Legal Policy and Procedure Notice 2/91

Issuance #328

December 21, 1991

**Superceded:** Memoranda and Directives of 1988, pages 2455- 2456, Form Waiver Letters for Local Law 58/87; TPPN- 1190, Waiver Procedures for Local Law 58/87, pages 2754- 2756.

**Purpose:** To clarify procedures for obtaining a waiver of the requirements of Local Law 58/87, (accessibility for the disabled), pursuant to Administrative Code' 27-292.6.

**Effective Date**: Immediately

**Specifics:** Applicants may resolve plan examination objections based on Local Law 58/87 by revising their plans accordingly, or by obtaining a waiver from the Department of Buildings. Prior to the issuance of such a waiver, the Mayor's Office for People With Disabilities ("MOPD") shall be consulted and shall issue a recommendation to the Department. Questions involving an interpretation of Code requirements, as opposed to a waiver of Code requirements, need not be referred to MOPD.

Each waiver request to the Commissioner shall be in writing, using the waiver application form [Form PEO-l(REV. 12/91)] attached hereto and following the directions accompanying said form.

Applicant shall forward a completed waiver request form with all supporting attachments (the "Waiver Request Package") to MOPD. MOPD shall review the Waiver Request Package and provide the Department with a written recommendation. Applicant may transmit MOPD's recommendation to the Department. If Applicant is not able to obtain a recommendation from MOPD within thirty days, the Borough Office may deem MOPD's failure to respond as a recommendation of a "denial" provided Applicant submits a copy of the Waiver Request Package, stamped "Received MOPD dated ."evidencing Applicant's submission of the Waiver Request Package to MOPD at least thirty days earlier, and a signed statement attesting to Applicant' s inability to obtain a definite written recommendation from MOPD.

As per Code SEC 27-292.6, Applicant's request, MOPD's recommendations and the Department's determination that a waiver should be granted must be based upon a specific finding that compliance with the requirements of Local Law 58/87 would:

1. create an undue economic burden; or
2. not achieve its intended objective; or
3. be physically or legally impossible; or
4. be unnecessary in light of alternatives which insure the achievement of the intended objective or which, without a loss in the level of safety, achieve the intended objective more efficiently, effectively or economically; or
5. entail a change so slight as to produce a negligible additional benefit consonant with the purposes of the Code.

The Borough Commissioner may act on the request for a waiver upon receipt of the recommendation from MOPD, or thirty days after the submission to MOPD, whichever is sooner.

**Agreement with MOPD recommendation**

Waivers may be granted or denied by the Borough Commissioner if in agreement with the MOPD recommendation.

 To grant a waiver request, the Borough Office must address in a detailed writing its findings and conclusions with respect to one or more of the bases which supports the grant.

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