

The New York City Department of Transportation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Transportation (“DOT” or “the Department”) is proposing to amend the bicycle access in office buildings rule set forth in Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York, to reflect amendments made to Title 28, Chapter 5, Article 504 of the New York City Administrative Code by Local Laws 105 and 107 of 2016.

When and where is the hearing? DOT will hold a public hearing on the proposed rule. The public hearing will take place at 1 pm on Tuesday, September 12, 2017. The hearing will be in the DOT Bid Room at 55 Water Street, New York, NY 10041. The entrance to the Bid Room is located on the Southeast corner of the 55 Water Street and it faces the Vietnam Veterans Memorial.

This location has the following accessibility option(s) available: Wheelchair Accessible.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DOT through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@dot.nyc.gov.
- **Mail.** You can mail comments to Bernice Yella, New York City Department of Transportation, Division of Legal Affairs, 55 Water Street, 9th Floor New York, New York 10041.
- **Fax.** You can fax comments to Bernice Yella, (212) 839-9895
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 839-6447. You can also sign up in the hearing room before the hearing begins on September 12, 2017. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline to submit written comments is September 12, 2017.

Do you need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 839-6500. You must tell us by September 5, 2017.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Office of Legal Affairs.

What authorizes DOT to make this rule? Section 1043 of the City Charter authorizes DOT to make this proposed rule. This rule is being proposed to satisfy the requirements of Local Laws 105 and 107 of 2016. This proposed rule was not included in DOT's regulatory agenda for this Fiscal Year because these local laws had not been enacted at the time when DOT published its agenda.

Where can I find DOT's rules? DOT's rules are in Title 34 of the Rules of the City of New York.

What rules govern the rulemaking process? DOT must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Local Laws 105 and 107 for the year 2016 amended Article 504 of Chapter 5 of Title 28 of the New York City Administrative Code and became effective on September 28, 2016. This proposed rule would amend the existing rules relating to bicycle access in office buildings as set forth in Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York, and reflects the changes adopted by Local Laws 105 and 107. In general, it was the purpose of these new laws to expand the opportunities for people to use bikes in New York City.

The proposed amendments to Section 2-19 of Chapter 2 of Title 34 are as follows:

- Section 2-19(a) would be amended by deleting definitions of “accessible level” and “control”, and adding new definitions of “foldable bicycle” and “owner”.
- Section 2-19(b) would be amended by adding new requirements for the bicycle access plan, such as providing at least one freight elevator that enhances the opportunities for residents to transport their bicycles to and from buildings.
- Section 2-19(c), (d), (e) and (g) would be amended by updating requirements for amendments to a bicycle access plan, exceptions to the requirement of providing a bicycle access plan, exception or denial determination and the filing of a bicycle access plan.
- Section 2-19(f) would be amended by adding new requirements regarding posting of a bicycle access plan indicating when other tenants or subtenants are entitled to access.
- Section 2-19(h) and (i) would be amended by adding new provisions regarding foldable bicycle access and emergencies that restrict bicycles or foldable bicycles from being transported.
- Section 2-19(j) would be amended by adding a new provision regarding a building owner’s ability to restrict or limit bicycle access under the bicycle access plan, if an owner is issued a violation that results from storage of a bicycle in an area of such building that is under the control of a tenant or subtenant.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (a) of Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

- (a) *Definitions.* For purposes of this section, the following terms have the following meanings:

- [(1) **Accessible Level.** "Accessible level" shall mean one that facilitates the approach, entry or use for bicyclists on whose behalf the tenant or subtenant has requested

bicycle access.]

[(2)] **Available.** "Available" [shall mean] means accessible for use by bicyclists on whose behalf the tenant or subtenant has requested bicycle access.

[(3)] **Control.** "Control" shall mean to exercise legal authority over through deed, permit, lease, contract or otherwise.]

[(4)] **Covered.** "Covered" [shall mean] means enveloped by a roof or functional equivalent. For purposes of this definition, "roof" means the outer cover and its supporting structures on the top of a building.

