

**THE CITY OF NEW YORK**

**COMMISSION ON HUMAN RIGHTS**

**RULES OF PRACTICE**

Title 47, Chapters 1, 2 and 3, Rules of the City of New York *Effective May 1998*

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**Statement of Basis and Purpose of Rules.** The adjudication function of the Commission on Human Rights (“Commission”) has been transferred to the Office of Administrative Trials and Hearings (“OATH”). The amendments to the Rules of Practice of the Commission and of OATH are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedures applicable to those adjudications. The Commission’s adjudications, both as previously conducted by its Hearings Bureau, and as now conducted by OATH, result in the issuance of Recommended Decisions from Administrative Law Judges to the Commission, which the Commission may adopt in full, modify or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

Some changes in procedure have been adopted by these amendments. For example, by §1-43 of Title 48, OATH adopts for all of its cases a Rule governing subpoenas that is identical to the Commission’s former Rule governing subpoenas, 47 RCNY, §1-8 1, except that ex parte applications for issuance of subpoenas are not permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge is reduced from seven days, as provided in the Commission’s former Rules, to five days in OATH’s current Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas that were made to the Hearings Bureau under the Commission’s former Rules are made to the Chair of the Commission under the Commission’s current Rules, 47 RCNY §§1-72, 1-73.

Upon the Commission’s referral of a case to OATH for adjudication, the Rules of Practice of OATH relating to pre-hearing and hearing procedures (Title 48, Rules of the City of New York, Chapter 1, and Chapter 2, subchapter C) are hereby adopted by the Commission. Subchapter C (Additional Rules for Human Rights Cases) of OATH’S Rules of Practice are annexed.

**Title 47**  
**Commission on Human Rights**

Chapter 1  
Practice and Procedure

**SUBCHAPTER A**  
**GENERAL**

**§1-01 Scope of Rules.**

These rules are intended to carry out the provisions of Title 8, Chapter 1 of the Administrative Code of the City of New York, Human Rights Law (“HRL”), and the policies and procedures of the Commission on Human Rights in connection therewith, as authorized by HRL §8-105(11) and §8-117.

**§1-02 Organization of Commission.**

In order to carry out its various statutory responsibilities in a fair and impartial fashion, the Commission has separated its functions into discrete bureaus and offices, each of which reports to the Chair of the agency. In addition to the Chair and the Commissioners, the following components of the Commission are directly involved in the enforcement of the HRL:

(a) *Law Enforcement Bureau.* The Law Enforcement Bureau is charged with the Commission’s investigatory and prosecutorial functions. Where an action is authorized or required to be taken by the Law Enforcement Bureau, such action shall be taken by the Deputy Commissioner for Law Enforcement, such Law Enforcement Bureau staff as the Deputy Commissioner shall designate, or such person as may be appointed by the Chair of the Commission.

(b) *Office of General Counsel.* The Office of General Counsel serves as counsel to the Chair and to the Commissioners. Where an action is authorized or required to be taken by the Office of General Counsel, such action shall be taken by the General Counsel, such staff of the Office of General Counsel as the General Counsel shall designate, or such person as may be appointed by the Chair of the Commission.

(c) *Office of Mediation and Conflict Resolution.* The Office of Mediation and Conflict Resolution provides mediation and conciliation services in connection with complaints that have been filed. Where an action is authorized or required to be taken by the Office of Mediation and

Conflict Resolution, such action shall be taken by the Deputy Commissioner for Mediation and Conflict Resolution, such staff of the Office of Mediation and Conflict Resolution as the Deputy Commissioner shall designate, or such person as may be appointed by the Chair of the Commission.

§ 1-03 **Definitions and Construction.** For purposes of this chapter,

*Calculation of dates.* A number of days specified in these rules means calendar days exclusive of the calendar day from which the calculation is made.

*Complainant.* Complainant shall mean a person who has filed a complaint pursuant to these rules.

