



THE CITY RECORD

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THE CITY RECORD

MICHAEL R. BLOOMBERG, Mayor

MARTHA K. HIRST, 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

BRONX BOROUGH PRESIDENT

MEETINGS

A PUBLIC HEARING IS BEING CALLED by the President of the Borough of The Bronx, Honorable Adolfo Carrión, Jr. on Friday, March 14, 2008 at 10:00 A.M. in the office of the Borough President, 198 East 161st Street, (one block east of the Grand Concourse), 2nd Floor, the Bronx, New York 10451, on the following items:

CD 9-ULURP APPLICATION NO: C 050172 ZMX - IN THE MATTER OF an application submitted by Westpark, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 4b changing from an R5 District to an R6 District property bounded by Westchester Avenue, a line 450 feet northeasterly of Pugsley Avenue, a line midway between Westchester and Newbold Avenue, and Pugsley Avenue, Borough of the Bronx, Community District 9, as shown on a diagram (for illustrative purposes only) dated January 7, 2008 and subject to the conditions of CEQR Declaration E-207.

CD 2-ULURP APPLICATION NO: C 080248 ZMX - IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 6c:

- changing from an M1-1 District to an R6 District property bounded by Seneca Avenue, Longfellow Avenue, a line 100 feet southerly of Seneca Avenue, and a line midway between Longfellow Avenue and Bryant Avenue;
- changing from an M1-1 District to an M1-2 District property bounded by Bruckner Expressway and its westerly centerline prolongation, Pedestrian Street and its northeasterly centerline prolongation, Longfellow Avenue, a line 150 feet northerly of Seneca Avenue, a line midway between Longfellow Avenue and Bryant Avenue, a line 100 feet southerly and southeasterly of Garrison Avenue, a line midway between Bryant Avenue and Faile Street, Garrison Avenue, Manida Street, a line 100 feet southeasterly of Garrison Avenue, Barretto Street, a line 75 feet northerly of Lafayette Avenue, Manida Street, Lafayette Avenue, Tiffany Street, a line 175 feet southerly of Spofford Avenue, a line midway between Barretto Street and Casanova Street, a line 100 feet northerly of Randall Avenue, Bryant Avenue, Spofford Avenue, Longfellow Avenue, Lafayette Avenue, Edgewater Road, Halleck Street, East Bay Avenue and its easterly

centerline prolongation, Longfellow Avenue, a line 300 feet northerly of Oak Point Avenue, Casanova Street, Randall Avenue, Worthen Street and its northwesterly centerline prolongation, and Bruckner Boulevard;

- changing from an M2-1 District to an M1-2 District property bounded by Bruckner Expressway, a U.S. Pierhead and Bulkhead Line, a line 215 feet southerly of Garrison Avenue and its easterly prolongation, Edgewater Road, a line 200 feet southerly of Seneca Avenue, Whittier Street, a line 100 feet northerly of Lafayette Avenue, Edgewater Road, a line 175 feet northerly of Lafayette Avenue, a line perpendicular to the northerly street line of Lafayette Avenue distance 260 feet easterly (as measured along the street line) from the point of intersection of the northerly street line of Lafayette Avenue and the easterly street line of Edgewater Road, Lafayette Avenue, a line midway between Whittier Street and Longfellow Avenue, Seneca Avenue, Longfellow Avenue, and Pedestrian Street and its northeasterly centerline prolongation;
- changing from an M3-1 District to an M1-2 District property bounded by:
 - Worthen Street and its northwesterly centerline prolongation, Randall Avenue, Casanova Street, a line 300 feet northerly of Oak Point Avenue, Longfellow Avenue, Oak Point Avenue and its westerly centerline prolongation, a line 430 feet westerly of Barry Street and its northerly prolongation, the southwesterly prolongation of a line 75 feet northwesterly of Garrison Avenue, the northwesterly centerline prolongation of Leggett Avenue, and Bruckner Boulevard; and
 - East Bay Avenue, Halleck Street, Viele Avenue, Halleck Street, Ryawa Avenue, and Whittier Street; and
- establishing within an existing R6 District a C1-4 District bounded by:
 - Lafayette Avenue, Bryant Avenue, a line 75 feet southerly of Lafayette Avenue, and Faile Street; and
 - Hunt's Point Avenue, a line perpendicular to the easterly street line of Faile Street distance 400 feet southerly (as measured along the street line) from the point of intersection of the easterly street line of Faile Street and the southerly street line of Lafayette Avenue, a line 100 feet northeasterly of Hunt's Point Avenue, a line perpendicular to the northeasterly street line of Hunt's Point Avenue distance 270 feet northwesterly (as measured along the street line) from the point of intersection of the northeasterly street line of Hunt's Point Avenue and the westerly street line of Bryant Avenue,

Hunt's Point Avenue, Spofford Avenue, a line 100 feet westerly of Faile Street, a line 100 feet southwesterly of Hunt's Point Avenue, and Coster Street;

as shown on a diagram (for illustrative purposes only) dated January 7, 2008, and subject to the conditions of CEQR Declaration E-210.

Anyone wishing to speak may register at the hearing. Please direct any questions concerning these matters to the Borough President's office (718) 590-6124.

m7-13

MANHATTAN BOROUGH PRESIDENT

MEETING

PUBLIC NOTICE IS HEREBY GIVEN THAT THE MANHATTAN BOROUGH BOARD MEETING is scheduled for March 20, 2008 from 8:30 A.M. to 10:00 A.M., at the Office of the Manhattan Borough President located at 1 Centre Street, 19th Floor South.

PLEASE NOTE: Individuals requesting sign-language interpreters or other reasonable accommodations for disabilities should contact the Office of the Manhattan Borough President, located at 1 Centre Street, 19th Floor South, New York, NY 10007 at (212) 669-8300. NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING/MEETING.

m12-19

CITY COUNCIL

PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN THAT the Council has scheduled the following public hearings on the matters indicated below:

The Subcommittee on Zoning and Franchises will hold a public hearing on the following matters in the Council Committee Room, City Hall, New York City, New York 10007, commencing at 9:30 A.M. on Wednesday, March 19, 2008:

STAIRWELLS TEXT AMENDMENT

CITYWIDE N 080149 ZRY
Application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter for an amendment of Section 12-10 (Definitions) of the Zoning Resolution of the City of New York, modifying regulations pertaining to floor area calculations for stairwells of residential buildings taller than 125 feet:

Matter in underline 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

Chapter 2 Construction of Language and Definitions

12-10 DEFINITIONS

Floor Area

However, the #floor area# of a #building# shall not include:

(II) floor space within stairwells at each floor of residential buildings developed# or #enlarged#

after (date of amendment) that are greater than 125 feet in height; provided:

- (i) such stairwells are located on a #story# containing #residences#;
- (ii) such stairwells are used as a required means of egress from such #residential buildings#;
- (iii) such stairwells have a minimum width of forty four inches;
- (iv) such floor space excluded from #floor area# shall be limited to a maximum of eight inches of stair and landing width measured along the length of the stairwell enclosure at each floor; and
- (v) where such stairwells serve non-#residential uses# on any floor, or are located within multi-level #dwelling units#, the entire floor space within such stairwells on such floors shall count as #floor area#.

* * *

WESTERLEIGH REZONING

STATEN ISLAND CB - 1

C 080202 ZMR

Application submitted by New York Department of City Planning pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 20d and 21b changing from an R3X District to an R2 District property bounded by:

1. College Avenue, Bidwell Avenue, Lathrop Avenue, St. John Avenue, Watchogue Road, and a line midway between Glascoe Avenue, and Woolley Avenue; and
2. a line 150 feet southerly of Forest Avenue, Manor Road, Maine Avenue, South Greenleaf Avenue, Crowell Avenue, Wescott Boulevard, Kemball Avenue, a line 120 feet easterly of Jewett Avenue, Chandler Avenue, Jewett Avenue, Markham Place, Deems Avenue, Boulevard, Wardwell Avenue, a line 100 feet northerly of Boulevard, a line 100 feet westerly of Jewett Avenue, a line 135 feet southerly of Maine Avenue, Wardwell Avenue, College Avenue, North Avenue, Shaw Place, Burnside Avenue, Jewett Avenue, a line 90 feet northerly of Kingsley Avenue, Elias Place, Ravenhurst Avenue, Mundy Avenue, Egbert Avenue, and a line 170 feet easterly of Greenleaf Avenue;

as shown on a diagram (for illustrative purposes only) dated December 17, 2007.

GRAND STREET REZONING

BROOKLYN CB - 1

C 080213 ZMK

Application submitted by the Department of City Planning pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 12c, 12d, and 13b:

1. eliminating from within an existing R6 District a C1-3 District bounded by Grand Street, Marcy Avenue, a line midway between South 1st Street and Grand Street, and Havemeyer Street;
2. eliminating from within an existing R6 District a C1-4 District bounded by a line midway between Hope Street and Grand Street, a line 150 feet northwesterly of Havemeyer Street, Hope Street, Havemeyer Street, a line midway between Hope Street and Grand Street, Marcy Avenue, Grand Street, Havemeyer Street, a line midway between South 1st Street and Grand Street, and Roebling Street;
3. eliminating from within an existing R6 District a C2-3 District bounded by:
 - a. a line 100 feet northeasterly of Grand Street, Bedford Avenue, a line midway between Grand Street and South 1st Street, a line 150 feet southeasterly of Bedford Avenue, South 1st Street, a line 150 feet northwesterly of Bedford Avenue, a line midway between Grand Street and South 1st Street, and Berry Street; and
 - b. a line midway between Grand Street and South 1st Street, Roebling Street, South 1st Street, and a line 150 feet northwesterly of Roebling Street.
4. changing from an R6 District to an R6A District property bounded by Metropolitan Avenue, Bedford Avenue, North 1st Street, and Berry Street;
5. changing from R6 District to an R6B District property bounded by:
 - a. North 3rd Street, Metropolitan Avenue, and Berry Street; and
 - b. North 1st Street, Driggs Avenue, Fillimore Place, Roebling Street, Hope Street, Havemeyer Street, a line midway between Hope Street and Grand Street, Marcy Avenue, a line midway between Grand Street and South 1st Street,

Roebling Street, South 1st Street, and Berry Street.

6. establishing within a proposed R6B District a C2-4 District bounded by:
 - a. a line 100 feet northeasterly of Grand Street, Bedford Avenue, a line midway between Grand Street and South 1st Street, a line 100 feet southeasterly of Bedford Avenue, South 1st Street, a line 100 feet northwesterly of Bedford Avenue, a line midway between Grand Street and South 1st Street, and Berry Street;
 - b. a line midway between Grand Street and South 1st Street, Roebling Street, South 1st Street, and a line 100 feet northwesterly of Roebling Street; and
 - c. a line midway between Hope Street and Grand Street, a line 100 feet northwesterly of Havemeyer Street, Hope Street, Havemeyer Street, a line midway between Hope Street and Grand Street, Marcy Avenue, a line midway between Grand Street and South 1st Street, and Roebling Street;

as shown in a diagram (for illustrative purposes only) dated December 17, 2007.

The Subcommittee on Landmarks, Public Siting and Maritime Uses will hold a public hearing on the following matters in the Council Committee Room, City Hall, New York City, New York 10007, commencing at 11:00 A.M. on Wednesday, March 19, 2008:

DUMBO HISTORIC DISTRICT

BROOKLYN CB - 2 20085255 HKK (N 080244 HKK)

Designation (List No. 399, LP 2279) by the Landmarks Preservation Commission pursuant to Section 3020 of the New York City Charter of the DUMBO Historic District. The district boundaries are: properties bounded by a line beginning at the northwest corner of John Street and Adams Street, extending southerly along the western curblin of Adams Street to the northern curblin of Plymouth Street, then westerly along the northern curblin of Plymouth Street to the northwest corner of Plymouth Street and Main Street, southerly along the western curblin of Main Street to the northwest corner of Water Street and Main Street, westerly along the northern curblin of Water Street to a point in said curblin formed by its intersection with a line extending northerly from a portion of the western building line of 64 Water Street, southerly along said line and southerly along a portion of the western property line of 64 Water Street to a point intersecting with the southern property line of 64 Water Street, easterly along a portion of the southern property line of 64 Water Street, southerly along a portion of the western building line of 66-68 Water Street, easterly along the southern building line of 66-68 Water Street, southerly along the western building line of 70-72 Water Street, easterly along the southern building line of 70-72 Water Street and the southern curblin of Howard Alley to the eastern curblin of Main Street, southerly along the eastern curblin of Main Street to the northern curblin of Front Street, easterly along the northern curblin of Front Street to a point formed by its intersection with a line extending northerly from the western property line of 68-76 Front Street, southerly then westerly then southerly along said property line to the northern curblin of York Street, easterly along the northern curblin of York Street across Washington Street to a point in the northern curblin of York Street formed by its intersection with a line extending southerly from the eastern property line of 75-91 Washington Street (aka 39-49 York Street), northerly along said line and northerly along the eastern property line of 75-91 Washington Street (aka 39-49 York Street), westerly along the northern property line of 75-91 Washington Street (aka 39-49 York Street) to the eastern curblin of Washington Street, northerly along said curblin and across Front Street to the northeast corner of Washington Street and Front Street, easterly along the northern curblin of Front Street to a point in said curblin formed by its intersection with a line extending northerly from the western property line of 100 Front Street, southerly across Front Street and along the western property line of 100 Front Street, easterly along the southern property lines of 100 and 104 Front Street to the western curblin of Adams Street, northerly along the western curblin of Adams Street and across Front Street to the northwest corner of Adams Street and Front Street, easterly across Adams Street and along the northern curblin of Front Street to a point in said curblin formed by its intersection with a line extending northerly from the western property line of 86 Pearl Street (Block 52, Lot 17), southerly across Front Street and along the western property line of 86 Pearl Street (Block 52, Lot 17) to the northern curblin of York Street, easterly along said curblin and across Pearl Street to a point in the northern curblin of York Street formed by its intersection with a line extending southerly from the eastern property line of Block 53, Lot 1, northerly along said line and northerly along a portion of the eastern property line of Block 53, Lot 1, easterly along a portion of the southern property lines of Block 53, Lot 1, southerly along a portion of the western property line of Block 53, Lot 6, easterly along the southern property line of Block 53, Lot 6, northerly along the eastern property line of Block 53, Lot 6, westerly along a portion of the northern building line of Block 53, Lot 6, northerly along the eastern property line of 126 Front Street (aka 87 Pearl Street) to the northern curblin of Front Street, easterly along said curblin to the northwest corner of Front Street and Jay Street, northerly along the western curblin of Jay Street to a point formed by its intersection with a line extending westerly from the southern property line of 57 Jay Street (aka 178 Water Street), easterly across Jay Street and along the southern property line of 57 Jay Street (aka 178 Water Street), southerly along the western property line of 190 Water Street, easterly along the southern property line of 190 Water

Street and the southern building line of 196-204 Water Street (aka 185 Front Street), southerly along the western property line of 206-220 Water Street (aka 195-215 Front Street and 54-70 Bridge Street) to the northern curblin of Front Street, easterly along the northern curblin of Front Street to the northeast corner of Front Street and Bridge Street, northerly along the eastern curblin of Bridge Street and across Water Street to a point in the eastern curblin of Bridge Street formed by its intersection with a line extending westerly from the southern property line of 37-41 Bridge Street (aka 226-234 Plymouth Street), easterly along said line and easterly along the southern property line of 37-41 Bridge Street (aka 226-234 Plymouth Street), northerly along the eastern property line of 37-41 Bridge Street (aka 226-234 Plymouth Street) and across Plymouth Street to the northern curblin of Plymouth Street, westerly along said curblin to the northeast corner of Bridge Street and Plymouth Street, northerly along the eastern curblin of Bridge Street and across John Street to the northern curblin of John Street, westerly along the northern curblin of John Street to the northeast corner of John Street and Jay Street, northerly along the eastern curblin of Jay Street to a point in the said curblin formed by its intersection with a line extending easterly from a portion of the northern property line of 10-18 Jay Street (aka 21-41 John Street and 17 Pearl Street), westerly across Jay Street and a portion of the northern property line of 10-18 Jay Street (aka 21-41 John Street and 17 Pearl Street), northerly along a portion of the eastern property line of 10-18 Jay Street (aka 21-41 John Street and 17 Pearl Street), westerly along a portion of the northern property line of 10-18 Jay Street (aka 21-41 John Street and 17 Pearl Street) and across Pearl Street to the western curblin of Pearl Street, southerly along said curblin to the northwest corner of Pearl Street and John Street, then westerly along the northern curblin of John Street to the point of the beginning.

EARLY CHILDHOOD CENTER - SCHOOL DISTRICT NO. 10

BRONX CB - 7

20085049 SCX

Application pursuant to Section 1732 of the New York School Construction Authority Act, concerning the proposed site selection for a new, 515-seat early childhood center to be generally located at Kings College Place, East 211th Street, East Gun Hill Road and Putnam Place (Block 3356, Lot 36 (portion), Community School District No. 10.

The Subcommittee on Planning, Dispositions and Concessions will hold a public hearing on the following matters in the Council Committee Room, City Hall, New York City, New York 10007, commencing at 1:00 P.M. on Wednesday, March 19, 2008:

RIVER ROCK APARTMENTS

BROOKLYN CB - 16

C 080105 HAK

Application submitted by the Department of Housing Preservation and Development (HPD):

- 1) Pursuant to Article 16 of the General Municipal Law of New York State for:
 - a) the designation of property located at 206, 208, 210 and 214 Riverdale Avenue (Block 3602, Lots 34, 35, 36 and 37) and 774, 780, 782, 784, and 786 Rockaway Avenue (Block 3602, Lots 38, 39, 40, 41 and 42) part of Site 24 of the Marcus Garvey Urban Renewal Area, as an Urban Development Action Area; and
 - b) an Urban Development Action Area Project for such area; and
- 2) pursuant to Section 197-c of the New York City Charter for the disposition of property located at 206, 208, 210, 214 Riverdale Avenue (Block 3602, Lots 34, 35, 36 and 37) and 774, 782, 784, and 786 Rockaway Avenue (Block 3602, Lots 38, 40, 41 and 42) to a developer selected by HPD;

to facilitate development of a six-story mixed-use building, tentatively known as RiverRock Apartments, with approximately 54 residential units.

BRADHURST CLUSTER CORNERSTONE IV

MANHATTAN CB - 10

C 080108 HAM

Application submitted by the Department of Housing Preservation and Development (HPD):

- 1) pursuant to Article 16 of the General Municipal Law of New York State for:
 - a) the designation of property located at 2078 and 2080 Frederick Douglass Blvd. (Block 1828, Lots 64 and 63), 215 West 115th Street (Block 1831, Lot 21), 228 West 116th Street (Block 1831, Lot 47), 312 West 112th Street (Block 1846, Lot 55), 274 West 117th Street (Block 1922, Lot 58), 203 and 205 West 119th Street (Block 1925, Lots 27 and 25), 311 West 141st Street (Block 2043, Lot 7) as an Urban Development Action Area; and
 - b) an Urban Development Action Area Project for such area; and
- 2) pursuant to Section 197-c of the New York City Charter for the disposition of such property;

to facilitate development of seven buildings, tentatively known as Bradhurst Cluster Cornerstone IV, with approximately 102 residential units, commercial and community facility spaces, to be developed under the New

York City Housing Preservation and Development's Cornerstone Program.

215 WEST 117TH STREET

MANHATTAN CB - 10 C 080130 HAM
Application submitted by the Department of Housing Preservation and Development (HPD):

- 1) pursuant to Article 16 of the General Municipal Law of New York State for:
 - a) the designation of property located at 215 West 117th Street (Block 1923, Lot 18) as an Urban Development Action Area; and
 - b) an Urban Development Action Area Project for such area; and
- 2) pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer selected by HPD;

to facilitate development of accessory open space for an existing residential building rehabilitated under the Housing Preservation and Development's Vacant Building Program.

COUNCIL TOWERS V

BRONX CB - 10 N 080217 HAX
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 2228 Givan Avenue (Block 5141, Lot 260); and 777 Co-op City Boulevard (Block 5141, Lot 265), as an Urban Development Action Area; and
- b) an Urban Development Action Area Project for such area;

to facilitate development of an eleven-story building, tentatively known as Council Towers V, with approximately 70 residential units, to be developed under the Department of Housing and Urban Development's Section 202 Supportive Housing Program for the Elderly.

COLLEGE AVENUE

BRONX CB - 4 N 080224 HAX
Application submitted by the Department of Housing Preservation and Development, pursuant to Article 16 of the General Municipal Law of New York State for:

- a) the designation of property located at 1421-1437 College Avenue (Block 2786, Lots 17, 19, 21, 23, 25 and 27) as an Urban Development Action Area; and
- b) an Urban Development Action Area Project for such area;

to facilitate the development of a six-story rental apartment building, with approximately 95 assisted living units for persons 55 years of age and older and 19 units for low-income families, to be developed under the Supportive Housing Loan Program, which provides permanent housing to individuals who are homeless and/or have special needs.

PROSPECT/MACY

BRONX CB - 2 N 080230 HAX
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 853 Macy Place (Block 2688, Lot 36); and 774, 776, 778, 780, and 782 Prospect Avenue (Block 2688, Lots 38, 40, 42, 44, and 46), as an Urban Development Action Area; and
- b) an Urban Development Action Area Project for such area;

to facilitate development of two buildings, tentatively known as Prospect/Macy, with approximately 124 residential units, to be developed under the Department of Housing Preservation and Development's Cornerstone Program.

Proposals subject to Council review and action pursuant to the Urban Development Action Act, Article 16 of the New York General Municipal Law, at the request of the Department of Housing Preservation and Development ("HPD"), which requests that the Council:

1. Find that the present status of the listed area tends to impair or arrest the sound growth and development of the municipality and that the proposed Urban Development Action Area Project is consistent with the policy and purposes of Section 691 of the General Municipal Law;
2. Waive the area designation requirement of Section 693 of the General Municipal Law pursuant to said Section;
3. Waive the requirements of Sections 197-c and 197-d of the New York City Charter pursuant to Section 694 of the General Municipal Law;
4. Approve the project as an Urban Development Action Area Project pursuant to Section 694 of the General Municipal Law:

NO.	ADDRESS	BLOCK/ LOT	BORO	PROGRAM	BOARD
1.	1234 East 223rd Street	4897/63	Bronx	Asset Sales	12
2.	305 West 138th Street	2041/45	Manhattan	Neighborhood Entrepreneur	09

3. 1508 Amsterdam Avenue 1988/33 Manhattan Tenant Interim Lease 07
m13-19

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, New York, on Wednesday, March 26, 2008, commencing at 10:00 A.M.

BOROUGH OF BROOKLYN

No. 1

BROWNSVILLE NORTH HOUSING

CD 16 C 080183 HAK
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD):

- 1) pursuant to Article 16 of the General Municipal Law of New York State for:
 - a) the designation of property located at 2156 and 2160 Atlantic Avenue (Block 1433, Lots 23 and 25); 1973, 1973A, 1975, and 1969 Bergen Street (Block 1447, Lots 67-70); 402, 404, 412, and 522 Howard Avenue (Blocks 1451 and 1473, Lots 42, 43, 48, and 35); 1459 and 1461 St. Marks Avenue (Block 1452, Lots 1 and 87); 1734 St. Johns Place (Block 1473, Lot 34); and 1457 and 1459 Eastern Parkway (Block 1473, Lots 36 and 37), as an Urban Development Action Area; and
 - b) an Urban Development Action Area Project for such area; and
- 2) pursuant to Section 197-c of the New York City Charter for the disposition of 2156 and 2160 Atlantic Avenue (Block 1433, Lots 23 and 25); 1973, 1973A, 1975, and 1969 Bergen Street (Block 1447, Lots 67-70); 402, 404, and 412 Howard Avenue (Blocks 1451, Lots 42, 43, and 48); 1459 and 1461 St. Marks Avenue (Block 1452, Lots 1 and 87); 1734 St. Johns Place (Block 1473, Lot 34); and 1457 and 1459 Eastern Parkway (Block 1473, Lots 36 and 37), to a developer selected by HPD;

to facilitate development of six residential buildings, ranging from four to six stories, tentatively known as Brownsville North, with approximately 87 residential units, to be developed under the Department of Housing Preservation and Development's Cornerstone Program.

BOROUGH OF MANHATTAN

No. 2

316 11TH AVENUE

CD 4 C 070233 ZSM
IN THE MATTER OF an application submitted by DD 11th Avenue, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to allow an attended public parking garage with a maximum capacity of 108 spaces on portions of the ground floor and cellar of a proposed mixed-use building on property located at 316 11th Avenue (Block 701, Lots 62, 68 and 70), in a C6-4 District within the Special West Chelsea District (Sub Area A). 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.

BOROUGH OF QUEENS

Nos. 3, 4, 5 & 6

14TH AVENUE/COLLEGE POINT LSRD

No. 3

CD 7 C 060287 MMQ
IN THE MATTER OF an application, pursuant to Sections 197-c and 199 of the New York City Charter and Section 5-430 et. seq. of the New York City Administrative Code by College Point Holdings I, LLC, for an amendment to the City Map involving

- the elimination, discontinuance and closing of a portion of 115th Street north of 14th Avenue;
- the adjustment of grades necessitated thereby; and
- any acquisition or disposition of real properties related thereto,

in accordance with Map No. 4990 dated October 31, 2006, and signed by the Borough President.

No. 4

CD 7 C 070174 ZMQ
IN THE MATTER OF an application submitted by College Point Holdings I, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 7b, changing from an M1-1 District to an R4 District property bounded by a line 350 feet northerly of 14th Avenue, the former centerline of 115th Street*, 14th Avenue and a line 240 feet westerly of 115th Street* as shown on a diagram (for illustrative purposes only) dated December 3, 2007.

*Note: A portion of 115th Street is proposed to be eliminated under a related mapping application (C 060287 MMQ).

No. 5

CD 7 C 070175 ZSQ
IN THE MATTER OF an application submitted by College Point Holdings I, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following Sections of the Zoning Resolution:

- 1) Section 78-351 (Common open space and good site plan) to modify the permitted residential floor area ratio to 1.00 and the open space ratio to 66.5;
- 2) Section 78-352 (Bonus for community facility space) to modify the permitted residential floor area ratio to 1.15 and the open space ratio to 54.7; and Section 78-353 (Bonus for enclosed parking) to increase 0.25 to the permitted residential floor area and decrease 14.5 to the open space ratio over the amount earned by other provisions of Section 78-35;

to facilitate the development of a 91-unit large-scale residential development located at the northwest corner of the intersection of 14th Avenue and 115th Street (Block 4035, Lot 1), in an R4* District.

*Note: The site is proposed to be rezoned from an M1-1 District to an R4 District under a related application (C 070174 ZMQ).

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

CD 7 C 070178 ZSQ
IN THE MATTER OF an application submitted by College Point Holdings I, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 78-312(d) of the Zoning Resolution to modify the requirements of Section 23-631(b) (Height and setback in R1, R2, R3, R4 and R5 Districts) to allow building heights and street wall heights up to 35.79 feet in the periphery, of a 91-unit large-scale residential development located at the northwest corner of the intersection of 14th Avenue and 115th Street (Block 4035, Lot 1), in an R4* District.

*Note: The site is proposed to be rezoned from an M1-1 District to an R4 District under a related application (C 070174 ZMQ).

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.

BOROUGH OF STATEN ISLAND

Nos. 7 & 8

LAFAYETTE MANOR

No. 7

CD 1 C 080198 ZMR
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 21a changing from an R3X District to an R5 District property bounded by Fillmore Street, Lafayette Avenue, a line 100 feet southerly of Fillmore Street, and a line 175 feet westerly of Lafayette Avenue, Community District 1, as shown on a diagram (for illustrative purposes only) dated December 17, 2007.

No. 8

CD 1 C 080199 HAR
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD):

- 1) pursuant to Article 16 of the General Municipal Law of New York State for:
 - a) the designation of property located at 226 Fillmore Street (Block 71, Lot 117), as an Urban Development Action Area; and
 - b) an Urban Development Action Area Project for such area; and
- 2) pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer selected by HPD;

to facilitate development of a five-story building for low-income seniors, tentatively known as Lafayette Manor, with approximately 60 units, to be developed under the U.S. Department of Housing and Urban Development's Section 202 Supportive Housing for the Elderly Program.

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

m13-26

COMMUNITY BOARDS

■ PUBLIC HEARINGS

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

BOROUGH OF MANHATTAN

COMMUNITY BOARD NO. 5 - Thursday, March 13, 2008 at 6:00 P.M., Fashion Institute of Technology, 227 West 27th Street ("A" Building), New York, NY

#C 080178ZSM

IN THE MATTER OF an application submitted by Park Avenue Hotel Acquisition, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 81-212, 74-79, 81-277 and 23-851 (Minimum Dimension of Inner Courts), to modify the height and setback requirements of Section 81-27 (Alternative Height and Setback Regulations-Daylight

Evaluation) to facilitate the development of a 63-story mixed-use building, within the Special Midtown District.

m7-13

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

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO. 2 - Tuesday, March 18, 2008, 6:15 P.M., St. Francis College, 180 Remsen Street, 1st Floor, Brooklyn, NY

IN THE MATTER OF an application, by JL Megre Co., Inc. doing business as Haagen-Dazs Ice Cream, for review pursuant to Section 20-226(b) of the New York City Administrative Code, of the application to construct and operate an unenclosed sidewalk cafe with 4 tables and 8 seats at 120 Montague Street, between Henry and Hicks Streets.

IN THE MATTER OF an application, by 166 Park Inc., dba Rice, for review pursuant to Section 20-226(b) of the New York City Administrative Code, of the application to construct and operate an unenclosed sidewalk cafe with 6 tables and 12 seats at 166 Dekalb Avenue.

m12-18

BOARD OF CORRECTION

MEETING

Please take note that the next meeting of the Board of Correction will be held on March 13, 2008, at 9:30 A.M., in the Conference Room of the Board of Correction. Located at: 51 Chambers Street, Room 929, New York, NY 10007.

At that time, there will be a discussion of various issues concerning New York City's correctional system.

m6-13

BOARD OF EDUCATION RETIREMENT SYSTEM

MEETING

The next regular meeting of the Board of Education Retirement System (BERS) of the City of New York Trustees will meet on Monday, March 17, 2008. This meeting will be held at the Tweed Courthouse, 52 Chambers Street, New York, New York 10007.

The meeting will convene at 4:30 P.M. in Room 105. An agenda will be distributed to BERS Trustees prior to the meeting.

If you need more information, please contact Noro Healy at (718) 935-4529 or email: nhealy@bers.nyc.gov

m11-17

LANDMARKS PRESERVATION COMMISSION

PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN THAT pursuant to the provisions of Title 25, chapter 3 of the Administrative Code of the City of New York (Sections 25-307, 25-308, 25,309, 25-313, 25-318, 25-320) (formerly Chapter 8-A, Sections 207-6.0, 207-7.0, 207-12.0, 207-17.0, and 207-19.0), on Tuesday, **March 25, 2008** at 9:30 A.M. in the morning of that day, a public hearing will be held in the Conference Room at 1 Centre Street, 9th Floor, Borough of Manhattan with respect to the following properties and then followed by a public meeting. Any person requiring reasonable accommodation in order to participate in the hearing or attend the meeting should call or write the Landmarks Commission no later than five (5) business days before the hearing or meeting.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-4844 - Block 96, lot 5-207 Front Street - South Street Seaport Historic District
A Federal style building built c.1816 and altered in 1901. Application is to install storefront infill and signage.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-5525 - Block 179, lot 6-13 Worth Street - Tribeca West Historic District
A store and loft building designed by William Field and Son and built 1873. Application is to construct a rooftop addition. Zoned C6-2A.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-5938 - Block 230, lot 3-317 Canal Street - SoHo-Cast Iron Historic District
A Federal style house built in 1821 and altered in 1869. Application is to enlarge a fire escape and construct a rooftop deck.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-5074 - Block 232, lot 1-434 Broadway - SoHo - Cast Iron Historic District
A Second Empire style store and loft building built in 1866-67. Application is install storefront infill.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-6318 - Block 473, lot 5-470 Broadway - SoHo-Cast Iron Historic District
A commercial building originally built in 1858, and altered in 1918 and 1940. Application is to alter the facade and install new storefront infill and signage.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-3076 - Block 529, lot 7502-7 Bond Street - NoHo Historic District
Two Second Empire-style store, warehouse and factory buildings one designed by Stephen D. Hatch and built in 1871, and the other designed by Griffith Thomas built in 1872-73. Application is to construct a rooftop addition and create new window openings in an existing bulkhead.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-1899 - Block 572, lot 71-55 West 8th Street - Greenwich Village Historic District
A transitional Romanesque Revival style apartment house built ca.1895. Application is to reconstruct the facade.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-6454 - Block 553, lot 34-109 Waverly Place - Greenwich Village Historic District
A Greek Revival style house built in 1840. Application is to construct rooftop and rear yard additions and to excavate the rear yard. Zoned R-6.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 07-9145 - Block 632, lot 39-719 Greenwich Street - Greenwich Village Historic District
A brick warehouse building designed by Bernstein and Bernstein and built in 1909. Application is for facade work.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-4019 - Block 646, lot 57-421-425 West 13th Street - Gansevoort Market Historic District
A neo-Renaissance style warehouse building designed by Hans E. Meyen and built in 1901-02. Application is to install a new canopy, signage and light fixtures.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-5921 - Block 1265, lot 1-Rockefeller Plaza - Rockefeller Center - Individual Landmark
An Art Deco style office, commercial and entertainment complex designed by the Associated Architects and built in 1931-33. Application is to install ticket kiosks on Rockefeller Plaza and the Channel Gardens.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-1438 - Block 1231, lot 29-480 Amsterdam Avenue - Upper West Side/Central Park West Historic District
A Renaissance Revival style tenement building designed by Charles Rentz and built in 1894-95. Application is to install storefront infill and signage.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-4026 - Block 1200, lot 31-262 Central Park West - Upper West Side/Central Park West Historic District
A neo-Renaissance style apartment building designed by Sugarman and Berger and built in 1927-1928. Application is to install through-the-wall air conditioners and replace windows.

BINDING REPORT
BOROUGH OF MANHATTAN 08-3744 - Block 113, lot 1-Brooklyn Bridge - Brooklyn Bridge - Individual Landmark
A Gothic inspired suspension bridge designed by John A. Roebling and Washington Roebling, and built in 1867-83. Application is to replace, reconstruct, restore and repaint the bridge railings.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 08-5651 - Block 31, lot 1-201 Water Street - DUMBO Historic District
A Daylight Factory style factory building designed by Frank H. Quinby and built in 1913; and a two story vernacular style factory building built c. 1900. Application is to alter masonry openings, replace the roof and install windows and storefront infill.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 08-4794 - Block 2119, lot 23-277 Cumberland Street - Fort Greene Historic District
An Italianate style building with a commercial ground floor built in the mid-1850's. Application is to replace storefront infill installed without Landmarks Preservation Commission permits and install an awning and bracket sign.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 07-7070 - Block 2102, lot 29-213 Cumberland Street - Fort Greene Historic District
A French Second Empire style residence designed by William Brush and built in 1867. Application is to legalize the installation of railings, windows, and gates installed in non-compliance.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 08-6253 - Block 1982, lot 35-369 Grand Avenue - Clinton Hill Historic District
An Italianate style rowhouse with neo-Grec style elements built in the early 1870's. Application is to install a deck.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 08-3038 - Block 1917, lot 6-280 Washington Avenue - Clinton Hill Historic District
A Queen Anne style rowhouse designed by Marshall J. Morrill and built in 1887. Application is to replace windows and construct a rear yard addition. Zoned R6-B.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 07-7357 - Block 1962, lot 9-433 Waverly Avenue - Clinton Hill Historic District
An Italianate style carriage house and residence built in the mid-19th century. Application is to modify and legalize alterations to the rear facade and the installation of decks without Landmarks Preservation Commission permits.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF QUEENS 08-4379 - Block 182, lot 88-39-16 44th Street - Sunnyside Gardens Historic District

A brick rowhouse with Colonial Revival style details designed by Clarence Stein, Henry Wright, and Frederick Ackerman and built in 1927. Application is to modify the rear deck.

m12-25

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, March 18, 2008 at 9:30 A.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 Landmarks, Landmark Sites, and 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.

ITEMS TO BE HEARD

LP-2287 **PROPOSED NOHO HISTORIC DISTRICT EXTENSION**, Borough of Manhattan

Boundary Description

The proposed NoHo Historic District Extension consists of the property bounded by a line beginning at the northwest corner of Lafayette Street and Bleecker Street, then extending northerly along the western curbline of Lafayette Street to a point on a line extending westerly from the northern property line of 379 Lafayette Street, easterly along said line and the northern property line of 379 Lafayette Street, northerly along part of the western property line of 30 Great Jones Street, northerly along the eastern building line of 383-389 Lafayette Street (aka 22-26 East 4th Street) and continuing northerly across East Fourth Street, northerly along the western property line of 25 East Fourth Street, easterly along the northern property lines of 25 and 27 East 4th Street, southerly along the eastern property line of 27 East 4th Street to the southern curbline of East 4th Street, easterly along the southern curbline of East 4th Street to a point on a line extending northerly from the eastern property line of 38 East 4th Street, southerly along said line and the eastern property line of 38 East 4th Street, easterly along part of the northern property line of 48 Great Jones Street, northerly along the western property lines of 354 and 356 Bowery, easterly along the northern property line of 356 Bowery to the western curbline of the Bowery, southerly along the western curbline of the Bowery to a point on a line extending easterly from the southern property line of 354 Bowery, westerly along said line and part of the southern property line of 354 Bowery, southerly along part of the eastern property line of 48 Great Jones Street, easterly along the northern property line of 54 Great Jones Street, southerly along the eastern property line of 54 Great Jones Street to the southern curbline of Great Jones Street, easterly along the southern curbline of Gtreat Jones Street to a point on a line extending northerly from the easterly property line of 57 Great Jones Street, southerly along said line and part of the eastern property line of 57 Great Jones Street, easterly along the northern property line of 344 Bowery to the western curbline of the Bowery, southerly along the western curbline of the Bowery, westerly along the western curbline of Bond Street to a point on a line extending northerly from the eastern property line of 51 Bond Street, southerly along said line and the eastern property line of 51 Bond Street, westerly along the southern property lines of 51 through 31 Bond Street and the southern curbline of Jones Alley, southerly along the eastern property line of 337 Lafayette Street (aka 51-53 Bleecker Street) to the northern curbline of Bleecker Street, and westerly along the northern curbline of Bleecker Street, to the point of beginning.

