



THE CITY RECORD

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THE CITY RECORD

MICHAEL R. BLOOMBERG, Mayor

MARTHA K. HIRST, Commissioner, Department of Citywide Administrative Services.
ELI BLACHMAN, Editor of The City Record.

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PUBLIC HEARINGS AND MEETINGS

See Also: Procurement; Agency Rules

CITY PLANNING COMMISSION

PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT RESOLUTIONS Have been adopted by the City Planning Commission scheduling public hearings on the following matters to be held at Spector Hall, 22 Reade Street New York, New York, on Wednesday, January 7, 2009, commencing at 10:00 A.M.

BOROUGH OF THE BRONX No. 1 1157 FULTON AVENUE

CD 3 C 090073 HAX
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD):

- pursuant to Article 16 of the General Municipal Law of New York State for:
 - the designation of property located at 1157 Fulton Avenue (Block 2609, Lot 54), as an Urban Development Action Area; and
 - an Urban Development Action Area Project for such area; and
- pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer selected by HPD;

to facilitate the rehabilitation of an existing four-story residential building, tentatively known as 1157 Fulton Avenue, with approximately 13 residential units.

BOROUGH OF BROOKLYN Nos. 2, 3, 4, 5 & 6 GATEWAY ESTATES II No. 2

CD 5 C 090078 HUK
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD), pursuant to Section 505 of Article 15 of the General Municipal (Urban Renewal) Law of New York State and Section 197-c of the New York City Charter, for the Third Amended Fresh Creek Urban Renewal Plan for the Fresh Creek Urban Renewal Area.

The Third Amendment updates the project time schedule and overall plan by modifying parcel sizes, densities, building heights, and use designations on individual parcels; and revises the language and format of the Urban Renewal Plan

to conform with HPD's current format for urban renewal plans, to facilitate the development of a mixed-use development containing residential, commercial, community facility and open space uses.

No. 3

CD 5 C 090079 ZMK
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 17d:

- eliminating from within an existing R6 District a C2-4 District bounded by a line 95 feet northeasterly of Lower Ashford Street, a line 115 northwesterly of Fountain Street, a line 100 feet southwesterly of Elton Street, the southwesterly centerline prolongation of Elton Place, Elton Street, a line 162 feet southeasterly of Erskine Place, a line 100 feet northeasterly of Elton Street, a line midway between Elton Place and Fountain Street, a line 95 feet southwesterly of Essex Street, Fountain Street, the southeasterly prolongation of the northeasterly street line of Essex Street, a line 180 feet southeasterly of Fountain Street, the southeasterly prolongation of the southwesterly street line of Lower Ashford Street, and Fountain Street;
- changing from an R3-2 District to an R6 District property bounded by the former centerline of Erskine Street*, the new centerline of Erskine Street*, and a line 115 feet southeasterly of Schroeders Avenue*;
- changing from an R6 District to an R7A District property bounded by Flatlands Avenue, Elton Street, a line 100 feet northwesterly of Egan Street*, a line 100 feet northeasterly of Elton Street, the southeasterly street line of Elton Street and its northeasterly and southwesterly prolongations, a line 100 feet southwesterly of Elton Street, Locke Street*, and Ashford Street*;
- changing from an R3-2 District to a C4-2 District property bounded by a line 115 southeasterly of Schroeder Avenue*, the former centerline of Erskine Street*, and the new centerline of Erskine Street*;
- changing from an R6 District to a C4-2 District property bounded by a line 115 feet southeasterly of Schroeders Avenue* and its southwesterly prolongation, a line 100 feet southwesterly of Elton Street, the southeasterly street line of Elton Street and its northeasterly and southwesterly prolongations, a line 100 feet northeasterly of Elton Street, a line 115 feet southeasterly of Schroeders Avenue*, the former centerline of Erskine Street*, Erskine Street, a line 180 feet southeasterly of former Fountain Street*, and the centerline of former Schenck Avenue;
- establishing within an existing R6 District a C2-4 District bounded by:
 - Vandalia Avenue, Erskine Avenue*, Schroeders Avenue*, and a northeasterly boundary line of a park; and

- Egan Street, Fountain Avenue, Vandalia Avenue, and a line 100 feet southwesterly of Fountain Avenue; and
- establishing within the proposed R7A District a C2-4 District bounded by:
 - Flatlands Avenue, a line 100 feet southwesterly of Elton Street, Locke Street*, and Ashford Street*;
 - a line 100 feet northwesterly of Egan Street*, a line 100 feet northeasterly of Elton Street, Vandalia Avenue, and Elton Street; and
 - Schroeders Avenue*, Elton Street, the southeasterly street line of Elton Street and its southwesterly prolongation, and a line 100 feet southwesterly of Elton Street;

as shown on a diagram (for illustrative purposes only) dated September 8, 2008.

*Note: Fountain Street is proposed to be eliminated, Schroeders Avenue is proposed to be mapped, Erskine Street is proposed to be narrowed and various streets are proposed to be re-named under a related concurrent application (C 080089 MMK) for a change in the City Map.

No. 4

CD 5 C 090081 ZSK
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development and Gateway Center Properties Phase II, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(c) of the Zoning Resolution to modify the regulations of Section 32-64 (Surface Area and Illumination Provisions), Section 32-65 (Permitted Projection or Height of Signs) and Section 32-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) in connection with a proposed commercial development, on property generally bonded by Gateway Drive, a line approximately 750 feet southeasterly of Schroeders Avenue, Erskine Street, and a line approximately 115 feet southeasterly of Schroeders Avenue (Block 4452 p/o Lots 170 and 400 and Block 4586 p/o Lot 1), in a C4-2 District*, within a general large-scale development.

*Note The site is proposed to be rezoned by changing an R6 District to a C4-2 District, under a related concurrent application C 090079 ZMK.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

No. 5

CD 5 C 090082 HAK
IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development (HPD):

- pursuant to Article 16 of the General Municipal Law of New York State for:
 - the designation of the following properties located at:

Block	Lot	Fresh Creek Urban Renewal Area
4444	p/o Lot 1	p/o Site 3a
4445	Lot 1	Sites 3b, 3e, 3f, and p/o Site 3a
4446	Lot 1	
4447	p/o Lot 1	p/o Site 4
4448	Lot 1	Sites 6a, 6b, 14a, 14c, and p/o Site 4
4449	Lot 1	
4452	600, 700, p/o Lot 170	Sites 3c, 3d, 7a-c, 8a-f, 10, 12a-e, 16c, 19b, 20a-b, p/o Site 13a and p/o Site 24

and p/o Lot 400

4586 p/o Lot 1 Sites 29, 31, 27, 28, p/o Site 13a and p/o Site 24

as an Urban Development Action Area; and

b) an Urban Development Action Area Project for such area; and

2) pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer selected by HPD;

to facilitate development of a new mixed use community, containing regional and local retail, housing, community and public facilities, and open space.

No. 6

CD 5 C 080089 MMK
IN THE MATTER OF an application, submitted by Gateway Center Properties Phase II, LLC, the Department of Housing, Preservation and Development, the Department of Parks and Recreation, and the Nehemiah Housing Development Fund Corporation, Inc., pursuant to Sections 197-c and 199 of the New York City Charter and Section 5-430, et seq., of the New York City Administrative Code, for an amendment to the City Map involving:

- the establishment of streets;
- the elimination, discontinuance and closing of streets;
- the establishment of park;
- the elimination of park;
- the extinguishment and modification of easements;
- the modifications of grades necessitated thereby; and
- any acquisition or disposition of real property related thereto,

all within an area generally bounded by Gateway Drive, Flatlands Avenue, Fountain Avenue, and Shore Parkway,

in accordance with Map Nos. Y-2705 and X-2706, dated September 4, 2008, and signed by the Borough President.

NOTICE

On Wednesday, January 7, 2009, at 10:00 A.M., in Spector Hall, at the Department of City Planning, 22 Reade Street, in Lower Manhattan, a public hearing is being held by the Department of Housing Preservation and Development in conjunction with the above ULURP hearings to receive comments related to a Draft Environmental Impact Statement (DEIS) concerning the 3rd amendment to the Fresh Creek Urban Renewal Plan, zoning and city map amendments, a special permit and the designation of an Urban Development Action Area and Project to facilitate Gateway Estates II, a proposed mixed-use development.

This hearing is being held pursuant to the State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR), CEQR No. 07HPD021K.

**Nos. 7, 8 & 9
 363-365 BOND STREET
 No. 7**

CD 6 C 090047 ZMK
IN THE MATTER OF an application submitted by the Toll Brooklyn, L.P. pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 16c:

1. changing from an M2-1 District to an M1-4/R7-2 District property bounded by Carroll Street and its southeasterly centerline prolongation, the center line of the Gowanus Canal, Second Street and its southeasterly centerline prolongation, and Bond Street; and
2. establishing a Special Mixed Use District (MX-11) District bounded by Carroll Street and its southeasterly centerline prolongation, the center line of the Gowanus Canal, Second Street and its southeasterly centerline prolongation, and Bond Street.

as shown on a diagram (for illustrative purposes only) dated September 8, 2008, and subject to the conditions of CEQR Declaration E-221.

No. 8

CD 6 C 090048 ZSK
IN THE MATTER OF an application submitted by the Toll Brooklyn, L.P. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify the height and setback regulations of Section 123-66 (Height and Setback Regulations), the rear yard regulations of Section 23-47 (Minimum Required Rear Yards), and the inner court regulations of Section 23-852 (Inner court recesses), in connection with a proposed mixed use development on property located at 363-365 Bond Street, (Block 452, Lots 1, 5, 15, 19, and Block 458, Lot 1), in an M1-4/R7-2 (MX-11) * District, within a General Large-Scale Development.

*Note: The site is proposed to be rezoned from an M2-1 District to an M1-4/R7-2 (MX-11) District, under a related application C 090047 ZMK.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

No. 9

CD 6 C 090049 ZRK
IN THE MATTER OF an application submitted by Toll Brooklyn, LP pursuant to Section 201 of the New York City Charter, for amendments of the Zoning Resolution of the City of New concerning Article XII, Section 3 (Special Mixed Use Districts); and Article II, Section 3 (Bulk Regulations for Residential Buildings in Residence Districts) in Community District 6, Borough of Brooklyn.

Matter in underline is new, to be added;
 Matter in ~~strikeout~~ is old, to be deleted;
 Matter within # # is defined in Section 12-10;
 * * * indicates where unchanged text appears in the Zoning Resolution

ARTICLE II – RESIDENCE DISTRICTS

Chapter 3
 Bulk Regulations for Residential Buildings in Residence Districts
 * * *
 23-144
 In designated areas where the Inclusionary Housing Program is applicable

In #Inclusionary Housing designated areas#, as listed in the following table, the maximum permitted #floor area ratios# shall be as set forth in Section 23-942 (In Inclusionary Housing designated areas). The locations of such districts are specified in Section 23-922 (Inclusionary Housing designated areas).

Community District	Zoning District
Community District 1, Brooklyn	R6 R6A R6B R7A
Community District 2, Brooklyn	R7A
Community District 3, Brooklyn	R7D
Community District 6, Brooklyn	R7-2
Community District 7, Brooklyn	R8A
Community District 6, Manhattan	R10
Community District 7, Manhattan	R9A
Community District 2, Queens	R7X

* * *
 23-922
 Inclusionary housing designated areas

The Inclusionary Housing Program shall apply in the following areas:
 * * *

- (i) In Community District 6, in the Borough of Brooklyn, in the R7-2 District within the areas shown on the following Map 14:



Map 14. Portion of Community District 6, Brooklyn

* * *
 23-942
 In Inclusionary Housing designated areas

The #floor area# of a #development# or #enlargement# may not exceed the base #floor area ratio# set forth in the following table, except that such #floor area# may be increased by one and one-quarter square feet for each square foot of #floor area# provided for #lower income housing#, up to the maximum #floor area ratio# specified in the table. However, the amount of #lower income housing# required to receive such bonus #floor area# need not exceed 20 percent of the total #floor area#, exclusive of ground floor non-#residential floor area#, in the #building#. In addition, the following rules shall apply:

District	Base #floor area ratio#	Maximum #floor area ratio#
R6*	2.2	2.42
R6**	2.7	3.6
R6A	2.7	3.6
R6B	2.0	2.2
R7*	2.7	3.6
R7**	3.45	4.6
R7A	3.45	4.6
R7D	4.2	5.6
R7X	3.75	5.0
R8	5.40	7.2
R9	6.0	8.0
R9A	6.5	8.5
R10	9.0	12.0
—		
*	for #zoning lots#, or portions thereof, beyond 100 feet of a #wide street#	
**	for #zoning lots#, or portions thereof, within 100 feet of a #wide street#	

(b) Height and setback

(1) Except in #Special Mixed Use Districts#, the compensated #building# must be #developed# or #enlarged# pursuant to the height and setback regulations of Sections 23-633 (Street wall location and height and setback regulations in certain districts) or 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts), as applicable.

(2) In #Special Mixed Use Districts#, where the #residence district# designation has a letter suffix, the compensated #building# must be #developed# or #enlarged# pursuant to paragraph (a) or (b) of Section 123-662 (All buildings in Special Mixed Use Districts with R6, R7, R8, R9 and R10 District designations), as applicable. However, where the #residence district# designation is an R6 District without ~~does not have~~ a letter suffix, the compensated #building# must be #developed# or #enlarged# pursuant to the height and setback regulations of Section 23-633 regardless of whether the #building# is #developed# or #enlarged# pursuant to the Quality Housing Program.
 * * *

ARTICLE XII - SPECIAL PURPOSE DISTRICTS

Chapter 3
 Special Mixed Use District
 * * *
 123-63
 Maximum Floor Area Ratio and Lot Coverage Requirements for Residential Buildings in R6, R7, R8 and R9 Districts

Where the designated #Residence District# is an R6, R7, R8 or R9 District, the minimum required #open space ratio# and maximum #floor area ratio# provisions of Sections 23-142, 23-143 and paragraph (a) of Section 23-147 shall not apply. In lieu thereof, all #residential buildings#, regardless of whether they are required to be #developed# or #enlarged# pursuant to the Quality Housing Program, shall comply with the maximum #floor area ratio# and #lot coverage# requirements set forth for the designated district in Section 23-145, or paragraph (b) of Section 23-147 for #non-profit residences for the elderly#. For purposes of this Section, #non-profit residences for the elderly# in R6 and R7 Districts without a letter suffix, shall comply with the provisions for R6A or R7A Districts, respectively, as set forth in paragraph (b) of Section 23-147.

Where the designated district is an R7-3 District, the maximum #floor area ratio# shall be 5.0 and the maximum #lot coverage# shall be 70 percent on a #interior# or #through lot# and 80 percent on a #corner lot#.

Where the designated district is an R9-1 District, the maximum #floor area ratio# shall be 9.0, and the maximum #lot coverage# shall be 70 percent on a #interior# or #through lot# and 80 percent on a #corner lot#.

However, in #Inclusionary Housing designated areas#, as listed in the following table, the maximum permitted #floor area ratio# shall be as set forth in Section 23-942 (In Inclusionary Housing designated areas). The locations of such districts are specified in Section 23-922 (Inclusionary Housing designated areas).

Special Mixed Use District Designated Residence District

MX 8-Community District 1, R6 R6A R6B R7A
 Brooklyn

MX 11-Community District 6, R7-2
 Brooklyn

* * *
 123-90
 Special Mixed Use Districts Specified
 The #Special Mixed Use District# is mapped in the following areas:
 * * *
#Special Mixed Use District# - 11: Gowanus, Brooklyn

The #Special Mixed Use District# -11 is established in Gowanus, in Brooklyn as indicated on the #zoning maps#.

Resolution for adoption scheduling January 7, 2009 for a public hearing.

NOTICE

On Wednesday, January 7, 2009, at 10:00 A.M., in Spector Hall, at the Department of City Planning, 22 Reade Street, in Lower Manhattan, a public hearing is being held by the City Planning Commission in conjunction with the above ULURP hearing to receive comments related to a Draft Environmental Impact Statement (DEIS) concerning a zoning text amendment and a related zoning map amendment to change an existing M2-1 zoning district to a Special Mixed Use District (M1-4/R7-2) for two blocks (Blocks 452 and 458) located along the west waterfront of the Gowanus Canal in the Gowanus neighborhood of Brooklyn Community District 6. The proposed actions would facilitate a proposal by the applicant, Toll Brothers, Inc., to redevelop their project site (Block 452, Lots 1 and 15 and Block 458, Lot 1) with a mix of residential (market rate and affordable), commercial, community facility, and open space uses. The applicant is also seeking a special permit to modify height and setback, inner courtyard recess, and rear yards requirements within a General Large-Scale Development.

This hearing is being held pursuant to the State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR), CEQR No. 08DCP033K.

No. 10

BROOKLYN NORTH SALT SHED

CD 1 C 090135 PCK
IN THE MATTER OF an application submitted by the Department of Sanitation and the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter, for the site selection and acquisition of property located at 175 Varick Avenue (Block 2962, p/o Lot 11), for use as a salt storage facility.

No. 11

155 WEST STREET

CD 1 C 090053 ZSK
IN THE MATTER OF an application submitted by 145 West Street LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-736 of the Zoning Resolution to modify the height and setback requirements of Section 62-354 (Special height and setback regulations) to facilitate the development of a 39-story mixed use development on property bounded by West Street, India Street, the East River Pierhead Line, and Huron Street, (Block 2530, Lots 1, 55 and 56), in R6, R6/C2-4, and R8 Districts.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

BOROUGH OF MANHATTAN**Nos. 12 & 13****BATTERY MARITIME BUILDING****No. 12**

CD 1 C 090120 ZMM
IN THE MATTER OF an application submitted by Dermot BMB, LLC and the Economic Development Corporation pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 12b changing from an M1-4 District to a C4-6 District property bounded by South Street, the southerly prolongation of a line 100 feet westerly of the westerly street line of Broad Street, the U.S. Pierhead Line and the southerly centerline prolongation of Whitehall Street, as shown on a diagram (for illustrative purposes only) dated October 27, 2008.

No. 13

CD 1 C 090121 PPM
IN THE MATTER OF an application submitted by the New York City Department of Small Business Services, pursuant to Section 197-c of the New York City Charter, for the disposition of one (1) city-owned property located at the Battery Maritime Building, 10 South Street (Block 2, Lot 1) pursuant to zoning.

BOROUGH OF QUEENS**No. 14****GRACE ASPHALT**

CD 7 C 090111 PCQ
IN THE MATTER OF an application submitted by the Department of Transportation and the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter, for the site selection and acquisition of property located at 130-31 Northern Boulevard (Block 1791, Lots 52, 68 and 72), for use as an asphalt plant.

BOROUGH OF BROOKLYN**No. 15****METRO TECH COURT**

CD 2 N 090245 PXK
IN THE MATTER OF a Notice of Intent to acquire office space submitted by the Department of Citywide Administrative Services, pursuant to Section 195 of the New York City Charter for the use of property located at One Metro Tech Center (Block 147, Lot 4) (Appellate Division of the New York State Supreme Court, Second Judicial Department's Mental Hygiene Legal Services office).

No. 16

CD 18 N 090246 PXK
IN THE MATTER OF a Notice of Intent to acquire office space submitted by the Department of Citywide Administrative Services, pursuant to Section 195 of the New York City Charter, for use of property located at 8925 Avenue D (Block 7920, Lots 6 and p/o 1) (New York City Police Department offices).

YVETTE V. GRUEL, Calendar Officer
City Planning Commission
22 Reade Street, Room 2E
New York, New York 10007
Telephone (212) 720-3370

☛ d23-j7

CITY PLANNING

■ NOTICE

**PUBLIC NOTICE OF A SCOPING MEETING
DRAFT ENVIRONMENTAL IMPACT STATEMENT
(CEQR No. 09DCP019M)**

Notice is hereby given that pursuant to Section 5-07 of the Rules of Procedure for Environmental Review (CEQR) and 6 NYCRR 617.8 (State Environmental Quality Review) that the New York City Department of City Planning (DCP), acting on behalf of the City Planning Commission (CPC) as CEQR lead agency, has determined that a Draft Environmental Impact Statement (DEIS) is to be prepared for the 15 Penn Plaza project (CEQR No. 09DCP019M).

The CEQR lead agency hereby requests that the applicant prepare or have prepared, at their option, a Draft Environmental Impact Statement (DEIS) in accordance with 6 NYCRR 617.9(b) and Sections 6-08 and 6-12 of Executive Order No. 91 of 1977 as amended (City Environmental Quality Review).

A public scoping meeting will be held on Tuesday, January 27, 2009 at the New York City Department of City Planning's Spector Hall, 22 Reade Street, New York, New York, 10007. The meeting will begin at 10:00 A.M. Written comments will be accepted by the lead agency until Wednesday, February 11, 2009.

Copies of the Draft Scope of Work and the Environmental Assessment Statement may be obtained from the Environmental Assessment and Review Division, New York City Department of City Planning, 22 Reade Street, 4E, New York, New York 10007, Robert Dobruskin, AICP, Director (212) 720-3423; or from the Office of Environmental Coordination, 253 Broadway, 14th Floor, New York, New York 10007, Robert Kulikowski, Ph.D., Director (212) 788-2937. The Draft Scope of Work and scoping protocol will also be made available for download at www.nyc.gov/planning.

The applicants, 401 Commercial LP and 401 Hotel REIT LLC, propose to redevelop the current site of the Hotel Pennsylvania (Block 808, Lots 1001 and 1002) on Seventh Avenue between West 32nd and West 33rd Streets adjacent to Penn Station with a new commercial office building - a redevelopment project known as 15 Penn Plaza. The development site is located within a C6-6 zoning district and partly within a C6-4.5 zoning district, within the Penn Center Subdistrict of the Special Midtown District, in Manhattan Community District 5.

The proposed actions consist of a zoning map amendment to rezone a portion of the project site from C6-4.5 to C6-6, zoning text amendments to various sections of the Zoning Resolution and special permits to modify bulk regulations and certain mandatory district plan elements of the Special Midtown District pursuant to the proposed text amendments and to allow for a floor area bonus of up to 20 percent for rail mass transit improvements. The area affected by the actions includes the adjacent Manhattan Mall, located on Block 808, Lot 40, which would be merged with the development site to create a single zoning lot. The proposed actions would facilitate either one of two building scenario proposals by the applicant - a Single Tenant Office Scenario with up to approximately 2,840,000 gross square feet (gsf), or a Multi-Tenant Office Scenario with up to approximately 2,650,000 gsf. Both scenarios would be constructed within the same maximum building envelope and would contain new commercial office space located above retail use. Additionally, both scenarios would include 100 below-grade accessory parking spaces and new below-grade mass transit improvements. Absent the proposed actions, the applicant has stated that it would develop the 15 Penn Plaza site under existing C6-6 and C6-4.5 zoning with an as-of-right office building of approximately 1,600,000 gsf. The applicant indicates the build year for the project is 2014.

Public comments are requested with respect to issues to be addressed in the draft environmental impact statement.

☛ d23

COMPTROLLER

■ PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that a Public Hearing will be held in the Municipal Building, One Centre Street, Room 650 conference room, on Tuesday, January 6, 2009 at 10:30 A.M. on the following items.

(1) **IN THE MATTER OF** a proposed contract between the Office of the Comptroller and Pension Consulting Alliance, Inc. for the provision of developing and implementing an Infrastructure Investment Program for the New York City Employees' Retirement System and the City of New York Teachers' Retirement System acting on behalf of said Systems and such other additional Systems, funds and accounts as may be designated in writing from time to time by the Comptroller. The term of the contract will commence December 1, 2008 and remain in effect until completion of all requisite services which is estimated to be nine months from the commencement date. The contract amount for the consultant services is not to exceed \$140,000. The cost of services will be paid from the corpus of the city pension fund. PIN: 015-0589503 ZP.

(2) **IN THE MATTER OF** a proposed contract between the Office of the Comptroller and Pension Consulting Alliance, Inc. for the provision of developing, implementing and monitoring a three year strategic plan for the private equity program of the New York City Employees' Retirement System and the City of New York Teachers' Retirement System acting on behalf of said Systems and such other additional Systems, funds and accounts as may be designated in writing from time to time by the Comptroller. The term of the contract will commence January 1, 2009 through December 31, 2010. The contract amount for the consultant services is a fixed amount for \$120,000 plus a variable amount for \$40,000 per Investment for Investment Review and Due Diligence as well as \$10,000 per Investment for Annual Monitoring and Reporting of Investment. The cost of services will be paid from the corpus of the city pension fund. PIN: 015-0589504 ZP.

The proposed contractor was selected pursuant to a competitive sealed proposal process in accordance with Section 3-03 of the PPB Rules.

A copy of the contracts, or excerpts thereof, can be seen at the Office of the Comptroller, One Centre Street, Room 650, New York, New York 10007, Monday through Friday excluding holidays commencing on December 23, 2008 through January 6, 2009 between 10:00 A.M. - Noon and 1:30 P.M. - 4:30 P.M.

☛ d23

**LANDMARKS PRESERVATION
COMMISSION**

■ PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Title 25, chapter 3 of the Administrative Code of the City of New York (Sections 25-307, 25-308, 25,309, 25-313, 25-318, 25-320) (formerly Chapter 8-A, Sections 207-6.0, 207-7.0, 207-12.0, 207-17.0, and 207-19.0), on Tuesday, **January 06, 2009 at 9:30 A.M.** in the morning of that day, a public hearing will be held in the Conference Room at 1 Centre Street, 9th Floor, Borough of Manhattan with respect to the following properties and then followed by a public meeting. Any person requiring reasonable accommodation in order to participate in the hearing or attend the meeting should call or write the Landmarks Commission no later than five (5) business days before the hearing or meeting.

ADVISORY REPORT

BOROUGH OF QUEENS 09-3996 - Block 8401, lot 1-73-50 Little Neck Parkway - Creedmoor (Cornell) Farmhouse, also known as the Queens County Farm Museum-Individual Landmark
 A Colonial style farmhouse with Dutch and English features, built c. 1750, with additions constructed c.1840 in a simplified Greek Revival style, and further additions constructed in 1875, 1885 and 1900. Application is for the installation of a perimeter post and wire fence and gate.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF BROOKLYN 09-3865 - Block 1964, lot 60-56 Cambridge Place - Clinton Hill Historic District
 A house built c.1863 and altered in the neo-Tudor and Queen Anne styles by Mercein Thomas c. 1887-93. Application is to legalize the installation of a mailbox, light post, light fixtures on the north and south facades, and painting the building white, all without Landmarks Preservation Commission permits.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF BROOKLYN 09-4062 - Block 1918, lot 52, 54-244-246 Hall Street - Clinton Hill Historic District
 A vernacular carriage house and coachman's residence. Application is to modify window and door openings.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF BROOKLYN 09-4137 - Block 2121, lot 11-345 Adelphi Street - Fort Greene Historic District
 An Italianate style rowhouse designed by Edward Robbins and built in 1859. Application is to construct a rear yard addition. Zoned R6B.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF BROOKLYN 09-4853 - Block 208, lot 216-146 Columbia Heights - Brooklyn Heights Historic District
 A neo-Grec style house built in 1880. Application is to construct a deck and modify window openings.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF BROOKLYN 08-5453 - Block 5181, lot 77-455 East 17th Street - Ditmas Park Historic District
 A Colonial Revival style free-standing house designed by A. White Pierce and built in 1902. Application is to legalize facade alterations performed without Landmarks Preservation Commission permits.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF MANHATTAN 09-2736 - Block 40, lot 14-48 Wall Street - The former Bank of New York and Trust Company Building-Individual Landmark
 A neo-Georgian style skyscraper designed by Benjamin Wistar Morris and built in 1927-29. Application is to install signage.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF MANHATTAN 09-1209 - Block 142, lot 12-27A Harrison Street - 315 Washington Street House-Individual Landmark
 A Federal style townhouse built in 1819. Application is to legalize the removal of shutters without Landmarks Preservation Commission permits.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF MANHATTAN 09-4838 - Block 486, lot 26-67 Greene Street - SoHo-Cast Iron Historic District
 A store building designed by Henry Fernbach and built in 1873. Application is to install storefront infill and alter the loading dock.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF MANHATTAN 09-2534 - Block 610, lot 16-115-125 7th Avenue South - Greenwich Village Historic District
 A building designed by the Liebman Melting Partnership and built in 1990-1994. Application is to alter the façade and construct a rooftop addition. Zoned CA-5.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF MANHATTAN 09-2511 - Block 698, lot 18-515-521 West 26th Street - West Chelsea Historic District
 A vernacular brick factory building designed by Abraham Ratner and built in 1921; a daylight factory building designed by Rouse & Goldstone and built in 1911; and a brick daylight factory building with Arts and Crafts style elements designed by Harris H. Uris and built in 1913-14. Application is to construct rooftop additions. Zoned M1-5.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF MANHATTAN 09-5074 - Block 1141, lot 36-104 West 70th Street - Upper West Side/Central Park West Historic District
 A Beaux-Arts style hotel building designed by Israels and Harder and built in 1903-04. Application is to construct a stair bulkhead. Zoned C1-8A.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-5753 - Block 1374, lot 60-10-14 East 60th Street - Upper East Side Historic District
A Beaux-Arts style hotel building designed by R.C. Gildersleeve and built in 1902. Application is to install signage and display boxes.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-5228 - Block 1129, lot 55-40 East 66th Street - Upper East Side Historic District
A neo-Gothic style studio building built in 1907-09. Application is to modify storefront openings.

d22-j6

OFFICE OF THE MAYOR

■ PUBLIC HEARING

NOTICE OF PUBLIC HEARING ON PROPOSED LOCAL LAWS

PURSUANT TO STATUTORY REQUIREMENT, NOTICE IS HEREBY GIVEN that proposed local laws numbered and titled hereinafter have been passed by the Council and that a public hearing on such proposed local laws will be held in the Blue Room at City Hall, Borough of Manhattan, New York City, on **Monday, December 29, 2008 at 2:00 P.M.:**

Intro 842 – A Local Law to amend the administrative code of the City of New York, in relation to the establishment of the Fulton Street business improvement district.

Intro 848 – A Local Law to amend the administrative code of the City of New York, in relation to regionally significant projects and empire zones.

Intro 877-A - A Local Law to amend the administrative code of the City of New York, in relation to the naming of 49 thoroughfares and public places.

Intro 879-A - A Local Law to amend the administrative code of the City of New York, in relation to an increase in the rate of the additional tax on the occupancy of hotel rooms imposed by chapter 25 of title 11 of such code.

Intro 887 - A Local Law to provide for the levy and collection of additional real property taxes for fiscal year 2009, and to amend the administrative code of the city of New York and the New York City charter in relation to the date when taxes are due and payable.

Intro 895 - A Local Law to amend the administrative code of the City of New York, in relation to suspending alternate side of the street parking rules during snowfalls.

Michael R. Bloomberg
Mayor

NOTE: Individuals requesting Sign Language Interpreters should contact the Mayor's Office of City Legislative Affairs, 253 Broadway, 14th Floor, New York, NY 10007, (212) 788-3678, no later than five business days prior to the public hearing. TDD users call Verizon relay service

d23

TRANSPORTATION

■ PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN, pursuant to law, that the following proposed revocable consents, have been scheduled for a public hearing by the New York City Department of Transportation. The hearing will be held at 40 Worth Street, Room 814 commencing at 2:00 P.M. on Wednesday, January 7, 2009. Interested Parties can obtain copies of proposed agreements or request sign-language interpreters (with at least seven days prior notice) at 40 Worth Street, 9th Floor South, New York, NY 10013, or by calling (212) 442-8040.

#1 IN THE MATTER OF a proposed revocable consent authorizing The Future Condominium Association to maintain and use bollards on the east sidewalk of Third Avenue, between East 31st and East 32nd Streets, in the Borough of Manhattan. The proposed revocable consent is for a term beginning July 1, 2006 to June 30, 2018 and provides, among other terms and conditions, for compensation payable to the City according to the following schedule:

For the period July 1, 2008 to June 30, 2018 - \$1,375/per annum

the maintenance of a security deposit in the sum of \$1,400, and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

#2 IN THE MATTER OF a proposed revocable consent authorizing Yeshiva University to maintain and use a pipe tunnel under and across West 186th Street, west of Amsterdam Avenue, in the Borough of Manhattan. The proposed revocable consent is for a term beginning July 1, 2008 to June 30, 2018 and provides, among other terms and conditions, for compensation payable to the City according to the following schedule:

For the period July 1, 2008 to June 30, 2009 - \$3,911
For the period July 1, 2009 to June 30, 2010 - \$4,025
For the period July 1, 2010 to June 30, 2011 - \$4,139
For the period July 1, 2011 to June 30, 2012 - \$4,253
For the period July 1, 2012 to June 30, 2013 - \$4,367
For the period July 1, 2013 to June 30, 2014 - \$4,481
For the period July 1, 2014 to June 30, 2015 - \$4,595
For the period July 1, 2015 to June 30, 2016 - \$4,709
For the period July 1, 2016 to June 30, 2017 - \$4,483
For the period July 1, 2017 to June 30, 2018 - \$4,937

the maintenance of a security deposit in the sum of \$5,000, and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

#3 IN THE MATTER OF a proposed revocable consent authorizing RCPI Landmark Properties, LLC to maintain and use conduits under and across West 49th Street and under and across West 50th Street, east of Avenue of the Americas, in the Borough of Manhattan. The proposed revocable consent is for a term beginning July 1, 2008 to June 30, 2018 and provides, among other terms and conditions, for compensation payable to the City according to the following schedule:

For the period July 1, 2008 to June 30, 2009 - \$10,545
For the period July 1, 2009 to June 30, 2010 - \$10,852
For the period July 1, 2010 to June 30, 2011 - \$11,159
For the period July 1, 2011 to June 30, 2012 - \$11,466
For the period July 1, 2012 to June 30, 2013 - \$11,773
For the period July 1, 2013 to June 30, 2014 - \$12,080
For the period July 1, 2014 to June 30, 2015 - \$12,387
For the period July 1, 2015 to June 30, 2016 - \$12,694
For the period July 1, 2016 to June 30, 2017 - \$13,001
For the period July 1, 2017 to June 30, 2018 - \$13,308

the maintenance of a security deposit in the sum of \$13,346, and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

#4 IN THE MATTER OF a proposed revocable consent authorizing Moshe Hatsav and Fia Hatsav to construct, maintain and use a fenced-in area and stoop on the west sidewalk of Bedford Street, north of Morton Street, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the Date of Approval by the Mayor to June 30, 2019 and provides, among other terms and conditions, for compensation payable to the City according to the following schedule:

From the Approval Date to June 30, 2019 - \$25/per annum.

The maintenance of a security deposit in the sum of \$5,000, and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

#5 IN THE MATTER OF a proposed revocable consent authorizing Babum LLC to construct, maintain and use a stoop and fenced-in area on the north sidewalk of Jones Street, east of Bleeker Street, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the Date of Approval by the Mayor to June 30, 2019 and provides, among other terms and conditions, for compensation payable to the City according to the following schedule:

For the period July 1, 2008 to June 30, 2009 - \$441
For the period July 1, 2009 to June 30, 2010 - \$454
For the period July 1, 2010 to June 30, 2011 - \$467
For the period July 1, 2011 to June 30, 2012 - \$480
For the period July 1, 2012 to June 30, 2013 - \$493
For the period July 1, 2013 to June 30, 2014 - \$506
For the period July 1, 2014 to June 30, 2015 - \$519
For the period July 1, 2015 to June 30, 2016 - \$532
For the period July 1, 2016 to June 30, 2017 - \$545
For the period July 1, 2017 to June 30, 2018 - \$558

the maintenance of a security deposit in the sum of \$3,600, and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

#6 IN THE MATTER OF a proposed revocable consent authorizing Christopher Davis to maintain and use a fenced-in planted area on the north sidewalk of East 81st Street, between Fifth Avenue and Madison Avenue, in the Borough of Manhattan. The proposed revocable consent is for a term beginning July 1, 2008 to June 30, 2018 and provides, among other terms and conditions, for compensation payable to the City according to the following schedule:

For the period July 1, 2008 to June 30, 2018 - \$100/per annum

the maintenance of a security deposit in the sum of \$8,000, and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

d18-j7

PROPERTY DISPOSITION

CITYWIDE ADMINISTRATIVE SERVICES

DIVISION OF MUNICIPAL SUPPLY SERVICES

■ AUCTION

PUBLIC AUCTION SALE NUMBER 09001 - L AND M

NOTICE IS HEREBY GIVEN of a bi-weekly public auction of City fleet vehicles consisting of cars, vans, light duty vehicles, trucks, heavy equipment and miscellaneous automotive equipment to be held on Wednesday, December 10, 2008 (SALE NUMBER 09001-L). This auction is held every other Wednesday unless otherwise notified. Viewing is on auction day only from 8:30 A.M. until 9:00 A.M. The auction begins at 9:00 A.M.

NOTE: The auction scheduled for Wednesday, December 24, 2008 (SALE NUMBER 09001-M) has been cancelled.

LOCATION: 570 Kent Avenue, Brooklyn, NY (in the Brooklyn Navy Yard between Taylor and Clymer Streets). A listing of vehicles to be offered for sale in the next auction can be viewed on our website, on the Friday prior to the sale date at: <http://www.nyc.gov/auctions>
Terms and Conditions of Sale can also be viewed at this site.

