

DEPARTMENT OF PARKS & RECREATION

Notice of Opportunity to Comment on Proposed Rule

Addition of Chapter 5 to Title 56 of the Official Compilation of Rules of the City of New York

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Parks & Recreation (“Parks”) by Section 533 (a) (9) of the New York City Charter and Section 18-104 of the New York City Administrative Code and in accordance with the requirement of Section 1043 of the New York City Charter, that Parks proposes to amend Title 56 of the Official Compilation of Rules of the City of New York.

Written comments regarding the proposed rules may be sent to Alessandro G. Olivieri, General Counsel, Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, by July 15, 2008. A public hearing shall be held on July 15, 2008 at the Arsenal Gallery, at 830 Fifth Avenue, 3rd Floor, New York, New York at 11:00 a.m. Persons who request that a sign language interpreter or other accommodation be provided at the hearing are asked to notify Alessandro G. Olivieri at the foregoing address by July 8, 2008. Written comments and a tape recording of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 9:00 a.m. and 5:00 p.m. at The Arsenal, Room 313, telephone number (212) 360-1313.

These amendments were not included in the Parks regulatory agenda because the Department was not aware of the necessity for amendments at the time the regulatory agenda was prepared.

New material is indicated by underlining. Deletions are indicated by brackets.

Section 1. Title 56 of the Official Compilation of the Rules of the City of New York is amended by adding a new chapter 5 to read as follows:

CHAPTER 5 **TREES UNDER PARKS JURISDICTION**

§ 5-01 Construction Work, Excavation or Demolition Affecting Trees Under Parks Jurisdiction

§ 5-02 Tree Planting in Lieu of Obligations under the Zoning Requirements

§ 5-03 Contents of Certified Arborist Report

§5-04 Penalties

§ 5-01 Construction Work, Excavation or Demolition Affecting Trees Under Parks Jurisdiction.
(a) Any construction work, excavation or demolition affecting a tree under the jurisdiction of the Department shall require a permit from the Commissioner.
(b) No permit will be issued by the Commissioner under this chapter without the submission of a certified arborist report. The certification on a certified arborist report under this chapter must

be made by an individual with either a certification from the International Society of Arboriculture as a “Certified Arborist” or a “Board Certified Master Arborist”, or by an individual with a certification from the American Society of Consulting Arborists as a “Registered Consulting Arborist.”

§ 5-02 Tree Planting in Lieu of Obligations under the Zoning Requirements. If a person or entity is required under Zoning Resolution Article 2, Chapter 6, Section 41 to plant street trees, but pursuant to the Zoning Resolution such person or entity is required or opts to have the Department plant such trees on such person or entity’s behalf, then the person or entity must deposit one thousand nine hundred (1,900) dollars per tree in an account of the City as directed by the Department.

§ 5-03 Contents of Certified Arborist Report. The Certified Arborist Report must (i) identify all existing trees, listing species, condition and diameter breast height that are within and/or directly adjacent to the proposed construction work, excavation, or demolition; (ii) accurately locate such trees on the design plan; (iii) provide a specific tree protection plan to minimize impact to existing critical root zone, trunk and canopy acceptable to the Department; and (iv) specify the number, exact locations, species, and installation details for all new trees.

§ 5-04 Penalties

Failure to obtain a permit under subdivision (a) of this section shall be considered a violation of these rules and shall be punishable as provided by section 1-07 of chapter one of this title.

STATEMENT OF BASIS AND PURPOSE

Parks plans to require a Certified Arborist Report (“CAR”) for anyone (including but not limited to private developers and utilities) working in proximity to trees under Parks jurisdiction in order to strengthen Parks’ ability to protect and preserve existing trees and to ensure proper planting practices for new trees.

Tree care and protection within the urban environment is a technical and multifaceted endeavor which requires specialized training beyond that normally seen within the landscape industry. Landscape professionals without the advanced Arborist certifications now required by this section lack the distinct skill set required to make determinations on issues relating to the impact of construction on trees and the mitigation and remediation thereof. The requirement for a CAR will ensure that City assets (*i.e.*, trees) are being preserved while at the same time meeting the goal of moving construction projects forward. The CAR will facilitate the timely issuance of permits and the reduction of administrative delays due to conflicting agency mandates. The CAR will ensure that all parties are clear on what is expected at all stages of the development process in relation to City trees. The CAR will also assist those who wish to perform construction work near street trees in avoiding design conflicts and possible fines, as well as in obtaining tree work and planting permits. Furthermore, the CAR will streamline and standardize the current system which may now result in multiple sites visits, lengthy correspondence, and ad hoc negotiations with the permit applicants.

Development and construction activities pose a huge risk to existing vegetation and frequently result in the damage and/or destruction of mature trees. The existing rules of different agencies currently conflict with each other, and can result in one arm of City government (Department of Buildings) approving a project that another arm of City government (Department of Parks & Recreation) would later reject due to its proposed impact on public trees. Parks enforcement of its authority under § 18-104 of the City's Administrative Code requires the review of construction activities in the planning stage as well as throughout the life of the project, and is a vital component to the preservation of public trees. The CAR requirement will ensure that trees are considered in project design, prior to the issuance of construction permits. The CAR will include a full inspection of all City trees impacted by the development to ensure they are worthy of retention. It will also include a full assessment of the plans including details such as foundation design and position, utility location and installation, scaffolding position, construction techniques, tree protection measures, and also a post construction tree care prescription. This will facilitate the consideration and adoption of solutions, such as alternative construction techniques and/or infrastructure placement, in the design phase of the project. This will also mitigate costly delays—caused by tree damage and/or fines and work stoppage—during construction.

With a recent change in the City's zoning law, tree planting may be required as a condition of receiving a certificate of occupancy. The zoning text also permits the person or entity subject to tree planting requirements to pay a fee to Parks to fulfill this obligation. The fee will be the same for all applicants and will be based on citywide tree planting average costs, which the Department has determined to be \$1,900 per tree.