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THE CITY OF NEW YORK
LAW DEPARTMENT
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NEW YORK, NY 10007

(212) 788-1087

Hon. Adrian Benepe
Commissioner of the Department of Parks and Recreation

Re: Rules Regarding Community Gardens

No. 2010 RG 028

Dear Commissioner Benepe:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

A handwritten signature in cursive script that reads "Steven L. Goulden".

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Alessandro Olivieri
General Counsel, Department of Parks and Recreation

DEPARTMENT OF PARKS & RECREATION

Notice of Adoption

Revision to Add a New Chapter 6 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 in accordance with the requirement of section 1043 of the New York City Charter, that Parks hereby adds a new Chapter 6 to Title 56 of the Official Compilation of Rules of the City of New York.

Written comments regarding the rules were received in accordance with notice published in the City Record and a public hearing was held on August 10, 2010 at the Chelsea Recreation Center, 430 West 25th Street, New York, NY 10010. Written comments and an audio recording of the oral testimony from the hearing are available for public inspection between the hours of 9:00 a.m. and 5:00 p.m. at The Arsenal, Room 313, 830 Fifth Avenue, New York, NY 10065.

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

Title 56 of the Official Compilation of the Rules of the City of New York is amended to add a new Chapter 6 to read as follows:

GreenThumb Gardens

§ 6-01 Definitions.

As used in this chapter, the following terms will have the meanings set forth below:

“Accelerated Default.” A Default based in whole or in part upon any conduct, activity, or condition occurring in or immediately adjacent to the Lot and caused by the Gardening Group or circumstances under its control that (i) is contrary to law, (ii) constitutes a public nuisance, or (iii) affects, or poses a threat to, the health or safety of the community in which the Lot and Garden are located.

“Alternate Garden Contact Person.” An individual registered with GreenThumb as the secondary representative of a Gardening Group.

“Alternate Site List.” Either (i) a list of available City-owned vacant land within one-half mile of the Lot upon which an existing Garden is located, including the address, block and lot, and approximate size of each parcel of land contained therein; (ii) where there is no such available City-owned vacant land within one half mile of such Lot, a list of available City-owned vacant land within the community district in which such Lot is located, including the address, block and lot, and approximate size of each parcel of land contained therein; or (iii) a statement that there is no available City-owned vacant land within either one half mile of such Lot or within the community district in which such Lot is located.

"Alternate Site Notice." A notice that transmits an Alternate Site List to a Garden Contact Person and Alternate Garden Contact Person and, if such Alternate Site List contains available City-owned vacant land, states that (i) the Garden Contact Person may select any site from such Alternate Site List and inform the Department and GreenThumb of such selection in writing within 45 days after the date of such notice, (ii) failure to inform the Department and GreenThumb of the selection of a site from the Alternate Site List within 45 days after the date of such notice will be deemed to be a rejection of the offer, (iii) rejection of the offer may result in a Transfer without relocation of the Garden, and (iv) if the Garden Contact Person accepts a site from the Alternate Site List, GreenThumb will offer an opportunity to register and license such new site. The Alternate Site List may be incorporated into the text of, and will in any event be deemed to be incorporated by reference in, the Alternate Site Notice.

"City." The City of New York.

"Default." A Gardening Group's failure or refusal to (i) comply with GreenThumb Registration requirements, (ii) complete the Registration process, (iii) comply with the terms of its Registration, (iv) comply with GreenThumb License requirements, (v) enter into a License, or (vi) comply with its License.

"Default Notice." A notice from the Department or an Other Agency directing a Gardening Group to cure an Accelerated Default within 30 days after the date of such notice or a notice to cure a Default within 6 months after the date of such notice. Copies of such notices shall be sent to the council member for the council district in which the Garden is located and the community board of the community district in which the Garden is located.

"Garden." A community garden that is registered and licensed with GreenThumb and located on a Lot.

"Garden Contact Person." An individual registered with GreenThumb as the primary representative of a Gardening Group.

"Garden Review Process." The process set forth in section 6-05 of this chapter to be followed in connection with the Transfer of any Lot.