LP-2297 **FORMER SOCIETY OF CIVIL ENGINEERS CLUBHOUSE, NOW LEE'S ART SHOP**, 220 West 57th Street aka 218-222 West 57th Street, Manhattan.
Landmark Site: Borough of Manhattan Tax Map Block 1028, Lot 42

LP-2299 **(Former) FIRE ENGINE COMPANY NO. 54**, 304 West 47th Street, Manhattan.
Landmark Site: Borough of Manhattan Tax Map Block 1037, Lot 37

LP-2281 **ST. MICHAEL'S CHURCH, PARISH HOUSE AND RECTORY**, 201 West 99th Street aka 800-812 Amsterdam Avenue, Borough of Manhattan.
Landmark Site: Borough of Manhattan Tax Map Block 1871, Lots 24 and 29

m3-18

PUBLIC MEETING

NOTICE IS HEREBY GIVEN THAT PURSUANT to the provisions of Title 25, Chapter 3 of the Administrative Code of the City of New York that on **Tuesday, March 18, 2008**, there will be a Public Meeting of the Landmarks Preservation Commission in the Public Hearing Chamber at 1 Centre Street, 9th Floor North, Borough of Manhattan, City of New York. For information about the Public Meeting agenda, please contact the Public Information Officer at (212) 669-7817.

m13-17

LOFT BOARD

PUBLIC MEETING

NOTICE IS HEREBY GIVEN PURSUANT TO ARTICLE 7 OF THE PUBLIC OFFICERS LAW that the New York City Loft Board will have its monthly Board meeting on Thursday, March 20, 2008. The meeting will be held at Spector Hall, 22 Reade Street, 1st Floor. The proposed agenda will include cases and general business.

The general public is invited to attend and observe the proceedings.

m13-17

OFF-TRACK BETTING

■ PUBLIC MEETING

BOARD OF DIRECTORS

NOTICE IS HEREBY GIVEN that the New York City Off-Track Betting Corporation Board of Directors meeting is scheduled for Thursday, March 20, 2008 at 10:00 A.M. in the 11th Floor Conference Room at Corporate Headquarters at 1501 Broadway, New York, NY 10036.

☛ m13-19

SMALL BUSINESS SERVICES

■ MEETING

NOTICE IS HEREBY GIVEN THAT THE FOLLOWING NEW YORK CITY EMPIRE ZONES ADMINISTRATIVE BOARD MEETINGS WILL BE HELD IN MANHATTAN, BRONX, BROOKLYN, QUEENS AND STATEN ISLAND AS CITED BELOW:

EMPIRE ZONE ADMINISTRATIVE BOARD MEETINGS
March 25-31, 2008

Zone - Schedule - Time - Location

North Brooklyn/Brooklyn Navy Yard - Tuesday, March 25th - 11:00-12:30 P.M. - Brooklyn Workforce 1 Center, 9 Bond Street, 5th Fl. - Brooklyn

East Brooklyn - Tuesday, March 25th - 1:00-2:30 P.M. - Brooklyn Workforce 1 Center, 9 Bond Street, 5th Fl. - Brooklyn

Southwest Brooklyn - Tuesday, March 25th - 3:00-4:30 P.M. - Brooklyn Workforce 1 Center, 9 Bond Street, 5th Fl. - Brooklyn

North Shore - Wed., March 26th - 10:00-11:30 P.M. - SI Workforce 1 Center, 60 Bay Street - SI, NY

West Shore - Wed., March 26th - 12:00-1:30 P.M. - SI Workforce 1 Center, 60 Bay Street - SI, NY

Hunts Point - Thurs., March 27th - 10:00-11:30 A.M. - Bronx Workforce 1 Center, 358 East 149th St., 2nd Fl. - Bronx

Port Morris - Thurs., March 27th - 12:00-1:30 P.M. - Bronx Workforce 1 Center, 358 East 149th St., 2nd Fl. - Bronx

East Harlem - Friday, March 28th - 10:00-11:30 A.M. - SBS Office - Board Room, 110 William Street, 7th Floor

Chinatown/Lower East Side - Friday, April 4th - 12:00-1:30 P.M. - SBS Office - Board Room, 110 William Street, 7th Floor

Far Rockaway - Monday, March 31st - 10:00-11:30 A.M. - Queens Borough President's Office, 120-55 Queens Boulevard

South Jamaica - Monday, March 31st - 12:00-1:30 P.M. - Queens Borough President's Office, 120-55 Queens Boulevard

FOR FURTHER INFORMATION CALL:
MS. LEE MILLER (212) 618-8863
NEW YORK CITY DEPARTMENT OF
SMALL BUSINESS SERVICES
110 William Street, 7th Floor - New York, NY 10038

☛ m13-17

On behalf of
THE CITY COUNCIL
NOTICE OF A PUBLIC HEARING

The City Council, by resolution adopted on March 12, 2008, set March 26, 2008 as the date, 11:00 A.M. as the time, and the City Council Committee Room, 2nd Floor, City Hall, New York, New York 10007, as the place for a public hearing (the "Public Hearing") to hear all persons interested in the proposed legislation which would extend the Bryant Park Business Improvement District (the "District") in the Borough of Manhattan. The District shall be extended in accordance with an amended district plan (the "District Plan") on file at the Office of the City Clerk. The City Council has authorized the Department of Small Business Services to publish, on its behalf, this notice of the Public Hearing containing the information required by Section 25 406(c) of the Administrative Code of the City of New York and summarizing the resolution adopted.

The District Plan was submitted to, and reviewed by, the City Planning Commission and Manhattan Community Board Number 5. The Community Board and the City Planning Commission have approved the District Plan.

The District Plan provides that the extended District shall include 25 properties fronting and adjacent to Bryant Park, adding One Bryant Park with the Bank of America as its major tenant to the Bryant Park BID. Services to be provided in the extended District shall include, but not be limited to, supplemental sanitation, security, lighting of Bryant Park, horticulture, park amenities such as the Bryant Park Reading Room and a carousel, events programming, outdoor furniture, food service, maintenance of the Bryant Park public bathroom, administration of the District, and additional services required for the enjoyment and protection of the public, and the promotion and enhancement of the District (hereinafter, "Services"). Pursuant to the District Plan, capital improvements (hereinafter "Improvements") may include, but shall not be limited to, sidewalk amenities such as placement of planters, installation of custom street furniture, design upgrades such as the addition of stairway railings, installation of sprinkler system, and improvements of the Bryant Park public bathroom. The Improvements shall be implemented on an as-needed basis. During the existence of the BID, the maximum cost of the Improvements, if any, shall not exceed \$20 million. The extended District shall be managed by the Bryant Park Management Corporation, Inc.

To defray the cost of Services and Improvements provided in the extended District, all real property in the District shall be assessed in proportion to the benefit such property receives from the Services and Improvements. Each property shall be assessed at a rate, determined annually by the Bryant Park Management Corporation, Inc., to yield an amount sufficient to meet the District's annual budget. The annual budget for the extended District's first year of operation is \$900,000.

Those properties within the District which are devoted primarily to commercial uses shall constitute Class A

properties and shall be assessed in the following manner.

Class A assessment = $\frac{\text{Property's gross building square footage} \times \text{Annual BID Budget Gross building square footage of all Class A and B properties} + 0.68 \times \text{gross building square footage of all Class A-1 properties}}$

The fiscal year 2009 annual assessment for Class A properties is anticipated to be approximately \$0.10 per square foot.

Those properties existing on a tax lot within the boundaries of more than one BID shall constitute Class A-1 properties and shall be assessed an amount calculated by multiplying 0.68% of the property's gross building square footage by the Per Square Foot Assessment. The fiscal year 2009 annual assessment for Class A-1 properties is anticipated to be approximately \$0.068 per square foot.

Those properties within the District which are devoted primarily to residential or not-for-profit use shall constitute Class B properties and shall be assessed in the same manner as those properties listed as Class A properties. The fiscal year 2009 annual assessment for Class B properties is anticipated to be approximately \$0.10 per square foot.

Government-owned properties devoted to serving the public shall constitute Class C properties and shall be exempt from BID assessment. Government-owned properties devoted in whole or in part to commercial or for-profit uses shall constitute Class C properties and the portion devoted to commercial/for-profit uses shall be assessed in the same manner as those properties listed as Class A properties

The amount, exclusive of debt service, assessed and levied in any given year against benefited real property within the District may not exceed twenty percent (20%) of the total general City taxes levied in such year against such properties.

Copies of the resolution adopted by the City Council, which include a copy of the District Plan, are available for public inspection from 9:00 A.M. to 4:00 P.M. Monday through Friday at the Office of the City Clerk located at 265 Municipal Building (South Side), One Centre Street, New York, New York 10007. In addition, copies of the resolution are available free of charge to the public at the Office of the City Clerk.

Any owner of real property, deemed benefited and therefore within the District, objecting to the District Plan, must file an objection at the Office of the City Clerk, on forms made available by the City Clerk, within thirty (30) days of the close of the hearing on the proposed District. If owners of at least fifty-one percent (51%) of the assessed value of benefited real property situated within the boundaries of the District proposed for establishment, as shown on the latest completed assessment roll of the City, or at least fifty-one percent (51%) of the owners of benefited real property within the area included in the District proposed for establishment file objections with the City Clerk, the District shall not be established.

☛ m13

COURT NOTICES

SUPREME COURT

■ NOTICE

KINGS COUNTY
IA PART 74
NOTICE OF PETITION
INDEX NUMBER 6398/08

In the Matter of the Application of the CITY OF NEW YORK relative to acquiring title in fee simple absolute in certain real property, where not heretofore acquired, for **ULMER PARK BRANCH LIBRARY** (2602 Bath Avenue, Brooklyn)

within an area generally bounded by Bath Avenue, Bay 43rd Street, Harway Avenue, and 26th Avenue, in the Borough of Brooklyn, City and State of New York. **PLEASE TAKE NOTICE** that the Corporation Counsel of the City of New York intends to make application to the Supreme Court of the State of New York, Kings County, IA Part 74, for certain relief.

The application will be made at the following time and place: At 320 Jay Street, in the Borough of Brooklyn, City and State of New York, on March 28, 2008 at 9:30 A.M., or as soon thereafter as counsel can be heard. The application is for an order:
1) authorizing the City to file an acquisition map in the Office of the City Register;
2) directing that upon the filing of said map, title to the property sought to be acquired shall vest in the City;
3) providing that just compensation therefor be ascertained and determined by the Supreme Court without a jury; and
4) providing that notices of claim must be served and filed within one calendar year from the vesting date.

The City of New York, in this proceeding, intends to acquire title in fee simple absolute to certain real property where not heretofore acquired for the same purpose, for the Ulmer Park Branch Library in the Borough of Brooklyn, City and State of New York. The property to be acquired consists of Tax Lot 35 in Block 6897 shown on the Tax Map of The City of New York for the Borough of Brooklyn as said Tax Map existed on February 21, 2008.

The property shall be acquired subject to encroachments, if any, of the structures, improvements and appurtenances standing or maintained partly upon the above described parcels and partly upon the lands and premises adjoining the same, as long as such encroachments shall stand.

Surveys, maps or plans of the property to be acquired are on

file in the office of the Corporation Counsel of the City of New York, 100 Church Street, New York, New York 10007.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to EDPL §402(B)(4), any party seeking to oppose the acquisition must interpose a verified answer, which must contain specific denial of each material allegation of the petition controverted by the opponent, or any statement of new matter deemed by the opponent to be a defense to the proceeding. Pursuant to CPLR 403, said answer must be served upon the office of the Corporation Counsel at least seven (7) days before the date that the petition is noticed to be heard.

Dated: February 26, 2008, New York, New York
MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007
Tel. (212) 788-0424

SEE MAP ON BACK PAGES

m3-14

PROPERTY DISPOSITION

CITYWIDE ADMINISTRATIVE SERVICES

DIVISION OF MUNICIPAL SUPPLY SERVICES

■ SALE BY SEALED BID

SALE OF: 1 UNUSED "CARRIER" ECOLOGICAL CHILLER.

S.P.#: 08015

DUE: March 18, 2008

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, Division of Municipal Supply Services, 18th Floor Bid Room, Municipal Building, New York, NY 10007.
For sales proposal contact Gladys Genoves-McCauley (718) 417-2156 for information.

m5-18

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

■ AUCTION

PUBLIC AUCTION SALE NUMBER 1128

NOTICE IS HEREBY GIVEN of a ONE (1) day public auction of unclaimed salvage vehicles, motorcycles, automobiles, trucks, and vans. Inspection day is March 24, 2008 from 10:00 A.M. - 2:00 P.M. Salvage vehicles, motorcycles, automobiles, trucks, and vans will be auctioned on March 25, 2008 at approximately 9:00 A.M. Auction will be held at the Erie Basin Auto Pound, 700 Columbia Street (in Redhook area of B'klyn., 2 blocks from Halleck St.)

For information concerning the inspection and sale of these items, call the Property Clerk Division's Auction Unit information line (646) 610-4614.

m12-25



New Today...

first time procurement ads appearing today!

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. As part of this effort, the City is pleased to announce the following contracting opportunities for construction/construction services and construction-related services.

CITYWIDE ADMINISTRATIVE SERVICES

DIVISION OF MUNICIPAL SUPPLY SERVICES

AWARDS

Goods

PAINT, ENAMEL, ALKYD 2 – Competitive Sealed Bids – PIN# 857701411 – AMT: \$63,475.00 – TO: National Paint Industries, Inc., 1999 Elizabeth Street, North Brunswick, NJ 08902.

● **AUDIO/VISUAL EQUIPMENT (BRAND SPECIFIC)** – Competitive Sealed Bids – PIN# 857800458 – AMT: \$131,391.00 – TO: B and H Electronics Corp. dba B and H Photo Video Pro Audio, 420 Ninth Avenue, New York, NY 10001.

● **TRUCK, PUMP - DEP** – Competitive Sealed Bids – PIN# 857800428 – AMT: \$320,679.00 – TO: Truck King International Sales and Service, Inc., 58-80 Borden Avenue, Maspeth, NY 11378.

☛ m13

DESIGN & CONSTRUCTION

AGENCY CHIEF CONTRACTING OFFICER

SOLICITATIONS

Construction / Construction Services

C114NEW2, ARCHITECTURAL AND ENGINEERING DESIGN SERVICES – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 8502008CR0014P – DUE 04-11-08 AT 4:00 P.M. – Renovation and expansion of Brooklyn Detention Center.

All qualified and interested firms are advised to download the Request for Proposal at <http://ddeftp.nyc.gov/rfpweb/> from March 14, 2008 or contact the person listed for this RFP. The contract resulting from this Request for Proposal will be subjected to Local Law 129 of 2005, Minority Owned and Women Owned Business Enterprise (M/WBE) program.

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 Design and Construction,
30-30 Thomson Avenue, Long Island City, NY 11101.
Bernarda Ramirez (718) 391-2666, ramirezbd@ddc.nyc.gov

☛ m13

EDUCATION

DIVISION OF CONTRACTS AND PURCHASING

SOLICITATIONS

Goods

APANGEA SMARHELP SOFTWARE – CSB – PIN# Z0691040 – DUE 03-31-08 AT 5:00 P.M. – Bid opening: Tuesday, April 1st, 2008 at 11:00 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.

NYCDOE, Division of Contracts and Purchasing, Room 1201
65 Court Street, Brooklyn, NY 11201, (718) 935-3000
<http://schools.nyc.gov/dcp>

☛ m13-24

3-DAY RETREAT FOR LEONARDO DA VINCI INTERMEDIATE SCHOOL – CSB – PIN# Z0701040 – DUE 03-25-08 AT 5:00 P.M. – Bid opening: Wednesday, March 26th, 2008 at 11:00 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.

NYCDOE, Division of Contracts and Purchasing, Room 1201
65 Court Street, Brooklyn, NY 11201, (718) 935-3000
<http://schools.nyc.gov/dcp>

☛ m13-24

OFFICE OF EMERGENCY MANAGEMENT

SOLICITATIONS

Goods & Services

BOTTLED WATER – Negotiated Acquisition – PIN# 017CSP08003 – DUE 03-14-08 AT 5:00 P.M. – The New York City Office of Emergency Management is cancelling the solicitation for prime vendor services for bottled water, PIN# 017CSP08003. The original ad ran from 1/7 - 1/11/08.

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 Emergency Management, 165 Cadman Plaza East,
Brooklyn, NY 11201. Erika Yan (718) 422-4845,
procurement@oem.nyc.gov

☛ m13

ENVIRONMENTAL PROTECTION

SOLICITATIONS

Services (Other Than Human Services)

ER-AC3CM: CM SERVICES IN CONNECTION WITH CONSTRUCTION CONTRACTS ER-AC3: ALLEY PARK ENVIRONMENTAL RESTORATION AND OAK-1: OAKLAND LAKE PARK IMPROVEMENT – Negotiated Acquisition – PIN# 82608WP01136 – DUE 03-31-08 AT 4:00 P.M. – DEP, Bureau of Environmental Design and Construction, intends to enter into an Agreement with Haks Engineers and Land Surveyors for ER-AC3CM: CM Services in connection with construction contracts ER-AC3: Alley Park Environmental Restoration and Oak-1: Oakland Lake Park Improvement HAKS Engineers and Land Surveyors personnel have an intimate knowledge of the Alley Creek CSO Abatement facilities project which should eliminate the learning curve and enhance the project management. HAKS Engineers and Land Surveyors has proven to be a responsible and competent consultant to DEP in construction management services on the Alley Creek CSO Abatement Facilities Project. Any firm which believes it can also provide the required service is invited to so, indicated by letter to: Department of Environmental Protection, 59-17 Junction Blvd., 17th Floor, Flushing, New York 11373. Debra Butlien, Agency Chief Contracting Officer, (718) 595-3423, dbutlien@dep.nyc.gov

☛ m13-19

HEALTH AND HOSPITALS CORPORATION

SOLICITATIONS

Goods & Services

REPLACE AND INSTALL A/C UNITS BARD – CSB – PIN# 21-08-023 – DUE 03-24-08 AT 10:00 A.M. – Replace two (2) existing old bard air cooled A/C units with exact replacements, reclaim old gas in old A/C bard unit, new equipment includes high efficiency compressors and fan motors hot gas bypass and reheat dehumidification, reconnect all ductwork with flexible connections, install new condensate drain, reconnect existing wiring replace disconnect switch and wall thermostat provide factory start-up provide NYC Dept. Buildings permits and filing. Mandatory walk-thru dates either March 18 or 19, 2008 at 10:00 A.M., Jacobi Medical Center, 1400 Pelham Parkway, Bronx, NY 10461, Building #4, Nurses Residence, 7th Fl., Certificate of Insurance required.

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.

Jacobi Medical Center, Purchasing Department/Storehouse,
Room #38, 1400 Pelham Parkway South and Eastchester
Road, Bronx, N.Y. 10461. Karyn Hill (718) 918-3149.
Bid Packages, and specifications can be picked-up from the
Purchasing Department, Storehouse Building, Room #38.

☛ m13

Construction / Construction Services

INSTALLATION OF NEW 0.32 ALUMINUM METAL PANEL SYSTEM – Competitive Sealed Bids – PIN# 231-08-059 – DUE 03-28-08 AT 10:00 A.M.
● **REPLACEMENT OF COMPACTOR PAD** – Competitive Sealed Bids – PIN# 231-08-060 – DUE 03-28-08 AT 11:00 A.M.

PROCUREMENT

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. As part of this effort, the City is pleased to announce the following contracting opportunities for construction/construction services and construction-related services.

CITY UNIVERSITY

SOLICITATIONS

Goods & Services

REPAIR AND UPGRADE OF LABORATORY STAFF A CONTROL SYSTEM AND SOFTWARE – Sole Source – DUE 03-14-08 AT 1:00 P.M. – Hunter College (CUNY) is entering into sole source negotiations with Thomas S. Brown Associates, Inc. located at 38-30 Woodside Avenue, Long Island City, New York 11104, to provide all labor and materials for the repair and upgrade of Staefa Control Systems and the corresponding Talon Software in Lab fourteen (14) at the main campus located at 68th Street Campus. Thomas C. Brown Associates, Inc. is a licensed installer of Talon Software. The amount of the agreement will be \$14,450.00 and the term shall be from date of notice to proceed until completion.

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;

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.

Cumberland Diagnostic and Treatment Center, Rm. C-39,
100 North Portland Avenue, Brooklyn, NY 11205.
Enid Rodriguez (718) 260-7694, enid.rodriguez@nychhc.org

☛ m13

MATERIALS MANAGEMENT

SOLICITATIONS

Services

INTERNET HOME-PAGE/SUB-PAGE/WEB DEVELOPMENT SERVICES – CSB – PIN# 011080280040 – DUE 04-23-08 AT 10:00 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.

Health and Hospitals Corp., Division of Materials
Management, 346 Broadway, Suite 516, New York, N.Y.
10013-3990.

☛ m13

HEALTH AND MENTAL HYGIENE

AGENCY CHIEF CONTRACTING OFFICER

AWARDS

Human / Client Service

GERIATRIC MENTAL HEALTH INITIATIVE – BP/City Council Discretionary – PIN# 08PO177001R0X00 – AMT: \$105,000.00 – TO: Jewish Board of Family and Children's Services, 120 West 57th Street, New York, NY 10019.

☛ m13

OFFICE OF THE MAYOR

CRIMINAL JUSTICE COORDINATOR'S OFFICE

SOLICITATIONS

Human / Client Service

MEDIATION AND CONCILIATION – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 00208DMPS483 – DUE 04-10-08 AT 4:00 P.M. – The City of New York Criminal Justice Coordinator's Office and the State of New York Unified Court System are jointly seeking appropriately qualified proposers to operate Alternative Dispute Resolution Centers for the provision of mediation and conciliation, and, if applicable, arbitration of civilian-initiated complaints in each of the City's five counties. The City and State will jointly select the successful proposers. The State will provide additional funding under a separate contract at a later date. The State will partially fund the vendors selected through the competitive sealed proposal procurement. The City funding is entirely separate and apart from the State funding.

The total available City funding for the program will be an annual amount of approximately \$780,000 in City funds for all five counties. It is anticipated that the term of the contracts awarded from the RFP will be from July 1, 2008 to June 30, 2010. In addition, contracts may include up to two two-year options to renew.

Please be advised that Attachments E and H to the Requests for Proposal are not available for download. The attachments will be furnished upon request from the Criminal Justice Coordinator's Office.

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.

Mayor's Office, 1 Centre Street, Room 1012, New York, NY
10007. Cynthia Peterson (212) 788-6801,
cpeterso@cityhall.nyc.gov

☛ m13-19

other information; and for opening and reading of bids at date and time specified above.

Hunter College, Purchasing and Contract Department,
695 Park Avenue, E1509, New York, NY 10065. Daryl
Williams, Purchasing Director, (212) 650-3811,
daryl.williams@hunter.cuny.edu

m7-13

CITYWIDE ADMINISTRATIVE SERVICES

DIVISION OF MUNICIPAL SUPPLY SERVICES

AWARDS

Goods

PAINT, ENAMEL, ALKYD 2 – Competitive Sealed Bids – PIN# 857701411 – AMT: \$63,475.00 – TO: National Paint Industries, Inc., 1999 Elizabeth Street, North Brunswick, NJ 08902.

● **AUDIO/VISUAL EQUIPMENT (BRAND SPECIFIC)** – Competitive Sealed Bids – PIN# 857800458 – AMT: \$131,391.00 – TO: B and H Electronics Corp. dba B and H Photo Video Pro Audio, 420 Ninth Avenue, New York, NY 10001.

● **TRUCK, PUMP - DEP** – Competitive Sealed Bids – PIN# 857800428 – AMT: \$320,679.00 – TO: Truck King International Sales and Service, Inc., 58-80 Borden Avenue, Maspeth, NY 11378.

☛ m13

VENDOR LISTS

Goods

ACCEPTABLE BRAND LIST – In accordance with PPB Rules, Section 2-05(c)(3), the following is a list of all food items for which an Acceptable Brands List has been established.

1. Mix, Biscuit - AB-14-1:92
2. Mix, Bran Muffin - AB-14-2:91

3. Mix, Corn Muffin - AB-14-5:91
4. Mix, Pie Crust - AB-14-9:91
5. Mixes, Cake - AB-14-11:92A
6. Mix, Egg Nog - AB-14-19:93
7. Canned Beef Stew - AB-14-25:97
8. Canned Ham Shanks - AB-14-28:91
9. Canned Corned Beef Hash - AB-14-26:94
10. Canned Boned Chicken - AB-14-27:91
11. Canned Corned Beef - AB-14-30:91
12. Canned Ham, Cured - AB-14-29:91
13. Complete Horse Feed Pellets - AB-15-1:92
14. Canned Soups - AB-14-10:92D
15. Infant Formula, Ready to Feed - AB-16-1:93
16. Spices - AB-14-12:95
17. Soy Sauce - AB-14-03:94
18. Worcestershire Sauce - AB-14-04:94

Application for inclusion on the above enumerated Acceptable Brand Lists for foods shall be made in writing and addressed to: Purchase Director, Food Unit, Department of Citywide Administrative Services, Division of Municipal Supply Services, 1 Centre Street, 18th Floor, New York, NY 10007. (212) 669-4207.

j4-jy17

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: Vendor Relations, Department of Citywide Administrative Services, Division of Municipal Supply Services, 1 Centre Street, 18th Floor, New York, NY 10007. (212) 669-8562.

j4-jy17

OPEN SPACE FURNITURE SYSTEMS - CITYWIDE - In accordance with PPB Rules, Section 2.05(c)(3), an Acceptable Brands List, #AB-17W-1:99, has been established for open space furniture systems.

Application for consideration of product for inclusion on this acceptable brands list shall be made in writing and addressed to: Vendor Relations, Department of Citywide Administrative Services, Division of Municipal Supply Services, 1 Centre Street, 18th Floor, New York, NY 10007, (212) 669-8562.

j4-jy17

DESIGN & CONSTRUCTION

AGENCY CHIEF CONTRACTING OFFICER

SOLICITATIONS

Construction / Construction Services

PV467-42 NEW 42 THEATER RENOVATIONS - Sole Source - Available only from a single source - PIN# 8502008PV0046P - DUE 03-24-08 AT 4:00 P.M. - The Department of Design and Construction intends to enter into a sole source contract with The New 42nd Street, Inc. for the above project. The contractor must have unique knowledge of the site, and must guarantee the assumption of all cost above the estimated cost of construction. In addition, the contractor must make a private financial contribution to fund the design and construction of the project. Any firm which believes that it is also qualified to provide these services or would like to provide such services in the future is invited to indicate by letter to: Department of Design and Construction, 30-30 Thomson Avenue, 5th Floor, Long Island City, New York 11101. Steven Wong, Program Director, (718) 391-2550, wongs@ddc.nyc.gov.

m12-18

C114NEWF2, ARCHITECTURAL AND ENGINEERING DESIGN SERVICES - Competitive Sealed Proposals - Judgment required in evaluating proposals - PIN# 8502008CR0014P - DUE 04-11-08 AT 4:00 P.M. - Renovation and expansion of Brooklyn Detention Center. All qualified and interested firms are advised to download the Request for Proposal at <http://ddcftp.nyc.gov/rfpweb/> from March 14, 2008 or contact the person listed for this RFP. The contract resulting from this Request for Proposal will be subjected to Local Law 129 of 2005, Minority Owned and Women Owned Business Enterprise (M/WBE) program.

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 Design and Construction
 30-30 Thomson Avenue, Long Island City, NY 11101.
 Bernarda Ramirez (718) 391-2666, ramirezbd@ddc.nyc.gov

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ECONOMIC DEVELOPMENT CORPORATION

CONTRACTS

SOLICITATIONS

Goods & Services

WEST HARLEM PIERS PARK EXCURSION BOAT OPERATOR - Request for Proposals - PIN# 2884-1 - DUE 04-15-08 AT 4:00 P.M. - Companies who have been certified with the New York City Small Business Services as Minority and Women Owned Business Enterprises ("M/WBE") are strongly encouraged to apply. To find out more about M/WBE certification, please call 311 or go to www.nyc.gov/getcertified.

There will be an optional Site visit at the West Harlem Piers Park on Tuesday, March 25th, at 9:00 A.M. Respondents may submit questions and/or request clarifications from NYCEDC no later than 4:00 P.M. on Thursday, March 27, 2008. Questions regarding the subject matter of this RFP should be directed in writing to the Project Manager at kvantassel@nycedc.com or via mail to NYCEDC, Attn: Kate Van Tassel, 110 William St., 4th Floor, New York, NY 10038. Answers to all questions will be posted by Wednesday, April 2nd to www.nycedc.com/RFP. Proposers may request a printed copy of the answers by sending a written request to the Project Manager at the above mailing address.

The RFP is available for in-person pick-up between 9:30 A.M. and 4:30 P.M., Monday through Friday. To download a copy

of the solicitation documents please visit www.nycedc.com/RFP. Please submit six (6) sets of your proposal.

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.
 Economic Development Corp., 110 William Street, 6th Floor, New York, NY 10038. Maryann Catalano (212) 312-3969.

m13-26

EDUCATION

DIVISION OF CONTRACTS AND PURCHASING

SOLICITATIONS

Goods

APANGEA SMARHELP SOFTWARE - CSB - PIN# Z0691040 - DUE 03-31-08 AT 5:00 P.M. - Bid opening: Tuesday, April 1st, 2008 at 11:00 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.
 NYCDOE, Division of Contracts and Purchasing, Room 1201 65 Court Street, Brooklyn, NY 11201, (718) 935-3000
<http://schools.nyc.gov/dcp>

m13-24

3-DAY RETREAT FOR LEONARDO DA VINCI INTERMEDIATE SCHOOL - CSB - PIN# Z0701040 - DUE 03-25-08 AT 5:00 P.M. - Bid opening: Wednesday, March 26th, 2008 at 11:00 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.
 NYCDOE, Division of Contracts and Purchasing, Room 1201 65 Court Street, Brooklyn, NY 11201, (718) 935-3000
<http://schools.nyc.gov/dcp>

m13-24

FURNISHING AND DELIVERING: MAINTENANCE FOR LIVE SCAN/CARD SCAN MACHINES - CSB - PIN# Z0697040 - DUE 03-26-08 AT 5:00 P.M. - Bid opening: Thursday, March 27th, 2008 at 11:00 A.M.
DWDM MONITORING, MAINTENANCE AND PROBLEM RESOLUTION - RFP - PIN# R0571040 - DUE 04-02-08 AT 11:30 A.M.

The New York City Department of Education (NYCDOE) is seeking proposals from organizations experienced in providing comprehensive management of fiber-optic networks to provide maintenance, network monitoring and problem resolution services for a DWDM fiber optic transmission system. If you are unable to download this solicitation, please send an e-mail to depit@schools.nyc.gov with solicitation number, solicitation title, your company name, address, phone, fax, e-mail address, and tax ID number.

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.
 NYCDOE, Division of Contracts and Purchasing, Room 1201 65 Court Street, Brooklyn, NY 11201, (718) 935-3000
<http://schools.nyc.gov/dcp>

m11-19

OFFICE OF EMERGENCY MANAGEMENT

SOLICITATIONS

Goods & Services

BOTTLED WATER - Negotiated Acquisition - PIN# 017CSP08003 - DUE 03-14-08 AT 5:00 P.M. - The New York City Office of Emergency Management is cancelling the solicitation for prime vendor services for bottled water, PIN# 017CSP08003. The original ad ran from 1/7 - 1/11/08.

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 Emergency Management, 165 Cadman Plaza East, Brooklyn, NY 11201. Erika Yan (718) 422-4845, procurement@oem.nyc.gov

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ENVIRONMENTAL PROTECTION

SOLICITATIONS

Services (Other Than Human Services)

ER-AC3CM: CM SERVICES IN CONNECTION WITH CONSTRUCTION CONTRACTS ER-AC3: ALLEY PARK ENVIRONMENTAL RESTORATION AND OAK-1: OAKLAND LAKE PARK IMPROVEMENT - Negotiated Acquisition - PIN# 82608WP01136 - DUE 03-31-08 AT 4:00 P.M. - DEP, Bureau of Environmental Design and Construction, intends to enter into an Agreement with Haks Engineers and Land Surveyors for ER-AC3CM: CM Services in connection with construction contracts ER-AC3: Alley Park Environmental Restoration and Oak-1: Oakland Lake Park Improvement HAKS Engineers and Land Surveyors personnel have an intimate knowledge of the Alley Creek CSO Abatement facilities project which should eliminate the learning curve and enhance the project management. HAKS Engineers and Land Surveyors has proven to be a responsible and competent consultant to DEP in construction management services on the Alley Creek CSO Abatement Facilities Project. Any firm which believes it can also provide the required service is invited to so, indicated by letter to: Department of Environmental Protection, 59-17 Junction Blvd., 17th Floor, Flushing, New York 11373. Debra Butlien, Agency Chief Contracting Officer, (718) 595-3423, dbutlien@dep.nyc.gov

m13-19

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) 442-3863.

j1-d31

SOLICITATIONS

Goods & Services

REPLACE AND INSTALL A/C UNITS BARD - CSB - PIN# 21-08-023 - DUE 03-24-08 AT 10:00 A.M. - Replace two (2) existing old bard air cooled A/C units with exact replacements, reclaim old gas in old A/C bard unit, new equipment includes high efficiency compressors and fan motors hot gas bypass and reheat dehumidification, reconnect all ductwork with flexible connections, install new condensate drain, reconnect existing wiring replace disconnect switch and wall thermostat provide factory start-up provide NYC Dept. Buildings permits and filing. Mandatory walk-thru dates either March 18 or 19, 2008 at 10:00 A.M., Jacobi Medical Center, 1400 Pelham Parkway, Bronx, NY 10461, Building #4, Nurses Residence, 7th Fl., Certificate of Insurance required.

Jacobi Medical Center, Purchasing Department/Storehouse, Room #38, 1400 Pelham Parkway South and Eastchester Road, Bronx, N.Y. 10461. Karyn Hill (718) 918-3149. Bid Packages, and specifications can be picked-up from the Purchasing Department, Storehouse Building, Room #38.

m13

Construction / Construction Services

INSTALLATION OF NEW 0.32 ALUMINUM METAL PANEL SYSTEM - Competitive Sealed Bids - PIN# 231-08-059 - DUE 03-28-08 AT 10:00 A.M.
REPLACEMENT OF COMPACTOR PAD - Competitive Sealed Bids - PIN# 231-08-060 - DUE 03-28-08 AT 11:00 A.M.

Cumberland Diagnostic and Treatment Center, Rm. C-39, 100 North Portland Avenue, Brooklyn, NY 11205. Enid Rodriguez (718) 260-7694, enid.rodriguez@nychhc.org

m13

MATERIALS MANAGEMENT

SOLICITATIONS

Services

INTERNET HOME-PAGE/SUB-PAGE/WEB DEVELOPMENT SERVICES - CSB - PIN# 011080280040 - DUE 04-23-08 AT 10:00 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.
 Health and Hospitals Corp., Division of Materials Management, 346 Broadway, Suite 516, New York, N.Y. 10013-3990.

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HEALTH AND MENTAL HYGIENE

SOLICITATIONS

Human / Client Service

COLON CANCER SCREENING NAVIGATION - Negotiated Acquisition - PIN# 08CR193100R0X00 - DUE 03-21-08 AT 4:00 P.M. - The New York City Department of Health and Mental Hygiene (DOHMH), Division of Health Promotion and Disease Prevention (HPDP), Bureau of Chronic Disease and Control, the Cancer Prevention and Control Program, intends to enter into negotiations with six voluntary medical facilities to expand the Colon Cancer Screening navigation Program to the areas of Central Brooklyn, Central and West Harlem, the North Bronx, Queens, Staten Island, and Washington Heights. Specifically, the chosen contractors will be responsible for participating in the implementation and assessment of this intervention, which has the goal of increasing colon cancer screening rates of New York City residents. It is anticipated that the contract term will be from April 1, 2008 - March 31, 2009.

Organizations interested in responding to future solicitations for these services are invited to request a vendor enrollment application, or fill one out on line by visiting www.nyc.gov/selltonyc.

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, 2 Lafayette Street, 20th Floor New York, NY 10007. Sherri Love (212) 788-8008 slove@health.nyc.gov

m10-14

AGENCY CHIEF CONTRACTING OFFICER

SOLICITATIONS

Human / Client Service

NEW YORK/NEW YORK III SUPPORTED HOUSING CONGREGATE - Competitive Sealed Proposals - Judgment required in evaluating proposals - PIN# 81608PO0763 - DUE 02-13-09 AT 3:00 P.M. - The New York City Department of Health and Mental Hygiene (DOHMH) 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/New York III Supportive Housing agreement. The subject RFP will be open-ended and proposals will be accepted on an on-going basis. Beginning on February 16, 2007, RFPs may be picked up in person at the address below, between the hours of 10:00 A.M. and 4:00 P.M. on business days only. The RFP is also on line at: <http://www.nyc.gov/html/doh/html/acco/acco-rfp-nynycongregate-20070117-form.shtml> A pre-proposal conference will be held on March 6, 2007 at 2:00 P.M. at

125 Worth Street, 2nd Floor Auditorium, New York, NY. Any questions regarding this RFP must be sent in writing in advance to Karen Mankin at the above address or fax to (212) 219-5890. All questions submitted will be answered at the Pre-Proposal conference. All proposals must be hand delivered no later than February 13, 2009, at 3:00 P.M. at the Agency Chief Contracting Officer, Room 812, New York, NY 10013.

As a minimum qualification requirement for (1) the serious and persistent mentally ill populations, the proposer must be incorporated as a not-for-profit organizations, 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, 93 Worth Street, Room 812
New York, NY 10013. Karen Mankin (212) 219-5873
kmankin@health.nyc.gov

f16-jy30

AWARDS

Human/Client Service

GERIATRIC MENTAL HEALTH INITIATIVE – BP/City Council Discretionary – PIN# 08PO177001R0X00 – AMT: \$105,000.00 – TO: Jewish Board of Family and Children's Services, 120 West 57th Street, New York, NY 10019.

m13

HOMELESS SERVICES

OFFICE OF CONTRACTS AND PROCUREMENT

SOLICITATIONS

Human/Client Service

SAFE HAVEN OPEN-ENDED RFP – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 071-08S-04-1164 – DUE 08-27-10 – The Department of Homeless Services has issued an Open Ended Request for Proposals (PIN 071-08S-04-1164) as of August 27, 2007 seeking appropriately qualified vendors to develop and operate a stand-alone Safe Haven for chronic street homeless single adults and/or adult couples without minor children.

There is no due date for proposals under this RFP. Proposals will be reviewed by the Department as they are received and contracts will be awarded on an on-going basis until the Department's needs are met.

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 Homeless Services, 33 Beaver Street,
13th Floor, New York, NY 10004.
Suellen Schulman (212) 361-8400, ssschulma@dhs.nyc.gov

a27-f12

CORRECTION: TRANSITIONAL RESIDENCES FOR HOMELESS/DROP-IN CENTERS

– Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 071-00S-003-262Z – DUE 01-02-09 AT 2:00 P.M. CORRECTION: The Department of Homeless Services is soliciting proposals from organizations interested in developing and operating transitional residences for homeless adults and families including the Neighborhood Based Cluster Residence and drop-in centers for adults. This is an open-ended solicitation; there is no due date for submission.

