

NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to comment on proposed Department of Transportation rules relating to the Adopt-a-Highway program.
- Date/Time:** October 19, 2012, 1 p.m.
- Location:** Department of Transportation (DOT)
55 Water Street
BID Room, Room A (entrance located on the south side of the building facing the Vietnam Veteran's Memorial)
New York, NY 10041
- Contact:** Yajaira Ferreira
Director, Adopt-a-Highway
141-22 Brookville Boulevard
Rosedale, NY 11422
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Proposed Rule Amendment

Pursuant to the authority vested in the Commissioner of Transportation by Section 1043 of the New York City Charter and subdivision (b) of Section 2903 of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter, the Department of Transportation proposes to add section 2-21 to Chapter 2 of Title 34 of the Official Compilation of the Rules of the City of New York, the Highway Rules, relating to the Adopt-a-Highway program. The proposed amendments were included in the Agency's regulatory agenda.

Instructions

- Written comments regarding the proposed rules may be sent to Yajaira Ferreira, 141-22 Brookville Boulevard, Rosedale, NY, 11422 , on or before October 19, 2012 or may be submitted electronically to rules@dot.nyc.gov or to the NYC Rules web site at www.nyc.gov/nycrules.
- Individuals seeking to testify at the public hearing are requested to notify Yajaira Ferreira at the address stated above.
- Individuals who need a sign language interpreter or other accommodation for a disability at the hearing are asked to notify Yajaira Ferreira at the foregoing address by October 19, 2012.
- Individuals interested in receiving comments may request them by writing to: New York City Department of Transportation, Record Access Office, 55 Water Street, 6th Floor, New York City, NY 10041.

STATEMENT OF BASIS AND PURPOSE

Pursuant to §§ 1043 and 2903 (b) of the New York City Charter, the Commissioner of Transportation is authorized to promulgate rules regarding maintenance of public roads, streets, highways, parkways, bridges and tunnels.

The City currently operates the Adopt-a-Highway Program, which offers civic-minded individuals, groups, and companies an opportunity to enhance New York City's highways by “adopting” segments of the highways and adjacent areas. Through this program, volunteers and sponsors provide certain maintenance services along the City's highways. Signs placed at the beginning of the “adopted” areas acknowledge the volunteers and sponsors. These maintenance services and beautification projects along designated highway routes help maintain the quality of life for local residents and businesses.

The purpose of the proposed rule is to provide guidelines for the continuation of the Adopt-a-Highway Program. Specifically, the rule:

- (1) describes how the Department administers and coordinates the provision of maintenance services by volunteers and sponsors in order to reduce litter and graffiti, and to provide necessary tree trimming, sweeping, mowing, planting of flowers or trees, and other landscape maintenance along designated highway routes within the City;
- (2) delineates the application and permitting process for individuals to adopt segments of the highway;
- (3) details the signs installed to identify those volunteers or sponsors performing such activities on particular segments of the City's highways;
- (4) describes the general requirements for participants in the Adopt-a-Highway Program, including qualifications, agreements, permits, levels of service of adopted segments, insurance and indemnification requirements, safety, and signage.

New text in the following rule is underlined.

“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.

Chapter 2 of Title 34 of the Rules of the City of New York is amended by adding a new Section 2-21 to read as follows:

§ 2-21 Adopt-a-Highway Program.

(a) Purpose. The purpose of the Adopt-a-Highway Program is to enlist the help of maintenance providers, sponsors, and/or volunteers to assist in cleaning and beautifying the City's highways through litter and graffiti removal, tree trimming, sweeping, mowing, planting flowers or trees, and other landscape maintenance along designated highway routes.

(b) Definitions. For purposes of this section, the following terms have the following meanings:

- (1) Adopted segment** means a particular section of the highway designated by the Commissioner to be adopted by a sponsor or volunteer participating in the Adopt-a-

Highway Program. In addition to the section of the highway, adopted segments may include highway exits, entrances, or service roads.

