

CHARTER OF THE CITY OF NEW YORK

CHAPTER 45-A: OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

§ 1049-a Environmental control board.

a. There shall be in the office of administrative trials and hearings an environmental control board consisting of the commissioner of environmental protection, the commissioner of sanitation, the commissioner of buildings, the commissioner of health and mental hygiene, the police commissioner, the fire commissioner and the chief administrative law judge of the office of administrative trials and hearings, who shall be chair, all of whom shall serve on the board without compensation and all of whom shall have the power to exercise or delegate any of their functions, powers and duties as members of the board, and six persons to be appointed by the mayor, with the advice and consent of the city council, who are not otherwise employed by the city, one to be possessed of a broad general background and experience in the field of air pollution control, one with such background and experience in the field of water pollution control, one with such background and experience in the field of noise pollution control, one with such background and experience in the real estate field, one with such background and experience in the business community, and one member of the public, and who shall serve for four-year terms. Such members shall be compensated at the rate of one hundred fifty dollars per day when performing the work of the board. Within its appropriation, the board may appoint an executive director and such hearing officers, including nonsalaried hearing officers and other employees as it may from time to time find necessary for the proper performance of its duties.

b. The environmental control board may adopt and amend regulations not inconsistent with any provision of law:

(1) regulating or prohibiting the emission into the open air from any source, whether fixed or movable, and whether on land or waters of any harmful or objectionable substances including, but not limited to, smoke, soot, dust, fumes, flyash, gas vapors and odors, and the installation, construction or alteration of equipment giving forth such emissions into the open air insofar as such emissions are effected thereby; and

(2) regulating or prohibiting the emission into the waters within and about the city of New York from any source whether fixed or movable and whether on land or water of any harmful or objectionable substances, contaminants and pollutants.

b-1. The environmental control board shall promulgate rules or regulations not inconsistent with any provision of law:

(1) providing that appropriate language assistance services are afforded respondents whose primary languages are not English to assist such respondents in communicating meaningfully with hearing officers;

(2)(a) providing that if a notice of violation sets forth a specific hearing date and hearing office and the respondent timely appears on such date at such office pursuant to that notice of violation, then the hearing officer may exercise his or her discretion to adjourn the hearing only: (i) if a representative of the petitioning agency appears at the hearing; (ii) if, due to extraordinary circumstances, a representative of the petitioning agency is not present at the hearing; or (iii) if the respondent consents to the adjournment;

(b) notwithstanding any other provision of this charter, for the purpose of making an appearance under this paragraph, any city agency that issues notices of violations returnable to the environmental control board may delegate authority to appear on its behalf to any representative authorized to appear on behalf of any other city agency that issues notices of violation returnable to the environmental control board; and

(3) providing that if (i) a hearing has been adjourned by a hearing officer solely for the purpose of obtaining the presence and testimony of the officer of the petitioning agency who issued the subject notice of violation, (ii) the respondent timely appears on the adjourned hearing date, and (iii) such officer of such agency fails to timely appear on the adjourned hearing date, then the hearing shall not be further adjourned solely to obtain the presence and testimony of such officer of such agency, unless the respondent consents to the adjournment or the hearing officer determines that extraordinary circumstances warrant the adjournment.

c. (1) The environmental control board shall enforce the provisions of the charter and the administrative code, and any rules and regulations made thereunder, which relate to:

(a) the cleanliness of the streets;

(b) the disposal of wastes;

(c) the provision of a pure, wholesome and adequate supply of water;

(d) the prevention of air, water and noise pollution;

(e) the regulation of street peddling;

(f) the prevention of fire and danger to life and property therefrom which are within the jurisdiction of the fire department and which the fire commissioner shall designate by rule or regulation;

(g) the construction, alteration, maintenance, use, occupancy, safety, sanitary condition, mechanical equipment and inspection of buildings or structures and the regulation, inspection and testing of wiring and appliances for electric light, heat and power in or on

buildings or structures in the city which are within the jurisdiction of the department of buildings or the department of small business services and which the commissioner of buildings or the commissioner of small business services shall designate by rule or regulation;

