

THE NEW YORK CITY PLANNING COMMISSION
NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on a proposed rule designating thirteen (13) actions as Type II, which will not require environmental review under City Environmental Quality Review

Date/time: November 20, 2013 / 10:00 A.M.

Location: Spector Hall
22 Reade Street
New York, NY 10007

Contact: Wesley O'Brien
New York City Mayor's Office of Environmental Coordination
100 Gold Street, 2nd Floor
New York, New York 10038
(212)788-2932

Proposed Rule

NOTICE IS HEREBY GIVEN in accordance with the requirements of Section 1043 of the New York City Charter and pursuant to the authority vested in the City Planning Commission by Section 192(e) of the New York City Charter, the City Planning Commission proposes to add new rules to Section 5-05 of Chapter 5 of Title 62 of the Rules of the City of New York. These rules were not included in a regulatory agenda for fiscal year 2014 because the need for this rulemaking was not known at the time that regulatory agendas were published.

Instructions

- Any person in attendance at this hearing shall be given a reasonable opportunity to present oral or written statements and to submit other documents concerning the proposed rules.
- Each speaker shall be allotted a maximum of three (3) minutes.
- Persons who require that a sign language interpreter or other form of reasonable accommodation for disability be provided at the hearing are asked to notify Wesley O'Brien at the address set forth above by November 11, 2013.
- Persons who require that a foreign language interpreter be provided at the hearing are asked to notify Wesley O'Brien at the address set forth above by November 11, 2013.
- Prior to the hearing, comments on the proposed rules may be submitted to Wesley O'Brien by mail or electronically through NYC Rules at www.nyc.gov/nycrules.
- Until December 3, 2013, written comments received and a recording of oral comments received at the hearing will be available for public inspection within a reasonable time after receipt by contacting Wesley O'Brien at the address set forth above.

Statement of Basis and Purpose

Statutory Authority

These rules are promulgated pursuant to the authority of the City Planning Commission under Section 192(e) of the New York City Charter. Section 192(e) vests in the City Planning Commission the authority to establish by rule procedures for environmental reviews by the City where such reviews are required by law. The State granted the City the authority to promulgate these rules through New York State Department of Environmental Conservation regulations, found in Title 6 of the New York Codes, Rules and Regulations (NYCRR). Subdivision (b) of Section 617.5 of Chapter 6 of Title 6 of the NYCRR authorizes agencies to adopt their own list of Type II actions to supplement the State list of Type II actions, which are found in Subdivision (c) of the same section.

Statement of Purpose

The proposed rules would exempt certain actions from the City Environmental Quality Review (CEQR) procedures. The proposed rules would also provide that some of the listed actions are exempt only if they meet one or more prerequisites.

Currently, the State Environmental Quality Review regulations and CEQR designate certain actions, which are likely to require the preparation of an Environmental Impact Statement, as Type I. Section 617.5 of Title 6 of the NYCRR designates other actions, which have been determined not to have a significant adverse impact on the environment, and therefore are not subject to environmental review, as Type II.

Actions that are not designated as either Type I or Type II are referred to as “Unlisted.” For Unlisted actions, an Environmental Assessment Statement (EAS) must be prepared. The lead agency must determine whether the action has the potential for significant adverse environmental impacts. If it is determined, based on the Environmental Assessment Statement, that the action does not have the potential to result in significant impacts, then a Negative Declaration is issued providing the reasons for this determination.

Previous EASs have consistently shown that certain types of Unlisted actions do not have the potential to result in significant adverse environmental impacts. For example, over the past five years, 31 EASs have been prepared in conjunction with special permits for radio and television towers pursuant to Section 73-30 of the Zoning Resolution of the City of New York. Radio and television towers were consistently found not to result in significant adverse environmental impacts, and negative declarations were issued for each of the 31 special permits.

However, because actions such as the special permit for radio and television towers remain Unlisted, an EAS must still be prepared and a Negative Declaration must be issued every time that these actions are taken. Continuing to conduct environmental review of such actions places an administrative burden on government agencies and private businesses, but provides no environmental protection since significant adverse environmental impacts are never predicted. The review of such actions, therefore, constitutes a waste of public and private resources.

The New York City Mayor’s Office of Environmental Coordination, in consultation with the CEQR Task Force, has identified 13 Unlisted actions that lead agencies have determined do not have the potential to result in significant environmental impacts, based on the preparation and

review of EASs in the past as well as on evaluation of the potentially significant environmental impacts associated with such actions.

