

New York City Police Department

Notice of Adoption

NOTICE OF ADOPTION relating to transport of handguns by premises license holders pursuant to Chapters 5 and 16 of Title 38 of the Rules of the City of New York.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the New York City Police Department (“Police Department”) by Section 400.00 of the Penal Law, Sections 435 and 1043 of the New York City Charter, and Section 10-131 of the Administrative Code of the City of New York, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Police Department hereby amends Sections 5-01, 5-22 and 5-23 of Chapter 5, and Section 16-02 of Chapter 16, of Title 38 of the Rules of the City of New York.

This rule was first published on April 12, 2019 (the “Proposed Rule”), and a public hearing was held on May 17, 2019.

Statement of Basis and Purpose of Final Rule

As the firearms-licensing officer for the City of New York, the Police Commissioner has promulgated rules governing the possession, carry, and transport of handguns by licensees. Section 5-01 of Title 38 of the Rules of the City of New York defines the types of available handgun licenses in the City and generally describes the restrictions imposed by the different types of licenses. Section 5-01(a) defines a premises license as a restricted handgun license issued for a specific business or residence. Section 5-23 sets forth in greater detail the restrictions and conditions imposed by the different types of handgun licenses available in the City. Section 5-23(a) governs the possession and transport of handguns by holders of a premises license. Subdivision a provides that any handguns listed on a premises license may not be removed from the address specified on the license except as provided in Chapter 5 of Title 38 of the Rules of the City of New York. Section 5-23(a) authorizes a premises licensee to remove a handgun from the premises listed on the license to take it directly to and from one of the following destinations, provided that the handgun is transported unloaded, in a locked container, with the ammunition carried separately:

- An authorized small arms range/shooting club, to maintain proficiency in the use of a handgun, where all such authorized ranges/clubs are located within New York City; or
- An authorized area for hunting, provided that the licensee requested and received an appropriate amendment to the handgun license from the Police Department.

Separately, section 5-22(a)(16) authorizes a licensee to transport the handgun to a gunsmith, with written authorization of the Police Department's License Division, provided that the handgun is transported unloaded, in a locked container. Additionally, Chapter 16 of Title 38 of the Rules of the City of New York generally governs the transport or delivery of weapons into or within the City. Chapter 16 applies to circumstances described in that chapter not otherwise addressed by the Rules, including the transport of handguns by premises licensees.

The requirement that premises licensees keep at their premises the handguns listed on their licenses, along with the above two exceptions to that requirement, sought to balance public safety against the interests of licensees in maintaining proficiency in the use of their handguns and in using their handguns for hunting. Two legal developments occasioned a reexamination of the balance struck by these rules. The first was the New York Court of Appeals' decision in *Osterweil v. Bartlett*, 21 N.Y.3d 580 (2013), which held that the New York Penal Law permits the owner of a part-time residence in the state to apply for a handgun license in the jurisdiction of that residence, although the owner may be domiciled outside the state. Prior to the decision, the statute had been interpreted to require the applicant for a handgun permit to show that he or she was a domiciliary of the county (or city) where the application was filed. *See, e.g., Matter of Mahoney v. Lewis*, 199 A.D.2d 734 (3d Dep't 1993). Following the *Osterweil* decision, a New York City resident who owns a second home elsewhere in the state apparently may apply to the licensing officer in that jurisdiction for a license to possess a handgun at the second home. The former rules, however, did not authorize a premises licensee to transport a handgun listed on a New York City premises license to another premises where the licensee resides and is authorized to possess a handgun.

The second development was the *New York State Rifle and Pistol Association, Inc. v. City of New York* (NYSRPA) lawsuit, which challenges the former transport restrictions for premises licensees on Second Amendment and other constitutional grounds. One plaintiff in the case alleges that the former rules improperly prevented him from transporting a handgun listed on the premises license for his New York City residence to a second home upstate. Several plaintiffs allege that the former rules improperly prevented them from transporting their handguns to small arms ranges/shooting clubs outside of New York City for purposes of firearms training or competitions. *See New York State Rifle & Pistol Association, Inc. v. City of New York*, 883 F.3d 45 (2d Cir. 2018). The case is currently pending in the United States Supreme Court.

The *Osterweil* decision suggests that an accommodation of licensees who own second homes is warranted as a matter of New York law, and the ongoing *NYSRPA* case raises questions about the constitutionality of the former transport rules. The Police Department accordingly reviewed the rules and determined that it was possible to modify them to reflect a carefully considered accommodation to the interests of

licensees while also ensuring the safe transport of handguns by licensees. In furtherance of this determination, the Police Department announced the Proposed Rule.

The Proposed Rule would have allowed a premises licensee to transport the handgun(s) listed on her/his premises license directly to and from any of the following locations, in addition to the locations authorized under the former version of section 5-23(a), provided that the handgun was transported unloaded, in a locked container, with the ammunition carried separately:

- Another residence or place of business where the licensee was authorized to have and possess a handgun;
- A small arms range/shooting club authorized by law to operate as such, whether located within or outside New York City; or
- A shooting competition at which the licensee was authorized to possess the handgun consistent with the law applicable at the place of the competition.