(h) the response to emergencies caused by releases or threatened releases of hazardous substances;

(i) the use and regulation of all property subject to the jurisdiction of the department of parks and recreation;

(j) the reporting of information relating to the amount, location and nature of hazardous substances, and the labeling of hazardous substances;

(k) the construction, maintenance and repair and obstruction or closure of public roads, streets, highways, parkways, bridges and tunnels which are within the jurisdiction of the department of transportation and the department of information technology and telecommunications;

(l) the use and regulation of all property subject to the jurisdiction of the department of small business services;

(m) the defacement of property; and

(n) landmarks and historic districts within the jurisdiction of the landmarks preservation commission.

(2) The board shall have concurrent jurisdiction with the board of health to enforce those provisions of the health code and the rules and regulations relating thereto which the board of health shall designate.

(3) The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under this subdivision.

d. (1) (a) The environmental control board shall conduct proceedings for the adjudication of violations of the laws, rules and regulations enforced by it pursuant to the provisions of subdivision c of this section or of any other law providing for enforcement by the environmental control board in accordance with this paragraph (1) and with rules and regulations promulgated by the board, and shall have the power to render decisions and orders and to impose the civil penalties provided under law for such violations.

(b) The form and wording of notices of violation shall be prescribed by the board. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

(c) The notice of violation shall contain information advising the person charged of the manner and the time in which such person may either admit or deny the violation charged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and time stated in the notice may result in a default decision and order being entered against such person. The original or a copy of the notice of violation shall be filed and retained by the board and shall be deemed a record kept in the ordinary course of business.

(d) Where a respondent has failed to plead within the time allowed by the rules of the board or has failed to appear on a designated hearing date or a subsequent date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing a penalty in the maximum amount prescribed under law for the violation charged.

(e) Where a proceeding has been referred by the board to a hearing officer, upon the failure of any party to respond properly to a lawful discovery order or request made pursuant to rules of the board governing discovery, or upon any party's wrongful refusal to answer questions or produce documents, the hearing officer may take whatever action he or she deems appropriate including, but not limited to, preclusion of evidence or witnesses, or striking the pleadings or defenses of such party. It shall not be necessary for a party to have been subpoenaed to appear or produce documents at any properly ordered discovery proceeding for such sanctions to be applicable.

(f) Where the rules of the board permit exceptions to be filed with the board from a recommended decision and order issued pursuant to this subdivision and such exceptions are filed pursuant to the rules of the board, if no final decision and order has been issued by the board to the parties after the expiration of one hundred eighty days from the filing of the exceptions, a respondent who filed such exceptions may seek, at any time after the expiration of the one hundred eighty days, judicial review pursuant to article seventy-eight of the New York civil practice law and rules, and if a respondent does so, the recommended decision and order issued pursuant to this subdivision shall be deemed the final decision and order of the board, provided that no respondent may rely upon this subparagraph to have a recommended decision and order deemed a final decision and order of the board unless: (i) at least forty-five days before the filing of any petition pursuant to article seventy-eight of the New York civil practice law and rules, such respondent shall have filed with the board written notice, pursuant to its rules, of the respondent's intention to file such petition; and (ii) such respondent has served such petition on the board pursuant to the New York civil practice law and rules. The board may issue a final decision and order at any time after the respondent has filed with the board written notice of his or her intention to file such petition, provided that the respondent has not filed such petition on a day prior to the board's issuance of its final decision.

(g) Any final order of the board imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the

board which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions; provided, however, that no such judgment shall be entered which exceeds the sum of twenty-five thousand dollars for each respondent.

(h) Notwithstanding the foregoing provision, before a judgment based upon a default may be so entered the board must have notified the respondent by first class mail in such form as the board may direct: (i) of the default decision and order and the penalty imposed; (ii) that a judgment will be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state of New York; and (iii) that entry of such judgment may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to the rules of the board within thirty days of the mailing of such notice.

(i) A judgment entered pursuant to this paragraph shall remain in full force and effect for eight years.

