



THE CITY RECORD

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THE CITY RECORD

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BOROUGH OF MANHATTAN No. 1

125TH STREET FOLLOW-UP ZONING TEXT

CD 10 N 090031ZRM
IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 7 (Special 125th Street District), to modify height and bulk regulations within the C4-7 zoned portion of the Core Subdistrict

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

ARTICLE IX SPECIAL PURPOSE DISTRICTS

* * *

Chapter 7 Special 125th Street District

* * *

97-411 Maximum floor area ratio in C4-4D, C4-7 and C6-3 Districts

In C4-4D, C4-7 or C6-3 Districts, the maximum permitted #floor area ratios# for new #developments# or #enlargements# shall be as listed in the following table for #residential#, #commercial# and #community facility uses and may only be increased pursuant to Section 97-42 (Floor Area Bonuses).

MAXIMUM PERMITTED FLOOR AREA RATIO (FAR)
FOR RESIDENTIAL, COMMERCIAL AND COMMUNITY
FACILITY USES

Dis- trict	OUTSIDE THE CORE SUBDISTRICT			WITHIN THE CORE SUBDISTRICT		
	#Residential floor area ratio#	Commercial #floor area ratio#	Community Facility #floor area ratio#	#Residential floor area ratio#	Commercial #floor area ratio#	Community Facility #floor area ratio#
C4-4D	5.4	4.0	6.0	5.4	4.0	6.0
C4-7	9.0	10.0	10.0	9.0-5.4	10.0-7.2	10.0-7.2
C6-3	6.0	6.0	6.0	5.4	6.0	6.0

* * *

97-422 Floor area bonus for visual or performing arts uses

In C4-4D, C4-7 or C6-3 Districts within the #Special 125th Street District#, for a new #development# or #enlargement# with frontage on 125th Street, the maximum #floor area ratio# otherwise permitted for #residential# or #commercial uses# listed in Section 97-411 may be increased up to the maximum #floor area ratio# specified in the following table, provided that for every four square feet of bonused #floor area#, an amount of space equivalent to one square foot of such bonused #floor area# shall be used for those visual or performing arts #uses# designated in paragraph (b) of Section 97-11 (Special Arts and Entertainment Uses). Such bonused #floor area# shall be permitted only upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the conditions set forth in Section 97-423 have been met.

MAXIMUM PERMITTED FLOOR AREA RATIO (FAR)
FOR RESIDENTIAL AND COMMERCIAL USES WITH
FLOOR AREA BONUS FOR VISUAL OR PERFORMING
ARTS USES

PUBLIC HEARINGS AND MEETINGS

See Also: Procurement; Agency Rules

BOARD MEETINGS

NOTICE OF MEETINGS

City Planning Commission

Meets in Spector Hall, 22 Reade Street, New York, New York 10007, twice monthly on Wednesday, at 10:00 A.M., unless otherwise ordered by the Commission.

City Council

Meets by Charter twice a month in Councilman's Chamber, City Hall, Manhattan, New York 10007, at 1:30 P.M.

Contract Awards Public Hearing

Meets in Spector Hall, 22 Reade Street, Main Floor, Manhattan, weekly, on Thursday, commencing 10:00 A.M., and other days, times and location as warranted.

Design Commission

Meets in City Hall, Third Floor, Manhattan, New York 10007 on the second Monday of the month, except August. For changes in the schedule, copies of monthly agendas, or additional information, please call (212) 788-3071 or visit our web site at nyc.gov/artcommission

Department of Education

Meets in the Hall of the Board for a monthly business meeting on the Third Wednesday, of each month at 6:00 P.M. The Annual Meeting is held on the first Tuesday of July at 10:00 A.M.

Board of Elections

32 Broadway, 7th floor, New York, NY 10004, on Tuesday, at 1:30 P.M. and at the call of the Commissioner

Environmental Control Board

Meets at 66 John Street, 10th floor, conference room, New York, NY 10038 at 9:15 A.M., once a month at the call of the Chairman.

Board of Health

Meets in Room 330, 125 Worth Street, Manhattan, New York 10013, at 10:00 A.M., at the call of the Chairman.

Health Insurance Board

Meets in Room 530, Municipal Building, Manhattan, New York 10007, at call of the Chairman.

Board of Higher Education

Meets at 535 East 80th Street, Manhattan, New York 10021, at 5:30 P.M., on fourth Monday in January, February, March, April, June, September, October, November and December. Annual meeting held on fourth Monday in May.

Citywide Administrative Services

Division Of Citywide Personnel Services will hold hearings as needed in Room 2203, 2 Washington Street, New York, N.Y. 10004.

Commission on Human Rights

Meets on 10th floor in the Commission's Central Office, 40 Rector Street, New York, New York 10006, on the fourth Wednesday of each month, at 8:00 A.M.

In Rem Foreclosure Release Board

Meets in Spector Hall, 22 Reade Street, Main Floor, Manhattan, Monthly on Tuesdays, commencing 10:00 A.M., and other days, times and location as warranted.

Franchise And Concession Review Committee

Meets in Spector Hall, 22 Reade Street, Main Floor, Manhattan, Monthly on Wednesdays, commencing 2:30 P.M., and other days, times and location as warranted.

Real Property Acquisition And Disposition

Meets in Spector Hall, 22 Reade Street, Main Floor, Manhattan, bi-weekly, on Wednesdays, commencing 10:00 A.M., and other days, times and location as warranted.

Landmarks Preservation Commission

Meets in the Hearing Room, Municipal Building, 9th Floor North, 1 Centre Street in Manhattan on approximately three Tuesday's each month, commencing at 9:30 A.M. unless otherwise noticed by the Commission. For current meeting dates, times and agendas, please visit our website at www.nyc.gov/landmarks.

Employees' Retirement System

Meets in the Boardroom, 22nd Floor, 335 Adams Street, Brooklyn, New York 11201, at 9:30 A.M., on the third Thursday of each month, at the call of the Chairman.

Housing Authority

Board Meetings will be held every other Wednesday at 10:00 A.M. (unless otherwise noted) in the Board Room on the 12th Floor of 250 Broadway. These meetings are open to the public. Pre-registration of speakers is required. Those who wish to register must do so at least forty-five (45) minutes before the scheduled Board Meeting. Comments are limited to the items on the agenda. Speakers will be heard in the order of registration. Speaking time will be limited to three (3) minutes. The public comment period will conclude upon all speakers being heard or at the expiration of thirty (30) minutes allotted by law for public comment, whichever occurs first.

For Board Meeting dates and times, and/or additional information, please visit our website at nyc.gov/nycha or contact us at (212) 306-6088. Copies of the agenda can be picked up at the Office of the Secretary at 250 Broadway, 12th floor, New York, New York, no earlier than 3:00 P.M. on the Friday before the upcoming Wednesday Board Meeting.

Any person requiring a reasonable accommodation in order to participate in the Board Meeting, should contact the Office of the Secretary at (212) 306-6088 no later than five (5) business days before the Board Meeting.

Parole Commission

Meets at its office, 100 Centre Street, Manhattan, New York 10013, on Thursday, at 10:30 A.M.

Board of Revision of Awards

Meets in Room 603, Municipal Building, Manhattan, New York 10007, at the call of the Chairman.

Board of Standards and Appeals

Meets at 40 Rector Street, 6th Floor, Hearing Room "E" on Tuesdays at 10:00 A.M. Review Sessions begin at 9:30 A.M. and are customarily held on Mondays preceding a Tuesday public hearing in the BSA conference room on the 9th Floor of 40 Rector Street. For changes in the schedule, or additional information, please call the Application Desk at (212) 513-4670 or consult the bulletin board at the Board's Offices, at 40 Rector Street, 9th Floor.

Tax Commission

Meets in Room 936, Municipal Building, Manhattan, New York 10007, each month at the call of the President.

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, September 24, 2008, commencing at 10:00 A.M.

District	OUTSIDE THE CORE SUBDISTRICT				WITHIN THE CORE SUBDISTRICT			
	#Residential floor area Ratio#		Commercial #floor area ratio#		#Residential floor area ratio#		Commercial #floor area ratio#	
	Base	Maximum	Base	Maximum	Base	Maximum	Base	Maximum
C4-4D	5.4	7.2	4.0	5.4	5.4	7.2	4.0	5.4
C4-7	9.0	12.0	10.0	12.0	9.0 5.4	12.0 7.2	10.0 7.2	12.0 8.65
C6-3	6.0	8.0	6.0	8.0	5.4	7.2	6.0	8.0

* * *

97-442**Height and setback regulations for C4-7 and C6-3 Districts**

The following modifications of the underlying district regulations shall apply for C4-7 and C6-3 Districts within the Special District:

- (a) The minimum and maximum base height of the #street wall# and the maximum height of a #development# or #enlargement# shall be modified, as set forth in the following table:

MINIMUM BASE HEIGHT, MAXIMUM BASE HEIGHT AND MAXIMUM BUILDING HEIGHT

District	Street Wall Height (in feet)		Maximum Building Height (in feet)
	Minimum Base Height	Maximum Base Height	
C4-7	60	85	290- 195
C6-3	60	85	160

All portions of buildings that exceed a height of 85 feet in C4-7 and C6-3 Districts shall be set back at least 15 feet from the #street line#, except that such setback depth may include the depth of any permitted recess in the #street wall#, according to the provisions of 97-433 (Street wall location).

- (b) Special regulations for certain C4-7 Districts
- For the area located within 50 feet of the 126th Street frontage and between 200 feet east of Adam Clayton Powell Boulevard and 150 feet west of Lenox Avenue/Malcolm X Boulevard, the height of any portion of a #development# or #enlargement# shall be limited to 80 feet.
 - For #zoning lots# bounded by 125th Street, Park Avenue and 124th Street, the maximum #building# height shall be 330 feet.
 - For Lots 1 and 7501 on #Block# 1910, the requirements of City Environmental Quality Review (CEQR) Environmental Designation number (E-201) have been modified, as set forth in the Technical Memorandum to the Final Environmental Impact Statement for CEQR Number 070DCP030M, dated July 18, 2008.
- (c) In C6-3 Districts, the maximum length of any #story# located above a height of 85 feet shall not exceed 150 feet. Such length shall be measured by inscribing within a rectangle the outermost walls at the level of each #story# entirely above a height of 85 feet. No side of such rectangle shall exceed a width of 150 feet.

* * *

No. 2**HUDSON SQUARE BID**

CD 2 **N 090020 BDM**
IN THE MATTER OF an application submitted by the Department of Small Business Services on behalf of the Hudson Square Business Improvement District pursuant to Section 25-405 of the Administrative Code of the City of New York, as amended, concerning the formation of the Hudson Square Business Improvement District.

BOROUGH OF QUEENS**No. 3****EDGEMERE URBAN RENEWAL PLAN**

CD 14 **C 080455 HUQ**
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 1st amendment to the Edgemere Urban Renewal Plan for the Edgemere Urban Renewal Area.

The proposed amendment will change the definitions of residential and commercial land use, in Section C.2.a and C.2.b to uses permitted by the Zoning Resolution and Sites 1, 33, and 34 are cited as exceptions to the height restriction for new residential buildings in Section C.3.e.

Nos. 4, 5, 6, 7 & 8**WATERPOINTE****No. 4**

CD 7 **C 080203 ZMQ**
IN THE MATTER OF an application submitted by the 151-45 Sixth Road Whitestone Partners, LLC pursuant to

Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 7d changing from an M1-1 District to an R3-2 District property bounded by the U.S. Pierhead Line, a line 560 feet westerly of the westerly street line and the northerly prolongation of the westerly street line of 154th Place (straight line portion), a line 670 feet northerly of 10th Avenue (straight line portion) and its westerly prolongation, a line 100 feet easterly of the northerly prolongation of the easterly street line of 152nd Street, a line 85 feet northerly of the easterly prolongation of the northerly street line of Powell's Cove Boulevard, the northerly centerline prolongation of 152nd Street, a line 130 feet northerly of Powell's Cove Boulevard, 151st Place, 6th Road and a line 280 feet easterly of 151st Street and its northerly prolongation, as shown on a diagram (for illustrative purposes only) dated June 16, 2008.

