

**CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on rules relating to the issuing of orders for repair of underlying conditions in buildings

Date/Time: May 7, 2013 /10:00 A.M. to 11:00 A.M.

Location: 100 Gold Street, Room 5R1
New York, NY, 10038

Contact: Assistant Commissioner Grace DeFina
100 Gold Street, Room 4C1
New York, New York 10038

Proposed Rules

Pursuant to the authority vested in the City of New York Department of Housing Preservation and Development (HPD) by Chapter 61 of the New York City Charter (Charter) and by New York City Administrative Code §27-2091 and in accordance with Charter §1043(b), HPD proposes rules relating to the issuing of orders for repair of underlying conditions in buildings. The proposed rules were not included in HPD's regulatory agenda because they are proposed as the result of recent amendments to Administrative Code §27-2091.

Instructions

- Prior to the hearing, written comment regarding these rules may be sent to Assistant Commissioner Grace DeFina, 100 Gold Street, Room 4C1, New York, New York 10038. Written comments may also be submitted electronically through NYCRULES at www.nyc.gov/nycrules, on or before May 7, 2013.
- Individuals seeking to testify should notify HPD at the above address prior to the date of the hearing. Speakers will be limited to five minutes.
- Individuals requesting a sign language interpreter or other form of reasonable accommodation for a disability should notify Assistant Commissioner Grace DeFina at the above address by April 23, 2013.
- After the hearing, written comments and a summary of oral comments received at the hearing may be requested by calling the Office of Legal Affairs, between 9:00 A.M. and 5:00 P.M. at (212) 863-8381.

STATEMENT OF BASIS AND PURPOSE

Administrative Code §27-2091 was recently amended by Local Law #6 of 2013 to provide that the Department of Housing Preservation and Development (HPD) may issue an order requiring a building owner to correct underlying conditions in a building that have caused or are causing a violation of the Housing Maintenance Code or of other State and local laws that impose requirements on dwellings.

The legislation authorizes HPD to set the criteria used to select buildings for issuance of such orders to correct underlying conditions. The proposed rules target buildings that have recurring violations caused by infrastructure problems, where an owner repeatedly performs cosmetic repairs rather than addressing the underlying cause. The criteria proposed in this rule are intended to focus on buildings that have recurring water leak and mold violations where owners have failed to address the impaired building system that is causing those violations. HPD expects to identify and issue these orders to approximately 50 such buildings per year, giving priority to buildings based on the number and severity of violations. HPD will not issue orders to one- or two- family buildings or to certain buildings that are subject to other enforcement actions by HPD or that may be the subject of a loan from HPD.

Under the legislation, an owner has a four-month window from the date of issuance of the order to correct the underlying conditions and remove violations from HPD's records. Owners may request a two-month extension by submitting specific documentation identifying the underlying condition and showing that the required work will be completed within the extended time period.

The rules also specify the process for an owner to have a building removed from the program through submission of proof of infrastructure repair and dismissal of violations, leading to the rescission of HPD's order. The Department may also rescind an order if the building is subject to another enforcement action by HPD or is the subject of a loan from HPD, or if the repair work was completed by HPD.

“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.

New material in the following rule is underlined, deleted material is in [brackets].

Section one. Title 28 of the Rules of the City of New York is amended by adding a new Chapter 44 to read as follows:

CHAPTER 44
ORDERS BY THE DEPARTMENT FOR REPAIR OF UNDERLYING CONDITIONS

§44-01 Definitions.

As used in this chapter, the following terms have the following meaning:

(a) "Class B violation" means a hazardous violation of the Housing Maintenance Code.

(b) "Class C violation" means an immediately hazardous violation of the Housing Maintenance Code.

(c) "HDC" means the Housing Development Corporation or its successor.

(d) "Department" or "HPD" means the New York City Department of Housing Preservation and Development or its successor.

(e) "Housing Maintenance Code" means chapter two of title 27 of the Administrative Code of the City of New York.

(f) "Underlying Condition" means a physical defect or failure of a building system that is causing or has caused a violation of the Administrative Code, Multiple Dwelling Law, or any other state or local law that imposes requirements on dwellings, including, but not limited to, a structural defect or failure of a heating, plumbing, or other system.

§44-02. Criteria.