For further information, please call (718) 417-2155 or (718) 625-1313.

n26-d24

■ SALE BY SEALED BID

SALE OF: 3,000 LBS. OF UNCLEAN AUTOMOTIVE AND ASSORTED RADIATORS AND CORES, USED.

S.P.#: 09012

DUE: January 6, 2009

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
DCAS, Division of Municipal Supply Services, 18th Floor Bid Room, Municipal Building, New York, NY 10007.
For sales proposal contact Gladys Genoves-McCauley (718) 417-2156 for information.

d22-j6

POLICE

OWNERS ARE WANTED BY THE PROPERTY CLERK DIVISION OF THE NEW YORK CITY POLICE DEPARTMENT.

The following listed property is in the custody, of the Property Clerk Division without claimants.

Recovered, lost, abandoned property, property obtained from prisoners, emotionally disturbed, intoxicated and deceased persons; and property obtained from persons incapable of caring for themselves.
Motor vehicles, boats, bicycles, business machines, cameras, calculating machines, electrical and optical property, furniture, furs, handbags, hardware, jewelry, photographic equipment, radios, robes, sound systems, surgical and musical instruments, tools, wearing apparel, communications equipment, computers, and other miscellaneous articles.
INQUIRIES
Inquiries relating to such property should be made in the Borough concerned, at the following office of the Property Clerk.

FOR MOTOR VEHICLES (All Boroughs):

- * College Auto Pound, 129-01 31 Avenue, College Point, NY 11354, (718) 445-0100
- * Gowanus Auto Pound, 29th Street and 2nd Avenue, Brooklyn, NY 11212, (718) 832-3852
- * Erie Basin Auto Pound, 700 Columbia Street, Brooklyn, NY 11231, (718) 246-2029

FOR ALL OTHER PROPERTY

- * Manhattan - 1 Police Plaza, New York, NY 10038, (212) 374-4925.
- * Brooklyn - 84th Precinct, 301 Gold Street, Brooklyn, NY 11201, (718) 875-6675.
- * Bronx Property Clerk - 215 East 161 Street, Bronx, NY 10451, (718) 590-2806.
- * Queens Property Clerk - 47-07 Pearson Place, Long Island City, NY 11101, (718) 433-2678.
- * Staten Island Property Clerk - 1 Edgewater Plaza, Staten Island, NY 10301, (718) 876-8484.

j1-d31

■ AUCTION

PUBLIC AUCTION SALE NUMBER 1148

NOTICE IS HEREBY GIVEN of a ONE (1) day public auction of unclaimed salvage vehicles, motorcycles, automobiles, trucks, and vans. Inspection day is December 29, 2008 from 10:00 A.M. - 2:00 P.M.

Salvage vehicles, motorcycles, automobiles, trucks, and vans will be auctioned on December 30, 2008 at approximately 9:30 A.M.

Auction will be held at the Erie Basin Auto Pound, 700 Columbia Street (in Redhook area of B'klyn., 2 blocks from Halleck St.)

For information concerning the inspection and sale of these items, call the Property Clerk Division's Auction Unit information line (646) 610-4614.

d17-30

PROCUREMENT

“The City of New York is committed to achieving excellence in the design and construction of its capital program, and building on the tradition of innovation in architecture and engineering that has contributed to the City's prestige as a global destination. The contracting opportunities for construction/construction services and construction-related services that appear in the individual agency listings below reflect that commitment to excellence.”

BROOKLYN NAVY YARD

■ SOLICITATIONS

Construction / Construction Services

WATER MAIN, SEWER, ROADWAY AND LANDSCAPING - BROOKLYN NAVY YARD - CSB - PIN# 08158 - DUE 01-21-09 AT 12:00 P.M. - The project consists of installing new water main, sewers, and road reconstruction on Sand Street from Navy Street to 3rd Street. Cost of documentation: \$100.00 non-refundable certified check or money order. Failure to attend the mandatory pre-bid conference on January 7, 2009 at 10:00 A.M. will result in bidder disqualification.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Brooklyn Navy Yard Development Corp., Building 292
63 Flushing Avenue, Unit 300, Brooklyn, NY 11205.
Anthony Jarzembowski at (718) 907-5952.

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CITYWIDE ADMINISTRATIVE SERVICES

■ SOLICITATIONS

Goods & Services

UPGRADE AND MODIFY THE MAINTENANCE CONTROL AND MANAGEMENT SYSTEM (MCMS) - Sole Source - Available only from a single source - PIN# 856080000643 - DUE 01-12-09 AT 5:00 P.M. - The Department of Citywide Administrative Services intends to enter into sole source negotiations to upgrade and modify the Maintenance Control and Management System (MCMS) with Asset Technologies Solutions LLC, 419 North Washington Avenue, Fayetteville, AR 72701, to continue upgrades and modifications on the Maintenance Control and Management System for 1,095 consecutive calendar days with a three year option to renew. Any firm which believes that it can also provide this requirement is invited to so indicate by letter to Grace Seebol, Deputy Agency Contracting Officer, DCAS Office of Contracts, 18th Floor North, One Centre Street, NY, NY 10007, (212) 669-3538, gseebol@dcas.nyc.gov

☛ d23-30

DIVISION OF MUNICIPAL SUPPLY SERVICES

■ SOLICITATIONS

Goods

TRUCK, COLLECTION, REAR LOADING, 25 CY DSNY - Competitive Sealed Bids - PIN# 8570800968 - DUE 01-26-09 AT 10:30 A.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Department of Citywide Administrative Services
1 Centre Street, 18th Floor, New York, NY 10007.
Jeanette Megna (212) 669-8562.

☛ d23

■ AWARDS

Goods

MEATS AND POULTRY - Competitive Sealed Bids - PIN# 857900346 - AMT: \$681,720.80 - TO: Advanced Commodities, Inc. dba Midwest Quality Foods, 840 West Bartlett Road, Suite 3, Bartlett, IL 60103.

☛ d23

■ VENDOR LISTS

Goods

ACCEPTABLE BRAND LIST - In accordance with PPB Rules, Section 2-05(c)(3), the following is a list of all food items for which an Acceptable Brands List has been established.

- 1. Mix, Biscuit - AB-14-1:92
- 2. Mix, Bran Muffin - AB-14-2:91
- 3. Mix, Corn Muffin - AB-14-5:91
- 4. Mix, Pie Crust - AB-14-9:91
- 5. Mixes, Cake - AB-14-11:92A
- 6. Mix, Egg Nog - AB-14-19:93
- 7. Canned Beef Stew - AB-14-25:97
- 8. Canned Ham Shanks - AB-14-28:91
- 9. Canned Corned Beef Hash - AB-14-26:94
- 10. Canned Boned Chicken - AB-14-27:91
- 11. Canned Corned Beef - AB-14-30:91
- 12. Canned Ham, Cured - AB-14-29:91
- 13. Complete Horse Feed Pellets - AB-15-1:92
- 14. Canned Soups - AB-14-10:92D
- 15. Infant Formula, Ready to Feed - AB-16-1:93
- 16. Spices - AB-14-12:95
- 17. Soy Sauce - AB-14-03:94
- 18. Worcestershire Sauce - AB-14-04:94

Application for inclusion on the above enumerated Acceptable Brand Lists for foods shall be made in writing and addressed to: Purchase Director, Food Unit, Department of Citywide Administrative Services, Division of Municipal Supply Services, 1 Centre Street, 18th Floor, New York, NY 10007. (212) 669-4207.

j4-jy17

EQUIPMENT FOR DEPARTMENT OF SANITATION

In accordance with PPB Rules, Section 2.05(c)(3), an acceptable brands list will be established for the following equipment for the Department of Sanitation:
A. Collection Truck Bodies
B. Collection Truck Cab Chassis
C. Major Component Parts (Engine, Transmission, etc.)

Applications for consideration of equipment products for inclusion on the acceptable brands list are available from: Vendor Relations, Department of Citywide Administrative Services, Division of Municipal Supply Services, 1 Centre Street, 18th Floor, New York, NY 10007. (212) 669-8562.

j4-jy17

OPEN SPACE FURNITURE SYSTEMS - CITYWIDE - In accordance with PPB Rules, Section 2.05(c)(3), an Acceptable Brands List, #AB-17W-1:99, has been established for open space furniture systems.

Application for consideration of product for inclusion on this acceptable brands list shall be made in writing and addressed to: Vendor Relations, Department of Citywide Administrative Services, Division of Municipal Supply Services, 1 Centre Street, 18th Floor, New York, NY 10007, (212) 669-8562.

j4-jy17

EDUCATION

DIVISION OF CONTRACTS AND PURCHASING

■ SOLICITATIONS

Goods

CAD/CAM DENTAL LABORATORY EQUIPMENT - CSB - PIN# Z0960040 - DUE 01-06-09 AT 5:00 P.M. - Bid opening: Wednesday, January 7th, 2009 at 11:00 A.M. There is a non-refundable fee of \$50.00, which is payable by all major credit cards. The solicitation can be downloaded from https://vendorportal.nycenet.edu

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
NYCDOE, Division of Contracts and Purchasing, Room 1201
65 Court Street, Brooklyn, NY 11201, (718) 935-2300
http://schools.nyc.gov/dcp

☛ d23

ENVIRONMENTAL PROTECTION

BUREAU OF WATER SUPPLY

■ AWARDS

Services (Other Than Human Services)

APPRAISAL OF WATERSHED LANDS FOR THE LAND ACQUISITION PROGRAM - Renewal - PIN# 82608WS00037 - AMT: \$275,000.00 - TO: McGrath and Company, Inc., 1069 Main Street, Fishkill, New York 12524. CONTRACT: LAP-05.
● **APPRAISAL OF WATERSHED LANDS FOR THE LAND ACQUISITION PROGRAM** - Renewal - PIN# 82608WS00036 - AMT: \$300,000.00 - TO: Hudson Valley Appraisal Corp., P.O. Box 1004, Port Ewen, NY 12466. CONTRACT: LAP-05.
● **APPRAISAL OF WATERSHED LANDS FOR THE LAND ACQUISITION PROGRAM** - Renewal - PIN# 82608WS00038 - AMT: \$175,000.00 - TO: Pomeroy Appraisal Associates, Inc., 225 West Jefferson Street, Syracuse, NY 13202. CONTRACT: LAP-05.
● **APPRAISAL OF WATERSHED LANDS FOR THE LAND ACQUISITION PROGRAM** - Renewal - PIN# 82608WS00039 - AMT: \$125,000.00 - TO: Thurston, Casale and Ryan, LLC, 6715 Joy Road, East Syracuse, New York 13057. CONTRACT: LAP-05.
● **APPRAISAL OF WATERSHED LANDS FOR THE LAND ACQUISITION PROGRAM** - Renewal - PIN# 82608WS00040 - AMT: \$750,000.00 - TO: Hubble Realty Services Inc., 320 Main Street, Poughkeepsie, NY 12601. CONTRACT: LAP-05.
● **APPRAISAL OF WATERSHED LANDS FOR THE LAND ACQUISITION PROGRAM** - Renewal - PIN# 82608WS00041 - AMT: \$50,000.00 - TO: The Landmark Appraisal Group, Inc., 555 E. Boston Post Road, Mamaroneck, NY 10543. CONTRACT: LAP-05.

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WATER SUPPLY & QUALITY

■ SOLICITATIONS

Construction Related Services

KENSICO STORMWATER IMPROVEMENTS, WESTCHESTER COUNTY, UPSTATE, NEW YORK - Competitive Sealed Bids - PIN# 82609WS00018 - DUE 01-14-09 AT 11:30 A.M. - Contract CRO-498: Document Fee \$40.00. There will be a pre-bid conference on 1/05/09 at 465 Columbus Avenue, Valhalla, Conference Room, 2nd Floor at 1:00 P.M. Jose Nieves, Project Manager, (914) 742-2827. This contract is subject to Local Law 129 M/WBE requirements. Vendor ID#: 57247.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Department of Environmental Protection
59-17 Junction Boulevard, 17th Floor, Elmhurst, New York
11373. Greg Hall (718) 595-3236, greg@dep.nyc.gov

☛ d23

HEALTH AND HOSPITALS CORPORATION

The New York City Health and Hospitals Corporation is regularly soliciting bids for supplies and equipment at its Central Purchasing Offices, 346 Broadway, New York City, Room 516, for its Hospitals and Diagnostic and Treatment Centers. All interested parties are welcome to review the bids that are posted in Room 516 weekdays between 9:00 a.m. and 4:30 p.m. For information regarding bids and the bidding process, please call (212) 442-3863.

j1-d31

■ SOLICITATIONS

Goods

TECNIS ACRY 13. OMM 60PT MODC PMM #ZA9003 - Competitive Sealed Bids - PIN# 231-09-088 - DUE 01-02-09 AT 11:00 A.M. - Bid document fee \$25.00 per set (check or money order), non-refundable, made payable to NYCHHC for hard copy. Copy of bid can also be obtained by emailing roysterd@nychhc.org

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Cumberland Diagnostic and Treatment Center, Rm. C-32
100 North Portland Avenue, Brooklyn, NY 11205.
Deborah Royster (718) 260-7694, roysterd@nychhc.org

☛ d23

Goods & Services

FURNISH AND INSTALL PVI A HEATER - Competitive Sealed Bids - PIN# 62209004 - DUE 01-06-09 AT 3:00 P.M. - At the Segundo Ruiz Clinic located at 545 East 142nd Street, Bronx, NY 10454. A pre-bid conference will be held on 12/30/08 at 10:00 A.M. at Segundo Ruiz Clinic, 545 East 142nd Street, Bronx, NY 10454, 1st Floor Conference Room.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Lincoln Hospital Center, 234 East 149th Street, Bronx, NY 10451. Junior Cooper (718) 579-5096.

☛ d23

FULL SERVICE CONTRACT FOR A CATARAC SYSTEM - Competitive Sealed Bids - PIN# 22209075 - DUE 01-08-09 AT 3:00 P.M.

● **PREVENTIVE MAINTENANCE CONTRACT TO REPAIR MICROSCOPES AND OPHTHALMIC EQUIPMENT** - Competitive Sealed Bids - PIN# 22209076 - DUE 01-09-09 AT 3:00 P.M.

● **FULL SERVICES CONTRACT FOR 6 WRO 300 WATER TREATMENTS UNITS** - Competitive Sealed Bids - PIN# 22209077 - DUE 01-12-09 AT 3:00 P.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Lincoln Hospital Center, 234 East 149th Street, Bronx New York 10451. Sonia Barnes, Procurement Analyst II, (718) 579-5035.

☛ d23

WOMEN'S IMAGING CENTER PROJECT - Competitive Sealed Bids - PIN# 22209078 - DUE 01-08-09 AT 3:00 P.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Lincoln Hospital Center, 234 East 149th Street, Bronx, NY 10451. John Dixon, Procurement Analyst II, (718) 579-5980.

☛ d23

STAFF TRACKING ALARM SYSTEM - Competitive Sealed Bids - PIN# 22209079 - DUE 01-09-09 AT 3:00 P.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Lincoln Hospital Center, 234 East 149th Street, Bronx, NY 10451. Jannet Olivera, Procurement Analyst II, (718) 579-5992.

☛ d23

OPHTHALMIC PACK - Competitive Sealed Bids - PIN# 22209071 - DUE 01-07-09 AT 3:00 P.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Lincoln Hospital Center, 234 East 149th Street, Bronx, NY 10451. Erik Bryan, Procurement Analyst II, (718) 579-5532.

☛ d23

Services

BOILER CALIBRATION - Competitive Sealed Bids - PIN# 231-09-096 - DUE 01-09-09 AT 10:00 A.M. - Bid document fee \$25.00 per set (check or money order), non-refundable, made payable to NYCHHC for hard copy. Copy of bid can also be obtained by emailing akihiko.hirao@woodhullhc.nychhc.org

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Cumberland Diagnostic and Treatment Center, Rm. C-32
100 North Portland Avenue, Brooklyn, NY 11205.
Akihiko Hirao at (718) 260-7684,

akihiko.hirao@woodhullhc.nychhc.org

☛ d23

HEALTH AND MENTAL HYGIENE

AGENCY CHIEF CONTRACTING OFFICER

■ SOLICITATIONS

Human / Client Service

NEW YORK/NY III SUPPORTED HOUSING CONGREGATE - Competitive Sealed Proposals - Judgment required in evaluating proposals - PIN# 81608PO076300R0X00 - DUE 02-13-09 AT 3:00 P.M.

The Department is issuing a RFP to establish 3,000 units of citywide supportive housing in newly constructed or rehabilitated single-site buildings for various homeless populations pursuant to the New York III Supported Housing agreement. The subject RFP will be open-ended and proposals will be accepted on an on-going basis. Since February 16, 2007, the RFP has been available for pick up in person at the address listed below, between the hours of 10:00 A.M. and 4:00 P.M. on business days only. The RFP is also on line at http://www.nyc.gov/html/doh/html/acco/acco-rfp-nynycongregate-20070117-form.shtml. A pre-proposal conference was held on March 6, 2007 at 2:00 P.M. at 125 Worth Street, 2nd Floor Auditorium, New York, N.Y. Any questions regarding this RFP must be sent in writing in advance to Contracting Officer at the above address or fax to (212) 219-5865. All proposals must be hand delivered at the Agency Chief Contracting Officer, 93 Worth Street, Room 812, New York, NY 10013.

As a minimum qualification requirement for (1) the serious and persistent mentally ill populations, the proposer must be incorporated as a not-for-profit organization, and (2) for the young adult populations, the proposer must document site control and identify the source of the capital funding and being used to construct or renovate the building.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Health and Mental Hygiene, 93 Worth Street, Room 812 New York, NY 10013. Huguette Beauport (212) 219-5883 hbeaupor@health.nyc.gov

o15-f12

AWARDS

Services (Other Than Human Services)

TELEPHONE KIOSK IN OUTER BOROUGH – Sole Source – Available only from a single source - PIN# 09HE147001R0X00 – AMT: \$3,000,000.00 – TO: Vector Media Street Furniture, LLC, 708 Third Avenue, New York, NY 10017.
● **NY/NY III: CONGREGATE HOUSING - POP 1 AND 5** – Request for Proposals – PIN# 08PO076311R0X00 – AMT: \$866,304.00 – TO: Volunteers of America Greater New York, Inc., 340 West 85th Street, New York, NY 10024.
● **NY/NY III: CONGREGATE - POPULATION V** – Request for Proposals – PIN# 08PO076310R0X00 – AMT: \$1,932,039.00 – TO: Palladia, Inc., 2006 Madison Avenue E., 128th Street, New York, NY 10035.

d23

HOMELESS SERVICES

OFFICE OF CONTRACTS AND PROCUREMENT

SOLICITATIONS

Human/Client Service

SAFE HAVEN OPEN-ENDED RFP – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 071-08S-04-1164 – DUE 08-27-10 – The Department of Homeless Services has issued an Open Ended Request for Proposals (PIN 071-08S-04-1164) as of August 27, 2007 seeking appropriately qualified vendors to develop and operate a stand-alone Safe Haven for chronic street homeless single adults and/or adult couples without minor children.

There is no due date for proposals under this RFP. Proposals will be reviewed by the Department as they are received and contracts will be awarded on an on-going basis until the Department's needs are met.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Department of Homeless Services, 33 Beaver Street 13th Floor, New York, NY 10004. Suellen Schulman (212) 361-8400, sschulma@dhs.nyc.gov

a27-f12

CORRECTION: TRANSITIONAL RESIDENCES FOR HOMELESS/DROP-IN CENTERS

Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 071-00S-003-262Z – DUE 01-02-09 AT 2:00 P.M. – CORRECTION: The Department of Homeless Services is soliciting proposals from organizations interested in developing and operating transitional residences for homeless adults and families including the Neighborhood Based Cluster Residence and drop-in centers for adults. This is an open-ended solicitation; there is no due date for submission.

Request for proposals is also available on-line at www.nyc.gov/cityrecord

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Department of Homeless Services, 33 Beaver Street 13th Floor, New York, NY 10004. Marta Zmoira (212) 361-0888, mzoita@dhs.nyc.gov

f29-d31

HOUSING AUTHORITY

SOLICITATIONS

Construction/Construction Services

INSTALLATION OF FIRE ALARM SYSTEM CHILDREN'S CENTER AT DYCKMAN HOUSES – Competitive Sealed Bids – PIN# EL7014997 – DUE 01-08-09 AT 10:30 A.M.
● **GROUNDS IMPROVEMENTS AT FIORENTINO PLAZA** – Competitive Sealed Bids – PIN# GD8009573 – DUE 01-08-09 AT 10:00 A.M.

Bid documents are available Monday through Friday, 9:00 A.M. to 4:00 P.M., for a \$25.00 fee in the form of a money order or certified check made payable to NYCHA.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Housing Authority, 90 Church Street, 11th Floor. Gloria Guillo, MPA, CPPO, (212) 306-3121, gloria.guillo@nycha.nyc.gov

d17-23

PARKS AND RECREATION

CONTRACT ADMINISTRATION

SOLICITATIONS

Construction/Construction Services

RECONSTRUCTION OF THE COMFORT STATION IN VINCENT CICCARONE PLAYGROUND – Competitive Sealed Bids – PIN# 8462008X102C02 – DUE 01-28-09 AT 10:30 A.M. – Located South of East 188th Street between Arthur and Hughs Avenues, The Bronx, known as Contract #X102-205MA1. Vendor Source ID#: 57203. This procurement is subject to participation goals for MBEs and/or WBEs as required by Local Law 129 of 2005.
● **ELECTRICAL WORK** – Competitive Sealed Bids – PIN# 8462009X102C01 – DUE 01-28-09 AT 10:30 A.M. Contract #X102-305MA. Vendor Source ID#: 57204.
● **PLUMBING WORK** – Competitive Sealed Bids – PIN# 8462009X102C03 – DUE 01-28-09 AT 10:30 A.M. Contract #X102-405MA. Vendor Source ID#: 57205.
● **HVAC WORK** – Competitive Sealed Bids – PIN# 8462009X102C04 – DUE 01-28-09 AT 10:30 A.M. Contract #X102-505MA. Vendor Source ID#: 57206.

Located South of East 188th Street between Arthur and Hughs Avenues, The Bronx.

Bid documents are available for a fee of \$25.00 in the Blueprint Room, Room #64, Olmsted Center, from 8:00 A.M. to 3:00 P.M. The fee is payable by company check or money order to the City of NY, Parks and Recreation. A separate check/money order is required for each project. The Company name, address and telephone number as well as the project contract number must appear on the check/money order. Bidders should ensure that the correct company name, address, telephone and fax numbers are submitted by your company/messenger service when picking up bid documents.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Parks and Recreation, Olmsted Center, Room 64 Flushing Meadows Corona Park, Flushing, NY 11368. Juan Alban (718) 760-6771, Juan.Alban@parks.nyc.gov Olmsted Center, Room 60, Flushing Meadows-Corona Park, Flushing, NY 11368.

d23

REVENUE AND CONCESSIONS

SOLICITATIONS

Services (Other Than Human Services)

OPERATION OF A MODEL SAILBOAT RENTAL SERVICE – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# M010-15-SLB – DUE 02-04-09 AT 3:00 P.M. – At Conservatory Waters, Central Park, Manhattan. Parks will hold a proposer meeting on Thursday, January 8, 2009 at 9:30 A.M. at the proposed concession site, which is located adjacent to the Conservatory Waters sailboat pond inside Central Park at about East 74th Street.

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

Parks and Recreation, The Arsenal-Central Park 830 Fifth Avenue, Room 407, New York, NY 10021. Joel Metlen (212) 360-1397, joel.metlen@parks.nyc.gov

d10-23

SCHOOL CONSTRUCTION AUTHORITY

CONTRACT ADMINISTRATION

SOLICITATIONS

Services

PAYROLL PROCESSING SERVICES – Competitive Sealed Proposals – PIN# SCA09-00037R – DUE 01-14-09 AT 2:00 P.M. – Proposals will be accepted from the following firms: Tri-State Employment Service; Basic Pay, LLC; PayChex, Inc.; PBI (Public Bookkeepers, Inc.); Ceridian Corporation; Oracle Corp.: Automatic Data Processing, Inc.; MyPayrollHR; AccountantsWorld, LLC; CompuPay, Inc.; Perquest, Inc.; Netchex Online; Time+Plus Payroll Services; Paylocity Corporation; Payroll People, Inc.; Corporate Payroll Services; CheckPoint HR; Advantage Payroll Service, Inc.; C & S Technologies; Master Tax, LLC.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

School Construction Authority, 30-30 Thomson Avenue Long Island City, New York 11101. Seema Menon, Contract Negotiator, (718) 472-8284, smenon@nycsca.org

d17-23

Construction/Construction Services

EXTERIOR MASONRY PARAPETS – Competitive Sealed Bids – PIN# SCA09-11509D-2 – DUE 01-13-09 AT 11:30 A.M. – PS 214 (Queens). Project Range: \$1,420,000.00 to \$1,491,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

School Construction Authority, Plans Room Window Room #1046, 30-30 Thomson Avenue, 1st Floor Long Island City, New York 11101, (718) 752-5854.

d23

EXTERIOR MASONRY – Competitive Sealed Bids – PIN# SCA09-11111D-1 – DUE 01-07-09 AT 11:00 A.M. PS 178 (Brooklyn). Project Range: \$1,240,000.00 to \$1,303,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

School Construction Authority, Plans Room Window Room #1046, 30-30 Thomson Avenue, 1st Floor Long Island City, New York 11101, (718) 752-5288.

d17-23

PLAYGROUND REDEVELOPMENT – Competitive Sealed Bids – PIN# SCA09-12254D-1 – DUE 01-07-09 AT 10:30 A.M. – PS 43 (Queens). Project Range: \$1,010,000.00 to \$1,063,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

School Construction Authority, Plans Room Window Room #1046, 30-30 Thomson Avenue, 1st Floor Long Island City, New York 11101, (718) 752-5868.

d19-26

ELEVATOR UPGRADE – Competitive Sealed Bids – PIN# SCA09-12094D-1 – DUE 01-06-09 AT 10:30 A.M. I.S. 383 (Brooklyn). Project Range: \$770,000.00 to \$820,000.00. Non-refundable bid document charge: \$100.00, certified check or money order only. Make payable to the New York City School Construction Authority. Bidders must be pre-qualified by the SCA.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.

School Construction Authority, Plans Room Window Room #1046, 30-30 Thomson Avenue, 1st Floor Long Island City, New York 11101, (718) 752-5842.

d17-23

AGENCY RULES

HEALTH AND MENTAL HYGIENE

NOTICE

NOTICE OF ADOPTION OF A RESOLUTION TO REPEAL AND REENACT ARTICLE 71 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice of intention to repeal and reenact Article 71 (Food and Drugs) of the New York City Health Code was published in the City Record on September 22, 2008, and a public hearing was held on October 28, 2008. No testimony or comments were received on the proposal. At its meeting on December 16, 2008, the Board of Health adopted the following resolution.

Statutory Authority

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene ("DOHMH" or "Department") with jurisdiction to regulate all matters affecting the health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters to which the DOHMH's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess the efficacy of its articles in protecting the public's health, the Board of Health is repealing and reenacting Article 71, "Food and Drugs," to better reflect practice and the regulatory environment by, for example, explicitly extending the scope and coverage of the Article to cosmetics; assuring that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public; and by harmonizing such provisions with related provisions of the Federal Food, Drug and Cosmetic Act, the New York Agriculture and Markets Law and the New York Education Law and regulations promulgated thereunder. As

part of the revision effort, particular effort has also been focused on clarifying the enforcement authority of the Department. The proposed changes will better enable the Department to take actions to protect the public from contaminated cosmetic products such as *litargirio*, a lead-containing deodorant powder; mercury-containing skin lightening creams; and herbal medicine products containing hazardous levels of heavy metals. Review and assessment of Article 71 has resulted in amendments to all but one of the sections in the Article, resulting in repeal and reenactment of Article 71 as set forth herein.

§71.01. Scope.

This section now includes cosmetics within the regulatory scope of the Article, which formerly applied only to food and drugs. The regulatory scheme of this Article is intended to be consistent with the regulatory scope of the Federal Food, Drug and Cosmetic Act (the "Act"), which also regulates cosmetics. Because adulterated or misbranded cosmetics may have serious or detrimental health and safety effects, incorporating regulation of cosmetics in this Article will enhance the protection of public health. Violations of this Article with respect to cosmetics will result from issues involving product ingredients, contaminants, processing, packaging, labeling, shipping or handling, that cause a cosmetic to be considered adulterated or misbranded.

§71.03. Definitions.

This section adds, as subdivision (c), a definition of the term "cosmetic," based on the definition in the Act. The definitions of "food" and "drug" similarly track the definitions in the Act. A new subdivision (f) defines label or labeling as having the same meaning as the terms defined in §173.01 of the Code.

§71.05. Adulteration or misbranding prohibited; possession deemed for purpose of sale.

This section is similar to former §71.05 and includes cosmetics.

Subdivision (c) conforms and updates standards for determining whether a food is adulterated in accordance with Federal and State law, clarifying that a food will be deemed adulterated if it bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of the Act (21 U.S.C. §346), unless such added substance is a pesticide chemical residue in or on a raw agricultural commodity, or as determined by the Commissioner. The former provision referred only to a pesticide chemical.

Subdivision (d) ("Foods deemed misbranded") is new and provides a comprehensive list of criteria for determining when foods are misbranded, consistent with the Federal Act and State law.

Subdivision (e) ("Drug deemed adulterated") includes additional examples of when a drug will be deemed adulterated, derived from the Act and the New York Education Law. Paragraph (9), although not derived from Federal or State law, would be added to provide further protections.

Subdivision (f) ("Drug deemed misbranded") is new and tracks the provisions of the Act.

New subdivisions (g) ("Cosmetic deemed adulterated") and (h) ("Cosmetic deemed misbranded") reflecting the addition of cosmetics to the Article's regulatory scope, prohibit distribution of cosmetics which are adulterated or misbranded, and establish standards by which DOHMH will determine a cosmetic to be adulterated or misbranded, based on the Act and State Education Law.

§71.06. Labeling requirements.

This new section provides that any required statements and information on the labels for food, drug and cosmetic products appear in the English language in addition to any information or statements appearing in a foreign language to enable consumers to avail themselves of words, statements or other information required to be provided under applicable law.

§71.09 Records; access and confidentiality.

Former §71.09 has been updated to clarify limitations on Department redisclosure of pharmacy records.

§71.11. Embargo or seizure.

This section is unchanged from former §71.11, and adds "cosmetics" as items that may be seized or embargoed.

The Proposal is as follows:

Matter underlined is new

RESOLVED, that Article 71 ("Food and Drugs") and the list of section headings of Article 71 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby are repealed and reenacted, to be printed together with explanatory notes to read as follows:

Article 71 Food, Drugs and Cosmetics

§71.01. Scope.

§71.03. Definitions.

§71.05. Adulteration or misbranding prohibited; possession deemed for purpose of sale.

§71.06. Labeling requirements.

§71.07. Drugs dispensed on prescription.

§71.09. Records; access and confidentiality.

§71.11. Embargo or seizure.

Introductory Notes:

Article 71 was repealed and reenacted on December 16, 2008 as part of a comprehensive review of the Health Code to assess the efficacy of the articles in protecting the public's health, to better reflect current practice and the regulatory environment by, for example, explicitly extending the regulatory scope and coverage of the Article to cosmetics; assuring that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public; and by harmonizing such provisions with related provisions of the Federal Food, Drug and Cosmetic Act, and the New York Agriculture and Markets Law and Education Law and related regulations promulgated thereunder.

According to the Food and Drug Administration ("FDA"), the difference between a cosmetic and a drug is determined by a product's intended use. A violation can occur by marketing a cosmetic with a drug claim or by marketing a drug as if it were a cosmetic without adhering to applicable drug requirements promulgated by the FDA. The Federal Food, Drug and Cosmetic Act defines cosmetics by their intended use, and includes in its definition skin creams, lotions, perfumes, lipsticks, fingernail polishes, eye and facial make-up preparations, shampoos, permanent waves, hair colors, toothpastes, deodorants, as well as any other material intended for use as a component of a cosmetic product. Some products are defined as both cosmetics and drugs when they have two intended uses. For example, a shampoo is a cosmetic because its intended use is to cleanse the hair and an antidandruff treatment is a drug because its intended use is to treat dandruff. Consequently, an antidandruff shampoo is both a cosmetic and a drug and therefore must comply with the requirements for both cosmetics and drugs.

This Article also clarifies the Department's authority to prohibit the sale and distribution of adulterated and misbranded food, drugs and cosmetics within the City if harmful to the public health. Neither the Federal Food Drug and Cosmetic Act nor the New York State Agriculture and Markets Law or the New York State Education Law contains a definition of "adulteration". Instead, these laws and this Article provide parameters for when regulated foods, drugs and cosmetics will be deemed adulterated.

§71.01. Scope.

Unless otherwise indicated, the provisions of this article shall apply to all food, drugs and cosmetics.

§71.03. Definitions. When used in this Code:

(a) *Food* means any raw, cooked or processed edible substances, beverages, ingredients, chewing gum, ice, or water used or intended for use or for sale in whole or in part for human consumption.

(b) *Drug* means:

(1) An article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them.

(2) An article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or condition, or to control a bodily function in humans or animals.

(3) An article other than food that is intended to affect the structure or any function of the body of human or animals, whether intended to be consumed, aspirated or otherwise absorbed, rubbed, poured, sprinkled, sprayed on, ingested, introduced into or otherwise applied to the human body or any part thereof.

(4) An article intended for use as a component of any articles specified in paragraphs (1), (2) or (3) of this subdivision, but does not include a device, instrument, apparatus, or contrivance or their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals; or to affect the structure or any function of the body of humans or animals.

(c) *Cosmetic* means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, including but not limited to personal hygiene products such as deodorant, shampoo or conditioner, and (2) articles intended for use as a component of any such articles.

(d) *Raw agricultural commodity* means any food in its raw or natural state, including all fruits or vegetables, that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(e) *Federal Food, Drug, and Cosmetic Act* means the Federal Food, Drug, and Cosmetic Act of the United States, 21 U.S.C. §301, et seq., as such law may from time to time be amended.

(f) *Label* or *labeling* shall have the same meaning as the definition in §173.01 of this Code.

§71.05. Adulteration or misbranding prohibited; possession deemed for purpose of sale.

(a) No person shall manufacture, produce, pack, possess, sell, offer for sale, deliver or give away any food, drug or cosmetic which is adulterated or misbranded. A food, drug or cosmetic in the possession of, held, kept or offered for sale by any person shall, prima facie, be presumed to be held, kept or offered for sale for human consumption or use.

(b) No person shall adulterate or misbrand a food, drug or cosmetic.

(c) *Food deemed adulterated.* A food shall be deemed adulterated if the Department has determined the food to be adulterated or as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §342) or the New York State Agriculture and Markets Law (§200) under circumstances including, but not limited to, any one or more of the following:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health.

(2) If it bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act (21 U.S.C. §346), or as determined by the Department, unless such added substance is a pesticide chemical residue in or on a raw

agricultural commodity, or if it is a processed food, a food additive, or a color additive.

(3) If it is a raw agricultural commodity and bears or contains a pesticide chemical residue, it will be considered adulterated if it is unsafe within the meaning in the Federal Food, Drug and Cosmetic Act (21 U.S.C. §346a).

(4) If the food is, bears or contains any food additive, it will be considered adulterated if it is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act (21 U.S.C. §348).

(5) If it consists in whole or in part of any diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for consumption as food.

(6) If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

(7) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter, or which has fed upon uncooked offal.

(8) If its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health.

(9) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. §348) or the New York State Agriculture and Markets Law (§§199-a or 199-b).

(d) *Food deemed misbranded.* A food shall be deemed misbranded in accordance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. §343) or the New York State Agriculture and Markets Law (§ 201) under circumstances including, but not limited to, any of the following:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another article.

(3) If it is an imitation of another food, unless its label bears the word "imitation" and immediately thereafter the name of the food imitated in type of uniform size and equal prominence, followed by a statement showing the constituents thereof.

(4) If its container is so made, formed, colored or filled as to be misleading.

(5) If in package form, unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor.

(6) If any word, statement or other information required by or under authority of this Code to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed, unless it conforms to such definition and standard, and its label bears the name of the food specified in the definition and standard, and, in so far as may be required, the common names of optional ingredients present in such food.

(8) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner determines to be and prescribes as necessary in order to inform purchasers fully as to its value for such uses.

(9) If a food is not a raw agricultural commodity and it is or it contains an ingredient that bears or contains a major food allergen, unless labeled pursuant to the standards as set forth in the Federal Food, Drug, and Cosmetic Act.

(10) If it is in package form and contains two or more discrete components and does not bear a label containing the contents.

(11) If it purports or is represented to be for special dietary uses, the label of which does not bear such information concerning its vitamin, mineral and other dietary properties as is necessary in order to inform purchasers fully as to its value for such uses.

(12) If it is otherwise mislabeled in a manner that obscures or fails to declare its source, contents, or purpose.

(13) If it is in a package that does not bear a label containing the name and place of business of the manufacturer, packer or distributor.

