

NEW YORK CITY POLICE DEPARTMENT
Notice of Opportunity to Comment on Proposed Rule Amendment
Pursuant to Charter Sections 434(b) and 1043

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the New York City Police Department by Sections 434(b) and 1043 of the New York City Charter that the New York City Police Department intends to adopt amendments to its rules pertaining to Handgun Licenses, Rifle/Shotgun Permits and Organizations Possessing Rifles and Shotguns.

Written comments regarding these amendments may be sent to the office of the Deputy Commissioner, Legal Matters, One Police Plaza, Room 1406, New York, New York 10038, on or before September 15, 2010. Members of the public may also submit comments on the rule electronically through NYC RULES at www.nyc.gov/nycrules. A public hearing will be held on September 22, 2010, from 11:00 AM to 1:00 PM, at One Police Plaza, 1st Floor Auditorium, New York, New York 10038. Persons seeking to testify are requested to notify the Deputy Commissioner, Legal Matters at the foregoing address. Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are asked to notify the Deputy Commissioner, Legal Matters at the foregoing address by September 15, 2010. Written comments and a summary 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 AM and 5:00 PM at the office of the Deputy Commissioner, Legal Matters. This proposed rule did not appear in the Department's regulatory agenda because promulgation of the rule was not anticipated at the time of publication of said agenda.

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

§ 1. Subdivision h of Section 2-05 of Chapter 2 of Title 38 of the Rules of the City of New York is amended to read as follows:

(h) The custodian and alternate custodian shall each be required to sign an acknowledgment that s/he shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to each type of license or permit issued to her/him and to the organization. The Rifle/Shotgun Section shall provide the custodian and alternate custodian with the acknowledgment statement. These acknowledgment statements shall be [notarized] affirmed in writing. Failure to [sign] affirm the acknowledgment statements [and have them notarized] shall result in denial of the application for the organization registration certificate. Upon appointment, each successive custodian and alternate custodian shall be required to [sign] affirm in writing an acknowledgment statement [and have it notarized]. Failure to do so shall result in the suspension or revocation of the organization's registration certificate. Custodians and alternate custodians shall be held responsible for having knowledge of all new laws and rules that may be enacted by local, state, or federal legislatures or promulgated by the New York City Police Department affecting their organization.

§ 2. Subdivision d of Section 3-02 of Chapter 3 of Title 38 of the Rules of the City of New York is amended to read as follows:

(d) If the applicant was discharged from the Armed Forces under other than honorable conditions s/he shall submit a copy of her/his separation papers and [a notarized] an affirmed statement explaining the reason for discharge.

§ 3. Subdivision h of Section 3-02 of Chapter 3 of Title 38 of the Rules of the City of New York is amended to read as follows:

(h) All permittees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to this permit. The Rifle/Shotgun Section shall provide the permittee with the acknowledgment statement in writing. [This acknowledgment statement shall be notarized.] Failure to affirm [sign] the acknowledgment statement [and have it notarized] in writing shall result in denial of the permit application.

§ 4. Section 3-03 of Chapter 3 of Title 38 of the Rules of the City of New York is amended to read as follows:

§ 3-03 Grounds for Denial of Permit. An application for a rifle/shotgun permit may be denied [if] for lack of good moral character or other good cause, pursuant to section 10-303 of the Administrative Code, based on the following reasons:

(a) The applicant has been arrested, indicted or convicted for [any] a crime or violation except minor traffic violations, in any [jurisdiction,] federal, state or local jurisdiction.

(b) The applicant has been other than honorably discharged from the Armed Forces of this country.

- (c) The applicant has or [has had any] is reasonably believed to have a disability or condition that may affect the ability to safely possess or use a rifle or shotgun, including but not limited to alcoholism, drug use or mental illness.
- (d) The applicant [has received psychiatric treatment or been confined for alcoholism, mental illness or drug addiction] is or has been an unlawful user of, or addicted to, a controlled substance or marijuana.
- (e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a permit to possess a gun.
- (f) The applicant is the subject [or recipient] of an order of protection or a temporary order of protection.
- (g) The applicant has a history of one or more incidents of domestic violence.
- (h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.
- (i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of handguns, rifles, shotguns or ammunition.
- (j) The applicant has been terminated from employment under circumstances that demonstrate lack of good judgment or lack of good moral character.
- (k) The applicant has demonstrated an inability to safely store firearms, such as through a history of lost/stolen firearms.
- (l) The applicant has failed to pay legally required debts such as child support, taxes, fines or penalties imposed by governmental authorities.

