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THE CITY RECORD

MICHAEL R. BLOOMBERG, Mayor

EDNA WELLS HANDY, Commissioner, Department of Citywide Administrative Services.
 ELI BLACHMAN, Editor of The City Record.

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PUBLIC HEARINGS AND MEETINGS

See Also: Procurement; Agency Rules

MANHATTAN BOROUGH PRESIDENT

PUBLIC HEARINGS

A public hearing on the proposed changes to the Waterfront Revitalization Program.

NOTICE IS HEREBY GIVEN THAT Manhattan Borough President Scott M. Stringer will hold a meeting of the Manhattan Borough Board on: Thursday, June 21, 2012 - 8:30 A.M., 163 West 125th Street, 8th Floor, New York, New York 10027.

j15-21

CITY PLANNING COMMISSION

PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN THAT RESOLUTIONS Have been adopted by the City Planning Commission Scheduling public hearings on the following matters to be held at Spector Hall, 22 Reade Street, New York, NY, on Wednesday, June 20, 2012 at 10:00 A.M.

BOROUGH OF THE BRONX

No. 1

HIGHBRIDGE CHILD CARE/SENIOR CENTER

CD 4 C 120140 PQX

IN THE MATTER OF an application submitted by the Administration for Children's Services, the Department for the Aging, and the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter, for the acquisition of property located at 1181 Nelson Avenue (Block 2516, Lot 51), for continued use as a child care center and senior center.

BOROUGH OF BROOKLYN

Nos. 2 & 3

59 WALTON STREET REZONING & TEXT AMENDMENT

No. 2

CD 1 C 100041 ZMK

IN THE MATTER OF an application submitted by the Walton Realty Associates pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 13b:

- changing from an M1-2 District to an R6A District property bounded by Middleton Street, Union Avenue, Lorimer Street, and Marcy Avenue;
- changing from an M3-1 District to an R7A District property bounded by Lorimer Street, Union Avenue, Wallabout Street, and Marcy Avenue; and
- establishing within a proposed R7A District a C2-4 District bounded by Lorimer Street, a line 150 feet northeasterly of Marcy Avenue, Walton Street, and Marcy Avenue;

as shown in a diagram (for illustrative purposes only) dated March 26, 2012 and subject to the conditions of CEQR Declaration E-282.

No. 3

CD 1 N 100042 ZRK
 IN THE MATTER OF an application submitted by Walton Realty Associates pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Appendix F (Inclusionary Housing Designated Areas), relating to the extension of the Inclusionary Housing Program to a proposed R7A district.

Matter Underlined is new, to be added;
 Matter in ~~Strikeout~~ is old, to be deleted;
 Matter within ## is defined in Section 12-10;
 *** indicates where unchanged text appears in the Zoning Resolution

APPENDIX F Inclusionary Housing Designated Areas

The boundaries of #Inclusionary Housing designated areas# are shown on the maps listed in this Appendix F. The #Residence Districts# listed for such areas shall include #Commercial Districts# where #residential buildings# or the #residential# portion of #mixed buildings# are governed by the #bulk# regulations of such #Residence Districts#. Where #Inclusionary Housing designated areas# are mapped in #Commercial Districts#, the residential district equivalent has instead been specified for each map.

 Brooklyn, Community District 1

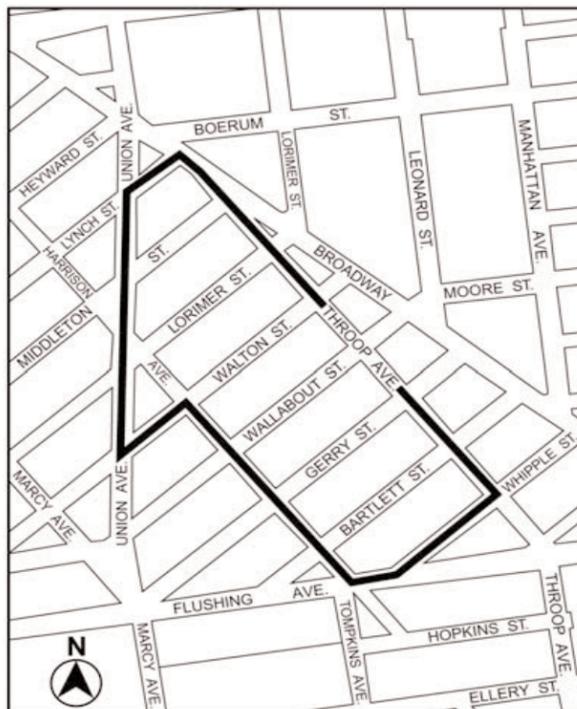
In Waterfront Access Plan BK-1 and in the R6, R6A, R6B, R7A, R7-3 and R8 Districts within the areas shown on the following Maps 1, 2, 3 and 4:

EXISTING

(TO BE DELETED)

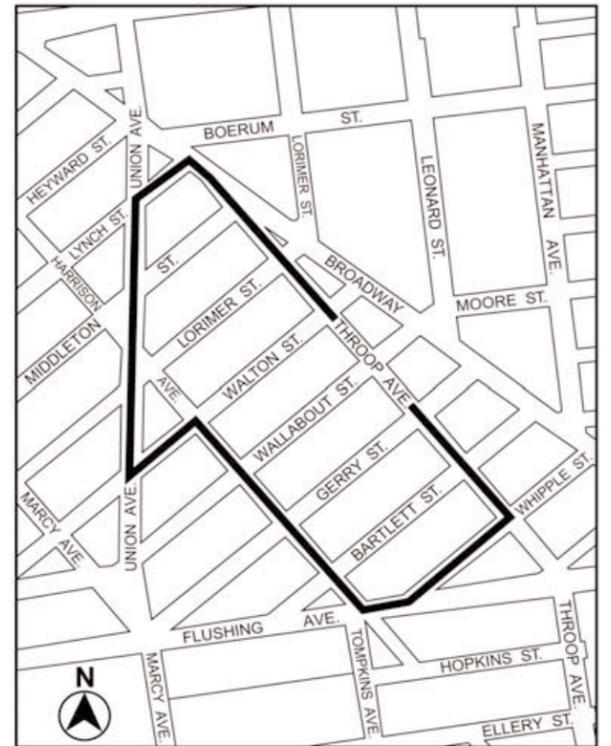
Map 4 (12/21/09)

Portion of Community District 1, Brooklyn



PROPOSED (TO REPLACE EXISTING)

Map 4
 Portion of Community District 1, Brooklyn



No. 4

74 WALLABOUT STREET REZONING

CD 1 C 110390 ZMK

IN THE MATTER OF an application submitted by 74 Wallabout LLC, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Sections No. 12d:

- changing from an M1-2 District to an R7-1 District property bounded by Wallabout Street, Franklin Avenue, Flushing Avenue, and Kent Avenue; and
- establishing within a proposed R7-1 District a C1-5 District bounded by Wallabout Street, Franklin Avenue, Flushing Avenue; and Kent Avenue;

as shown in a diagram (for illustrative purposes only) dated March 26, 2012 and subject to the conditions of CEQR Declaration E-283.

BOROUGH OF MANHATTAN

No. 5

FORDHAM UNIVERSITY PASSAGEWAY

CD 7 C 120172 ZSM

IN THE MATTER OF an application submitted by Fordham University, West 62nd Street LLC and West 60th Realty LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 82-33 of the Zoning Resolution to modify the minimum distance between buildings requirements of Section 23-711 (Standard minimum distance between buildings), in connection with the proposed expansion of Fordham University, Lincoln Center Campus, bounded by Amsterdam Avenue, West 62nd Street, Columbus Avenue, West 60th Street, Amsterdam Avenue, West 61st Street, a line 200 feet easterly of Amsterdam Avenue, and a line 90 feet southerly of West 62nd Street (Block 1132, Lots 1, 20, 21, 22 and 35), in a C4-7 District, within the Special Lincoln Square District.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

No. 6

120 EAST 125TH STREET FIREHOUSE

CD 11 N 120248 HAM

IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD):

- pursuant to Article 16 of the General Municipal Law of New York State for:

- a. the designation of property located at 120 East 125th Street (Block 1773, Lot 62) as an Urban Development Action Area;
- b. and an Urban Development Action Area Project for such an area;

to facilitate the rehabilitation of an existing four-story building for community facility and art-related uses.

YVETTE V. GRUEL, Calendar Officer
City Planning Commission
22 Reade Street, Room 2E
New York, New York 10007
Telephone (212) 720-3370

j7-20

COMMUNITY BOARDS

■ PUBLIC HEARINGS

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO. 02 - Wednesday, June 20, 2012, 6:00 P.M., Polytechnic Institute, Dibner Library, Room LC 400, 5 Metrotech Center, Brooklyn, NY

#N120384ZRK

Downtown Brooklyn Parking
 IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution; to modify the parking regulations of the Special Downtown Brooklyn District.

IN THE MATTER OF an application to be filed at the Board of Standards and Appeals (BSA) to allow the reconversion of an existing community facility hotel back to its original transient hotel use in a C1-3/R7-1 and R6 zoning district, where transient hotel use is not otherwise allowed.

j14-20

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO.18 - Wednesday, June 20, 2012 at 7:00 P.M., Community Board Office, 1097 Bergen Avenue, Brooklyn, NY

IN THE MATTER OF an application submitted by the New York City Department of Small Business Services, pursuant to Section 384(b)4 of the New York City Charter for the disposition of city-owned property located at 2875 Flatbush Avenue (a.k.a. Mill Basin Project).

BSA# 337-90-BZ

Premises: 1415 East 92nd Street (a.k.a 9201-11 Avenue L)
 A public hearing on an application filed pursuant to Section 11-411 of the Zoning Resolution to waive the Rules of Practice and Procedure to extend the time to obtain a Certificate of Occupancy and to re-open and extend the term of variance, for a term of ten (10) years; to permit the continued operation of an automotive service station, and automobile repair establishment.

j14-20

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO. 12 - Monday, June 25, 2012, 6:45 P.M., Community Board 12 Office, 5910 13th Avenue, Brooklyn, NY

Premises: 1030-1044 Ocean Parkway
 An amendment to split the previous BSA grant into two separate job numbers at the Department of Buildings and to legalize the addition of a cellar mezzanine at the premises.

j19-25

EMPLOYEES RETIREMENT SYSTEM

■ INVESTMENT MEETING

Please be advised that the next Investment Meeting of the Board of Trustees of the New York City Employees' Retirement System has been scheduled for Tuesday, June 26, 2012 at 9:30 A.M. to be held at the New York City Employees' Retirement System, 335 Adams Street, 22nd Floor Boardroom, Brooklyn, NY 11201-3751.

j19-25

ENVIRONMENTAL CONTROL BOARD

■ MEETING

OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS / ENVIRONMENTAL CONTROL BOARD

The next meeting will take place on Thursday, June 28, 2012 at 40 Rector Street, OATH Lecture Room, 14th Floor, New York, N.Y. 10006 at 9:15 A.M., at the call of the Chairman.

j18-20

LANDMARKS PRESERVATION COMMISSION

■ PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN THAT PURSUANT to the provisions of 3020 of the New York City Charter and Chapter 3 of Title 24 of the Administrative Code of the City of New York (Sections 25-303 and 25-313) that on **Tuesday, June**

26, 2012 at 3:30 P.M., at the Landmarks Preservation Commission will conduct a *public hearing* in the Public Meeting Room of the Landmarks Preservation Commission, located at The Municipal Building, 1 Centre Street, 9th Floor North, City of New York with respect to the following proposed Historic District. Any person requiring reasonable accommodation in order to participate in the hearing should call or write the Landmarks Preservation Commission, [Municipal Building, 1 Centre Street, 9th Floor North, New York, NY 10007, (212) 669-7700] no later than five (5) business days before the hearing. There will also be a public meeting on that day.

ITEM TO BE HEARD

PUBLIC MEETING ITEM NO. 1
 LP-2491
PROPOSED EAST VILLAGE/LOWER EAST SIDE HISTORIC DISTRICT, Borough of Manhattan.

Boundary Description

The proposed East Village/Lower East Side Historic District consists of the property bounded by a line beginning at the northeast corner of Second Avenue and East 2nd Street, extending westerly across Second Avenue and continuing westerly along the northern curblineline of East 2nd Street to its intersection with a line extending southerly from the western side wall of 26 East 2nd Street, northerly along the western side wall of 26 East 2nd Street, easterly along the northern property line of 26 East 2nd Street and a portion of the northern property line of 28 East 2nd Street, northerly along a portion of the western property line of 28 East 2nd Street, easterly along a portion of the northern property line of 28 East 2nd Street and the northern property lines of 30 to 36 East 2nd Street to the western curblineline of Second Avenue, northerly along the western curblineline of Second Avenue to its intersection with a line extending easterly from the southern property line of 43 Second Avenue, westerly along the southern property line of 43 Second Avenue, northerly along the western property lines of 43 to 45-47 Second Avenue, westerly along a portion of the southern property line of 30 East 3rd Street to the northern curblineline of East 3rd Street, westerly along the southern curblineline of East 3rd Street to its intersection with a line extending southerly from the western property line of 7 East 3rd Street, northerly along the western property line of 7 East 3rd Street, westerly along the southern property line of 56 East 4th Street and a portion of the southern property line of 54 East 4th Street, northerly along a portion of the western property line of 54 East 7th Street, westerly along a portion of the western property line of 54 East 7th Street to the northern curblineline of East 4th Street, easterly along the northern curblineline of East 4th Street to its intersection with a line extending southerly from the western property line of 57 East 4th Street, northerly along the western curblineline of East 4th Street to its intersection with a line extending southerly from the western property line of 207 East 5th Street, northerly along the western property line of 210-214 East 5th Street, northerly along the western property line of 210-214 East 5th Street to the northern curblineline of East 5th Street, westerly along the northern curblineline of East 5th Street to its intersection with a line extending southerly from the western property line of 207 East 5th Street, northerly along the northern property lines of 207 to 223 East 5th Street and a portion of the northern property line of 225 East 5th Street, northerly along the western property line of 226 East 6th Street to the southern curblineline of East 6th Street, easterly along the southern curblineline of East 6th Street to its intersection with a line extending southerly from the western property line of 103 Second Avenue (aka 239 East 6th Street), northerly along the western property lines of 103 Second Avenue (aka 239 East 6th Street) and 105 Second Avenue and a portion of the western property line of 107-113 Second Avenue, easterly along a portion of the northern property line of 107-113 Second Avenue, northerly along a portion of the western property line of 107-113 Second Avenue and the western property line of 46 East 7th Street to the northern curblineline of East 7th Street, westerly along the northern property line of East 7th Street to its intersection with a line extending southerly from the western property line of 11 East 7th Street, northerly along the western property line of 11 East 7th Street, easterly along the northern property lines of 11 to 39 East 7th Street and a portion of the northern property line of 41-43 East 7th Street, northerly along western property line of 125 Second Avenue, easterly along a portion of the northern property line of 125 Second Avenue, northerly along the western property lines of 127 Second Avenue to 131 Second Avenue (aka 36 St. Mark's Place) to the southern curblineline of St. Mark's Place, easterly along the southern curblineline of St. Mark's Place, southerly along the western curblineline of Second Avenue to the southwest corner of Second Avenue and East 7th Street, easterly along the southern curblineline of East 7th Street to its intersection with a line extending southerly from the western property line of 49 East 7th Street, northerly along the western property line of 49 East 7th Street, easterly along the northern property line of 49 East 7th Street, northerly along a portion of the western property line of 51 East 7th Street, easterly along the northern property lines of 51 to 65 East 7th Street, southerly along a portion of the eastern property line of 65 East 7th Street, easterly along the northern property lines of 67 to 69 East 7th Street, northerly along a portion of the western property line of 71 East 7th Street, easterly along the northern property lines of 71 to 73-75 East 7th Street, southerly along a portion of the eastern property line of 73-75 East 7th Street, easterly along the northern property line of 77 East 7th Street, northerly along a portion of the western property line of 79 East 7th Street, easterly along the northern property lines of 79 to 85 East 7th Street, southerly along the eastern property line of 85 East 7th Street to the northern curblineline of East 7th Street, westerly along the northern curblineline of East 7th Street to its intersection with a line extending northerly from the eastern property line of 84 East 7th Street, southerly along the eastern property line of 84 East 7th Street, westerly along the southern property line of 84 East 7th Street, southerly along portions of the eastern property lines of 82 East 7th Street and 341 East 6th Street, easterly along the northern property line of 99 First Avenue (aka 343-347 East 6th Street) to the western curblineline of First Avenue, southerly along the Western curblineline of First Avenue to its intersection with a line extending westerly from the northern property line of 100 First Avenue (aka 401-403 East 6th Street), easterly along the northern property line of 100 First Avenue (aka 401-403 East 6th Street), northerly along portions of the western property lines of 405 East 6th Street and 92 East 7th Street, westerly along the southern property line of 112 First Avenue to the eastern curblineline of First Avenue, northerly along the eastern curblineline of First Avenue to its intersection with a line extending westerly from the northern property line of 122 First Avenue, easterly along

the northern property line 122 First Avenue, northerly along a portion of the western property line of 95 East 7th Street, easterly along the northern property lines of 95 to 109 East 7th Street, southerly along a portion of the eastern property line of 109 East 7th Street, easterly along the northern property line of 111-115 East 7th Street, southerly along a portion of the eastern property line of 117-119 East 7th Street, easterly the northern property lines of 117-119 to 129 East 7th Street, southerly along the eastern property line of 129 East 7th Street to the northern curblineline of East 7th Street, westerly along the northern curblineline of East 7th Street to its intersection with a line extending northerly from the eastern property line of 122 East 7th Street, southerly along the eastern property line of 439 to 441 East 6th Street and 101 Avenue A to the western curblineline of Avenue A, southerly along the western curblineline of Avenue A to the northern curblineline of East 6th Street, westerly along the northern curblineline of East 6th Street to its intersection with a line extending northerly from the eastern property line of 340 East 6th Street, southerly along the eastern property line of 340 East 6th Street, westerly along the southern property lines of 340 to 306-308 East 6th Street, southerly along the eastern property line of 92-94 Second Avenue, westerly along a portion of the southern property line of 92-94 Second Avenue, southerly along the eastern property line of 88-90 Second Avenue (aka 301 East 5th Street) to the southern curblineline of East 5th Street, easterly along the southern curblineline of East 5th Street to its intersection with a line extending northerly from the eastern property line of 86 Second Avenue (aka 300 East 5th Street), southerly along the eastern property lines of 86 Second Avenue (aka 300 East 5th Street) to 72 Second Avenue (aka 91 East 4th Street) to the northern curblineline of East 4th Street, westerly along the northern curblineline of East 4th Street to its intersection with a line extending northerly from the eastern property line of 68-70 Second Avenue (aka 86 East 4th Street), southerly along the eastern property lines of 68-70 Second Avenue (aka 86 East 4th Street) to 64 Second Avenue, easterly along a portion of the northern property line of 60-62 Second Avenue, southerly along the eastern property line of 60-62 Second Avenue, easterly along a portion of the northern property line of 51-55 East 3rd Street, northerly along a portion of the western property line of 51-55 East 3rd Street, easterly along a portion of the northern property line of 51-55 East 3rd Street and the northern property line of 57 East 3rd Street, southerly along the eastern property line of 57 East 3rd Street to the southern curblineline of East 3rd Street, easterly along said curblineline to a point on a line extending northerly from the eastern property line of 64 East 3rd Street, southerly along the eastern property line of 64 East 3rd Street, easterly along a portion of the northern property line of 52-74 East 2nd Street, southerly along the eastern property line of 52-74 East 2nd Street, westerly along a portion of the southern property line of 52-74 East 2nd Street, southerly along the eastern property line of 80 East 2nd Street to the northern curblineline of East 2nd Street, westerly along said curblineline to a point on a line extending northerly from the eastern property line of 77 East 2nd Street, southerly along said line and the eastern property line of 77 East 2nd Street, westerly along the southern property lines of 77 and 75 East 2nd Street, southerly along a portion of the eastern property line of 67-69 East 2nd Street, westerly along the southern property lines of 67-69 and 59-63 East 2nd Street, northerly along a portion of the western property line of 59-63 East 2nd Street, westerly along the southern property line of 47-55 East 2nd Street, southerly along a portion of the eastern property line of 43-45 East 2nd Street (aka 32-34 Second Avenue), westerly along the southern property line of 43-45 East 2nd Street to the eastern curblineline of Second Avenue, northerly along said curblineline, easterly along the southern curblineline of East 2nd Street to a point on a line extending southerly from the western property line of 52-74 East 2nd Street, northerly along said line and the western property line of 52-74 East 2nd Street, westerly along the southern property lines of 54-56 and 50-52 East 3rd Street, northerly along a portion of the western property line of 50-52 East 3rd Street, westerly along the southern property lines of 48 through 40-42 East 2nd Street (aka 50-52 Second Avenue) to the eastern curblineline of Second Avenue, and southerly along said curblineline to the point or place of beginning.