No. 5

CD 7 **C 080204 MMQ**
IN THE MATTER OF an application, submitted by 151-45 Sixth Road Whitestone Partners, LLC, 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 elimination, discontinuance and closing of a portion of 152nd Street between Powell's Cove Boulevard and the U.S. Bulkhead Line;
- the delineation of a permanent sewer easement;
- the adjustment of grades necessitated thereby; and
- any acquisition or disposition of real properties related thereto,

in accordance with Map No. 5004, dated May 15, 2008, and signed by the Borough President.

No. 6

CD 7 **C 080207 ZSQ**
IN THE MATTER OF an application submitted by the 151-45 Sixth Road Whitestone Partners, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following Sections of the Zoning Resolution:

- Section 78-312(c) to modify the front yard regulations of Section 23-45 (Minimum Required Front Yards) in the periphery of the development;
- Section 78-312(d) and Section 62-132(c) to modify the height and setback regulations of Section 23-631 (Height and setback requirements in R1, R2, R3, R4 and R5 Districts); and
- Section 78-312(f) to modify the distance between buildings requirements of Section 23-711 (Minimum Distance between Buildings on a single Zoning Lot);

to facilitate the development of a 114-unit large-scale residential development on property located at 151-45 Sixth Road (Block 4531, Lots 79 & 92, Block 4524, Lots 77 & 92, Block 4487, Lots 160, 169, 170 & 200, the bed of former 6th Road, and the bed of the proposed to be demapped portion of 152nd Street), in an R3-2*.

*Note: The site is proposed to be rezoned from an M1-1 District to an R3-2 District under a related application (C 080203 ZMQ).

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. 7

CD 7 **C 080207 (A) ZSQ**
IN THE MATTER OF an application submitted by the 151-45 Sixth Road Whitestone Partners, LLC pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure for the grant of a special permit pursuant to Section 78-312(f) of the Zoning Resolution to modify the distance between buildings requirements of Section 23-711 (Minimum Distance between Buildings on a single Zoning Lot) to facilitate the development of 52 1-family detached homes within a large-scale residential development on property located at 151-45 Sixth Road (Block 4531, Lots 79 & 92, Block 4524, Lots 77 & 92, Block 4487, Lots 160, 169, 170 & 200, the bed of former 6th Road, and the bed of the proposed to be demapped portion of 152nd Street), in an R3-2* District.

*Note: The site is proposed to be rezoned from an M1-1 District to an R3-2 District under a related application (C 080203 ZMQ).

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. 8

CD 7 **C 080208 ZSQ**
IN THE MATTER OF an application submitted by the 151-45 Sixth Road Whitestone Partners, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 78-34 (Special Permit Provisions for Certain Large-Scale Developments) of the Zoning Resolution to modify, in accordance with Section 78-351, the permitted residential floor area ratio to 0.6 and the open space ratio to 125, to facilitate the development of a 114-unit large-scale residential development on property located at 151-45 Sixth Road (Block 4531, Lots 79 & 92, Block 4524, Lots 77 & 92, Block 4487, Lots 160, 169, 170 & 200, the bed of former 6th Road, and the bed of the proposed to be demapped portion of 152nd Street), in an R3-2* District.

*Note: The site is proposed to be rezoned from an M1-1 District to an R3-2 District under a related application (C 080203 ZMQ).

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.

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

s11-24

COMMUNITY BOARDS**PUBLIC HEARINGS**

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO. 6 - Thursday, September 25, 2008, 6:30 P.M., P.S. 32 (Auditorium), 317 Hoyt Street, Brooklyn, NY

#C 090047ZMK

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: changing from an M2-1 zoning district to an M1-4/R7-2 zoning district, establishing a Special Mixed-Use District.

#C 090048ZSK

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(s)(2) of the Zoning Resolution to modify the height and setback regulations of Section 123-66 (Height and Setback Regulations), (Minimum Required Rear Yards), and the inner court regulations of Section 23-852, within a General Large Scale Development.

s19-25

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF THE BRONX

COMMUNITY BOARD NO. 2 - Wednesday, September 24, 2008, 6:00 P.M., Banknote Building, 1231 Lafayette Avenue, Bronx, NY

#C 070443MMX

IN THE MATTER OF an application submitted by the New York City Economic Development Corporation and the Department of Small Business Services, pursuant to Section 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 Food Center Drive and Hunt's Point Landing east of Halleck Street; the elimination, discontinuance and closing of Hunt's Point Avenue; the adjustment of grades necessitated thereby; and any acquisition or disposition of real properties related thereto.

s18-24

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF THE BRONX

COMMUNITY BOARD NO. 1 - Thursday, September 25, 2008, 6:30 P.M., 3024 Third Avenue, Bronx, NY

#080533PCY

IN THE MATTER OF an application submitted by the Department of Transportation, the Department of Parks and Recreation and the Department of Citywide Administrative Services pursuant to Section 197-c of the New York City Charter for site selection and acquisition of easements for use as a pedestrian and bicycle pathway.

s19-25

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO. 13 - Wednesday, September 24, 2008, 7:00 P.M., Coney Island Hospital (2nd Floor), 2601 Ocean Parkway, Brooklyn, NY

PUBLIC HEARING on proposed Capital and Expense Items for inclusion in Budget Requests for Fiscal Year 2010.

s18-24

EMPLOYEES' RETIREMENT SYSTEM**INVESTMENT MEETING**

Please be advised that the next Investment Meeting of the Board of Trustees of the New York City Employees' Retirement System has been scheduled for Tuesday, September 23, 2008 at 9:30 A.M. to be held at the New York City Employees' Retirement System, 335 Adams Street, 22nd Floor Boardroom, Brooklyn, NY 11201-3751.

s16-22

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, **September 23, 2008** 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.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF THE BRONX 09-3008 – Block Various, lot Various-
Fieldston Historic District
A romantically planned suburb developed by the Delafield Estate in 1914 by engineer Albert Wheeler based on recommendations made by Frederick Law Olmsted and James R. Croe, characterized by an eclectic variety of residential styles including variants of the Colonial Revival, Craftsman, various picturesque revivals including Medieval, Tudor, and Mediterranean, as well as formal modernist houses. Application is to proposed master plan for certain alterations to improvements in the Fieldston Historic District.

PROPOSED RULEMAKING

A proposal to adopt the Fieldston Historic District Implementation Rules for a proposed master plan for certain alterations to improvement in the Fieldston Historic District pursuant to the City Administrative Procedures Act.

BINDING REPORT

BOROUGH OF QUEENS 09-0519 - Block 10097, lot 1-153-10 Jamaica Avenue - First Reformed Church of Jamaica - Individual Landmark
An Early Romanesque Revival style church designed by Sidney J. Young, built in 1858-1859 and altered in 1902. Application is to install free-standing signage.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF QUEENS 08-7806 - Block 1448, lot 27-34-42 88th Street - Jackson Heights Historic District
An Anglo-American Garden style home designed by C. L. Varrone and built in 1925-26. Application is to legalize the installation of fences at the front yard without Landmarks Preservation Commission permits.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF QUEENS 08-7978 - Block 1448, lot 28-34-44 88th Street - Jackson Heights Historic District
An Anglo-American Garden style home designed by C. L. Varrone and built in 1925-26. Application is to legalize the installation of fences at the front yard without Landmarks Preservation Commission permits.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF QUEENS 08-7824 - Block 1448, lot 29-34-46 88th Street - Jackson Heights Historic District
An Anglo-American Garden style home designed by C. L. Varrone and built in 1925-26. Application is to legalize the installation of fences at the front yard without Landmarks Preservation Commission permits.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 09-1696 - Block 43, lot 27-74 Hudson Avenue - Vinegar Hill Historic District
A Greek Revival style rowhouse built circa 1828-1841. Application is to install storefront infill.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 09-2887 - Block 234, lot 59-128 Willow Street - Brooklyn Heights Historic District
A neo-Gothic apartment house designed by Slee & Bryson and built in 1925. Application is to construct an access ramp and alter the entrance stairs and to install a new canopy.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 09-1107 - Block 234, lot 24-169 Columbia Heights - Brooklyn Heights Historic District
A Beaux-Art style hotel building built in 1903. Application is to replace the marquee and install ironwork and lighting.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 09-0019 - Block 249, lot 43-166 Montague Street - Brooklyn Heights Historic District
Romanesque Revival style office building, designed by George Morse and built in 1891. Application is to install a barrier-free access lift.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 09-0409 - Block 261, lot 47-42 Garden Place - Brooklyn Heights Historic District
An Eclectic style house built in 1861-1879. Application is to construct a rear yard addition, and alter the rear facade.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 08-0957, 08-0958 - Block 1063, lot 5, 6-
79-81 7th Avenue - Park Slope Historic District
Two one-story commercial buildings built prior to 1939. Application is to demolish the buildings and construct a new building. Zoned C1-3.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-0791 - Block 174, lot 25-79 Franklin Street - Tribeca East Historic District
A converted dwelling built in 1814-1815 and altered in 1930 and 1966. Application is to install new storefront infill.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-2754 - Block 547, lot 30-715 Broadway - NoHo Historic District
A Renaissance Revival style store and office building, designed by Robert Maynicke and built in 1894-1896. Application is to install a flagpole.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-7350 - Block 231, lot 4-307 Canal Street, aka 49 Howard Street - SoHo-Cast Iron

Historic District
An Italianate style store building, built in 1856 and 1862. Application is to replace ground floor infill.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-0915 - Block 473, lot 10-478-482 Broadway - SoHo Cast Iron Historic District
A neo-Grec style store and loft building designed by Richard Morris Hunt and built in 1873-1874. Application is to install mechanical equipment on the roof.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-3072 - Block 500, lot 34-89 Greene Street, aka 127 Spring Street - Soho Cast-Iron Historic District
A store and loft building designed by J.B. Snook and built in 1886-87. Application is to install storefront infill.

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 09-1791 - Block 632, lot 55-535 Hudson Street - Greenwich Village Historic District
An apartment building designed by Samuel Roth and built in 1951-1953. Application is to modify openings and to create a master plan governing the future installation of storefront infill and signage.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-2517 - Block 622, lot 16-400 Bleecker Street - Greenwich Village Historic District
A Queen Anne style apartment house built in 1888. Application is to install new storefront infill.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-1600 - Block 567, lot 9-6 East 10th Street - Greenwich Village Historic District
A Greek Revival style house built in 1848 and altered in the early twentieth century. Application is to alter the front facade and construct a rear addition. Zoned R7-2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-2603 - Block 625, lot 7501-299 West 12th Street - Greenwich Village Historic District
An apartment house designed by Emery Roth and built in 1929-1931. Application is to install a rooftop pergola.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-2481 - Block 552, lot 13-80 Washington Place - Greenwich Village Historic District
A Greek Revival style rowhouse built in 1839 and altered in the early 20th century. Application is to alter the front facade; construct rear yard addition and a rooftop addition, and to excavate the rear yard. Zoned R7-2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-2922 - Block 551, lot 7-19 Washington Square North - Greenwich Village Historic District
A Greek Revival style brick house with Italianate style details built in 1835-1836 with a rear extension designed by McKim, Meade and White and built in 1886. Application is to install a barrier-free access ramp, demolish a chimney, install rooftop equipment and bulkheads.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-7939 - Block 743, lot 3-152 9th Avenue - Chelsea Historic District
A venacular style rowhouse built in 1852 and altered in the 20th-century. Application is to construct a rooftop addition. Zoned R8-A.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-2536 - Block 682, lot 29-2 Park Avenue - Individual Landmark
An Art Deco office tower designed by Ely Jacques Kahn and built in 1926-1928. Application is to establish a Master Plan governing the future installation of storefront infill.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-1500 - Block 834, lot 29-17 West 32nd Street - (former) Aberdeen Hotel-Individual Landmark
A Beaux-Arts style hotel designed by Harry B. Mulliken and built in 1902-1904. Application is to install an entrance canopy.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-1506 - Block 1015, lot 12-217-247 West 43rd Street, aka 216-232 West 44th Street - New York Times Building-Individual Landmark
A neo-Gothic style skyscraper designed by Buchman & Fox and built 1912-1913, with a French Renaissance style addition designed by Ludlow & Peabody and built in 1922-1924, and a neo-Gothic style addition designed by Albert Kahn, Inc. and built in 1930-1933. Application is to install signage and to replace a clock.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-2061 - Block 1010, lot 5-165 West 57th Street - Columbia Artists Management Inc. Building & former Louis H. Chalif Normal School of Dance-Individual Landmark
An Italian Renaissance style building designed by George A. and Henry Boehm and built in 1916. Application is to install an entrance ramp and rooftop mechanical equipment.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 08-7596 - Block 1124, lot 3-67, 69, 71 and 73 West 71st Street - Upper West Side/Central Park West Historic District
A row of four neo-Grec style rowhouses, designed by Thom and Wilson and built in 1887-1888. Application is to install new storefront infill, install a storefront at #67, and construct rear yard additions at #67 and #69. Zoned C-18a, R8b.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-0168 - Block 1211, lot 33-428 Columbus Avenue - Upper West Side/Central Park West Historic District
An Early 20th century commercial style office building designed by Charles J. Perry and built in 1900. Application is to alter and enlarge an existing rooftop addition. Zoned C1-8A.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 06-4323 - Block 1251, lot 7501-190 Riverside Drive - Riverside-West End Historic District
An Beaux-Arts style apartment building designed by Townsend, Steinle & Haskell and built in 1909-10. Application is to construct a rooftop addition. Zoned R10A.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-0968 - Block 1235, lot 57,58,158
258-262 West 88th Street - Riverside-West End Historic District
Three Renaissance Revival style rowhouses designed by Nelson M. Whipple and built in 1884. Application is to construct rooftop and rear yard additions.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 09-1926 - Block 1420, lot 1-200 East 66th Street - Manhattan House-Individual Landmark
A Modern style mixed-use complex, designed by Mayer & Whittlesey and Skidmore, Owings, & Merrill, and built between 1947 and 1951. Application is to replace driveways and sidewalks at two entrances.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 07-3450 - Block 1520, lot 102-1147 Park Avenue - Carnegie Hill Historic District
A neo-Grec style rowhouse designed by John Sullivan and built in 1884-85. Application is to alter the front facade.