Request for proposals is also available on-line at www.nyc.gov/cityrecord

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 Homeless Services, 33 Beaver Street,
13th Floor, New York, NY 10004.
Marta Zmoira (212) 361-0888, mzoita@dhs.nyc.gov

f29-d31

JUVENILE JUSTICE

SOLICITATIONS

Human/Client Service

CORRECTION: PROVISION OF NON-SECURE DETENTION CENTERS

– Negotiated Acquisition – Judgment required in evaluating proposals - PIN# 13007DJJ001 – DUE 11-14-08 AT 3:00 P.M. – CORRECTION: The NYC Department of Juvenile Justice (DJJ) is seeking one or more appropriately qualified vendors to provide non-secure detention services for youth. Services shall include, but not be limited to, custody, basic youth care, food, clothing, shelter, education, health care, recreation, court related services, social work and case management services, social skills instruction, group sessions and monitoring and supervision of these services. In addition, the contract will require that a defibrillator shall be located in each program facility and that all staff requiring CPR training shall be certified in use of said defibrillator.

Each program facility will provide at least 10 and no more than 12 beds in accordance with the applicable regulations promulgated by the New York State Office of Children and Family Services (NYS OCFS), 9 N.Y.C.R.R. Section 180 et seq. The Department is seeking to provide services at facilities that will be operational at any time from January 1, 2007 to December 31, 2010. A vendor may submit an offer for more than one Facility Option. Current Agency vendors operating non-secure group homes that have contracts expiring in calendar year 2006 are urged to respond to this solicitation.

All program facilities shall be appropriately equipped to provide services for male or female youth as required by the Department, and be located in one of the five boroughs. The term of the contracts awarded from this solicitation will be for three years and will include an additional three-year option to renew. The anticipated maximum average annual funding available for each contract will be \$1,067,000, excluding start-up costs. Proposed start-up costs will be considered in addition to the proposed annual line item budget. Greater consideration will be given to applicants offering more competitive prices.

If your organization is interested in being considered for award of the subject contract, please hand deliver a written expression of interest addressed to my attention at 110 William Street, 13th Floor, New York, NY 10038. The expression of interest should specifically address the following:

1. Indicate each program facility for which the vendor is submitting.

2. Describe each proposed facility, its location, and proposed date of operation.

3. Attach appropriate documentation demonstrating the current use of each proposed facility and the vendor's site control of the facility for a period of at least 3 years.

4. For each proposed facility,
a) Indicate the number of beds to be provided and demonstrate that the facility has the capacity to provide the indicated number of beds.
b) Demonstrate that the facility will be appropriately equipped to provide services for male or female youth.

5. Demonstrate the vendor's organizational capability to:
a) Provide the indicated number of beds at each proposed facility. (If the vendor is a current provider, also demonstrate the capability to provide the indicated number of beds in addition to those already provided.)
b) Ensure that each proposed facility will be fully operational by required date in accordance with the applicable regulations promulgated by the New York State Office of Children and Family Services (NYS OCFS), 9 N.Y.C.R.R. Section 180 et seq.

6. Demonstrate the quantity and quality of the vendor's successful relevant experience.

7. Attach for each proposed facility three-year annual line item operating budget. Include staffing details. Proposed start up costs should be included in addition to the proposed three-year annual line item operating budget.

All expressions of interest received in the manner set forth will be reviewed to determine if they are responsive to the material requirements of this solicitation. Expressions of interest determined to be non-responsive will not be further considered. Expressions of interest determined to be responsive will be considered in terms of the following factors:

- Appropriateness of each proposed facility.
- Demonstrated site control of each proposed facility.
- Demonstrated level of organizational capability to provide the proposed number of beds and to ensure that each proposed facility if fully operational by the applicable requisite date.
- Demonstrated quantity and quality of successful relevant experience.
- Annual budget amount and cost effectiveness of the budget.

The Department will enter into negotiations with the vendor(s) determined to be the best qualified at the time of evaluation, based on consideration of the above-cited factors. A contract will be awarded to the responsible vendor(s) whose offer(s) is/are determined to be the most advantageous to the City, taking into consideration the price and the other factors set forth in this solicitation. In the case that a vendor is eligible for award of more than one program facility, the Department reserves the right, based upon the vendor's demonstrated organizational capability and the best interest of the City, respectively, to determine how many and for which program facility(ies) the vendor will be awarded a contract.

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 Juvenile Justice, 110 William Street
20th Floor, New York, NY 10038.

Chuma Uwechia (212) 442-7716, cuwechia@djj.nyc.gov

n20-13

OFFICE OF THE MAYOR

CRIMINAL JUSTICE COORDINATOR'S OFFICE

SOLICITATIONS

Human/Client Service

MEDIATION AND CONCILIATION – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 00208DMPS483 – DUE 04-10-08 AT 4:00 P.M. – The City of New York Criminal Justice Coordinator's Office and the State of New York Unified Court System are jointly seeking appropriately qualified proposers to operate Alternative Dispute Resolution Centers for the provision of mediation and conciliation, and, if applicable, arbitration of civilian-initiated complaints in each of the City's five counties. The City and State will jointly select the successful proposers. The State will provide additional funding under a separate contract at a later date. The State will partially fund the vendors selected through the competitive sealed proposal procurement. The City funding is entirely separate and apart from the State funding.

The total available City funding for the program will be an annual amount of approximately \$780,000 in City funds for all five counties. It is anticipated that the term of the

contracts awarded from the RFP will be from July 1, 2008 to June 30, 2010. In addition, contracts may include up to two two-year options to renew. Please be advised that Attachments E and H to the Requests for Proposal are not available for download. The attachments will be furnished upon request from the Criminal Justice Coordinator's Office.

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.

Mayor's Office, 1 Centre Street, Room 1012, New York, NY 10007. Cynthia Peterson (212) 788-6801,
cpeterso@cityhall.nyc.gov

m13-19

SCHOOL CONSTRUCTION AUTHORITY

CONTRACT ADMINISTRATION

SOLICITATIONS

Services

ARCHITECTURE AND ENGINEERING SERVICES – Competitive Sealed Proposals – PIN# SCA08-00079R – DUE 03-26-08 AT 12:00 P.M. – The NYC School Construction Authority (SCA) is seeking qualified consultants interested in responding to a Request for Proposal (RFP) SCA No. 08-00079R to provide Architecture and Engineering Services in Connection with Capital Improvement Projects at Various Schools Throughout New York City.

Proposals will be accepted from the following firms: Aarris Architects, LLP, Acheson Doyle, Partners Architects, Afridi Associates, Alexander Gorlin Architects & Associates, Inc., Antonucci & Associates, LLP., Barbara Thayer, PC, BL Companies, Inc., Buck Simpers, Architects, Carter & Burgess, Chapman Architects, Claire Weisz Architects, CSA Group NY Architects & Engineers, Cutsgeorge Tooman & Allen Architects, Danois Architects, Design and Develop Group Architects, DiGeronimo, P.C., DMJM Harris, DMR Architects, Donald Blair Architects, DRG Architects, Faulding Architecture, Feld, Kaminetzky & Cohen, PC., Fred Sommer & Associates, Gannett Fleming Engineers & Architects, G. SWITZER Architecture, Graf & Lewent Architects, Guilor Architect, P.C., H2M, HAKS Engineers, Harris Smith Design, The Hall Partnership Architecture, LLP., Herbert Kunstadt Associates, Inc., Highland Associates, Architecture & Engineering Design PC., HLW International, LLP., Horace Harris, Ivan Brice, Jack L. Gordon Architects, P.C. AIA, John M.Y. Lee/Michael Timchula, Karlsberger, Architecture., PC., Kostow Greenwood, Kutnicki Bernstein Architects, PLLC., Lubrano Ciavarra Design, LLC., Lynn Gaffney Architects, PLLC., MacRae Gibson, Magnusson Architects, Michielli Wyetznar Architects, Mondana Rezanian Architect, P.C., Oaklander Coogan & Vitto Architects, PC., O'Dea Lynch Abbattista, Paganamenta Torriani, Peter Kransnow Architect, PLLC., Platt Byard Dovell White Architects, RCGA Architects, PC., Redtop Architects, Rice Jones Architects, Sigma7 Design Group, STV, Inc., The Grosfeld Partnership, The RBA Group, Tonetti Associates Architects, P.C., Turett Collaborative Architects and Wank Adams Slavin Associates.

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.

School Construction Authority, 30-30 Thomson Avenue
Long Island City, New York 11101. Sal DeVita, Senior
Management Specialist, (718) 472-8049, sdevita@nycsca.org

m11-24

Construction/Construction Services

MULTI-CAMPUS WORK – Competitive Sealed Bids – PIN# SCA08-11415D-1 – DUE 03-27-08 AT 11:30 A.M. Far Rockaway HS (Queens). Project Range: \$1,220,000.00 to \$1,285,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

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.

School Construction Authority, Plans Room Window
Room #1046, 30-30 Thomson Avenue, 1st Floor
Long Island City, New York 11101, (718) 752-5843.

m7-13

EXTERIOR MASONRY – Competitive Sealed Bids – PIN# SCA08-11098D-1 – DUE 03-31-08 AT 11:00 A.M. IS 201 (Brooklyn). Project Range: \$1,910,000.00 to \$2,010,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

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.

School Construction Authority, Plans Room Window
Room #1046, 30-30 Thomson Avenue, 1st Floor
Long Island City, New York 11101, (718) 472-8360.

m11-17

LOW VOLTAGE ELECTRICAL SYSTEM – Competitive Sealed Bids – PIN# SCA08-11526D-1 – DUE 03-28-08 AT 10:00 A.M. – IS 116 (Bronx). Project Range: \$1,560,000.00 to \$1,641,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

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.

School Construction Authority, Plans Room Window
Room #1046, 30-30 Thomson Avenue, 1st Floor
Long Island City, New York 11101, (718) 752-5854.

m11-17

SCIENCE LAB UPGRADE AND SCIENCE LAB DEMO ROOM – Competitive Sealed Bids – PIN# SCA08-004331-1 – DUE 03-25-08 AT 10:30 A.M. – JHS 232 (Brooklyn). Project Range: \$1,060,000.00 to \$1,115,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

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.
School Construction Authority, Plans Room Window Room #1046, 30-30 Thomson Avenue, 1st Floor Long Island City, New York 11101, (718) 752-5854.

m7-13

MULTI-CAMPUS TRANSITION WORK – Competitive Sealed Bids – PIN# SCA08-11411D-1 – DUE 03-31-08 AT 11:30 A.M. – Martin Luther King HS (Manhattan). Project Range: \$1,990,000.00 to \$2,095,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

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.
School Construction Authority, Plans Room Window Room #1046, 30-30 Thomson Avenue, 1st Floor Long Island City, New York 11101, (718) 752-5843.

m12-18

LOW VOLTAGE ELECTRICAL AND SAFETY SYSTEMS – Competitive Sealed Bids – PIN# SCA08-11703D-1 – DUE 03-27-08 AT 10:00 A.M. – PS 206 (Brooklyn). Project Range: \$1,170,000.00 to \$1,236,000.00.

● **MULTI-CAMPUS TRANSITION** – Competitive Sealed Bids – PIN# SCA08-11405D-1 – DUE 03-26-08 AT 11:30 A.M. – Bushwick HS (Brooklyn). Project Range: \$1,100,000.00 to \$1,154,000.00.

Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

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.
School Construction Authority, Plans Room Window Room #1046, 30-30 Thomson Avenue, 1st Floor Long Island City, New York 11101, (718) 752-5288.

m10-14

AGENCY RULES

CITY PLANNING

NOTICE

NOTICE OF ADOPTION OF RULES

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE City Planning Commission pursuant to Sections 192, 197-c and 1043 of the New York City Charter, and pursuant to 3-702(18) of the Administrative Code of the City of New York, the New York City Planning Commission and the New York City Department of City Planning (collectively, “City Planning”) propose to amend Chapter 2 of Title 62 of the Rules of the City of New York. The rule was published for comment in the City Record on February 4, 2008. The required public hearing on this rule was held on March 10, 2008.

Material to be added is underlined.

Section 1. Chapter 2 of Title 62, section 2-02(a)(1) of the Rules of the City of New York is amended to read as follows:

§ 2-02. Applications.

(a) Applications: general provisions. (1) Presentation of application. A request for any action shall be submitted to the Department of City Planning, Central Intake Room. The application must be submitted upon the proper forms for the action, as provided by the Department, including forms requesting information required for the “doing business database” established by Local Law 34 for the year 2007, and must be accompanied by all of the information and documents required by such forms in the appropriate number of copies specified thereon. For purposes of the acquisition of property by the City, pursuant to Section 2-01(e) and 2-01(k) of these rules, the applicant shall be the requesting agency and the Department of Citywide Administrative Services. For purposes of the approval of housing or urban renewal plans and projects or amendments thereof pursuant to City, State or Federal laws in accordance with Section 2-01(h) of these rules, the applicant shall be the New York City Department of Housing Preservation and Development or the New York City Housing Authority, as appropriate, or their designees.

When presented at Central Intake, the application shall be accompanied by payment of the required fee, if any. Central Intake will not accept incomplete applications or applications without the required fee.

Section 2. Chapter 2 of Title 62, section 2-02(a)(5) of the Rules of the City of New York is amended to read as follows:

(5) Certification of Completeness.

The Department or the Commission shall certify the application as complete when compliance has been achieved with all of the following:

(i) The standard application form, including for any

application certified on or after April 14, 2008, forms requesting information required for the “doing business database” established pursuant to Local Law 34 for the year 2007, has been filled out in its entirety with all requested information presented in clear language.

* * *

STATEMENT OF BASIS AND PURPOSE

This rule is promulgated pursuant to the authority of the City Planning Commission, under Sections 192, 197-c and 1043 of the New York City Charter, and pursuant to the authority of the Department of City Planning pursuant to Section 1043 of the New York City Charter and Section 3-702(18) of the Administrative Code of the City of New York. In accordance with Local Law 34 of 2007, City agencies must cooperate in the creation of a database (the “Doing Business Database”), the purpose of which is to keep a unified record of all entities and persons who are doing business with the City and to facilitate compliance with the New York City Campaign Finance Act. This rule will require that applications presented to City Planning include all forms necessary for the Doing Business Database.

This rule is also proposed to clarify that the applicant with respect to applications for approval of housing or urban renewal plans and projects pursuant to City, State or Federal laws in accordance with Chapter 2 of Title 62, section 2-01(h) of the Rules of the City of New York, is the housing agency of jurisdiction.

m13

HEALTH AND MENTAL HYGIENE

NOTICE

BOARD OF HEALTH

NOTICE OF ADOPTION OF AMENDMENTS TO ARTICLE 81 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, notice of intention to amend Article 81 of the New York City Health Code (the “Health Code”) was published in the City Record on October 26, 2007, and a public hearing was held on November 27, 2007. Eight persons testified in support of the amendments and three additional written comments were received. Changes were made in response to the written comments received. At its meeting on March 6, 2008 the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Section 558(b) and (c) of the Charter empowers the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The Department enforces provisions of the Health Code and other applicable laws intended to protect the safety of food served directly to the consumer throughout the City, including food that is commercially prepared and sold, or distributed for free, by food service establishments (FSEs), a broad category that includes restaurants, caterers (non-retail food processing establishments), mobile food vending units, and cafeterias.

The Board of Health hereby amends Article 81 of the Health Code to establish requirements enabling FSEs to use reduced atmosphere packaging food processing techniques that are not specifically addressed within either Article 81 or the State Sanitary Code. These processing techniques include reduced oxygen packaging (ROP) for storage and preservation of food, cook chill and *sous vide* processing. These new provisions codify minimal standards for such processes.

When Article 81 was repealed and reenacted in 1996, the food processing techniques that this amendment regulates were not commonly used in New York City FSEs. Increasingly, however, operators of FSEs are using food preparation techniques, including *sous vide* and cook chill processing, that are not currently regulated by specific provisions of Article 81 or the New York State Sanitary Code. Used properly, these techniques can extend the shelf life of a product and may improve the taste and quality of foods. However, these processing techniques, which extract air, can create a significantly anaerobic environment that inhibits the growth of aerobic spoilage organisms, but may support pathogens that are either facultative (organisms capable of living under varying conditions, with or without oxygen) or anaerobic (able to live without oxygen), such as *Bacillus cereus*, *Staphylococci*, *Listeria monocytogenes*, *Clostridium perfringens*, and *Clostridium botulinum*, and it is therefore important to establish minimum food safety requirements for ROP processing.

Amend §81.03 Definitions

The following terms and definitions used in regulating these processes are being added to this section: aquatic animals, Hazard Analysis and Critical Control Point (HACCP) plan, critical control point, critical limit, cook chill processing, reduced oxygen packaging, packaging, *sous vide*, water activity (A_w), and the “pH” symbol for the negative logarithm of the hydrogen ion concentration.

Amend §81.06 Prevention of imminent health hazards

This section has been amended, adding a new subdivision (b), that describes the content of a HACCP plan whenever such plans are required by the Department or the Health Code to prevent the occurrence of imminent health hazards, and a new subdivision (c), prohibiting processing and preparation of

certain foods without Department approval, and relettering the current provision as subdivision (a). The proposed HACCP plan requirements are modeled on those in the FDA 2005 Food Code §§8-201.12 and 8-201.14. When HACCP plans are required, they must be submitted to DOHMH for approval, then maintained at an FSE and be made available to DOHMH inspectors for review upon request. This provision explicitly authorizes the Department, as applicable, to require that an FSE submit additional information so that it may determine that food safety is not compromised by use of a proposed food processing technique, and it authorizes the Department to maintain the confidentiality of trade secrets that may be contained in HACCP plans when requested by an FSE.

The new provisions codify minimal standards for developing and implementing a HACCP plan. The HACCP plan outlines the FSE’s formal procedures for use of the specific technique and when properly applied by the FSE enables safe use of the technique. HACCP plans were developed by the FDA’s National Advisory Committee on Microbiological Criteria for Foods. Their use is widely recommended in the FDA’s Food Code in a variety of potentially hazardous food preparation and processing techniques that the FDA considers high risk, where combinations of time and temperature differ from those specified in the Food Code, State Sanitary Code and Health Code, to promote food safety.

HACCP plan preparation requires consideration of each of the following:

- 1) Hazard analysis and risk assessment: the potential hazards associated with food processes at all stages are identified and the likelihood of occurrence is assessed.
- 2) Identification of critical control points (CCPs) in a process. CCPs are any points, procedures or operational steps that can be controlled during the process to eliminate a hazard or minimize its likelihood for occurrence.
- 3) Establishing critical limits for each CCP; determining target levels and tolerances to ensure each CCP is under control.
- 4) Establishing a monitoring schedule for each CCP. The system should ensure control of each CCP by scheduled testing, i.e., measuring temperature.
- 5) Establishing corrective action to be taken when a deviation occurs at a CCP, i.e., when monitoring indicates a CCP is out of control.
- 6) Establishing a record keeping-system to document each HACCP step.
- 7) Establishing a verification procedure enabling an FSE’s food protection certificate holder, chef, and the Department to determine if the food processing operation conforms to the requirements of the HACCP plan.

Adding a new §81.12 Reduced oxygen packaging: cook chill and *sous vide* processing.

Reduced Oxygen Packaging

These new amendments to the Health Code will better inform FSE permittees of correct and safe procedures when utilizing reduced oxygen packaging (ROP) techniques, and will promote safer food processing by FSEs. ROP techniques include the following processes, which are defined in §1-201.10(B) of the 2005 FDA Food Code:

- (1) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package.
- (2) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of packaging material or the respiration of the food. Such packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen.
- (3) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers¹ or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.
- (4) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.
- (5) *Sous vide* packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.²

These processing techniques, which extract air, can create a significantly anaerobic environment that prevents the growth of aerobic spoilage organisms. These aerobic organisms are responsible for the off-odors, slime, and texture changes that are also warning signs of spoilage. The benefits of ROP include its ability to prevent degradation or oxidative processes in food products; retard the amount of oxidative rancidity in fats and oils; prevent color deterioration in raw meats caused by oxygen; and shrinkage of the food by preventing water loss.

¹ Oxygen scavengers are small sachets or self adhesive labels that are placed inside modified atmosphere packs to help extend the shelf life of the product and improve product appearance. They work by absorbing any oxygen left in the pack by oxidation of the iron powder contained in sachet/label.

² FDA 2005 Food Code §1-201. Psychrotrophic pathogens grow at temperatures below 41°F (5°C) and include, but are not limited to, *L. monocytogenes*, *Bacillus cereus*, and *C. botulinum* type E.

Sous Vide

Sous vide, a specialized ROP cooking process, simply means “under vacuum.” *Sous vide* cooking is favored by some food scientists and operators of FSEs who claim it provides the best possible heat transfer coefficient between the heat source and packaged foods during cooking, enables consistency of taste and texture, and makes it possible to store cooked products at a proper (i.e., under 38° F (3.3°C)) holding temperature for longer periods of time. There has been an increase in demand for *sous vide* processed foods which contain little or no chemical preservation, and are given a mild heat treatment in order to achieve a fresh cooked taste. *Sous vide* products rely on a combination of minimal processing and storage under controlled chill conditions to prevent growth of pathogenic organisms and achieve microbiological safety, unlike conventional thermally processed products which rely on thermal destruction of any pathogens present.³ The *sous vide* cooking process is a pasteurization step that reduces bacterial load but is not sufficient to sterilize a product; thus making the food shelf-stable without temperature controls.⁴ Psychrotrophic *C. botulinum* types E and B are the organisms of most concern to minimally processed chilled foods with an extended shelf life as they may be able to grow during storage and produce a powerful neurotoxin which, if ingested, would cause botulism. Additionally, these organisms are able to survive the mild heat treatment and continue to live and grow in an oxygen free environment.

In *sous vide* processing, vacuum packaged cooked, partially cooked, raw ingredients or combinations of ingredients require immediate refrigeration or frozen storage until the package is thoroughly cooled. The process may involve some or all of the following steps:

- (1) Preparing raw materials (this step may include cooking or partial cooking of some or all ingredients);
- (2) Packaging the product, application of vacuum, and sealing of the package;
- (3) Cooking the product for a specified and monitored time/temperature;
- (4) Storage of the cooked product at or below 34° F (1.1° C) for 30 days, or 72 hours at 38° F (3.3° C); and
- (5) Reheating of the *sous vide* packaged items to at least 140° F (60°C) before opening and service.

³ *Sous Vide and Cook-chill Processing for the Food Industry*, Edited by S. Ghazala, p 134.

⁴ Microorganisms in foods, Characteristics of Microbial Pathogens, The International Commission on Microbiological Specifications of Foods of the International Union of Biological Societies, 1998.

Holding Temperatures for ROP Products

The new regulation requires that cold holding temperatures for all ROP products, regardless of processing methods, be lower than the cold holding temperatures currently provided for potentially hazardous foods in the Health Code. Most food borne pathogens are either anaerobes (able to multiply without oxygen) or facultative (able to multiply either with or without oxygen), requiring special care to control their growth. Refrigerated storage temperatures of 41°F (5°C) may be adequate to prevent growth and/or toxin production of some pathogenic microorganisms but *C. botulinum* and *Listeria monocytogenes* are better controlled at temperatures at or below 38°F (3.3°C). Controlling these pathogens will control the growth of other food borne pathogens as well.

Packaging of Aquatic animals Using an ROP Method

The FDA *Food Code* currently recommends against ROP processing of any aquatic animal product at the retail level except frozen aquatic animals. Accordingly, this amendment will prohibit FSEs from processing fresh, unfrozen aquatic animals by ROP methods.

The Department supports stringent requirements for preparation and storage of aquatic animals processed by *sous vide* because research has shown that aquatic animals are subject to outgrowths of *C. botulinum* type E when improperly heated.⁵ *C. botulinum* type E is naturally occurring in marine organisms, and will grow at refrigeration temperatures as low as 37.2°F (2.9°C.). Aquatic animals that may contain this microorganism include, but are not limited to salmon, trout, herring, whitefish, cod, plaice, eel, pollack, flounder and flatfish. The localization of contaminating spores of *C. botulinum* type E differs among aquatic animal species. Some aquatic animals species are contaminated in the intestines and viscera, some in the gills and the peritoneum, while others are contaminated on the outer surfaces (skin and fins). In some cases, strains have been isolated from internal organs and surface area of the same aquatic animals.

The presence of spores in the internal organs and skin of fish is a reflection of the general contamination of the environment, feed and water of the harvest area. However, the germination of spores, growth of vegetative cells and production of toxins in fishery products is due to a number of factors: the exposure of aquatic animals to temperature danger zones between time of harvest and delivery to food service or processing establishments; further exposure to temperatures in the danger zone during preparation or processing in the establishments; subjection to mild heat treatments or insufficient cooking temperatures; untrained or careless food workers’ introduction of spores into the tissues

and carcasses of the aquatic animals during preparation; and subsequent subjection of the finished (fishery) products to refrigerated storage temperatures warmer than 38°F (3.3°C).

Factors that may control *C. botulinum* type E growth and toxin production include efficient heat treatment (194° F or 90° C for 10 minutes), restricted shelf life, pH below 4.6, and holding temperatures at or below 37.4°F (3°C). In order for a food borne type E botulism outbreak to occur, a combination of the following four prerequisites must be present: the aquatic animals is already contaminated by type E spores from the environment; processing of the food is inadequate to inactivate type E spores, and there are inadequate holding temperatures, or the product is recontaminated after processing; or food is consumed without cooking or after insufficient heating. Thus, relative to other proteinaceous foods, there is concern that aquatic animals and aquatic animal products may be undercooked and that pathogens could survive in apparently cooked products. To require that aquatic animals be frozen during all stages of processing eliminates these hazards.

⁵ Principles of Modified-Atmosphere and Sous Vide Product Packaging, edited by Jeffrey Farber, Ph.D and Karen L. Dodds, Ph.D. Bureau of Microbial Hazards Health Canada. Chapter 7: Fish and Shellfish Products in Sous vide and Modified Atmosphere Packs.

Sous Vide Cooking Temperatures

Cooking temperatures are one of the prime factors that control the growth of pathogens in food. For cooking temperatures to be effective in reducing pathogens, the following factors are to be considered: the pathogenic bacteria count prior to cooking; the initial holding temperature of the raw product; and the product mass and characteristics that affect the time the product takes to reach its intended internal cooking temperature. To eliminate microorganisms and pathogens through cooking, the product must be held at a sufficient temperature for a specified kill time. Cooking temperatures in the Health Code are based, in part, on the biology and chemistry of specific pathogens that are associated with certain protein-based foods, and are also required to be consistent with the New York State Sanitary Code.⁶ To assure that heat treatment of a *sous vide* product is safe, the Department will require that FSEs cook food to temperatures required by §81.09 of the Health Code.

⁶ These temperatures are prescribed in both the Health Code and the State Sanitary Code, and the Department does not have the legal authority to allow lower cooking temperatures at FSEs engaging in ROP. See, e.g., Charter §558 (b) (“The board of health from time to time may add to and alter ... any part of the health code, and may therein publish additional provisions for security of life and health in the city and confer additional powers on the department not inconsistent with the constitution, laws of this state or this charter...”) “Not inconsistent” generally means that a Health Code provision must be as or more stringent than the State Sanitary Code.

Requiring a Hazard Analysis Critical Control Point (HACCP) Plan for ROP

The use of the Hazard Analysis Critical Control Point or HACCP approach is probably the single most important strategy for controlling the safety of a food product. It has been demonstrated scientifically that the application of a combination of different multiple inhibitory factors like water activity (A_w) of 0.91 or less, pH of 4.6 or less, and high levels of competing microorganisms can impede the growth of these virulent facultative anaerobic organisms in vacuum packaged foods. However, *sous vide* and cook chill processes lack these barriers, and therefore depend on monitoring of critical limits, such as time and temperature for safety.⁷ A HACCP plan is the recognized standard for monitoring critical limits in food processes and assuring food safety. The lack of inhibitory factors (e.g., aerobic bacteria) makes *sous vide* and other ROP processes high risk for transmission of food borne illness.

The importance of a HACCP plan for ROP methods of food processing like *sous vide* in FSEs begins with an understanding that the raw food received from the wholesale supply system is normally contaminated with either or both vegetative cells and/or spores of pathogenic microscopic organisms, some naturally occurring in their environment (e.g. finfish and other seafood),⁸ and that the majority of the most virulent are either anaerobes or facultative anaerobes,⁹ with a competitive advantage enabling them to survive and grow better in reduced oxygen environments,¹⁰ such as vacuum sealed food bags, than in the presence of aerobic spoilage organisms. In addition, several studies have shown that further contamination of food, growth of pathogens, and production of toxins more often than not occur in the FSE due to the exposure of food to unsanitary environmental factors and production processes, such as preparation and preservation of food by untrained and inexperienced food workers. Since scientific evidence has shown that the inactivation of some of these pathogens, especially their spores, and destruction of toxins require temperatures far higher than the minimal heat processing usually employed for the production of most vacuum packaged foods, like *sous vide*, documented application of safety procedures must therefore be guaranteed,¹¹ and the only tested, proven and up-to-date procedure that guarantees drastic reduction of hazards to a safe level is use of a HACCP plan.

⁷ FDA 2005 Food Code §3-502.12 – Public Health Reasons & Administrative Guidelines

⁸ FDA, Critical Steps towards safer seafood (1997)

⁹ FDA 2005 Food Code §3-502.12 – Public Health Reasons & Administrative Guidelines

¹⁰ FDA 2005 Food Code §3-502.12 – Public Health Reasons & Administrative Guidelines

¹¹ PubMed Publication, Mar. 1995, Safety Aspects of Sous vide

The new §81.12 of the Health Code will allow FSEs to package and process food using cook chill or *sous vide* methods, provided they submit and obtain approval from the

Department for a HACCP plan conforming with the new §81.06(b) of the Health Code for each food item to be processed using one of these techniques.

The rule is as follows:

Note-matter in brackets [] to be deleted
Matter underlined is new

RESOLVED, that §81.03 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as amended by resolution adopted on the first of July, one thousand ninety-eight, be and the same hereby is amended, to be printed together with explanatory notes, as follows:

§81.03 Definitions.

When used in this Title and Code:

(a) Aquatic animal means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including but not limited to alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(b) A_w means water activity which is the measure of the free moisture in a food, and is indicated by the symbol A_w . Its numeric value is the quotient of the water vapor pressure of the food substance divided by the vapor pressure of pure water at the same temperature.

[(a)] (c) Comminuted means reduced in size by methods including chopping, flaking, grinding, mincing; or a mixture of aquatic animals or meat products that have been reduced in size and restructured and reformulated.

[(b)] (d) Contaminated means adulterated or spoiled food, or food and equipment which is exposed to filth, toxic substances, rodent or insect contact or infestation, or potentially hazardous foods held at temperatures between 41 degrees Fahrenheit (5 degrees Celsius) and 140 degrees Fahrenheit (60 degrees Celsius) for a period of time exceeding that reasonably required for preparation, including potentially hazardous foods which are not heated or cooked to the temperatures specified in §81.09, or food in or subject to any condition which could permit the introduction of pathogenic microorganisms or foreign matter, including manual contact during service or preparation if such foods will not be subsequently cooked or heated to the temperatures specified in §81.09.

[(c)] (e) A controlled-location vending machine means a food vending machine which dispenses only food that is not potentially hazardous, can be serviced in a sanitary manner by an untrained person at the location and is located where it is protected from environmental contamination, abuse and vandalism.

(f) Cook chill processing means a type of reduced oxygen packaging process in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens (pathogens that grow slowly at refrigerated temperatures and that include, but are not limited to, *Listeria monocytogenes*, *Clostridium botulinum* and *Yersinia enterocolitica*).

(g) Critical control point means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

(h) Critical limit means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

[(d)] (i) Easily cleanable means readily accessible and of such material and finish that residues may be completely removed by normal cleaning methods.

[(e)] (j) Easily movable equipment means equipment that is mounted on wheels or casters with flexible, extensible, or quick disconnecting utility connections, if any, so that the equipment may be easily moved for cleaning.

[(f)] (k) Equipment means all stoves, ranges, microwave ovens, hoods, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables and similar items, other than utensils, used in the operation of a food service establishment or non-retail food processing establishment.

[(g)] (l) Food-contact surfaces mean the surfaces of equipment, utensils, tableware and kitchenware, such as ladles, colanders, serving spoons, spatulas, pots and pans, which normally come into contact with food or from which liquids and residues may drain back into food or onto other food-contact surfaces.

[(h)] (m) Food-grade means intended to be used with food products, utensils or equipment without reacting with such food products, and without imparting odor, color or taste to such food products, or approved by the National Sanitation Foundation or its equivalent.

[(i)] (n) Foodworker means foodhandler or any [employee] other person who works in a food service establishment or non-retail food processing establishment, including but not limited to any person described in §11.01(f) of this Code.

[(j)] (o) Food service establishment means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

[(k)] (p) A food vending machine means a self-service device which when activated, dispenses unit servings of food or beverage without requiring replenishing between each vending operation.

[(l)] (q) A food vending machine commissary means a place where food, containers or supplies are processed or packaged and prepared for use in food vending machines.

[(m)] (r) A food vending machine operation means the place where food vending machines are located and includes the food vending machines, machine servicing equipment, utensils, personnel, single-service articles, tables, chairs, that part of the premises used in connection with the food vending machine operation and all other appurtenances required and used to operate and maintain the food vending machines.

(s) Hazard Analysis and Critical Control Point (HACCP) plan means a written document that delineates the formal procedures for following the hazard analysis and critical

control point principles developed by the National Advisory Committee on Microbiological Criteria For Foods.

[(n)] (t) Imminent health hazard means any violation, condition, or combination of violations or conditions making it probable that food served to the public by the establishment or its continued operation will be injurious or dangerous to the health of any person consuming such foods.

[(o)] (u) Indirect drain means a waste line which does not connect directly with the drainage system, but conveys and discharges liquid wastes through an air break into an approved plumbing fixture or receptacle that is directly connected to the drainage system.

[(p)] (v) Non-retail food processing establishment means a place where food is processed, prepared, stored or packed for consumption off the premises and not given or sold directly to the consumer. This shall include but not be limited to mobile food vending commissaries, food vending machine commissaries and places where fish or shellfish is kept, sold or offered for sale which are not otherwise regulated or permitted by the Department of Agriculture and Markets or other appropriate regulatory agency.

[(w)] (w) Packaged means bottled, canned, cartoned, securely bagged, or securely wrapped, and does not include a wrapper, carry out box, or other non durable container used to containerize food for the purpose of facilitating food protection during service and receipt of the food by the consumer.

[(x)] (x) pH means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

[(q)] (y) Potentially hazardous food means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, crustacea and other aquatic animals, cooked potato, cooked rice, or ingredients in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, or growth of *C. botulinum*. The term does not include food with a water activity (Aw) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below.

[(r)] (z) Processed fish means fish that has been cured, salted, marinated, dried, pickled, fermented or smoked for human consumption.

[(aa)] (aa) Reduced oxygen packaging means the reduction of the amount of oxygen in a food packaged by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level) and where the food being packaged requires control of *Clostridium botulinum* or *Listeria monocytogenes* in the final packaged form. Reduced oxygen packaging includes, but is not limited to, vacuum packaging, cook chill packaging, and *sous vide* processing.

[(s)] (bb) Sanitization means effective bactericidal treatment by heat or chemical means which destroys pathogens on surfaces treated. Acceptable sanitization methods are:

- (1) immersion for at least one-half minute in clean hot water at a temperature of not less than 170 degrees Fahrenheit (76.7 degrees Celsius);
- (2) immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);
- (3) immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having pH not higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);
- (4) immersion in a clean solution containing any other food grade chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as hypochlorite which has been held at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius) for one minute;
- (5) treatment with culinary-quality steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or
- (6) swabbing fixed equipment with a solution of at least twice the strength required for that sanitizing solution when used for immersion.

[(t)] (cc) Single service articles means cups, containers, lids, or closures, plates, knives, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, toothpicks and all similar articles which are intended by the manufacturer for single eating and drinking usage and generally recognized by the public as items to be discarded after one usage.

[(dd)] (dd) *Sous vide* processing is a type of reduced oxygen packaging in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, and either served or rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

[(u)] (ee) Stand means a movable, portable or collapsible structure, framework, device, container, or other contrivance, other than a vehicle or pushcart, used for displaying, keeping or storing any food.

[(v)] (ff) Temporary food service establishment means any food service establishment which operates at a fixed location for a temporary period of time, not to exceed 14 consecutive days, in connection with a single event or celebration such as a fair, carnival, circus, public exhibition, advertising campaign or business promotion, religious or fraternal organization function or transitory gathering. In addition to the provisions of this Article, a temporary food service establishment shall be operated at all times in compliance with the provisions of Article 88 and all applicable provisions of this Code.

[(w)] (gg) Utensil means any tableware, such as knives, forks, spoons, glasses, cups and the like, and kitchenware, implements or containers used for storage, preparation, transfer, conveyance or service of food.

[(x)] (hh) Wholesale food establishment means any establishment which sells food or which manufactures food for other than retail sale directly to the consumer.

Notes: Section 81.03 was amended by resolution on XXX,

adding definitions for various terms incorporated into new provisions of this Article, including reduced oxygen packaging processes, and HACCP plans, based on the definitions of these terms in §1-201.10 of the FDA 2005 Food Code, and relettering existing subdivisions.

Notes: This section was further amended by resolution on March 6, 2008 to add definitions related to cook chill and *sous vide* processing and preparation of a Hazard Analysis Critical Control Point plan, and existing definitions were relettered.

RESOLVED, that §81.06 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as adopted by resolution on the seventh of June, two thousand five, be and the same hereby is amended by relettering the current provision as subdivision (a), and by adding new subdivisions (b) and (c), to be printed together with explanatory notes, as follows:

§81.06 Prevention of imminent health hazards.

(a) Additional requirements. Whenever necessary to prevent the occurrence or recurrence of imminent health hazards the Department may, in specific instances, impose additional requirements on an establishment. The Department shall describe in writing the terms and conditions of operation that have been imposed, the reasons therefore, shall provide such document to the permit holder, and shall maintain such document with the records of the Department.

(b) Hazard Analysis and Critical Control Point ("HACCP") plans.

(1) To prevent the occurrence of an imminent health hazard, a HACCP plan shall be prepared by a food service establishment or non-retail processing establishment whenever such establishment prepares, processes, cooks, holds and stores foods in a manner other than as specified in this Code or other applicable law.

(2) Whenever a HACCP plan is required, such plan shall be submitted to and approved by the Department prior to its implementation, and shall thereafter be maintained at the establishment and be made available to Department inspectors for review upon request.

(3) A HACCP plan shall include the following:

(i) Types and categories of foods to be addressed by the plan.

(ii) Food flow diagram or plan identifying critical control points, specifying ingredients, materials and equipment used in processing, and addressing the food safety concerns identified at each such point.

(iii) Standard operating procedures for implementing the plan, including clearly identifying each critical control point; method and frequency of monitoring and controlling each critical control point by a foodworker trained in HACCP plan implementation who is designated by the person in charge of food operations; and the method and frequency whereby the person in charge of food operations routinely verifies that the foodworker is following standard operating procedures and the action to be taken by the responsible foodworker if the critical limits for each critical control point are not met.

