

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Adoption of Final Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION (the “Department” or “DEP”) by Section 1403 of the New York City Charter and Sections 24-501 *et seq.* of the New York City Administrative Code, that the Department has amended its rules to establish requirements for a Green Infrastructure Grant Program. The proposed rule was published in the City Record and a public hearing was held on February 15, 2017. There was no testimony, and one written comment was submitted.

Statement of Basis and Purpose of Rule

In 2012, the Department signed a Consent Order modifying a 2005 New York State Department of Environmental Conservation Consent Order (DEC Case No CO2-20000107-8, as modified) to reduce combined sewer overflows (“CSOs”) and committed to construct and implement green stormwater management practices (also known as “green infrastructure”) that are part of a broader green/grey strategy (i.e., also employing “grey infrastructure,” which includes CSO storage facilities and other engineered projects) to improve water quality in local waterways. Specifically, the Department is required to manage one (1) inch of rainfall on ten percent (10%) of the impervious surfaces within combined sewer areas by 2030 using green infrastructure. The Department established its Office of Green Infrastructure to implement the Green Infrastructure Grant Program (“Program”) and launched the Program in order to partner with stakeholders and community groups in the construction and maintenance of green infrastructure. The Program provides funding to private property owners for the design and construction of qualified green infrastructure practices. Grants under this Program are available to owners of property located within the five (5) boroughs of the City of New York whose property and proposals meet the criteria set forth by the Department.

The Department received a comment from an environmental organization urging that a number of changes be made to the rule, including the deletion of the requirement that the final contract plans be certified by a professional, and other changes which, in the commenter’s view, would hinder the effectiveness of the Program. After due consideration of this comment, the Department has decided to finalize the rule without change.

This rulemaking sets forth the determination by the Commissioner of the Department as to the requirements for eligible projects and grant applicants, the application process, compliance and administration and funding requirements under the Program. The Department is therefore promulgating the following new rule, to be found at 15 RCNY Chapter 48.

The Rule is authorized by Section 1403 of the Charter of the City of New York and Section 24-501 *et seq.* of the Administrative Code.

The text of the Rules is as follows.

New text is underlined; deleted material is in [brackets].

Section 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 48, to read as follows:

Chapter 48

Green Infrastructure Grant Program.

§48-01 Purpose and Applicability.

- (a) Purpose. The Green Infrastructure Grant Program (“Program”) is intended to provide funding for the design and construction of green infrastructure to manage stormwater runoff in New York City.
- (b) Applicability. The Program provides funding for the design and construction of green infrastructure practices on real property located within the five (5) boroughs of New York City, and, except as set forth in §XX-04(b), below, that is privately owned.

§48-02 Definitions.

“Applicant” means the person or entity completing, preparing and/or submitting the Program application, in some cases on behalf of the potential Grantee.

“City” means the City of New York.

“Conditional acceptance” or “conditionally accepted” refers to a Grant application that has been reviewed by the Department and accepted subject to satisfaction of additional specific requirements, and for which there has not yet been a binding commitment to award a Grant because there remain pre-conditions to be satisfied by the Applicant and/or the prospective Grantee.

“Department” means the Department of Environmental Protection, the City agency responsible for administering the Green Infrastructure Grant Program.

“Funding Agreement” means the primary contract between the City and the Grantee with respect to the Program funding.

“Grant” means a grant of funds awarded by the Department to a Grantee under the Program, which becomes effective and binding when the Funding Agreement has been fully executed and registered with the City Comptroller.

“Grantee” means the owner of the real property on which the Project will be built, including all parties having an ownership interest in the property.

“Green Infrastructure Practice” means a stormwater management installation that is designed and constructed by the Grantee to manage stormwater runoff from the immediate impervious tributary drainage area during a rain event. This term typically refers, but is not necessarily

limited, to the following: rain gardens or other bioinfiltration systems, porous paving materials, green roofs, and various subsurface retention systems.

“Private property” means real property not owned by the City or another public entity and located within the limits of the five (5) boroughs of the City of New York.

“Program” means the Department’s Green Infrastructure Grant Program that facilitates the installation of Green Infrastructure Practices on private property.

“Program Guide” means the step-by-step instruction manual for prospective Grantees that describes the Project development process to be followed from conditional acceptance of the application until execution of the Funding Agreement, and how the Department will provide the funding to the Grantee for the construction of the Project. The Program Guide will be incorporated by reference into the Funding Agreement.

“Project” means the Green Infrastructure Practice(s) to be installed on the Grantee’s property with funding provided by a Grant awarded by the Department.

