New York City Department of Finance

Notice of Adoption of Final Rules

Pursuant to the authority vested in the New York City Department of Finance ("DOF") by sections 1043(a) and 1504 of the New York City Charter, as well as chapter 32 of title 11 of the Administrative Code of the City of New York, DOF is adopting rules relating to the administration of a surcharge on certain real properties that do not serve as a primary residences.

Statement of Basis and Purpose

The New York City Department of Finance ("DOF") is adopting the following rule change in accordance with the powers set forth in New York City Charter ("Charter") §§ 1043(a) and 1504, as well as chapter 32 of title 11 of the New York City Administrative Code ("Administrative Code").

On May 28, 2026, New York State adopted part HH of chapter 59 of the laws of 2026 into law, which enacted a new chapter 32 within title 11 of the Administrative Code, imposing a surcharge on certain residential properties that do not serve as the primary residence of the owners of such properties, their immediate family members, or a tenant. *See also* Tax Law art. 30-C (codifying the corresponding enabling statute, also added by part HH of chapter 59 of the laws of 2026). This surcharge, colloquially known as the pied-à-terre tax, imposes an additional tax that is calculated as the product of a surcharge rate established by statute and the market value of the applicable property, or with respect to a residential cooperative property, a residential cooperative dwelling unit. *See* Administrative Code §§ 11-3202 to 11-3204. This surcharge will only apply to qualifying class one residential properties, residential cooperative dwelling units and residential condominiums units that are not used as a primary residence by an owner or their immediate family members or a tenant and that have market values exceeding thresholds set forth in the Administrative Code. *See* Administrative Code § 11-3202. If a property or cooperative dwelling unit's valuation exceeds the threshold, the entirety of the property's value is subject to the surcharge.

Chapter 59 of the laws of 2026 requires DOF to administer and enforce this surcharge to the greatest extent practicable in the same manner used to administer and enforce real property taxes. *See* Administrative Code § 11-3205(c). The law also confers authority on DOF to promulgate rules governing certain aspects of the administration of the surcharge. Therefore, DOF is adopting the following rule change pursuant to its powers set forth in Charter §§ 1043(a) and 1504, as well as Administrative Code §§ 11-3203(b) and 11-3205(i).

On June 9, 2026, a proposed version of these rules was published in the City Record. *See* City Record at 2460-65 (June 9, 2026). DOF held a hearing for public comment on July 9, 2026. Many members of the public provided written and verbal comments regarding this rulemaking. Some commenters requested additional clarity regarding procedures regarding application of the surcharge. These final rules are intended to clarify DOF policy regarding the surcharge. Additional guidance materials will be provided online regarding the surcharge.

Section one of this rule adds a new chapter 62 to title 19 of the Rules of the City of New York.

- Section 62-01 of this chapter adds definitions to complement the definitions already set forth in Administrative Code § 11-3201, which also apply to 19 RCNY ch. 62.
    - This final rule includes a difference from the proposed version of this rule; the final rule clarifies that the term “economic interest” includes an economic interest in shares in a cooperative corporation, in addition to an economic interest in a real property.
    - DOF received comments relating to the scope of definitions relating to primary residency. One commenter suggested that properties that are leased out for use as a primary residence should not be subject to the full tax; this policy is already a feature of the applicable statute, and is further implemented through these rules. *See* Administrative Code § 11-3201 (defining “primary residence”); 19 RCNY § 62-06.
    - Another commenter suggested that DOF amend the definition of “arm’s length transaction” to avoid hypothetical circumstances in which one limited liability company (“LLC”) leases to a second LLC to avoid application of the surcharge. After reviewing this comment, DOF determined that no such amendment is necessary because an LLC tenant would not be able to establish primary residency, as a lessee or sub-lessee can only establish primary residency where the lessee or sub-lessee is a natural person, rather than a business entity like an LLC. *See* Administrative Code § 11-3201 (defining “primary residence”). In response to another comment, DOF declined to incorporate a safe harbor provision into the definition of the term “arm’s length transaction” in order to maintain administrative flexibility. DOF did clarify in this final rule that an arm’s length transaction does not include one for which circumstances indicate a reasonable possibility that the lease or sub-lease was entered into primarily for the purpose of avoiding imposition of the surcharge. This revision recognizes that a property owner is not prohibited from considering the tax implications of their business affairs, but cannot orchestrate such affairs for the primary purpose of tax avoidance.
    - One commenter recommended that DOF clarify the meaning of the term “majority interest.” DOF has included a definition of the term “majority interest” in this rule.
    - Several commenters inquired as to the applicability of the surcharge in regard to a specific fact pattern focused on the definition of the term “immediate family member.” The term “immediate family member” is defined in Administrative Code § 11-3201, and the list of relationships included in this definition of “immediate family member” is exhaustive. *See* 19 RCNY § 62-01. Property owners or their representatives may request letter rulings regarding specific fact patterns pursuant to chapter 16 of title 19 of the Rules of the City of New York.
    - One commenter recommended that DOF create a streamlined process by which a licensed attorney may document that they represent a property owner regarding the surcharge. DOF accepted this recommendation and made a corresponding revision to the definition of the term “duly authorized representative.” Because the initial notices of determination of surcharge established in 19 RCNY § 62-06, discussed below, include a password that allows submission of an appeal, this rule

provides that, for the purposes of submitting an appeal, a duly authorized representative includes any individual who has been provided such code and certifies that they are authorized to submit an appeal on behalf of a property owner.

- Section 62-02 of this chapter specifies that, for the purposes of determining whether a person is a "covered owner[,]" as defined in Administrative Code § 11-3201, property or shares of stock are "held" by a corporation, LLC or partnership only where such corporation, LLC or partnership holds an undivided fee interest in such property or such shares of a cooperative corporation representing such dwelling unit in their entirety. *See* Administrative Code § 11-3201. To prevent gamesmanship among owners of real property, this provision prevents individuals who hold a controlling interest in a business entity that holds only a fractional share of a property from receiving treatment as a "covered owner" for the purposes of establishing primary residency as set forth in Administrative Code § 11-3203. Several commenters opposed this policy outcome, characterizing it "overinclusive" and urging DOF to focus on beneficial, rather than actual, ownership of property. DOF declines to adopt these commenters' proposed reframing of this rule. Strict construction regarding entity ownership of property is generally consistent with DOF's approach to interpreting other residential tax exemptions under the law. *See, e.g.,* Real Property Tax Law §§ 459-c, 467, 467-a. This final rule clarifies that the ownership interests of shareholders, members, or partners of a corporation, LLC, or partnership may be aggregated together for the purposes of determining whether such shareholders, members or partners meet the majority ownership element of the definition of the term "covered owner." This final rule also clarifies that shareholders, members, or partners of a corporation, LLC, or partnership who collectively are covered owners of a property or shares of a cooperative corporation may only establish primary residency in a property or dwelling unit if such property or dwelling unit serves as the primary residence of such shareholders, members, or partners who, alone or in the aggregate, have a majority interest in the corporation, LLC, or partnership. In contrast, an individual (as opposed to a business entity) may potentially be a "covered owner" even if they own a fractional share of a property. *See* Administrative Code § 11-3201 (defining "covered owner"). Several commenters expressed a belief that this interpretation does not reflect the legislative intent of the applicable statute; however, the definition of "covered owner" included in Administrative Code § 11-3201, among other provisions, supports DOF's interpretation.
    - Several commenters posed a question regarding whether some but not all beneficiaries of a complex trust arrangement may be a "covered owner" for the purposes of application of the primary residency exemption set forth in Administrative Code § 11-3203. In order to establish status as a covered owner, state law requires that the primary resident beneficial owner or owners of a trust must be the sole beneficiaries of such trust. *See* Administrative Code § 11-3201 (defining "covered owner"). To address this comment, DOF is adding a provision to this section of the rule to clarify that contingent or future interests in a trust's estate held by a person will not be considered for the purposes of determining whether other persons are the sole beneficiaries of a trust. This provision aligns with State guidance regarding the determination of whether a person is the sole

