

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

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Housing Preservation and Development (“HPD”) is proposing amendments to Chapter 53 of Title 28 of the Rules of the City of New York, which concerns the requirements for certifications of no harassment for approval of construction documents or permits for the Certification of No Harassment Pilot Program Buildings. The proposed amendments update and clarify the rules in accordance with recently enacted Local Law 140 of 2021.

When and where is the hearing? HPD will hold a public hearing on the proposed rules. The public hearing will take place on WEBEX on April 28, 2022 from 10 AM to 11 AM.

To participate in the public hearing, enter the Webex URL:
<https://nychpd.webex.com/nychpd/j.php?MTID=mdb25250d2e2d6402adf68e6dc1acf698>

If prompted to provide a password or number, please enter the following:

Meeting number: 2339 344 5256 Password: yBCHuDRT837

Join by video system
Dial 23393445256@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

You may also join via audio device or dial in via phone:

To dial in by phone, please use the following dial-in phone number and participant access code:

Join by phone
+1-646-992-2010 United States Toll (New York City)

+1-408-418-9388 United States Toll

Access code: 2339 344 5256

Password if requested: yBCHuDRT837

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

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

- **Website.** You can submit comments to HPD through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@hpd.nyc.gov.

- **Mail.** You can mail comments to Assistant Commissioner Martha Weithman, Department of Housing Preservation and Development, 100 Gold Street, Room 6Z1, New York, N.Y. 10038.
- **Fax.** You can fax comments to Deputy Commissioner AnnMarie Santiago at 212 863-7010.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 212 863-8602 or by emailing rifenm@hpd.nyc.gov before 5:00 PM on April 27, 2022. Although you can indicate during the hearing that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline for submission of comments is April 28, 2022.

What if I need assistance to participate in the hearing? You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at rifenm@hpd.nyc.gov. You may also tell us by telephone at 212 863-8602. We request advance notice so that we have sufficient time to arrange the accommodation. Please tell us by April 14, 2022. This hearing has the following accessibility options available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website <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 rules will be available to the public at the Office of Legal Affairs, 100 Gold Street, Fifth Floor, New York, N.Y. 10038.

What authorizes HPD to make these rules? Sections 1043 and 1802 of the New York City Charter (“City Charter”) and sections 27-2093.1, and 28-505.3 of the Administrative Code of the City of New York authorize HPD to make these proposed rules. These rules were not included in HPD’s regulatory agenda for this Fiscal Year because they were not anticipated.

Where can I find HPD’s rules? The agency’s rules are in Title 28 of the Rules of the City of New York.

What laws govern the rulemaking process? HPD must comply with Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

The proposed rules amend Chapter 53 of Title 28 of the Rules of the City of New York, concerning the Certification of No Harassment Pilot Program. The City Council recently amended the Pilot Program by passing Local Law 140 of 2021, and these proposed rules reflect that new local law.

The proposed rules amend the Pilot Program's coverage of construction by excluding interior demolition of occupied units to repair such units, where the Commissioner of the Department of Buildings has determined that issuance of a construction permit is necessary to perform work to protect public health and safety because the health and safety issues have already resulted in a violation issued by a City agency.

The proposed rules also amend which buildings may be included in the Pilot Program. Under the proposed rules, any building with six or more units that meets the Building Quality Index in any City community district may be included. Any building where an administrator has been discharged under article 7-A of the Real Property Actions and Proceedings Law may also be included, unless such building is the subject of a loan provided by or through the Department or the New York City Housing Development Corporation for the purpose of rehabilitation. Buildings in the Department's Alternative Enforcement Program (AEP) may be included only when they have been discharged from the AEP. And buildings that are the subject of a full vacate order may not be included if the vacate order was due to a fire in the building.

The proposed rules also specify that if (1) the Department of Buildings issues a stop-work order or rescinds or revokes an approval of construction documents at HPD's request because of work without a permit or a required certification of no harassment (CONH), or (2) HPD denies a CONH, such stop-work order, rescission, revocation or denial is deemed to be a finding of harassment, and the CONH is to be denied or rescinded and the building restored to its legal configuration.

Finally, the proposed rules clarify the new effective date of the law for the purpose of the five-year look back period applicable to investigations for harassment.

New material is underlined.

[Deleted material 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 53-01 of chapter 53 of title 28 of the rules of the city of New York is amended to read as follows:

§53-01 Definitions

Covered Categories of Work. The term "Covered Categories of Work" means the following types of construction or other work that require a building owner to obtain a Certification of No Harassment prior to approval of construction documents by the Department of Buildings:

(1) demolition of all or part of the Pilot Program Building, other than interior demolition conducted in the course of renovation of occupied units to repair such units where the commissioner of the department of buildings determines that issuance of such permit is necessary to perform work to protect public health and safety and where such health and safety issues have resulted in a violation being issued by the department, the department of buildings, or any other city agency;

(2) change of use or occupancy of all or part of a dwelling unit, any residential portion of the Pilot Program Building, or any part of such building serving such dwelling units;

(3) any alteration resulting in the addition or removal of kitchens or bathrooms, an increase or decrease in the number of dwelling units, or any change to the layout, configuration, or location of any portion of any dwelling unit;

(4) an application for a new or amended certificate of occupancy; and

(5) removal of a central heating system and replacement with an individually metered heating system, provided that this type of work shall be considered a Covered Category of Work for any plan approval or any application for a permit or renewal of a permit submitted to the Department of Buildings on and after September 1, 2019.

