

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 rules is to provide a framework for the issuance of permits and revocable consents for the installation and maintenance of systems for flood mitigation within the City's right of way (i.e. public streets and sidewalks). In the aftermath of Superstorm Sandy, building owners across the City have expressed an interest in flood mitigation systems such as barriers and/or walls that would protect their buildings in instances of severe weather-related events that result in significant flooding. Additionally, provisions of the Highway Rules and Revocable Consent Rules are being reorganized and clarified to streamline the process by which the Department authorizes the installation of certain other structures throughout the City.

When and where is the Hearing? The New York City Department of Transportation (DOT) will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on August 7, 2014. The hearing will be at 55 Water Street, Bid Room A, New York, NY 10041. The entrance is located on the south side of the building facing the Vietnam Veterans Memorial.

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 Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rules@dot.nyc.gov.
- **Mail.** You can mail written comments to Michelle Craven, 55 Water Street, 9th Floor, New York, NY 10041.
- **Fax.** You can fax written comments to Michelle Craven, 212-839-9685.
- **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 calling 212-839-6550. You can also sign up in the hearing room before the hearing begins on August 7, 2014. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline to submit written comments is August 7, 2014.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs 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 mail at the address given above. You may also tell us by telephone at 212-839-6500. You must tell us by July 23, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments are available through the DOT Freedom of Information Law (FOIL) Office, 55 Water Street, 4th Floor, New York, NY 10041.

What authorizes DOT to make this rule? Sections 364 and 2903 of the City Charter and Title 19 of the New York City Administrative Code authorize DOT to make this proposed rule. This proposed rule was not included in DOT's regulatory agenda for this fiscal year because it was not contemplated when DOT published the agenda.

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

What rules 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 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The purpose of the proposed rules is to provide a framework for the issuance of permits and revocable consents for the installation and maintenance of systems for flood mitigation within the City's right of way (i.e. public streets and sidewalks). In the aftermath of Superstorm Sandy, building owners across the City have expressed an interest in flood mitigation systems such as barriers and/or walls that would protect their buildings in instances of severe weather-related events that result in significant flooding.

Certain flood mitigation system designs may require the placement of components upon the City's right of way. As such, the Department is proposing a rule that will add two categories of permits for any flood mitigation system that is to be placed upon or below sidewalks, or in some unique situations, roadways. Requirements, including New York City Department of Buildings and New York City Fire Department approvals, as well as timeframes for the installation and removal of flood mitigation system components during and after severe weather-related events, are also specified.

Flood mitigation system permits must be obtained for equipment that is placed in the City's right of way that is intended for the protection of buildings, areas of buildings, public service corporation facilities, or transit facilities from flooding. New section 2-10(e)(1) permits will be required for the placement of all above-ground components of a flood mitigation system. New section 2-10(e)(2) permits will only be required for at or below-ground flood mitigation system components that will remain in place at all times in order to expedite installation of the necessary above-ground flood mitigation system components. New section 7-04(37) revocable consents will be required for any at or below-ground flood mitigation system components that will remain in place for longer than 365 days.

Additionally, provisions of the Highway Rules and Revocable Consent Rules are being reorganized and clarified to streamline the process by which the Department authorizes the installation of certain other structures throughout the City.

The proposed rule will achieve this goal by:

- Renaming section 2-10 of the Highway Rules to cover two specific types of temporary structures (i.e., security structures and flood mitigation systems) while also deleting provisions that are no longer applicable.
- Adding provisions in section 2-10 of the Highway Rules related to temporary flood mitigation systems and flood mitigation system footings.
- Clarifying the references to the Revocable Consent Rules as they relate to temporary security structures in section 2-10 of the Highway Rules.
- Moving the provision regarding non-electrical sidewalk sockets (i.e. flagpole sockets) to section 2-14 of the Highway Rules since these structures are not temporary and would not otherwise fit within the new framework of section 2-10.
- Moving the provisions relating to structures, such as planters and bicycle racks, that are currently in section 2-10 of the Highway Rules to section 7-04 of the Revocable Consent Rules.

- Adding a new paragraph in section 7-04 of the Revocable Consent Rules relating to flood mitigation system components.

DOT's authority for these rules is found in sections 364 and 2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 2-10 of the Rules of the City of New York is amended to read as follows:

Section 2-10 [Street Furniture] TEMPORARY INSTALLATIONS FOR FLOOD MITIGATION AND SECURITY PURPOSES

(a) Permit Required.

(1) [See Revocable Consent Rules, Chapter 7 of this Title 34, for street furniture other than bicycle racks, small planters and non-electrical sidewalk sockets.