s10-23

TRANSPORTATION**PUBLIC HEARING**

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, September 24, 2008. 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 Commonwealth Boulevard LLC to maintain and use a fenced-in area on the southwest sidewalk of 246th Street, northwest of Service Road of Grand Central Parkway, in the Borough of Queens. 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 - \$100/per annum.

the maintenance of a security deposit in the sum of \$1,500, 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 Commonwealth Boulevard LLC to maintain and use a fenced-in area on the east sidewalk of Commonwealth Boulevard, south of Cullman Avenue, in the Borough of Queens. 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 - \$100/per annum.
the maintenance of a security deposit in the sum of \$1,500, 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 Citigroup Inc. to construct, maintain and use bollards and horizontal ties on the sidewalks of the site bounded by 44th Road, Crescent Street, Hunter Street and 44th Drive, in the Borough of Queens. 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 no compensation or security deposit payable to the city.

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 Michael Jackson to construct, maintain and use a stoop and a fenced-in area on the west sidewalk of West 4th Street, north of West 11th 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 modification of revocable consent authorizing New York University to maintain and use additional pipes and conduits in the vicinity of Washington Square, in the Borough of Manhattan. The proposed revocable consent is for a term of five years from the Date of Approval by the Mayor to June 30, 2014, and provides among other terms and conditions, for compensation payable to the City according to the following schedule:
For the period July 1, 2009 to June 30, 2010 - \$145,504

For the period July 1, 2010 to June 30, 2011 - \$148,713
 For the period July 1, 2011 to June 30, 2012 - \$151,922
 For the period July 1, 2012 to June 30, 2013 - \$155,131
 For the period July 1, 2013 to June 30, 2014 - \$158,341

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 Lester Haynes to maintain and use a fenced-in area on the southwest sidewalk of East 69th Street, southeast of Avenue M, and on the southeast sidewalk of Avenue M, southwest of East 69th Street, in the Borough of Brooklyn. 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 - \$100/per annum.

the maintenance of a security deposit in the sum of \$2,500, 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.

s4-24

COMMUTER VAN SERVICE AUTHORITY Six-Year Renewal

NOTICE IS HEREBY GIVEN THAT the Department of Transportation is conducting a public hearing on the Six-Year Renewal of a Van Authority in the Borough of Brooklyn. The van company requesting renewal is Blackstreet Van Lines, Inc. The address is 310 Lenox Road, Apt. 4H, Brooklyn, NY 11226. The applicant utilizes 16 vans daily to provide service 24 hours a day.

There will be a public hearing held on Monday, October 6, 2008 at the Brooklyn Borough President's Office, 209 Joralemon Street, Community Room, Brooklyn, New York 11201, from 2:00 P.M. - 4:00 P.M. so that you may have an opportunity to voice your position on this application. In addition, written comments in support or in opposition to this application may be sent to Ms. Dorothy Szorc at the New York City Department of Transportation, Bureau of Traffic Operations, 40 Worth Street, Room 1035, New York, NY 10013 no later than October 6, 2008. Any written comments received after this date may not be considered. Those opposing the application must clearly specify why the proposed service will not meet present and/or future public convenience and necessity.

s22-26



SUPREME COURT

■ NOTICE

RICHMOND COUNTY IA PART 74 NOTICE OF PETITION INDEX NUMBER (CY) 4018/08

In the Matter of Application of the CITY OF NEW YORK, relative to acquiring title in fee simple absolute to certain real property where not heretofore acquired for the

GRANTWOOD RETENTION BASIN

located in the area generally bounded by Shotwell Avenue to the east, Tyron Avenue to the south, Grantwood Avenue to the west, and Woodrow Road to the north, in the Borough of Staten Island, City and State of New York.

PLEASE TAKE NOTICE that the Corporation Counsel of the City of New York intends to make application to the Supreme Court of the State of New York, Richmond County, IA Part 74, for certain relief.

The application will be made at the following time and place: At 360 Adams Street, Brooklyn, New York, in the City and State of New York, on October 3, 2008, at 9:30 A.M., or as soon thereafter as counsel can be heard.

The application is for an order:

- 1) authorizing the City to file an acquisition map in the office of the Clerk of Richmond County;
- 2) directing that upon the filing of said map, title to the property sought to be acquired shall vest in the City;
- 3) providing that just compensation therefor be ascertained and determined by the Supreme Court without a jury; and
- 4) providing that notices of claim must be served and filed within one calendar year from the vesting date.

The City of New York, in this proceeding, intends to acquire title in fee simple absolute to certain real property where not heretofore acquired for the same purpose, for the Grantwood Retention Basin, situated in the Arden Heights watershed area, for the storage and conveyance of stormwater, in the Borough of Staten Island, City and State of New York.

The description of the real property to be acquired is as follows:

Borough of Staten Island Block 5676, Lot 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Staten Island, County of Richmond, City and State of New York, being more particularly bounded and described as follows:

BEGINNING at the point formed by the intersection of the easterly line of Grantwood Avenue and the southwesterly line of Woodrow Road;

RUNNING THENCE along the southwesterly line of Woodrow Road, North 39 degrees 20 minutes 00 seconds East, a distance of 387.18 feet to a point;

THENCE along the southeasterly line of Woodrow Road, South 74 degrees 48 minutes 30 seconds East, a distance of 20.00 feet to a point;

THENCE along the westerly line of Shotwell Avenue, South 8 degrees 56 minutes 55 seconds East, a distance of 420.00 feet to a point;

THENCE along the division line between the Tax Lots 1, 49 and 125 in the Tax Block 5676 as shown on the tax map of the City of New York for the Borough of Staten Island as said tax map existed on October 30, 2001, South 76 degrees 23 minutes 57 seconds West, a distance of 299.16 feet (as per survey) and 299.15 feet (as per tax map) to a point on the easterly line of Grantwood Avenue;

THENCE along said easterly line of Grantwood Avenue, North 11 degrees 37 minutes 00 seconds West, a distance of 195.00 feet to the point or place of **BEGINNING**.

Surveys, maps or plans of the property to be acquired are on file in the office of the Corporation Counsel of the City of New York, 100 Church Street, New York, New York 10007.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to EDPL §402(B)(4), any party seeking to oppose the acquisition must interpose a verified answer, which must contain specific denial of each material allegation of the petition controverted by the opponent, or any statement of new matter deemed by the opponent to be a defense to the proceeding. Pursuant to CPLR 403, said answer must be served upon the office of the Corporation Counsel at least seven (7) days before the date that the petition is noticed to be heard.

Dated: August 19, 2008, New York, New York
 MICHAEL A. CARDOZO
 Corporation Counsel of the City of New York
 100 Church Street
 New York, New York 10007
 Tel. (212) 788-0710

SEE MAP ON BACK PAGE

s12-25



CITYWIDE ADMINISTRATIVE SERVICES

DIVISION OF MUNICIPAL SUPPLY SERVICES

■ AUCTION

PUBLIC AUCTION SALE NUMBER 09001-G

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, October 1, 2008 (SALE NUMBER 09001-G). 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: 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 web site, 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.

s18-o1

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 1141

NOTICE IS HEREBY GIVEN of a ONE (1) day public auction of unclaimed salvage vehicles, motorcycles, automobiles, trucks, and vans. Inspection day is September 22, 2008 from 10:00 A.M. - 2:00 P.M. Salvage vehicles, motorcycles, automobiles, trucks, and vans will be auctioned on September 23, 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.

s15-23



“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.”

CITYWIDE ADMINISTRATIVE SERVICES

DIVISION OF MUNICIPAL SUPPLY SERVICES

■ SOLICITATIONS

Goods

JOINT COMPOUND (PIPE), AND PUTTY (WOOD) – Competitive Sealed Bids – PIN# 8570801235 – DUE 10-07-08 AT 10:30 A.M.

● **TRUCK, CONVENTIONAL CAB WITH HOOK TYPE LOADER BODY** – Competitive Sealed Bids – PIN# 8570801501 – DUE 10-17-08 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
 Office of Vendor Relations, 1 Centre Street, Room 1800
 New York, NY 10007. Jeanette Megna (212) 669-8610.

s22

■ AWARDS

Goods

PAPER, TOILET, ROLL, WHITE – Competitive Sealed Bids – PIN# 857800764 – AMT: \$8,507,950.00 – TO: International Paper Company dba Xpedx, One Penn Plaza, Suite 2814, New York, NY 10119.

s22

■ 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

CORRECTION

■ SOLICITATIONS

Services (Other Than Human Services)

SERVICE AND REPAIR TO BODY ORIFACE SCANNING SYSTEM (BOSS CHAIR) – Sole Source – Available only from a single source - PIN# 2-0101-0044-2009 – DUE 10-03-08 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.

Department of Correction, 17 Battery Place, New York, NY 10004. Sharon Hall-Frey (212) 487-2703, sharon.hall-frey@doc.nyc.gov

s17-23

CENTRAL OFFICE OF PROCUREMENT

■ SOLICITATIONS

Goods & Services

LABOR AND MATERIALS FOR THE REPAIR AND OR PARTS OF THE CEIA-USA WALK THRU METAL DETECTOR UNITS – Sole Source – Available only from a single source - PIN# 2-0101-0042/09 – DUE 10-03-08 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.

Department of Correction, 17 Battery Place, 4th Floor, NY, NY 10004. Lilliana Alvarez-Cano (212) 487-7297, lilliana.cano@doc.nyc.gov

s17-23

ON-CALL REPAIRS AND PREVENTIVE MAINTENANCE SERVICES FOR ALL MECHANICAL EQUIPMENT AND SYSTEMS – Competitive Sealed Bids – PIN# 072200767EHS – DUE 10-29-08 AT 11:00 A.M. – The pre-bid conference is scheduled for Wednesday, October 15, 2008 at 10:00 A.M. located at EHS Trailer, 14-11 Hazen Street, East Elmhurst, New York, NY 11372. Attendance at this pre-bid conference is OPTIONAL BUT HIGHLY RECOMMENDED. The cost of the bid package is \$25.00 check or money order payable to: Commissioner of Finance.

The bid package can be purchased between the hours of 9:00 A.M. - 4:30 P.M. For admission to Rikers Island, interested contractors must execute a "Security Clearance Request and Authorization Form," which is furnished with each bid package (complete Section 3 and 4 ONLY). The Security Clearance Form can be received by fax at (212) 487-7323 or by email at: lilliana.cano@doc.nyc.gov and be certain to indicate the specific PIN for which entry is sought on your fax cover sheet.

