



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, NY 10007

**MEMORANDUM**

To: Robert R. Kulikowski, Ph.D.

From: Wesley O'Brien, General Counsel  
Mayor's Office of Environmental Coordination

Date: October 24, 2013

Subject: CEQR Type II Rulemaking

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*This memorandum provides the highlights of the oral presentation that was delivered to the New York City Planning Commission on October 7, 2013.*

**I. Introduction and Background.**

The State Environmental Quality Review Act requires that before any government agency undertakes, funds or approves an action, the agency must conduct an environmental review to determine whether the action would result in significant environmental impacts. The requirement to conduct environmental review applies to a broad array of actions by all agencies of the City.

In addition to describing the array of actions requiring environmental review, the regulations for State Environmental Quality Review also include a list of 37 actions that are exempt from environmental review -- these are referred to as "Type II" actions. For example, basic maintenance and repair of structures is listed as a Type II action, and therefore, no environmental review is required prior to repairing buildings.

However, a longstanding issue for the City is that there are a variety of minor actions, which do not appear on the state's Type II list but which have been consistently demonstrated not have the potential to result in significant environmental impacts. As a result, environmental review is conducted again and again for these minor actions with unnecessary expenditure of time and resources by both applicants and the City. For example, in order open a health club in New York City, the operator has to apply for a special permit from the Board of Standards and Appeals. Because there is no Type II category for health clubs, an environmental review has to be conducted in conjunction with every application. From 2007 to mid-2012, 123 health club special permit applications were filed, and each and every one required environmental reviews that had the same outcome -- a finding that no environmental impacts would result from the action of granting the permit.

Fortunately, local governments are permitted to supplement the state Type II list with their own lists of exempt actions, provided that none of the local actions would result in significant environmental

impacts. Under the City Charter, the City Planning Commission is responsible for promulgating the rules that govern environmental reviews by all city agencies.

So, today, as part of an ongoing business process reform for environmental review that was initiated by City Hall a few years ago, we are proposing new City Planning Commission CEQR rules that would exempt from environmental review the health club special permit and twelve other minor actions that have been shown not to have the potential to cause environmental impacts.

Looking at this for a minute from the perspective of the City Planning Commission's land use review function there are two points worth noting:

- First, this proposal affects only four City Planning Commission actions; the remainder of the actions are non-zoning actions, which are undertaken by other agencies.
- And second, the proposal would only exempt these actions from environmental review; the proposal would not exempt projects from ULURP or otherwise affect land use review procedures.

I will now take a few minutes to describe the proposed rules and how they were developed, and then will discuss the process for promulgating these rules.

## **II. Proposal.**

Last year, the Mayor's Office of Environmental Coordination contacted City agencies and requested that they identify routine or high volume actions that are currently subject to environmental review, but which are minor and have been shown over time not to result in significant environmental impacts. As a result, we received proposals from a number of agencies. If you refer to pages 3 and 4 of Notice of Public Hearing, in underlining you will see the final list of actions that were proposed by:

- The Board of Standards and Appeals; these are shown in sections (c)(1) through (6) of the proposed rules;
- The Office of the Mayor and the NYC Law Department, shown in section(c)(7);
- The Department of Parks and Recreation, shown in sections (c)(8) and (9); and
- The Department of City Planning, which is shown in sections (c)(10) through (13).

We then assembled all of the environmental review documents that have been prepared for these actions over the last five to ten years, and worked with the Citywide CEQR Task Force to determine which actions would be appropriate for exemption. To determine whether significant impacts would result from designating these actions as Type II, an Environmental Assessment Statement was prepared that includes the background, history, and environmental review outcomes for all of the actions that we are proposing for inclusion on the Type II list today.

For each action, we considered whether there was something inherent to the action – for example its small size – that ensures it would not result in environmental impacts. For example, the proposed rules would exempt from environmental review City Planning Commission authorizations for accessory off-street parking facilities, pursuant to ZR section 13-442. This authorization only allows the addition of up to 15 parking spaces in existing buildings. Garages of this size simply do not generate enough trips to

cause traffic, air quality or other environmental impacts, and therefore this action is proposed for exemption.

For other actions, we found that the history of prior environmental reviews demonstrates that no environmental impacts would result as long as the projects remain below certain sizes. So for these actions, the proposed rules provide upper size limits. For example, the construction of park structures would only be exempt from environmental review if the structure is less than 10,000sf; larger park structures would remain subject to environmental review.

Finally, for some actions, the potential for certain environmental impacts could not be ruled out, and therefore, various prerequisites set forth in section (d) of the proposed rules would have to be met before the action is designated as Type II. For example, in constructing park structures we could not make a blanket determination that no hazardous materials impacts would result because the potential for hazardous materials impacts depends on where the structure is being built and what uses it will accommodate. Accordingly, in order to be exempt from environmental review, the Parks Department would have to make a determination that constructing a park structure at a proposed site would not cause hazardous materials impacts.

### **III. The Process.**

Today we are requesting authorization from the Commission to publish the Notice of Public Hearing that is in your packet and to begin the rulemaking process in accordance with the City Administrative Procedure Act. There would then be a public hearing on the proposed rules at your regularly scheduled public hearing on November 20<sup>th</sup>. Thereafter, we would return to you to discuss any issues raised in the hearing and answer any questions that the Commission might have before holding the vote on the final rule.

### **IV. Conclusion.**

In his 2009 State of the City address, Mayor Bloomberg directed city agencies to reduce the costs and delays of environmental review “without giving up one iota of environmental protection.” Thereafter, the Mayor’s Office of Environmental Coordination led an effort to improve the process for environmental reviews, much like the BluPrint project that City Planning has undertaken in recent years. At that time, the creation of a Type II list was identified as an important reform.

We estimate that the proposed rules would exempt approximately 184 projects from undertaking unnecessary environmental review over the next five years, saving applicants’ time and allowing agencies to dedicate scarce resources to other issues. Looking to the future, we hope that this rulemaking will serve as a template for identifying and periodically adding additional actions to the Type II list. We, therefore, request that the Commission authorize publication of the Notice of the Public Hearing to begin the rulemaking process.

Thank you.