(2) The Commissioner may issue permits for the placement or installation of [bicycle racks, planters smaller than four square feet or two feet in diameter, as measured on a horizontal plane, non-electrical sidewalk sockets] flood mitigation systems as defined in this section and temporary structures [placed on sidewalks] for security purposes to be placed on sidewalks or roadways in accordance with this section.

~~(3)~~ It shall be a violation of these rules to erect, place or install [street furniture] the following on a sidewalk or roadway without a revocable consent pursuant to Chapter 7 of this Title or a permit pursuant to this section:

(i) a temporary structure for security purposes; or

(ii) any component part of a flood mitigation system unless such component part is a permitted encroachment pursuant to chapter 32 of the New York city building code.

(b) Permit Requirements. All permits are subject to applicable provisions contained in §2-02 of these rules.

(c) [General Conditions.

(1) Eight feet or one-half the sidewalk width, whichever is greater, shall be maintained by the permittee for unobstructed pedestrian passage.

(2) Street furniture shall not be placed at the curb directly opposite a building entrance or cellar door. Street furniture at the building line shall not be installed within three feet of a building entrance or cellar door.

(3) Unless otherwise authorized by the Commissioner in writing, street furniture shall not be installed within:

15 feet of Subway Entrance and Exit Stairs

- 15 feet of Bus Stop Zone
- 15 feet of Newsstand
- 15 feet of Fire Hydrant
- 10 feet of either side of the area created by extending the building line to the curb (the "corner")
- 8 feet of Bicycle Rack
- 7 feet of Driveway
- 5 feet of Cafe
- 5 feet of Bench
- 5 feet of Tree (without tree pit)
- 5 feet of Standpipe
- 4 feet of Telephone Booth/Pedestal
- 4 feet of Mailbox
- 4 feet of Street Light
- 4 feet of Parking Meter
- 4 feet of News Racks
- 4 feet of Utility Poles
- 4 feet of other street furniture authorized by applicable law or rule
- 3 feet of Canopy
- 3 feet of Utility Hole or Transformer Vault Cover
- 3 feet of Grating
- 3 feet of Sign Pole
- 3 feet of Edge of Tree Pit

(4) Street furniture shall be placed at least eighteen inches but no more than twenty-four inches from the face of the curb.

(5) Permittees shall be responsible for all repairs to streets damaged due to the placement, installation or removal of street furniture.

(6) Permittees shall be responsible for all street furniture maintenance.

(7) Placement of street furniture on distinctive sidewalks requires the written approval of the property owner.

(8) Permits shall expire one year after date of issuance, unless revoked sooner by the Commissioner.

(9) Permits are subject to review and approval each year prior to renewal.

(10) All street furniture permits are subject to the requirements of the Americans With Disabilities Act.

(d) Application.

(1) Applications shall be reviewed individually for each location, shall be subject to approval by the Commissioner, and shall include a sketch with the following information:

- (i) lot and block number(s) and address(es) of the property;
- (ii) property lines and sidewalk dimensions;
- (iii) existing topographical conditions, including but not limited to items listed in (c)(3); and
- (iv) existing vaults and areaways.

(2) Written approval from the Arts Commission and/or Landmarks Preservation Commission shall be obtained where required.

(3) Permittees shall obtain the written approval of the property owner.

(e) Design Criteria.

(1) Advertisements shall not be placed on street furniture.

(2) Street furniture finishes shall be graffiti retardant.

(3) Street furniture design shall be such that both the body and base are not conducive to trapping debris.

(f) Planters.

(1) Planters shall be no more than three feet in height and shall be spaced at intervals of four feet or more unless otherwise directed.

(2) Planters shall not occupy an area of more than four square feet or two feet in diameter. For larger planters see Revocable Consent Rules, Chapter 7 of this title.

(3) Planters shall be placed with the face or outer edge eighteen inches from the face of the curb or no more than three feet from the building line.

(4) Applicants shall adhere to the New York City Department of Parks and Recreation's applicable standards for acceptable trees in planters.

(5) Planters shall be maintained with live plants at all times and be kept free of debris.

(g) Non-electrical Sidewalk Sockets. Veteran organizations of the Armed Services may, with the consent of the Commissioner and owners of the abutting property, place flagpole sockets at least five feet apart and at least eighteen inches, but no more than twenty-four inches, from the face of the curb. When the sidewalk socket does not have a flagpole in it, it shall be capped or covered and flush with the sidewalk.

(h) Bicycle Racks. No person shall install a bicycle rack without a permit. All racks shall be installed in compliance with the bicycle rack clearances, which may be obtained from the Department's permit office. Based on sound engineering judgment and where pedestrian volume will allow, the minimum clearances may be waived. A site request that adheres to minimum clearances shall be denied where the bicycle rack would interfere with the safe passage of pedestrians.

(i) Maintenance Required by the Permittee or Property Owner.

