

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Housing Preservation and Development (HPD) is proposing rules implementing Local Law 65 of 2014 (LL 65), which authorizes HPD to impose a fee for certain complaint-based housing inspections. HPD is also proposing amendments to Chapters 17 and 25 of Title 28 of the Rules of the City of New York to implement the changes made by LL 65 and certain clarifications.

When and where is the Hearing? The Department of Housing Preservation and Development will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM-11:00 AM on June 18, 2015. The hearing will be in room 5R1 at 100 Gold Street, New York, N.Y. 10038.

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

- **Website.** You can submit comments to the Department of Housing Preservation and Development through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rules@hpd.nyc.gov.
- **Mail.** You can mail written comments to Assistant Commissioner Mario Ferrigno at: Department of Housing Preservation and Development, 100 Gold Street, Room 5-Z7, New York, N.Y. 10038.
- **Fax.** You can fax written comments to the Department of Housing Preservation and Development, Att: Mario Ferrigno at 212 863-8617.
- **Hearing.** You can speak at the public 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 212 863-8602, or you can sign up in the hearing room before the hearing begins on June 18, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? Comments must be submitted before the close of business on June 18, 2015.

What if I need assistance to participate in the Hearing? You must tell the Department 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 212 863-8602. You must tell us by June 4, 2015.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at 100 Gold Street, Office of Legal Affairs, Department of Housing Preservation and Development, New York, N.Y. 10038.

What authorizes the Department of Housing Preservation and Development to make this rule? New York City Charter §§ 1043 and 1802(6)(l) and New York City Administrative Code §§27-2115(f), 27-2129, and 27-2008 authorize the Department of Housing Preservation and Development to make this proposed rule. This proposed rule was not included in the Department of Housing Preservation and Development's regulatory agenda for this fiscal year because one of the local laws authorizing the rule had not yet been enacted.

Where can I find the Department of Housing Preservation and Development's rules? The rules of the Department of Housing Preservation and Development are located in Title 28 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Housing Preservation and Development must meet the requirements of New York City Charter §1043 when creating or changing rules. This notice is made according to the requirements of New York City Charter §1043.

Statement of Basis and Purpose of Proposed Rule

Local Law 65 of 2014 (LL 65) authorizes the Department of Housing Preservation and Development (HPD) to impose a fee to conduct a third complaint-based inspection for a dwelling unit that HPD has inspected twice in the same twelve-month period. For this fee to apply, HPD must have issued a hazardous (class B) or immediately hazardous (class C) violation in the dwelling unit as a result of each such inspection in that period, and the owner must have failed to certify that all of those violations have been corrected. Under the law, if the fee has not been paid, it becomes a tax lien against the property.

The new law provides HPD with authority to, by rule:

- (1) Increase the fee for such inspections when they are performed during "heat season" (the period of October 1st through May 31st),
- (2) Exclude certain hazardous or immediately hazardous violations from the inspection fee, and
- (3) Determine what documents HPD would require for an owner to object to the inspection fee. An owner must prove that he/she attempted to access the dwelling unit to make repairs but was unable to do so. The owner's objection would be made under the process provided by Administrative Code §27-2129 and related statutes, and HPD's rules in 28 RCNY Chapter 17.

The proposed rules provide for a new Chapter 47 to specify which hazardous and immediately hazardous violations would not generate the complaint-based inspection fee. They also amend 28 RCNY Chapter 17 to describe the documents required for an owner to protest the inspection fee on the basis of lack of access to a dwelling unit to make repairs.

Housing Maintenance Code §27-2008 establishes an owner's right of access to a tenant's dwelling unit. The law authorizes HPD to make rules regarding an owner's entry to a dwelling unit at a reasonable time and in a reasonable manner. Under LL 65, an owner would be able to protest a recurring violation inspection fee on the basis of lack of access to a dwelling unit to

make repairs. The proposed rule amends Chapter 25, Subchapter H, §25-01 to clarify and update requirements regarding notification to tenants and the right of access to a dwelling unit at a reasonable time and in a reasonable manner to repair violations and conduct inspections for making improvements and other repairs.

The proposed rule also makes a clarification to Chapter 17 of Title 28 of the RCNY to specify that the rules pertaining to objections to charges enforced as tax liens apply to charges incurred under § 27-2091.

“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.

New material in the following rule is underlined, deleted material is in [brackets].

