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| 2013 amendment to § 1-07 |
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# NEW YORK CITY LOFT BOARD

## NOTICE OF ADOPTION OF FINAL RULE

**NOTICE IS HEREBY GIVEN 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 is amending Section 1-07 of Title 29 of the Rules of the City of New York to update and clarify requirements related to reconsideration applications brought before the Loft Board.

A duly noticed public hearing was held on August 2, 2012, affording the public opportunity to comment on the amendments as required by Section 1043 of the New York City Charter. Written comments were accepted through August 2, 2012.

### 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. Rules promulgated pursuant to Article 7-C of the Loft Law are set forth in Title 29 of the Rules of the City of New York ("Loft Board Rules").

The amendments to Section 1-07 of the Loft Board Rules update and clarify procedures related to reconsideration applications filed with the Loft Board to ensure consistency, where appropriate, with Section 1-06 of the Loft Board Rules. Section 1-06 relates to applications to the Loft Board generally. Specifically, the changes are as follows:

1. Describe the filing and service requirements for reconsideration applications and answers to such applications;

2. Clarify the circumstances under which reconsideration applications can be made; and

3. Add section headings, and make minor clarifying revisions and revisions to conform the language of Section 1-07 to that of Section 1-06.

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

New matter in the following rule is <u>underlined</u>, and deleted material is in [brackets].

**Section 1-07 of Title 29 of the Rules of the City of New York is amended to read as follows:**

§ 1-07 **Reconsideration of Loft Board Determination.**

(a) Reconsideration Application.

(1) General Requirements. The procedures and requirements set forth in § 1-06 of this title apply to reconsideration applications filed pursuant to this section, except as otherwise stated in this section.

(2) Basis of the Reconsideration Application. The Loft Board, upon the application of a party aggrieved by a determination of the Loft Board, may, in its sole discretion, reconsider [such] its determination. An application for reconsideration will be granted only under the following extraordinary circumstances: [allegations] (i) an allegation of denial of due process or material fraud in the prior proceedings, (ii) an error of law, (iii) an erroneous determination based on a ground that was not argued by the parties at the time of the prior proceeding and that the parties could not have reasonably anticipated would be the basis for a determination, [and] or (iv) discovery of probative, relevant evidence which could not have been discovered at the time of the hearing despite the exercise of due diligence. In addition, pursuant to § 1-06(i) of this title, an affected party who has not moved for relief from a default determination and who is aggrieved by the default determination may move to reopen the proceeding by filing an application for reconsideration with the Loft Board within 30 calendar days following the mailing date of the order. Such reconsideration application will be granted only if the Loft Board finds that the affected party has established (i) extraordinary circumstances for the failure to file an answer and (ii) substantial likelihood of success on the merits.

(b) Service and Filing of the Reconsideration Application.

(1) Service and filing requirements set forth in § 1-06(b) of this title apply to reconsideration applications filed pursuant to this section. These requirements include but are not limited to the following:

(i) An aggrieved party must file with the Loft Board: [12] (A) 5 copies of his or her reconsideration application, [along with] at least one of which must have an original signature, (B) one copy of the instruction sheet sent to each affected party to the prior proceeding, and (C) proof [that] of service of the reconsideration application [has been served on] to the affected parties [to] in the prior proceeding [and];

(ii) Payment of the application fee required by [section] § 2-11(b)(15)[.] must be made upon submission of the reconsideration application to the Loft Board; and

(iii) Service of the application [shall] must be made in accordance with the provisions of [section 2-01(d)(1)(i)] § 1-06(b)(1).

(2) To be considered timely, a complete reconsideration application must be received by the Loft Board within 30 calendar days [of] after the mailing date [of mailing by the Loft Board] of the determination sought to be reconsidered. The application must specify the questions presented for reconsideration and the facts and points of law relied upon as a basis for seeking reconsideration, and must include a copy of the determination sought to be reconsidered.

(c) (1) Service and Filing Requirement for Answers.

(i) Unless otherwise stated here, the service and filing requirements set forth in § 1-06(c)-(f) of this title apply to answers to reconsideration applications filed pursuant to this section. [Within 20 days of service of the reconsideration application,] In accordance with § 1-06(e), any affected party [supporting or opposing the application shall] submitting an answer to the reconsideration application must file [12] 5 copies of [an] the original [answering brief or memorandum] answer and any accompanying documents, and proof of service of the answer on the applicant for reconsideration, with the Loft Board[, with proof of service upon the applicant for reconsideration].

(ii) The answer period is 20 calendar days after service of the reconsideration application on the affected party is deemed complete pursuant to § 1-06(b)(3) of this title. [Such brief or memorandum] The answer must contain the facts and [argument on which such party is relying] arguments relevant to the issues raised in the reconsideration application.

(2) Issuance of Orders. Pursuant to § 1046(f) of the City Administrative Procedure Act, prior to the issuance of the final order, the Loft Board will mail a copy of its proposed order to 1) the party or parties who filed the reconsideration application, 2) the parties who filed an answer, and 3) all affected parties in the underlying proceeding. [Upon determination of the reconsideration application, the decision of the Board will be mailed] The Loft Board will mail a copy of its final order, within a reasonable time from the date of the order, to [all] 1) the party or parties who filed [an] the reconsideration application, [or] 2) the parties who filed an answer, [in the reconsideration pro- ceeding] and 3) all affected parties in the underlying proceeding.

(d) Judicial Review. A Loft Board determination issued pursuant to [section] § 1-06 of [these rules shall be the] this title constitutes a final agency determination for [the purpose] purposes of [judicial review] commencement of the running of the statute of limitations for the filing of a petition pursuant to Article 78 of the Civil Practice Law and Rules challenging such determination and seeking judicial review, unless a timely application for reconsideration of the determination has been filed. [In such case,] If a reconsideration application was filed, and the Loft Board:

> [(i) if the Loft Board modifies] (1) Modifies or revokes the underlying [order] determination, [such] the revocation or modification [shall be] is deemed the final agency determination [from which] for purposes of judicial review [may be sought];
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> [(ii) if the Loft Board denies] (2) Denies the reconsideration application, the underlying [order] determination [shall be] is deemed the final agency determination [from which] for purposes of judicial review [may be sought], and the date of the denial of the reconsideration application [shall be] is deemed the date of the final agency determination; [and] or
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> [(iii) if the Loft Board decides] (3) Decides the reconsideration application by remanding the matter to the assigned staff hearing [officer] examiner or Administrative Law Judge at the Office of Administrative Trials and Hearings (OATH) for further proceedings, neither the underlying order nor the remand order [shall constitute] constitutes a final agency determination for purposes of judicial review, and no judicial review may be sought until such time as the Loft Board issues a final agency determination following the remand.