

NEW YORK CITY FIRE DEPARTMENT

Notice of Opportunity to Be Heard on
Proposed Amendments to
Fire Department Rule 3 RCNY 401-06,
entitled
“Fire and Emergency Preparedness Guide, Checklist and Notices”

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Fire Department is proposing to amend Section 401-06 of Chapter 4 of Title 3 of the Rules of the City of New York (RCNY) to implement Local Law No. 103 of 2019 to require posting of “hurricane evacuation” signs in the lobby of apartment buildings. The Fire Department also proposes to require apartment building owners to periodically inspect the fire safety notices on dwelling unit doors to ensure their maintenance, and if necessary, replacement if the apartment resident does not return a form certifying that the notice is posted.

When and where is the hearing? In the interest of public safety, an in-person public hearing on the proposed rule will not be held. Instead, the Fire Department will conduct an on-line public hearing, using the “Go To Meeting” application, as set forth below. The public hearing will take place at 11:00 a.m. on **Wednesday, September 30, 2020**.

How do I comment on the proposed rule? Anyone can comment on the proposed rules by:

- **Website** - You can submit comments to the Fire Department through the NYC rules website at <http://rules.cityofnewyork.us>, or on the “FDNY Rules” page of the Fire Department’s website, <http://www1.nyc.gov/site/fdny/codes/fire-department-rules/fire-dept-rules.page>.
- **Mail** - You can mail written comments to Code Development Unit, Bureau of Fire Prevention, New York City Fire Department, 9 MetroTech Center, Room 3N2, Brooklyn, NY 11201.
- **Speaking at the hearing** - **Anyone who wants to comment on the proposed rule at the on-line public hearing must sign up by emailing code.develop@fdny.nyc.gov. You will receive by reply email a link to the GoToMeeting and call-in information.** The time that you can speak at the hearing may be limited.

Join through Internet:

To join the hearing, use your Internet browser to click on the URL link that will be sent to you (or copy the link and paste it into your browser’s address bar). Then follow the prompts to enter the meeting password and attendee ID.

When joining the meeting choose either “use computer for audio” or “call in” for the audio portion of the public hearing. The information needed to connect (phone number, access code and/or attendee ID) will be provided after you join the Go To Meeting. If

you have low bandwidth or inconsistent Internet connection, we suggest you use the “call-in” option.

Join by phone only (conference call):

To join the hearing only by phone, use the phone number and access code that you will receive by reply email.

Is there a deadline to submit written comments? Yes, written comments must be submitted by September 30, 2020.

What if I need assistance to participate in the hearing? You must notify the Bureau of Fire Prevention if you need a sign language interpreter or other reasonable accommodation for a disability at the hearing. Write to us at the address above or telephone us at (718) 999-2042. Advance notice is requested to allow sufficient time to arrange the accommodation. Please notify us by Monday, September 14, 2020.

The Fire Department Auditorium is wheelchair accessible (use the MetroTech Commons entrance).

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, a record of the hearing and copies of the written comments will be available to the public at the Bureau of Fire Prevention.

What authorizes the Fire Department to make this rule? Section 1043(a) of the New York City Charter, and 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) authorize the Fire Department to propose this rule.

Where can I find the Fire Department rules? The Fire Department rules are codified in Title 3 of the Rules of the City of New York and can be viewed on the Fire Department’s website, <http://www.nyc.gov/fdny>, or at <http://rules.cityofnewyork.us>.

What laws govern the rulemaking process? The Fire Department must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the New York City Charter.

Statement of Basis and Purpose of Proposed Rule

The Fire Department proposes to adopt 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 notices on dwelling unit doors.

The Fire Department is re-noticing this proposed 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. The proposed rule would amend 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 proposed 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 proposes to amend 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 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 proposed 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 proposed 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.

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

“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 1. Section 401-06 of Chapter 4 of Title 3 of the Rules of the City of New York is proposed to be 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.

* * *

(e) Fire and Emergency Preparedness Notice Requirements

* * *

(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 as follows:

(1) **Inspection.** Representatives of the *owner* or board shall inspect each dwelling unit at least once every three years to ascertain the presence and condition of the notice, unless certification is

received from the tenant or apartment owner of each apartment in accordance with R401-06(e)(6)(C)(2). A written record shall be kept for three years of the date of inspection (or attempted inspections) of each apartment for which certification is not received, the presence or absence of the posted fire safety notice, and remedial action taken if the notice is missing or damaged.

(2) **Resident certification.** In conjunction with the distribution of the fire and emergency preparedness guide, the *owner* or board of directors shall distribute to each apartment resident, for completion and return to such *owner* or board, a notice and certification form by which the tenant or apartment owner may certify that the fire safety notice has been posted and is being maintained on their dwelling unit door. The notice and certification form shall be distributed with such guide in the manner prescribed in R401-06(c)(5), and contain the information set forth in R401-06(e)(6)(C)(3). If the form is not completed and returned for a dwelling unit by the next April 30th following the date of mailing, an inspection shall be conducted of such dwelling unit within one (1) year.

(3) The notice and certification form shall contain the following information:

(A) **Fire Department 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. Please post the Fire Safety Notice supplied by the building owner and complete and promptly return this form to the building owner. False statements are punishable by law. Failure to return the notice will require the building owner/manager to inspect your apartment and post the Fire Safety Notice, 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.”

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

(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.

**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: Emergency Evacuation Notices for Buildings Located in Coastal Flood Plain

REFERENCE NUMBER: 20 RG 106

RULEMAKING AGENCY: Fire Department

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: July 28, 2020

**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: Emergency Evacuation Notices for Buildings Located in Coastal Flood Plain.

REFERENCE NUMBER: FDNY-24

RULEMAKING AGENCY: Fire Department

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 enforcement action for noncompliance with Fire Department rules typically provides for an opportunity to cure the violation. This is set forth in the Department's Administrative Code chapter and is not included in the rules.

Andrea Hernandez
Mayor's Office of Operations

August 12, 2020
Date