

**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 section 6-09 of subchapter C and section 6-24 of subchapter F of chapter 6 of title 48 of the rules of the City of New York, concerning appearances.

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 100 Church Street, 12th Floor, New York, NY 10007. 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 (“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 charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049(2)(a) of the charter.

Statement of Basis and Purpose of Proposed Rule

The Office of Administrative Trials and Hearings (“OATH”) proposes to amend section 6-09 of subchapter C and section 6-24 of subchapter F of chapter 6 of title 48 of the rules of the City of New York, concerning appearances.

The proposed amendments to section 6-09 reorder the subdivisions and clarify the rules about appearing before the Tribunal, as follows:

- Proposed subdivisions (a) and (b) set out who may appear on behalf of a respondent and how a respondent or representative may appear.
- Proposed subdivision (c) explains that if a respondent does not wish to contest the summons, they can pay the penalty before the hearing, which is considered an appearance and admission.
- Proposed subdivision (d) provides the framework for when a current owner of a property may appear on behalf of a prior owner.
- Proposed subdivision (e) provides that the failure of a respondent to timely appear constitutes a default.
- Proposed subdivision (f) references the requirements in § 6-24 for registered representatives who wish to appear on 15 or more summonses on a given hearing date, and provides that failure to comply with § 6-24 will constitute a default.
- Proposed subdivisions (g) and (h) set out how Petitioner may timely appear, and provide that the hearing may proceed without Petitioner.

The proposed amendments to section 6-09 are intended to expedite hearings and improve the overall efficiency of the Tribunal. These proposed amendments set timeframes for Respondent and Petitioner’s appearance to be considered timely. Proposed section 6-09(b)(1) adds the condition that a respondent’s appearance is timely if the respondent appears at the scheduled hearing location within two hours of the scheduled time. Proposed section 6-09(g) adds the condition that, if the Petitioner elects to appear at the Tribunal, Petitioner’s appearance is timely if Petitioner is ready to proceed within 30 minutes of the timely appearance of the respondent.

The proposed amendments to section 6-09 also no longer permit a person to move for discretionary intervention, which, if granted, would have allowed an intervenor to participate in a hearing, as a witness but not as a party, at the discretion of the hearing officer. Discretionary intervention was rarely sought and did not grant the intervenor the status of a party to the proceeding.

The proposed amendments to section 6-24 clarify the requirements for an attorney or registered representative to appear on 15 or more summonses on a given hearing date and replace former subdivision (b), which gave the Tribunal discretion on the day of the hearing to add cases to the list provided by the attorney or registered representative, with a provision stating that failure to appear at or before the scheduled hearing time constitutes a default.

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

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivisions (a) through (g) of section 6-09 of subchapter C of chapter 6 of title 48 of the rules of the city of New York are REPEALED and restated, and a new subdivision (h) is added as follows:

(a) A Respondent may appear for a hearing personally or be represented by:

(1) an attorney admitted to practice law in New York State, or

(2) a representative registered to appear before the Tribunal pursuant to § 6-23 of this chapter, or

(3) any other person authorized by a Respondent to appear at or before the Tribunal on behalf of the Respondent, as set forth in § 6-23(a) of this chapter.

(b) A Respondent may appear for a hearing by:

(1) Appearing in person or by representative at the place, date, and time scheduled for the hearing. A Respondent's appearance is timely if Respondent or Respondent's representative appears at the scheduled hearing location and is ready to proceed within two (2) hours of the scheduled hearing time for a summons; or

(2) Appearing by remote method pursuant to § 6-10 of this chapter, only where the summons indicates that such opportunity is available to a Respondent. Where the summons requires personal appearance, a Respondent must appear pursuant to subsection (1) of this subdivision.

(c) Where the terms of a summons authorize a Respondent to do so, a Respondent may also appear by admitting the violation charged on the summons and paying the penalty for the cited violation in the manner and by the time directed in the summons. Payment in full is deemed an admission of liability and no further hearing or appeal will be allowed.

(d) Current Owner of a Property.

(1) Notwithstanding the foregoing, if a prior owner of a property is named on the summons, the current owner of a property may appear on behalf of the prior owner if the summons:

(A) is a premises-related violation, and

(B) was issued after title to the property was transferred to the current owner.

(2) The current property owner may appear for purposes of presenting a deed and indicating when title passed.

(3) The current owner of the property may also present a defense on the merits of the charge only if the current owner agrees to substitute him or herself for the prior owner and waives all defenses based on service.

(e) Failure to Appear by Respondent. A Respondent's failure timely to appear at the scheduled time pursuant to subsection (1) of subdivision (b) of this section, or to make a timely request to reschedule pursuant to § 6-05 of this chapter, constitutes a default, and subjects the Respondent to penalties in accordance with § 6-20 of this chapter.

(f) Notwithstanding any other provision of this section, attorneys or registered representatives who appear on fifteen (15) or more summonses on a given hearing date, must comply with the requirements set forth in § 6-24 of this chapter. Failure to do so constitutes a default and subjects the Respondent to penalties in accordance with § 6-20 of this chapter.

(g) A Petitioner may appear for a hearing through an authorized representative at the place, date and time scheduled for the hearing or by remote methods when the opportunity to do so is offered by the Tribunal. If Petitioner elects to appear at the Tribunal, Petitioner's appearance for a hearing is considered timely if Petitioner is ready to proceed within thirty (30) minutes of the timely appearance by Respondent.

(h) Failure to Appear by Petitioner. If Petitioner fails timely to appear at the scheduled place, date and time, pursuant to subdivision (g) of this section, the hearing may proceed without the Petitioner.

§ 2. Section 6-24 of subchapter F of chapter 6 of the rules of the city of New York is amended to read as follows:

(a) No attorney or registered representative may appear on fifteen (15) or more summonses on a given hearing date unless [the attorney or registered representative emails or faxes in advance a written list of all scheduled cases to the Tribunal office in the borough where the cases are scheduled to be heard. This list must be sent no later than noon, two (2) business days before the scheduled hearing date.];

(1) No later than noon two (2) business days before the scheduled hearing date, the Tribunal office in the borough where the cases are scheduled to be heard receives from the attorney or registered representative by email a written list of all scheduled cases; and,

(2) Notwithstanding the appearance requirements set forth in § 6-09(b)(1) of this chapter, the attorney or registered representative appears at or before the scheduled hearing time, at the place and date for the scheduled hearing.

(b) Cases may be added to this list on the day of the hearing at the discretion of the Tribunal

**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: Appearances Before the OATH Tribunal

REFERENCE NUMBER: 2018 RG 097

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: Appearances Before the OATH Tribunal

REFERENCE NUMBER: OATH-ECB-85

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 for appearances.

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

August 18, 2018
Date