

NEW YORK CITY FIRE DEPARTMENT

Notice of

Repeal of 3 RCNY §16-03, entitled
“Consolidation of Provisions of the Administrative Code
and Fire Department Regulations” and

Promulgation of a New Section, 3 RCNY §109-02,
entitled “Consolidation of Administrative Code Provisions
For Enforcement Purposes”

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Fire Commissioner of the City of New York by Section 489 of the New York City Charter and Chapter 1 of the New York City Fire Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the New York City Fire Department hereby repeals Section 16-03 of Title 3 of the Rules of the City of New York (RCNY) and promulgates a new rule, 3 RCNY §109-02, entitled “Consolidation of Administrative Code Provisions For Enforcement Purposes.” The entire rule is underlined to indicate that it is new.

The public hearing was held on June 27, 2008. The repeal of 3 RCNY §16-03 and promulgation of 3 RCNY §109-02 shall take effect on July 1, 2008.

This notice, the rule, and the statement of basis and purpose will be available for at least 90 days on the Fire Department Internet website at:

www.nyc.gov/fdny

§ 109-02 Consolidation of Administrative Code Provisions For Enforcement Purposes

- (a) Scope. This section establishes violation categories for the purpose of enforcing the provisions of the New York City Fire Code (FC) (Title 29 of the Administrative Code); Title 15 of the Administrative Code (Fire Prevention and Control); the New York City Construction Codes (Title 28 of the Administrative Code); the rules promulgated by the Department and codified in Title 3 of the Rules of the City of New York (3 RCNY); and/or other laws, rule and regulations enforced by the Department. These violation categories will be cited by Department personnel in connection with the issuance of notices of violations returnable before the New York City Environmental Control Board, in lieu of citation to a particular code or rule section.
- (b) Violation Categories. The following violation categories are established for the aforementioned enforcement purposes:

Violation Category 1: Portable Fire Extinguishers and Fire Hoses

Failure to provide and/or maintain required portable fire extinguishers, fire hoses or other portable fire extinguishing devices, in violation of FC 303.5; 304.4; 307.4; 307.5; 308.6; 309.4; 309.7; 315.3; 316.5; 901.4; 904.11; 906.1; 906.2; 1105.2, 1105.3, 1105.4, 1105.5, 1105.6, 1107.7; 1110.6; 1208.4; 1407.3; 1415.1; 1417.3; 1418.1; 1504.6; 1505.5; 1507.10; 1908.8; 1909.5; 2003.5; 2106.3; 2205.5; 2208.7; 2210.6; 2211.6; 2306.10; 2404.12; 2404.13; 2508.2; 2604.2; 2707.9; 2903.6; 2906.6; 3309.9; 3403.2; 3404.3; 3405.4; 3406.2; 3406.4; 3406.8; 3506.5; and 3808.2; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 2: Combustible Waste Containers

Failure to provide a required container for combustible waste and/or store combustible waste in a required container, in violation of FC 304.3; 310.6; 1404.2; 1503.4; 1511.8; 2210.5; 2211.2; 2903.1; and 4204.1; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 3: Permits

Failure to obtain, renew or otherwise possess a Department permit required for any material, operation or facility regulated by the Fire Code, in violation of FC105.6; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 4: Unlawful Quantity or Location of Regulated Material

Manufacturing, storing, handling, using, transporting, selling or possessing hazardous materials, combustible materials, or other materials regulated by the Fire Code in an amount in excess of the quantity authorized by Department permit and/or the quantity or location restrictions for such materials set forth in the Fire Code or the rules, in violation of FC 303.7; 309.1; 1206.2; 1206.3; 2210.2; 2306; 2307; 2308; 2904; 2905; 2703.1; 2703.11; 2706.6; 2806.3; 3404.3; 3404.4; 3405.3; 3504.1; 3504.2; 3507.3; 3805.3; 3809.12; and 4204.1; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 5: Posting of Permits and Recordkeeping

Failure to post a permit and/or maintain and/or produce records, in violation of FC 105.3; 107.2; 107.7; 316.5; 405.5; 604.3; 606.1; 606.14; 901.6; 901.7; 904.11; 907.20; 909.1; 1201.4; 1205.4; 1408.1; 2201.9; 2206.2; 2208.2; 2208.7; 2210.3; 2603.5; 2707.5; 3008.8; 3303.2; and 3307.16; and/or such other Fire Code or rule sections as provide therefor.

