



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

(212) 788-1087

Hon. Rafael Cestero
Commissioner of the Department of Housing Preservation and Development
100 Gold Street
New York, New York 100038

Re: Rules Regarding Community Gardens
2010 RG 075

Dear Commissioner Cestero:

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: Mary-Lynne Rifenburg, Esq.

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Revision to Add a New Chapter 42 to Title 28 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 Housing Preservation and Development (“HPD”) by Section 1802 of the New York City Charter and in accordance with the requirement of Section 1043 of the New York City Charter, that HPD hereby adds a new Chapter 42 to Title 28 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, New York 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.

Section 1. Title 28 of the Official Compilation of the Rules of the City of New York is amended to add a new Chapter 42 to read as follows:

GreenThumb Gardens

§ 42-01 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 HPD and GreenThumb of such selection in writing within 45 days after the date of such notice, (ii) failure to inform HPD 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 DPR 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.

"DPR." The City's Department of Parks and Recreation.

"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 42-05 of this chapter to be followed in connection with the Transfer of any Lot.

"Garden Review Statement." A written statement, prepared by HPD in accordance with section 42-05(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 DPR responsible for New York City's urban gardening program.

"HPD." The City's Department of Housing Preservation and Development.

"License." An agreement between HPD 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 HPD that contains a Garden at any time on or after September 17, 2010.

"Other Agency." A governmental agency or entity other than HPD.

"Retention Agreement." A written agreement between the City, acting by and through HPD 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 DPR to demonstrate eligibility for a License pursuant to section 6-03 of chapter 6 of title 56 of the Rules of the City of New York.

"Transfer." The conveyance of a Lot 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.

§ 42-02 Application.

This chapter establishes certain procedures with respect to the operation of Gardens registered and licensed on September 17, 2010, or first registered and licensed within the exercise of DPR's and HPD'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.

§ 42-03 Licenses.

- (a) HPD will issue a License if the proposed Licensee and Garden meet the Registration criteria established by GreenThumb. HPD may 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, or fails to meet the Registration criteria established by GreenThumb, abandons the Garden, or if an Uncured Default has occurred, HPD may offer a License for the Garden to a new Gardening Group.

- (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. HPD, in consultation with GreenThumb, 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 GreenThumb or HPD 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.

§ 42-04 Lots used as Gardens or as open space; Gardens not deemed mapped parkland.

Except as provided in section 42-05 of this chapter, all Lots will be used as Gardens. 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.

§ 42-05 Garden Review Process.

- (a) HPD will comply with the Garden Review Process before any Transfer.
- (b) Under the Garden Review Process:
 - (1) HPD 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) HPD 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 HPD 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) HPD 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) HPD 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 42-05(b)(2)(a) and 42-05(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. DPR 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, HPD will prepare a Garden Review Statement that includes the following, to the extent that such information exists and/or is contained in HPD'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 HPD before submission of any application for approval as set forth in section 42-05(b)(6) of this chapter.
- (5) HPD 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) HPD 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, HPD 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.

§ 42-06 Exemptions.

- (a) The following Lots will not be subject to any of the requirements set forth in this chapter:
 - (1) Bronx: Block 2418; Lot 6; Block 2786; Lots 12, 13; Block 2867; Lot 128; Block 2979; Lot 1; Block 3540; Lots 1, 29, 40.

- (2) Brooklyn: Block 1028; Lot 7; Block 1432; Lot 48; Block 1447; Lots 68-70; Block 1450; Lot 14; Block 1450; Lots 8, 11; Block 1476; Lot 34; Block 1484; Lots 6, 8; Block 1484; Lots 35, 41, 43; Block 1486; Lots 15, 16; Block 1663; Lot 82; Block 1664; Lot 40; Block 1755; Lots 54-57; Block 1792; Lots 22-25, 61; Block 3514; Lot 6; Block 3600; Lots 29, 31, 32, 34, 134; Block 3603; Lot 25; Block 3613; Lots 31-33; Block 3791; Lots 26, 28; Block 3841; Lot 32; Block 4000; Lot 3; Block 4009; Lot 47; Block 4015; Lots 22, 23; Block 4067; Lots 13, 14; Block 7050; Lot 74;
 - (3) Queens: Block 16088; Lot 15.
 - (4) Manhattan: Block 372; Lot 11; Block 372; Lot 49; Block 1645; Lots 3, 71; Block 1790; Lot 41; Block 1918; Lot 51.
- (b) 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.
 - (c) 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 42-05 of this chapter.
 - (d) Except as set forth in section 42-03(a) of this chapter, after the occurrence of an Uncured Default, the Lot that is the subject of such Uncured Default will no longer be subject to any of the requirements set forth in this chapter.

§ 42-07 Miscellaneous.

- (a) Any determination by HPD pursuant to this chapter will be made in HPD'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. HPD 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.

STATEMENT OF BASIS AND PURPOSE

This rule is promulgated pursuant to the authority of the Commissioner of the Department of Housing Preservation and Development (“HPD”) under sections 1802 and 1043 of the New York City Charter.

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.

This rule seeks to codify and strengthen the practices that HPD has followed since 2002 and set forth the practices HPD will follow for licensing City-owned gardens registered through the Department of Parks and Recreation's GreenThumb program. In particular, the rule establishes a formal system for HPD 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.

Certain lots will be exempt from the provisions of these rules regarding transfer, disposition, and development because they have already undergone the procedures described therein, have already completed all public reviews required for such actions, and/or have been exempted from such review under a prior Memorandum of Agreement with the Attorney General State of New York.