Section one. Chapter 17 of title 28 of the rules of the city of New York is amended to read as follows:

CHAPTER 17
RULES PERTAINING TO OBJECTIONS TO CHARGES ENFORCED
AS TAX LIENS PURSUANT TO §§27-2144, 27-2153(q), 27-2091, 27-2115(f)(8), 28-215.1.1
AND 28-216.11 OF THE ADMINISTRATIVE CODE

§17-01 Scope.

This chapter describes the process for making objections to municipal charges that are enforced as tax liens against properties pursuant to §§27-2144, 27-2153(q), 27-2091, 27-2115(f)(8), 28-215.1.1 and 28-216.11 of the Administrative Code and any other municipal charges that may be made tax liens subject to the process described in Article 8 of Subchapter 5 of the Housing Maintenance Code.

§17-03 Objection Procedure.

- (a) The Department may file a lien for its expenses and fees incurred pursuant to Administrative Code §§27-2144, 27-2153(q), 27-2091, 27-2115(f)(8), 28-215.1.1 and 28-216.11.
- (b) Unless otherwise stated in Administrative Code §27-2146 and these rules,
 - (1) an owner, or

(2) a mortgagee or lienor, whose mortgage or lien would have priority over the Department's lien if not for the provisions of §27-2144, who receives a statement of account pursuant to Administrative Code §27-2129 with a charge incurred pursuant to Administrative Code §§27-2125, 27-2153, 27-2091, 27-2115(f)(8), 28-215.1.1 or 28-216.11 may notify the Department in writing of his or her objection to such charge.

(c) The "statement date" listed on the Department of Finance's billing application detail for a statement of account shall be presumptive evidence that such statement of account was mailed within five business days of the statement date to the person or entity registered with the Department of Finance.

(d) All objections to a charge on a statement of account shall be submitted in writing or electronically. Each objection shall be addressed to the Department to the attention of the Research and Reconciliation Unit, 100 Gold Street, [Room 4A,] New York, N.Y. 10038 or to www.hpderp@hpd.nyc.gov.

(e) Each objection to a charge on a statement of account shall:

- (1) specify the charge objected to and the nature of such objection, and
- (2) include any documentation supporting the objection.

Any charge without specific objections from an owner shall be considered undisputed.

(f) If an owner submits an objection under Administrative Code §27-2129 and 28 RCNY §47-02 to a charge imposed under §27-2115(f)(8) on the basis that he or she has attempted and failed to gain access to the dwelling unit that is the subject of the complaint-based inspection fee for the purpose of making repairs, then the owner shall include the following documentation:

(i) Copies of at least four written notices delivered to the occupant of the subject dwelling unit (two attempts at access after each complaint-based inspection) requesting access at reasonable dates and times in accordance with 28 RCNY §25-101, to make repairs. However, if the owner is requesting access to repair a class C violation, copies of such written notices will not be required unless such class C violation is for the existence of a lead-based paint hazard; and

(ii) A sworn affidavit signed by the owner, that such owner was not able, after four attempts (two attempts at access after each complaint-based inspection), to gain access to the dwelling unit for the purpose of making repairs. Such affidavit shall include the date of each such attempt at access and shall describe the efforts made by the owner or his or her representative to obtain access to the dwelling unit, and such other information as the Department may require.

[(f)] (g) Each objection to a charge on a statement of account shall be received by the Department prior to the due and payable date of such charge. Pursuant to Administrative Code §27-2129, if an owner does not notify the Department in writing of his or her objection to such a charge before the due and payable date as indicated on the statement of account, the owner may not contest the charge in any subsequent judicial or administrative proceeding.

[(g)] (h) Unless otherwise stated in subdivision (c) of Administrative Code §27-2146, a written objection to a charge on a statement of account may not be based upon:

- (1) the lawfulness of the repair or other work done or,
- (2) the propriety and accuracy of the expense for which a lien is claimed.

[(h)] (i) Within a reasonable time after receipt of a written objection to a charge on a statement of account, the Department will make a determination based on all the documentation received from the objecting owner as well as the records of the Department. The Department will then inform the objecting owner of such determination in writing, including the reasons for that decision.

§2. Section 25-101 of subchapter H of chapter 25 of title 28 of the rules of the city of New York is amended to read as follows:

SUBCHAPTER H

OWNER'S RIGHT TO ACCESS TO DWELLING UNITS [APARTMENTS] OR ROOMS IN MULTIPLE DWELLINGS

§25-101 Owner's Right of Access.

§25-101 Owner's Right of Access.

(a)(1) *Owner to give notice.* Where an owner or his or her representative seeks access to [an apartment] a dwelling unit, suite of rooms or to a room, under the provisions of §27-2008 in order to make an inspection [therein] for the purpose of determining whether such places are in compliance with the provisions of the multiple dwelling law [of] or the administrative code, [he] such owner or representative shall notify the tenants [that he will seek access to the apartment, suite of rooms, or rooms,] not less than twenty-four hours in advance of such time of inspection.

