

New York City Department of Transportation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The purpose of the proposed rule is to update section 2-02 of Chapter 2 of Title 34 of the Rules of the City of New York (“Highway Rules”) to clarify that insurance coverage or coverage provided by self-insured or uninsured entities must include coverage for damage at, above and below the street surface.

When and where is the hearing? The New York City Department of Transportation (DOT) will hold a public hearing on the proposed rule online. Members of the public may access and participate in this hearing online or by telephone. The public hearing will take place on February 9, 2023 at 10am.

Join through Internet:

- To join the hearing via your browser, either click on the following URL link or copy and paste it into your browser’s address bar.
- Join Zoom Meeting using the following information:
<https://zoom.us/j/98718624429?pwd=SmtnYlYxY2daWDNKNi9sM0xLTDZlQT09>
- Meeting ID: 987 1862 4429
Password: 822204
- Then follow the prompts.
- If you have low bandwidth or inconsistent Internet connection, we suggest you use the phone option below for the hearing.

Join via phone only:

- To join the meeting only by phone, use the following information to connect:

Phone: 1-929-205-6099
Meeting ID: 987 1862 4429
Password: 822204

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DOT through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@dot.nyc.gov.
- **Mail.** You can mail comments to Andrea Batiste, Director, Office of Construction Permit Management, 55 Water Street, Concourse Level, NY, NY 10041.

- **Fax.** You can fax comments to Andrea Batiste, Director, Office of Construction Permit Management, 212-839-9699.

By Speaking at the Hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing rules@dot.nyc.gov by February 8, 2023 and include your name and affiliation. While you will be given an opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline for written comments is February 9, 2023 by 5PM.

What if I need assistance to participate in the Hearing? You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by e-mailing at rules@dot.nyc.gov or by telephone at 212-839-6500 or TTY 212-504-4115. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by February 2, 2023.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online and copies of all written comments concerning the proposed rule will be available through the DOT Freedom of Information Law (FOIL) Office at <https://a860-openrecords.nyc.gov/> or 55 Water Street, 4th Floor, New York, NY 10041.

What authorizes DOT to make this rule? Sections 1043(a) and 2903 of the New York City Charter (City Charter) authorizes DOT to make this proposed rule. This proposed rule was not included in DOT's regulatory agenda for this Fiscal Year 2022 under several proposals because it was not anticipated at the time the regulatory agenda was prepared.

Where can I find the Department of Transportation rules? DOT's rules are in Title 34 of the Rules of the City of New York.

What laws govern the rulemaking process? DOT must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Commissioner of the New York City Department of Transportation (DOT) is authorized to promulgate rules regarding highway operations in the City pursuant to Section 2903(b) of the City Charter. The rules that DOT is seeking to amend are contained within Chapter 2 of Title 34 of the Rules of the City of New York (the "Highway Rules").

The purpose of the proposed rule is to update section 2-02 of the Highway Rules to resolve a potential ambiguity and make clear that for DOT permits, including street opening permits, the insurance policy or self-insurance provided by the permittee must provide coverage for damage arising from the permitted operations, whether at, below or above the street surface. Thus, for street opening permits, the insurance

or self-insurance must provide coverage for the opening of the street itself, as well as for any street-level, above-ground or underground work performed pursuant to the permit.

More specifically, the following changes are being proposed:

- Amendments to sections 2-02(a)(1) and 2-02(a)(2) to provide that insurance information must be included in the initial application to register an authorized DOT permittee and must be maintained to apply for individual permits.
- Amendments to section 2-02(a)(3) to make clear that the Commercial General Liability insurance policy obtained in advance of applying for a street opening permit, or coverage by self-insured or uninsured entities, must provide coverage for all damage arising from all work done pursuant to that permit, above and below ground, not only damage to the street surface arising from the opening of the street.
- Changes to sections 2-02(a)(3) to make clear that City officials and employees are named as Additional Insureds with respect to the insurance coverage obtained.
- The proposed rule also provides for a broader range of accepted ratings agencies consistent with current City practice.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

Section 1. Subparagraph (ix) of paragraph 1 of subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York is amended and a new subparagraph (x) of such paragraph is added, all to read as follows:

(ix) e-mail address, if any[.] ; and

(x) insurance information, as set forth in subparagraphs (i) through (viii) of paragraph 3 of subdivision (a).