- (2) **Adopter** means a sponsor or a volunteer approved by the Department to be a participant in the Adopt-a-Highway Program.
- (3) **Maintenance provider** means a business entity approved by the Department to provide professional maintenance services on an adopted segment according to a permit issued by the Department.
- (4) **Maintenance provider agreement** means a written agreement between a maintenance provider and the Department.
- (5) **Maintenance services** means work performed at the adopted segments that may include, but is not necessarily limited to, litter removal, tree trimming, graffiti removal, sweeping, mowing, planting flowers or trees, and other landscape maintenance.
- (6) **Sponsor** means any individual, business, corporation, or organization that enters into an agreement with a maintenance provider to perform maintenance services in a designated adopted segment.
- (7) **Sponsor agreement** means a written agreement between a sponsor and a maintenance provider.
- (8) **Volunteer** means any individual or group, other than those employed by a maintenance provider, who enters into a volunteer agreement with the Department to perform maintenance services on an adopted segment without compensation and in accordance with a permit issued by the Department.
- (9) **Volunteer agreement** means a written agreement between the volunteer adopting an adopted segment and the Department.

(c) General requirements.

(1) Applications for Participation.

(i) **Sponsors.** Any individual, business, corporation or organization who desires to participate in the Adopt-a-Highway Program as a sponsor must obtain from the Department a list of maintenance providers with whom the sponsor may enter into a maintenance provider agreement.

(ii) **Maintenance providers.** Any business entity who desires to participate in the Adopt-a-Highway Program as a maintenance provider must submit an application by mail or electronically to the Department using the Department's Maintenance Provider and Related Services Application.

(iii) **Volunteers.** Any individual or group who desires to participate in the Adopt-a-Highway Program as a volunteer must submit an application by mail or electronically to the Department using the Department's Adopt-a-Highway Volunteer Application.

(2) Rights to segments.

(i) Segments are available for adoption on a first-come first-served basis. Prospective adopters may choose from the Department's list of available segments or may, upon request, be placed on a waiting list for an already adopted segment.

(ii) The Department will maintain waiting lists for adopted segments in order of the date the request for an adopted segment is received by the Department. Upon termination or relinquishment of the adoption of a particular segment, if there is a waiting list for such segment, the Department will give the prospective adopter at

the top of the applicable waiting list the opportunity to adopt such segment.

(3) Compliance. Adopters and maintenance providers must comply with any agreement the adopter or maintenance provider enters into with the Department related to the Adopt-a-Highway Program, the terms of the permit issued by the Department, the Adopt-a-Highway technical guidelines published by the Department, any other terms and conditions as required by the Department, and all applicable laws, rules, and regulations.

(d) Permits. A volunteer or maintenance provider whose application to participate in the Adopt-a-Highway Program has been approved must obtain a permit in order to perform work on the adopted segment.

(1) Maintenance provider permit. For each segment adopted by a sponsor, prior to performing any maintenance services, the maintenance provider must obtain a maintenance provider permit from the Department. The maintenance provider must perform the maintenance services required under its sponsor agreement in accordance with the terms and conditions of its maintenance provider agreement with the Department and the applicable maintenance provider permit.

(2) Volunteer permit. For each segment adopted by a volunteer, prior to performing any maintenance services, the volunteer must obtain a volunteer permit from the Department. The volunteer must perform the maintenance services required under its volunteer agreement in accordance with the terms and conditions of the volunteer permit.

(e) Levels of service.

(1) The Department will establish minimum levels of service for each adopted segment that will be delineated in the applicable maintenance provider permit or volunteer permit issued by the Department. Minimum levels of service may include litter pickup, trimming, sweeping, graffiti removal, landscape maintenance, or installation of new plantings. The Department will review with the adopter the level of service required for each adopted segment.

(2) Adopters may choose enhanced levels of service on an adopted segment. The enhanced levels of service must be approved by the Department and will be delineated in a permit issued by the Department. Enhanced levels of service may include any maintenance services not included in the adopter's minimum levels of service for the particular segment, such as planting.

(f) Work areas. Adopters must perform maintenance services in the areas detailed in the maintenance provider segment. Work areas may include areas on the curbside of highway segments between the travel way and the service or collector road, on and off ramps, and center areas of split roadways.

(g) Sponsors and maintenance providers.

(1) Sponsor-maintenance provider relationship.

(i) The sponsor agreement is exclusively between the maintenance provider and the sponsor. The Department is not a party to any agreement between the maintenance provider and the sponsor. Neither the maintenance provider nor the sponsor will be considered an agent of the Department. The cost of services for sponsors participating in the program is to be negotiated solely between the sponsor and the maintenance provider. All billing and collection occurs between those two parties. The Department has the right to review the sponsor agreement.

