



## NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### BOARD OF HEALTH

#### **Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Article 47 of the New York City Health Code**

#### **What are we proposing?**

The New York City Department of Health and Mental Hygiene is proposing that the New York City Board of Health amend requirements for child care and family shelter-based drop-off child supervision programs in Article 47 of the New York City Health Code. The proposed amendments would align with recent changes to both the New York State Public Health Law eliminating religious exemptions for vaccinations, and to the New York City Administrative Code, concerning annual surveys and remediation of lead-based paint hazards. Changes are also being proposed in response to other recent local legislation prohibiting use of crib bumper pads and to require anchors for furniture that could topple over. Other changes are being proposed to require child-to-staff ratios consistent with those in the federal Head Start program, as well as to provide greater clarity and to modify several provisions which were inadvertently included in earlier amendments.

#### **When and where is the hearing?**

The Department will hold a public hearing on the proposed rule at 9:30AM to 12PM on November 15, 2019. The hearing will be held in room 3-32 at 42-09 28<sup>th</sup> Street, Long Island City, New York.

This location is wheelchair-accessible.

#### **How do I comment on the proposed rules?**

Anyone can comment on the proposed rules via any of the following:

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>
- **Email.** You can email comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov)
- **Mail.** You can mail comments to Roslyn Windholz, Secretary to the Board of Health, New York City Department of Health and Mental Hygiene, 42-09 28<sup>th</sup> Street, Room 14-38, Long Island City, NY 11101.
- **Fax.** You can fax comments to the attention of Svetlana Burdeynik at 347-396-6087.
- **By speaking at the hearing.** Anyone who wants to speak on the proposed rule changes at the public hearing must register. You can sign up in advance of the hearing by calling 347-396-6078. You can also sign up at the hearing room before the hearing begins on November 15, 2019. You can speak for up to 3 minutes.

#### **Is there a deadline to submit comments?**

You may submit comments up until and through the day of the hearing.

#### **Do you need assistance to participate in the hearing?**

You must tell the Department's Office of General Counsel 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 the above address. You may also tell us by telephone at 347-396-6078. You must tell us by November 1, 2019.

**Can I review the comments made on the proposed rule?**

You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Department’s Office of the General Counsel, which is located at 42-09 28<sup>th</sup> Street, Long Island City, New York.

**What authorizes the New York City Department of Health and Mental Hygiene to make this rule?**

Sections 558 and 1043 of the New York City Charter authorize the Board to make this proposed change to the Health Code. This proposed rule was not included in the Department’s regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

**Where can I find the New York City Health Code?**

The New York City Health Code is located in Title 24 of the Rules of the City of New York and accessible online at the website of the City's official rule publisher: [http://www.amlegal.com/codes/client/new-york-city\\_ny/](http://www.amlegal.com/codes/client/new-york-city_ny/).

**What laws govern the rulemaking process?**

The Department and the Board must meet the requirements of § 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of § 1043 of the Charter.

**Statement of Basis and Purpose**

The New York City Department of Health and Mental Hygiene (“Department”) is proposing that the New York City Board of Health (“Board”) amend Article 47 of the New York City Health Code (“Health Code”). The proposed amendments would align the Health Code with recent legislative changes to the New York State Public Health Law and New York City Administrative Code. On June 13, 2019, NYS Public Health Law § 2164 was amended to remove the exemption from childhood immunization requirements due to religious beliefs. Article 47 (§ 47.25) of the Health Code is being amended to incorporate this change. On March 13, 2019, the NYC Council passed multiple amendments to the NYC Administrative Code, which among other things, updated the requirements for conducting an annual survey for lead-based paint hazards for all day care services (See Local Laws 64, 66, 67 and 71 of 2019). As per Local Law 64 of 2019, “day care service” means “a program or service regulated by articles 43 and 47 of the New York city health code.” Accordingly, Article 47 (§47.63) of the Health Code is being amended to incorporate these updated annual survey requirements. Changes to the Health Code are also being proposed in response to other recent local legislation prohibiting use of crib bumper pads and to require anchors for furniture that could topple over. Other changes are being

proposed, for example, for child-to-staff ratios to be consistent with those in the federal Head Start program, as well as to provide greater clarity and to remove text which was inadvertently included in prior amendments.