[Community Board 3]

j12-25

PARKS AND RECREATION

PLANNING

■ MEETING

PUBLIC SCOPING MEETING

Notice is hereby given that a Public Scoping Meeting will be held by the City of New York Department of Parks and Recreation (DPR), as lead agency for CEQR and SEQRA review, to accept comments on the Draft Scope of Work for the preparation of the Environmental Impact Statement for the proposed USTA Billie Jean King National Tennis Center (NTC) Strategic Vision project. The Public Scoping Meeting will be held on Monday, July 23, 2012 at 6:00 p.m. at the USTA Billie Jean King National Tennis Center, Indoor Training Center at David Dinkins Circle, Flushing Meadows Corona Park, Flushing, New York 11368 (by car: Meridian Road, Parking Lot B; by subway: No. 7 to Mets-Willets Point).

The action involves proposed improvements to and an expansion of the NTC by USTA National Tennis Center, Inc. The 42-acre NTC is one of the world's largest public recreational tennis facilities, located in Flushing Meadows Corona Park, Queens, on park land leased from DPR. For 11 months of the year, NTC facilities are open to the public for indoor and outdoor tennis. The NTC is also host to the US Open tennis tournament, one of the sport's four Grand Slam championship tennis tournaments. The proposed project would improve the NTC site plan, circulation, visitor amenities, and landscaping, and would include construction of two new stadiums to replace the existing Louis Armstrong Stadium in the same location and the Grandstand Stadium in a new location at the southwest corner of the NTC site, improvements to Arthur Ashe Stadium, a temporary stadium on the site of Louis Armstrong Stadium for one US Open tournament during construction, and two new parking garages. The project would add 1.02 acres to the NTC site, including up to 0.76 acres of park land that would be alienated, and 0.26 acres of previously alienated park land that is currently not covered by the NTC lease.

A copy of the Draft Scope and the Environmental Assessment Statement and Positive Declaration can be obtained online at <http://www.nycgovparks.org/parks/fmcp> or by contacting:

Joshua Laird, Assistant Commissioner for Planning and Parklands
 New York City Department of Parks and Recreation
 The Arsenal, Central Park
 830 Fifth Avenue, Room 401
 New York, New York 10065
 Telephone: 212-360-3402
 Fax: 212-360-3453
 Email: Joshua.laird@parks.nyc.gov

Oral and written comments can be submitted at the Public Scoping Meeting. Written comments can also be sent to the above address, fax number, or email address. Written comments will be accepted by NYCDPR at the above address or by fax or e-mail through Friday, August 3, 2012.

j20

TRANSPORTATION

PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN, pursuant to law, that the following proposed revocable consents, have been scheduled for a public hearing by the New York City Department of Transportation. The hearing will be held at 55 Water Street, 9th Floor, Room 945 commencing at 2:00 P.M. on Wednesday, June 27, 2012. Interested parties can obtain copies of proposed agreements or request sign-language interpreters (with at least seven days prior notice) at 55 Water Street, 9th Floor SW, New York, NY 10041, or by calling (212) 839-6550.

#1 In the matter of a proposed revocable consent authorizing The Trustee of Columbia University in the City of New York to construct, maintain and use a conduit, together with pull boxes, under and along West 168th Street and under, across and along Audubon Avenue, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2023 and provides among other terms and conditions for compensation payable to the City according to the following schedule:

From the Approval Date to June 30, 2013- \$7,536/annum.

- For the period July 1, 2013 to June 30, 2014 - \$7,755
- For the period July 1, 2014 to June 30, 2015 - \$7,974
- For the period July 1, 2015 to June 30, 2016 - \$8,193
- For the period July 1, 2016 to June 30, 2017 - \$8,412
- For the period July 1, 2017 to June 30, 2018 - \$8,631
- For the period July 1, 2018 to June 30, 2019 - \$8,850
- For the period July 1, 2019 to June 30, 2020 - \$9,069
- For the period July 1, 2020 to June 30, 2021 - \$9,288
- For the period July 1, 2021 to June 30, 2022 - \$9,507
- For the period July 1, 2022 to June 30, 2023 - \$9,726

the maintenance of a security deposit in the sum of \$9,800 and the insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) aggregate.

#2 In the matter of a proposed revocable consent authorizing Richard Cantor and Esther Altmann to construct, maintain and use a stoop on the south sidewalk of West 87th Street, west of West End Avenue, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2023 and provides among other terms and conditions for compensation payable to the City according to the following schedule:

From the Approval Date to June 30, 2023 - \$25/annum.

the maintenance of a security deposit in the sum of \$2,000 and the insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) aggregate.

#3 In the matter of a proposed revocable consent authorizing Francesco Scattone and Judith Gibbons to construct, maintain and use a stoop and a fenced-in area on the south sidewalk of East 93rd Street, west of Madison Avenue, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2023 and provides among other terms and conditions for compensation payable to the city according to the following schedule:

From the Approval Date to June 30, 2023 - \$25/annum.

the maintenance of a security deposit in the sum of \$5,000 and the insurance shall be the amount of One Million dollars (1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) aggregate.

#4 In the matter of a proposed revocable consent authorizing Kurt W. Rueloffs Jr. and Shyanne Rueloffs to construct, maintain and use a stoop and a stair on the south sidewalk of West 88th Street, east of Central Park West, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2023 and provides among others terms and condition for compensation payable to the city according to the following schedule:

From the Approval Date to June 30, 2023 - \$25/annum.

the maintenance of a security deposit in the sum of \$5,000 and the insurance shall be in the amount of One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) aggregate.

j7-27

PROPERTY DISPOSITION

CITYWIDE ADMINISTRATIVE SERVICES

OFFICE OF CITYWIDE PURCHASING

SALE BY SEALED BID

SALE OF: METAL MEZZANINE AND GAS HEATERS, USED.

S.P.#: 12023

DUE: June 28, 2012

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

DCAS, Office of Citywide Purchasing, 18th Floor Bid Room, Municipal Building, New York, NY 10007. For sales proposal, contact Gladys Genoves-McCauley (718) 417-2156.

j15-28

POLICE

OWNERS ARE WANTED BY THE PROPERTY CLERK DIVISION OF THE NEW YORK CITY POLICE DEPARTMENT.

The following listed property is in the custody, of the Property Clerk Division without claimants.

Recovered, lost, abandoned property, property obtained from prisoners, emotionally disturbed, intoxicated and deceased persons; and property obtained from persons incapable of caring for themselves.

Motor vehicles, boats, bicycles, business machines, cameras, calculating machines, electrical and optical property, furniture, furs, handbags, hardware, jewelry, photographic equipment, radios, robes, sound systems, surgical and musical instruments, tools, wearing apparel, communications equipment, computers, and other miscellaneous articles.

INQUIRIES

Inquiries relating to such property should be made in the Borough concerned, at the following office of the Property Clerk.

FOR MOTOR VEHICLES

(All Boroughs):

- * College Auto Pound, 129-01 31 Avenue, College Point, NY 11354, (718) 445-0100
- * Gowanus Auto Pound, 29th Street and 2nd Avenue, Brooklyn, NY 11212, (718) 832-3852
- * Erie Basin Auto Pound, 700 Columbia Street, Brooklyn, NY 11231, (718) 246-2029

FOR ALL OTHER PROPERTY

- * Manhattan - 1 Police Plaza, New York, NY 10038, (212) 374-4925.
- * Brooklyn - 84th Precinct, 301 Gold Street, Brooklyn, NY 11201, (718) 875-6675.
- * Bronx Property Clerk - 215 East 161 Street, Bronx, NY 10451, (718) 590-2806.
- * Queens Property Clerk - 47-07 Pearson Place, Long Island City, NY 11101, (718) 433-2678.
- * Staten Island Property Clerk - 1 Edgewater Plaza, Staten Island, NY 10301, (718) 876-8484.

j1-d31

PROCUREMENT

“Compete To Win” More Contracts! Thanks to a new City initiative - “Compete to Win” - the NYC Department of Small Business Services offers a new set of FREE services to help create more opportunities for minority and women-owned businesses to compete, connect and grow their business with the City. With NYC Construction Loan, Technical Assistance, NYC Construction Mentorship, Bond Readiness, and NYC Teaming services, the City will be able to help even more small businesses than before.

● Win More Contracts at nyc.gov/competetowin

“The City of New York is committed to achieving excellence in the design and construction of its capital program, and building on the tradition of innovation in architecture and engineering that has contributed to the City’s prestige as a global destination. The contracting opportunities for construction/construction services and construction-related services that appear in the individual agency listings below reflect that commitment to excellence.”

ADMINISTRATION FOR CHILDREN’S SERVICES

SOLICITATIONS

Human / Client Services

NON-SECURE DETENTION GROUP HOMES – Negotiated Acquisition – Judgment required in evaluating proposals - PIN# 06811N0004 – DUE 05-31-13 AT 2:00 P.M. – The Administration for Children’s Services, Division of Youth and Family Justice is soliciting applications from organizations interested in operating non-secure detention group homes in New York City. This is an open-ended solicitation; applications will be accepted on a rolling basis until 2:00 P.M. on 5/31/13.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above. Administration for Children’s Services, 150 William Street, 9th Floor, New York, NY 10038. Patricia Chabla (212) 341-3505; Fax: (212) 341-3625; patricia.chabla@dfa.state.ny.us

j1-n14

AGING

AWARDS

Human / Client Services

SENIOR SERVICES – BP/City Council Discretionary –

Hebrew Institute of Riverdale
 3700 Henry Hudson Pkwy., Bronx, NY 10463
 PIN#: 12512DISC1YE - \$25,000

Hebrew Institute of Riverdale
 3700 Henry Hudson Pkwy., Bronx, NY 10463
 PIN#: 12511DISC1YE - \$30,000

Research Foundation of the City University of New York
 230 West 41st Street, 7th Fl., New York, NY 10036
 PIN: 12512DISC6WH - \$10,120

Young Mens and Young Wovens Hebrew Association/
 92nd St. YM HA/YWAA
 1395 Lexington Ave., New York, NY 10128
 PIN#: 12512DISC3ZB - \$10,500

j20

SENIOR CENTERS – Negotiated Acquisition – Available only from a single source -

The Spanish Speaking Elderly Council-RAICES, Inc.
 460 Atlantic Avenue, Brooklyn, NY 11217
 PIN#: 12513SCNA21Q - \$268,770

The Spanish Speaking Elderly Council-RAICES, Inc.
 460 Atlantic Avenue, Brooklyn, NY 11217
 PIN#: 12513SCNA216 - \$414,416

Queens Community House, Inc.
 108-25 62nd Drive, Forest Hills, NY 11375
 PIN#: 12513SCNA409 - \$333,894

Queens Community House, Inc.
 108-25 62nd Drive, Forest Hills, NY 11375
 PIN#: 12513SCNA437 - \$558,511

Queens Community House, Inc.
 108-25 62nd Drive, Forest Hills, NY 11375
 PIN#: 12513SCNA4A2 - \$358,138

Chinese-American Planning Council, Inc.
 150 Elizabeth Street, New York, NY 10012
 PIN#: 12513SCNA476 - \$369,451

Chinese-American Planning Council, Inc.
 150 Elizabeth Street, New York, NY 10012
 PIN#: 12513SCNA30H - \$695,014

Catholic Charities Neighborhood Services, Inc.
 191 Joralemon Street, 14th Fl., Brooklyn, NY 11201
 PIN#: 12513SCNA62A - \$2,195,148

Catholic Charities Neighborhood Services, Inc.
 191 Joralemon Street, 14th Fl., Brooklyn, NY 11201
 PIN#: 12513SCNA433 - \$691,660

Catholic Charities Neighborhood Services, Inc.
 191 Joralemon Street, 14th Fl., Brooklyn, NY 11201
 PIN#: 12513SCNA41G - \$417,324

Catholic Charities Neighborhood Services, Inc.
 191 Joralemon Street, 14th Fl., Brooklyn, NY 11201
 PIN#: 12513SCNA436 - \$637,616

Goddard Riverside Community Center
 593 Columbus Avenue, New York, NY 10024
 PIN#: 12513SNVA30V - \$381,133

University Settlement Society of New York
 184 Eldridge Street, New York, NY 10002
 PIN#: 12513SCNA32B - \$331,310

Hudson Guild
 441 West 26th Street, New York, NY 10001
 PIN#: 12513SCNA349 - \$771,725

Korean Community Services of Metropolitan New York
 35-56 159th Street, Flushing, NY 11358
 PIN#: 12513SCNA41T - \$219,151

Korean Community Services of Metropolitan New York
 35-56 159th Street, Flushing, NY 11358
 PIN#: 12513SCNA41A - \$493,052

Jamaica Service Program for Older Adults
 162-04 Jamaica Avenue, 3rd Fl., New York, NY 11432
 PIN#: 12513SCNA40X - \$374,182

Rochdale Village Social Services, Inc.
 169-65 137th Avenue, Jamaica, NY 11434
 PIN#: 12513SCNA40N - \$267,569

Selfhelp Community Services, Inc.
 520 Eighth Avenue, 5th Fl., New York, NY 10018
 PIN#: 12513SCNA464 - \$1,749,020

Greenwich House, Inc.
 224 West 30th Street, New York, NY 10001
 PIN#: 12513SCNA30W - \$302,872

Greenwich House, Inc.
 224 West 30th Street, New York, NY 10001
 PIN#: 12513SCNA32Z - \$782,685

The Neighborhood Self-Help by Older Persons Project, Inc.
 953 Southern Blvd., Bronx, NY 10459
 PIN#: 12513SCNA193 - \$775,329

Citizens Care Committee, Inc.
 146 Saint Nicholas Avenue, New York, NY 10026
 PIN#: 12513SCNA339 - \$186,254

Jamaica Service Program for Older Adults
 162-04 Jamaica Avenue, 3rd Fl., New York, NY 11432
 PIN#: 12513SCNA420 - \$579,722

Catholic Charities Neighborhood Services, Inc.
 191 Joralemon Street, 14th Fl., Brooklyn, NY 11201
 PIN#: 12513SCNA422 - \$315,169

Jewish Association for Services for the Aged
 247 West 37th Street, 9th Fl., New York, NY 10018
 PIN#: 12513SCNA627 - \$1,548,711

Jewish Association for Services for the Aged
 247 West 37th Street, 9th Fl., New York, NY 10018
 PIN#: 12513SCNA443 - \$257,170

Jewish Association for Services for the Aged
247 West 37th Street, 9th Fl., New York, NY 10018
PIN#: 12513SCNA132 - \$189,511

Jewish Association for Services for the Aged
247 West 37th Street, 9th Fl., New York, NY 10018
PIN#: 12513SCNA440 - \$521,898

Jewish Association for Services for the Aged
247 West 37th Street, 9th Fl., New York, NY 10018
PIN#: 12513SCNA610 - \$598,097

Jewish Association for Services for the Aged
247 West 37th Street, 9th Fl., New York, NY 10018
PIN#: 12513SCNA10D - \$350,353

BronxWorks, Inc.
60 East Tremont Avenue, Bronx, NY 10453
PIN#: 12513SCNA10H - \$197,607

BronxWorks, Inc.
60 East Tremont Avenue, Bronx, NY 10453
PIN#: 12513SCNA11P - \$181,586

YM YWHA of the Bronx/Riverdale YM-YWHA
5625 Arlington Avenue, Bronx, NY 10471
PIN#: 12513SCNA101 - \$503,986

The Carter Burden Center for the Aging, Inc.
1484 First Avenue, New York, NY 10075
PIN#: 12513SCNA31Z - \$314,193

Institute for the Puerto Rican Hispanic Elderly, Inc.
105 E 22nd Street, Ste. 615, New York, NY 10010
PIN#: 12513SCNA10W - \$367,303

Institute for the Puerto Rican Hispanic Elderly, Inc.
105 E 22nd Street, Ste. 615, New York, NY 10010
PIN#: 12513SCNA460 - \$553,580

Institute for the Puerto Rican Hispanic Elderly, Inc.
105 E 22nd Street, Ste. 615, New York, NY 10010
PIN#: 12513SCNA40P - \$635,122

Institute for the Puerto Rican Hispanic Elderly, Inc.
105 E 22nd Street, Ste. 615, New York, NY 10010
PIN#: 12513SCNA30Z - \$470,224

Institute for the Puerto Rican Hispanic Elderly, Inc.
105 E 22nd Street, Ste. 615, New York, NY 10010
PIN#: 12513SCNA12A - \$269,626

Institute for the Puerto Rican Hispanic Elderly, Inc.
105 E 22nd Street, Ste. 615, New York, NY 10010
PIN#: 12513SCNA11T - \$400,945

The Educational Alliance, Inc.
197 East Broadway, New York, NY 10002
PIN#: 12513SCNA31C - \$586,084

Agudath Israel of America Community Services, Inc
42 Broadway, 14th Fl., New York, NY 10004
PIN#: 12513SCNA31G - \$314,815

SEBCO Development, Inc.
885 Bruckner Blvd., Bronx, NY 10459
PIN#: 12513SCNA189 - \$436,664

VARIOUS SENIOR SERVICES – Negotiated Acquisition – Available only from a single source –

The Neighborhood Self-Help by Older Persons Project, Inc.
953 Southern Blvd., Bronx, NY 10459
PIN#: 12513VRNA11G - \$434,159

The Carter Burden Center for the Aging, Inc.
1484 First Avenue, New York, NY 10075
PIN#: 12513VRNA32G - \$247,968

One Stop Senior Services
747 Amsterdam Avenue, 3rd Fl., New York, NY 10025
PIN#: 12513VRNA333 - \$341,612

LEGAL SENIOR SERVICES – Negotiated Acquisition – Available only from a single source –

LSNY Bronx Corporation Legal Services
579 Courtlandt Avenue, Bronx, NY 10451
PIN#: 12513LGNA1AA - \$241,737

Jewish Association for Services for the Aged
247 West 37th Street, 9th Fl., New York, NY 10018
PIN#: 12513LGNA40A - \$434,482

CHIEF MEDICAL EXAMINER

CONTRACTS

Goods & Services

CORRECTION: OCME DNA FORENSIC SWAB AND SWAB KIT – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 81609ME0010 – DUE 09-13-12 AT 3:00 P.M. – This is a concessions RFP for the license rights or the right to act as licensing agent for the manufacture, sale and distribution of OCME DNA forensic swab and swab kit.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Office of Chief Medical Examiner, 421 East 26th Street, 10th Floor, New York, NY 10016.
Althea Samuels (212) 323-1730; Fax: (646) 500-5548; asamuels@ocme.nyc.gov

CITYWIDE ADMINISTRATIVE SERVICES

SOLICITATIONS

Goods

GRP: ATTENUATORS, TRUCK MOUNTED, UMAD (RE-AD) – Competitive Sealed Bids – PIN# 8571200610 – DUE 07-10-12 AT 10:30 A.M. – A copy of the bid can be downloaded from the City Record Online site at

<http://a856-internet.nyc.gov/nycvendoronline/home.asp>. Enrollment is free. Vendors may also request the bid by contacting Vendor Relations via email at dcasdmssbids@dcas.nyc.gov, by telephone at (212) 669-8610 or by fax at (212) 669-7603.