Violation Category 6: Signs, Postings, Notices and Instructions

Failure to provide and/or maintain required signs, postings, notices, and/or instructions, in violation of FC 310.3; 310.5; 408.8; 408.9; 408.11; 408.14; 501.4; 503.3; 503.7; 504.4; 505.2; 507.2; 510.1; 605.3; 606.7; 606.9; 607.2; 608.6; 609.8; 703.2; 904.3; 904.8; 904.10; 904.11; 906.6; 907.19; 912.4; 1103.2; 1105.7; 1106.3; 1204.2; 1205.1; 1404.1; 1405.4; 1406.2; 1409.1; 1418.1; 1503.2; 1506.9; 1510.6; 1607.1; 1703.3; 2107.1; 2204.2; 2204.3; 2206.12; 2208.1; 2208.8; 2210.5; 2210.6; 2305.3; 2404.6; 2603.6; 2609.3; 2609.5; 2703.5; 2703.6; 2703.7; 2703.11; 2704.3; 2906.5; 2906.6; 3003.2; 3008.8; 3304.6; 3307.3; 3307.13; 3403.5; 3404.2; 3404.3; 3405.4; 3406.2; 3406.4; 3406.8; 3503.1; 3705.3; 3807.2; 3903.3; 4003.3; and 4303.3; Administrative Code sections 28-103.1 and 15-127(c)(3); and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 7: Labels and Markings

Failure to provide and/or maintain a required and/or approved label, or other marking, in violation of FC 112.3; 309.1; 313.5; 603.6; 605.7; 606.9; 803.5; 1403.1; 1406.2; 1606.1; 2107.2; 2206.7; 2208.2; 2211.5; 2211.8; 2404.2; 2703.5; 2703.7; 2803.2; 3003.2; 3203.4; 3203.4; 3403.5; 3404.2; 3404.3; 3405.4; 3406.4; 3704.2; and 4106.1; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 8: Accumulation and Removal of Combustible Waste

Failure to timely remove *combustible waste* from the *premises*, and/or allowing the accumulation of *combustible waste* and/or vegetation upon a *premises*, in violation of FC 304.1; 304.2; 307.5; 311.3; 316.5; 408.11; 606.10; 1027.4; 1103.3; 1106.4; 1205.1; 1404.2; 1405.3; 1605.1; 2210.5; 2404.5; 2503.3; 2604.1; 2604.1; 2604.3; 2609.4; 2703.12; 2704.11; 2705.3; 2903.1; 3003.5; 3203.6; 3304.7; 3404.4; 3406.2; 3504.2; 3604.3; 3807.3; 4203.2; and 4204.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 9: Means of Egress

Failure to provide required *means of egress* from any *premises* or part thereof, free from obstructions or impediments, including *overcrowding* by reason of the presence of persons in locations that obstruct or impede egress, and/or failure to maintain *means of egress*, in violation of FC 315.2; 801.6; 1001.2; 1027; 1207.2; 1411.2; 1504.1; 2404.4; 2404.18; 2804.3; 3003.3; 3404.3; 3406.4; 3506.3; 3809.4; and 4203.3; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 10: Overcrowding

Failure to limit the number of persons in a *premises* or any part thereof, in violation of FC 107.6; 403.2; and 1027.3; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 11: General Maintenance

Failure to maintain devices, equipment, systems, *facilities* or *premises*, or part thereof, in good working order (except as otherwise provided in Violation Categories 6, 7, 12, 13, 14, 15, 16 and 20), in clean condition, or in compliance with other general maintenance or housekeeping requirements, in violation of FC 304.1; 904.11; 1303.2; 1405.3; 2205.7; 2211.2; and 3304.8; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 12: Fire Protection Systems

Failure to provide and/or maintain *fire protection systems*, including *sprinkler systems* and other *fire extinguishing systems*, *standpipe systems*, *fire pumps*, *fire alarm systems*, and/or other devices, and equipment associated with *fire protection systems*, in violation of FC 901.6; 901.7; 903.5; 903.6; 904.5; 904.6; 904.7; 904.8; 904.9; 904.10; 904.12; 905.12; 907.20; 908.10; 909.1; 909.2; 910.5; 912.6; 913.5; 914.2; and 3406.4; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 13: Flame-Resistant Materials

Failure to provide and/or maintain *flame-resistant materials*, in violation of FC 306.3; 805; 2404.2; and 2706.11; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 14: Fire-Rated Doors and Windows

Failure to provide, protect and/or maintain a required door or window, including fire-rated doors, self-closing doors, access doors, or fire-rated glass, in violation of FC 703.2; 703.4; 2604.1; and 2804.6; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 15: Fire-Rated Construction

