

**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 repeal and restate section 6-19 of subchapter D of chapter 6, and amend section 5-04 of chapter 5 of Title 48 of the Rules of the City of New York, concerning the appellate procedures at OATH.

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.

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 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 100 Church Street, 12th Floor, New York, NY 10007. You may also tell us by telephone at 212-436-0708. You must tell us by **September 19, 2018**.

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 rules 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

The Office of Administrative Trials and Hearings (“OATH”) proposes to repeal and restate Section 6-19 of Subchapter D of Chapter 6 of the Rules of the City of New York, concerning OATH’s appellate procedures. The restated Section 6-19 clarifies the appellate procedures, simplifies the language, and re-organizes the rules to make them easier to read and understand. In addition to providing clearer appellate procedures, OATH is also proposing the following substantive changes to the rules:

- A respondent who has chosen to perform community service instead of paying a monetary penalty is not required to pay the penalty as a condition to filing an appeal. This comports with Section 7-06(a) of OATH’s rules on community service.
- A party who requests an extension of time to file an appeal or respond to an appeal will be granted one automatic extension of thirty (30) days. A request for an audio recording of the hearing will no longer provide an automatic extension of a party’s time to appeal. After the automatic extension has been granted, any additional requests for an extension of time will be granted for good cause shown.
- Additional submissions by either party on an appeal other than the appeal and response will not be considered unless requested by the Appeals Unit.
- Current section 6-19(b) provides that the Appeals Unit only considers evidence that was presented to a hearing officer at the hearing. Now, upon good cause shown, the Appeals Unit may consider dispositive government records, such as a death certificate or deed to establish a material fact or defense.

OATH also proposes to amend section 5-04 of chapter 5 of title 48 of the Rules of the City of New York so that the requirement in section 19-506.1(c) of the New York City Administrative Code

that respondents are not required to pay penalties, fines, or restitution in order to file an appeal is reflected in OATH's rules.

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 6-19 of subchapter D of chapter 6 of title 48 of the Rules of the City of New York is REPEALED and restated to read as follows:

(a) Filing an appeal.

(1) A party may appeal a decision of a Hearing Officer in whole or in part. An appeal will be considered by the Tribunal only upon timely completion of the following requirements:

(i) The party seeking to appeal the decision of a Hearing Officer must file the appeal with the Tribunal within thirty (30) days of the date of the Hearing Officer's decision, or within thirty-five (35) days if the decision was mailed, and the filing must contain proof that the appealing party served a copy of the appeal on the non-appealing party;

(ii) The appeal must be in writing and contain a concise statement of the issues, which must include specific objections to the findings of fact and conclusions of law in the Hearing Officer's decision, and the points of law and facts that support each objection. The appeal may be on a form prescribed by the Tribunal.

(iii) Where a respondent appeals, that respondent must indicate in writing that payment of any fines, penalties or restitution imposed by the decision has been made in full, unless:

(A) Respondent is granted a waiver of prior payment of fines or penalties due to financial hardship, as provided in subdivision (b) of this section;

(B) Respondent received a waiver of prior payment of fines or penalties as otherwise provided in law, rules or regulations;

(C) Respondent opted for community service in lieu of a monetary penalty at the hearing; or

(D) The agency responsible for collecting payment of the fines or penalties imposed enters into a payment plan with the Respondent prior to or at the time of the filing of the appeal.

(2) A party may not appeal a decision rendered on default, a denial of a request for new hearing after default (motion to vacate a default), or a plea admitting the violations charged.

(b) Financial hardship.

(1) An application to the Tribunal for a waiver of prior payment due to financial hardship must be made before or at the time of the filing of the appeal and must be supported by evidence of financial hardship. The Chief Administrative Law Judge or his or her designee has sole discretion to grant or deny a waiver due to financial hardship. Application for a waiver does not extend the time to appeal.

(2) Notwithstanding the provisions set forth in subdivision (a)(iii), above, payment of restitution is not subject to waiver due to financial hardship. If a Hearing Officer has ordered payment of restitution, the Respondent must, prior to or at the time of filing the appeal, submit proof that the Respondent has deposited the amount of restitution with the agency responsible for collecting payment, pending determination of the appeal.