beneficiary of a trust for real property tax purposes in other contexts. *See, e.g.,* 10 Op. Counsel SBRPS No. 25, 1996 WL 885794 (Mar. 19, 1996). Several commenters noted a grammatical ambiguity regarding whether multiple individuals can constitute trust beneficiaries for the purpose of establishing primary residency. *See* 19 RCNY § 62-06(b)(2)(v). DOF has clarified this provision. Lastly, one commenter inaccurately conflates the ownership requirements of trusts and other entities under different relevant statutes. *See* Tax Law § 1351(d)(4)-(5), (m), Administrative Code § 11-3201. These provisions operate separately, and do not allow the immediate family members of trust beneficiaries or groups of individuals to satisfy primary residency requirements.

  - Several commenters inquired regarding various circumstances in which an individual who is a trust beneficiary or holds a controlling interest in a business entity that itself holds a controlling interest in one or more other business entities may be a "covered owner" for the purposes of application of establishing primary residency. An individual cannot establish primary residency through a multi-tier business entity ownership structure. *See* Administrative Code §§ 11-3201, 11-3203.

- Section 62-03 of this chapter establishes that, for the purposes of the exclusion from the surcharge pursuant to Administrative Code § 11-3201 for an unsold residential cooperative dwelling unit or residential condominium dwelling unit subject to an offering plan under General Business Law § 352-e, a sale is deemed to have occurred at the time of conveyance of a deed for, or transfer of an economic interest in, such residential condominium dwelling unit or residential cooperative dwelling unit. *See* Administrative Code § 11-3205(i)(1)(iv). Several commenters recommended that DOF additionally exempt successor sponsors that acquire a project and continue to offer and sell units under the offering plans; residential projects proceeding under Attorney General no-action letters rather than filed offering plans, which are subject to the same substantive regulatory framework; and purchasers of bulk transfers of unsold inventory to affiliated entities, joint venture partners, or investors for continued offering. DOF declines to expand the definition of exempt properties under § 11-3201 to those that have been fully sold or are not subject to an offering plan.
- Section 62-04 of this chapter establishes a process for DOF to conduct audits related to the surcharge and impose penalties in certain circumstances where: (i) a certification or any documentation submitted to DOF contains inaccurate or misleading information that was material to the determination made regarding the imposition of such surcharge and was submitted negligently or in bad faith, or (ii) a condominium property has been divided into more than three units to avoid application of the surcharge and such division was made in bad faith. *See* Administrative Code § 3205(i)(2), (j); *see also* Charter § 1046. More specifically, this section establishes a process by which DOF:
  - may conduct audits to determine the amount of the surcharge owed by a covered property, including by collecting records and issuing subpoenas;
  - may notify a property owner of DOF's imposition of a penalty against such owner and such owner's right to appeal such penalty;

    - will conduct hearings regarding appeals of such penalties or delegate the duty to conduct such hearings to the Office of Administrative Trials and Hearings ("OATH") pursuant to a memorandum of agreement with OATH; and
    - through the DOF Commissioner, make a final determination regarding the imposition of penalties after review of a recommendation from the presiding hearing officer.
- The hearings conducted by DOF will be conducted, upon a petitioner's request, in writing by mail or a webform, in person, or through a simultaneous webcast. DOF will impose a penalty equal to 50% of such surcharge for submission of a misleading or inaccurate certification or documentation that, if accepted by DOF, would result in exemption from the surcharge. (In such a circumstance, the surcharge amount would also be reimposed, as applicable.) Where such a misleading or inaccurate certification or documentation, if accepted, would result in a surcharge in a lower amount than the amount of the surcharge that would be calculated if the certification or documentation submitted did not include misleading or inaccurate information, such penalty will instead be equal to 300% of the difference in surcharge that would result if such certification or documentation were accepted, provided that such penalty does not exceed 50% of the surcharge that would have been calculated. This provision promotes compliance with the surcharge by increasing the potential cost of evasion by property owners while ensuring that such property owners are afforded an opportunity to challenge the imposition of such penalties. One commenter suggested that the 50% cap on penalties over-penalizes small evasions of the surcharge, creating a perverse incentive for a property owner to submit inaccurate or misleading information that would achieve a greater undervaluation of their property. However, this 50% penalty cap is specified in state law and cannot be superseded by City rule. *See* Admin. Code § 11-3205(i)(2). After considering this comment, DOF has determined that no changes to the proposed rule are necessary.
- Section 62-05 of this chapter specifies, pursuant to Administrative Code § 11-3205(i), that DOF's rules relating to adjustments to assessed value for purposes of real property taxes, the correction of certain clerical errors and errors of description, and refunds of real property taxes under 19 RCNY chapters 24, 37, and 53 apply to calculations of market value and imposition and payment of the surcharge. This rule section leverages existing safeguard mechanisms to ensure that the surcharge is applied fairly to property owners. One commenter expressed concern regarding whether the process laid out in 19 RCNY chapter 24 can be used by a property owner to obtain a refund if a surcharge is ultimately canceled after it paid. Chapter 24 could be used to obtain such a refund.
- Section 62-06 of this chapter establishes the circumstances in which DOF, relying on records within its possession, will make an initial determination that a property constitutes a primary residence, thereby exempting such property from the surcharge pursuant to Administrative Code §§ 11-3202 and 11-3203. In response to comments, this final rule provides that DOF will use income tax data to make initial determinations of primary residency for the 2026/2027 fiscal year. This section establishes a process by which DOF will provide notice of such determination to a property owner.
    - Property owners determined to be subject to, and not exempt from, such surcharge are authorized to appeal a primary residency determination directly to the City's

Tax Commission in some circumstances, *see* Administrative Code § 11-3206, or are authorized to appeal such determination of primary residency to DOF. This rule establishes a time period to challenge an initial determination with DOF, which is generally calculated based on the time at which notice of an initial determination is transmitted. One commenter inquired when a notice would be considered "transmitted." Generally, the transmission of a letter or email notice occurs when it is sent via mail or transmitted electronically. Several commenters suggested that the time period to file a primary residency appeal, which generally begins upon transmission of a notice by DOF, is not sufficiently long. DOF has determined that any extensions to this time period are unnecessary because the time period incorporated into this rule appropriately balances due process and operational efficiency in implementing the surcharge. Several commenters incorrectly characterized the potential avenues available to property owners to challenge their surcharge. Property owners have an additional potential avenue to challenge the surcharge with the Tax Commission. *See* Administrative Code § 11-3206(f). One commenter posed a variety of practical issues regarding how DOF plans to issue notice of primary residency. 19 RCNY § 62-06(a)(4) provides that DOF may provide such notice electronically if the department has an email address for an owner of a covered property in records of the department and determines that communicating such notice by email would be practical and feasible. In implementing this rule for the 2026/2027 fiscal year, however, after considering DOF plans to mail a copy of the initial determination for such fiscal year to each property address for each property and dwelling unit in a cooperative corporation that DOF determines is subject to the surcharge. DOF also generally plans to mail such initial determination to certain owner mailing addresses of properties that DOF determines are subject to the surcharge, including addresses that DOF has identified as the residential cooperative corporation mailing addresses for cooperative corporations containing such a dwelling unit. DOF may, in its discretion, take additional measures to notify property owners of its initial determination. (Official notice of the surcharge amount is established pursuant to 19 RCNY § 62-07 and is discussed below.) Several commenters also requested that DOF clarify the information that will be included on the initial determination notice. (Some of the requested information regarding appeals procedures was already proposed to be included in the draft version of this rule.) DOF revised 19 RCNY § 62-06(a)(4) to provide that the value of the projected surcharge will also be included on the notice, as well as the deadline by which an appeal must be submitted to DOF. After weighing DOF's need for effectively administering this program, DOF does not intend to include any analysis in such notice for fiscal year 2026/2027 regarding the basis for its initial determination of primary residency.

