

# 1 RCNY §21-02

## CHAPTER 21 PLANS

### **§21-02 Exclusion from Limited Supervisory Check and/or Professional Certification Programs.**

(a) *Grounds for exclusion.* The Commissioner may exclude an architect or engineer from the Department's programs for limited supervisory check and/or professional certification of applications, plans and removal of objections if the Commissioner finds that the architect or engineer has:

- (1) Displayed negligence or incompetence with regard to, or lack of knowledge of, the Building Code, the Zoning Resolution, the Department's regulations, or other applicable laws, rules or regulations as demonstrated by plans, applications, certifications, or inspection reports submitted by the architect or engineer to the Department; or
- (2) Submitted plans, applications, certifications or inspection reports to the City that were required to be prepared by the architect or engineer or under his or her supervision but that were not prepared by the architect or engineer or under his or her supervision; or engaged in conduct evidencing a delegation of professional responsibilities to a person where the architect or engineer knew or had reason to know that such person was not qualified, by training, by experience or by licensure, to perform them; or
- (3) Knowingly or negligently made false or misleading statements on or knowingly or negligently falsified, altered or allowed a person under his or her control and/or supervision to falsify or alter any certificate, form, signed statement, application or report filed with the City, or knowingly or negligently failed to file a report or obtain any approval, certification, waiver or reconsideration required by law or the City or willfully impeded or obstructed such filing, or induced another person to do so; or
- (4) Been convicted of a criminal offense where the underlying act arises out of the architect or engineer's professional occupation or business dealings; or
- (5) Had knowledge that any project or application filed with the Department with which the architect or engineer is involved in any capacity was fraudulent or dishonest in character and failed to report such fraudulence or dishonesty to the Department, the Department of Investigation or other relevant authority; or
- (6) Engaged in misconduct regarding his or her Department-issued Photo Identification Card; or
- (7) Engaged in any conduct related to any activity performed in connection with his or her profession that evidences a failure to comply with the provisions of Federal, State or local law, rules or regulations or a Department order or requirement; or
- (8) Impeded, obstructed or failed to cooperate with an investigation or inquiry of or failed to provide documents requested by the Commissioner or his or her designee or the Department; or
- (9) Made a material misrepresentation to persons not affiliated with the Department regarding the status of applications and/or plans filed with the Department; or
- (10) Altered, defaced or destroyed Department property, or removed Department property, including permitted folders, from Department premises; or
- (11) Offered or attempted to offer a bribe or unlawful gratuity to a Department employee or other public servant; or
- (12) Failed to maintain a copy of plans and/or related documents approved by the Department for six years after the applicant has been issued a letter of completion, a Certificate of Occupancy, or an application sign-off, whichever occurs later; or
- (13) Permitted the improper use of, or had knowledge of or failed to promptly report to the Department any improper use of his or her professional stamp, signature, or license number; or
- (14) Within a period of six months, failed two Department audits that resulted in revocations.

(b) *Procedures.*

- (1) Administrative charges outlining the basis for such action to exclude from the limited supervisory check and/or professional certification program shall be served upon the architect or engineer by certified mail, return receipt requested, pursuant to the Office of Administrative Trials and Hearings' (OATH's) Rules of Practice (Title 48 of the Rules of the City of New York).
- (2) Notwithstanding the foregoing, if the Commissioner finds that continued use of the programs for limited supervisory check and/or professional certification by the architect or engineer would likely create a serious and immediate threat to public safety or property, the Commissioner shall have the power, pending service of administrative charges, to issue an order immediately suspending the architect or engineer and his or her associates, if applicable, from limited supervisory check and/or professional certification.

(c) *Hearing.*

- (1) Upon a filing of the administrative charges, the architect or engineer will be scheduled for a hearing upon submitting any written objections to the administrative charges and the grounds for such objections to the Commissioner within fifteen days after the date that the notice of charges is served.
- (2) All hearings are to be held at OATH. The architect or engineer may be represented by counsel or by a duly authorized representative and may present evidence on his or her behalf.
- (3) When the Commissioner suspends an architect's or an engineer's limited supervisory check and/or professional certification privileges pursuant to § 21-02(b)(2), the architect or engineer shall have fifteen days from the date the

order is served to object and request a hearing on the order and any forthcoming administrative charges. The written objection shall include the grounds for such objection(s). Failure to make a timely objection shall result in a waiver of the right to a hearing and the Commissioner's order shall thereupon be considered a final determination. Upon receipt of a timely objection to the order, the Commissioner or his or her representative shall promptly schedule a hearing at OATH, with due consideration given to the current OATH calendar, and serve the architect or engineer with charges and notice of such hearing pursuant to OATH's Rules of Practice.

(4) After the conclusion of a hearing, the OATH Administrative Law Judge shall issue proposed findings of fact and proposed conclusions of law, along with a report and recommendation to the Commissioner. The Commissioner shall review the report and recommendation issued by the OATH Administrative Law Judge and shall issue a final determination. The Commissioner shall notify the architect or engineer in writing of the final determination. Such notice shall include a written statement indicating the reason for the final determination.

(5) After the Commissioner has rendered a final determination excluding a particular professional, all applications and plans submitted by that architect or engineer shall be subject to full review by the Department.