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TENER CONSULTING SERVICES
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October 20, 2025

NYC Department of Finance
Legal Affairs Division
375 Pearl Street, 30th Floor
New York, New York 10038
Attn.: Timothy Byrne
Email: DOFRules@Finance.nyc.gov

Re: Comments on Proposed Amendment of the Rules Relating to “completion” or “completion of construction” for ICAP applications

Dear Mr. Byrne:

Tener Consulting Services is a tax consulting firm assisting real property owners with tax and valuation matters. We routinely assist our clients with applications for property tax benefits, including those pursuant to the Industrial and Commercial Abatement Program (ICAP).

We are writing to express our concern with the practical implications of the proposed changes to §36-01 of Title 19 of the Rules of the City of New York as they relate to renovation projects.

The proposed addition to subsection (f)(2) creates a two-part test to determine project completion. The proposed updates state that the Department of Finance may determine completion based on (i) a site inspection or (ii) an architect’s or engineer’s certification.

In the Statement of Basis and Purpose of Proposed Rule, the Department of Finance states that the changes to §36-01(f) are intended to avoid situations where architects or engineers certify that work is complete when it has not been completed, in order to obtain additional ICAP benefits. We are concerned that this rationale does not take into account the distinct characteristics of renovation projects.

In contrast to new construction, renovation projects often consist of multiple discrete construction jobs that evolve over time as an owner’s plans for their building change. Such work may occur in separate phases, and there may be lags between construction stages depending on factors such as financing and leasing. The completion of a renovation project cannot be determined solely on the basis of a site inspection, especially when the work is structured in multiple phases.

The test for completion set forth in the proposed revision to subsection (f)(2) is an “or” test. Thus, Finance could declare a project complete on the basis of a site inspection without any additional information from an applicant. As a result, it is plausible that such a determination could occur before an applicant has completed an ICAP project, particularly if the project is structured in multiple phases. In this scenario, Finance’s determination of completion could also occur before an

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applicant files a Notice of Completion, before an applicant meets the Minimum Required Expenditure (as defined in §489-aaaaaa(10)), or before there is sufficient taxable growth to generate any ICAP abatement, despite an applicant's intention to continue construction.

The language of subsection (f)(2) could produce adverse results for owners if it elevates Finance's determination above the sworn statements of architects or engineers. If the Department of Finance has concerns about the veracity of those statements, they can be validated through inspection. The ICAP rules already allow for the denial, reduction, suspension, termination, or revocation of benefits where applicants engage in fraud under §36-15(c)(2).

If Finance deems a project complete and the applicant disagrees, the proposed rules contain no provision for applicants to supply information to dispute such a finding. The "or" test imposes no requirement that Finance consider anything other than its own inspection. This could give rise to litigation by applicants adversely affected by Finance's determination of project completion. Furthermore, if the Department of Finance unilaterally determines that a project is complete before the maximum allowable construction period, and later adds a physical assessment increase for the remaining work in a year after the post-construction tax year tax (as deemed by the Department of Finance), the applicant would be denied the ICAP benefit associated with that increase. This may compel applicants to pursue litigation against Finance to challenge the completion determination.

In order to protect against incorrect determinations of project completion, Finance could amend the current rules to require applicants who complete construction early to notify Department of Finance and further require a site inspection to confirm project completion. Implementing such a requirement would prevent unfair treatment of applicants who intend to utilize the maximum allowable construction window to complete their work while still allowing Finance to verify early completion claims and ensure the program's integrity. Such an approach would also reduce the risk of litigation that might otherwise ensue to adjudicate disagreements.

If the Department of Finance adopts the proposed language allowing it to declare projects completed based solely on its own inspection, and that differs from an applicant's determination of completion, at a minimum, the rules should be amended to include a notice provision requiring Finance to notify applicants when it deems a project complete and provide an opportunity to respond to that determination. Without such notice, applicants could inadvertently fail to meet other ICAP requirements whose deadlines are triggered by the construction completion date, including the Notice of Completion filing.

We urge the Department of Finance to reconsider the proposed amendments to §36-01. There are ample ways to deter bad actors without replacing the current requirements for construction completion with a test that may be wholly discretionary. The proposed changes fail to improve clarity and may ultimately lead to costly litigation to resolve disputes.

Thank you for your consideration of these points.

Sincerely,

Tener Consulting Services