

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the proposed rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB) related to fines for illegal conversions of dwelling units from permanent residences.

Date / Time: December 18, 2012 / 3:30 p.m.

Location: Environmental Control Board (ECB)
66 John Street
10th Floor, Conference Room
New York, N.Y. 10038

Contact: James Macron
Counsel to the Board
ECB
66 John Street, 10th Floor
New York, N.Y. 10038
(212) 361-1515

Proposed Rule Amendment

Pursuant to Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the New York City Charter and Chapter 2 of Title 28 of the New York City Administrative Code, the Environmental Control Board proposes to amend Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, creating penalties for offenses adjudicated by the Environmental Control Board related to fines for illegal conversions of permanent residential units for use other than a permanent residence, such as converting the space for use as a hotel.

This rule was not included in the Environmental Control Board's regulatory agenda because it was not anticipated at the time the agenda was created.

Instructions

- Prior to the hearing, you may submit written comments about the proposed rule to Mr. Macron by mail at the address above or electronically through NYC RULES at www.nyc.gov/nycrules by December 18, 2012. Individuals seeking to testify at the hearing should also notify Mr. Macron by December 18, 2012.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Mr. Macron by December 11, 2012.
- After the hearing, individuals interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to Mr. Macron.

Statement of Basis and Purpose

The Environmental Control Board proposes to amend its Department of Buildings (DOB) Penalty Schedule. This schedule is found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). The proposed amendments will create penalties for certain sections of the New York City Building Code, Administrative Code, and RCNY in order to better enforce these provisions.

On October, 2, 2012, the Mayor signed Int. 404-A of 2010 into law. This new law:

- o amends article 210 of chapter two of title 28 of the Administrative Code by adding a new section 28-210.3; and
- o amends section 28-201.2.1 of the Administrative Code by adding a new item 16.

Section 1. Permanent Dwelling Offered/Used/Converted for other than Permanent Residential Purpose(s)

Section 28-210.3 makes it illegal to offer, use or convert a permanent residential apartment space for use other than a permanent residence, such as converting the space for use as a hotel. These illegal conversions contribute to an already extremely low rental vacancy rate across the City and create significant health and safety concerns for legal permanent residents.

The law also amends Section 28-201.2.1 of the New York City Administrative Code making the offering, use or conversion of:

- o more than one residential unit in a building, or
- o a second or subsequent violation by the same person at the same unit or multiple dwelling,

a *per se* Immediately Hazardous (Class 1) violation. Class 1 violations carry higher penalties, including per day penalties (see Section 2). A first notice of violation for the conversion of only one dwelling unit will be issued as a Class 2 Major Violation.

Section 2. Additional Daily Penalty for Class 1 Violation of 28-210.3 - Permanent Dwelling to other than Permanent Residential Purpose(s)

Additional and separate daily civil penalties for Class 1 violations, as specified in section 28.202.1, may be imposed above the flat penalty for each continued and uncorrected Immediately Hazardous (Class 1) violation. Additional daily penalties deter illegal conversions and help keep rental apartments on the market for permanent tenants. Pursuant to 1 RCNY 102-01, a daily penalty, at a rate of \$1,000 per day, will be imposed for a total of forty-five days running from the date of the Commissioner's order to correct the violation within the notice of violation (NOV). If the person charged with the violation proves at a hearing that the violating condition(s) has been corrected prior to the end of that forty-five day period, the penalty imposed will be the amount accrued up to and including the date of the proved correction.

New matter is underlined.

Section 1. The Environmental Control Board is amending its DOB Penalty Schedule II found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following violations after the violation "BC 28-210.2, Plumbing work contrary to approved app'n/plans that assists/maintains convers'n of indust/manuf occupancy for resid use":

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default - Maximum Penalty
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<u>BC 28-210.3</u>	<u>1</u>	<u>Permanent dwelling offered/used/converted for other than permanent residential purpose(s)</u>	<u>No</u>	<u>No</u>	<u>3,200</u>	<u>No</u>	<u>16,000</u>	<u>8,000</u>	<u>25,000</u>	<u>16,000</u>	<u>25,000</u>	<u>25,000</u>
<u>BC 28-210.3</u>	<u>2</u>	<u>Permanent dwelling offered/used/converted for other than permanent residential purpose(s)</u>	<u>No</u>	<u>No</u>	<u>1,600</u>	<u>Yes</u>	<u>8,000</u>	<u>4,000</u>	<u>10,000</u>	<u>8,000</u>	<u>10,000</u>	<u>10,000</u>

Section 2. The Environmental Control Board is amending its DOB Penalty Schedule II found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add the following violation after the violation “28-202.1, Additional monthly penalty for continued violation of 28-210.2”:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-202.1</u>	<u>1</u>	<u>Additional daily penalty for Class 1 violation of 28-210.3 – permanent dwelling to other than permanent residential purpose(s)</u>	<u>No</u>	<u>No</u>	<u>1,000/per day</u>	<u>No</u>	<u>45,000</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-788-1087

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Buildings Penalty Schedule (Illegal Hotel Conversions)

REFERENCE NUMBER: 2012 RG 081

RULEMAKING AGENCY: Environmental Control Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: October 23, 2012

Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1400

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Proposed Rule Illegal Residential Conversions to Hotels

REFERENCE NUMBER: OATH/ECB 27

RULEMAKING AGENCY: Environmental Control Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;

- (i) Does not provide a cure period because a cure period would present a substantial risk to public safety.

 /s/ Amina Masood
Mayor's Office of Operations

 10/22/12
Date