(ii) A sponsor enters into a contract with a maintenance provider for a particular segment with agreed upon levels of service. Both the sponsor and maintenance

provider then sign and submit a maintenance provider work permit application. Once the work permit application is approved by the Department, the sponsor has the right to that adopted segment for the duration of the work permit's terms and conditions.

(iii) Sponsors may change maintenance providers and still retain rights to the adopted segment as long as the new maintenance provider has been approved by the Department.

(2) Sponsor obligations. It is the sponsor's obligation to ensure that the maintenance provider's services are rendered as agreed upon in the sponsor agreement and in accordance with the maintenance provider agreement and maintenance provider permit.

(3) Term of adoption.

(i) Sponsors wishing to adopt a segment must commit to a minimum of a one-year agreement with a Department-approved maintenance provider.

(ii) Adopted segments that need landscaping require sponsor commitment for a minimum of two years.

(4) Maintenance provider qualifications. Maintenance providers must be approved by the Department to participate in the Adopt-a-Highway Program. Maintenance providers must have a minimum of five years of maintenance experience similar to that as defined as maintenance services in these rules, administrative experience, and experience with roadway closures. Maintenance Providers must conform with the requirements of VENDEX, New York City's automated system check on background, performance, tax, and contact information for businesses that contract with the City.

(5) Maintenance provider obligations. Maintenance providers act as independent contractors for sponsors. Maintenance providers are responsible for:

(i) Entering into and maintaining a maintenance provider agreement with the Department.

(ii) Reaching a sponsor agreement with a sponsor and informing sponsors of maintenance services completed.

(iii) Coordinating all maintenance services and requirements with the Department.

(iv) Submitting a maintenance provider work permit application and performing all administrative work associated with the program including billing and related services with the sponsor.

(v) Performing all maintenance services in accordance with the maintenance provider agreement and maintenance provider permit.

(vi) Maintaining records for each adopted segment including:

- Name of sponsor
- Description and length of each adopted segment
- Gross value (including in-kind goods and services) of sponsor contribution
- Levels of maintenance services provided
- Time period covered by the maintenance provider's agreement with the sponsor

(vii) Supplying all labor, equipment and capital resources necessary to perform the maintenance services in accordance with the maintenance provider agreement and maintenance provider permit.

(viii) Always using a backup truck with arrow board and impact attenuator when performing mechanical sweeping.

- (ix) Picking-up and bagging litter and clippings; placing bags and bulk debris on the shoulder of each adopted segment.
- (x) Transporting field personnel in commercial vehicles.
- (xi) Performing maintenance services only during hours specified in the maintenance provider permit.
- (xii) Ordering a sign as soon as the maintenance provider work permit application is approved by the Department.
- (xiii) Providing a sign to the Department for installation at the adopted segment.
- (xiv) Maintaining the sign so that it is dirt and graffiti free and unobstructed.
- (xv) Recycling whenever possible when performing maintenance services.
- (xvi) Scheduling maintenance services at the adopted segment from Monday through Thursday, except where Friday is needed to make-up for cancellations due to weather, or unless authorized by the Department.

(6) Field Personnel. Maintenance provider field personnel performing maintenance services must be 18 years of age or older. Every adopted segment must have a supervisor who can speak and understand English. All drivers must possess a valid commercial driver's license.

(7) Safety.

- (i) Maintenance providers must be familiar with and comply with Part 6 of the most recent version of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), published by the Federal Highway Administration (FHWA), and the New York State Supplement "Highway Work Zone Traffic Controls" and "Vegetation Control for Safety, A Guide for Street and Highway Maintenance Personnel," by the FHWA, Office of Highway Safety. Any lane closing schemes must be presented for approval to the Department's Office of Construction Mitigation and Coordination, and a maintenance provider permit must be issued before commencing maintenance services.
- (ii) Maintenance providers are required to have every field employee complete a Department-approved safety training program each year.

(8) Insurance.

- (i) From the date any maintenance provider agreement is executed through the date of its expiration or termination, the maintenance provider must ensure that the types of insurance indicated in this section are obtained and remain in force, and that such insurance adheres to all requirements herein. The maintenance provider is authorized to undertake or maintain operations under its maintenance provider agreement only during the effective period of all required coverage.

(ii) Types of required insurance.

(A) Commercial General Liability insurance. The maintenance provider shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence and at least Two Million Dollars (\$2,000,000) aggregate. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under the maintenance provider agreement. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be "occurrence"-based rather

than "claims-made." The City, together with its officials and employees, shall be an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

(B) Workers' Compensation, Employers Liability, and Disability Benefits insurance. The maintenance provider shall maintain such insurance on behalf of, or with regard to, all employees involved in the maintenance provider's operations under its maintenance provider agreement to the full extent required by the laws of the State of New York.

