

DEPARTMENT OF TRANSPORTATION

Notice of Opportunity to Comment on Proposed Rule regarding providing bicycle access to office buildings.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Commissioner of the Department of Transportation by subdivision (b) of Section 2903 of the New York City Charter, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department of Transportation proposes to amend Chapter 2 of Title 34 of the Official Compilation of the Rules of the City of New York, the Highway Rules, by adding a new Section 2-18. Matter underlined is new; matter in [brackets] is deleted. This rule was not included in the agency's regulatory agenda, as it was not anticipated at the time the agenda was published.

Written comments regarding the proposed rules may be sent to Brooke McKenna, Assistant Commissioner, Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041 on or before November 23rd, 2009. A public hearing shall be held on November 23rd, 2009 at the New York City Department of Buildings, 280 Broadway, 3rd floor conference room, New York, NY 10013 at 10:00 a.m. Persons seeking to testify are requested to notify Assistant Commissioner McKenna at the address stated above by November 16th, 2009. Persons who need a sign language interpreter or other accommodation for a disability at the hearing are asked to notify Assistant Commissioner McKenna, Department of Transportation, 55 Water Street, 6th floor, New York, NY 10041 by November 16th, 2009. Persons interested in receiving comments may request them by writing to: Department of Transportation, Record Access Office, 55 Water Street, 6th Floor, New York, N.Y. 10041. Janette Sadik-Khan, Commissioner.

Section 1. Chapter 2 of Title 34 of the Rules of the City of New York is amended by adding a new Section 2-18, to read as follows:

Section 2-18 **Bicycle Access in Office Buildings**

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) Accessible Level. “Accessible level” shall mean one that facilitates the approach, entry or use for bicyclists on whose behalf the tenant or subtenant has requested bicycle access.

(2) Available. “Available” shall mean accessible for use by bicyclists on whose behalf the tenant or subtenant has requested bicycle access.

(3) Control. “Control” shall mean to exercise legal authority over through deed, permit, lease, contract or otherwise.

(4) Covered. “Covered” shall mean enveloped by a roof or functional equivalent. For purposes of this definition, “roof” shall mean the outer cover and its supporting structures on the top of a building.

(5) Indoor. “Indoor” shall mean situated in the interior of or within a building that is within three blocks or seven hundred fifty feet, whichever is less, of the building for which a bicycle access plan is requested.

(6) Off-street. “Off-street” shall mean located in an area other than the roadway or the public sidewalk within three blocks or seven hundred fifty feet, whichever is less, of the building for which a bicycle access plan is requested.

(7) Secure. “Secure” shall mean that (i) the entry to or exit from the alternate bicycle parking is locked or supervised by building personnel and permitted only to (A) the owner, lessee, manager or such other person who controls such building and their agents, and (B) bicycle owners on whose behalf the tenant or subtenant has requested bicycle access, and (ii) a bicycle owner can lock a bicycle to a fixed object (including, but not limited to, a bicycle rack) such that the bicycle is protected from damage or theft.

(b) Bicycle Access Plan.

(1) Request for Bicycle Access.

(i) The tenant or subtenant of an office building, as defined in Administrative Code §28-504.1, may submit a request for bicycle access, in writing on a form provided by the Department, to the owner, lessee, manager or other person who controls such office building. Such request shall be submitted by certified mail, return receipt requested.

(ii) The tenant or subtenant shall file a copy of any request for bicycle access with the Department. Such request may be filed electronically by submitting it through the Department’s website (www.nyc.gov/bikesinbuildings) or by submitting such request by regular mail to the Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, Attention: Bikes in Buildings Program.

(iii) The owner, lessee, manager, or other person who controls such office building shall complete and implement a bicycle access plan for such building within thirty (30) days after receipt of a written request from such tenant or subtenant of such building.

(iv) The owner, lessee, manager or other person in control of the building may request an exception to the requirements of Administrative Code §28-504.3 in accordance with subdivision (d) of this section.

(2) Contents of Bicycle Access Plan.

(i) Requirements. The bicycle access plan prepared by the owner, lessee, manager or other person who controls a building shall, for bicyclists on whose behalf the tenant or subtenant has requested bicycle access, include but not be limited to:

A. the location of entrances within or to the building;

B. the route to elevator(s) that accommodate bicycle access;

C. the regular hours of operation of the elevator(s);

D. such other information as is deemed to be appropriate by and for the particular building; and

(ii) For purposes of these rules it shall be presumed that if a freight elevator in the building is available for carrying freight, it is available for carrying a bicycle for purposes of providing bicycle access.

(iii) Bicycle access shall be available, at minimum, during the regular operating hours of the freight elevator in the event that such elevator is used for bicycle access.

(iv) Upon receiving and reviewing its copy of a request for a bicycle access plan that has been filed in accordance with subparagraph (ii) of paragraph one of subdivision (b) of this section, the Department may require that additional information be included in the plan because it has determined that such information is appropriate for the particular building in question.

(c) Amendments to plan. The owner, lessee, manager, or other person who controls a building shall amend a plan as needed (1) to address changed circumstances which warrant a revision in a particular tenant's or subtenant's plan, or in a plan that is applicable to all tenants; or (2) to accommodate new requests from other tenants or subtenants requesting bicycle access. Should such owner, lessee, manager, or other such person who controls a building elect to amend a bicycle access plan pursuant to this section, such plan shall be amended within thirty (30) days of receiving a request for bicycle access. Any amendments that may materially affect the bicycle access plan shall be completed and implemented

within thirty (30) days of the changed circumstances or to accommodate new requests from other tenants or subtenants requesting bicycle access, and do not preclude the requirement to comply with the provisions of this section. All amendments shall be filed with the Department pursuant to the provisions of subdivision (h) of this section.