§48-03 Eligible Grantees.

To be eligible for a Grant, Applicants must be in compliance with the following:

- (a) They are not in default on any prior grant agreement or other City contract;
- (b) They do not owe any taxes; and
- (c) There is no evidence of lack of business integrity, as determined by the Department after a review of information maintained in VENDEX or other public databases; provided that the Department will not conclude that there is a lack of business integrity without first providing the Applicant with an opportunity to update or correct the information drawn from such databases.

§48-04 Eligible Property.

- (a) Grants may be awarded for projects that will be constructed on private property, except as set forth in paragraph (b) of this section.
- (b) Grant applications involving projects on property that is either (i) owned in whole or in part by the City and occupied by the potential Grantee on a long-term basis (e.g., pursuant to a ground lease or other land use agreement) or (ii) owned by another governmental entity or public authority, will be considered by the Department on a case-by-case basis. In evaluating applications involving property leased from the City, as described in (i), the Department will consider such factors as the length of the occupancy agreement and whether or not the lease or agreement is renewable.

§48-05 Project Feasibility Requirements for Infiltration Projects and Rooftop Projects.

- (a) The proposed Project must manage at least one (1) inch of stormwater runoff from the surrounding impervious tributary drainage area, unless the Department determines that a

particular Project has sufficient benefits to warrant allowing a lesser volume in a given case.

- (b) When an application for an infiltration Project is conditionally accepted, the Applicant will be required to submit the results of a geotechnical investigation, conducted in accordance with procedures set forth by the Department in the Program Guide, which confirm that the underlying soils are suitable for the Project.
- (c) Proposed rooftop Projects must be determined to be feasible by a structural analysis that has been performed by a professional structural engineer licensed by the State of New York and that concludes that the loading capacity of the roof is sufficient to support the proposed Project.

§48-06 Application Submission Requirements.

- (a) The application can be submitted through the Department's online application system, at <http://www.nyc.gov/dep/grantprogram>. To request a paper copy of the application, one can mail a request to Green Infrastructure Grant Program, Office of Green Infrastructure at 59-17 Junction Blvd, 11th Floor, Flushing, NY 11373, and completed paper applications may be submitted to the same address.
- (b) Only one (1) tax lot may be included in an application to fund a proposed Project, unless the potential Grantee owns adjacent lots and the proposed Project would manage stormwater runoff from all of the commonly owned adjacent tax lots. In this case, one (1) application may be submitted for a Project to be constructed on the adjacent lots in common ownership.
- (c) The Applicant must provide all information requested on the application form, including detailed information regarding Project scope, drawings, schematics, maps and plans. Proof of property ownership must be included.
- (d) All applications must include, at a minimum:
 - 1. The Applicant's name, address, telephone number and email address;
 - 2. The identity of the Grantee including names address, phone number and email address;
 - 3. The address and location of the property, as well as borough, block and lot information;
 - 4. The type of Project proposed;
 - 5. A description of how the proposed Project will function;
 - 6. The professional qualifications of those designing and implementing the Project;
 - 7. The proposed budget for the proposed Project;
 - 8. Calculations of the stormwater projected to be managed by the proposed Project, derived using the calculator provided by the Department with the application;
 - 9. The construction timeline for the proposed Project;

10. Information including the Project's location within the property, footprint dimensions, stormwater flow directions, and proposed materials;
11. A record of the connection of the building or site to the sewer, if available, or the application or proposal for site connection for new construction; and
12. A proposed maintenance plan that details maintenance tasks and activities for the useful life of the project, and a statement of how the Grantee would pay for these activities (note that maintenance costs are not eligible for Grant funding).

(e) Relevant additional information should be included if applicable, such as:

1. At least two photos showing the existing conditions of the proposed Project area within the property as of the date of the application submission;
2. Identification of any "co-benefits" in addition to reduced stormwater runoff;
3. Identification of any local institutions or community groups that will be involved in the design, construction or stewardship of the proposed Project; and
4. The proposed monitoring plan, if any.

§48-07 Selection of Projects and Appeals.

(a) The Department will conditionally accept applications, in its discretion, based upon the criteria set forth in this section, after a complete application has been submitted, reviewed, and determined to meet the eligibility requirements as set forth in these Rules.

(b) Applications will be evaluated based upon the following criteria:

1. Cost/benefit ratio. The stormwater management benefits of the Project should be cost effective in comparison to the Project costs.
2. Constructability. An evaluation of the constructability of the proposed Project will be based on information submitted.
3. Other factors. Such other factors as the quality of the application materials, a short construction timeline, the availability of matching funds or in-kind contributions, the involvement of community partners or organizations, public visibility or accessibility, the inclusion of a robust scientific monitoring plan, the ability of the proposed Project to be replicable on a wide scale, and/or the inclusion of any training or workforce development opportunities as part of a proposed Project may be considered by the Department when evaluating the Project proposal.

