

New York City Department of Consumer Affairs

Notice of Adoption

Notice of Adoption to add a new rule to implement Chapter 45-A of the New York City Charter, added by Local Law 47 for the Year 2016, relating to the Department's licensing authority.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer Affairs by Sections 1043, 1049-b, 2203(c) and 2203(h)(1) of the New York City Charter, Section 20-104 of the New York City Administrative Code, and Section 3 of Local Law 47 of 2016, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department adds Section 1-20 to Chapter 1 of Title 6 of the Rules of the City of New York.

This rule was proposed and published on November 5, 2018. A public hearing was held on December 5, 2018.

Statement of Basis and Purpose of Rule

The City Council enacted Local Law 47 for the Year 2016, adding a new Section 1049-b to Chapter 45-A of the New York City Charter that (i) permits city agencies that issue licenses, permits or registrations and issue notices of violation to deny an application for, or renewal of, any license, permit or registration and may suspend, terminate or revoke any license, permit or registration based on the failure to timely pay those civil penalties; (ii) directs such city agencies to promulgate rules to implement the authority granted by the Law; and (iii) instructs city agencies to explicitly include certain factors of consideration that shall be used to determine whether to deny, suspend, or revoke any license, permit or registration.

The Department of Consumer Affairs ("DCA") adds this rule to implement the authority granted by Local Law 47. Specifically, the rule establishes DCA's power to deny a new or renewal application and to revoke, suspend, cancel, or terminate any license, permit or registration due to the non-payment of civil penalties imposed by OATH if a sister agency has provided DCA with the information necessary to do so. Moreover, the rule outlines the factors that will be taken into consideration in making this determination, including the amount of time that has passed since the person failed to satisfy a judgment, the amount that is owed, and whether the person has committed a series of violations.

New material is underlined.

[Deleted material is in brackets.]

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

Rule Amendment

Section 1. Chapter 1 of Title 6 of the Rules of the City of New York is amended to add subsection 1-20, to read as follows:

§ 1-20 Non-Payment of Civil Penalties.

(a) The Commissioner may deny a new or renewal application for any license, permit or registration, and may revoke, suspend, cancel, or terminate any license, permit or registration, if (i) the applicant, licensee, permittee or registrant has failed to timely pay civil penalties imposed by a tribunal of the New York City Office of Administrative Trials and Hearings (OATH), and (ii) an agency has provided the

Commissioner with the following information: the name, address, Department license number and license category, where applicable, and information sufficient to determine the delinquency and monetary amount of the outstanding civil penalties owed by the applicant, licensee, permittee or registrant.

(b) In determining whether to exercise the power granted by paragraph (a) of this section, the Commissioner shall consider the amount of time that has passed since the applicant, licensee, permittee or registrant failed to satisfy a final judgment, order or decision imposing civil penalties from OATH, the amount of the outstanding civil penalties, whether the applicant, licensee, permittee or registrant has committed a series of violations, and any such other matters as justice may require, as follows:

1. New applications for licenses, permits or registrations may be denied where there is an outstanding final judgment, order, or decision of any amount older than thirty (30) days.

2. Licenses, permits or registrations may be suspended, and renewal applications denied, where outstanding final judgments, orders, or decisions are:

A. Older than sixty (60) days; and

B. Five hundred dollars (\$500) or more.

3. Licenses, permits or registrations may be revoked or cancelled where outstanding final judgments, orders, or decisions are:

A. Older than ninety (90) days; and

B. One thousand dollars (\$1,000) or more; and

C. The applicant, licensee, permittee or registrant violated any provision the enforcement of which is within the jurisdiction of the Department in the previous five (5) years.

(c) If the applicant, licensee, permittee or registrant breaches the terms of a settlement agreement or payment plan reached with the City for satisfaction of a final judgment, order or decision imposing civil penalties, time will be calculated from the date of the breach or first missed payment, unless otherwise set forth in the agreement.

(d) For purposes of this subsection, a judgment, order or decision imposing civil penalties from OATH is considered "final" when:

1. An appeal or motion to vacate challenging the judgment, order, or decision has been resolved;

2. The entity or legal representative against whom the judgment, order or decision was imposed fails to appeal within the time allotted by OATH; or

3. The entity or legal representative against whom the judgment, order or decision was entered on default fails to move to vacate the judgment, order or decision within sixty (60) of the date entered.