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 Correction, 17 Battery Place, 4th Floor, NY, NY 10004. Lilliana Alvarez-Cano (212) 487-7297, lilliana.cano@doc.nyc.gov

s22

Services (Other Than Human Services)

LOCKING DEVICE/SECURITY DEVICE THROUGHOUT DOC – Sole Source – Available only from a single source - PIN# 2-0101-0043/2009 – DUE 10-01-08 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.

Department of Correction, 17 Battery Place, 4th Floor New York, NY 10004. Shaneza Shinath (212) 487-7299 shaneza.shinath@doc.nyc.gov

s17-23

ECONOMIC DEVELOPMENT CORPORATION

CONTRACTS

■ SOLICITATIONS

Construction / Construction Services

QUEENS PLAZA BICYCLE AND PEDESTRIAN IMPROVEMENT PROJECT IFB – Public Bid – PIN# 14420002 – DUE 10-17-08 AT 2:00 P.M. – Detailed submission guidelines are outlined in the Bid package. The cost of the Bid package is \$150.00. The only form of payment accepted will be exact cash, certified check or money order payable to NYCEDC.

This project has Disadvantaged Business Enterprise (“DBE”) participation goals and all respondents will be required to submit a DBE Utilization Plan with their responses. For the list of companies who have been certified as DBE, visit the New York State Uniform Certification Program at <http://biznet.nysucp.net>

A non-mandatory pre-bid meeting is scheduled for Tuesday, September 30, 2008 at 10:00 A.M. Attendees are requested to come to the NYCEDC Offices at 110 William Street, 6th Floor. Respondents may submit questions and/or request clarifications, with regards to the subject matter of the project, from NYCEDC no later than 5:00 P.M. on Friday, October 3, 2008. Any questions or requests for clarifications received after this date will not be answered. All questions received through Friday, October 3, 2008 will be posted by Thursday, October 9, 2008 to www.nycedc.com/RFP, so as to be available to all respondents, if NYCEDC determines that such answers provide material clarification to the Bid. Bids will not be accepted after 2:00 P.M. Bids will be opened publicly at the office of NYCEDC at the date and time specified above.

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.

Economic Development Corp., 110 William Street, 6th Floor New York, NY 10038. Maryann Catalano, Senior Vice President, Contracts (212) 312-3969 queensplaza@nycedc.com

s22

EDUCATION

DIVISION OF CONTRACTS AND PURCHASING

■ SOLICITATIONS

Goods

CONNECT DIRECT SOFTWARE – CSB – PIN# Z0889040 – DUE 10-14-08 AT 5:00 P.M. – Bid opening: Wednesday, October 15th, 2008 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.

NYCDOE, Division of Contracts and Purchasing, Room 1201, 65 Court Street, Brooklyn, NY 11201, (718) 935-2300, http://schools.nyc.gov/dcp

s22

OFFICE OF EMERGENCY MANAGEMENT

■ INTENT TO AWARD

Services (Other Than Human Services)

MAINTENANCE FOR EMERGENCY OPERATIONS CENTER COMMAND AND CONTROL SOFTWARE – Sole Source – Available only from a single source -

PIN# 01709NC4001 – DUE 10-06-08 AT 10:00 A.M. – The New York City Office of Emergency Management intends to enter into sole source negotiations with NC4 Public Sector, LLC to provide maintenance and support for the Emergency Operations Center Command and Control Software (“E Team”) currently used by the agency. OEM uses the proprietary software to manage communication and information flow within the command center, which is a critical part of operations.

Any vendor interested in providing this service is invited to submit an expression of interest in writing to: NYC OEM, 165 Cadman Plaza East, Brooklyn, NY 11201. Attention: Erika Yan, or via email at procurement@oem.nyc.gov.

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.

Office of Emergency Management, 165 Cadman Plaza East Brooklyn, NY 11201. Erika Yan (718) 422-4845 procurement@oem.nyc.gov

s19-25

FIRE

■ SOLICITATIONS

Construction / Construction Services

PLUMBING SERVICES – Competitive Sealed Bids – PIN# 057080000582 – DUE 10-22-08 AT 4:00 P.M. – At Fire Department facilities throughout the five boroughs. This contract is subject to participation goals for MBE’s and/or WBE’s as required by Local Law 129 of 2005.

This contract is subject to Local Law 220, Prevailing Wages.

This contract is subject to Environmental Preferable Purchasing Laws.

This contract is subject to apprenticeship program requirements as described in the solicitation materials.

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.

Fire Department, 9 MetroTech Center, 5th Floor, Brooklyn, NY 11201. Kristina LeGrand (718) 999-1234, legrandkm@fdny.nyc.gov

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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

ETHICON ENDO HARMONIC SCALPEL – CSB – PIN# 11109000049 – DUE 09-29-08 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.

Bellevue Hospital Center, Purchasing Department 462 First Avenue, Room 12E32, New York, NY 10016. Matthew Gaumer, Procurement Analyst, (212) 562-2887.

s22

JOHNSON AND JOHNSON HARMONIC ACE – Competitive Sealed Bids – PIN# 231-09-065 – DUE 10-03-08 AT 10:00 A.M.

- APLIGRAF (TISSUE) – Competitive Sealed Bids – PIN# 231-09-067 – DUE 10-01-08 AT 10:00 A.M.
- VARIOUS SURGICAL INSTRUMENTS – Competitive Sealed Bids – PIN# 231-09-068 – DUE 10-03-08 AT 2:30 P.M.

For the Operating Room Dept. located at Woodhull Medical and Mental Health Center, 760 Broadway, Brooklyn, NY 11206. 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 millicent.thompson@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.

Millicent Thompson (718) 260-7686, millicent.thompson@nychhc.org

s22

Goods & Services

SUPPLY AND INSTALL SECURITY SYSTEMS WITH FIRE SAFETY SECURITY DEVICES – Competitive Sealed Bids – PIN# 22209038 – DUE 10-06-08 AT 3:00 P.M. – at Lincoln Hospital.

A pre-bid conference will be held on 9/30/2008 at 10:00 A.M. at Lincoln Medical and Mental Health Center, 234 East 149th Street, Bronx, NY 10451. Meeting at the Purchasing Department, Room 2A2.

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.

Generations+ / Northern Manhattan Health Network for Metropolitan Hospital c/o Lincoln Hospital Center 234 East 149th Street, Bronx, NY 10451.

Junior Cooper (718) 579-5096. s22

DIFFERENT WATER TESTING FOR THE REVERSE OSMOSIS SYSTEM AND HEMODIALYSIS SYSTEM, GEL CLOT TESTING AND BACTERIA COUNT TESTING – CSB – PIN# 111090000048 – DUE 10-03-08 AT 12:00 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.

Bellevue Hospital Center, Purchasing Department 462 First Avenue, Room 12E31, NY, NY 10016.

Wilda Suarez, Procurement Analyst, (212) 562-3950. s22

“IN BUILDING” DISTRIBUTED ANTENNA SYSTEM – CSB – BID# RB 09-262286 – DUE 10-10-08 AT 3:00 P.M. – To handle all wireless RFID and cell phone devices for new Psychiatric Hospital - includes materials and installation. There will be a mandatory walk-thru on 09/25/08 between the hours of 10:00 A.M. and 12:00 noon.

For bid pick up please contact Rup Bhowmick at (718) 245-2122.

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.
Kings County Hospital Center, 451 Clarkson Avenue, Brooklyn, NY 11203. Dino Civan (718) 245-4782.

☛ s22

Services

TECHNICAL SUPPORT – CSB – BID# RB09-268692 – DUE 10-07-08 AT 3:00 P.M. – Existing work order system that needs upgrade from Maximo Advantage to Archibus. Contract Date: 10/15/08 through 6/20/09. There will be a mandatory walk-thru on 09/24/08 between the hours of 10:00 A.M. and 11:00 A.M. Place: Fac. Mgmt. Conference Room, E-Bldg., 2nd Floor.

For bid pick-up please contact Rup Bhowmick at (718) 245-2122.

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.
Kings County Hospital Center, 451 Clarkson Avenue, Brooklyn, NY 11203. Izhar Shams (718) 245-2950.

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PREVENTIVE MAINTENANCE SERVICE CONTRACT FOR FORK LIFTS – 1 CSB – BID# QHN 2009 1025 EHC – DUE 10-09-08 AT 2:00 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.
Queens Health Network, Procurement Services and Contracts, 82-68 164th Street, "S" Building, 2nd Fl., Jamaica, NY 11432. Debra Baez (718) 883-6000.

☛ s22

CLEAN 750 GALLON ACID WASTE NEUTRALIZATION CONTAMINATING TANK – CSB – BID# TM09-252499 – DUE 10-01-08 AT 3:00 P.M. – Includes materials and installation. There will be a mandatory walk-thru on 09/24/08 and 9/25/08 at 10:00 A.M. Place: Pathology Dept. Room 151 (Please contact Ms. Sharma at (718) 245-5300 upon arrival).

For bid pick up please contact Theresa Meredith at (718) 245-3223.

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.
Kings County Hospital Center, 451 Clarkson Avenue, Brooklyn, NY 11203. Komal Sharma (718) 245-5300.

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Construction / Construction Services

ROOFING WORK FOR WALKWAY (GENERAL CONSTRUCTION) – Competitive Sealed Bids – PIN# 231-09-064 – DUE 10-15-08 AT 10:00 A.M. – Provide materials, equipment, labor and required bond for roofing work located at Woodhull Medical and Mental Health Center, 760 Broadway, Brooklyn, NY 11206. Mandatory site visit scheduled for Friday, October 3, 2008 at 10:00 A.M. or 11:00 A.M. at Woodhull Medical and Mental Health Center, 760 Broadway, Brooklyn, NY 11206. Engineering/Maintenance Department, Room 1BC04, Jesse Crawford. Bid package with complete description can be picked up and returned to the Purchasing Department, Cumberland D&T Center, 100 North Portland Avenue, Room C-32, Brooklyn, NY 11205. 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 millicent.thompson@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. Millicent Thompson (718) 260-7686, millicent.thompson@nychhc.org

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MATERIALS MANAGEMENT

SOLICITATIONS

Goods

FURNISH AND DELIVER – CSB – PIN# 011080290004 – DUE 10-07-08 AT 10:00 A.M. – Systematically scheduled monthly and biannual, samplings and analysis, of the wastewater discharge into the NYC public sewer system by Brooklyn Central Laundry located at 645 Kingston Ave., Brooklyn, NY.

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 & Hospitals Corp., Division of Materials Management, 346 Broadway, Suite 516, NY, NY 10013-3990.

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PURCHASING

SOLICITATIONS

Goods

ACSI QUICKFLATE PORTABLE COMMAND SHELTER FOR CONEY ISLAND HOSPITAL – 1 CSB – PIN# 331-09-018 – DUE 09-29-08 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.
Coney Island Hospital, 2601 Ocean Parkway, Room 1N45, Brooklyn, NY 11235.

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HEALTH AND MENTAL HYGIENE

SOLICITATIONS

Human / Client Service

FORENSIC PSYCHIATRY FELLOWS – Negotiated Acquisition – PIN# 10PR000200R0X00 – DUE 10-06-08 AT 3:00 P.M. – The Department, Bureau of Correctional Health Services, wishes to contract with one or more accredited Forensic Psychiatry Fellowship training programs so as to provide fellowship training in New York City jails. The fellows will provide clinical services, under supervision, to persons incarcerated in New York City Department of Correction facilities on Rikers Island. Anticipated contract term will be for three years beginning July 1, 2009. All questions regarding this NA should be addressed to Eric Zimiles.

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, 225 Broadway, 17th Fl. New York, NY 10007. Eric Zimiles (212) 385-8112 ezimiles@health.nyc.gov

s16-22

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 BASEBALL FIELD AND BASKETBALL COURTS AT BUSHWICH HOUSES – Competitive Sealed Bids – PIN# GR7007445 – DUE 10-09-08 AT 10:00 A.M.
● **INSTALLATION OF EXTERIOR COMPACTING REFUSE MANAGEMENT SYSTEM** – Competitive Sealed Bids – PIN# GD8006431 – DUE 10-09-08 AT 10:15 A.M.