(m) The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.

(n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the permit.

In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings.

§ 5. Subdivision b of Section 3-05 of Chapter 3 of Title 38 of the Rules of the City of New York is amended to read as follows:

(b) The permittee's rifle/shotgun permit may be [subject to suspension or revocation if:

(1) The permittee is arrested, indicted or convicted for any crime or violation, except minor traffic violations, in any jurisdiction, federal, state or local, or is the subject or recipient of an order of protection or a temporary order of protection, or is the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(2) The permittee is other than honorably discharged.

(3) The permittee has or has had any disability or condition that may affect the ability to safely possess or use a rifle or a shotgun.

(4) The permittee has received or is receiving psychiatric treatment or is or has been confined for alcoholism, mental illness or drug addiction.

(5) The permittee violates any of the rules pertaining to the permit to possess rifles and shotguns] suspended for a defined period or revoked upon evidence of any disqualification pursuant to subdivision a of section 10-303 of the Administrative Code and sections 3-02 and 3-03 of this chapter. A rifle/shotgun permit shall be revoked upon the conviction in this state, or elsewhere of a felony or a serious offense, as defined in subdivision seventeen of section 265.00 of the penal law. Evidence of disqualification may be demonstrated by an investigation, by a permittee's failure to cooperate with such an investigation, or by other evidence.

§ 6. Section 3-10 of Chapter 3 of Title 38 of the Rules of the City of New York is amended to read as follows:

The permittee shall notify the Rifle/Shotgun Section if s/he wishes to cancel or decline to renew her/his rifle/shotgun permit by forwarding the permit, certificate(s) of registration, and [a notarized] an affirmed letter to the Rifle/Shotgun Section. The letter shall inform the Rifle/Shotgun Section where the rifles/shotguns are located or how they have otherwise been disposed of.

§ 7. Paragraph 6 of Subdivision b of Section 5-05 of Subchapter A of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

(6) *Arrest information.* If the applicant was ever arrested for any reason s/he shall submit a Certificate of Disposition showing the offense and disposition of the charges. Also, the applicant shall submit a detailed[, notarized] statement describing the circumstances surrounding each

arrest. This statement shall be affirmed in writing. The applicant shall do this even if the case was dismissed, the record sealed or the case nullified by operation of law. The New York State Division of Criminal Justice Services shall report to the Police Department every instance involving the arrest of an applicant. The applicant shall not rely on anyone's representation that s/he need not list a previous arrest. If the applicant was ever convicted or pleaded guilty to a felony or a serious offense, as defined in New York State Penal Law §265.00(17), an original, signed Certificate of Relief from Disabilities[, signed by a judge,] shall be submitted. The certificate shall contain a statement granting the applicant firearm privileges under Penal Law Articles 265 and 400.

§ 8. Subparagraph i of Paragraph 8 of Subdivision b of Section 5-05 of Subchapter A of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

(i) A letter of necessity explains the need for the license. It shall be typewritten on current letterhead stationery; signed by a corporate officer, partner, or in the case of a sole proprietorship, the owner of the business. Self-employed applicants may submit such letter under their own signature. The letter of necessity shall be [notarized] affirmed. A letter of necessity shall be submitted by the following applicants:

(A) All applicants except applicants for a Premises Residence License.

(B) All employees seeking a Premises Business License for use in connection with their employment shall submit a letter of authorization signed by the owner of the business.

§ 9. Subdivision a of Section 5-06 of Subchapter A of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

An applicant shall initially submit a typed [and notarized] license application, which shall be affirmed in writing, in accordance with general handgun license rules, including all personal and business documentation requested. Examples of business documentation would be a company's corporate book, including filing receipt; certificate of incorporation; minutes of the corporate meeting reflecting current corporate officers; business certificate or partnership agreement, whichever is applicable.

§ 10. Subchapter A of Chapter 5 of Title 38 of the Rules of the City of New York is amended by adding new sections 5-10 and 5-11, to read as follows:

§ 5-10 Grounds for Denial of Handgun License. An application for a handgun license may be denied for lack of good moral character or other good cause based on the following reasons:

(a) The applicant has been arrested, indicted or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction.

(b) The applicant has been other than honorably discharged from the Armed Forces of this country.

(c) The applicant has or is reasonably believed to have a disability or condition that may affect the ability to safely possess or use a handgun, including but not limited to alcoholism, drug use or mental illness.