(e) *Drug deemed adulterated.* A drug shall be deemed to be adulterated if the Department has determined the drug to be adulterated or as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §351) or the New York State Education Law (§6815) under circumstances including but not limited to, any of the following:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof or under such conditions of use as are customary or usual.

(2) If it bears or contains any added poisonous or added deleterious substance.

(3) If it consists in whole or in part of any filthy, putrid or decomposed substance.

(4) If it has been prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or rendered injurious to health.

(5) If it is a drug and its container is composed, in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health.

(6) If it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch that has been certified pursuant to Article 137 of the New York Education Law or the regulations promulgated thereunder.

(7) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision because it differs from the standard of strength, quality or purity set forth in such compendium if such difference is plainly stated on the label. When a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be

subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(8) If it is not subject to the provisions of paragraph (5) of this subdivision and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(9) If it is a drug and any substance has been mixed or packed therewith so as to reduce its quality or strength or substituted wholly or in part therefore.

(10) If it is sold under or by a name not recognized in or according to a formula not given in the United States pharmacopoeia or the national formulary but that is found in some other standard work on pharmacology recognized by the board, and it differs in strength, quality or purity from the strength, quality or purity required, or the formula prescribed in, the standard work.

(f) *Drug deemed misbranded.* A drug shall be deemed misbranded as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §352) or the State Education Law (§6815) under circumstances including, but not limited to, any of the following:-

(1) If its labeling is false or misleading in any particular.

(2) If in package form, unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

(3) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) *Cosmetic deemed adulterated.* A cosmetic shall be deemed adulterated if the Department has determined the cosmetic to be adulterated or as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §361) or State Education Law (§6818) under circumstances including, but not limited to, any of the following:-

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual, except that this provision shall not apply to any cosmetic product, whose label bears a statement pursuant to 21 U.S.C. §740.1 warning of the hazards associated with use of the product.

(2) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(3) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance, which may render the contents injurious to health.

(h) *Cosmetic deemed misbranded.* A cosmetic shall be deemed misbranded as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §362) or the New York State Education Law (§6818) under circumstances including, but not limited to, any of the following:

(1) If its labeling is false or misleading in any particular.

(2) If in package form, unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the or numerical count, reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations.

(3) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If its container is so made, formed, or filled as to be misleading or if it bears a copy, counterfeit, or colorable imitation of a trademark, label, or identifying name or design of another cosmetic.

§71.06 Labeling requirements.

(a) All words, statements, and other information required by applicable law to appear on the label or labeling of food, drug and cosmetic products shall be printed in the English language.

(b) If a label contains any representation in a foreign language, all words, statements, and other information required by or under authority of all applicable laws and regulations to appear on the label shall appear thereon in the foreign language in addition to all information required in the English language.

§71.07 Drugs dispensed on prescription.

(a) A pharmacist shall maintain a file of prescriptions filled and make such file available for inspection by the Department in any matter under investigation by the Department.

(b) Prescriptions shall be retained by the pharmacist for a period of at least five years after such prescriptions are filled by such pharmacist.

§71.09 Records; access and confidentiality.

(a) All records relating to the receipt, holding or movement of foods, drugs or cosmetics required to be maintained pursuant to applicable laws and regulations shall be available for inspection by the Department.

(b) Prescriptions and other reports and records obtained by the Department containing information that identifies a patient or prescriber shall not be subject to inspection by persons other than authorized employees of the Department, and no information obtained by the Department from such prescriptions, reports and records shall be disclosed except for the purpose of protecting the public health.

(c) All records, reports, and files, papers and letters containing information about or relating to adverse reactions,

side-effects or therapeutic misuse of any food, drug or cosmetic held, sold, kept for sale or used in the City of New York or which may indicate that any such food, drug or cosmetic may be injurious to or have an adverse effect on the health of persons using the food, drug or cosmetic shall be available for inspection by the Department whenever the Department deems such inspection reasonable and necessary. Any information in the custody or possession of the Department relating to such information shall not be subject to subpoena or inspection by persons other than the Commissioner or authorized employees or agents of the Department, and shall not be divulged by the Department. The Department may, however, disclose or publish summaries, findings or statistical compilations relating thereto.

(d) No person shall refuse to permit an authorized representative of the Department to inspect or copy any record referred to in subdivisions (a), (b) and (c) of this section.

§71.11 Embargo or seizure.

When in the opinion of the Department a food, drug or cosmetic is unfit for consumption or use, or is adulterated or otherwise constitutes a danger or is prejudicial to the public health, the Department may seize, embargo, or condemn such material pursuant to §3.03 of this Code.

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NOTICE OF ADOPTION OF A RESOLUTION TO REPEAL AND REENACT ARTICLE 89 OF THE NEW YORK CITY HEALTH CODE

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of the Charter, notice of the intention to repeal and reenact Article 89 (Mobile Food Vending) of the New York City Health Code was published in the City Record on September 22, 2008, and a public hearing was held on October 31, 2008. Three persons testified and one written comment was received from the New York State Department of Health, and some changes were made in response to the comments. At its meeting on December 16, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department" or "DOHMH") with jurisdiction to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters to which the DOHMH's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess the efficacy of the articles in protecting public health, the Board of Health is repealing and reenacting Article 89 (Mobile Food Vending), reorganizing and deleting some of its provisions, and adding new ones, to better reflect practice and the regulatory environment, assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize such provisions with related provisions of Title 17 of the New York City Administrative Code ("Administrative Code"), the Department's rules in Chapter 6 of Title 24 of the Rules of the City of New York and the State Sanitary Code (10 NYCRR). As part of the revision effort, particular attention has been placed on food preparation and protection and maintenance of mobile food vending units, as well as on attempting to clarify enforcement procedures. Article 89 has not been substantively modified since it was adopted in 1978 and many of its provisions are obsolete. Pursuant to this review and assessment of the Health Code, the Board of Health has repealed and reenacted Article 89 as provided below.

§89.01(Scope) is partly derived from current §89.25(a) concerning compliance with the applicable provision of the Health Code, and emphasizes that all mobile food vending, regardless of whether it occurs only in public spaces regulated by §§17-306 et seq. of the Administrative Code, or in private and restricted spaces, is subject to Health Code and State Sanitary Code requirements, as well as the Department's rules in Chapter 6 of Title 24 of the Rules of the City of New York.

§89.03 (Definitions) has been updated, adding new definitions, and clarifying terms used in this Article. The definition of "restricted space" has been added to cover spaces that may be open to the public, but where commercial activity, such as mobile food vending, may only be conducted with the written approval of the owners of the spaces. The definition of "stand" has been deleted, since the Department does not allow a stand to be used as or an adjunct of a mobile food vending unit. "Operation" of a mobile food vending unit has been defined to clarify that all the activities involved in setting up a unit for vending are considered to be part of operating a mobile food vending unit, making vendors responsible for violations that occur during preparation for vending, even though food is not being sold at the time the violations are observed. In response to a public comment, the definition of "material alteration" has been expanded to clarify and provide additional examples of a material alteration, including a change in the size of a mobile food vending unit, and changes in plumbing equipment, such as potable water and waste water tanks and sinks.

§89.05 (Permits and licenses required) and §89.07 (Licenses

and badges) update requirements in current §89.03 (Permits, licenses; badges, identifying plates and insignia) to reflect current practice.

§89.09 (Terms of permits and licenses) is new and codifies the terms for all mobile food vending permits and licenses issued by the Commissioner.

§89.11 (Applications for permits and licenses) includes some of the provisions of current §89.03, but has been updated to reflect current practice.

§89.13 (Duties of licensees and permittees) includes many of the provisions of current §89.07, but adds provisions reflecting current practice.

§89.15 (Prohibitions against transfer of foods) is the same as current §89.11.

§89.17 (Prohibitions against transfer of a license or permit) is new, reflects current practice and attempts to clarify that a license or permit may not be transferred, although the Department does not prohibit the leasing of a mobile food vending unit, to which a decal has been affixed by the Department, by the individual permittee to another licensed vendor. These arrangements are common industry practices. However, neither a permit or license document, nor a cart decal or a vendor badge may be transferred from one person to another. Decals are only affixed to carts that have passed a preoperational Department inspection and are considered fit for food vending. Licenses are issued only to persons who have passed a food protection course. Unregulated transfer of decals and licenses ill serves the public's expectation that foods served by such units are safe to eat.

§89.19 (Food protection and safety) updates current provisions in §§89.33 (Food preparation) and 89.37 (Condiments) and adds requirements similar to those in Article 81 for food protection related to food sources, use of thermometers, and hot and cold holding facilities, including ice. The section also prohibits butchering meat and service of fish products, requires refrigeration for processed fruits and vegetables, establishes vendor hygiene standards and requires that units be serviced and cleaned at least daily.

§89.21 (Water supply) has been expanded and updates requirements in current §89.35 (Potable water).

§89.23 (Equipment and hand wash sinks) retains the requirement for use of single-service articles in current §89.27, and requires that mobile food vending units be equipped to facilitate prevention of food contamination in accordance with Article 81. Physical specifications for various types of mobile food vending units will be incorporated in the Department's rules in Chapter 6 of Title 24 of the Rules of the City of New York.

§89.25. (Garbage, refuse and liquid wastes) has been updated and incorporates provisions requested by the City's Department of Sanitation to clarify the responsibility of mobile food vendors for maintaining cleanliness of street areas surrounding their vending units. It also specifically authorizes various City agencies to enforce its provisions, by issuing orders and writing notices of violation.

§89.27 (Mobile food commissaries) updates requirements of current §89.31 (Cleaning and servicing of mobile food units), eliminating references to "depots", and incorporates many related provisions of the State Sanitary Code. It prohibits using streets and sidewalks for cleaning units, and requires commissaries to maintain records of the mobile food vending units serviced.

§89.29 (Imminent health hazards) is new, and adds provisions from current §81.39 authorizing the Department to order cessation of operations when the Department believes that continuing operation endangers the public health. Permittees, whose carts are very often operated by other mobile food vendors, on notice that they, too, will be accountable for imminent health hazards created by the mobile food vendors, other than the permittee, who are operating the permittee's mobile food vending unit. The Department believes these provisions are necessary to promote more responsible ownership and operation of mobile food vending units. The section authorizes the Department inspector to remove or cover the mobile food vending unit and includes provisions for substantive due process, including timely hearings, for permittees and licensees ordered to cease operations.

§89.31 (Enforcement) includes the provision in current §89.19(c) authorizing seizure of a non-permitted unit in subdivision (a), prohibits vendors from leaving mobile vending food units unattended whenever food is maintained on the unit, and authorizes denial of a license or permit by the Commissioner in accordance with applicable law. Subdivisions (d) and (e) of this section are substantially the same as current §89.19 (Enforcement).

§89.33 (Suspension and revocation of license or permit) continues the four current provisions of §89.13 (Suspension and revocation of license or permit), and adds a new subdivision (e) to provide that a person not authorized to hold a license or permit, who has been issued a license or permit in error, may be notified that the license or permit is void. It also provides that failure to notify the Department of a change of address is not a defense to any proceeding brought by the Department for revocation of a license or permit. Also added to this section are provisions of current §89.15 (Notice; hearings).

§89.35 (Modification) preserves the current authority of the Commissioner in §89.25 (Compliance and modification) to modify any requirements of this article that present practical difficulties or unreasonable hardships, provided that the public health is not compromised. Other provisions of the current section in subdivisions (a) and (c) have been incorporated in other sections.

The following provisions have been deleted in their entirety as either obsolete, or duplicative of provisions of the Administrative Code or the Health Code: §89.09 Restrictions on the placement of mobile food units; §89.21 Seizure of perishable foods; §89.23 Penalties or fines; and §89.39 Identification of individual food servings. §89.09 (Placement of units in public spaces) is entirely subject to provisions of the Administrative Code. Penalties and fines for placement violations in public areas are established in the Administrative Code (public space vending) or Article 3 of the Health Code (restricted or private area violations) and all other violations of any Health Code provisions). Seizure of perishable foods by the Department is authorized by Article 3's provisions for seizure or embargo of any article that is found unfit for use. Labeling of packaged foods is currently subject to federal regulation.

The proposal is as follows:
Matter underlined is new.

RESOLVED, that the list of sections and section headings in Article 89 of the New York City Health Code and Article 89 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, as last amended by resolution adopted on the twelfth of December two thousand two, be, and the same hereby are repealed and reenacted, to be printed together with explanatory notes to read as follows:

Article 89 Mobile Food Vending

§89.01 Scope.

§89.03 Definitions.

§89.05 Permits required.

§89.07 Licenses and badges.

§89.09 Terms of permits and licenses.

§89.11 Applications for permits and licenses.

§89.13 Duties of licensees and permittees.

§89.15 Prohibition against transfer of foods.

§89.17 Prohibition against transfer of a license or permit.

§89.19 Food protection and safety.

§89.21 Water supply.

§89.23 Equipment and hand wash sinks.

§89.25 Garbage, refuse and liquid wastes.

§89.27 Mobile food commissaries.

§89.29 Imminent health hazards.

§89.31 Enforcement.

§89.33 Suspension and revocation of license or permit

§89.35 Modification.

Introductory Notes:

As part of a comprehensive revision of the Health Code, Article 89 was repealed and reenacted by resolution of the Board of Health on December 16, 2008, effective January 1, 2010, to enhance the protection of the public health by requiring mobile food vending units to be operated in the safest manner possible, and to regulate various forms of mobile food vending.

§89.01 Scope In addition to Article 81, all other applicable provisions of this Code, Chapter 6 of Title 24 of the Rules of the City of New York, and Subpart 14-4 of Part 14 of the State Sanitary Code (10 NYCRR Chapter 1), or successor regulations, the provisions of this article shall apply to all mobile food vending operations, including, but not limited to, the sale of foods, and foods distributed without charge, from mobile food vending units on or in public, private and restricted spaces, both indoors and outdoors, including mobile food vendors and units that are regulated by the Administrative Code.

§89.03 Definitions. When used in this article:

(a) *Charitable organization* shall mean any charitable organization required to register with the State Attorney General that distributes food free of charge.

(b) *Decal* shall mean the identifying plate, insignia, seal or other identifying device that is placed on a mobile food vending unit by the Department, after the unit has been approved and inspected by the Department and authorizing use of the unit for mobile food vending.

(c) *Food* shall have the same meaning as in Article 71 of this Code.

(d) *License* shall mean the paper or other license document and photo identification badge issued to a mobile food vendor authorizing such person to sell food from a mobile food vending unit that has been issued a permit by the Commissioner.

(e) *Material alteration* shall mean an alteration that changes or results in a change in the size of the unit, or the replacement of any part of the body structure or equipment in a mobile food vending unit including, but not limited to, any food contact surface or non-food contact surface, and plumbing equipment such as sinks, potable and waste water tanks. A tire change or repair, replacement of the axle, or straightening a dent in a panel shall not be considered a material alteration.

(f) *Mobile food commissary* shall mean a food service establishment or a non-retail food service establishment, as those terms are defined in Article 81 of this Code, or other facility approved by the Department that complies with Chapter 6 of Title 24 of the Rules of the City of New York, which provides any of the following services to one or more mobile food vending units:

- (1) Storage of the unit when the unit is not being used for vending;
- (2) Cleaning and sanitizing of the unit;
- (3) Cleaning and sanitizing of the equipment and utensils used on a unit;
- (4) Disposing of liquid and solid wastes and refuse generated by the operation of a unit; or
- (5) Supplying of potable water and food, whether pre-packaged by the manufacturer, or prepared at the commissary, and furnishing of non-food supplies.

(g) *Mobile food vending* shall mean setting up to sell, and preparing, storing, holding and selling food, or distributing food free of charge, to the public from a mobile food vending unit.

(h) *Mobile food vending unit* shall mean a food service establishment as defined in Article 81 of this Code located in a pushcart or vehicle, self or otherwise propelled, used to store, prepare, display, serve or sell food, or distribute food free of charge to the public, for consumption in a place other than in or on the unit. Any such pushcart or vehicle shall be deemed a mobile food vending unit whether operated indoors or outdoors, on public, private or restricted space. A mobile food vending unit shall not mean a stand or a booth.

(i) *Mobile food vendor* shall mean a person who sells or offers for sale food, or distributes food free of charge, from a mobile food vending unit in any public, private or restricted space.

(j) *Operate or operation of a mobile food vending unit* shall mean setting up, preparing, storing, holding and selling food, or distributing food free of charge, from a mobile food vending unit.

(k) *Permit* shall mean the paper or other permit document authorizing the use of a specific mobile food vending unit to sell or distribute food, and the decal affixed to the unit by the Department after such unit has passed a pre-permit inspection.

(l) *Potentially hazardous foods* shall have the same meaning as provided in Article 81 of this Code.

(m) *Private space* shall mean all privately owned or leased property where use of the property for commercial purposes, including mobile food vending, is restricted to persons who have the written permission of the owner or lessee of the property.

(n) *Public space* shall mean all publicly owned property between the property lines on a street as such property lines are shown on City records including, but not limited to, a park, plaza, roadway, shoulder, tree space, sidewalk or parking space between such property lines.

(o) *Pushcart* shall mean a wheeled device, not required to be licensed as a vehicle, that is equipped in accordance with this Article and that is approved by the Department for use as a mobile food vending unit. Pushcart shall not mean a stand or booth.

(p) *Restricted space* shall mean publicly owned property where the owner or the lessee has the right to restrict or limit commercial activity, including mobile food vending.

(q) *Service, servicing or providing services* to a mobile food vending unit shall mean providing the services listed under subdivision (f) of this section, at a mobile food commissary, or other facility approved by the Department in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.

(r) *Temporary mobile food vending permit* shall mean a seasonal permit issued for operating a mobile food vending unit from April 1 to October 31 in a calendar year.

(s) *Vehicle* shall mean a motor vehicle or trailer, as defined in the Vehicle and Traffic Law, equipped in accordance with this Article and Chapter 6 of Title 24 of Rules of the City of New York.

(t) *Volunteers* shall mean persons who provide services free of charge to charitable organizations that operate mobile food vending units distributing food free of charge.

§89.05 Permits required.

(a) *Mobile food vending units.* No person, including a charitable organization, shall operate a mobile food vending unit in any public, private or restricted space without a permit issued by the Commissioner and a decal issued and placed on the unit by the Department after inspection by the Department.

(1) No mobile food vending unit permit or decal shall be issued until the Department determines, upon inspection, that the unit is of sanitary construction and design, and equipped with sanitary facilities for mobile food vending in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.

(2) The permittee shall provide proof satisfactory to the Department that the mobile food vending unit is supplied and serviced at a mobile food commissary permitted by the Commissioner, or other facility approved by the Department in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.

(3) Only a currently licensed mobile food vendor may apply for or hold a mobile food vending unit permit.

(b) *Permit and decal.* After a mobile food vending unit passes a pre-permit inspection by the Department, as defined in Chapter 6 of Title 24 of the Rules of the City of New York, and a decal is affixed by the inspector conducting the inspection, the Commissioner shall issue a permit document to the permittee provided that the applicant has satisfied all other applicable requirements.

(c) *Material alterations prohibited.* A mobile food vending unit shall not be materially altered after it has been inspected by the Department and the Department has attached a permit decal. Any material alteration of a mobile food vending unit after it has been inspected by the Department shall automatically void the permit issued to that unit. When an employee of the Department determines that a unit has been materially altered, such employee shall remove the decal and seize the vendor's permit and the Department may revoke or suspend such permit in accordance with §89.33.

(d) *Ice cream trucks.* No decal shall be issued for any vehicle to be used to vend ice cream and other frozen desserts unless such vehicle is equipped with fully operational warning beepers and signage arms required by the State Vehicle and Traffic law and the rules promulgated thereunder.

(e) *Mobile food commissaries.* No person shall maintain or operate a mobile food commissary that services City mobile food vending units unless such commissary holds a current permit issued by the Commissioner, the Department of Agriculture and Markets, or the permit issuing official of a jurisdiction outside New York State in which the commissary is located.

§89.07 Licenses and badges.

(a) *License required.* No person shall operate a mobile food vending unit in any public, private or restricted space without having first obtained a license issued by the Commissioner. A new or renewal license shall be issued when a complete application and all documentation required by this Code and other applicable law have been submitted, and the Commissioner has determined that the applicant is

eligible to hold such license.

(b) *Food protection course.* No mobile food vendor license shall be issued to any person unless such person submits proof satisfactory to the Department that he or she has successfully completed a food protection course in accordance with Article 81 of this Code.

(c) *Charitable organization volunteers.* Volunteers for charitable organizations operating mobile food vending units that distribute food free of charge shall not be required to hold a mobile food vendor license, but shall be required to present proof prior to vending, of satisfactory completion of a food protection course approved by the Department.

(d) *Documentation required.* No person shall operate any mobile food vending unit unless the badge issued to such person by the Department is conspicuously displayed on his or her outer clothing, and is carrying both the original food vendor license issued to such person and the original mobile food vending unit permit documents. Such license and permit shall be exhibited upon demand to any police officer, Department employee or agent, or other authorized officer, employee or agent of the City. Until the permit document is received by the permittee, the operator of the mobile food vending unit shall have in his or her possession the original pre-permit inspection report of the Department, indicating that a permit has been approved for issuance to the permittee.

§89.09 Terms of permits and licenses.

(a) *Two year terms.* Mobile food vending unit permits, and mobile food vendor licenses shall be valid for two years unless suspended or revoked by the Commissioner.

(b) *Temporary permits.* Seasonal mobile food vending unit permits shall be issued annually for operation from April 1 through October 31 of each calendar year, unless suspended or revoked by the Commissioner.

(c) *Commissary permits.* Mobile food commissary permits shall be valid for one year unless sooner suspended or revoked by the Commissioner.

(d) *Restricted or private space permits.* Mobile food vending units operating exclusively in restricted or private spaces shall have the same term as the term of the written agreement between the permittee and the owner or lessee of the premises, but shall not exceed the terms specified in subdivision (a) or (b) of this section.

§89.11 Applications for permits and licenses.

(a) *Fees.* All applications for a license or permit to vend in a public space shall be accompanied by payment of the fees prescribed in §17-308 of the Administrative Code, or successor law, or, if the mobile food vending unit will operate in a private or restricted space, the fee prescribed by Article 5 of this Code (b) *Applications.* All applications shall be submitted in a form and contain all information and documentation required by the Department, and shall include, but not be limited to, the following information:

- (1) The name, home and business address of the applicant;
- (2) The name, home address and license number of every food vendor who will be authorized by the permittee to operate the mobile food vending unit;
- (3) A description of the food to be vended and a description of the type of mobile food vending unit to be operated pursuant to the permit;
- (4) At least one piece of current valid photo identification issued by a government agency of any jurisdiction;
- (5) Proof that the applicant has obtained a certificate of authority to collect sales taxes pursuant to §1134 of the Tax Law, and has a tax clearance certificate from the State Tax Commission;

(6) If the applicant is a partnership, limited liability company or other business entity, the name, and address of each partner, member, officer or manager, as may be applicable, of such entity; if a corporation, the names and addresses of the corporation, the names, home and business addresses of the principal stockholders, officers, directors and shareholders;

(7) Proof that the applicant has obtained clearance from the Environmental Control Board showing the payment of all penalties and fines pursuant to Chapter 6 of Title 24 of the Rules of the City of New York; and

(8) An application for a permit for a mobile food vending unit to operate in a private or restricted space shall include a copy of a written agreement with the owner of the private or restricted space indicating that the applicant has the right to operate in such space.

(c) *Renewals.* An application for renewal of a license or permit shall be received by the Department, with the fee required by Article 5 of this Code or the Administrative Code, at least thirty days prior to the expiration date of the existing license or permit. Such application shall be accompanied by tax clearance certificates issued by the State Tax Commission and New York City Department of Finance, and proof that all penalties and fines for sustained or defaulted notices of violation issued to the mobile food vendor licensee or permittee for violations of Title 17 of the Administrative Code, the Health Code, the Sanitary Code, and Chapter 6 of Title 24 of the Rules of the City of New York have been paid in full in accordance with such chapter.

(d) *Duplicates.* Applications for duplicate license and permit documents, decals and badges shall be accompanied by documentation acceptable to the Department demonstrating that the original documents, decals or badges have been lost, stolen, damaged or destroyed. Such documentation shall include, but not be limited to a sworn notarized statement by the applicant attesting to the circumstances of the loss, theft or damage of the document, decal or badge and, in cases of theft, a police report for the stolen document, decal or badge

(e) *Representatives.* An application for a new or renewal license or permit that is prepared or submitted by an authorized representative of the applicant shall contain a sworn statement indicating that the representative provided the applicant with a complete application packet provided by the Department, including a copy of all laws and regulations applicable to vending, and that all applicable laws and regulations were explained to the applicant.

(f) *Signed by applicant.* Applications for new, renewal or duplicate documents shall be signed by the applicant, and not by a representative.

(g) Affirmation. Every applicant for a new or renewal or duplicate license or permit shall affirm or swear as to whether such applicant has or has not previously had a license or permit suspended or revoked by the Commissioner.

Notes:

See Khalil v. Spencer, 143 Misc. 2d 429; 541 N.Y.S.2d 301 (Sup Ct. NY Cty. 1989), which upheld the license renewal process for mobile food vendors as reasonable. First class mail and certified mail service of petition and notice of hearing at vendor's last known address of record was deemed sufficient to establish jurisdictional prerequisites for default. Licensees and permittees are required to maintain a current address on file with the Department. Dep't of Health v. El Hossini, OATH Index No. 1768/98 (Aug. 26, 1998); Dep't of Health v. Moustafa, OATH Index No. 1769/98 (Aug. 26, 1998).

§89.13 Duties of licensees and permittees

(a) Inspections. Permittees and licensees shall permit inspections by the Department of any mobile food vending unit subject to this Article, and any premises in which food is stored, prepared, processed distributed or served. Permittees and licensees shall present mobile food vending units for inspection at such place and time as may be designated by the Department.

(b) Commissary used. Permittees and licensees shall provide to the Department upon request the names and home and business addresses of the owners of the mobile food commissaries, or other approved facility from which the permittee or licensee receives her or his food and supplies, and the address at which the food supplies are stored, where his or her mobile food vending unit is serviced and where the unit is stored when not in operation.

(c) Documented food source. Permittees and licensees shall have in their possession and make available for inspection documentation satisfactory to the Department identifying the source of all foods being held, stored, offered for sale, sold or distributed free of charge from the mobile food vending unit.

(d) Authorized foods. Permittees and licensees shall not use or allow others to use a mobile food vending unit to vend any foods other than those foods authorized in writing by the Commissioner to be vended by the permittee or licensee.

(e) Expired or suspended or revoked permits and licenses. Permittees and licensees shall not operate a mobile food vending unit after expiration or revocation of a permit or license or during any period when a permit or license is suspended.

(f) Surrender of licenses and permits. Licenses, permits, badges and decals shall be surrendered promptly to the Commissioner upon revocation, suspension, termination or expiration.

(g) Unlicensed vendors prohibited. Permittees and licensees shall not allow a person who does not hold a currently valid mobile food vending license issued by the Commissioner to operate such permittees' or licensees' mobile food vending unit.

(h) Notice to the Department. Permittees and licensees shall notify the Department within ten business days of any change in the information provided on an application for a license or a permit, including, but not limited to, the address and contact information for the licensee or permittee, and the names and license numbers of persons authorized to operate a permittee's mobile food vending unit. Failure to timely notify the Department of a change in address by a licensee or permittee shall result in the declaration of a default if the Department commences a proceeding for the licensee or vendor to show cause why the Commissioner should not revoke or suspend the license or permit and mails the petition and notice of hearing to the licensee's or permittee's last known address as maintained in Department records.

(i) Damaged and repaired mobile food vending units. Any mobile food vending unit that has been damaged and repaired or materially altered, as defined in this Article, shall be re-inspected by the Department prior to its re-use as a mobile food vending unit. No decal shall be transferred from any mobile food vending unit to another mobile food vending unit, except by the Department. The Department may impose a reasonable fee to cover the costs of all such inspections.

(j) Restricted or private area permit limitations. Any person who operates a mobile food vending unit with a private or restricted area permit in any area other than the area specified on the permit shall be deemed to be operating without a permit.

(k) Permittees liable for mobile food vending unit operation. Permittees shall be jointly and severally liable for violations of this Code, and other applicable law, that occur in the course of operating mobile food vending units. A person operating a mobile food vending unit who is not the permittee shall be deemed an agent of the permittee, and the mobile food vending unit being operated by such person shall be deemed the place of business of the permittee, for the purpose of service of any Department notice of violation, order, or petition and notice of hearing issued to the permittee. A licensee served with any notice of violation, order, or petition and notice of hearing directed to the permittee shall deliver such notice of violation, order or petition to the permittee within two business days of delivery of such document to the licensee, and the Department shall mail such notice of violation, order, or petition and notice of hearing to the permittee by any method authorized in Article 3 of the Code.

§89.15 Prohibition against transfer of foods. Except for charitable organizations, it shall be unlawful for any person to sell food or distribute food free of charge to any other mobile food vendor for resale or distribution if such vendor does not have a valid permit and license for mobile food vending.

§89.17 Prohibition against transfer of a license or permit.

(a) Transfers prohibited. No person holding a permit for a mobile food vending unit or a license to operate a mobile food vending unit shall sell, lend, lease or in any manner transfer his or her license, permit, badge or decal, except in accordance with applicable law.

(b) Unauthorized transfer voids permit and license. Any

unauthorized transfer or attempt to transfer a license, permit, badge or decal shall automatically void such license, permit, badge and identification insignia.

(c) Notice to the Department. The Department shall be notified in writing at least ten business days in advance of any transfer of a license or permit authorized by applicable law.

Notes: Ad Code §17-314.1 prohibits transfers of mobile food vending licenses or permits except in certain cases where family members who hold permits are incapacitated or deceased. Health Code §5.11 automatically voids a permit that is transferred for operation of any business regulated by the Department.

§89.19 Food protection and safety.

(a) Food sources. Food shall be obtained from approved sources operating pursuant to licenses or permits issued by federal, state or local regulatory agencies. All potentially hazardous foods shall be cooked, processed, packaged, and labeled at a licensed mobile food commissary or other approved facility.

(b) Thermometers required. Metal stem-type, numerically scaled, indicating thermometers, thermocouples, or thermistors, accurate to plus or minus two degrees Fahrenheit (one degree Celsius), shall be used to determine that required internal cooking, holding or refrigeration temperatures of all potentially hazardous foods are obtained and maintained in accordance with Article 81.

(c) Hot and cold holding. Sufficient hot and cold storage facilities shall be provided and used to maintain potentially hazardous foods, as defined in Article 81 of this Code, at required temperatures.

(d) Ice. Ice that is consumed or that touches food and food contact surfaces or utensils shall be made from potable water from approved sources in a manner that protects it from contamination. Ice shall be obtained only in chipped, crushed or cubed form and in single-use food grade plastic or wet strength paper bags filled and sealed at the point of manufacture. Ice shall be held until dispensed, in the manufacturer's bags, in a manner that protects it from contamination.

(e) Cold storage on ice. Packaged food may be stored in direct contact with ice or water if the food's packaging, wrapping, container or position in the ice prevents ice or water from direct contact with food or entering the package or container upon opening. Areas of packaging intended for use as eating or drinking surfaces shall not be in contact with ice or water at any time.

(f) Prohibitions on sale or service of specific foods. The Commissioner may by rule prohibit the sale or service of specific potentially hazardous foods or types of foods by mobile food vending units.

(1) Meat. All meat shall be processed and prepared for cooking at a mobile food commissary. No raw meat shall be butchered, de-boned, dressed, or cut into portion size in or on a mobile food vending unit.

(2) Fish. No fish, shellfish, or any food consisting of or made with an aquatic animal, as defined in Article 81, shall be prepared, stored, held for service or sold from a mobile food vending unit.

(3) Processed fruits and vegetables. Mobile food vending units in which sliced, peeled or processed fruits and vegetables are prepared, stored, held for service or sold shall have adequate refrigeration at all times, and shall during a pre-permit inspection. Mobile food vending units only authorized to sell whole fresh pre-packaged fruits and vegetable may not sell or hold for service sliced, peeled or processed fruits and vegetables and as such refrigeration for such units is not required.

(g) Displayed foods. Food placed on display on the mobile food vending unit shall be protected from contamination, in accordance with Article 81 of this Code. Foods, including but not limited to, pretzels and nuts, shall be displayed only in protective containers approved by the Department.

(h) Condiments. Individual single-service containers, sealed by the manufacturer, shall be provided for condiments such as sugar, mustard, ketchup, salt, pepper and relish, unless dispensed directly by the food vendor from a shaker or container with a pump, made of a food grade material.

(i) Mobile food vendor hygiene. At all times while operating a mobile food vending unit, persons shall maintain personal hygiene in accordance with Article 81, shall not smoke, shall be fully clothed (no sleeveless shirts or bare midriffs) in clean outer garments, and shall wash hands after using toilets.

(j) Contamination. All foods on a mobile food vending unit shall be protected against contamination in accordance with Article 81 of this Code. Water in which food is boiled, heated, or otherwise processed shall not be used to heat containers of other foods.

(k) Toxic materials. No poisonous or toxic materials, including, but not limited to, pesticides and cleaning compounds, shall be kept on or in a mobile food vending unit. In a vehicle used as a mobile food vending unit, vehicle maintenance materials shall not be stored in parts of the vehicle where food is stored, prepared or served.

(l) Servicing frequency. All mobile food vending units shall be cleaned and serviced at least daily at a mobile food commissary or other facility approved by the Department.

§89.21 Water supply

(a) Potable water. All water, including City tap water, supplied to a mobile food vending unit shall be potable water and obtained from a supply complying with the requirements of Article 81 of this Code and the State Sanitary Code.

(b) Water storage tanks. Water storage tanks, fill piping and distribution piping shall be constructed from food-grade materials; installed and maintained to protect water from contamination; designed to be drained by gravity; and sanitized, emptied and rinsed daily with potable water before use.

§89.23 Equipment and hand wash sinks.

(a) Compliance with Article 81 and rules. A mobile food vending unit shall be designed and equipped to hold, prepare, store and serve food in accordance with Chapter 6 of Title 24

of the Rules of the City of New York and Article 81 of this Code.

(b) Operations exclusively on the mobile food vending unit. The sale, storage, holding, distribution, or display of food from boxes or from any place other than a mobile food vending unit is prohibited.

(c) Single-service articles. Consumers shall be provided with single service articles, such as plastic forks and paper plates. Mobile food vendors shall not re-use single service articles and shall provide a container for their disposal. All waste containers shall be emptied and cleaned at the commissary servicing the mobile food vending unit, in accordance with §89.25 of this Article.

(d) Equipment placement. Equipment shall be located and installed in a way that prevents food contamination and facilitates cleaning the unit, in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.

(e) Unobstructed work areas. Unobstructed working spaces are to be provided sufficient to permit persons operating a mobile food vending unit to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(f) Hand washing facilities required. Hand wash sinks shall be provided in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.

§89.25 Garbage, refuse and liquid wastes. Garbage, refuse and other solid and liquid wastes shall be collected and stored at the mobile food vending unit while the unit is in use and removed from the unit and disposed of so as to prevent a nuisance.

(a) Collection and disposal. Mobile food vending permittees and licensees shall collect garbage, refuse and other solid and liquid wastes at the vending site in a vermin-proof receptacle and remove and dispose of the receptacle at the mobile vending unit's commissary or other facility authorized by the Department. Solid and liquid waste shall not be discarded on public streets or sidewalks or in a public litter basket placed on the streets by the Department of Sanitation, or any other person or entity.

(b) Liquid wastes and sewage holding and disposal. Sewage and liquid wastes shall be stored in a permanently installed holding tank that has at least 15 percent greater capacity than the water supply tank in a manner that protects the vending location, personnel and contents within the mobile food vending unit from contamination. All plumbing shall be constructed and maintained so as to prevent contamination of or contact with the potable water supply, food, equipment, utensils, food contact surfaces and non-food contact surfaces, employees and patrons. All sewage and liquid waste shall be disposed of at the mobile food commissary or a sewage disposal system constructed and operated in a manner acceptable to the Department.

(c) Debris and consumer litter. The operator of a mobile food vending unit is responsible for and shall remove and clean solid and liquid wastes, debris and food spillage caused by the operation of the unit and consumer littering adjacent to the mobile vending food vending unit.

(d) Enforcement. In addition to authorized officers, employees and agents of the Department, authorized officers, employees and agents of the City Department of Sanitation, may order cleanup of wastes and issue summonses and notices of violations for violations of subdivisions (a) and (c) of this section.

§89.27 Mobile food commissaries

(a) Compliance with applicable law. A mobile food commissary shall be constructed, maintained and operated in accordance with this article, Article 81 of this Code, Subpart 14-2 of the State Sanitary Code or successor regulations, and Chapter 23 of Title 24 of the Rules of the City of New York, and shall not create or maintain a nuisance with respect to the health or safety of any consumer or the public because of the condition of the mobile food vending unit, its equipment, utensils, personnel, mode of operations, vending location, water supply, liquid and solid waste and sewage disposal, food and appurtenances.

