



DEPARTMENT OF BUILDINGS
EXECUTIVE OFFICES
60 HUDSON STREET, NEW YORK, N. Y. 10011
CHARLES M. SMITH, Jr., P.A., *Commissioner*

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LEGAL
POLICY AND PROCEDURE NOTICE # 2/89

To: DISTRIBUTION

From: CHARLES R. FOY
General Counsel *CR Foy*

Date: MAY 8, 1989

Subject: GUIDELINES FOR RULEMAKING PROCEDURES
PURSUANT TO CAPA §1043

The rulemaking process mandated by the recently enacted City Administrative Procedure Act (the "Act"), significantly amends the prior procedures utilized for rule promulgation by requiring, that except in emergency situations, a public hearing be held prior to a rule being adopted by any city agency. In order to ensure that the rulemaking procedures employed by the Department of Buildings are consistent, afford procedural due process to those parties interested in submitting comments, and serve the intent of the Act to make governmental process more accessible for the public, the following guidelines are to be employed in the rulemaking process.

1. PREHEARING PROCEDURE.

Rules that are proposed to be adopted by the department should first be reviewed internally, i.e., through distribution to the Executive Staff for comments. A sample of the format to follow in drafting a proposed rule is attached hereto as attachment "A".

After internal review a copy of the notice of opportunity to comment shall be transmitted to the Law Department for an independent review by that agency to determine that the proposed rule is within the departments' statutory authority. This transmission is to be accompanied by a form attached hereto as attachment "B". The staff member responsible for drafting the rule shall fill out this form and send it to the General Counsel's Office. After the General Counsel's Office has received the proposed rule and transmission sheet, it will

review it for legal sufficiency and upon signing off on the proposed rule, the General Counsel's Office will transmit it to the Law Department.

Subsequent to the Law Department's review, the date for public hearing on the proposed rule will be set. The notice must conspicuously state the date and time of the hearing. Unless otherwise specified, all hearings on proposed rules will take place at the Executive Offices of the Department, 60 Hudson Street, 14th Floor, New York, New York 10013. Additionally, the major media must be notified of the proposed rule and hearing. The list of major media which must be notified by the person drafting the rule is attached hereto, as attachment "C". Trade journals which are customarily notified of Department directives and memoranda should be included in this list. Please note: this list will be modified by the Mayor's office in the near future.

The Office of Executive Engineer will transmit the proposed rule to the City Record for its first publication date.

Written comments respecting the proposed rule may be submitted at any time from the date of initial publication until the time that the Commissioner or his designee declares the hearing is closed. Written comments shall be addressed to the department representative designated in the publication.

Any party wishing to attend and/or testify at the scheduled hearing is required to submit a form, available from the Department, entitled "Notice of Intention to Attend and/or Testify at Rulemaking Hearing" no later than 5 days prior to the scheduled hearing date. Said form, a copy of which is attached hereto, as attachment "D", may be obtained at the Executive Offices of the Department, 60 Hudson Street, 14th Floor, New York, New York 10013, by contacting the department representative designated in the publication. A failure to file said form will result in a denial to a request to offer oral testimony on the scheduled hearing date, but will not preclude interested parties from making a written submission.

2. RULEMAKING HEARING.

The Commissioner or his designee will preside at the rulemaking hearing, and make all determinations with regard to substantive and procedural matters. The right to reasonably limit the amount of time that interested parties have in offering oral evidence at the hearing is expressly reserved. Where it is determined that all relevant testimony may not be elicited at the originally scheduled hearing due

to time constraints, the hearing may be adjourned to another date and time. At such time as it is determined that all relevant information has been submitted the rulemaking hearing shall be declared closed. Thereafter, the Commissioner or his designee shall proceed to determine what final rule, if any, should be promulgated.

3. POST-HEARING PROCEDURE.

The public record for the rulemaking procedures shall be comprised of the proposed rule, all written comments submitted, and a summary of the oral testimony elicited at the hearing, to be maintained by stenography, audio tape or manual transcription. Said record should be delivered by the hearing representative to the custody of the Department's Executive Engineer. All of the aforementioned material shall be readily available for inspection within 30 days after the hearing is declared closed by the Commissioner or his designee, notwithstanding the fact deliberation concerning the proposed rule is ongoing. Those who desire to inspect the public record for rulemaking shall submit requests for such inspection of the public record to the Department's Executive Engineer, 60 Hudson Street, New York, New York 10013.

When deliberation of the proposed rule is concluded, the final rule, which may include revisions based upon consideration of relevant comments, will be transmitted by the Executive Engineer to the City Record for final publication. The rule will take effect 30 days after the second publication.

Internally, that office of the Department requesting the rule shall incorporate the adopted rule into a policy and procedure format.