(iv) The critical limits for each critical control point, and the method and frequency for monitoring and controlling critical limits at each critical control point by the designated foodworker.

(4) Records/logs shall be maintained by the permittee for at least 90 days after consumption of the food prepared pursuant to the HACCP plan to demonstrate that the HACCP plan has been properly implemented.

(c) Prior approval required for certain foods and processing. Prior approval by the Department of a food service establishment's HACCP plan shall be obtained prior to processing any food items by means of reduced oxygen packaging methods, curing and smoking food products on the premises of the food service establishment.

Notes: Section 81.06 was amended by resolution adopted on March 6, 2008 relettering the existing provision as subdivision (a), adding a new subdivision (b) to incorporate requirements for developing and implementing hazard analysis critical control point ("HACCP") plans when such plans are required to prevent the occurrence of imminent health hazards, and a new subdivision (c) specifying certain foods and processes that always require HACCP plans. These requirements are substantially the same as those in the FDA 2005 Food Code.

RESOLVED, that Article 81 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as amended by resolution adopted on the fifth of December, two thousand and six, be, and the same hereby is further amended, to add a new section 81.12, to be printed with explanatory notes, as follows:

§81.12 Reduced oxygen packaging; cook chill and *sous vide* processing.

(a) Scope and applicability. A food service establishment may package and process food using reduced oxygen packaging ("ROP"), as defined in §81.03 of this Code, in accordance with this section, provided that the food being processed shall have at least two controls in place, including but not limited to time, temperature, Aw or pH, to prevent the growth and formation of *C. botulinum* or *Listeria monocytogenes*.

(b) Approved Hazard Analysis and Critical Control Point (HACCP) plan required. A food service establishment shall not utilize ROP processes without obtaining prior Department approval of a Hazard Analysis and Critical Control Point (HACCP) plan. The establishment shall submit to the Department its HACCP plan that conforms to §81.06(c) of this Article for each food item or food category it intends to prepare using a ROP processing technique.

(c) Food safety. Foods processed by ROP shall be prepared and consumed on the premises of the food service establishment, or off premises if the preparation site is properly permitted and wholly owned and operated by the

same business entity as the food service establishment, and no ROP food products shall be sold or distributed to any other business entities or consumers.

(d) Specific requirements. Foods shall be:

(1) Placed in an ROP package or ROP bag before cooking, or placed in a package or bag immediately after cooking and before reaching an internal temperature below 140 degrees Fahrenheit (60 degrees Celsius).

(2) Cooked immediately to require minimum internal temperatures specified in §81.09 of this Article or held at a specified temperature and time approved by the Department in the HACCP Plan. However, if such food has an A_w of 0.91 or less; has a pH of 4.6 or less; is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture using substances specified in 9 CFR 424.21, or successor regulation, and is received in an intact package; or is a food with high level of competing organisms such as raw meat or raw poultry, it may be held at 38 degrees Fahrenheit (2.2 degrees Celsius) without being cooked for no more than 14 calendar days, and shall be discarded thereafter.

(3) Protected from contamination after cooking as specified in §81.07 of this Article.

(4) Properly cooled to an internal temperature of 38 degrees Fahrenheit (3.3 degrees Celsius) or below in the ROP package within two hours of cooking; further cooled to an internal temperature of 34 degrees Fahrenheit (1.1 degrees Celsius) or less within six hours of reaching 38 degrees Fahrenheit (3.3 degrees Celsius); held at an internal temperature of 34 degrees Fahrenheit (1.1 degrees Celsius) and consumed or discarded within 30 days after the date of preparation. However, if cooled to an internal food temperature of 38 degrees Fahrenheit (3.3 degrees Celsius), the food may be held at an internal temperature of 38 degrees Fahrenheit (3.3 degrees Celsius) or less for no more than 72 hours before consumption, and if not consumed, shall be discarded.

(5) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily.

(6) Labeled with the product name, date packed, and dates to be discarded, and stored in accordance with a "First-in" "First out" storage rotation procedure, in accordance with the HACCP plan.

(e) Aquatic animals. Except for aquatic animals that are frozen before, during, and after packaging, a food establishment may not package aquatic animals using an ROP method.

(f) Cheese. A food service establishment may package cheese using an ROP method provided that it limits the cheeses packaged to those commercially manufactured in a food processing plant with no ingredients added by the food establishment, and provided the cheese meets the United States Food and Drug Administration standards of identity specified in 21 CFR §133.150 ("Hard cheeses"); 21 CFR §133.169 ("Pasteurized process cheese"); and 21 CFR §133.187 ("Semisoft cheeses"), or successor regulations. The "use by" date of cheese shall not exceed 30 days after packaging, or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(g) Equipment. All equipment used in ROP processing shall be approved by the Department and shall comply with all specifications for equipment in this Article, and the following additional criteria:

(1) Thermometers used in cook chill or *sous vide* cooking methods shall be food grade thermocouple type, equipped with probe, with a temperature range of -40 degrees Fahrenheit (-40 degrees Celsius) to 212 degrees Fahrenheit (100 degrees Celsius), and shall not contain glass or any parts that can easily fall into food. Thermometers shall be calibrated before each batch process, and at other times in accordance with manufacturers' instructions and whenever calibration could have been compromised by extreme temperatures or after being accidentally dropped.

(2) ROP products that are transported off site to a satellite location of the same business entity shall be kept in containers equipped with verifiable monitoring devices enabling monitoring of time and temperature and kept at temperatures no higher than 38 degrees Fahrenheit (3.3 Celsius) during transportation. Such products or containers shall be labeled with the product name, date packaged, and discard date.

(3) *Sous vide* processed foods shall be cooked in an approved water immersion unit or combination oven (an oven combining convection and added moisture) that can be equipped with an electronic system that continuously monitors time and temperature, and is visually examined for proper operation twice daily. At least one item of each type of food of similar size cooked in a water immersion or combination oven shall have its internal temperature monitored to determine if the food is being cooked to the temperatures required by §81.09 of this Article.

(4) *Sous vide* cooking equipment shall include a thermal bath and immersion circulator or a combination oven. The thermal bath and immersion circulator shall be a commercial type able to heat water to precise temperatures. The immersion circulator or combination oven shall be equipped with a temperature controller, temperature sensor, heater, and circulating element, and continuous temperature recorder and display accurate to one tenth of a degree, capable of recording temperatures between 32 degrees Fahrenheit (0 degrees Celsius) and 212 degrees Fahrenheit (100 degrees Celsius), and large enough to enable complete immersion of the largest piece of food.

(5) ROP processors shall utilize a chamber type vacuum packaging machine with a pump able to achieve a flow rate of 10m³ per hour and capable of heat sealing the food storage bag to maintain the vacuum, or other commercial grade vacuum packaging equipment as approved by the Department in the establishment's HACCP plan or as determined on inspection.

(6) Cook chill processors shall utilize an ice bath or a NSF approved blast or tumble chiller that can lower temperatures of food from 185 degrees Fahrenheit (85 degrees Celsius) to 32-38 degrees Fahrenheit (0-3.3 degrees Celsius) within two hours, and is equipped with a factory installed temperature

monitoring device and alarm system. If a tumble chiller is used, the associated ice builder must meet the sanitary requirements of this Article.

(7) Cook chill processors shall utilize a commercial type stainless steel NSF approved cook tank or steam kettle with an agitation mechanism, and factory installed temperature monitoring devices, or other cooking equipment approved by the Department in the establishment's HACCP plan or as determined on inspection.

(8) All cook chill bags (casings) shall be made of food grade plastic, able to withstand temperatures of 212 degrees Fahrenheit (100 degrees Celsius) to -20 degrees Fahrenheit (-28.8 degrees Celsius) and rapid temperature change from 185 degrees Fahrenheit (85 degrees Celsius) to 34 degrees Fahrenheit or below (1 degree Celsius).

Notes: Section 81.12 was added by resolution adopted on March 6, 2008 to establish procedures for food processing using reduced oxygen packaging, cook chill and *sous vide* methods.

RESOLVED, that the list of Section Headings in Article 81 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as amended by resolution adopted on the fifth of December, two thousand six, be, and the same hereby is, amended, to be printed together with explanatory notes, as follows:

ARTICLE 81

FOOD PREPARATION AND FOOD ESTABLISHMENTS

* * *

§81.11 Food; disposition if unfit for human consumption; re-service of food prohibited.

§81.12 Reduced oxygen packaging; cook chill and *sous vide* processing.

§81.13 Foodworkers; health; clothing

* * *

Notes: Section 81.12 was added by resolution adopted on March 6, 2008 to establish procedures for preparing foods by reduced oxygen packaging methods, including cook chill and *sous vide* processing.

• m13

BOARD OF HEALTH

NOTICE OF INTENTION TO ADD A NEW ARTICLE 43 TO 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, notice is hereby given of the proposed intention to add a new Article 43 (School-Based Programs for Children Ages Three through Five) to the New York City Health Code (the "Health Code").

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:00 A.M. TO 12:00 P.M. ON THURSDAY, APRIL 17, 2008 IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. WEDNESDAY, APRIL 16, 2008. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL BUSINESS HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY APRIL 3, 2008. REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., THURSDAY, APRIL 17, 2008. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The New York City Department of Health and Mental Hygiene (the Department or DOHMH) is required by law to protect and promote the health of all New Yorkers. The Bureau of Child Care, in the Department's Division of Environmental Health, enforces Article 47 ("Day Care Services") of the Health Code, which regulates public and private group day care services operating within New York City. At its meeting in October, 2007, the Board of Health approved for publication and public comment a Notice of Intention to repeal and reenact Article 47 ("Child Care Services"). That resolution excludes from the definition of "child care service" any school based instructional programs for children ages three through five, regardless of the kind of school offering such programs.

The revised Article 47 is scheduled to go into effect on September 1, 2008. In 1995, school-based kindergartens (for children who are or who will be age five by December 31 of the school year) operated by the Board of Education were specifically exempted from the definition of "day care service" and were at the same time included in the regulatory scope of Article 45 ("General Provisions Governing Schools and Children's Institutions") of the Health Code. With the exception of Board (now Department) of Education kindergartens, Article 47 has been applicable to all day care and instructional programs for children under six in all non public schools. Religious organizations' day care services, which are not required to hold a permit under Article 47 have nevertheless been subject to almost all other Article 47 requirements except for staff criminal justice and child abuse screening.

In the next two years, both Article 45 and Article 49 ("Schools") of the Health Code which together regulate schools operating in New York City are scheduled for substantive revision as part of a project to modernize the entire Health Code. However, on September 1, 2008, the effective date of the repealed and reenacted Article 47, and until Articles 45 and 49's substantive revisions are adopted by the Board, a gap would exist in regulations covering the health and safety of school children ages three through five. Accordingly, the Department is proposing that the Board approve for publication and public comment a resolution that incorporates in a new Article 43 supplementary provisions applicable to schools providing programs for this age group. Child care programs for children younger than three would continue to be considered "child care services" and will require Article 47 permits regardless of whether they are located within or are part of a school.

ARTICLE 43 PROVISIONS

Article 43 contains many of the same provisions for health and safety that are applicable to child care services providing care to the same age groups regulated in accordance with repealed and reenacted Article 47, with some exceptions. The Department recognizes that all public and many non-public schools are subject to and regulated by the State and federal law, and we have no intention of duplicating and imposing a further layer of regulation where there are applicable similar laws and rules already in place. For example, some federal funding programs require school safety plans, particularly for evacuations in emergencies. If a school has a comprehensive safety plan, Article 43 will not require the person in charge of the school to duplicate or amend it. If school personnel are already required by any applicable law to be fingerprinted and undergo criminal justice record screening and review, as are all staff of public schools in this state, this Article will not require further fingerprinting or screening. The Article will not duplicate, but will supplement, requirements for child health in the regulations of the Chancellor of the City Department of Education. The specific sections proposed are as follows:

§43.01 Definitions. These definitions are intended to clarify terms used in the Article.

§43.03 Scope and applicability. The Article is intended to supplement other provisions of the Health Code already applicable to schools, with particular reference to children ages three through five.

§43.05 Notice to the Department. The Department does not propose to issue permits to, license or register schools. However, to respond to complaints it is necessary to know of the existence of schools that provide classes for children in these age groups. Accordingly, we are requiring that a notice be filed with the Department on or before the effective date of the Article, and that notices thereafter be filed whenever new schools are established, or contact information for existing schools changes.

§43.07 Written safety plan. These provisions are essentially the same as those in Article 47, but exempt from this requirement schools that have already adopted the same or similar plans.

§43.09 Staff supervision. The Department is proposing that ratios of staff to children in Article 47 should also apply to school-based classes for the same age groups. To meet the ratios, the proposal would allow that staff providing supervision may include parents or other volunteers. This section also requires that staff maintain direct line of sight observation of each child.

§43.11 Health; staff. This provision is essentially the same as in Article 47.

§43.13 Criminal justice and child abuse screening of current and prospective personnel and §43.15 Corrective action plan. These provisions are essentially the same as in Article 47 (see, §§47.19 and 47.21). However, any school that is already required to fingerprint staff under any law would be exempt from these requirements. Corrective action plans would be maintained at the school by the person in charge, and be made available for Department inspection upon request.

§43.17 Health; child admission criteria; §43.19 Health; daily requirements; communicable diseases, and §43.21 Health; emergencies. These provisions are essentially the same as requirements in Article 47 (see, §§ 47.25, 47.27, 47.29, 47.31, 47.33).

§43.23 Lead-based paint restricted. This requirement is the same as current §45.12, a provision that will remain in this Article, but will be repealed in the substantive revision and modernization of Health Code provisions applicable to schools generally. Lead surveys are required annually for schools with interior surfaces that have lead-based paint, or paint of unknown lead content.

§43.24 Modification of provisions. This is a standard provision of most articles of the Health Code and essentially the same as §47.75 in Article 47.

STATEMENT PURSUANT TO CHARTER §1043

The proposal was not included in the Department's Regulatory Agenda because the need for it was not known when the Regulatory Agenda was published.

The proposal is as follows:

Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that 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 add a new Article 43 ("School-Based Programs for Children Ages Three through Five"), to be printed, together with introductory notes as follows:

Article 43

School-Based Programs for Children Ages Three through Five

§43.01 Definitions.

§43.03 Scope and applicability.

§43.05. Notice to the Department.

§43.07 Written safety plan.

§43.09 Staff supervision.

§43.11 Health; staff.

§43.13 Criminal justice and child abuse screening of current and prospective personnel.

§43.15 Corrective action plan.

§43.17 Health; child admission criteria.

§43.19 Health; daily requirements; communicable diseases.

§43.21 Health; emergencies.

§43.23 Lead-based paint restricted.

§43.25 Modification of provisions.

Introductory Notes. Article 43 was adopted by the Board of Health on xxx, to be effective September 1, 2008, when the repealed and reenacted Article 47 ("Child Care Services") of the Health Code goes into effect. Article 43 establishes regulatory standards for school-based instructional programs for children ages three through five that were previously regulated under Article 47 ("Day Care Services") and that, with the exception of City Department of Education programs and programs in schools operated by religious organizations, were required to hold permits as day care services. Article 43 is intended to supplement regulations in the Health Code that currently apply to all schools.

§ 43.01. Definitions. When used in this article:

(a) *School* shall mean a public, non-public, chartered or other school or school facility recognized under the State Education Law and/or approved by the State Education Department to provide a compulsory education for children in grades one through twelve, and where more than six children ages three through five are provided instruction, but shall not include a child care service defined in Article 47 of this Code.

(b) *Elementary school* shall mean any school approved by the State Education Department to provide programs of instruction that meet State requirements for a compulsory education in the elementary grades, but does not include secondary school grades, as defined in this Article.

(c) *Kindergarten and pre-kindergarten* shall mean school-based programs of instruction for children ages five years and younger.

(d) *Secondary school* shall mean a school providing instruction in the sixth through twelfth grades, and shall include, but not be limited to, schools designated as junior high schools, intermediate schools, middle schools and high schools.

(e) *Person in charge of a school* shall mean a principal, headmaster, director or other person designated by the governing body of a school or school system to manage school operations, programs and implementation of the governing body's policies, and who is responsible for the health and safety of staff and children attending such school.

(f) *Three years of age.* A child attending elementary school shall be deemed to be three years of age if the child's third birthday occurs or will occur on or before December 31st of the school year.

(g) *Three years of age.* A child attending elementary school shall be deemed to be three years of age if the child's third birthday occurs or will occur on or before December 31st of the school year.

(h) *Three years of age.* A child attending elementary school shall be deemed to be three years of age if the child's third birthday occurs or will occur on or before December 31st of the school year.

(i) *Three years of age.* A child attending elementary school shall be deemed to be three years of age if the child's third birthday occurs or will occur on or before December 31st of the school year.

§ 43.03. Scope and applicability. The provisions of this Article shall apply to pre-kindergarten and kindergarten programs of instruction provided for children ages three through five that are located within a school, or that are part of a school, and shall be in addition to requirements of other provisions of this Code applicable to schools. For the purposes of this Article, being "part of a school" shall mean that there

is identical ownership, operation, management and control of kindergarten and pre-kindergarten classes for children ages three through five and all other classes provided by the school. All educational or other programs, regardless of whether they are located within, or are part of an elementary or other school, that are intended for and attended by children younger than three years of age shall be deemed child care services and the person in charge of a school shall not provide care for such children unless such programs have been issued a permit by the Commissioner pursuant to Article 47 of this Code.

§43.05. Notice to the Department.

On or before the effective date of this Article, the person in charge of a school that provides classes for children ages three through five shall file a notice with the Department, on a form provided or approved by the Department. The notice shall provide the names, addresses and contact information for the person or entity that own and operate the school. Any person or entity that operates more than one school may submit one notice that lists the required contact information for each school. Notices shall be filed whenever there has been a change in the location of, or contact information for, a school providing classes for children ages three through five, and whenever a new school providing such classes is established.

§43.07. Written safety plan.

(a) *Safety plan required.* Except where a school has established a written safety plan in compliance with applicable State or federal law, every school subject to this Article shall develop, review annually and update, in accordance with changed circumstances, conditions or activities, a written safety plan. The safety plan shall be implemented by the person in charge of a school, used in training staff and volunteers, provided to parents on request, and kept in an accessible location at the school where it may be used by staff for reference, and reviewed by Department inspectors.

(b) *Scope and content.* The written safety plan shall establish policies and procedures for safe operation, including teaching and other staff duties, facility operation and maintenance, fire safety, general and activity-specific safety, emergency management, staff and child health and medical requirements, staff training and parent/child orientation. The written safety plan shall consist of, at a minimum, a table of contents and the following components:

(1) *Staff:* organization chart, job descriptions, responsibilities and supervisory responsibilities.

(2) *Program operation and maintenance:* including, but not limited to, schedules and designated staff for facility inspection, cleaning and maintenance, schedule for boiler/furnace and HVAC system maintenance, maintenance of adequate water pressure, protection of the potable water supply from submerged inlets and cross-connections in the plumbing system, schedule for the annual lead paint survey, inspection of window guards, indoor and outdoor equipment inspection and replacement schedule, evaluation of injury prevention procedures, equipment and structures, identification of procedures for transportation vehicle maintenance, food protection procedures during receipt, storage and preparation, identity of individuals certified in food protection, schedule for sanitization procedures of food prep areas and identification of approved food sources.

(3) *Fire safety:* evacuation of buildings and property, assembly, supervision, and accounting for children and staff; fire prevention; coordination with local fire officials; fire alarm and detection systems and their operation, maintenance, and routine testing; type, location and maintenance of fire extinguishers; inspection and maintenance of exits; required fire drills and log; and electrical safety.

(4) *Health care plan:* statement of policies and procedures to show how the health and medical requirements of this Code shall be implemented for maintaining children's medical histories; addressing individual children's restrictions on activities, policies for medication administration and special needs, if any; initial health screening for children and staff; daily health surveillance of children; procedures for providing basic first aid, handling and reporting medical emergencies and outbreaks; procedures for response to allegations of child abuse; identification of and provisions for medical, nursing and emergency medical services addressing special individual needs; names, qualifications and duties of staff certified in first aid and CPR; description of separation facilities, supervision and other procedures for ill children to be provided by the school until parent arrives; storage of medications; location and use of first aid and CPR supplies; maintenance of a medical log; description of universal precautions for blood borne pathogens; reporting of child and staff illness and injuries; and sanitary practices.

(5) *Corrective action plans:* actions to be taken to protect children on receipt of reports of alleged and confirmed teaching and other staff criminal justice or child abuse histories.

(6) *General and activity specific safety:* description of child supervision, including arrangements for general supervision; supervision during and between on-site activities; recreational and trip supervision for specific outdoor and off-site activities; supervision during sleeping and rest hours; transportation; and in emergencies.

(7) *Staff training:* new employee orientation; training curricula; procedures for child supervision and discipline; child abuse recognition and reporting; provision of first aid and emergency medical assistance; reporting of child injury and illness; fire safety and fire drills; child and staff evacuation procedures; activity specific training for assigned activities; and process to document attendance at staff training.

(8) *Emergency evacuation:* age-specific plans for removal of children from the premises for each shift and program where care is provided. Primary emphasis shall be placed on the immediate evacuation of children in premises which are not fireproof. Emergency evacuation procedures, implementing Fire Department recommendations, shall be posted in conspicuous places throughout the facility. The emergency evacuation plan shall include the following:

- (A) how children and staff will be made aware of the emergency;
- (B) primary and secondary routes of egress;
- (C) methods of evacuation, including where children and staff will meet after evacuating the building, and how attendance will be taken;
- (D) roles of the staff and chain of command;
- (E) notification of authorities and the children's parents.

(9) *Parent / child orientation:* orientation curriculum outline; tour of premises; reporting and management of illnesses, injuries and other incidents; evacuation plan; lost child plan; lightning plan; fire safety and fire drills; evacuation procedures; activity specific training for assigned activities; trips (if provided).

§ 43.09. Staff supervision.

(a) *Direct supervision.* Line of sight supervision by adult teaching staff shall be maintained for all children, and no child or group of children shall be left unsupervised at any time.

(b) *Minimum staff to children ratios.* The minimum ratios of staff to children shall be as follows:

AGE OF CHILDREN	STAFF/CHILD RATIO
3 years to under 4	1:10
4 years to under 5	1:12
5 years to under 6	1:15

(c) *Staff.* Parents and other volunteers may be counted as staff with respect to the above ratios.

§43.11. Health; staff.

(a) *Staff to be excluded.* The person in charge of a school shall exclude any staff person from work in accordance with Article 11 of this Code, if such staff person reports having an illness or symptoms of a communicable disease reportable pursuant to Article 11 of this Code. Such staff person shall not be permitted to return to the school without a written statement of recovery from a health care provider if the staff person was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the staff person was a case of any other communicable disease reportable pursuant to Article 11.

(b) *Physical examination certificates.* No educational director, teacher, substitute, volunteer worker, office worker, kitchen worker, maintenance worker or other staff member who regularly associates with children shall be permitted to work in a service unless such person is healthy and capable of carrying out the responsibilities of the job. Prior to commencing work, all such staff and volunteers shall present a certificate from a licensed health care provider certifying that, on the basis of medical history and physical examination, such staff member or volunteer is physically and mentally able to perform assigned duties. Such certificate shall be submitted every two (2) years thereafter as a condition of employment. Certificates of required physical examinations and other medical or personal health information about staff shall be kept on file at the place of employment, shall be confidential, and shall be kept separate from all other personnel or employment records.

(c) *Staff immunizations.* Health care providers shall certify that each staff or volunteer has been immunized against measles; mumps; rubella; varicella (chicken pox); and tetanus and diphtheria (Td) or tetanus, diphtheria and acellular pertussis (Tdap) in accordance with recommendations of the CDC Advisory Committee on Immunization Practices. Persons born on or before December 31, 1956 who have a history of measles or mumps disease shall not require such vaccines. A history of having health care provider documented varicella, measles or mumps disease shall be accepted in lieu of varicella, measles or mumps vaccines. A history of having rubella disease shall not be substituted for the rubella vaccine. A laboratory test demonstrating detectable varicella, measles, mumps, or rubella antibodies shall also be accepted in lieu of varicella, measles, mumps and rubella vaccine. An employee may be exempted from this immunization requirement for medical contraindications upon submission of appropriate documentation from a licensed physician.

(d) *Test for tuberculosis infection.* The Department may require testing for tuberculosis at any time of any persons in a school when such testing is deemed necessary for epidemiological investigation.

§43.13. Criminal justice and child abuse screening of current and prospective personnel.

(a) *Applicability.* These requirements for child abuse and criminal justice screening shall apply to any person who has, will have, or has the potential for unsupervised contact with children and shall include, but not be limited to: individual owners, persons in charge of a school, partners, members and shareholders of small or membership corporations who are the owners or operators of the school; educational, administrative and maintenance employees; school bus drivers; volunteers, including parent volunteers and student teachers, trainees or observers; and consultants and other persons employed by persons, corporations, partnerships, associations or other entities providing services to the school. Employees of independent contractors providing maintenance, construction, food or other services to a school shall be screened in accordance with this section, or shall be prohibited from working in any area or facility occupied by the school unless such person is working under the direct supervision and within the line of sight of a screened employee of the school. Schools that are currently required by State or federal law to screen employees for criminal justice and child abuse and maltreatment records shall not be required to comply with the provisions of this section and §43.15 of this Article.

(b) *Pre-employment verification.* A person in charge of a school shall obtain and verify credentials, including certificates and educational transcripts, as applicable, and references prior to employment of all persons listed in subdivision (a) of this section.

(c) *Screening.* A person in charge of a school shall arrange for (1) fingerprinting, (2) review of records of criminal convictions and pending criminal actions, and (3) inquiry of the Statewide Central Register of Child Abuse and Maltreatment (hereinafter "SCR") for all prospective employees, and other persons listed in subdivision (a), and for current employees shall repeat the inquiry to the SCR every two years.

(d) *Individual consent.* A person in charge of a school shall obtain written consent from each such person for fingerprinting and criminal record review, and shall provide written notice to such persons that there will be an inquiry submitted to the SCR, pursuant to Social Services Law §424-a (1), or successor law, and that copies of the reports received by the person in charge of a school as a result of such review and screening may be provided to the Department.

(e) *Refusal to consent.* A person in charge of a school shall not hire or retain as an employee, or otherwise allow on its premises any person who is required to have, but refuses to consent to, fingerprinting and criminal record review. The person in charge of a school shall not hire or retain any person who has a criminal conviction record, subject to and consistent with Article 23-A of the New York State Correction Law, except as provided in subdivision (g) of this section.

(f) *Employee to notify person in charge of a school.* Employees required to have criminal justice and child abuse screening shall notify the person in charge of a school within 24 hours when such employees are arrested, or when such employees receive a notice that an allegation of child abuse or maltreatment has been filed concerning such employees. (g) *Actions required.* Consistent with Article 23-A of the New York State Correction Law, and except where the person in charge of a school has prepared and implemented a corrective action plan in accordance with §43.15 of this Code:

(1) A person in charge of a school shall not hire, retain, utilize or contract for the services of a person who:

- (A) Has been convicted of a felony at any time, or who has been convicted of a misdemeanor within the preceding ten years; or
- (B) Has been arrested and charged with any felony or misdemeanor, and where there has been no disposition of the criminal matter; or
- (C) Is the subject of an indicated child abuse and maltreatment report, in accordance with a determination made after a fair hearing pursuant to §422(8) of the Social Services Law.

(2) A person in charge of a school shall not dismiss or permanently deny employment to current and prospective staff solely because they are defendants in pending criminal actions, but may suspend current employees or defer employment decisions on prospective employees until disposition of the pending criminal action.

(3) A person in charge of a school shall prohibit unsupervised contact with children by any person who has not received screening clearance for criminal convictions or by the SCR, or is listed in paragraph (1) of this subdivision. (i) *References.* For all prospective staff, the person in charge of a school shall make a written inquiry to an applicant's three most recent employers and shall obtain three references prior to hiring. If prospective staff have not had three prior employers, references may be accepted from persons who are not family members and who state, in writing, that the applicant is well-known to them as a student, volunteer, or other stated capacity, and that the applicant is suited by character, fitness, and ability to work with children.

§ 43.15. Corrective action plan.

(a) *Corrective action plan required.* A corrective action plan shall be prepared by the person in charge of a school that is subject to this Article in the following instances:

(1) Prior to the person in charge of a school hiring, retaining or utilizing the services of persons listed in subdivision (a) of §43.13 of this Article when such persons are reported as having:

- (A) A criminal conviction, as specified in §43.13 (g); or
- (B) Pending criminal charges, as specified in §43.13(g); or
- (C) SCR reported incidents of child abuse or maltreatment which have been indicated or which are under investigation.

(2) When a death or serious injury of a child has occurred while in the care of a person in charge of a school, or in the care of any owner, director, employee, or volunteer of the person in charge of a school or while in the care of any agent of the person in charge of a school, or if a related criminal or civil action has already been adjudicated or adjudication is pending in any jurisdiction with respect to such death or serious injury.

(3) When required by the Department, if the person in charge of a school has been cited for violations or conditions deemed imminent health hazards, to demonstrate that the person in charge of a school is able and willing to correct such violations or conditions.

(b) *Contents of corrective action plan.* A corrective action plan shall assess the risk to children in the school, and shall clearly and convincingly demonstrate that such person presents no danger to any child, or other persons. The plan shall include, but not be limited to, consideration of the following factors:

(1) Seriousness of the incident(s) or crimes cited in the report(s);

(2) Seriousness and extent of injuries, if any, sustained by the child(ren) named or referred to in the indicated report(s) or disclosed upon investigation of the criminal charge;

(3) Any detrimental or harmful effect on child(ren) as a result of the person's actions or inactions and relevant events and circumstances surrounding these actions and inactions as these relate to any report(s);

(4) The age of the person and child at the time of the incident(s);

(5) Time elapsed since the most recent incident(s);

(6) Number of indicated incident(s) or crimes; where more than one incident or crime, an evaluation of each separately, and an assessment of the total effect of all indicated incidents on risks to children currently under care;

(7) Duties of the person under consideration; degree of supervision, interaction, opportunity to be with children on regular, substantial basis and if position may involve being alone with children or will always involve presence of other adults;

(8) Information provided by person, re: rehabilitation, i.e., showing positive, successful efforts to correct the problems resulting in the indicated child abuse or criminal report so that children in care will not be in danger, demonstrated by no repeated incidents or showing that the person has undergone successful professional treatment;

(9) Employment or practice in a child care field without incident involving injuries to children;

(10) Extra weight and scrutiny shall be accorded child abuse and maltreatment reports involving fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive; and crimes involving homicides, sexual offenses (misconduct, rape, sodomy, abuse); kidnapping; felony possession or sale of a controlled substance; felony promotion of prostitution; obscenity offenses; disseminating indecent material involving, or to, minors; incest; abandonment of a child; endangering welfare of a child; promoting sexual performance by a child; felony weapon possession; assault; reckless endangerment; coercion; burglary; arson and robbery; driving while intoxicated or under the influence of alcohol if the person will have responsibilities for unsupervised contact or driving motor vehicles at the school.

(c) Available for Department inspection. Corrective action plans shall be maintained by the person in charge of a school and made available to the Department for inspection upon request.

§43.17 Health; child admission criteria.

(a) Admission requirements.

(1) Physical examinations and screening. Prior to initial admission to a school, all children shall receive a complete age appropriate medical examination, including but not limited to a history, physical examination, developmental assessment, nutritional evaluation, lead poisoning screening, and, if indicated, screening tests for dental health, tuberculosis, vision, and anemia.

(2) Immunizations. All children shall be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B and haemophilus influenzae type b (Hib), in accordance with New York Public Health Law §2164, or successor law, and shall have such additional immunizations as the Department may require. Exemption from specific immunizations may be permitted for medical contraindications or on religious grounds, in accordance with Public Health Law §2164.

(b) Form with results of examination. Health care providers examining children pursuant to this section shall furnish person in charge of a school with a signed statement, in a form provided or approved by the Department, containing a summary of the results of examination, past medical history, and, if a disease or condition which affects the child's ability to participate in program activities is found, a summary of the evaluation and findings associated with that condition. The examination form shall include the health care provider's recommendations for exclusion or treatment of the child, modifications of activities, and plans for any necessary health supervision.

(c) Periodic examinations. Each child shall have periodic medical examinations at 3, 4 and 5 years of age.

(d) Medical records to be maintained. A person in charge of a school shall maintain an individual medical record file for each child. This file shall include:

(1) A cumulative record consisting of a form provided or approved by the Department, including: child's name, address, date of admission and date of birth; parents' names, home and business addresses and telephone numbers; names and telephone contact information of person(s) to contact in case of emergency, including name, address and telephone number of the child's primary health care provider; pertinent family medical history, and child's history of allergies, medical illnesses, special health problems and medications, immunization records; and parental consent for emergency treatment.

(2) Copies of all individual health records required by this Code, including new admission and periodic medical examination forms, parents' and health care provider notes regarding episodic illnesses, and a history of all illnesses, accidents, and other health data.

(e) Records to be confidential. All records required by this section shall be maintained as confidential records and shall not be made available for inspection or copying by any persons other than parents, other persons who present a written authorization from a parent, or authorized staff of the Department. When a child transfers from one school to another, a copy of the child's student health record shall be forwarded to the person charged with maintaining student health records at the child's new school.

(f) Department property. If the Department assigns a health care provider to a school, all child health related records shall be deemed the property of the Department.

§43.19. Health; daily requirements; communicable diseases.

(a) Daily attendance record. A daily attendance record shall be kept in a form provided or approved by the Department.

(b) Daily health inspections. A health inspection of each child shall be made daily by teachers who are familiar with such child and trained to recognize signs or symptoms of illnesses in accordance with guidelines or training provided or approved by the Department.

(c) Management of ill children and reporting.

(1) An area shall be provided for separating ill children under direct adult supervision until parents remove children from the school.

(2) All health care provider diagnoses pursuant to Article 11 of this Code shall be reported to the Department by the person in charge of a school.

(3) The Department shall be notified by the person in charge of a school within 24 hours of the occurrence of a death or serious injury to a child while in the care of the school.

(4) When any child is unexpectedly absent from the school for three consecutive days, the person in charge of a school shall telephone the child's parent to determine the cause of absence and shall maintain a record of the telephone call and the information obtained in the log required by §43.21 (d) of this Code.

(d) Parent reports of absences. At the beginning of each school year, the person in charge of a school shall notify parents that they are required to report absences in accordance with this subdivision. Parents shall report to the person in charge of a school within 24 hours any absence for: chicken pox, conjunctivitis, diarrhea, diphtheria, food poisoning, hepatitis, haemophilus influenzae type b infection, impetigo, measles, meningitis (all types), meningococcal disease, mumps, Methicillin resistant staphylococcus aureus (MRSA), pertussis (whooping cough), poliomyelitis, rubella (German measles), salmonella, scarlet fever, tuberculosis, or any other disease or condition which may be a danger to the health of other children. Such disease or condition shall not include acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.

(e) Reports of vaccine preventable illnesses. The person in charge of a school shall report to the Department by telephone, within 24 hours, any child who has any vaccine preventable illness, or meningitis or tuberculosis, or if there is any outbreak or unusual occurrence of any disease or condition at the facility.

(f) Exclusions pursuant to Article 11 of this Code. The person in charge of a school shall exclude a child who is a case, contact, or carrier of a communicable disease if the child is required to be isolated or excluded by Article 11 of this Code. Such child shall not be permitted to return to the school without a written statement of recovery from a health care provider if the child was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the child was a case, carrier, or contact of any other communicable disease reportable pursuant to Article 11 of this Code. The statement shall indicate that the child is free from such disease in communicable form and that the period of isolation or exclusion required by Article 11 of this Code has ended.

§43.21. Health; emergencies.

(a) Emergency procedures and notices. Written policies and procedures for managing health and other emergencies shall be included in the written health and safety plan. Persons in charge of a schools shall provide notice of the location and contact telephone numbers of the school to local hospitals, police precincts, fire houses and emergency transport services and information about emergency policies and procedures shall be provided to parents. Emergency procedures and emergency telephone contact numbers (for Police, Fire Department, Poison Control Center, Child Abuse Hotline, and the Department of Health and Mental Hygiene) shall be conspicuously posted in each classroom or area used by children.

(b) Necessary emergency medical care. When a child is injured, or becomes ill under such circumstances that immediate care is needed, the person in charge of a school or designee shall obtain necessary medical care and immediately notify the child's parent.

(c) First aid supplies. A first aid kit, completely stocked for emergency treatment of cuts and burns, shall be provided by the person in charge of a school and shall be easily accessible for use. The first aid kit shall be kept out of reach of children and inspected periodically.

(d) Log of children's illnesses and accidents. The person in charge of a school shall maintain a log of illnesses, accidents, and injuries sustained by children in the service, in a form provided or approved by the Department. The person in charge of a school shall provide a child's parent with information concerning such incidents pertaining to the child, and shall report serious injuries to the Department. Logged entries shall include the name and date of birth of the child, the place, date and time of the accident or injury, names and positions of staff and other adults present, a brief statement as to how the accident or injury occurred, emergency treatment obtained, if any, and parental notification made or attempted.

§ 43.23. Lead-based paint restricted.

(a) Applicability. This section shall apply to all rooms and areas in a school facility that are occupied by children under six years of age, or to which such children have access.

(b) Peeling lead-based paint prohibited.

(1) There shall be no peeling lead-based paint or peeling paint of unknown lead content on any surface in a kindergarten.

(2) Peeling lead-based paint or peeling paint of unknown lead content shall be immediately abated or remediated upon discovery, in accordance with § 173.14 of this Code.

(3) Children shall not be present and shall not have access to any room or area undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

(4) The work practices of §173.14 of this Code shall not apply to repair and maintenance work which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

(c) Equipment and furnishings. Equipment and furnishings shall be painted with lead-free paint.

(d) Soil. Soil in exterior areas used by children under six years of age shall be tested for lead, shall be remediated if test results exceed clearance limits in §173.14 of this Code, and shall not be used until cleared in accordance with §173.14.

(e) Annual survey. Each year the owner or person in charge of a school shall conduct a survey of the condition of surfaces in classrooms, where the surfaces of such classrooms or other areas used by children under six years of age are covered with lead-based paint or paint of unknown lead content. Survey results shall be recorded on a form provided by or satisfactory to the Department, and copies of survey results

shall be provided to the Department upon request.

(f) Definitions. All terms used in this section shall have the same meanings as the terms defined in § 173.14 of this Code.

§ 43.25. Modification of provisions. When the strict application of any provision of this article presents practical difficulties, or unusual or unreasonable hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose and intent of these articles and upon such conditions as in his opinion are necessary to protect the health of the children. The denial by the Commissioner of a request for modification may be appealed to the Board in the manner provided by § 5.21.