(b) Records of food vending units to be maintained. Mobile food commissaries and other facilities approved by the Department shall maintain a list of the mobile vending units serviced by such facilities and make the list available for inspection by the Department on request.

(c) Cleaning. Such commissaries or facilities shall provide a cleaning area for cleaning and servicing mobile food vending units that shall be:

(1) Large enough to accommodate the largest size mobile food vending unit utilizing the facility.

(2) Physically separated from all food operations to avoid contamination of food, equipment and food contact surfaces.

(3) Provided with potable water, plumbing fixtures and facilities for the drainage and disposal of liquid wastes and the storage of solid wastes in accordance with Article 81 of this Code.

(d) Street and sidewalk cleaning prohibited. Mobile food vending units shall not be cleaned or serviced on public streets and sidewalks, including those adjacent to commissaries.

(e) Garbage and waste disposal. Commissaries shall collect and remove garbage, refuse and liquid wastes in accordance with Article 81 of this Code and other applicable law.

(f) Enforcement. In addition to authorized officers, employees and agents of the Department, authorized officers and employees of the Department of Sanitation, or successor agency, may issue notices of violation or orders to remediate any nuisances created by vendors in violation of this section.

§89.29 Imminent health hazards.

(a) Cessation of operations of a mobile food vending unit for imminent health hazards. The Department may order immediate cessation of operations and service of food by any person operating a mobile food vending unit if continued operation presents an imminent hazard to public health. Any person ordered to cease operations and service of food pursuant to this section shall comply with such order immediately, and shall, within 10 business days thereafter, be provided with a hearing as to why the cessation order should be rescinded and as to why the mobile food vendor's

license and the permit for the unit should not be further suspended or revoked.

(b) *Seizure of permit and license(s) authorized.* In such cases, the Department shall seize the permit document, and the operator's license document and badge, and may apply a seal or sign to cover the mobile food vending unit's decal, or remove the decal.

(c) *Operation prohibited until after hearing.* No person shall operate the unit until there has been a hearing at OATH followed by expeditious adoption by the Commissioner of the report and recommendation of an OATH administrative law judge, setting forth a finding that continued operation of the unit by or on behalf of the permittee does not present a continuing hazard to the public health. If the administrative law judge finds that continued operation of the mobile food vending unit by the permittee and the licensee presents a continuing hazard to the public health, the permittee and licensee may request that the Commissioner provide them with an opportunity to correct the violations and to demonstrate that they are willing and able to operate the mobile food vending unit in compliance with all applicable law. If such request is not received the Commissioner shall issue an order suspending or revoking the permittee's mobile food vending unit permit and license and the operator's mobile food vending license.

(d) *Service of cessation order.* If the operator of the mobile food vending unit is not the permit holder, the order issued pursuant to this section shall be served upon the permittee by delivery to the person operating the mobile food vending unit, and by mailing the order to the permittee's address, as maintained in Department records, pursuant to §3.05 (b) of this Code.

(e) *Cessation signs not to be removed.* Cessation signs or seals affixed by the Department shall not be removed except by order of the Commissioner or designee.

§89.31 Enforcement

(a) *Operation without permit.* Any mobile food vending unit being operated without a currently valid mobile food vending unit permit issued by the Commissioner shall be deemed an imminent health hazard and may be seized by the Department and all the food therein denatured or otherwise disposed of.

(b) *Denial of license or permit.* The Commissioner may refuse to issue or renew, or may suspend or revoke a license or permit in accordance with provisions of this Code, or other applicable law.

(c) *Unattended units prohibited.* No mobile food vending unit shall be parked on the street overnight, or left unattended at any time food is kept in the mobile food vending unit.

(1) Any mobile food vending unit which is found to be unattended or which a vendor has abandoned shall be considered an imminent health hazard subject to the provisions of §89.29 of this Article.

(2) Any cessation order issued for abandoning a mobile food vending unit or leaving such unit unattended shall, in the absence of the operator of such unit, be served by posting or affixing notice of such cessation order on such unit. Notice of the cessation order shall thereafter be mailed to the permittee's address, as maintained in the Department's records, pursuant to Article 3 of this Code.

(d) *Authorized enforcement officers.* Public health sanitarians or other authorized officers of employees of the Department and other City departments or agencies having jurisdiction over matters applicable to the operations of mobile food vendors and mobile food vending units, including, but not limited to, officers of the Police Department, shall have the power to enforce all laws, rules and regulations relating to mobile food vendors and mobile food vending units, including the provisions of this Article. This Article shall not be construed as restricting in any way any other power granted by law to any officer or employee of the City. Any such officer or employee may seize any food or mobile food vending unit which does not have a permit or which is being used by an unlicensed mobile food vendor. Such mobile food vending unit and food shall be subject to forfeiture and disposal or sale in accordance with applicable law.

(e) *Removal costs.* A mobile food vending unit and its contents that are seized pursuant to subdivision (d) of this section, or other applicable law may be removed to any garage, automobile pound or other place of safety, and the owner, or other person lawfully entitled to the possession of such vehicle or pushcart may be charged with reasonable costs for such removal and storage, payable prior to the release of the mobile food vending unit.

§89.33 Suspension and revocation of license or permit. A license or permit issued pursuant to the provisions of this Article may be suspended or revoked by the Commissioner upon notice and hearing for any of the following causes:

(a) Fraud, misrepresentation or false statements contained in the application for the license or permit;

(b) Fraud, misrepresentation or false statements made in connection with the selling of any item of food;

(c) Having been found in violation four or more times of the provisions of Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code within a two-year period, or a violation of the provisions of Part 14 of Chapter 1 of the State Sanitary Code or of this Code, or of Chapter 6 of Title 24 of the Rules of the City of New York within a two-year period;

(d) Failure to answer a summons or notice of violation, or failure to appear at a hearing for violation of Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code, or of Chapter 6 of Title 24 of the Rules of the City of New York, or of this Code or the State Sanitary Code, or failure to pay a fine or penalty imposed by the Commissioner, Department or court for any such violation.

(e) A license or permit that has been issued to a person who is not eligible pursuant to Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code or this Code to hold such license or permit shall be deemed automatically invalid, and issued in error. Notice of such determination shall be made by first class mail to the last known address of the licensee or

permittee, as maintained in Department records, and shall be a final agency determination.

(f) It shall not be a defense in any proceeding to revoke a license or permit that the licensee or permittee changed his or her address without providing notice to the Department.

(g) Notice; hearings. Notice and hearing upon denial of an application, refusal to issue or renew, or where the Commissioner seeks to suspend or revoke a license or permit shall be provided in accordance with this Code, Chapter 7 of Title 24 of the Rules of the City of New York, and §17-317 of the Administrative Code.

Notes: Where respondents were proven to have received four or more adjudicated violations of statutory provisions, food vendor license revocation was recommended and imposed. Dep't of Health v. Khedr, OATH Index No. 928/99 (Jan. 19, 1999), *aff'd*, Comm'r Dec. (Feb. 1, 1999).

§89.35 Modification. The Commissioner may modify any requirements in this Article which present practical difficulties or unusual or unreasonable hardships in a specific instance consistent with the purpose and intent of this Article and this Code upon such conditions as are necessary to assure the service of safe food and to protect the public health.

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NOTICE OF ADOPTION OF AMENDMENTS TO ARTICLE 173 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the "Charter") and pursuant to the authority granted to the Board of Health by §558 of the Charter, notice of the proposed amendment of Article 173 (Hazardous Substances) of the New York City Health Code was published in the City Record on September 22, 2008 and a public hearing was held on October 29, 2008. No one testified at the hearing and no written comments were received. At its meeting on December 16, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene ("DOHMH") with jurisdiction to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the DOHMH proposed that the Board of Health amend Article 173, Hazardous Substances, to better reflect practice and the regulatory environment, provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize its provisions with related provisions of federal and state law. Pursuant to this review and assessment of the Health Code, the Department proposed that the Board amend certain of the provisions of current Article 173 as described below.

§173.01 (Definitions) has been repealed and reenacted. It changes or amends definitions for the terms "hazardous substance," "toxic," "highly toxic," "flammable," "combustible," "corrosive," "irritant," "label," "electrical hazard," "mechanical hazard," "thermal hazard" and "art material." These changes modernize the terms used in the Article, incorporating corresponding definitions from the Federal Hazardous Substances Act (15 USCA §1261 et seq.), and related regulations (16 CFR Part 1500).

§173.05 (Labeling).

Subdivision (a) has been amended to delete exceptions for Articles 71, 75 and 77.

Subdivision (b) has been amended to harmonize with corresponding provisions in the Federal Hazardous Substances Act (15 USCA §1261 et seq.) and its related regulations (16 CFR Part 1500), and regulations that may be adopted by the United States Consumer Product Safety Commission.

Subdivision (c) has been amended to delete paragraphs (1) through (3) and refers to highly toxic substances as defined in this Article. Elimination of paragraphs (1) through (3) obviates the need for subdivision (d), which has accordingly been deleted.

New subdivision (d) requires labeling of art materials in accordance with the Federal Hazardous Substances Act and related federal regulations to protect the health and safety of persons using art materials.

New subdivision (e) is a general provision requiring labeling not otherwise required under federal, state or local law. The remaining subdivisions have been relettered accordingly.

Current subdivision (g) on changing labeling requirements pursuant to the discretion of the Commissioner is deleted, and former subdivision (f) is relettered as (g). Deference will be given to labeling requirements as set forth in the Federal Hazardous Substances Act and its related federal regulations.

Current subdivision (i) has been amended to add the term "conspicuous" to characterize required labeling, reflecting the language in the Federal Hazardous Substances Act and related regulations.

§173.051 (Exemptions) has been repealed, as an exemption for pressurized products is no longer necessary with the repeal of §173.06.

§173.06 (Pressurized Products) has been repealed as unnecessary because pressurized products are currently subject to New York City Fire Department regulations. See, 3 RCNY §32-01.

§173.07 (False or misleading advertising or labeling) has been amended to delete references to pressurized products.

§173.08 (Carbon tetrachloride; prohibited for household use and in fire extinguishers) has been repealed as the use of carbon tetrachloride, as noted, is prohibited by Fire Department rules for use in pressurized containers, and for at least the past 30 years, the FDA has banned carbon tetrachloride in any product to be used in the home. See, 3 RCNY §32-01 and 16 CFR §1500.17.

§173.09 (Rodenticides and insecticides) has been repealed, as pesticide use is comprehensively regulated by both the New York Environmental Conservation Law and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

§173.11 (Fire extinguishers containing methyl bromide) has been repealed as neither the Fire Department nor National Fire Protection Association Standard 10 consider a fire extinguisher containing methyl bromide acceptable. See, 3 RCNY §15-02.

§173.13 (Lead Paint) has been amended to specify that orders for remediation of lead hazards in soil, authorized in paragraph (1) of subdivision (d) may be issued when a child under six years of age resides in or uses the premises appurtenant to the leaded soil.

§173.14 (Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint) has been amended to delete references to §45.12, now §43.23, and §47.44, now §47.63. Amendments have been incorporated in the Table of Contents and subdivisions (a), (b), (c) and (e). Subdivision (a) was amended after the public comment period to correct a technical omission in the proposal published.

§173.16 (Lye intended for household use) has been repealed as §173.05 has been amended to provide for and address the labeling provisions as set forth in this section.

The proposal is as follows:

Note—Matter in brackets [] to be deleted
Matter underlined is new

RESOLVED, that the list of section headings of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, as last amended by resolution adopted on the thirteenth of December nineteen hundred ninety-nine, be and the same hereby is further amended, to be printed together with explanatory notes to read as follows:

Article 173 Hazardous Substances

§173.01 **Definitions.**

§173.03 **Transfer of hazard stances; use of food, drug and cosmetic containers.**

§173.05 **Labeling.**

[§173.051 **Exemptions**

§173.06 **Pressurized products.]**

§173.07 **False or misleading advertising or labeling.**

[§173.08 **Carbon tetrachloride; prohibited for household use and in fire extinguishers.**

§173.09 **Rodenticides and insecticides.**

§173.11 **Fire extinguishers containing methyl bromide.]**

§173.13 **Lead Paint**

§173.14 **Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.**

§173.15 **Reserved.**

[§173.16 **Lye intended for household use.]**

§173.17 **Plastic Bags.**

§173.19 **Glues and cements containing volatile solvents.**

Introductory Notes:

* * *

As part of a comprehensive review of the Code to assess the efficacy of its provisions in protecting the public health, Article 173 was amended on December 16, 2008 to better reflect practice and the regulatory environment, assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize such provisions with related provisions of federal and state law. As a result of this review, §§173.051, 173.06, 173.08, 173.09, 173.11 and 173.16 were repealed; §173.01 was repealed and reenacted, and §173.05 was amended, to reflect current federal law; §173.13 was amended to authorize the Commissioner to order remediation of leaded soil in properties used by children under six years of age; and §173.14 was amended to reference provisions in a new Article 43 and a repealed and reenacted Article 47.

RESOLVED, that §173.01 (Definitions) of Article 173 (Hazardous Substances) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, repealed and reenacted, to be printed together with explanatory notes, to read as follows:

§173.01 Definitions. When used in this article the following terms shall have the following meanings:

(a) Advertisement means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase or use of a hazardous substance.

(b) Art material means any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include substances subject to the Federal Insecticide, Fungicide, and Rodenticide

Act, as amended, or drugs, devices, or cosmetics subject to Article 71 of the Code.

(c) Combustible means having a flashpoint at or above 100 degrees Fahrenheit (37.8 degrees Celsius) to and including 150 degrees Fahrenheit (65.6 degrees Celsius) as determined by the test method described at 16 C.F.R. §1500.43a or successor regulation.

(d) Corrosive means capable of causing destruction of living tissue by chemical action when placed in contact with such tissue but shall not refer to action on inanimate surfaces.

(e) Electrical hazard means an article that in normal use or when subjected to reasonably foreseeable damage or abuse may cause personal injury or illness by electric shock due to its design or manufacture.

(f) Extremely flammable means that a substance has a flashpoint at or below 20 degrees Fahrenheit (-6.7 degrees Celsius) as determined by the test method described at 16 CFR § 1500.43a, or successor regulation.

(g) Flammable means that a substance has a flashpoint above 20 degrees Fahrenheit (-6.7 degrees Celsius) and below 100 degrees Fahrenheit (37.8 degrees Celsius), as determined by the method described at 16 C.F.R. §1500.43a or successor regulation.

(h) Flashpoint means the lowest temperature of a product at standard conditions at which the product's vapors will ignite momentarily when subjected to a flame. Flashpoint temperatures shall be determined pursuant to the procedures set forth in 16 C.F.R. §1500.43a or successor regulations.

(i) Hazardous substance means:

(1) Any substance or mixture of substances which is combustible, corrosive, extremely flammable, flammable, highly toxic, an irritant, a strong sensitizer, toxic, or generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause or has caused substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(2) Any substance which the Federal Consumer Product Safety Commission determines meets the requirements of section 2(f)(1)(A) of the Federal Hazardous Substances Act;

(3) Any radioactive substance if, with respect to such substance as used in a particular class of article or as packaged the Federal Consumer Product Safety Commission determines by regulation that the substance is sufficiently hazardous to require labeling to protect the public health; and

(4) Any toy or other article which the Federal Consumer Product Safety Commission or the Commissioner determines presents an electrical hazard, mechanical hazard, or thermal hazard.

(5) Hazardous substance shall not mean pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act or State Environmental Conservation Law; substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house; and source material, special nuclear material, or byproduct materials defined and regulated in applicable federal, state and local law.

(j) Highly toxic means any substance which falls within the definition or description set forth in 16 CFR §1500.3 or successor regulation. If, pursuant to 16 CFR §1500.4 or successor regulation, available data on human experience with any substance indicates results different from those obtained on animals in the dosages and concentrations specified, human data shall take precedence.

(k) Human experience or data shall mean a report or evidence of exposure of one or more persons to a hazardous substance resulting in an adverse effect.

(l) Irritant means a substance that is not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

(m) Label or labeling means a display of written, printed, or graphic matter upon the immediate container of any hazardous substance or, in the cases of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto. A requirement of federal, State or local law that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (i) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (ii) on all accompanying literature where there are directions for use, written or otherwise.

(n) Mechanical hazard means an article that in normal use or when subjected to reasonably foreseeable damage or abuse presents an unreasonable risk of personal injury or illness due to its design or manufacture:

(1) From fracture, fragmentation, or disassembly of the article;

(2) From propulsion of the article (or any part or accessory thereof);

(3) From points or other protrusions, surfaces, edges, openings, or closures;

(4) From moving parts;

(5) From lack or insufficiency of controls to reduce or stop motion;

(6) As a result of self-adhering characteristics of the article;

(7) Because the article (or any part or accessory thereof) may be aspirated or ingested;

(8) Because of instability; or

(9) Because of any other aspect of the article's design or manufacture.

(o) Strong sensitizer means a substance that will cause a hypersensitivity-type reaction through an immunologically-mediated (allergic) response, including allergic photosensitivity, which offers a significant potential for causing injury and where the allergic reaction typically becomes evident upon reexposure to the same substance.

(p) Thermal hazard means an article or thing that in normal use or when subjected to reasonably foreseeable damage or abuse, presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces due to its design or manufacture.

(q) Toxic means a substance, other than a radioactive substance, that

(1) Has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface or any substance deemed to be toxic pursuant to the procedures as set forth in 16 C.F.R. §1500.3 or successor regulation;

(2) Is toxic (but not highly toxic) on the basis of human experience; or

(3) Presents a chronic hazard, if it is or contains a known or probable:

(A) Human carcinogen;

(B) Human neurotoxin; or

(C) Human developmental or reproductive toxicant.

Notes:

Section 173.01 was repealed and reenacted by resolution adopted on December 16, 2008 as part of a comprehensive revision of the Health Code, to reflect current concepts and applicable law. Many definitions are derived from the Federal Hazardous Substances Act and the definition of labeling is similar to that found in Federal Food, Drug, and Cosmetic Act §321(m), Education Law §6802 and Agriculture and Markets Law §198.

RESOLVED that §173.05 (Labeling) of Article 173 (Hazardous Substances) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, amended, to be printed together with explanatory notes to read as follows:

§173.05 Labeling.

(a) Label required. No person shall sell, hold for sale, transport, or give away a hazardous substance unless the labeling complies with this article. [The provisions of this article shall not apply to a drug or cosmetic as defined in §71.03(b) and (d) and labeled pursuant to Articles 71, 75 or 77.] When a hazardous substance is labeled in compliance with applicable State or Federal law, this section shall not apply, except that if the Commissioner finds that the labeling of the substance is inadequate to protect the public health, the labeling of the substance shall, upon the order of the Commissioner and written notice to the manufacturer or distributor, contain such additional matter as may be required by [the] this section.

(b) Label contents. The label of a package or container of a hazardous substance shall bear the following information:

(1) The name and place of business of the manufacturer, packer [or], distributor or seller;

(2) The common or usual name, or if there is no common or usual name, the chemical name, or if there is no common or usual name and if the chemical name is unknown or complex, the recognized nonprotected name (not trade name only) of the hazardous substance or of each component which contributes substantially to its hazard, unless the United States Consumer Product Safety Commission by regulation permits or requires the use of a recognized generic name;

(3) The signal word "Danger," "Warning" or "Caution" to indicate the degree of hazard. The signal word "Danger" shall be used for substances which are extremely flammable, corrosive, [or explosive]. The signal word "Danger" shall also be used for toxic substances which produce death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of one gram or less per kilogram of body weight when orally administered; or produce death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of 1,000 parts per million or less by volume of gas or vapor or ten milligrams or less per liter of mist or dust; or produce death within 14 days in half or more than half of a group of ten or more rabbits tested in a dosage of one gram or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less. The signal word "Warning" or "Caution" shall be used for substances which present a lesser hazard than those required to be labeled "Danger." In addition, the label of a substance, which, defined in terms of acute lethal dosage by mouth, has a fatal effect in amounts greater than five grams per kilogram of body weight, shall bear the signal word "Warning" or "Caution" when the Commissioner finds such a substance to be detrimental to public health unless so labeled.] or highly toxic. The signal word "Warning" or "Caution" shall be used for all other hazardous substances;

(4) An affirmative statement of the principal hazard or hazards of the substance such as "Flammable," "Extremely Flammable," "Vapor Harmful," "Causes Burns," "Absorbed through Skin" or similar words descriptive of the hazard;

(5) Precautionary measures describing the action to be followed or avoided;

(6) Instructions for first-aid treatment, if available;

(7) Instructions for handling or storage on packages or containers requiring special care in handling or storage;

(8) Instructions for final disposal of containers on retail packages or containers requiring special care in disposal; and,

(9) The statement "Keep Out of the Reach of Children" or its practical equivalent on retail packages or containers offered for household use.

(c) Poisons. In addition to the words, statements or other information required by subdivision (b) of this section, a hazardous substance shall bear on its label the word "Poison," a skull and crossbones symbol, directions to call a physician upon ingestion and, if available, an antidote, [when it falls into one of the following categories:

(1) A substance which produces death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight when orally administered; or,

(2) A substance which produces death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume

of gas or vapor or two milligrams or less per liter of mist or dust; or,

(3) A substance which produces death within 14 days in half or more than half of a group of ten or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.] if such hazardous substance is highly toxic as defined in this Article.

[(d) The Commissioner may require a hazardous substance to be labeled pursuant to subsection (c) of this section or may exempt a hazardous substance from the labeling requirements of subsection (c) of this section, when he finds that available data on human experience with the substance in the dosages or concentrations specified in subsection (c) (1), (2) or (3) of this section indicate results different from those obtained on animals.]

(d) Art materials. All art materials shall be labeled in a manner as required pursuant to the Federal Hazardous Substances Act, as amended, and related regulations.

[(e) When, in the opinion of the Commissioner, a substance is a strong sensitizer then upon order of the Commissioner and written notice to the manufacturer or distributor, such substance shall be so labeled pursuant to this article. The Commissioner shall consider the frequency and severity of the sensitization reaction in determining whether a substance offers a significant potential for causing injury.] (e) Other substances to be labeled. When the Commissioner finds that any substance is dangerous or detrimental to the health and safety of the public, the Commissioner may require the substance to be labeled pursuant to subdivisions (b) or (c) of this section.

(f) Strong sensitizers. When the Department determines that a substance is a strong sensitizer, it may order the manufacturer, distributor or seller to label the substance pursuant to subdivision (b) of this section.

[(f) Subsections] (g) Experimental substances. Subdivisions (b) and (c) of this section shall not apply to a substance still in the development stage when it is used solely for experimental purposes and when it is known that no specific hazard exists but the potential hazard is not identified, if it bears the following label or its practical equivalent: "Important! The properties of this substance have not been fully investigated and its handling or use may be hazardous. Exercise due care."

[(g) When the size of the package or container makes it impossible to include all the information required by subsection (b) of this section, the information required by subsection (b) (5) may be abbreviated and the information required by subsection (b) (7) or (b) (8) may be abbreviated or, upon approval of the Department, omitted.]

(h) Wrapper labels. The words, statements or other information required by this article to be borne on the label or labeling of a hazardous substance shall also appear on the outside container or wrapper, if any, of the retail package of the substance, unless the required word, statement or other information is easily legible through the outside container or wrapper, and on each place of the labeling of a hazardous substance where there are directions for use, whether written or otherwise.

(i) Labeling to be conspicuous. All words, statements or other information required [to appear] on the label or labeling shall appear in a prominent place in the English language and in [a] conspicuous and legible type which is contrasted by typography, layout or color from other printed matter on the label, container or wrapper. If the label or labeling contains any representation in a foreign language, all words, statements or other information required to appear on [either of them] the label, container or wrapper shall also appear thereon in the foreign language.

Notes:

Section 173.05 was amended by resolution adopted on December 16, 2008. Subdivision (a) was amended to delete the exemption for substances regulated pursuant to Articles 71, 75 or 77.

Subdivision (b) was amended by adding to paragraph (2) reference to US Consumer Product Safety Commissioner regulations. Paragraph (3), instead of permitting a free choice of the signal word to indicate the degree of hazard, requires the word "Danger" on the most hazardous substances, and either "Warning" or "Caution" on those presenting a lesser hazard, and is consistent with the Federal Hazardous Substances Act and related regulations. See 15 USCA § 1261 et seq. and 16 C.F.R. Part 1500.

Subdivision (c) was amended by deleting specific references to dose-related sequelae, and substituting a reference to when a hazardous substance is highly toxic as defined in this Article.

Subdivision (d) was deleted and a new subdivision (d) was added to require art materials to be labeled in accordance with the Federal Hazardous Substances Act and related federal regulations to protect the health and safety of persons using art materials.

Subdivision (e) was deleted and a new subdivision (e) was added, authorizing the Commissioner to order labeling where the Department determines that the warning signals on existing labels are inadequate.

Subdivision (f) is new and refers to labeling required for substances that are strong sensitizers.

Former subdivision (f) was relettered as subdivision (g), and former subdivision (g) which authorized abbreviating or omitting information was deleted.

Subdivision (i) was amended to add the term "conspicuous" to the label display.

RESOLVED that §173.051 (Exemptions) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same is hereby repealed.

RESOLVED, that §173.06 (Pressurized Products) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed.

RESOLVED, that §173.07 (False or misleading advertising or labeling) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and

the same hereby is amended, to be printed together with explanatory notes as follows:

§173.07 False or misleading advertising or labeling.

(a) No manufacturer, packer, distributor or seller of a hazardous substance [or pressurized product] shall disseminate or cause to be disseminated an advertisement concerning such hazardous substance [or pressurized product] that is false or misleading in regard to its safety or use.

(b) No person shall sell or hold for sale any hazardous substance [or pressurized product] the labeling of which is false or misleading in regard to its safety of use.

(c) In determining whether the labeling of, or an advertisement concerning, a hazardous substance [or pressurized product] is false or misleading, [there shall be taken into account, among other things, not only] the Department shall consider the representations made or suggested by the label's statement, word, picture, design[,] or emblem[, sound or any combination thereof, but also] and the extent to which the labeling or advertisement fails to reveal material facts [material in the light of such representations or material with respect to consequences which may result from the use of the substance or product to which the labeling or advertisement relates] about the substance.

Notes:

This section was amended by resolution adopted on December 16, 2008 to delete references to pressurized products and to clarify how the Department will determine if labels are false or misleading.

RESOLVED, that §173.08 (Carbon tetrachloride) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, added by resolution adopted on the twenty-second of October one thousand nine hundred seventy, be and the same hereby is repealed.

RESOLVED, that §173.09 (Rodenticides and insecticides) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed.

RESOLVED, that §173.11 (Fire extinguishers containing methyl bromide) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed.

RESOLVED, that paragraph (1) of subdivision (d) (*Orders for abatement or remediation*) of §173.13 (Lead Paint) of Article 173 of the New York City Health Code found in Title 24 of the Rules of the City of New York as last amended by resolution adopted on the twenty-second of July, two thousand four, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§173.13 Lead Paint.

* * *

(d) *Orders for abatement or remediation.*

(1) *Generally.* When the Department finds that there is lead-based paint, or dust with a lead content in excess of the clearance levels specified in §173.14(e) of this Code, on the interior of any dwelling, or concentrations of lead in the paint on the exterior of a dwelling, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any dwelling or other premises, including but not limited to, child care services, schools, and recreational facilities primarily used or occupied by children under the age of six years when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency found in 40 C.F.R. Part 745, or successor regulations, and further determines that such concentrations may be dangerous to health.

* * *

Notes:

Subdivision (d) was amended by resolution adopted on December 16, 2008 by adding to paragraph (1) a provision authorizing the Department to order the removal of leaded soil from areas surrounding children's homes, and other places used by children, such as grounds of child care services and schools.

RESOLVED, that the Table of Contents, and subdivisions (a), (b), (c) and (e) of §173.14 (Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint) of Article 173 of the New York City Health Code found in Title 24 of the Rules of the City of New York as last amended by resolution adopted on the twenty-second of July, two thousand four, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§173.14 Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.

Table of Contents for §173.14

* * *

(e) *Occupant protection*

(1) Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a [day] child care service or kindergarten pursuant to §§47.44 or 45.12] §47.63 or §43.23 of this Code or §17-911 of the Administrative Code, or work ordered by HPD in accordance with §27-2056.11(a)(1) of the Administrative Code, or work performed pursuant to §27-2056.11(a)(2)(ii) of the Administrative Code

* * *

(2) Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §§17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or [§§45.12 or 47.44] §43.23 or §47.63 of the Health Code.

* * *

(a) *Purpose, scope and applicability.* This section establishes work practices and safety standards for abatement and other reduction of lead-based paint hazards, and other work that disturbs surfaces covered with lead-based paint, or paint of unknown lead content, and the minimum qualifications of persons who conduct such activities, in premises where [young] children younger than six years of age reside, [or attend day] receive child care services, or attend pre-kindergarten or kindergarten classes, and is intended to reduce the exposure of such children to the lead-based paint hazards associated with such work.

(b) *Definitions.* When used in this Article, or in [§§45.12 or 47.44] §43.23 or §47.63 of this Code, the following terms shall have the following meanings:

* * *

(c) *Administrative requirements*

(1) *Filing procedures.*

* * *

(2) *Training and certification.*

* * *

(A) *Abatement.*

* * *

(B) *Other than abatement work.*

(i) *Other work to remediate lead-based paint hazards that is ordered by the Department or HPD, or work that disturbs large amounts of lead-based paint.* All work ordered by the Department, or by the HPD in accordance with § 27-2056.11(a)(1) of the Administrative Code, or work that disturbs over 100 square feet per room conducted in accordance with §17-911 of the Administrative Code, or [§§45.12 or 47.44] §43.23 or §47.63 of this Code, or § 27-2056.11 (a)(2)(ii) of the Administrative Code, shall be performed by firms and trained workers meeting the following requirements: * * *

(ii) *Work not ordered by the Department or HPD that disturbs a small amount of paint in a multiple dwelling or in a [day] child care facility or a kindergarten.* Work which is not ordered by the Department and disturbs between two and 100 square feet per room, which is performed in accordance with §17-911 or §27-2056.11(a)(2)(i) of the Administrative Code, or [§§45.12 and 47.44] §43.23 or §47.63 of this Code, shall be performed by workers trained in accordance with the following requirements: * * *

* * *

(e) *Occupant protection.*

(1) *Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a [day] child care service or kindergarten pursuant to [§§47.44 or 45.12] §47.63 or §43.23 of this Code or §17-911 of the Administrative Code, or work ordered by HPD in accordance with §27-2056.11(a)(1) of the Administrative Code, or work performed pursuant to §27-2056.11 (a)(2)(ii) of the Administrative Code:*

* * *

(2) *Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or [§§45.12 or 47.44] §43.23 or §47.63 of the Health Code.*

* * *

Notes:

The Table of Contents and subdivisions (a) (Purpose, scope and applicability), (b) (Definitions), (c) (Administrative requirements) and (e) (Occupant protection) were amended by resolution adopted on December 16, 2008 to update cross references for lead-based paint hazard control in Article 47 (Child Care Services) and a new Article 43 (School-Based Programs for Children Ages Three through Five).

RESOLVED, that §173.16 (Lye intended for household use) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, as last amended by resolution on the thirteenth of December nineteen hundred ninety-nine be, and the same hereby is, repealed.

◆ d23

NOTICE OF ADOPTION OF A RESOLUTION TO REPEAL AND REENACT ARTICLE 151 AND TO REPEAL ARTICLE 171 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of the Charter, notice of intention to repeal and reenact Article 151 (Pest Prevention and Management) and to repeal Article 171 (Fumigation and Extermination) of the New York City Health Code was published in the City Record on September 22, 2008, and a public hearing was held on October 27, 2008. Two persons testified at the hearing, written comments were received from seven organizations, and two changes were made to the resolution in response to the comments received. At its meeting on December 16, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene ("DOHMH") with jurisdiction to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting the public health, the Board of Health has repealed and reenacted Article 151, Rodents, Insects and Other Pests, changing its title to Pest Prevention and Management, to better reflect practice, the regulatory environment, and to assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public concerning prevention and control of rodent, insect and other pest infestations. The main intent of this revised article is to prevent the infestation of rodent, insect or other pests and to prohibit the existence on any premises of conditions conducive to pest infestations through continuous pest management efforts, elimination of harborages and requiring property maintenance practices to eliminate or severely limit the presence of pest populations. Because the regulation of pesticide use is preempted by state law, this article attempts to promote prevention of pests and pest infestations without directly addressing the use of pesticides. The focus on pest management incorporates a hierarchy of actions to prevent and eliminate pests, including structural alterations and repairs, and the elimination of conditions conducive to pest infestations. In addition, for the reasons stated below, the Board has also repealed Article 171 (Fumigation and Extermination).

1. Repeal and reenact Article 151.

Section 151.01 Definitions defines terms used in the article.

The term "conditions conducive to pests" has been added and refers to conditions that attract and contribute to the presence of pests, and require correction.

The term "harborage" remains unchanged from the current Article 151.

The term "person in control" is retained and now refers to responsibility over a "premises" or "property."

The term "pest" replaces the term "insects and other pests" in current Article 151, and refers to unwanted insects, rodents or other pests as determined by the Department.

The term "pest management" has been added, and replaces the term "eradication." Pest management consists of prevention, monitoring and control of pests, and is required to maintain a pest free environment. Eradication, the prior term, referred only to the elimination of pests through extermination, too narrow a practice for effective management of pests. Eradication should be interpreted as only one component of "pest management."

The term "pesticide" has been added to refer to substances or mixtures of substances used to prevent, destroy, repel or mitigate against pests, consistent with the term as defined in the New York Environmental Conservation Law.

The terms "premises" and "property" have been defined to mean building structures, rooms and units of a building, and public parts of buildings, as well as yards, building lots, vacant lots, parks, streets, and vehicles.

Section 151.02 Prevention and pest management measures represents a change from the former Article's emphasis on eradication methods and extermination and reflects several needs.

First, New York Environmental Conservation Law preempts localities from regulating the use or application of pesticides, and as such, mandating eradication as previously defined to include the use of poisons or pesticides, is no longer permitted. Additionally, effective pest management requires a hierarchy of strategies that prioritize prevention and monitoring, and address the management of pests as a proactive ongoing set of tasks and responsibilities, not just a reaction to the undesired presence of pests.

Subdivision (a), "Properties shall be free of pests," requires that premises must be kept free from pests and conditions conducive to their presence. This section requires persons in control to take measures that may be necessary to prevent and control these conditions. Subdivision (b), "Waste shall be managed to prevent pests," is necessary because improperly handled waste is a significant source of food and harborage for many pests. This subdivision mandates that solid and liquid garbage be stored in containers that prevent the entry of pests, until garbage is ready to be picked up, at which time garbage may be placed in suitable bags or other containers acceptable to the City's Department of Sanitation and other agencies regulating garbage pickup.

Subdivision (c), "Pest management plans," defines components of a written management plan, when the Department determines that such a plan is required, including a description of pest management strategies to be employed, a schedule of routine inspections, a list of actions taken when pests are present, instructions to occupants and other users of the premises as to how to report the presence of pests, and the name and contact information for the pest management business or professionals retained by the persons in control. In response to a comment asking who is responsible for routine inspections, paragraph (2) has been amended to read: "A schedule for routine inspections, *determined by the person in control*, for conditions conducive to pests and the presence of pests;...". In response to another

comment indicating that requiring a person in control of a building to duplicate record keeping practices that State law mandates for pesticide applicators is burdensome and not feasible, paragraph (6) has been further amended so that the person in control of a building is required only to maintain a record of the names, not the quantities, of pesticides applied in the premises.

Subdivision (d), "Elimination of conditions conducive to pests and the presence of pests," describes the pest management actions that may be ordered by the Department to control pests. These actions include the physical removal of pest nests, waste and other debris, the elimination of pest entry and travel via the sealing and closure of openings, the elimination of harborage, the elimination of harborages and the elimination of pest food sources.

Subdivision (e) prohibits the use of pesticides alone to substitute for pest management measures required by this section. Pesticide use should not be the first and only line of defense against pests.

Section 151.03 Elimination of standing water authorizes the Department, with the exception of protected wetlands, to order the correction of standing water problems in areas other than protected wetlands lots, excavations or other places to prevent the breeding and harborage of mosquitoes and other pests.

Section 151.04 Enforcement by the Department and other City agencies authorizes the Department to issue orders to enforce this Article and conveys the same authority to the City's Departments of Buildings and Housing Preservation and Development.

2. Repeal Article 171

The Board of Health has repealed Article 171 (Fumigation and Extermination), as no longer necessary. The U.S. Environmental Protection Agency comprehensively regulates substances used as pesticides, and the New York State Department of Environmental Conservation currently comprehensively regulates all aspects of pesticide use in New York State. See, e.g., Environmental Conservation Law Article 33 and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

The proposal is as follows.
Matter underlined is new.
Matter in brackets [] is deleted.

RESOLVED, that the list of section headings for Article 151 and Article 151 (Rodents, Insects and Other Pests) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, as last amended by resolution on the twelfth of December two thousand and two, be, and the same hereby is, repealed and reenacted, to be printed with explanatory notes to read as follows:

Article 151 Pest Prevention and Management

§151.01 Definitions

§151.02 Prevention of pests and pest management measures

§151.03 Elimination of standing water

§151.04 Enforcement by the Department and other City agencies.

