

Appendix Y

NYC Charter- 1041-1045 (updated 1/2016)

CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT

Section

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§ 1041. Definitions. As used herein, the term

1. "Adjudication" means a proceeding in which the legal rights, duties or privileges of named parties are required by law to be determined by an agency on a record and after an opportunity for a hearing.

2. "Agency" means any one or more of the elected or appointed officers provided for in this charter and any other official or entity which is acting (1) under the direction of one or more of such officers, (2) under the direction of one or more other officials who are appointed by, or appointed on the recommendation of, such officers, or (3) under the direction of a board, the majority of whose members are appointed by, or appointed upon the recommendation of, one or more of such officers, but shall not include the city council.

3. "Compilation" means the Compilation of city rules required to be published under section one thousand forty-five.

4. "Law" means federal, state and local law, this charter and rules issued pursuant thereto.

5. "Rule" means the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency including an amendment, suspension, or repeal of any such statement or communication.

a. "Rule" shall include, but not be limited to, any statement or communication which prescribes (i) standards which, if violated, may result in a sanction or penalty; (ii) a fee to be charged by or required to be paid to an agency; (iii) standards for the issuance, suspension or revocation of a license or permit; (iv) standards for any product, material, or service which must be met before manufacture, distribution, sale or use; (v) standards for the procurement of goods and services; (vi) standards for the disposition of public property or property under agency control; or (vii) standards for the granting of loans or other benefits.

b. "Rule" shall not include any (i) statement or communication which relates only to the internal management or personnel of an agency which does not materially affect the rights of or procedures available to the public; (ii) form, instruction, or statement or communication of general policy, which in itself has no legal effect but is merely explanatory; (iii) statement or communication concerning the allocation of agency resources or personnel; (iv) statement or communication for guiding, directing or otherwise regulating vehicular and pedestrian traffic, including but not limited to any statement or communication controlling parking, standing, stopping or a construction detour, the contents of which is indicated to the public in signs, signals, markings and similar devices, the determination and installation of which is based on engineering or other technical considerations not involving substantial policy considerations; (v) statement or communication effecting a non-continuous closing of a street; or (vi) statement or communication adopted pursuant to sections fifty-one, one hundred ninety-seven-a except pursuant to the first sentence of subdivision b or the third sentence of subdivision c of section one hundred ninety-seven-a, one hundred ninety-seven-c except pursuant to subdivisions i and l of section one hundred ninety-seven-c, one hundred ninety-nine, two hundred, two hundred one, two hundred two and seven hundred five of this charter.

§ 1042 Regulatory agenda. a. Each agency shall publish by the first day of May annually, a regulatory agenda which shall contain:

1. a brief description of the subject areas in which it is anticipated that rules may be promulgated during the next fiscal year, including a description of the reasons why action by the agency is being considered;
2. a summary, to the extent known, of the anticipated contents of each such proposed rule, its objectives and legal basis;
3. a description of the types of individuals and entities likely to be subject to the rule;
4. an identification, to the extent practicable, of all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule; and
5. an approximate schedule for adopting the proposed rule, and the name and telephone number of an agency official knowledgeable about each subject area involved.

b. Each agency the single head of which is appointed by the mayor shall forward to the mayor its regulatory agenda. The mayor shall review such regulatory agenda to determine whether regulations contemplated by city agencies are consistent with the policy objectives of the administration.

c. Failure to include an item in a regulatory agenda shall not preclude action thereon. If rulemaking is undertaken on a matter not included in the regulatory agenda the agency shall include in the notice of proposed rulemaking the reason the rule was not anticipated. The inadvertent failure to provide the reason such rule was not included in the regulatory agenda shall not serve to invalidate the rule.

§ 1043 Rulemaking. a. Authority. Each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law. No agency shall adopt a rule except pursuant to this section. Each such rule shall be simply written, using ordinary language where possible.

b. Notice. 1. Each agency shall publish the full text of the proposed rule in the City Record at least thirty days prior to the date set for a public hearing to be held pursuant to the requirements of subdivision e of this section or the final date for receipt of written comments, whichever is earlier. A proposed rule amending an existing rule shall contain in brackets any part to be deleted and shall have underlined or italicized any new part to be added. A proposed rule repealing an existing rule shall contain in brackets the rule to be repealed, or if the full text of the rule was published in the Compilation required to be published pursuant to section one thousand forty-five, shall give the citation of the rule to be repealed and a summary of its contents. Such published notice shall include a draft statement of the basis and purpose of the proposed rule, the statutory authority, including the particular sections and subdivisions upon which the action is based, the time and place of public hearing, if any, to be held or the reason that a public hearing will not be held, and the final date for receipt of written comments. If the proposed rule was not included in the regulatory agenda, such notice shall also include the reason the rule was not anticipated, as required in subdivision c of section one thousand forty-two of this chapter.