*Department of Citywide Administrative Services,
1 Centre Street, 18th Floor, New York, NY 10007.
Deborah Hibbler (212) 386-0411; Fax: (212) 313-3167;
dhibbler@dcas.nyc.gov*

MUNICIPAL SUPPLY SERVICES

AWARDS

Goods

GRP: FERRARA FIRE APPARATUS – Competitive Sealed Bids – PIN# 8571200437 – AMT: \$930,000.00 – TO: Ferrara Fire Apparatus Inc., 27855 James Chapel Road, P.O. Box 249, Holden, LA 70744.

● **GRP: RACOR FILTRATION PRODS** – Competitive Sealed Bids – PIN# 8571200208 – AMT: \$199,800.00 – TO: Shuster Corporation, 4 Wright Street, New Bedford, MA 02740.

● **PAPER, TOILET, ROLL - WHITE** – Other – PIN# 8571200625 – AMT: \$23,055.50 – TO: Appco Paper and Plastics Corp., 3949 Austin Boulevard, Island Park, NY 11558.

Original Vendor - Paradigm Marketing Consortium
Basis for Buy-Against: Non-delivery by original vendor on Purchase Order No. DO1 856 20121002706/1200549.

VENDOR LISTS

Goods

EQUIPMENT FOR DEPARTMENT OF SANITATION – In accordance with PPB Rules, Section 2.05(c)(3), an acceptable brands list will be established for the following equipment for the Department of Sanitation:

- A. Collection Truck Bodies
- B. Collection Truck Cab Chassis
- C. Major Component Parts (Engine, Transmission, etc.)

Applications for consideration of equipment products for inclusion on the acceptable brands list are available from: Mr. Edward Andersen, Procurement Analyst, Department of Citywide Administrative Services, Office of Citywide Procurement, 1 Centre Street, 18th Floor, New York, NY 10007. (212) 669-8509.

COMPTROLLER

ASSET MANAGEMENT

AWARDS

Services (Other Than Human Services)

INVESTMENT MANAGEMENT AGREEMENT – Request for Proposals – PIN# 01508811901QI – AMT: \$300,000.00 – TO: Amalgamated Bank, 275 Seventh Avenue, 9th Floor, New York, NY 10001-6708.

DESIGN & CONSTRUCTION

AWARDS

Construction / Construction Services

RECONSTRUCTION OF HIGH BRIDGE OVER THE HARLEM RIVER - PLANYC - MANHATTAN AND THE BRONX (ALTERNATE BID) – Competitive Sealed Bids – PIN# 85012B0023 – AMT: \$40,165,140.08 – TO: Schiavone Construction Co., LLC, 150 Meadowlands Parkway, 3rd Floor, Secaucus, NJ 07094. PROJECT ID: P-3PNYC01. DDC PIN#: 8502012HW0006C.

● **CONSTRUCTION OF STORM AND SANITARY SEWERS AND APPURTENANCES IN PERU STREET BETWEEN MORSE AVENUE AND OCEAN TERRACE, ETC., STATEN ISLAND** – Competitive Sealed Bids – PIN# 85012B0073 – AMT: \$5,876,586.80 – TO: Perfetto Contracting Co., Inc., 250 Sixth Street, Brooklyn, NY 11215. PROJECT ID: SER200214. DDC PIN#: 8502012SE0013C.

CONSTRUCTION OF SANITARY AND STORM SEWERS AND APPURTENANCES IN DAHLIA STREET, ETC., STATEN ISLAND – Competitive Sealed Bids – PIN# 85012B0070 – AMT: \$4,191,019.14 – TO: DiFazio Industries, Inc., 38 Kinsey Place, 2nd Floor, Staten Island, NY 10303. PROJECT ID: SER002320. DDC PIN#: 8502012SE0011C.

● **NEW YORK HALL OF SCIENCE - GREAT HALL UPGRADES AND TERRACE IMPROVEMENTS, QUEENS** – Competitive Sealed Bids – PIN# 85011B0130 – AMT: \$12,998,000.00 – TO: Admiral Construction LLC, 92 Magnolia Avenue, Westbury, NY 11590. PROJECT ID: PV274GHIN. DDC PIN#: 8502011PV0012C.

CONTRACT

SOLICITATIONS

Construction / Construction Services

RIKERS ISLAND FACADE RECONSTRUCTION OF GEORGE R. VIerno CENTER – Competitive Sealed Bids – PIN# 85012B0097 – DUE 08-08-12 AT 2:00 P.M. – PROJECT NO.: C75-FCAD/DCC PIN: 8502012CR0003C. Contract documents will not be sold after Monday, July 16, 2012. Security Clearance forms due by Thursday, July 19, 2012 (close of business). There will be a mandatory pre-bid walk-thru on Tuesday, July 24, 2012 at 9:30 A.M. at the George R. Vierno Center on Rikers Island located at 09-09 Hazen Street, Bronx, NY 11370. Special Experience Requirements apply to this contract.

This contract is subject to the Project Labor Agreement (“PLA”) entered into between the City and the Building and Construction Trades Council of Greater New York (“BCTC”) affiliated Local Unions. For further information, see Volume 2 of the Bid Documents.

This contract is part of a Multi-Agency Pilot Program in which the City’s Standard Construction Contract provisions concerning Delay Damages have been revised altering the allocation of the risk of projects delays, to allow contractors appropriate compensation for certain delays that are reasonably considered to be the City’s responsibility.

Bid Documents are available at: <http://www.nyc.gov/buildnyc> This bid solicitation includes M/WBE participation goal(s) for subcontracted work. For the M/WBE goals, please visit our

website at www.nyc.gov/buildnyc see “Bid Opportunities.” For more information about M/WBE certification, please call 311 or go to www.nyc.gov/getcertified. Vendor Source ID#: 80342.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above. Bid Document Deposit - \$35.00 per set. Comany check or money order only. No cash accepted. Late bids will not be accepted.
*Department of Design and Construction, 30-30 Thomson Avenue, 1st Floor, Long Island City, NY 11101.
Ben Perrone (718) 391-2200; Fax: (718) 391-2615.*

EMPLOYEES RETIREMENT SYSTEM

LEGAL DEPARTMENT

AWARDS

Goods

WYSE TERMINALS FOR CITRIX IMPLEMENTATION CONTRACT – Intergovernmental Purchase – PIN# 0090613201201 – AMT: \$235,445.92 – TO: CDW Government, 230 North Milwaukee Avenue, Vernon Hills, IL 60061. Terminals for Citrix Desktop Virtualization implementation.

● **DYNTEK CITRIX IMPLEMENTATION CONTRACT** – Intergovernmental Purchase – PIN# 0090613201202 – AMT: \$138,082.00 – TO: DynTek Services, Inc., 1250 Broadway, Suite 3801, New York, NY 10001. Citrix software licenses, implementation of Virtual Desktop, with related training and consulting.

ENVIRONMENTAL PROTECTION

MANAGEMENT AND BUDGET

SOLICITATIONS

Construction / Construction Services

GREEN INFRASTRUCTURE NEIGHBORHOOD DEMONSTRATION AREA AT THE NEWTOWN CREEK WPCP, BROOKLYN – Competitive Sealed Bids – PIN# 826130GI0002 – DUE 07-12-12 AT 11:30 A.M. – PROJECT NO. GKNC1505. Document Fee \$40.00. The Project Manager is Raymond Palmares, (718) 595-4093. The last day for technical questions will be 6/27/12. Please send all technical questions to Raymond Palmares by email, RPalmares@dep.nyc.gov. Please be advise, this contract is subject to Local Law 129 M/WBE requirement.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
*Department of Environmental Protection, 59-17 Junction Blvd., 17th Floor, Flushing, NY 11373.
Greg Hall (718) 595-3236; Fax: (718) 595-3208;
ghall@dep.nyc.gov*

HEALTH AND HOSPITALS CORPORATION

The New York City Health and Hospitals Corporation is regularly soliciting bids for supplies and equipment at its Central Purchasing Offices, 346 Broadway, New York City, Room 516, for its Hospitals and Diagnostic and Treatment Centers. All interested parties are welcome to review the bids that are posted in Room 516 weekdays between 9:00 a.m. and 4:30 p.m. For information regarding bids and the bidding process, please call (212) 442-4018.

HEALTH AND MENTAL HYGIENE

AGENCY CHIEF CONTRACTING OFFICER

SOLICITATIONS

Human / Client Services

NEW YORK/NY III SUPPORTED HOUSING CONGREGATE – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 81608PO076300ROX00-R – DUE 09-18-12 AT 4:00 P.M. – The Department is issuing a RFP to establish 3,000 units of citywide supportive housing in newly constructed or rehabilitated single-site buildings for various homeless populations pursuant to the New York III Supported Housing agreement. The subject RFP will be open-ended and proposals will be accepted on an on-going basis. The RFP is available on-line at <http://www.nyc.gov/html/doh/html/acco/acco-rfp-nynycongregate-20070117-form.shtml>. A pre-proposal conference was held on March 6, 2007 at 2:00 P.M. at 125 Worth Street, 2nd Floor Auditorium, New York, N.Y. Any questions regarding this RFP must be sent in writing in advance to Contracting Officer at the above address or e-mailed to the above address. All proposals must be hand delivered at the Agency Chief Contracting Officer, Gotham Center, CN#30A, 42-09 28th Street, 17th Floor, Queens, NY 11101-4132, no later than September 18, 2012.

As a minimum qualification requirement for (1) the serious and persistent mentally ill populations, the proposer must be incorporated as a not-for-profit organization, and (2) for the young adult populations, the proposer must document site control and identify the source of the capital funding and being used to construct or renovate the building.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
*Health and Mental Hygiene, ACCO, Gotham Center, CN#30A, 42-09 28th Street, 17th Floor, Queens, NY 11101-4132.
Huguette Beauport (347) 396-6633; hbeauport@health.nyc.gov*

HOUSING AUTHORITY

■ SOLICITATIONS

Construction Related Services

LIGHTING AND SPRAY SHOWER UPGRADE AT ISSACS HOUSES – Competitive Sealed Bids – PIN# GD1016979 – DUE 07-11-12 AT 10:00 A.M. – Bid documents are available Monday through Friday, 9:00 A.M. to 4:00 P.M., for a \$25.00 fee in the form of a money order or certified check made payable to NYCHA. Documents can also be obtained by registering with I-supplier and downloading documents.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Housing Authority, 90 Church Street, New York, NY 10007.
Vaughn Banks (212) 306-6727; Fax: (212) 306-5152;
vaughn.banks@nycha.nyc.gov

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PURCHASING

■ SOLICITATIONS

Goods

SCO PELLETS, CONTRACT – Competitive Sealed Bids – RFQ# 29637 RS – DUE 07-05-12 AT 10:35 A.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Housing Authority, 23-02 49th Avenue, 5th Floor SCOD Long Island City, NY 11101. Bid documents available via internet ONLY:
http://www.nyc.gov/html/nycha/html/business/goods_materials.shtml
Robin Smith (718) 707-5446.

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HUMAN RESOURCES ADMINISTRATION

AGENCY CHIEF CONTRACTING OFFICER/CONTRACTS

■ AWARDS

Goods & Services

CONSULTING SERVICES FOR LONG TERM CARE WEB PROJECT – Intergovernmental Purchase – Judgment required in evaluating proposals - PIN# 09612G0003001 – AMT: \$411,600.00 – TO: RCI Technologies, Inc., 1133 Green Street, Iselin, NJ 08830. Agency PIN: 069-12-310-3030. Period of Performance: 02/01/2012-01/31/2015.

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ORACLE PREMIER SUPPORT SERVICES FOR SUN HARDWARE/SOFTWARE SYSTEMS – Intergovernmental Purchase – Judgment required in evaluating proposals - PIN# 09612G0008001 – AMT: \$1,958,703.11 – TO: Dynamic Systems, Inc., 124 Maryland Street, El Segundo, CA 90245. Agency PIN: 069-12-310-6108. Period of Performance: 04/01/2012-06/30/2014.

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INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

EXECUTIVE DIVISION

■ AWARDS

Services (Other Than Human Services)

TRANSLATION AND INTERPRETER SERVICES – Negotiated Acquisition – PIN# 85809X0007CNVN001 – AMT: \$9,800,000.00 – TO: Language Line Services, Inc. One Lower Ragsdale Drive, Monterey, CA 93940. Negotiated Acquisition Extension.

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SANITATION

AGENCY CHIEF CONTRACTING OFFICER

■ SOLICITATIONS

Construction/Construction Services

BROOKLYN 12 SOUND WALL AT (5608 19TH AVENUE, BROOKLYN, NY 11204) – Competitive Sealed Bids – PIN# 82712RR00035 – DUE 09-06-12 AT 11:00 A.M. – Bid Estimate - \$750,000. There is a \$40.00 fee for this bid document, POSTAL money order only accepted, please make payable to “Comptroller, City of New York”.

Optional Pre-Bid Conference July 10, 2012 at 11:00 A.M., 44 Beaver Street, 12th Floor Conference Room, NY, NY 10004. Last day for questions is 07/17/12 at 3:00 P.M., please contact Frank Mitchell at (212) 437-4542, or e-mail at fmitchell@dnsny.nyc.gov.

In accordance with Schedule A of the bid document, if your bid is over \$500,000, you must submit a certified check or money order equal to 5 percent of the Bid amount or Bid Bond with Penal Sum equal to 10 percent of the Bid amount. “This Procurement is subject to Local Law 129 of 2005”.

Department of Sanitation, 51 Chambers Street, Room 806, New York, New York 10007. ACCO (212) 437-5057; 44 Beaver Street, 2nd Floor, New York, NY 10004. Contract Unit (917) 237-5357.

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TRIBOROUGH BRIDGE & TUNNEL AUTHORITY

■ SOLICITATIONS

Services (Other Than Human Services)

AUTHORITY WIDE AS-NEEDED ENGINEERING SERVICES – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# PSC122891000 – DUE 07-10-12 AT 3:30 P.M. – Request for Expressions of

Interest for Construction Management and Inspection Services for Project RK-65R, TBTA Central Maintenance North Facility on Randall’s Island. Please visit our website at www.mta.info for more information.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, NY 10004. Victoria Warren (646) 252-7092; Fax: (646) 252-7077; vprocure@mtabt.org

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AGENCY PUBLIC HEARINGS ON CONTRACT AWARDS

NOTE: Individuals requesting Sign Language Interpreters should contact the Mayor’s Office of Contract Services, Public Hearings Unit, 253 Broadway, 9th Floor, New York, N.Y. 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING. TDD users should call Verizon relay services.

HUMAN RESOURCES ADMINISTRATION

■ PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that a Contract Public Hearing will be held on Tuesday, July 3, 2012, at the Human Resources Administration of the City of New York, 180 Water Street, 14 floor, Borough of Manhattan, commencing at 10:00 A.M. on the following:

IN THE MATTER of two (2) contracts between the Human Resources Administration of the City of New York and the contractor listed below, for the Sponsorship of the Multi-Service Centers, Brownsville and Bedford Stuyvesant, located in the Borough of Brooklyn. The term of these contracts is for six (6) weeks, from January 1, 2012 to February 5, 2012.

CONTRACTOR/ADDRESS

Central Brooklyn Community Services Corporation
1958 Fulton Street, Brooklyn, NY 11233

PIN 06913H082701
Amount \$0.00
Center Brownsville

Central Brooklyn Community Services Corporation
1958 Fulton Street, Brooklyn, NY 11233

PIN 06913H082801
Amount \$0.00
Center Bedford Stuyvesant

The contractor was selected through the Negotiated Acquisition Extension method, pursuant to Section 3-04(b)(2)(iii) of the Procurement Policy Board (PPB) Rules.

Draft copies of the proposed closeout contracts will be available for public inspection at the Human Resources Administration of the City of New York, 180 Water Street, Room, 1420, New York, N.Y. 10038 on business days, from June 20, 2012 through July 3, 2012, excluding Holidays, from 10:00 A.M. to 5:00 P.M.

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OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

■ NOTICE

NOTICE OF ADOPTION

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Office of Administrative Trials and Hearings (“OATH”) by §§ 1043 and 1049 of the New York City Charter (“the Charter”) and § 1(c) of Mayoral Executive Order No. 148 (June 8, 2011) (“E.O. 148”), and in accordance with the requirements of § 1043 of the New York City Charter, OATH promulgates and adopts an amendment to Title 48 of the Rules of the City of New York (“RCNY”) by adding a new Chapter 6, “Rules of Practice Applicable to Cases Before the Health Tribunal at OATH.” The amendment was published in *The City Record* on April 26, 2012, and a public hearing was held on May 29, 2012. One comment was received, and is addressed below in connection with the description of § 6-05(g).

Statement of Basis and Purpose of Rule

Background of Rule Amendments

On November 2, 2010, New York City voters approved a number of Charter revisions including an amendment authorizing the Mayor, by executive order, to consolidate City administrative tribunals into the Office of Administrative Trials and Hearings (“OATH”). In addition, they required the establishment of a committee whose mandate was to recommend which tribunals or types of cases should be transferred to OATH. The Mayor’s Committee on Consolidation of Administrative Tribunals issued its “Report and Recommendations,” dated June 7, 2011, containing an Appendix with recommended modifications to rules of the various tribunals (“Report” and “Appendix”). The set of rules contained in the Appendix that were designated as OATH rules, referred to below as “interim rules,” would be continued until OATH conducted rulemaking governing the procedures of the tribunals to be under its jurisdiction.

As further authorized by the Charter amendments, on June 8, 2011, the Mayor issued E.O. 148, which, among other things, transferred to OATH the administrative tribunals then located within the Department of Health and Mental Hygiene (“DOHMH”) and the Taxi and Limousine Commission, effective July 3, 2011.

With respect to the Health Tribunal, E.O. 148, by approving the Report and adopting its Appendix, provided that the rules and procedures governing adjudication at the DOHMH Administrative Tribunal would generally be continued with some modifications as interim rules of OATH applicable to the Health Tribunal within OATH. These rules and procedures were contained in Article 7 of the Health Code. This set of interim rules would be continued until such time as OATH completed rulemaking in accordance with the Charter. See E.O. 148, § 1(b) and (c).

As further background, two sets of rules containing provisions that are being amended by this rule are included as an endnote to this publication: (1) the interim rules applicable to the Health Tribunal that were contained in the Appendix to the Report, and (2) Article 7 (Administrative Tribunal) of the Health Code as it existed prior to the promulgation of E.O. 148.

Moreover, the Board of Health has proposed repealing the remaining provisions of Article 7 of the Health Code within its jurisdiction and making certain other conforming changes to the Health Code, including adding a new § 3.12 concerning the operations of the Health Tribunal at OATH. The rulemaking actions of DOHMH, the Board of Health, and OATH are being coordinated so that the amendments enacted by each entity will take effect on the same date.

Health Code provisions, as described in this proposal, are set forth in a separate portion of Title 24 of the Rules of the City of New York. Unless otherwise specified, references to the Health Code that are included here refer to provisions modified in accordance with E.O. 148.

Summary of Rule Amendments

OATH will codify these interim rules by incorporating them, with some further modifications reflecting OATH practice, into a new Chapter 6 in Title 48 of Rules of the City of New York. The interim rules will now be renumbered and further modified, and they cover the following areas:

- Replacing all references to the existence and jurisdiction of the DOHMH Tribunal with references to OATH;
- Modifying various hearing procedures relating to adjournments, notifications, defaults, appeals, and other matters in order to reduce the burden on OATH and respondents, as well as to improve record-keeping;
- Providing language assistance services to respondents when needed; and
- Where appropriate, making these procedural rules consistent with OATH’s practices generally and with respect to other tribunals.

Specific Amendments to be Enacted

Section 6-01 (“Definitions Specific to this Chapter”) sets forth the meanings of terms specifically applicable to the Health Tribunal.

Section 6-02 (“Jurisdiction, powers and duties of the Health Tribunal”) closely tracks the interim rule (Health Code § 7.03) that transferred the jurisdiction from DOHMH to OATH.

Health Code § 7.05 (“Director/Chief Administrative Law Judge”) is repealed and not re-enacted because the position “Director of the Administrative Tribunal” would no longer exist and therefore there would no longer be references to such position in the OATH rules.