Foldable bicycle. "Foldable bicycle" means a bicycle designed to fold into a compact assembly not exceeding 20 inches (508 mm) by 36 inches (914 mm) by 32 inches (813 mm).

[(5)] **Indoor.** "Indoor" [shall mean] means situated in the interior of or within a building that is within [three] four blocks or [seven hundred fifty] one thousand feet (304.8 m), whichever is less, of the building for which a bicycle access plan is requested.

[(6)] **Off-street.** "Off-street" [shall mean] means located in an area other than the roadway or the public sidewalk within [three] four blocks or [seven hundred fifty] one thousand (304.8 m) feet, whichever is less, of the building for which a bicycle access plan is requested.

Owner. "Owner" means the owner of the office building or such other person who controls such building and their agents.

[(7)] **Secure.** "Secure" [shall mean] means that (i) the entry to or exit from the alternate bicycle parking is locked or supervised by building personnel and permitted only to (A) the owner[, lessee, manager or such other person who controls such building and their agents,] and (B) bicycle owners on whose behalf the tenant or subtenant has requested bicycle access, and (ii) a bicycle owner can lock a bicycle to a fixed object (including, but not limited to, a bicycle rack) such that the bicycle is protected from damage or theft.

§2. Paragraph 1 and subparagraph (i) of paragraph 2 of subdivision (b) of Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:

(b) Bicycle Access Plan.

(1) Request for Bicycle Access.

(i) The tenant or subtenant of an office building, as defined in Administrative Code § 28-504.1, may submit a request for bicycle access, in writing on a form provided by the Department, to the owner[, lessee, manager or other person who controls] of such office building. Such request must include a certification by such tenant or subtenant that there is sufficient space within such tenant's or subtenant's premises to store the requested number of bicycles in a manner that does not violate the New York City Building or Fire Code or any other

applicable law, rule or code, or which would impede ingress or egress to such premises or building. Such request [shall] must be submitted by certified mail, return receipt requested.

(ii) The tenant or subtenant [shall] must file a copy of any request for bicycle access with the Department. Such request may be filed electronically by submitting it through the Department's website (www.nyc.gov/bikesinbuildings) or by submitting such request by regular mail to the Department of Transportation, 55 Water Street, [6th] 9th Floor, New York, NY 10041, Attention: Bikes in Buildings Program.

(iii) The owner[, lessee, manager, or other person who controls] of such office building [shall] must complete and implement a bicycle access plan for such building within thirty (30) days after receipt of a written request from such tenant or subtenant of such building.

(iv) The owner[, lessee, manager or other person in control] of the building may request an exception to the requirements of Administrative Code § [28-504.3] 28-504.1.2 in accordance with subdivision (d) of this section.

(2) *Contents of Bicycle Access Plan.*

(i) *Requirements.* The bicycle access plan prepared by the owner[, lessee, manager or other person who controls] of a building [shall] must, for bicyclists on whose behalf the tenant or subtenant has requested bicycle access, include but not be limited to:

- A. [the location of entrances within or to the building;] provisions for at least one freight elevator that meets each of the following conditions:
 1. such elevator will be made available for bicycle access for each building tenant or subtenant and employees thereof, who requests such access, during the regular operating hours of such elevator;
 2. bicycles will be allowed to be transported to and from such elevator along each route that is used to transport freight to and from such elevator, to the extent practicable, and where such routes do not present substantial safety risks;
 3. no escort by building personnel will be required for a person transporting a bicycle to or from such elevator if no such escort is required when a person is transporting freight to or from such elevator; and
 4. a person transporting a bicycle to or from such elevator, and any package or other material in such person's possession, will be subject to the same or substantially similar security measures applicable to other persons entering such building or such elevator.
- B. [the route to elevator(s) that accommodate bicycle access] provisions allowing bicycles to be brought in or out of such building using one or more designated passenger elevators when the freight elevator described in subparagraph (A) is not operational and at any time outside the regular operating hours of the freight elevator described in subparagraph (A).