2. Copies of the full text of the proposed rule shall be electronically transmitted to the office of the speaker of the council, the council's office of legislative documents, the corporation counsel, each council member, the chairs of all community boards, the news media and civic organizations no later than the date the proposed rule is transmitted to the City Record for publication pursuant to paragraph one of subdivision b of this section; provided that an inadvertent failure to fully comply with the notice requirements of this paragraph shall not serve to invalidate any rule.

3. (a) News media, for the purposes of this subdivision, shall include (i) all radio and television stations broadcasting in the city of New York, all newspapers published in the city of New York having a city-wide or borough-wide circulation, and any newspaper of any labor union or trade association representing an industry affected by such rule, and (ii) any community newspaper or any other publication that requests such notification on an annual basis.

(b) Civic organizations, for the purposes of this subdivision, shall include any city-wide or borough-wide organization or any labor union, trade association or other group that requests such notification on an annual basis.

c. Review of statutory authority. The corporation counsel shall review the proposed rule to determine whether it is within the authority delegated by law to the agency proposing the rule. If the corporation counsel determines that the proposed rule is not within the agency's delegated authority, the corporation counsel shall notify the agency in writing prior to the publication of the final rule in the City Record.

d. (1) The law department and the mayor's office of operations shall review each proposed rule prior to publication of such proposed rule in the City Record. At the conclusion of its review, the law

department shall state whether each proposed rule: (i) is drafted so as to accomplish the purpose of the authorizing provisions of law; (ii) is not in conflict with other applicable rules; (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule. As part of its review, the mayor's office of operations shall analyze each proposed rule and state: (a) whether such rule is understandable and written in plain language; (b) how the drafting process of the rule, to the extent practicable and appropriate, included analysis sufficient to minimize the compliance costs for the discrete regulated community or communities, to the extent one exists, consistent with achieving the stated purpose of the rule; and (c) why, in the event such rule involves the establishment of a violation, modification of a violation or modification of the penalties associated with a violation without also including a cure period, or other opportunity for ameliorative action by the party or parties subject to enforcement, such cure period or other opportunity for ameliorative action was not included. Provided, however, that if the proposed rule solely establishes or modifies the amount of a monetary penalty or penalties then the law department statement required by this paragraph shall not be required and the analysis of the office of operations may be limited to the reason or reasons a cure period or other opportunity for ameliorative action was not included.

(2) After completing the review as set forth in paragraph one of this subdivision, the law department and the mayor's office of operations shall certify that they have performed such review, and shall promptly transmit a copy of such certification, including the analysis performed by the mayor's office of operations, to the relevant agency. Such agency shall annex such certification and analysis to the full text of the proposed rule as published in the City Record. Such certification and analysis shall also be made available to the public on the city's website and transmitted to the speaker of the city council at the time of publication. In no event shall a proposed rule be submitted for initial publication in the City Record unless the law department and the mayor's office of operations have issued such certification and analysis.

(3) This subdivision shall not be construed to create a private right of action to enforce its provisions. Inadvertent failure to comply with this subdivision shall not result in the invalidation of any rule.

(4) This subdivision shall not apply to rules that: (i) are promulgated pursuant to the emergency procedures set forth in subdivision i of this section; (ii) are solely concerned with the establishment or modification of the amount of a monetary penalty or penalties, and the underlying violation or a modification of the penalties associated with such violation has previously been analyzed in accordance with paragraph one of this subdivision; (iii) are solely concerned with the establishment or modification of the amount of a fee or fees or (iv) implement particular mandates or standards set forth in newly enacted federal, state, or local laws, regulations or other requirements with only minor, if any, exercise of agency discretion in interpreting such mandates or standards. If an analysis of a proposed rule is not performed pursuant to the exceptions noted in this paragraph, such fact shall be noted and the note annexed to the full text of the proposed rule as published in the City Record.