Failure to provide and/or maintain required fire-rated construction, including walls and other partitions, in violation of FC 304.4; 311.2; 315.2; 703.1; 1803.14; 2306.3; 2604.1; 2706.6; 2904; and 3006.2; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 16: Ventilation

Failure to provide and/or maintain required and/or approved natural or mechanical ventilation, including required devices, equipment or systems, in violation of FC 309.1; 309.3; 608.5; 609; 904.11; 1204.2; 1205.2; 1205.3; 1405.2; 1504.1; 1504.2; 1505.2; 1506.10; 1507.4; 1510.3; 1511.5; 1803.14; 2005.5; 2211.4; 2211.7; 3006.2; 3007.2; 3008.5; 3404; 3405; 3406; 3506.3; and 3803.2; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 17: Certificates of Fitness and Certificates of Qualification

Failure to obtain and/or produce a *certificate of fitness* and/or *certificate of qualification* for the supervision and/or operation of materials, operations and/or facilities, in violation of FC 303.4; 306.2; 313.5; 316.3; 401.6; 401.7; 603.1; 606.1; 801.7; 901.6; 901.7; 905.1; 914.3; 1110.6; 1201.4; 1403.6; 1404.5; 1406.2; 1418.1; 1501.4; 1701.4; 2201.7; 2603.4; 2604.2; 2706.4; 2707.7; 2906.4; 2906.8; 3001.4; 3101.4; 3201.4; 3301.5; 3401.6; 3406.2; 3406.4; 3501.4; 3701.5; 3801.5; 3901.5; 4001.4; 4101.5; 4201.5; 4301.5; and 4401.5; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 18: Certificates of Approval, Certificates of License and Company Certificates

Failure to obtain and/or produce a *certificate of approval, certificate of license or company certificate, in violation of FC 801.8; 901.4; 901.6; 1025.5; 1504.1; 1701.4; 2201.8; 3301.5; and 3401.8; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.*

Violation Category 19: Affidavits, Design and Installation Documents and Other Documentation

Failure to prepare, produce, file with the *Department* and/or submit for Department approval affidavits, applications, certifications, *design and installation documents* and/or other required documentation, in violation of FC 105.2; 105.3; 105.4; 404.2; 606.1; 2206.2; and 3406.4; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 20: Inspection and Testing

Failure to conduct a required initial or periodic inspection or test of any device, equipment, system, *facility or premises*, in violation of FC 401.8; 508.4; 508.5; 604.4; 606.6; 903.5; 903.6; 904.1; 904.11; 905.12; 912.6; 913.5; 1106.19; 1107.6; 2206.9; 3403.6; 3404.2; and 3406.4; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 21: Portable Containers

Failure to provide or use a required *container*, in violation of FC 2204.4; 3003.1; 3203.1; 3404.3; and 3406.2; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 22: Stationary Tanks

Failure to provide a required *stationary tank* storage system, including aboveground or underground flammable or combustible liquid storage tank systems, and devices and equipment associated with such systems, in violation of FC 1207.3; 2009.2; 2206.2; and 3404; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or rule sections as provide therefor.

Violation Category 23: Storage Facilities

Failure to provide a required storage facility, including storage cabinets, enclosures, rooms or vaults, in violation of FC 904.11; 2703.8; 2706.8; 2904; 3003.5; 3104; 3404.3; 3504; 3604; 3703; 3809; 3904; 4004; 4104; 4204; 4304; and 4404; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 24: Racks and Shelf Storage

Failure to provide required racks and shelf storage, and/or failure to store *hazardous materials, commodities* or other goods thereupon in an approved manner, in violation of FC 2307; 2308; and 3404.3; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 25: Electrical Hazards

Failure to provide and/or maintain required electrical devices and/or equipment (except as otherwise provided in Violation Category 27 for electrical lighting hazards), and/or allow electrical hazards to exist, in any *facility* or *premises*, in violation of FC 603.1; 604.1; 605; 606.15; 804.3; 804.4; 904.3; 1106.3; 1106.5; 1204.2; 1404.7; 1503.2; 1504.1; 1504.7; 1505.10; 1506.2; 1507.3; 1510.5; 1604.2; 1703.2; 2004; 2005.6; 2201.5; 2204.7; 2208.1; 2208.8; 2211.3; 2211.8; 2606; 2703.8; 2704.7; 2705.1; 3003.6; 3008.5; 3203.7; 3403.1; 3405.3; 3406.5; 3406.8; 3504.2; 3704.2; 3809.15; 3904.1; and 3904.2; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 26: Heating and Refrigerating Equipment and Systems