*Legal Authority*

These amendments to the Health Code are proposed pursuant to §§ 558 and 1043 of the NYC Charter. Sections 558 (b) and (c) of the Charter empower the Board to amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 1043 grants the Department rule-making authority.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the text below, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined; deleted text is in [brackets].

\* \* \*

**RESOLVED**, that §§ 47.07, 47.13, 47.19, 47.23, 47.25, 47.27, 47.29, 47.33, 47.37, 47.55, 47.61, 47.63 and 47.67 of Article 47 of the New York City Health Code, located in Title 24 of the Rules of the City of New York, be amended to provide additional child protections and to conform the Health Code with recent changes in state and local law including immunization requirements and lead-based paint hazards, to be printed together with explanatory notes, to read as follows:

**§ 47.07 Permit: required approvals and clearances.**

No permit shall be issued unless the permit applicant has obtained and submitted to the Department:

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(c) *Criminal justice and child abuse screening.* Documentation satisfactory to the Department that the permit applicant has submitted all necessary forms and requests for all persons requiring criminal justice and [State Central\_Registry of Child Abuse and Maltreatment] Statewide Central Register of Child Abuse and Maltreatment (SCR) screening in accordance with Section 47.19 of this [Code] Article. Such documentation [shall] must be kept on site and made available to the Department upon request.

**§ 47.13 Teaching staff qualifications and coverage in child care programs.**

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(b) *Pending certifications.* A permittee may temporarily employ an education director or group teacher whose application for certification is fully submitted and pending certification by the State Education Department or other accreditation organization or whose study plan for obtaining certification is fully submitted and pending approval by the Department, provided that the permittee has complied with criminal justice and [State Central\_Registry of Child Abuse and Maltreatment] Statewide Central Register of Child Abuse and Maltreatment (SCR) screening requirements for staff set forth in this Article. No individual qualifying as an education director under this subsection may serve in that capacity with a pending certification for a total of more

than [six] 6 months. All relevant documentation [shall] must be kept on site and made available to the Department upon request.

(c) *Education director.* Except as provided in Sections 47.15 or 47.17, every child care program [shall] must designate a certified group teacher as the education director, who shall be in charge of staff training, educational and child development programs and shall supervise all teaching staff at each permitted child care program. An education director [can] may serve in such capacity for a maximum of two programs, and only if such programs are co-located and operated by the same legal entity.

(1) *Coverage for education director.* Except as provided herein, a program's education director must be on site at all times while the program is caring for one or more children. At any time when the education director is not on the premises to supervise a child care program, the permittee [shall] must designate an individual to act as education director. Except as provided in Section 47.15 or 47.17, such individual [shall] must be a certified group teacher or a group teacher whose application for certification is fully submitted and pending certification by the State Education Department or other accreditation organization, or whose application for certification is fully submitted and pending approval by the Department, provided that the permittee has complied with criminal justice and [State Central Registry of Child Abuse and Maltreatment] SCR screening requirements for staff set forth in this Article. In addition, the permittee must notify the Department in writing within [five] 5 business days of the separation from service of the education director. When the education director is separated from service or will be on leave for more than [five] 5 business days, the permittee must notify teaching staff and the Department in writing of the certified teacher who has been designated as education director and make this written communication available to the Department for inspection upon request.

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**§ 47.19 Criminal justice and child abuse screening of current and prospective personnel; reports to the Department.**

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(c) \*\*\*

(1) \*\*\*

(A) \*\*\*

(B) \*\*\*

[(2)] (C) the permittee has ensured that the individual [shall] must be continuously supervised by a satisfactorily screened staff member with authority to intervene in the actions of such individual. For all employees, the permittee [shall] must request a new report from the SCR every [two] 2 years. All documents obtained in accordance with the requirements of this section, along with any required English language translations, [shall] must be kept on site and made available to the Department upon request.

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**§ 47.23 Supervision; staff/child ratios and group size.**

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(f) *Minimum staff/child ratios.*

(1) The staff of a child care program for purposes of staff/child ratios [shall] must include only the teaching staff.