Bid documents are available 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, New York, N.Y. 10007. Gloria Guillo (212) 306-3121, gloria.guillo@nycha.nyc.gov

s17-23

HUMAN RESOURCES ADMINISTRATION

BUREAU OF CONTRACTS AND SERVICES

SOLICITATIONS

Services (Other Than Human Services)

TRANSPORTATION SERVICES FOR VISITING PSYCHIATRIC SERVICES – Competitive Sealed Bids – PIN# 069-09-310-0006 – DUE 10-15-08 AT 3:00 P.M. – For the Customized Assistance Services (“CAS”) Office of Health and Mental Health Services (“OHMHS”) visiting Psychiatric Service staff, and for other HRA staff in emergency situations with approval from the Medical Director of OHMHS or his/her designee.

An optional pre-bid conference will be held on Monday, September 29, 2008 at 10:00 A.M. at 2 Washington Street, New York, NY 10004. In the Conference Room on the 22nd Floor. HRA strongly encourages M/WBE participation. Vendor Source ID#: 55406.

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.
Human Resources Administration, 2 Washington Street 22nd Fl., New York, NY 10004. Geraldine King (212) 480-6825, kingg@hra.nyc.gov

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JUVENILE JUSTICE

SOLICITATIONS

Human / Client Service

CORRECTION: PROVISION OF NON-SECURE DETENTION CENTERS – Negotiated Acquisition – Judgment required in evaluating proposals - PIN# 13007DJJ001 – DUE 11-14-08 AT 3:00 P.M. – CORRECTION: The NYC Department of Juvenile Justice (DJJ) is seeking one or more appropriately qualified vendors to provide non-secure detention services for youth. Services shall include, but not be limited to, custody, basic youth care, food, clothing, shelter, education, health care, recreation, court related services, social work and case management services, social skills instruction, group sessions and monitoring and supervision of these services. In addition, the contract will require that a defibrillator shall be located in each program facility and that all staff requiring CPR training shall be certified in use of said defibrillator.

Each program facility will provide at least 10 and no more than 12 beds in accordance with the applicable regulations promulgated by the New York State Office of Children and Family Services (NYS OCFS), 9 N.Y.C.R.R. Section 180 et seq. The Department is seeking to provide services at facilities that will be operational at any time from January 1, 2007 to December 31, 2010. A vendor may submit an offer for more than one Facility Option. Current Agency vendors operating non-secure group homes that have contracts expiring in calendar year 2006 are urged to respond to this solicitation.

All program facilities shall be appropriately equipped to provide services for male or female youth as required by the Department, and be located in one of the five boroughs. The term of the contracts awarded from this solicitation will be for three years and will include an additional three-year option to renew. The anticipated maximum average annual funding available for each contract will be \$1,067,000, excluding start-up costs. Proposed start-up costs will be considered in addition to the proposed annual line item budget. Greater consideration will be given to applicants offering more competitive prices.

If your organization is interested in being considered for award of the subject contract, please hand deliver a written expression of interest addressed to my attention at 110 William Street, 13th Floor, New York, NY 10038. The expression of interest should specifically address the following:

1. Indicate each program facility for which the vendor is submitting.
2. Describe each proposed facility, its location, and proposed date of operation.
3. Attach appropriate documentation demonstrating the current use of each proposed facility and the vendor's site control of the facility for a period of at least 3 years.
4. For each proposed facility,
 - a) Indicate the number of beds to be provided and demonstrate that the facility has the capacity to provide the indicated number of beds.
 - b) Demonstrate that the facility will be appropriately equipped to provide services for male or female youth.
5. Demonstrate the vendor's organizational capability to:
 - a) Provide the indicated number of beds at each proposed facility. (If the vendor is a current provider, also demonstrate the capability to provide the indicated number of beds in addition to those already provided.)
 - b) Ensure that each proposed facility will be fully operational by required date in accordance with the applicable regulations promulgated by the New York State Office of Children and Family Services (NYS OCFS), 9 N.Y.C.R.R. Section 180 et seq.
6. Demonstrate the quantity and quality of the vendor's successful relevant experience.
7. Attach for each proposed facility three-year annual line item operating budget. Include staffing details. Proposed start up costs should be included in addition to the proposed three-year annual line item operating budget.

All expressions of interest received in the manner set forth will be reviewed to determine if they are responsive to the material requirements of this solicitation. Expressions of interest determined to be non-responsive will not be further considered. Expressions of interest determined to be responsive will be considered in terms of the following factors:

- Appropriateness of each proposed facility.
- Demonstrated site control of each proposed facility.
- Demonstrated level of organizational capability to provide the proposed number of beds and to ensure that each proposed facility is fully operational by the applicable requisite date.
- Demonstrated quantity and quality of successful relevant experience.
- Annual budget amount and cost effectiveness of the budget.

The Department will enter into negotiations with the vendor(s) determined to be the best qualified at the time of evaluation, based on consideration of the above-cited factors. A contract will be awarded to the responsible vendor(s) whose offer(s) is/are determined to be the most advantageous to the City, taking into consideration the price and the other factors set forth in this solicitation. In the case that a vendor is eligible for award of more than one program facility, the Department reserves the right, based upon the vendor's demonstrated organizational capability and the best interest of the City, respectively, to determine how many and for which program facility(ies) the vendor will be awarded a contract.

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 Juvenile Justice, 110 William Street
13th Floor, New York, NY 10038.
Chuma Uwechia (212) 442-7716, cuwechia@djj.nyc.gov

n20-13

LAW

■ SOLICITATIONS

Services (Other Than Human Services)

INDEPENDENT MEDICAL EXAMINATIONS, INDEPENDENT MEDICAL RECORD REVIEW AND RELATED SERVICES – Negotiated Acquisition – PIN# 02508X100025 – DUE 10-21-08 AT 5:00 P.M. – The New York City Law Department (the “Department”) invites qualified independent medical evaluation firms to submit Expressions of Interest in the provision of Independent Medical Examinations (“IMEs”), Independent Medical Record Reviews (“IMRs”), Reports Summarizing the results of the IMEs and IMRs, Face to Face or Telephonic Consultations with Examining Physicians on an as-needed bases, especially before trial, and, as-needed, expert Testimony related to IMEs and/or IMRs. The Reports, Reviews, Consultations and Testimony are sought to assist the City of New York in the investigation, litigation and/or settlement of personal injury claims brought against it. As the need for these services is extensive, the Department anticipates awarding at least two contracts pursuant to this solicitation. The source selection method of Negotiated Acquisition will be utilized because this procurement is for consulting services in support of litigation. It is anticipated that the term of the proposed contracts will commence as of March 1, 2009 and continue through February 29, 2012 with an option to renew for an additional term of two years. However, the City may decide to contract for a shorter term. Providers of IME/IMR and Related Services wishing to be considered for the award of a contract must submit an Expression of Interest (“EOI”) in conformity with the Department’s Request for EOIs (“RFEI”) in the Provision of Independent Medical Examinations, Independent Medical Record Reviews and Related Services. The RFEI can be picked up at the Fourth Floor East Reception Desk, Fourth Floor, New York City Law Department, 100 Church Street, New York, New York 10007 between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday, exclusive of holidays observed by the City of New York. The RFEI provides clear instructions regarding the manner in which the Expression of Interest is to be structured, prepared and submitted. The Department intends to enter into negotiations with those firms whose EOIs are determined to be within a competitive range of technical merit. The deadline for the submission of EOIs is 5:00 P.M., Tuesday, October 21, 2008. EOIs that are not prepared and submitted in conformity with the RFEI are at risk of being determined non-responsive and eliminated for further consideration as the basis for the award of a contract. Interested firms are advised to prepare their EOI only after they have obtained the RFEI, which is available at the Law Department, as indicated above. The Department’s intent is to select firms for the provision of these services on the basis of its evaluation of the EOIs received in response to this solicitation.

The source selection method of Negotiated Acquisition is being used because the services to be procured are consultant services in support of litigation.

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.
Law Department, Service of Legal Process Window, Communications and Docketing Services Unit
100 Church Street, Room 4-313, Fourth Floor, New York, NY 10007. Tom Dowling (212) 788-1008, tdowling@law.nyc.gov

s22-26

PARKS AND RECREATION

CAPITAL PROJECTS DIVISION

■ INTENT TO AWARD

Construction Related Services

THE RECONSTRUCTION OF PORTIONS OF THE PICNIC HOUSE IN PROSPECT PARK, BROOKLYN – Sole Source – Available only from a single source - PIN# 8462008B073D01 – DUE 09-29-08 AT 10:00 A.M. – The Department of Parks and Recreation, Capital Projects Division, intends to enter into Sole Source negotiations with Prospect Park Alliance, a not-for-profit organization, to

provide Design Services for the Reconstruction of Portions of the Picnic House, located near Prospect West, opposite 5th Street in Prospect Park, Brooklyn.

Any firms that would like to express their interest in providing services for similar projects in the future may do so. All expressions of interest must be in writing to the address listed here and received by September 29, 2008. You may join the City Bidders list by filling out “NYC-FMS Vendor Enrollment Application” available on-line at “NYC.gov/selltonyc” and in hard copy by calling the Vendor Enrollment Center at (212) 857-1680.

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 61
Flushing Meadows Corona Park, Flushing, NY 11368.
Grace Fields-Mitchell (718) 760-6687,
grace.fieldsmitchell@parks.nyc.gov

s19-25

CONSTRUCTION OF A COMFORT STATION AT THE PARADE GROUNDS, BROOKLYN – Sole Source – Available only from a single source - PIN# 8462008B068D03 – DUE 09-29-08 AT 10:00 A.M. – The Department of Parks and Recreation, Capital Projects Division, intends to enter into Sole Source negotiations with Prospect Park Alliance, a not-for-profit organization, to provide Design Services for the Construction of a Comfort Station located on the Prolongation of Argyle Road at the Parade Grounds bounded by Parade Place, Brooklyn.

Any firms that would like to express their interest in providing services for similar projects in the future may do so. All expressions of interest must be in writing to the address listed here and received by September 29, 2008. You may join the City Bidders list by filling out “NYC-FMS Vendor Enrollment Application” available on-line at “NYC.gov/selltonyc” and in hard copy by calling the Vendor Enrollment Center at (212) 857-1680.

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 61
Flushing Meadows Corona Park, Flushing, NY 11368.
Grace Fields-Mitchell (718) 760-6687,
grace.fieldsmitchell@parks.nyc.gov

s19-25

CONTRACT ADMINISTRATION

■ SOLICITATIONS

Construction / Construction Services

CONSTRUCTION OF A SKATE PARK – Competitive Sealed Bids – PIN# 8462009X348C01 – DUE 10-22-08 AT 10:30 A.M. – At the Southeast corner of East 157th Street and River Avenue, The Bronx. Known as Contract #X348-107MA. Vendor Source ID#: 55377.
● **RECONSTRUCTION OF BUSHWICK PLAYGROUND** – Competitive Sealed Bids – PIN# 8462008B017C0 – DUE 10-22-08 AT 10:30 A.M. – And basketball courts, located North of Knickerbocker Avenue between Woodbine Street and Putnam Avenue, Brooklyn. Known as Contract #B017-108M. Vendor Source ID#: 55378.

These procurements are subject to participation goals for MBEs and/or WBEs as required by Local Law 129 of 2005.

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.

s22

CONTRACTS

■ SOLICITATIONS

Services (Other Than Human Services)

REMOVAL AND DISPOSAL OF DEAD STREET TREES IN QUEENS – Competitive Sealed Bids – PIN# 84608Q000X06 – DUE 10-01-08 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.
Parks and Recreation, 24 West 61st Street, New York, NY 10023. Akia Slade-Holder (212) 830-7987,
akia.slade-holder@parks.nyc.gov

s22

REVENUE AND CONCESSIONS

■ SOLICITATIONS

Services (Other Than Human Services)

OPERATION OF THREE (3) MOBILE FOOD UNITS AND THE RENOVATION, OPERATION, AND MANAGEMENT OF A PARKING LOT, SNACK BAR, AND BEACH SHOP – Competitive Sealed Bids – PIN# B251-SB,PL – DUE 10-27-08 AT 3:00 P.M. – At Manhattan Beach, Brooklyn. Parks will hold a recommended bidder meeting on Friday, October 3, 2008 at 11:00 A.M. at the parking lot entrance at Oriental Blvd. and Irwin Street in Brooklyn. All interested parties are urged to attend.

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

s15-26

POLICE

CONTRACT ADMINISTRATION UNIT

■ INTENT TO AWARD

Services (Other Than Human Services)

IBM LICENSE AGREEMENT – Sole Source – Available only from a single source - PIN# 056090000618 – DUE 09-29-08 AT 11:00 A.M.