*Discriminatory harassment or violence.* The procedures set forth in these Rules which apply to unlawful discriminatory practices shall apply with like effect to acts of discriminatory harassment or violence as set forth in chapter 6 of title 8 of the Administrative Code except that no complaint shall be filed with respect to an act of discriminatory harassment or violence unless the act complained of occurred on or after January 22, 1993.

*Filing and proof of service.* Wherever these rules require that a paper be filed, such requirement shall be construed to require the filing of proof of prior service of the paper on the persons required to be served by the section together with the paper. Each Bureau and Office of the Commission shall retain proof of service of each paper served under these rules.

*Investigatory file.* For the purposes of these rules, the Law Enforcement Bureau's

"Investigatory File" shall be construed to include only the factual information, as opposed to opinions or legal analysis contained on those writings made or gathered by the Bureau during the course of an investigation. Any information derived from an investigation pursuant to Subchapter D of this chapter including the names and other identifying information of witnesses who request anonymity is confidential; provided, however, that the Law Enforcement Bureau may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action.

*Means of service of papers.* Except where otherwise specified, service of a paper means any method of service described by §2103 of the New York Civil Practice Law and Rules.

*Necessary party.* Necessary party shall mean any person deemed by the Law Enforcement Bureau or any person determined by an Administrative Law Judge to be a person without whom complete relief could not be ordered by the Commission or a person whose interests would be materially affected by the Commission's determination of the case. Any person deemed or determined to be a necessary party shall be treated as a party for all purposes under these rules and the HRL.

*Papers to be served upon counsel.* Whenever a person required to be served with a paper pursuant to these rules has duly informed the Law Enforcement Bureau as required by these rules that such person is represented by counsel, service shall be effected upon the person's counsel in lieu of service on the person himself or herself

*Party.* Unless the context requires otherwise, the term "party" shall refer to the Law Enforcement Bureau, to respondents, to those complainants that shall have intervened pursuant to §2-25 of the Rules of Practice of the Office of Administrative Trials and Hearings (hereinafter "OATH") and to necessary parties.

*Person.* The term "person" shall have the meaning ascribed thereto in subdivision one of HRL §8-102. The term "person" shall be construed to include associations, organizations or groups that assert the civil rights of protected classes.

*Probable Cause.* The Law Enforcement Bureau shall find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed.

*Respondent.* Respondent shall mean a person who has been charged in a complaint filed pursuant to these rules with having committed an unlawful discriminatory practice.

*Rules.* Rules shall mean the provisions of chapter 1 of Title 47 of the Rules of the City of New York.

## **SUBCHAPTER B**

### **COMPLAINTS, ANSWERS, AND NOTIFICATION OF OBLIGATIONS**

#### **§1-11 Complaints Generally.**

(a) *Who may file.* (1) Any person claiming to be aggrieved by an unlawful discriminatory practice may in person, by his or her attorney, or by a representative acting with appropriate legal authority make, sign and file a written verified complaint with the Law Enforcement Bureau in accordance with these rules.

(2) The Law Enforcement Bureau may make, sign, and file a verified complaint alleging that a person has committed an unlawful discriminatory practice.

(b) *Form of complaints.* All complaints shall be typewritten, and must be signed and verified by the person making the complaint or, in the case of a Commission-initiated complaint, by the



(d) *What constitutes filing of a complaint or answer.* A complaint or answer is filed when it is accepted for filing by the Office of the Docketing Clerk of the Law Enforcement Bureau.

(e) *Procedure upon receipt of complaint.* The Law Enforcement Bureau shall accept complaints for filing, note the date of filing on the complaint, and assign a complaint number to the complaint. The Law Enforcement Bureau shall thereafter serve by mail a copy of the filed complaint upon each respondent and necessary party and shall advise the respondent of his or her procedural rights and obligations.

