

## NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES

### Notice of Public Hearing and Opportunity to Comment on Proposed Rule

**What are we proposing?** The New York City Department of Citywide Administrative Services (DCAS) proposes to add a new Chapter 15 to Title 55 of the Rules of the City of New York, setting forth policies and procedures for the modification or removal of certain deed restrictions.

**When and where is the hearing?** DCAS will hold a public hearing on the proposed rule. The public hearing will take place at 6:00 pm on Tuesday, November 1, 2016. The hearing will be held at 125 Worth St., 2nd Floor. New York, NY 10013.

This location has the following accessibility option(s) available: See accessibility legends at the end of this notice.

**How do I comment on the proposed rule?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to DCAS through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [contactdcas@dcas.nyc.gov](mailto:contactdcas@dcas.nyc.gov).
- **Mail.** You can mail comments to The Department of Citywide Administrative Services, 1 Centre Street-17<sup>th</sup> Floor, New York, New York 10007.
- **Fax.** You can fax comments to DCAS at (212) 669-8992.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 386-0040. You can also sign up in the hearing room before the hearing begins on Tuesday, November 1, 2016. You can speak for up to three minutes.

**Is there a deadline to submit comments?** The deadline to submit comments is Tuesday, November 1, 2016 until the close of the hearing.

**What if I need assistance to participate in the hearing?** You must tell DCAS by Tuesday, October 25, 2016 if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone by calling the DCAS Diversity & EEO Office at (212) 386-0297. You must tell us by the close of business on Tuesday, October 25, 2016.

**Can I review the comments made on the proposed rule?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rules will be available to the public at The Office of the DCAS General Counsel at 1 Centre Street-19<sup>th</sup> Floor North, New York, New York 10007.

**What authorizes DCAS to make this rule?** Sections 811 and 1043 of the New York City Charter authorize DCAS to make this proposed rule. This proposed rule was not included in DCAS’s regulatory agenda for this Fiscal Year because it was not contemplated when DCAS published the agenda.

**Where can I find DCAS’s rules?** DCAS’s rules are in Title 55 of the Rules of the City of New York.

**What rules govern the rulemaking process?** DCAS must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

The Department of Citywide Administrative Services (DCAS) proposes to add a new Chapter 15 to Title 55 of the Rules of the City of New York, setting forth the process by which DCAS reviews requests to modify or remove deed restrictions for certain properties.

Deed restrictions are covenants that limit the uses of property. DCAS and other City agencies have imposed deed restrictions on thousands of properties throughout the City, both through the process by which City-owned properties are sold and also through the Uniform Land Use Review Procedure. Because decisions concerning land use can have long-lasting effects, the process proposed in this rule recognizes the importance of land use to the City, ensures decisions to modify or remove deed restrictions are appropriate and reflect the City’s best interests, and increases the transparency of the decision-making process.

This rule sets forth the process that property owners requesting a modification or removal of a deed restriction from DCAS must follow, the information that DCAS must obtain and review when considering such requests, public notice and hearing requirements, and provisions related to the review and approval of such requests by additional City officials, including the Mayor.

DCAS’s authority for this rule is found in Sections 811 and 1043 of the New York City Charter.

New material is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 55 of the Rules of the City of New York is amended by adding a new Chapter 15 to read as follows:

### **CHAPTER 15** **Modification or Removal of Deed Restrictions**

**§ 15-01 Definitions.** As used in this chapter, the following terms have the following meanings.

Commissioner. The term “Commissioner” means the Commissioner of the Department.

Deed restriction. The term “deed restriction” means a covenant set forth in a deed that limits the use of property and is imposed by the City of New York when such property is sold or otherwise disposed of by the City of New York.

Department. The term “Department” means the Department of Citywide Administrative Services.

**§ 15-02 Standard.** A request for modification or removal of a deed restriction by the Department shall be reviewed in accordance with the procedures set forth in this chapter. Such request shall only be approved upon a determination that the proposed modification or removal is appropriate and furthers the best interests of the City of New York.