● **NOVELL MASTER LICENSE AGREEMENT** – Sole Source – Available only from a single source - PIN# 056090000627 – DUE 09-29-08 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.
Police Department, 51 Chambers Street, Room 310, New York, NY 10007. Howard Babich (646) 610-5214,
howard.babich@nypd.org

s22-26

SCHOOL CONSTRUCTION AUTHORITY

CONTRACT ADMINISTRATION

■ SOLICITATIONS

Construction / Construction Services

FIRE ALARM SYSTEM/PA AND CLOCK SYSTEMS UPGRADES – Competitive Sealed Bids – PIN# SCA09-11181D-1 – DUE 10-07-08 AT 10:30 A.M. – IS 143 (Bronx). Project Range: \$1,080,000.00 to \$1,133,000.00. 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.

s18-24

TRANSPORTATION

■ SOLICITATIONS

Construction / Construction Services

BID EXTENSION: PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 84108MBPT281 – DUE 09-30-08 AT 2:00 P.M. – This RFP is available on the NYCDOT Web site at <https://a841-dotwebpcard01.nyc.gov/RFP/html/asp/rfp.asp>. A deposit of \$50.00 in the form of a certified check or money order made payable to New York City Department of Transportation is required to obtain bid/contract documents. NO CASH ACCEPTED. Refund will be made only for contract Bid/Proposal documents that are returned in its original condition within 10 days after the bid opening. Any person delivering bid documents must enter the building through 220 Church Street, New York, NY 10013. Due to increased building security, bidders should ensure that proper photo identification is available upon request. Please ensure that your company’s address, telephone and fax numbers are submitted by your company (or messenger service) when picking up contract documents. For additional information, please contact Gail Hatchett at (212) 839-2116.

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 Transportation, Office of the Agency Chief Contracting Officer, Contract Unit, 40 Worth Street, Room 824A, New York, NY 10013. Bid Window (212) 442-7567.

s22

AGENCY RULES

HEALTH AND MENTAL HYGIENE

■ NOTICE

NOTICE OF INTENTION 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 is hereby given of intention to

repeal and reenact Article 71 (Food and Drugs) 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 FROM 2:00 P.M. TO 4:00 P.M. ON TUESDAY, OCTOBER 28, 2008 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 5:00 P.M. MONDAY OCTOBER 27, 2008. 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 OCTOBER 17, 2008.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 4:00 P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PRE-REGISTER.

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 MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO: RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) TO: <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., TUESDAY, OCTOBER 28, 2008. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

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 §§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 DOHMH proposes that the Board of Health repeal and reenact 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, and the DOHMH accordingly proposes that the Board repeal and reenact Article 71 as set forth herein.

§71.01. Scope.

This section would now include cosmetics within the regulatory scope of the Article, which currently applies only to food and drugs. However, the existing 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 regulates cosmetics. Because adulterated or misbranded cosmetics may have serious or detrimental health and safety effects, the DOHMH has concluded that incorporating the regulation of cosmetics into 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 would be amended to add, as subdivision (c), a definition of the term “cosmetic,” based on the definition in the Act. The definition of “drug” would be amended to make

clear that an article that is intended to be consumed, aspirated or otherwise absorbed, rubbed, poured, sprinkled, sprayed on, introduced or otherwise applied to the human body or any part thereof, will be considered a drug if it is an article that is intended to affect the structure or any function of the body. This clarification is intended to provide additional guidance on what will be deemed a drug.

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

This section would be similar to existing §71.05 and would now include the addition of cosmetics.

Subdivision (c) would conform and update 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 existing provision refers only to a pesticide chemical. The change to pesticide chemical residue conforms these standards to those of the Federal Act and State law.

Subdivision (d) (“Foods deemed misbranded”) would be new and would provide a comprehensive list of criteria for determining when foods are misbranded, consistent with the Federal Act and State law.

Subdivision (e) (“Drug deemed adulterated”) would include 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 Federal Act.

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

§71.06. Labeling requirements.

This new section would provide that any required statements and information on the labels for food, drug and cosmetic products must 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.

Existing §71.09 would be updated and clarified regarding redisclosure of pharmacy records.

§71.11. Embargo or seizure.

This section would remain unchanged from existing §71.11, except to add cosmetics to 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 [] 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 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 any article 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 any article 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.

§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 unsanitary 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.

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 FRIDAY, OCTOBER 24, 2008.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P.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 MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., FRIDAY, OCTOBER 24, 2008. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

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 §§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 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 the public health, the DOHMH proposes that Article 88, now titled "Temporary Food Establishments", be repealed and reenacted, and retitled "Temporary Food Service Establishments." The title change would better reflect practice and the regulatory environment; it would provide adequate legal tools to effectively address the health and safety needs of the public; and would harmonize such provisions with related provisions of the State Sanitary Code. As part of the revision effort, particular attention has been placed on emphasizing the applicability of relevant provisions of Article 81 ("Food Preparation and Food Establishments") to the operation of temporary food service establishments. Pursuant to this review and assessment of the Health Code, the DOHMH proposes that the Board repeal and reenact Article 88. Proposed changes to the existing Article 88 are set forth below.

§88.01 Scope.

This section would be new. It would reinforce the policy that temporary food service establishments are a type of food service establishment and also subject to Article 81, other pertinent provisions of the Code, New York State Sanitary Code (10 NYCRR Chapter 2) and all rules and regulations governing the use of public streets.

§88.03 Definitions.

Definitions that are currently set forth in §88.01 would be moved to a new § 88.03, and the section would be expanded from two to five definitions. The term "temporary food service establishment" would be redefined because these establishments may be found in many public and private, indoor and outdoor settings, and in connection with many different kinds of events and promotions. The section would contain definitions for other terms used in Article 88, including "event," "food," "sponsor," and "operator." The definition of "temporary food processing establishment" would be deleted as obsolete.

§88.05 Permit required.

This section would amend existing §88.03 ("Permit, registration") in several ways. First, it would eliminate the requirement of registration for events taking one day or less, or occupying more than one block. Second, it would eliminate the distinction between temporary food processing and non-food processing establishments. Finally, it would require that all operators have a permit, to be obtained at least 30 days prior to the event. The effective date of this Article would be January 1, 2010, providing sufficient notice to all operators of temporary food service establishments of the new requirements. This new section would incorporate provisions of existing §88.21 ("Responsibility of sponsor") which would be repealed.

§88.07 Food safety and protection.

This section would replace existing §§ 88.05 and 88.09. It would require that all permittees hold a food protection certificate (currently required by § 88.19) issued by the Department or a certificate issued by another jurisdiction that is acceptable to the Department. New requirements would be added for thermometers to be provided and used to

NOTICE OF INTENTION TO REPEAL AND REENACT ARTICLE 88 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 is hereby given of the proposed repeal and reenactment of Article 88 (Temporary Food Service Establishments) of the New York City Health Code (the "Health Code").

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 2:00 P.M. TO 4:00 P.M. ON FRIDAY, OCTOBER 24, 2008 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 5:00 P.M. THURSDAY, OCTOBER 23, 2008. PLEASE

confirm that the establishment is holding potentially hazardous foods at required temperatures, and for using ice safely when holding potentially hazardous foods. However, current requirements prohibiting service of specific potentially hazardous foods without the approval of the Department would be eliminated. The Department has concluded that requiring that every operator or supervisor of food services at a temporary food service establishment hold a food protection certificate would result in increased food safety: operators and supervisors would be better educated and more aware of the dangers of serving some potentially hazardous foods in various event settings where environmental conditions may be difficult or impossible to control.

Subdivision (g) would retain the Commissioner's existing authority to prohibit sales or service of specific potentially hazardous foods or types of foods.

§88.09 Construction, facilities, equipment and utensils. This section would incorporate provisions from existing §§ 88.07 and 88.15, as well as provisions from Article 81 regarding maintenance of food contact surfaces; sanitizing utensils and equipment; providing adequate shielded lighting; and the ventilation of steam, condensation, odors and fumes to prevent a nuisance.

Subdivision (e) would require that adequate hand washing facilities be provided, in accordance with Article 81. However, because the Department recognizes that there may be substantial variability in the plumbing facilities available at events and at participating temporary food service establishments, this provision would allow the Department to approve alternative arrangements for hand washing where strict compliance with this Code requirement is not feasible.

§88.11 Cooking and heating equipment. This section would retain existing requirements that equipment not create a hazard, and that flammable materials be maintained in accordance with Fire Department regulations and specifications.

§88.13 Water supply. This section would be amended to incorporate more rigorous requirements governing the provision and use of potable water for food preparation, and for hand washing and cleaning equipment, to protect food from contamination from untreated water, in accordance with the State Sanitary Code.

§88.15 Toilets. This section would be new and would require that sponsors of events provide adequate portable toilets and adjacent hand washing facilities for use of workers and patrons of temporary food service establishments where fixed plumbing facilities are not adequate or available.

§88.17 Single service articles. This section would retain the requirement for use of single service articles, as defined in Article 81.

§88.19 Refuse and trash. This section would be amended to clarify that its provisions for clean up do not apply to events regulated by the Mayor's Community Assistance Unit (CAU) Street Activity Permit Office. The CAU rules set forth in Chapter 1 of Title 50 of the Rules of the City of New York now regulate all City street and sidewalk events, and require event sponsors to arrange with the New York City Department of Sanitation for the cleaning of streets and sidewalks and the appropriate disposal of wastes generated at such events. For other events, this section of the Health Code applies to required cleaning and maintenance.

§88.21 Enforcement. The provision authorizing the closure of a temporary food service establishment, now set forth in § 88.23, would be added to subdivision (b) of the revised § 88.21. A new subdivision (a) ("Imminent health hazards") would allow the Department to dispose of food or order the disposal or sealing of unsafe, unclean, damaged or otherwise unsafe equipment that it identifies as an imminent health hazard, as defined in Article 81.

§88.23 Modification. This section would retain the authority of the Commissioner to modify requirements when strict compliance with a provision presents practical difficulties or unusual or unreasonable hardship.

The Proposal is as follows:

Matter underlined is new

RESOLVED, that Article 88 and the list of section headings for Article 88 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 introductory notes to read as follows:

ARTICLE 88 TEMPORARY FOOD SERVICE ESTABLISHMENTS

- §88.01 Scope.**
- §88.03 Definitions.**
- §88.05 Permit required.**
- §88.07 Food safety and protection.**
- §88.09 Construction, facilities, equipment, and utensils.**
- §88.11 Cooking and heating equipment.**
- §88.13 Potable water supply.**
- §88.15 Toilets.**
- §88.17 Single service articles.**
- §88.19 Refuse and trash.**
- §88.21 Enforcement.**
- §88.23 Modification**

Introductory Notes:

As part of a comprehensive review of the Health Code to assess the efficacy of its articles in protecting the public health, Article 88, "Temporary Food Service Establishments," was repealed and reenacted by resolution of the Board of Health on XXXX, to be effective January 1, 2010, to better reflect current practice and the regulatory environment, to

provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize its provisions with related provisions of the State Sanitary Code. As part of the revision effort, particular attention has been focused on the applicability of Article 81 ("Food Preparation and Food Establishments") to the operation of temporary food service establishments.

§88.01 Scope. A temporary food service establishment 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 (Food Service Establishment Sanitary Inspection Procedures) of Title 24 of the Rules of the City of New York. Such temporary food service establishment shall not present a danger to the health or safety of patrons or to the public health with respect to the condition of the establishment, its equipment, utensils, personnel, mode of operations, surroundings, water supply, liquid and solid waste and sewage disposal, food served and appurtenances.