### **§1—12 Commission-initiated Complaints.**

(a) *Procedure upon filing of a Commission-initiated complaint.* Upon filing of a Commission-initiated complaint, the Law Enforcement Bureau shall immediately note the date of filing on the complaint, and assign a complaint number to the complaint. The Law Enforcement Bureau shall thereafter serve a copy of the filed complaint upon each respondent and shall advise the respondent of his/her procedural rights and obligations.

(b) *Probable cause.* The filing of Commission-initiated complaint shall be deemed to be a determination of probable cause.

### **§1-13 Amendments to Complaints.**

A complaint may be amended as of right at any time before the referral of the complaint to the OATH pursuant to § 1—71 of this chapter. Subsequent to the referral of a complaint to OATH~ a complaint may be amended by application to the presiding Administrative Law Judge.

### **§1-14 Answer.**

(a) *Time for filing.* The respondent shall file a verified answer with the Law Enforcement Bureau within 30 days of having been served with a complaint or an amendment thereof

(b) *Form and content of answer.* The answer shall be verified as to the truth of the statements therein, and the respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial. Any allegation in the complaint not specifically denied or explained shall be deemed admitted unless good cause to the contrary is shown. All affirmative defenses and mitigating factors set forth in HRL §8-107(13)(d), §8-107(13)(e), and §8-126(b) shall be stated separately in the answer.

(c) *Counterclaims and cross-claims.* The respondent shall not be permitted to interpose either a counterclaim or a cross-claim in the answer.

(d) *Extension of time to answer.* A respondent may apply to the Law Enforcement Bureau for additional time to file an answer. Such a request shall be granted for good cause shown.

(e) *Amendment of answer.* A respondent may amend its answer to the original complaint at any time prior to the referral of the complaint to OATH pursuant to § 1—71 of this chapter. An amendment to an answer subsequent to the referral of a complaint to OATH may be made by application to the presiding Administrative Law Judge.

(f) Notwithstanding the foregoing provisions, the following shall apply with respect to complaints originally filed with the Commission prior to September 16, 1991 and amendments thereof whether filed before or after September 16, 1991:

(1) A respondent may but is not required to file a verified answer to the complaint. If a respondent elects not to file an answer to the complaint, all allegations of the complaint shall be deemed denied.

(2) A respondent must file a verified answer if the respondent has or intends to assert affirmative defenses to the charges set forth in the complaint.

(3) Where a respondent files an answer, any allegation of the complaint which is not answered or upon which respondent alleges insufficient information shall be deemed denied.

(4) An answer may be filed at any time after the service of the complaint and no later than 15 days after service of a determination of probable cause.

**§1-15 Representation. Complainants and** respondents may be represented by counsel. Counsel shall file with the Law Enforcement Bureau a Notice of Appearance which shall recite the person or persons for whom the attorney appears, and the attorney's name, address, and telephone and fax number.

**§ 1-16 Change of Address.** Complainants, respondents, and their legal representatives are under a continuing obligation to notify the Law Enforcement Bureau of any change in their addresses.

## SUBCHAPTER C

### WITHDRAWALS AND DISMISSALS

#### **§1-2 1 Withdrawal of Complaints.**

At any time prior to the service of a notice that a complaint has been referred to OATH, a complainant may withdraw a complaint that has been filed.

#### **§ 1-22 Dismissal of Complaint.**

(a) *Dismissal for administrative convenience.* The Law Enforcement Bureau may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:

- (1) Law Enforcement Bureau personnel have been unable to locate the complainant after diligent efforts to do so;
- (2) the complainant has repeatedly failed to appear at mutually agreed-upon appointments with the Law Enforcement Bureau or the Office of Mediation and Conflict Resolution personnel, or is unwilling to meet with the Law Enforcement Bureau or the Office of Mediation and Conflict Resolution personnel, provide requested documentation, or to attend a hearing;
- (3) the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the Law Enforcement Bureau;
- (4) where the complainant is unwilling to accept a reasonable proposed conciliation agreement;
- (5) prosecution of the complaint will not serve the public interest. Without limitation, this shall include those circumstances where it is not likely that further investigation will result in a finding of probable cause or where the passage of time or other factors have materially impaired the ability of a respondent to defend against the allegations of the complaint; and
- (6) the complainant requests such dismissal, one hundred eighty days have elapsed since the filing of the complaint with the Law Enforcement Bureau, and the Law Enforcement Bureau finds (a) that the complaint has not been actively investigated and (b) that the respondent will not be unduly prejudiced thereby.