"Garden Review Statement." A written statement, prepared by the Department in accordance with section 6-05(b)(4) of this chapter, describing a Lot, the existing Garden on such Lot, and the proposed Transfer of such Lot.

"Gardening Group." An organized group of individuals who maintain a Garden and are collectively represented by the Garden Contact Person. The Garden Contact Person shall by April 15 of each calendar year provide a list to GreenThumb of the names and contact information for all members of the Gardening Group.

"GreenThumb." A division within the Department responsible for the City's urban gardening program.

"License." An agreement between the Department or an Other Agency and a Licensee providing a license to operate a Garden on a Lot for a set term subject to requirements set forth therein, unless earlier terminated.

"Licensee." A Gardening Group, acting through its Garden Contact Person, pursuant to a License.

"Lot." A parcel of City-owned land under the jurisdiction of the Department that contains a Garden at any time on or after September 17, 2010.

"New Garden." A community garden on available City-owned land identified on or after the effective date of this chapter and accepted for registration and licensing as a community garden by GreenThumb and transferred to the Department by the agency having jurisdiction over such City-owned land.

"Other Agency." A governmental agency or entity other than the Department.

"Retention Agreement." A written agreement between the City, acting by and through the Department or an Other Agency and a Gardening Group, acting by and through its Garden Contact Person, providing for (i) the retention of part or all of a Garden as a community garden and/or open space as part of a project to be developed, or (ii) the relocation of the Garden to an alternate site. Gardens that are retained or relocated pursuant to a Retention Agreement remain subject to the GreenThumb Registration and License requirements and this chapter.

"Registration." Written acknowledgment by GreenThumb that a Gardening Group has complied with the criteria set forth by the Department to demonstrate eligibility for a License pursuant to section 6-03.

"Transfer." The conveyance of a Lot or, with regard to any Lot under the jurisdiction of the Department, the transfer of jurisdiction over such Lot to an Other Agency for the purpose of devoting such Lot to a use other than as a garden or open space.

"Uncured Default." A Default that remains uncured six months after the date of a Default Notice or an Accelerated Default that remains uncured 30 days after the date of a Default Notice.

§ 6-02 Application.

This chapter establishes certain procedures with respect to the operation of Gardens registered and licensed with GreenThumb on September 17, 2010, or first registered and licensed with GreenThumb within the exercise of the Department's discretion after September 17, 2010. This chapter also establishes certain procedures with respect to the Transfer of the Lots upon which such Gardens are located.

§ 6-03 Licenses.

- (a) The Department will issue a License if the proposed Licensee and Garden meet the Registration criteria established by GreenThumb. The Department shall renew such License if the Licensee complies with the terms and conditions set forth therein and continues to meet the Registration criteria established by GreenThumb. If the Licensee has not complied with the terms of or fails to renew the License, fails to meet the Registration criteria established by GreenThumb, abandons the Garden, or if an Uncured Default has occurred, the Department will attempt to identify a successor Gardening Group and offer a License to it for the Garden. The Department's efforts to identify a successor Gardening Group will include contacting the local community board and councilmember and may include contacting nearby Gardening Groups. The Department's efforts to identify a successor Gardening Group may begin as early as the Department determines necessary in order to retain the Lot's use as a Garden, but shall not extend beyond 3 months of after any Uncured Default, at which point the Garden is subject to Transfer.
- (b) Licenses will set forth terms and conditions under which the Licensee will design and install a plant garden on a Lot and will thereafter maintain such Garden and all plants and conforming structures contained therein (including, but not limited to, all raised plant beds, planters, tables, benches, and other ornamental items) in a safe and orderly condition. The Department may permit other uses of the Lot that are compatible with gardening and are authorized pursuant to the License.
- (c) Any license agreement from the City to any party performing work on the Lot or development work on an adjacent property that affects the Lot shall require the licensee to return the Garden to a condition similar to that which existed prior to commencement of said work.
- (d) The License will provide that (i) the Licensee accepts the Lot "as is," in whatever condition it may be on the date the License is fully executed, (ii) the City makes no representation or warranty of fitness of the Lot for gardening purposes, (iii) the Licensee must meet GreenThumb's Registration and License requirements; (iv) the Licensee must comply with all applicable federal, state, and local laws, rules, regulations, codes, and ordinances, and (v) the Licensee must comply with such other requirements as the Department may establish.
- (e) The City will retain title to the Lot and the Licensee will not have any leasehold or other interest in the land comprising such Lot, any improvement thereon, or any equipment provided by GreenThumb.

