

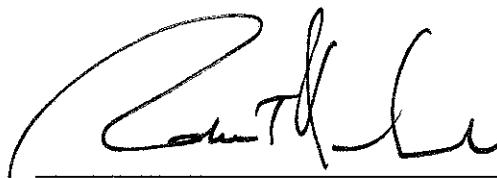
NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the addition of Chapter 9000 and new section 9000-01 to Title 1 of the Official Compilation of the Rules of the City of New York, regarding adult establishments.

This rule was first published on April 2, 2003 and a public hearing thereon was held on May 2, 2003.

Dated: _____

6/1/10
New York, New York



Robert D. LiMandri
Commissioner

Title 1 of the rules of the City of New York is amended by adding a new chapter 9000 and a new section 9000-01 to read as follows:

CHAPTER 9000

Zoning

§ 9000-01 Adult establishments. Dates of establishment and discontinuance of adult establishments, houses of worship, and schools for the purposes of sections 32-01 and 42-01 of the zoning resolution. In determining whether an adult establishment may lawfully be established at a location pursuant to sections 32-01 and 42-01 of the zoning resolution, the department will use the following criteria to determine the dates of establishment and discontinuance for adult establishments, houses of worship and schools located or proposed to be located within 500 feet of each other.

(a) The date of establishment of an adult establishment, house of worship, or school in existence and operating prior to August 8, 2001 shall be the date of issuance of an appropriate department permit or, if no permit was required, the date that it commenced operation, as determined by the department.

(b) Except as otherwise provided in subdivision a of this section, the date of establishment of an adult establishment, house of worship, or school shall be the date of issuance of an appropriate department permit, subject to the following qualifications:

(1) With respect to a new building permit or alteration permit:

(i) significant progress must be shown toward completion of the work under the permit. For the purposes of this paragraph, the term "significant progress" means the issuance of a temporary certificate of occupancy or, if applicable, department signoff of the work within one year of issuance of the permit, except that upon application, the commissioner or his or her designee, may extend the one year period in accordance with subdivision c of this section for a period of time not exceeding one year, and

(ii) the use or operation for which the building is constructed or altered must commence within six months after the issuance of a temporary certificate of occupancy or, if applicable, within six months after a department signoff that the work has been completed, except that upon application, the commissioner or his or her designee, may extend the six month period in accordance with subdivision c of this section for a period of time not exceeding six months.

(2) With respect to applications for permits filed solely to establish priority, where no work requiring a building permit is proposed, the use or operation for which the permit is issued must commence within two months of the issuance of such permit, except that upon application, the commissioner or his or her designee may extend such two month period in accordance with subdivision c of this section for a period of time not exceeding two months.

(c) An extension of time pursuant to subdivision b of this section may be granted where the permittee submits an application no later than 30 days prior to the expiration of the applicable time period together with satisfactory evidence that significant progress

or the commencement of use or operations within the applicable time period is impracticable. The commissioner or his or her designee shall make a determination and notify the applicant in writing of his or her determination not later than 30 days after receipt of the application by the department. If the application is denied, the commissioner or his or her designee shall state the reason(s) therefor. If the commissioner or his or her designee fails to act upon the application within such 30-day period, the application shall be deemed to be granted.

(d) An adult establishment, otherwise in compliance with the zoning resolution, may be established within 500 feet of a discontinued adult establishment, house of worship or school. For the purposes of this subdivision, once established, an adult establishment, house of worship, or school shall not be deemed to be discontinued until it has ceased operation for a continuous period of one year or longer.

(e) The time periods set forth in this section for significant progress of work or for commencement of operations shall commence to run as of the effective date of this section or issuance of the permit, whichever is later.

STATEMENT OF BASIS AND PURPOSE

The foregoing rule is promulgated pursuant to the authority of the Commissioner of the Department of Buildings under Sections 643 and 1043 of the New York City Charter and pursuant to New York City Zoning Resolution Sections 32-01 and 42-01. Specifically, the rule supplements Sections 32-01 and 42-01 of the October 31, 2001 amendments to the NYC Zoning Resolution (ZR) relating to adult establishments. The rule provides that if an adult establishment, house of worship or school began operating prior to August 8, 2001, it is “established” either as of the date of a Department permit or, if no permit was required, as of the date it commenced operations.

ZR 32-01 and 42-01 state that an adult establishment is established on the date of a permit issued by the Department, subject to rules regarding the failure to

perform work authorized under a permit or to commence operation pursuant to a permit and the discontinuance of an adult establishment. The priority rights of an adult establishment, house of worship or school can be affected by its failure to complete construction work and/or commence operations within a certain time frame, as well as its discontinuance of operations. This rule establishes priority rights in situations where an adult establishment or house of worship or school obtains a work permit but does not make significant progress towards completion of the work under the permit within a prescribed time, obtains a work permit and makes significant progress towards completion of the work (or obtains a no work permit) but fails to commence operation within a prescribed time, or opens for business but subsequently discontinues operation for a prescribed period of time.

The rule provides that where an adult establishment, house of worship or school is established as of the date of a new building or alteration permit, it must show significant progress toward completion of the work under such permit within a prescribed time and commence operation within a prescribed time; if it is established upon issuance of a "no work" permit, it must commence operations within a prescribed time period. Such prescribed time period for significant progress begins to run as of the effective date of this rule or as of the permit date, whichever is later. The rule also sets forth a procedure to obtain an extension of time based on satisfactory evidence that significant progress or commencement of operations within the prescribed time period is not practicable.

The rule further adds a discontinuance period of one year for an "established" adult establishment, house of worship or school. This is a period at the expiration of which an adult establishment, house of worship or school loses its "established" status if it fails to operate continuously for this period.