(C) Business Automobile Liability insurance. With regard to all operations under its maintenance provider agreement, the maintenance provider shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(iii) General requirements for insurance coverage and policies.

(A) Policies of insurance required under this section shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Department.

(B) Policies of insurance required under this section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(C) There shall be no self-insurance program with regard to any insurance required under this section unless approved in writing by the Department. The maintenance provider shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this section, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

(D) The City's limits of coverage for all types of insurance required under this section for which it is an Additional Insured shall be the greater of (1) the minimum limits set forth in this section or (2) the limits provided to the maintenance provider under all primary, excess and umbrella policies covering operations under its maintenance provider agreement.

(iv) Proof of Insurance.

(A) Certificates of Insurance for all insurance required in this section must be submitted to and accepted by the Department prior to or upon execution of any maintenance provider agreement.

(B) For Commercial General Liability insurance and Business Automobile Liability insurance, the maintenance provider shall submit one or more Certificates of Insurance in a form acceptable to the Department. All such

Certificates of Insurance shall certify (1) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and (2) the status of the City as Additional Insured under the Commercial General Liability policy, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form required by the Department or certified copies of all policies referenced in such Certificate of Insurance.

(C) Certificates of Insurance confirming renewals of insurance shall be submitted to the Department prior to the expiration date of coverage of all policies required under any maintenance provider agreement. Such Certificates of Insurance shall comply with clause (B) of this subparagraph.

(D) Acceptance or approval by the Department of a Certificate of Insurance or any other matter does not waive the maintenance provider's obligation to ensure that insurance fully consistent with the requirements of this section is secured and maintained, nor does it waive the maintenance provider's liability for its failure to do so.

(E) The maintenance provider shall be obligated to provide the City with a copy of any policy of insurance required under this section upon request by the Department or the New York City Law Department.

(v) Other insurance requirements.

(A) The maintenance provider may satisfy its insurance obligations under this section through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(B) The maintenance provider shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.

(C) Where notice of loss, damage, occurrence, accident, claim, or suit is required under a policy maintained in accordance with this section, the maintenance provider shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under its maintenance provider agreement (including notice to Commercial General Liability insurance carriers for events relating to the maintenance provider's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged, or lost. The

maintenance provider shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(D) The maintenance provider's failure to secure and maintain insurance in complete conformity with this section or to do anything else required by this section shall constitute a material breach of the maintenance provider agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(E) Insurance coverage in the minimum amounts provided for in this section shall not relieve the maintenance provider of any liability under its maintenance provider agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of its maintenance provider agreement or the law.

(F) The maintenance provider waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the maintenance provider and/or its employees, agents, or servants of its contractors or subcontractors.

(G) In the event the maintenance provider requires any entity, by contract or otherwise, to procure insurance with regard to any operations under its maintenance provider agreement and requires such entity to name the maintenance provider as an additional insured under such insurance, the maintenance provider shall ensure that such entity also names the City, including its officials and employees, as an additional insured with coverage at least as broad as specified in ISO form CG 20 26.

(H) In the event the maintenance provider receives notice, from an insurance company or other person, that any insurance policy required under this section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the maintenance provider shall immediately forward a copy of such notice to the Department. Notwithstanding the foregoing, the maintenance provider shall ensure that there is no interruption in any of the insurance coverage required under this section.

(9) Maintenance provider's responsibility for safety, injuries or damage; indemnification.

(i) In all its activities under a maintenance provider agreement, the maintenance provider shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

(ii) The maintenance provider shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss, or injury resulting from any and all operations under its maintenance provider agreement.

(iii) The maintenance provider shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under its maintenance provider agreement, whether or not due to the negligence of the maintenance provider, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

(iv) To the fullest extent permitted by law, the maintenance provider shall indemnify, defend, and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs, and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under its maintenance provider agreement (regardless of whether or not the maintenance provider itself had been negligent) and/or the maintenance provider's failure to comply with the law or any of the requirements of its maintenance provider agreement. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the maintenance provider, the City and its officials and employees shall be partially indemnified by the maintenance provider to the fullest extent permitted by law.