§ 6-04 Active gardens to be preserved; Gardens not deemed mapped parkland.

Except as provided in section 6-05 of this chapter, all Lots under the Department's jurisdiction will be used and preserved as Gardens as long as they comply with the Department's registration and licensing requirements. Lots are not dedicated as, and will not be deemed to be dedicated as, parkland unless they have otherwise been mapped as parkland by the City.

§ 6-05 Garden Review Process.

(a) The Department will comply with the Garden Review Process before any Transfer.

(b) Under the Garden Review Process:

(1) The Department will notify the Garden Contact Person and the Alternate Garden Contact Person of the proposed Transfer. Such notice may, but will not be required to, be included within the Alternate Site Notice.

(2) The Department will provide an Alternate Site Notice to the Garden Contact Person and Alternate Garden Contact Person.

a. The Garden Contact Person may select one site from the Alternate Site List for relocation of the Garden and inform the Department and GreenThumb of such selection in writing within 45 calendar days after the date of the Alternate Site Notice.

b. The offer contained in the Alternate Site Notice will be deemed rejected, and the Garden Contact Person will have no further right to select a site from the Alternate Site List for relocation of the Garden if (i) the Department and GreenThumb do not receive, within 45 calendar days after the date of the Alternate Site Notice, written notice from the Garden Contact Person that the Gardening Group has selected a site from the Alternate Site List for relocation of the Garden, or (ii) the Department or GreenThumb receives written notice from the Garden Contact Person at any time that the Gardening Group will not select a site from the Alternate Site List for relocation of the Garden.

c. If the Alternate Site List states that there is no available City-owned vacant land within one half mile of the Lot upon which the existing Garden is located, or within the community district in which such Lot is located if there is no City-owned vacant land within one half mile of the Lot, the provisions of sections 6-05(b)(2)(a) and 6-05(b)(2)(b) of this chapter will not apply.

(3) Any site on the Alternate Site List will be offered “as is,” and a Gardening Group will be responsible for performing all necessary work on such lot. The Department will, upon request and contingent upon staff availability and resources, assist the Gardening Group with its relocation and gardening efforts at the alternate site. The City will offer the Gardening Group an opportunity to register with GreenThumb for the alternate site, and once registered, obtain a License.

- (4) Before any Transfer, the Department will prepare a Garden Review Statement that includes the following, to the extent that such information exists and/or is contained in the Department's files:
- a. a description of each affected Lot (including the address, block, and lot of such Lot) and the existing Garden located thereon;
 - b. the name, address, and telephone number of the Garden Contact Person and Alternate Garden Contact Person;
 - c. the date that GreenThumb licensed each affected Lot for the first time;
 - d. copies of the most recent Registration form submitted to GreenThumb by the Garden Contact Person; the two most recent site visit forms prepared by GreenThumb; and at least two photographs of the existing Garden;
 - e. the Alternate Site List and a statement of whether the Garden Contact Person has accepted or rejected any sites on such Alternate Site List; and
 - f. a description of any proposed Transfer of each affected Lot.
 - g. a description provided by the Gardening Group of any programs, activities and events in, and existing features of, the Garden. The above description, which shall be no more than four legal size pages in length, will be included in the Garden Review Statement if submitted to the Department before submission of any application for approval as set forth in section 6-05(b)(6).
- (5) The Department will send a Garden Review Statement to the Garden Contact Person, the Alternate Garden Contact Person, the council member for the council district in which the Garden is located and the community board of the community district in which the Garden is located by written notice not less than 45 calendar days before any Transfer. The sending of such notice will constitute notice of the proposed Transfer.
- (6) The Department or Other Agency will include a Garden Review Statement in any application for approval of a Transfer pursuant to section 197-c of the City Charter, in any application to the City Council or the Mayor for approval of a Transfer pursuant to Article 15 of the General Municipal Law, Article 16 of the General Municipal Law, or Article XI of the Private Housing Finance Law, and in any application to a Borough Board for approval of a Transfer pursuant to section 384(b)(4) of the City Charter.
- (c) If the Transfer of a Lot is disapproved through an applicable public review process, a Garden may remain on such Lot, subject to Registration, execution of a License, and compliance with all GreenThumb program requirements, until approval of a future