(d) The applicant is or has been an unlawful user of, or addicted to, a controlled substance or marijuana.

- (e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a license to possess a gun.
- (f) The applicant is the subject of an order of protection or a temporary order of protection.
- (g) The applicant has a history of one or more incidents of domestic violence.
- (h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.
- (i) The applicant has failed to comply with federal, state or local law or with Police Department rules governing possession and use of firearms, rifles, shotguns or ammunition.
- (j) The applicant has been terminated from employment under circumstances that demonstrate lack of good judgment or lack of good moral character.
- (k) The applicant has demonstrated an inability to safely store firearms, such as through a history of lost/stolen firearms.
- (l) The applicant has failed to pay legally required debts such as child support, taxes, fines or penalties imposed by governmental authorities.
- (m) The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.
- (n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license.

In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings.

§ 5-11 Grounds for Suspension for Defined Period or Revocation of Handgun License. A

handgun license may be suspended for a defined period or revoked upon evidence of any disqualification pursuant to this chapter. A handgun license shall be revoked upon the conviction in this state, or elsewhere of a felony or a serious offense, as defined in subdivision seventeen of section 265.00 of the penal law. Evidence of disqualification may be demonstrated by an investigation, by a licensee's failure to cooperate with such an investigation, or by other evidence.

§ 11. Paragraph 2 of Subdivision a of Section 5-24 of Subchapter B of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

(2) Each designee shall submit to the License Division an additional handgun license application for gun custodian, which shall be typed and [notarized] affirmed in writing, along with two (2) color photos, 1½ × 1½ inches, taken within the past thirty (30) days, showing the applicant from the chest up, and the necessary fees.

§ 12. Subdivision a of Section 5-28 of Subchapter B of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

(a) The renewal process generally begins sixty (60) calendar days prior to the licensee's month of birth. The licensee shall receive her/his renewal application, instructions, and other required forms and her/his invalidated license in the mail. As part of the renewal process, the License Division may require that the licensee produce all licensed handguns for inspection, either using a random selection procedure or when a review of the renewal package discloses the need for such an inspection, as directed by the Commanding Officer, License Division. The licensee shall receive appropriate instructions and a form Affidavit of Handgun Possession, to be completed and [notarized] affirmed in writing as part of the renewal package. If so directed, the licensee shall transport all licensed handguns to the License Division, One Police Plaza, Room 152, New York, New York or otherwise make the handguns available for inspection, in the manner directed by the instructions. The licensee shall examine the license, complete all required forms including providing color photos, forwarding fees (payable by certified check or money order only), etc., and return the renewal package to the License Division by mail, as soon as possible. Upon receipt of the renewal material, the License Division shall process the renewal and return the validated license to the licensee by mail.

§ 13. Section 5-33 of Subchapter B of Chapter 5 of Title 38 of the Rules of the City of New York is amended to read as follows:

All licensees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to this license. The License Division shall provide the licensee with the

acknowledgment statement. This acknowledgment statement shall be [notarized] affirmed in writing. Failure to [sign] affirm the acknowledgment statement [and have it notarized] shall result in denial of the license application.

STATEMENT OF BASIS AND PURPOSE

The Police Commissioner is responsible for the licensing and regulation of handguns, rifles, shotguns and other weapons in New York City, including activities such as possessing, carrying, selling, manufacturing, transporting or repairing such weapons. The administrative arm of the Police Department, which fulfills these functions at his direction, is the New York City Police Department's License Division.

As part of a comprehensive revision of the City's laws, rules and procedures for gun licensing in order to improve their efficiency and effectiveness, the Police Commissioner proposes to amend the rules administered by the License Division. The rules pertaining to the issuance of handgun licenses and rifle/shotgun permits would be amended to provide applicants with additional guidance regarding the potential grounds for denial of an application for such license or permit. The rules would similarly be amended to provide licensees and permittees with additional guidance regarding the grounds for suspension for a defined period or revocation of such license or permit. In addition, the rules would be amended to remove the requirement that various documents be notarized, in acknowledgment of the ability of the License Division to verify identity through in-person visits and available technology.

Consistent with the intent of the New York State Penal Law and the Administrative Code of the City of New York, and pursuant to the powers of the Commissioner under sections 434(b) and 1043 of the New York City Charter, Title 10 of the Administrative Code of the City of New York, and Article 400 of the New York State Penal Law, the Police Department is acting to amend its rules to improve the efficiency and effectiveness of the licensing of handguns, rifles and shotguns.