

**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 6-21 of subchapter E of chapter 6 of title 48 of the Rules of the City of New York, concerning requests for new hearings after default.

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 (“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

The Office of Administrative Trials and Hearings (“OATH”) proposes to amend section 6-21 of subchapter E of chapter 6 of title 48 of the Rules of the City of New York, concerning requests for new hearings after a failure to appear. OATH proposes replacing references to “motion to vacate a default” with “request for a new hearing after default,” which is easier for the public to understand and is similar to the terminology on OATH’s forms and website. OATH also proposes amendments to clarify subdivisions (e) and (f) of section 6-21. Subdivision (e) applies to respondents seeking to file a second request for a new hearing, and subdivision (f) applies to respondents filing a first request for a new hearing at least one year after receipt of the default decision.

The first paragraph of subdivision (e) clarifies that respondents who have defaulted twice are not eligible to file another request for a new hearing and that the second default decision is the Tribunal’s final determination, subject to judicial review pursuant to Article 78 of the New York Civil Practice Law and Rules. The second paragraph of subdivision (e) clarifies the exception under which the Chief Administrative Law Judge or his or her designee may consider granting a new hearing after the issuance of a second default decision. These proposed amendments make clear that there are no additional administrative procedures to exhaust after the receipt of a second default decision in order to file a petition pursuant to Article 78.

The proposed amendments to subdivision (f) clarify that the discretion of the Chief Administrative Law Judge or his or her designee to consider a request for a new hearing more than one year from the date of the default decision applies only if it is the first such request made by the respondent.

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 6-21 of Subchapter E of Chapter 6 of Title 48 of the Rules of the City of New York is amended to read as follows:

(a) Form of [Motion] Request. A [motion to vacate a default] request for a new hearing after default (motion to vacate a default) is a [request] motion by a Respondent for a new hearing after the Respondent did not appear and a default decision was issued. The Respondent must make [this motion] the request by application to the Tribunal on a form approved by the Tribunal. The [motion] request must be dated, contain a current mailing address for the Respondent; explain how and when the Respondent learned of the violation and be certified to under the penalties of perjury. If the [motion] request is made by an attorney or other representative, the [motion] request must explain the relationship between the Respondent and the person making the [motion] request.

(b) A first [motion to vacate a default] request for a new hearing after default by a Respondent that is submitted within sixty (60) days of the mailing or hand delivery date of the default decision will be granted. A [motion to vacate a default] request for a new hearing after default that is submitted by mail must be postmarked within sixty (60) days of the mailing or hand delivery date of the default decision.

(c) A [motion to vacate a default] request for a new hearing after default that is submitted after sixty (60) days of the date of the mailing or hand delivery date of the default decision must be filed within one (1) year of the date of the default decision and be accompanied by a statement setting forth a reasonable excuse for the Respondent's failure to appear and any documents to support the [motion to vacate the default] request. The Hearing Officer will determine whether a new hearing will be granted.

(d) Reasons for Failing to Appear. In determining whether a Respondent has shown a reasonable excuse for failing to appear at a hearing, the Hearing Officer will consider:

- (1) Whether the summons was properly served pursuant to applicable law.
- (2) Whether the Respondent was properly named, including but not limited to:
 - (i) Whether the Respondent was cited generally as "Owner" or "Agent" on all copies of the summons served on the Respondent; or
 - (ii) Whether the Respondent was an improper party when the summons was issued, such as:
 - (A) An individual who was deceased or legally incompetent on the hearing date upon which the Respondent did not appear; or
 - (B) For a premises-related violation, the Respondent was not the owner, agent, lessee, tenant occupant or person in charge of or in control of the place of occurrence on the date of the offense.
- (3) Whether circumstances that could not be reasonably foreseen prevented the Respondent from attending the hearing.
- (4) Whether the Respondent had an emergency or condition requiring immediate medical attention.
- (5) Whether the matter had been previously adjourned by the Respondent.
- (6) Whether the Respondent attempted to attend the hearing with reasonable diligence.

- (7) Whether the Respondent's inability to attend the hearing was due to facts that were beyond the Respondent's control.
- (8) Whether the Respondent's failure to appear at the hearing can be attributed to the Respondent's failure to maintain current contact information on file with the applicable licensing agency.
- (9) Whether the Respondent has previously failed to appear in relation to the same summons.
- (10) Any other fact that the Tribunal considers to be relevant to the motion to vacate.

(e) Defaulting twice on the same summons.

(1) If, after a request for a new hearing has been previously granted, [and a new default decision has been issued, a motion to vacate the second default decision in relation to the same summons will not be granted.] a Respondent defaults on the same summons, the second default shall not be eligible for a request for a new hearing. The second default decision is the Tribunal's final determination and is not subject to review or appeal at the Tribunal. Judicial review of the decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

(2) Notwithstanding the forgoing, upon application, the Chief Administrative Law Judge or his or her designee [will have the discretion, in] may grant a new hearing after default upon a showing of exceptional circumstances and in order to avoid injustice [, to grant a request for a new hearing].

(f) Except as otherwise stated in § 5-03 of [the] this Title, the Chief Administrative Law Judge or his or her designee will have the discretion, in exceptional circumstances and in order to avoid injustice, to consider a [motion to vacate a default filed] Respondent's first request for a new hearing after default made more than one (1) year from the date of the default decision.

(g) If a [motion to vacate a default] request for a new hearing after default is granted, the Tribunal will send a notice to the Respondent at the Respondent's address provided on the motion. If the Respondent is deceased or legally incompetent, a notice will be sent to Respondent's representative at the address provided by the representative on the motion. Notice will also be sent to the Petitioner upon request. If the Respondent is unable to appear on the hearing date scheduled after such motion is granted, the Respondent may request that the hearing be rescheduled one (1) final time.

(h) If a [motion to vacate a default] request for a new hearing after default is granted and the Respondent has already made a full or partial payment, no request of a refund will be considered until after the hearing is completed and a decision issued.

(i) A decision to grant a [motion to vacate a default] request for a new hearing after default is not a final decision on the issues of whether the Respondent was properly served or a proper party on the date of the offense.

[(i)] (j) A denial of a [motion to vacate a default] request for a new hearing after default is the Tribunal's final determination and is not subject to review or appeal at the Tribunal. Judicial review of the denial may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

**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: Requests for New Hearings after Default

REFERENCE NUMBER: 2018 RG 096

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: Requests for New Hearings after Default

REFERENCE NUMBER: OATH-ECB-86

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) Provides a cure period in that a request for a new hearing after a default is, in effect, a cure mechanism for a respondent that failed to appear at the hearing and was issued a default decision.

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

August 17, 2018
Date