The minimum ratios of staff to children in a child care program [shall] must be as follows:

AGE OF CHILDREN	MINIMUM STAFF/CHILD RATIO	MAXIMUM GROUP SIZE <u>per room/area separated from other rooms/areas by a physical barrier</u>
under 12 months	1:4 or 1:3	8 [per room/area separated from other rooms/areas by a physical barrier]
12 to 24 months	1:5	10
2 years to under 3	1:6	12
3 years to under 4	1:10	[15] <u>17</u>
4 years to under 5	1:12	20
5 years to under 6	1:15	25

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**§47.25 Health; children’s examinations and immunizations.**

(a) *Required examinations, screening and immunizations.*

(1) *Physical examinations and screening.* Prior to admission[, or within 90 days after admission for children who are either homeless, as defined by section 11434a of Chapter 119 of Title 42 of the United States Code, or in foster care,] all children [shall] must receive a complete age appropriate medical examination, including but not limited to a history, physical examination, developmental assessment, nutritional evaluation, lead poisoning screening, and, if indicated, screening tests for dental health, tuberculosis, vision, and anemia.

(2) *Immunizations.*

(A) (i) All children [shall] must be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B, pneumococcal disease and haemophilus influenzae type b (Hib), in accordance with New York State Public Health Law § 2164, or successor law. Exemption from specific immunizations may be permitted if the immunization may be detrimental to the child’s health [or on religious grounds], in accordance with New York State Public Health Law § 2164. [In addition, there shall be a 90-day grace period after admission for children who are either homeless, as defined by section 11434a of Chapter 119 of Title 42 of the United States Code, or in foster care, to obtain the required immunizations.] Documentation of immunizations and exemptions [shall] must be kept on site and made available to the Department immediately upon request [except as otherwise required by law].

(ii) No permittee shall permit any child to attend such program without appropriate documentation of the immunizations required pursuant to clause (i) of this subparagraph, except as provided for in this subdivision or pursuant to New York State Public Health Law § 2164 or successor law.

(B) (i) Children aged from 6 months to 59 months [shall] must be immunized each year before December 31 against influenza with a vaccine approved by the U.S. Food and Drug Administration as likely to prevent infection for the influenza season that begins following July 1 that calendar year, unless the vaccine may be detrimental to the child’s health, as certified by a physician licensed to practice medicine in this state[, or the parent, parents or

guardian of a child hold genuine and sincere religious beliefs which are contrary to the practices herein required] or the state in which the child resides. The permittee may require additional information supporting [either exemption] such request for exemption, including proof that the child is currently in the care of the physician supporting the request.

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(C) \*\*\*

(D) \*\*\*

(E) All children must have such additional immunizations as the Department may require.

(F) The permittee must report to the Department all requests for exemption made pursuant to subparagraphs (A) or (B) of paragraph (2) of this subdivision in a manner and form prescribed by the Department. Upon submission of an exemption request and pending Department determination, the child may attend the child care program. If upon review of the documents submitted and any additional documentation provided to the Department, the Department determines that the exemption request is not valid insofar as it is not in accordance with the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP) guidelines or other nationally recognized evidence-based guidelines, the permittee or person in charge of a child care program must not allow the child to attend the program without documentation that such child has received the immunizations required pursuant to clause (i) of subparagraph (A) of paragraph (2) of this subdivision.

**§ 47.27 Health; daily requirements; reports of absences; communicable diseases.**

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(c) *Management of ill children and reporting.*

(1) \*\*\*

[(2) All health care provider diagnoses pursuant to Article 11 of this Code shall be reported to the Department by the permittee.]

[(3)] (2) The Department [shall] must be notified by the permittee within 24 hours of the occurrence of a death or serious injury to a child while in the care or supervision of the program.

[(4)] (3) When any child is unexpectedly absent from the program, the permittee [shall] must notify the child's parent of the absence by telephone, text or e-mail message or other means of immediate communication within one hour of the child's scheduled time of arrival and [shall] must maintain a record of having made such notification and the information obtained in the log required by § 47.29(d) of this Code.

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[(f) Exclusions pursuant to Article 11 of this Code. The permittee shall exclude a child who is a case, contact, or carrier of a communicable disease if the child is required to be isolated or excluded by Article 11 of this Code. Such child shall not be permitted to return to the program without a written statement of recovery from a health care provider if the child was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the child was a case, carrier, or contact of any other communicable disease reportable pursuant to Article 11 of this Code. The statement shall indicate that the child is free from such disease in communicable form and that the period of isolation or exclusion required by Article 11 of this Code has ended.]