In addition to clarifying and otherwise adopting the transport authorizations found in the Proposed Rule, the Final Rule authorizes a premises licensee to transport the handgun(s) listed on her/his license as follows:

- When purchasing a handgun in accordance with 38 RCNY § 5-25, directly from the place of purchase to the address specified on the license, provided that the handgun is transported unloaded, in a locked container, with the ammunition carried separately;
- Directly to or from the offices of the License Division, or the licensee's local police precinct, as authorized by applicable rules, provided that the handgun is transported unloaded, in a locked container, without ammunition; or
- Directly to or from a dealer in firearms with written authorization of the License Division, provided that the handgun is transported unloaded, in a locked container. This authorization supplements the existing authorization of transport to a gunsmith.

The additional authorizations added in the Final Rule were included to codify existing practice in the interest of clarity. Toward that end, the Police Department further confirms that the authorization in 38 RCNY § 5-23(a)(3)(i) to transport a handgun to another residence or place of business of the licensee authorizes the licensee to transport a firearm when moving to a new premises in accordance with 38 RCNY § 5-27 or 5-29. Moreover, references in Chapter 5 of Title 38 of the Rules of the City of New York to an "authorized small arms range/shooting club," as

applied to premises licenses, are intended to include any lawful small arms range, shooting club, or shooting competition, whether within or outside New York City.

The Final Rule continues to recognize the importance of public safety. It requires that (1) a handgun possessed pursuant to a premises license be kept at the premises when not being transported directly to or from, or possessed at, an authorized location; (2) any such handgun be transported unloaded, in a locked container, with the ammunition carried separately (or, in certain cases, without ammunition); and (3) transport of any such handgun within New York City be continuous and uninterrupted. These requirements ensure that a person who has not obtained a carry license will continue to be unauthorized by a premises license to transport a firearm in operable condition in public.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (a) of section 5-01 of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

§ 5-01 Types of Handgun Licenses.

* * *

(a) *Premises License – Residence or Business.* This is a restricted handgun license, issued for a specific business or residence location. The handgun shall be safeguarded at the specific address indicated on the license, except when the licensee transports or possesses such handgun consistent with these Rules. [This license permits the transporting of an unloaded handgun directly to and from an authorized small arms range/shooting club, secured unloaded in a locked container. Ammunition shall be carried separately.]

§ 2. Subdivision (a) of section 5-23 of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

§ 5-23 Types of Handgun Licenses.

(a) *Premises License – Residence or Business.* This is a restricted handgun license, issued for the protection of a business or residence premises.

(1) The handguns listed on this license may not be removed from the address specified on the license except as otherwise provided in this chapter.

(2) The possession of the handgun [for protection] is restricted to the inside of the premises which address is specified on the license or to any other location

to which the licensee is authorized to transport such handgun in accordance with these Rules.

(3) [To maintain proficiency in the use of the handgun, the] The licensee may transport the handgun(s) listed on her/his [handgun(s) directly to and from an authorized small arms range/shooting club] license, unloaded, in a locked container, the ammunition to be carried separately, directly to and from the following locations:

(i) Another residence, or place of business, of the licensee where the licensee is authorized to possess such handgun. Such residence or place of business may be within or outside New York City.

(ii) A lawful small arms range/shooting club or lawful shooting competition. Such range, club, or competition may be within or outside New York City.

(4) A licensee may transport her/his handgun(s) directly to and from an authorized area designated by the New York State Fish and Wildlife Law and in compliance with all pertinent hunting regulations, unloaded, in a locked container, the ammunition to be carried separately, after the licensee has requested and received a "Police Department – City of New York Hunting Authorization" Amendment attached to her/his license.

(5) A licensee may transport her/his handgun(s), unloaded, in a locked container, without ammunition, to or from the offices of the License Division, or the licensee's local police precinct, as authorized by these Rules.

(6) When purchasing a handgun in accordance with 38 RCNY § 5-25, a licensee may transport the handgun, unloaded, in a locked container, the ammunition to be carried separately, directly from the place of purchase to the address specified on the license.

(7) Transport within New York City pursuant to paragraph (3), (4), (5), or (6) of this subdivision shall be continuous and uninterrupted.

§ 3. Paragraph (16) of subdivision (a) of section 5-22 of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

(16) Except for licensees with unrestricted Carry Business licenses or Special Carry Business Licenses, a licensee wishing to transport her/his handgun to a gunsmith or a dealer in firearms shall request permission in writing from the Division Head, License Division. Authorization shall be provided in writing. The licensee shall carry this authorization with her/him when transporting the handgun to the gunsmith or the dealer in firearms, and shall transport the handgun directly

to and from the gunsmith or the dealer in firearms. The handgun shall be secured unloaded in a locked container during transport.

§ 4. Section 16-02 of Chapter 16 of Title 38 of the Rules of the City of New York is amended by adding a new subdivision (c) to read as follows:

§ 16-02 Applicability.

This chapter shall apply to all persons who transport or deliver one or more weapons into or within any location in the City of New York, except that it shall not apply to:

* * *

(c) transport pursuant to 38 RCNY § 5-23(a)(3), (4), (5), or (6).