- C. information about the [regular hours of operation of the elevator(s)] location of building entrances;
- D. [such other information as is deemed to be appropriate by and for the particular building; and] information about the route to freight elevators that accommodate bicycle access;
- E. the route to a designated area for bicycle parking on an accessible level if such bicycle parking is made available; and
- F. a notice to tenants and subtenants informing them of their responsibilities with respect to bicycle storage.

* * *

§3. Subdivision (c) of Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

(c) *Amendments to plan.* The owner[, lessee, manager, or other person who controls] of a building [shall] must either create a new plan or amend a plan as needed (1) to address changed circumstances which warrant a revision in a particular tenant's or subtenant's plan, or in a plan that is applicable to all tenants; or (2) to accommodate new requests from other tenants or subtenants requesting bicycle access. Should such owner[, lessee, manager, or other such person who controls] of a building elect to amend a bicycle access plan pursuant to this section, such plan [shall] must be amended within thirty (30) days of receiving a request for bicycle access. Any such amendments that may materially affect the bicycle access plan shall be completed and implemented within thirty (30) days of the changed circumstances or to accommodate new requests from other tenants or subtenants requesting bicycle access, and do not preclude the requirement to comply with the provisions of this section. All amendments [shall] must be filed with the Department pursuant to the provisions of subdivision [(h)] (g) of this section

§4. Paragraph (1), subparagraphs (i) and (ii) of paragraph 3 and paragraph 4 of subdivision (d) of Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:

(d) *Exceptions.*

(1) Bicycle access need not be provided if an owner[, lessee, manager or other person who controls] of a building applies to the Commissioner for, and is granted, a letter of exception as set forth below. Such request [shall] must be sent by certified mail, return receipt requested within fifteen (15) days [of receipt of] after such owner has received a request for a bicycle access plan to the Department of Transportation, 55 Water Street, [6th] 9th Floor, New York, NY 10041, Attention: Bikes in Buildings Program, and certifies the following:

(i) [the building's] no freight elevator in such building is [not] available because unique circumstances exist involving substantial safety risks directly related to the use of each such elevator pursuant to Administrative Code § [28.504.4(1)] 28-504.1.3(1) ("Exception 1"); or

(ii) there is sufficient secure alternate covered off-street no-cost bicycle parking within [three] four blocks or [seven hundred fifty (750)] 1,000 feet (304.8m), whichever is less; or there is sufficient secure alternate indoor no-cost bicycle parking available on the premises or within [three] four blocks or [seven hundred fifty (750)] 1,000 feet (304.8m), whichever is less, of such building to accommodate all tenants or subtenants of such building requesting bicycle access and that such off-street parking is accessible on a 24-hour basis pursuant to Administrative Code § [28.504.4(2)] 28-504.1.3(2) ("Exception 2"). The number of bicycle parking spaces available [shall] must be at least equal to the number of bicycles contained in the bicycle access tenant requests.

* * *

(3) A request for Exception 2 [shall] must include the basis for requesting such an exception and [shall] must also include but not be limited to the following supporting documentation:

(i) Proof that secure alternate covered off-street no-cost bicycle parking or secure alternate indoor no-cost bicycle parking is available to or under the control of the owner[, lessee, manager or other person who controls] of the building. Such proof may include but not be limited to a copy of a deed, lease, title, permit or contract evidencing such control.

(ii) The route to the secure alternate covered off-street no-cost bicycle parking that is within [three] four blocks or [seven hundred fifty (750)] 1,000 feet (304.8m), whichever is less; or the route to the secure alternate indoor no-cost bicycle parking available on the premises or is within [three] four blocks or [seven hundred fifty (750)] 1,000 feet (304.8m), whichever is less, of such building.

* * *

(4) Pending the Department's inspection, review and determination of a request for a letter of exception, an owner[, lessee, manager or other person who controls] of a building [shall] will be exempt from complying with the requirements of this section.

