



NEW YORK
CITY BAR

COMMITTEE ON ELECTION LAW

KATHARINE LOVING

CHAIR

Phone: (212) 409-1864

KLovingElectLaw@gmail.com

COMMITTEE ON GOVERNMENT

ETHICS AND STATE AFFAIRS

January 31, 2020

JENNIFER RODGERS

CHAIR

Phone: (212) 854-8379

jrogers@law.columbia.edu

Patricia Anne Taylor, President
New York City Board of Elections
1 Edgewater Plaza, 4th Floor
Staten Island, NY 10305

Frederic M. Umane, Secretary
New York City Board of Elections
200 Varick Street, 10th Floor
New York, NY 10014

Re: Transparent Rulemaking Request

Dear Commissioners:

Candidates running for office in the City of New York strive to follow New York City Board of Elections' (Board) rules. Compliance saves Board staff considerable time and aggravation during the busiest times of the election year.

However, under the Board's current procedures, in which the rules are changed without notice or an opportunity for comment, or when new versions are posted with no reference to what has changed, compliance can be difficult. In the interest of increasing smooth interactions between all candidates, their agents, and Board staff, we hope that you will consider simple, transparent rulemaking procedures including posting proposed rules with revisions noted 30 days prior to a meeting where comments will be accepted, or before the closing of a written comment period, and posting finalized rules with the changes highlighted.

Under both state and city law, government agencies must follow simple, transparent procedures when making rules (outlines attached). *See* New York City Charter, Ch. 45, §§ 1041-47 (CAPA); State Administrative Procedure Act §§ 1-501 (SAPA). These basic procedures are

universally observed by state and city agencies. We are confident that making procedures more transparent will increase compliance and reduce headaches for candidates and staff.

Respectfully submitted,

Election Law Committee¹
Katharine G. Loving, Chair
Martin E. Connor, Immediate Past Chair
Sarah K. Steiner, Past Chair

Government Ethics and State Affairs Committee
Jennifer Rodgers, Chair

Enclosures:
NYC Rulemaking Process
NYS Rulemaking Process

cc:
Michael J. Ryan, Executive Director
Dawn Sandow, Deputy Executive Director
New York City Board of Elections
32-42 Broadway, 7th Floor
New York, NY 10004

¹ Note that John Zaccone recused himself from this matter.

From: NYC.gov

<https://rules.cityofnewyork.us/content/rulemaking-process-101>

Rulemaking Process 101

A rule is a type of law that is proposed and adopted by a City agency. Rules are distinguished from other forms of laws by the process that agencies must follow to enact or amend them. This process is known as the [City Administrative Procedure Act](#), or CAPA. The rulemaking process generally takes a minimum of 60 days, and during this period agencies are required to provide New Yorkers with an opportunity to review and comment on the proposed rules.

The diagram below provides an overview of the key steps in the standard rulemaking process. Exceptions, including the Final 30-day Waiver and Emergency Rulemaking, are detailed below.

Step 1: Agency drafts rule

The New York City Charter gives certain agencies the authority to propose rules. When an issue arises, agencies analyze the problem and investigate various solutions. If it is determined that a new rule would be the best course of action, a proposal will be drafted. Agencies also sometimes propose rules because they are mandated by law to do so.



Step 2: Agency notifies public of proposed rule

Before an agency can pass a rule into law, the public must be given the opportunity to review the proposed rule and provide commentary, either by submitting suggestions in writing or by speaking at a public hearing.

To that end, the agency must submit official notice to the City Record, the City Council, community boards, media outlets, and civic organizations, as well as the NYC Rules website.

The official notice must include:

- The purpose and completed text of the proposed rule
- An explanation of the legal authority given to the agency
- Time and place of public hearing
- Deadline for submitting comments on NYC Rules web site or in writing

Agencies are required to distribute notice of the rule at least 30 days prior to the scheduled public hearing, or the end of the comment period, whichever comes first.



Step 3: Agency holds public hearing

A public hearing is held by the agency to present the proposed rule and hear public testimony on the proposed rule. Testimony includes any written comments submitted on the NYC Rules web site or, through the mail, and spoken testimony provided at the public hearing.



Step 4: Agency publishes final rule

Once all of the testimony has been reviewed, the agency will modify the rules based on the public's feedback, if necessary, then draft a final version. A copy is posted on NYC Rules, published in the City Record, and submitted to the City Council.



Step 5: Final rule is adopted and becomes law

The rule takes effect 30 days after the final version is published.

In some cases, agencies must adopt rules quickly and are unable to follow the 60-day process outlined by CAPA. In these situations, an agency may use the Final 30-Day Waiver or the Emergency Rulemaking Procedure to accelerate the process.

The Final 30-Day Waiver. The 30-day waiting period between publication of the final rule and the date the rule becomes law may be waived by the Mayor if:

- The agency head certifies that there is a "substantial need for the earlier implementation of a program or policy" that can be achieved through the rule change
- And if a written statement of need for earlier implementation is signed by the agency head, countersigned by the Mayor and published with the final rule.

If this procedure is followed, the rule becomes effective immediately upon publication in the City Record.

Emergency Rulemaking. In extreme cases, rules must be put into effect immediately after they have been proposed and published in the City Record, in order to avoid "an imminent threat to health, safety, property or a necessary service." Under such circumstances, an agency may engage in emergency rulemaking by preparing a written statement of imminent threat that is signed by the agency head, countersigned by the Mayor, and published in the City Record with the emergency rule. An emergency rule becomes effective upon publication and expires after 120 days, unless it is re-adopted by the standard rulemaking procedure.

<https://rules.cityofnewyork.us/content/rulemaking-process-101> 1-9-20

LEGISLATURE

The New York State Legislature passes statute that grants authority to a state agency to promulgate rules and regulations.

The Administrative Regulations Review Commission (ARRC) reviews each newly proposed rule to examine issues of compliance with legislative intent, as well as the impact on the economy and affected parties. Public comment on any regulatory matter can be sent to the Commission, at:

ARRC
State Capitol
Albany, NY 12247



STATE AGENCY

- Writes proposed rule.
- Prepares a Regulatory Impact Statement to address the impact on regulated parties, as well as a Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis and Job Impact Statement.
- Obtains approval to proceed from the Executive Chamber.
- Submits the proposed rule, with accompanying



PUBLIC COMMENT

The public has an opportunity to comment on proposed rules by providing testimony at public hearings or by writing directly to the agency



EXECUTIVE REVIEW

The Executive Chamber reviews proposed rules for necessity, clarity, consistency and efforts to reduce burdensome effects.

The Chamber may extend the comment period, require an agency to provide more information or require a public hearing.

statements, to the Department of State for publication in the New York State Register; submits copies to ARRC and legislative leaders.

- Considers public comment for a required statutory period of time (minimum of 45 days). If substantial changes are required, submits a revised notice for publication in the Register, initiating another (30-day) comment period.
- Adopts the final rule.
- Files text of adopted rule with the Department of State's Division of Administrative Rules, with an Assessment of Public Comment.



The full text of the rule is filed with the Department of State.

A Notice of Adoption is published in the New York State Register to provide public notice that a new or amended rule has been adopted. Generally, a rule is effective when the Notice of Adoption appears in the Register. Readers track proposed actions by referencing the "Action Pending Index" each week.

The complete, official text of the new rule is published in the semi-monthly supplementation to the [NYCRR](#). Subscribers may purchase the NYCRR by volume, Title or as a full set by calling West Group.

<https://www.dos.ny.gov/info/rulediagram.html> 1-10-20