(1) Street furniture shall be maintained in a safe condition at all times.

(2) Street furniture shall be graffiti and litter free at all times.

(3) The Department may order the repair, replacement or removal of unsafe or defective street furniture.

(4) Non-compliance shall result in permit revocation pursuant to §2-02 of these rules.

(j)] Definitions. The following terms shall mean:

(1) Flood Mitigation System. The term “flood mitigation system” means a group of interconnected component parts, including barriers, walls, and/or any ancillary structure such as stairs or ramps necessary for ingress or egress, that surround a building or portion of a building, public service corporation facility, or transit facility, and are certified by a New York State Licensed Professional Engineer as being capable of preventing water from entering the building or portion of a building, public service corporation facility, or transit facility, during a trigger event. A flood mitigation system may or may not include flood mitigation system footings.

(2) Flood Mitigation System Footing. The term “flood mitigation system footing” means an at or below ground component part of a flood mitigation system that must

remain in place at all times in order to expedite the installation of the remaining elements of the flood mitigation system prior to the occurrence of a trigger event.

(3) Trigger Event. The term “trigger event” means a hurricane, tropical storm, or other severe weather event predicted to result in significant flooding that has been forecasted to affect the City of New York by either the National Weather Service or the National Hurricane Center, or any successor weather entity or agency.

(d) Temporary [security structures] Security Structures.

(1) Notwithstanding any inconsistent provision of these or any other rules, the Commissioner may issue a permit for a period of one year for temporary structures to be placed on sidewalks or roadways for security purposes. Such structures shall include, but not be limited to, concrete barricades, large planters and fencing.

(2) Notwithstanding any inconsistent provision of these rules, for the purposes of this subdivision, the [standards and clearances] general conditions in [Chapter 7] Section 7-06 of this title shall apply. For concrete barricades, the standards for planters in [of Chapter 7] Section 7-04(a)(19) of this title shall apply.

(3) A permit issued pursuant to this subdivision may be revoked or modified at will by the Department.

(4) Such permit may be renewed for a maximum of two consecutive six-month periods. The approval of the [New York City Art] Public Design Commission of the City of New York shall be obtained prior to the grant of a renewal.

(5) At the expiration of the permit and any renewal, if applicable, the person or entity wishing to continue to maintain such structures shall do so only pursuant to a revocable consent obtained from the Department pursuant to [the provisions of Chapter 7] Section 7-04(a)(33) of this title.

(e) Flood Mitigation Systems.

(1) Notwithstanding any inconsistent provision of these or any other department rules, the Commissioner may issue a permit for a flood mitigation system to be placed on a sidewalk or roadway where such system is designed to protect a building or a portion of a building, public service corporation facility, or transit facility, where such building or facility was erected prior to the effective date of this subdivision, except where such system is a permitted encroachment pursuant to chapter 32 of the New York city building code.

(i) Applicants shall provide evidence of approvals obtained from the New York City Department of Buildings and the New York City Fire Department, and shall submit such evidence to the Department.

(ii) Notwithstanding any inconsistent provision of these or any other rules, for the purposes of this subdivision, the general conditions in Section 7-06 of this title shall apply to flood mitigation systems. In the event that field conditions will not allow for a flood mitigation system, once installed, to comply with the clear path requirements of Section 7-06(c)(3), the applicant shall cause a New York State Licensed Professional Engineer to produce and submit to the Department for review and approval, an authorized plan for the maintenance and protection of traffic to assist motorists, pedestrians, bicyclists, and others to proceed around the obstructed path (“the Plan”). Permittees shall comply with the Plan at all times that a permit is in effect.

(iv) Installation and Removal of Flood Mitigation Systems

(a) Permittee may install flood mitigation system components, exclusive of flood mitigation system footings, a maximum of forty-eight (48) hours prior to the occurrence of a trigger event.

(b) Permittee shall remove flood mitigation system components, exclusive of flood mitigation system footings, that it installed prior to the occurrence of a trigger event, within twenty-four (24) hours of water receding from the street, or if the weather system that is the subject of the trigger event is no longer forecasted to affect the City of New York, or such weather system is no longer predicted to result in flooding, within twenty-four (24) hours of the change in forecast or prediction.

(2) Additional Authorizations Required for Flood Mitigation System Footings.

In addition to receiving a permit in accordance with paragraph (1) above, no person shall install flood mitigation system footings upon a sidewalk or roadway, unless such flood mitigation system footing is a permitted encroachment pursuant to chapter 32 of the New York city building code, without first obtaining from the Department either:

(i) A revocable consent for the flood mitigation system footings pursuant to Section 7-04 of this title; or

(ii) A permit issued for a period of not more than one year for the flood mitigation system footings, at the expiration of which the flood mitigation system footings shall be removed if a revocable consent pursuant to Section 7-04 of this title is not obtained.

