

NEW YORK CITY FIRE DEPARTMENT

Notice of Adoption of Amendments to Fire Department Rule 3 RCNY 401-06, entitled “Fire and Emergency Preparedness Guide, Checklist and Notices”

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Fire Commissioner of the City of New York pursuant to Sections FC102.6.3 and FC406.2.3 of the New York City Fire Code (Title 29 of Administrative Code of the City of New York), and in accordance with the requirements of Section 1043 of the New York City Charter, that the New York City Fire Department has adopted the above final rule.

The rule was originally published for public comment in the City Record on March 16, 2020, and re-published for public comment on August 24, 2020. An on-line public hearing was held on September 30, 2020.

The rule shall take effect on January 1, 2021, provided, however, that hurricane evacuation zone notices shall be posted by April 30, 2021.

The Notice of Adoption, final rule and the Statement of Basis and Purpose of Final Rule, will be available on the Fire Department’s website (www.nyc.gov/fdny) and NYCRULES (www.nyc.gov/NYCRULES).

Statement of Basis and Purpose of Final Rule

The Fire Department adopts this rule to implement the provisions of Local Law No. 103 of 2019 regarding hurricane evacuation notices and to require apartment building owners to take certain actions to ensure compliance with the requirement of fire safety and emergency preparedness notices on dwelling unit doors.

The Fire Department re-noticed this rule for public comment on changes to the rule made in response to the public comments received on the rule as it was originally proposed.

Hurricane Evacuation Notices

Local Law 103 requires apartment building owners (Group R-2 buildings and occupancies) within a hurricane evacuation zone, as designated by Commissioner of the Office of Emergency Management (now New York City Emergency Management or NYCEM) to post a hurricane evacuation notice in a common area of the building. The notice is intended to inform building occupants of the current hurricane evacuation zone designation for the building and the means by which building residents can determine the closest hurricane evacuation centers, namely by calling 311 or viewing the online Hurricane Evacuation Zone finder operated by NYCEM. The law provides that “[s]uch notice shall be in such form as prescribed by the commissioner by rule and shall be posted within a common area of the building and such other locations as set forth in the rules.”

Fire Department rule 3 RCNY § 401-06 sets forth emergency preparedness requirements for apartment buildings. This rule amends Section 401-06 to require the posting of the hurricane

evacuation notice in a conspicuous location in the building lobby at street level, either near the main building entrance, in the mailbox area or by the elevators or main stairwell.

The rule prescribes that the notice take the form of the hurricane evacuation notice posted on NYCEM's website and that it be affixed to the wall by adhesive or in a frame, displayed in an enclosed, locked bulletin board, or otherwise durably and securely posted.

Fire Safety Notices

Fire and emergency preparedness notices (entitled "Fire Safety Notices") are required to be posted on the interior side of dwelling unit doors. The posting of this notice has been required for almost 20 years.

The Fire Department does not ordinarily inspect dwelling units and therefore does not have a means to enforce replacement of missing or damaged notices. When it has found missing or damaged notices, owners have maintained that the rule does not clearly require prompt replacement of the notices.

To address these issues, the Fire Department amends Section 401-06 to require building owners and cooperative or condominium association board of directors, or their representatives, to:

- inspect each dwelling unit at least once every three years to confirm the presence of the notice, and to replace missing or damaged notices whenever the owner or the owner's managing agent or building staff become aware of a missing or damaged notice, or, in apartment buildings with a cooperative or condominium form of ownership, require the apartment owner to post the replacement notice provided by such board; and/or
- obtain written certification from the tenant or apartment owner that the notice has been posted by delivering to each dwelling unit a form for completion and return to the owner or board that includes a statement from the Fire Department regarding the importance of the notice.

Public Comment on Original Publication Notice and Fire Department Response

Three major organizations representing residential building owners and managers submitted comments objecting to the inspection requirement that owners inspect apartments for compliance with the longstanding requirement that a Fire Safety Notice be posted on the back of each dwelling unit door. Comments were also submitted with respect to the requirements for the hurricane evacuation notice.

- **Hurricane Evacuation Notice**

Comment: Tenants would be better informed if the fire and emergency preparedness guide for apartment buildings (which is entitled "NYC Apartment Building Emergency Preparedness Guide") and evacuation/emergency preparedness checklist indicated that the hurricane evacuation zone could be found on a notice in the building lobby.