Section 6-03 (“Proceedings before the Health Tribunal”) continues, with technical changes, interim rule Health Code § 7.07, which retained the existing DOHMH rule while reflecting the transfer to OATH. The new rule reflects the transfer by specifying that the reference to the “Department” refers to the Health Tribunal at OATH.

Section 6-04 (“Appearances”) continues, with several changes, interim rule Health Code § 7.09, which retained the former DOHMH rule (except for subdivision (e) governing DOHMH’s settlement authority, which will remain with DOHMH with the added requirement that DOHMH notify OATH of all notices of violation that are withdrawn once DOHMH receives payment from respondents). The new rule makes several substantive changes to the interim rule, described below:

- It moves the provision in subdivision (a) for adjourning telephone or electronic hearings for live hearings to Section 6-05 (h). This section addresses procedures for hearings by phone or other electronic media. It also provides that DOHMH, in addition to the respondent and respondent’s authorized representative, may request an adjournment of a scheduled hearing.
- It removes requirements from former § 7.09(e) for certain findings by the hearing examiner before a default judgment is issued, to make them consistent with procedures currently in place at the Environmental Control Board.
- It replaces the requirement for notice of default judgments by certified mail with notice by regular mail. OATH has found that requiring default decisions to be sent by certified mail is an administrative and financial burden on the Tribunal and, in addition, has downsides for respondents, who often do not follow the extra procedures necessary to claim certified mail. The new rule is consistent with procedures currently in place at the Environmental Control Board.
- Finally, it changes the requirement for when motions for vacating default judgments must be received. The original rule requires receipt within 60 days of the *Tribunal’s mailing of the judgment* to the respondent; the new rule requires receipt within 60 days of the *date of the decision*, resulting in improved record keeping at the Tribunal.

Section 6-05 (“Hearings and Adjudications by mail, telephone or other electronic media”) continues, with several changes, interim rule Health Code § 7.11, which retained the existing DOHMH rule as a rule of OATH. The new subdivision (f) provides that if a motion is made at a hearing for the presence of the inspector who issued the violation in question, the hearing examiner must only grant the motion if he or she determines that the inspector’s presence would contribute to a full and fair hearing. This change will result in more efficient hearings and reduce unnecessary delay. The

new rule is consistent with procedures currently in place at the Environmental Control Board.

As a result of a comment received in connection with the published proposal, subdivision (g) has been revised to correct an inadvertent omission relating to the right of any party (not only the respondent) to request the record of a hearing.

Subdivision (j) of § 6-05 provides that OATH will provide appropriate language assistance services to respondents when needed. This subdivision describes how the hearing examiner may make such a determination. The new rule is consistent with procedures currently in place at the Environmental Control Board.

Section 6-06 ("Subpoenas") continues, with changes, interim rule Health Code § 7.13, which retained the existing DOHMH rule. To be consistent with OATH authority, the new rule broadens subpoena power by removing the limitation which restricts the issuance of subpoenas to records and witnesses solely within the control of DOHMH.

Section 6-07 ("Disqualification of hearing examiners") continues, with changes, interim rule Health Code § 7.15, which retained the existing DOHMH rule as a rule of OATH. The new rule makes several substantive changes to the interim rule, described below:

- It modifies the procedure for making a motion for disqualification by eliminating the need to submit supporting affidavits.
- It shortens the time frame for the hearing examiner's reply to the motion.
- It allows for a brief adjournment for the purpose of prompt appeal to the Chief Administrative Law Judge or his/her designee in the event that a hearing officer denies the motion for disqualification.
- It provides that a party may raise a denial of a motion for disqualification on appeal.
- The new rule is consistent with procedures currently in place at the Environmental Control Board.

Section 6-08 ("Appeals") continues, with changes, interim rule Health Code § 7.17, which superseded the DOHMH provisions for appeals by a "Review Board" and established an Appeals Unit within the Health Tribunal. Having appeals decided by an Appeals Unit within the Health Tribunal rather than the DOHMH Review Board promotes more independent decisionmaking. Additionally, interim rule Health Code § 7.17 granted DOHMH the right to appeal adverse decisions. In addition to those changes, the new rule now does the following:

- It re-orders some of provisions and adjusts some of the technical requirements for notice and filing in subdivision (c).
- It provides that all appeals be decided on written submissions and the record of the hearing.
- It no longer contains a provision of the prior rule that had allowed parties to make requests to appear before the Appeals Unit (in order to be consistent with the changes above).
- In subdivision (d) of the new rule, it states that a respondent may apply for a waiver of prepayment of fines prior to appealing a decision, thereby making the appeals process more accessible to all respondents regardless of their ability to pay the fines.
- Consistent with its experience with appeals at the ECB Tribunal, OATH anticipates that these changes will increase efficiency and mitigate scheduling difficulties and backlogs without an impact on due process.

Former Health Code § 7.19 ("Disqualification of member of Review Board") was superseded in the interim rule and is no longer in effect.

Section 6-09 ("Registration and disqualification of certain authorized representatives") continues and makes technical conforming changes to interim rule Health Code § 7.21, which retained the DOHMH rule as a rule of OATH. The prior changes are contained in Article 7 of the Health Code and Chapter 7 of Title 24 of the Rules of the City of New York.

Section 6-10 ("Computation of time") continues, with modification, interim rule Health Code § 7.23, which retained the existing DOHMH rule as a rule of OATH. Under the interim rule and the former DOHMH rule, when a party had the right or requirement to do an act within a period of time from the date of service of a document, and if service of the document was by mail, *five* days were added to the period of time. In the new Chapter 6 in Title 48 of RCNY, all such time periods, with the exception of a non-appealing party's time to respond to an appeal, start from the date of a Tribunal decision instead of the date of service of the document. Accordingly, subdivision (b) of this section is modified to provide that if a Tribunal decision is mailed to a party, *seven* days will be added to period of time within which the party has the right or requirement to act. This change is made to account for the extra time it is expected to take the Health Tribunal to process and mail the decision.

Deleted text is in [brackets]; new text is underlined.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Chapter 6 of Title 48

Rules of Practice Applicable to Cases Before the Health Tribunal at OATH

§ 6-01 Definitions Specific to this Chapter.

§ 6-02. Jurisdiction, powers and duties of the Health Tribunal.

§ 6-03. Proceedings before the Health Tribunal.

§ 6-04. Appearances.

§ 6-05. Hearings and adjudications in person, by mail, or by telephone.

§ 6-06. Subpoenas.

§ 6-07. Disqualification of hearing examiners.

§ 6-08. Appeals.

§ 6-09. Registration and disqualification of certain authorized representatives.

§ 6-10. Computation of time.

§ 6-01 Definitions Specific to this Chapter.

As used in this chapter:

Board of Health means the board established by section 553 of the New York City Charter, authorized to add, amend or repeal provisions of the Health Code.

Charter means the New York City Charter.

Chief Administrative Law Judge means the director of OATH appointed by the Mayor pursuant to New York City Charter section 1048.

Department means the New York City Department of Health and Mental Hygiene ("DOHMH").

Health Code means the New York City Health Code, codified separately within Title 24 of the Rules of the City of New York.

Hearing Examiner means a person designated by the Chief Administrative Law Judge of OATH, or his/her designee, to carry out the adjudicatory powers, duties and responsibilities of the Health Tribunal at OATH.

Notice of Violation or "NOV" means the document issued by the petitioner to a respondent which specifies the charges forming the basis of an adjudicatory proceeding before the Tribunal.

Party means the petitioner or the person named as respondent, or intervening as of right, in a proceeding before the Tribunal.

Person means any individual, partnership, unincorporated association, corporation or governmental agency.

Petitioner means the New York City Department of Health and Mental Hygiene.

Respondent means the person against whom the charges alleged in a notice of violation have been filed.

Tribunal means the hearing examiners and staff of the Health Tribunal at OATH, who under the direction of the Chief Administrative Law Judge of OATH, or his/her designee, are charged with holding hearings on notices of violation.

§ [7.03] 6-02 Jurisdiction, powers and duties of the [Administrative] Health Tribunal.

(a) *Jurisdiction.* In accordance with [the executive order] Mayor Executive Order No. 148, dated June 8, 2011, and pursuant to Charter section 1048 and consistent with the delegations of the Commissioner of Health and Mental Hygiene and the Board of Health, the Health Tribunal at OATH shall have jurisdiction to hear and determine notices of violation alleging non-compliance with the provisions of the [New York City] Health Code, the New York State Sanitary Code, those sections of the New York City Administrative Code relating to or affecting health within the City, and any other laws or regulations that the Department has the duty or authority to enforce.

(b) *General powers.* The [Administrative] Tribunal or the hearing examiners assigned thereto shall have the following powers:

- (1) To impose fines and pecuniary penalties in accordance with Article 3 of [this] the Health Code or other applicable law; and
- (2) To compile and maintain complete and accurate records relating to its proceedings, including copies of all notices of violation served, responses, [notices of appeal] appeals and briefs filed and decisions rendered by the hearing examiners [and the Review Board];

[(3) To adopt, through the Department's rulemaking process, such other rules and regulations as may be necessary or appropriate to effectuate the purposes and provisions of this Article;]

(c) *Hearing Examiners.* Hearing examiners may:

- (1) Hold conferences for the settlement or simplification of the issues[;]
- (2) Administer oaths and affirmations, examine witnesses, rule upon offers of proof or other motions and requests, admit or exclude evidence, grant adjournments and continuances, and oversee and regulate other matters relating to the conduct of a hearing[;]
- (3) Upon the request of any party, or upon the hearing examiner's own volition, and when the hearing examiner determines that necessary and material evidence will result, issue subpoenas or adjourn a hearing for the appearance of individuals, or the production of documents or other types of information, that are in the possession or control of [the Department] a party and in accordance with §[7.13] 6-06 of this [article] chapter[;]
- (4) Bar from participation in a hearing any person, including a party, representative or attorney, witness or observer who engages in disorderly, disruptive or obstructionist conduct that disrupts or interrupts the proceedings of the Tribunal; and
- (5) [take] Take any other action authorized by applicable law, rule or regulation, or that is delegated by the [Director] Chief Administrative Law Judge or otherwise authorized by applicable law, rule or regulation.

§[7.05] Director/Chief Administrative Law Judge.

All references in the Health Code to the Director of the Administrative Tribunal shall be deemed to refer to the Chief Administrative Law Judge of OATH or his/her designee.]"

§ [7.07] 6-03 Proceedings before the [Administrative] Health Tribunal.

(a) *Notice of Violation.* All proceedings before the [Administrative] Tribunal shall be commenced by the issuance and service of a notice of violation ("NOV") upon the respondent and by the [transmittal] filing thereof [to] with the [Administrative] Tribunal. Each NOV shall be prima facie evidence of the facts alleged therein. The notice of violation may include the report of the public health sanitarian, inspector or other person who conducted the inspection or investigation that culminated in the notice of violation. When such report is served in accordance with this section, such report shall also be prima facie evidence of the factual allegations contained therein.

(b) *Service of the Notice of Violation.* The [notice of violation] NOV may be served in person upon the person alleged to have committed the violation, the permittee or registrant, upon the person who was required to hold the permit or to register, upon a member of the partnership or other group concerned, upon an officer of the corporation, upon a member of a limited liability company, upon a management or general agent or upon any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged. Service may also be made by certified or registered mail through the U.S. Postal Service, or by any type of mail utilizing any other mailing service that provides proof of mailing and receipt, to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of (1) the alleged violator, (2) the individual who is listed as the permittee or applicant in the permit issued by the Board of Health or the Commissioner of DOHMH or in the application for a permit, [or] (3) the registrant listed in the registration form, or (4) the person filing a notification of an entity's existence with DOHMH where no permit or registration is required. In the case of service by mail, documentation of delivery or receipt provided by the delivery or mailing service shall be proof of service of the notice of violation.

(c) *Contents of notice of violation.* The [notice of violation] NOV shall contain:

(1) A clear and concise statement sufficient to inform the respondent with reasonable definiteness and clarity of the essential facts alleged to constitute the violation or the violations charged, including the date, time where applicable and place when and where such facts were observed;

(2) Information adequate to provide specific notification of the section or sections of the Health Code or other law, rule, or regulation alleged to have been violated;

(3) Information adequate for the respondent to calculate the maximum penalty authorized to be imposed if the facts constituting the violation are found to be as alleged;

(4) Notification of the date and place when and where a hearing will be held by the [Department] Tribunal, such date to be at least fifteen calendar days after receipt of the [notice of violation] NOV, unless another date is required by applicable law;

(5) Notification that failure to appear on the date and at the place designated for the hearing shall be deemed a waiver of the right to a hearing, thereby authorizing the rendering of a default decision; and

(6) Information adequate to inform the respondent of his or her rights under §[7.09] 6-04 of this [Article] chapter.

(d) *Amendment.* The hearing examiner may allow an amendment to [a notice of violation] an NOV at any time if the subject of the amendment is reasonably within the scope of the original [notice of violation] NOV; provided, however, that such amendment does not allege any [violation] additional violations based on an act not specified in the original notice, alleged to have occurred subsequent to the service of such notice, and does not prejudice the rights of the respondent to adequate notice of the allegations made against the respondent.

§ [7.09] 6-04 Appearances.

(a) *Types of appearances.* A respondent may appear for a hearing by:

(1) appearing in person at the place and on the date scheduled for the hearing;

(2) sending an authorized representative to appear on behalf of such person at the place and on the date scheduled for the hearing who is:

(i) an attorney admitted to practice law in New York State, or

(ii) a representative registered to appear before the Tribunal pursuant to §[7.21] 6-09, or

(iii) any other person, subject to the provisions of §[7.21] 6-09; or

(3) making a written request for an adjudication by [mail] U.S. postal service or other mailing service, provided that the request is received by the Tribunal before the scheduled date of the hearing or bears a postmark or other proof of mailing indicating that it was mailed to the Tribunal before the scheduled date of a hearing. If the request bearing such a postmark or proof of mailing is received by the Tribunal after a decision on default has been issued, such default shall be vacated automatically; or

(4) participating in a hearing conducted by telephone or other electronic media when the opportunity to do so is offered by the [Department, provided, however, that a telephone or electronic hearing may be adjourned for a live hearing if the hearing officer determines that such an adjournment is necessary, or if any party requests an adjournment] Tribunal.

(b) *Appearance by mail.* If the respondent chooses to appear by mail, the written request for mail adjudication shall contain any denials, admissions and explanations pertaining to the individual violations charged, and documents, exhibits or statements to be considered as evidence in support of respondent's defense, or in the determination of penalties. If, after a review of the record, the hearing examiner is of the opinion that it is necessary for the respondent to submit additional evidence, the hearing examiner may require the submission of additional documentary evidence or deny a request for adjudication by mail and adjourn the matter for a hearing. Violations that are not denied or explained shall be deemed to have been admitted; defenses not specifically raised shall be deemed to have been waived.

(c) [A] *Pre-hearing adjournment requests.* The petitioner, respondent, or authorized representative may request that a scheduled hearing be adjourned to a later date. Such a request may be made in writing to the Tribunal, provided that it is received by the Tribunal no later than three business days prior to the date of the scheduled hearing, or the request may be made in person on the date of the scheduled hearing at any time prior to the hearing. A maximum of three requests for adjournments prior to the hearing by the respondent, and a maximum of three requests for adjournments prior to the hearing by the petitioner [or by

the Tribunal,] will be granted administratively as of right. [Thereafter, all]

(d) Other requests for adjournment. All requests for adjournments that are not provided for as of right in accordance with subdivision (c) of this section must be made in person to a hearing examiner [or the Director of the Tribunal] at the time of the scheduled hearing, and may be granted only upon a showing of good cause as determined by the hearing examiner [or the Director] in his or her discretion. A denial of an adjournment request shall not be subject to separate or interlocutory review [by the Review Board] or appeal.

[(d) (e) Failure to appear.

(1) A respondent who fails to appear or to make a timely request for an adjournment shall not be entitled to a hearing. [Without further notice to the respondent,] If the respondent fails to appear, a hearing examiner may, without further notice to the respondent, find that the respondent is in default [if the respondent has failed to appear and]. The hearing examiner will then render a default decision sustaining the violations cited in the notice of violation[, subject to findings the hearing examiner must make with respect to the service of the notice of violation and the sufficiency of the factual allegations contained therein], and imposing [a penalty] penalties pursuant to Article 3 of [this] the Health Code or as authorized by other applicable law. [If, before a default decision is issued, it is determined that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, a default decision may not be issued and the matter may be adjourned to a new hearing date. A decision that is adverse to a respondent shall be issued on default only after the hearing examiner has determined that the notice of violation was served as required by applicable law, and that the notice of violation alleges sufficient facts to support the violations charged.]

(2) The Tribunal shall notify [a defaulting] the respondent of the issuance of a default decision by mailing a copy of the decision [by certified mail] or by providing a copy to [a] the respondent or respondent's representative who appears personally at the Tribunal and requests a copy.

(3) [A] The respondent may make a motion in writing requesting that a default be vacated[, if the]... A motion to vacate [is] postmarked [or received by the Tribunal] within sixty days of the date of [mailing of] the default decision [to the respondent or the date a copy was provided to the respondent or the respondent's representative at the Tribunal, whichever date is earlier. One such request] shall be granted administratively as of right, provided that the Tribunal's records show that there have been no other failures to appear in relation to the particular notice of violation. A motion to vacate a default that is [received] postmarked more than sixty days after [mailing or personal receipt of] the date of the default decision [shall] must be filed within one year of the date of the default decision and be accompanied by a statement setting forth good cause for the respondent's failure to appear. Such statement, and any documents to support the motion to vacate the default, shall be reviewed by a hearing examiner who shall determine if it establishes a reasonable excuse for the default. Denial of a motion to vacate a default decision shall not be subject to review [by the Review Board] or appeal.

§ [7.11] 6-05 Hearings and [mail] adjudications in person, by mail, or by telephone.

(a) A notice of violation may be adjudicated at a hearing, by telephone, or by [mail] U.S. postal service or other mailing service.

(b) The hearings shall be open to the public, shall be presided over by a hearing examiner, shall proceed with reasonable expedition and order, and, insofar as practicable, shall not be postponed or adjourned.

(c) Each party to a proceeding shall have the right to be represented by counsel or other authorized representative as set forth in §§[7.09] 6-04 (a) and [7.21] 6-09 of this [Article] chapter, to present evidence, to examine and cross-examine witnesses and to have other rights essential for due process and a fair and impartial hearing.

(d) The Department shall have the burden of proving the factual allegations contained in the [notice of violation] NOV by a preponderance of the evidence. A respondent shall have the burden of proving an affirmative defense, if any, by a preponderance of the evidence.

(e) In addition to evidence submitted, the hearing examiner may request further evidence to be submitted by the petitioner or respondent or may adjudicate the matter based on the record before him or her.

(f)(1) Appearances of inspectors

(1) A public health sanitarian, inspector or other person who issued an NOV (the "inspector") may be required to appear at a hearing under the following circumstances:

(a) A respondent may request the presence at the hearing of the [public health sanitarian, inspector or other person who issued the NOV (the "inspector")] inspector, provided that the request is made in writing and is received by the Tribunal no later than seven business days prior to the scheduled hearing. [In such event] Upon such request, the hearing shall be rescheduled to allow for the appearance of the inspector, and the respondent need not appear at the originally scheduled hearing.

(b) A respondent may [also], at the time of the hearing, request the presence of the inspector; in which case the hearing shall be adjourned]. Upon such request, the hearing examiner shall determine whether the presence of the inspector would afford the respondent a reasonable opportunity to present relevant, non-cumulative testimony or evidence that would contribute to a full and fair hearing of each party's side of the dispute. Upon such finding, the hearing examiner shall adjourn the hearing to allow for the appearance of the inspector if the inspector is unavailable at the time of the hearing.

(c) [In addition, if] If at a hearing a respondent denies the factual allegations contained in the NOV, the hearing examiner may require the presence of the inspector without a request by the respondent, and, if needed, adjourn the hearing.