(b) *Mandatory Dismissal for administrative convenience.* The Law Enforcement Bureau shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent if the complainant requests such dismissal, unless the Law Enforcement Bureau has conducted an investigation of the complaint or has engaged the parties in conciliation after the time the complaint was filed.

(c) *Dismissal because the complaint is not within the jurisdiction of the Commission.* The Law Enforcement Bureau shall dismiss a complaint in whole or in part where it concludes that the complaint or a portion thereof is not within the jurisdiction of the Commission.

(d) *Dismissal for lack of probable cause.* If, after investigation the Law Enforcement Bureau determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, the Bureau shall dismiss the complaint in whole or in part as to such respondent.

(e) *Notification of dismissal.* When the Law Enforcement Bureau makes a determination pursuant to this section, it shall promptly serve each complainant, respondent, and necessary party with an order dismissing the complaint in whole or in part.

(f) *Review of order of dismissal.* A complainant or respondent aggrieved by an order of dismissal made pursuant to this section may apply to the Chair for review of such order within 30 days of the service of such order by serving a notice of application for review on all other complainants and respondents, the Law Enforcement Bureau and any necessary parties, and by filing such notice with the Office of General Counsel.

## **SUBCHAPTER D INVESTIGATORY PROCEDURES**

### **§1-31 Policy.**

The procedures to be followed in investigative proceedings shall be such as in the discretion of the Law Enforcement Bureau will best facilitate accurate, orderly, and thorough fact-finding.

### **§1-32 Subpoenas.**

The Law Enforcement Bureau may issue and serve subpoenas ad testificandum and subpoenas duces tecum upon any person. Proceedings to enforce, quash, fix conditions, or modify subpoenas shall be governed by Article 23 of the New York Civil Practice Law and Rules.

### **§ 1-33 Investigative Record-keeping.**

(a) The Law Enforcement Bureau shall have the authority to make demands for the preservation of records and for the continuation of the practice of making and keeping records permitted by FIRL §8-1 14(b). The demand shall require that such records be made available for inspection by the Law Enforcement Bureau and/or be filed with the Law Enforcement Bureau.

(b) Any person upon whom a demand has been made may assert an objection to the demand within seven days after service of the demand by serving such objection upon the Law Enforcement Bureau and filing such objection with the Office of General Counsel. The Law Enforcement Bureau shall have seven days from service of the objection to serve such person with a written response to the objection and to file such response with the Office of General Counsel. The Chair shall issue an order on said demand and objection.

### **§1-34 Availability of Investigatory Materials.**

Upon an order of the Law Enforcement Bureau dismissing the complaint, complainant and respondent may examine the factual documentation in the investigatory file.

### **§ 1-35 Pre-complaint Investigations.**

In addition to conducting investigations of allegations contained in complaints filed pursuant to §1-11 and §1-12 of this chapter, the Law Enforcement Bureau may investigate on its own initiative possible violations of the HRL.

## **SUBCHAPTER E DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS**

### **§1-51 Basis of Determination.**

The Law Enforcement Bureau shall find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed.

### **§ 1-52 Notice of Determination.**

The Law Enforcement Bureau shall serve a written notice of determination upon complainant and respondent. Determinations which state that probable cause has been found not to exist and that dismiss the complaint shall state the reasons for the Law Enforcement Bureau's conclusion.