§ 5. Paragraphs (1), (3) and (4) of subdivision (e) of Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:

(e) *Inspection and Determination.*

(1) If Exception 1 is sought: After conducting an inspection of the building and freight elevator, the Commissioner of the Department of Buildings [shall] will thereafter issue a final determination to the Department as to whether to grant Exception 1. Such final determination [shall] will be included in the Department's letter of exception or denial sent to the owner[, lessee, manager, or other person who controls the building].

* * *

(3) A letter of exception or denial [shall] must be sent by the Department by certified mail, return receipt requested, to the owner[, lessee, manager, or other person who controls the building].

(4) If a letter of denial is sent, a bicycle access plan [shall] must be posted within twenty (20) days [of] after receipt of such letter.

§6. Paragraphs (1) and (2) of subdivision (f) of Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:

(f) *Posting.*

(1) [Every] The owner[, lessee, manager or other person who controls] of a building for which a bicycle access plan has been adopted [shall] must post in such building either a current bicycle access plan or a notice in the building lobby indicating that the plan is available in the building manager's office upon request. The posting of such plan or notice [shall] must be made within five (5) days [of] after [implementation] completion of such plan. Such posting or notice must indicate that other tenants or subtenants are entitled to access according to the plan upon request, provided such tenants and subtenants, upon making such request, certify that there is sufficient space within such tenant's or subtenant's premises to store the requested number of bicycles in a manner that does not violate the New York City Building or Fire Codes or any other applicable law, rule or code, or which would impede ingress or egress to such building.

(2) [Every] The owner [, lessee, manager or other person who controls] of a building for which an exception to the bicycle access plan requirement has been granted [shall] must post in such [a] building the letter of exception provided by the Commissioner pursuant to subdivision (d) of this section, or a notice in the building lobby indicating that such letter of exception is available in the building manager's office upon request. The posting of such letter or notice [shall] must be made within five (5) days [of] after receipt of such letter of exception.

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§7. Subdivision (g) of Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

(g) *Filing of bicycle access plan and subsequent amendments with the Department.* A bicycle access plan [shall] must be filed with the Department by electronic submission through the Department's website (www.nyc.gov/bikesinbuildings) or by regular mail to the Department of Transportation 55 Water Street, [6th] 9th Floor, New York, NY 10041, Attention: Bikes in Buildings Program, within ten (10) days of [implementation] completion of such plan. Should the owner[, lessee, manager or other person who controls] of a building amend their bicycle access plan pursuant to subdivision (c) of this section, such amendment [shall] must be filed with the Department as outlined above within ten (10) business days of completion [and implementation] of such amendment.

§8. Section 2-19 of Chapter 2 of Title 34 of the Rules of the City of New York is amended by adding new subdivisions (h), (i) and (j) to read as follows:

(h) Foldable bicycle access. It is unlawful for an owner of a building the main occupancy of which is offices that are classified in occupancy group B to prohibit a tenant or subtenant from transporting a foldable bicycle to or from such tenant or subtenants space on a passenger elevator, provided that such bicycle is fully folded.

(i) Emergencies. In an emergency that requires the evacuation of all or part of a building, the owner may limit or restrict bicycles and foldable bicycles from being transported through any means of egress.

(j) Restriction or limitation on bicycle access. If the owner of a building is issued a violation of the New York City Administrative Code or the New York City Fire Code, or a rule promulgated thereunder, arising from the storage of a bicycle, and such owner shows that such violation occurred in an area of such building that is under the control of a tenant or subtenant, such owner may restrict or limit bicycle access under the bicycle access plan for such tenant or subtenant.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Bicycle Access in Office Buildings

REFERENCE NUMBER: 2017 RG 036

RULEMAKING AGENCY: Department of Transportation

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: July 18, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: BICYCLE ACCESS IN OFFICE BUILDINGS

REFERENCE NUMBER: DOT-38

RULEMAKING AGENCY: DEPARTMENT OF TRANSPORTATION

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ [Stephen Narloch]
Mayor's Office of Operations

[July 18, 2017]
Date