(2) In the event that the inspector does not appear, the hearing examiner may adjourn the hearing, or may take testimony, and sustain or dismiss all or part of the [notice of violation] NOV, as the hearing examiner may deem appropriate. In determining the appropriate action, the hearing examiner may consider any relevant facts, including the availability of the inspector, the reason for the failure to appear, the need for and relevance of the requested testimony, and the potential prejudice to either party if the

hearing is adjourned or proceeds without the inspector. In no event shall a hearing be adjourned on more than three occasions by the hearing examiner because of the unavailability of an inspector. If the respondent requests that the hearing proceed in the absence of the inspector, the respondent shall be deemed to have waived the appearance of such inspector.

(g) A record shall be made of all [notices of violation] NOV's filed, proceedings held, written evidence admitted and decisions rendered, and such record shall be kept in the regular course of business for a reasonable period of time in accordance with applicable law. Hearings shall be mechanically, electronically or otherwise recorded by the [Administrative] Tribunal under the supervision of the hearing examiner, and the original recording shall be part of the record and shall constitute the sole official record of the hearing. A copy of [a tape] the hearing recording [of a hearing] shall be made available within five business days of receiving a request, upon payment of a reasonable fee in accordance with applicable law, to any [respondent] party requesting a copy, to enable such [respondent] party to appeal a notice of decision [to the Review Board] or for other legal proceedings.

(h) With the consent of all parties, a hearing examiner may conduct a hearing by telephone or other electronic media. At any time during such proceeding, the hearing examiner may adjourn the matter for an in-person hearing if he or she determines it is necessary.

(i) A written decision sustaining or dismissing each charge in the notice of violation shall be promptly rendered by the hearing examiner who presided over the hearing, or who conducted the adjudication by mail, or who rendered a default decision. Each decision, other than a default decision, shall contain findings of fact and conclusions of law. Where a violation is sustained, the hearing examiner shall impose a penalty. A copy of the decision, other than a default decision mailed or otherwise provided in accordance with §[7.09] 6-04(e) hereof, shall be served forthwith on the respondent or on the respondent's counsel, registered representative or other authorized representative, either personally or by [certified] mail. Any fines imposed shall be paid within thirty days of [service of] the date of the decision. If full payment of fines is not made within thirty days, an additional penalty in an amount of fifty dollars may be imposed per NOV [in an amount of fifty dollars,] if paid between thirty-one and sixty days after [service of] the date of the decision, and one hundred dollars if paid more than sixty days after [service of] the date of the decision.

(j) Language assistance services.

(1) Appropriate language assistance services shall be afforded to respondents whose primary language is not English to assist such respondents in communicating meaningfully at the hearing. Such language assistance services shall include interpretation of hearings and of pre-hearing conferences conducted by hearing examiners, where interpretation is necessary to assist the respondent in communicating meaningfully with the hearing examiner and others at the hearing.

(2) At the beginning of any hearing or pre-hearing conference, the hearing examiner shall advise the respondent of the availability of interpretation. In determining whether interpretation is necessary to assist the respondent in communicating meaningfully with the hearing examiner and others at the hearing, the hearing examiner shall consider all relevant factors, including but not limited to the following: (i) information from Tribunal administrative personnel identifying a respondent as requiring language assistance services to communicate meaningfully with a hearing examiner; (ii) a request by the respondent for interpretation; (iii) even if interpretation was not requested by the respondent, the hearing examiner's own assessment whether interpretation is necessary to enable meaningful communication with the respondent. If the respondent requests an interpreter and the hearing examiner determines that an interpreter is not needed, that determination and the basis for the determination shall be made on the record.

(3) When required by paragraph (1) of this subdivision, interpretation services shall be provided at hearings and at pre-hearing conferences by a professional interpretation service that is made available by the Tribunal, unless the respondent requests the use of another interpreter, in which case the hearing examiner in his/her discretion may use the respondent's requested interpreter. In exercising that discretion, the hearing examiner shall take into account all relevant factors, including but not limited to the following: (i) the respondent's preference, if any, for his or her own interpreter; (ii) the apparent skills of the respondent's requested interpreter; (iii) whether the respondent's requested interpreter is a child under the age of eighteen; (iv) minimization of delay in the hearing process; (v) maintenance of a clear and usable hearing record; (vi) whether the respondent's requested interpreter is a potential witness who may testify at the hearing. The hearing examiner's determination and the basis for this determination shall be made on the record.

§ [7.13] 6-06 Subpoenas.

(a) At any time after a hearing has commenced, a subpoena may be issued by the hearing examiner, upon a form approved by the Tribunal, to compel the timely production of any record or document for examination or introduction into evidence, or to compel the appearance of persons to give testimony, when the hearing examiner finds that such record, document or testimony is reasonably related, relevant and necessary to the adjudication. [Such subpoenas shall be issued only for production of records maintained within the Department, or the appearance of a person who is employed by the Department at the time such appearance is demanded.] Such subpoena may be issued on the hearing examiner's own motion or on the motion of a party. If made by a party, a motion for a subpoena may be made on an ex parte basis. Upon the issuance of a subpoena the hearing examiner may proceed with the hearing [and] or adjourn such hearing until the subpoenaed documents or witnesses are produced[, or immediately adjourn the hearing until such time].

(b) Subpoenaed documents must be produced and made returnable on a date certain prior to the adjourned date [for the continued hearing]. Witnesses subpoenaed to testify must appear on the adjourned date.

(c) [A hearing examiner who has issued a subpoena, upon] Upon receipt of a motion timely made [by the Department] before the return date of the subpoena, or on the hearing examiner's own motion, a hearing examiner who has already issued a subpoena may [deny,] quash or modify [a] such subpoena if it is shown to be unreasonable, insufficiently relevant to the adjudication or has [been shown to be] wrongfully been issued.

(d) If the hearing examiner determines that a subpoena has

not been complied with, and that there is no good cause for such failure to comply, the hearing examiner may proceed with the hearing upon finding that the record, document or testimony subpoenaed is not necessary to the proof or defense of a violation or a fair adjudication of the merits, or [the hearing examiner] may preclude evidence offered by the non-complying party that is related to the subpoena, or may dismiss the particular violation the proof of which appears to the hearing examiner to be reasonably dependent on the material or person subpoenaed, but not produced.

§ [7.15] 6-07 Disqualification of hearing examiners.

(a) Grounds for disqualification. A hearing examiner shall not preside over a hearing [in accordance with the provisions of] under the circumstances set forth in subdivisions (D) and (E) of §103 of Appendix A of [Title 48 of the Rules of the City of New York] this title. A hearing examiner who determines his or her disqualification shall [withdraw] disqualify himself or herself from the proceeding by notice on the record and shall notify the [Director] Chief Administrative Law Judge or his/her designee of such [withdrawal] disqualification.

(b) Motion to disqualify. [Whenever a party asserts for any reason that a hearing examiner must be disqualified from presiding over a particular proceeding, such party may file with the Director a motion to disqualify and remove the hearing examiner. Such a motion must be supported by affidavits setting forth the alleged grounds for disqualification. The Director shall furnish a copy of the motion to the hearing examiner whose removal is sought, and the hearing examiner shall have seven days to reply. Unless the hearing examiner disqualifies himself or herself within seven days of the receipt of the motion, the Director shall promptly determine the validity of the alleged grounds, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.] A party may, for good cause shown, request that the hearing examiner disqualify himself or herself. The hearing examiner in the proceeding will rule on such motion. If the hearing examiner denies the motion, the party may obtain a brief adjournment in order to promptly apply for review by the Chief Administrative Law Judge or his/her designee. If the Chief Administrative Law Judge or his/her designee determines that the hearing examiner should be disqualified, the Chief Administrative Law Judge or his/her designee will appoint another hearing examiner to continue the case. If a hearing examiner's refusal to disqualify is upheld by the Chief Administrative Law Judge or his/her designee, the party may raise the issue again on appeal.

§ [7.17] 6-08 Appeals.

(a) There shall be an Appeals Unit within the Health Tribunal at OATH.

(b) (1) The Appeals Unit shall have jurisdiction to review all final decisions, other than default decisions, of [the] hearing [examiner] examiners to determine whether the facts found therein are supported by substantial evidence in the record, and whether the findings and determinations of the hearing [examiner] examiners, as well as the [penalty] penalties imposed, are supported by law. In addition, the Appeals Unit may determine whether a monetary penalty, even if it is lawful, should be increased or decreased.

(2) Appeals decisions are made upon the entire record of the hearing and the evidence before the hearing examiner. The NOV, the recording of the hearing, and all briefs filed and exhibits received in evidence, together with the hearing examiner's decision, constitute the hearing record. The Appeals Unit shall not consider any evidence that was not presented to the hearing examiner. The Appeals Unit shall have the power to affirm, reverse, [to] remand or [to] modify the decision appealed from [or] and to increase or reduce the amount of the penalty imposed within the limits established by the Health Code or other applicable law.

(c) (1) A party may seek [to] review, in whole or in part, of any final decision of a hearing examiner, other than a decision rendered on default by the respondent. However, neither a denial of a motion to vacate a default decision nor a plea admitting the violations charged shall be subject to review by the Appeals Unit.

(2) Within 30 days of the date of [Health Tribunal at OATH delivering or mailing] the hearing [officer's] examiner's decision [to a party or the party's authorized representative], [the] a party [may] seeking review of the decision must file [two copies of a notice of appeal] an Appeal Application on a form prescribed by the [tribunal] Tribunal[, accompanied by two copies of a brief statement setting forth the specific reasons why the decision should be reversed, remanded or modified. Upon receipt of a notice of appeal, the tribunal shall promptly deliver or mail a copy of it, together with a copy of any accompanying statement, to the adverse party.] At the time the Appeal Application is filed, the party seeking review must also serve the Appeal Application on the non-appealing party and file proof of such service with the Tribunal.

(3) Within 30 days of [the tribunal delivering or mailing to a party a notice of appeal filed with the tribunal, the party may file two copies of a response to the appeal with the tribunal, and the tribunal shall promptly deliver or mail a copy of the response to the appealing party.] service of the Appeal Application, or 35 days if service of the Appeal Application is made by mail, the non-appealing party may file a Response to Appeal on a form prescribed by the Tribunal. At the time that the Response to Appeal is filed, the party responding to the appeal must also serve the Response to Appeal on the appealing party and file proof of such service with the Tribunal.

(4) Further filings by either party are not permitted.

(d) Filing [a notice of appeal] an Appeal Application shall not stay the collection of any fine or other penalty imposed by the decision. No appeal by or on behalf of a respondent shall be permitted unless the fine or penalty imposed has been paid [before] prior to or at the time of the filing of the [notice of appeal] Appeal Application, or the respondent may post a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from. [Appeals decisions shall be made upon the entire record of the hearing and the evidence before the hearing examiner. Appeals may be decided without the appearance of the appealing party, but the appealing party may make a request to appear before the Appeals Unit at the time of the filing of the notice of appeal. If the appealing party makes such a request, the tribunal shall provide notice to the parties whether the request is granted and, if so, the date of argument on the appeal, at which either party may appear before the Appeals Unit.] Any application for a waiver of prior payment of the civil penalty must be made prior to or at the time of the filing of the Appeal Application and must be supported by evidence of financial hardship. Waivers of prepayment may be granted in the discretion of the Chief Administrative Law Judge or his/her designee.

[(d)(i)] (e) The Appeals Unit shall promptly issue a written decision affirming, reversing, remanding or modifying the decision appealed from, a copy of which shall be delivered to [DOHMH] the Department and served on the respondent by [certified or registered] mail, stating the grounds upon which the decision is based. Where appropriate, the decision shall order the repayment to the respondent of any penalty that has been paid. The decision of the Appeals Unit shall be the final determination of [DOHMH] the Department, except in the case of a violation arising under Article 13-E of the New York State Public Health Law, entitled "Regulation of Smoking in Certain Public Areas[.]" in accordance with § 3.12 of the Health Code.

§[7.21] **6-09 Registration and disqualification of certain authorized representatives.**

(a) Any person who represents two or more respondents before the Tribunal within a calendar year shall, as a condition precedent to such representation, register with the Tribunal as a representative. Any person who appears on behalf of a respondent before the Tribunal shall be prohibited from appearing before the Tribunal on behalf of any other respondent within the same calendar year without having completed such registration. A representative shall register by completing and submitting a form provided by the [Department] Tribunal, and such form shall be accompanied by proof acceptable to the [Department] Tribunal identifying the representative, and shall include such other information as the [Department] Tribunal may require. Registered representatives shall notify the Tribunal within ten business days of any change in the information required to be stated on the registration form. The [Department] Tribunal may charge a reasonable fee in accordance with applicable law to cover the cost of processing and maintaining registrations and may issue each representative a registration card and identification number. Attorneys admitted to practice in New York State shall not be required to [so] register.

(b) Attorneys, registered representatives or other authorized representatives may be permanently or temporarily barred by the [Commissioner] Chief Administrative Law Judge or his/her designee from representing any respondents before the Tribunal, and in the case of registered representatives their registration revoked or suspended, upon a finding by the Office of Administrative Trials and Hearings, or successor agency, issued after an opportunity to be heard [has been afforded], that they have engaged in improper conduct, including but not limited to one or more of the following:

(1) Disorderly, disruptive or obstructive conduct, as set forth in §[7.03] 6-02(c)(4) of this [Article] chapter, on more than one occasion, regardless of whether the representative was barred from participating in a specific hearing by a hearing examiner in accordance with [said] such §[7.03] 6-02(c)(4);

(2) Submitting any false or forged document either as evidence in a matter being adjudicated at the Tribunal, or as proof of representation of a respondent;

(3) Any violation of §3.15 or §3.19 of [this] the Health Code; or

(4) Any criminal conviction of a type that does not fall within the protections afforded under Article 23-A of the New York State Correction Law.

§[7.23] **6-10 Computation of time.**

(a) In computing any period of time prescribed or allowed by this [Article] chapter, the day of the act or default from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which case the period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. [Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a document and the document is served by mail, five days must be added to the prescribed period of time.]

(b) Whenever a party has the right or is required to do some act within a prescribed period of time after the date of a Tribunal decision, seven days shall be added to such prescribed period of time if the decision is mailed to the party.

Endnotes

Interim rules applicable to the Health Tribunal contained in the Appendix to the Report

§7.03 **Jurisdiction, powers and duties of the Administrative Tribunal.**

(a) Jurisdiction. In accordance with the executive order of the Mayor pursuant to Charter section 1048 and consistent with the delegations of the Commissioner of Health and Mental Hygiene and the Board of Health, the Health Tribunal at OATH shall have jurisdiction to hear and determine notices of violation alleging non-compliance with the provisions of the New York City Health Code, the New York State Sanitary Code, those sections of the New York City Administrative Code relating to or affecting health within the City, and any other laws or regulations that the Department has the duty or authority to enforce.

(b) General powers. The Administrative Tribunal or the hearing examiners assigned thereto shall have the following powers:

- (1) To impose fines and pecuniary penalties in accordance with Article 3 of this Code or other applicable law;
- (2) To compile and maintain complete and accurate records relating to its proceedings, including copies of all notices of violation served, responses, notices of appeal and briefs filed and decisions rendered by the hearing examiners and the Review Board;
- (3) To adopt, through the Department's rulemaking process, such other rules and regulations as may be necessary or appropriate to effectuate the purposes and provisions of this Article;

(c) Hearing Examiners. Hearing examiners may:

- (1) Hold conferences for the settlement or simplification of the issues,
- (2) Administer oaths and affirmations, examine witnesses, rule upon offers of proof or other motions and requests, admit or exclude evidence, grant adjournments and continuances, and oversee and regulate other matters relating to the conduct of a hearing,
- (3) Upon the request of any party, or upon the hearing examiner's own volition, and when the hearing examiner determines that necessary and material evidence will result, issue subpoenas or

adjourn a hearing for the appearance of individuals, or the production of documents or other types of information, that are in the possession or control of the Department and in accordance with §7.13 of this article.

- (4) Bar from participation in a hearing any person including a party, representative or attorney, witness or observer who engages in disorderly, disruptive or obstructionist conduct that disrupts or interrupts the proceedings of the Tribunal; and
- (5) Take any other action authorized by applicable law, rule or regulation, or that is delegated by the Director.

§7.05 **Director/Chief Administrative Law Judge.**

All references in the Health Code to the Director of the Administrative Tribunal shall be deemed to refer to the Chief Administrative Law Judge of OATH or his/her designee."

§7.07 **Proceedings before the Administrative Tribunal.**

(a) Notice of Violation. All proceedings before the Administrative Tribunal shall be commenced by the issuance and service of a notice of violation ("NOV") upon the respondent and by the transmittal thereof to the Administrative Tribunal. Each NOV shall be prima facie evidence of the facts alleged therein. The notice of violation may include the report of the public health sanitarian, inspector or other person who conducted the inspection or investigation that culminated in the notice of violation. When such report is served in accordance with this section, such report shall also be prima facie evidence of the factual allegations contained therein.

(b) Service of the Notice of Violation. The notice of violation may be served in person upon the person alleged to have committed the violation, the permittee or registrant, upon the person who was required to hold the permit or to register, upon a member of the partnership or other group concerned, upon an officer of the corporation, upon a member of a limited liability company, upon a management or general agent or upon any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged. Service may also be made by certified or registered mail through the U.S. Postal Service, or by any type of mail utilizing any other mailing service that provides proof of mailing and receipt, to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of (1) the alleged violator, (2) the individual who is listed as the permittee or applicant in the permit issued by the Board or the Commissioner or in the application for a permit, or (3) the registrant listed in the registration form. In the case of service by mail, documentation of delivery or receipt provided by the delivery or mailing service shall be proof of service of the notice of violation.

(c) Contents of notice of violation. The notice of violation shall contain:

- (1) A clear and concise statement sufficient to inform the respondent with reasonable definiteness and clarity of the essential facts alleged to constitute the violation or the violations charged, including the date, time where applicable and place when and where such facts were observed;
- (2) Information adequate to provide specific notification of the section or sections of the Code or other law, rule, or regulation alleged to have been violated;
- (3) Information adequate for the respondent to calculate the maximum penalty authorized to be imposed if the facts constituting the violation are found to be as alleged;
- (4) Notification of the date and place when and where a hearing will be held by the Department, such date to be at least fifteen calendar days after receipt of the notice of violation, unless another date is required by applicable law;
- (5) Notification that failure to appear on the date and at the place designated for the hearing shall be deemed a waiver of the right to a hearing, thereby authorizing the rendering of a default decision; and
- (6) Information adequate to inform the respondent of his or her rights under §7.09 of this Article.

(d) Amendment. The hearing examiner may allow an amendment to a notice of violation at any time if the subject of the amendment is reasonably within the scope of the original notice of violation; provided, however, that such amendment does not allege any violation not specified in the original notice, alleged to have occurred subsequent to the service of such notice, and does not prejudice the rights of the respondent to adequate notice of the allegations made against the respondent.

§7.09 **Appearances.**

(a) A respondent may appear for a hearing by:

- (1) appearing in person at the place and on the date scheduled for the hearing;
- (2) sending an authorized representative to appear on behalf of such person at the place and on the date scheduled for the hearing who is:
 - (i) an attorney admitted to practice law in New York State,
 - (ii) a representative registered to appear before the Tribunal pursuant to §7.21, or
 - (iii) any other person, subject to the provisions of §7.21; or
- (3) making a written request for an adjudication by mail, provided that the request is received by the Tribunal before the scheduled date of the hearing or bears a postmark indicating that it was mailed to the Tribunal before the scheduled date of a hearing. If the request bearing such a postmark is received by the Tribunal after a decision on default has been issued, such default shall be vacated automatically; or
- (4) participating in a hearing conducted by telephone or other electronic media when the opportunity to do so is offered by the Department, provided, however, that a telephone or electronic hearing may be adjourned for a live hearing if the hearing officer determines that such an adjournment is necessary, or if any party requests an adjournment.

