

NEW YORK CITY FIRE DEPARTMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Fire Department is proposing to amend Section 4601-01 of Title 3 of the Rules of the City of New York (RCNY), entitled “New and Amended Fees,” to amend the fee provisions of the Fire Code relating to review of design and installation documents for fire alarm systems, emergency alarm systems, auxiliary radio communication systems, fire extinguishing systems and fire protection plans. The proposed rule would also add late plan filing fees and supplemental fees for new technology applications.

When and where is the hearing? The Fire Department will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 a.m. on Friday, April 26, 2019. The hearing will be held in the Fire Department Auditorium at 9 MetroTech Center, Brooklyn, NY 11201.

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

- **Website** - You can submit comments to the Fire Department through the NYC rules website at <http://rules.cityofnewyork.us>, or on the “FDNY Rules” page of the Fire Department’s website, <http://www1.nyc.gov/site/fdny/codes/fire-department-rules/fire-dept-rules.page>.
- **Mail** - You can mail written comments to Code Development Unit, Bureau of Fire Prevention, New York City Fire Department, 9 MetroTech Center, Room 3N2, Brooklyn, NY 11201.
- **Speaking at the hearing** - Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak at the hearing. The time that you can speak may be limited.

Is there a deadline to submit written comments? Yes, written comments must be submitted by April 26, 2019.

What if I need assistance to participate in the hearing? You must notify the Bureau of Fire Prevention if you need a sign language interpreter or other reasonable accommodation for a disability at the hearing. Write to us at the address above or telephone us at (718) 999-2042. Advance notice is requested to allow sufficient time to arrange the accommodation. Please notify us by April 5, 2019.

The Fire Department Auditorium is wheelchair accessible (use the MetroTech Commons entrance).

Can I review the comments made on the proposed rule? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us>. A few days after the hearing, a record of the hearing and copies of the written comments will be available to the public at the Bureau of Fire Prevention.

What authorizes the Fire Department to make this rule? Section 1043(a) of the New York City Charter, and Sections FC 102.6.2 and 102.6.3 of the New York City Fire Code (Title 29 of Administrative Code of the City of New York) authorize the Fire Department to propose this rule.

Where can I find the Fire Department rules? The Fire Department rules are codified in Title 3 of the Rules of the City of New York and can be viewed on the Fire Department's website at <http://www.nyc.gov/fdny> or at <http://rules.cityofnewyork.us>.

What laws govern the rulemaking process? The Fire Department must comply with the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made in accordance with to the requirements of Section 1043(b) of the New York City Charter. The proposed rule was included in the Fire Department's FY2019 regulatory agenda because publication of the regulatory agenda pre-dated enactment of the local law that prompted this proposed rule.

Statement of Basis and Purpose of Proposed Rule

Fire Department rule 3 RCNY §4601-01 sets forth amendments to the fee provisions of the Fire Code, and reflects these new fees by bracketing and underlining, as applicable, the existing text of Sections A03 and A04 of Appendix A to the Fire Code.

The Fire Department proposes to amend the provisions relating to fees for plan examinations set forth in FC A03(51) and to amend FC A04 to include a document management fee for certain plan examination filings. These changes are being proposed at this time to implement Local Law No. 195 of 2018 (Local Law 195), which eliminated New York City Department of Buildings (DOB) review of plans and other design and installation documents for fire alarm, emergency alarm, auxiliary radio communication, and fire extinguishing systems, and fire protection plans. The Fire Department also proposes to amend FC A03 to include fees for late plan filings and for supplemental reviews of new technology applications and other applications requiring complex technical analyses.

Fire Alarm, Emergency Alarm, Auxiliary Radio Communication and Fire Extinguishing System/ Fire Protection Plan Fees

DOB currently reviews fire alarm, emergency alarm, auxiliary radio communication and fire extinguishing system plans for compliance with zoning, licensing and asbestos inspection requirements; issues work permits authorizing installation of these systems; and posts information about the applications, approvals and permits on its website. Fire protection plans – narrative statements describing buildings' fire protection systems – are also filed with DOB.

To consolidate and streamline the plan review and approval process, Local Law 195 transferred these tasks to the Fire Department, effective on or about May 30, 2019. Local Law 195 eliminated the requirements for DOB filings and work permits, thereby eliminating the applicable DOB application and permit fees.

The Fire Department proposes to adopt fees that will enable the agency to hire staff to perform the administrative tasks previously performed by DOB. Specifically, the Fire Department proposes to adopt a document management fee of \$165 per application (the same fee previously charged by DOB) to support the cost of processing applications, establishing a public portal on the Fire Department's website and maintaining electronic records of all applications. This fee would be added to the list of fees for administrative services set forth in FC A04.

The document management fee would apply to any application for a fire alarm system, emergency alarm system, auxiliary radio communication system, or fire extinguishing system, and to any other application not requiring a work permit from DOB (and thus requiring Fire Department administrative review of the application for items normally reviewed by DOB).

The Fire Department has determined that the costs involved in these administrative tasks exceed the \$165 that the Fire Department proposes to charge.

Additionally, the Fire Department proposes to charge a fee of \$420 for reviews of fire protection plans, which are reviewed by the Emergency Planning and Preparedness Unit of the Bureau of Fire Prevention to confirm that they are in compliance with applicable code requirements. . This is the same amount the agency currently charges for review of fire protection plans, and reflects an average of two hours of review time.

