

Amendment to § 2-08 to add a section clarifying the use group exclusions for buildings seeking Article 7-C coverage under § 281(5) of the Multiple Dwelling Law.

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NEW YORK CITY LOFT BOARD

NOTICE OF ADOPTION OF FINAL RULE

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY LOFT BOARD by Article 7-C of the Multiple Dwelling Law and Mayor's Executive Order No. 129, dated May 22, 2009, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter, that the New York City Loft Board intends to amend section 2-08 of Title 29 of the Rules of the City of New York, to identify the uses in Use Groups 15 through and including 18 that are deemed inherently incompatible with residential use in the same building.

A duly noticed public hearing was held on January 20, 2011, affording the public opportunity to comment on the proposed amendments, as required by Section 1043 of the New York City Charter. Written comments were accepted through January 14, 2011.

Statement of Basis and Purpose:

Pursuant to § 282 of Article 7-C of the MDL ("Loft Law"), the Loft Board may promulgate rules to ensure compliance with the Loft Law. Given that the IMD buildings made eligible for coverage under MDL § 281(5) are not required to be located in areas that are zoned for residential use, the legislature dictated that the Loft Board determine whether each use set forth in groups 15 through 18, as defined in the zoning resolution, constitutes a use inherently incompatible with residential use; and amend their rules to ensure greater protection to the residential tenants by determining if buildings contain unsafe commercial, manufacturing or industrial activities. This proposed amendment to the rule clarifies what uses in Use Groups 15 through and including 18 are "inherently incompatible" with residential use. This amendment to the rule determines eligibility of a building to become an IMD, and is not for the purpose of determining eligibility for a Certificate of Occupancy. As a model for determining what uses in Use Group 15 through 18 are inherently incompatible with residential use, the Loft Board has used the criteria set out in the Special Mixed Use District regulations set out in Chapter 3 of Article XII of the NYC Zoning Resolution. The rationale for the use of these regulations is that they reflect the careful assessment after study of the Department of City Planning of what commercial, manufacturing and industrial uses are compatible with residential use.

These rules were not published in the regulatory agenda because they were not anticipated.

Section 2-08 of Title 29 of the Rules of the City of New York is amended by adding new subdivisions (j)-(s) to read as follows:

- (j) The term "Interim Multiple Dwelling" ("IMD") as used in Multiple Dwelling Law § 281(5) shall not include any building in which an inherently incompatible use as described in subsection (k) of

this section is being actively and currently pursued in any unit other than a residential unit of the building. The term "actively and currently pursued" shall refer to commercial, manufacturing or industrial use being conducted in the building on June 21, 2010. A unit eligible for coverage pursuant to MDL § 281(5), which is located in a building registered as an IMD under MDL §§ 281(1) or (4), shall not be excluded from Article 7-C coverage on the basis that any prohibited activity in use groups 15 through 18 existed in the building on June 21, 2010.

(k) **Uses In Use Groups Inherently Incompatible With Residential Use.** Pursuant to MDL § 281(5), a use that falls within Use Groups 15-18, as defined in Article III Chapter 2 and Article IV Chapter 2 of the Zoning Resolution in effect on June 21, 2010, that is also set forth in the Appendix to these Rules, is inherently incompatible with residential use in the same building if it:

- (i) has or should have a New York City or New York State environmental rating of "A", or "B" under Section 24-153 of the New York City Administrative Code for any process equipment requiring a New York City Department of Environmental Protection operating certificate; or
- (ii) is or should be required under the Community Right-to-Know Law, at Chapter 7 of Title 24 of the Administrative Code of the City of New York, to file a Risk Management Plan for Extremely Hazardous Substances; or
- (iii) is or should be classified as High-Hazard Group H occupancy as set forth in Section 307 of the New York City Building Code.

(l) **Residential Unit:** For the purposes of subsections (j) through (s), in addition to the definition of Residential Unit in § 2-08 (a) (4) above, a residential unit may contain a non-residential use that:

- (1) is clearly incidental to or secondary to the residential use of the residential unit;
- (2) is carried on within the residential unit, by one or more occupants of such residential unit;
- (3) does not use more than 49 percent of the total floor area of a dwelling unit for the non-residential purposes; and

(4) has up to three non-residential employees.