### **§1-53 Review of Determination.**

A determination that probable cause exists to credit some or all of the allegations of a complaint that an unlawful discriminatory practice has been or is being committed is not reviewable. A determination that probable cause does not exist to credit some or all of the allegations of a complaint that an unlawful discriminatory practice has been or is being committed, and that the complaint is accordingly dismissed in whole or in part, is reviewable in accordance with subdivision (f) of §1-22 of this Chapter.

## **SUBCHAPTER F MEDIATION AND CONCILIATION**

### **§1-61 Conciliation Agreements.**

The Law Enforcement Bureau, complainant, respondent, and other necessary parties may at any time after the filing of a complaint agree to a conciliated resolution of a complaint.

(a) *Form and Content.* Every conciliation agreement shall contain an acknowledgment of each complainant's and respondent's execution of the agreement. The provisions of the conciliation agreement may be such as are agreed to by the Law Enforcement Bureau, complainant, and respondent.

(b) *Effective Date.* A conciliation agreement shall be deemed binding at the time that such agreement is executed by the Law Enforcement Bureau and by all complainants and respondents and other necessary parties entering into the agreement.

(c) *Entry of Order by Commission.* When a conciliation agreement has been fully executed, the Law Enforcement Bureau shall promptly forward such agreement to the Chair. The signature of the Chair on a conciliation agreement with the notation "SO ORDERED" shall be construed to be an order of the Commission pursuant to HIRL §8-115(d) directing the parties to such conciliation agreement to perform each and all of their obligations under such conciliation agreement in the time and manner set forth in such conciliation agreement. The Chair shall deliver the order of the Commission to the Law Enforcement Bureau for service upon the parties to the agreement.

## **§ 1-62 Requests for Assistance of Office of Mediation and Conflict Resolution.**

Upon the request of the Law Enforcement Bureau, complainant, or respondent, the Office of Mediation and Conflict Resolution shall endeavor to assist the Law Enforcement Bureau, complainant, and respondent to achieve a conciliated resolution of a complaint.

## **SUBCHAPTER G**

### **ADJUDICATION PROCEDURES**

#### **§1-71 Referral of Complaints to OATH.**

(a) When the Law Enforcement Bureau determines that a case is ready for adjudication, the Bureau shall refer the case to OATH pursuant to this section. Except as otherwise provided herein, OATH's rules of practice relating to hearing and pre-hearing procedures (Title 48, Rules of the City of New York, chapter 1, and chapter 2, subchapter C) are hereby adopted by the Commission as the rules of practice and the procedure of the Commission and shall apply to adjudications referred to OATH by the Commission.

(b) The Law Enforcement Bureau shall serve the Notice of Referral upon the complainant, the respondent and any necessary party and file it with OATH. The notice shall include the last known address and telephone number of each complainant, respondent, and necessary party. The notice shall state whether the respondent has complied with the requirement of § 1-14 of this Chapter and, if not, whether the Law Enforcement Bureau seeks to have respondent held in default. The notices shall inform the complainant of his or her right to intervene pursuant to OATH's rules (48 RCNY §2-25). No material relating to the investigation, the finding of probable cause, or the substance of conciliation efforts shall be filed with OATH.

#### **§ 1-72 Motions relating to requests by Law Enforcement Bureau pursuant to Subchapter D.**

In the event any party has failed to comply with any request by the Law Enforcement Bureau for documents or other information pursuant to Subchapter D of this Chapter, the Law Enforcement Bureau may make a motion to have the Chair order compliance with such request. Any party to whom such a request is made shall have an opportunity to submit to the Chair any objections to such request. The Chair may order compliance with such request or may order such other relief as the Chair deems just and proper. In the event any party has failed to comply with such an order compelling compliance with a request by the Law Enforcement Bureau for documents or other information, the Law Enforcement Bureau may make a motion to have the Chair make such orders or take such actions as are permitted by HRL §8-118.

