

**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 to amend rules relating to the repair of underlying conditions. The proposed amendments clarify documentation required to certify that all work to achieve compliance has been done in accordance with applicable laws.

When and where is the hearing? HPD will hold a public hearing on the proposed rules. The public hearing will take place virtually on **July 20, 2023** from 10 AM to 11 AM:

To participate in the public hearing, enter the Webex URL:

<https://nycphpd.webex.com/nycphpd/j.php?MTID=m1b7f50e054661af13eff837b5d275d66>

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

Meeting number: **2335 708 1523** Password: **nKNdKEu4c33**

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

Join by video system:

Dial **23357081523@webex.com**

You can also dial **173.243.2.68** and enter your meeting number

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

United States Toll (New York City) **+1-646-992-2010,,23357081523##**

United States Toll **+1-408-418-9388,,23357081523##**

Access code: **2335 708 1523**

Password if requested: **nKNdKEu4c33**

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 Deputy Commissioner AnnMarie Santiago, Department of Housing Preservation and Development, Room 6-01, 100 Gold Street, 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 212 863-8603 or by emailing wallaca@hpd.nyc.gov before **5:00 PM on July 19, 2023**. 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 **July 20, 2023**.

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 wallaca@hpd.nyc.gov. You may also tell us by telephone at 212 863-8603. We request advance notice so that we have sufficient time to arrange the accommodation. Please tell us by **June 30, 2023**. 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 27-2090 and 27-2091 of the New York City Administrative Code authorize HPD to make these rules. The rule was not included in the agency’s regulatory agenda as the local law amendment was 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

Subdivision c of Administrative Code section 27-2091, which was added by Local Law 6 of 2013, grants HPD the authority to issue an order to a building owner to correct any underlying condition existing in that building that has caused or is causing a violation of the Housing Maintenance Code, the New York State Multiple Dwelling Law, or any other state or local law that imposes requirements on dwellings. This is known as the Underlying Conditions Program. HPD selects approximately 50-100 buildings, per year, for participation in the Underlying Conditions Program. Selection is based on the severity of violations and the number of dwelling units affected by the underlying condition.

HPD promulgated rules that set criteria for selection of buildings for the Underlying Conditions Program, requirements regarding owner compliance with the Underlying Conditions Order, issued in accordance with Administrative Code section 27-2091 and circumstances under which HPD may rescind an Underlying Conditions Order. Amendments to the rules in 2022 added consideration of certain health indicators by the Department of Health and Mental Hygiene that are related to housing conditions as a factor to prioritize in the selection of buildings. The proposed amendments to the rules clarify the documentation required to demonstrate correction of the underlying conditions relating to mold and water leak violations in order to achieve compliance with the order and secure its dismissal. This clarification, regarding documentation, is intended to assist owners in correcting their violations relating to indoor allergen violations more expeditiously by informing them of the documents necessary to complete their certification of correction, which will assist in the rescission of the Underlying Conditions Order.

Section one. Paragraph 1 of subdivision c of section 44-03 of Chapter 44 of Title 28 of the rules of the city of New York is amended to read as follows:

§ 44-03 Compliance and Documentation.

(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[.]; and
- (iii) An owner must submit evidence that the building is in compliance with Administrative Code §27-2017.2(b) and 28 RCNY §54-02. An owner may elect to

use the Control of Pests and Other Asthma Allergen Triggers – Sample Investigation Form available at: [indoor-allergen-hazards-sample-investigative-report.pdf \(nyc.gov\)](#) to document the inspection and any remedial actions taken.

§2. Subparagraph (i) of paragraph 2 of subdivision (c) of section 44-03 of Chapter 44 of Title 28 of the rules is amended to read as follows:

(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 stating that such work to correct mold violations was performed pursuant to the work practices provided in Administrative Code § 27-2017.9 and 28 RCNY §54-04(b).

§3. Paragraph 2 of subdivision (c) of section 44-03 of Chapter 44 of Title 28 of the rules is amended by adding a new subparagraph (ii) to read as follows:

(ii) An owner must submit evidence that the building is in compliance with the owner's responsibility to notify tenant occupants and to investigate complaints, pursuant to Administrative Code §27-2017.2 (b) and 28 RCNY §54-02. An owner may elect to use the Control of Pests and Other Asthma Allergen Triggers – Sample Investigation Form available at: [indoor-allergen-hazards-sample-investigative-report.pdf \(nyc.gov\)](#) to document the inspection and any remedial actions taken.

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

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 Order to Correct Program Rules

REFERENCE NUMBER: 2023 RG 015

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

Date: May 1, 2023

Senior Counsel

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 Order to Correct Program Rules

REFERENCE NUMBER: HPD-89

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

May 1, 2023

Mayor's Office of Operations

Date