(a) The Department may identify buildings for issuance of orders to correct Underlying Conditions based upon the following criteria:

(1) A building with a Class B or Class C violation on record related to the existence of mold or water leaks that was issued by the Department within the prior year preceding issuance of the order that has not been properly certified as corrected by the owner, or that was corrected by the Department, and such building:

(i) Contains three to five dwelling units and at least 50% of such units have one such violation;

(ii) Contains six to nine dwelling units and at least 25% of such units have one such violation; or

(iii) Contains ten dwelling units or more and at least 15% of such units have one such violation.

(2) The Department will prioritize selection of buildings meeting the criteria in paragraph (1) of this subdivision first by those buildings with the highest total number of Class C violations relating to the existence of mold or water leaks, followed by those buildings with the highest total number of both Class C and Class B violations relating to the existence of mold or water leaks.

(b) The Department may exclude a building from the issuance of an order to correct Underlying Conditions where such building otherwise meets the criteria in paragraph (1) of subdivision (a) of this section, but such building is:

(1) A one- or two-family building;

(2) Subject to an order issued in the Alternative Enforcement Program pursuant to New York City Administrative Code §27-2153;

(3) Subject to the appointment of an administrator under the 7A Program pursuant to Article 7A of the New York State Real Property Actions and Proceedings Law;

(4) Subject to a comprehensive enforcement action by the Department;

(5) Conveyed to a new owner after an in rem judgment of foreclosure in favor of New York City in the Third Party Transfer Program pursuant to New York City Administrative Code §11-412.1 within the last five years; or

(6) The subject of a preservation loan made by HPD or HDC within the last two years.

§44-03. Compliance and Documentation.

(a) An owner must comply with an order issued by the Department within four months of the issuance of an order, or within an additional two months upon approval of such extension by the Department, and submit the documentation required by this section.

(b) To request an extension of two months to comply with an order, an owner must submit the following documentation to the Department within two months of issuance of such order:

(1) An affidavit from a New York State licensed professional engineer or registered architect in a form approved by the Department identifying the Underlying Condition that is the source of the mold or water leak; and

(2) An affidavit from the owner of the building in a form approved by the Department stating that the Underlying Condition and related violations will be corrected, describing the work that will be performed to correct such Underlying Condition and violations, and stating that the work will be completed within the extended time period.

(c) To request a rescission of the order issued by the Department, an owner must submit the documentation required by paragraph 1 or paragraph 2 of this subdivision within four

months of issuance of the order, or within six months of such issuance if an extension was granted by the Department. In addition, the Department will not grant a rescission unless it finds, after inspection, that at least 80% of the mold and water leak violations have been repaired.

(1) If there are no Underlying Conditions:

(i) An owner must submit an affidavit from a New York State licensed professional engineer or registered architect in a form approved by the Department stating that there are no Underlying Conditions that are causing the mold and water leak violations; and

(ii) An owner must submit a completed dismissal request form pursuant to 28 RCNY Chapter 9.

(2) If Underlying Conditions and related violations have been repaired:

(i) An owner must submit an affidavit from a New York State licensed professional engineer or registered architect in a form approved by the Department identifying the Underlying Condition that was the source of the mold or water leak violations, stating that the Underlying Condition and related violations were properly repaired, and identifying who repaired the Underlying Condition and related violations; and

(ii) An owner must submit a completed dismissal request form pursuant to 28 RCNY Chapter 9.

(d) The Department may also rescind an order for the following reasons:

(1) An administrator had been appointed for the building pursuant to Article 7A of the Real Property Actions and Proceedings Law and this fact became known to the Department after issuance of the Underlying Conditions order;

(2) A preservation loan was closed by HPD or HDC during the four- or six-month period for compliance with the Underlying Conditions order;

(3) HPD completed the repair work required under the Underlying Conditions order;

(4) HPD selected a building for participation in the Alternative Enforcement Program pursuant to New York City Administrative Code §27-2153 during the four- or six-month period for compliance with the Underlying Conditions order; or

(5) The order was issued to a building that is otherwise excluded from such issuance pursuant to §44-02(b) of this chapter.

**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: Orders to Correct Underlying Conditions

REFERENCE NUMBER: 2013 RG 7

RULEMAKING AGENCY: Department of Housing Preservation and Development

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: March 14, 2013

**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: Orders to Correct Underlying Conditions

REFERENCE NUMBER: HPD-9

RULEMAKING AGENCY: HPD

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/ Ruby B. Choi
Mayor's Office of Operations

March 14, 2013
Date