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BOARD OF HEALTH

NOTICE OF ADOPTION OF THE REPEAL AND REENACTMENT OF ARTICLE 47 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, notices of intention to repeal and reenact Article 47 (Child Care Services) of the New York City Health Code (the "Health Code") were published in the City Record on March 13, 2007 and October 30, 2007, and public hearings were held on April 19, 2007 and December 3, 2007. A number of changes have been made in response to comments received during both public comment periods. At a meeting on March 6, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The New York City Department of Health and Mental Hygiene (the Department or DOHMH) is required by law to protect and promote the health of all New Yorkers. The Bureau of Child Care, in the Department's Division of Environmental Health, enforces Article 47 ("Day Care Services") of the Health Code, which regulates public and private group day care services operating within New York City.

Background

At its October 24, 2007 meeting, the Board of Health approved for publication for public comment a further resolution to repeal and reenact Article 47, updating its provisions, and harmonizing them with comparable provisions of the New York Social Service Law (SSL) and the regulations of the State Office for Children and Family Services applicable to child day care in other parts of the State. An earlier resolution was authorized for publication by the Board of Health at its meeting in March, 2007, and a public hearing was held April 19, 2007. This resolution contains changes made in response to comments received at both hearings. The major difference between the two resolutions was the removal of the application of Article 47 to child care programs for children between the ages of three and five who attended any elementary schools.

Child care programs are essential for many working families. Beyond providing child development, education, recreation and a safe and structured environment for children while their parents work, they contribute to the emotional and social growth of children by building a sense of community, fostering intergenerational relationships, and providing first hand experiences in areas of learning. Children develop skills that strengthen character and promote friendships.

There are currently 2,084 group day care services in New York City holding DOHMH permits, 40 LYFE ("Living for the Young Family through Education") programs operated by the New York City Department of Education (DOE) in schools (offering infant toddler care for children of DOE students) and 1,065 private and/or religious organizations known to DOHMH which provide day care services. Under the current Article 47, neither DOE nor religious schools are required to hold a permit to operate a day care service if the service is part of an elementary school. DOE kindergartens are also exempt from any permit requirements. Although most other Article 47 requirements are currently applicable to "NPR" (for "no permit required") day care services operated by religious schools, unless complaints are received, they have in the past rarely been inspected.

In the Notice of Intention published March 13, 2007, the Department proposed that religious schools' early child care programs be required to obtain permits. This aspect of the proposed Health Code reenactment received favorable comment from children's advocacy organizations, but was opposed by the operators of the religious schools. Initially, at the request of the NPR community, the public comment period was extended, and the Department discussed with the organizations operating such schools how to reconcile their desire not to have their religious instruction programs be regulated at all with the Department's efforts to require that essential health and safety needs of the youngest children attending such school programs be addressed. These discussions resulted in a decision by the Department to recommend to the Board that this proposal be further amended so that no programs for children ages three through five in any public or non-public elementary school would be subject to the provisions in Article 47. Instead, the most

compelling requirements affecting pre-kindergarten and kindergarten school children's health and safety will be incorporated in an amended Article 45 ("General Provisions Governing Schools and Children's Institutions"). Accordingly, Article 47 as originally published has been further revised to delete from the definition of "child care service" all pre-kindergarten and kindergarten programs operated within or as part of an elementary school. However, a child care service will continue to be defined as any program providing services for children younger than three years of age regardless of whether the program is located within or is part of an elementary school, provided that the majority of children in the school-based program will not have their third birthday before December 31st of any calendar year. In addition, the Article provides for voluntary permitting for school-based child care services for children three through five years of age.

There has been no substantive revision of Article 47 since 1988, and professional standards and expectations, as well as the regulatory environment for day care have changed considerably since that time. In 1997, the State assumed regulation (through registration and licensing) of all residential based group family and family day care homes for smaller groups of children under six years of age, including those in this city, and for all school age child care programs, generally after school programs for children ages five through 12. At the same time, the State Office of Family and Children's Services was designated to adopt rules for various kinds of day care programs statewide. These rules do not apply to Article 47 group child care facilities in New York City, but have served as a model, wherever practicable, for many provisions of the reenacted Article 47. The amended definition of "child care service" is consistent with the definition of "child day care" in state Social Services Law §390 (1)(a)(ii)(D), which excludes "a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, ...operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school programs is located on the premises or campus where the elementary or secondary education is provided."

Article 47 Changes

The Department received a substantial number of comments from the public in response to publication of both resolutions. The resolution adopted by the Board contains substantially the same text as that contained in the original resolution published for public comment in April, 2007, with further revisions made in response to public comments on teacher qualifications, teacher training requirements and instructional swimming. Further substantive changes to the original proposal are described in each of the following section summaries.

§47.01 Definitions. Most of the terms used in this Article are newly defined. The term "child care service" replaces the term "day care service" and will apply to any program, day or night, that provides child care services for three or more children under six years of age for five or more hours per week, and that operates for more than 30 days during any 12-month period. Neither the term nor this Article will be applicable to pre-kindergarten or kindergarten classes that are a part of or are located within any public or non-public elementary school, except for those offering child care services for children under three years of age. The Department of Education's (DOE's) LYFE infant/toddler programs, which are not otherwise regulated, are the only DOE-based child care programs that will need a DOHMH permit. In response to comments, it has been further clarified that kindergarten or pre-kindergarten classes that are within or "part of an elementary school" may be located in separate buildings than the elementary school, but must be under identical ownership, operation, management and control. All programs for children under three years of age regardless of where located will require permits from the Department. Additional definitions have been included for the terms "Fill and draw pool" and "Spa pool" to clarify those terms when used in the new provisions allowing swimming and the term "volunteer."

§§47.03, 47.05, 47.07 and 47.09 Permit requirements. Article 47 no longer exempts from permit requirements any child care service which otherwise comes within the revised definition. Prospective permittees will be required to attend pre-permit orientation where DOHMH staff will outline Article 47 requirements and answer questions. All permits will now be for two years. Permits will only be issued if all pre-permitting staff child abuse registry and criminal justice screening requirements are complied with, and the written health and safety plan required by §47.11 has been submitted and approved by DOHMH. Operators of school based child care services that are no longer required to hold permits under Article 47 may voluntarily apply for and be issued permits, if they need to demonstrate that they are in compliance with Article 47's requirements.

§47.11 Written safety plan. This is a new requirement. The written health and safety plan will aid in maintaining the health, safety and security of children and staff members. The written safety plan is intended to serve as the standard operating policies and procedures for the safe operation of a child care service. The plan will cover how the requirements of Article 47 are to be implemented with respect to medical supervision and health of children, medication administration, facility operation, maintenance, fire safety, specific activity safety, staff training, parent/child orientation, and proper supervision. An initial plan will be reviewed and approved for all new permit applicants and updated as necessary upon permit renewal or if there are substantial changes in program operation. The Department will provide a model for preparing such plans.

§§47.13, 47.15, 47.17 Teaching staff qualifications. These

provisions have been updated and are consistent with current New York State Department of Education requirements for early childhood certified teachers, as well as OCFS regulations. In response to public comments, §47.13 has been further amended to allow current group teachers with a baccalaureate degree and five years' teaching experience to continue to hold these positions.

§§47.19 and 47.21 Criminal justice and child abuse screening and corrective action plans. The current requirements have been expanded and set forth in greater detail, and are consistent with those imposed on State regulated child care programs by OCFS. Corrective action plans will be required if staff are reported as having confirmed or pending criminal histories or child abuse complaints, and the permittee elects to maintain the staff person at the child care service. The Department will provide models for preparing such plans.

§47.23 Supervision; staff to child ratios and group size. These provisions have been reformatted in charts for simplification and easy reference. All staff/child ratio requirements remain the same. For infant/toddler programs, staff ratios have been changed to allow either one teacher for every four children (1:4) or one teacher for three children (1:3); programs that maintain only a 1:4 staff ratio must demonstrate through their Written Safety Plan that they have a staff to child ratio of 1:3 available if they need to safely evacuate children younger than 12 months of age during emergencies. In addition, in response to a comment from the Administration for Children's Services the staff: child ratio the staff:child ratio for a group of children of mixed ages may be determined by the predominant age of the children in the group, provided the children are of contiguous ages.

§§47.25, 47.27, 47.29, 47.31, 47.33 Health of children and staff. These provisions have been updated as necessary to reflect current pediatric recommendations for well-child care, and other Health Code requirements for control of communicable diseases, and to incorporate regulations for administration of medication to children that are consistent with those of the OCFS (see, 18 NYCRR Part 18-1 and Part 18-2). The requirement that new staff hires be tested for tuberculosis infection has been eliminated since this group is at relatively low risk for tuberculosis. There is also a new provision that requires that medical information maintained in the child care service be confidential. The provisions are otherwise in most respects substantively the same as those in the current Article 47.

§47.35 Personal hygiene practices. This section consolidates various existing provisions.

§47.37 Training. Current §47.19 (d) requires training in establishing a health plan, recognizing and controlling infectious diseases and child abuse prevention. This new provision is modeled on training required for OCFS licensed programs elsewhere in the State, makes the educational director responsible for training, specifies a number of new training requirements and authorizes the DOHMH to approve or certify certain kinds of trainers. The Department initially received comments objecting to the extended training, and requesting that training frequency be reduced, since training in many areas may not be necessary for certified teachers, and that most child care services lack resources to support such training. In response to initial comments, the Department reduced the amount of training required and received comments supporting the need for additional training, especially for uncertified teaching staff. In an effort to strike a balance in the final resolution, minimum training is required for all staff in child abuse prevention and recognition, for teaching staff in infection control, and additional training is required for less qualified infant and toddler, night program and assistant teachers.

§47.39 Space allowance. This section consolidates similar current provisions in §47.29

§47.41 Indoor physical facilities. This section restricts infant/toddler programs to the first (ground) floor and one below ground level floor to facilitate evacuation of the youngest children in emergencies. Child care services for older children will be restricted to the third or lower floors for the same reason. Window guards will be required for all windows because the Department believes that there is no "safe" distance to the ground for any child with access to an open window.

§47.43 Plumbing. This section consolidates provisions in current §47.39, makes child:toilet ratios applicable to children over 24 months of age; and requires toilet facilities for all children to be as close as practicable to classrooms and play areas. The requirement as originally published, requiring toilet facilities to be adjacent to classrooms and play areas of children under three years of age, would have been impossible for many existing facilities to comply with.

§47.45 Ventilation and lighting. This section is derived from current §47.29 (f) and (g), with additional requirements for control of specific defined indoor air quality nuisances.

§47.47 Outdoor play areas. This section is derived from current §47.35, and clarifies safety criteria for resilient surfaces under play equipment, and adds restrictions on use of rooftop play areas in non-fireproof buildings.

§47.49 General sanitation and maintenance. This section is derived from current §47.31 and adds requirements for use of environmentally sensitive cleaning products in accordance with Education Law §409-i.

§47.51 Rodents, insects and other pests prohibited; pesticide application notice. Current provisions in §47.31 have been amended and a requirement for notification of parents when pesticides are applied has been added, in accordance with Social Services Law § 390(c).

§47.53 Pet animals. This section has been amended to be

consistent with Article 161 of this Code.

§47.55 Equipment and furnishings. New section including provisions from current §§47.31, 47.33 and 47.39, adding a prohibition on use of stackable cribs. The section has been further modified in response to comments to allow pillows to be used when recommended by a child's health care provider for orthopedic support.

§47.57 Safety; general requirements. Includes provisions from current §§ 47.29 and 47.41; adds requirements addressing concerns on heat advisory days; explicitly prohibits co-location of new child care services in buildings that contain environmental hazards such as dry cleaners, gas stations and power plants. In response to public comments, the original prohibition on swimming has been modified; subdivision (i) enables child care services to offer instructional swimming but maintains a requirement of barriers to water access.

§47.59 Fire safety. Includes provisions from current §§47.41 and 47.46.

§47.61 Food and food safety. Includes provisions from current §47.37; requires the person in charge of food operations to hold a food protection certificate issued pursuant to §81.15 of this Code. No child care service will also be required to hold a permit pursuant to Article 81, but will be responsible for compliance with that Article.

§47.63 Lead-based paint restricted. Renumbers current §47.44; adds restrictions on lead in soil in outdoor areas of a child care facility used by children.

§47.65 Transportation. Renumbers current §47.43; adds requirements for child restraints in vehicles transporting children.

§47.67 Child development policies, program, rest periods and clothing. Renumbers current §47.33; updates requirements for appropriate use of surveillance technology.

§47.69 Night care. Renumbers current §47.46; adds requirements for maintaining information about child's bedtime routines; limits time in night care to 12 hours.

§47.71 Physical activity and limits on television viewing. Renumbers and combines current §§47.35 and 47.36; and is otherwise unchanged.

§47.73 Required postings. Renumbers §47.03; adds notice about obtaining copies of inspection reports by calling the City's 311 telephone information number.

§47.75 Modification of provisions. Renumbers §47.47 without substantive change.

§47.77 Closing and enforcement. Renumbers and clarifies current § 47.49; adds provisions that operating a child care service without a permit shall be deemed an imminent health hazard and shall result in the closing of the service; authorizes the Department to close a service for imminent health hazards; allows Department discretion to allow continued operation with additional requirements of child care services with imminent health hazards to promote maximum degree of child safety; and authorizes Department to padlock facilities that have been ordered closed but that continue to operate in violation of a Commissioner's order. Imminent health hazard is defined in new §47.01 as any condition, such as lack of adequate supervision, that could be expected to result in illness, physical injury or death of a child or children in care. Observation of such conditions would result in immediate closure of a child care program. Such a provision will harmonize Article 47 with more modern provisions of OCFS regulations for State-regulated child care programs, and reflect the policies and concerns underlying related child health and safety regulations, such as those governing day camps in Subpart 7.2 of the New York State Sanitary Code and Article 48 of the Health Code.

§47.79 Construction and severability. Applies the provisions in Health Code §3.33 specifically to this Article.

The proposal is as follows:
Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that Article 47 of the New York City Health Code, set forth in title 24 of the Rules of the City of New York, as amended by resolution adopted on the fifteenth of June, two thousand six, be and the same hereby is repealed and reenacted, to be printed together with explanatory notes, as follows:

ARTICLE 47 CHILD CARE SERVICES

- §47.01 Definitions.**
§47.03 Permit required.
§47.05 Program capacity.
§47.07 Permit: required approvals and clearances.
§47.09 Applications for permits.
§47.11 Written safety plan.
§47.13 Teaching staff qualifications in child care services for children ages two to six.
§47.15 Teaching staff qualifications in infant/toddler child care services.
§47.17 Teaching staff qualifications in night child care services.
§47.19 Criminal justice and child abuse screening of current and prospective personnel.
§47.21 Corrective action plan.
§47.23 Supervision; staff to child ratios and group size.
§47.25 Health; child admission criteria.
§47.27 Health; daily requirements; communicable diseases.

§47.29	Health; emergencies.
§47.31	Health; medication administration.
§47.33	Health; staff.
§47.35	Personal hygiene practices; staff and child.
§47.37	Training
§47.39	Space allowance; reservation for children's use.
§47.41	Indoor physical facilities.
§47.43	Plumbing; toilets, hand wash and diaper changing facilities.
§47.45	Ventilation and lighting.
§47.47	Outdoor play areas and facilities.
§47.49	General sanitation and maintenance.
§47.51	Rodents, insects and other pests prohibited; pesticide application notice.
§47.53	Pet animals.
§47.55	Equipment and furnishings.
§47.57	Safety; general requirements.
§47.59	Fire safety.
§47.61	Food and food safety.
§47.63	Lead-based paint restricted.
§47.65	Transportation.
§47.67	Child development policies; program; and rest periods.
§47.69	Night care.
§47.71	Physical activity and limits on television viewing.
§47.73	Required postings.
§47.75	Modification of provisions.
§47.77	Closing and enforcement.
§47.79	Construction and severability.

Introductory Notes: Article 47 was repealed and reenacted, effective September 1, 2008, by resolution adopted on March 6, 2008.

§47.01 Definitions.

(a) *Abuse* shall mean any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including, but not limited to:

(1) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(2) an unlawful act, a threat or menacing conduct directed toward a child that results and/or might be expected to result in fear or emotional or mental distress to a child.

(b) *Assistant teacher* shall mean a person who is part of the teaching staff, works under the supervision of an educational director, group teacher or infant/toddler teacher, and whose assignment to a group of children may be considered in calculating compliance with required staff to child ratios.

(c) *Child care service.*

(1) Child care service means any program providing child care for five (5) or more hours per week, for more than 30 days in a 12-month period, to three (3) or more children under six (6) years of age.

(2) Child care service shall not mean:

(A) Any State-regulated informal child care program, a group family or family day care home, or school age child care program, or a foster care program;

(B) A kindergarten or pre-kindergarten class operated as part of or located within any elementary school; except that school programs that provide care to children younger than three years of age shall be deemed child care services subject to this Code. "Operated as part of an elementary school" shall mean that there is identical ownership, operation, management and control of kindergarten or pre-kindergarten classes and elementary school classes.

(C) "Mommy and me" or equivalent programs where each child is accompanied by a parent or another adult escorting the child, who is not employed by the child care program; or

(D) Children's camps operating seasonally at any time between June and September that are required to have a permit pursuant to Article 48 of this Code; or

(E) Adult physical fitness, spa or other recreational facilities, or retail establishments, or other businesses providing supervision for children of patrons or employees of the facility, establishment or business while parents are on the premises, unless children are registered or enrolled and individual children are spending more than eight hours/week in care.

(F) Churches or religious organizations where congregants' children are supervised by employees or members of the congregation while parents attend services.

(d) *Corrective action plan* shall mean a written safety assessment required to be prepared pursuant to §47.21 of this Article, that shall be submitted to and approved by the Department when a permittee hires, plans to hire, or plans to utilize the services of, certain persons, or in such circumstances as are specified in this Article, or as may otherwise be required by the Department to show that a particular person at, or the continuing operation of, a child care service shall not pose a danger to children.

(e) *Educational director* shall mean a person whose responsibilities shall include, but not be limited to, coordination and development of an age appropriate curriculum and program, teaching and other staff training, and supervision of teachers.

(f) *Facility* shall mean interiors and exteriors of buildings, structures and areas of premises under the control of a child care permittee where child care services are provided and that are subject to the permit.

(g) *Fill and draw pool* shall mean a pool that is not equipped with a recirculation system, but is cleaned by complete removal and disposal of used water and replacement with water at periodic intervals, whose use at any facility regulated by this Article is prohibited.

(h) *Group size* shall mean the maximum number of children that may be cared for as a unit. Group size shall be used to determine the minimum staff/child ratio based upon the age of the children in the group.

(i) *Group teacher* shall mean a person who, under the supervision of an educational director, is responsible for planning and supervising age appropriate activities for a given group of children.

(j) *Health care provider* shall mean a New York State licensed physician, physician's assistant, nurse practitioner or

registered nurse, as defined in the State Education Law.

(k) *Imminent health hazard* shall mean any violation, combination of violations, conditions or combination of conditions occurring in a child care service making it probable that illness, physical injury or death could occur or the continued operation of the child care service could result in injury or be otherwise detrimental to the health and safety of a child. Any of the following shall be imminent health hazards which require the Commissioner or designee to order its immediate correction or to order the child care service to cease operations immediately and institute such corrective action as may be required by the Department or provided by this Code. Imminent health hazards shall include, but not be limited to:

(1) Supervision of children that is not in accordance with the supervisory ratios required by this Article;

(2) Use of corporal punishments or of frightening or humiliating methods of discipline;

(3) Failure to report instances of alleged child abuse or maltreatment to the Department and the Statewide Central Register of Child Abuse and Maltreatment and to take appropriate corrective action to protect children when allegations of such abuse or maltreatment have been reported to or observed by the permittee;

(4) Refusal or failure to provide access to the child care facility to an authorized employee or agent of the Department;

(5) Uncontained sewage in any part of the child care facility;

(6) Transporting children in the bed of a truck or trailer or in any other part of any motor vehicle that is not designed for passenger occupancy; or transporting children without adequate supervision; or failing to use appropriate child restraints in vehicles;

(7) Failure to provide two approved means of egress or obstructing any means of egress or a required fire exit;

(8) Failure to properly store flammable liquids or other toxic substances;

(9) Failure to maintain firefighting or fire detection equipment in working order;

(10) Allowing pillows to be used for children who are not disabled or when not recommended by a health care provider;

(11) Contamination of the potable water supply by cross connection or other faults in the water distribution or plumbing systems;

(12) Serving food to children from an unknown or unapproved source; serving food that is adulterated, contaminated or otherwise unfit for human consumption, or re-serving food that was previously served;

(13) Holding potentially hazardous foods for periods longer than that necessary for preparation or service at temperatures greater than 41°F or less than 140°F;

(14) Failing to exclude from work at the child care service a person with a communicable disease who is required to be excluded pursuant to Article 11 of this Code;

(15) Failure to implement the child care service's written safety plan resulting in a child not being protected from any unreasonable risk to his or her safety;

(16) Conducting construction, demolition, painting, scraping, or any repairs other than emergency repairs while children are present in the child care service; failing to remove children from areas and rooms while such activities are in progress;

(17) Failure to screen any person who has, or will have the potential for, unsupervised contact with children in accordance with §47.19 of this Article; or

(18) Any other condition(s), violations, or combination of conditions or violations, deemed to be an imminent health hazard by the Commissioner or his or her designee.

(l) *Infant* means a child younger than 12 months of age.

(m) *Infant/toddler care service* shall mean a program of child care that, during all or part of the day or night, provides care to children younger than 24 months of age.

(n) *Infant-toddler teacher* shall mean a person who, under the supervision of an educational director or group teacher, is responsible for a group of children younger than 24 months.

(o) *Night care service* shall mean any child care service, as defined in this section, that accepts children for care starting at 5 P.M., provides child care between the hours of 5 PM and 8 AM, and operates more than one (1) night per week, for more than 30 days in a 12 month period.

(p) *Parent* shall mean a natural or adoptive parent, guardian or other person lawfully charged with a minor child's care or custody.

(q) *Permittee or other person in control of a child care service* shall mean a person, organization or other entity that has been issued a permit to operate a child care service pursuant to this Article.

(r) *Semester hour* shall mean a credit, point, or other unit granted for the satisfactory completion of a college or university course which requires at least 15 clock hours (of 50 minutes each) of instruction and at least 30 hours of supplementary assignments, as defined in 8 NYCRR §50.1. This basic measure shall be adjusted proportionately to translate the value of other academic calendars and formats of study in relation to the credits granted for study during the two semesters that comprise an academic year.

(s) *Serious injury* shall mean a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(t) *Spa pool*, "hydrotherapy pool," "whirlpool," "hot spa," or "hot tub," shall mean a pool primarily designed for therapeutic use or relaxation that is generally not drained, cleaned or refilled for individual use. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral bath, air induction, bubbles or any combination thereof. Spa pools shall have a maximum water depth of 4 feet at any point and may be equipped with aquatic seats within the perimeter of the pool. Spa pools shall not be used for swimming, wading or diving activities at any facility regulated by this Article.

(u) *Staff/child ratio* shall mean the maximum number of children in a group authorized pursuant to this Article to be supervised by individual group and assistant teachers and

teacher aides.

(v) *Supervision* shall mean the presence of qualified teaching staff, within line of sight and hearing of children at all times so that such staff can act to protect the health and safety of such children. Supervision shall not mean mechanical audio or video devices.

(w) *Toddler* shall mean a child between 12 and 24 months of age.

(x) *Volunteer* shall mean a person who is an unpaid member of the staff or who otherwise donates any services to a facility regulated by this Article.

§47.03 Permit required.

(a) *Permit required.* No person shall operate a child care service as defined in this Article without a permit issued by the Commissioner, provided, however, that a pre-kindergarten or kindergarten program that is part of or located in and operated by an elementary school may voluntarily apply for and hold a permit as a child care service.

(b) *Term of permit.* The term of a permit shall be determined by the Department, but in no case shall exceed two (2) years.

(c) *Permits not transferable.* A permit shall be issued to a person, as defined in §1.03 of this Code, to conduct a child care service at a specific facility and location. Permits shall specify the number of children that may be cared for in each type of child care service operated at the facility by the permittee. Permits shall not be transferable or assignable to a permittee to any other person or entity; and shall not be applicable to any other facility or location. Separate permits shall be required for services providing infant/toddler care, services providing care for children aged two through five, and night care services. Any change in building address or location, capacity or permittee not authorized or approved by the Department shall void a permit, and may result in the closure of the service.

§47.05 Program capacity.

(a) *Maximum number of children on premises.* Each permit shall specify the maximum number of children to be allowed in each specific type of child care service at any time. The Department shall determine the maximum number of children allowed based upon the number of children for which adequate facilities and teachers are provided, in accordance with the supervision and space requirements of this Code. The total number of children under six (6) years of age receiving care pursuant to each permit shall be counted for all purposes, including calculating qualified staff to child ratios, and shall include children or foster children of the individual permittee or other staff or volunteers.

(b) *Capacity not to be exceeded.* A child care service shall not have children in attendance in excess of the number(s) prescribed in each permit issued for each type of child care service provided.

§47.07 Permit: required approvals and clearances. No permit shall be issued unless the permit applicant has obtained and submitted to the Department:

(a) *Certificate of Occupancy.* A Certificate of Occupancy, or a statement of approval from the Department of Buildings that the premises comply with all applicable building laws and codes and may be used as a child care facility. Where a Certificate of Occupancy is not required by law, the permit applicant shall submit a current inspection report from the Department of Buildings showing that there are no outstanding uncorrected violations of the City's Building Code.

(b) *Fire safety statement.* A statement or report from the Department that the premises have been inspected and currently comply with all applicable laws and regulations pertaining to fire control and prevention. A permit shall not be issued or renewed, unless a statement or report is submitted demonstrating compliance with such laws, based upon the Fire Department's determination on an inspection made within 12 months of the date of submitting the permit renewal application.

(c) *Criminal justice and child abuse screening.* Documentation satisfactory to the Department that the permit applicant has submitted all necessary forms and requests for all persons requiring criminal justice and State Registry of Child Abuse and Maltreatment screening in accordance with §47.19 of this Code.

§47.09 Applications for permits. A person or entity that has never held a permit issued by the Commissioner to operate a child care service and that proposes to operate a child care service subject to such permit, shall attend a pre-permit orientation session held by the Department and shall thereafter submit an application for a permit to the Department.

(a) *New application.* An application for a new permit shall be submitted on forms approved or provided by the Department and shall include:

(1) Facility pre-permit technical plan. Each plan, consisting of blueprints, architectural or engineering drawings, shall be drawn to scale, and labeled to show floor layout, all indoor rooms and outdoor areas to be occupied or used by the child care service, dimensions of such rooms and areas, and intended use of each area; outdoor spaces location in relation to actual distance and location from indoor spaces; and all toilets, sinks and kitchen(s) to be used by children and staff.

(2) A copy of a current certificate of occupancy issued by the Department of Buildings, or if no certificate of occupancy is required by applicable law, a statement from the Department of Buildings that the premises and facility to be used for child care comply with all applicable building laws and codes.

(3) A report of an inspection or a statement issued by the Fire Department finding that the premises comply with all laws and regulations pertaining to fire prevention and control in a child care service.

(4) Written safety plan required by this Code.

(5) Certifications and other documentation required by this Code for teaching staff health training; qualifications, health examinations.

(6) Permit fee set forth in Article 5 of this Code

(7) Proof of workers' compensation and disability benefits insurance covering all employees.

(b) *Notifications of deaths, serious injuries and civil and criminal actions.* Permittees and applicants for new permits shall submit, on forms provided by the Department, such information as may be required by the Department concerning all staff misdemeanor or felony arrests, deaths or serious injuries of children that have occurred, or are alleged to have occurred while such children were in the care of the applicant or permittee, or in the care of any owner, director, employee, or volunteer of the applicant or permittee, or while in the care of any agent of the permittee or applicant; and shall identify, in such detail as may be required by the Department, any related civil or criminal action already adjudicated or currently pending in any jurisdiction related to such serious injuries, deaths, or felony or misdemeanor arrests.

(c) *Renewal application.* An application for renewal of a permit shall be submitted on forms provided by the Department no later than 90 days before the expiration date of the current permit, and shall include the permit fee, and a full description of any changes in teaching staff, written safety plan, written health plan, physical facilities, required staff training or program which occurred after submission of the previous permit application.

(d) *Pre-renewal inspection.* A renewal permit shall not be issued unless the Department has conducted an inspection of the service while it is in operation and has found the service to be in substantial compliance with this Code and other applicable law.

(e) *Renovations and modifications.* A permittee shall submit for approval to the Department a request for modification of an existing permit prior to undertaking renovations affecting the size, configuration, or location of rooms or areas used by children.

(f) *Applications to be complete.* No permit shall be issued until the Department has received and has approved all documentation, records, reports, or other information required by this Code.

§47.11 Written safety plan.

(a) *Safety plan required.* Every current permittee and every applicant for a new permit shall develop, review annually and update, in accordance with changed circumstances, conditions or activities, or as required by the Department, a written safety plan. The written safety plan shall be approved by the Department if it includes all the information required in this Article. Upon permit renewal, if no changed circumstances require changes to a previously approved written safety plan, the permittee shall state in writing that no changes were needed or made to the plan. The safety plan shall be implemented by the permittee, used in training staff and volunteers, provided to parents on request, kept in an accessible location at the child care service where it may be used by staff for reference and be available for Department inspection.

(b) *Scope and content.* The written safety plan shall establish policies and procedures for safe operation, including teaching and other staff duties, facility operation and maintenance, fire safety, general and activity-specific safety, emergency management, staff and child health and medical requirements, staff training and parent/child orientation. The written safety plan shall consist of, at a minimum, a table of contents and the following components:

(1) *Staff:* organization chart, job descriptions, responsibilities and supervisory responsibilities.

(2) *Program operation and maintenance:* including, but not limited to, schedules and designated staff for facility inspection, cleaning and maintenance, schedule for boiler/furnace and HVAC system maintenance, maintenance of adequate water pressure, protection of the potable water supply from submerged inlets and cross-connections in the plumbing system, schedule for the annual lead paint survey, inspection of window guards, indoor and outdoor equipment inspection and replacement schedule, evaluation of injury prevention procedures, equipment and structures, identification of procedures for transportation vehicle maintenance, food protection procedures during receipt, storage and preparation, identity of individuals certified in food protection, schedule for sanitization procedures of food prep areas and identification of approved food sources.

(3) *Fire safety:* evacuation of buildings and property, assembly, supervision, and accounting for children and staff; fire prevention; coordination with local fire officials; fire alarm and detection systems and their operation, maintenance, and routine testing; type, location and maintenance of fire extinguishers; inspection and maintenance of exits; required fire drills and log; electrical safety; and reporting to the Department within 24 hours fires which destroy or damage any facilities, or which result in notification of the fire department, or are life or health threatening.

(4) *Health care plan:* statement of policies and procedures to show how the health and medical requirements of this Code shall be implemented for maintaining children's medical histories; addressing individual children's restrictions on activities, policies for medication administration and special needs, if any; initial health screening for children and staff; daily health surveillance of children; procedures for providing basic first aid, handling and reporting medical emergencies and outbreaks; procedures for response to allegations of child abuse; identification of and provisions for medical, nursing and emergency medical services addressing special individual needs; names, qualifications and duties of staff certified in first aid and CPR; description of separation facilities, supervision and other procedures for ill children to be provided by the child care service until parent arrives; storage of medications; location and use of first aid and CPR supplies; maintenance of a medical log; description of universal precautions for blood borne pathogens; reporting of child and staff illness and injuries; and sanitary practices. When the permittee has a medication administration policy, the permittee shall immediately notify the Department of any changes in designated exempt or certified staff.

(5) *Corrective action plans:* actions to be taken to protect children on receipt of reports of alleged and confirmed teaching and other staff criminal justice or child abuse histories.

(6) *General and activity specific safety:* description of child supervision and staff schedules, including arrangements for general supervision; supervision during and between on-site activities; recreational and trip supervision for specific outdoor and off-site activities; supervision during sleeping and rest hours; transportation; and in emergencies.

(7) *Staff training:* new employee orientation; training curricula; procedures for child supervision and discipline; child abuse recognition and reporting; provision of first aid and emergency medical assistance; reporting of child injury and illness; fire safety and fire drills; child and staff evacuation procedures; activity specific training for assigned activities; and process to document attendance at staff training.

(8) *Emergency evacuation:* age-specific plans for removal of children from the premises for each shift and program where care is provided. Primary emphasis shall be placed on the immediate evacuation of children in premises which are not fireproof. Emergency evacuation procedures, implementing Fire Department recommendations, shall be posted in conspicuous places throughout the facility. The emergency evacuation plan shall include the following:

(A) how children and staff will be made aware of the emergency;

(B) primary and secondary routes of egress;

(C) methods of evacuation, including where children and staff will meet after evacuating the building, and how attendance will be taken;

(D) roles of the staff and chain of command;

(E) notification of authorities and the children's parents.

(9) *Parent / child orientation:* orientation curriculum outline; tour of premises; reporting and management of illnesses, injuries and other incidents; evacuation plan; lost child plan; lightning plan; fire safety and fire drills; evacuation procedures; activity specific training for assigned activities; trips (if provided).

§47.13 Teaching staff qualifications in child care services for children ages two to six.

(a) *Accreditation.* In determining teacher and educational director qualifications, the Department may accept documentation from schools, colleges and universities approved by the State Education Department or other teacher accreditation organizations acceptable to the Department certifying that such persons have met the specific Code requirements.

(b) *Pending certifications.* A permittee may temporarily employ an educational director or individual group teachers pending certification by the State Education Department or other accreditation organization or while a teacher's study plan for obtaining certification is pending approval by the Department, provided that the permittee has complied with criminal justice and State Registry of Child Abuse and Maltreatment screening requirements for staff set forth in this Article.

(c) *Educational director.* Every child care service shall designate a qualified teacher as the educational director who shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted child care service.

(1) *Coverage for educational director.* When an educational director is not present to supervise a child care service, the permittee shall designate a group teacher to act as educational director.

(2) *Teaching duties.* The educational director shall have no teaching duties when more than 40 children are enrolled in the child care service. If the child care service holding a permit is part of an elementary school offering classes from grades one through six, and has either child care programs for children under three years of age or has voluntarily applied for a permit pursuant to this Article, and such school also has a principal with no teaching duties, the educational director shall not have any teaching duties when more than 60 children are enrolled in the child care service.

(3) *Qualifications.* The education director shall have:

(A) A baccalaureate degree in early childhood education or related field of study and State Education Department teacher certification in early childhood education or equivalent certification pursuant to paragraph (2) of subdivision (d) of this section, and

(B) At least two years of experience as a group teacher in a program for children under six years of age.

(d) *Group teacher.* No person shall be placed in charge of a group of children in a child care service unless s/he is certified or qualified pursuant to paragraph (1), (2), (3) or (4) of this subdivision.

(1) *Baccalaureate degree and State certification.* A baccalaureate degree in early childhood education or related field of study and current valid certification issued by the State Education Department pursuant to 8 NYCRR §80 or successor rule or equivalent certification from another jurisdiction, as a teacher in the field of early childhood education; or

(2) *Equivalent certification.* Certification from a public or private certifying or teacher accrediting organization or agency granted reciprocity by the New York State Department of Education; or

(3) *Baccalaureate degree.* A baccalaureate degree in early childhood education or related field and five years of supervised experience in a pre-school program if currently employed in a permitted child care service; or

(4) *Study plan eligibility.* The person has proposed a plan for meeting the requirements of paragraph (1), (2) or (3) of this subdivision within seven years, and has obtained approval of this plan by an accredited college. A person who is study plan eligible shall submit documentation to the Department indicating proof of enrollment in such college and specifying the time required for completion of training.

(A) The course of study may include the following study areas:

(i) Sociological, Historical, Philosophical Foundations of Education or

(ii) Sociology of Education or History of Education or Philosophy of Education

(iii) Child Development or Child Psychology

(iv) Educational Developmental Psychology or Psychological Foundations of Education

(v) *Instructional Materials and Methods Courses* – three (3) courses required, including one on the pre-kindergarten or kindergarten level including, but not limited to, such courses as:

(aa) Teaching of Reading, Teaching of Math, Teaching Science to Young Children

(bb) Teaching of Music, Teaching of Art, Methods of Teaching of Language Arts

(cc) Teaching of Computer Technology to Young Children

(vi) Parent Education and Community Relations or Urban Education or Sociology of the Family or Parent, Child, School.

(B) To be study plan eligible, a person shall have:

(i) Associate's (AA or AS) degree in early children education, practicum included; or

(ii) Ninety or more undergraduate college credits and one year classroom experience teaching children in pre-kindergarten, kindergarten or grades 1-2; or

(iii) Baccalaureate in any other academic subject and one year classroom experience teaching children up to third grade.

(e) *Group teacher for children with special needs.* A group teacher for children with special needs shall be certified in special education, or early childhood education, with additional appropriate training in working with special needs children, in accordance with applicable law.

(f) *Assistant teacher.* An assistant teacher shall be at least 18 years of age and have a high school diploma or equivalent (GED).

§47.15 Teaching staff qualifications for infant-toddler child care services.

A child care service authorized to provide care for children under 24 months of age may employ staff with either the qualifications listed in §47.13 of this Code for each title or the following alternative qualifications:

(a) *Educational director.* Every infant-toddler child care service shall have an educational director who shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted infant-toddler child care service.

(1) *Qualifications:*

(A) Baccalaureate degree in early childhood education or related field of study, and

(B) At least one year of experience as a group teacher or child care provider in a child care service for children under 24 months of age, or six college credits in infant-toddler coursework, or a study plan leading to six college credits in infant-toddler coursework

(b) *Infant/Toddler teacher.* A teacher for an infant-toddler program shall be at least 21 years of age and have the following qualifications:

(1) Associate's (AA or AS) degree in early childhood education; or

(2) Child Development Associate (CDA) certification and a study plan leading to an associate's degree in early childhood education within 7 years; or

(3) High school diploma or equivalent (GED); nine college credits in early childhood education or child development; two years experience caring for children, and a study plan leading to an associate's degree in early childhood education within seven years; or

(4) High school diploma or equivalent (GED) and five years of supervised experience in an infant-toddler classroom if currently employed in a permitted child care service; or

(5) High school diploma or equivalent (GED); and a study plan that is acceptable to the Department leading to nine credits in early childhood education or childhood development within two years; and a study plan leading to an associate's degree in early childhood education within seven years, if currently employed in a permitted child care service.

§47.17 Teaching staff qualifications for night child care services.

(a) Permittees offering night care services shall comply with all requirements of this Article except when such requirements are inconsistent with the provisions of this section, in which case the provisions of this section shall control.

(b) *Educational director.* The educational director shall be qualified in accordance with §47.13 of this Code; or hold a baccalaureate degree, including 12 college credits in early childhood education, and have two years experience in a licensed program with children younger than six years of age. When the educational director is not present to supervise the teachers in a night care service, the permittee shall designate a group teacher qualified pursuant to §47.13 (d) of this Article to act as educational director.