(f) Isolation and exclusion pursuant to Article 11 of this Code. The permittee must isolate or exclude any child, staff or volunteer who is suspected or confirmed with, or has been exposed to,

a communicable disease requiring isolation or exclusion under Article 11 of this Code. A child, staff or volunteer who has been excluded must not be permitted to return to the child care program without a written statement from a health care provider indicating that the child, staff member or volunteer is free from such disease in communicable form and that the period of isolation or exclusion required by Article 11 of this Code has ended. Any child, staff or volunteer isolated or excluded pursuant to this subdivision must be reported to the Department.

**§ 47.29 Health; emergencies.**

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(b) \*\*\*

(1) \*\*\*

(2) Where a parent has provided a written, individualized health care plan indicating the specific medications that can be administered and the schedule of such administration(s) for their child, including in cases of emergency, and there is a direct conflict between such plan and any provision of this section, [nm] the permittee [shall] must follow the child's individualized health care plan.

**§47.33 Health; staff.**

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(c) *Staff and volunteer immunizations.* (1) Each staff [person] and volunteer [shall] must obtain a report from a health care provider who is a licensed physician, nurse practitioner, physician's assistant, or doctor of osteopathy certifying that such person has been immunized [against] with 2 doses of measles-containing vaccine; 2 doses of mumps-containing vaccine; 1 dose of rubella-containing vaccine; 2 doses of varicella-containing vaccine (chicken pox); [and] 1 dose of tetanus, diphtheria and acellular pertussis (Tdap). Persons born on or before December 31, 1956 are not required to have measles, mumps or rubella vaccines. A history of having health care provider documented varicella or herpes zoster disease [shall be] is [accepted] acceptable in [lieu] place of varicella vaccine. A history of having measles, mumps or rubella disease shall not be substituted for the measles, mumps or rubella vaccine. A laboratory test demonstrating detectable varicella, measles, mumps, or rubella antibodies is also acceptable [shall also be accepted] in [lieu] place of varicella, measles, mumps and rubella vaccine. [An employee] A staff or volunteer may be exempted from this immunization requirement for [ACIP-recognized] medical contraindications in accordance with ACIP or other nationally recognized evidence-based guidelines upon submission of appropriate documentation from a treating licensed physician. Each staff [person] and volunteer [shall] must submit such report of immunization to the permittee.

(2) Reports of immunizations shall be confidential and [shall] must be kept by the permittee in a paper or electronic file with other staff and volunteer health information, except that such reports [shall] must be made available to the Department immediately upon request. Documentation of exemption from immunization [shall] must also be kept on site and made available to the Department immediately upon request.

(3) No permittee or person in charge of a child care program shall permit any staff or volunteer to attend such program without appropriate documentation of the immunizations required pursuant to paragraph (1) of this subdivision.

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**§47.37 Training.**

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(b) \*\*\*

(1) *Child abuse, maltreatment[,] and neglect.* All [teaching] staff [and shelter child supervision staff shall] must receive at least [two] 2 hours of training every 24 months in preventing, identifying, and reporting child abuse, maltreatment[,] and neglect, and requirements of applicable statutes and regulations. Such training [shall] must be provided by a New York State Office of Children and Family Services-certified trainer. New teaching and shelter child supervision staff [shall] must receive such training within [three] 3 months of hire or of the effective date of this rule, whichever is later. Training completed while employed at a different program holding a permit under this Article shall count for purposes of compliance with this subsection. Certificates of completion of all training required pursuant to this subsection [shall] must be kept on site and made available to the Department upon request.

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**§47.55 Equipment and furnishings.**

(a) *Furnishings.*

(1) Tables, chairs, furniture and equipment [shall] must be age and size appropriate, finished with non-toxic surface coverings, easily cleanable, and cleaned and sanitized as needed, in a manner consistent with the health and safety of the children in the program.

(2) All items of large furniture and all electronic appliances capable of being tipped over due to design, height, weight, stability or other features must be secured to the floors or walls of such facility, using angle-braces, anchors or other anchoring devices. Any item of furniture or electronic device which cannot be so anchored must be removed from the child care facility.

