

DEPARTMENT OF TRANSPORTATION

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Transportation (DOT) is proposing to amend the annual rate increase charged for revocable consents that are granted to public service corporations for facilities ancillary to, but not within, a franchise.

When and where is the Hearing? DOT will hold a public hearing on the proposed rule. The public hearing will take place at 2:00pm on Friday, January 15, 2016. The hearing will be in the 55 Water Street, Bid Room, New York, NY 10041.

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

- **Website.** You can submit comments to DOT through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rules@dot.nyc.gov.
- **Mail.** You can mail written comments to:

Michelle Craven
Franchises and Street Furniture
New York City Department of Transportation
55 Water Street, 9th Floor
New York, NY 10041

- **Fax.** You can fax written comments to the Department of Transportation, 212-839-9685.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-839-6550. You can also sign up in the hearing room before the hearing begins on January 15, 2016. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by January 14, 2016.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-839-6550. You must tell us by January 14, 2016.

Can I review the comments made on the proposed rules? You can review the comments submitted online by visiting <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of

the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes DOT to make this rule? Section 364 of the City Charter authorizes DOT to make this proposed rule. This proposed rule was not included in DOT's regulatory agenda for this fiscal year because it was not contemplated when DOT published the agenda.

Where can I find the Department of Transportation rules? The Department of Transportation's rules are in title 34 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Transportation must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Public service corporations, such as railroads, gas, water, and electric light companies, serve basic public needs. A revocable consent is the grant of a right by the Department of Transportation (“DOT”), on behalf of the City of New York, to construct and maintain private improvements on, over or under the City’s streets and sidewalks.

Pursuant to section 364 of the New York City Charter, DOT may grant a revocable consent to a public service corporation (“PSC”) for facilities that are ancillary to, but not within, a franchise. An example is a Con Edison transformer vault, many of which exist on public property, and for which Con Edison pays a fee to DOT for occupying public property.

Because PSCs provide valuable services to New York City and are already regulated by the Public Service Commission, DOT proposes to decrease by 15% the annual rate increase charged for revocable consents granted to PSCs for facilities ancillary to, but not within, a franchise.

New material is underlined.

[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.

Proposed Rule

Section 1. Paragraph 21 of subdivision a of section 7-04 of title 34 of the Rules of the City of New York is amended to read as follows:

(ii) Annual rate. See section 7-10. When calculating the annual rate pursuant to this paragraph, “E” will be reduced by 15%. This rate shall not apply to revocable consents approved as provided in subdivision (b) of this section.

§ 2. Subdivision b of section 7-04 of title 34 of the Rules of the City of New York is amended to read as follows:

(b) Other improvements approved by the Board of Estimate. Revocable consents that were granted by the Board of Estimate prior to July 1, 1990 for private improvements which are not listed in subdivision (a) above may be renewed, amended, or revoked by the Commissioner in his or her sole discretion, provided that any renewal or amendment shall be submitted to DCP when required pursuant to section 7-03 of these rules. In each year of such consent, the annual rate shall increase by the average of the Consumer Price Index for All Urban Consumers in New York and New Jersey published by the U.S. Department of Labor’s Bureau of Labor Statistics (“CPI”) increase for the ten years prior to the date of the renewal of the consent. For consents granted

pursuant to this subdivision to public service corporations, their annual rate increase shall be reduced by 15%.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Revocable Consent Rules

REFERENCE NUMBER: 2015 RG 093

RULEMAKING AGENCY: Department of Transportation

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

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 19, 2015

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Revocable Consent Rules

REFERENCE NUMBER: DOT-29

RULEMAKING AGENCY: DOT

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

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

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

October 20, 2015
Date