

Guidelines on Access to City Property

New York City Administrative Code Section 4-210

Effective April 16, 2018, Local Law 246 of 2017 is codified in the New York City Administrative Code at Section 4-210. The law requires in part:

b. Limited access to city property. The city shall not knowingly permit governmental personnel who are empowered to enforce civil or criminal laws, other than personnel of the city, the department of education, or a local public benefit corporation or local public authority, to have access to non-public areas of city property unless:

1. such personnel are authorized to have access pursuant to an agreement, contract, or subcontract;
2. such personnel present a judicial warrant;
3. access is otherwise required by law;
4. such personnel are accessing such property as part of a cooperative arrangement involving city, state, or federal agencies;
5. access furthers the purpose or mission of a city agency; or
6. exigent circumstances exist.

c. Human services contractors and subcontractors. Agencies shall require any contractor having regular contact with the public in the daily administration of human services to apply the requirements of subdivision b to any location, whether or not on city property, where such services are provided under a city contract, whether through such contractors or their subcontractors.

Section 4-210(d) gives the Mayor the authority to designate a single agency to issue guidelines applicable to multiple agencies. The Mayor has designated the Law Department to issue these guidelines, which are applicable to all agencies and meant to aid agencies' understanding and efficient implementation of Section 4-210.

Agency general counsels should review Local Law 246/2017. General counsels at agencies that provide benefits or social services to the public are encouraged to craft their own guidelines, in consultation with the Law Department, to more specifically address the individual needs their each agencies. The Law Department will consult with the Mayor's Office of Operations as necessary to address any issues of policy or consistency across agencies raised by proposed agency guidelines.

Note that, as set forth above, access restrictions in Section 4-210 do not apply to employees of the City (including New York City police officers), the City Department of Education and local governmental entities, including for example the New York City Health and Hospitals Corporation, the New York City Housing Authority, the Port Authority, and the Metropolitan Transit Authority. Further, with the exception of certain property of contractors as described below, City property includes only “real property leased or owned by the city that serves a city governmental purpose and over which the city has operational control.” For example, property that is leased by the City to a private entity for its own business purpose, or property that is used by the City without the ability to control access, would not generally fall within this definition.

Agencies that plan to vary from these guidelines to address their particular circumstances are encouraged to consult with the Law Department before implementing variations.

Limiting Access to Non-Public Areas of City Property

City agencies may restrict access to their premises via written policies and consistent practices. Any policies and practices regarding access should be objectively and even-handedly applied.

Agencies may establish written policies and post signage allowing only persons with business with the agency and those accompanying them to enter and remain in waiting rooms, lobbies or other open areas. This will create non-public areas as set forth in Section 4-210. Alternatively, agencies may establish written policies designating waiting areas and lobbies as public areas, while clearly demarcating areas beyond these spaces as non-public. If such written policies are adopted, signage stating that areas beyond the public areas may not be entered unless accompanied or invited by a staff member should be posted. Any policies implementing Section 4-210 should be written in a generally applicable way, not singling out any specific group or law enforcement agencies.

Under Section 4-210, as noted above, agencies should limit access to any part of their property that is not normally open to all members of the public. Please note that Section 4-210 specifies exceptions for when access must or may be permitted, including when such access “furthers the purpose or mission of a City agency.” This includes routine visits by inspectors or other officials related to an agency’s mission. Agency general counsels may issue a policy informing agency employees when they should grant access to non-public areas of city property for specific routine interactions with governmental personal that further an agency’s purpose or mission. Please note that any policy regarding access to non-public areas of city property should be posted on your agency’s website, pursuant to Section 4-210(e).

Section 4-210(d) also requires that agencies designate an individual who shall be responsible for the implementation of the section, and any guidelines or rules issued pursuant to Section 4-210. Please inform the Mayor’s Office of Operations who this individual will be at your agency. Such individual is encouraged to reach out to the Law Department with any legal questions regarding the implementation of Section 4-210.

Recommended Policy

If governmental personnel who are empowered to enforce civil or criminal laws, other than personnel of the City, the City Department of Education, or a local public benefit corporation or local public authority, request access to non-public areas of city property, agency personnel should follow their agency's individual policy regarding property access, or contact their general counsel's office for further instructions.

Should an individual empowered to enforce civil or criminal laws insist on immediately accessing non-public areas of city property before contact can be made with the general counsel's office, agency personnel should not physically block the individual's entry. Agency personnel should document the individual's actions within the property, and promptly call their general counsel's office to describe the incident and receive any further instructions.

The following is a recommended sample policy for agencies to implement pursuant to Section 4-210. For the sake of brevity, "officer" is used to refer generally to governmental personnel who are empowered to enforce civil or criminal laws, other than personnel of the city, the department of education, or a local public benefit corporation or local public authority. However, if agencies routinely interact with certain categories of non-City governmental personnel, such as a particular type of facility inspector or auditor, they may opt to treat these categories of personnel differently in their policies in order to avoid disruption of agency operations:

1. Security personnel should ask officer(s) for:
 - a. Identification (name and badge/ID) and business card(s) of the officer(s)
 - b. Purpose of visit
 - c. Any relevant documentation (e.g. subpoena, warrant, accompanying affidavits, other documents)
2. Security personnel should advise the officer(s) that:
 - a. Prior to responding to the request, they must notify and obtain guidance from agency general counsel
 - b. Officer(s) should be asked to wait outside while security personnel obtain instruction from the agency general counsel
 - c. If the officer(s) objects, security personnel should provide the officer(s) with the name and telephone number of the agency general counsel and ask them to communicate directly
3. Security personnel should immediately call their agency general counsel and other relevant agency personnel, such as the director of the facility, and await further instruction.
 - a. Security personnel and agency staff should not consent to entry or search without first discussing with agency general counsel and obtaining authorization to consent.
4. Agency general counsel should review all documentation provided by the officer(s) and make a determination about whether access is required by law, or otherwise permitted by § 4-210 and appropriate. If further guidance is necessary in light of the particular circumstances, agency general counsel are encouraged to consult with the Law Department.

Applying Section 4-210 to Contractors

The above guidelines apply equally to agency contractors who have regular contact with the public in the daily administration of human services, whether or not such services are provided on city property.

Agencies may or may not have the authority under their current contracts to require their contractors to follow the provisions of Section 4-210 and any guidelines issued pursuant to it. If an agency currently has the authority to require any contractors who have regular contact with the public in the daily administration of human services to comply with the requirements of Section 4-210, they must do so per Section 4-210(c). If an agency does not have such authority, it should include appropriate authorizing language in any contract entered into or renewed after April 16, 2018. *See* Local Law 246 of 2017, § 2. Standard contract language for human services contracts has been drafted by the Law Department and will be made available shortly to relevant city agencies.

Additionally, there are training requirements for contractors who provide security services on city property in Administrative Code Section 4-210(f):

f. Training. All new or renewed city contracts for security services on city property at which there is regular contact with the public in the daily administration of human services by or on behalf of the city shall contain a provision requiring relevant employees of the security contractor or subcontractor be provided with training on the requirements of this section, at no cost to such employees. Any employees subject to this requirement shall be compensated at their regular rate of compensation for time spent participating in such training, where applicable.

The Law Department has also drafted standard contract language to implement this requirement that will be made available to relevant city agencies. Please note that contractors will be responsible for training their employees and compensating their employees for any time spent on the training.