§ 2. Subparagraph (vi) of paragraph 2 of subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York is amended and a new subparagraph (vii) of such paragraph is added, all to read as follows:

(vi) names of two agents/employees designated to receive summonses or notices of violation or other notices required by these rules or other provisions of law[.] ; and

(vii) insurance information, as set forth in subparagraphs (i) through (viii) of paragraph 3 of subdivision (a).

§ 3. Subparagraphs (i), (vi), and (vii) of paragraph 3 of subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York are amended to read as follows:

(i) Each applicant shall, before applying for a permit, obtain a Commercial General Liability (CGL) insurance policy or policies satisfying the requirements of this subparagraph and any self-insured or uninsured entity must provide coverage that satisfies the requirements of this subparagraph. [All CGL insurance policies, whether primary, excess or umbrella, shall:] All coverage, whether a CGL policy or as provided by a self-insured or uninsured entity must:

(A) be issued by a company or companies that may lawfully issue the required policy and has an A.M. Best rating of at least [A-VII] A-7, [or] a Standard and Poor's rating of at least A, a Moody's Investor's Service rating of at least A3, a Fitch Ratings rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; [.]

(B) provide coverage to protect the City of New York ("City"), and its officials and employees, and the applicant from claims for property damage and/or bodily injury, including death, which may, pursuant to a permit to be issued by the Department, including but not limited to a street opening permit, arise from any operations performed by or on behalf of the applicant [for which the Department has issued it a permit], whether at, above, or below the surface of the street(s);

(C) provide coverage at least as broad as that provided by the most recent edition of ISO Form CG 00 01;

(D) provide coverage for completed operations;

(E) provide coverage of at least \$1,000,000 combined single limit per occurrence, except that with respect to applications for permits to place a crane on a street, such minimum amount shall be no less than \$3,000,000 combined single limit per occurrence;

(F) provide that the City and its officials and employees are Additional Insureds with coverage at least as broad as set forth in the most recent editions of ISO Form CG 20 26 and CG 20 37;

(G) provide that the limit of coverage applicable to the Named Insured is equally applicable to the City and its officials and employees as Additional [Insured] Insureds.

(H) This policy shall not be cancelled or terminated, or modified or changed in a way that affects the City or its officials or employees by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Transportation, except that notice of termination for non-payment may be made on only ten (10) days written notice.

(I) If the permit applicant has applied for more than one thousand permits in the previous calendar year, the insurance policy shall contain each of the following endorsements;

(1) If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City as Additional Insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of the "occurrence", "claim", or "suit" unless notice thereof is received by the: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

(2) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City and its officials and employees as Additional [Insured] Insureds. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to the Named

Insured and to the City and its officials and employees at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(vi) In its sole discretion, the Department may allow applicants that frequently seek permits to self-insure, provided that the applicant:

(A) presents proof of excess or umbrella CGL coverage applicable to its operations under such permits;

(B) certifies that it has a self-insurance program in place that satisfies the requirements contained in subparagraph (i) of this paragraph (3) and will continue it for the life of the permit and the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of 34 RCNY § 2-11;

(C) agrees to provide the same defense of any suit against the City and its officials and employees that alleges facts that bring the suit within the scope of the coverage required in subparagraph (i) as an insurer would be obligated to provide under the laws of New York;

(D) submits a statement, signed by a person authorized to bind the applicant and acknowledged by a notary public, in which the applicant agrees to assume full liability for satisfying all obligations set forth in this subparagraph (vi), and

(E) provides the Department with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self insurance obligations.

(vii) The permittee shall maintain insurance throughout the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of 34 RCNY § 2-11, satisfying the requirements in subparagraph (i) of this paragraph (3) and providing coverage to protect the City and its officials and employees, the Department and the applicant from all claims for property damage and/or bodily injury, including death, which may arise from any defects discovered during such Guarantee Period.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Insurance Requirements for Street Opening Permits

REFERENCE NUMBER: 2022 RG 097

RULEMAKING AGENCY: Department of Transportation

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: December 20, 2022

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Insurance Requirements for Street Opening Permits

REFERENCE NUMBER: DOT-70

RULEMAKING AGENCY: Department of Transportation

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

December 20, 2022
Date