- This rule establishes the forms of proof that allow such an owner to establish that such property is a primary residence of a covered owner, a primary residence of an immediate family member of a covered owner or the primary residence of a lessee or sub-lessee. An owner may demonstrate primary residency through various forms of proof, including through the presentation of certain documents evincing that a person makes a property their home and other proof of occupancy. To account for circumstances in which a property or shares of cooperative are held by a trust, LLC, corporation or partnership, this rule also specifies the types of documents that DOF will accept as proof that an individual is a member of a LLC, shareholder of a corporation, partner of a partnership or beneficiary of a trust. These provisions will establish a process by which DOF will efficiently review and approve documentation demonstrating that an owner or a shareholder of a cooperative corporation qualifies for an exemption based on a determination that a property serves as the primary residence of such owner or shareholder. (One commenter mischaracterized the documentary proof set forth in 19 RCNY § 62-06(b)(2) as establishing standards of proof of primary residency for the purposes of "judicial appeals" but not "informal appeals." DOF would instead characterize this rule as establishing the proof standards for administrative appeals of primary residency determinations. *See* Administrative Code § 11-3203.) Based on a comment received, DOF has revised the final version of these rules to include additional pathways to document primary residency for immediate family members who are spouses and renters under month-to-month lease or sublease agreements, and to include a corresponding definition for the term "additional rental documents" codified in 19 RCNY § 62-01. (One other commenter suggested that the forms of documentary proof of immediate family relationships is unduly restrictive; however, DOF has concluded that the option to provide such proof through affidavits provides property owners adequate flexibility.) Several commenters expressed uncertainty as to which documents may be necessary for a property owner to provide when a property is leased or subleased to a primary resident. These documents are detailed in 19 RCNY § 62-06(b)(1)-(2). Several commenters expressed concern that property owners may not receive adequate documentation from lessees or sublessees to demonstrate their primary residency (or where a lessee or sublessee does not use a property as their primary residence); however, these matters must be resolved between private parties and will not be addressed in these rules. Several commenters suggested that DOF expand the types of proof that DOF will consider for establishing primary residency under 19 RCNY § 62-06(b)(2)(i). DOF declines to expand these sources of proof and disagrees with commenters who argue that these forms of proof are inconsistent with the applicable statute. The forms of proof identified in this provision strike a careful balance between allowing flexibility in the submission of proof and maximizing reliability and efficiency of reviews by DOF personnel. This provision also allows DOF to consider other proof of primary residency that it deems to be acceptable, which will accommodate unusual circumstances in which conventional proof of primary residency is unavailable. DOF does not believe 19 RCNY § 62-06(b)(2)(i)(B)(III) is fundamentally different from the process set forth in 19 RCNY § 50-06(b)(3), which one commenter cited as an alternative potential model for proof of primary residency, insofar as both provisions allow property owners a flexible opportunity to provide proof of primary residency to DOF. *See also* 19 RCNY § 50-05(c). In its final rule, DOF clarified that other proof of primary residency can include evidence of occupancy, when paired with another listed form of proof. In regard to this commenter's observations regarding limitations on the value of voter registration cards for establishing primary residency, DOF notes that a voter registration card must be supplemented by one other form of proof to establish primary residency. *See* 19 RCNY § 62-06(b)(2)(i)(B). This commenter also argued that the rule provision detailing the use of a tax return for the purposes of establishing primary residency was inadequately specific. DOF disagrees; however, in an abundance of caution, DOF has revised the text of 19 RCNY § 62-06(b)(2)(i)(A) to provide that adequate proof of primary residency includes the "most recently filed state or federal personal income tax return *as of the date an appeal is filed*[.]" (Emphasis added.)

- One commenter argued that it is unclear whether a property qualifies for the exclusion where one dwelling unit in a class one property is used as a primary residence and another unit is not. DOF believes this issue is adequately clarified in 19 RCNY § 62-06(d).
- Several commenters suggested that individuals who own second homes in the City but who nevertheless maintain a primary residence at a different location within the City should be treated as exempt from the surcharge. This reading is not supported by the text of the law. *See* Administrative Code §§ 11-3201, 11-3203.
- The final version of these rules also clarifies that if an applicant challenges an initial determination regarding primary residency with the Tax Commission pursuant to Administrative Code § 11-3206(b)(2), then DOF will not consider any appeal of such primary residency submitted to DOF pursuant to 19 RCNY § 62-06, and if the Commissioner of DOF has made any determination with regard to such an appeal, such determination shall have no effect. The purpose of this change is to prevent forum shopping by property owners and avoid the issuance of multiple—potentially inconsistent—administrative decisions regarding the same matter.
- One commenter also suggested that two or more tenant-stockholders of a cooperative corporation should be authorized to join their appeals together for hearings regarding primary residency. The Tax Commission's administrative procedures are outside of the scope of this rulemaking, and the DOF primary residence appeal challenge procedure does not involve hearings; rather, it is a written appeals process. *See* Administrative Code § 11-3203; 19 RCNY § 62-06.
- One commenter asked whether a mechanism exists by which a property owner may disclose that their property does not serve as a primary residence. In light of this comment, DOF included a new subdivision 19 RCNY § 62-06(f) in the final version of this rule, so that property owners may make such a self-disclosure in writing.
- Various commenters requested that DOF add certain exemptions to the primary residency requirement. After considering these comments, DOF added a new provision, 19 RCNY § 62-06(b)(3), to the final rule that deems an individual's primary residency to continue for one year immediately following their death, hospitalization or temporary stay in a rehabilitation or nursing home. *See* Administrative Code § 11-3205(i)(1)(i).

- A commenter inquired regarding how to determine what email address DOF has on file for the purposes of 19 RCNY § 62-06(a). A property owner may contact DOF to determine which email address is associated with a property; however, as noted above, for the fiscal year beginning on July 1, 2026, the notice will be sent via mail. This commenter also inquired whether guidance materials regarding filing an appeal will be made available by DOF. As noted above, DOF intends to disseminate such materials; however, this is outside the scope of this rulemaking.
- One commenter inquired whether an individual may have multiple primary residences. An individual cannot have multiple primary residences.
- One commenter requested that DOF further clarify who may file a primary residency appeal—particularly with respect to managing agents of cooperative corporations—and allocate liability when errors in filing such appeals are made. This rule already addresses this point, clarifying that a "duly authorized representative," as such term is defined in 19 RCNY § 62-06(b), may file such an appeal. *See* 19 RCNY § 62-01. Additionally, statutory provisions authorize cooperative corporations to file appeals in relation to the surcharge. *See* Administrative Code §§ 11-3201, 11-3203. DOF does not find that any further changes to this final rule are warranted.
- One commenter inquired whether personal information provided to support a claim of primary residency is subject to tax secrecy statutes. *See, e.g.,* Tax Law § 697(e), Real Property Tax Law § 467-a(4). While DOF takes the privacy of personal information very seriously, this information, when provided by a taxpayer in the context of the surcharge, is not subject to any statutory tax secrecy provisions. *C.f.* Administrative Code § 11-3207.

