

NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to comment on proposed Department of Transportation rules relating to Microtrenching.
- Date/Time:** August 6, 2013, 10 a.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:** Franco Esposito
Senior Counsel
55 Water Street, 9th Floor
New York, New York 10041
(212) 839-6500

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 2-24 to Chapter 2 of Title 34 of the Official Compilation of the Rules of the City of New York, the Highway Rules, relating to Microtrenching. The proposed amendments were not included in the Agency's regulatory agenda because they were not anticipated at the time the agenda was created.

Instructions

- Written comments regarding the proposed rules may be sent to Franco Esposito, Senior Counsel, New York City Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041, on or before August 6, 2013, 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 Franco Esposito 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 Franco Esposito at the foregoing address by August 6, 2013.

- 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.

Chapter 2 of Title 34 of the Rules of the City of New York is being amended to allow for the utilization of a microtrenching for the installation of fiber-optic telecommunications conduit. Through a pilot program conducted by the New York City Department of Transportation (DOT) and the New York City Department of Information Technology and Telecommunications (DOITT), DOT has determined that microtrenching is less disruptive to traffic and requires less extensive restoration work than installation of conduit utilizing conventional trenching. These proposed rules authorize telecommunications franchisees to obtain permits to install conduit via microtrenching in compliance with certifications issued by DOITT. DOITT is separately proposing companion rules to authorize telecommunications franchisees to perform microtrenching in compliance with DOT permits.

“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 2-01 of Chapter 2 of Title 34 of the Rules of the City of New York is amended by adding the definition of “microtrenching” to read as follows:

Microtrenching. A technique for installing conduit to house fiber-optic cable in public rights-of-way to provide telecommunications services that involves shallower and narrower cuts than conventional trenching.

Chapter 2 of Title 34 of the Rules of the City of New York is amended by adding a new Section 2-23 to read as follows:

Section 2-24 Microtrenching.

- (a) Incorporation by Reference of the Microtrenching Rules Promulgated by the New York City Department of Information Technology and Telecommunications as Chapter 1 of Title 67 of the Rules of the City of New York.** Except where inconsistent with this Title, the microtrenching rules promulgated by the Department of Information Technology and Telecommunications (DOITT) in Chapter 1 of Title 67 of the Rules of the City of New York are hereby incorporated by reference into this Chapter as rules of the Department of Transportation.

(b) Microtrenching:

- (1) A telecommunications franchisee applicant for a microtrenching permit from the Department must obtain a certification that no excess capacity is available in the location covered by such permit from DOITT pursuant to Chapter 1 of Title 67 of the Rules of the City of New York. The applicant must submit that certification to the Department of Transportation as part of the application for a permit.
- (2) A street opening permit for installation of telecommunications conduit utilizing microtrenching must be obtained from the Department, pursuant to §2-02, after obtaining a certification from DOITT. Fees must be paid pursuant to §2-03 of these rules.
- (3) A street opening permit must be obtained for the removal of conduits installed pursuant to this section and the restoration of the sidewalk or roadway. Such sidewalk or roadway restoration must be performed in accordance with the Department's specifications.

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

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

RULE TITLE: Use of Microtrenching in Telecommunications Services

REFERENCE NUMBER: 2013 RG 057

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

Date: June 28, 2013

Acting Corporation Counsel

**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: Use of Microtrenching in Telecommunications Services

REFERENCE NUMBER: DOT-16

RULEMAKING AGENCY: DOT

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/ Francisco X. Navarro

Mayor's Office of Operations

June 28, 2013

Date