

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1989**

No. 42

Introduced by Council Member Katzman (by request of the Mayor). (Passed Under A Message of Necessity by the Mayor)

A LOCAL LAW

To amend the New York City charter, in relation to the city administrative procedure act and to make other related corrections.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent.

This bill proposes to revise provisions of the charter adopted by the voters at referendum in November of nineteen hundred eighty-eight. The proposed revisions of primary significance contained in this bill are certain extensions in time provided, one to delay for one year the effective date of a charter provision requiring a defined process in the conduct of adjudications by the city, another to delay for one year the date by which the corporation counsel is required to publish the Compilation of city rules with a related delay in a City Record publishing of a list of rules to be included in such Compilation. The extensions in time contained in this bill are intended to be limited to one year only and no further extensions are contemplated.

§2. Sections 1041, 1043, 1044 and 1045 of the New York City charter, as added by vote of the electors at the general election held on November 8, 1988, are amended to read, respectively, as follows:

§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 of this chapter.

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 [the] *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 [the] *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, one hundred ninety-seven-c except pursuant to subdivision g 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; or (vii) *building code reference standards amended, revised or added by the board of standards and appeals after notice and a public hearing and published as part of the administrative code.*

§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 d of this section or the final date for receipt of written comments, whichever is earlier. A proposed rule amending [or repealing] an existing rule shall contain in brackets any part to be [repealed] *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 of this chapter, 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 notice shall be transmitted to the council and the corporation counsel, and mailed to each council member, the chairs of all community boards, the news media and civic organizations; 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. [Prior to the date of public hearing or prior to the date for receipt of public comments if no hearing is held, the] *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 [, by the date set for final receipt of public comments,] notify the agency in writing *prior to the publication of the final rule in the City Record*. This subdivision shall not apply to the rules adopted by the board of estimate.

d. 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 submission of written data, views, or arguments, and (ii) 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 a 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.

e. 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 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.

f. 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.

g. 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.

h. 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.

2. A rule adopted on an emergency basis shall not remain in effect for longer than sixty days unless the agency [, with the prior approval of the mayor, finds that] *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 [, and the agency has initiated notice and comment otherwise required by this section].

§1044. Review of previously adopted rules. a. Submission of previously adopted rules. 1. By the tenth day of August, nineteen hundred eighty-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 of this chapter, in force as of the first day of January of nineteen hundred eighty-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 of this chapter.

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 of this chapter; 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 of this chapter, and

2. submit to the City Record for [expeditious] 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 of this chapter, 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 March, nineteen hundred [ninety] *ninety-one* unless it is included in the Compilation required to be published by that date pursuant to section one thousand forty-five of this chapter; 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 date that the Compilation required to be published pursuant to section one thousand forty-five of this chapter is first published, 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 of this chapter.

§1045. Compilation of city rules. The corporation counsel shall publish a Compilation of city rules and thereafter keep such Compilation up to date through [cumulative] supplements issued at least every six months and at such other times as the corporation counsel shall determine. The Compilation and its supplements shall include every rule currently in effect, and such other information as the corporation counsel deems necessary and appropriate for full understanding of such rule. 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 March, nineteen hundred and [ninety] *ninety-one* and updated and republished by the first day of March of every fourth year thereafter.

§3. Paragraph (2) of subdivision c of section 1152 of the New York City charter, as added by vote of the electors at the general election held on November 8, 1988, is amended to read as

follows:

(2) that the effective date of section one thousand-forty six shall be the first day of July nineteen hundred [eighty-nine] *ninety*, and

§4. Subdivision d of section 394 of the New York City charter is REPEALED.

§5. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 13, 1989, and approved by the Mayor on June 28, 1989.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed local law (Local Law 43 of 1989, Council Int. No. 1248-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on June 13, 1989:
34 for, 0 against

Was approved by the Mayor on June 28, 1989.

Was returned to the City Clerk on June 29, 1989.

LEONARD KOERNER, Acting Corporation Counsel