(j) Notwithstanding any inconsistent provision of section fifteen hundred four of the New York city civil court act, an execution with respect to a judgment of the board arising out of any violation of a provision of chapter one of title sixteen of the administrative code of the city of New York shall be directed only to the sheriff.

(k) The board shall develop and implement technology to enable electronic case management, including but not limited to: online adjudication and payments in appropriate cases; more efficient administration of case conferences, hearings and appeals; electronic case scheduling; and generation of data and other reports to enhance the efficiency and increase public accountability of board adjudication functions. Not later than December 1, 2008, the board shall report to the city council on its plans and progress in fulfilling the requirements of this subparagraph and shall include in its report a projected schedule for implementation.

(2) (a) The environmental control board shall not enter any final decision or order pursuant to the provisions of paragraph one of this subdivision unless the notice of violation shall have been served in the same manner as is prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law, except that:

(i) service of a notice of violation of any provisions of the charter or administrative code the enforcement of which is the responsibility of the fire commissioner, the commissioner of buildings, the commissioner of environmental protection, the commissioner of transportation, the commissioner of small business services, the landmarks preservation commission or the commissioner of the department of information technology and telecommunications and over which the environmental control board has jurisdiction, may be made by delivering such notice to a person employed by the respondent on or in connection with the premises where the violation occurred, provided however, that the

department of buildings and the fire department may not utilize the procedures set forth in this item to serve a notice of violation relating to commercial premises or residential premises with a legal occupancy of four or more dwelling units; and

(ii) service of a notice of violation of any provision of the charter or administrative code, the enforcement of which is the responsibility of the commissioner of sanitation, the commissioner of buildings or the commissioner of the fire department and over which the environmental control board has jurisdiction, may be made by affixing such notice in a conspicuous place to the premises where the violation occurred; and

(iii) service of a notice of violation of any provision of the administrative code relating to the prevention of noise pollution caused by an audible motor vehicle burglar alarm and over which the environmental control board has jurisdiction may be served upon the owner of a motor vehicle by affixing such notice to said vehicle in a conspicuous place; and

(iv) service of a notice of violation of any of the provisions of section 10-119 or 10-120 of the administrative code of the city of New York and over which the environmental control board has jurisdiction, may be made by certified mail, return receipt requested, to the respondent's last known residence or business address, provided that delivery of such notice shall be restricted to the respondent. Service by certified mail shall be deemed complete upon mailing of the notice of violation unless the notice of violation is returned to the sender by the United States postal service for any reason other than refusal of delivery.

(b) Such notice may only be affixed or delivered pursuant to items (i) and (ii) of subparagraph (a) of this paragraph where a reasonable attempt has been made to deliver such notice to a person in such premises upon whom service may be made as provided for by article three of the civil practice law and rules or article three of the business corporation law. When a copy of such notice has been affixed or delivered, pursuant to items (i) and (ii) of subparagraph (a) of this paragraph, a copy shall be mailed to the respondent at the address of such premises. In addition to the foregoing mailing, if the respondent is neither the owner nor the managing agent nor the occupying tenant of such premises, then a copy of the notice shall also be mailed to the respondent at such respondent's last known residence or business address, and, if the respondent is the owner or agent of the building with respect to which such notice was issued and the identity of and an address for such person is contained in any of the files specified in items (i), (ii) and (iii) of this subparagraph, a copy of the notice shall also be mailed:

(i) to the person registered with the department of housing preservation and development as the owner or agent of the premises, at the address filed with such department in compliance with article two of subchapter four of chapter two of title twenty-seven of the administrative code; or

(ii) to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in

one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

(iii) to the person described as owner or agent of the premises, at the address for such person contained in the files of the agency which issued such notice of violation compiled and maintained for the purpose of the enforcement of the provisions of the charter or administrative code or other law over which such agency has jurisdiction.

(c) Proof of such service made pursuant to item (i) or (ii) of subparagraph (a) of this paragraph and subparagraph (b) of this paragraph shall be filed with the environmental control board within twenty days; service shall be complete ten days after such filing.

(3) The environmental control board may apply to a court of competent jurisdiction for enforcement of any other decision or order issued by such board or of any subpoena issued by such board.