

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

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049 and 1043 of the New York City Charter that OATH amends 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. The proposed rule was published in *The City Record* on August 27, 2018, and a public hearing was held on September 26, 2018.

No one testified at the public hearing concerning this rule and OATH did not receive any written comments.

Statement of Basis and Purpose of Final Rule

OATH amends 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. Former section 6-14 addressed both general requests for adjournment and requests for adjournment specifically for inspector testimony. OATH amends 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.

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.

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).

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.



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

STEVEN GOULDEN
Division of Legal Counsel
Room 6-231
Tel: (212) 356-4028
Fax: (212) 356-4019
sgoulden@law.nyc.gov

Hon. Fidel Del Valle
Commissioner
Office of Administrative Trials and Hearings

Re: Adjournment of Proceedings

No. 2018 RG 098

Dear Commissioner Del Valle:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Simone Salloum (OATH)