Introductory Notes:

Article 151 was repealed and reenacted by resolution on December 16, 2008, as part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting the public health, to provide adequate legal tools to effectively address the health and safety needs of the public concerning prevention and control of rodent, insect or other pest infestations. The title of the Article was changed from "Rodents, Insects and Other Pests," to "Pest Prevention and Management," to better reflect practice and the regulatory environment where the emphasis has shifted from use of pesticides to primary prevention of pests and infestations. The article's intent remains unchanged, namely, the prevention of infestations of rodent, insect or other pest life and to keep premises free of conditions conducive to pest infestations through continuous pest management efforts, the elimination of harborages and the institution of property maintenance practices designed to eliminate or severely limit the presence of pest populations. Because pesticide use is comprehensively regulated by state law, this article attempts to promote primary prevention methods of pest control and the secondary prevention of infestations without directly addressing how and by whom pesticides may be employed. The focus on pest management practices incorporates a hierarchy of actions to prevent and eliminate pests, including structural alterations and repairs, and the elimination of conditions conducive to pest infestations.

§151.01 Definitions. When used in this article:

(a) Conditions conducive to pests means conditions of property construction, operation and maintenance in occupied or vacant property that promote or allow for the establishment of pest populations, their feeding, breeding and proliferation, and foster the creation of harborage conditions. Such conditions may include but are not limited to: the presence of weeds or other vegetation that are sources of food or shelter for rodents; accumulation of refuse and other material in or on which pests may find shelter, hide or nest; the presence of cracks, gaps or holes in building exteriors or interiors that enable the free movement of pests; the presence of food or water accessible to, and capable of, sustaining a pest population; or unsanitary conditions that attract pests.

(b) Harborage means any condition that provides shelter or protection for rodents, insects or other pests.

(c) Person in control means the owner, part owner, managing agent or occupant of premises or property, or any other person who has the use or custody of the same or any part thereof.

(d) Pest includes any unwanted member of the Class *Insecta*, including but not limited to mosquitoes, or of the Order *Rodentia*, including but not limited to the Norway rat, and any other unwanted plant, animal or fungal life that the Department determines is a pest because it is destructive, annoying or a nuisance.

(e) Pest management means ongoing prevention, monitoring and pest control activities and the elimination of rodents, insects or other pests from any building, lot, premise or vehicle. This includes, but is not limited to, the elimination of conditions conducive to pests and the use of traps and, when necessary, the use of pesticides.

(f) Pesticide means (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant, as defined in Environmental Conservation Law §33-0101 (35), or successor law, and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

(g) Premises or property means a commercial, private or public building or structure, including all rooms within the property as well as all public areas, halls, stairs, cellars, roofs, shafts, court yards, alleys and areas surrounding the structure. It shall also include all vacant lots, parks, streets and vehicles.

§151.02 Prevention and pest management measures.

(a) Properties shall be free of pests. All premises capable of attracting or supporting rodents, insects and other pests shall be kept free from rodents, insects and other pests, and from any conditions conducive to pests. The person in control of such premises shall take such measures as may be necessary to prevent and control the harborage and free movement of rodents, insects or other pests.

(b) Waste shall be managed to prevent pests. All garbage and other waste and recyclable materials shall be deposited in tightly covered, watertight receptacles made of a material type and grade that is resistant to rodents, insects and other pests until such time that garbage and waste materials are moved to an area for a scheduled pickup, at which time they shall be placed in a suitable bag or other container acceptable to the Department, and to the City Departments of Sanitation and Housing Preservation and Development. Receptacles used for liquid waste shall be constructed to hold contents without leakage.

(c) Pest management plans. When the Department determines that, because of pest infestation or conditions conducive to pests, a written pest management plan is required, it shall order that a person in control of the premises write such a plan, maintain the plan in effect for such time as the Department shall specify, maintain a copy of the plan on the premises where the infestation or conditions were observed, and make a copy available, upon request, to the Department and, when specified by the Department, to occupants of the premises. In commercial and residential premises, when specified by the Department, the person in control of the premises shall post a sign at the building entrances stating that the pest management plan is in effect and identifying a location on the premises where a copy of the plan may be inspected. The plan shall include the following:

(1) Pest management strategies that will be employed on such premises;

(2) A schedule for routine inspections, determined by the person in control, for conditions conducive to pests and the presence of pests;

(3) Actions to be taken when pests are present;

(4) Instructions to premises' occupants, tenants or other users on how to report the presence of pests to person(s) in control of the premises, with a notice conspicuously posted at building entrances indicating that such instructions are available and where occupants may obtain a copy;

(5) The name(s) and contact information for pest management businesses and/or professionals employed or contracted by the persons in control; and

(6) A log of visits by pest management professional(s) and the names of pesticides, if any, applied on each visit.

(d) Elimination of conditions conducive to pests and to the presence of pests. When the Department determines that a premises has pests or conditions conducive to pest life, it may order person(s) in control to take such action as be required by the Department, including, but not limited to, the following:

(1) Physically remove pest nests, waste, and other debris by vacuuming, washing surfaces, or otherwise collecting and discarding such debris.

(2) Eliminate existing routes of pest movement by sealing and repairing holes, gaps, and cracks in walls, ceilings, floors, molding, baseboards, around conduits, and around and within cabinets by the use of sealants, plaster, cement, wood or other durable materials.

(3) Eliminate existing harborages for pests by clearing interior and exterior debris and garbage, and clearing dense weeds, shrubs and other vegetation, if necessary.

(4) Remove existing sources of water for pests by draining standing water; repairing drains to prevent further accumulation of water; repairing leaks in faucets and plumbing; and maintaining the impermeability of roofs, ceilings, and exterior and interior walls.

(5) Eliminate existing sources of food for pests by keeping the property free of all types of waste and by regularly cleaning and maintaining areas where waste is stored and/or compacted before its removal.

(e) The use of pesticides shall not substitute for pest management measures required by this section.

§151.03 Elimination of standing water.

Except for a wetland regulated by federal, state or local law, the Department may order the person(s) in control of any property including, but not limited to, a sunken lot, property below grade, excavation or any other place where stagnant water may collect, to fill in or drain such property or to employ other methods to prevent the breeding or harborage of mosquitoes and other pests in a manner consistent with federal, state and local law.

§151.04 Enforcement by the Department and other City agencies.

Without limiting the authority of the Department, in addition to the Department, the City Departments of Buildings and Housing Preservation and Development are authorized to enforce this Article.

RESOLVED, that Article 171 (Fumigation and Extermination) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, repealed.

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NOTICE OF INTENTION TO AMEND ARTICLE 165 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice is hereby given of the proposed amendment of Article 165 of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON JANUARY 29, 2009 FROM 10:00AM TO 12:00PM IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY JANUARY 28, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL BUSINESS HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY JANUARY 14, 2009.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12 PM. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAILING TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, OR BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV ON OR BEFORE 5PM ON THURSDAY, JANUARY 29, 2009.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter ("Charter"). Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene ("Department") jurisdiction to regulate all matters affecting health in the City of New York. Specifically, Section 556 (a)(3) requires the Department to, "exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto..." Sections 558 (b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 of the Charter grants rule-making powers to the Department.

STATEMENT OF BASIS AND PURPOSE

The Department is responsible for the protection of the health and safety of the public using permitted bathing establishments by assuring the proper construction, operation and maintenance of regulated facilities within New York City. Article 165 of the Health Code sets forth standards for the operation and maintenance of bathing establishments operating under permit issued by the Department.

Effective March 28, 2007, the New York State Department of Health adopted regulations regarding Recreational Aquatic Spray Grounds located at 10 New York Code, Rules and Regulations, Subpart 6-3. The purpose of these State Sanitary Code regulations is to establish standards for the safe and sanitary operation of recreational spray grounds that re-circulate water. These regulations were promulgated in response to multiple outbreaks associated with gastrointestinal illness caused by contaminated recycled spray ground water at spray parks. See New York State Register, December 27, 2006. Therefore, the Department proposes that the Board of Health adopt the State Sanitary Code spray ground requirements in order to maintain consistency between Subpart 6-3 regulations of the State Sanitary Code and relevant provisions of Article 165 of the Health Code.

Also, effective November 7, 2007, the New York State Department of Health amended §6-1.23 of the State Sanitary Code, which contains bather supervision and training requirements relating to lifeguard surveillance during instructional swimming activities. The Department proposes that the Board of Health adopt the State Sanitary Code amendment requirements found in Section 6-1.23(a)(6) in order to maintain consistency between the State Sanitary Code and §165.15 of Article 165 of the Health Code, which concerns bathing establishment supervision and surveillance requirements.

PROPOSED CHANGES TO THE HEALTH CODE

The following changes to Article 165 are proposed:

- §165.01 (applicability of Article extended to include certain spray grounds)
- §165.03 (spray ground-related definitions added)
- §165.05 (spray ground requirements added to permit applications)
- §165.09 (spray ground requirements added related to permit approvals)
- §165.11 (spray ground requirements added related to enforcement)
- §165.15 (spray ground and lifeguard surveillance requirements added related to supervision)
- §165.17 (spray ground requirements added related to lifesaving and safety equipment)
- §165.19 (all bathing establishments, including spray grounds, required to have a safety plan)
- §165.23 (spray ground requirements added related to water chemistry and testing)
- §165.25 (spray ground requirements added related to water quality standards)
- §165.27 (spray ground requirements added related to sanitation and safety)
- §165.29 (spray ground requirements added related to maintenance of mechanical equipment)
- §165.31 (spray ground requirements added related to chemical handling and storage)
- §165.39 (spray ground requirements added related to recordkeeping)
- §165.42 (new section created adding general requirements for spray grounds)
- §165.43 (spray ground requirements added related to water supply and cross-connections)
- §165.45 (spray ground and pool requirements added related to water treatment systems)
- §165.47 (spray ground requirements added related to lighting, electrical and ventilation)
- §165.49 (spray ground and pool requirements added related to location and facilities)

The proposal is as follows:

Note - Matter in brackets [] is to be deleted.
Matter underlined is new.

RESOLVED, that the Table of Contents of Article 165 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution, on March 21, 2001, be and the same hereby is amended to delete the reference to "pool" for safety plans in §165.19 and to add a new §165.42 concerning general requirements for aquatic spray grounds, to read as follows:

ARTICLE 165 BATHING ESTABLISHMENTS

GENERAL PROVISIONS

SAFETY, OPERATION AND MAINTENANCE REQUIREMENTS

- §165.17 **Lifesaving and Safety Equipment.**
- §165.19 **[Pool] Safety Plan.**
- §165.21 **Facility Operating Policy.**

DESIGN AND CONSTRUCTION

- §165.41 **General Requirements for Pools.**
- §165.42 **General Requirements for Spray Grounds.**
- §165.43 **Water Supply, Waste Water, and Sewer Connections.**

RESOLVED, that §§ 165.01-165.05, 165.09-65.11, 165.15-165.19, 165.23-165.31, 165.39, 165.43-165.49 of Article 165 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution, on March 21, 2001, be and the same hereby is amended to primarily add requirements for supervision and aquatic spray grounds, and to create a new § 165.42 concerning aquatic spray grounds, to be printed together with explanatory notes, to read as follows:

GENERAL PROVISIONS

§165.01 **Applicability.**

(b) This Article shall not apply to: (1) a pool, spray features/grounds or sauna and steam rooms, within a one or two family dwelling, or a dwelling unit of a multiple dwelling, and solely for the use of the occupants for non-commercial purposes, (2) a float tank or relaxation tank used by one person at a time, (3) pools used only for religious purposes (ritual immersion), [or] (4) spa pools used for prescribed medical therapy or rehabilitation and under medical supervision, or (5) a spray ground that uses water from the municipal water supply or a source of potable water pursuant to §141.01 of this Code without impoundment, reuse or recirculation of the water.

§165.03 **Definitions.**

Bathing establishment. "Bathing establishment" means every indoor or outdoor place where: (1) there is a swimming, wading, spa, or special purpose pool, [or] (2) there is a sauna or steam room with or without a pool, or (3) there is a spray ground with or without a pool, sauna or steam room.

Cross connection. "Cross connection" means a physical connection between the potable water system and a non-potable source such as a pool, or physical connection between a bathing establishment water [pool] and the sanitary sewer or waste water [disposal] disposal system such that non-potable water may flow into the potable water system.

Foot Shower. "Foot shower" means a shower head and similar water feature for use in rinsing debris from patrons' feet.

Major alteration, renovation or addition. "Major alteration, renovation or addition" means substantial physical change to the bathing establishment [pool size], shape, structure, enclosure, electrical system or other appurtenances, or to the water disinfection or recirculation system, or to the waste water system. It does not include replacement of equipment or piping previously approved by the Department provided that the type of and size of the equipment are not changed, nor does it include normal maintenance or repair.

Recirculation. "Recirculation" means the pump, piping, filtration system, chemical feed systems and accessories provided for treating the pool and/or spray pad water to meet the water quality standards in these rules.

Spa pool. "Spa pool" means a pool, primarily designed for therapeutic use or relaxation, which is normally not drained, cleaned or refilled for each individual. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral bath, air induction, bubbles or any combination thereof. Spa pools shall have a maximum water depth of 4 feet at any point and may be equipped with aquatic seats within the perimeter of the pool. A "Spa pool" shall not be used for swimming or diving. "Spa Pool" means and includes "hydrotherapy pool," "whirlpool," "hot spa," or "hot tub."

Spray Pad. "Spray pad" means a specific area consisting of a play surface, spray features, and drains, upon which the bathers stand and are sprayed with water.

Spray Ground(s). "Spray Ground(s)" means an artificially created water jet, features or stream where water is sprayed from a structure or the ground in conjunction with a spray pad in which sprayed water is drained, collected, treated and re-circulated back for reuse purposes.

Spray Features. "Spray features" means the devices and plumbing used to convey the treated water to the spray pad to spray the patrons.

Spray Pad Treatment System. "Spray Pad Treatment System" means the equipment and processes used to filter, disinfect and circulate the water used for the spray pad and spray features.

Spray Pad Treatment Tank. "Spray Pad Treatment Tank" means the vessel to collect the water that has been sprayed on the spray pad and returned through the spray pad drains.

Superchlorination. "Superchlorination" means the addition of a sufficient amount of chlorinating compound to pool water and/or spray pad treatment tank water to remove combined chlorine (chlorine that has reacted with nitrogenous compounds) or destroy unwanted organisms in the pool water and/or spray pad treatment tank water. Generally the level of chlorine added is ten times the level of combined chlorine in the pool water and/or spray pad treatment tank water (in units of ml/l or ppm). Treatment of pool water and spray pad treatment tank water with non-chlorine chemicals to eliminate or suppress combined chlorine is not superchlorination.

Supervisory Staff. "Supervisory Staff" means an individual or individuals responsible for supervising bathers and monitoring the spray ground to ensure compliance with regulations for use, and who is familiar with its equipment and is trained in the operation and maintenance of the spray pad treatment system.

Swimming pool. "Swimming pool" means a pool of three foot depth or greater, designed to be used primarily for swimming or other recreation. This includes white-water slide, wave and movable bottom pools.

§165.05 **General Requirements for Permit Applications.**

No person shall construct or operate a bathing establishment without prior construction authorization and a permit issued by the Department. No bathing establishment shall be constructed nor shall any major alterations or additions be made to any bathing establishment unless a completed application for the construction, alteration or addition is submitted to the Department for review and approval prior to commencement of work. The application shall include appropriate fees, application forms and other supplemental information as required by the specific circumstances. For bathing establishments with pools and/or spray grounds, the application package shall also include detailed engineering plans, specifications and an engineering design report. The permit shall be displayed in a conspicuous place at the facility. The Department may order any bathing establishment operating without a permit to close and remain closed until the facility has obtained and displays a valid permit issued by the Department.

- (A) *Plot plan and general site plan:*
 - (i) A plot plan or vicinity plan showing the precise

location of the proposed bathing establishment [pool] and building and existing structures by references to known landmarks such as streets and public buildings.

(ii) Name of the project location, the scale in feet, the north point, and direction of prevailing wind (for outdoor pools).

(B) *Detailed plans:* All detailed plans shall be drawn to a suitable scale and include the following information:

(i) A bathing establishment [pool] layout plan showing all the proposed facilities: The locations of the bathing area, spray ground layout, spray pad area, diving boards, ladders, stairs, deck, walkway, walls or fences enclosing the pool, inlets, spray features, spray pad drains, main drains, pool and deck drains, vacuum fittings, drinking fountains, piping, hose bibbs, surface skimmer system, recirculation system and appurtenances, filtration system, disinfection equipment, sewage connections, water main, lighting fixtures and other proposed features related to the operation and safety of the proposed bathing establishment including bathhouse, toilet and shower.

(ii) Surface drainage management for the proposed bathing establishment. (For outdoor pools and spray grounds only.)

(iii) A flow diagram or schematic in elevation views of the [pool] water treatment and recirculation system.

(iv) Complete construction details, including dimensions, elevations and appropriate cross-sections.

(v) Piping plan containing the size, type and location of all piping, including elevations.

(vi) Construction notes, schedules, charts and other related data.

(3) *Specifications.* One set of complete specifications for the construction of the proposed bathing establishment [pool], bather preparation facilities, recirculation system, filtration facilities, disinfection equipment and all other appurtenances shown on the detailed plans shall be submitted.

(4) *Engineering design report or calculations.* A summary of the design basis, including information relative to the [pool] capacity or patron loading (maximum and average), spray pad area, pool area and volume, hydraulic computation (including head loss in all piping and water treatment), chlorinator and pump sizing calculations, recirculation equipment, filtration facilities, disinfection equipment, spray pad treatment system design calculations, spray feature flow rates, turnover and filtration rate, filter flow rates, pump curves, capacity of bathhouse and bather preparation facilities and toilet facilities, and all other appurtenances, shall be submitted.

(d) *Supplemental or additional information.* A completed application shall be accompanied by any supplemental information which the Department deems necessary for review. For bathing establishments using water other than the municipal public water supply, the application should also include source, quality, quantity available and characteristics of water supplied to the bathing establishment including alkalinity, pH, iron and manganese.

§165.09 **Requirements for Permit Approval.**

All establishments shall be designed, constructed and completed in accordance with the requirements of this Article. For all bathing establishments:

(a) A completed and approved [pool] safety plan, as required by §165.19.

(c) Waste water or sewer discharge permit from an approved agency (for pools and/or spray grounds) as required by §165.33.

§165.11 **Enforcement.**

(b) *Public health hazards and closing criteria.* Where one or more of the following public health hazard conditions exist, the bathing establishment may be immediately closed by the Department and shall remain closed until the hazardous condition(s) are corrected. No person shall use the facility until the violations are corrected in compliance with the provisions of this Article. The facility shall remain closed until the Department has authorized the reopening of the facility. Public health hazard shall mean but shall not be limited to:

(3) **For spray grounds:**

- (A) Failure to provide adequate level of supervision of the spray ground as required by §165.15.
- (B) Failure to provide the minimum disinfectant residual levels and the minimum ultraviolet light dosage as required by §165.23.
- (C) Failure to continuously operate the spray ground filtration and disinfection equipment.
- (D) Use of an unapproved or contaminated water supply source for potable water use.
- (E) Overhead electrical wires within 20 feet of the spray ground, except where covered and secured in a ceiling.
- (F) Unprotected electrical circuits or wiring within 10 feet of the spray pad.
- (G) Broken or missing drain grates on the spray pad.
- (H) Failure to maintain emergency lighting source.
- (I) Plumbing cross-connections between the drinking water supply and spray ground treatment system or between sewage system and the spray pad's filter backwash facilities, or other cross-connections in the plumbing.
- (J) Use of unapproved chemicals or the application of chemicals by unapproved methods to the spray ground water.
- (K) Glass or sharp objects on spray pad or deck area.
- (L) Visible contamination of the spray pad and/or spray pad treatment tank by a potentially toxic chemical or a bacteriological substance that could present a hazard to the public.
- (M) Any other condition determined by the Department to be

dangerous to life or health.

SAFETY, OPERATION AND MAINTENANCE REQUIREMENTS**§165.15 Certifications, Supervision Coverage and Surveillance Requirements.**

(a) All bathing establishments shall be maintained and operated in a safe, clean and sanitary condition at all times.

(b) *Certifications.* All bathing establishments [with pools] shall be operated and supervised by the required certified personnel. The pool operator shall not hire or retain any person who does not have verifiable aquatic supervisory staff qualifications. Copies of the certificates or other documents showing possession of such qualifications shall be kept on file at the facility and shall be readily available for inspection by the Department.

(1) *Pool operator.* A certified pool operator shall be designated and shall be responsible for the operation of the bathing establishment in compliance with this Article. No person who is charged with the operation of a bathing establishment shall engage in or be employed in such capacity unless the person obtains a certificate indicating successful completion of a course in swimming pool technology administered by the department. A refresher course in swimming pool technology may be required for a licensed pool operator whenever deemed necessary by the department. The department may require that a refresher course be taken when continuing violations of the Article are found, when a water borne disease outbreak implicates the pool and/or spray ground water or sanitary conditions at the pool and/or spray ground, or when the department requires such a course to acquaint the operator with current developments in pool operation technology.

(2) *Aquatic supervisory staff.* Except in a physical-therapy pool, appropriately certified aquatic supervisory staff shall be present whenever the pool is open. A minimum of one supervising lifeguard is required for pools that require three or more aquatic supervisory staff.

*(b) Supervision Level III and IIIA.**(1) Level III*

(i)(1) Shall be at least 18 years old (or 16 years old if certified as Level II Lifeguard); and
(ii)(2) Shall possess a current American Red Cross Community-Cardiopulmonary Resuscitation (CPR) certificate, or equivalent certificate approved by the New York State Department of Health. Certification period shall not exceed one year, except if assisting a lifeguard as specified in §165.15 (b)(2)(B)(2) below; and
(iii)(3) Shall be competent to [:

- (i) understand and apply the provisions of this Article and the Pool Safety Plan; and
- (ii) evaluate environmental hazards; and
- (iii) use lifesaving equipment; and
- (iv) control bathers and crowds.]

understand and apply the provisions of this Article and the Safety Plan, evaluate environmental hazards, use lifesaving equipment, and control bathers and crowds.

(2) Level IIIA. A supervision Level IIIA staff assists a lifeguard with direct supervision of bathers as specified in §165.15 (c)(1)(C)(6) below. The Level IIIA staff:

(i) Shall be at least 18 years old; and
(ii) Shall possess a current American Red Cross Lifeguard Management certificate or New York State Department of Health approved equivalent certification. Certification period shall be valid for the time period specified by the certifying agency but shall not exceed three years.

(C) Supervising Lifeguard.

- (1) Supervising lifeguard shall have the qualifications for Supervision Level II.
- (2) Supervising lifeguard shall have at least two years adequate life guarding experience.

(c) Supervision.

(6) Pools in usage during instructional activities:

[When instructional swimming classes are taught by lifeguards, supplementary supervisory staff meeting at least Supervision Level III requirements, shall be present when the instructional activities may distract instructing lifeguards from direct supervision of all bathers.] When instructional activities occur, including but not limited to learn to swim programs, physical education classes and swim team activities, and the required Supervision Level II staff (lifeguards, as per §165.15(b)(2)) provide the instruction, at least one additional staff meeting at least Supervision Level III must be provided for each aquatic supervisory staff engaging in instructional activities. When a Supervision Level IIIA staff is utilized to assist a Supervision Level II (lifeguard) staff with direct supervision of bathers during instruction, the Supervision Level III staff must possess certification in aquatic injury prevention and emergency response as specified in §165.15(b)(2)(B)(2) above. The written Safety Plan must describe the duties, positioning at pool side and interaction between the lifeguard and Level III staff which ensures adequate bather supervision and emergency response. Note: where instructors, in the water or on the deck, supplement the required on-deck lifeguard(s) who do not provide instruction, no extra Level III supervision is required.

(7) *White-water slide:* Supervision by Supervision Level II lifeguards shall be provided in a number determined by the Department depending on the design of the facility. A proposed supervision staff plan shall be submitted in writing to the department for review and approval.

(d) *Surveillance requirements for sauna and steam rooms:* If a one-hour timer is not provided, as provided for in §165.63,

an attendant who meets the definition of responsible person, shall inspect the facility at a minimal interval of 15 minutes during all periods of operation of a sauna and steam room and shall maintain a daily log of inspections.

(e) Supervision requirements for spray grounds: At least one Supervisory Staff as defined in §165.03, shall provide periodic supervision of the spray ground.

§165.17 Lifesaving and Safety Equipment.

Either one commercially prepared 24-unit first aid kit or a minimum supply of band aids, bandage compresses and self-adhering gauze bandages must be provided at the spray ground unless otherwise specified in the safety plan. For facilities with pools, (T)the following minimum equipment shall be kept in good repair and readily accessible near the pool deck at all times when the pool facility is open for use:

§165.19 [Pool] Safety Plan.

The operators of pools and/or spray grounds shall develop, maintain and implement a written safety plan which consists of policies and procedures to be followed by the [pool] personnel during normal operation and emergencies for protecting the public from accidents and injuries. Safety plans must include procedures for daily bather supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan shall be approved by the department and shall be accessible for use and inspection by the department at all times. The owner or pool operator shall review the plan periodically and update the plan whenever a change occurs in the facility. Changes made to the plan shall be submitted to the department for approval before implementation.

§165.23 Water Chemistry and Testing Requirements.

The chemical quality of water in the pool and/or spray ground shall not cause irritation to the eyes or skin of the bathers or have other objectionable physiological effects on patrons. The [pool] water shall be chemically balanced to maintain [pool] clarity, proper disinfection, total alkalinity, and pH levels as specified below:

(a) *Disinfectant residual.* All pools and/or spray grounds in use shall be automatically and continuously disinfected by means of equipment that is in compliance with the provisions of this Article and that uses a disinfectant which is approved by the department. Silver/copper ion generators, ozone and other disinfectants may be used only as a supplement to chlorine or bromine.

(1) Chlorine residual.

(A) Pools. Where chlorine is used as a disinfectant, and the pool water pH is less than or equal to 7.8, the dosage of chlorine or chlorine compound shall be sufficient to maintain a concentration of at least 0.6 mg/l free chlorine throughout the pool. When pH is between 7.8 and 8.2, a concentration of at least 1.5 mg/l free chlorine residual shall be maintained. During use, pool water shall not exceed a free chlorine residual of 5.0 mg/l or a pH of 8.2. The pH of water in the spa pool shall be maintained between 7.2 and 7.8, and a minimum free residual chlorine of 1.5 mg/l shall be provided. Spa pools shall be chlorinated to 10 mg/l (shock treatment) at least once a week at end of daily usage period.

(B) Spray Grounds. When calcium hypochlorite or sodium hypochlorite are used to disinfect a spray pad and the spray pad treatment tank, the dose of chlorine or chlorine compound shall be sufficient to maintain a concentration of at least 2.0 mg/l free chlorine throughout the system including the treatment tank and water emanating from the spray features. A free chlorine residual of 10.0 mg/l shall not be exceeded in any spray pad treatment tank during use. Spray pad treatment tank water pH shall be maintained between 7.2 and 7.8.

(2) *Superchlorination and superoxidation.* When combined chlorine (chloramines) in excess of 0.5 mg/l is detected in pool and/or spray ground treatment tank water, the water shall be superchlorinated to attain a free chlorine concentration of at least 10 times the combined chlorine concentration, or oxidized by other means to eliminate the combined chlorine. Hand feeding of chemicals directly into the pool and/or spray ground treatment tank is permitted for purposes of superchlorination or superoxidation when the pool and/or spray ground is closed to the public.

(3) Bromine.

(A) When bromine is used as a disinfectant, the pH of water shall be maintained between 7.2 and 7.8, and a minimum bromine residual of 1.5 mg/l shall be provided. Spa pools shall be maintained at a bromine residual between 3 mg/l and 6 mg/l. A maximum of 6 mg/l bromine residual shall be permitted in any pool during use.

(B) The pH of the spray pad treatment tank water and water emanating from the spray features shall be maintained throughout the system between 7.2 and 7.8 and a minimum bromine residual of 4.4 mg/l shall be provided.

(4) *Silver/copper.* When silver/copper or copper ion generators are authorized, the concentration of copper shall not exceed 1.3 mg/l and the concentration of silver shall not exceed 0.05 mg/l.

(5) *Ozone.* When ozone is authorized, ozone concentration in pool water shall not exceed 0.1 mg/l and the ambient air zone concentration shall be less than 0.1 mg/l at all times either in the vicinity of the ozonator or at the pool water surface.

(6) *Ultraviolet Light.* The light intensity meter reading of the ultraviolet unit shall be monitored and recorded at least two times daily. The light intensity shall be maintained at the manufacturer's specified level for the flow rate. When the output intensity falls below the setpoint intensity, conditions causing decreased ultraviolet light intensity at the sensor shall be evaluated and corrected. The ultraviolet lamp(s) shall be replaced when the decreased ultraviolet light intensity is due to lamp failure.

(7) [(6)] *Other disinfectants.* Use of cyanuric acid-based chlorine (or any other chlorine stabilizer) is prohibited. Pools found using or containing any cyanuric compound shall be closed, drained and refilled prior to continued use. Disinfectants other than those listed in §165.45(1) may be used only if approved by the department and the New York State Department of Health.

(b) *Total alkalinity.* The total alkalinity of the pool water shall be maintained within the range of 80 to 120 mg/l.

(c) *Testing kits.* Each pool or spray ground facility shall have functional colorimetric water testing equipment for free chlorine and combined chlorine, or total bromine; pH; total alkalinity; calcium hardness; copper concentration when silver/copper or copper ion generator is used; and ozone concentration when ozone generating equipment is used. FAS-DPD test kits are acceptable. A supply of appropriate reagents for making each type of test shall be maintained on site, shall be stored in their original labeled containers and shall be replaced every six months or as recommended by the manufacturer. When colorimetric tests are used, color standards shall be furnished for each of the tests, that allow an accurate comparison of the sample to be tested from standpoint of color and density, and shall be reasonably permanent and no fading. Electronic residual and pH monitoring devices may be used in addition to the test kit.

(1) Water testing equipment for the disinfectant used in the [pool] water shall be maintained on site. The equipment for determining pH shall include at least five increments with a range of pH 6.8 to 8.2, accurate to the nearest 0.2 pH unit.

(2) Where chlorine is used as a disinfectant, a DPD (Diethyl-P-Phenylene Diamine) test kit with at least ten [eight] chlorine color standards with the following increments: 0.2, 0.4, 0.6, 0.8, 1.0, 1.5, 2.0, [and] 3.0, 5.0 and 10 mg/l as minimum. If other halogens are used, an appropriate scale shall be provided.

(d) *Records and testing.* A bathing establishment [pool] operation record including all test results shall be maintained on a daily basis by the establishment. Whenever tests indicate that an inadequate disinfectant level, inadequate ultraviolet light intensity or inappropriate pH value are present, immediate action shall be taken to reestablish an appropriate disinfectant level and pH value. Pool water shall be manually tested and results recorded as indicated below, including pool water systems equipped with an automatic monitoring device to control pH and disinfectant residual in water:

(1) For pH, free chlorine or bromine residual the [pool] water shall be tested at least three times. Tests shall be at the beginning of the day, during the day's peak bather load, and at the end of the day; or more frequently, as needed, throughout each day to maintain the standards required by this Article.

(2) For combined chlorine the [pool] water shall be tested at least twice a week.

(6) The ultraviolet light intensity meter reading of the ultraviolet light unit shall be monitored and recorded at least two times a day.

(e) *Saturation index.* For the purposes of this Article the saturation index shall be used to determine chemical balance of the water, and whether the water is corrosive (undersaturated) or scale forming (oversaturated). The Department may require that the bathing establishment determine the saturation index monthly or at any other frequency required to maintain water clarity, proper disinfection, alkalinity and pH levels.

§165.25 Water Quality Standards.

The water in the pool and/or spray pad treatment tank shall meet the following water quality standards[.]:

(a) *Water temperature.* The maximum water temperature for all spa pools shall not exceed 104 degrees Fahrenheit. A thermostatic control for water shall be provided. An audible alarm system shall be installed and maintained to warn of any temperature over 104 degrees Fahrenheit.

(b) Water clarity and turbidity.

(1) For pools, t[T]he water in a pool shall be sufficiently clear for a black and white object, four inches in diameter (known as *Secchi* disk), placed at any location on the bottom of the pool, to be readily visible when viewed from the pool deck. The water clarity test shall be performed as frequently as necessary throughout each day to maintain the standards required by this Article.

(2) Spray Grounds. The turbidity in the spray pad treatment tank shall not exceed 3 nephelometric turbidity units (NTU) at any time during use. If this turbidity level is exceeded, the spray pad shall be closed for use until the spray pad treatment system reduces the turbidity to less than 3 NTU.

(c) *Water physical quality.* The bottom and sidewalls of pool shall be kept free of sediment and visible soil, and the pool water surface and/or spray pad treatment tank water surface shall be kept free of visible floating matter.

(d) *Water bacteriological quality.* Samples of [pool] water may be collected by the department for microbiological analysis by a laboratory approved by the New York State Department of Health, for evaluating pool and spray pad water quality. The coliform bacteria level shall not exceed 4 colonies per 100 milliliters in more than one sample examined each month. When the membrane filter technique is used, or when the fermentation tube method is used, coliform bacteria shall not be present in more than 10 percent of portions analyzed in any month; and total bacteria shall not exceed 200 colonies per milliliter.

§165.27 Sanitation and Safety.

(a) *Pool and Spray Ground [pool area].* (1) *General.* The pool shall be maintained free from sediment, lint, dirt and hair. The pool walls and bottom shall be vacuumed or brushed daily or as needed to remove visible material when pool is closed. [Cracks and other defects in the pool shall be repaired.] The walls, floors, ceilings and equipment shall be maintained so that they are protected from deterioration.

(2) Pool and/or spray ground enclosures or fencing and gates shall be maintained in a manner consistent with §§165.41(i)(1) and/or 165.42(g)

(3) Depth markings and safety lines for pools shall be provided and maintained in accordance with the provisions of §165.41(o) and be clearly visible and readable.

(4) Safety signs for pools shall be maintained in a manner consistent with §165.41(u).

(5) Decks, Spray Pad and Features.
 (A) General. Pool and/or spray decks shall be rinsed daily to remove any materials or contaminants on the surface of the pool deck and/or surface of the spray pad. The deck shall be kept clean and free of puddled water. Cracks in the spray pad and/or pool decks shall be repaired when they may be a potential for leakage, present a tripping hazard, a potential cause of lacerations, or impact the ability to properly clean and maintain the pool and/or spray pad area.

(B) Pools. Indoor pool decks shall be disinfected at least weekly. The walks, overflow gutters, counters, lockers, equipment, furniture, interior partitions and walls shall be kept in good repair, clean and sanitary. The deck shall be kept free of obstructions and tripping hazards for at least a five-foot (5') width walkway around the entire pool. [The deck shall be kept clean and free of puddled water.]

(C) Spray Pad and Features. The water must be flushed to waste and not discharged into the spray pad treatment tank. Flushing may be accomplished by use of a hose supplied with potable water or by operation of the spray features providing it adequately flushes the entire pad surface and is discharged to waste. The spray pad and features shall be kept free of sediment and visible soil.

(6) Spa pools. Spa pools shall be drained and cleaned when needed, and not less than once every two weeks. Placement of chairs or other furniture shall be prohibited within three feet of the edge of any spa pool.

(7) Food and drinks. Glass and sharp objects are prohibited in the pool and on spray pad and all deck areas.

(8) For pools, ladders, handrails, diving equipment, lifeguard chairs, slides and other deck equipment shall be kept firmly secured to the deck and maintained in good repair.

(9) Floats or tubes not in use shall be removed from pool.

(10) Safety ropes (for pools). Safety ropes shall be kept in place except when pool is being used exclusively for lap swimming or competition.

(11) Starting blocks (for pools). Starting blocks shall only be used during supervised practices or swim meets, otherwise the starting blocks shall be removed or secured to prevent use by an untrained person.

(12) Deck slides (for pools). Deck slides shall be installed and maintained in accordance with the provisions of §165.41(q).

(13) Rolling bulkheads (for pools). Rolling bulkheads, when used, shall be provided with traction wheels running on the pool floor or alternatively in the overflow gutter. When not in use these should be stored in a safe manner.

(14) Hosing. A minimum length of 50 feet of hosing shall be provided and available to flush the entire deck area. Hose bibbs shall have antisiphonage devices. The hosing unit shall not be used to fill make-up water into the pool.

(15) Water level for diving (for pools). The water level in the pool shall be maintained to provide the required depths in areas for diving as provided below:

Table 2: Minimum Water Depth Requirement for Pools

(b) Bather loads. The number of patrons within a pool enclosure shall not exceed the maximum permissible loading established by §165.41(m). The bather load shall be posted at [pool] entrance or at a location where it can be seen by all patrons. The certified pool operator shall be responsible for controlling the number of bathers so that the maximum capacity is not exceeded.