- Section 62-07 of this chapter establishes, pursuant to the authority set forth in Administrative Code § 11-3205 (c) and (i)(1)(iii), that the statement of account required pursuant to Administrative Code § 11-129 and the assessment roll required to be published pursuant to chapter 58 of the Charter collectively constitute notice of the imposition of the surcharge, except that for the fiscal year beginning on July 1, 2026, the assessment roll and the tax bills for payment for such fiscal year constitute such notice. DOF added subdivision (b) to this section in the final version of this rule to clarify the process by which DOF will issue an addendum to the roll for the purposes of the surcharge in accordance with Administrative Code § 11-3205 for the fiscal year beginning July 1, 2026. DOF also added subdivision (c) to this section to clarify that, notwithstanding any other provision of this section 62-07, for the purposes of the surcharge, residential cooperative dwelling units may be identified on an assessment roll by their street address and unit number. This section allows DOF to administer the surcharge to the greatest extent practicable in the same manner as it administers real property taxes, while taking into account the differences between the surcharge and real property taxes, as well as differences between residential cooperative dwelling units and other real property. This section allows DOF to add any other information on an assessment roll. Because the surcharge is based on market value, not assessed value, DOF notes that these rolls are required to include the applicable market values of properties, not assessed values.

- One commenter inquired whether surcharge amounts will be included on the DOF website and whether such website constitutes notice of the surcharge. Notice of the surcharge is discussed in greater detail above; however, Administrative Code § 11-3205(a) requires surcharge amounts to be included on the statement of account for a property. Statements of account are generally included on a publicly accessible page on the DOF website.
- One commenter inquired regarding how the valuation of a dwelling unit within a residential cooperative corporation can be viewed. The valuation of residential cooperative dwelling units subject to the surcharge will be included in the rolls described above and will be included in the notices provided pursuant to 19 RCNY § 62-06, discussed above.

- Section 62-08, which was included in the final version of this rule, after considering public comments, clarifies that the department will evaluate the value and determine the applicability of the surcharge, including but not limited to whether a property is used as a primary residence or constitutes an excluded property, as of the taxable status date for each fiscal year. *See* Administrative Code §§ 11-3201, 11-3203. Several commenters suggested that DOF should also allow property owners to establish that the surcharge should not apply based on facts that develop after the taxable status date, including where a property owner leases a property shortly after the taxable status date. Several commenters expressed concern regarding circumstances in which an owner of multiple properties is renovating or rehabilitating one such property at the time of the taxable status date, but that property is occupied sometime after the taxable status date. Other commenters suggested that DOF include a provision in these rules to exempt residential condominium and cooperative units from the surcharge where the purchaser of such unit or the share associated with such unit, as applicable, plans to occupy the unit as their primary residence, but has not done so by the taxable status date. *See* Administrative Code § 11-3201. One commenter suggested more specifically that DOF adopt an exception to the surcharge akin to the "contemplated use" doctrine authorized by Real Property Tax Law § 420-a(3)(a) in the context of the real property tax. DOF declines to make the changes suggested by these commenters. State law bases the determination of primary residency on a property's use as of the taxable status date. *See* Administrative Code § 11-3201 (defining "primary residence").
    - Several commenters suggested that measurement of whether an individual meets the criteria for primary residency retrospectively from the period preceding the taxable status date but applying the surcharge for the successive fiscal year may create some practical disconnect. This is a common feature of real property tax benefit provisions and is an intended element of the statute authorizing the surcharge. *See* Administrative Code §§ 11-3201, 11-3205.

Various commenters expressed concern that unpaid surcharge amounts or penalties would create a liability for an entire cooperative corporation, and that the statutory provision relating to allocation of the surcharge to an individual shareholder, pursuant to Administrative Code § 11-3205(f), does not suit the needs of cooperative corporations. These commenters argued that the surcharge inappropriately charges cooperative corporations with a tax collection function, and saddles such cooperative corporations with the obligations as the guarantor of their shareholders' surcharge liability. These commenters generally recommended delaying imposition of the surcharge, changing the application of the thresholds of the surcharge applicability, and restructuring the tax, so that it does not create a lien on a cooperative corporation's property as a whole. The thresholds, timeline for implementation and enforcement structure of this surcharge are established by state law. *See* Administrative Code §§ 11-3202, 11-3205. These state law provisions cannot be amended through a City rulemaking process. Instead, cooperative corporations could consider amending their proprietary leases to accommodate these charges so that liability is allocated in accordance with Administrative Code § 11-3205(f). DOF will not promulgate a rule that would seek to directly supersede the terms of these proprietary leases or cooperative corporation governance documents and regulate the payment obligation of shareholder to their cooperative corporations. Additionally, DOF will not consider any related legislative proposals in this rulemaking process. However, DOF is willing to engage with individuals and organizations representing cooperative properties following this rulemaking to consider any additional policy recommendations.

Multiple commenters suggested DOF should not impose liabilities or tax liens associated with the surcharge on subsequent purchasers of properties. DOF declines to make changes in response to these comments. State law provides that the surcharge is imposed on a property, rather than a particular owner of property. *See* Administrative Code § 11-3202. The surcharge, along with any penalties and interest, constitutes a lien on the property. Administrative Code § 11-3205(b). Parties transacting for an interest in a real property may structure their transactional documents to allocate the risk associated with the potential retroactive imposition of the surcharge due to a determination that a property did not serve as a primary residence. DOF will continue to consider whether future changes in relation to issues raised by these commenters are appropriate.

Several comments related to valuation methodology. One commenter inquired how market values are generally calculated for the purposes of the surcharge. State law provides that phase one market values for purposes of the surcharge are based on DOF market values calculated for real property tax purposes. The valuation methodology for the surcharge is authorized to change for the fiscal year beginning on July 1, 2028. Administrative Code §§ 11-3201, 11-3202 to 11-3204. Property values for the purposes of the surcharge will be included on an assessment roll, as described above. One commenter expressed disagreement with, and constitutional concerns relating to, the phase one valuation methodology for cooperative properties. This valuation methodology, including the use of share ratios, is established by provisions of state statute. *See* Administrative Code §§ 11-3201, 11-3202. Some commenters expressed interest in challenging property valuations, including based on the cooperative residential dwelling unit share ratios used to calculate valuation. The statutory framework implementing the surcharge allows for valuation challenges. *See* Administrative Code § 11-3206; *see also* 19 RCNY § 62-05. One commenter suggested that the City allow individual shareholders of residential cooperative dwelling units to challenge their valuation for the purposes of the surcharge. These valuation challenges are already authorized by law. *See* Administrative Code §§ 11-3201, 11-3206 (defining the term "owner" and describing this challenge procedure). Other commenters developed highly specific policy proposals by which property owners would be able to use sales price data to rebut or parametrically limit phase one valuations of residential cooperative dwelling units and condominium units. These policy proposals conflict with the valuation methodologies authorized by the legislature for phase one and phase two. *See* Administrative Code §§ 11-3201, 11-3202. Because these are essentially legislative policy proposals, they are outside the scope of this rulemaking. Several other commenters focused on the fiscal years beginning on or after July 1, 2028 and regarding the collection and use of sales data to calculate phase two valuations. Some expressed concern about using a sales-based methodology to value cooperative properties. DOF has determined that phase two valuation methodology is not necessary to discuss at this stage of the rulemaking process.