The proposed rules would exempt these actions from environmental review under CEQR and simplify the environmental review process for applicants while freeing agency resources to focus on actions that may have the potential for significant adverse impacts on the environment.

The proposed rules also include prerequisites that certain types of projects must meet before they are exempted from the requirements. For example, the proposed rule would exempt certain actions that could involve the excavation of areas not previously excavated from environmental review only if they are located on a site that is not archeologically sensitive.

The Mayor's Office of Environmental Coordination estimates that the proposed rules will exempt approximately 184 projects from the environmental review requirements of CEQR over the next five years.

Summary of Provisions

The proposed rules would add two new subdivisions, subdivisions (c) and (d), to Section 5-05 of Chapter 5 of Title 62 of the Rules of the City of New York.

Subdivision (c) would list 13 types of actions that are not subject to environmental review under CEQR. Subdivision (d) would list certain prerequisites that the actions listed in subdivision (c) must meet in order to be exempt from environmental review.

Material to be deleted is enclosed in [brackets] and material to be added is underlined.

Section 5-05 of Chapter 5 of Title 62 of the Rules of the City of New York is amended by adding two new subdivisions (c) and (d) to read as follows:

(c) Type II. The following actions are not subject to review under City Environmental Quality Review, the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) or the SEQRA Regulations, subject to § 5-05(d) of these rules:

- (1) Special permits for physical culture or health establishments of up to 20,000 gross square feet, pursuant to § 73-36 of the Zoning Resolution;
- (2) Special permits for radio and television towers, pursuant to § 73-30 of the Zoning Resolution;
- (3) Special permits for ambulatory diagnostic or treatment health care facilities, pursuant to § 73-125 of the Zoning Resolution;
- (4) Special permits to allow a building or other structure to exceed the height regulations around airports, pursuant to § 73-66 of the Zoning Resolution;
- (5) Special permits for the enlargement of buildings containing residential uses by up to 10 units, pursuant to § 73-621 of the Zoning Resolution;
- (6) Special permits for eating and drinking establishments of up to 2,500 gross square feet with accessory drive-through facilities, pursuant to § 73-243 of the Zoning Resolution;
- (7) Acquisition or disposition of real property by the City, not involving a change of use, a change in bulk, or ground disturbance;
- (8) Construction or expansion of primary or accessory/appurtenant park structures or facilities involving less than 10,000 square feet of gross floor area;

- (9) Park mapping, site selection or acquisition of less than ten (10) acres of existing open space or natural areas;
- (10) Authorizations for a limited increase in parking spaces for existing buildings without parking, pursuant to § 13-442 and § 16-341 of the Zoning Resolution;
- (11) Special permits for accessory off-street parking facilities, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-351 of the Zoning Resolution;
- (12) Special permits for public parking garages and public parking lots, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-352 of the Zoning Resolution; and
- (13) Special permits for additional parking spaces, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 13-45 of the Zoning Resolution.

(d) Type II Prerequisites.

- (1) An action listed in § 5-05(c)(2)-(5), or (8) of these rules involving ground disturbance shall remain subject to environmental review, unless it is determined that any potentially significant hazardous materials impacts will be avoided.
- (2) An action listed in § 5-05(c)(2), (3), (5), or (8) of these rules involving excavation of an area that was not previously excavated shall remain subject to environmental review, unless it is determined that the project site is not archaeologically sensitive.
- (3) An action listed in § 5-05(c)(4) of these rules shall remain subject to environmental review, unless it is determined that any potentially significant noise impacts will be avoided.
- (4) An action listed in § 5-05(c)(2), (3), (5), or (8) of these rules involving the removal or alteration of significant natural resources shall remain subject to environmental review.
- (5) An action listed in § 5-05(c)(2), (4) or (5) of these rules shall remain subject to environmental review if the project site is:
 - (i) wholly or partially within any historic building, structure, facility, site or district that is calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark;
 - (ii) substantially contiguous to any historic building, structure, facility, site or district that is designated, calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark; or
 - (iii) wholly or partially within or substantially contiguous to any historic building, structure, facility, site or district, or archaeological or prehistoric site that is listed, proposed for listing or eligible for listing on the State Register of Historic Places or National Register of Historic Places.

**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: Amendment of City Environmental Quality Review Procedures

REFERENCE NUMBER: 2013 RG 075

RULEMAKING AGENCY: City Planning Commission

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: September 13, 2013

**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: Amendment of City Environmental Quality Review Procedures

REFERENCE NUMBER: DCP-3

RULEMAKING AGENCY: DCP

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/ Francisco X. Navarro
Mayor's Office of Operations

September 13, 2013
Date