(c) Prospective Grantees will be required to submit a Doing Business Data Form to the Department.

(d) If an application is conditionally accepted, the Applicant will be notified by letter, with a copy of the Program Guide. Such Guide will also be available on the Department's website, at <http://www.nyc.gov/dep/grantprogram>. The prospective Grantee must complete an Acceptance Form and return it to the Department within two (2) weeks after receipt of the acceptance letter, confirming that the prospective

Grantee is prepared to execute the Funding Agreement and, if appropriate, a restrictive covenant or security agreement upon final acceptance of the Project design. Applicants who are not selected for a Grant will be sent a letter advising what needs to be done for a resubmitted application to be conditionally accepted, or, if it does not appear that the application will be accepted, advising of the reasons for denial.

- (e) If an application is denied in whole or on part, an appeal may be submitted as set forth in this paragraph. Such appeal may be made by the property owner sending a letter to the New York City Department of Environmental Protection, Attn: Commissioner, 59-17 Junction Boulevard, Flushing, NY 11373, c/o Bureau of Legal Affairs, within thirty (30) days after the date of the denial letter issued by the Department. Failure to submit an appeal within thirty (30) days will be deemed to be an acceptance of the Department's denial. Upon receipt of a timely letter of appeal, the Commissioner will appoint an appeal officer within the Department to review. Such appeal officer will make a report on the appeal to the Commissioner. The Commissioner or his or her designee must issue a final order within sixty (60) days after receiving the report. A copy of the final order will be sent to the appellant within ten (10) days after the date the Commissioner or his or her designee issues it.

§48-08 Funding.

- (a) Funding is provided to Grantees, or an approved assignee, on a reimbursement basis upon receipt of invoices for eligible costs previously paid. Monthly invoices may be submitted to the Department after:
1. Final designs have been accepted by the Department;
 2. The Funding Agreement has been registered pursuant to Section 328 of the City Charter; and
 3. A notice to proceed with the Project has been issued to the Grantee by the Department.
- (b) The following items are not eligible expenses and cannot be covered by the Grant:
1. Non-third party personnel costs or salaries of Grantee employees
 2. Operating costs
 3. Maintenance activities
 4. Legal expenses
- (c) The Department will disburse Grant funding in accordance with the instructions and requirements of the Department's Agency Chief Contracting Officer and the City's Office of Management and Budget.

§48-09 Grant Administration and Compliance.

- (a) Prospective Grantees will be required to execute a Funding Agreement in the form provided in the on-line application available at www.nyc.gov/dep/grantprogram after Project design is complete and has been accepted by the Department.
- (b) Grantees may be required to execute a security agreement, generally in the form of a restrictive covenant, to ensure the preservation of the Project for its useful life, which may be up to twenty (20) years.
- (c) Grantees must provide proof of the required insurance as set forth in the Funding Agreement.
- (d) After a final design has been accepted by the Department, a notice to proceed will be issued to the Grantee.
- (e) Failure to render satisfactory progress or to complete the Project to the satisfaction of the Department may be deemed an abandonment of the Project and, under the terms of the Funding Agreement, may result in the termination of further Grant funding and recoupment of funds already disbursed. Satisfactory progress includes, without limitation, executing the required Funding Agreement or the Program Guide.
- (f) Infiltration Projects must be designed and/or installed by a New York State-licensed professional. Where necessary, all final contract plans must be signed and stamped by a professional engineer, registered architect, or registered landscape architect.
- (g) Projects must comply with all local, state and federal laws and regulations.
- (h) Grant funds must not be used for political advocacy, boycotts, advertising, or litigation expenses. In addition, funds must not be used for legally mandated actions under local, state or federal law and/or associated with administrative permit conditions or terms of settlement agreements.
- (i) Grantees must submit regular construction status reports once construction commences, until final acceptance by the Department. Once construction of the Project is completed, Grantees are required to submit regular maintenance summaries for three (3) years.
- (j) The City has the unrestricted right to use the designs for any Projects for which Grants are awarded for any future projects or purposes at no additional cost to the City.
- (k) The City has the right to publish photographs of completed Projects. The Grantee must indicate in any statements to the press or in any materials for publication in any media of communication (print, news, television, radio, internet, etc.) that the Project was funded wholly or in part by the Department.