- (m) Owner's registration application. For all applications for registration filed pursuant to § 2-05, except for any unit eligible for coverage pursuant to MDL § 281(5) that is located in a building registered as an IMD under MDL §§ 281(1) or (4), the owner seeking coverage under MDL § 281(5) must, if there are any commercial, manufacturing, or industrial uses in the non-residential units in the building as of June 21, 2010, submit a certification to the Loft Board, signed by a New York State licensed and registered architect or engineer, that such commercial, manufacturing or industrial use is not an inherently incompatible use under subdivision (k).
- (n) Rejection of owner's registration application. Where an owner files a registration application for coverage under MDL § 281(5) for a building that has or had a commercial, manufacturing or industrial tenant that was actively pursuing a use on June 21, 2010 that was inherently incompatible with residential use under subsection (k) above, the Executive Director shall determine that the building does not qualify for coverage and reject the registration application.
- (o) Revocation of IMD registration. The Executive Director may, on written notice to the owner, revoke the IMD registration at any time for failure to meet the requirements set forth in the provisions of MDL § 281(5), and this rule, where:
- (1) previously undisclosed facts, or misrepresentations or false statements as to material facts in the registration application or submitted documents regarding the information which was the basis for the Loft Board issuance of an IMD registration number are discovered, or
 - (2) the Loft Board issued an IMD registration number in error and conditions are such that the IMD registration number should not have been registered.

Such notice will inform the owner of the reasons for the revocation and that the owner has the right to present to the Executive Director or his or her representative within 10 business days of delivery of the notice by hand or 15 calendar days of the posting of the notice by mail, information as to why the registration should not be revoked.

- (p) Use after June 21, 2010. A commercial, manufacturing or industrial tenant engaged in an inherently incompatible use as described in subdivision (k) after June 21, 2010 shall not disqualify a building from Article 7-C coverage that otherwise qualifies for coverage.
- (q) Tenant applications for coverage. For all applications for coverage filed pursuant to § 1-06, except for any unit eligible for coverage pursuant to MDL § 281(5) that is located in a building registered as an IMD under MDL §§ 281(1) or (4), the applicant seeking coverage under Article 7-C of the MDL must establish by a preponderance of the evidence that there are no commercial, manufacturing or industrial uses in the non-residential units that are inherently incompatible with residential use as defined in subdivision (k) in the building as of June 21, 2010.
- (r) Site visits. The Executive Director may conduct, or designate a Loft Board staff member to conduct, a site visit to the building for which coverage under Article 7-C of the MDL is being sought. The building owner shall arrange for the Executive Director and/or the Loft Board's staff to have access to the non-residential spaces upon reasonable notice. The Executive Director, or his/her staff, may also conduct informal conferences regarding the owner's registration application. The Executive Director may request additional information from the owner, building tenants or government agencies about the non-residential uses in the building on June 21, 2010.
- (s) Appeal of Decision. If the Executive Director rejects the registration or revokes the IMD registration number issued after the filing of the registration application because a use listed in subdivisions (k) of this section was actively and currently pursued in the unit on June 21, 2010, the applicant may appeal the Executive Director's determination to the Loft Board in accordance with, and subject to the terms of the provisions in § 1-07.1.

APPENDIX

From Use Group 16A:

Animal hospitals or kennels

Animal pounds or crematoriums

Blacksmith shops

Carpentry, custom woodworking or custom furniture making shops

Crematoriums, human

Fuel, oil, or coal sales, open or enclosed, limited to 5,000 square feet of lot area per establishment

Mirror silvering shops

Sign painting shops, with no limitation on floor area per establishment

Silver plating shops, custom

Soldering or welding shops

Tool, die, or pattern-making establishments, or similar small machine shops

Trade schools for adults, which use substances in quantities required under the City Right-to-Know Law to file a Risk Management Plan for Extremely Hazardous Substances

From Use Group 16B:

Automobile, truck, motorcycle or trailer body repairs, provided such use is conducted within a completely enclosed building

From Use Group 16C:

Public transit yards, open or enclosed, including accessory motor fuel pumps

From Use Group 16D:

Carpet cleaning establishments

Dry cleaning or cleaning and dyeing establishments, with no limitation on type of operation, solvents, floor area or capacity per establishment

Laundries, medical or laboratory

Linen or towel supply establishments, where cleaning is done on the same zoning lot

Packing or crating establishments for substances in quantities required under the City Right-to-Know Law to file a Risk Management Plan for Extremely Hazardous Substances

Photographic developing or printing, with no limitation on floor area per establishment

Warehouses for substances in quantities required under the City Right-to-Know Law to file a Risk Management Plan for Extremely Hazardous Substances

Wholesale establishments selling, as part of their stock, substances in quantities required under the City Right-to-Know Law to file a Risk Management Plan for Extremely Hazardous Substances, with no limitation on accessory storage

From Use Group 17B (Manufacturing Establishments):

Adhesives, excluding manufacture of basic components

Advertising displays

Aircraft, including parts

Automobiles, trucks or trailers, including parts or rebuilding of engines

Beverages, non-alcoholic

Boats less than 200 feet in length, building or repair, open or enclosed, provided that such use or portion thereof may be conducted outside a completely enclosed building only if located at a distance greater than 200 feet from a Residence District boundary, or if effectively screened by a wall or fence at least eight feet in height with no boat building located less than 30 feet from a Residence District boundary

Brushes or brooms

Cameras or other photographic equipment, except film

Canvas

Carpets

Ceramic products, including pottery, small glazed tile, or similar products

Chemicals, compounding or packaging

Cosmetics or toiletries

Cotton ginning, or cotton wadding or linters

Electrical appliances, including lighting fixtures, irons, fans, toasters, electric toys, or similar appliances

Electrical equipment assembly, including home radio or television receivers, home movie equipment, or similar products, but not including electrical machinery

Electrical supplies, including wire or cable assembly, switches, lamps, insulation, dry cell batteries, or similar supplies

Film, photographic

Food products, except slaughtering of meat or preparation of fish for packaging

Ice, dry

Ink or inked ribbon

Laboratories, research, experimental or testing

Leather products, including shoes, machine belting, or similar products

Luggage

Machines, business, including typewriters, accounting machines, calculators, card-counting equipment, or similar products

Machinery, miscellaneous, including washing machines, firearms, refrigerators, air-conditioning, commercial motion picture equipment, or similar products

Machine tools, including metal lathes, metal presses, metal stamping machines, woodworking machines, or similar products

Metal finishing, plating, grinding, sharpening, polishing, cleaning, rust-proofing, heat treatment, similar products

Metal stamping or extrusion, including costume jewelry, pins and needles, razor blades, bottle caps, buttons, kitchen utensils, or similar products

Motorcycles, including parts

Musical instruments, including pianos or organs

Novelty products

Optical equipment, clocks or similar precision instruments

Orthopedic or medical appliances, including artificial limbs, braces, supports, stretchers, or similar appliances

Paper products, including envelopes, stationery, bags, boxes, shipping containers, bulk goods, tubes, wallpaper printing, or similar products

Perfumes or perfumed soaps, compounding only

Pharmaceutical products

Plastic products, including tableware, phonograph records, buttons, or similar products

Printing or publishing, with no limitation on floor area per establishment

Rubber products, such as washers, gloves, footwear, bathing caps, atomizers, or similar products, excluding manufacture of natural or synthetic rubber

Silverware, plate or sterling

Sporting or athletic equipment, including balls, baskets, cues, gloves, bats, racquets, rods, or similar products

Statuary, mannequins, figurines, or religious art goods, excluding foundry operations

Steel products, miscellaneous fabrication or assembly, including steel cabinets, doors, fencing, metal furniture, or similar products

Textiles, dyeing or printing

Tobacco, including curing, or tobacco products

Tools or hardware, including bolts, nuts, screws, doorknobs, drills, hand tools or cutlery, hinges, house hardware, locks, non-ferrous metal castings, plumbing appliances, or similar products

Toys

Umbrellas

Vehicles, children's, including bicycles, scooters, wagons, baby carriages, or similar vehicles

Venetian blinds, window shades, or awnings, with no limitation on production or on floor area per establishment

Wood products, including furniture, boxes, crates, baskets, pencils, cooperage works, or similar products

From Use Group 18:

A. Manufacturing establishments

Asphalt or asphalt products

Beverages, alcoholic or breweries that are larger than 10,000 square feet of floor area.

