

NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to comment on proposed rule changes to Section 1-07.1 of the Loft Board Rules, relating to appeals of administrative determinations.
- Date / Time:** August 2, 2012 at 2:00 p.m.
- Location:** 22 Reade St, 1st Floor
New York, NY 10007
- Contact:** New York City Loft Board
280 Broadway, 3rd Floor
New York, NY 10007
(212) 566-5663

Proposed Rule Amendment

Pursuant to the authority vested in the New York City Loft Board by Article 7-C of the Multiple Dwelling Law and Mayor's Executive Order No. 129, dated May 22, 2009, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter, the New York City Loft Board intends to amend section 1-07.1 of Title 29 of the Rules of the City of New York to conform the Loft Board's rules regarding appeals of administrative determinations to the Loft Board in accordance with the amendments made to Article 7-C of the Multiple Dwelling Law, effective as of June 21, 2010.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment by mail to the New York City Loft Board at the address shown above or electronically through NYC RULES at www.nyc.gov/nycrules by August 2, 2012.
- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact the New York City Loft Board at the phone number shown above by July 30, 2012.
- Copies of the written and summarized oral comments received at the hearing will be available August 9, 2012 between the hours of 10:00 A.M. and 4:00 P.M. at the offices of the New York City Loft Board.

STATEMENT OF BASIS AND PURPOSE

Pursuant to § 282 of Article 7-C of the Multiple Dwelling Law (“Loft Law”), the Loft Board may promulgate rules to ensure compliance with the Loft Law. In June 2010, the Legislature amended the Loft Law by enacting Chapter 147 of the Laws of 2010, which, among other things, amended § 282 of the Loft Law.

Section 282 authorizes the Loft Board to designate the Environmental Control Board (“ECB”) to enforce violations of the Loft Law. In accordance with the terms of MDL § 282, this proposed amendment to section 1-07.1 of Title 29 of the Rules of the City of New York clarifies that the procedures for appeal in § 1-07.1, relating to appeals from administrative determinations, do not apply to appeals from ECB determinations.

The proposed amendments further clarify that the procedures in § 1-07.1 apply to: 1) appeals from determinations by Loft Board staff with respect to any matter that does not have to go to the full Board for a determination and 2) to determinations by a Loft Board hearing officer with respect to housing maintenance standard violations under § 2-04 of these rules. Finally, the proposed amendments include minor technical changes with respect to the procedures for filing an appeal.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise.

New matter in the following rule is underlined, and deleted material is in brackets.

Section 1-07.1 of Title 29 of the Rules of the City of New York is amended to read as follows:

§_1-07.1 Appeal from a Determination of the [Director] Loft Board Staff or the Environmental Control Board, or Determination of a Hearing Officer Under Section 2-04.

(1) Appeal from a Determination of the Loft Board Staff or Hearing Officer.

(a) Right to Appeal.

(1) A person aggrieved by a written determination of the [Director] Loft Board staff, with respect to any matter that is not required by these rules to be determined by the full Loft Board, or by a determination of a Loft Board hearing officer with respect to housing maintenance standard violations

under section 2-04 of these rules, may appeal [from] such determination to the [full] Loft Board. The determination of the Loft Board [deciding] pursuant to such appeal [shall] constitute the final agency determination from which judicial review may be sought.

(2) Who has the Right to Appeal? For the purposes of this section, a "person aggrieved" by a written determination of the [Director"] Loft Board staff [shall be] means the owner or any residential tenant of the building in question whose rights may be affected by the determination.

For the purposes of this section, a "person aggrieved by a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules" [shall be] means the owner of the building in question or [the Director of Enforcement of] the Loft Board staff, in his or her capacity as prosecutor of housing maintenance standard violations.

(b) Filing Requirement.

(1) A person aggrieved by a determination as set forth in [subdivision] paragraph (a) of this [section] subdivision must file with the Loft Board [12] 5 copies of an appeal application, along with proof of service of the appeal application upon the affected parties to the prior proceeding and, except where the [Director of Enforcement of the] Loft Board staff is the appellant, the application fee required by [section] § 2-11(b)(14). Service of the application [shall] must be made in accordance with the provisions of [section 2-01(d)(1)(i)] § 1-06(b). To be considered timely, an appeal application must be received by the Loft Board within 45 calendar days of the date of mailing of the determination sought to be appealed. The application must specify the questions presented for appeal and the facts and points of law relied upon as a basis for seeking appeal.

(2) Who is an Affected Party in an Appeal? For the purposes of this section, an "affected party" in an appeal from a staff determination [of the Director shall be] means the owner or any residential tenant of the building in question whose rights may be affected by the determination.

For the purposes of this section, an "affected party" in an appeal from a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules [shall be] means the owner of the building in question or the [Director of Enforcement of the]

Loft Board staff, in his or her capacity as prosecutor of housing maintenance standard violations.

(c) Answer Period in an Appeal and Notice of the Final Order.

Within 20 calendar days of service of the appeal application, any party supporting or opposing the application [shall] must file [12] 5 copies of an answer[ing brief or memorandum] with the Loft Board, with proof of service, in accordance with the provisions of § 1-06(e) [section 2-01(d)(1)(i)] of these rules, upon the applicant. [Such brief or memorandum] The answer must contain the facts and argument on which such party is relying. Pursuant to § 1046(f) of the City Administrative Procedure Act, [U]pon determination of the appeal application, the [decision] final orders of the Loft Board will be mailed to all parties who filed an application or answer in the appeal proceeding. The proposed order will be mailed prior to the issuance of the final order.

(d) Standard of Review.

In [determining] reviewing an appeal from a determination [in] by the Loft Board staff or of a Loft Board hearing officer with respect to housing maintenance standard violations under § 2-04 of these rules, the Loft Board [shall review the determination with regard to] must consider whether the facts found [therein] are supported by substantial evidence in the record, whether the law was correctly applied, and whether the penalty imposed is appropriate, but [shall] may not consider any evidence not presented to the Loft Board staff or Loft Board hearing officer, unless good cause is shown as to why the evidence was not previously available.

(e) Loft Board Authority.

The Loft Board [shall have the power to] may reverse, remand, or modify any determination appealed from pursuant to this section and may reduce the penalty imposed by a hearing officer for housing maintenance standard violation, and the penalty imposed by the Loft Board staff.

(2) Appeal from a Determination of the Environmental Control Board.

An appeal from a determination of an Environmental Control Board (“ECB”) hearing examiner issued pursuant to a Loft Board rule must be brought before

the ECB in accordance with its applicable rules and provisions, as set forth in Chapter 3 of Title 48 of the Rules of the City of New York, and must be in a form prescribed by the ECB, which may be obtained at www.nyc.gov/ecb.

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

RULE TITLE: Filing Requirements for Appeals from Administrative Determinations of Loft Board Staff (§ 1-07.1)

REFERENCE NUMBER: 2011 RG 093

RULEMAKING AGENCY: Loft Board

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: June 19, 2012

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/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 19, 2012