Other recommendations were similarly unripe. Another commenter suggested that DOF adopt a streamlined approach for property owners who have previously been determined to be primary residents to avoid successive annual submissions of proof of primary residency in future years. Such a structure has been used with respect to other benefits administered by DOF. *See, e.g.,* Real Property Tax Law § 467-b(4)(a)(2). DOF acknowledges the potential utility of such a policy, and will consider it as the surcharge is implemented; however, DOF has determined that it is not necessary to address these matters in this initial rulemaking process.

DOF notes in regard to various comments that class one properties with mixed-use characteristics are not exempt from the surcharge. Some commenters suggested that DOF create an exemption for financial institutions that take possession of properties through foreclosure proceedings. Another commenter suggested that DOF prorate the surcharge for partial years in which a property does not constitute a primary residence. Such exemptions are not authorized by law.

One commenter suggested that administration of the surcharge violates various fair housing laws. DOF disagrees and does not find that further changes to the rule are warranted in response to this comment.

One commenter recommended that DOF establish an additional expedited letter ruling process specific to the surcharge. DOF declines to accept this recommendation. DOF plans to respond to letter ruling requests regarding the surcharge in the same manner as other taxpayers seeking clarification under 19 RCNY ch. 16.

Some commenters inquired regarding the Tax Commission and the State courts system's roles and procedures in resolving surcharge disputes. Another commenter expressed opposition to the general concept of graduated taxation. These topics are outside the scope of this rulemaking.

DOF added unconsolidated section two of this final rule to clarify the date on which these rules take effect. In addition to imposing the surcharge and requiring that DOF administer the surcharge, chapter 59 of the laws of 2026 required that the surcharge be imposed on properties in the fiscal year beginning on July 1, 2026. Accordingly, pursuant to a finding that there is a substantial need for the earlier implementation authorized by Charter § 1043(f)(1)(d), this rule takes effect immediately.

<u>New material is underlined.</u>
[Deleted material is in brackets.]
"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.

Rule Amendment

Section 1. Title 19 of the Rules of the City of New York is amended by adding a new chapter 62 to read as follows:

Chapter 62:

Surcharge on Property that Does Not Serve as a Primary Residence

§ 62-01 Definitions.

For the purposes of this chapter, the following terms have the following meanings. The terms not defined in this section have the meanings set forth in section 11-3201 of the administrative code, except as otherwise provided in this chapter.

Additional rental documents. The term "additional rental documents" means a utility bill in a lessee's or sub-lessee's name issued within one year prior to the date of submission, an unexpired renter's insurance policy that such lessee or sub-lessee is party to, or proof of rental payment to the owner of a property.

Arm's length transaction. The term "arm's length transaction" means a lease or sub-lease for a covered property or a dwelling unit in a covered property entered into in good faith and for valuable consideration that reflects the fair market rental value of such covered property or dwelling unit between two informed and willing parties, where neither is under any compulsion to participate in the transaction and circumstances do not indicate a reasonable possibility that the lease or sub-lease was entered into primarily for the purpose of avoiding imposition of the surcharge.

Commissioner. The term "commissioner" means the commissioner of the department or their designee.

Duly authorized representative. The term "duly authorized representative" means:

1. any person who files a power of attorney with the department on a form designated by the department that authorizes such person to act on behalf of an owner;

2. any licensed attorney who submits an affidavit indicating that such attorney represents an owner with regard to the applicable matter;

3. for the purposes of submitting an appeal pursuant to 19 RCNY § 62-06(b), any individual who provides the password included in the initial notice of primary residency determination and certifies that they are authorized to submit an appeal on behalf of a property owner;

4. with respect to a partnership, a general partner of such partnership;

5. with respect to a limited liability company, a member of such company;

6. with respect to a corporation, an officer of such corporation; or

7. a trustee of a trust.

Economic interest. The term "economic interest" means shares of stock in a corporation that owns a covered property, including shares of stock in a cooperative corporation entitling the holder of such shares to a proprietary lease in a dwelling unit; the ownership of an interest or interests in a partnership, limited liability company or other unincorporated entity that owns a covered property or such shares in a cooperative corporation; and the ownership of a beneficial interest or interests in a trust that owns a covered property or such shares in a cooperative corporation.

Majority interest. The term “majority interest” means:

1. In the case of a corporation, greater than 50% of the total combined voting power of all classes of stock of such corporation, or greater than 50% of the total fair market value of all classes of stock of such corporation; and

2. in the case of a partnership or limited liability company, entitlement to greater than 50% of the capital or profits of such partnership or limited liability company.

OATH. The term “OATH” means the office of administrative trials and hearings.

Petitioner. The term “petitioner” means an owner of a covered property or a duly authorized representative in relation to a petition that was submitted timely pursuant to subdivision (d) of section 62-04 of this chapter.

§ 62-02 Corporate owners of a covered property.

(a) For purposes of determining whether a person is a covered owner under chapter 32 of title 11 of the administrative code, real property classified as class one or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation entitling the holder of such shares to a propriety lease in a dwelling unit are held, by a partnership, corporation or limited liability company only where such partnership, corporation or limited liability company holds an undivided fee interest in such property or holds all such shares of stock. A partner or partners, shareholder or shareholders or member or members of such partnership, corporation, or limited liability company, respectively, who individually or jointly hold a majority interest in such partnership, corporation or limited liability company shall only be deemed to be a covered owner or covered owners for the purposes of chapter 32 of title 11 of the administrative code if such partnership, corporation or limited liability company holds an undivided fee interest in such property or holds all such shares of stock.

(b) Partners of a partnership, shareholders of a corporation, or members of a limited liability company who are covered owners of a covered property or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, shall only be considered primary residents of such property or dwelling unit under chapter 32 of title 11 of the administrative code if such property or dwelling unit serves as the primary residence of such partners, shareholders, or members holding a majority interest in such partnership, corporation, or limited liability company.

(c) For purposes of determining whether a person is a covered owner under chapter 32 of title 11 of the administrative code, contingent or future interests in a trust's estate will not be considered in determining whether such person is the sole beneficiary of such trust.

§ 62-03 Sale or transfers of property.

For purposes of determining whether a residential condominium dwelling unit or residential cooperative dwelling unit constitutes excluded property, as defined in section 11-3201 of the administrative code, the date of sale of a residential condominium dwelling unit, or a transfer of an economic interest in a residential cooperative dwelling unit, is the date of:

(a) conveyance of a deed for such residential condominium dwelling unit; or

(b) transfer of an economic interest in such residential condominium dwelling unit or such residential cooperative dwelling unit.

§ 62-04 Investigations and penalties.

(a) *Audit authority*. The commissioner may conduct an audit for the purposes of determining the amount of the surcharge owed by a covered property, including any determination relating to primary residence, and any certification or documentation of primary residency submitted to the department, provided that any audit of such certification or documentation shall be conducted within six years of the submission of such certification or documentation.

(b) *Collection of records and subpoena*. The commissioner may:

1. compile any materials necessary to conduct such audit; and

2. subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to an audit initiated pursuant to subdivision (a) of this section.