(v) The maintenance provider's obligation to defend, indemnify, and hold the City and its officers and employees harmless shall not be (1) limited in any way by the maintenance provider's obligations to obtain and maintain insurance under its maintenance provider agreement, nor (2) adversely affected by any failure on the part of the City or its officers and employees to avail themselves of the benefits of such insurance.

(10) Equipment.

(i) All field personnel must be equipped with proper safety equipment and attire to perform work in the adopted segment, including but not limited to: orange safety vests, safety helmets, durable work gloves, long pants, and substantial leather footwear with ankle support.

(ii) Maintenance providers must have at least one heavy duty truck compliant with all federal, State, and City requirements.

(iii) All trucks used for the Adopt-a-Highway program must be equipped with:

(A) A truck mounted safety attenuator system designed and certified for use on vehicles to provide a safety crash cushion between approaching traffic and roadway workers. Truck mounted safety attenuators must be in good working order to meet or exceed the National Cooperative Highway Research Program Report #230 testing criteria for vehicles weighing from 1,800 - 45,000 pounds, including any updates of that report.

(B) A flashing arrow board, appropriately mounted, facing oncoming traffic. The board must be a minimum of 3' x 5' and must comply with all federal and State

standards for traffic directional arrow boards used on highways. In operating mode, it must provide:

1. FLASHING ARROW (5 lamp overhead, 3 lamp stem, both flashing simultaneously, 50% on and 50% off, right or left.)

2. DOUBLE FLASHING ARROW (5 lamp arrowheads at both ends, joined by and flashing simultaneously with 1 lamp center bar, 50% on and 50% off.)

3. TRAVEL MODE (lamps positioned in center bar, 50% on and 50% off.)

(C) Vehicle markings that include stripes on the back and sides of the vehicle and signage that indicates “SLOW MOVING” or “CAUTION” to oncoming traffic.

(iv) At least one vehicle per adopted segment must have a two-way radio communication device.

(v) Maintenance providers must provide field personnel with green, black, or white plastic garbage bags, at least .003 mm thick and no larger than 33” x 45” for litter and debris pickup.

(11) Subcontracting. Subcontracting of litter pickup at the adopted segment is not permitted. Maintenance providers may subcontract other maintenance services. All subcontractors must be approved by the Department prior to performing any work at any adopted segment, obtain all insurance as required of maintenance providers by this section, and comply with the terms of the maintenance provider permit, the Adopt-a-Highway Guidelines published by the Department, any other terms and conditions as required by the Department, and all applicable laws, rules, and regulations.

(12) Hazardous debris removal. Maintenance provider field personnel must not touch or attempt to remove materials from the adopted segment which may be toxic or otherwise hazardous. Items to avoid include powders, chemicals, smelly substances, suspicious packages, chemical drums or containers, weapons, medical waste, syringes or hypodermic needles, dead animals, or bulk items that cannot be put in litter bags (such as car parts or larger items). Maintenance provider field personnel must immediately notify the Department of the location of these items.

(13) Notifications to the Department.

(i) Maintenance providers must provide the Department with a weekly proposed work schedule by Wednesday (5 p.m.) of the week prior to the work being performed.

(A) Work schedules must be typed and in a format approved by the Department, and must include segment number, sponsor name, highway, direction, mile marker to and from, and scheduled cleaning date.

(ii) By 9:00 A.M. of each day that maintenance providers will be performing maintenance services, they must submit to the Department a schedule of that day’s maintenance activities including any changes not reflected on their weekly schedule.

(iii) If circumstances warrant that maintenance providers must amend their maintenance services while performing maintenance services, the maintenance providers must notify the Department immediately of such changes.

(14) Failure to maintain adopted segments. Maintenance providers will be notified as follows if the Department determines that an adopted segment was not maintained as scheduled:

(i) First observation. If, upon inspection, the Department observes that an adopted segment was not maintained as scheduled, the Department will verbally provide the maintenance provider with 24-hour notice to perform the required maintenance services. At the end of the 24-hour period, if the maintenance provider has not performed required maintenance services, the Department will provide written notification that the maintenance provider has an additional 24-hour period to perform such required maintenance services.

(ii) Second observation. If, upon inspection, the Department observes that an adopted segment was not maintained as scheduled a second time within a six-month period, the Department will notify in writing, both the sponsor and the maintenance provider that it must complete the required maintenance services immediately.