**§1-73 Motions relating to sanctions for failure to comply with order for investigative record-keeping.**

The Law Enforcement Bureau may make a motion to have the Chair make such orders or take such actions as are permitted by HRL 8-118 in the event a respondent has failed to comply with an order for investigative record-keeping issued by the Chair pursuant to §1-33 of this Chapter.

**§1-74 Interlocutory review of Administrative Law Judge decisions and orders.**

The Chair shall entertain an interlocutory challenge to a decision or order of an Administrative Law Judge where the presiding Administrative Law Judge certifies the question for review. Any question not certified by the presiding Administrative Law Judge may be raised by a party to the Commission in connection with the Commission's review of a recommended decision and order in a case. Any challenge that is certified by the Administrative Law Judge and entertained by the Chair shall preclude further review by the Commission. The failure of a party to challenge a decision or order of an Administrative Law Judge other than a recommended decision and order, shall not preclude that party from making such challenge to the Commission in connection with the Commission's review of a recommended decision and order in a case, provided that the party timely made its objection known to the Administrative Law Judge and that the grounds for such challenge shall be limited to those set forth to the Administrative Law Judge.

**§1-75 Time for Commission Consideration of Recommended Decision and Order.**

(a) *Generally.* The Commission shall commence consideration of a case that is the subject of a recommended decision and order upon filing of the recommended decision and order with the Office of General Counsel.

(b) *Recommended decisions and orders not completely disposing of a complaint.* The Commission shall not commence consideration of a case that is the subject of a recommended decision and order which, if adopted, would not resolve the complaint in its entirety unless the Administrative Law Judge certifies the portion of the case proposed to be decided by the recommended decision and order to the Commission for immediate consideration. Dismissal of all or part of a case shall have the effect of a Recommended Decision and Order for the purpose of this section.

**§1-76 Post-hearing Comments.**

Each party shall have twenty days after the commencement of Commission consideration of the recommended decision and order as provided in § 1-75 of this chapter to submit written comments to the Commission. The comments should raise any objections to the recommended decision and order. Comments shall be limited to the record below. Objections not raised in the comments will be deemed waived in any further proceedings. Comments shall be served upon all

other parties and shall be filed with the Office of General Counsel. Parties shall apply to the General Counsel's office for permission to submit reply comments. Upon application filed with the Office of General Counsel, the Chair may shorten or extend the time for comments or replies for good cause shown. Comments and replies shall be served upon the Commissioners by the Office of General Counsel.

## CHAPTER 2

### UNLAWFUL DISCRIMINATORY PRACTICES

#### **§2-01 Definitions.**

The definitions in this section shall be used by the New York City Commission on Human Rights in determining whether an institution, club, or place of accommodation is “distinctly private” as that term is used in the New York City Human Rights Law, Administrative Code §8-101 et seq.

*Members.* “Members” shall mean individuals belonging to any class of membership offered by the institution, club, or place of accommodation including, but not limited to, full membership, resident membership, nonresident membership, temporary membership, family membership, honorary membership, associate membership, membership limited to use of dining or athletic facilities, and membership of members’ minor children or spouses.

*Payment directly from a nonmember.* “Payment directly from a nonmember” shall mean payment made to an institution, club or place of accommodation by a nonmember for expenses incurred by a member or nonmember for dues, fees, use of space, facilities, services, meals or beverages.

*Payment for the furtherance of trade or business.* “Payment for the furtherance of trade or business” shall mean payment made by or on behalf of a trade or business organization, payment made by an individual from an account which the individual uses primarily for trade or business purposes, payment made by an individual who is reimbursed for the payment by the individual’s employer or by a trade or business organization, or other payment made in connection with an individual’s trade or business, including entertaining clients or business associates, holding meetings or other business-related events.

*Payment indirectly from a nonmember.* “Payment indirectly from a nonmember” shall mean payment made to a member or nonmember by another nonmember as reimbursement for payment made to an institution, club or place of accommodation for expenses incurred for dues, fees, use of space, facilities, meals or beverages.