(c) *Transmission of notice of penalty*. 1. The commissioner may transmit a notice of penalty to any owner of a covered property where the commissioner determines that: (i) any certification or documentation submitted to the department in connection with the imposition of the surcharge on a covered property contains inaccurate or misleading information that: (A) is material to the determination of the imposition of such surcharge, including a determination relating to primary residence; and (B) was submitted negligently or in bad faith; or (ii) a covered property that is a residential condominium unit has been divided into more than three units to avoid application of such surcharge and the owner of such covered property has made such division in bad faith. Such notice shall include the amount of such penalty pursuant to subdivision (g) of this section.

2. The commissioner shall transmit such notice to:

(i) the address of the owner of record of such covered property filed with the department, provided that in the case of a covered property that is a residential cooperative property, such notice shall be transmitted to both the owner of record of such residential cooperative property and the owner of record of the applicable residential cooperative dwelling unit; and

(ii) the address of any person who has registered with respect to such covered property pursuant to Administrative Code section 11-309.

(d) *Filing of a petition for a hearing.*

1. An owner of a covered property that is subject to a notice of penalty pursuant to this section may request a hearing by filing a petition with the department no later than 30 days from the date of transmission of such notice on a form designated by the department. Failure to file a petition for a hearing within such period shall result in the imposition of a penalty pursuant to subdivision (g) of this section.

2. A petition may be filed only by an owner of a covered property or by a duly authorized representative of the owner, provided that that in the case of a covered property that is a residential cooperative property, a petition may be filed by the owner of record or duly authorized representative of either such residential cooperative property or the applicable residential cooperative dwelling unit.

(e) *Delegation to the office of administrative trials and hearings.*

1. If, prior to issuance of a notice of penalty, the commissioner and OATH enter into a memorandum of understanding authorizing OATH to conduct hearings in accordance with the procedures set forth in title 48 of the rules of the city of New York and such memorandum of understanding has not been terminated, then upon receipt of a petition filed in a timely manner pursuant to subdivision (d) of this section: (i) the department shall transmit such petition to OATH; and (ii) following a hearing on such notice of penalty conducted in accordance with such title, the presiding hearing officer shall make a recommendation to the commissioner with respect to whether to impose penalties pursuant to this section. The commissioner shall make a determination regarding whether to impose penalties pursuant to this section no later than 30 days after the receipt of such recommendation, provided that the failure of the commissioner to make a determination within such time period shall not result in a waiver of such penalties. The commissioner shall transmit such determination to both the owner and the duly authorized representative of the owner, if any, at the addresses provided in the petition.

2. If the commissioner and OATH have not entered into a memorandum of understanding pursuant to paragraph 1 of this subdivision prior to issuance of a notice of penalty, or if such memorandum of understanding has been terminated prior to such issuance, any such hearing shall be conducted in accordance with the provisions of subdivision (f) of this section.

(f) *Conduct of hearings by the department.*

1. *Designation of hearing officer.* The commissioner shall designate a person to serve as hearing officer to hear petitions filed pursuant to these rules. Such person need not be an employee of the department.

2. *Representation of petitioners.* A duly authorized representative may appear on behalf of an owner at a hearing. If an owner is an individual, such individual may appear on their own behalf.

3. *Proof of authorization.* Documentation demonstrating that an individual is a duly authorized representative or such individual's status as a duly authorized representative is revoked must be filed with the hearing officer with or prior to such individual's appearance or submission of documents on behalf of an owner.

4. *Consolidation, joinder, severance.*

(i) Any party to a hearing may request the consolidation of hearings relating to the same owner or property.

(ii) Any party may request the severance of a matter in a hearing relating to a property when such property is not owned by the same owner or identical issues of fact or law are not involved.

(iii) Consolidation, joinder or severance of any case or issue shall be permitted at the discretion of the hearing officer.

5. *Ex parte communications.* No party to a hearing may make an *ex parte* communication to a hearing officer with respect to the merits of such hearing.

6. *Burden of proof.* The department shall have the burden of establishing each fact relevant to a determination of the matters reviewable pursuant to this subdivision by a preponderance of the evidence.

7. *Hearings without personal appearance.* A petition for a hearing without a personal appearance may be made by mail or on the department's website in accordance with this paragraph.

(i) A hearing by mail or website may be conducted by submission of a paper or electronic form, as applicable, if a petition filed pursuant to subdivision (d) of this section indicates that the petitioner wishes to conduct a hearing without a personal appearance. Such form must be received at an address or web portal designated by the department no later than 30 days following submission of such petition. Attached to such form, the petitioner may include legal memoranda, additional documents or other material in support of the owner's position and proof that the individual submitting such form is authorized to submit such petition pursuant to paragraph 2 of this subdivision.

(ii) Upon receipt of a copy of the form and any materials attached thereto, the department may also submit legal memoranda, additional documents or other materials to the hearing officer to support the department's position within a reasonable time as determined by the hearing officer.

(iii) At any time after receipt of a petition indicating a request for a hearing without personal appearance, the hearing officer may by subpoena require the production of any relevant books, papers and documents, upon written request of a petitioner or the department.

(iv) At any time after receipt of submissions by the petitioner and the department pursuant to subparagraphs (i) and (ii) of this paragraph, a hearing officer may give both the department and the petitioner the opportunity to submit additional materials and legal memoranda in support of their positions.

8. *Hearing in person or through simultaneous electronic appearance.* If a petition submitted pursuant to subdivision (d) of this section indicates that the petitioner wishes to conduct a hearing in person or through simultaneous electronic webcast, the following provisions shall apply to such hearing:

(i) The hearing officer may by subpoena require the production of any relevant books, papers and documents upon written request of a petitioner or the department.

(ii) The hearing officer shall be authorized to:

(A) administer oaths and affirmations;

(B) dictate the course of the hearing, set the time and place for conducting the hearing, and fix the time and manner for filing of legal briefs, memoranda and other documents;

(C) rule upon offers of proof and receive relevant evidence;

(D) require the parties at any time during the hearing to state their respective positions in support of any issues under consideration in the matter;

(E) question any party or witness for the purpose of clarifying the record; and

(F) take any other action that the hearing officer determines is appropriate to conduct a speedy and expeditious hearing.

(iii) The hearing officer shall set a schedule for the hearing as soon as is practicable. The parties shall be given notice of the hearing date no fewer than 20 days prior to such date. The notice shall include the time, place, and nature of the hearing, including whether the hearing will be conducted through simultaneous electronic webcast. The hearing officer will not consider a request for a postponement of a hearing date unless a written application setting forth good cause for the postponement is received by the hearing officer within 10 days after transmission of the hearing notice. In the event of an emergency, however, a postponement may be considered on shorter notice. A postponement may be granted only in writing by the hearing officer.

(iv) At the hearing, the parties shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses.

(v) In the discretion of the hearing officer, technical rules of evidence need not be applied. However, the rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.

(vi) Hearings shall be transcribed verbatim or recorded by electronic means determined by the hearing officer. A copy of the transcript or recording shall be provided to all parties within a reasonable time after the hearing is concluded.

9. *Hearing officer recommendation.*

(i) Following a hearing conducted pursuant to either paragraph 7 or 8 of this subdivision, the hearing officer shall make a recommendation to the commissioner regarding whether any documentation or certification was submitted as described in paragraph (1) of subdivision (c) of this section or a division of a residential condominium unit has been made as described in such paragraph and a recommendation regarding the imposition of a penalty pursuant to this section. Such recommendation shall be based on any relevant findings of fact and conclusions of law, upon consideration of the record as a whole and as supported by the evidence entered by the parties. A copy of the determination shall be mailed to the petitioner and to the petitioner's duly authorized representative, if any.