Transfer of such Lot. Any new approval of such future Transfer will be subject to the Garden Review Process.

- (d) In order to facilitate the Transfer of a Lot, the Department may, by notice to the Garden Contact Person and Alternate Garden Contact Person at any time after the Transfer of such Lot is approved through the applicable public review process, terminate or decline to renew the License and direct the Gardening Group to vacate the Lot.

§ 6-06 Exemptions.

- (a) Upon execution of a Retention Agreement that provides for the relocation of a Garden to an alternate site, (i) the Lot from which such Garden is to be relocated will no longer be subject to any of the requirements set forth in this chapter, and (ii) the Lot to which such Garden is to be relocated will be subject to the requirements set forth in this chapter.
- (b) After the execution of a Retention Agreement that provides for the retention of part or all of a Garden as a community garden as part of a project to be developed, the Transfer that is the subject of such Retention Agreement will no longer be subject to any of the requirements set forth in section 6-05 of this chapter.

§ 6-07 Miscellaneous.

- (a) Any determination by the Department pursuant to this chapter will be made in the Department's sole discretion.
- (b) Any notices required pursuant to this chapter will be in writing and will be delivered by regular mail, certified mail, registered mail, or personal delivery, and will also be posted at or near the Garden entrance. Any such notice will be deemed delivered when deposited in an official United States Postal Service receptacle. The Department will make reasonable efforts to provide translations for notices required pursuant to this chapter into the predominant language of the Gardening Group as identified by the Gardener of Record to GreenThumb.
- (c) Any Garden must comply with all applicable federal, state, and local laws, rules, regulations, codes and ordinances and is subject to the GreenThumb Registration and License requirements and this chapter.

§ 6-08 New Gardens.

- (d) The Department may establish New Gardens on available City-owned land. New Gardens shall be subject to the same requirements of the Department as any other garden and all other provisions of this chapter concerning registration, licensing and transfer.

STATEMENT OF BASIS AND PURPOSE

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the “Commissioner”) under sections 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, governance and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation. This rule was amended from the draft version to reflect comments received from the City Council, community gardening organizations, and the general public.

Active community gardens allow members of the public to play an active, hands-on role in the creation and maintenance of public open spaces used for recreation, education, and horticulture and food production. They also serve to increase civic participation and spur neighborhood revitalization, transforming vacant and unattractive plots of public land throughout the five boroughs. In addition, gardens offer vital environmental and health benefits.

Parks intends to preserve gardens under its jurisdiction that are currently registered, licensed and in good standing. Under this rule, gardens that are in good standing and consistently comply with the Department’s registration and licensing requirements and are under its jurisdiction will be preserved and will not be subject to transfer to another agency or sold by the City for a non-garden or non-open space use. This rule seeks to codify and strengthen the practices that Parks has followed since 2001 and set forth the practices Parks will follow for licensing City-owned gardens registered through the GreenThumb program. In particular, the rule establishes a formal system for the Department to provide and renew licenses to participating community gardens and sets forth a Garden Review Process to address the

development or disposition of GreenThumb garden lots, ensuring that detailed information concerning the garden and proposed project are provided to interested parties, including decision makers and gardeners, as part of the land use process. The transfer provisions included in these rules are intended to address gardens under the Parks Department's jurisdiction that are a blight upon the community because they have been abandoned or are in persistent default and will be utilized if the Department has been unable to identify a new group to responsibly care for the Garden.