e. Opportunity for and consideration of agency and public comment. The agency shall provide the public an opportunity to comment on the proposed rule (i) through outreach to the discrete regulated community or communities, if one exists, provided that this clause shall not be construed to create a private right of action to enforce this requirement; (ii) through submission of written data, views, or arguments, and (iii) at a public hearing unless it is determined by the agency in writing, which shall be published in the notice of proposed rulemaking in the City Record, that such a public hearing on a proposed rule would serve no public purpose. All written comments and a summary of oral comments concerning a proposed rule received from the public or any agency shall be placed in a public record and be made readily available to the public as soon as practicable and in any event within a reasonable time, not to be delayed because of the continued pendency of consideration of the proposed rule. After consideration of the relevant comments presented, the agency may adopt a final rule pursuant to subdivision f of this section. Such final rule may include revisions of the proposed rule, and such adoption of revisions based on the consideration of relevant agency or public comments shall not require further notice and comment pursuant to this section.

f. Effective date. 1. No rule shall be effective until

(a) the rule is filed by the agency with the corporation counsel for publication in the Compilation,

(b) the rule and a statement of basis and purpose is transmitted to the council for its information, and

(c) the rule and a statement of basis and purpose have been published in the City Record and thirty days have elapsed after such publication. The requirement that thirty days shall first elapse after such publication shall not apply where a finding that a substantial need for the earlier implementation

of a program or policy has been made by the agency in writing and has been approved by the mayor prior to the effective date of the rule and such finding and approval is contained in the notice.

2. A rule shall be void if it is not published in the next supplement to the Compilation in which its publication is practicable; provided, however, that in the case of an inadvertent failure to publish a rule in such supplement, the rule shall become effective as of the date of its publication, if it is published within six months of the date the corporation counsel receives notice of its omission; and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

g. Petition for rules. Any person may petition an agency to consider the adoption of any rule. Within sixty days after the submission of a petition, the agency shall either deny such petition in writing, stating the reasons for denial, or state the agency's intention to initiate rulemaking, by a specified date, concerning the subject of such petition. Each agency shall prescribe by rule the procedure for submission, consideration and disposition of such petitions. In the case of a board, commission or other body that is not headed by a single person, such rules of procedure may authorize such body to delegate to its chair the authority to reject such petitions. Such decision shall be within the discretion of the agency and shall not be subject to judicial review.

h. Maintenance of comments. Each agency shall establish a system for maintaining and making available for public inspection all written comments received in response to each notice of rulemaking.

i. Emergency procedures. 1. Notwithstanding any other provision of this section, an agency may adopt a rule prior to the notice and comment otherwise required by this section if the immediate effectiveness of such rule is necessary to address an imminent threat to health, safety, property or a necessary service. A finding of such imminent threat and the specific reasons for the finding must be made in writing by the agency adopting such rule and shall be approved by the mayor before such rule may be made effective. In the event that an elected official other than the mayor has the authority to promulgate rules, such official may make such findings without prior mayoral approval. The rule and accompanying finding shall be made public forthwith and shall be published in the City Record as soon as practicable. Agencies shall also electronically transmit all emergency rules adopted pursuant to this paragraph to the office of the speaker of the council, the council's office of legislative documents, the corporation counsel, each council member, the chairs of all community boards, the news media and civic organizations, as such term is defined in subdivision b of this section, no later than the date the emergency rules are transmitted to the City Record for publication pursuant to this paragraph.

2. A rule adopted on an emergency basis shall not remain in effect for longer than sixty days unless the agency has initiated notice and comment otherwise required by this section within such sixty day period and publishes with such notice a statement that an extension of such rule on an emergency basis is necessary for an additional sixty days to afford an opportunity for notice and comment and to adopt a final rule as required by this section; provided that no further such finding of an emergency may be made with respect to the same or a substantially similar rule.

§ 1044 Review of previously adopted rules. a. Submission of previously adopted rules.

1. By the tenth day of August, nineteen hundred eight-nine, each agency shall send to the corporation counsel a copy of each rule, as defined in subdivision five of section one thousand forty-one, in force as of the first day of January of nineteen hundred eight-nine. Each such rule shall be identified by the agency as one of the following:

- (a) a rule which should be continued in its present form;
- (b) a rule which should be continued with amendments; or
- (c) a rule which should be repealed.