(ii) If a petitioner fails to appear at a hearing and no written postponement has been granted pursuant to subparagraph (iii) of paragraph 8 of this subdivision or fails to make a submission required by paragraph 7 of this subdivision within a timeframe designated by these rules or an order of the hearing officer, the hearing shall be concluded and the hearing officer shall make a recommendation to the commissioner for final determination based on the record, if any, previously made.

10. *Commissioner determination.*

The commissioner, upon review of a hearing officer's recommendation made pursuant to paragraph 9 of this subdivision, shall render a final determination regarding the imposition of a penalty pursuant to this section within 30 days of the receipt of such recommendation, provided that the failure of the commissioner to make a determination within such period shall not result in a waiver of such penalties. Notwithstanding any provision of this chapter to the contrary, the commissioner shall not designate any individual to make such determination who audited or investigated the owner or property subject to such penalties, issued the notice of penalty, or represented the department in a hearing regarding such penalties. A copy of the determination shall be mailed to both the petitioner and the petitioner's duly authorized representative, if any. Such determination shall constitute a final agency determination and is subject to challenge pursuant to Article 78 of the civil practice law and rules.

(g) *Penalty amounts.* If the commissioner determines that any certification or documentation submitted to the department in connection with the imposition of the surcharge was submitted, or a residential condominium was subdivided as described in paragraph (1) of subdivision (c) of this section, and any such subdivision, certification or documentation, if accepted as accurate by the department, would result in:

1. the surcharge not being imposed upon such property, a penalty of 50% of the surcharge applicable to such property for such fiscal year shall be imposed, and the commissioner shall reinstate such surcharge against such property for such fiscal year; or

2. the valuation of a property pursuant to chapter 32 of title 11 of the administrative code at a lower amount than would otherwise have been assigned by the department, a penalty equal to 300% of the amount of the difference in surcharge that would result from such lower valuation shall be imposed, provided that such penalty shall not exceed 50% of the surcharge applicable to such property.

§ 62-05 Corrections and refunds.

(a) For any fiscal year beginning on or after July 1, 2027, the market value of a covered property determined pursuant to chapter 32 of title 11 of the administrative code may be amended in accordance with the procedures set forth in chapter 37 of this title of the rules of the city of New York.

(b) An owner may petition for correction of a clerical error or error in description related to the surcharge in accordance with the provisions of chapter 53 of this title of the rules of the city of New York.

(c) The department may make refunds of overpayments and double payments of the surcharge in accordance with the provisions of chapter 24 of this title of the rules of the city of New York.

§ 62-06 Primary Residency.

(a) *Initial determination*.

1. The department shall make, on an annual basis, an initial determination that a covered property, or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, that has a market value amount equal to or greater than the applicable phase one or phase two market value thresholds established in section 11-3202 of the administrative code, is not a primary residence.

2. Unless credible information in the possession of the department, including but not limited to information collected by the department in administering the abatement authorized pursuant to section 467-a of the real property tax law, indicates otherwise, the department will make a determination that a covered property, or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, is used as primary residence if:

(i) an individual that the department has identified as a covered owner indicated in their state or federal personal income tax return for the most recent income tax year for which data is sufficiently available to the department that such covered property, or, in the case of a covered property that is a residential cooperative property, such residential cooperative dwelling unit: (A) was such covered owner's permanent home address; or (B) received a tax credit pursuant to subsection (eee) of section 606 of the tax law; or

(ii) an individual that the department has identified as a covered owner received a tax exemption pursuant to sections 425, 458, 458-a, 458-b, 459-c, 462 or 467 of the real property tax law for such covered property for the fiscal year beginning immediately prior to the date of transmission of a notice of determination pursuant to paragraph (4) of this subdivision.

3. For purposes of a surcharge imposed in a fiscal year beginning on or after July 1, 2027, if the department does not make an initial determination that a property is a primary residence pursuant to paragraph (2) of this subdivision, the department may make a determination whether a property is a primary residence using other information available to such department, and based on factors including whether:

(i) a covered owner occupied such covered property or residential cooperative dwelling unit for a majority of days during the immediately prior calendar year; and

(ii) a covered owner indicated that such covered property or residential cooperative dwelling unit is such covered owner's permanent residence in other documents previously submitted to the city.

4. The department shall transmit notice of such determination of primary residence to each owner of a covered property, or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, in writing no later than February 15 of each year, provided that for the fiscal year beginning on July 1, 2026, such notice shall be transmitted no later than August 30, 2026. Such notice shall include information regarding the manner in which an owner may appeal such initial determination pursuant to subdivision (b) of this section. Such notice will include the surcharge amount based on the phase one or phase two market value of the covered property, as applicable. The department may provide such notice electronically if the department has an email address for an owner of a covered property in records of the department and determines that communicating such notice by email would be practical and feasible, provided that for the fiscal year beginning on July 1, 2026, the department will provide such notice via mail. Failure by the department to provide this notice shall not affect the validity of the imposition of the surcharge authorized by chapter 32 of title 11 of the administrative code.

(b) *Appeal.*

1. An owner of a covered property, or, in the case of a covered property that is a residential cooperative property, a residential cooperative dwelling unit, or a duly authorized person may file an appeal of any initial determination made pursuant to subdivision (a) of this section no later than 30 days after the date that notice of such initial determination is transmitted pursuant to paragraph (4) of such subdivision, or if no such notice is transmitted by DOF, no later than 30 days after such surcharge appears on the assessment roll. Such owner must file such appeal in writing through an electronic portal designated by the department. Such appeal must include a certification that such property or dwelling unit is used as a primary residence and one or more of the following:

(i) proof that such covered property or dwelling unit is the primary residence of a covered owner pursuant to subparagraph (i) of paragraph (2) of this subdivision, provided that with respect to a beneficiary of a trust who is a covered owner pursuant to paragraph (iv), or a partner, shareholder or member who is a covered owner pursuant to paragraph (v), of the definition of covered owner in section 11-3201 of the administrative code, such appeal must also include proof set forth in subparagraph (iv) or (v) of paragraph (2) of this subdivision, as applicable;

(ii) proof that such covered property or dwelling unit is the primary residence of an individual pursuant to subparagraph (i) of paragraph (2) this subdivision and proof that such individual is the immediate family member of a covered owner pursuant to subparagraph (ii) of such paragraph, provided that with respect to a beneficiary of a trust who is a covered owner pursuant to paragraph (iv) or a partner, shareholder or member who is a covered owner pursuant to paragraph (v) of the definition of covered owner in section 11-3201 of the administrative code, such appeal must also include proof set forth in subparagraph (iv) or (v) of paragraph (2) of this subdivision, as applicable; or

(iii) proof that such covered property or dwelling unit is the primary residence of an individual pursuant to subparagraph (i) of paragraph (2) of this subdivision and proof that such individual is a lessee or sub-lessee of such property or dwelling unit pursuant to subparagraph (iii) of such paragraph.

2. (i) Unless credible information in the possession of the department indicates otherwise, proof of the primary residence of a person who is a covered owner, an immediate family member of a covered owner, a lessee or a sub-lessee includes documents establishing the location of such person's home, including:

(A) proof that a covered property or residential cooperative dwelling unit was listed as the permanent home address of such person on such person's most recently filed state or federal personal income tax return as of the date the appeal is filed; or

(B) two or more of the following documents, provided that any such documents indicate residency at a covered property on or prior to the taxable status date:

(I) a photo-copy of the front and back of an unexpired New York state department of motor vehicles driver's license, learner's permit or non-driver identification card or other record or United States department of state issued driver's license or non-driver identification card indicating that the covered property or residential cooperative dwelling unit is such person's residence;

(II) a voter identification card issued by the New York city board of elections; or

(III) other proof of primary residency, including proof of occupancy for the 12-month period prior to the applicable taxable status date, that is determined to be acceptable by the department.

