



DEPARTMENT OF BUILDINGS
EXECUTIVE OFFICES
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RUDOLPH J. RINALDI, COMMISSIONER

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ISSUANCE #328

LEGAL
POLICY AND PROCEDURE NOTICE #2/91

TO: PPN DISTRIBUTION
FROM: CAROLE S. SLATER *CS*
General Counsel and Director
Office of Legal Affairs
DATE: December 17, 1991
SUBJECT: Waiver Procedures for Local Law 58/87

SUPERCEDED: Memoranda and Directives of 1988, pages 2455 - 2456, "Form Waiver Letters for Local Law 58/87"; TPPM #1/90, Waiver Procedures for Local Law 58/87, pages 2754 - 2756.

PURPOSE: To clarify procedures for obtaining a waiver of the requirements of Local Law 58/87, (accessibility for the disabled), pursuant to Administrative Code §27-292.6.

EFFECTIVE DATE: Immediately

SPECIFICS: Applicants may resolve plan examination objections based on Local Law 58/87 by revising their plans accordingly, or by obtaining a waiver from the Department of Buildings. Prior to the issuance of such a waiver, the Mayor's Office for People With Disabilities ("MOPD") shall be consulted and shall issue a recommendation to the Department. Questions involving an interpretation of Code requirements, as opposed to a waiver of Code requirements, need not be referred to MOPD.

Each waiver request to the Commissioner shall be in writing, using the waiver application form [Form PE0-1 (REV. 12/91)] attached hereto and following the directions accompanying said form.

Applicant shall forward a completed waiver request form with all supporting attachments (the "Waiver Request Package") to MOPD. MOPD shall review the Waiver Request Package and provide the Department with a written recommendation. Applicant may transmit MOPD's recommendation to the Department. If Applicant is not able to obtain a recommendation from MOPD within thirty days, the Borough Office may deem MOPD's failure to respond as a recommendation of a "denial," provided Applicant submits a copy of the Waiver Request Package, stamped "Received MOPD dated _____," evidencing Applicant's submission of the Waiver Request Package to MOPD at least thirty days earlier, and a signed statement attesting to Applicant's inability to obtain a definitive written recommendation from MOPD.

As per Code §27-292.6, Applicant's request, MOPD's recommendation and the Department's determination that a waiver should be granted must be based upon a specific finding that compliance with the requirements of Local Law 58/87 would:

- a) create an undue economic burden; or
- b) not achieve its intended objective; or
- c) be physically or legally impossible; or
- d) be unnecessary in light of alternatives which insure the achievement of the intended objective or which, without a loss in the level of safety, achieve the intended objective more efficiently, effectively or economically; or
- e) entail a change so slight as to produce a negligible additional benefit consonant with the purposes of the Code.

The Borough Commissioner may act on the request for a waiver upon receipt of the recommendation from MOPD, or thirty days after the submission to MOPD, whichever is sooner.

Agreement with MOPD recommendation

Waivers may be granted or denied by the Borough Commissioner if in agreement with the MOPD recommendation.

To grant a waiver request, the Borough Office must address in a detailed writing its findings and conclusions with respect to one or more of the bases which supports the grant.

To deny a waiver request, the Borough Office must address in a detailed writing the Department's findings and conclusions with respect to each basis listed in Code §27-292.6 which Applicant presented.

The Department's determination may cite the MOPD recommendation in lieu of a detailed explanation, provided MOPD has addressed the grounds presented by Applicant.

Disagreement with MOPD recommendation

If the Borough Commissioner does not concur with the MOPD recommendation, the application shall be referred to the Assistant Commissioner for Technical Compliance for determination. Such a referral shall include the reason(s) why the Borough Commissioner believes the MOPD recommendation should not be accepted.

Applicant may appeal a Borough Commissioner's determination through the usual course of reconsideration.