(iii) Third observation. If, upon inspection, the Department observes that an adopted segment was not maintained as scheduled a third time within one year of the first observation, the Department may revoke the existing maintenance provider permit in accordance with this section and notify the sponsor. The sponsor may retain the adopted segment, provided that the sponsor enters into a sponsor agreement with a different maintenance provider.

(15) Solicitation of sponsors by maintenance providers.

(i) A maintenance provider must not directly contact a sponsor who has a sponsor agreement with a different maintenance provider by calling, writing or any other form of solicitation, except as indicated by this section.

(ii) If a maintenance provider is found to be soliciting another maintenance provider's sponsor in a manner inconsistent with this section, the maintenance provider will be subject to discharge from the Adopt-a-Highway program. Any such discharge shall be in accordance with subdivision (m) of this section.

(iii) The Department will provide a list of all approved maintenance providers on the Department's website and will provide any sponsor with a list upon request.

(iv) Three months prior to a maintenance provider agreement renewal date, the Department will provide sponsors with a letter reminding the sponsor that it may switch maintenance providers, as well as a list of all current maintenance providers with contact information.

(16) Changes in levels of service. The Department may change the minimum levels of service for an adopted segment and will notify the adopter of such changes in levels of service no fewer than 30 days prior to such change in levels of service being in effect.

(h) Volunteers.

(1) Term of adoption. Volunteers wishing to adopt a segment must commit to a minimum of a one-year agreement with the Department to perform maintenance services at the adopted segment.

(2) Volunteer obligations. Volunteers are responsible for:

(i) Entering into a volunteer agreement with the Department.

(ii) Coordinating all maintenance services and requirements with the Department.

(iii) Submitting a volunteer permit application to the Department.

(iv) Performing all maintenance services in accordance with the volunteer agreement and volunteer permit.

(v) Supplying all labor to perform the maintenance services in accordance with the volunteer agreement and the volunteer permit.

(vi) Picking up and bagging litter and clippings and leaving them for pick-up as directed by the Department.

(vii) Working on adopted segments only during hours specified in the volunteer permit.

(viii) Submitting a form to the Department after the first two months of maintaining the adopted segment to request that the Department manufacture and install a sign at the adopted segment.

(ix) Maintaining the sign so it is dirt free and unobstructed.

(x) Attending safety training sessions provided by the Department.

(xi) Having the volunteer permit on hand while working at the adopted segment.

(3) Renewals. The Department will mail volunteers a renewal volunteer agreement one month prior to expiration of the current volunteer agreement. Volunteers must return the signed volunteer agreement one week prior to the expiration of the volunteer agreement or the area will be considered abandoned, the recognition panel will be removed, and the adopted segment will be made available to the next adopter on the waiting list.

(4) Adopted segment improvements. Any improvements to the adopted segment such as plantings or structures, including, but not limited to, flagpoles, benches, bird feeders or baths, retaining walls, and light houses, must be approved by the Department prior to installation.

(5) Use of pesticides. Volunteers may only use pesticides approved by the Department in the adopted segment. Pesticides may only be applied by New York State Department of Environmental Conservation Certified Pesticide Applicators.

(6) Liability waiver. Volunteers must sign a liability waiver that waives any liability to the City for any accident or injury that may occur at the adopted segment while the volunteers are performing maintenance services at the adopted segment.

(7) Frequency of maintenance services. Volunteers must perform maintenance services at their adopted segments at least 30 times per year. This includes a requirement to clean the adopted segment a minimum of three times per month in May, June, July, August, September, and October and a minimum of twice a month every other month during the year.

(8) Age of field personnel. Volunteer personnel working on adopted segments must be 18 years of age or older.

(9) Safety.

(i) Prior to the commencement of work at the adopted segment, the Department will inspect the adopted segment to assure that it is a safe place for the volunteers to perform maintenance services without the closing of traffic lanes.

(ii) Volunteers must adhere to the following safety rules when performing work on the adopted segment:

(A) Only allow persons 18 or older and in good physical condition (sight, hearing, and mental alertness) to work in the adopted segment.

(B) When the volunteer is a group, a volunteer group leader must be designated by the group. The volunteer group leader is responsible for

providing information on safety to the group and must conduct a safety training refresher session before performing any maintenance services.

(C) Park no closer than the nearest side street or service road to the adopted segment and never on the highway.

(D) Wear appropriate attire including, but not limited to: highway safety vests and orange or red clothing; heavy work gloves; work shoes or boots with ankle support; hats; and long pants.