Failure to provide and/or maintain required heating and/or *refrigerating systems* and/or devices and equipment associated with such equipment or systems, in violation of FC 315.2.3; 603.5; 606.5; 606.8; 606.9; 606.11; 606.12; 908.6; 1204.2.2; 1303.1; 1403.5 1503.2; 1504.7; 2005.6; 2201.6; 2210.2; 2404.15; 3304.6; 3405.3; 3406.4; and 4204.4; Administrative Code section 28-103.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 27: Electrical Lighting Hazards

Failure to provide and/or maintain required lighting devices or equipment and/or protection therefor, in violation of FC 605.2; 605.9; 1504.5; 1604.4; 2404.9; 2705.1; 3203.11; and 4203.4; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 28: Open Fires, Open Flames and Sparks

Causing or allowing an *open fire, open flame* or sparking device or equipment to be built, kindled, lit, maintained, operated or used, and/or failure to provide protection therefor, in violation of FC 307.1; 308; 309.1; 309.5; 309.6; 316.2; 804.3; 904.11; 1104.6; 1106.10; 1303.1; 1404.3; 1503.2; 1606.2; 1703.2; 2003.6; 2005.6; 2204.7; 2208.7; 2210.5; 2504.1; 2604; 2605.5; 2703.7; 2904.6; 3304.7; and 3309.11; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 29: Designated Handling and Use Rooms or Areas

Failure to provide a required room or area for *handling* and/or use of materials, operations or other activity regulated by the Fire Code, in violation of FC 310.2; 1504.1; 1504.1; 1504.1; 2601.3; 2705; 3105.1; 3405.3; 3405.3; 3505.1; 3605.1; 3703; 3905.1; 4005.1; 4105.1; 4204.1; 4305.1; and 4405.1; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

Violation Category 30: Fire Safety in Office Buildings, Hotels and Motels

Failure to comply with the fire safety requirements for *office buildings, hotels* and/or motels, in violation of FC 401.8 and 404; and/or such other Fire Code, Administrative Code, or *rule* sections as provide therefor.

STATEMENT OF BASIS AND PURPOSE OF FINAL RULE:

The Fire Department has repealed Fire Department rule 3 RCNY §16-03 and promulgated a new, amended version of the rule that consolidates for enforcement purposes the Administrative Code provisions enforced by the Fire Department, and rules promulgated thereunder.

This action has been taken in connection with the enactment of a new Fire Code for New York City, effective July 1, 2008. The Fire Department plans to repeal and repromulgate all of its existing rules, which will be renumbered to parallel the new Fire Code sections, revised to conform to the terminology of the new Fire Code, and, as necessary, revised to amend or clarify various requirements.

The new rule, §109-02, and the violation categories it establishes, apply to ECB Notices of Violation issued by the Fire Department with a date of occurrence on or after July 1, 2008, the effective date of the new Fire Code.

Section 109-02 largely retains the organization of the repealed §16-03. In addition to renumbering the rule (to correlate with Section 109 of the new Fire Code, entitled “Violations”), §109-02 re-names the violation categories (formerly referred to as “rules”),

clarifies their scope, and substitutes the section numbers of the new Fire Code for the Fire Prevention Code sections that are consolidated in Section 16-03.

Terms used in the rule that are defined in the Fire Code or elsewhere in the Fire Department's rules are indicated by *italics*.

109-02 (6/27/08)



FIRE DEPARTMENT

9 METROTECH CENTER BROOKLYN, N.Y. 11201-3857

STATEMENT OF SUBSTANTIAL NEED FOR EARLY IMPLEMENTATION

In accordance with Section 1043(e)(1) of the New York City Charter, the Fire Department has determined that there is a substantial need to have this rule take effect on July 1, 2008, and to waive the requirement that thirty days elapse prior to the effective date of the rule, and the Mayor has approved the earlier implementation of this rule. There is a substantial need for the implementation of this rule on July 1, 2008, to enable the Fire Department to enforce, through the issuance of notices of violations returnable before the New York City Environmental Control Board, the provisions of the new New York City Fire Code, which itself takes effect on that date. Section 109-02 serves to provide notice to the public of the Fire Code sections consolidated into the violation categories cited by the Fire Department on such notices of violation.

/s/

Michael R. Bloomberg

Mayor

6/30/08

Date

/s/

Nicholas Scoppetta

Fire Commissioner

6/27/08

Date