§88.03 Definitions. When used in this Article:
(a) *Event* shall mean a single event or activity, not to exceed fourteen (14) consecutive days, where food or food samples are distributed to the public, with or without charge, that occurs indoors or outdoors, in public or privately owned or leased premises, and shall include but not be limited to:
(1) A street activity, regardless of whether the event requires a permit issued in accordance with the rules of the New York City Community Assistance Unit, or successor agency;
(2) A business, advertising or media promotion or convention;
(3) A celebration; a street or other fair; or
(4) A sporting event, carnival, flea market, circus, public exhibition, festival, religious or fraternal organization function, parade or other similar gathering.
(b) *Food* shall have the same definition as found in Article 71 of this Code.
(c) *Operator* shall mean the permittee or person who owns, operates, manages or otherwise controls a temporary food service establishment providing food services at an event, who has been issued a permit by the Commissioner in accordance with §88.05 of this Article.
(d) *Sponsor* shall mean the person or organization that organizes, controls and manages the event at which a temporary food service establishment provides food service.
(e) *Temporary food service establishment* means an individual food service establishment, as defined in Article 81 of this Code, operating from a booth, stand, vehicle, or cart, in a fixed public or private, indoor or outdoor location, at a single event, where foods are stored, prepared or held for service to the public. A food service establishment issued a permit in accordance with Article 81 of this Code that operates a temporary food service establishment in connection with an event on a sidewalk directly outside and adjacent to the permitted establishment, that serves food prepared within the permitted establishment or by workers employed by the permitted establishment, shall not also be required to obtain a temporary food service establishment permit pursuant to this Article. A temporary food service establishment shall also mean a person who vends or distributes pre-packaged non-potentially hazardous foods from a container, approved by the Department, that is carried upon his or her person at an event.

§88.05 Permit required.
(a) A sponsor of an event shall not rent space to, nor allow food to be prepared, stored, served or sold by, any temporary food service establishment that fails to obtain a current and valid temporary food service establishment permit for the event.
(b) The sponsor shall submit to the Department, at least thirty (30) days prior to the first date of the event, a list of all individual food establishments and operators expected to participate in the event and, where feasible, an application for a permit from each operator of a temporary food service establishment at the event.
(c) The operator of each temporary food service establishment at an event shall obtain a permit issued by the Commissioner.

§88.07 Food safety and protection.
(a) *Food protection certificate required.* The operator or supervisor of food services at each temporary food service establishment shall hold a food protection certificate issued by the Department, or a certificate issued by another jurisdiction that is acceptable to the Department.
(b) *Food sources.* Food shall be obtained from approved sources, as defined in Article 81, operating pursuant to licenses or permits issued by federal, state or local regulatory agencies.
(c) *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 provided and 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.
(d) *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.
(e) *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.
(f) *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.
(g) *Prohibitions on sale or service of specific foods.* The Commissioner may prohibit the sale or service of specific potentially hazardous foods or types of foods by temporary food service establishments. No cooked or raw fish or shellfish shall be sold at a temporary food service

establishment.

§88.09 Construction, facilities, equipment, and utensils.
(a) *Food contact surfaces.*
(1) Food contact surfaces, equipment and utensils shall be designed and constructed of materials that facilitate cleaning and inspection of all parts and shall be smooth and free from cracks or pits.
(2) All food contact surfaces shall be kept clean and shall be sanitized immediately prior to and during use as needed to prevent food contamination.
(3) Operators shall not use utensils, pots or containers that are chipped, cracked, rusted, corroded, badly worn or otherwise not easily cleaned and sanitized.
(b) *Sanitizing.* Equipment, utensils and other food contact surfaces shall be effectively cleaned and sanitized in accordance with Article 81. Between uses, food dispensing utensils shall be stored in food with the handle extended out of the food, or kept clean and dry and protected from contamination.
(c) *Lighting.* When the temporary food service establishment uses artificial lighting, shatter-proof or shatter guarded lighting shall be installed to adequately light all food contact and food preparation surfaces. Lighting fixtures located over or near food storage, preparation and service facilities shall be shielded to prevent broken glass from falling into food or onto food-contact surfaces.
(d) *Ventilation.* Temporary food service establishments shall be ventilated so as to prevent nuisances from excessive heat, steam, condensation, vapors, odors, smoke and fumes.
(e) *Hand washing facilities.* Permanently installed or portable hand washing sinks dispensing hot and cold potable water and equipped with drying devices shall be provided in or adjacent to each temporary food service establishment and in or adjacent to all toilet facilities at an event. When the operator or event sponsor cannot meet the hand washing requirements of Article 81, the operator or event sponsor shall, in advance of the event, obtain prior Department approval for alternate hand washing arrangements.
(f) *Overhead structure.* An overhead device, structure or awning shall be installed to protect food from dust, birds, dirt, rodents, insects and other pests, foreign material and other forms of contamination, in accordance with Article 81 of this Code.

§88.11 Cooking and heating equipment.
(a) *Hazards.* Cooking and heating equipment shall be constructed, located and used so as not to create a hazardous condition.
(b) *Flammable materials.* Storage and use of flammable material and fuel shall comply with all applicable law, including the rules, regulations and standards of the Fire Department.

§88.13 Potable water supply. Each temporary food service establishment shall be provided with sufficient potable hot and cold water from sources approved by the Department for food preparation, cleaning equipment and hand washing.
(a) *Bottled and packaged water.* Bottled and packaged potable water shall be obtained from a source approved by the State Commissioner of Health and handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.
(b) *Water tanks.*
(1) Potable water storage tanks in temporary food service establishments shall be constructed from food-grade materials, in accordance with Article 81 of this Code.
(2) Water storage tanks shall be sanitized, emptied and rinsed with potable water before use and between temporary food service events.
(3) Water shall not be transported from one event to another event.

§88.15 Toilets. Where sufficient fixed or permanent plumbing facilities are not available, the sponsor of an event shall provide and maintain portable chemical toilets, hand washing sinks and drying facilities for use by temporary food service establishment food workers and patrons.

§88.17 Single service articles. Only single use articles as defined and described in Article 81 of this Code shall be provided for patrons' use, and shall be discarded after use.

§88.19 Refuse and trash.
(a) *Containers.* Where an event is not subject to Chapter 1 of Title 50 of the Rules of the City of New York, the rules of the Community Assistance Unit, or successor agency, the sponsor shall provide or arrange for an adequate number of receptacles and containers, constructed in compliance with Article 151 of this Code, for the storage and disposal of refuse and garbage.
(b) *Cleaning and maintenance.* The sponsor shall maintain or arrange for maintenance of the event area and for the collection and removal of accumulated refuse and garbage at regularly scheduled intervals during and after the event.

§88.21 Enforcement.
(a) *Imminent health hazards.* When, in the opinion of the Department, any food, equipment, or temporary food service establishment at an event presents an imminent health hazard as defined in Article 81 of this Code, or is in an unclean condition, or is in disrepair or damaged to such an extent so as to render it unsafe, such food, equipment, establishment or any part thereof may be ordered sealed and its use or operation immediately discontinued upon the order of the Commissioner or designee. Upon such sealing, the Department shall affix thereto labels or conspicuous signs stating that the establishment has been closed because of an imminent health hazard. The operator may request an immediate opportunity to be heard by the Department, and an opportunity to reopen upon curing the imminent health hazard. Labels or signs affixed by the Department shall not be removed except as authorized by the Department.
(b) *Closure.* A temporary food service establishment found operating without a valid permit in violation of this Article shall be ordered closed and the operator ordered to cease all food operations and to remain closed until the operator obtains a currently valid permit for the temporary food service establishment.

§88.23 Modification. The Commissioner may modify requirements of this Article, when compliance presents practical difficulties or unusual or unreasonable hardships in

a specific instance consistent with the purpose and intent of this Article and this Code.

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NOTICE OF INTENTION 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 is hereby given of intention to repeal and reenact Article 89 (Mobile Food Vending) of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON FRIDAY, OCTOBER 31, 2008 FROM 2:00 P.M. TO 4:00 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 5:00 P.M., THURSDAY, OCTOBER 30, 2008. 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 OCTOBER 17, 2008.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 10A.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 MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., FRIDAY, OCTOBER 31, 2008. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

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 §§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 DOHMH proposes that the Board of Health repeal and reenact Article 89 (Mobile Food Vending) to provide a reorganized article, 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 DOHMH proposes that the Board repeal and reenact 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.

§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.

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§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 XXX, 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, and all other applicable provisions of this Code and Chapter 6 of Title 24 of the Rules of the City of New York, 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 any alteration that changes or results in 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. 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 Department of Sanitation litter baskets.

(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 INTENTION 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 is hereby given 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.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON MONDAY, OCTOBER 27, 2008 FROM 2:00 P.M. TO 4:00 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 5:00 P.M. FRIDAY, OCTOBER 24, 2008. 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 WEDNESDAY, OCTOBER 15, 2008. REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 10A.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 MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., FRIDAY, OCTOBER 24, 2008. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

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 §§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 DOHMH proposes that the Board of Health repeal and reenact Article 151, Rodents, Insects and Other Pests, and to change its title to Pest Prevention and Management, and 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, the elimination of harborages and requiring property maintenance practices to eliminate or severely limit the presence of pest populations. Because the regulation of pesticide use, generally, 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 Department proposes that the Board repeal 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 current 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.

Subdivision (d) is titled "Elimination of conditions conducive to pests and the presence of pests" and 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 harborages, 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 Determination of pest infestation by the Department authorizes the Department to issue orders to property owners for the elimination and prevention of pests and infestations as the Department deems necessary, and conveys the same authority to the City's Departments of Buildings and Housing Preservation and Development.

Section 151.04 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.

2. Repeal Article 171

The Department requests that the Board repeal 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 Determination of pest infestation by the Department.

§151.04 Elimination of standing water

Introductory Notes:

Article 151 was repealed and reenacted by resolution on XXX, 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 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 and quantities 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 Determination of pest infestation by the Department

When the Department determines that a premises or property is infested by rodents, insects or other pests, or contains conditions conducive to pest life, it may order the person(s) in control to take such measures to eliminate, prevent and control such pests, including but not limited to measures specified in subdivision (d) of section 151.02, as the Department deems necessary. Without limiting the authority of the Department, the City Departments of Buildings and Housing Preservation and Development may exercise the same power with respect to residential and commercial premises.

§151.04 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.

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 173 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 is hereby given of the proposed amendment of Article 173 (Hazardous Substances) of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON WEDNESDAY, OCTOBER 29, 2008 FROM 10:00 A.M. TO 12:00 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 5:00 P.M. TUESDAY, OCTOBER 28, 2008. 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 OCTOBER 17, 2008.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12 :00 P. 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 MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., WEDNESDAY, OCTOBER 29, 2008. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

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 §§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 articles in protecting the public health, the DOHMH proposes 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 proposes 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 (b), (c) and (e).

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

Article 173 Hazardous Substances

§173.01 Definitions.

§173.03 Transfer of hazardous substances; 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 XXXX 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 Health Code articles 43 and 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 XXXX 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) (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 XXXX. 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 is 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 or 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 XXX 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 XXX 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 (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. * * *
(b) *Definitions.* When used in this Article, or in §§45.12or 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 (b) (Definitions), (c) (Administrative requirements) and (e) (Occupant protection) were amended by resolution adopted on XXX 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.

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NOTICE OF INTENTION 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, notice is hereby given of the proposed amendment of Article 13 of the New York City Health Code (the "Health Code").

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON OCTOBER 31, 2008 FROM 10:00 A.M. TO 12:00 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 THURSDAY, OCTOBER 30, 2008. 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 FRIDAY OCTOBER 17, 2008.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 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 FRIDAY, OCTOBER 31, 2008. 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.shtm>

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.

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, the DOHMH proposes to amend current Article 13, Clinical Laboratories, 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, the DOHMH proposes that the Board amend certain of the provisions of current Article 13 as provided for below.

Section 13.01

Subdivisions (a) and (c) would be deleted. Instead, a new definition of "laboratory" or "clinical laboratory", which terms are used interchangeably, will make clear that those terms also include a blood bank. Separate definitions of "laboratories" and "blood bank" are not necessary since the term "blood bank" is not used in the article. Furthermore, 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, will also apply to blood banks. The definition of "clinical laboratory" would be 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) would be 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. The subdivision would also be revised 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) would also be 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 would be 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) would be 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) would be revised to add reporting requirements with regard to laboratory tests related to syphilis and hepatitis.

Subdivision (c) would be 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) would be amended to update the cross reference to Article 11's confidentiality provision.

Subdivision (b) would be 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, 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, would be renumbered, and subdivision (a) would be amended to clarify that reports are to be submitted within 24 hours of the clinical laboratory obtaining the results.

Subdivision (c) would be 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) would be 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 proposal 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 [].

§13.03 Report of positive findings.

(a) The director of a clinical laboratory conducting an examination of a specimen submitted for analysis shall 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. 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 [].

§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 [].

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 [].