2. Any amendment or repeal of a rule described in paragraph one of this subdivision, shall be subject to the provisions set forth in section one thousand forty-three.

b. In regard to all rules submitted pursuant to subdivision a of this section, the corporation counsel shall

1. include such rules in the Compilation required to be published pursuant to section one thousand forty-five; provided, however, that each rule which the agency identifies as a rule which should be continued but with amendments, and each rule which the agency identifies as a rule which should be repealed, shall be published in the Compilation with an appropriate notation as to the agency's comments and intentions. Such notations shall be provided for informational purposes only and such rule in its present form shall remain in full force and effect until and unless such rule is amended or repealed pursuant to the procedures set forth in section one thousand forty-three, and

2. submit to the City Record for publication by the first day of September, nineteen hundred ninety, a list of rules submitted pursuant to subdivisions a and e of this section, except for rules

contained in the health code. Such list shall include for each rule a short descriptive title, as well as any available identifying names, numbers, adoption dates or similar information regarding such rule; and an indication of the agency's intention to continue such rule without amendments, to continue it with amendments or to repeal it.

c. No rule, as defined in subdivision five of section one thousand forty-one, which is in force as of the first day of January, nineteen hundred eighty-nine shall have any force or effect on or after the tenth day of August, nineteen hundred and eighty-nine unless it is submitted by the agency to the corporation counsel by such date.

d. Except as provided in subdivision e, no rule adopted by any agency prior to the effective date of this chapter shall have any force or effect after the first day of July, nineteen hundred ninety-one unless it is included in the Compilation required to be published by that date pursuant to section one thousand forty-five; provided however that in the case of an inadvertent failure to publish a rule in such Compilation, the rule shall become effective as of the date of its publication, if it is published within six months from the date the corporation counsel received notice of its omission, and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

e. On or before a date one hundred eighty days after the publication date of the Compilation required to be published pursuant to section one thousand forty-five, any person may submit to the agency involved a copy or a description of a rule which such person believes to be in force as of the effective date of this chapter. Upon the receipt of a description or copy of such a rule, the agency shall endeavor to verify the existence of such rule and upon identifying such rule, if such rule was in force and effect as of the effective date of this chapter and has not been submitted to the corporation counsel pursuant to subdivision a of this section, the agency shall take the actions required pursuant to subdivision a of this section, and notwithstanding the provisions of subdivisions c and d of this section, such rule shall remain in force and effect until or unless amended or repealed pursuant to section one thousand forty-three.

§ 1045 Compilation of city rules. a. The corporation counsel shall publish a Compilation of city rules and thereafter keep such Compilation up to date through supplements issued at least every six months and at such other times as the corporation counsel shall determine. The Compilation and its supplements shall be certified by the corporation counsel and shall include every rule currently in effect. The Compilation and its supplements may contain such other information as the corporation counsel deems necessary and appropriate for full understanding of any rule or which the corporation counsel in his or her discretion determines may be of interest or assistance to the public. The Compilation and its supplements shall be organized by agency and indexed by subject matter. An indexed edition of the Compilation shall be published by the first day of July, nineteen hundred and ninety-one, which date shall be deemed the publication date of the Compilation, and shall be updated and republished by the first day of March of every fourth year thereafter.

b. The rules contained within the Compilation and its supplements shall be certified by the corporation counsel and shall be the rules of the city unless added to, amended or repealed in accordance with section ten hundred forty-three of the charter. Materials included in the Compilation may be edited, rearranged and updated for clarity, accuracy and reorganization without change in substance. Section numbers, stylistic and organizational formats and other non-substantive revisions to the rules effected by the law department pursuant to this subdivision shall become effective on the publication date of the Compilation and upon the publication of each supplement.

c. Documents submitted by an agency pursuant to subdivision a of section ten hundred forty-four of the charter which were not formally adopted by the agency as rules pursuant to section eleven hundred five of the charter as in effect prior to November eighth, nineteen hundred eighty-eight shall either be included in the Compilation or filed in the municipal reference and research center in the manner provided below. All documents which the corporation counsel, in his or her discretion, determines should not be included in the Compilation shall be organized by agency and subject matter in a form which shall be easily accessible to the public and filed by the corporation counsel in the municipal reference and research center on or prior to July first nineteen hundred ninety-one. Notice of such filing and a list of the documents filed shall be published in the City Record. Notwithstanding any inconsistent provision of section ten hundred forty-four of the charter, any of such documents so filed shall, if otherwise valid, continue to be effective provided, however, that the amendment or repeal of any document which is within the definition of rule set forth in subdivision five of section ten hundred forty-one of the charter shall be in accordance with section ten hundred forty-three of the charter.