(c) Bathroom and bather preparation facilities. All facilities shall be ventilated and maintained. The floors, walls, fixtures, showers, and toilets shall be kept clean, free of dirt and debris and in good condition. Floors shall be maintained in a slip-resistant condition. Soap dispensers shall be filled and operable. A supply of toilet paper shall be provided at each toilet at all times. All lavatories shall be provided with soap, paper towels or electrical-drying units, and covered waste and sanitary napkin receptacles where appropriate. Showers, when provided, shall be supplied with water at a temperature no more than 110°F Thermostatic, and tempering or mixing valves shall be kept in good operation to prevent scalding of the users. Shower curtains shall be kept clean. Foot showers, if used, shall be kept clean and free of puddled water. The use of foot baths is prohibited, but foot rinsers with continuous flowing water may be used].

 §165.29 **Operation and Maintenance of Mechanical Equipment.**

(a) Manual. A manual for operation of the pools and/or spray grounds shall be provided, maintained and available to the certified pool operator. It shall include instructions for each filter, pump or other piece of equipment, drawings, illustrations, charts, operating instructions and parts list, to permit installation, operation, winterization and maintenance. All valve operating procedures and schedules shall be provided in the equipment room for each mode of operation (recirculation, filtration, backwashing) with piping labeling and flow directions. The mechanical equipment shall be inspected and maintained in accordance with the manufacturers' recommendations and to ensure proper operation.

(b) Pumps, filters, ultraviolet disinfection system, disinfectant or chemical feeders, flow meters, gauges, and all related components of the pool water and/or spray pad treatment tank recirculation system shall be kept in continuous operation 24 hours a day to provide water quality consistent with §165.23 and §165.25. The water level in the spray pad treatment tank shall be maintained continuously by an automatic level control system. The spray pad treatment tank shall be completely drained and cleaned at a frequency necessary to maintain water quality. Pool and/or

spray ground equipment and appurtenances shall be operated and maintained in accordance with approved plans and specifications. They shall not be altered or modified in any way unless approved by the Department.

(c) Inlet fittings. (1) For pools, [I] inlets shall be checked frequently to ensure that the rate of flow through each inlet establishes a uniform circulation of water and facilitates the maintenance of a uniform disinfectant residual throughout the pool.
 (2) For spray grounds, inlets for shall be adjusted to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the spray pad treatment tank.

(d) Main drains and deck drains. Main drain and deck drain grates shall be secured in place at all times. Broken or missing main drain grates shall be repaired or replaced before the pool and/or spray pad is used.

(e) Vacuum cleaners (for pools). Vacuum cleaning shall not be conducted when pool is in use.

 (g) Surface skimmer system (for pools).

 (k) Lighting and electrical equipment.

 (4) No overhead electrical wiring shall pass within 20 feet of the pool and/or spray pad except where covered and secured in a ceiling.
 (5) When underwater lighting is not provided and night swimming is permitted, surface lighting shall be adequate to allow an observer on the [pool] deck to clearly see the pool bottom. [(6)] Emergency lighting shall be maintained as required by §165.47(a)(7).

(6) At all indoor spray pads and spray pads used at night, surface lighting shall be adequate to allow an observer to clearly see the spray pad and deck.

(7) Defects in the electrical system, including overhead lights and the respective lenses, shall be immediately repaired.

(l) Ventilation and heating. Ventilation, heating and exhaust equipment shall be maintained and operated to provide air movement and temperature pursuant to §165.47(b) and (c).

(m) Ultraviolet light or equivalent treatment process. Ultraviolet light disinfection or equivalent treatment process shall be provided and maintained to disinfect water provided to the spray pad in accordance with §165.45(1)(9). The ultraviolet light units shall be cleaned in accordance with the manufacturer's specifications. When the output intensity falls below the setpoint intensity, conditions causing decreased ultraviolet light intensity at the sensor shall be evaluated and corrected. When the decreased ultraviolet light intensity is due to lamp failure, the ultraviolet lamp(s) shall be replaced in accordance with manufacturer's recommendations.

(n) [(m)] Sauna. Installation of the heating unit, maintenance of and other electrical installation shall be performed by a qualified licensed electrician.

§165.31 **Chemical Handling and Storage.**

(a) General requirements. All chemicals used in pools and/or spray grounds shall be handled and stored in accordance with manufacturers' recommendations and applicable law. Only chemicals used by the United States Environmental Protection Agency, specified as food additives by the United State Food and Drug Administration as potable use approved by NSF, or by the State Commissioner of Health, shall be used. Each chemical shall be kept covered and stored in the original, labeled container with the identity of the chemical and appropriate hazard warnings clearly labeled, away from flame and heat sources, and in a clean, dry, well-ventilated place which prevents unauthorized access to the chemicals. The facility shall maintain the manufacturer's instructions for all chemicals in the facility.

 §165.39 **Record Keeping.**

 (c) Spray Grounds. The owner or person in charge of a spray ground shall maintain a daily operational record and log book which shall include the following information: quantity of water added; length of time pumps and filters are in operation; time when each filter is backwashed or cleaned; quantity of each chemical added; time when the spray pad and treatment tank are cleaned; the results of all tests for hydrogen ion and residual chlorine; dates and type of light cleaning maintenance and lamp replacement work for ultraviolet light system and other information the Department may require to demonstrate compliance with this Code. A copy of the daily operational records shall be forwarded to the Department at monthly intervals. Copies of the records shall also be kept at the bathing establishment for inspection by the Department for a period of twelve months from the date of the creation of the record.

 §165.42 **General Requirements for Spray Grounds.**

(a) General. All bathing establishments with a spray ground shall be designed and constructed in accordance with the requirements contained in this Code. All spray grounds shall be located at a site free from contamination and conducive to good operation, maintenance, and public safety.. The designing architect or engineer shall certify the structural stability and safety of the spray grounds. The strength of the assembled and installed components and accessories to be used in and around the pools spray grounds should be such that no structural failure of any component part shall cause the failure of any other component part. All spray grounds shall further comply with all of the following provisions:
Construction materials and finishes.
 (1) Construction materials. Spray pads shall be constructed of materials which are inert, stable, nontoxic, watertight and enduring. Sand or earth bottoms are prohibited.
 (2) Finish. Spray pad surface must be slip resistant and easily cleanable surface.

(c) Spray Pad.
 (1) Slope. The spray pad shall be sloped to drain. The slope shall be sufficient to prevent water collecting on the pad.

(2) Drainage. The size, number and locations of the spray pad drains shall be determined and specified so as to assure water does not accumulate on the spray pads. Flow through the drains to the spray pad treatment tank shall be under gravity; direct suction outlets from the spray pad are prohibited.

(3) Valves and Piping. Valves and piping shall be provided in the spray pad drainage system to allow for discharging spray pad water to waste prior to returning to the spray pad treatment tank.

(4) Grating. Openings in the grates covering the drains shall no be over one-half inch wide. Gratings shall not be removable without the use of tools.

(d) Decks.
 (1) A continuous deck at least five feet (5') wide shall extend completely around the entire spray pad perimeter. The deck shall be of a uniform, easily cleaned, impervious material with a slip-resistant surface.

(2) Slope. The deck shall be sloped at least one-fourth inch per foot (1/4 in/ft) to deck drains or grades.

(3) Drainage. Deck drains, when used, shall be spaced and arranged so that not more than four hundred square feet (400 ft²) of area is tributary to each drain, and drains shall not be spaced more than twenty-five feet (25 ft) apart. There shall be no direct connection between the spray pad deck drains and the sanitary sewer system or treatment tank, or between the treatment tank and recirculation system. The deck for outdoor spray ground shall be sloped away from the spray pad or to the deck drains to prevent surface runoff from entering the spray pad.

(4) Carpeting. Carpeting shall not be permitted on the spray pad or desk.

(5) Hose bibbs. At least one hose bibb shall be provided to facilitate flushing of the spray pad and deck areas and each bibb shall be provided with an anti-siphon device.

(e) Spray Features. Spray features should be designed and installed so as not to pose a tripping hazard, a hazard to due water velocity from the spray features, or other possible safety hazards.

(f) Foot Showers. Showers shall be provided at the entry to the spray pad to allow for rinsing debris from patrons' feet prior to entering the spray pad, except such showers are not required at indoor spray grounds or those within the enclosure of an aquatic amusement park. The use of foot baths is prohibited. Wastewater from the foot showers shall be discharged to an approved waste disposal system to prevent standing water on the ground surface, and/or contamination of spray ground and adjacent areas. The foot shower area shall be free of puddle water.

(g) Spray Ground Enclosures. All spray grounds shall be protected by a fence, wall, building, other solid barrier, or any combination thereof. A wall of a building may serve as part of the enclosure, provided that there is no direct access from the wall to the spray ground. A spray ground located on a roof, where there is no access to the roof except through doors where access can be prevented when the spray ground is unsupervised, does not require additional enclosure. All spray grounds shall be provided with an enclosure which shall comply with the following:

- (1) Has no external handholds or footholds.
- (2) Is made of materials which are durable.
- (3) Is at least four feet (4') in height, _____
- (4) Has a maximum vertical clearance above grade of two inches (2").

(5) The entrance into the spray ground enclosure shall be equipped with a door or gate that is self-closing and has a positive self-latching closure mechanism at least forty inches (40") above grade. Doors and gates at all entrances shall be equipped with hardware that permits secure locking of the entrance and prevents access when the spray ground is not supervised.

(6) Where a chain-link fence is provided, the openings between links shall not exceed 2³/₈ inches and chain link twists shall extend above the upper horizontal bar. The enclosure shall have railings and posts within the enclosure, which shall be capable of resisting a minimum lateral load of one hundred fifty pounds (150 lb) applied midway between posts and at top of posts, respectively. Enclosures, fence material or fabric shall be capable of withstanding a concentrated lateral load of fifty pounds (50 lb) applied anywhere between supports on an area twelve square inches (12 in²), without failure or permanent deformation.

(7) Where a picket-type fence is provided, space between pickets shall not exceed 4 inches and pickets shall extend above the upper horizontal bar.

(h) Warning Signs. A durable plate bearing the following wording in 24-point type (letters 0.25 inches in height) or more permanently marked thereon in colors contrasting with the background, shall be prominently affixed at spray pad or enclosure/entrance and in the bathroom or bather preparation facilities at eye level containing the following:

- (1) The hours that spray pad is open.
- (2) The hours that spray pad use is prohibited.
- (3) Individuals with diarrhea shall not use the spray pad.
- (4) Spray features use recirculated water - do not drink.
- (5) Children who are not toilet trained must wear a swim diaper covered by rubber pants.
- (6) No animals allowed on or near spray pad.
- (7) Pollution of the spray pad area is prohibited. Urinating, discharge of fecal matter, expectorating or nose blowing in any spray pad area is prohibited.

§165.43 **Water Supply, Waste Water, and Sewer Connections.**

(a) Water supply. (1) The source and quality of the water supplied to the pool and/or spray ground and all plumbing fixtures, including drinking fountains, lavatories and showers, shall be obtained from the municipal water supply or a source of potable water pursuant to §141.01 of this Code.
 (2) Cross-connection control. The potable water

supply shall be protected against inter-connection or cross-connection to any potential source of contamination, including but not limited to backflow and back-siphonage. Water introduced into the pool and/or spray pad, either directly or to the recirculation system, shall be supplied through an air gap of at least 6 inches or two times the pipe diameter, whichever is greater. In pools and/or spray pad where it is not possible to provide an air gap, the pool and/or spray water shall be protected by an approved backflow prevention device.

(b) *Waste water disposal.* (1) The sanitary sewer system shall have sufficient capacity to serve the facility, including the bathhouse, locker rooms and related accommodations. The building drains and sewer system shall have adequate capacity to carry filter backwash flows without surcharging or flooding. Sanitary sewage and pool and/or spray pad waste water shall be dis[po]s[ed] to the municipal sanitary sewer system whenever possible. The establishment shall obtain the waste water discharge permit or approval from the appropriate regulatory agency (for example, the New York City Department of Environmental Protection) prior to discharge. When no such sewer is available, the connection shall be made to a suitable private subsurface disposal system or other system approved by the department and such agencies having jurisdiction.

(2) The pool and/or spray pad waste water shall be discharged to the sanitary sewer system through an air gap of at least six inches (6") or two times the pipe diameter, whichever is greater, so as to preclude the possibility of backup of sewage or waste water into the pool and/or spray pad piping system.

§165.45 Water Treatment System.

(a) *General.* [Each pool shall have a separate water treatment system.] A water treatment system consisting of pumps, piping, filters, water conditioning and disinfection equipment, and other accessory equipment, shall be provided which will clarify, chemically balance and disinfect the pool water and/or spray pad water. The system shall be designed for a recirculation flow rate that will result in a turnover period in each pool and/or spray ground not exceeding those specified below. Construction shall comply with all other provisions of this Code regarding water and waste water.
(1) *Pools.* Each pool shall have a separate water treatment system. Pools with an approved design rate of less than those specified below shall be operated at the design rate. Construction of fill and draw pools is prohibited. [Construction shall comply with all other provisions of this code regarding water and waste water.]

(2) *Spray Grounds.* All water provided to the spray pad shall be treated with ultraviolet light as specified in 165.45(1)(9) during spray pad operation. The spray pad treatment system shall comply with the following requirements:

(A) The water from the spray pad treatment system can only be combined/circulated with water from other pool(s) if:

(1) All the water from the spray pad is treated by ultraviolet (uv) light disinfection prior to combining/circulating with water from the other pool(s) or;

(2) UV light disinfection are provided to treat all of the water in the other pool(s). The larger flow rate resulting from the two calculations below shall be the minimum flow rate used for the treatment system design. All recirculated water must pass through both the ultraviolet light unit(s) and filters. The minimum flow rate through the treatment system shall be calculated using the two methods described below:

(i) Minimum flow rate (For ultraviolet disinfection):

$$Q = \left(\frac{14.8 - \ln(V)}{12 \cdot 60} \right) V$$

Q: Minimum flow rate through the ultraviolet disinfection/filtration system (in gallons per minute)

V: Pool volume (in gallons).

ln(V): Natural log of the volume.

14.8-ln(V): Number of turnovers

(ii) Minimum filtration flow rate (for combined pool/spray pad system):

The minimum filtration rate for a pool that shares water with a spray pad is specified in section 165.45(a)(2)(C)(iii). The minimum filtration flow rate shall be at least the sum of the flow rate for the pool type specified in §165.45(a)(1) and one third of the spray feature flow rate.

(B) When water supplying the spray features is removed from the spray pad treatment tank by a pump separate from the filtration/recirculation pump system, the ratio of the flow rate of water supplied to the spray features directly from the treatment tank must not exceed 3 times the design filtered water flow rate.

(C) *Turnover Rate.* (i) When water is supplied to the spray features by a pump which removes water directly from the spray pad treatment tank independent from the spray pad treatment tank filter pump, the turnover rate for filtration shall be determined by the feature flow rate. The filtration flow rate for the spray pad treatment tank must be at least one-third of the design spray feature flow rate.

(ii) When all of the water supplied to the spray features is filtered upon removal from the spray pad treatment tank before being supplied to the spray features, a reduced pumping rate for

filtration/treatment of the spray pad treatment tank water can be used when the spray features are not in operation. However, a minimum 4-hour turnover rate shall be provided.

(iii) The minimum flow rate through the filtration system for combined pool/spray pad systems shall be equal to or greater than the sum of the flow rate for the specific type pool as required by §165.45(a)(1), plus one third of the spray feature flow rate.

(b) *Equipment and storage area.* All the pumps, filters, chemical feeders and other mechanical equipment and [pool] chemicals shall be secured and protected by an appropriate enclosure or room, separate and apart from the pool. The size of the equipment room shall provide working space to perform routine operations. Clearance shall be provided for all equipment as prescribed by the manufacturers to allow normal maintenance operation and removal without disturbing other piping or equipment. Operating instructions and a schematic drawing for all [pool] equipment shall be provided in the [pool] equipment enclosure room. Adequate storage area shall be provided for [pool water] chemicals and supplementary [pool] equipment. A dry above ground storage area shall be provided for facilities using calcium hypochlorite as a disinfectant. Equipment rooms shall not be used for storage of chemicals emitting corrosive fumes or for storage of other items to the extent that entrance to the room for inspection or operation of the equipment is impaired.

(c) *Hydraulics and piping system.* (1) *Materials.* The recirculating piping and fittings shall be of nontoxic material, resistant to corrosion, and able to withstand operating pressures. Acceptable materials for [pool] recirculation systems are polyvinylchloride (PVC), copper, stainless steel, aluminum, cast iron or other material suitable for water supply applications.

(2) *Size.* All pipes, fittings and valves of the [pool] recirculation system shall be designed to reduce friction losses to a minimum and to carry the required quantity of water at a maximum velocity not to exceed six feet per second (6 ft/s) under suction, ten feet per second (10 ft/s) under pressure and three feet per second (3 ft/s) in gravity flow.

(4) *Installation and draining of pipes.* All equipment and piping shall be designed and fabricated to drain completely by use of drain plugs, drain valves or other means. All piping shall be supported continuously or at sufficiently close intervals to prevent sagging. All suction piping shall be sloped in one direction, preferably toward the pump. All supply and return pipelines to the pool and/or spray pad shall be provided with valves or other means to allow the piping to be drained to a point below the frost line. Provision shall be made for expansion and contraction of pipes.

(d) *Selection of recirculation pumps.* The recirculation pump shall have adequate capacity (flow rate and pressure) to meet the design requirements of the pool and/or spray pad treatment tank, including filter backwashing and turnover rate. It shall be of a self-priming type if installed above the hydraulic gradient. A gauge which indicates both pressure and vacuum shall be installed on the pump suction header and a pressure gauge shall be installed on the pump discharge line. Gauges shall be installed as near to the pump inlet as possible.

(f) *Inlets (for pools).* Wall or floor inlets shall be provided for all pools and shall be located and directed to provide distribution of treated water to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(g) *Main drains (for pools).* Every pool constructed after July 15, 1998, shall have at least two hydraulically balanced main drains to the pool filter system installed in the pool floor at the deepest point. The minimum distance between the main drains shall be three feet (3') measured from center to center of the drains. If the floor of a spa pool is insufficient for a separation distance of three feet (3'), then the separation distance shall be as great as possible. The main drains shall be connected to a single main suction pipe by branch lines and the branch lines shall not be valved so as to be capable of operating independently. Pools constructed before July 15, 1998, shall have at least one main drain installed in the pool floor at the deepest point.

(h) *Surface skimmer systems (for pools).* A surface skimmer system, perimeter overflow system or recessed automatic surface skimmers, shall be provided on all pools and shall be designed and installed to continuously remove all floating material, surface dirt and waste water. A perimeter overflow system shall be required on all pools which have a pool width exceeding thirty feet (30'), or a surface area of over one thousand six hundred square feet (1,600 ft²). Pools having a width of thirty feet (30') or less, or a surface area of one thousand six hundred square feet (1,600 ft²) or less shall be provided either with perimeter overflows or skimmers. A combination of perimeter overflow systems and skimmers may also be used when approved by the department. All overflow systems and skimmers shall be capable of continuously removing all floating material, surface dirt and waste water.

(i) *Filtration.* The filtration system shall be designed to maintain the required pool and/or spray pad water quality. A water treatment system shall have one or more filters. Filters shall be installed with adequate clearance and facilities for ready and safe inspection, maintenance, disassembly and repair.

(j) *Flow measurement and control.*

(2) *Flow regulation.* Where multiple pumps or filters are provided, each unit shall have a flow-regulating device installed. For spray grounds, automatic devices shall be provided for regulating the rate of flow through the filtration system and flow to the spray features.

(k) *Water heater and thermometer (pools).* A water heater shall be installed at all indoor pools. Heaters shall be installed in accordance with the standards contained in the Building Code and the manufacturer's recommendations. Heating coil, pipe or steam hose shall not be installed in a pool. Pools equipped with heaters shall have a fixed thermometer in the recirculation line downstream of the heater and another near the outlet of the pool.

(l) *Disinfection and chemical feeders.* Pools and/or spray pad treatment shall be designed to provide for continuous disinfection of the pool and/or spray pad water with a chemical which is an effective disinfectant and which imparts an easily measured, active residual. The pools and/or spray pad shall be equipped with a chlorinator, hypochlorinator, or other disinfectant feeder or feeders. An automatic controller shall be provided for continuous monitoring and adjusting the level of free residual disinfectant in the spray pad treatment tank. An automatic device shall be provided to deactivate chemical feeders when there is not flow in the spray pad treatment recirculation system. The feeder shall be automatic, easily disassembled for cleaning and maintenance, and capable of providing the required chemical residuals which meet the following requirements:

(1) *Design specifications.* The feeder shall be of sturdy construction and materials which will withstand wear, corrosion or attack by disinfectant solutions or vapors, and which are not adversely affected by repeated, regular adjustments or other normal use conditions. The feeder shall not allow flow of unintended chemicals or those containing foreign materials into the pool and/or spray pad treatment. The feeders shall incorporate anti-siphon safeguards so that the disinfectant cannot continue to feed into the pool [,] and/or spray pad treatment tank, the pool piping system, [or] the pool enclosure, spray pad treatment tank, the spray piping system or the spray pad enclosure if [the pump stops for any reason.] any type of failure of the equipment occurs.

(3) *Equipment capacity.* Feeders shall be capable of supplying disinfectant to the pool and/or spray pad treatment in a range of chlorine demand of up to 10 mg/l or equivalent.

(9) *Ultraviolet light disinfection units.* All spray pad treatment systems shall provide ultraviolet light disinfection systems unless the provision of an alternative treatment process has been approved by the New York State Department of Health to be capable of providing the equivalent level of reduction of cryptosporidium as the ultraviolet light disinfection system specified in this article. The ultraviolet light unit shall be located between the spray pad treatment tank pump discharge and the spray features or as approved in accordance with §165.45(a)(2)(A). The following requirement for ultraviolet light shall apply:

(A) All ultraviolet light units must be validated with dosage by an independent agency with dosage. The validation process must determine the ultraviolet light unit's disinfection performance by indicating that a dose of 40mJ/cm² (at end of lamp life) is achieved at a flow rate equal to or greater than the design flow rate at the setpoint intensity. The validation procedure used must have been determined by the State Department of Health to be capable of demonstrating the disinfection performance described above.

(B) For systems utilizing quartz sleeves to separate the water passing through the chamber from the ultraviolet source, the system shall be designed to permit cleaning of the lamp jackets and the sensor window or lens without mechanical disassembly. For systems utilizing polytetrafluoroethylene (PTFE) surface materials to separate the water that flows through the ultraviolet chamber from the lamps, the ultraviolet unit shall be designed to be readily accessible to the interior and exterior of the PTFE. The ultraviolet unit shall be designed to permit use of either physical or chemical cleaning methods.

(C) An accurately calibrated ultraviolet light intensity meter, properly filtered to restrict its sensitivity to the disinfection spectrum shall be installed in the wall of the disinfection chamber at the point of greatest water depth from the tube or tubes.

(D) An automatic system shall be installed to prevent flow to the features in the event the ultraviolet light intensity decreases below the validated set point.

(E) An automatic, audible alarm shall be installed to warn of ultraviolet light disinfection system malfunction or impending shutdown.

(F) The unit shall be designed to protect the operator against electrical shock or excessive radiation.

(G) Installation of the unit shall be in a protected enclosure not subject to extremes of temperature.

(H) A spare ultraviolet lamp and other necessary equipment to effect prompt repair by qualified personnel properly instructed in the operation and maintenance of the equipment shall be provided on-site.

(m) *pH control.* Mechanical feed equipment for the purpose of adding a chemical for pH adjustment shall be provided for all pools and spray grounds built. An automatic controller shall be provided for continuously monitoring and adjusting the level of pH in the spray pad treatment tank. The method of chemical addition shall protect the bather from contact with concentrated chemicals. Soda ash, caustic soda, sodium bisulfate, carbon dioxide gas, muriatic acid, or other chemicals approved for water supply use by the United States Environmental Protection Agency, as food additives by the United States Food and Drug Administration, or by the Department, shall be used to raise or lower pool water pH. The method shall provide adequate distribution of the chemical

throughout the pool and distribution shall be verified by pool water testing prior to bather exposure. Where carbon dioxide (CO₂) is used as a method of pH control, the following features shall be provided:

(o) *Pool vacuum system and cleaning system (for pools).* A cleaning system should be provided to remove sludge, sediment and other accumulations from the bottom of the pool. When a vacuum system is used as an integral part of the recirculation system, hose connections shall be located in the walls of the pool at least eight inches (8") below the waterline, and at such points that the floor of the pool can be cleaned with not more than fifty feet of suction hose.

(p) *Spray Pad Treatment Tank (for spray grounds only).* The spray pad treatment tank that receives the effluent water from the spray pad shall conform to the following specifications:

(1) *Material.* The spray pad treatment tank shall be constructed of materials which are inert, corrosion resistant, nontoxic, and watertight such as concrete, fiberglass, stainless steel, etc., which can withstand all anticipated loadings under full and empty conditions.

(2) *Volume.* The volume of the water in the spray pad treatment tank shall be sufficient to assure continuous operation of the filtration system. The capacity shall be measured from six inches above the uppermost pump inlet to the bottom of the overflow waste outlet.

(3) *Controller.* An automatic water level controller shall be provided for the spray pad treatment tank.

(4) *Ready Access.* The spray pad treatment tank must be designed to provide ready access for cleaning and inspections, and be capable of complete draining. An overflow pipe to convey excess water to waste through a suitable air gap must be provided.

(5) *Backflow Prevention.* The makeup water shall be introduced into the spray pad treatment tank through an air gap or by another method which will prevent back flow and back-siphonage.

(6) *Screen.* A screen or similar device shall be provided through which all water from the spray pad shall pass before entering the spray pad treatment tank or another method/process described to provide for removal of debris on the surface layer of the spray pad treatment tank water.

(7) *Filtered/Treated Water Inlets.* An adequate number of filtered or treated water inlets shall be provided and located for complete mixing and circulation of treated water within the spray pad treatment tank.

(8) *Drain.* At least one main drain suction outlet supplying water to the spray pad treatment tank filtration system shall be provided at the deepest point in the spray pad treatment tank.

§165.47 Lighting and Electrical Installation, Ventilation and Heating Requirements.

(a) *Lighting and electrical installation.* Artificial lighting shall be provided for all bathing establishments which are to be used at night, or which do not have adequate natural lighting. The light and electrical installation shall be provided in accordance with the following:

(4) *Decks.* A minimum of 50 foot-candles should be provided at deck area and/or spray pad.

(5) The illumination level in indoor pools and/or spray grounds shall be so designed to limit glare and excessive reflection.

(6) No overhead electrical wiring, except when secured within a ceiling, shall pass within twenty feet (20') of the pool enclosure and/or spray pad.

(8) *Electrical outlets.* Lighting or other electrical outlets in the deck, spray pad, shower room, and the water treatment areas shall have properly installed ground fault circuit interrupters (GFCI) at the outlet.

(b) *Ventilation.* (1) *General.* All indoor pools and/or spray grounds shall be adequately ventilated, either by natural or mechanical means. Indoor portions of a bathing establishment, including indoor pools and/or spray grounds, dressing rooms, mechanical equipment rooms, storage areas, bathhouses, shower rooms and lavatories shall be ventilated pursuant to Article 12 of the Building Code or any successor law or regulation. The ventilation system for indoor pools and dressing rooms shall be designed so the bathers are not subjected to drafts and shall minimize condensation. A minimum of two air changes per hour shall be provided for indoor pool and/or spray ground areas. Any heating units shall be kept from contact with swimmers. Fuel burning heating equipment shall be installed and vented to the outdoors in accordance with the Building Code.

§165.49 Bathhouse and Bather Preparation Facilities.

(b) *Location.* For all pools, [T]the bather preparation facility shall be located so that the patrons shall pass through the bather preparation facilities to enter the pool. The layout of the preparation facilities shall be such that the patrons on leaving the dressing room pass the toilets and then the showers en route to the pool. For spray grounds, the bather preparation facility shall be conveniently located.

(e) *Shower room.* The number of shower heads to be provided shall be based upon the maximum number of persons, both adults and children, who can be accommodated in a bathing establishment at any one time. In no case shall there be fewer than two showers. A bathing establishment with indoor bathing facilities shall have at least one shower for every 40 persons of each sex. A bathing establishment

with outdoor bathing facilities shall have at least one shower for every 80 persons of each sex. Showers in all bathing establishments shall have hot and cold running water. Showers shall be supplied with water at a temperature of at least ninety degrees Fahrenheit (90 °F) and no more than one hundred and ten degrees Fahrenheit (110 °F) and at a minimum rate of 1.5 gallons per minute and a maximum rate of 2.5 gallons per minute per shower. If shower curtains are used, they shall be of plastic or other impervious material and shall be kept clean. Heavy duty wall mounted soap dispensers (glass prohibited) shall be provided at each individual shower stall or at a rate of one dispenser per two shower heads in a common shower room containing more than one shower head.

(f) *Lavatories.* All lavatories shall be provided with liquid soap in an acceptable dispenser, paper towels or other individual towels or electrical hand-drying units and covered waste receptacles. Common use of bar soap or cloth towels shall not be permitted. Suitable sanitary napkin receptacles shall be provided in female toilet rooms. For spray grounds, a diaper changing area shall also be provided.

Notes: The Department proposes that the Board of Health amend various provisions (§§ 165.01-165.05, 165.09-165.11, 165.15-165.19, 165.23-165.31, 165.39, 165.43-165.49) of Article 165, and to create a new § 165.42, to primarily maintain consistency with requirements found in Subparts 6-1 (concerning supervision) and 6-3 (concerning spray grounds) of the New York State Sanitary Code.

♦ d23

NOTICE OF ADOPTION OF A RESOLUTION TO AMEND ARTICLE 13 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the "Charter") and pursuant to the authority granted to the Board of Health by §558 of said Charter, a Notice of Intention of the proposed amendment of Article 13 of the New York City Health Code (the "Health Code") was published in the City Record on September 22, 2008, and a public hearing was held on October 31, 2008. One person testified at the public hearing and three written comments were received. One change was made to the resolution in response to the comments received. At its meeting on December 16, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene ("DOHMH" or "Department") with jurisdiction to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters to which the DOHMH's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers. In addition, §580(3) of the New York State Public Health Law specifically recognizes the authority of the City of New York, or an agency thereof such as DOHMH, to enact laws, codes or regulations affecting clinical laboratories or blood banks.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess the efficacy of its provisions in protecting the public health, Article 13, Clinical Laboratories, has been amended to better reflect practice and the regulatory environment, assure that the revised provisions provide adequate legal tools to effectively ensure the reporting of presumptive and positive laboratory findings for any notifiable disease, condition, outbreak, unusual manifestation of disease or unusual disease listed or referenced in Section 11.03 or in Article 13. Pursuant to this review and assessment of the Health Code, and in response to public comments received, the Board has amended the provisions of Article 13 as provided for below.

Section 13.01

Subdivisions (a) and (c) have been deleted. Instead, a new definition of "laboratory" or "clinical laboratory", which terms are used interchangeably, makes clear that those terms also include a blood bank. The laboratory testing that blood banks in New York State are required to perform must, pursuant to state regulations, be done in state licensed laboratories. Therefore, the reporting and other requirements of Article 13, which are imposed on clinical laboratories, also apply to blood banks. The definition of "clinical laboratory" was amended to make consistent reference to New York City and to the New York State Public Health Law as used in the Health Code.

Section 13.03

Subdivision (a) was amended to clarify that only the laboratory that actually tests a clinical specimen must report positive findings, but that a laboratory that refers a specimen to another laboratory for analysis must provide all the information that the testing laboratory will need to fully comply with the reporting requirements. In response to comments submitted, and in recognition of the practice of blood banks which refer specimens to outside laboratories for testing to submit those specimens anonymously, without individual donor identifying information, DOHMH modified the proposal to require the referring blood bank to comply with the all of the reporting obligations imposed by the Code, instead of the testing laboratory. The subdivision was also amended to clarify that reports of presumptive and positive laboratory findings for all notifiable diseases or conditions, or any other reportable findings, are to be submitted within 24 hours of the clinical laboratory obtaining the results, and that, in addition, reports of presumptive or confirmed

laboratory findings for diseases, conditions or occurrences which are urgently reportable pursuant to §11.03(b)(1) or (c) of this Code must be reported immediately by telephone. Subdivision (a) was also amended to provide greater specificity with regard to which data elements must be reported, including the reporting of race, ethnicity and gender if these data elements are known to the laboratory. Pregnancy status was specified as reportable if known and if clinically relevant to a positive laboratory result; for example a positive hepatitis B surface antigen or a positive syphilis test result. It should be noted that the Department has programs in place with regard to both these conditions which offer outreach services to affected women in order to mitigate perinatal and congenital transmission. Subdivision (a) was further amended to specify as reportable quantitative results for any positive or reactive serologic test results related to reportable diseases specified by the Department, and to incorporate the substance of former subdivision (d) of section 11.03 regarding the reporting of antibiotic susceptibility testing results.

Subdivision (b) was revised to add reporting requirements with regard to laboratory tests related to syphilis and hepatitis.

Subdivision (c) was amended to delete an outdated reference to July 1, 2006, and to incorporate the substance of former subdivision (e) of section 11.03 allowing laboratories to report to the Department through an electronic reporting system utilized by the New York State Department of Health.

Section 13.05

Subdivision (a) was amended to update the cross reference to Article 11's confidentiality provision.

Subdivision (b) was amended to clarify that negative direct smears to detect acid fast tuberculosis bacilli are not reportable to the Department, but must be reported to the physician, or other person ordering the test, within 24 hours, and to update laboratory tuberculosis testing and reporting requirements, including a requirement to perform nucleic acid amplification testing.

Section 13.07 (formerly §13.04)

This section, related to hemoglobin A1C reports, was renumbered, and subdivision (a) was amended to clarify that reports are to be submitted within 24 hours of the clinical laboratory obtaining the results.

Subdivision (c) was modified to clarify that the requirements of subdivision (a) of §13.03, as well as the provisions of paragraphs (1) through (6) of that subdivision, are applicable to hemoglobin A1C reports.

Subdivision (d) was amended to allow the disclosure of information to the patient's "treating health care providers" as opposed to "treating medical providers" as is currently set forth in the Code. The term "health care provider" is a more generally recognized term that is defined in the state Public Health Law as encompassing both "health care practitioners" and "health care facilities".

The amendment is as follows:

Note - matter in brackets [] to be deleted
matter underlined is new

RESOLVED, that, effective February 1, 2009, the sections and section headings for Article 13 of the New York City Health Code be and the same hereby are revised, to be printed together with introductory notes to read as follows:

Article 13 Clinical Laboratories

§13.01 Definitions
§13.03 Report of positive findings
[§13.04 Reporting of Hemoglobin A1C]
§13.05 Testing for tuberculosis
§13.07 Reporting of Hemoglobin A1C

Introductory Notes:

As part of a comprehensive review of the Code to assess the efficacy of the articles in protecting the public's health, Article 13 was amended to better reflect public health practice and technology, and assure that the revised provisions provide adequate legal and investigative tools to protect the public's health, including the reporting of positive or reactive laboratory findings indicating the presumptive or confirmed presence of any notifiable disease, condition or occurrence listed or referenced in Section 11.03 or this Article 13, and to update laboratory testing and reporting requirements for tuberculosis and syphilis.

RESOLVED, that, effective February 1, 2009, §§13.01, 13.03 and 13.05 be and the same hereby are amended, to be printed together with explanatory notes to read as follows:

§13.01 Definition[s].
When used in this article [(a) Laboratories means clinical laboratories and blood banks.(b) "laboratory" or [Clinical] "clinical laboratory" shall mean a facility, including a blood bank, regulated pursuant to Public Health Law, Title V, Article 5, holding a permit issued by the New York State Department of Health, and operating in [New York] the City or testing a specimen taken from a [New York] City resident. [(c) Blood bank shall mean a facility regulated pursuant to Public Health law, Title V, Article 5 and holding a permit issued by the New York State Department of Health.]

Notes:

This section was amended by resolution adopted on December 16, 2008.

§13.03 Report of positive findings.
(a) The director of a clinical laboratory conducting an examination of a specimen submitted for analysis shall, except as noted below with respect to blood banks, report to the Department, within 24 hours of obtaining results, all positive or reactive laboratory findings which indicate the presumptive or confirmed presence of any disease or

condition required to be reported by subdivision (a) of §11.03 of this Code, and also any laboratory findings which are otherwise required to be reported pursuant to this section or this Article; provided that findings indicating the presumptive or confirmed presence of diseases or conditions required to be reported pursuant to paragraph (1) of subdivision (b) of §11.03, as well as outbreaks or suspected outbreaks, unusual manifestations of disease or conditions and unusual diseases required to be reported pursuant to subdivision (c) of §11.03, shall also be reported to the Department immediately by telephone. A clinical laboratory which refers a specimen to another laboratory for examination shall provide to the testing laboratory all of the information the testing laboratory will need to fully comply with the reporting requirements set forth in this Article or this Code; provided, however, that if a blood bank refers a specimen to a laboratory for testing without donor identifying information, then the referring blood bank, and not the testing laboratory, shall comply with the reporting requirements of this Article or this Code. Reports shall [state the particulars required by §11.05 and shall include] contain all of the information and data elements required by the reporting forms or electronic reporting format approved by the Department, including but not limited to:

(1) The full name, date of birth and address of the person from whom the specimen was taken[, the date of birth and address of such person.]; the race, ethnicity and gender of such person, if known; the pregnancy status of such person, if the pregnancy status is known and if it is clinically relevant to the positive laboratory result, for example, a positive hepatitis B surface antigen or a positive syphilis test result; the specimen source; and the date the specimen was collected.