§2. Section 2-14 of Title 34 of the Rules of the City of New York is amended by adding a new subdivision (i) to read as follows:

(i) Flagpole sockets. It shall be permissible, by and with a permit of the Commissioner and with permission of the owners of abutting property, for any organization of military, naval and marine war veterans to place in sidewalks flagpole sockets to be used only for the placing therein of stanchions or poles on which to display American flags to be used on patriotic occasions, public celebrations, or in connection with public parades. Such organizations shall place flagpole sockets at least five feet apart and at least eighteen inches, but no more than twenty-four inches, from the face of the curb. The general conditions in Section 7-06 of this title applicable to revocable consents shall apply to such permits, except as provided in this subdivision. When the sidewalk socket does not have a flagpole in it, the socket shall be capped or covered and shall be flush with the sidewalk.

§3. Paragraph 19 of subdivision a of section 7-04 of Title 34 of the Rules of the City of New York is amended to read as follows:

(19) [Planter that is larger than two feet in diameter or that occupies more than four square feet in area. Planters may be approved for no more than one year pursuant to the provisions in § 2-10(j) of Chapter 2 of this Title 34, provided the placement of such

planters is for temporary security purposes. (Smaller planters may be approved through a permit obtained from the Department.)] **Planters.**

(i) Standard.

(A) The planter shall be no fewer than 18 and no greater than 48 inches high. The maximum area, measured at the planter's widest point, shall be 25 square feet, and the maximum dimension of the planter shall be five feet along the side which is perpendicular to the curb or eight feet along the side which is parallel to the curb. (Planters installed against the building face may be continuous.)

(B) If a planter is proposed to be placed above a sidewalk vault, a professional engineer shall certify that the sidewalk can support a 600-pound per square foot live load.

(C) No planter shall be constructed of wood. Wood cladding of other planter types is permitted if such cladding is fireproof and graffiti resistant. Concrete tubs, two inches thick, are recommended.

(D) The Department recommends the planting of small shrubs and flowers as they require less maintenance and are hardier than small trees. No woody growth shall overhang the edge of the planter. Suggested tree species for planters are: Crab Apples (Florida Snow Drift); Euonymus Pateris (Shrub); Taxus O. Densifornius (Japanese Yew); Scotch Pine; Austrian Pine; Ilex Meserva; Cornus Mass (Cornelian Dogwood); Syringia Reticulata (Japanese Tree Lilac); Prunus Sargentii (Columnaris); Acer Ginnala (Amur Maple); Acer Truncatum; Viburnum Sieboldii (Tree Form Viburnum).

(E) Planters shall be maintained, shall contain live plants at all times and shall be kept free of debris and graffiti.

(ii) Annual rate. The greater of \$2 per square foot of area as projected onto a horizontal plane, or \$25 per planter.

§4 Section 7-02 of Title 34 of the Rules of the City of New York is amended to read as follows:

[No] With the exception of the city of New York and/or its agents, no person or entity shall install or maintain any of the improvements listed in §7-04 of these rules without first obtaining a revocable consent from the Department. The Department shall not issue a revocable consent for any improvement which, in the judgment of DCP, has land use impacts or implications, unless such revocable consent has been reviewed and approved pursuant to ULURP. Revocable consents may not be assigned, transferred or otherwise conveyed without the prior written approval of the Commissioner.

§5. Subdivision a of section 7-04 of Title 34 of the Rules of the City of New York is amended by adding new paragraphs (36) and (37) to read as follows:

(36) Bicycle racks.

(i) Standard. All bicycle racks shall be installed in compliance with the general conditions in Section 7-06 of this title. A request that adheres to minimum

clearances may nonetheless be denied by the department if the bicycle rack would interfere with the safe passage of pedestrians.

(ii) Annual rate. \$25

(37) Any improvement that has been certified by a New York State Licensed Professional Engineer as a component of a flood mitigation system as defined in Section 2-10 of this title.

(i) Standard.

(A) The Department may grant a revocable consent for flood mitigation system components for the protection of a building or a portion of a building, public service corporation facility, or transit facility, where such building or facility was erected prior to the effective date of this paragraph.

(B) Such improvements shall be designed and constructed in compliance with the requirements of the New York City Department of Buildings and any other applicable requirements of or terms and conditions of approvals issued by other City entities.

(ii) Rate. \$2,000.

**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: Flood Mitigation

REFERENCE NUMBER: DOT 20

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/ [Morgan Monaco]
Mayor's Office of Operations

[6/30/2014]
Date

**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: Flood Mitigation Rules

REFERENCE NUMBER: 2014 RG 026

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
Acting Corporation Counsel

Date: July 1, 2014