(c) *Assistant teacher.* An assistant teacher in a night care service shall be at least 18 years of age and have the following qualifications:

(1) High school diploma or equivalent (GED); nine college credits in early childhood education or child development; and two years experience caring for children; or

(2) High school diploma or equivalent (GED) and five years of supervised experience in a permitted child care service; or

(3) High school diploma or equivalent (GED); and a study plan that is acceptable to the Department leading to completion of nine credits in early childhood education or childhood development within two years.

§47.19 Criminal justice and child abuse screening of current and prospective personnel.

(a) *Applicability.* These requirements for child abuse and criminal justice screening shall apply to any person who has, will have, or has the potential for unsupervised contact with children in a child care service, and shall include, but not be limited to: individual owners, permittees, partners, members and shareholders of small or membership corporations who are the owners or operators of the service; educational, administrative and maintenance employees; school bus drivers; volunteers, including parent volunteers and student teachers, trainees or observers; and consultants and other persons employed by persons, corporations, partnerships, associations or other entities providing services to the child care service. Employees of independent contractors providing maintenance, construction, food or other services to a child care service shall be screened in accordance with this section.

or shall be prohibited from working in any area or facility occupied by the child care service unless such person is working under the direct supervision and within the line of sight of a screened employee of the child care service.

(b) *Pre-employment verification.* A permittee shall obtain and verify credentials, including certificates and educational transcripts, as applicable, and references prior to employment of all persons listed in subdivision (a) of this section.

(c) *Screening.* A permittee shall arrange for (1) fingerprinting, (2) review of records of criminal convictions and pending criminal actions, and (3) inquiry of the Statewide Central Register of Child Abuse and Maltreatment (hereinafter "SCR") for all prospective employees, and other persons listed in subdivision (a), and for current employees shall repeat the inquiry to the SCR every two years.

(d) *Individual consent.* A permittee shall obtain written consent from each such person for fingerprinting and criminal record review, and shall provide written notice to such persons that there will be an inquiry submitted to the SCR, pursuant to Social Services Law §424-a (1), or successor law, and that copies of the reports received by the permittee as a result of such review and screening shall be provided to the Department.

(e) *Refusal to consent.* A permittee shall not hire or retain as an employee, or otherwise allow on its premises any person who is required to have, but refuses to consent to, fingerprinting and criminal record review. The permittee shall not hire or retain any person who has a record of criminal convictions or arrests, subject to and consistent with Article 23-A of the New York State Correction Law, except as provided in subdivision (h) of this section.

(f) *Employee to notify permittee.* Employees required to have criminal justice and child abuse screening shall notify the permittee within 24 hours when such employees are arrested, or when such employees receive a notice that an allegation of child abuse or maltreatment has been filed concerning such employees.

(g) *Reports to the Department.* Permittees shall notify the Department within 24 hours when they have received an indicated report from the SCR; an employee report that an allegation has been filed against the employee; and a record or report of criminal conviction(s), pending criminal action, or arrest or criminal charge for any misdemeanor or felony for any person required to have a criminal record review or SCR screening.

(h) *Actions required.* Consistent with Article 23-A of the New York State Correction Law, and except where the permittee has submitted and obtained Department approval of a corrective action plan in accordance with §47.21 of this Code:

(1) A permittee shall not hire, retain, utilize or contract for the services of a person who:

(A) Has been convicted of a felony at any time, or who has been convicted of a misdemeanor within the preceding ten years; or

(B) Has been arrested and charged with any felony or misdemeanor, and where there has been no disposition of the criminal matter; or

(C) Is the subject of an indicated child abuse and maltreatment report, in accordance with a determination made after a fair hearing pursuant to §422(8) of the Social Services Law.

(2) A permittee shall not dismiss or permanently deny employment to current and prospective staff solely because they are defendants in pending criminal actions, but may suspend current employees or defer employment decisions on prospective employees until disposition of the pending criminal action.

(3) A permittee shall prohibit unsupervised contact with children by any person who has not received screening clearance for criminal convictions or by the SCR, or as specified in paragraph (1) of this subdivision.

(i) *References.* For all prospective staff, the permittee shall make a written inquiry to an applicant's three most recent employers and shall obtain three references prior to hiring. If prospective staff have not had three prior employers, references may be accepted from persons who are not family members and who state, in writing, that the applicant is well-known to them as a student, volunteer, or other stated capacity, and that the applicant is suited by character, fitness, and ability to work with children.

§ 47.21. Corrective action plan.

(a) *Approved corrective action plan required.* A corrective action plan shall be submitted by the permittee and approved by the Department

(1) Prior to the permittee hiring, retaining or utilizing the services of persons listed in subdivision (a) of §47.19 of this Code when such persons are reported as having:

(A) A criminal conviction as specified in §47.19 (h); or

(B) Pending criminal charges as specified in §47.19(h); or

(C) SCR reported incidents of child abuse or maltreatment which have been indicated or which are under investigation.

(2) When a death or serious injury of a child has occurred while in the care of an applicant for a permit or permittee, or in the care of any owner, director, employee, or volunteer of the applicant or permittee or while in the care of any agent of the permittee, or if a related criminal or civil action has already been adjudicated or adjudication is pending in any jurisdiction with respect to such death or serious injury.

(3) When required by the Department, after the permittee has been cited for violations or conditions deemed imminent health hazards, to demonstrate the permittee's willingness and ability to continue in operation in accordance with applicable law.

(b) *Contents of corrective action plan.* A corrective action plan shall assess the risk to children in the child care service, and shall clearly and convincingly demonstrate that such person presents no danger to any child, or other persons. The plan shall include, but not be limited to, consideration of the following factors:

(1) Seriousness of the incident(s) or crimes cited in the report(s);

(2) Seriousness and extent of injuries, if any, sustained by the child(ren) named or referred to in the indicated report(s) or disclosed upon investigation of the criminal charge;

(3) Any detrimental or harmful effect on child(ren) as a

result of the person's actions or inactions and relevant events and circumstances surrounding these actions and inactions as these relate to any report(s);

(4) The age of the person and child at the time of the incident(s);

(5) Time elapsed since the most recent incident(s);

(6) Number of indicated incident(s) or crimes; where more than one incident or crime, an evaluation of each separately, and an assessment of the total effect of all indicated incidents on risks to children currently under care;

(7) Duties of the person under consideration; degree of supervision, interaction, opportunity to be with children on regular, substantial basis and if position may involve being alone with children or will always involve presence of other adults;

(8) Information provided by person, re: rehabilitation, i.e., showing positive, successful efforts to correct the problems resulting in the indicated child abuse or criminal report so that children in care will not be in danger, demonstrated by no repeated incidents or showing that the person has undergone successful professional treatment;

(9) Employment or practice in a child care field without incident involving injuries to children;

(10) Extra weight and scrutiny shall be accorded child abuse and maltreatment reports involving fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive; and crimes involving homicides, sexual offenses (misconduct, rape, sodomy, abuse); kidnapping; felony possession or sale of a controlled substance; felony promotion of prostitution; obscenity offenses; disseminating indecent material involving, or to, minors; incest; abandonment of a child; endangering welfare of a child; promoting sexual performance by a child; felony weapon possession; assault; reckless endangerment; coercion; burglary; arson and robbery; driving while intoxicated or under the influence of alcohol if the person will have responsibilities for unsupervised contact or driving motor vehicles at the child care service.

(c) *Implementing the plan.* If the Department determines that such plan adequately safeguards the health and safety of children, the permittee shall be responsible for implementation of the plan, subject to periodic monitoring by the Department.

(d) *Rejection of plan.* If the Department determines that such plan fails to provide adequate safeguards, a permittee that intends to hire or retain the employee shall resubmit the plan until it is acceptable to Department and shall not allow such employee to have unsupervised contact with any children until the plan is approved by the Department.

(e) *Remedies.* Any person aggrieved by the action of the Department in enforcing this section may request that the Department provide him or her with an opportunity to be heard in accordance with §7-02 (a)(1) of the Rules of the Department (24 RCNY Chapter 7). The decision of the Department after such opportunity to be heard shall be a final agency determination.

§47.23 Supervision; staff to child ratios and group size.

(a) *Constant supervision required.* Staff included in the staff/child ratios set forth below shall maintain direct line of sight, visual supervision of children at all times. Children shall be supervised by qualified staff at all times in each type of child care service for which a permit is issued. In the event of breaks, lunch periods, and short term absence, no more than three (3) days, the required staff to child ratio may be maintained with assistant teaching staff.

(1) When any child care service is in operation, the number of qualified staff required by this Code shall be assigned and on duty to protect the health and safety of the children in care.

(2) No child or group of children shall be unsupervised at any time.

(b) *Group teacher.* Except in night care, a group teacher shall be in charge of each group of children ages two to six years.

(c) *Infant/toddler service supervision.* An educational director or a group teacher with equivalent qualifications shall be present at all times of operation to supervise an infant/toddler service.

(d) *Infant/Toddler teacher.* An infant/toddler teacher, under the supervision of the educational director, may be in charge of individual groups of infants and toddlers, or children in night care.

(e) *CPR and first aid certifications.* At least one staff member certified in cardiopulmonary resuscitation and first aid shall be on the premises of a child care service during all hours when children are present.

(f) *Minimum staff to children ratios.* The minimum ratios of staff to children shall be as follows:

AGE OF CHILDREN	STAFF/CHILD RATIO	MAXIMUM GROUP SIZE
under 12 months	1:4 or 1:3	8 per room/area
12 to 24 months	1:5	10
2 years to under 3	1:6	12
3 years to under 4	1:10	15
4 years to under 5	1:12	20
5 years to under 6	1:15	25

(1) When children 12 months of age and older are in a group of mixed but contiguous ages, the minimum staff/child ratios and group size shall be based on the predominant age of the children in the group.

(2) Programs that maintain a ratio of teachers to children of 1:4 for children under 12 months of age shall demonstrate through their Written Safety Plan that they have sufficient staff in the program at all times to provide a staff to child ratio of 1:3 for the safe evacuation of children younger than 12 months of age during emergency situations.

(g) *Mixed groups.* Infants shall not be placed in older age groups.

(h) *Night care services supervision.*

(1) Staff included in the staff/child ratios set forth above shall be awake at all times, and shall maintain direct line of sight, visual supervision of children.

(2) An educational director or a staff teacher with

equivalent qualifications shall be present at all times to supervise the night care service and may not have a specific classroom assignment if more than 40 children are receiving night care.

§47.25 Health; child admission criteria.

(a) *Admission requirements.*

(1) *Physical examinations and screening.* All children shall receive a complete age appropriate medical examination, including but not limited to a history, physical examination, developmental assessment, nutritional evaluation, lead poisoning screening, and, if indicated, screening tests for dental health, tuberculosis, vision, and anemia.

(2) *Immunizations.* All children shall be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B and haemophilus influenzae type b (Hib), in accordance with New York Public Health Law §2164, or successor law, and shall have such additional immunizations as the Department may require. Exemption from specific immunizations may be permitted for medical contraindications or on religious grounds, in accordance with Public Health Law §2164.

(b) *Form with results of examination.* Health care providers examining children pursuant to this section shall furnish permittees with a signed statement, in a form provided or approved by the Department, containing a summary of the results of examination, past medical history, and, if a disease or condition which affects the child's ability to participate in program activities is found, a summary of the evaluation and findings associated with that condition. The examination form shall include the health care provider's recommendations for exclusion or treatment of the child, modifications of activities, and plans for any necessary health supervision.

(c) *Periodic examinations.* Each child shall have periodic medical examinations at 2, 4, 6, 9, 12, 15, 18 and 24 months and 3, 4, 5 and 6 years of age.

(d) *Medical records to be maintained.* A permittee shall maintain an individual medical record file for each child. This file shall include:

(1) A cumulative record consisting of a form provided or approved by the department, including: child's name, address, date of admission and date of birth; parents' names, home and business addresses and telephone numbers; names and telephone contact information of person(s) to contact in case of emergency, including name, address and telephone number of the child's primary health care provider; pertinent family medical history, and child's history of allergies, medical illnesses, special health problems and medications, immunization records; and parental consent for emergency treatment.

(2) Copies of all individual health records required by this Code, including new admission and periodic medical examination forms, parents' and health care provider notes regarding episodic illnesses, and a history of all illnesses, accidents, and other health data.

(e) *Records to be confidential.* All records required by this section shall be maintained as confidential records and shall not be made available for inspection or copying by any persons other than parents, other persons who present a written authorization from a parent, or authorized staff of the Department.

§47.27. Health; daily requirements; communicable diseases.

(a) *Daily attendance record.* A daily attendance record shall be kept in a form provided or approved by the Department.

(b) *Daily health inspections.* A health inspection of each child shall be made daily by the educational director or designated teachers who are familiar with such child and trained to recognize signs or symptoms of illnesses in accordance with guidelines or training provided or approved by the Department.

(c) *Management of ill children and reporting.*

(1) An area shall be provided for separating ill children under direct adult supervision until parents remove children from the child care service.

(2) All health care provider diagnoses pursuant to Article 11 of this Code shall be reported to the Department by the permittee.

(3) The Department shall be notified by the permittee within 24 hours of the occurrence of a death or serious injury to a child while in the care of the child care service.

(4) When any child is unexpectedly absent from the child care service for three consecutive days, the permittee shall telephone the child's parent to determine the cause of absence and shall maintain a record of the telephone call and the information obtained in the log required by §47.29 (d) of this Code.

(d) *Parent reports of absences.* At the beginning of each school year, the permittee shall notify parents that they are required to report absences in accordance with this subdivision. Parents shall report to the permittee within 24 hours any absence for: chicken pox, conjunctivitis, diarrhea, diphtheria, food poisoning, hepatitis, haemophilus influenza type b infection, impetigo, measles, meningitis (all types), meningococcal disease, Methicillin resistant staphylococcus aureus (MRSA), mumps, pertussis (whooping cough), poliomyelitis, rubella (German measles), salmonella, scarlet fever, tuberculosis, or any other disease or condition which may be a danger to the health of other children. Such disease or condition shall not include acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.

(e) *Reports of vaccine preventable illnesses.* The permittee shall report to the Department by telephone, within 24 hours, any child who has any vaccine preventable illness, or meningitis or tuberculosis, or if there is any outbreak or unusual occurrence of any disease or condition at the facility.

(f) *Exclusions pursuant to Article 11 of this Code.* The permittee shall exclude a child who is a case, contact, or carrier of a communicable disease if the child is required to be isolated or excluded by Article 11 of this Code. Such child shall not be permitted to return to the child care service without a written statement of recovery from a health care provider if the child was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all

types), or poliomyelitis, or if the child was a case, carrier, or contact of any other communicable disease reportable pursuant to Article 11 of this Code. The statement shall indicate that the child is free from such disease in communicable form and that the period of isolation or exclusion required by Article 11 of this Code has ended.

§47.29. Health; emergencies.

(a) *Emergency procedures and notices.* Written policies and procedures for managing health and other emergencies shall be included in the written health and safety plans and approved by the Department prior to the issuance of a permit. Permittees shall provide notice of the location and contact telephone numbers of the child care service to local hospitals, police precincts, fire houses and emergency transport services and information about emergency policies and procedures shall be provided to parents. Emergency procedures and emergency telephone contact numbers (for Police, Fire Department, Poison Control Center, Child Abuse Hotline, and the Department of Health and Mental Hygiene) shall be conspicuously posted in each classroom or area used by children.

(b) *Necessary emergency medical care.* When a child is injured, or becomes ill under such circumstances that immediate care is needed, the permittee or designee shall obtain necessary medical care and immediately notify the child's parent.

(c) *First aid supplies.* A first aid kit, completely stocked for emergency treatment of cuts and burns, shall be provided by the permittee and shall be easily accessible for use. The first aid kit shall be kept out of reach of children and inspected periodically.

(d) *Log of children's illnesses and accidents.* The permittee shall maintain a log of illnesses, accidents, and injuries sustained by children in the service, in a form provided or approved by the Department. The permittee shall provide a child's parent with information concerning such incidents pertaining to the child, and shall report serious injuries to the Department. Logged entries shall include the name and date of birth of the child, the place, date and time of the accident or injury, names and positions of staff and other adults present, a brief statement as to how the accident or injury occurred, emergency treatment obtained, if any, and parental notification made or attempted.

§ 47.31. Health; medication administration

(a) *Medication policy required.* Each permittee shall establish a policy as to whether the permittee will or will not administer medication, and incorporate such policy in the service's health care plan.

(b) *Exempt staff.* A service that employs staff who are also currently State licensed physicians, physicians assistants, registered nurses, nurse practitioners, licensed practical nurses, or emergency medical technicians may administer medications without such staff obtaining additional qualifications or certification.

(c) *Health care consultant and duties.* All permittees that choose to administer medications to children shall designate a health care consultant of record, who shall be a health care provider as defined in this Article. The permittee shall confer with the health care consultant and shall obtain approval of the consultant for the portion of the health care plan regarding policies and procedures related to the administration of medications. The consultant shall review documentation of all staff authorized to administer medications and determine if staff have required professional licenses or certificates of completion of required training. A health care plan shall be valid for two years and shall be updated when designated staff has changed. The health care consultant shall visit the child care service at least once every two years and shall review the permittee's health care policies, procedures, documentation, practice and compliance with its health care plan for administering medications. If the consultant determines that the approved health care plan is not being reasonably followed by the permittee, the consultant may revoke his or her approval of the plan. If the consultant revokes his or her approval of the health care plan, the health care consultant shall immediately notify the permittee and the Department.

(d) *Staff members certified to administer medications.* Only a trained, designated staff person may administer medications to children, except where the only administration of medications will be over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellent. The staff person administering medications to children shall be at least 18 years of age, possess current certifications in first aid, cardio-pulmonary resuscitation (CPR), and medication administration training (MAT) in a course approved or administered by the Department or the State Office of Children and Family Services. MAT certificates shall be made available for inspection by the Department on request.

MAT certifications shall be effective for a period of three years from the date of issuance. Recertification training shall extend certification for additional three-year periods. If a designated staff person ceases to work in a child care service for a continuous period of one year, certification shall automatically lapse. Where certification lapses, the person may be recertified after repeating initial MAT or recertification training, as required by the Department. Where a permittee has failed to comply with requirements for the administration of medications set forth in this section, the Department may require retraining or may prohibit the permittee from administering medications.

(e) *Medication administration procedures.* Permittees and designated staff may administer prescription and nonprescription (over-the-counter) medications for eyes or ears, oral medications, topical ointments and medications, and inhaled medications in accordance with the provisions of this section.

(1) A copy of written policies regarding the administration of medications shall be reviewed and explained to parents at the time of enrollment, and provided to parents.

(2) The permittee shall obtain from a child's parent and health care provider a statement in writing that indicates medicine to be administered and schedule of administration.

(3) A parent, or other adult authorized in writing by the

parent may administer medications to a child while the child is attending a child care service at any time.

(4) The permittee shall maintain a medication administration log to document name of child, date, time and name of staff, parent, or other adult authorized by a parent to administer medications.

(5) Permittees and designated staff may not administer medications by injection, except for epinephrine auto-injector devices when necessary to prevent anaphylaxis for an individual child when the parent and the child's healthcare provider have indicated such treatment is appropriate.

(6) Medications shall not be administered vaginally or rectally except where such permittee or staff has a valid New York State license as a physician, physician's assistant, registered nurse, nurse practitioner, licensed practical nurse, or advanced emergency medical technician.

(7) Permittees who agree to administer medications shall do so, unless they observe circumstances specified by a child's health care provider, if any, under which medication shall not be administered. In such instances, the permittee shall contact the parent immediately.

(8) Medication may only be administered with written consent of the parent in accordance with written instructions from the child's health care provider including, but not limited to circumstances, if any, under which the medication or prescription shall not be administered. Medication shall be returned to the parent when no longer required by the child.

(9) When the permittee has written parental consent and written instructions from a health care provider authorizing administration of a specified medication if the permittee observes a specific condition or change of condition in the child while the child is in care, the permittee may administer the medication without obtaining additional authorization from the child's parent or health care provider.

(10) To the extent that such information is not included on the medication label, written instructions by the health care provider shall include:

- (A) child's name;
- (B) health care provider's name, telephone number, and signature;
- (C) date authorized;
- (D) name of medication and dosage;
- (E) frequency the medication is to be administered;
- (F) method of administration;
- (G) date the medication shall be discontinued or length of time, in days, the medication is to be given;
- (H) reason for medication (unless this information shall remain confidential pursuant to law);
- (I) most common side effects or reactions; and
- (J) special instructions or considerations, including but not limited to possible interactions with other medications the child is receiving or concerns regarding the use of the medication as it relates to a child's age, allergies, or any pre-existing conditions.

(11) Medications shall be kept in the original labeled bottle or container. Over-the-counter medication shall be kept in the originally labeled container and shall be labeled with the child's first and last name. Prescription medications shall contain the original pharmacy label.

(12) If medication is to be given on an ongoing, long-term basis, the parent's consent and health care provider's written instructions shall be renewed in writing at least once every six months. Any changes in the original medication shall require a permittee to obtain new written instructions from the health care provider.

(13) A permittee may administer over-the-counter topical ointments, including sunscreen lotion and topically applied insect repellent, upon the written instructions of the parent. Such administration shall be consistent with any directions for use noted on the original container, including but not limited to precautions related to age and special health conditions, and no additional certifications are required by the permittee or designated staff.

(14) For all children for whom the permittee administers over-the-counter medications pursuant to this paragraph, copies of parental written consent and instructions shall be maintained in the child's medical record file.

(15) Medications shall be kept in a clean area that is inaccessible to children. If refrigeration is required, medications shall be stored in either a separate refrigerator or a leak-proof container in a designated area of a food storage refrigerator, separated from food and inaccessible to children. Permittees shall comply with all applicable law for secure storage of all medications.

(16) Staff shall document dosages and times that medications are given, observable side effects, reasons for not giving medication and medication administration errors, and shall report to the parent and to the child's health care provider, in accordance with the provider's written instructions; medication errors shall be immediately reported to the Department.

(17) No children shall independently self administer medications or assist in the administration of their own medications except under direct supervision of designated staff.

(f) *When medication is not administered by the permittee.* The permittee who elects not to administer medications, shall include such policy in the health plan portion of the written safety plan required by §47.11 of this Code, notify parents of such policy and inform parents that they or an adult they designate in writing may administer medication to their child while he/she is in care.

(1) The permittee is not required to obtain approval or schedule visits of a health care consultant when no medications are administered.

(2) Topical non-prescription (over-the-counter) ointments, sunscreens and insect repellents are the only items allowed to be administered by a permittee who is not certified in accordance with this section.

(3) Written consent shall be obtained from the parent for use of all topical ointments.

(4) The permittee shall record in the medication log applications of ointments, sunscreens and insect repellents, with name of child, date, time and staff signature.

§47.33. Health; staff.

(a) *Staff to be excluded.* The permittee shall exclude any staff person from work in accordance with Article 11 of this Code, if such staff person reports having an illness or symptoms of a communicable disease reportable pursuant to Article 11 of this Code. Such staff person shall not be permitted to return to the child care service without a written statement of recovery from a health care provider if the staff person was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the staff person was a case of any other communicable disease reportable pursuant to Article 11.

(b) *Physical examination certificates.* No educational director, teacher, substitute, volunteer worker, office worker, kitchen worker, maintenance worker or other staff member who regularly associates with children shall be permitted to work in a service unless such person is healthy and capable of carrying out the responsibilities of the job. Prior to commencing work, all such staff and volunteers shall present a certificate from a licensed health care provider certifying that, on the basis of medical history and physical examination, such staff member or volunteer is physically and mentally able to perform assigned duties. Such certificate shall be submitted every two (2) years thereafter as a condition of employment. Certificates of required physical examinations and other medical or personal health information about staff shall be kept on file at the place of employment, shall be confidential, and shall be kept separate from all other personnel or employment records.

(c) *Staff immunizations.* Health care providers shall certify that each staff or volunteer has been immunized against measles; mumps; rubella; varicella (chicken pox); and tetanus and diphtheria (Td) or tetanus, diphtheria and acellular pertussis (Tdap) in accordance with recommendations of the CDC Advisory Committee on Immunization Practices. Persons born on or before December 31, 1956 who have a history of measles or mumps disease shall not require such vaccines. A history of having health care provider documented varicella, measles or mumps disease shall be accepted in lieu of varicella, measles or mumps vaccines. A history of having rubella disease shall not be substituted for the rubella vaccine. A laboratory test demonstrating detectable varicella, measles, mumps, or rubella antibodies shall also be accepted in lieu of varicella, measles, mumps and rubella vaccine. An employee may be exempted from this immunization requirement for medical contraindications upon submission of appropriate documentation from a licensed physician.

(d) *Test for tuberculosis infection.* The Department may require testing for tuberculosis at any time of any persons in a child care service when such testing is deemed necessary for epidemiological investigation.

§47.35 Personal hygiene practices; staff and child.

(a) *Hand washing.* Staff and children shall wash hands before and after toileting or diaper changes, after contact with a child in ill health, and prior to handling or preparing any food and after playing outdoors.

(b) *Signs.* Hand washing signs provided by or approved by the Department shall be prominently posted in each lavatory and by each sink.

(c) *Individual personal care.* Hair brushes or cloth towels shall not be provided for use. If toothbrushes, combs, or washcloths are provided, each child shall have items for his/her exclusive use and they shall be stored in an individually labeled container.

(d) *Changes of clothing.* At least one change of weather-appropriate clothing shall be available so that any child who soils clothing may receive a change. Soiled clothing and cloth diapers shall be handled in a manner that protects occupants from exposure to wastes and maintains an appropriately sanitary environment.

(e) *Bathing.* Children shall not be regularly bathed on premises; but shall be washed in case of accidents.

(f) *Self-care/hygiene routines for night care services.* Permittees shall establish procedures and policies that require children to brush teeth at bedtime and after meals; comb hair upon awakening, and follow a routine for toileting, dressing and undressing

(g) *Safety precautions relating to blood.* Permittees shall implement the following safety precautions for all staff having any exposure to, or contact with blood:

(1) Disposable gloves shall be immediately available and worn whenever there is a possibility for contact with blood, including but not limited to:

- (A) Changing diapers where there is blood in the stool;
- (B) Touching blood or blood-contaminated body fluids;
- (C) Treating cuts that bleed; and
- (D) Wiping surfaces stained with blood.

(2) In an emergency, a child's safety and well-being shall take priority. A bleeding child shall not be denied care because gloves are not immediately available.

(3) Disposable gloves shall be discarded after each use.

(4) If blood is touched accidentally, exposed skin shall be thoroughly washed with soap and running water.

(5) Clothes contaminated with blood shall be placed in a securely tied plastic bag and returned to the parent at the end of the day.

(6) Surfaces that have been blood stained shall be cleaned and disinfected with a germicidal solution.

(h) *Smoking prohibited.* There shall be no smoking of tobacco or other substances in any indoor or outdoor area of any premises on which a child care service is located.

§47.37 Training

(a) *Educational Director.* The educational director shall arrange for and verify continuing in-service training of all employees, teaching staff and others, as required by this Article. The educational director may be certified to conduct such training or may designate other teaching staff to obtain such certification and conduct such training.

(1) *All employees.* All employees, and any volunteers, or other persons who have, will have, or have the potential for, unsupervised contact with children in a child care service, shall receive two hours of training in child abuse and

maltreatment identification, reporting and prevention and requirements of applicable statutes and regulations. Such training shall be provided by a New York State Office of Children and Family Services certified trainer. New employees shall receive such training within six (6) months of hire. All employees shall receive such training every 24 months. In addition, all teachers shall receive training in infection control and reporting infectious diseases. The Educational Director shall maintain copies of certificates verifying completion of such training.

(2) *Infant/toddler and night care service staff.* In addition to the training requirements in paragraph (1) above, infant/toddler and night care services staff shall complete sudden infant death syndrome ("SIDS") and "shaken baby" identification and prevention training.

(3) *Assistant teachers.* Assistant teachers shall complete 15 hours of training every 24 months, including the mandatory child abuse prevention and identification training in paragraph (1), and other subjects related to child health and safety, and early childhood development. The Educational Director shall develop a training curriculum based on assessment of the professional development needs of individual assistant teachers. The curriculum shall include, but not be limited to, the following topics:

(A) Preventing, recognizing signs of, and reporting injuries, infectious diseases, other illnesses and medical conditions.

(B) First aid and CPR

(C) Lead poisoning prevention.

(D) Physical activities, scheduling and conducting guided and structured physical activity.

(E) Asthma prevention and management.

(F) Setting up and maintaining staff and child health records including immunizations

(G) Growth and child development

(i) Early intervention

(ii) Early childhood education curriculum development and appropriate activity planning.

(iii) Appropriate supervision of children

(iv) Meeting the needs of children with physical or emotional challenges

(v) Behavior management and discipline.

(vi) Meeting nutritional needs of young children

(vii) Parent, staff, and volunteer, communication and orientation: roles and responsibility.

(viii) The selection of appropriate equipment and classroom arrangement.

(ix) Safety and security procedures for fire safety, emergency evacuation, playgrounds, trips and transportation.

(c) The Department may provide such training or any part thereof or accept training provided by others found satisfactory to the department. Persons who enroll in workshops conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for workshop registration materials, training testing, and certificate issuance.

§47.39. Space allowance; reservation for children's use

(a) *Space for children's exclusive use.* Rooms, areas and other spaces utilized by children in a child care service shall be reserved for their exclusive use and shall not be shared with other children or adults while the service is in operation.

(b) *Minimum square footage/child.* The minimum allowance of space for each child in a classroom shall be 30 square feet of wall to wall space.

§47.41. Indoor physical facilities

(a) *Egress.* All child care services receiving a first permit after January 1, 1989 shall have two means of egress. Fire escapes shall not be counted as a second means of egress.

(b) *No child care provided above third floor.* No child care services receiving a first permit after January 1, 1989 shall allow children to utilize any rooms, areas or other spaces above the third floor of a building, except that the Department may allow child care services to occupy spaces above the third floor where the Department of Buildings and Fire Department have approved such use and the Department has approved the applicant or permittee's evacuation plan.

(c) *Infant/toddler services limited to first floor.* No infant/toddler service receiving a first permit on or after September 1, 2008 shall provide child care services in any room, area or other space above the first floor or below the ground level floor of a building, except that the Department may allow infant/toddler child care services to occupy spaces above the first floor or one level below the ground level floor of a building, where the Department of Buildings and Fire Department have approved such use and the Department has approved the applicant or permittee's evacuation plan.

(d) *Basements.* A child care service receiving a first permit on or after September 1, 2008 shall not allow children to utilize any rooms, areas or other spaces lower than one level below the ground level floor of a building.

(e) *Window guards.* Windows guards shall be installed in accordance with specifications provided or approved by the Department on all windows in all rooms, hallways, and stairwells, except windows giving access to fire escapes.

(f) *Passageways free of obstruction.* All corridors, doorways, stairs, and exits shall be kept unobstructed at all times.

(g) *Protective barriers in stairways.* Protective barriers shall be provided in all stairways used by children. Stairways shall be equipped with low banisters or handrails for use of children. Protective barriers providing visual access shall be installed in lofts used by children.

(h) *Shielding required.* Columns, radiators, pipes, poles, and any other free-standing or attached structures in classrooms and play areas shall have protective guards.

(i) *Door locks.* No door to a bathroom, closet or other enclosed space shall be equipped with a lock that allows the door to be locked from inside the space, except that devices may be used to secure privacy if they can be overridden from the outside in an emergency.

(j) *Finishes and maintenance.* Walls, ceilings and floors shall be finished with non-toxic finishes, constructed of materials enabling thorough cleaning, and maintained in good repair, with no holes, missing tiles, peeling plaster, or other defects.

§47.43 Plumbing; toilets, hand wash, and diaper changing facilities.

(a) *Plumbing installation.* Plumbing shall be installed only by a licensed plumber and shall be free of cross-connections and other hazards to health. Drinking water from faucets and fountains shall be tested for lead content and the permittee shall investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected.

(b) *Adequate toilets and sinks to be provided.* One toilet and one hand wash sink shall be provided for every 15 children ages 24 months and older, or fraction thereof, based on permit capacity. When an extended hand wash facility is equipped with several faucets supplying tempered water, each faucet shall be considered the equivalent of one hand wash sink.

(c) *Located near children's rooms.* Toilets and hand wash sinks shall be located as close as practicable to children's playrooms and classrooms.

(d) *Staff toilets.* Separate adult toilets shall be provided for staff.

(e) *Sink water supply.* Hand wash sinks with an adequate supply of hot and cold running water shall be provided in or adjacent to toilets. Water temperature in hand wash sinks used by children shall not exceed 115 degrees Fahrenheit (46.11 degrees Celsius).

(f) *Accessibility to children.* Toilets and hand wash sinks shall be installed at a height that allows unassisted use by children. If adult-size toilets or hand wash sinks are in place, platforms with easily cleaned surfaces shall be provided for use by children. Such platforms shall be permanently installed and free of hazards.

(g) *Soaps and drying devices.* All sinks shall be equipped with liquid soap dispensers, individual paper towels or sanitary driers, located within easy reach of the children.

(h) *Diaper changing.*

(1) A firm, non-absorbent, easily cleanable, counter height surface directly adjacent to a sink with running hot and cold water shall be provided in or adjacent to the classroom for diaper changing when needed.

(2) A disposable covering shall be provided on diaper changing counters and shall be changed after each use. The counter surface shall be disinfected after each use.

(3) A readily accessible receptacle with secure lid and removable plastic liner shall be provided for the disposal of diapers; separate equipment shall be provided for cloth diapers, if used. A properly labeled spray bottle of approved disinfectant shall be provided.

(4) Staff changing diapers shall wear disposable rubber or other barrier gloves.

(5) Potties shall be used only in bathroom or toilet facilities, and shall be washed and disinfected after each use in a designated utility sink that is not used by staff or children as a hand wash sink.

§47.45 Ventilation and lighting

(a) *Ventilation.* Ventilation, by natural or artificial means, shall be provided in each room used by children. Internal temperature and humidity shall be regulated so the facility is free of nuisance conditions, including, but not limited to excessive heat, dust, fumes, vapors, gases, odors or condensate. The windows, inlets, outlets and artificial ventilation shall be located and the rate of air flow shall be controlled so as not to subject the children to drafts.

(b) *Lighting.* All parts of a building used for the care of children shall be adequately lighted by natural or artificial means. All lighting shall be evenly distributed and diffused, free from glare, flickering or shadows. The following lighting levels shall be provided and maintained at children's activity level:

(1) Fifty footcandles of light in all classrooms used for partially sighted children;

(2) Thirty footcandles of light in all other classrooms, study halls or libraries;

(3) Twenty footcandles of light in recreation rooms;

(4) Ten footcandles of light in auditoriums, cafeterias, locker rooms, washrooms, corridors containing lockers;

(5) Five footcandles of light in open corridors and store rooms; and

(6) Five footcandles of light shall be provided during sleeping hours in bathrooms, sleeping areas and exit paths.

§47.47 Outdoor play areas

(a) Adequate, easily accessible outdoor play areas shall be provided, shall be kept clean and safe, and shall be suitable for children's use.

(b) Outdoor play areas located on the premises of the child care program shall be enclosed by climb-proof fencing that is a minimum of five (5) feet in height. No razor or barbed wire shall be used at the top of a fence, unless the fence is more than six and one half (6½) feet in height.

(c) Rooftop play areas may be provided in fireproof buildings, when such use is approved by the Department, the Department of Buildings and the Fire Department. Rooftop play areas shall be enclosed by a climb-proof fence, at least 10 feet in height with an additional 45° inwardly angled panel.

(d) Outdoor equipment, including, but not limited to, swings, slides, and climbing apparatus, shall be age and developmentally appropriate, shall be installed, maintained and used in accordance with manufacturers' specifications and instructions, approved by the US Consumer Product Safety Commission, and maintained in good repair.

(e) Outdoor play areas shall be maintained free of broken glass or other debris, poison ivy or other poisonous vegetation, pest harborages, or other hazards.

(f) Resilient surfaces, approved by the US Consumer Product Safety Commission, that do not contain asphalt or cement, shall be provided under and surrounding climbing and other elevated equipment.

(g) Play equipment shall be in good repair, and free from hazards such as sharp edges or pointed parts, or toxic or poisonous finishes or materials, including but not limited to, lead and arsenic.

§47.49 General sanitation and maintenance.

(a) *Maintenance.* Indoor and outdoor rooms, play areas, and other spaces, including cellars, basements, and adjoining yards and courts, and all furnishings and equipment shall be

kept clean of food and debris and maintained in good condition. Interior rooms used by children shall not be cleaned by dry sweeping.

(b) *Trash and garbage.* Trash and garbage shall be stored in rodent proof containers with tightly fitted lids. Trash, garbage, and combustible materials shall not be stored in the furnace or boiler rooms or in rooms or outdoor areas adjacent to the facility that are ordinary occupied by or accessible to children.

(c) *Toxic and poisonous materials to be contained.* All matches, lighters, medicines, drugs, cleaning materials, detergents, aerosol cans and other poisonous or toxic materials shall be stored in their original containers. Such materials shall be used in such a way that they will not contaminate play surfaces, equipment, food or food preparation areas or constitute a hazard to children. Such materials shall be kept in places that are inaccessible to children, and that can be securely locked.

(d) *Environmentally sensitive cleaning products.* Whenever feasible, child care services shall utilize environmentally sensitive cleaning products, as defined in State Education Law §409-i, or successor statute.

§47.51 Rodents, insects and other pests prohibited; pesticide application notice.

(a) *Pest free premises.* Premises shall be kept free of rodents, insects and other pests and free of any condition conducive to rodent, insect and other pest life.

(b) *Pest control.* Pest control methods shall emphasize prevention of pest infestation by preventing the free movement of pests into, and within the premises and by eliminating the conditions conducive to pests such as clutter and the availability of food and water. Such methods shall include, but not be limited to: closing and filling holes, cracks, and gaps at baseboards, where plumbing, radiator and other pipes and conduits enter the premises, where food storage cabinets join walls, and where shelves meet food storage cabinet interiors, using plaster, spackle, caulk or other appropriate sealants; storing all food products in sealed insect and rodent proof containers; installing door sweeps to prevent pest movement between rooms and areas. When necessary to control pests, permittees shall utilize pest control services provided by exterminators certified to apply pesticides by the New York State Department of Environmental Conservation (NYSDEC). Extermination logs shall be maintained for inspection by the NYSDEC.

Permittees shall request that exterminators utilize the least toxic methods and substances to control infestations, including but not limited to the use of: boric acid, diatomaceous earth, silica gel, insecticidal baits and gels for cockroaches; and shall utilize glue traps and rodenticidal bait only if inserted in tamper-resistant containers and placed in locations inaccessible to children. Routine extermination shall not include the use of insecticidal aerosol sprays or foggers. Exterminators' logs of pesticide applications equivalent in content to NYSDEC Form 44-15-26 (Applicator/Technician Pesticide Report) shall be maintained for inspection by the Department for three years.