(E) Never drink alcoholic beverages or use illegal substances while working at the adopted segment.

(F) Never perform maintenance services on the roadway.

(G) Stay off steep slopes when working at the adopted segment.

(H) Have a first aid kit on site at the adopted segment and know the route to the closest hospital/emergency room.

(I) Never pick-up hazardous or medical waste found at the adopted segment and immediately notify the Department of such waste.

(K) Never use headphones while performing maintenance services on the adopted segment.

(L) Avoid contact with poisonous plants and notify the Department of any poisonous plants found at the adopted segment.

(M) Never cross the highway for any reason.

(N) Never enter the highway or its shoulder area to pick up trash.

(10) Notice after performing maintenance services. Volunteers should notify the Department after performing maintenance services at the adopted segment so that the Department can schedule pick-up of the trash bags.

(11) Recycling. Volunteers should recycle whenever possible when performing maintenance services.

(i) Changing adopted segments. Adopters may exchange their existing segment for another segment in the system provided that the other segment is available. The Adopt-A-Highway sign must stay at the original adopted segment. The Department will remove the recognition panel portion of the sign containing the adopter's name from the original segment and use it for the new segment.

(j) Reserving segments. Adopters may not reserve or hold segments. Once a permit has been issued for a segment, the maintenance provider or volunteer must begin performing maintenance services in accordance with the terms and conditions of the permit within such time as is specified in the sponsor agreement and/or volunteer agreement.

(k) Adopt-a-Highway Signs.

(1) Signs are produced and maintained by the maintenance provider or volunteer and must be delivered to the Department for installation no later than one month after the permit for an adopted segment is approved.

(2) Sign installation.

(i) Ground mounted signs will be installed by the Department as close to the beginning of the adopted segment as feasible, taking into consideration safety and other informational signage.

- (ii) Signs requiring bridge, gantry wall, or parapet mounting will be installed by the Department or a contractor approved by the Department, and paid for by the maintenance provider or volunteer.
- (3) All signs posted at the adopted segment must:
 - (i) consist of a standard base sign design with a removable recognition panel identifying the sponsor's or volunteer's name and/or logo;
 - (ii) conform to the Department's specifications for size, shape, materials, and placement;
 - (iii) not be used for advertising purposes; and
 - (iv) comply with applicable laws, rules, and regulations.
- (4) Where litter pick-up, trimming and/or mechanical sweeping are the services provided, the sign will read "LITTER REMOVAL."
- (5) Where other services are provided the signs will read "BEAUTIFICATION."
- (6) Signs on elevated highway segments must be 4' x 4.5' and hung on lampposts.
- (7) Signs on the Henry Hudson Parkway must be larger than 4' x 4.5' to accommodate two recognition panels.
- (8) Maintenance providers and volunteers must replace damaged or stolen signs.
- (9) When an adopter terminates its agreement with the Adopt-a-Highway program, the adopter must not remove the sign. The Department will remove the recognition panel portion of the sign.
- (l) **Field inspections of adopted segments.** The Department will perform inspections of the adopted segment to assure that maintenance providers and volunteers are performing maintenance services as required under their permits and agreements.
- (m) **Voiding and revoking permits.**
 - (1) If an adopter does not perform maintenance services at an adopted segment one month after permit issuance, the Department will notify the adopter orally and in writing that its permit has become void.
 - (2) The Department may revoke a volunteer or maintenance provider permit for a permittee's failure to comply with this section, the requirements of the permit, the Adopt-a-Highway technical guidelines, and any applicable laws, rules, and regulations.
 - (i) Prior to revoking a permit the Department will give the permittee an opportunity to be heard with at least two days notice.
 - (ii) If the Department determines that an imminent peril to life or property exists, the Department may revoke a permit without providing the permittee an opportunity to be heard prior to such revocation. Upon request of the permittee, the Department will provide the permittee an opportunity to present its objections to such action within five days after the Department receives the request.
 - (3) The Department will assign the segment of the voided or revoked permit to the next sponsor or volunteer on the waiting list or place the segment on the available segment list.

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: Adopt-a-Highway Rules

REFERENCE NUMBER: DOT-6

RULEMAKING AGENCY: Department of Transportation

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Rachel Squire
Mayor's Office of Operations

9/6/2012
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Adopt-a-Highway Rules

REFERENCE NUMBER: 2011 RG 113

RULEMAKING AGENCY: Department of Transportation

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 31, 2012