Response: The suggestion is a good one. Consideration will be given to revising the Guide and checklist for the next distribution cycle. In the interim, building owners are free to reference the hurricane evacuation notice in the “other information” section on the building-specific Building Information Section that accompanies the Guide and checklist.

Comment: We urge the Fire Department to consider the consolidation of apartment building notices with other notices required by the agency in an effort to reduce the "wallpapering" of common areas in apartment buildings. The reality for apartment building owners, particularly for less sophisticated, smaller owners, is that maintaining and keeping track of the extraordinary number of notices required by the City, and protecting those notices from vandalism, is an extremely burdensome task.

Response: We are sympathetic to this concern. We appreciate that other City agencies have signage requirements but we cannot adjust those requirements. This Fire Department rule requires three lobby postings: the Building Information Section that accompanies the Guide, a copy of the Fire Safety Notice posted in the apartments, and now the hurricane evacuation notice. The Fire Department has no objection to a single posting consolidating these requirements, provided it is legible and understandable. Building owners and/or their associations should contact the Fire Department through the Fire Code public inquiry form on the Fire Department website to obtain appropriate guidance.

- **Fire Safety Notice Inspection**

Comment: Apartment shareholders/unit owners receive ample instruction regarding building emergency protocols from the distribution of the Guide and other emergency preparedness information.

Response: The implication of this comment is that the posting of a Fire Safety Notice in each apartment is unnecessary. The Fire Department begs to differ. When faced with a fire in one’s building, with smoke filling the public hallway corridors, not everyone will have the presence of mind to remember the instructions provided in the Guide, or the time to search for documents with instructions. Apartment residents who complete the evacuation/emergency preparedness checklist and given thought in advance to what actions they will take will be better prepared, but there is no substitute to having evacuation/shelter in place instructions posted right on the apartment door.

Comment: The rule should clarify how building owners should maintain records of the apartment inspection and indicate how these requirements will be enforced.

Response: Agreed. Section 401-06(e)(6)(C)(I) of the rule has been revised accordingly.

Comment: When the requirements for Fire Safety Notices were first promulgated, it was acknowledged that shareholders and unit owners often have strong feelings about the decor in their homes, and therefore it was required that boards of housing cooperatives and condominiums simply distribute these notices to these resident owners, provide replacements when requested and post the notices on any rental units that were under the control of the cooperative or condominium. We know of neither problems nor complaints that have arisen with this practical system in the intervening decades.

Response: Preferences for apartment décor cannot supersede interests of public safety. There is reason to believe that there is a lack of compliance with the posting requirement and hence the reason for this amendment. However, the Fire Department has attempted to balance the burden of compliance by allowing certification of compliance by the shareholder/unit owner (see below).

Comment: The rule should not make the Fire Safety Notice inspection requirement applicable to cooperatives and condominiums. The obligation to inspect should fall on the shareholder/unit-owner rather than the board. Shareholder/unit owners are better positioned than the Board or managing agent to conduct such an inspection. Other City laws require these individuals – rather than boards or managing agents – to conduct inspections.

Response: In light of the comments indicating that apartment residents (whether rental tenants or shareholder/unit owners) should be responsible for Fire Safety Notice compliance, we have revised the rule to allow certification by the tenant/shareholder. Apartment building owners and managers will be required to inspect an apartment unit only if such certification is not timely received. See Section 401-06(e)(6)(C).

Comment: With the COVID-19 crisis, this is not the time to impose a new mandate for intrusive inspections into individual apartment.

Response: We understand the concern associated with apartment inspections at this time. Accordingly, we have revised the rule to require the Fire Safety Notice inspection once every three years and timed to coincide with the distribution of the Guide and related documents. Accordingly, the obligation to conduct inspections (for apartments that have not submitted certifications) would not arise until after April 2022.

Public Comment on Second Publication Notice and Fire Department Response

The Fire Department received a single comment in response to the second publication notice. The comment, from a representative of a public housing authority, indicated that the authority was required to conduct periodic inspections of all apartments. The comment urged that the rule be revised to make clear that building owners can elect to conduct inspections, and, if they do so, distribution of a certification form to apartment residents is not required.

The Fire Department agrees with this comment. The changes to the rule were intended to expand, not limit, the options available to apartment building owners and boards of directors. The final rule has been amended accordingly. The language of the notice to apartment residents has also been clarified.

New text is underlined. Text to be deleted is [bracketed].

Guidance with respect to the interpretation of the Fire Code and Fire Department rules may be obtained using the Public Inquiry Form on the Fire Department's website, <http://www1.nyc.gov/site/fdny/about/resources/code-and-rules/nyc-fire-code.page>.