(c) *Notice of pesticide applications.* Notice of pesticide applications shall be provided to parents not less than 48 hours before such application and shall include: (1) location and specific dates of applications; (2) pesticide product name and U.S. EPA registration number; (3) the name and telephone number of a child care service staff person to contact for more information; and (4) the following statement: "This notice is to inform you of a pending pesticide application at this child care service. You may wish to discuss with a representative of the child care service what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product or products being applied, including any warnings that appear on the label of the pesticide or pesticides that are pertinent to the protection of humans, animals, or the environment, can be obtained by calling the National Pesticide Telecommunication Network Information line at 1-800-858-7378 or the NYS Department of Health Center for Environmental Health Info Line at 1-800-458-1158."

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§47.53 Pet animals.

No reptiles, dogs, cats, and any other animals whose possession is prohibited by §161.01 of this Code, or successor rule, shall be harbored in a child care service. Any animals that are harbored in a child care service shall be in good health, show no evidence of carrying any disease, and shall pose no threat to children. Pets shall be kept in cages, and waste material within cages shall be cleaned daily or more often, if needed.

§47.55 Equipment and furnishings.

(a) *Furnishings.* Tables, chairs, furniture and equipment shall be age and size appropriate, finished with non-toxic surface coverings, easily cleanable, and cleaned and sanitized as needed.

(b) *Naps.*

(1) A separate firm sanitary cot, crib, mat, playpen or other sleeping arrangement specifically approved by the Department shall be provided for each child who spends more than four hours a day in the service.

(2) Stackable cribs shall be prohibited.

(3) Cots or other sleep equipment shall be placed at least two feet apart unless separated by a screen or partition.

(4) Pillows shall not be used except when recommended by a child's health care provider.

(5) A clean sheet shall be provided for the exclusive use of each child.

(6) Blankets that are sufficient to maintain adequate warmth shall be made available for each child and shall be used when necessary.

(7) Sheets and blankets shall be stored separately for each child to avoid cross-contamination, and shall be washed at least weekly.

(c) *Space for clothing.* Space shall be provided and arranged so that each child's outer garments may be hung separately, safely and within each child's reach.

§47.57 Safety; general requirements.

(a) *Telephone service.* The permittee shall provide and

maintain at least one dedicated land line listed telephone for emergency use, and shall conspicuously post adjacent to the telephone current telephone numbers and instructions for obtaining fire, police and emergency medical assistance, contacting the Department's poison control hotline and Bureau of Child Care, or successor program, and the SCR child abuse hotline.

(b) *Eliminate safety hazards.* Precautions shall be taken to eliminate all conditions in areas accessible to children that pose a safety or health hazard.

(c) *Choking hazards.* Handbags, backpacks, briefcases, or other personal items belonging to adults or children, plastic bags, toys and objects small enough for children to swallow shall be stored in manner that they are not accessible to children.

(d) *Cold weather.* When outdoor temperatures are below 55°F, and children are on premises, permittees shall maintain indoor air temperatures between 68°F and 72°F in all rooms, areas and other spaces used by children.

(e) *Heat advisories.* On designated heat advisory, excessive heat warnings or watches, or ozone or other air pollution advisory days, the permittee shall maintain physical comfort levels of children and staff by providing adequate facility ventilation and/or air conditioning. The permittee shall implement policies to increase children's fluid intake and facilitate adequate hydration. Activities shall be modified to protect children from heat associated disorders and conditions, including but not limited to heat stress and heat strain, and scheduled activities shall be otherwise restricted or cancelled in response to restrictions or recommendations of the New York City Office of Emergency Management or the National Weather Service. During severe weather or other advisories, the permittee shall take appropriate action to protect the safety and health of children, including but not limited to, early dismissal, closing of the child care service, and employing appropriate precautions during transportation. Such precautions shall be described in the written safety plan.

(f) *Approved areas to be used.* Children shall not be kept for any period of time in any areas of a building or other premises not previously approved by the Department and the New York City Fire Department and Department of Buildings for such use. Such approval shall not be granted unless the premises and the area surrounding the premises are free from fire, traffic and other safety or health hazards.

(g) *Environmental hazards.* Child care services obtaining a first permit after September 1, 2008 shall not be co-located in any building or other premises containing commercial or manufacturing establishments associated with environmental hazards including, but not limited to those associated with dry cleaners, gas stations and petrochemical storage and distributors, automotive dealerships/maintenance or repair facilities, commercial printing, industrial/manufacturing plants and machine/equipment servicing, nuclear laboratories or power plants, or on premises identified as a federal or state superfund or other cleanup site, or any property with known contaminated ground or water supplies. No child care permit shall be issued or renewed for any child care service located in any building or other premises unless such building or premises are free of environmental hazards including but not limited to those identified above, or any other condition dangerous to life and health. When the permittee or the operators or other persons in control of any premises occupied by any child care service learn of a current or prior commercial activity or condition that may result in potential exposure to environmental hazards, such persons shall submit written notification on a form provided by or satisfactory to the Department of the existence of such activity or condition. When the Department determines that a condition may expose children or other persons to environmental hazards at the premises occupied by any child care service, it may order the abatement or remediation of such condition. In such cases as it deems necessary the Department may conduct and/or order the owner or other persons in control of the premises occupied by the child care service to conduct an environmental assessment consisting of but not limited to environmental sampling and to take such other action as it deems essential to protect the public health.

(h) *Adults restricted.* Adults allowed on the premises occupied by a child care service shall be limited to staff, parents and/or guardians and other authorized relatives and volunteers, student teacher trainees or observers, credentialed Department and other public inspectors, and persons providing services to the center.

(i) *Instructional swimming and aquatic activities.* Child care services shall obtain written approval of the Department prior to offering any swimming or other aquatic activities. Aquatic activities for group child care services are limited to learn to swim or water safety programs that use a supervision protocol approved by the State Commissioner of Health to protect children from injury or drowning. When authorized by the Department, such activities shall be conducted in accordance with the child care service's written safety plan and the following requirements:

(1) Facilities and equipment.

(A) Child care services may utilize only swimming pools operating pursuant to a permit issued by the Department, or other State permit issuing official, in accordance with Article 165 of this Code and Subpart 6-1 of the New York State Sanitary Code, or successor regulations.

(B) Swimming at bathing beaches, spa pools and in "fill and draw" pools is prohibited.

(C) Swimming pools or other bodies of water within the grounds of a child care center shall be surrounded by a barrier sufficient to form an obstruction to children having access to such body of water in accordance with Article 165 of this Code.

(D) Barrier walls, fences and gates shall be at least six (6) feet high, except for wading pools, which shall be enclosed by barriers at least four (4) feet high, and shall be firmly attached to the adjacent ground, and shall completely enclose the pool or body of water.

(E) Pathways, walkways, decks, or other connecting entrance to the pool or body of water shall be obstructed by barriers that prevent children from having access to the pool or body of water.

(2) *Supervision: aquatic staff responsibilities and qualifications.*

(A) At least one qualified lifeguard shall be provided by the pool or the child care service for every 25 children or portion thereof and for every 3,400 square feet of pool surface area. Qualified lifeguards, as defined in Article 165 of this Code, shall actively supervise children participating in swimming and aquatic activities, as detailed in the written safety plan, and shall not be engaged in any other duties or activities that distract them from direct supervision of children in the pool.

(B) The permittee shall identify an employee to act as an aquatics director responsible for direct supervision of all swimming and aquatic activities. The aquatics director shall be present during all swimming and aquatic activities; shall establish and oversee all such activities on and off-site; and shall supervise all staff, volunteers, and children participating in these activities.

(C) During all swimming and aquatics activities, the aquatics director or designee shall have in his or her possession the approved written safety plan; and shall maintain for each swimming session an accountability system detailed in the written safety plan and approved by the Department for recording the name of each child, the swimming area to which the child is assigned, the adult to whom the child is assigned in the swimming area, and the dates and times of initiation and cessation of aquatic and swimming activities.

(D) The aquatics director shall:

(i) be at least 18 years of age;

(ii) possess either: a current cardiopulmonary resuscitation (CPR) certificate, not exceeding one year in duration, in CPR for the Professional Rescuer issued by the American Red Cross (ARC); or a current CPR certificate, not exceeding one year in duration, issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of CPR training; and

(iii) be either:

(aa) a progressive swimming instructor who is a currently certified ARC water safety instructor or possesses a current certificate issued by certifying agency determined by the State Commissioner of Health to provide an adequate level of similar training; or

(bb) a qualified lifeguard, as specified in the New York State Sanitary Code [10 N.Y.C.R.R.] §7-2.5(g), or successor regulation, who meets lifeguarding, first aid and CPR certification requirements detailed in Part 6 of the State Sanitary Code including minimum lifeguard supervision level IIa.

(E) The permittee shall restrict swimming and aquatic activities to group sizes per 47.23(e) of this Code.

(F) At least one progressive swimming instructor (PSI) shall be provided by the pool or child care service during all learn-to-swim programs, and shall provide instruction to no more than 10 children in the water at one time. A PSI shall be in the water at all times with the children and shall not be engaged in any other duties or activities that distract from direct instruction of children in the pool. The PSI shall be:

(i) at least eighteen (18) years of age; and

(ii) be a water safety instructor currently certified by the American Red Cross, or possess a current certificate issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of similar training; and

(iii) possess either: a current cardiopulmonary resuscitation (CPR) certificate, not exceeding one year in duration, in CPR for the Professional Rescuer issued by the American Red Cross (ARC); or a current CPR certificate, not exceeding one year in duration, issued by a certifying agency determined by the State Commissioner of Health to provide an adequate level of CPR training.

(G) There shall be at least one staff member, parent, or volunteer located in the water in close proximity to children in the water, so as to provide immediate assistance to children in distress, with direct visual surveillance of:

(i) every two children in water that is less than chest deep as measured on the children; or

(ii) every one child in water that is greater than chest deep as measured on the children; or

(iii) every three children in the water if children are wearing non-inflatable, properly fitted flotation devices that are secured to their bodies.

(iv) The PSI may be included in the above staff:child ratios.

(H) Staff members, parents, or volunteers in the water shall not be engaged in any other duties or activities that distract from direct supervision and support of children in the pool, and shall:

(i) be at least eighteen (18) years of age.

(ii) have their ability to swim established by the PSI prior to supervising children in the water. The PSI must assess their swimming capability, record the results, and incorporate them in the written safety plan which is maintained on file by the permittee.

(I) Learn-to-swim programs shall operate in water less than chest deep for all PSI, staff members, parents, and

volunteers in the water.

(J) At least one staff member certified in infant, child or pediatric CPR shall be present during all swimming and aquatic activities.

(3) Child safety.

(A) Children under 3 years of age are prohibited from participating in all swimming and aquatic activities.

(B) The written safety plan shall incorporate the safety requirements and supervision procedures applicable to swimming activities.

(C) An accountability system detailed in the written safety plan approved by the Department shall be established for supervising and accounting for children, that shall include, but not be limited to:

(i) an accountability system which identifies each child by name, the swimming area to which the child is assigned, the adult to whom the child is assigned in the pool, and a record of the dates and times of initiation and cessation of aquatic and swimming activities.

(ii) accountability checks of the children are made at least every 15 minutes and results recorded in an accountability log or in accordance with the accountability system detailed in the program's written safety plan approved by the Department.

(D) The child care service's written safety plan shall specify duties of all staff in case of swimming and aquatic activity emergencies, including but not limited to emergency procedures for "lost swimmers."

(E) Prior to each swimming and aquatic activity, the aquatics director shall meet with all staff and volunteers assigned to the activity and review their roles and duties at the area, including the children to whom each adult is assigned, and emergency procedures for "lost swimmers."

(F) Prior to every trip to an off-site swimming facility not owned by the child care service, permittee shall obtain and maintain on file for each child a written consent from a parent or guardian. A consent form approved by the Department shall be incorporated in the written safety plan and shall include the child's name and age, the destination and type of activities authorized during the field trip, and the date of the trip.

§47.59 Fire Safety

(a) All exits shall have clear and legible exit signs when required by Department of Buildings.

(b) Services shall have approved fire extinguishers in good working order and have them inspected as required by the Fire Department.

(c) In a child care service holding a permit for more than 30 children, an approved interior fire alarm system shall be provided.

(d) Fire drills shall be conducted monthly and logged for Fire Department inspection.

(e) Heating apparatus shall be equipped with adequate protective guards. Space heaters shall not be used.

(f) Premises shall be free of electrical, chemical, mechanical and all other types of hazards.

(g) Smoke and carbon monoxide detectors with audible alarms shall be provided in accordance with applicable law or as required by the Department or the Fire Department.

§47.61 Food and food safety.

(a) Food shall be stored, served to, and prepared for children in accordance with Article 81 of this Code, except that no additional permit to operate a food service establishment shall be required. The permittee shall designate as a supervisor of food service operations a person who has a certificate in food protection issued pursuant to §81.15 (a)(1) or (2) of this Code, or successor rule. Such person shall be on premises to supervise all food storage, preparation, cooking, holding, and cleaning activities, whenever such activities are in progress.

(b) Food supplied to children shall be wholesome, of good quality, properly prepared in accordance with nutritional guidelines provided or approved by the Department, age-appropriate in portion size and variety, and served at regular hours at appropriate intervals.

(1) Beverages with added sweeteners, whether artificial or natural, shall not be provided to children.

(2) Juice shall only be provided to children over eight (8) months of age, and only 100% juice shall be permitted. Children shall receive no more than six (6) ounces of 100% juice per day.

(3) When milk is provided, children ages two and older shall only be served milk with 1% or less milk-fat unless milk with a higher fat content is medically required for an individual child, as documented by the child's medical provider.

(4) Water shall be made available and shall be easily accessible to children throughout the day, including at all meals. Potable drinking water supplies shall be located in or near classrooms and playrooms. Except when bubbler fountains are used, individual disposable drinking cups shall be provided within reach of children. If bubbler fountains are used, they shall be of the angle jet type with suitable guards and shall have water pressure sufficient to raise the water high enough above the spout to avoid contamination.

(5) Any special diet shall be provided only in accordance with a note from a physician.

(6) The provisions of this subdivision shall not apply to child care services operated by a religious organization in instances where religious dietary requirements would be inconsistent with such provisions.

(c) When parents or other responsible persons provide meals, such foods shall be properly refrigerated and the operator shall provide such persons with age-appropriate nutritional guidelines approved or provided by the Department.

(d) Milk shall be stored at a temperature below 41 degrees Fahrenheit, may not be kept beyond its expiration date, and

may not be dispensed or served by children except under adequate supervision.

(e) Dry food shall be stored in insect and rodent-proof containers.

(f) All utensils, dishes and other materials used in association with food shall be properly cleaned and sanitized as required by the Department or disposed of after each use.

(g) Feeding bottles shall be marked with the child's full name and date of preparation.

(h) Unused portions of formula milk and/or baby food shall be discarded after each feeding or meal.

(i) Bottles shall not be propped or kept by children while sleeping. No styrofoam cups shall be used by children two years or younger.

(j) The food service at a night care program shall be provided as follows:

(1) Evening meals shall be served at the same time daily.

(2) Breakfast shall be provided for all children who have been at the facility through the night and are present between 6:00 A.M. and 8:00 A.M.

§47.63 Lead-based paint restricted.

(a) *Peeling lead-based paint prohibited.*

(1) There shall be no peeling lead-based paint or peeling paint of unknown lead content on any surface in a child care service.

(2) Peeling lead-based paint and peeling paint of unknown lead content shall be immediately abated or remediated upon discovery by the child care service permittee, or the owner of a building in which a child care service is located, regardless of whether there has been an inspection or order issued by the Department, in accordance with §173.14 of this Code.

(3) When there has been an order to abate or remediate lead-based paint hazards issued by the Department, the permittee, or the owner of the building in which the service is located shall use only the methods specified in such order.

(4) When the Department finds a lead-based paint hazard as defined in §173.14(b) of this Code or a lead dust hazard as defined in EPA 40 CFR 745.227 (h) (3) (i), on the interior of the child care service, or concentrations of lead in the paint of the exterior surfaces of the child care facility, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any child care service when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency published in 40 C.F.R. Part 745 or successor regulations and further determines that such concentrations may be dangerous to health.

(5) The work practices of §173.14 of this Code shall not apply to repair and maintenance work in a child care service which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

(6) Maintenance staff workers in child care service facilities that contain lead based paint or paint of unknown lead content, and who regularly do repair work that may disturb such paint, shall attend a HUD/EPA approved 8-hour course on lead safe work practices in accordance with §173.14 (2)(b) of this Code.

(7) Children shall not be present and shall not have access to any room undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

(8) The permittee, or the owner of a building in which a child care service is located, in which paint has not been tested by X-ray fluorescent (XRF) analysis by or on behalf of the Department for lead content, may object to an order issued to remediate peeling lead-based paint or peeling paint of unknown lead content, by submitting evidence satisfactory to the Department that the surface of any component cited in the order as requiring remediation does not contain lead-based paint, as follows:

(A) Such evidence shall consist of a sworn written statement by the person who performed the testing on behalf of the permittee, or building owner supported by: lead-based paint testing or sampling results, including a description of the testing methodology and manufacturer and model of instrument used to perform such testing or sampling; a copy of the certificate of training of the certified lead-based paint inspector or risk assessor; a copy of the inspection report of the inspector or risk assessor, including a description of the surfaces in each room where such testing or sampling was performed; and a copy of the results of XRF testing and/or such laboratory tests of paint chip samples performed by an independent laboratory certified by the state of New York where such testing has been performed.

(B) Such written statement and all supporting documentation shall be submitted to the department not later than thirty (30) days before the date set for compliance with an order to remediate, and shall only be submitted where the Department has not performed an XRF test prior to issuing such order. Receipt by the Department of a complete application in accordance with this paragraph including such written statement and such supporting documentation shall toll the time period to comply with the order. Receipt of an incomplete application shall not toll the time period for compliance with the order.

(C) The Department shall notify the applicant of its determination in writing, and, if the Department rejects the application, such notice shall set a date for compliance.

(D) The performance of lead-based paint testing shall be in accordance with the definition of lead-based paint established in §173.14 of the Code. Laboratory analysis of paint chip samples shall be permitted only where XRF tests fall within the inconclusive zone for the particular XRF machine or where the configuration of the surface or component to be tested is such that an XRF machine cannot accurately measure the lead content of such surface or component. Laboratory tests of paint chip samples, where performed, shall be reported in mg/cm², unless the surface area of a paint chip sample cannot be accurately measured, or if an

accurately measured paint chip sample cannot be removed, in which circumstance the laboratory test may be reported in percent by weight. Where paint chip sampling has been performed, the sworn written statement by the person who performed the testing shall include a statement that such sampling was done in accordance with 40 CFR §745.227 or successor provision.

(E) Testing for lead-based paint may only be conducted by a person who has been certified as a lead-based paint inspector or risk assessor in accordance with subparts L and Q of 40 CFR part 745 or successor provisions and such testing shall be performed in accordance with 40 CFR §745.227(a) and (b) or successor provisions.

(b) *Child care services in operation prior to May 1, 1997.* No child care service permit shall be issued or renewed, unless all interior window sills and window wells accessible to children, chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces, and such other surfaces in such child care service as may be determined by the Department, containing or covered with lead-based paint or paint of unknown lead content shall have been abated or remediated in accordance with §173.14 of this Code or as otherwise directed by the Department.

(c) *Child care services commencing operation on or after May 1, 1997.* No child care service which received its first permit or which, if no permit was previously required, commenced operation after May 1, 1997, shall be issued a permit where there is lead-based paint on any interior surface in such child care service.

(d) *All paint or other similar surface coating material on furniture and equipment shall be lead-free.*

(e) *Annual survey.* Each year the permittee operating a child care service in which any surfaces are covered with lead-based paint or paint of unknown origin shall conduct a survey of the condition of all such surfaces, note the results of the survey on a form provided by or satisfactory to the Department, and shall provide to the Department a copy of the results of such survey. Submission of such survey shall be on or before the permit issuance date, or the anniversary thereof. Copies of such survey results may be submitted by mail, fax or electronically.

(f) *Declaration pursuant to Administrative Code §17-145.* The existence of a lead-based paint hazard in a child care service, or failure to comply with this section or §173.14 of this Code in correcting such hazard, is hereby declared to constitute a public nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code. Every person obligated to comply with the provisions of this section of this Code is hereby ordered to abate or remediate such nuisance by complying with any order or direction issued by the Department.

(g) *Failure to comply with Department orders.* In the event that the Department determines that a child care service permittee, or the owner of a building in which a child care service is located has failed to substantially comply with an order issued pursuant to this section within forty-five (45) days after service thereof, the Department shall, in accordance with §17-911(d) of the Administrative Code, request an agency of the City to execute such order pursuant to the provisions of §17-147 of the Administrative Code.

(h) *Definitions.* Except as otherwise provided, all terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.

§47.65 Transportation.

(a) Motor vehicles used to transport children to or from a child care service shall comply with all requirements of the New York State Department of Transportation specified in 17 NYCRR Part 720 or successor rule, and shall prominently display a current certificate of inspection issued by or on behalf of the State Department of Transportation, and shall be operated in accordance with all applicable law.

(b) A service that provides transportation facilities shall supervise the transportation so as to preserve the health, safety and comfort of the children.

(c) All children shall be secured in safety seats or by safety belts as appropriate for the age of the child in accordance with the requirements of the Vehicle and Traffic Law before any child may be transported in a motor vehicle where such transportation is provided for or arranged for by the operator.

(d) When transportation is provided by or on behalf of the child care service, the driver of the vehicle may not be included in the staff/child ratios.

(e) A transportation schedule shall be arranged so that no child will regularly travel more than one hour between his or her home and the place where the service is operated.

(f) The operator shall obtain and maintain on file written consent from the parent or guardian for any transportation of children in care at the service provided or arranged for by the permittee. The consent shall include the child's name and age, the destination and duration of travel time.

§47.67 Child development policies, program, rest periods and clothing.

(a) *Program.* The program shall be varied in order to promote the physical, intellectual, and emotional well-being of the children. Corporal punishment and humiliating or frightening methods of control and discipline shall be prohibited. Food, rest or isolation shall not be used as a means of punishment. Punitive methods of toilet training are prohibited.

(b) *Schedules.* A written daily schedule of program activities and routines which offer reasonable regularity, including snack and meal periods, nap and rest periods, indoor and outdoor activities, and activities which provide children with opportunities for learning and self-expression in small and large groups is required. When night care is provided, this schedule shall include routine personal hygiene, including changing into night clothes, brushing teeth, and washing before bed in the manner to be agreed between the parent and the operator.

(c) *Disciplinary policies.* A written statement on the philosophy of disciplining children shall be distributed to every staff member, posted in a prominent location within the child care service and made available to parents upon request.

(d) *Parents.* Parents shall have unrestricted access to their

children at all times.

(1) The parents of all children receiving care in a child care service equipped with video surveillance cameras installed for the purpose of allowing parents to view their children in the child care setting by means of the internet shall be informed in writing that cameras will be used for this purpose. All staff of the child care service also shall be informed in writing if video surveillance cameras will be used for this purpose. The child care service shall make available copies of such notices to the Department upon request.

(2) All parents of children enrolled in the child care service and all staff of the child care service shall be made aware of the locations of all video surveillance cameras used at the child care service.

(3) Child care services opting to install and use video surveillance equipment shall comply with all law applicable to the use of such equipment.

(4) Video surveillance cameras may not be used as a substitute for competent direct supervision of children.

(5) Child care services opting to allow parents to view their children in the child care setting by means of the internet shall use and maintain adequate internet security measures at all times. Such measures include but are not limited to: passwords that are frequently changed that enable parent to access the internet site for viewing children; filtering measures that prohibit public access to or viewing of child care activities via the internet; and immediate corrective action in response to any report of abuse of the system or inappropriate access. Such services shall also advise the parents having access to views of the child care service through the internet of the importance of security in regard to such viewing and of the importance of the privacy rights of other children who may be viewed.

(6) Video surveillance cameras shall be used only to transmit images of children in common rooms, hallways and play areas. Bathrooms and changing areas shall remain private and free of all video surveillance equipment.

(7) Child care services that use video surveillance equipment shall allow inspectors and other representatives of the Department to have access to such equipment and to have viewing privileges as required by the Department.

(e) Children shall be comforted when distressed.

(f) Each child in full time child care shall have a quiet, relaxed period of approximately one hour a day. Shorter, comparable periods of quiet and relaxation shall be provided for each child who spends less time in the service.

§47.69 Night care.

(a) *Information required.* A night care service shall include in each child's record the arrangements provided for care when the child is not in night care as well as information regarding family bedtime routines and other information which would assist staff in providing a smooth transition for the child.

(b) *Time in night care limited.* No child shall spend more than 12 hours in a night care setting in any 24 hour period.

(c) *Program.* A night care service shall have a program that incorporates the following elements:

(1) When possible, children shall be left for care before and picked up after their normal sleeping period so that there are minimal disturbances of the child during sleep.

(2) The program of the night care service shall facilitate a relaxed atmosphere characterized by informal quiet activities.

(3) Scheduling shall reflect the need for regularity in meeting basic needs such as relaxation, meals, self-care/hygiene and sleep.

§47.71 Physical activity and limits on television viewing.

(a) *Physical activity.* Each child care service shall provide a program of age and developmentally appropriate physical activity.

(1) Children ages 12 months or older attending a full-day program shall be scheduled to participate in at least 60 minutes of physical activity per day. Children attending less than a full day program shall be scheduled to participate in a proportionate amount of such activities. For children ages three (3) and older, at least 30 of the 60 minutes shall be structured and guided physical activity. The remainder of the physical activity may be concurrent with other active play, learning and movement activities.

(2) Structured and guided physical activity shall be facilitated by teachers and/or caregivers and shall promote basic movement, creative movement, motor skills development, and general coordination.

(3) Permittees shall document structured and guided physical activities and make such documentation available to the Department upon request. This documentation shall be included in the program daily schedule and program lesson/activity plans.

(4) Children shall not be allowed to remain sedentary or to sit passively for more than 60 minutes continuously, except during scheduled rest or naptime.

(b) *Play equipment.* In the indoor and outdoor play areas, the permittee shall make available sufficient equipment, appropriate to the stage of development of the children, and designed to foster physical and motor development, and that shall enable all children to engage in structured and guided physical activities.

(c) *Outdoor play.*

(1) Adequate periods of outdoor play shall be provided daily for all children, except during inclement weather.

(2) During outdoor play, children shall be dressed appropriately for weather and temperature. In inclement weather, active play shall be encouraged and supported in safe indoor play areas.

(b) *Television viewing.*

(1) Television, video and other visual recordings shall not be used with children under two years of age.

(2) For children ages two (2) and older, viewing of television, videos, and other visual recordings shall be limited to no more than 60 minutes per day of educational programs or programs that actively engage child movement.

(3) Children attending less than a full day program shall be limited to a proportionate amount of such viewing.

§47.73 Required postings.

(a) The permittee shall maintain an updated copy of this Code and make it available to all staff.

(b) The permittee shall display the following in a conspicuous place near its public entrance where staff, parents and others may review them:

- (1) The current permit, and
- (2) A sign provided or approved by the Department stating that the Department's most recent summary inspection report for the child care service may be obtained from the Department's website, or by calling 311, and that complaints about the child care service may be made to, and more information about requirements for operation of child care services may be obtained by calling 311.

§47.75 Modification of provisions.

(a) *Modification of provisions.* When the strict application of any provision of this article presents practical difficulties, or unusual or unreasonable hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose and intent of this Code and upon such conditions as in his/her opinion are necessary to protect the health of the children.

(b) *Fee waiver.* Upon the submission of proof satisfactory to the Commissioner that an applicant for a permit is a child care service which is fully funded by the Agency for Children's Services (ACS) or the New York City Human Resources Administration, or a successor agency, as an ACS Group Child Care Center, Head Start or other child care service program, the permit fee required by Article 5 of this Code shall be waived. Such waiver shall continue in effect provided the applicant child care service remains fully funded.

§47.77 Closing and enforcement.

(a) *Imminent health hazards.* When the Department determines that any child care service is being operated in a manner, or maintaining one or more conditions that constitute an imminent health hazard, or that its operation otherwise presents a risk of endangering the health or safety of children or other persons, the Commissioner may order such child care service to close and to discontinue operations, suspending its permit, without further proceedings, by service of an order upon the permittee, or other person(s) managing or in control of such child care service. An order issued pursuant to this section shall provide the permittee, or other person(s) in control, an opportunity to be heard and to show cause why such child care service should not remain closed until there are changed circumstances, or the correction, removal or abatement of the dangerous or detrimental condition(s).

(b) *Operating without a permit.* Operating any child care service without a currently valid permit shall be deemed to present an imminent health hazard to children in attendance, for which such service shall be ordered closed without further proceedings.

(c) *Additional operating terms and conditions authorized.* If the Department determines that the reopening of a child care service that has been ordered closed and its continuing operation will not present any risk to any person, the Department may authorize such reopening and may impose such additional conditions upon continuing operation that it deems necessary to avoid recurrence of imminent health hazards.

(d) *Service of orders.* Service of any order issued pursuant to this Article may be made upon any person to whom the order is addressed, to a permittee, to a person required to hold a permit or upon any other person of suitable age and discretion who is asserting ownership, management or control of such child care service. Service of any order may be made in any manner provided in §3.07 of this Code, or successor provision, and may be delivered to the home or business address of the permittee listed in the permit issued by the Commissioner, or in the permit application or at the place where the child care service is being operated.

(e) *Posting orders to close; notifying parents.* Upon issuing an order to close a child care service for any reason, the Department shall post a copy of the order at the entrance to the premises subject to such order, and shall notify and provide a copy of the closing order to the parents or other persons who arrive at the child care service to pick up children attending the child care service.

(f) *Padlocking.* Upon finding that any order issued pursuant to this section has not been complied with, the Department may, without further notice, seal or padlock the premises where such child care service is conducted and take any other measures deemed necessary to obtain compliance with the order.

(g) *Operation in violation of order prohibited.* No person shall remove a padlock, seal or an order posted pursuant to this section, or open to the public or operate a child care service in violation of an order issued pursuant to this section.

(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.

§47.79 Construction and severability. This Article shall be liberally construed for the protection of the health of children attending child care services regulated by this Article. If any provision of this Article is adjudged invalid by any court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this Article.

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BOARD OF HEALTH**NOTICE OF ADOPTION OF THE REPEAL AND REENACTMENT OF ARTICLE 1 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

of the proposed repeal and reenactment of Article 1 of the New York City Health Code (the "Health Code") was published in the City Record on January 25, 2008, and a public hearing was held on February 28, 2008. No written comments or testimony were received. At its meeting on March 6, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to Sections 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 ("DOHMH") with jurisdiction to regulate all matters affecting the 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 to which the DOHMH's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, various provisions of the Health Code are being updated to assure that it provide the adequate legal tools for the Board and the DOHMH to effectively address the City's current and future public health needs. As part of this broad revision of the Health Code, Article 1 is repealed and reenacted so as to, in large part, update definitional terms used throughout the Code and to eliminate outdated terms.

The amendment is as follows:

Note-matter in brackets [] to be deleted
Matter underlined is new

RESOLVED, that the list of article headings for Title I, the Introductory Notes thereto, Article 1, and the section headings for Article 1 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as adopted in nineteen hundred fifty-nine, be and the same hereby are, repealed and reenacted, to be printed together with explanatory notes, to read as follows:

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

Introductory Notes:

Title I of the New York City Health Code contains provisions that govern the administration and enforcement of the Code. Much of the material in this title is derived and compiled from prior provisions of the Health Code and of its predecessor, the Sanitary Code. The annotations to this title of the Code illustrate the power of the Board, Commissioner and Department generally as authorized by statute and as applied in judicial decisions. The Code is municipal legislation which, in accordance with §558 of the New York City Charter, must be consistent with the federal and state constitutions, laws and applicable regulations, and with the City Charter. The legal annotations which follow the provisions of the Code thus also serve to indicate the laws that were considered in the preparation of the Code.

The notes and legal annotations of the Code are generally prepared at the time of the adoption of the provisions of the Code to which they refer. Consequently, these annotations are accurate as of the date of the adoption of this Article.

Article 1**SHORT TITLE AND GENERAL DEFINITIONS**

- §1.01 Short title.**
§1.03 General definitions.
Introductory Notes:

Article 1 refers to the Code by its title, the New York City Health Code, the designation by which the Code has been known since its last full revision adopted by the Board in 1959. Article 1 defines terms throughout the Code, including Commissioner, Department, City, State, and person.

§1.01 Short title.
The health or sanitary code of the city of New York shall be known and may be cited as the New York City Health Code.

Notes:

a. *Derivation.* This section was repealed and reenacted by resolution adopted on March 6, 2008. It modifies the former §1.01, which in 1959 had replaced S.C. §1, to make it clear that the official title of this Code is the New York City Health Code. Prior to 1959 this Code had been referred to as the "Sanitary Code of The City of New York" as entitled and adopted by the Board as of June 8, 1939. The earlier history of the Code refers to the "Sanitary Code of the Board of Health of the Department of Health of The City of New York," which prior to January 1, 1938 constituted Chapter 20 of the Code of Ordinances of The City of New York. On January 1, 1938, pursuant to state law (L. 1937, c. 929), the Code of Ordinances became the New York City Administrative Code and the Sanitary Code, now the Health Code, became a separate body of law. Whenever any law or regulation refers to the "Sanitary Code" in effect in New York

City, it is to this code, i.e., the New York City Health Code, to which the reference runs. These earlier designations reflect the Code's long history. The complete revision of the Code adopted by the Board of Health in 1959, in which the revised Code is referred to as the New York City Health Code, is not only a formal designation of its short title, but is also a clear indication of the more contemporary emphasis of the Code. Since 1959 the Code has emphasized the advancement of the public health in the City, rather than its earlier more limited focus on sanitary regulations, and it reflects the more affirmative view of the purposes of the Code in marking the City's direction in advancing, as well as protecting, the health of its citizens in the fields of environmental sanitation and communicable and chronic disease control and prevention. For the provisions of the Sanitary Code prior to its full revision in 1959, the City's Municipal Archives should be consulted.

b. *Force and Effect of Provisions of the New York City Health Code.* When the New York City Charter of 1938, approved by the electorate upon the recommendation of a charter revision commission appointed pursuant to an enactment of the state legislature, took effect on January 1, 1938, Charter §558a declared, and it still does so, that the Sanitary Code then in effect would continue to be binding and in force except as amended or repealed from time to time, and that it would have the "force and effect of law". §558b of the 1938 Charter also authorized and empowered the Board of Health "from time to time to add to and to alter, amend or repeal any part of the sanitary code." Thus, provisions of the Sanitary Code, now the Health Code, in effect on, or traceable to, January 1938, when it was granted the force and effect of law, enjoy the same status within the corporate limits of New York City as an act of the state legislature. Provisions of the New York City Health Code are accorded the status of state law either because they have been explicitly ratified and approved by the state legislature, or because they have been ratified by implication, as occurs when the state legislature amends a state law and continues to exempt its application in New York City (See, *In re Bakers Mutual Ins. Co. of N.Y.*, 301 N.Y. 21, 92 N.E. 2d 49 (1950)). For example, Title IV of Article 21 of the state Public Health Law, regarding the control of rabies was significantly amended by the state legislature in 2002. The provision of that Title exempting the application of the Title in New York City was specifically reenacted. Therefore, provisions of the New York City Health Code in place prior thereto regarding the control of rabies may be said to have the force and effect of state law, as long as they are not less strict than the New York State Sanitary Code.

A provision of the New York City Health Code which is not accorded the status of law may be challenged by a showing that it is not justified under the police power of the state, or that it is arbitrary or unreasonable. See *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E. 2d 731 (1951); *Matter of Wulfsohn v. Burden*, 241 N. Y. 288, 150 N.E. 120, 43 A.L.R. 651 (1925); *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365, 388, 47 S. Ct. 114, 118, 71 L. Ed. 303 (1926); *Town of Islip v. F. E. Summers Coal and Lumber Co.*, 257 N.Y. 167, 169, 170, 177 N.E. 409, 410 (1931); *People ex rel. Knoblauch v. Warden*, 216 N.Y. 154, 110 N.E. 451 (1915).

Challenges to provisions of the Code as mere ordinances have been rare, all the more so because even if Health Code provisions are not accorded the status of law but rather of mere ordinances, it would be difficult to sustain a challenge. If the provision is within the police power, it has the presumption of reasonableness and regularity and the burden of proving otherwise is on the person challenging its validity. Few recent challenges to provisions of the Code on grounds of unreasonableness have been made, and where the constitutionality of certain Code provisions has been questioned, the courts have generally upheld the subject Code provisions and noted that legislation concerning public health and safety is entitled to a strong presumption of constitutionality. Indeed, a party challenging the constitutionality of a provision designed to foster public health or public safety must establish that such provision is so lacking in reason that it is essentially arbitrary. See *New York City Friends of Ferrets v. New York City*, 876 F. Supp. 529 (S.D.N.Y. 1995), *aff'd* 71 F.3d 405 (2nd Cir. 1995) and *Pet Professionals v. New York City*, 215 A.D.2d 742, 627 N.Y.S.2d 728 (2d Dept. 1995).

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

(a) *Administrative Code* means the Administrative Code of the city of New York including all of its amendments.

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

(c) *Board* means the Board of Health of the Department of Health and Mental Hygiene of the city of New York.

(d) *Charter* means the Charter of the city of New York including all of its amendments.

(e) *City* means the city of New York.

(f) *Code* means the New York City Health Code.

(g) *Commissioner* means the Commissioner of Health and Mental Hygiene of the city of New York.

(h) *Department* means the Department of Health and Mental Hygiene of the city of New York. When a provision of this Code gives the Department the authority or the duty to act, such authority or duty vests in the Commissioner or in an employee of the Department specifically designated by the Commissioner, or in any employee of the Department who is given such authority or duty in accordance with the administrative procedures of the Department established by the Commissioner.

(i) Person means an individual or partnership, corporation, firm, joint stock association or any other group of individuals who carry on an activity affected, regulated or prohibited by this Code.

(j) State means the state of New York.

Notes:

This article was repealed and reenacted by resolution adopted on March 6, 2008.

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BOARD OF HEALTH

NOTICE OF ADOPTION OF AMENDMENTS TO ARTICLE 9 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 9 of the New York City Health Code (the "Health Code"), was published in the City Record on January 25, 2008, and a public hearing was held on February 28, 2008. No written comments or testimony were received. At its meeting on March 6, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to Sections 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 ("DOHMH") with jurisdiction to regulate all matters affecting the 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 to which the DOHMH's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

Certain sections of Article 9 of the Health Code are amended pursuant to a comprehensive review of the Health Code. As a result of this assessment of the Health Code, Sections 9.01, 9.03, 9.05 and 9.07 are amended to eliminate unnecessary terms and language. Importantly, the amendment would allow the public to submit petitions electronically by facsimile or electronic mail.

In accordance with Charter Subdivision 1043(f), any person may petition an agency to consider the adoption of any rule and each agency is to prescribe by rule the procedure for submission, consideration and disposition of such petitions. Article 9 provides procedures for how the public may petition the Board to adopt a rule in the Health Code.

