

**City of New York
Office of Administrative Trials and Hearings**

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings (OATH) proposes to amend sections 6-14 and 6-15 of subchapter C of chapter 6 of title 48 of the rules of the City of New York, concerning adjournments.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place from **10:00 a.m. through 11:30 a.m. on September 26, 2018**. The hearing will be in the OATH Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

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

- **Website.** You can submit comments to OATH through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH, Attention: Simone Salloum, Senior Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Simone Salloum, Senior Counsel, at 646-500-5742.
- **Hearing.** You can speak 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 OATH at 212-436-0708, or you can also sign up in the hearing room before the hearing begins on **September 26, 2018**. You can speak for up to three (3) minutes.

Is there a deadline to submit written comments? You may submit written comments up to **5:00 p.m. on September 26, 2018**.

What if I need assistance to participate in the Hearing? You must tell us 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 212-436-0708. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by **September 19, 2018**.

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

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>.

A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at OATH, 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH to make this rule? Section 1049(2)(a) of the New York city charter (“city charter”) authorizes OATH to make this proposed rule. This proposed rule was included in OATH’s regulatory agenda for this Fiscal Year.

Where can I find OATH’s rules? OATH’s rules are in title 48 of the rules of the city of New York.

What laws govern the rulemaking process? OATH must meet the requirements of section 1043(b) of the city charter when creating or changing rules. This notice is made according to the requirements of sections 1043(b) and 1049(2)(a) of the city charter.

Statement of Basis and Purpose of Proposed Rule

OATH proposes amendments to sections 6-14 and 6-15 of subchapter C of chapter 6 of title 48 of the rules of the City of New York, concerning adjournments. Current section 6-14 addresses both general requests for adjournment and requests for adjournment specifically for inspector testimony. OATH proposes amending sections 6-14 and 6-15 to address separately general requests for adjournment in section 6-14 and requests for adjournment for inspector testimony in section 6-15.

Proposed section 6-14 contains minimal amendments to the rules concerning general requests for adjournment, removing unnecessary language and clarifying that a hearing officer should consider whether a party had a reasonable opportunity to prepare for a hearing, instead of simply *an* opportunity to prepare.

Proposed section 6-15 contains amended versions of the rules formerly in section 6-14(a), (b), and (c) that set forth the limitations to granting an adjournment request for inspector testimony, consistent with the limitations set forth in New York city charter section 1049-a(b-1)(3).

This proposal was included in OATH’s FY 2018 and 2019 Regulatory Agendas.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 6-14 of subchapter C of chapter 6 of title 48 of the rules of the city of New York is amended to read as follows:

- (a) [At the time of the scheduled hearing or upon motion, a Hearing Officer may adjourn a hearing for the testimony of the Inspector or a complaining witness only if:
- (1) Respondent consents or the Petitioner appears at the hearing, and
 - (2) the Hearing Officer concludes that the Inspector's or witness's testimony is reasonably likely to be necessary to a fair hearing of the violations charged or of the defenses to those charges.

- (b) If a Hearing Officer has adjourned a hearing:
- (1) solely for the purpose of obtaining the Inspector's testimony, and
 - (2) the Respondent timely appears on the adjourned hearing date, and
 - (3) the Inspector fails to timely appear on the adjourned hearing date,

the hearing shall not be further adjourned solely to obtain the testimony of such Inspector unless the Respondent consents to the second adjournment or the Hearing Officer determines that extraordinary circumstances warrant the second adjournment. "Extraordinary circumstances" are circumstances that could not have been reasonably foreseen by the Petitioner.

(c) A Hearing Officer may not adjourn a hearing on more than two (2) occasions because of the unavailability of the Inspector.

(d) For all other adjournment requests,] At the request of either party during a hearing, a Hearing Officer may [grant a request to] adjourn the hearing [to a later date only after] upon a showing of good cause as determined by the Hearing Officer in his or her discretion.

(b) In deciding whether there is good cause for an adjournment, the Hearing Officer will consider:

- (1) Whether granting the adjournment is necessary for the party requesting the adjournment to effectively present the case;
- (2) Whether granting the adjournment is unfair to the other party;
- (3) Whether granting the adjournment will cause inconvenience to any witness;
- (4) The age of the case and the number of adjournments previously granted;
- (5) Whether the party requesting the adjournment had [the] a reasonable opportunity to prepare for the scheduled hearing;
- (6) Whether the need for the adjournment is due to facts that are beyond the requesting party's control;
- (7) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the issues relevant to the case; and
- (8) Any other fact that the Hearing Officer considers to be relevant to the request for an adjournment.

[(e)] (c) Once a hearing has been adjourned, neither party may request a reschedule pursuant to section 6-05 of [these rules] this chapter. A denial of an adjournment request is not subject to [separate or] interim review or appeal.

§ 2. Section 6-15 of subchapter C of chapter 6 of title 48 of the rules of the city of New York is REPEALED and restated to read as follows:

§ 6-15 [Appearances of Inspectors] Adjournments for Inspector Testimony

(a) Upon request of either party, a Hearing Officer may grant an adjournment for the testimony of an Inspector if the Hearing Officer finds that the Inspector's testimony is likely to be necessary to a fair hearing on the violation(s) charged and/or the defense(s) asserted.

(b) If a Hearing Officer has adjourned a hearing solely for the purpose of obtaining the Inspector's testimony, and the Respondent timely appears on the adjourned hearing date but the Inspector fails timely to appear, the hearing shall not be further adjourned solely to obtain the testimony of such Inspector, unless the Respondent consents to the second adjournment or the Hearing Officer finds that extraordinary circumstances warrant the second adjournment. "Extraordinary circumstances" are circumstances that could not have been reasonably foreseen by the Petitioner.

(c) A Hearing Officer may not adjourn a hearing on more than two (2) occasions for the appearance of the Inspector.

**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: Adjournment of Proceedings

REFERENCE NUMBER: 2018 RG 098

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: August 17, 2018

**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: Adjournment of Proceedings

REFERENCE NUMBER: OATH-ECB-84

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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 a cure period does not apply to requesting adjournments.

/s/ Francisco X. Navarro
Mayor's Office of Operations

August 17, 2018
Date