**§ 15-03 Process for Requesting Modification or Removal of Deed Restrictions.**

(a) Intake Package. A property owner requesting that the Department modify or remove a deed restriction must submit to the Department an intake package consisting of:

(i) A request form provided by the Department, which must include:

1. the property owner’s name;
2. the address of the property;
3. the reason for the request;
4. a description of any proposed development or sale of the property to a third party;
5. a description of the use of the property since the property owner’s purchase;
6. the date by which the property owner seeks to have the requested modification or removal take effect; and
7. any other information required by the Commissioner;

(ii) A copy of the current deed of ownership and any other document containing the deed restriction;

(iii) Verified Statement and Tax Affidavit (VSTA) Forms provided by the Department disclosing real property owned and any outstanding real property taxes, water and sewer charges, assessments, and/or other municipal charges, including interest on any of the aforementioned amounts;

(iv) If the property owner is a corporation, limited liability company, or partnership:

1. a list identifying the names of any individuals whose share of ownership in the corporation, limited liability company, or partnership is twenty percent or more; and
2. a certificate of good standing issued by the State of New York or the equivalent of such certificate issued by another state; and

(v) A federal or state tax identification number.

(b) The property owner must promptly report to the Department any changes in the information provided in the intake package that occur after the intake package is submitted and while the request is pending.

**§ 15-04 Review of Requests for Modification or Removal of a Deed Restriction.**

(a) Preliminary Review.

(i) Upon receipt of the intake package required pursuant to Section 15-03 of this chapter, the Department shall notify the property owner in writing that the request for modification or removal is under review.

(ii) The Department shall develop a land use analysis, which shall include a description of the history of the use of the property, the deed restriction that is the subject of the request, the land use implications of such deed restriction, and any findings of the due diligence review conducted pursuant to paragraph (iii) of this subdivision.

(iii) The Department shall conduct a due diligence review to ensure there are no outstanding obligations owed to the City in connection with the properties identified in the VSTA Forms, or by the current property owner or any proposed property owner, which shall include but not be limited to review of the following information related to such properties, current property owner, or any proposed property owner:

1. the intake package;
2. information requested from City agencies, including but not limited to the Department of Buildings and the Department of Finance; and
3. information obtained through a search of public databases.

(b) Consultation and Notice.

(i) Following the preliminary review, the Department shall consult with other City agencies as appropriate to obtain information about the public benefit related to the deed restriction, assess possible alternative uses of the property, and identify potential issues of concern with the proposed modification or removal.

(ii) The Department shall send written notice of the proposed modification or removal to the community board for the community district in which the property is located, the council member representing the council district in which the property is located, and the borough president representing the borough in which the property is located.

(c) Appraisal.

(i) If, on the basis of the preliminary review and consultation conducted pursuant to subdivisions (a) and (b) of this section, the Department finds that the requested modification or removal of a deed restriction may be appropriate and may further the best

interests of the City of New York, the Department shall appraise the market value of the property with and without the deed restriction based on two appraisals, at least one of which must be performed by an independent real estate appraiser licensed in the State of New York who is not an employee of the Department. The appraisals must be performed within 60 days prior to the date the Department submits pursuant to subdivision (d) of this section its preliminary recommendation to the committee established by Section 16-01 of Title 43 of the Rules of the City of New York and within 180 days prior to the date the Department submits its final written recommendation to the Mayor pursuant to Section 15-07 of this chapter.

(ii) The property owner shall pay an appraisal fee equivalent to the cost of the independent appraisal. The Department is authorized to waive or modify such fee if it determines, based on a showing made by the property owner, that the payment of such fee would impose an unreasonable hardship on the property owner.

(iii) The method of calculation of any consideration to be proposed in connection with the modification or removal of the deed restriction shall be determined by the Department in consultation with relevant City agencies and experts. Such method shall take into account the market value of the property with and without the deed restriction.