(c) Responding to an appeal. Except as provided in § 5-04 of this Title, the non-appealing party may file a response to the appeal within thirty (30) days of being served with the appeal, or thirty-five (35) days if served by mail. The response must be in writing, served on the appealing party, and filed with the Tribunal with proof of such service within the time allotted. The response may be on a form prescribed by the Tribunal.

(d) Requests for Extensions of time.

(1) A party who requests an extension of time to file an appeal or respond to an appeal will receive one automatic extension of thirty (30) days from the date the Appeals Unit grants the request. Any further requests for an extension will be granted for good cause shown.

(2) All parties are entitled to request a copy of the hearing recording from the Appeals Unit. Any requests for hearing recordings will not further extend the party's time to appeal as set forth in subsection (1) of this subdivision.

(3) Requests under subsection (1) of this subdivision must be made in writing within the time allotted to file an appeal or a response, served on all parties, and timely filed with the Tribunal with proof of service. Requests for an extension may be on a form prescribed by the Tribunal.

(e) Further filings on an appeal with the Tribunal by either party will not be considered unless requested by the Appeals Unit.

(f) Review of an Appeal.

(1) Appeals decisions are made upon the record of the hearing. The record of the hearing includes all items enumerated in § 6-11(g) of this Chapter.

(2) The Appeals Unit will only consider evidence that was offered to the Hearing Officer at the hearing; provided however, upon good cause shown, the Appeals Unit may consider dispositive government records, such as a death certificate or deed, that establish a material fact or defense.

(3) In all cases other than those subject to § 5-04 of this Title, the Tribunal will decide an appeal even if there is no hearing recording.

(g) Appeals Decision.

(1) When an appeal is filed, the Appeals Unit will determine whether the facts contained in the findings of the Hearing Officer are supported by a preponderance of the evidence in the record, and whether the determinations of the Hearing Officer, as well as the penalties imposed, are supported by law. Except as provided in sections 3-15, 5-04 and 5-05 of this Title, the Appeals Unit has the power to affirm, reverse, remand or modify the decision appealed from.

(2) Except as provided in sections 3-15, 5-04 and 5-05 of this Title, the Appeals Unit will promptly issue a written decision. Such decision is the final determination of the Tribunal, and judicial review of such decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules. A copy of the decision will be delivered to the Petitioner and served on the Respondent by mail, stating the grounds upon which the decision is based. Where appropriate, the decision will order the repayment to the Respondent of any penalty that has been paid.

(3) For summonses returnable to the Tribunal as authorized by the Board pursuant to §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, any decision of the Appeals Unit is a recommended decision to the Board. The Board or a panel consisting of members thereof will review the recommended decision and issue a final determination pursuant to §3-15 of this Title.

§ 2. A new subdivision (a) of section 5-04 of chapter 5 of title 48 of the Rules of the City of New York is added and prior subdivisions (a) through (d) are renumbered to read as follows:

(a) Pursuant to Administrative Code § 19-506.1(c), a Respondent will not be required to pay the fines, penalties, or restitution imposed in the decision in order to file an appeal.

[(a)] (b) Expedited appeals. Either party may appeal a decision pursuant to section 6-19. Where the appeal involves the suspension or revocation of a TLC-issued license, the Appeals Unit will issue an expedited appeal.

[(b)] (c) A party responding to a request for appeal where the appeal involves the suspension or revocation of a TLC-issued license must file the response with the Tribunal within seven (7) days after being served with the appeal. The responding party must also serve a copy of the response on the appealing party, and file proof of such service with the Tribunal.

[(c)] (d) Requests for hearing recording. Pursuant to Administrative Code § 19-506.1(d), if a Respondent appealing a decision requests in writing a copy of the hearing recording, the recording will be produced to the Respondent within thirty (30) days after receipt of the request. If the recording cannot be produced within the thirty (30) day period, the determination being appealed will be dismissed without prejudice.

[(d)] (e) Finality. A decision of the Appeals Unit becomes the final determination of the Tribunal, unless either party petitions the TLC Chairperson in accordance with § 68-12(e) of Chapter 68 of Title 35 of the Rules of the City of New York (RCNY).

**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: Amendment of Rules of Appellate Procedure

REFERENCE NUMBER: 2018 RG 094

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: Amendment of Rules of Appellate Procedure

REFERENCE NUMBER: OATH-ECB-87

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 the issuance of a final appeals determination.

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

August 18, 2018
Date