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**§47.61 Food and food safety.**

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(i) Bottles shall not be propped or kept by children while sleeping. [No Styrofoam cups shall be used by children two years or younger.]

(j) There must be no single use food service articles consisting of expanded polystyrene, such as foam containers, cups or plates, in the child care facility.

[(j)] (k) The food service at a night child care program shall be provided as follows:

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**§47.63 Lead-based paint restricted.**

(a) \*\*\*

(1) \*\*\*

(2) \*\*\*

(3) When there has been an order to abate or remediate lead-based paint hazards issued by the Department, the permittee, or the owner of the building in which the program is located [shall] must use only the methods specified in such order.

(A) After such order has been served by the Department, the permittee must post the notices required by § 173.14(e)(1)(A) of this Code at or near the entrance of the facility.

(B) The permittee must comply with the requirements of the order within 21 days after service of the order. Where compliance with the time period requirements of this subdivision would

cause undue hardship and the permittee demonstrates a good faith effort to timely comply, such as by showing that it has taken steps to remediate, including by retaining a contractor to conduct the remediation, and demonstrates to the satisfaction of the Department that it is maintaining adequate controls to protect children from a lead-based paint hazard, the Department may, at its discretion, extend the time period for compliance.

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(e) *Annual survey.* [Each] At least once each year, the permittee operating a program in which any surfaces are covered with lead-based paint or paint of unknown origin [shall] must conduct a survey of the condition of all such surfaces[.]. The permittee must note the results of the survey on a form provided by or [satisfactory to] approved by the Department [, and]. The survey form must include, but need not be limited to, the following: the date of the survey; a description of, and the location of, each surface surveyed and remediation status, if applicable. The permittee [shall] must provide a copy of the survey results to the Department [a copy of the results of such survey].

(1) Submission of such survey to the Department [shall] must be on or before the permit issuance date, or the anniversary thereof.

(2) Copies of such survey results may be submitted to the Department by mail, fax or electronically.

(3) Within 30 days of submitting the annual survey results to the Department, the permittee must notify the parent or guardian of each child attending the program of the results of the annual survey. Such notice may be provided electronically if the permittee routinely communicates with parents or guardians electronically and may refer to detailed results on a website if such results are maintained there. The permittee must maintain documentation on premises indicating the date on which such notice was provided. A copy of the notice and proof of the date when such notification was made must be made available to the Department immediately upon request.

#### **§47.67 Child development policies, activities, rest periods and clothing.**

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(f) *Safe sleep environment for infants.*

(1) An infant/toddler child care program or family shelter-based drop-off child supervision program providing services to infants or toddlers must provide a safe sleep environment for each infant, consisting of a single crib or bassinet per child that is approved by the US Consumer Product Safety Commission, and that complies with standards of the American Society for Testing and Materials [ASTM] International for infant sleep equipment; and a firm crib mattress specifically designed for the equipment used, covered by a tight fitting sheet flush with the sides of the crib/bassinet. The crib or bassinet must be free of bumper pads, pillows or sleep positioning devices not medically prescribed, loose bedding, blankets, toys and other possible suffocation risks. No child care facility subject to this Article may use or have on the premises any crib bumper pad unless a medical professional has determined that use of a crib bumper pad is medically necessary for a particular child using a crib in such child care facility.

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Notes: The Department proposes that the Board of Health amend Article 47 to align the Health Code with recent legislative changes in state and city law, including changes to immunization and lead-based paint requirements, as well as enhancing child health and safety protections, and revising existing language for clarity and in order to remove inadvertent prior text inclusions.

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**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Health and Safety Requirements for Child Care Programs  
(Health Code Article 47)**

**REFERENCE NUMBER: DOHMH-107**

**RULEMAKING AGENCY: Department of Health and Mental Hygiene**

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 the violations pose significant risks to public health and safety.

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

September 30, 2019  
Date

**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:** Amendment of Health and Safety Requirements for Child Care Programs  
(Health Code Article 47)

**REFERENCE NUMBER:** 2019 RG 080

**RULEMAKING AGENCY:** Department of Health and Mental Hygiene

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 L. GOULDEN  
Acting Corporation Counsel

Date: September 30, 2019