(d) Exceptions.

(1) Bicycle access need not be provided if an owner, lessee, manager or other person who controls a building applies to the Commissioner for, and is granted, a letter of exception as set forth below. Such request shall be sent by certified mail, return receipt requested within fifteen (15) days of receipt of a request for a bicycle access plan to the Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, Attention: Bikes in Buildings Program, and certifies the following:

(i) the building's freight elevator is not available because unique circumstances exist involving substantial safety risks directly related to the use of such elevator pursuant to Administrative Code § 28.504.4(1) ("Exception 1"); or

(ii) there is sufficient secure alternate covered off-street no-cost bicycle parking within three blocks or seven hundred fifty (750) feet, whichever is less; or there is sufficient secure alternate indoor no-cost bicycle parking available on the premises or within three blocks or seven hundred fifty (750) feet, whichever is less, of such building to accommodate all tenants or subtenants of such building requesting bicycle access pursuant to Administrative Code § 28.504.4(2) ("Exception 2"). The number of bicycle parking spaces available shall be at least equal to the number of bicycles contained in the bicycle access tenant requests.

(2) A request for Exception 1 shall include the basis for requesting such an exception and shall also include but not be limited to the following supporting documentation:

(i) A certification from a professional engineer who is licensed and registered in New York State. Such certification shall include but not be limited to the following facts:

- (A) The date the building was constructed;
- (B) The date the elevator was installed;
- (C) The method of elevator door closing;
- (D) Whether the elevator is self-service or there is an operator;
- (E) Whether there is a car top;

- (F) Whether there is a car gate or door; and
- (G) The professional engineer's license number.

(ii) Upon receiving and reviewing a request based on Exception 1, the Department may require that additional information be submitted in support of the request because it has determined that such information is appropriate for the particular building in question.

(3) A request for Exception 2 shall include the basis for requesting such an exception and shall also include but not be limited to the following supporting documentation:

(i) Proof that secure alternate covered off-street no-cost bicycle parking or secure alternate indoor no-cost bicycle parking is available to or under the control of the owner, lessee, manager or other person who controls the building. Such proof may include but not be limited to a copy of a deed, lease, title, permit or contract evidencing such control.

(ii) The route to the secure alternate covered off-street no-cost bicycle parking that is within three blocks or seven hundred fifty (750) feet, whichever is less; or the route to the secure alternate indoor no-cost bicycle parking available on the premises or is within three blocks or seven hundred fifty (750) feet, whichever is less, of such building.

(iii) Upon receiving and reviewing a request based on Exception 2, the Department may require that additional information be submitted in support of the request because it has determined that such information is appropriate for the particular building in question.

(4) Pending the Department's inspection, review and determination of a request for a letter of exception, an owner, lessee, manager or other person who controls a building shall be exempt from complying with the requirements of this section.

(e) Inspection and Determination.

(1) If Exception 1 is sought: After conducting an inspection of the building and freight elevator, the Commissioner of the Department of Buildings shall thereafter issue a final determination to the Department as to whether to grant Exception 1. Such final determination shall be included in the Department's letter of exception or denial sent to the owner, lessee, manager, or other person who controls the building.

(2) If Exception 2 is sought: After conducting an inspection in consultation with the Department of Buildings of the secure alternate covered off-street no-cost bicycle parking or the secure alternate indoor no-cost bicycle parking, the

Commissioner shall thereafter issue a final determination as to whether to grant Exception 2.

(3) A letter of exception or denial shall be sent by the Department by certified mail, return receipt requested, to the owner, lessee, manager, or other person who controls the building.

(4) If a letter of denial is sent, a bicycle access plan shall be posted within twenty (20) days of receipt of such letter.

(f) Posting.

(1) Every owner, lessee, manager or other person who controls a building for which a bicycle access plan has been adopted shall post in such building either a current bicycle access plan or a notice in the building lobby indicating that the plan is available in the building manager's office upon request. The posting of such plan or notice shall be made within five (5) days of implementation of such plan.

(2) Every owner, lessee, manager or other person who controls a building for which an exception to the bicycle access plan requirement has been granted shall post in such a building the letter of exception provided by the Commissioner pursuant to subdivision (d) of this section, or a notice in the building lobby indicating that such letter of exception is available in the building manager's office upon request. The posting of such letter or notice shall be made within five (5) days of receipt of such letter of exception.

(3) Bicycle access plans, letters of exception and notices of availability of either such documents shall be made available to the Department, the Department of Buildings or authorized representatives of any other City agency upon request.

(g) Filing of bicycle access plan and subsequent amendments with the Department. A bicycle access plan shall be filed with the Department by electronic submission through the Department's website (www.nyc.gov/bikesinbuildings) or by regular mail to the Department of Transportation 55 Water Street, 6th Floor, New York, NY 10041, Attention: Bikes in Buildings Program, within ten (10) days of implementation of such plan. Should the owner, lessee, manager or other person who controls a building amend their bicycle access plan pursuant to subdivision (c) of this section, such amendment shall be filed with the Department as outlined above within ten (10) business days of completion and implementation of such amendment.

Statement of Basis and Purpose

The Commissioner of the New York City Department of Transportation (DOT) is authorized to promulgate rules pursuant to Section 2903 of the New York City Charter.

Chapter 2 of Title 34 of the Rules of the City of New York (RCNY) is being amended to comply with Local Law 52 of 2009, which statute relates to bicycle access to office buildings. DOT is promulgating these rules to set forth the procedures for implementing bicycle access as contemplated in Local Law 52.