§2. Section 53-02 of chapter 53 of title 28 of the rules of the city of New York is amended to read as follows:

§53-02 Pilot Program List

(1) A Pilot Program List will be provided by the Department on its website[, and the initial Pilot Program List will published in the City Record] and may be amended and republished as necessary to include additional multiple dwellings.

(2) The criteria used to select buildings to be included on the Pilot Program List shall include:

(a) Buildings with scores on the Building Qualification Index indicating significant distress as determined by the Department[, and located within:

(i) Bronx community district 4,

(ii) Bronx community district 5,

(iii) Bronx community district 7,

(iv) Brooklyn community district 3,

(v) Brooklyn community district 4,

(vi) Brooklyn community district 5,

(vii) Brooklyn community district 16,

(viii) Manhattan community district 9,

(ix) Manhattan community district 11,

(x) Manhattan community district 12,

(xi) Queens community district 14, and

(xii) Any community district where any part of such district is subject to a City-sponsored Neighborhood-wide Rezoning after December 31, 2017. Such community district will be added to the Pilot Program List and included on the Pilot Program List on the Department's website within 30 days after it is designated];

(b) Buildings where a full vacate order has been issued by the Department or by the Department of Buildings within the five-year period prior to [July 24, 2018] October 31, 2021, except where such vacate order was issued due to a fire;

(c) Buildings where there has been active participation in the Department's alternative enforcement program pursuant to an order issued by the Department [for more than four months since February 1, 2016 and the Department has determined that an order will be issued] that have been discharged from such program on or after October 31, 2021, as of the date of the discharge determination by the Department. A building will be added to the Pilot Program List and included on the Pilot Program List on the Department's website within 30 days after it is [identified for issuance of an order by the Department] discharged from the program; and

(d) Buildings where there has been a final determination by New York State Homes and Community Renewal or any court having jurisdiction that one or more acts of Harassment were committed at such building after [September 27, 2013] October 31, 2016. A building will be added to the Pilot Program List and included on the Pilot Program List on the Department's website within 30 days after it is identified as having been the subject of such determination, provided, however that where such final determination was made on default judgment, and such default is opened by the court having jurisdiction, such building will be removed from the Pilot Program List within 30 days of notification by the owner unless such building meets other criteria for inclusion on such list.

(e) Buildings where an administrator has been discharged under article 7-A of the real property actions and proceedings law on or after October 31, 2021, as of the date of the court order discharging such administrator, unless such building is the subject of a loan provided by or through the department or the New York city housing development corporation for the purpose of rehabilitation that includes, but is not limited to, electric, heating, plumbing, roofing, windows, or another major component of the building. A building will be added to the Pilot Program List and included on the Pilot Program List on the Department's website within 30 days after the date of the court order.

§3. Section 53-03 of chapter 53 of title 28 of the rules of the city of New York is amended to read as follows:

§ 53-03 Criteria for the Building Qualification Index.

The criteria used to evaluate prospective Pilot Program Buildings for distress shall include:

(1) The number of open and closed hazardous and immediately hazardous violations of the housing maintenance code per adjusted dwelling unit that were issued by the Department within the five-year period prior to [July 24, 2018] October 31, 2021, rated on a range of values from zero to ten. For the purposes of this section, "adjusted dwelling unit" refers to the natural logarithm of dwelling units in the building, calculated in order to limit underweighting of serious building-wide violations in very large buildings.

(2) The total amount of paid or unpaid emergency repair charges per adjusted dwelling unit levied against the building within the five-year period prior to [July 24, 2018] October 31, 2021, rated on a range of values from zero to ten.

(3) The ratings in this section are based on the number of standard deviations above the average at the time of evaluation. Buildings above such average score 2.5 points, and an additional 2.5 points for each of up to 3 standard deviations above the average. The following scores will result in placement of a building on the Pilot Program List:

(a) Buildings with no ownership changes within a five-year period prior to [July 24, 2018] October 31, 2021, and a combined score of 15 or more for criteria in subdivisions (1) and (2) of this section;

(b) Buildings with one ownership change (b) within a five-year period prior to [July 24, 2018] October 31, 2021 and a combined score of ten or more for criteria in subdivisions (1) and (2) of this section; and

(c) Buildings with two or more ownership changes within a five-year period prior to [July 24, 2018] October 31, 2021, and a combined score of five or more for criteria in subdivisions (1) and (2) of this section.

§4. Chapter 53 of title 28 of the rules of the city of New York is amended by adding a new section 53-13 to read as follows:

§53-13 Issuance of Stop Work Order, or Rescission or Revocation of Construction Document Approval on Request, or Denial of Certification of No Harassment

(1) Where the Department of Buildings issues a stop-work order or rescinds or revokes an approval of construction documents at the request of the Department pursuant to section 28-505.8 for work without a permit or the required certification of no harassment, or where the Department denies a certification of no harassment pursuant to subparagraph (C) of paragraph (5) of subdivision d of administrative code 27-2093.1, such stop-work notice, rescission or revocation, or denial, shall be deemed to be a finding of harassment in violation of subdivision d of section 27-2005, and the certification of no harassment shall be denied or rescinded, as applicable, and the building shall be restored to its legal configuration prior to commencement of such work.

§5. This rule shall take effect immediately.

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: Amendment of Requirements for Certificate of No Harassment for Approval of Construction Documents

REFERENCE NUMBER: HPD-85

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;**
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and**
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.**

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

February 11, 2022
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 Requirements for Certificate of No Harassment for Approval of Construction Documents

REFERENCE NUMBER: 2022 RG 010

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: February 11, 2022