

NEW YORK CITY FIRE DEPARTMENT

Notice of Opportunity to Comment on the

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

Proposed 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 intends to repeal Section 16-03 of Title 3 of the Rules of the City of New York (RCNY) and to promulgate 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.

A public hearing will be held on Friday, June 27, 2008, at 10:30 a.m., in the Auditorium at Fire Department Headquarters at 9 MetroTech Center, Brooklyn, New York. Persons seeking to testify are requested to notify the Counsel to the Department at New York City Fire Department, Bureau of Legal Affairs, 9 Metro Tech Center, 4<sup>th</sup> Floor, Brooklyn, New York 11201-3857. Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are requested to notify the Counsel of the Department at the foregoing address by Friday, June 13, 2008.

Written comments regarding this rule may be sent to the Counsel to the Department on or before Wednesday, June 25, 2008, at the above address. All written comments and summary of oral comments received at the hearing will be available for public inspection within a reasonable time after receipt, between the hours of 9:00 a.m. and 5:00 p.m., at the Office of the Counsel.

The Notice of Opportunity to Comment, Proposed Rule and Statement of Basis and Purpose will be available on the Fire Department Internet Home Page at:

[www.nyc.gov/fdny](http://www.nyc.gov/fdny)

Section 1. It is hereby proposed to REPEAL Section 16-03 of Title 3 of the Rules of the City of New York, entitled “Consolidation of Provisions of the Administrative Code and Fire Department Regulations.”

Section 2. It is hereby proposed to amend Title 3 of the Rules of the City of New York by adding a new Section 109-02, to read as follows:

**§ 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; 307.5; 308.6; 309.4; 309.7; 315.3; 316.5; 901.4; 901.4; 904.11; 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; 3309.6; 3403.2; 3404.3; 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; 1503.4; 2210.5; 2211.2; 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; 2306; 2307; 2308; 2904; 2905; Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) and 2703.1.1(4); 3404.3; 3404.4; 3405.3; 3504.2; 3805.3; 3809.12; 3507.3; and 4204; 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; 107.7; 405.5; 604.3; 901.6; 904.11; 909.1; 1408.1; 2201.9; 2206.2; 2208.2; 2208.7; 2210.3; 2707.5; 3008.8; 3303; 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; 408.9; 408.9; 408.14; 501.4; 503.2; 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; 1106.3; 1204.2; 1205.1; 1205.1; 1301.1; 1404.1; 1405.4; 1406.2; 1503.2; 1506.9; 1607.1; 1703.3; 2107.1; 2204.2; 2204.2; 2204.3; 2206.12; 2208.1; 2208.8; 2210.5; 2210.6; 2305.3; 2404.3; 2603.6; 2609.3; 2609.5; 2703.5; 2703.6; 2703.7; 2703.11; 2704.3; 2906.6; 3003.2; 3008.8; 3203.4; 3203.4.6; 3304.6; 3304.6; 3307.3; 3307.13; 3403.5; 3404.2; 3404.3; 3406.2; 3406.8; 3503.1; 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; 2204.2; 2206.7; 2208.1; 2208.2; 2211.5; 2211.8; 2404.2; 2703.5; 2703.7; 2704.3; 3003.2; 3203.4; 3203.4; 3309.5; 3403.5; 3404.3; 3405.4; 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; 2404.2; 2503.3; 2604.1; 2604.1; 2604.3; 2609.4; 2703.12; 2704.11; 2705.3; 2903.1; 3003.5; Tables 3203.6.1 and 3203.6.2; 3304.7; 3404.3; 3404.4; 3406.2; 3406.2; Table 3504.2.1; 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 901.4; 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; 2404.2; 2706.11; and 805; 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; and 2904; 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 113.2; 303.4; 306.2; 313.5; 316.3; 401.6; 401.7; 401.8; 603.1; 606.1; 801.6; 901.6; 901.7; 905.1; 914.3; 907.20 912.6; 1110.6; 1201.4; 1403.6; 1404.5; 1406.2; 1418.1; 1501.4; 1504.4; 1701.4; 2201.7; 2603.4; 2604.2; 2706.4; 2707.7; 2707.4; 2707.5; 2906.4; 2906.8; 3001.4; 3001.4; 3001.4; 3101.4; 3201.4; 3201.4; 3301.5; 3301.5; 3301.5; 3401.6; 3404.6; 3406.2; 3406.4; 3406.6; 3406.12; 3501; 3501.4; 3501.4; 3701.5; 3801.5; 3901.4; 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; 901.6; 1025.5; 1504.1; 1701.4; 2201.8; 3301.5; 3301.5; 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; 602; 606.1; 2206.2; 2206.9; 3206.2; 3404.2; 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 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 107.2; 401.8; 508.5; 604.4; 606.6; 805; 903.5; 903.6; 904.11; 905.12; 912.6; 1106.19; 1107.6; 2206.9; 3003.2; 3403.6; 3404.2; 3404.2; 3406.4; 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; 3003.5; 3104; 3404.3; 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 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; 904.3; 1106.3; 1106.3; 1106.5; 1503.2; 1504.1; 1504.7; 1505.10; 1506.2; 1507.3; 1510.5; 1604.2; 1703.2; 2005.6; 2201.5; 2204.7; 2208.1; 2208.8; 2211.3; 2211.8; 2404.1; 2606; 2703.8; 2704.7; 2705.1; 3003.6; 3008.5; 3203.7; 3403.1; Table 3403.1.1; 3405.3; 3405.5; 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; 1403.5.1; 1503.2.3; 1504.7.2.3; 2005.6; 2210.2.3; 2404.15; 3304.6.2; 3405.3.3; 3406.4.3; 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 316.5; 605.1; 605.9; 804.3; 804.; 1106.3; 1204.2; 1404.7; 1503.2; 1504.1; 1504.5; 1604.2; 1604.4; 2004.1; 2211.3; 2404.1; 2404.7; 2604; 2605.5; 2703.7; 2705.1; 2904.6; 3203.11; 3304.7; 3309.11; 3403.1; Table 3403.1.1; 3404.2; 3504.2; 3406.2; 3809.15; 3904.1; 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; and 2504.1; 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 PROPOSED RULE:

The Fire Department is proposing to repeal Fire Department rule 3 RCNY §16-03 and promulgate 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 is being taken in connection with the anticipated 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 proposed new rule, §109-02, and the violation categories it establishes, would apply to ECB Notices of Violation issued by the Fire Department with a date of occurrence on or after July 1, 2008, the anticipated effective date of the new Fire Code.

Section 109-02 would largely retain the organization of existing §16-03. In addition to renumbering the rule (to correlate with Section 109 of the new Fire Code, entitled “Violations”), §109-02 would re-name the violation categories (formerly referred to as “rules”), clarify their scope, and substitute 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 proposed rule that are defined in the Fire Code or elsewhere in the Fire Department’s rules the are indicated by *italics*.

109-02 (5/23/08)