HOUSING PRESERVATION & DEVELOPMENT

■ NOTICE

NOTICE OF PROMULGATION OF RULES PERTAINING TO THE CAMPAIGN FINANCE ACT

Notice is hereby given, pursuant to the authority vested in the Department of Housing Preservation and Development by Chapter 61 of the New York City Charter and by New York City Administrative Code §3-702, that the Department of Housing Preservation and Development hereby promulgates rules pertaining to the Campaign Finance Act.

Section one. Title 28 of the rules of the city of New York is amended by adding a new chapter 38 to read as follows:

CHAPTER 38

Campaign Finance Act Implementation.

§ 38-01. Definitions. As used in this chapter, the following terms shall have the following meaning:

(a) "Act" shall mean the New York City Campaign Finance Act, §§ 3-701 through 3-720 of the New York City Administrative Code.

(b) "BCL" shall mean the Business Corporation Law.

(c) "City" shall mean the City of New York.

(d) "Discretionary Tax Benefit" shall mean an exemption from or abatement of real property taxation approved by the City Council, including, but not limited to, any such exemption or abatement pursuant to PHFL Articles II, V, and XI, GML Article 16, or RPTL §422.

(e) "EDC" shall mean the New York City Economic Development Corporation.

(f) "GML" shall mean the General Municipal Law

(g) "HDC" shall mean the New York City Housing Development Corporation.

(h) "HPD" shall mean the City's Department of Housing Preservation and Development.

(i) "PHFL" shall mean the Private Housing Finance Law.

(j) "RPTL" shall mean the Real Property Tax Law.

(k) "UDAAP" shall mean Article 16 of the General Municipal Law.

(l) "ULURP" shall mean the Uniform Land Use Review Procedure set forth in §§197-c and 197-d of the New York City Charter.

(m) "Urban Renewal Law" shall mean Article 15 of the General Municipal Law.

(n) "Zoning Resolution" shall mean the New York City Zoning Resolution.

§ 38-02. (a) Except as otherwise provided in the Act and §38-03 of these rules, actions, transactions and agreements for providing affordable housing shall constitute "business dealings with the city" for purposes of the Act where any such action, transaction or agreement involves:

(1) the disposition of City-owned real property; or

(2) a loan or grant by HPD or HDC, except as otherwise provided in §38-03 of these rules; or

(3) any Discretionary Tax Benefit; or

(4) any discretionary approval following a public hearing by either the City Council or the Office of the Mayor, including, but not limited to, any approval pursuant to ULURP, UDAAP, the Urban Renewal Law, the PHFL or the Zoning Resolution; or

(5) the allocation of federal low income housing tax credits by HPD pursuant to Internal Revenue Code §42; or

(6) the execution of an agreement with HPD regarding the creation of inclusionary housing in accordance with any applicable provision of the Zoning Resolution.

(b) The actions, transactions or agreements set forth in subdivision a of this section shall only constitute business dealings with the City during the following periods:

(1) For an action, transaction or agreement that involves the disposition of City-owned real property, the period commencing on the date that the proposed sponsor submits or makes a proposal to HPD, HDC or EDC to acquire such property and ending as provided in paragraph b of subdivision 18 of §3-702 of the Act.

(2) For an action, transaction or agreement that involves a loan or grant by HPD or HDC, the period commencing on the date that the proposed sponsor makes or submits an application or proposal to HPD or HDC for such loan or grant and ending one year after the date of construction completion or the final advance or disbursement of funds pursuant to such loan or grant.

(3) For an action, transaction or agreement that involves a Discretionary Tax Benefit, the period commencing with the submission of an application for such exemption or abatement and ending one year after the date of approval of such exemption or abatement by the City Council.

(4) For an action, transaction or agreement that requires any discretionary approval following a public hearing by either

the City Council or the Office of the Mayor, including, but not limited to, any approval pursuant to ULURP, UDAAP, the Urban Renewal Law, the PHFL or the Zoning Resolution, but not including the approval of a Discretionary Tax Benefit by the City Council, the period commencing with negotiations and ending as provided in paragraph b of subdivision 18 of §3-702 of the Act, where applicable, or 120 days after approval by the City Council or the Office of the Mayor.

(5) For an action, transaction or agreement that involves the allocation of federal low income housing tax credits by HPD, the period commencing with the submission of an application for such tax credits to HPD and ending one year after the date of issuance by HPD of the Low Income Housing Credit Allocation and Certification form to the applicant.

(6) For an action, transaction or agreement that involves the execution of an agreement with HPD regarding the creation of inclusionary housing in accordance with any applicable provision of the Zoning Resolution, the period commencing with the submission of an application to HPD for such agreement, and ending one year after the date of execution by HPD of a certificate of completion for the inclusionary housing dwelling units.

(7) For an action, transaction or agreement that involves more than one of the actions, transactions and agreements set forth in subparagraphs one through six of this subdivision, the period commencing on the earliest date provided in such subparagraphs and ending on the latest date provided in such subparagraphs.

(8) Notwithstanding anything to the contrary contained herein, for any proposed action or transaction that HPD determines will not be consummated or for any proposed agreement that HPD determines will not be executed, the end date shall be one year after the date upon which HPD notifies the Office of the Mayor of such determination.

§ 38-03. (a) Notwithstanding any other provision of these rules to the contrary, actions, transactions and agreements for providing affordable housing shall not constitute "business dealings with the city" as defined in subdivision 18 of §3-702 of the Act where any such action, transaction or agreement:

(1) is entered into with a housing development fund company that is formed as a cooperative corporation pursuant to PHFL Article XI and the Business Corporation Law, including any discretionary tax benefit granted to such company; or

(2) is entered into with a limited profit housing company formed pursuant to PHFL Article II that is organized and operated as a mutual company; or

(3) involves solely a mortgage modification; or

(4) involves solely the subordination, satisfaction, or assignment of a mortgage; or

(5) relates to approval of a certificate of incorporation for a housing development fund company; or

(6) involves solely a license agreement or lease for use of City-owned property for nominal consideration or no consideration; or

(7) is entered into by an individual or family in connection with the purchase of a one- to four-unit home, a condominium dwelling unit, or the shares attributable to a cooperative dwelling unit under a housing program administered by HPD; or

(8) involves a loan pursuant to PHFL §8-b; or

(9) involves a loan or grant the sole purpose of which is the remediation of lead-based paint hazards; or

(10) involves exemption or abatement of real property taxes pursuant to RPTL §§420-a, 420-c, 421-a, 421-b, 488-a, or 489; or

(11) involves a change in ownership of property that is the subject of an action, transaction or agreement for providing affordable housing and that constituted "business dealings with the city" pursuant to subdivision a of §38-02 of these rules; or

(12) involves an approval or consent granted pursuant to the provisions of an agreement with HPD, EDC or HDC providing for such approval or consent; or

(13) involves the conveyance of property pursuant to New York City Administrative Code §11-412.1; or

(14) involves provision of relocation services pursuant to Administrative Code §26-301 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §§4601 et seq.); or

(15) is entered into for the purpose of settlement of litigation to which the City of New York, HDC, or EDC is a party; or

(16) is not listed in §38-02 of these rules.

STATEMENT OF BASIS AND PURPOSE

The Campaign Finance Act ("Act") authorizes the Department of Housing Preservation and Development to

promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing do, and do not, constitute business dealings with the City of New York for purposes of the Act. Entities engaging in actions, transactions and agreements that do not constitute business dealings with the City would not be subject to disclosure requirements and the campaign contribution limitations set forth in the Act.

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SPECIAL MATERIALS

SCHOOL CONSTRUCTION AUTHORITY

NOTICE

NOTICE OF FILING

Pursuant to §1731 of the New York City School Construction Authority Act, notice has been filed for the proposed site selection of Block 4449, Lot 1 (portion), located in the Borough of Brooklyn, for the construction of a new, approximately 1,200-seat intermediate/high school facility in Community School District No. 19.

The proposed site contains a total of approximately 73,000 square feet (1.68 acres) of lot area located on the block bounded by Flatlands Avenue, Elton Street, Linwood Street, and Vandalia Street in the Fresh Creek Urban Renewal Area. The site is vacant, and is owned by the City of New York. Site plans and a summary thereof for the proposed action are available at:

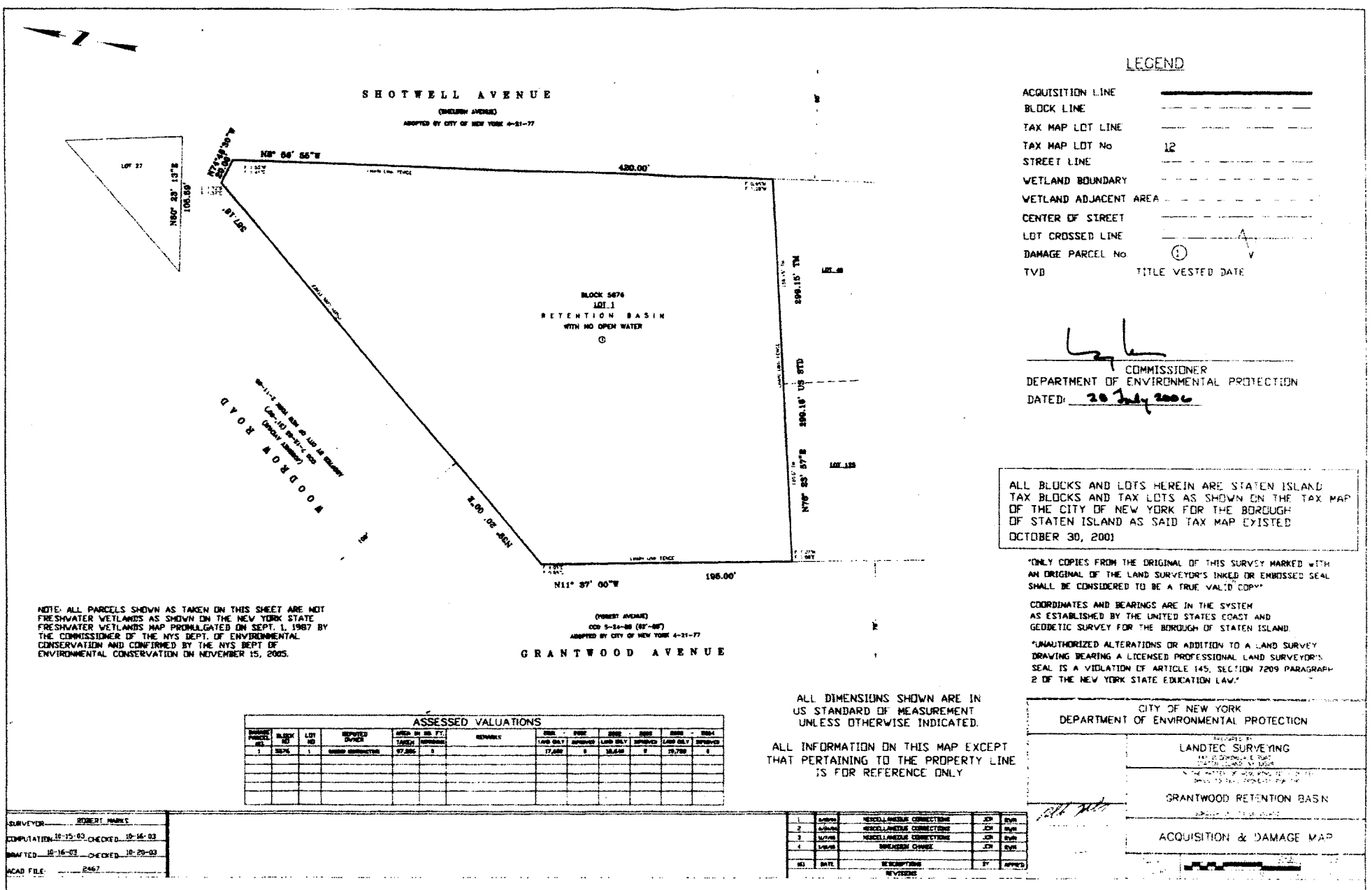
New York City School Construction Authority
30-30 Thomson Avenue
Long Island City, New York 11101

Attention: Ross J. Holden

Comments on the proposed actions are to be sent to the New York City School Construction Authority at the above address and will be accepted until November 6, 2008.

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COURT NOTICE MAP FOR GRANTWOOD RETENTION BASIN, STATEN ISLAND



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 Judgment 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.