Brick, tile or clay

Cement

Charcoal, lampblack or fuel briquettes

Chemicals, including acetylene, aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black or bone black, cleaning or polishing preparations, creosote, exterminating agents, hydrogen or oxygen, industrial alcohol, potash, plastic materials or synthetic resins, rayon yarns, or hydrochloric, picric, or sulphuric acids or derivatives

Coal, coke or tar products

Excelsior or packing materials

Fertilizers

Foundries, ferrous or non-ferrous

Gelatin, glue or size

Glass or large glass products, including structural or plate glass or similar products

Grain, milling or processing

Graphite or graphite products

Gypsum

Hair, felt, or feathers, bulk processing, washing, curing or dyeing

Incineration or reduction of garbage, offal or dead animals

Insecticides, fungicides, disinfectants, or related industrial or household chemical compounds

Leather or fur tanning, curing, finishing or dyeing

Linoleum or oil cloth

Machinery, heavy, including electrical, construction, mining, or agricultural, including repairs

Matches

Meat or fish products, including slaughtering of meat or preparation of fish for packing

Metal or metal ores, reduction, refining, smelting or alloying

Metal alloys or foil, miscellaneous, including solder, pewter, brass, bronze, or tin, lead or gold foil or similar products

Metal or metal products, treatment or processing, including enameling, japanning, lacquering, galvanizing or similar processes

Metal casting or foundry products, heavy, including ornamental iron work or similar products

Monument works, with no limitation on processing

Paint, varnishes or turpentine

Petroleum or petroleum products, refining

Plastic, raw

Porcelain products, including bathroom or kitchen equipment or similar products

Radioactive waste disposal services involving the handling or storage of radioactive waste

Railroad equipment, including railroad cars or locomotives

Rubber, natural or synthetic, including tires, tubes or similar products

Sewage disposal plants

Ship or boat building or repair yards, for ships or boats 200 feet in length or over

Soaps or detergents, including fat rendering

Steel, structural products, including bars, girders, rails, wire rope or similar products

Solvent extracting

Stock yards or slaughtering of animals or poultry

Stone processing or stone products, including abrasives, asbestos, stone screenings, stone cutting, stc work, sand or lime products, or similar processes or products

Sugar refining

Textile bleaching

Wood or bone distillation

Wood or lumber processing including sawmills or planning mills, excelsior, plywood, or veneer, woc preserving treatment or similar products or processes

Wood pulp or fiber, reduction or processing, including paper mill operations

Wool scouring or pulling

B. Storage or miscellaneous uses, open or enclosed

Coal or gas storage

Dumps, marine transfer stations for garbage or slag piles

Electric power or steam generating plants

Explosives storage, when not prohibited by other ordinances

Gas manufacturing plants

Grain storage

Junk or salvage yards, including auto wrecking or similar establishments, provided that such yard is completely enclosed on all sides by a solid opaque fence or wall (including solid opaque entrance and gates) of suitable uniform material and color, at least eight feet in height and constructed in accordance with rules and regulations to be promulgated by the Commissioner of Buildings

Lumber yards, with no limitation on lot area per establishment

Manure, peat or topsoil storage

Petroleum or petroleum products, storage or handling

Refrigerating plants

Scrap metal, junk, paper or rags storage, sorting, or baling, provided that any yard in which such use is conducted is completely enclosed on all sides by a solid opaque fence or wall (including solid opaque entrance and exit gates) of suitable uniform material and color, at least eight feet in height and constructed in accordance with rules and regulations to be promulgated by the Commissioner of Buildings

C. Accessory uses