The amendment is as follows:

Note – matter in brackets [] to be deleted
Matter underlined is new

RESOLVED, that Article 9 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as adopted on the twenty-ninth of June, nineteen hundred ninety-three, be and the same hereby is amended, to be printed together with Introductory Notes, to read as follows:

Introductory Notes:

This article [is new. It] was added on June 29, 1993 in accordance with §1043(f) of the New York City Charter (City Administrative Procedure Act). This provision provides that any person may petition an agency to consider the adoption of any rule. Section 1043(f) further requires that each agency prescribe by rule the procedure for submission, consideration and disposition of such petitions. This article was amended by resolution adopted on March 6, 2008 to eliminate unnecessary terms and update its provisions.

§9.01 Definitions.

(a) ["Person" shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.
b] *Petition* shall mean a request or application for the [board] Board to add to, alter, amend or repeal a provision of the New York City Health Code [or to take other action in accordance with §1043 of the City Administrative Procedure Act (New York City Charter, Article 45)].
[c] (b) *Petitioner* shall mean the person who files a petition.
[d] (c) *Rule* shall have the same meaning set forth in §1041(5) of the New York City Charter [and shall mean generally any statement or communication of general applicability that (1) implements or applies law or policy or (2) prescribes the procedural requirements of an agency, including an amendment, suspension, or repeal of any such statement or communication].

§9.03 Scope.

This article shall govern the procedures by which the public may petition the Board [of Health] to commence rulemaking pursuant to §1043(f) of the [New York City] Charter.

§9.05 Procedures for submitting petitions; responses to petitions.

(a) Any person may petition the [board] Board to consider the adoption of a rule. The petition must contain the following information:
(1) The rule to be considered, with the proposed language for adoption;
(2) A statement of the [board's] Board's authority to promulgate the rule and its purpose;

(3) Petitioner's argument(s) in support of adoption of the rule;
(4) The period of time the rule should be in effect;
(5) Responses to any questions posed on a form approved by the [secretary] Secretary to the [board] Board for such petitions;
(6) The name, address and telephone number of the petitioner or his or her authorized representative;
(7) The signature of petitioner or his or her representative if the petition is submitted on paper or by facsimile.
(b) Any change in the information provided pursuant to §9.05(a)(6) shall be communicated promptly in writing to the office of the [secretary] Secretary to the [board] Board.
(c) All petitions should be typewritten, if possible, but handwritten petitions shall be accepted, provided they are legible.
(d) All petitions shall be delivered or mailed to the office of the [secretary] Secretary to the [board] Board. Petitions may also be submitted by facsimile, electronic mail or online over the internet.
(e) Upon receipt of a petition submitted in the proper form, the [secretary] Secretary to the [board] Board shall stamp the petition with the date it was received and shall assign the petition a number. The [secretary] Secretary will forward the petition to the [board] Board, the [commissioner] Commissioner and appropriate staff of the Department. [The commissioner is hereby delegated and authorized to grant or deny the petition pursuant to §1043(f) of the New York City Charter, as further provided in this article.]
(f) Within sixty days from the date the petition is received by the [secretary] Secretary, the [commissioner] Commissioner, as Chairperson of the Board, shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the intention to grant the petition and to initiate rulemaking on the subject matter by a specified date.

(1) In all cases where the [commissioner] Commissioner has granted a petition to initiate rulemaking, the actual petition shall be made part of the record before the [board] Board at the time that the rulemaking is initiated. In proceeding with such rulemaking, neither the [department] Department nor the [board] Board shall be bound by the language proposed by petitioner, but may amend or modify such proposed language at the [department's] Department's or [board's] Board's discretion. Neither shall the [board] Board be bound to enact the substance of a petition to initiate rulemaking which has been granted by the [commissioner] Commissioner.

(2) In cases where the [commissioner] Commissioner intends to deny a petition to initiate rulemaking, the petition, the proposed denial, and the reasons therefore, shall be expeditiously provided to the members of the [board] Board. Any member of the [board] Board may object to a denial of a petition and an objection made within ten (10) days of the [commissioner's] Commissioner's notice to the [board] Board of his or her intention to deny, shall cause the petition to be placed before the entire [board] Board for consideration as to whether such petition should be granted or denied.

(g) The [commissioner's] Commissioner's decision to grant, or deny a petition in the absence of the objection of any member of the [board] Board, or a decision by the [board] Board to grant or deny a petition, shall be a final decision which is not subject to judicial review pursuant to [New York City] Charter §1043(f).

(h) In the event the petition needs to be placed before the entire [board] Board pursuant to subsection (f) above and the sixty (60) day time period specified to decide a petition is about to expire, the [commissioner] Commissioner may deny the petition, provided that the petition shall thereupon be automatically renewed, or, upon the consent of the petitioner, the [commissioner] Commissioner may extend the time for consideration beyond the sixty (60) day period specified by §1043(f) of the [New York City] Charter.

§9.07 Public Notice

(a) This article shall be made available to members of the public [along] with the following information:

(1) [the] The procedures for submitting petitions for rulemaking including the location at which any necessary forms may be obtained, and

(2) [the] The name, business address, facsimile number, electronic mail address, online address and telephone number of the [secretary] Secretary to the [board] Board.
(b) The name, business address, facsimile number, electronic mail address, online address and telephone number of the [secretary] Secretary to the [board] Board, and the location at which any necessary form may be obtained shall be published in [The] the City Record. Notice of any change in the above information shall be published as soon as practicable in [The] the City Record. Such notice shall not constitute a rule as defined in the [New York City] Charter §1041(5).

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BOARD OF HEALTH

NOTICE OF INTENTION TO REPEAL AND REENACT ARTICLE 7 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice is hereby given of the proposed amendment of Article 7 of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON APRIL 16, 2008 FROM 2:00 P.M. TO 4:00 P.M. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK; (212) 295-5380 BY APRIL 15, 2008. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 4:00P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY APRIL 2, 2008.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED BY MAIL TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/notice/notice.shtml> ON OR BEFORE 5:00 P.M. APRIL 16, 2008. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to §§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 ("DOHMH") with jurisdiction to regulate all matters affecting the 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 to which the DOHMH's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public's health, the DOHMH proposes to update Article 7 of the Health Code to assure that it can provide the adequate legal tools to effectively address the City's current and future public health needs relative to the Department's Administrative Tribunal. Several of the provisions are without substantive change but have been reorganized such that the Article and its provisions flow in a more coherent and streamlined manner. The revisions reflect modern thinking about public health, public health law and due process. The revisions also reflect the current practices of the DOHMH and the Administrative Tribunal, including enforcement needs within the DOHMH and the need to conform the Article to the City Administrative Procedure Act as provided for in the New York City Charter. To that end, the DOHMH proposes that the Board repeal and reenact Article 7 as provided for below.

Section 7.01

The DOHMH proposes that this section officially establish the Administrative Tribunal pursuant to §558 of the Charter.

Section 7.03

The DOHMH proposes that this section establish the jurisdiction, power and duties of the Administrative Tribunal and its hearing examiners. The Tribunal's practices must be consistent with §1046 of the City Charter, thus ensuring compliance with the City Administrative Procedure Act. In addition to the powers provided for in current Article 7, the DOHMH proposes that the Board add certain powers inherent to the orderly conduct of hearings, such as the issuance of subpoenas for testimony or other evidence that is under the control of DOHMH and the authority to bar from continued participation in a hearing any person, including a party, authorized representative or attorney, witness or observer, who engages in disorderly, disruptive or obstructionist conduct, in order to maintain order and decorum and allow for efficient and expedient hearings.

Section 7.05

The DOHMH proposes that the Board reenact §7.05 to provide for the organization of the Administrative Tribunal. The proposed head of Adjudications at the Administrative Tribunal will be the Director who is to be responsible for the conduct of hearings and for all adjudicative matters of law, except that he or she will not be vested with the powers and duties of the Review Board. The Director will appoint hearing examiners to exercise the powers and duties and discharge the responsibilities of the Administrative Tribunal with regard to adjudications. In this connection, the Director will be able to assign hearing examiners to conduct hearings, and also delegate any or all of the powers vested in him or her, but will not be able to delegate the powers and duties of the Review Board. Finally, unlike currently existing Article 7, §7.05 will provide that the hearing examiners will be subject to the applicable rules of conduct promulgated pursuant to the New York City Charter.

Section 7.07

The DOHMH proposes that the Board reenact §7.07 to describe proceedings before the Administrative Tribunal. This section is substantively derived from the currently

existing section in Article 7 describing procedures concerning a “finding” of violation. The actual document informing the respondent of the violation is entitled the “notice of violation.” The DOHMH proposes to make reference to the notice of violation rather than the “finding” of violation to reflect DOHMH practice and the proper title. The proposed changes to the currently existing procedures include the presumption that when a notice of violation includes the report by the person who made the inspection resulting in the notice of violation, such report is prima facie evidence of the facts contained therein. In addition, this proposed section now clarifies that an amendment may not be made to the notice of violation if the amendment alleges new violations that have occurred since the original notice of violation or if the proposed amendment is not within the scope of the original notice of violation. Such subsequent or extraneous actions should afford the respondent the benefits, rights and duties associated with the receipt of a new notice of violation.

Section 7.09

The DOHMH proposes that the Board change the method by which a respondent must respond to a notice of violation by eliminating the concept of requiring a written answer. Current §7.07, which addresses responding to a notice of violation, provides as one method of response that a respondent answer in writing prior to the respondent’s scheduled hearing, and makes no mention of adjudications by mail. However, current programmatic practice does not encourage this prior written answer. Current §7.07 is outdated and inefficient in its approach to adjudications because it does not allow for adjudications to be conducted by mail. To reflect programmatic practice, conserve resources of the DOHMH and to provide additional convenience for the DOHMH and respondents, the DOHMH would like to facilitate adjudicatory efforts by allowing for and encouraging adjudications by mail in addition to the option of appearing in person or by an authorized representative at the scheduled hearing. Proposed subdivision (a) specifies who, in addition to the respondent, may appear as an authorized representative on behalf of the respondent. In connection with the proposed mail adjudications, the DOHMH also proposes to make reference to mail adjudications and to provide additional guidance on mail adjudication procedures, including allowing the hearing examiner to request more evidence from the respondent in addition to the evidence submitted and allowing the hearing examiner to deny a mail adjudication request and adjourn the matter for a hearing. With the mail adjudications, the DOHMH also proposes that there be a provision indicating that when notice of violation or related notice sets forth a penalty that may be paid in full satisfaction of the violations, the respondent may admit to the violations charged and pay the penalty by mail in the manner and time provided for in the notice. This type of payment shall constitute an admission of liability and will waive the respondent’s rights to a hearing and appeal. Allowing for such payment will allow a respondent who simply wants to pay the penalty to do so without having to appear at a hearing.

The practice of submitting a written answer is an historical anomaly that is no longer practiced by the DOHMH and is an outdated, inefficient effort that will be rendered even more unnecessary with the implementation of mail adjudications. Accordingly, the DOHMH proposes to eliminate all references to the appearance option of submitting a written answer prior to the respondent’s scheduled hearing, reflect the implementation of adjudications by mail and provide guidance on how to respond by mail.

In addition, similar to the language of current §7.07, the DOHMH proposes to state that the failure of the respondent to respond by requesting adjudication by mail, to appear at the hearing or have his or her attorney or other authorized representative appear at the hearing will be deemed a waiver of the right to a hearing.

Subdivision (d) sets forth the rules for issuing default decisions where there is an unexplained failure to appear. Such default orders may be issued only by a hearing examiner. A default decision may be reconsidered in appropriate circumstances. In such cases a hearing could be rescheduled so as to avoid prejudice to the respondent. And subdivision (e) explains the procedures for admitting the violations charged and paying a penalty by mail.

Section 7.11

Proposed §7.11 is derived largely from, and retains many of the provisions of current §7.09, which addresses procedures for and guidance on hearings, including but not limited to provisions specifying that hearings are open to the public, that a respondent may present evidence, examine and cross examine witnesses, request the presence of the issuing inspector, that a record of the proceedings must be made and maintained, and requirements for the writing and service of hearing examiner decisions. This section also eliminates references to written answers.

In regard to evidentiary matters, subdivision (c) of currently existing §7.09 states that the Department has the burden of proving the allegations made in a Notice of Violation by a “fair preponderance of the evidence.” To clarify this provision, the DOHMH proposes that §7.11(d) eliminate “fair” from the legal standard and employ the more commonly referenced legal terminology of “preponderance of the evidence.” In addition, the DOHMH also proposes language to make it clear that if a respondent raises an affirmative defense to the charges brought by the Department, then the respondent will similarly have the burden of proving that affirmative defense by a preponderance of the evidence.

Section 7.13

The DOHMH proposes that new §7.13 provide for the issuance of subpoenas related to a hearing in compliance with the Charter in order to allow for gathering appropriate and relevant evidence in a timely and orderly manner necessary for an expedient hearing.

With respect to a subpoena request subsequent to the commencement of a hearing, a hearing examiner may issue subpoenas to compel the production of any DOHMH record or document for examination or to compel the appearance of persons currently employed by DOHMH to give testimony if such production or testimony is reasonably related, relevant and necessary to the adjudication at issue.

Section 7.21

A new §7.21 is being proposed to require that “professional” representatives, those that represent two or more respondents in a calendar year, register with the Tribunal. The proposed section would also specify the rules of conduct for authorized representatives to follow and allow for registered representatives to be barred from representing respondents at the Tribunal as a consequence of violating those rules or engaging in other specified behavior, including the submission of false or forged evidence. Existing §7.21, regarding the computation of time, would be renumbered as §7.23.

The following sections have largely remained the same as their predecessor sections: §7.15 Disqualification of hearing examiners; §7.17 Review Board; §7.19 Disqualification of member of Review Board and §7.21, now proposed §7.23, Computation of time.

The proposal is as follows:

Note – matter in brackets [] to be deleted
Matter underlined is new

RESOLVED, that 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 is repealed and reenacted, to be printed together with explanatory notes, to read as follows:

Article 7 Administrative Tribunal

§7.01 Administrative Tribunal

§7.03 Jurisdiction, powers and duties of the Administrative Tribunal

§7.05 Organization of the Administrative Tribunal

§7.07 Proceedings before the Administrative Tribunal

§7.09 Appearances

§7.11 Hearings and mail adjudications

§7.13 Subpoenas

§7.15 Disqualification of hearing examiners

§7.17 Review Board

§7.19 Disqualification of member of Review Board

§7.21 Registration and disqualification of certain authorized representatives

§7.23 Computation of time

Introductory Notes:

As part of a comprehensive review of the Health Code to assess the efficacy of these articles in protecting public health, Article 7, Administrative Tribunal, was repealed and reenacted by the Board of Health on xxx to provide adequate legal tools to effectively address the City’s public health needs and respondents’ due process rights. The revisions reflect modern thinking about public health and public health law and also better reflect current practices of the Department and issues addressed by the Department, and the need to be consistent with the City Administrative Procedure Act (Charter §1046) as well as shaping the article to support the enforcement and operational needs and practices of the Department.

§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, registered or unregistered representative or attorney, witness or observer who engages in disorderly,

disruptive or obstructionist conduct including, but not limited to,

(i) disorderly behavior, breach of the peace or other disturbance which directly or indirectly tends to disrupt or interrupt the proceedings of the Tribunal,

(ii) willful disregard of a hearing examiner’s authority prior to, during or after the course of a hearing or proceeding of the Tribunal,

(iii) actions, gestures or verbal conduct which show disrespect for the proceedings of the Tribunal, or

(iv) leaving a hearing or proceeding of the Tribunal without the express permission of the presiding hearing examiner; 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.

Notes:

This section comports with the requirements of Charter §1046, which prescribes the minimum standards for City agency adjudications.

§7.09 Appearances.

(a) A respondent may appear by

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

(2) Sending

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

(ii) a representative authorized by a written affidavit of the respondent and registered pursuant to §7.21, or

(iii) other representative authorized by the respondent, to appear in person on the date and at the place scheduled for the hearing, or

(3) making a written request before the scheduled hearing for an adjudication by mail.

(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 shall be granted administratively as of right by the Tribunal. Thereafter, all requests for an adjournment 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) Failure by the respondent to appear in person, by sending an attorney or other authorized representative, or by mail shall constitute a waiver of the right to a hearing and shall authorize the hearing examiner, without further notice to the respondent, to find that the respondent is in default and that the facts are as alleged in the notice of violation, and to render a default decision sustaining the allegations and imposing a penalty pursuant to Article 3 of this Code or as authorized by other applicable law. If, before issuing a default decision, the Tribunal finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the Tribunal may choose to not issue a default decision and instead adjourn the matter for a new hearing date. A decision that is adverse to a respondent by reason of the respondent's default shall be issued 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. A respondent may request in writing that a default decision be reconsidered, if the request to reconsider is received by the Tribunal within thirty days of the mailing of the default decision to the respondent. 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. In all other cases a request to reconsider a default decision shall be accompanied by a statement setting forth good cause for the respondent's failure to appear and either a meritorious defense to any violation found in the decision or a jurisdictional defect in the notice of violation. Such statement, and any supporting documentary evidence deemed necessary by a hearing examiner, shall be reviewed by a hearing examiner who shall determine if it establishes a reasonable excuse for the default and a legally sufficient basis to reconsider a default decision. However, under no circumstances shall more than two requests to reconsider default decisions be entertained in relation to a particular notice of violation. Denial of a request 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.

§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) hereof, 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. 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) 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 and, where a violation is sustained, shall impose a penalty. A copy of the decision, other than a default decision mailed 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 to reconsider 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 mailing the decision to the respondent, 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 is

authorized to represent a respondent before the Tribunal and who represents two or more such respondents within a calendar year shall, as a condition precedent to such representation, register with the Tribunal as a representative. Any person who represents one respondent before the Tribunal shall be prohibited from representing any additional such respondents 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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SPECIAL MATERIALS

CITY PLANNING

NOTICE

PROPOSED ANNUAL PERFORMANCE REPORT (APR) and PROPOSED AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH) STATEMENT 2007 CONSOLIDATED PLAN PROGRAM YEAR

COMMENT PERIOD - March 12 - March 26, 2008

The Proposed 2007 Consolidated Plan Annual Performance Report (APR) Public Comment Period will be from March 12th to March 26th. This document describes the City's performance concerning the: statutory requirements of the Cranston-Gonzalez Housing Act's Comprehensive Housing Affordability Strategy, and the City's use of the four U.S. Department of Housing and Urban Development (HUD) Community Planning and Development formula entitlement programs: Community Development Block Grant (CDBG); HOME Investment Partnerships (HOME); Emergency Shelter Grant (ESG); and Housing Opportunities for Persons with AIDS (HOPWA). The APR reports on the accomplishments and commitment of these funds during the 2007 program year, January 1, 2007 to December 31, 2007.

In addition, New York City's Five-Year Affirmatively Furthering Fair Housing (AFFH) Statement will also be released for public comment as part of the City's proposed APR.

As of March 12, 2008, copies of both the Proposed APR and Proposed AFFH can be obtained at the Department of City Planning Bookstore, 22 Reade Street, Manhattan, Monday - Friday; 10:00 A.M. - 4:00 P.M. In addition, copies of the Proposed APR will be available for review at the main public library in each of the five boroughs. Please call (212) 720-3531 for information on the closest library.

The public comment period ends close of business March 26, 2008. Written comments regarding either of the respective reports should be sent to: Charles V. Sorrentino, New York City Consolidated Plan Coordinator, Department of City Planning, 22 Reade Street, 4N, New York, N.Y. 10007.

m11-24

COMPTROLLER

NOTICE

NOTICE OF ADVANCE PAYMENT OF AWARDS PURSUANT TO THE STATUTES IN SUCH cases made and provided, notice is hereby given that the Comptroller of the City of New York, will be ready to pay, at 1 Centre Street, Rm. 629, New York, NY 10007 on March 27, 2008, to the person or persons legally entitled an amount as certified to the Comptroller by the Corporation Counsel on damage parcels, as follows:

Damage Parcel No.	Block	Lot
1	2905	38

acquired in the proceeding, entitled: Rescue Company 3 of New York City Fire Dept. subject to any liens and encumbrances of record on such property. The amount advanced shall cease to bear interest on the specified date above.

William C. Thompson, Jr.
Comptroller

m13-27

NOTICE OF ADVANCE PAYMENT OF AWARDS PURSUANT TO THE STATUTES IN SUCH cases made and provided, notice is hereby given that the Comptroller of the City of New York, will be ready to pay, at 1 Centre St., Rm. 629, New York, NY 10007 on March 21, 2008, to the person or persons legally entitled an amount as certified to the Comptroller by the Corporation Counsel on damage parcels, as follows:

Damage Parcel No.	Block	Lot
154, 154A, 156, 156A 157, 157A, 158, 158A 159, 159A, 60	3790	31,33,35,37,38 and 42
139, 139A, 140 and 140A	3791	31 and 33

acquired in the proceeding, entitled: New Creek Bluebelt, Phase 4 subject to any liens and encumbrances of record on

such property. The amount advanced shall cease to bear interest on the specified date above.

William C. Thompson, Jr.
Comptroller

m7-20

NOTICE OF ADVANCE PAYMENT OF AWARDS PURSUANT TO THE STATUTES IN SUCH cases made and provided, notice is hereby given that the Comptroller of the City of New York, will be ready to pay, at 1 Centre St., Rm. 629, New York, NY 10007 on March 20, 2008, to the person or persons legally entitled an amount as certified to the Comptroller by the Corporation Counsel on damage parcels, as follows:

Damage Parcel No.	Block	Lot
2,2A,3,3A,4,4A,5	2301	p/o 1, Bed of N. 10th Street, 50, Bed of N. 10th Street, 60, Bed of N. 10th Street, 70

acquired in the proceeding, entitled: Bushwick Inlet Phase II subject to any liens and encumbrances of record on such property. The amount advanced shall cease to bear interest on the specified date above.

William C. Thompson, Jr.
Comptroller

m7-20

HOUSING PRESERVATION & DEVELOPMENT

NOTICE

**OFFICE OF PRESERVATION SERVICES
CERTIFICATION OF NO HARASSMENT UNIT
REQUEST FOR COMMENT ON APPLICATION FOR
CERTIFICATION OF NO HARASSMENT PURSUANT
TO LOCAL LAW 19 OF 1983**

DATE OF NOTICE: March 7, 2008

**TO: OCCUPANTS, FORMER OCCUPANTS AND
OTHER INTERESTED PARTIES OF**

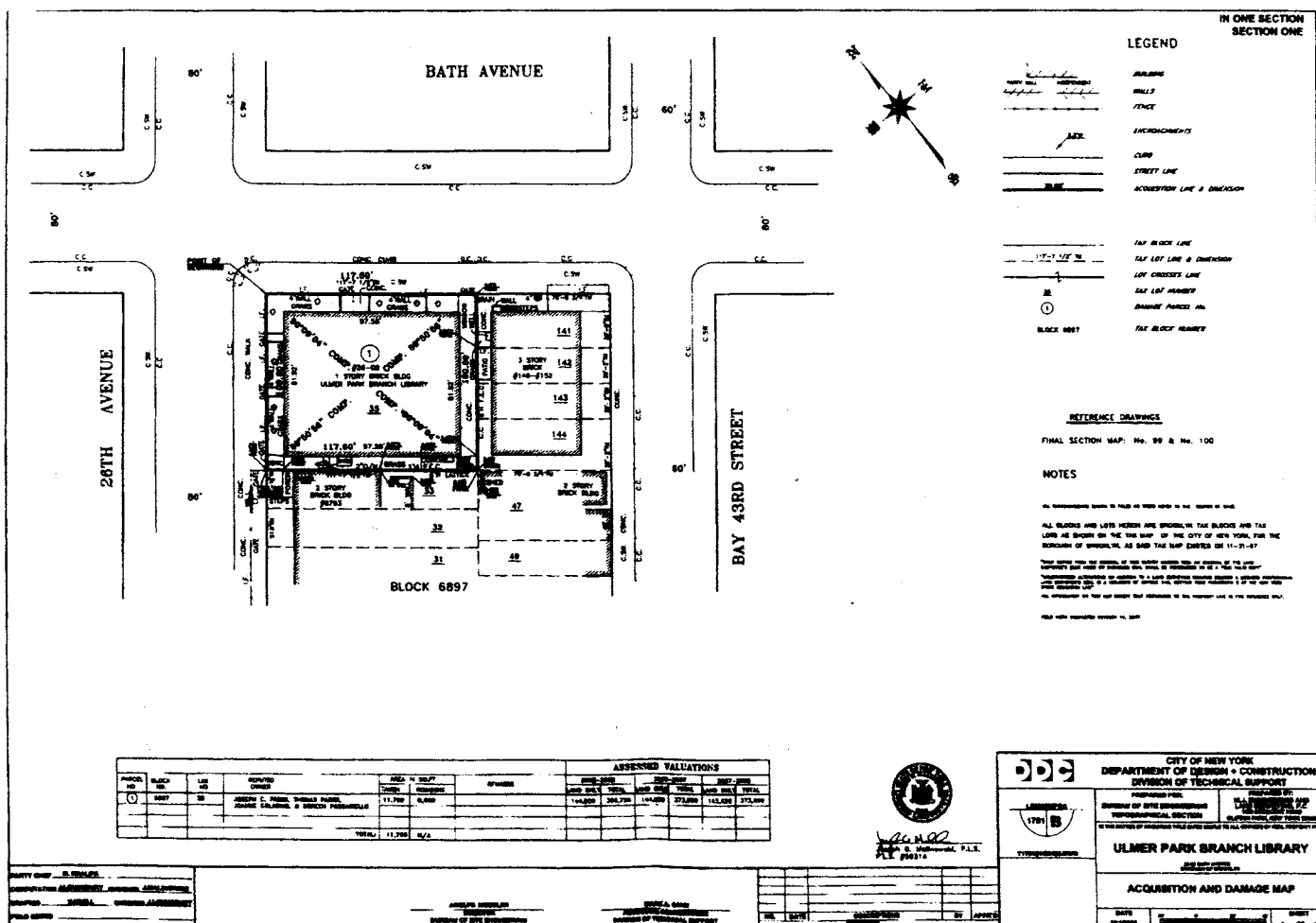
Address	Application #	Inquiry Period
239 West 132nd Street, Manhattan	14/08	February 6, 2005 to Present
221 West 137th Street, Manhattan	15/08	February 12, 2005 to Present
254 West 121st Street, Manhattan	18/08	February 20, 2005 to Present
405 West 147th Street, Manhattan	20/08	February 28, 2005 to Present
2338 Dr. M L King Jr. Boulevard, Bronx, a/k/a 2338 University Avenue		
	13/08	February 6, 2005 to Present
454 Greene Avenue, Brooklyn	12/08	February 1, 2005 to Present
281 Macon Street, Brooklyn	16/08	February 12, 2005 to Present
627 St. Marks Avenue, Brooklyn	17/08	February 13, 2005 to Present
107 St. James Place, Brooklyn	19/08	February 22, 2005 to Present

The Department of Housing Preservation and Development has received an application for a certification that during the inquiry period noted for the premises above, that no harassment has occurred at such premises in the form of threats, use of physical force, deprivation of essential services such as heat, water, gas or electric, or by any other conduct intended to cause persons to vacate the premises or waive rights related to their occupancy. Upon the issuance of a Certification, an owner can legally convert the premises to non-single room occupancy use.

Comments as to whether harassment has occurred at the premises should be submitted to the Anti-Harassment Unit, 100 Gold Street, 3rd Floor, New York, NY 10038, by letter postmarked not later than 30 days from the date of this notice or by an in-person statement made within the same period. To schedule an appointment for an in-person statement call (212) 863-8272.

m7-17

COURT NOTICE MAP FOR ULMER PARK BRANCH LIBRARY



READER'S GUIDE

The City Record (CR) is, published each business day and includes notices of proposed New York City procurement actions, contract awards, and other procurement-related information. Solicitation notices for most procurements valued at or above \$100,000 for information technology and for construction and construction related services, above \$50,000 for other services, and above \$25,000 for other goods are published for at least one day. Other types of procurements, such as sole source, require notice in the City Record for five consecutive days. Unless otherwise specified, the agencies and offices listed are open for business Mondays thru Fridays from 9:00 A.M. to 5:00 P.M. except legal holidays.

NOTICE TO ALL NEW YORK CITY CONTRACTORS

The New York State Constitution ensures that all laborers, workers or mechanics employed by a contractor or subcontractor doing public work are to be paid the same wage rate that prevails in the trade where the public work is being done. Additionally, New York State Labor Law §§ 220 and 230 provide that a contractor or subcontractor doing public work in construction or building service must pay its employees no less than the prevailing wage. Section 6-109 (the Living Wage Law) of the New York City Administrative Code also provides for a "living wage", as well as prevailing wage, to be paid to workers employed by City contractors in certain occupations. The Comptroller of the City of New York is mandated to enforce prevailing wage. Contact the NYC Comptrollers Office at www.comptroller.nyc.gov, click on Labor Law Schedules to view rates.

New York City's "Burma Law" (Local Law No. 33 of 1997) No Longer to be Enforced. In light of the United States Supreme Court's decision in **Crosby v. National Foreign Trade Council**, 530 U.S. 363 (2000), the City has determined that New York City's Local Law No. 33 of 1997 (codified in Administrative Code Section 6-115 and Charter Section 1524), which restricts City business with banks and companies doing business in Burma, is unconstitutional. This is to advise, therefore, that the language relating to Burma contained in existing New York City contracts may not be enforced.

CONSTRUCTION/CONSTRUCTION SERVICES OR CONSTRUCTION RELATED SERVICES

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.

VENDOR ENROLLMENT APPLICATION

New York City procures approximately \$7 billion worth of goods, services, construction and construction-related services every year. The NYC Procurement Policy Board Rules require that agencies primarily solicit from established mailing lists called bidder/proposer lists. To register for these lists--free of charge-, prospective suppliers should fill out and submit the NYC-FMS Vendor Enrollment application.

- Online at NYC.gov/selltonyc
- To request a hardcopy application, call the Vendor Enrollment Center at (212) 857-1680.

Attention Existing Suppliers:

Even if you already do business with NYC agencies, be sure to fill out an application. We are switching over to citywide, centralized Bidders Lists instead of the agency-specific lists previously used to issue notices about upcoming contract opportunities. To continue receiving notices of New York City contract opportunities, you must fill out and submit a NYC-FMS Vendor Enrollment application.

If you are uncertain whether you have already submitted an application, call us at (212) 857-1680.

SELLING TO GOVERNMENT TRAINING WORKSHOP

New and experienced vendors are encouraged to register for a free training course on how to do business with New York City. "Selling to Government" workshops are conducted by the Department of Small Business Services, 110 William Street, New York, NY 10038. Morning and afternoon sessions are convened on the first Tuesday of each month. For more information, and to register, call (212) 618-8845.

PRE-QUALIFIED LIST

New York City procurement policy permits agencies to develop and solicit from pre-qualified lists of vendors, under prescribed circumstance. When it is decided by an agency to develop a pre-qualified list, criteria for pre-qualification must be clearly explained in the solicitation and notice of the opportunity to pre-qualify for that solicitation must be published in at least five issues of the CR.

Information and qualification questionnaires for inclusion on such list may be obtained directly from the Agency Chief Contracting Officer at each agency, (see Vendor Information Manual). A completed qualification Questionnaire may be submitted to the Chief Contracting Officer at any time, unless otherwise indicated and action (approval or denial) shall be taken by the agency within 90 days from the date of submission. Any denial or revocation of pre-qualified status can be appealed to the Office of Administrative Trials and Hearings, (OATH), Section 3-11 of the Procurement Policy Board Rules describes the criteria for the general use of pre-qualified lists.

NON-MAYORAL ENTITIES

The following agencies are not subject to Procurement Policy Board rules and do not follow all of the above procedures: City University, Department of Education, Metropolitan Transportation Authority, Health & Hospitals Corporation, Housing Authority. Suppliers interested in applying for inclusion on bidders list should contact these entities directly (see Vendor Information Manual) at the addresses given.

PUBLIC ACCESS CENTER

The Public Access Center is available to suppliers and the public as a central source for supplier-related information through on-line computer access. The Center is located at 253 Broadway, 9th floor, in lower Manhattan, and is open Monday through Friday from 10:00 A.M to 3:00 P.M. For information, contact the Mayor's Office of Contract Services at (212) 788-0010.

ATTENTION: NEW YORK CITY MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

Join the growing number of Minority and Women Owned Business Enterprises (M/WBEs) that are competing for New York City's business. In order to become certified for the program, your company must substantiate that it: (1) is at least fifty-one percent (51%) owned, operated and controlled by a minority or woman and (2) is either located in New York City or has a significant tie to New York City's business community. To obtain a copy of the certification application and to learn more about the program, contact the New York City Department of Small Business Services, 110 William Street, 2nd Floor, New York, New York 10038 (212) 513-6311.

PROMPT PAYMENT

It is the policy of the City of New York to pay its bills promptly. The Procurement Policy Board Rules generally require that the City pay its bills within 30 days after the receipt of a proper invoice. The City now pays interest on all late invoices. The grace period that formerly existed was eliminated on July 1, 2000. However, there are certain types of payments that are not eligible for interest. These are listed in Section 4-06 of the Procurement Policy Board Rules. The Comptroller and OMB determine the interest rate on late payments twice a year, in January and in July.

PROCUREMENT POLICY BOARD RULES

The Rules may also be accessed on the City Website, <http://NYC.GOV.Selltonyc>

COMMON ABBREVIATIONS USED IN THE CR

The CR contains many abbreviations. Listed below are simple explanations of some of the most common ones appearing in the CR:

- AB Acceptable Brands List
- AC Accelerated Procurement
- AMT Amount of Contract
- BL Bidders List
- CSB Competitive Sealed Bidding (including multi-step)
- CB/PQ CB from Pre-qualified Vendor List
- CP Competitive Sealed Proposal (including multi-step)
- CP/PQ CP from Pre-qualified Vendor List
- CR The City Record newspaper
- DA Date bid/proposal documents available
- DUE Bid/Proposal due date; bid opening date
- EM Emergency Procurement
- IG Intergovernmental Purchasing
- LBE Locally Based Business Enterprise
- M/WBE Minority/Women's Business Enterprise
- NA Negotiated Acquisition
- NOTICE.... Date Intent to Negotiate Notice was published in CR
- OLB..... Award to Other Than Lowest Responsible & Responsive Bidder/Proposer
- PIN..... Procurement Identification Number
- PPB Procurement Policy Board
- PQ Pre-qualified Vendors List
- RS..... Source required by state/federal law or grant
- SCE Service Contract Short-Term Extension
- DP Demonstration Project
- SS Sole Source Procurement
- ST/FED Subject to State &/or Federal requirements

KEY TO METHODS OF SOURCE SELECTION

The Procurement Policy Board (PPB) of the City of New York has by rule defined the appropriate methods of source selection for City procurement and reasons justifying their use. The CR procurement notices of many agencies include an abbreviated reference to the source selection method utilized. The following is a list of those methods and the abbreviations used:

- CSB **Competitive Sealed Bidding** (including multi-step)
Special Case Solicitations / Summary of Circumstances:
- CP **Competitive Sealed Proposal** (including multi-step)
- CP/1 Specifications not sufficiently definite
- CP/2 Judgement required in best interest of City
- CP/3 Testing required to evaluate
- CB/PQ/4
- CP/PQ/4 **CB or CP from Pre-qualified Vendor List/** Advance qualification screening needed
- DP Demonstration Project
- SS **Sole Source Procurement/**only one source
- RS..... Procurement from a Required Source/ST/FED
- NA..... Negotiated Acquisition
- For ongoing construction project only:*
- NA/8 Compelling programmatic needs

- NA/9 New contractor needed for changed/additional work
- NA/10 Change in scope, essential to solicit one or limited number of contractors
- NA/11 Immediate successor contractor required due to termination/default

For Legal services only:

- NA/12 Specialized legal devices needed; CP not advantageous
- WA **Solicitation Based on Waiver/Summary of Circumstances** (Client Services/BSB or CP only)
- WA1 Prevent loss of sudden outside funding
- WA2 Existing contractor unavailable/immediate need
- WA3 Unsuccessful efforts to contract/need continues
- IG **Intergovernmental Purchasing** (award only)
- IG/F Federal
- IG/S State
- IG/O Other
- EM **Emergency Procurement** (award only) An unforeseen danger to:
- EM/A Life
- EM/B Safety
- EM/C Property
- EM/D A necessary service
- AC **Accelerated Procurement/**markets with significant short-term price fluctuations
- SCE **Service Contract Extension/**insufficient time; necessary service; fair price
Award to Other Than Lowest Responsible & Responsive Bidder or Proposer / Reason (award only)
- OLB/a anti-apartheid preference
- OLB/b local vendor preference
- OLB/c recycled preference
- OLB/d other: (specify)

HOW TO READ CR PROCUREMENT NOTICES

Procurement Notices in the CR are arranged by alphabetically listed Agencies, and within Agency, by Division if any. The notices for each Agency (or Division) are further divided into three subsections: Solicitations, Awards; and Lists & Miscellaneous notices. Each of these subsections separately lists notices pertaining to Goods, Services, or Construction.

Notices of Public Hearings on Contract Awards appear at the end of the Procurement Section. At the end of each Agency (or Division) listing is a paragraph giving the specific address to contact to secure, examine and/or to submit bid or proposal documents, forms, plans, specifications, and other information, as well as where bids will be publicly opened and read. This address should be used for the purpose specified UNLESS a different one is given in the individual notice. In that event, the directions in the individual notice should be followed. The following is a SAMPLE notice and an explanation of the notice format used by the CR.

SAMPLE NOTICE:

POLICE

DEPARTMENT OF YOUTH SERVICES

■ SOLICITATIONS

Services (Other Than Human Services)

BUS SERVICES FOR CITY YOUTH PROGRAM – Competitive Sealed Bids – PIN# 056020000293 – DUE 04-21-03 AT 11:00 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.
NYPD, Contract Administration Unit, 51 Chambers Street, Room 310, New York, NY 10007. Manuel Cruz (646) 610-5225.

ITEM	EXPLANATION
POLICE DEPARTMENT	Name of contracting agency
DEPARTMENT OF YOUTH SERVICES	Name of contracting division
■ SOLICITATIONS	Type of Procurement action
<i>Services (Other Than Human Services)</i>	Category of procurement
BUS SERVICES FOR CITY YOUTH PROGRAM	Short Title
CSB	Method of source selection
PIN # 056020000293	Procurement identification number
DUE 04-21-03 AT 11:00 am	Bid submission due 4-21-03 by 11:00 am; bid opening date/time is the same.
<i>Use the following address unless otherwise specified in notice, to secure, examine-submit bid/proposal documents; etc.</i>	Paragraph at the end of Agency Division listing giving contact information, or submit bid/information or and Agency Contact address
	NYPD, Contract Administration Unit 51 Chambers Street, Room 310 New York, NY 10007. Manuel Cruz (646) 610-5225.

NUMBERED NOTES

Numbered Notes are Footnotes. If a Numbered Note is referenced in a notice, the note so referenced must be read as part of the notice. **1.** All bid deposits must be by company certified check or money order made payable to Agency or Company.