(iv) Based on the appraisals and in accordance with the calculation method determined pursuant to paragraph (iii) of this subdivision, the Department shall propose a consideration amount, if any, that would be required for the modification or removal of the deed restriction.

(v) Notwithstanding paragraph (i) of this subdivision, appraisals shall not be required if:

1. a deed restriction would be imposed in lieu of the deed restriction that is the subject of the request for removal or modification, and the Department determines that the deed restriction to be imposed is of substantially equivalent value to the deed restriction to be removed or modified;
2. the consideration amount for the modification or removal of the deed restriction is set forth in a legally binding written agreement between the City and the property owner executed at the time the deed restriction was imposed;
- or
3. the Department determines that appraisals are not necessary due to extenuating circumstances. For purposes of this subparagraph, "extenuating circumstances" shall include but not be limited to when an environmental restriction that was imposed on a property by a regulatory agency is removed upon a subsequent determination by such agency that such restriction is no longer necessary, and when a deed restriction has become detrimental to the City's interest and consideration would not be required for the removal or modification of the deed restriction.

(d) Committee Review.

(i) If, based on the information obtained pursuant to this section, the Department finds that the requested modification or removal of a deed restriction is appropriate and

further the best interests of the City of New York, the Department shall submit a preliminary recommendation to approve the request to the committee established by Section 16-01 of Title 43 of the Rules of the City of New York. Such preliminary recommendation shall include any proposed consideration amount and shall be accompanied by the materials required pursuant to Section 16-01.

(ii) If the committee approves the Department's preliminary recommendation, the Department shall issue a letter to the property owner in accordance with paragraph (iii) of this subdivision.

(iii) The letter to the property owner shall set forth the Department's preliminary recommendation; any required consideration, as approved or modified by the committee; and any further actions the property owner must take to obtain the requested modification or removal of the deed restriction, which shall include but not be limited to the property owner's agreement in writing to take the steps necessary to obtain the requested modification or removal.

(iv) The property owner must respond to the letter issued in accordance with paragraph (iii) of this subdivision within thirty (30) calendar days after the receipt of such letter.

**§ 15-05 Uniform Land Use Review Procedure.** If the Department determines that the proposed modification or removal is subject to the Uniform Land Use Review Procedure set forth in Section 197-c of the Charter, the Department shall prepare an application for such modification to be reviewed pursuant to such procedure. Any request for modification or removal that is subject to the Uniform Land Use Review Procedure shall not be approved unless the application for such modification or removal submitted in accordance with Section 197-c of the Charter is approved pursuant to Section 197-c and/or 197-d of the Charter.

**§ 15-06 Public Hearing.**

(a) If the committee established by Section 16-01 of Title 43 of the Rules of the City of New York approves the Department's preliminary recommendation to approve a requested modification or removal of a deed restriction, the Department shall conduct a hearing on such requested modification or removal pursuant to the procedures set forth in this section.

(b) The Department shall publish a public notice of the hearing in the City Record for at least seven consecutive business days commencing at least thirty days and no more than forty days before the hearing.

(c) The Department shall mail notice of the hearing to the community board for the community district in which the property is located, the council member representing the council district in which the property is located, and the borough president representing the borough in which the property is located.

(d) The public hearing shall be held in the community district in which the property is located.

(e) A public file containing copies of the calendar document and other public documents shall be made available in the office of the community board for the community district in which the property is located no later than twenty days before the hearing.

(f) The Department shall prepare a summary of public comments received on the request for modification or removal of the deed restriction.

**§ 15-07 Mayoral Approval.** Following the public hearing conducted pursuant to Section 15-06 of this chapter and any approval required pursuant to Section 197-c and/or 197-d of the Charter, if the Department determines that the requested modification or removal of a deed restriction is appropriate and furthers the best interests of the City of New York, the Department shall submit to the Mayor a final written recommendation for approval of such request pursuant to Section 16-02 of Title 43 of the Rules of the City of New York. Such written recommendation shall include the summary of public comments prepared pursuant to Section 15-06 of this chapter and any other documents or information the Department deems relevant.