(2) Where an owner[, contractor or agent of the owner] or his or her representative seeks access to make improvements required by law or to make repairs to a dwelling unit, suite of rooms or to a room, such owner or representative shall give notice [shall be given] to the tenant

not less than one week in advance of the time when the improvements or repairs are to be started, except where otherwise provided in paragraph (3) of this subdivision.

(3) [However, where] Where an owner or his or her representative seeks access to make repairs (i) that are urgently needed to a dwelling unit, suite of rooms, a room, or to a public area or other area of a dwelling, as in the case where a class C violation of the Housing Maintenance Code has been issued, except where such class C violation is for the existence of a lead-based paint hazard, or (ii) in the case of an emergency where repairs are immediately necessary [in emergencies] to prevent damage to property or to prevent injury to persons, such as repairs of leaking gas piping or appliances, leaking water piping, stopped-up or defective drains, [or] leaking roofs, or broken and dangerous ceiling conditions, such owner or representative shall not be required to provide [no] advance notice [shall be required from the owner, agent, contractor or workman] to the tenant or tenants.

(4) Where an owner or his or her representative must make a repair in a public area or other area of a dwelling that may result in an interruption of essential services such as utilities or elevators, that will continue for more than twelve hours, the owner or his or her representative shall provide written notice to the tenants by posting a notice in a prominent place within the public part of the building and on each floor of such building at least seventy-two hours prior to such interruption.

(b) *Notices to be in writing.* Where an owner is required to give notice in advance of seeking access to [an apartment] a dwelling unit, suite of rooms or to a room, as required by subdivision (a) of this section, such notice shall be in writing, dated, and shall contain a statement of the nature of the improvement or repairs to be made.

(c) *Authorization to be in writing.* Where [an authorized agent or employee] a representative of an owner seeks access to [an apartment] a dwelling unit, suite of rooms, or rooms, the authorization of the owner shall be in writing and the [agent or employee] representative shall exhibit such authorization to the tenant when access is requested.

(d) *Hours when access to be permitted.* Except as provided in paragraph (3) of subdivision (a) of this section [in emergencies], access to [an apartment] a dwelling unit, suite of rooms, or rooms, shall be limited[,] to the hours between nine antemeridian and five post-meridian, unless otherwise agreed to by the tenant. Access shall not be required on Saturdays, Sundays or legal holidays, unless otherwise agreed to by the tenant, except [in emergencies] as provided in paragraph (3) of subdivision (a) of this section.

§3. Title 28 of the rules of the city of New York is amended by adding a new chapter 47 to read as follows:

CHAPTER 47

Rules Pertaining to Recurring Violations and Complaint-Based Inspections

§47-01. A complaint-based inspection shall not be subject to the complaint-based inspection fee and shall not be included in the total number of such inspections within a twelve-month period that qualifies a dwelling unit for the complaint-based inspection fee authorized by Administrative Code §27-2115(f)(8) where such inspection results exclusively in the issuance of an immediately hazardous or hazardous violation for only one or more of the following conditions:

- (a) inoperable or missing smoke detector;
- (b) inoperable or missing carbon monoxide detector;
- (c) double cylinder lock on entry door of the dwelling unit;
- (d) illegal window gate;
- (e) improper installation or absence of a window guard; or
- (f) failure to maintain a dwelling unit in a clean and sanitary condition, including, but not limited to, an accumulation of refuse/rubbish.

§47-02. An owner may object, pursuant to Administrative Code §27-2129, to the imposition of the complaint-based inspection fee authorized by Administrative Code §27-2115(f)(8). An owner may object on the basis that he or she has attempted and failed to gain access to make repairs to the dwelling unit that is the subject of this fee. Such objection shall be made pursuant to article eight of subchapter five of chapter two of title 27 of the Administrative Code, and the rules promulgated thereunder in 28 RCNY Chapter 17.

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: Fee for Inspection of Recurring Violations

REFERENCE NUMBER: HPD - 20

RULEMAKING AGENCY: Department of Housing Preservation and Development

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/ Sabrina Fong

Mayor's Office of Operations

4/22/2015

Date

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: Fee for Inspection of Recurring Violations

REFERENCE NUMBER: 2015 RG 035

RULEMAKING AGENCY: Department of Housing Preservation and Development

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

Date: April 22, 2015

Acting Corporation Counsel