Section 1. Section 401-06 of Chapter 4 of Title 3 of the Rules of the City of New York is amended to add a new subdivision (h), and to amend subdivisions (a) and (b) and paragraph 6 of subdivision (e), to read as follows:

§ 401-06 Fire and Emergency Preparedness Guide, Checklist and Notices

- (a) Scope. This section sets forth standards, requirements and procedures for the preparation, posting and distribution of apartment building fire and emergency preparedness guides and notices pursuant to FC401.6; the emergency preparedness and evacuation planning checklist pursuant to *Administrative Code* §15-134; [and] the “close the door” notices required by *Administrative Code* §15-135; and the hurricane evacuation notices pursuant to FC406.2.3.
- (b) General Provisions
 - (1) Applicability. This section applies to all buildings and occupancies classified in Occupancy *Group R-2*, except:
 - (A) any building or occupancy that is occupied as a homeless shelter and that has a *fire alarm system with voice communication capability*; and
 - (B) school dormitories, college and university dormitories, and student apartments (as that term is defined in New York City Housing Maintenance Code 27-2004(g) and *Building Code* Section 907.2.9.1).
 - (2) Fire and emergency preparedness guide. The *owner* of a building or occupancy subject to this section shall prepare and distribute to building residents and building staff a fire and emergency preparedness guide, including a building information section completed by the *owner*, in compliance with the requirements of FC401.6 and R401-06(c).
 - (3) Annual fire and emergency preparedness bulletin. The *owner* of a building or occupancy subject to this section shall reproduce and distribute to building residents and building staff an annual fire and emergency preparedness bulletin in compliance with the requirements of R401-06(d).
 - (4) Fire and emergency preparedness notices. The *owner* of a building or occupancy subject to this section shall prepare, post and maintain fire and emergency preparedness notices in compliance with the requirements of R401-06(e).
 - (5) Emergency preparedness/evacuation planning checklist. The *owner* of a building or occupancy subject to this section shall prepare and distribute to building residents and building staff an emergency preparedness/evacuation planning checklist, in compliance with the requirements of R401-06(f).
 - (6) Close the door notices. The *owner* of a building or occupancy subject to this section shall prepare, post and maintain close the door notices in compliance with the requirements of R401-06(g).
 - (7) Hurricane evacuation notices. The *owner* of a building or occupancy subject to this section shall prepare, post and maintain a hurricane evacuation notice in compliance with the requirements of R401-06(h).

(8) Access to dwelling units. Tenants and other occupants of dwelling units in buildings and occupancies subject to this section shall allow the *owner* of such *premises* access to such dwelling unit, upon reasonable notice, for purposes of compliance with this section.

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(e) Fire and Emergency Preparedness Notice Requirements

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(6) Maintenance and replacement. The *owner* shall maintain the fire and emergency preparedness notice and the building information section (Part I of the fire and emergency preparedness guide) in the common area and maintain the fire and emergency preparedness notice on dwelling unit doors.

(A) The *owner* shall prepare, distribute and post any amended building information section within sixty days of any material change in building conditions requiring such amendment.

(B) The *owner* shall replace any missing or damaged notice on [the] a dwelling unit door, or, in an apartment building with a cooperative or condominium form of ownership, require the apartment owner to post a replacement notice provided by the cooperative or condominium board of directors, in all of the following circumstances, and may charge the building resident the reasonable cost of its replacement:

(1) whenever the *owner* or the *owner's* managing agent or building staff become aware of a missing or damaged notice;

(2) prior to any lawful change in occupancy of the dwelling unit[. The owner shall replace any missing or damaged notice]; and

(3) at any other time upon written request of the building resident. [The building resident may be charged the reasonable cost of replacement.]

(C) The *owner*, or cooperative or condominium board of directors, shall periodically monitor and enforce compliance with this requirement by requesting and obtaining residential certifications and/or conducting inspections, as follows:

(1) **Resident notice and certification program.** Except as otherwise provided in R401-06(e)(6)(C)(2), the *owner* or board of directors shall distribute to each apartment resident a resident notice and, for completion and return to such *owner* or board, a resident certification form by which the tenant or apartment owner may certify that the fire and emergency preparedness notice has been

posted and is being maintained on their dwelling unit door. If the resident certification form for a dwelling unit is not completed and returned by the next April 30th following the date of mailing, representatives of the owner or board of directors shall conduct an inspection of such dwelling unit within one (1) year. If the resident certification form is returned indicating the posting is missing, the owner or board shall promptly arrange with the apartment resident to post the notice. The resident notice and resident certification form shall be distributed with the fire and emergency preparedness guide in the manner prescribed in R401-06(c)(5) and shall contain the following information:

(A) **Resident notice.** The following language shall be prominently printed in bold lettering not smaller than 14 point Times New Roman typeface or equivalent: “Fire Department Notice. Building owners and apartment residents are required to post a small Fire Safety Notice (not larger than 6” x 9,” excluding the frame if framed) on the inside of the main entrance door to your apartment. We regret the intrusion, but the Fire Safety Notice is designed to save your life and those of your family. It contains important information and guidance about what to do in the event of a fire in your building. This information needs to be immediately available to all apartment residents if there is a fire. For additional information, refer to the NYC Apartment Building Emergency Preparedness Guide, which accompanies this notice.

- If the Fire Safety Notice is posted, please sign and return the certification confirming its presence. False statements are punishable by law.
- If the Fire Safety Notice is not posted, please complete and return the form to indicate it is missing and to request that it be posted.

Failure to complete and return the resident certification form will require the building owner/manager to inspect your apartment to check on the presence and condition of the Fire Safety Notice. The Fire Safety Notice will be posted at no expense to you unless the notice posted in your apartment at the time you moved in is missing or damaged. Thank you for your cooperation.”

(B) **Resident certification.** A place for the apartment resident’s signature and the date shall be provided under the following certification: “I hereby certify that the Fire Safety Notice provided by the building owner has been posted and is being maintained on the inside of the main entrance door to my apartment. I understand false statements are punishable by law.” The resident certification form shall also include a means of indicating

that the Fire Safety Notice has not been posted and requesting that it be posted.

(C) **Return instructions.** Instructions for returning the resident certification form to the *owner* or board of directors, including pre-paid postage if mailing is required, shall be included.

(2) **Inspection program.** The *owner* or board of directors may elect to forgo distribution to apartment residents of the resident notice and resident certification form pursuant to R401-06(e)(6)(C)(I) by establishing an inspection program by which representatives of the *owner* or board conduct inspections of all apartments at least once every three (3) years to ascertain the presence and condition of the fire and emergency preparedness notice.

(3) **Recordkeeping.** The *owner* or board shall document compliance with these requirements by maintaining a written record of the following for a period of at least three years:

(A) the distribution of the resident notice and resident certification form to apartment residents, or documentation of an inspection program to ascertain the presence and condition of the fire and emergency preparedness notice in all apartments;

(B) the apartments for which the resident certification form was completed and returned;

(C) the date of inspection (or attempted inspections) of each apartment, except apartments for which a resident certification confirming presence of the fire and emergency preparedness notice has been received; and

(D) for each apartment inspected, the presence or absence of the posted fire and emergency preparedness notice, and the posting of a replacement notice or other remedial action taken if the notice is missing or damaged.

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(h) Hurricane Evacuation Notice

(1) Purpose. In buildings and occupancies within a New York City Department of Emergency Management (NYCEM) designated hurricane evacuation zone, the hurricane evacuation notice shall inform *building occupants* of their building or occupancy's current hurricane evacuation zone designation and how to locate the closest hurricane evacuation center. Buildings and occupancies outside of

designated hurricane evacuation zones are not required to post a hurricane evacuation notice.

- (2) Content. The hurricane evacuation notice shall identify the hurricane evacuation zone in which the building or occupancy is located (by specifying the numerical zone designation). The notice shall also indicate that the closest hurricane evacuation center can be located either by calling 311 or visiting the website operated by NYCEM and specifying the webpage URL.
- (3) Form. The hurricane evacuation notice shall be in the form prescribed by the New York City Department of Emergency Management and posted on that agency's website, at www1.nyc.gov/site/em/resources/zoneposters.page. The notice shall be printed in the English language and may be posted in such other additional languages (including symbols) as the NYCEM posts on its website or the *owner* concludes would benefit the *building occupants*.
- (4) Posting. The hurricane evacuation notice shall be posted in a conspicuous location in the building lobby at or near the main building entrance, common mailbox area customarily used by *building occupants*, street level elevators or a main stairwell. The notice shall be affixed to the wall by adhesive or in a frame, displayed in an enclosed, locked bulletin board, or otherwise durably and securely posted.
- (5) Maintenance and replacement. Missing or damaged notices shall be replaced promptly.