(b) If the respondent chooses to appear by mail, the written request for mail adjudication may contain denials, admissions and explanations pertaining to the individual violations charged, and documents, exhibits or statements to be considered as evidence in support of respondent's defense, or in the determination of penalties. If, after a review of the record, the hearing examiner is of the opinion that it is necessary for the respondent to submit additional evidence, the hearing examiner may require the submission of additional documentary evidence or deny a request for adjudication by mail and adjourn the matter for a hearing. Violations that are not denied or explained shall be deemed

to have been admitted; defenses not specifically raised shall be deemed to have been waived.

(c) A respondent or authorized representative may request that a scheduled hearing be adjourned to a later date. Such a request may be made in writing to the Tribunal, provided that it is received by the Tribunal no later than three business days prior to the date of the scheduled hearing, or the request may be made in person on the date of the scheduled hearing at any time prior to the hearing. A maximum of three requests for adjournments by the respondent, and a maximum of three requests for adjournments by the petitioner or by the Tribunal, shall be granted administratively as of right. Thereafter, all requests for adjournments must be made in person to a hearing examiner or the Director of the Tribunal at the time of the scheduled hearing, and may be granted only upon a showing of good cause as determined by the hearing examiner or the Director in his or her discretion. A denial of an adjournment request shall not be subject to separate or interlocutory review by the Review Board.

(d) A respondent who fails to appear or to make a timely request for an adjournment shall not be entitled to a hearing. Without further notice to the respondent, a hearing examiner may find that the respondent is in default if the respondent has failed to appear and render a default decision sustaining the violations cited in the notice of violation, subject to findings the hearing examiner must make with respect to the service of the notice of violation and the sufficiency of the factual allegations contained therein, and imposing a penalty pursuant to Article 3 of this Code or as authorized by other applicable law. If, before a default decision is issued, it is determined that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, a default decision may not be issued and the matter may be adjourned to a new hearing date. A decision that is adverse to a respondent shall be issued on default only after the hearing examiner has determined that the notice of violation was served as required by applicable law, and that the notice of violation alleges sufficient facts to support the violations charged. The Tribunal shall notify a defaulting respondent of the issuance of a default decision by mailing a copy of the decision by certified mail or by providing a copy to a respondent or respondent's representative who appears personally at the Tribunal and requests a copy. A respondent may make a motion in writing requesting that a default be vacated, if the motion to vacate is postmarked or received by the Tribunal within sixty days of the date of mailing of the default decision to the respondent or the date a copy was provided to the respondent or the respondent's representative at the Tribunal, whichever date is earlier. One such request shall be granted administratively as of right provided that the Tribunal's records show that there have been no other failures to appear in relation to the particular notice of violation. A motion to vacate a default that is received more than sixty days after mailing or personal receipt of the default decision shall be accompanied by a statement setting forth good cause for the respondent's failure to appear. Such statement, and any documents to support the motion to vacate the default, shall be reviewed by a hearing examiner who shall determine if it establishes a reasonable excuse for the default. Denial of a motion to vacate a default decision shall not be subject to review by the Review Board.

(e) Where the notice of violation or an accompanying document, or a related document served on the respondent by certified mail, sets forth a monetary amount that may be paid in full satisfaction of the notice of violation, a respondent may, in lieu of attending a scheduled hearing, pay said amount by mail in the manner and time provided for in such notice. Such payment shall constitute an admission of liability for the violations charged and no further hearing or appeal shall be allowed. If an adjudication is open or completed before the Health Tribunal at OATH, DOHMH shall promptly notify the tribunal that it has received payment in full satisfaction of the notice of violation. If DOHMH withdraws a notice of violation, even if it has been adjudicated, that is open or has been completed before the Health Tribunal at OATH, DOHMH shall promptly notify the tribunal.

§7.11 **Hearings and mail adjudications.**

(a) A notice of violation may be adjudicated at a hearing or by mail.

(b) The hearings shall be open to the public, shall be presided over by a hearing examiner, shall proceed with reasonable expedition and order, and, insofar as practicable, shall not be postponed or adjourned.

(c) Each party to a proceeding shall have the right to be represented by counsel or other authorized representative as set forth in §§7.09 (a) and 7.21 of this Article, to present evidence, to examine and cross-examine witnesses and to have other rights essential for due process and a fair and impartial hearing.

(d) The Department shall have the burden of proving the factual allegations contained in the notice of violation by a preponderance of the evidence. A respondent shall have the burden of proving an affirmative defense, if any, by a preponderance of the evidence.

(e) In addition to evidence submitted, the hearing examiner may request further evidence to be submitted by the respondent or may adjudicate the matter based on the record before him or her.

(f) (1) A respondent may request the presence at the hearing of the public health sanitarian, inspector or other person who issued the NOV (the "inspector"), provided that the request is made in writing and is received by the Tribunal no later than seven business days prior to the scheduled hearing. In such event, the hearing shall be rescheduled, and the respondent need not appear at the originally scheduled hearing. A respondent may also, at the time of the hearing, request the presence of the inspector; in which case the hearing shall be adjourned. In addition, if a respondent denies the factual allegations contained in the NOV, the hearing examiner may require the presence of the inspector and adjourn the hearing.

(2) In the event that the inspector does not appear, the hearing examiner may adjourn the hearing, or may take testimony, and sustain or dismiss all or part of the notice of violation, as the hearing examiner may deem appropriate. In determining the appropriate action, the hearing examiner may consider any relevant facts, including the availability of the inspector, the reason for the failure to appear, the need for and relevance of the requested testimony, and the potential prejudice to either party if the hearing is adjourned or proceeds without the inspector. In no event shall a hearing be adjourned on more than three occasions by the hearing examiner because of the unavailability of an inspector. If the respondent requests that the hearing proceed in the absence of the inspector, the respondent shall be deemed to have waived the appearance of such inspector.

(g) A record shall be made of all notices of violation filed, proceedings held, written evidence admitted and decisions rendered, and such record shall be kept in the regular course of business for a reasonable period of time in accordance with applicable law. Hearings shall be mechanically, electronically or otherwise recorded by the Administrative Tribunal under the supervision of the hearing examiner, and the original recording shall be part of the record and shall constitute the sole official record of the hearing. A copy of a tape recording of a hearing shall be made available within five business days of receiving a request, upon payment of a reasonable fee in accordance with applicable law, to any respondent requesting a copy, to enable such respondent to appeal a notice of decision to the Review Board or for other legal proceedings.

(h) With the consent of all parties, a hearing examiner may conduct a hearing by telephone or other electronic media.

(i) A written decision sustaining or dismissing each charge in the notice of violation shall be promptly rendered by the hearing examiner who presided over the hearing, or who conducted the adjudication by mail, or who rendered a default decision. Each decision, other than a default decision, shall contain findings of fact and conclusions of law. Where a violation is sustained, the hearing examiner shall impose a penalty. A copy of the decision, other than a default decision mailed or otherwise provided in accordance with §7.09(d) hereof, shall be served forthwith on the respondent or on the respondent's counsel, registered representative or other authorized representative, either personally or by certified mail. Any fines imposed shall be paid within thirty days of service of the decision. If full payment of fines is not made within thirty days, an additional penalty may be imposed per NOV in an amount of fifty dollars, if paid between thirty-one and sixty days after service of the decision, and one hundred dollars if paid more than sixty days after service of the decision.

§7.13 Subpoenas.

(a) At any time after a hearing has commenced a subpoena may be issued by the hearing examiner to compel the timely production of any record or document for examination or introduction into evidence, or to compel the appearance of persons to give testimony, when the hearing examiner finds that such record, document or testimony is reasonably related, relevant and necessary to the adjudication. Such subpoenas shall be issued only for production of records maintained within the Department, or the appearance of a person who is employed by the Department at the time such appearance is demanded. Upon the issuance of a subpoena the hearing examiner may proceed with the hearing and adjourn such hearing until the subpoenaed documents or witnesses are produced, or immediately adjourn the hearing until such time.

(b) Subpoenaed documents shall be produced and made returnable on a date certain prior to the adjourned date for the continued hearing. Witnesses subpoenaed to testify shall appear on the adjourned date.

(c) A hearing examiner who has issued a subpoena, upon receipt of a motion timely made by the Department before the return date of the subpoena, or on the hearing examiner's own motion, may deny, quash or modify a subpoena if it is unreasonable, insufficiently relevant to the adjudication or has been shown to be wrongfully issued.

(d) If the hearing examiner determines that a subpoena has not been complied with, and that there is no good cause for such failure to comply, the hearing examiner may proceed with the hearing upon finding that the record, document or testimony subpoenaed is not necessary to the proof or defense of a violation or a fair adjudication of the merits, or the hearing examiner may preclude evidence offered by the non-complying party that is related to the subpoena, or may dismiss the particular violation the proof of which appears to the hearing examiner to be reasonably dependent on the material or person subpoenaed, but not produced.

§7.15 Disqualification of hearing examiners.

(a) Grounds for disqualification. A hearing examiner shall not preside over a hearing in accordance with the provisions of subdivisions (D) and (E) of §103 of Appendix A of Title 48 of the Rules of the City of New York. A hearing examiner who determines his or her disqualification shall withdraw from the proceeding by notice on the record and shall notify the Director of such withdrawal.

(b) Motion to disqualify. Whenever a party asserts for any reason that a hearing examiner must be disqualified from presiding over a particular proceeding, such party may file with the Director a motion to disqualify and remove the hearing examiner. Such a motion must be supported by affidavits setting forth the alleged grounds for disqualification. The Director shall furnish a copy of the motion to the hearing examiner whose removal is sought, and the hearing examiner shall have seven days to reply. Unless the hearing examiner disqualifies himself or herself within seven days of the receipt of the motion, the Director shall promptly determine the validity of the alleged grounds, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.

§7.17 Appeals.

(a) There shall be an Appeals Unit within the Health Tribunal at OATH.

(b) The Appeals Unit shall have jurisdiction to review all final decisions, other than default decisions, of the hearing examiner to determine whether the facts found therein are supported by substantial evidence in the record, and whether the findings and determinations of the hearing examiner, as well as the penalty imposed, are supported by law. In addition, the Appeals Unit may determine whether a monetary penalty, even if it is lawful, should be increased or decreased. The Appeals Unit shall not consider any evidence that was not presented to the hearing examiner. The Appeals Unit shall have the power to reverse, to remand or to modify the decision appealed from or to increase or reduce the amount of the penalty imposed within the limits established by the Health Code or other applicable law.

(c) A party may seek to review, in whole or in part, any final decision of a hearing examiner, other than a decision rendered on default by the respondent. However, neither a denial of a motion to vacate a default decision nor a plea admitting the violations charged shall be subject to review by the Appeals Unit. Within 30 days of the Health Tribunal at OATH delivering or mailing the hearing officer's decision to a party or the party's authorized representative, the party may file two copies of a notice of appeal on a form prescribed by the tribunal, accompanied by two copies of a brief statement setting forth the specific reasons why the decision should be reversed, remanded or modified. Upon receipt of a notice of appeal, the tribunal shall promptly deliver or mail a copy of it, together with a copy of any accompanying statement, to

the adverse party. Within 30 days of the tribunal delivering or mailing to a party a notice of appeal filed with the tribunal, the party may file two copies of a response to the appeal with the tribunal, and the tribunal shall promptly deliver or mail a copy of the response to the appealing party. Filing a notice of appeal shall not stay the collection of any fine or other penalty imposed by the decision. No appeal by or on behalf of a respondent shall be permitted unless the fine or penalty imposed has been paid before or at the time of the filing of the notice of appeal, or the respondent may post a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from. Appeals decisions shall be made upon the entire record of the hearing and the evidence before the hearing examiner. Appeals may be decided without the appearance of the appealing party, but the appealing party may make a request to appear before the Appeals Unit at the time of the filing of the notice of appeal. If the appealing party makes such a request, the tribunal shall provide notice to the parties whether the request is granted and, if so, the date of argument on the appeal, at which either party may appear before the Appeals Unit.

(d) (i) The Appeals Unit shall promptly issue a written decision affirming, reversing, remanding or modifying the decision appealed from, a copy of which shall be delivered to DOHMH and served on the respondent by certified or registered mail, stating the grounds upon which the decision is based. Where appropriate, the decision shall order the repayment to the respondent of any penalty that has been paid. The decision of the Appeals Unit shall be the final determination of DOHMH, except in the case of a violation arising under Article 13-E of the New York State Public Health Law, entitled "Regulation of Smoking in Certain Public Areas."

§7.21 Registration and disqualification of certain authorized representatives.

(a) Any person who represents two or more respondents before the Tribunal within a calendar year shall, as a condition precedent to such representation, register with the Tribunal as a representative. Any person who appears on behalf of a respondent before the Tribunal shall be prohibited from appearing before the Tribunal on behalf of any other respondent within the same calendar year without having completed such registration. A representative shall register by completing and submitting a form provided by the Department, and such form shall be accompanied by proof acceptable to the Department identifying the representative, and shall include such other information as the Department may require. Registered representatives shall notify the Tribunal within ten business days of any change in the information required to be stated on the registration form. The Department may charge a reasonable fee in accordance with applicable law to cover the cost of processing and maintaining registrations and may issue each representative a registration card and identification number. Attorneys admitted to practice in New York State shall not be required to so register.

(b) Attorneys, registered representatives or other authorized representatives may be permanently or temporarily barred by the Commissioner from representing any respondents before the Tribunal, and in the case of registered representatives their registration revoked or suspended, upon a finding by the Office of Administrative Trials and Hearings, or successor agency, issued after an opportunity to be heard has been afforded, that they have engaged in improper conduct, including but not limited to one or more of the following:

- (1) Disorderly, disruptive or obstructive conduct, as set forth in §7.03(c)(4) of this Article, on more than one occasion, regardless of whether the representative was barred from participating in a specific hearing by a hearing examiner in accordance with said §7.03(c)(4);
- (2) Submitting any false or forged document either as evidence in a matter being adjudicated at the Tribunal, or as proof of representation of a respondent;
- (3) Any violation of §3.15 or §3.19 of this Code; or
- (4) Any criminal conviction of a type that does not fall within the protections afforded under Article 23A of the New York State Correction Law.

§7.23 Computation of time.

In computing any period of time prescribed or allowed by this Article, the day of the act or default from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which case the period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a document and the document is served by mail, five days shall be added to the prescribed period of time.

Article 7 (Administrative Tribunal) of the Health Code as it existed prior to the promulgation of E.O. 148.

§7.01 Administrative Tribunal.

The Administrative Tribunal (the "Tribunal") established by the Board of Health pursuant to §558 of the Charter is hereby continued.

§7.03 Jurisdiction, powers and duties of the Administrative Tribunal.

(a) Jurisdiction. The Administrative Tribunal shall have jurisdiction to hear and determine, in accordance with §1046 of the New York City Charter, notices of violation alleging non-compliance with the provisions of this Code, the New York State Sanitary Code, those sections of the New York City Administrative Code relating to or affecting health within the City, and any other laws and regulations that the Department has the duty or authority to enforce.

(b) General powers. The Administrative Tribunal or the hearing examiners assigned thereto shall have the following powers:

- (1) To impose fines and pecuniary penalties in accordance with Article 3 of this Code or other applicable law;
- (2) To compile and maintain complete and accurate records relating to its proceedings, including copies of all notices of violation served, responses, notices of appeal and briefs filed and decisions rendered by the hearing examiners and the Review Board;
- (3) To adopt, through the Department's rulemaking process, such other rules and regulations as may be necessary or appropriate to effectuate the purposes and provisions of this Article;

(c) Hearing Examiners. Hearing examiners may:

- (1) Hold conferences for the settlement or simplification of the issues;
- (2) Administer oaths and affirmations, examine witnesses, rule upon offers of proof or other motions and requests, admit or exclude evidence, grant adjournments and continuances, and oversee and regulate other matters relating to the conduct of a hearing;
- (3) Upon the request of any party, or upon the hearing examiner's own volition, and when the hearing examiner determines that necessary and material evidence will result, issue subpoenas or adjourn a hearing for the appearance of individuals, or the production of documents or other types of information, that are in the possession or control of the Department and in accordance with §7.13 of this article.
- (4) Bar from participation in a hearing any person including a party, representative or attorney, witness or observer who engages in disorderly, disruptive or obstructionist conduct that disrupts or interrupts the proceedings of the Tribunal; and
- (5) take any other action authorized by applicable law, rule or regulation, or that is delegated by the Director.

§7.05 Organization of the Administrative Tribunal; Director.

(a) The head of Adjudications at the Administrative Tribunal shall be its Director, who shall be appointed by the Board and who, in addition to having all of the powers of a hearing examiner, shall be responsible for the conduct of hearings and for all administrative matters of law and professional practice related to adjudications, including the management and supervision of hearing examiners; provided that the Director shall neither hold nor delegate any of the powers and duties of the Review Board under §7.17. The Director shall be subject to re-appointment by the Board every three years, but if the Director is not re-appointed he or she may continue to serve until a successor is appointed and ready to assume the powers of office. The Board may at any time remove the Director for cause following an opportunity to be heard. The Director shall devote full time to the Administrative Tribunal and shall not perform any other services for the Department.

(b) The Director shall appoint a sufficient number of hearing examiners to carry out the adjudicatory powers, duties and responsibilities of the Administrative Tribunal. Hearing examiners shall exercise such powers, duties and responsibilities as the Director may assign. The Director may delegate any or all of the powers and duties vested in him or her, The hearing examiners, who shall be attorneys admitted to practice in the State of New York, may be appointed by the Director to serve on a full time, part time or per diem basis, but no hearing examiner shall perform any other services for the Department. Hearing examiners shall be subject to the provisions of the rules of conduct promulgated pursuant to §1049(2)(b) of the New York City Charter.

§7.07 Proceedings before the Administrative Tribunal.

(a) Notice of Violation. All proceedings before the Administrative Tribunal shall be commenced by the issuance and service of a notice of violation ("NOV") upon the respondent and by the transmittal thereof to the Administrative Tribunal. Each NOV shall be prima facie evidence of the facts alleged therein. The notice of violation may include the report of the public health sanitarian, inspector or other person who conducted the inspection or investigation that culminated in the notice of violation. When such report is served in accordance with this section, such report shall also be prima facie evidence of the factual allegations contained therein.

(b) Service of the Notice of Violation. The notice of violation may be served in person upon the person alleged to have committed the violation, the permittee or registrant, upon the person who was required to hold the permit or to register, upon a member of the partnership or other group concerned, upon an officer of the corporation, upon a member of a limited liability company, upon a management or general agent or upon any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged. Service may also be made by certified or registered mail through the U.S. Postal Service, or by any type of mail utilizing any other mailing service that provides proof of mailing and receipt, to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of (1) the alleged violator, (2) the individual who is listed as the permittee or applicant in the permit issued by the Board or the Commissioner or in the application for a permit, or (3) the registrant listed in the registration form. In the case of service by mail, documentation of delivery or receipt provided by the delivery or mailing service shall be proof of service of the notice of violation.

(c) Contents of notice of violation. The notice of violation shall contain:

- (1) A clear and concise statement sufficient to inform the respondent with reasonable definiteness and clarity of the essential facts alleged to constitute the violation or the violations charged, including the date, time where applicable and place when and where such facts were observed;
- (2) Information adequate to provide specific notification of the section or sections of the Code or other law, rule, or regulation alleged to have been violated;
- (3) Information adequate for the respondent to calculate the maximum penalty authorized to be imposed if the facts constituting the violation are found to be as alleged;
- (4) Notification of the date and place when and where a hearing will be held by the Department, such date to be at least fifteen calendar days after receipt of the notice of violation, unless another date is required by applicable law;
- (5) Notification that failure to appear on the date and at the place designated for the hearing shall be deemed a waiver of the right to a hearing, thereby authorizing the rendering of a default decision; and
- (6) Information adequate to inform the respondent of his or her rights under §7.09 of this Article.

(d) Amendment. The hearing examiner may allow an amendment to a notice of violation at any time if the subject of the amendment is reasonably within the scope of the original notice of violation; provided, however, that such amendment does not allege any violation not specified in the original notice, alleged to have occurred subsequent to the service of such notice, and does not prejudice the rights of the respondent to adequate notice of the allegations made against the respondent.

§7.09 Appearances.