(ii) Unless credible information in the possession of the department indicates otherwise, proof that an individual is an immediate family member of a covered owner includes one or more of the following:

(A) one or more birth certificates indicating that such individual is an immediate family member of such covered owner;

(B) affidavits from both such covered owner and such individual indicating that such persons are immediate family members; or

(C) a marriage certificate.

(iii) Unless credible information in the possession of the department indicates otherwise, proof that that an individual is a lessee or sub-lessee of a covered property or residential cooperative dwelling unit includes:

(A) an unexpired lease or sub-lease for one or more units within such covered property or dwelling unit that is entered into through an arm's length transaction and at least one additional rental document; or

(B) for a month-to-month lessee or sublessee, an affidavit from both the property owner and the lessee or sublessee confirming such lease or sublessee arrangement has been entered into through an arm's length transaction and two or more additional rental documents.

(iv) Unless credible information in the possession of the department indicates otherwise, proof that that an individual is a partner, member, or shareholder of a partnership, limited liability company, or corporation with a majority interest in such partnership, limited liability company or corporation must include:

(A) the operating agreement for such limited liability company, the partnership agreement for such partnership, or the articles of incorporation of such corporation; and

(B) an affidavit from an officer of such partnership, limited liability company or corporation indicating that such individual has a majority interest in such partnership, limited liability company or corporation.

(v) Unless credible information in the possession of the department indicates otherwise, proof that that an individual is a sole beneficiary or individuals are sole beneficiaries of a trust includes:

(A) a copy of the trust agreement indicating that such individual is the sole beneficiary or individuals are sole beneficiaries of such trust; and

(B) an affidavit indicating the same from a trustee of such trust.

3. Notwithstanding any provision of this section to the contrary, a covered owner, immediate family member of a covered owner, lessee or sub-lessee of a covered property or, in the case of a residential cooperative property, a residential cooperative dwelling unit, will be deemed to continue to be a primary resident of such covered property or dwelling unit for a period of one year immediately following their death or during a continuous period of hospitalization or a temporary stay in a nursing home or rehabilitation facility if the owner of such covered property or dwelling unit, or the estate of such owner, as applicable, provides:

(i) proof sufficient to the department of such death, hospitalization or temporary stay in a nursing home or rehabilitation facility; and

(ii) proof of primary residency set forth in subparagraph (i) of paragraph 2 of this subdivision for the period immediately preceding such death, hospitalization or temporary stay in a nursing home or rehabilitation facility.

(c) *Review of appeals.* 1. The commissioner shall review the merits of any appeal submitted within the time period set forth in subdivision (b) and shall transmit to such owner a notice of determination to the email address associated with such appeal. Notwithstanding any provision of this chapter to the contrary, the commissioner shall not designate any individual to make such determination who made the initial determination pursuant to subdivision (a) of this section. Any denial of such appeal shall be a final determination and may be challenged in accordance with the procedures set forth in section 11-3206 of the administrative code.

2. Where an owner fails to file an appeal or fails to provide proof of primary residence pursuant to subdivision (b) of this section, the initial determination made by the department pursuant to subdivision (a) of this section shall constitute a final determination of such department and shall not be subject to challenge pursuant to section 11-3206 of the administrative code, unless such owner has challenged such initial determination of primary residence pursuant to paragraph two of subdivision (b) of section 11-3206 of the administrative code.

(d) *Effect of an exclusion.* Satisfactory proof of primary residency of one or more dwelling units in a covered property for a fiscal year is sufficient to exclude such property from the surcharge for such fiscal year, except that, in the case of a residential cooperative property, satisfactory proof of primary residency of a residential cooperative dwelling unit in such residential cooperative property for a fiscal year is sufficient to exclude only such residential cooperative dwelling unit from the surcharge for such fiscal year.

(e) *Effect of filing multiple challenges.* If an owner files a challenge with the tax commission pursuant to section 11-3206(b)(2) of the Administrative Code, the department shall not consider any appeal filed pursuant to this section and any determination of the commissioner transmitted to such owner shall have no effect.

(f) *Self-disclosure.* An owner may disclose in writing to the department that a covered property, or in the case of a residential cooperative property, a residential cooperative dwelling unit, does not serve as a primary residence.

§ 62-07 Notice of the surcharge amount.

(a) The statement of account required pursuant to section 11-129 of the administrative code and the assessment roll required pursuant to chapter 58 of the New York city charter shall collectively constitute notice of the imposition of the surcharge to an owner, provided that for the fiscal year beginning on July 1, 2026, notice that a payment is due and payable and such assessment roll shall constitute notice of imposition of the surcharge.

(b) For the fiscal year beginning on July 1, 2026, no later than July 25 of such year, the department shall publish an addendum to such assessment roll. Such addendum shall include the phase one market value and information sufficient to identify each covered property or, in the case of a covered property that is a residential cooperative property, each residential cooperative dwelling unit that may be subject to the surcharge. On December 31, the department shall publish a final version of such addendum.

(c) Notwithstanding any other provision of this section, residential cooperative dwelling units may be identified on an assessment roll by their street address and unit number. The commissioner may include any additional information on an assessment roll.

§ 62-08. Taxable status date. The department shall evaluate the value and determine the applicability of the surcharge, including but not limited to whether a property is used as a primary residence or constitutes an excluded property, as of the taxable status date for each fiscal year.

§ 2. This rule takes effect immediately.

REQUIRED FINDING OF SUBSTANTIAL NEED PURSUANT TO NEW YORK CITY CHARTER SECTION 1043(f)(1)(d)

It is hereby certified that there is a substantial need for this rule to take effect immediately without waiting for 30 days to elapse after publication in the City Record. This rule relates to the administration of a surcharge on certain real properties that do not serve as a primary residence. This rule is necessary to allow the Department of Finance (DOF) to administer and enforce this surcharge and provide sufficient clarity on the mechanisms by which taxpayers may challenge the applicability of this surcharge to any real property.

At and before the public hearing for this rule on July 9, 2026, DOF received extensive written and oral comments. DOF carefully considered each comment and has addressed the public's concerns in its final rule and accompanying Statement of Basis of Purpose. Chapter 59 of the Laws of 2026, which imposes the surcharge and requires DOF to administer the surcharge, further requires that this surcharge be imposed on properties beginning in the fiscal year commencing on July 1, 2026. The process for apprising property owners that their property may be subject to the surcharge must therefore begin as soon as possible so that both property owners and DOF can begin the process for determining whether properties are subject to the primary residency exemption authorized by Administrative Code Sections 11-3202 and 11-3203. Accordingly, in order for DOF to ensure a fair and efficient process, there is a substantial need for this rule to take effect immediately.

IT IS HEREBY CERTIFIED that there is a substantial need, pursuant to Charter Section 1043(f)(1)(d), for this rule to take effect immediately upon publication in the City Record so that DOF can begin administering as soon as possible the surcharge on certain real properties that do not serve as a primary residence as required under Chapter 59 of the Laws of 2026.

___________/s/______________
Richard Lee, Commissioner
New York City Department of Finance

APPROVED:

___________/s/_______________
Zohran Kwame Mamdani
Mayor of the City of New York

Date: ____07/10/26_________