*Payment on behalf of a nonmember.* “Payment on behalf of a nonmember” shall mean payment by a member or nonmember for expenses incurred for dues, fees, use of space, facilities, services, meals or beverages by or for a nonmember.

*Regular meal service.* “Regular meal service” shall mean the provision, either directly or under a contract with another person, of breakfast, lunch, or dinner on three or more days per week during two or more weeks per month during six or more months per year.

*Regularly receives payment.* An institution, club or place of accommodation “regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business” if it receives as many such payments during the course of a year as the number of weeks any part of which the institution, club or place of accommodation is available for use by members or non-members per year.

## **§2-02 Severability.**

If any provision of these regulations or the application thereof is held invalid, the remainder of these regulations shall not be affected by such holding and shall remain in full force and effect.

## **§2-03 Exemption of Certain Places of Public Accommodations in Relation to Sex Discrimination.**

(a) Dressing rooms, toilets and shower rooms containing multiple facilities, and appurtenant rooms and facilities, and turkish baths and saunas, shall be exempt from the provisions of §8-107, paragraph 2 of the Administrative Code insofar as the use of such accommodations is restricted to one sex. This exemption shall not apply to swimming pools and other facilities for swimming.

(b) Rooming houses or residence hotels in which rental is restricted to one sex shall be exempt from the provisions of §8-107, paragraph 2 of the Administrative Code if such accommodation is regularly occupied on a permanent, as opposed to transient, basis by the majority of its guests.

(c) Lodging facilities in which the sleeping rooms and/or bathrooms are used in common, such as missions or dormitories designed for occupancy by members of the same sex, shall be exempt from the provisions of §8-107, paragraph 2 of the Administrative Code insofar as members of one sex are excluded from such accommodations.

## CHAPTER 3

### AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS

#### **§3-01 Definitions.**

*Advantages.* “Advantages” shall include but not be limited to priority services, discounts in pricing or any thing of monetary value extended on the basis of a person’s age.

*Restrictions.* “Restrictions” shall be construed to mean any limitation in access or services on the basis of a person’s age.

#### **§3-02 Age-Based Extension of Advantages in Public Accommodations.**

Any and all reasonable advantages extended in access to services provided by a place or provider of public accommodation on the basis of a person’s age shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

#### **§3-03 Age-Based Restrictions in Public Accommodations.**

(a) Any and all restrictions in access to public accommodations on the basis of a person’s age which are mandated by federal, state or local law shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(b) Any and all restrictions on the basis of a person’s age in access to public accommodations displaying motion pictures with ratings by the Motion Picture Association of America, Inc. shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(c) Any and all reasonable restrictions in access to public accommodations imposed upon minors to prevent physical harm to such persons shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(d) Any restrictions in access to or services provided by a place or provider of public accommodation based on age which allows the owner, lessee, proprietor, manager, superintendent, agent or employee of a place or provider of public accommodation to refuse to enter into a contract which under the laws of the State of New York may be disaffirmed on the ground of infancy shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code.

### **§3-04 Applications for Exemption from §8-107(4)(a) Administrative Code.**

The owner, lessee, proprietor, manager, superintendent or agent of a place or provider of public accommodation may make an application for exemption of an age-based restriction on access to or services provided by such public accommodation which would otherwise be prohibited pursuant to 8-107(4)(a) of the Administrative Code and §3-03 of these rules. Such application shall be made in writing to the Office of the Chairperson of the New York City Commission on Human Rights. The application shall set forth the specific basis for the exemption sought together with any supporting evidence. The Chair may grant such exemption if he or she determines that the exemption promotes the health, safety or well-being of the public, or prevents physical harm to the property or premises of a place of public accommodation, or undue disruption of the quiet enjoyment of a place of public accommodation and is not inconsistent with the goals and policies of the City Human Rights Law. The decision of the Chair shall be final.