(a) A respondent may appear for a hearing by:

- (1) appearing in person at the place and on the date scheduled for the hearing;
- (2) sending an authorized representative to appear on behalf of such person at the place and on the date scheduled for the hearing who is:
 - (i) an attorney admitted to practice law in New York State,
 - (ii) a representative registered to appear before the Tribunal pursuant to §7.21, or
 - (iii) any other person, subject to the provisions of §7.21; or
- (3) making a written request for an adjudication by mail, provided that the request is received by the Tribunal before the scheduled date of the hearing or bears a postmark indicating that it was mailed to the Tribunal before the scheduled date of a hearing. If the request bearing such a postmark is received by the Tribunal after a decision on default has been issued, such default shall be vacated automatically; or
- (4) participating in a hearing conducted by telephone or other electronic media when the opportunity to do so is offered by the Department, provided, however, that a telephone or electronic hearing may be adjourned for a live hearing if the hearing officer determines that such an adjournment is necessary, or if any party requests an adjournment.

(b) If the respondent chooses to appear by mail, the written request for mail adjudication may contain denials, admissions and explanations pertaining to the individual violations charged, and documents, exhibits or statements to be considered as evidence in support of respondent's defense, or in the determination of penalties. If, after a review of the record, the hearing examiner is of the opinion that it is necessary for the respondent to submit additional evidence, the hearing examiner may require the submission of additional documentary evidence or deny a request for adjudication by mail and adjourn the matter for a hearing. Violations that are not denied or explained shall be deemed to have been admitted; defenses not specifically raised shall be deemed to have been waived.

(c) A respondent or authorized representative may request that a scheduled hearing be adjourned to a later date. Such a request may be made in writing to the Tribunal, provided that it is received by the Tribunal no later than three business days prior to the date of the scheduled hearing, or the request may be made in person on the date of the scheduled hearing at any time prior to the hearing. A maximum of three requests for adjournments by the respondent, and a maximum of three requests for adjournments by the petitioner or by the Tribunal, shall be granted administratively as of right. Thereafter, all requests for adjournments must be made in person to a hearing examiner or the Director of the Tribunal at the time of the scheduled hearing, and may be granted only upon a showing of good cause as determined by the hearing examiner or the Director in his or her discretion. A denial of an adjournment request shall not be subject to separate or interlocutory review by the Review Board.

(d) A respondent who fails to appear or to make a timely request for an adjournment shall not be entitled to a hearing. Without further notice to the respondent, a hearing examiner may find that the respondent is in default if the respondent has failed to appear and render a default decision sustaining the violations cited in the notice of violation, subject to findings the hearing examiner must make with respect to the service of the notice of violation and the sufficiency of the factual allegations contained therein, and imposing a penalty pursuant to Article 3 of this Code or as authorized by other applicable law. If, before a default decision is issued, it is determined that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, a default decision may not be issued and the matter may be adjourned to a new hearing date. A decision that is adverse to a respondent shall be issued on default only after the hearing examiner has determined that the notice of violation was served as required by applicable law, and that the notice of violation alleges sufficient facts to support the violations charged. The Tribunal shall notify a defaulting respondent of the issuance of a default decision by mailing a copy of the decision by certified mail or by providing a copy to a respondent or respondent's representative who appears personally at the Tribunal and requests a copy. A respondent may make a motion in writing requesting that a default be vacated, if the motion to vacate is postmarked or received by the Tribunal within sixty days of the date of mailing of the default decision to the respondent or the date a copy was provided to the respondent or the respondent's representative at the Tribunal, whichever date is earlier. One such request shall be granted administratively as of right provided that the Tribunal's records show that there have been no other failures to appear in relation to the particular notice of violation. A motion to vacate a default that is received more than sixty days after mailing or personal receipt of the default decision shall be accompanied by a statement setting forth good cause for the respondent's failure to appear. Such statement, and any documents to support the motion to vacate the default, shall be reviewed by a hearing examiner who shall determine if it establishes a reasonable excuse for the default. Denial of a motion to vacate a default decision shall not be subject to review by the Review Board.

(e) The Department may extend an offer to settle any notice of violation by setting forth a monetary amount that a respondent may pay in full satisfaction of the violations cited in the notice of violation. A respondent may, in lieu of attending a hearing, pay the department the monetary amount. Such payment shall constitute an admission of liability for the violations charged and no further hearing or appeal shall be allowed.

§7.11 Hearings and mail adjudications.

(a) A notice of violation may be adjudicated at a hearing or by mail.

(b) The hearings shall be open to the public, shall be presided over by a hearing examiner, shall proceed with reasonable expedition and order, and, insofar as practicable, shall not be postponed or adjourned.

(c) Each party to a proceeding shall have the right to be represented by counsel or other authorized representative as set forth in §§7.09 (a) and 7.21 of this Article, to present evidence, to examine and cross-examine witnesses and to have other rights essential for due process and a fair and impartial hearing.

(d) The Department shall have the burden of proving the factual allegations contained in the notice of violation by a preponderance of the evidence. A respondent shall have the burden of proving an affirmative defense, if any, by a preponderance of the evidence.

(e) In addition to evidence submitted, the hearing examiner may request further evidence to be submitted by the respondent or may adjudicate the matter based on the record before him or her.

(f)(1) A respondent may request the presence at the hearing of the public health sanitarian, inspector or other person who issued the NOV (the "inspector"), provided that the request is made in writing and is received by the Tribunal no later than seven business days prior to the scheduled hearing. In such event, the hearing shall be rescheduled, and the respondent need not appear at the originally scheduled hearing. A respondent may also, at the time of the hearing, request the presence of the inspector; in which case the hearing shall be adjourned. In addition, if a respondent denies the factual allegations contained in the NOV, the hearing examiner may require the presence of the inspector and adjourn the hearing.

(2) In the event that the inspector does not appear, the hearing examiner may adjourn the hearing, or may take testimony, and sustain or dismiss all or part of the notice of violation, as the hearing examiner may deem appropriate. In determining the appropriate action, the hearing examiner may consider any relevant facts, including the availability of the inspector, the reason for the failure to appear, the need for and relevance of the requested testimony, and the potential prejudice to either party if the hearing is adjourned or proceeds without the inspector. In no event shall a hearing be adjourned on more than three occasions by the hearing examiner because of the unavailability of an inspector. If the respondent requests that the hearing proceed in the absence of the inspector, the respondent shall be deemed to have waived the appearance of such inspector.

(g) A record shall be made of all notices of violation filed, proceedings held, written evidence admitted and decisions rendered, and such record shall be kept in the regular course of business for a reasonable period of time in accordance with applicable law. Hearings shall be mechanically, electronically or otherwise recorded by the Administrative Tribunal under the supervision of the hearing examiner, and the original recording shall be part of the record and shall constitute the sole official record of the hearing. A copy of a tape recording of a hearing shall be made available within five business days of receiving a request, upon payment of a reasonable fee in accordance with applicable law, to any respondent requesting a copy, to enable such respondent to appeal a notice of decision to the Review Board or for other legal proceedings.

(h) With the consent of all parties, a hearing examiner may conduct a hearing by telephone or other electronic media.

(i) A written decision sustaining or dismissing each charge in the notice of violation shall be promptly rendered by the hearing examiner who presided over the hearing, or who conducted the adjudication by mail, or who rendered a default decision. Each decision, other than a default decision, shall contain findings of fact and conclusions of law. Where a violation is sustained, the hearing examiner shall impose a penalty. A copy of the decision, other than a default decision mailed or otherwise provided in accordance with §7.09(d) hereof, shall be served forthwith on the respondent or on the respondent's counsel, registered representative or other authorized representative, either personally or by certified mail. Any fines imposed shall be paid within thirty days of service of the decision. If full payment of fines is not made within thirty days, an additional penalty may be imposed per NOV in an amount of fifty dollars, if paid between thirty-one and sixty days after service of the decision, and one hundred dollars if paid more than sixty days after service of the decision.

§7.13 Subpoenas.

(a) At any time after a hearing has commenced a subpoena may be issued by the hearing examiner to compel the timely production of any record or document for examination or introduction into evidence, or to compel the appearance of persons to give testimony, when the hearing examiner finds that such record, document or testimony is reasonably related, relevant and necessary to the adjudication. Such subpoenas shall be issued only for production of records maintained within the Department, or the appearance of a person who is employed by the Department at the time such appearance is demanded. Upon the issuance of a subpoena the hearing examiner may proceed with the hearing and adjourn such hearing until the subpoenaed documents or witnesses are produced, or immediately adjourn the hearing until such time.

(b) Subpoenaed documents shall be produced and made returnable on a date certain prior to the adjourned date for the continued hearing. Witnesses subpoenaed to testify shall appear on the adjourned date.

(c) A hearing examiner who has issued a subpoena, upon receipt of a motion timely made by the Department before the return date of the subpoena, or on the hearing examiner's own motion, may deny, quash or modify a subpoena if it is unreasonable, insufficiently relevant to the adjudication or has been shown to be wrongfully issued.

(d) If the hearing examiner determines that a subpoena has not been complied with, and that there is no good cause for such failure to comply, the hearing examiner may proceed with the hearing upon finding that the record, document or testimony subpoenaed is not necessary to the proof or defense of a violation or a fair adjudication of the merits, or the hearing examiner may preclude evidence offered by the non-complying party that is related to the subpoena, or may dismiss the particular violation the proof of which appears to the hearing examiner to be reasonably dependent on the material or person subpoenaed, but not produced.

§7.15 Disqualification of hearing examiners.

(a) Grounds for disqualification. A hearing examiner shall not preside over a hearing in accordance with the provisions of subdivisions (D) and (E) of §103 of Appendix A of Title 48 of the Rules of the City of New York. A hearing examiner who determines his or her disqualification shall withdraw from the proceeding by notice on the record and shall notify the Director of such withdrawal.

(b) Motion to disqualify. Whenever a party asserts for any reason that a hearing examiner must be disqualified from presiding over a particular proceeding, such party may file with the Director a motion to disqualify and remove the hearing examiner. Such a motion must be supported by affidavits setting forth the alleged grounds for disqualification. The Director shall furnish a copy of the motion to the hearing examiner whose removal is sought, and the hearing examiner shall have seven days to reply. Unless the hearing examiner disqualifies himself or herself within seven days of the receipt of the motion, the Director shall promptly determine the validity of the alleged grounds, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.

§7.17 Review Board.

(a) There shall be a Review Board within the Department which shall consist of three persons, namely a person appointed by the Board who is an attorney in the Office of the General Counsel of the Department and who has been admitted to practice law in the State of New York for a period of at least five years; another person appointed by the Board who is an attorney admitted to practice in the State of New York for a period of at least five years; and a person appointed by the Board who has at least five years experience in public health activities who may, but need not be, an employee of the Department. The attorneys appointed to the Review Board shall be in good standing at the time of appointment and continuously during their term of service, and shall meet any additional requirements of experience and knowledge of administrative law as the Board may impose. Hearing examiners are not qualified to be members of the Review Board. The Board of Health may at any time remove a member of the Review Board for cause following an opportunity to be heard.

(b) The Review Board shall have jurisdiction to review all final decisions, other than default decisions, of the hearing examiners to determine whether the facts found therein are supported by substantial evidence in the record, and whether the findings and determinations of the hearing examiner, as well as the penalty imposed, are supported by law. The Review Board shall not consider any evidence that was not presented to the hearing examiner. Decisions of the Review Board shall be made by a majority of its members. The Review Board shall have the power to reverse, to remand or to modify the decision appealed from or to reduce the amount of the penalty imposed within the minimums established by this Code or other applicable law.

(c) A respondent may seek to review, in whole or in part, any final decision of a hearing examiner, other than a decision rendered on default by the respondent. However, neither a denial of a motion to vacate a default decision nor a plea admitting the violations charged shall be subject to review by the Review Board. Within thirty days of the Tribunal delivering or mailing the decision to the respondent or authorized representative, such respondent may file a notice of appeal on a form prescribed by the Department, accompanied by a brief statement setting forth the specific reasons why the decision should be reversed, remanded or modified. Filing a notice of appeal shall not stay the collection of any fine or of the penalty imposed by the decision. No appeal shall be permitted unless the fine or penalty imposed has been paid prior to or at the time of the filing of the notice of appeal, or the respondent may post a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from. Appeals decisions shall be made upon the entire record of the hearing and the evidence before the hearing examiner. Appeals may be decided without the appearance of the respondent, but the respondent may make a request to appear before the Review Board at the time of filing the notice of appeal.

(d) The Review Board shall promptly issue a written decision affirming, reversing, remanding or modifying the decision appealed from, a copy of which shall be served on the respondent by certified or registered mail, stating the grounds upon which the decision is based. Where appropriate, the decision shall order the repayment to the respondent of any penalty that has been paid. If the Review Board does not act on an appeal within one hundred eighty days after the notice of appeal is filed, or within such an extended time as may be agreed upon by the parties, the appeal shall be deemed to be granted. The decision of the Review Board shall be the final determination of the Department as to the imposition of any fine, penalty and forfeiture.

(e) The Review Board shall have no jurisdiction to entertain appeals by the Department of any decision of a hearing examiner.

(f) The Commissioner may appoint a person of suitable experience and similar qualifications to serve on the Review Board temporarily whenever there is a vacancy on the Review Board or a member is absent and unable to serve, pending the appointment of a person by the Board to fill the vacancy.

§7.19 Disqualification of member of Review Board.

(a) Grounds for disqualification. A member of the Review Board shall not review a final decision of a hearing examiner in accordance with the provisions of subdivisions (D) and (E) of §103 of Appendix A of Title 48 of the Rules of the City of New York. A member who determines his or her disqualification shall withdraw from the review by notice on the record and shall notify the Board of such withdrawal.

(b) Whenever a party asserts for any reason that a member of the Review Board must be disqualified from presiding over a particular proceeding, such party may file with the Board a motion to disqualify and remove such member. Such a motion must be supported by affidavits setting forth the alleged grounds for disqualification. The Board shall furnish a copy of the motion to the member whose removal is sought, and, thereafter, the member shall have seven days to reply. Unless the member disqualifies himself or herself within seven days of the receipt of the motion, the Board shall promptly determine the validity of the alleged grounds, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.

(c) Whenever a member of the Review Board is disqualified, the Board shall appoint a person of suitable experience to serve on the Review Board to determine the appeal in question.

§7.21 Registration and disqualification of certain authorized representatives.

(a) Any person who represents two or more respondents before the Tribunal within a calendar year shall, as a condition precedent to such representation, register with the Tribunal as a representative. Any person who appears on behalf of a respondent before the Tribunal shall be prohibited from appearing before the Tribunal on behalf of any other respondent within the same calendar year without having completed such registration. A representative shall register by completing and submitting a form provided by the Department, and such form shall be accompanied by proof

acceptable to the Department identifying the representative, and shall include such other information as the Department may require. Registered representatives shall notify the Tribunal within ten business days of any change in the information required to be stated on the registration form. The Department may charge a reasonable fee in accordance with applicable law to cover the cost of processing and maintaining registrations and may issue each representative a registration card and identification number. Attorneys admitted to practice in New York State shall not be required to so register.

(b) Attorneys, registered representatives or other authorized representatives may be permanently or temporarily barred by the Commissioner from representing any respondents before the Tribunal, and in the case of registered representatives their registration revoked or suspended, upon a finding by the Office of Administrative Trials and Hearings, or successor agency, issued after an opportunity to be heard has been afforded, that they have engaged in improper conduct, including but not limited to one or more of the following:

- (1) Disorderly, disruptive or obstructive conduct, as set forth in §7.03(c)(4) of this Article, on more than one occasion, regardless of whether the representative was barred from participating in a specific hearing by a hearing examiner in accordance with said §7.03(c)(4);
- (2) Submitting any false or forged document either as evidence in a matter being adjudicated at the Tribunal, or as proof of representation of a respondent;
- (3) Any violation of §3.15 or §3.19 of this Code; or
- (4) Any criminal conviction of a type that does not fall within the protections afforded under Article 23A of the New York State Correction Law.

§7.23 Computation of time.

In computing any period of time prescribed or allowed by this Article, the day of the act or default from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which case the period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a document and the document is served by mail, five days shall be added to the prescribed period of time.

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HEALTH AND MENTAL HYGIENE

NOTICE

NOTICE OF ADOPTION OF AMENDMENTS TO ARTICLE 3 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the "Charter") and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 3 of the New York City Health Code (the "Health Code") was published in the City Record on March 16, 2012 and a public hearing was held on April 18, 2012. No persons testified, no written comments were received, and no changes have been made to the proposed resolution. At its meeting on June 12, 2012, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the "Health Code") are issued in accordance with §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department") with authority to regulate all matters affecting health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

These amendments are related to revisions to the Charter approved by the voters in 2010, authorizing the Mayor by Executive Order to consolidate certain administrative tribunals by transferring their adjudicatory functions to the Office of Administrative Trials and Hearings ("OATH").

Background of Amendments

On November 2, 2010, New York City voters approved Charter revisions including an amendment authorizing the Mayor by Executive Order to consolidate certain administrative tribunals into OATH. In addition, the Charter amendment required the establishment of a committee whose mandate was to recommend which tribunals or types of cases should be transferred to OATH. The Mayor's Committee on Consolidation of Administrative Tribunals ("Mayor's Committee") issued a "Report and Recommendations" dated June 7, 2011 containing an Appendix with recommended modifications to rules of the various tribunals ("Report" and "Appendix").

By Executive Order No. 148 dated June 8, 2011 (the "Executive Order"), the Mayor ordered the "transfer of the administrative tribunals [sic] established by the Board of Health pursuant to Section 558 of the Charter" to OATH, effective July 3, 2011. According to the Executive Order, certain provisions of the Health Code and other Rules of the City of New York pertaining to the Department's Administrative Tribunal, as well as some additional interim procedures, would be deemed interim rules of OATH in accordance with the Mayor's Committee's Report and Appendix. These provisions, rules, and procedures, were designated interim rules until OATH itself completes official rulemaking in accordance with the Charter.

At its meeting on December 13, 2011, the Board adopted a resolution repealing Article 7 ("Administrative Tribunal") of the Health Code and amending other provisions of the Health Code that refer to Article 7 and/or the Administrative

Tribunal. Certain provisions of Article 7 survived the transfer to OATH and were added to Article 3 ("General Provisions") of the Health Code. According to the Board resolution, the amendments (including the repeal of Article 7 and the amended §3.12) would not be effective until OATH's rules for the Health Tribunal at OATH became effective.

The new §3.12 ("Administrative Tribunal") incorporates surviving provisions of the repealed Article 7. Subdivision (b) of this section confers jurisdiction on the Health Tribunal at OATH and the Environmental Control Board ("ECB") to hear all violations of the Health Code or any other State or local law or regulation enforced by the Department seeking monetary penalties. The same subdivision also provides that these proceedings will be adjudicated in accordance with the applicable procedures of the Health Tribunal or the ECB. However, the new §3.12 inadvertently omitted a provision for service of notices of violation ("NOVs") to be brought before the ECB.

This resolution amends §3.12 to add, in a new subdivision (c), provisions for service of NOVs returnable to the ECB, and provides that NOVs can be served either personally or by mail or other delivery. Currently, the Charter prescribes that when NOVs to be heard by ECB are served personally, the resulting decisions — whether rendered after a hearing or after a default by the respondent — may be docketed or entered as judgments in a court without additional court proceedings. The Charter provision does not prescribe procedures for other than personal service, and although it authorizes automatic docketing of decisions on NOVs not served personally by several other City agencies, NOVs not personally served by the Health Department do not result in decisions that are automatically docketed or entered as judgments.

Adding this provision to § 3.12 is necessary because ECB's rules provide that NOVs returnable to ECB that are not personally served may be brought before ECB and may be served "alternatively as provided by the statute, rule or other provision of law governing the violation alleged. Lawful service in a manner other than that provided for in §1049-a(d)(2) shall give the tribunal jurisdiction to hold a hearing or render a decision and order whether after hearing or in default thereof, but such decision and order shall not be entered in Civil Court or any other place provided for entry of civil judgments without court proceedings." 48 RCNY §3-31 (c).