(2) The medical record number if known, identification number or code assigned to the person, if any, and other personal identifiers as may be required by the Department.

(3) The name, [and] address and telephone number of the physician or other authorized [person] health care practitioner [or clinical laboratory] who submitted the specimen, the health care facility, if any, that submitted the specimen, and the clinical laboratory that referred the specimen, if any.

(4) The name and address of the clinical laboratory which performed the test.

(5) The date the test or tests results were first available.

(6) The name(s) of test or tests performed.

(7) The positive or reactive results (including [titer of the] quantitative results related to positive or reactive serologic [test for syphilis] tests for reportable diseases or conditions specified by the Department if quantitative [test] testing was performed).

(8) The antibiotic susceptibility testing results for bacterial diseases listed under subdivision (a) of §11.03 of this Code. This requirement includes traditional broth, agar and newer automated methods of antibiotic susceptibility testing, as well as molecular-based methods that assay for molecular determinants of antibiotic resistance.

(b)(1) With regard to tuberculosis, reports shall also include all laboratory findings which indicate presumptive presence of tuberculosis, the results of smears found positive for acid fast bacilli (AFB), all results including negatives and species identification on samples which had positive smears, and all drug susceptibility testing results. Such reports shall specify the laboratory methodology used and shall state whether the specimen was susceptible or resistant to each anti-tuberculosis drug at each concentration tested.

(2) With regard to syphilis, any treponemal or non-treponemal results, whether qualitative or quantitative, which are positive or reactive shall be reported to the Department within 24 hours of obtaining any such positive or reactive results. In addition, any negative or non-reactive results, or any quantitative results, on syphilis tests associated with the aforementioned positive or reactive results, and performed by the same laboratory, shall be separately reported to the Department by the laboratory performing the associated syphilis tests within 24 hours of obtaining such results. If a laboratory has been referred a specimen to perform only tests associated with a positive syphilis result obtained at the referring laboratory, and such associated syphilis tests have yielded only negative or non-reactive results, then, notwithstanding anything to the contrary in subdivision (a) of this section, only the referring laboratory shall report said negative or non-reactive results to the Department within 24 hours of obtaining the results. If a laboratory obtains negative or non-reactive results on a specimen submitted for syphilis testing and refers a specimen for further syphilis to another laboratory, and such further syphilis tests yield positive or reactive results, then, notwithstanding anything to the contrary in subdivision (a) of this section, in addition to the testing laboratory reporting such positive or reactive results, the referring laboratory shall report both the negative or non-reactive results obtained by it and also the positive or reactive results of any such further syphilis testing.

(3) With regard to hepatitis A, B, C, D, E or any other suspected infectious viral hepatitis, reports shall also include the results of alanine aminotransferase testing (ALT) if performed on the same specimen that tests positive for any of the reportable viral hepatitis.

(c) Reports required pursuant to this [section] article shall be made in a manner and form prescribed by the Department. Notwithstanding any other provision of this Code, [effective July 1, 2006,] clinical laboratories shall report to the Department using electronic or computer media prescribed by the Department in a format specified by the Department, including through the use of the electronic reporting system utilized by the New York State Department of Health. Written paper reports may be submitted for a limited period of time only in the case of extenuating circumstances, temporary equipment failure, or prolonged inability to access the Internet, and only with the specific approval of the Department. In addition, the Department may, on its own initiative, allow written, paper reports to be submitted if electronic reporting is not possible in a particular circumstance, as a result of a deficiency in the Department's or the State Health Department's electronic reporting system. The Department may, in addition, require summary,

cumulative or periodic reports on such reporting schedule as it may deem necessary.

Notes:

This section was amended by resolution adopted on December 16, 2008.

§13.05 Testing for tuberculosis.

A clinical laboratory authorized to perform tests for tuberculosis, including the growth of cultures from clinical specimens for the isolation of mycobacteria, shall adhere to the following minimum requirements:

(a) Within 24 hours of observing growth of a culture or subculture of *M. tuberculosis* complex, a portion of the initial culture or subculture from any specimen from which *M. tuberculosis* complex has been isolated shall be submitted to the Department for DNA or other molecular analysis. [(i) (1) A laboratory which submits a specimen to the Department for drug susceptibility testing shall be deemed to have complied with [subsection] subdivision (a) of this section unless otherwise notified by the Department.

[(ii) (2) The Department's records relating to such DNA analysis shall be confidential in accordance with [§11.07] §11.11 of this Code.

(b) (1) Smears performed to detect acid fast bacilli (AFB) shall be examined within 24 hours after receipt of the specimen in the laboratory, and when [direct] concentrated smears for AFB are performed on clinical specimens (e.g., sputum) the results shall not be reported to the Department unless positive. Negative [direct] smears shall be [concentrated and] reported to the physician or other person authorized to request laboratory tests, or the forwarding laboratory, if any, within 24 hours pursuant to §13.05(b)(7). All respiratory specimens which test acid-fast smear positive and are from patients who have not previously been diagnosed with tuberculosis shall have nucleic acid amplification testing performed. If a laboratory examining the specimen does not have the ability to perform nucleic acid amplification testing, it shall submit an appropriate specimen to the Department for testing by the Department or a laboratory designated by the Department; and

(2) Conventional cultures of clinical specimens shall be initiated within 24 hours after receipt, shall be examined for growth at least once each week after inoculation and, upon observing adequate suspicious growth, an acid fast smear examination shall be performed. Identification of *M. tuberculosis* complex shall be completed within four (4) working days after adequate suspicious growth is first observed; and

(3) Cultures of clinical specimens [by radiometric methodology] shall be completed within fifteen (15) working days after growth is first indicated. Identification of *M. tuberculosis* complex shall be completed within four (4) working days after adequate suspicious growth is first observed; and

(4) If direct drug susceptibility testing is performed it shall be initiated within 24 hours or the next scheduled workday after obtaining a smear positive for acid fast bacilli, and, if indirect drug susceptibility testing of pure cultures is performed, it shall be initiated [within seven workdays after] as soon as growth typical of *M. tuberculosis* is observed [or its speciation]; and

(5) If the time periods provided in paragraphs 1 through 4 above cannot be adhered to by the receiving laboratory, then specimens shall be forwarded to another clinical laboratory within 24 hours [or the next scheduled workday] after receipt of a specimen [or the determination by the receiving laboratory that such time period cannot be met]; and

(6) For other laboratory techniques and methodologies, [including but not limited to radiometric techniques,] examination schedules recommended by the manufacturer of each such methodology shall be adhered to; and

(7) The result of any test or examination related to tuberculosis including but not limited to those specified in this section shall be reported to the physician or other person authorized to request clinical laboratory tests, or the forwarding laboratory, if any, within 24 hours of the test result or finding.

Notes:

This section was amended by resolution adopted on December 16, 2008.

RESOLVED, that, effective February 1, 2009, §13.04, Reporting of Hemoglobin A1C, be amended and renumbered as §13.07 to read as follows:

§ 13.07. Reporting of Hemoglobin A1C.

(a) All clinical laboratories, as defined under §13.01 of this Article, that report laboratory test results electronically to the Department and which use a file up-load method, shall electronically report to the Department all laboratory results for Hemoglobin A1C tests, as defined in [subsection] subdivision (b) of this section, within 24 hours of obtaining such results.

(b) The "Hemoglobin A1C" laboratory test represents an index of blood glucose control measuring average blood sugar over the past 90 days, and shall mean the following for the purposes of this section: HgbA1c; HgbA1c by HPLC; HbA1c; Glycohemoglobin A1C; Glycolhaemoglobin; Glycohemoglobin; Glycated Hgb; Glyco-Hb; GHb; Ghb. As defined in this section, "Hemoglobin A1C" shall not mean the following: Hgb; Hemoglobin; Hb; Hb without reference to glycated or glycosylated or A1C; or Glycohemoglobin total.

(c) Reports required by subsection (a) shall contain the information required in §13.03 (a)(1) through (6) of this Article and of paragraphs (1) through (6) thereof.

(d) Hemoglobin A1C test results and other identifying information reported to the Department pursuant to this section shall be confidential and shall not be disclosed to any person other than the individual who is the subject of the report or to such person's treating [medical] health care providers. If the subject of the report is a minor, information can be disclosed to the subject's parent or legal guardian.

Notes: Section 13.07 was renumbered without substantive change from its predecessor, former section 13.04, by

resolution adopted on December 16, 2008.

◀ d23

NOTICE OF INTENTION TO AMEND ARTICLE 167 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice is hereby given of the proposed amendment of Article 167 of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON WEDNESDAY, JANUARY 28, 2009 FROM 10:00AM TO 12:00PM IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY TUESDAY, JANUARY 27, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL BUSINESS HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY WEDNESDAY, JANUARY 14, 2009.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 10 A.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAILING TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, OR BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV ON OR BEFORE 5PM ON WEDNESDAY, JANUARY 28, 2009.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter ("Charter"). Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene ("Department") jurisdiction to regulate all matters affecting health in the City of New York. Specifically, Section 556 (a)(3) requires the Department to, "exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto..." Sections 558 (b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 of the Charter grants rule-making powers to the Department.

STATEMENT OF BASIS AND PURPOSE

The Department is responsible for protecting the health and safety of the public who use permitted bathing beaches by providing for the proper construction, operation and maintenance of these facilities within New York City. Article 167 of the Health Code sets forth standards for the operation and maintenance of bathing beaches operating under permit by the Department.

The boundary restricting bathing currently defined under § 167.05(d) is inconsistent with the surface water classifications (usage designations) contained in New York State Department of Environmental Conservation (NYSDEC) regulations (see 6 NYCRR Parts 700, 701, 890, 891; see also, <http://www.dec.ny.gov/chemical/23853.html>). Successful improvements of pollution control programs and continued comprehensive upgrades to wastewater treatment infrastructure have resulted in a significant improvement in water quality, therefore, providing for the possibility for additional permitted bathing facilities in previously restricted areas. Accordingly, some of the previously restricted areas for bathing under §167.05(d) are now classified by NYSDEC to allow bathing (SB-primary contact). Pursuant to 6 NYCRR 700.1, "primary contact recreation" means recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence. Primary contact recreation includes, but is not limited to, swimming, diving, water skiing, skin diving and surfing.

In order to maintain consistency with the surface water classifications as defined under NYSDEC regulations, it is proposed that the defined boundary lines restricted for bathing under §167.05(d) be replaced with boundary lines of water classification used for primary contact as defined by the NYSDEC.

PROPOSED CHANGES TO THE HEALTH CODE

It is proposed that the list of restricted boundaries in §167.05 (d)(1)-(6) be deleted. It is also proposed that §167.05(d) should be amended to allow boundaries delineated for primary contact as defined by applicable surface water classification regulations of the NYSDEC.

The proposal is as follows:

Note - Matter in brackets [] is to be deleted.
Matter underlined is new.

RESOLVED, that subdivision (d) of Section 167.05 of Article 167 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on March xx, 2004, be and the same hereby is amended to update certain boundary lines of water classification used for primary contact recreation, to be printed together with explanatory notes, to read as follows:

§ 167.05 Permit Applications.

(d) *Restriction.* No person shall operate, construct or maintain and no permit shall be issued for a bathing beach within 750 feet of the point of discharge of the outlet of any sanitary sewer, the flow of which would contribute in any way to the pollution of the waters used by the bathers, [or located along the City waterfront within the following boundary lines:

- (1) In the Borough of Manhattan: Along the Hudson River, from the Harlem River to the Battery; along the East River, from the Battery to the Harlem River; or along the Harlem River, from the Hudson River to the East River; or
- (2) In the borough of the Bronx: Along the Hudson River, from the boundary line between the cities of New York and Yonkers to the Harlem River; along the Harlem River, from the Hudson River to the East River; or, along the East River, from the Harlem River to Fort Schuyler; or,
- (3) In the Borough of Queens: Along the East River, from Willet's Point (Fort Totten) to Newtown Creek, including Little Bay, Powell's Cove, Flushing Bay and Bowery Bay; or
- (4) In the Borough of Brooklyn: Along the East River and Upper New York Bay from Newtown Creek to Norton's Point, including Gowanus Bay, the Narrows and Gravesend Bay; or,
- (5) In the Boroughs of Brooklyn and Queens: Along the Brooklyn- Queens shore of Jamaica Bay from Sheepshead Bay, Brooklyn to the Queens-Nassau line, along the Queens-Nassau line to the northerly side of Far Rockaway; and along the northerly side of the Rockaway Peninsula to Rockaway Point, including Sheepshead Bay, Rockaway Inlet, and all of Jamaica Bay with its estuaries and islands; or,
- (6) In the Borough of Staten Island: Along the Raritan Bay, Arthur Kill and Kill Van Kull, from Page Avenue east of Tottenville to New Brighton; or along the Upper New York Bay and the Narrows, from New Brighton to the northerly boundary of Fort Wadsworth Reservation] and located outside the boundary delineated for primary contact recreation as defined by applicable regulations of the New York State Department of Environmental Conservation (see 6 NYCRR § 700.1; see also, 6 NYCRR Parts 890, 891). "Primary contact recreation" shall mean recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence. Primary contact recreation includes, but is not limited to, swimming, diving, water skiing, skin diving and surfing.

Notes: The Department proposes that the Board of Health amend language in §167.05(d) of the Health Code to maintain consistency with New York State Department of Environmental Conservation regulations concerning surface water classifications and primary contact recreation for New York City waters.

☛ d23

NOTICE OF INTENTION TO AMEND ARTICLE 201 OF THE NEW YORK CITY HEALTH CODE

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of said Charter, notice is hereby given of the proposed amendment of Article 201 of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON TUESDAY, JANUARY 27, 2009 FROM 2P.M. TO 4 P.M. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY MONDAY, JANUARY 26, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013;

(212) 788-5010 BY TUESDAY, JANUARY 13, 2009.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 2:00 P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, OR BY EMAIL TO THIS ADDRESS RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR BY FAX ADDRESSED TO RENA BRYANT AT (212) 788-5010 ON OR BEFORE 5PM ON TUESDAY, JANUARY 27, 2009.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene ("Department" or "DOHMH") with jurisdiction to regulate all matters affecting health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 of the Charter grants the Department rulemaking powers.

STATEMENT OF BASIS AND PURPOSE**INTRODUCTION**

As part of a comprehensive review of the Health Code, the Department proposes that current Article 201, Births, be amended to assure that the revised provisions provide adequate legal tools to effectively address general public health matters and to reflect modern public health thinking and practice.

Pursuant to this review and assessment of the Health Code, the DOHMH proposes that the Board amend Article 201, effective January 1, 2010, as set forth below.

Section 201.01

The definition of the term "person in charge of a hospital" has been amended to include the title of chief executive officer as an example of someone who is a person in charge of the hospital. Such amendment provides additional guidance on who the DOHMH will consider a person in charge.

A new subdivision (c) has been added to define the term "hospital" in a manner consistent with Article 28 of the State Public Health Law to include not only in-patient hospitals, but also, for example, clinics and diagnostic and treatment centers.

A new subdivision (d) has been added to specify that the term "licensed professional" means a licensed physician, licensed midwife, certified nurse practitioner or a registered physician assistant as those titles are used in the New York State Education Law.

Section 201.03

Subdivision (a) has been amended to delete reference to only a hospital's ambulance service, and add the broader concept of a birth occurring en route to the hospital. This subdivision was also amended to allow the designee of a person in charge of a hospital to report a live birth to the DOHMH, as it is not necessary for only the person in charge to be the direct reporter and provides for the common need for a lower level employee to file the report. Reference to a "maternity clinic" has been deleted as such facilities are subsumed within the term "hospital" as now defined.

Subdivision (a) has also been amended to allow a licensed midwife, certified nurse practitioner, and a registered physician assistant, in addition to a physician, in attendance at a birth outside a hospital to report such birth. Allowing such licensed health care professionals to report reflects the practice of having medical personnel other than physicians participate in live births. In addition, allowing reporting by such licensed health care professionals in attendance at the live birth other than a physician does not affect medical care standards; rather, it facilitates reporting requirements.

Subdivision (b) was amended to correct legal nomenclature distinguishing between a "subsection" and a "paragraph".

Subdivision (c) has been added to require reporters to provide additional required information upon receipt or upon request by the DOHMH. Such addition provides for a quick turnaround in response to a query posed by the DOHMH, as may be necessary.

Section 201.05

Subdivision (a) has been amended to allow the above-specified licensed health care professionals, in addition to a physician, to prepare a birth certificate and a confidential medical report of birth, and to further specify that such documents must be certified. In recognition of the practice in hospitals, especially in the context of electronic filing, of having individuals other than the licensed professionals who were present at the birth to prepare certificates for filing, relying on their review of medical records, this subdivision now allows such individuals to

prepare and certify. However, the amendment requires that such individuals be designated by the person in charge of the hospital and that they be trained or approved by the Department. If a birth occurs elsewhere than in a hospital, and is attended by such licensed health care professionals, then only they can prepare and certify the documents. Furthermore, this subdivision was amended to make clear that the act of certifying involves an examination of the record being certified for correctness of the information.

Subdivision (b) has been amended to reflect gender neutrality and to modify a reference to a particular Title of the State Public Health Law. In order to control the quality of data collection, a provision has been added to require that DOHMH approved worksheets be used in a hospital, and that individuals using them, other than licensed professionals present at the birth, be trained or approved by the Department. Such worksheets must be retained by the hospital for three years, and must be made available for inspection by the Department upon request.

Subdivision (c) and subdivision (f) (now renumbered as subdivision (d)) have been amended to remove language concerning requirements that were effective January 1997 as unnecessary. Renumbered subdivision (d) has been amended to emphasize that electronic reporting can only occur upon approval by the Department.

Subdivisions (d) and (e) have been deleted as no longer necessary because currently both the birth certificate and the confidential medical report of birth are required to be filed electronically.

Section 201.07

Subdivision (a) was amended to indicate that the disclosure of confidential medical reports of birth shall not be compelled, as opposed to not being subject to subpoena, in order to be consistent with the confidentiality provisions of Articles 3 and 11 of this Code.

Section 201.09

A new §201.09 has been added to specify how, in a manner consistent with §4131 of the State Public Health Law, reports of foundlings filed by the City's Commissioner of Children's Services are to be treated and processed by the Department.

Section 201.11

Subdivision (a) has been amended to reflect gender neutrality. Paragraph (2) has been deleted as the submission of a certificate of birth on an application for a delayed registration of birth no longer reflects the Department's application process.

Subdivision (b) was amended to correct legal nomenclature distinguishing a "subsection" a "paragraph".

Subdivision (c) was deleted as no longer necessary given that the new §201.09 comprehensively covers the handling of foundling reports. A new subdivision (c) has been added to clarify that an application for a delayed registration of birth will not be granted for a person who is already deceased.

The Proposal is as follows:

Note – the matter in brackets [] to be deleted
Matter underlined in new

RESOLVED, that, effective January 1, 2010, Article 201 of the New York City Health Code be and the same hereby is revised, to be printed together with explanatory notes to read as follows:

Article 201**Births****Introductory Notes**

This article contains provisions for the reporting of births occurring in the City, for the maintenance of registries of births and for the reporting of births not reported at the time of the event.

§201.01 Definitions.

When used in this title:

(a) "Live birth" or "birth" means the complete expulsion or extraction from its mother of a product of conception, regardless of the duration of pregnancy, which after expulsion or extraction shows evidence of life, such as breathing, beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(b) "Person in charge of a hospital" means the officer or employee who is responsible for the administration of a hospital or similar institution and includes but is not limited to a person holding the title of chief executive officer, administrator, superintendent, director or executive director. (c) "Hospital" means a facility or institution licensed pursuant to Article 28 of the State Public Health Law and defined as such in §2801 of said law.

(d) "Licensed professional" shall, depending on the context, mean a licensed physician, licensed midwife, certified nurse practitioner or a registered physician assistant as those titles are used in the State Education Law.

Notes:

Subdivision (b) was amended by resolution adopted on [].

§201.03 Reporting births.

(a) When a live birth occurs in the City, it shall be reported to the Department as follows:

- (1) If the birth occurs in a hospital or [on its ambulance service] en route thereto, by the person in charge of such hospital or his or her designee; or,
- (2) If the birth occurs elsewhere than in a hospital or en route thereto, by the physician, [or nurse] licensed midwife, certified nurse practitioner or registered physician assistant, in attendance at or after such birth; or,
- (3) If a [nurse midwife] physician, licensed midwife, certified nurse practitioner or registered physician assistant attends at or after the birth elsewhere than in a hospital, or en route thereto, as an associate of a hospital, by the person in charge

of the [maternity clinic or] hospital with which he or she is associated or by the designee of such person in charge; or, (4) If the birth occurs without the attendance of a physician, [or nurse midwife] licensed midwife, certified nurse practitioner or registered physician assistant, by either of the parents of the child or, if no parent is alive, by the next of kin of the child or any person present at the birth.

(b) A person required to report a live birth pursuant to [subsection] paragraphs (a)(1), (2) or (3) of this section shall file a certificate of birth and a confidential medical report, and a person required to report pursuant to [subsection] paragraph (a)(4) of this section shall file a certificate of birth only. Reports shall be filed within 5 business days after the birth with the office maintained and designated by the Department for such purposes.

(c) Upon receipt of information which was required to be reported, but which was not so reported, or upon a request for additional information from the Department, the person required to report a birth shall provide such information to the Department within five business days of such receipt or request.

Notes:

This section was enacted by resolution adopted on [].

§201.05 Preparation and certification of certificate of birth and confidential medical report of birth.

(a) The certificate of birth and confidential medical report shall be prepared and certified by the person required to file the same pursuant to §201.03, but when the birth occurs in a hospital or [on its ambulance service] en route thereto, the certificate and the confidential medical report [may] shall be prepared and certified by the physician in attendance or assisting, or by a licensed midwife, a registered professional nurse, certified nurse practitioner or registered physician assistant present at or after the birth, or by a designee of the person in charge of the hospital who is trained or approved by the Department. When a physician, licensed [nurse] midwife, certified nurse practitioner or registered physician assistant attends at or after a birth elsewhere than in a hospital or en route thereto, he or she shall prepare and certify the certificate and confidential medical report. A person certifying a certificate and confidential medical report shall examine said documents for correctness of the information contained thereon and make necessary changes.

(b) The certificate and confidential medical report shall be prepared on forms prescribed by the Board and furnished by the Department and shall contain no statement indicating the marital name or status of the mother or whether the child was born in or out of wedlock. The person preparing the certificate shall enter all information required by the form provided by the Department, except that in case of a child born out of wedlock [he] such person shall not enter the name of the putative father unless there is submitted to [him] the preparer a verified written consent of the putative father pursuant to §17-166(d) of the Administrative Code or a voluntary acknowledgment of paternity pursuant to Title [II] III of Article 41 of the State Public Health Law. When the birth occurs in a hospital or [on its ambulance service] or en route thereto, the information required by the forms shall be taken from the hospital records of the case. In a hospital, worksheets provided or otherwise approved by the Department shall be used in the preparation of the certificate and confidential medical report, and if such worksheets are used by other than licensed professionals present at or after the birth, then such individuals shall be trained or approved by the Department. Worksheets shall be retained by the hospital for a period of at least three years from the date of the birth, and shall, upon request, be made available to the Department for inspection.

(c) All live births occurring in the City [of New York on or after January 1, 1997] at facilities reporting 100 or more live births per year shall be reported to the Department electronically by means of computer programs specified and provided or otherwise authorized for use by the Department. All facilities at which fewer than 100 live births are reported per year may, at their election and upon approval by the Department, implement an electronic birth certificate reporting system or continue to report births on approved paper forms.

[(d) Facilities reporting births electronically shall file the confidential medical report of birth solely by means of electronic filing.

(e) Facilities reporting births electronically shall file the certificate of birth both electronically and on approved paper forms.]

(d[f]) All facilities required to file birth certificates electronically [after January 1, 1997] and facilities reporting fewer than 100 births per year which elect to report electronically, shall apply to the Department prior to implementing any system and, upon approval by the Department, shall make electronic reports only in such manner and on computer programs prescribed and provided or otherwise authorized by the Department. [Facilities reporting 100 or more live births per year may elect to commence filing birth certificates electronically, with the approval of the Department, prior to January 1, 1997 which the Department, at its discretion, may authorize. Such election shall be irrevocable upon commencement of electronic filing by such facilities.]

Notes:

Subdivisions (a), (b) and (c) were amended, subdivisions (d) and (e) were repealed and subdivision (f) was amended and re-lettered as a new subdivision (d) by resolution adopted on [].

§201.07 Confidential medical report of birth; not subject to compelled disclosure [subpoena] or inspection.

(a) The confidential medical report of birth shall not be subject to compelled disclosure [subpoena] or to inspection by persons other than the Commissioner or authorized personnel of the Department, except in a criminal action or criminal proceeding, or for official purposes by a federal, state, county or municipal agency charged by law with the duty of detecting or prosecuting crime. The Commissioner may, however, approve the inspection of such medical reports for scientific purposes.

(b) Within the context of this section, scientific purposes shall mean epidemiologic surveillance and investigation by a

governmental public health agency, research, [and/]or the compilation of statistics relating factors bearing on disease incidence, prevalence, mortality or treatment.

Notes:

Section 201.07 was amended by resolution adopted on [].

§201.09 Foundlings.

(a) The report of the finding of a child whose parents are unknown, filed by the Commissioner of the City Administration for Children's Services in accordance with the provisions of subdivision two of section three hundred ninety-eight of the State Social Services Law, shall constitute the birth record of such child.

(b) The address or location where such child was found shall be considered as the place of birth, and the date of birth shall be that determined by the Commissioner of the City Administration for Children's Services as the approximate date of birth.

(c) If, however, such child is subsequently identified, and a certificate of birth for this child has either before or following identification been duly filed, the report of the Commissioner of the City Administration for Children's Services shall be placed under seal by the Department, and such seal shall not be broken except upon order of a court of competent jurisdiction.

Notes:

Section 201.09 was added by resolution adopted on [].

§201.11 Delayed registration of births.

(a) When a birth in the City is not recorded in the Department within one year following the birth, it may be recorded with the approval of the Commissioner or the Commissioner's designee [other personnel of the Department designated by him]. Application for such delayed registration shall be made on a form furnished by the Department by the parents or surviving parent, or by the guardian of the person whose birth is to be recorded, if such person is a minor, or by the person himself or herself if he or she is 18 years of age or over and his or her parents are dead. The application shall be accompanied by the following:

(1) A certified statement issued by the Department that a search was made for the record of birth in question and that such record was not found; and

[(2) A certificate of birth on a delayed registration form prescribed by the Board and furnished by the Department. The certificate shall state the facts relating to the birth as of the date of birth and shall be signed by the physician, nurse midwife or midwife who attended at the birth, or if the physician, nurse midwife or midwife is dead or not available, or if there was no such person in attendance, it shall be signed by the person in charge of the hospital in which the birth occurred or by the parents or surviving parent, or by the guardian of the person whose birth is to be recorded. If none of these persons is alive or available, and the person whose birth is to be recorded is over 18 years of age, he shall sign the certificate, and,]

(2[3]) Such documentary and other evidence as will establish to the satisfaction of the Commissioner or [his] the Commissioner's designee the facts and date of birth as alleged in the application. The burden of submitting convincing proof rests with the applicant.

(b) When an application for delayed registration has been granted and a certificate of birth on a delayed registration form is filed pursuant to this section, the Department shall issue to the applicant without further charge, in exchange for the certified statement submitted pursuant to [subsection] paragraph (a)(1) of this section, a certified copy of the certificate of birth.

(c) No application for delayed registration shall be granted, and no delayed certificate of birth shall be registered or issued for a deceased person. [If a report of foundling, prepared by the City commissioner of welfare] pursuant to §398(2)(e) of the Social Welfare Law is not filed with the Department before the end of the calendar year following the year in which the child was found, it shall be filed as delayed registration of birth.]

Notes:

Subdivisions (a) and (b) were amended, paragraph (2) of subdivision (a) was deleted, and subdivision (c) was repealed and reenacted by resolution adopted on [].

design regulations and administrative requirements for new privately owned waterfront public access areas with minor, related changes to bulk regulations. The new design guidelines would improve the design and facilitate construction and operation of high-quality public spaces on privately owned waterfront sites. The proposed text amendments would apply to new construction of required privately owned public waterfront access areas and visual corridors required by Section 62-40 (Requirements for Waterfront Public Access Areas and Visual Corridors). The proposed text modifications would apply to all developments in R6, R7, R8, R9 or R10 Districts; as well as to commercial and community facility developments within R3, R4, R5, C1, C2, C3 and M1, M2 and M3 Districts within the WRP Coastal Boundary. It would affect locations in Manhattan community districts 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12; Bronx community districts 1, 2, 4, 5, 6, 7, 8, 9 and 10; Brooklyn community districts 1, 2, 5, 6, 7, 10, 11, 13, 15 and 18; Queens community districts 1, 2, 3, 5, 7, 10, 11 and 14; and Staten Island community districts 1, 2, and 3.

The proposed text would modify existing standards to allow for greater design flexibility in response to the highly varied conditions along the city's waterfront, improve the quality and utility of public access areas, promote clear public accessibility to the waterfront and add new provisions to address deficiencies in the text, particularly related to safe and efficient pedestrian, bicycle and vehicular access and integration with other local laws and regulations, such as fire safety. The Department also proposes additional miscellaneous changes:

- in the organization of the zoning text for greater clarity;
- clarification of, and more effective requirements for the maintenance and operation of these privately owned public access areas;
- greater detail to clarify intent of the Chair's Certifications for public access area compliance and zoning lot subdivisions;
- more flexible and comprehensive findings for the City Planning Commission authorization for modification of public access area and design requirements and for phased development as well as the special permit for modification of bulk, height and setback regulations; to Section 62-80, Waterfront Access Plans, (WAPs) to coordinate these special area regulations with other proposed text changes; and
- to update references to the waterfront zoning regulations throughout the *Zoning Resolution*.

In addition, the Department proposes a limited number of modifications to other than the design standards. Two changes are proposed to building location, height and setback and bulk; the first would increase the setback at grade of buildings adjoining certain upland connections and visual corridors and the second would provide greater flexibility to the so-called "penthouse rule" that regulates the form of upper stories of towers on waterfront zoning lots. The zoning districts where waterfront public access areas would be required remain unchanged, however, the regulations pertaining to the location and design requirements for public access required for commercial developments under 1 FAR in manufacturing districts would be modified. There would be no change to the amount of required public access area, except for a minor increase to improve pedestrian safety for developments which include emergency vehicular turnarounds in the public open space; nor any change to the applicability of the waterfront public access area requirements.

The new text would clarify the definition of "waterfront area" to specifically include blocks bounding the Gowanus Canal north of Hamilton Avenue in Brooklyn, Dutch Kills in Queens, and the portion of the Bronx River adjacent to the pierhead line located south of the prolongation of East 172nd Street in the Bronx.

The proposed changes zoning text would also modify some of the City Planning Commissions discretionary actions relating to waterfront public for clarification and flexibility. Specifically the changes would affect:

- **Certification for Waterfront Subdivision**
The existing text requires a Chair's certification to subdivide a waterfront zoning lot. The proposed modification would clarify that a subdivision must be certified whether or not development is occurring, or a use is specified, at the time of subdivision. In addition, the existing ambiguity as to when public access improvements must be constructed on the resulting zoning lots will be rectified: all public access would now be built with the first non-exempt development regardless of whether the lot had been previously developed for a non-exempt.
- **Authorizations to modify amount, location or design of waterfront public access areas or visual corridors, and for phased development.**

Currently, the authorization findings to justify modification of the waterfront public access and visual corridor requirements require unique site conditions; these findings have been found inadequate to address the diverse constraints affecting waterfront development. The modification would be changed to allow the CPC further latitude to determine that the development would otherwise be programmatically infeasible or that the modifications would provide equivalent public access area design and enjoyment of the waterfront. Additionally, phased development while allowed by

SPECIAL MATERIALS

CITY PLANNING COMMISSION

■ NOTICE

Negative Declaration for Waterfront Zoning Text Amendment

Project Identification	Lead Agency
CEQR No. 09DCP035Y	City Planning Commission
ULURP No. N 090239 ZRY	22 Reade Street
SEQRA Classification: Type I	New York, NY 10007

Contact Person

Robert Dobruskin, Director, 212-720-3423
Environmental Assessment and Review Division
New York City Department of City Planning

The proposal involves an application by The New York City Department of City Planning to amend certain provisions related to mandated waterfront public access areas in the Zoning Resolution text. The amendments would update

authorization is limited to phasing with public access provided in proportion to development; there is no mechanism to allow public access less than proportional to development. Therefore, the proposal would allow a new authorization to allow phased development of waterfront public access, or partial provision of public access on a subdivided waterfront lot.

● **CPC special permit for modification of bulk regulations**

The proposal would broaden the required findings to allow bulk modification if they would produce a better configuration of bulk on the zoning lot, or if necessary to address unusual site conditions.

The proposed text changes would not induce new development or change the type or location of new development. It would not significantly change the amount of required public access area generated by the zoning (except for a minor increase for a limited number of developments which include emergency vehicular turnarounds that adjoin the public open space) or change the applicability of these access area requirements. The text changes would not change the allowable bulk of new waterfront development or overall size of new development.

Statement of No Significant Effect:

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated December 11, 2008, prepared in connection with the ULURP Application (N 090239 ZRY). The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment.

Supporting Statement:

The above determination is based on an environmental assessment which finds that:

1. No significant adverse effects on the environment which would require an Environmental Impact Statement are foreseeable.

This Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

Should you have any questions pertaining to this Negative Declaration, you may contact the Environmental Assessment and Review Division, New York City Department of City Planning, 22 Reade Street, 4E, New York, New York 10007, Robert Dobruskin, Director (212) 720-3423.

◆ d23

COMPTROLLER

■ NOTICE

NOTICE OF ADVANCE PAYMENT OF AWARDS PURSUANT TO THE STATUTES IN SUCH cases made and provided, notice is hereby given that the Comptroller of the City of New York, will be ready to pay, at 1 Centre St., Rm. 629, New York, NY 10007 on December 30, 2008, to the person or persons legally entitled an amount as certified to the Comptroller by the Corporation Counsel as damage parcels, as follows:

Damage Parcel No.	Block	Lot
N/A	2770	1

acquired in the proceeding, entitled: Metropolitan Ave. Bridge, Phase I subject to any liens and encumbrances of record on such property. The amount advanced shall cease to bear interest on the specified date above.

William C. Thompson, Jr.
Comptroller

d15-30

URBAN DEVELOPMENT CORPORATION

■ NOTICE

DETERMINATION AND FINDINGS

Determination and Findings by the New York State Urban Development Corporation, d/b/a Empire State Development Corporation, Pursuant to Eminent Domain Procedure Law Section 204 in Connection with the Columbia University Educational Mixed Use Development Land Use Improvement and Civic Project.

The Columbia University Educational Mixed Use Development Land Use Improvement and Civic Project (the "Project") involves the acquisition, by condemnation or voluntary transfer, of certain property located within the Project Site (as described below) in the Manhattanville area of West Harlem for the development of a modern, open, integrated campus of some 17 acres for Columbia University ("Columbia") which would consist of a total of approximately 6.8 million gross square feet ("GSF") of new, state-of-the-art facilities housed in up to 16 new buildings and in an adaptively re-used existing building. Among other education related uses, these buildings would be used by Columbia for: teaching facilities; academic research probing the causes of diseases such as Parkinson's, autism, dementia, schizophrenia and Alzheimer's; graduate student housing, faculty housing and housing for other employees; and active ground floor uses serving the local community and Columbia.

The Project will create over two acres of much-needed publicly accessible, open space. This park-like and landscaped open space, like the Project site, will be without gates or barriers so as to invite pedestrian travel to and through the public areas of the site. The Project will also include an open-air market zone along 12th Avenue and widened, well-lit, treelined sidewalks. Columbia is a non-profit corporation, the oldest university in this State, one of the premier educational institutions in this nation, the seventh largest private employer in New York City (employing some 14,000 people, two-thirds of whom live in New York City), and, upon completion of the Project, Columbia is expected to employ an additional approximately 6,000 people at the Project site in stable, permanent jobs. During the construction build-out, some 14,000 construction jobs will also be created by the Project.

Nearly 2 million GSF of the Project total will be developed as a continuous, multi-level, Below-Grade Facility ("Below-Grade Facility") of up to some 80 feet in depth that would be used for activities that support the educational, academic research, housing, recreational and teaching programs of Columbia. The Below-Grade Facility would extend in part below West 130th, West 131st and West 132nd Streets, between Broadway and 12th Avenue and, as such, would connect most of the buildings. The build-out of the Project is anticipated to occur in two phases over an approximately 25-year period. The first phase would entail developing all of the Project site, except for Block 1999.