Article 109 of Chapter 1 of the New York City Construction Code requires that fire protection plans be filed for covered buildings (including all new high-rise buildings, most hotel and institutional buildings, buildings with assembly spaces of 300 or more persons, and various other occupancies), as well as when the building undergoes a substantial alteration or change in use and occupancy.

Late Plan Filings

Local Law 195 amended the New York City Fire Code to clarify that when Fire Department approval of plans is required, such approval must be obtained prior to commencing work on the installation. FC105.4.3 was amended to read as follows:

Approved documents required. When department review of design and installation documents is required by this code or other laws, rules or regulations, it shall be unlawful to construct or alter any facility, or install, alter or remove any device, equipment or system, without first having obtained department approval of the design and installation documents.

In order to promote compliance with this provision, the Fire Department proposes to adopt late plan filing fees similar to the late fees for renewals of Fire Department certificates and permits authorized in FC 117.

The purpose of these late plan filing fees would be to discourage applicants from performing work without approved plans. (Such unauthorized work would also be subject to issuance of violations and other enforcement action.)

The Fire Department proposes to impose a fifty percent (50%) surcharge for plans filed after the date of commencement of work without approved plans, up to one year from such date, and a one hundred percent (100%) surcharge for plans filed more than one year after such date.

New Technology Applications and Other Applications Requiring Complex Technical Analyses

The Fire Department regularly receives applications for approval of new technologies. More resources in time and labor are required for review of these applications in order to understand and evaluate the fire safety of the technology and the particular application or installation.

For example, the Fire Department regularly reviews applications for outdoor stationary storage battery systems that utilize lithium-ion and other new battery technologies. A plan review associated with such an applications, which is conducted by the engineering staff of the Bureau of Fire Prevention's Technology Management Unit, is highly complex. In addition to reviewing the design of standard fire protection systems and other fire safety features and components, the plan review requires an analysis of the technology and system design.

The Fire Department currently charges a fee of \$420 for review of plans, specifications and other design and installation documents. The fee is set forth in FC A03(51) and represents an average of two hours' review of each application. Rather than increase the base fee for design and installation document review (which applies to many other types of applications), the Fire Department proposes to adopt a supplemental fee to reflect the additional time required to review new technology applications and applications requiring complex technical analyses.

Battery storage systems and other new technology applications – including but not limited to fluid fire dynamic simulation studies and fire test results by nationally recognized testing laboratories – require detailed technical analysis beyond the average of two hours reflected in the standard plan review fee. Such submissions require comprehensive and highly complex technical analyses by Fire Department engineers in order to determine the merits of the application.

The Fire Department proposes to adopt a supplemental fee of \$525 for review of new technology applications and other applications involving complex technical analyses. This includes all applications filed pursuant to Fire Code Section FC102.8, which authorizes the Fire Department to establish fire safety requirements for any material operation or facility not addressed by the Fire Code, and FC104.9, which authorizes the Fire Department to approve alternative devices, equipment and systems not specifically prescribed or prohibited by the Fire Code. This supplemental fee reflects an average of 2.5 additional hours spent reviewing such applications.

Material newly added to 3 RCNY §4601-01 is underlined. Material to be deleted is in [brackets].

Certain text has been highlighted as a note to the publisher. Blue highlighting of text indicates that the underlining should be retained in the publication of the final rule, to reflect the changes to the Fire Code fee schedule.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Paragraph 51 of subdivision (e) of Section 4601-01 of Chapter 46 of Title 3 of the Rules of the City of New York is proposed to be amended to read as follows:

§ 4601-01 New and Amended Fees

* * *

(e) Permit, Inspection and Plan Examination Fees (FC A03). FC A03 is amended to read as follows:

* * *

51. Plan examinations

Review of design and installation documents, except as otherwise provided in FC A03.1(51)	\$420.00
Review of design and installation documents for commercial cooking systems	\$210.00
<u>Review of fire protection plan</u>	<u>\$420.00</u>
Review of fire safety and evacuation plan	\$210.00
Review of emergency action plan	
Original application	\$525.00
Amended application (per hour) (total not to exceed \$525.00)	\$210.00
Review of combined fire safety and evacuation plan and emergency action plan	
Original application	\$630.00
Amended application (per hour) (total not to exceed \$630.00)	\$210.00
Review of professionally certified application	\$210.00
<u>Supplemental review of new technology applications (including plans filed pursuant to FC 102.8 and 104.9) and other applications requiring complex technical analyses</u>	<u>\$525.00</u>
<u>Late plan filings</u>	
<u>Filing of design and installation documents for new or altered facility or installation from the date of commencement of work without approved design and installation documents to one year from such date</u>	<u>50% surcharge</u>
<u>Filing of design and installation documents for new or altered facility or installation more than one year after the date of commencement of work without approved design and installation documents</u>	<u>100% surcharge</u>

§2. Subdivision (f) of Section 4601-01 of Chapter 46 of Title 3 of the Rules of the City of New York is proposed to be amended by adding a new Paragraph 9, to read as follows:

(f) Administrative Services Fees (FC A04). [Reserved] FC A04 is amended to read as follows:

* * *

9. Document management for fire alarm system, emergency alarm system, auxiliary radio communication system or fire extinguishing system application and for any other application not requiring a work permit from the Department of Buildings (per application)

\$165.00

ANNEX
EXEMPTION FROM SECTION 1043(d) OF THE NEW YORK CITY CHARTER

This proposed rule is exempt from the requirements of Section 1043(d) of the New York City Charter pursuant to Section 1043(d)(4)(iii), on the ground that it is solely concerned with the establishment or modification of the amount of a fee or fees.