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

The resolution is as follows:

Deleted material is in [brackets]; new text is underlined.

RESOLVED, that §3.12 of Article 3 (General Provisions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes as follows:

§3.12 Administrative Tribunal and Environmental Control Board proceedings.

(a) Administrative Tribunal. The Administrative Tribunal established by the Board of Health pursuant to §558 of the Charter is hereby continued. It shall be operated by and within the City's Office of Administrative Trials and Hearings and known as the Health Tribunal at OATH.

(b) Proceedings at the Health Tribunal at OATH and the Environmental Control Board. Where the Department seeks a fine or monetary penalty for a violation of this Code or any other State or local law or regulation enforced by the Department, it shall bring a proceeding at either the Health Tribunal at OATH or at the Environmental Control Board, and such proceedings shall be governed by the procedures of such Tribunal or Board, as the case may be.

(1) (c) Service of notices of violations returnable to the Environmental Control Board.

(1) Personal service. Notices of violation returnable to the Environmental Control Board may be served in person upon (i) the person alleged to have committed the violation, (ii) the permittee or registrant, (iii) the person who was required to hold the permit or to register, (iv) a member of the partnership or other group concerned, (v) an officer of the corporation, (vi) a member of a limited liability company, (vii) a management or general agent, or (viii) any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged.

(2) Service by mail. Notices of violation returnable to the Environmental Control Board may be served by certified or registered mail through the U.S. Postal Service, or by any type of mail utilizing any mailing service that provides proof of mailing and receipt, to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of (i) the alleged violator, (ii) the individual who is listed as the permittee or applicant in the permit issued by the Board or the Commissioner or in the application for a permit, or (iii) the registrant listed in the registration form. In the case of service by mail, documentation of delivery or receipt provided by the delivery or mailing service is proof of service of the notice of violation.

(2) (d) Decisions. The decisions of the Environmental Control Board shall be final; the decisions of the Health Tribunal at Oath shall be final, except in the case of any appeal from an adjudication of a violation of Article 13-E of the Public Health Law.

(c) (e) Appeals pursuant to Article 13-E of the Public Health Law. Where there is an appeal from an adjudication of a violation of Article 13-E of the Public Health Law, the Health Tribunal at OATH shall, pursuant to the applicable provision of the rules of OATH governing such Tribunal, issue a recommended decision to the Commissioner for him or her to review. Within thirty (30) days of the issuance of the recommendation, the respondent may submit to the Department a written argument why the decision should or should not be followed by mailing by certified or registered mail, emailing or delivering by hand a copy of the argument to the General Counsel of the Department. After the Department has received the respondent's argument or after forty-five (45) days have passed from when the Tribunal issued its recommended decision, whichever time is shorter, the Commissioner shall issue a written decision affirming, reversing or modifying the recommended decision, or remanding the appeal back to the Health Tribunal at OATH

for further proceedings. The Commissioner's decision shall be served on the respondent by certified or registered mail. Where appropriate, the Commissioner's decision shall order the Tribunal to repay the respondent any penalty that has been paid. Except when the Commissioner remands an appeal to the Health Tribunal at OATH for future proceedings, the Commissioner's decision shall constitute a final agency determination.

Notes: Section 3.12, added by resolution adopted December 13, 2011, reflecting the transfer to OATH of the former Department Administrative Tribunal, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011), was further amended by resolution adopted June 12, 2012, adding a new subdivision (c) providing for service of notices of violations returnable to the Environmental Control Board; and making conforming technical changes to the section. This section shall be effective on the effective date of the rules for the Health Tribunal at OATH.

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NOTICE OF ADOPTION OF A PROPOSAL TO REPEAL ARTICLE 7 AND AMEND ARTICLES 1, 3, 47 AND 151 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the "Charter") and pursuant to the authority granted to the Board of Health by §558 of such Charter, a notice of intention to repeal Article 7 (Administrative Tribunal) and amend Articles 1, 3, 47 and 151 of the New York City Health Code (the "Health Code") was published in the City Record on September 21, 2011, and a public hearing was held on October 26, 2011. No comments or testimony were received at or after the hearing. At its meeting on December 13, 2011, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the "Health Code") are issued in accordance with §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department") with authority to regulate all matters affecting health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers. These amendments are also promulgated pursuant to revisions to the Charter approved by the voters in 2010, authorizing the Mayor by Executive Order to consolidate certain administrative tribunals by transferring their adjudicatory functions to the Office of Administrative Trials and Hearings (OATH).

Basis and Purpose of the Rule Change

On November 2, 2010, New York City voters approved Charter revisions authorizing the Mayor, by Executive Order, to consolidate certain administrative tribunals into OATH. By Executive Order No. 148 (June 8, 2011) (the "Executive Order"), the Mayor ordered the "transfer of the administrative tribunals [sic] established by the Board of Health pursuant to Section 558 of the Charter" to OATH, effective July 3, 2011. The Executive Order further provided that certain provisions of the Health Code and other Rules of the City of New York pertaining to the Department's Administrative Tribunal, as well as some additional interim procedures, would be deemed rules of OATH in accordance with the Report and the Appendix to the Report of the Committee on Consolidation of Administrative Tribunals ("Mayor's Committee") until OATH itself completed rulemaking in accordance with the Charter.

At its meeting on June 14, 2011, the Board of Health adopted a resolution facilitating the transfer by designating the Administrative Tribunal as the "Health Tribunal at OATH, which shall decide questions of fact and law and penalties to be imposed in all matters brought before such Administrative Tribunal..."

To further facilitate a smooth transition of adjudicatory and appeals functions to the Health Tribunal at OATH, the Board has repealed Article 7 and amended other provisions of the Health Code that refer to either or both Article 7 and the Administrative Tribunal, to be consistent with the Executive Order and Report and Appendix of the Mayor's Committee. Those provisions of Article 7 that survive the transfer to OATH have been added to Article 3. In addition, certain provisions of the Department's rules in Chapter 7 of Title 24 of the Rules of the City of New York ("RCNY"), which differentiated matters previously assigned to the Administrative Tribunal (penalties and fines) and OATH (show cause, permit revocations and suspensions) have also been incorporated in Article 3. In a separate rulemaking process that does not require Board of Health approval, the Department will take necessary actions to repeal Chapter 7 of Title 24 RCNY and Chapter 1 of Title 25 RCNY (Adjudications of the former Department of Mental Health and Retardation).

The following is a summary of the amendments that have been adopted:

Article 1 (Short Title and General Definitions). Section 1.03 (b), defining the Administrative Tribunal, has been amended by identifying the new Health Tribunal at OATH. A new subdivision (k) has been added that references and defines OATH.

Article 3 (General Provisions). Section 3.11 (c) (which provided that when a respondent fails to appear at the Administrative Tribunal and is found in default, any penalty imposed shall be double that which would have been imposed if the respondent was found in violation after a hearing) has been amended to reference the new name of the tribunal and add provisions recommended by Mayor's Committee relating to the name of the tribunal (former §7.01); jurisdiction (former §7.03); and surviving provisions of Chapter 7 of Title 24 RCNY. Section 3.12 continues the tribunal created by the Board of Health, but transfers its operation to OATH.

Article 47 (Child Care Services). Section 47.77 (h), referring to the authority of the Department to issue notices of

violation pursuant to Article 7, has been amended by changing the reference to Article 7 of the Health Code..

Article 151 (Pest Prevention and Management). Section 151.05 (a), which authorizes the Environmental Control Board in addition to the Administrative Tribunal to adjudicate notices of violation, has been amended to refer to the Health Tribunal at OATH.

Article 5 (General Permit Provisions) and Article 81 (Food Preparation and Food Establishments). Changes in the text of these two articles that reference Article 7 and the Administrative Tribunal have been incorporated into the resolutions adopting comprehensive amendments of these articles.

Statement Pursuant to Charter § 1043

This proposal was not included in the Department's regulatory agenda because the need for the amendment became known after publication of the regulatory agenda.

The resolution is as follows:

Matter to be deleted is in [brackets]

Matter to be added is underlined.

RESOLVED, that Article 7 (Administrative Tribunal), and the list of section headings in Article 7 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby are, REPEALED, to be printed together with explanatory notes as follows.

Notes: Article 7 was repealed by resolution adopted December 13, 2011. The Administrative Tribunal established pursuant to New York City Charter §558 was transferred to the Office of Administrative Trials and Hearings (OATH), to be known as the Health Tribunal at OATH, by Executive Order No. 148, effective July 3, 2011. The Board of Health adopted a resolution on June 14, 2011 to facilitate the transfer that authorized the Health Tribunal at OATH to decide questions of fact and law in any proceeding alleging a violation of the Health Code.

RESOLVED, that subdivision (b) of §1.03 (General definitions) of Article 1 (Short Title and Definitions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, and a new subdivision (k) added, to be printed together with explanatory notes as follows.

§1.03 General definitions.
When used in the New York City Health Code:

(b) *Administrative Tribunal* means the [Administrative Tribunal of the Department of Health and Mental Hygiene of the city of New York] Health Tribunal at OATH.

(j) *State* means the state of New York.

(k) *OATH* means the Office of Administrative Trials and Hearings.

Notes: Section 1.03 was amended by resolution adopted December 13, 2011, amending the definition of the Administrative Tribunal, and adding a definition for OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011) which consolidated the Department's Administrative Tribunal and other City agencies' tribunals with OATH as a result of a 2010 Charter revision.

RESOLVED, that subdivision (c) of §3.11 (Civil enforcement of the Code) of Article 3 (General Provisions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, and new subdivisions (d) and (e) added, to be printed together with explanatory notes as follows:

§3.11 Civil Enforcement of the Code

(c) Where a person fails to appear [in a proceeding] at an adjudicatory hearing to determine whether a monetary penalty should be imposed for any violation of this Code, [brought pursuant to Article 7 of this Code] the penalties imposed for each sustained violation shall be double the amount that would otherwise be assessed by the [hearing examiner] administrative law judge, but shall not exceed the maximum penalty specified in subdivisions (a) or (b) of this [Section, or in the other applicable law or regulation] section.

Notes: Subdivision (c) of §3.11 was amended by resolution adopted December 13, 2011, to delete a reference to matters brought pursuant to Article 7 (Administrative Tribunal), in accordance with the Mayor's Executive Order No. 148 (June 8, 2011) which consolidated the Department's Administrative Tribunal and other City agencies' tribunals with OATH as a result of a 2010 Charter revision.

RESOLVED, that Article 3 (General Provisions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, and a new section 3.12 added, to be printed together with explanatory notes as follows:

§3.12 Administrative Tribunal

(a) The Administrative Tribunal established by the Board of Health pursuant to §558 of the Charter is hereby continued. It shall be operated by and within the City's Office of Administrative Trials and Hearings and known as the Health Tribunal at OATH.

(b) Where the Department seeks a fine or monetary penalty for a violation of this Code or any other State or local law or regulation enforced by the Department, it shall bring a proceeding at either the Health Tribunal at OATH or at the Environmental Control Board, and such proceedings shall be governed by the procedures of such Tribunal or Board, as the case may be. The decisions of the Environmental Control Board shall be final; the decisions of the Health Tribunal at Oath shall be final, except in the case of any appeal from an adjudication of a violation of Article 13-E of the Public Health Law.

(c) Where there is an appeal from an adjudication of a violation of Article 13-E of the Public Health Law, the Health Tribunal at OATH shall, pursuant to the applicable provision of the rules of OATH governing such Tribunal, issue a recommended decision to the Commissioner for him or her to review. Within thirty (30) days of the issuance of the recommendation, the respondent may submit to the Department a written argument why the decision should or should not be followed by mailing by certified or registered mail, emailing or delivering by hand a copy of the argument to the General Counsel of the Department. After the Department has received the respondent's argument or after forty-five (45) days have passed from when the Tribunal issued its recommended decision, whichever time is shorter,

the Commissioner shall issue a written decision affirming, reversing or modifying the recommended decision, or remanding the appeal back to the Health Tribunal at OATH for further proceedings. The Commissioner's decision shall be served on the respondent by certified or registered mail. Where appropriate, the Commissioner's decision shall order the Tribunal to repay the respondent any penalty that has been paid. Except when the Commissioner remands an appeal to the Health Tribunal at OATH for future proceedings, the Commissioner's decision shall constitute a final agency determination.

Notes: Section §3.12 was added by resolution adopted December 13, 2011, reflecting the transfer of the form Department Administrative Tribunal to OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011).

RESOLVED, that subdivision (h) of §47.77 (Closing and enforcement) of Article 47 (Child Care Services) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§47.77 Closing and enforcement.

(h) Department authority not limited by this section. Nothing herein shall be construed to limit the authority of the Department to issue notices of violation [pursuant to Article 7 of this Code] or commence any other proceeding or action provided for by this Code or other applicable law, including actions to deny, suspend or revoke permits.

Notes: Subdivision (h) was amended by resolution adopted December 13, 2011 to reflect the repeal of Article 7, and the transfer of the Department's Administrative Tribunal to OATH, in accordance with Mayor's Executive Order No. 148 (June 8, 2011).

RESOLVED, that §151.05 (Notices of violation) of Article 151 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§151.05 Notices of violation.

(a) *Designation of Environmental Control Board*. In accordance with §1049-a (c)(2) of the Charter, a notice of violation ("NOV") citing a violation of any provision of this Article may be made returnable to the Environmental Control Board in addition to the [Administrative Tribunal established pursuant to Article 7 of this Code] Health Tribunal at OATH.

Notes: Subdivision (a) of §151.05 was amended by resolution adopted XXX to reflect the transfer of the former Department Administrative Tribunal to OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011).

RESOLVED, that the list of articles in Title I (Short Title, Definitions and General Provisions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, amended, to be printed together with explanatory notes to read as follows:

NEW YORK CITY HEALTH CODE TITLE I SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS

Article 1 Short Title and General Definitions
3 General Provisions
5 General Permit Provisions
[7 Administrative Tribunal]
9 Petitioning the Board of Health to Commence Rulemaking

Notes: The list of Articles in Title I was amended by resolution adopted December 13, 2011 to reflect the transfer of the former Department Administrative Tribunal to OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011), with the repeal of Article 7 effective upon the effective date of amendments to the rules of OATH codifying the procedures applicable to the Health Tribunal at OATH.

RESOLVED, that the amendments adopted herein shall in no event take effect earlier than the effective date of amendments to the rules of OATH codifying the procedures applicable to the Health Tribunal at OATH.

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SPECIAL MATERIALS

HEALTH AND MENTAL HYGIENE

NOTICE

NOTICE OF THE ESTABLISHMENT OF MOBILE FOOD VENDOR PERMIT WAITING LISTS BY THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

On Friday, August 10, 2012, the Department of Health and Mental Hygiene (DOHMH) will establish, utilizing a random selection process, five (5) separate waiting lists for Green Cart permits — two-year, full-term mobile food vendor unit permits authorizing the holders thereof to sell only raw, whole fresh fruits and vegetables within designated areas of the City — for the Bronx, Brooklyn, Manhattan, Queens and Staten Island.

Application packages with detailed instructions for inclusion in the selection process for the Green Cart permit waiting lists may be obtained via the internet at www.nyc.gov/greencarts, by calling 311, or in person at the New York City Department of Consumer Affairs Licensing Center, located at 42 Broadway, 5th Floor, New York, New York 10004, Monday through Friday from 9:00 AM to 5:00 PM.

In order to be eligible for inclusion in the selection process to establish these waiting lists, the applicant must have a valid mobile food vendor license (ID badge) issued by the Department of Health and Mental Hygiene **on or before Tuesday, July 31, 2012**, and the applicant must submit a completed waiting list application form by mail only to the address listed on the application form with a postmark dated **on or before Tuesday, July 31, 2012**.

All eligible waiting list applications will secure a waiting list position.

In accordance with Local Law No. 9 of 2008, preference or priority for a waiting list position will be given to those applicants who are members of a "preference category" listed in Local Law No.9. This preference or priority will be established by the giving of additional points to those applicants who are:

- already on an existing DOHMH mobile food vending permit waiting list
- United States veterans
- disabled persons

Applicants who do not belong to a preference category/priority group will secure a waiting list position after those who belong to a preference category/priority group.

For each borough list, all applications will be randomly assigned a number on each waiting list. Preference category/priority group applicants will be randomized separately and prioritized accordingly. If the applicant secures a waiting list position based upon a claim of being in one or more of the preference categories/priority groups mentioned above, the applicant will have to provide proof of such claim when the applicant is notified to apply for the Green Cart permit. If an applicant fails to do so, he or she will be disqualified from all Green Cart waiting lists.

Mobile Food Vendor License Applications: Application packages for a mobile food vendor operator's license (ID badge) may also be obtained via the internet at www.nyc.gov/greencarts, by calling 311, or in person at the New York City Department of Consumer Affairs Licensing Center, located at 42 Broadway, 5th Floor, New York, New York 10004, Monday through Friday from 9:00 A.M. to 5:00 P.M. Interested persons should allow at least twenty-five (25) business days to receive the necessary tax documentation and register for and pass the Department's "Mobile Food Vendor Food Protection Course", both of which are required prior to applying for a mobile food vending license.

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LATE NOTICES

HUMAN RESOURCES ADMINISTRATION

AGENCY CHIEF CONTRACTING OFFICER/CONTRACTS

INTENT TO AWARDS

Human/Client Services

MEDICAL REVIEW AND ASSESSMENT SERVICES OF HRA HOME CARE SERVICES CLIENTS – Negotiated Acquisition – PIN# 06907X0026CNVN002 – DUE 06-21-12 AT 5:00 P.M. – *For Informational Purposes Only*

HRA/Home Care Services Program intends to extend the contract with New York County Health Services Review Org., located at 199 Water Street, 27th Floor, New York, NY 10038. EPIN: 06907X0026CNVN002: Contract Amount: \$10,945,457.00

HRA proposed the nine (9) month contract extension for New York County Health Services Review Organization (NYCHSRO) and will allow the vendor to continue to provide mandated medical review and assessment services to Medicaid home care clients while the State begins the implementation of Medicaid Redesign and the transfer of the dual eligible (Medicaid-Medicare) home care clients from HRA supervision to managed long term care agencies under contract with NYSDOH. HRA is planning the restructuring of the home care program and is in the process of determining the most cost effective method to provide the medical review and assessment services for those clients who at this time, are not covered under the State's Managed Long Term Care Program and will remain under HRA supervision. The term of this contract period is from July 1, 2012 to March 31, 2013.

*Human Resources Administration, 180 Water Street, 14th Floor, New York, NY 10038.
Barbara Beirne (212) 331-3436; beirneb@hra.nyc.gov*

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PARKS AND RECREATION

PUBLIC HEARINGS

CANCELLATION OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a Contract Public Hearing will be held on Thursday, June 21, 2012, in Spector Hall, 22 Reade Street, Main Floor, Borough of Manhattan, commencing at 10:00 A.M. on the following:

PUBLIC HEARING in the matter of a proposed contract between the City of New York Parks & Recreation (Parks) and City Parks Foundation., 830 Fifth Avenue, New York, NY 10065, to create stewardship groups. The contract amount shall be \$475,000.00. The contract term shall be from April 1, 2010 to March 31, 2013. EPIN #: 84612R0005001.

The proposed contractor has been selected by Required Authorized Source Method, pursuant to Section 1-02(d)(2) of the Procurement Policy Board Rules.

A draft copy of the proposed contract is available for public inspection at Parks - Arsenal West, Purchasing & Accounting, 24 West 61st Street, 3rd Floor, New York, NY 10023, from June 8, 2012 to June 21, 2012, excluding Weekends and Holidays, from 9:00 A.M. to 5:00 P.M.

Anyone who wishes to speak at this public hearing should request to do so in writing. The written request must be received by Parks within 5 business days after publication of this notice. Written requests should be sent to Victor Baez, Contract Analyst, 24 West 61st Street, 3rd Floor, New York, NY 10023, or victor_baez@parks.nyc.gov. If Parks receives no written requests to speak within the prescribed time, Parks reserves the right not to conduct the public hearing. In such case, a notice will be published in The City Record canceling the public hearing.

Close the Hearing.

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