The Project site is wholly within New York County and generally extends from the southerly side of West 125th Street north along the westerly side of 12th Avenue to the northerly side of West 133rd Street, then along the northerly side of West 133rd Street to the westerly side of Broadway, then northerly along the westerly side of Broadway to the northerly side of West 134th Street, then southerly along the easterly border of Lot 7 and through Lot 9 on Block 1987 to the easterly side of Old Broadway, then southerly along the easterly side of Old Broadway to the southerly side of West 131st Street, then westerly along the southerly side of West 131st Street to the easterly side of Broadway, then southerly along the easterly side of Broadway to the south side of West 125th Street and lastly northwesterly along the southerly side of West 125th Street to 12th Avenue. A map of the Project site is attached hereto and made a part hereof as [Exhibit A](#).

The Project qualifies as both a Land Use Improvement Project and separately and independently as a Civic Project pursuant to the New York State Urban Development Corporation Act (Chapter 174 of the Laws of 1968, as amended; the "UDC Act"). As part of the educational mission of Columbia, the Project will foster important scientific research and knowledge in such areas as neurological disorders and systems biology to benefit the public. ESDC is providing no financing for the Project. Exclusive of financing costs, the estimated acquisition and construction cost for the Project is \$6.28 billion and the Project shall be funded by Columbia. Adequate provision has been or will be made for all Project related costs of acquisition, construction, operation, maintenance and upkeep.

The New York State Urban Development Corporation, d/b/a Empire State Development Corporation ("ESDC") adopted a General Project Plan for the Project on July 17, 2008. On September 2, 2008, as continued on September 4, 2008, ESDC held a duly noticed public hearing in accordance with the provisions of Article 2 of the New York State Eminent Domain Procedure Law ("EDPL") and Sections 6 and 16 of the UDC Act in order, among other things, to inform the public, to solicit comments on the Project from the public, and to review the public use, benefit or purpose of the proposed Project and general effect of the proposed Project on the environment and residents of the locality. Comments were invited at the hearing on the General Project Plan, the proposed condemnation, the proposed property acquisitions and the proposed property transfers to Columbia pursuant to the General Project Plan. Written or e-mailed comments were also invited until 5:30 P.M. on October 10, 2008.

The public hearing extended over two days and some 13 hours, until all persons who wished to speak had spoken for as long as they chose to speak. The public was provided with information concerning the public use, benefit and purpose to be served by the proposed Project, the Project location and the reasons for the selection of that location and the general effect of the proposed Project on the environment and residents of the locality. This information was provided by the hearing officer, and by representatives of ESDC and Columbia. Copies of the General Project Plan, the Final Environmental Impact Statement ("FEIS"), together with the Draft Environmental Impact Statement, the "EIS" and two separate neighborhood condition studies of the Project site were made available at the public hearing. One such study was prepared by AKRF, Inc. which used the internationally known engineering firm of Thornton Tomasetti, Inc. to inspect and evaluate the physical conditions of the properties. The other study was performed by the internationally known environmental and engineering firm of Earth Tech, Inc. which likewise independently inspected and evaluated the physical conditions of the properties. Both studies found the Project site to be substandard or insanitary. The hearing provided an opportunity for the public to comment on the proposed Project, the General Project Plan, the proposed property transfers and the public use, benefits and purposes to be served by the Project. The record of the hearing remained open for any additional written comments until October 10, 2008.

During the hearing, ESDC stated that during the first ten-year phase of the Project, it would assist in acquiring certain needed properties and property interests including, among others, subsurface interests underlying and adjacent to City streets within the Project site and below-grade property interests needed for tiebacks and supports and which are also needed for the construction, maintenance and development of

the Below Grade Facility beneath West 130th, West 131st, and West 132nd Streets.

During the first ten-year phase, the following properties would also be subject to acquisition by ESDC for the Project: Block 1986, Lots 30 and 65; Block 1987, Lots 1 and 7 and the western portion of Lot 9; Block 1995, Lots 31 and 35; Block 1996, Lots 14, 15, 16, 18, 20, 21, 23, 29, 34, 36, 50, 56, and 61; Block 1997, Lots 1, 6, 9, 14, 17, 18, 21, 27, 29, 30, 33, 34, 40, 44, 47, 48, 49, 52, 55, 56, 61 and 64; Block 1998, Lots 1, 3, 6, 10, 13, 16, 24, 26, 29, 38, 49, 57, and 61.

In addition, subsurface interests in below grade portions of West 125th, West 129th, West 130th, West 131st and West 132nd Streets, certain adjacent below-grade areas of Broadway, 12th Avenue and possibly certain below-grade areas of Old Broadway may also be acquired. The surface of the streets will remain public streets typically from grade to a depth of some 8 to 10 feet below grade thereby assuring continuance of the present street grid. During this first ten-year phase of the Project, ESDC would not acquire through eminent domain: Block 1997, Lot 6, which is owned by the City and leased to an affiliate of the Metropolitan Transit Authority ("MTA"); Block 1997, Lots 29 and 48, so long as they continue to be used for religious purposes; Block 1998, Lot 38, which is owned by the City and operated by its Department of Housing Preservation and Development; and Block 1998, Lot 49, as long as it continues to be used for public utility purposes; or any part of Block 1999. Acquisition of City-owned lots is expected to occur pursuant to Section 14 of the UDC Act rather than through condemnation, and could occur under Section 14 at any time after those lots become vacant. ESDC would only consider the acquisition of City-owned parcels leased by the MTA or its affiliates with the agreement of the MTA. ESDC will not acquire City-owned parcels used by the MTA or its affiliates while they are occupied by the MTA or its affiliates absent the agreement of the MTA.

Of the seven residential buildings on the Project site, six are located on Broadway between West 132nd and West 133rd Streets. The seventh is located on the south side of West 132nd Street. ESDC will not exercise its eminent domain power to acquire these seven buildings at any time while they remain occupied by residential occupants. Nor will ESDC exercise this power to acquire any other legal residential unit on the Project site prior to 2018.

Columbia and ESDC will provide relocation assistance to all Project residents and businesses as set forth in the General Project Plan.

Upon ESDC's acquisition of any property interest in the Project site, the payment by Columbia of all of ESDC's costs and expenses of acquiring the same, the payment of all fees, claims and expenses incurred or accrued by ESDC and ESDC's acquiring full possession thereof, ESDC would convey and release such property and property interests, without further consideration, to Columbia. All property now or hereafter owned by Columbia within the Project site will be subject to a Declaration of Covenants and Restrictions that will secure Columbia's compliance with the requirements of the General Project Plan, as modified and affirmed by ESDC's board on December 18, 2008 (the "GPP"), as well as certain obligations incurred by Columbia in connection with the rezoning of the area.

Compliance with the City's Uniform Land Use Review Procedure ("ULURP"), to the extent it might be deemed applicable to the Project, and with the City Map with respect to subsurface portions of City Streets which will be incorporated into the Below Grade Facility, would result in a multiplicity of reviews, delay implementation of the Project and its public benefits and needlessly duplicate the ULURP process that has already been conducted. The proposed Project already has received substantial public disclosure and involvement through the ULURP and State Environmental Quality Review Act/City Environmental Quality Review processes conducted for the recent rezoning and by the additional public review provided by ESDC's hearing. Given the opportunity so afforded the public to participate in the rezoning and environmental review under ULURP and the further opportunities afforded by ESDC, no purpose would be served by the delay associated with compliance with ULURP and related City requirements and such compliance would be impracticable and infeasible. Transfers of City owned property that might be subject to compliance with ULURP will therefore comply only with the UDC Act and GPP. Also, to the extent that the use of the below grade portion of City streets for Project purposes is inconsistent with the City Map, the Project will be governed by the GPP and not that Map.

Construction of the Project and the plans and specifications will be subject to and comply with the applicable provisions of the New York City Building Code, including without limitation, its fire, earthquake, sewer, street construction, health safety requirements and permitting requirements. In addition, Columbia's design team includes a Leadership in Energy and Environmental Design ("LEED") consultant to achieve at least the requisite LEED v. 2.2 Silver Certification, as set forth in the GPP, and will engage, at Columbia's own cost, an independent consultant acceptable to ESDC and the City to monitor environmental compliance on behalf of ESDC and the City.

All testimony and written comments received at the hearing and additional comments received during the comment period have been reviewed, made a part of the record, and afforded full consideration. Solely as an accommodation, ESDC has also duly considered late comments received during October, 2008 and reproduced the same as if they were duly part of the record. ESDC has also considered and relied upon the facts and analyses set forth in the EIS and the contents of the previously mentioned neighborhood condition studies in reaching its determination and findings.

I. The Public Use, Benefit, and Purpose To Be Served by the Project [EDPL § 204(B)(1)].

The Project will provide the following public uses, benefits and purposes:

- 1) Address the State's and City's need for educational, community, recreational, cultural and other civic facilities. One of the most important responsibilities of State government is to provide for the education of its citizens - a responsibility that includes fostering the growth and development of independent colleges and universities to improve student learning and achievement.
- 2) Maintain the status of the City and the State as a global center for higher education and academic research by providing new facilities with large, open floor plates and shared infrastructure, comparable to those now being constructed by Columbia's peer institutions.
- 3) Eliminate the approximately 60% of the lots that have substandard, unsafe, unsanitary or deteriorated conditions thereon which exhibit critical and poor physical conditions, a vacancy rate of 25% or more, and a utilization rate of approximately 60% or less even measured against the lower density zoning that existed prior to the December, 2007 rezoning. Approximately 80% of the current buildings on the Project Site were built more than 50 years ago and some 16% of the buildings more than a century ago. For generations extending prior to World War II, the Project site has been largely used by small and diverse owners for automotive sales, repairs, storage warehouse and light industrial/transportation uses and also has continued to suffer from long-term poor maintenance, lack of development and disinvestment. The current bleak conditions are and have been inhibiting growth and preventing the site's integration into the surrounding community. The implementation of the Project would remove these blighted conditions.
- 4) Ensure consistent, orderly, comprehensive and controlled growth pursuant to the Project throughout the entire 17 acres and thereby generate the numerous community and civic benefits set forth in the GPP that merely complying with the recent rezoning will not accomplish. The proximity of the Project site to other Columbia facilities, particularly its Morningside Heights Campus and Medical Center Campus, will foster inter-disciplinary discourse and collaboration among university faculty and students and keep the City as a vibrant center for research, knowledge creation and education.
- 5) Accommodate the Below-Grade Facility for educational, academic research, recreation and supporting uses and infrastructure. The Below Grade Facility will among other things: permit the construction and use of a centralized and efficient energy plant; provide parking and receiving facilities thereby promoting the efficient distribution of goods and food services and helping to minimize street congestion; reduce above ground density thereby allowing some two acres of ground level space to be devoted to publicly accessible open space and allowing the new buildings to be on a scale with the surrounding community; permit the streets to remain open at grade level, thereby allowing the lower floors of the buildings to connect to a lively, street level commercial corridor serving the local community and Columbia, and contributing to a pedestrian- friendly and vibrant ground level experience for pedestrians.
- 6) Provide open areas that will be gateless, airy and publicly accessible, albeit privately-owned and maintained. The current bleak, essentially treeless, deteriorated, foreboding appearance of the Project site, and automobiles regularly parked on and blocking sidewalks, would be replaced with a site containing approximately 94,000 square feet of accessible open space and maintained as such in perpetuity that will be punctuated by trees, open vistas, paths, landscaping and street furniture and an additional well-lit 28,000 square feet of space of widened sidewalks that will invite east-west pedestrian traffic.
- 7) Generate 6,000 new Columbia jobs and 14,000 construction jobs and also generate billions of dollars in personal income for New Yorkers. During the implementation of the Project, the present value of tax revenue derived from

construction expenditures and total personal income during this period is estimated to total \$122 million for the State and \$87 million for the City. By 2033, the active ground floor retail space uses serving the community and Columbia should alone generate almost double the City real estate taxes produced by the Project site in 2004-2005.

- 8) Make available to the community a package of mitigation measures and amenities including: upgrading the escalators at the 125th Street IRT subway station; a shuttle bus service for the elderly and disabled; a 24-year commitment, escalating up from \$500,000 per annum, towards the West Harlem Piers Park; viaduct lighting improvements, maintenance and electricity for lighting of the Riverside viaduct at the intersection of West 125th Street and 12th Avenue through 2033; and a host of other items set forth in the GPP. In opening its facilities, Columbia will make its libraries, computing facilities and other academic support facilities and services available to students from the new Public Middle and High School For Math, Science and Engineering for which Columbia is supplying the land rent-free for the next 49 years. Its proposed new swimming facilities will be available for the physically disabled and a local swim team and will also offer a four-hour "family session" to local residents on Sunday afternoons, year round.

II. Project Location and Reasons for Selection of that Location [EDPL § 204(B) (2)].

The Project location is set forth above. With 17 contiguous acres, the Project site will accommodate Columbia's historic and long-term contemplated growth and its need for flexible, state-of-the art educational facilities with sufficiently large floor plates, infrastructure below-grade, broad sidewalks, and open spaces that are essential to the creation and success of an urban campus integrated into the fabric of the local community. Its proximity to other Columbia facilities, particularly its Morningside Heights and Medical Center campus and Columbia's 100-year presence in the Morningside Heights Campus will promote and foster inter-disciplinary discourse, the expansion of knowledge and collaboration among educators and students. Independently, the Project site's current underutilization, substandard, deteriorated and unsanitary condition warrant its redevelopment pursuant to a cohesive, orderly and comprehensive plan that will benefit the local community, the City and State.

III. General Effect of the Project on the Environment [EDPL § 204(B)(3)].

The current aging jumble of low-density buildings, their physical condition and out-moded industrial/transportation character of the Project site, as shown in the two previously mentioned neighborhood condition studies and as evidenced by the numerous photographs contained therein, would be eliminated by the implementation of Project. The Project site would be transformed into an area characterized by open space, open vistas and visually cohesive, modern/iconic buildings and would benefit from significant, privately funded economic investment extending over the next several decades. Despite notable and sizeable redevelopment that has occurred around the Project site, the Project site itself has essentially remained stagnant for generations. The current conditions at the Project site would be dramatically improved by new buildings, new publicly accessible open space, new ground level retail opportunities, the creation of 6,000 new Columbia jobs and the knitting of the Project site into the activity of the surrounding neighborhoods of West Harlem.

The environmental impacts of the Project were analyzed and set forth in exhaustive detail in the EIS. The EIS discloses that the Project would clearly create inviting visual corridors towards the waterfront, improve the streetscape, improve the pedestrian experience on streets and create substantial publicly accessible open space on a site utterly lacking the same. The Project site including parcels on the east of Broadway would introduce new residential and commercial uses thereby enlivening the nearby community.

IV. General Effect of the Proposed Acquisitions on the Residents of the Locality [EDPL Section 204(B)(3)].

- 1) As set forth in the FEIS, the Project would affect local residents through the direct displacement of those who currently live on the Project site and the potential indirect displacement of those living in the vicinity of the Project site. Columbia would provide new replacement housing in the vicinity of the Project site for those residents displaced by the Project. Indirect residential displacement would be mitigated in part through a range of Columbia-funded affordable housing initiatives. Construction of the Project would also affect local residents in terms of air quality, traffic and noise. Columbia will implement construction emission, noise, and traffic reduction, including the use of cleaner burning fuels and electric-grid powered equipment. A detailed discussion of the impact of the

Project on the environment and local residents, including those impacts that cannot be fully mitigated, is set forth in the FEIS.

- 2) As previously mentioned, ESDC will not acquire by eminent domain any of the seven residential buildings on the Project site so long as they may be occupied by residential tenants and will not use this power to acquire possession of any other legal residential unit on the Project site prior to 2018. Among other things, Columbia would cause the construction of new housing to replace 75 residential units that will be required for the Project plus a minimum of 10% additional housing units. Relocation assistance would be provided to all residential households on the Project site including, without limitation, their relocation to decent, safe and sanitary dwellings as well as relocation payments and referrals to alternate housing, all of which would be paid for by Columbia. The approximately 85 known private businesses within the Project site would receive relocation assistance for the cost of moving, assistance on finding available commercial space and the other assistance described in the GPP.
- 3) In addition, the Project would provide for:
 - a) Upgrading the escalators at the 125th Street subway station on Broadway;
 - b) Providing \$500,000 p.a. (escalating at 3% annually) for the West Harlem Piers Park for 24 years;
 - c) \$76 million payable over 12 years to fund community benefits;
 - d) \$20 million towards affordable housing to address the impact of the Project;
 - e) \$20 million to the Harlem Community Development Corporation which serves the greater Harlem community, payable over a period of 25 years;
 - f) Shuttle bus service for the elderly and disabled through 2033, but such service may be discontinued if and when the 125th Street IRT station at Broadway becomes ADA accessible;
 - g) \$500,000 to the I.S. 195 playground which is just north of the Project site; and
 - h) Numerous other contributions and civic programs similarly funded by Columbia and detailed in the GPP.

V. Other Relevant Factors [EDPL § 204(B)(4)].

At the public hearing, oral and written comments were received from the public, and it was stated that written comments would be accepted until the close of business on October 10, 2008.

Numerous comments were received in support of the Project and the many public uses, benefits or purposes to be served thereby. For those opposing the Project, certain adverse comments were made, such as: (a) the purported absence of a need for condemnation; (b) that commercial scientific enterprises would purportedly dominate the use of the Project site; (c) that the Project does not purportedly independently and separately qualify as civic project under the UDC Act; (d) that the two ESDC neighborhood condition studies and the two professional engineering reports, together with the extensive photographic evidence contained in each of those studies, do not allegedly substantiate blight; (e) that any pending FOIL requests or FOIL litigation should preclude any decision by ESDC with respect to the Project; (f) that the consultants engaged by ESDC to prepare the neighborhood condition studies were purportedly not independent; (g) that the buildings acquired by Columbia were allegedly in good condition prior to their acquisition and that after their acquisition Columbia purportedly failed to maintain them; and (h) that there has been allegedly inadequate consideration given to the consequences of an earthquake or flood with respect to the Project.

All comments have been given careful, extensive and due consideration by ESDC.

DETERMINATION

Based on due consideration of the record and the foregoing findings, it is determined that the ESDC should exercise its power of condemnation to acquire the above-described property in order to promote and permit the purposes of the Project to be achieved.

Copies of this Determination and Findings by the ESDC are available and will be forwarded without cost and upon request, by writing to:

Empire State Development Corporation
633 Third Avenue
New York, New York 10017
Attention: Ms. Regina Stephens

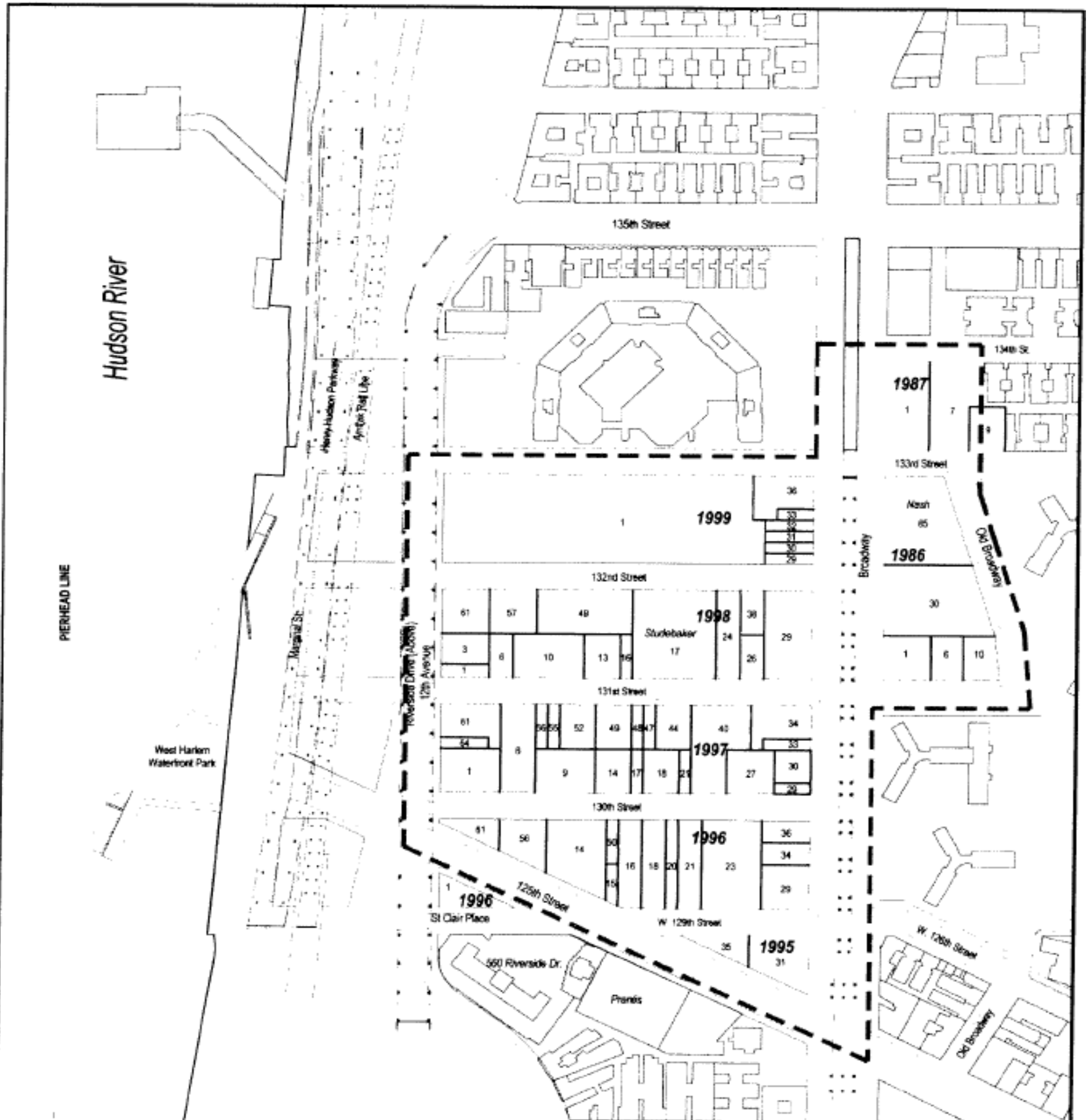
APPELLATE DIVISION, FIRST DEPARTMENT, 27
MADISON AVENUE, NEW YORK, NEW YORK, NO LATER
THAN JANUARY 22, 2009, OTHERWISE ANY SUCH
CHALLENGE OR JUDICIAL REVIEW MAY BE TIME
BARRED, AND (2) BY DULY SERVING A DEMAND UPON
THE ESDC TO FILE THE RECORD UNDERLYING THIS
DETERMINATION AND FINDINGS. THE APPELLATE
DIVISION MAY CONSIDER THE PUBLIC USE, BENEFIT
OR PURPOSE TO BE SERVED BY THE PROPOSED
ACQUISITION AND OTHER MATTERS SET FORTH IN
NEW YORK EMINENT DOMAIN PROCEDURE LAW

SECTION 207. UNDER SECTIONS 207 AND 208 OF THE
EMINENT DOMAIN PROCEDURE LAW, THE EXCLUSIVE
VENUE FOR ANY CHALLENGE TO THIS
DETERMINATION AND FINDINGS IS THE ABOVE-
DESCRIBED APPELLATE DIVISION. ANYONE WISHING
TO CHALLENGE THIS DETERMINATION AND
FINDINGS IS ADVISED TO CONSULT AN ATTORNEY
PROMPTLY.


SEE MAP BELOW

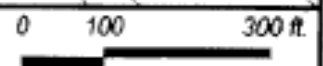
ATTENTION: ANY PERSON WHO WISHES TO SEEK
JUDICIAL REVIEW OF THIS DETERMINATION AND
FINDINGS, OR WHO CLAIMS TO BE AGGRIEVED BY
SUCH DETERMINATION AND FINDINGS AND WISHES
TO CHALLENGE SAME, MUST DO SO, IF AT ALL, (1) BY
DULY COMMENCING A LEGAL PROCEEDING IN THE

Exhibit A. Project Site Map



Legend

-  Project Site Boundary
- 1995** Block Number
- 34 Lot Number



**Manhattanville in West Harlem Land Use
Improvement and Civic Project**

December 2008

CHANGES IN PERSONNEL

DEPT OF PARKS & RECREATION FOR PERIOD ENDING 12/12/08

Table with columns: NAME, TITLE, SALARY, ACTION, PROV, EFF DATE. Lists personnel changes for the Department of Parks & Recreation.

Table with columns: NAME, TITLE, SALARY, ACTION, PROV, EFF DATE. Lists personnel changes for the Department of Design & Construction.

DEPT. OF DESIGN & CONSTRUCTION FOR PERIOD ENDING 12/12/08

Table with columns: NAME, TITLE, SALARY, ACTION, PROV, EFF DATE. Lists personnel changes for the Department of Info Technology & Tele.

DEPT OF INFO TECHNOLOGY & TELE FOR PERIOD ENDING 12/12/08

Table with columns: NAME, TITLE, SALARY, ACTION, PROV, EFF DATE. Lists personnel changes for Consumer Affairs.

CONSUMER AFFAIRS FOR PERIOD ENDING 12/12/08

Table with columns: NAME, TITLE, SALARY, ACTION, PROV, EFF DATE. Lists personnel changes for the Department of Citywide Admin Svcs.

DEPT OF CITYWIDE ADMIN SVCS FOR PERIOD ENDING 12/12/08

Table with columns: NAME, TITLE, SALARY, ACTION, PROV, EFF DATE. Lists personnel changes for the Department of Parks & Recreation (continued).

READER'S GUIDE

The City Record (CR) is, published each business day and includes notices of proposed New York City procurement actions, contract awards, and other procurement-related information. Solicitation notices for most procurements valued at or above \$100,000 for information technology and for construction and construction related services, above \$50,000 for other services, and above \$25,000 for other goods are published for at least one day. Other types of procurements, such as sole source, require notice in the City Record for five consecutive days. Unless otherwise specified, the agencies and offices listed are open for business Mondays thru Fridays from 9:00 A.M. to 5:00 P.M. except legal holidays.

NOTICE TO ALL NEW YORK CITY CONTRACTORS

The New York State Constitution ensures that all laborers, workers or mechanics employed by a contractor or subcontractor doing public work are to be paid the same wage rate that prevails in the trade where the public work is being done. Additionally, New York State Labor Law §§ 220 and 230 provide that a contractor or subcontractor doing public work in construction or building service must pay its employees no less than the prevailing wage. Section 6-109 (the Living Wage Law) of the New York City Administrative Code also provides for a "living wage", as well as prevailing wage, to be paid to workers employed by City contractors in certain occupations. The Comptroller of the City of New York is mandated to enforce prevailing wage. Contact the NYC Comptrollers Office at www.comptroller.nyc.gov, click on Labor Law Schedules to view rates.

New York City's "Burma Law" (Local Law No. 33 of 1997) No Longer to be Enforced. In light of the United States Supreme Court's decision in **Crosby v. National Foreign Trade Council**, 530 U.S. 363 (2000), the City has determined that New York City's Local Law No. 33 of 1997 (codified in Administrative Code Section 6-115 and Charter Section 1524), which restricts City business with banks and companies doing business in Burma, is unconstitutional. This is to advise, therefore, that the language relating to Burma contained in existing New York City contracts may not be enforced.

CONSTRUCTION/CONSTRUCTION SERVICES OR CONSTRUCTION RELATED SERVICES

The City of New York is committed to achieving excellence in the design and construction of its capital program, and building on the tradition of innovation in architecture and engineering that has contributed to the City's prestige as a global destination.

VENDOR ENROLLMENT APPLICATION

New York City procures approximately \$7 billion worth of goods, services, construction and construction-related services every year. The NYC Procurement Policy Board Rules require that agencies primarily solicit from established mailing lists called bidder/proposer lists. To register for these lists-free of charge-, prospective suppliers should fill out and submit the NYC-FMS Vendor Enrollment application.

- Online at NYC.gov/selltonyc
- To request a hardcopy application, call the Vendor Enrollment Center at (212) 857-1680.

Attention Existing Suppliers:

Even if you already do business with NYC agencies, be sure to fill out an application. We are switching over to citywide, centralized Bidders Lists instead of the agency-specific lists previously used to issue notices about upcoming contract opportunities. To continue receiving notices of New York City contract opportunities, you must fill out and submit a NYC-FMS Vendor Enrollment application. If you are uncertain whether you have already submitted an application, call us at (212) 857-1680.

SELLING TO GOVERNMENT TRAINING WORKSHOP

New and experienced vendors are encouraged to register for a free training course on how to do business with New York City. "Selling to Government" workshops are conducted by the Department of Small Business Services, 110 William Street, New York, NY 10038. Morning and afternoon sessions are convened on the first Tuesday of each month. For more information, and to register, call (212) 618-8845.

PRE-QUALIFIED LIST

New York City procurement policy permits agencies to develop and solicit from pre-qualified lists of vendors, under prescribed circumstance. When it is decided by an agency to develop a pre-qualified list, criteria for pre-qualification must be clearly explained in the solicitation and notice of the opportunity to pre-qualify for that solicitation must be published in at least five issues of the CR.

Information and qualification questionnaires for inclusion on such list may be obtained directly from the Agency Chief Contracting Officer at each agency, (see Vendor Information Manual). A completed qualification Questionnaire may be submitted to the Chief Contracting Officer at any time, unless otherwise indicated and action (approval or denial) shall be taken by the agency within 90 days from the date of submission. Any denial or revocation of pre-qualified status can be appealed to the Office of Administrative Trials and Hearings, (OATH), Section 3-11 of the Procurement Policy Board Rules describes the criteria for the general use of pre-qualified lists.

NON-MAYORAL ENTITIES

The following agencies are not subject to Procurement Policy Board rules and do not follow all of the above procedures: City University, Department of Education, Metropolitan Transportation Authority, Health & Hospitals Corporation, Housing Authority. Suppliers interested in applying for inclusion on bidders list should contact these entities directly (see Vendor Information Manual) at the addresses given.

PUBLIC ACCESS CENTER

The Public Access Center is available to suppliers and the public as a central source for supplier-related information through on-line computer access. The Center is located at 253 Broadway, 9th floor, in lower Manhattan, and is open Monday through Friday from 10:00 A.M to 3:00 P.M. For information, contact the Mayor's Office of Contract Services at (212) 788-0010.

ATTENTION: NEW YORK CITY MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

Join the growing number of Minority and Women Owned Business Enterprises (M/WBEs) that are competing for New York City's business. In order to become certified for the program, your company must substantiate that it: (1) is at least fifty-one percent (51%) owned, operated and controlled by a minority or woman and (2) is either located in New York City or has a significant tie to New York City's business community. To obtain a copy of the certification application and to learn more about the program, contact the New York City Department of Small Business Services, 110 William Street, 2nd Floor, New York, New York 10038 (212) 513-6311.

PROMPT PAYMENT

It is the policy of the City of New York to pay its bills promptly. The Procurement Policy Board Rules generally require that the City pay its bills within 30 days after the receipt of a proper invoice. The City now pays interest on all late invoices. The grace period that formerly existed was eliminated on July 1, 2000. However, there are certain types of payments that are not eligible for interest. These are listed in Section 4-06 of the Procurement Policy Board Rules. The Comptroller and OMB determine the interest rate on late payments twice a year, in January and in July.

PROCUREMENT POLICY BOARD RULES

The Rules may also be accessed on the City Website, <http://NYC.GOV.Selltonyc>

COMMON ABBREVIATIONS USED IN THE CR

The CR contains many abbreviations. Listed below are simple explanations of some of the most common ones appearing in the CR:

- AB Acceptable Brands List
- AC Accelerated Procurement
- AMT Amount of Contract
- BL Bidders List
- CSB Competitive Sealed Bidding (including multi-step)
- CB/PQ CB from Pre-qualified Vendor List
- CP Competitive Sealed Proposal (including multi-step)
- CP/PQ CP from Pre-qualified Vendor List
- CR The City Record newspaper
- DA Date bid/proposal documents available
- DUE Bid/Proposal due date; bid opening date
- EM Emergency Procurement
- IG Intergovernmental Purchasing
- LBE Locally Based Business Enterprise
- M/WBE Minority/Women's Business Enterprise
- NA Negotiated Acquisition
- NOTICE.... Date Intent to Negotiate Notice was published in CR
- OLB..... Award to Other Than Lowest Responsible & Responsive Bidder/Proposer
- PIN..... Procurement Identification Number
- PPB Procurement Policy Board
- PQ Pre-qualified Vendors List
- RS..... Source required by state/federal law or grant
- SCE Service Contract Short-Term Extension
- DP Demonstration Project
- SS Sole Source Procurement
- ST/FED Subject to State &/or Federal requirements

KEY TO METHODS OF SOURCE SELECTION

The Procurement Policy Board (PPB) of the City of New York has by rule defined the appropriate methods of source selection for City procurement and reasons justifying their use. The CR procurement notices of many agencies include an abbreviated reference to the source selection method utilized. The following is a list of those methods and the abbreviations used:

- CSB **Competitive Sealed Bidding** (including multi-step)
Special Case Solicitations / Summary of Circumstances:
- CP **Competitive Sealed Proposal** (including multi-step)
- CP/1 Specifications not sufficiently definite
- CP/2 Judgement required in best interest of City
- CP/3 Testing required to evaluate
- CB/PQ/4
- CP/PQ/4 **CB or CP from Pre-qualified Vendor List/** Advance qualification screening needed
- DP Demonstration Project
- SS **Sole Source Procurement/**only one source
- RS..... Procurement from a Required Source/ST/FED
- NA..... Negotiated Acquisition
For ongoing construction project only:
- NA/8 Compelling programmatic needs

- NA/9 New contractor needed for changed/additional work
- NA/10 Change in scope, essential to solicit one or limited number of contractors
- NA/11 Immediate successor contractor required due to termination/default
For Legal services only:
- NA/12 Specialized legal devices needed; CP not advantageous
- WA **Solicitation Based on Waiver/Summary of Circumstances** (Client Services/BSB or CP only)
- WA1 Prevent loss of sudden outside funding
- WA2 Existing contractor unavailable/immediate need
- WA3 Unsuccessful efforts to contract/need continues
- IG **Intergovernmental Purchasing** (award only)
- IG/F Federal
- IG/S State
- IG/O Other
- EM **Emergency Procurement** (award only) An unforeseen danger to:
- EM/A Life
- EM/B Safety
- EM/C Property
- EM/D A necessary service
- AC **Accelerated Procurement/**markets with significant short-term price fluctuations
- SCE **Service Contract Extension/**insufficient time; necessary service; fair price
Award to Other Than Lowest Responsible & Responsive Bidder or Proposer / Reason (award only)
- OLB/a anti-apartheid preference
- OLB/b local vendor preference
- OLB/c recycled preference
- OLB/d other: (specify)

HOW TO READ CR PROCUREMENT NOTICES

Procurement Notices in the CR are arranged by alphabetically listed Agencies, and within Agency, by Division if any. The notices for each Agency (or Division) are further divided into three subsections: Solicitations, Awards; and Lists & Miscellaneous notices. Each of these subsections separately lists notices pertaining to Goods, Services, or Construction.

Notices of Public Hearings on Contract Awards appear at the end of the Procurement Section. At the end of each Agency (or Division) listing is a paragraph giving the specific address to contact to secure, examine and/or to submit bid or proposal documents, forms, plans, specifications, and other information, as well as where bids will be publicly opened and read. This address should be used for the purpose specified UNLESS a different one is given in the individual notice. In that event, the directions in the individual notice should be followed. The following is a SAMPLE notice and an explanation of the notice format used by the CR.

SAMPLE NOTICE:

POLICE

DEPARTMENT OF YOUTH SERVICES

■ SOLICITATIONS

Services (Other Than Human Services)

BUS SERVICES FOR CITY YOUTH PROGRAM – Competitive Sealed Bids – PIN# 056020000293 – DUE 04-21-03 AT 11:00 A.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
NYPD, Contract Administration Unit, 51 Chambers Street, Room 310, New York, NY 10007. Manuel Cruz (646) 610-5225.

☛ m27-30

ITEM	EXPLANATION
POLICE DEPARTMENT	Name of contracting agency
DEPARTMENT OF YOUTH SERVICES	Name of contracting division
■ SOLICITATIONS	Type of Procurement action
<i>Services (Other Than Human Services)</i>	Category of procurement
BUS SERVICES FOR CITY YOUTH PROGRAM	Short Title
CSB	Method of source selection
PIN # 056020000293	Procurement identification number
DUE 04-21-03 AT 11:00 am	Bid submission due 4-21-03 by 11:00 am; bid opening date/time is the same.
<i>Use the following address unless otherwise specified in notice, to secure, examine-submit bid/proposal documents; etc.</i>	Paragraph at the end of Agency Division listing giving contact information, or submit bid/information or and Agency Contact address
	NYPD, Contract Administration Unit 51 Chambers Street, Room 310 New York, NY 10007. Manuel Cruz (646) 610-5225.
☛	Indicates New Ad
m27-30	Date that notice appears in City Record

NUMBERED NOTES

Numbered Notes are Footnotes. If a Numbered Note is referenced in a notice, the note so referenced must be read as part of the notice. **1.** All bid deposits must be by company certified check or money order made payable to Agency or Company.