



**BUILDING INSPECTION SAFETY PROGRAM MANUAL
CHAPTER 4, ADDENDUM 1
May 10, 2010**

NOTICE OF VIOLATION (NOV) GUIDE

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1. PURPOSE

Prior to 1985, members of the Fire Department enforced provisions of the Fire Code through the issuance of a Violation Order (“VO”) and, subsequently, a summons (for non-compliance with the VO). Summons for Fire Code violations were, and still are, adjudicated in the Criminal Court.

The processes of issuing violations, conducting re-inspections, issuing summonses, and Criminal Court hearings can be slow and complicated. In response to this situation, FDNY established an additional method of reporting and processing violations that is less time consuming and provides for substantial penalties.

Local Law 80 of 1985 gave the Department authority to use the Environmental Control Board (“ECB”) to adjudicate violations. The Notice of Violation (“NOV”) is an additional tool available to the Department to enforce the Fire Code, Fire Department Rules, certain provisions of the New York City Building Code and other laws and rules that the Department is authorized to enforce.

The NOV is not intended to substitute for a VO or a Summons.

Members can refer to the Standard Form of Order (“SFO”) Guide to determine the type of written order (VO, Summons, or NOV) to be issued.

2. RESTRICTIONS ON THE USE OF AN NOV

Do not issue an NOV in the following instances:

- **FORTHWITH VOs** - If the inspecting member deems the violation to be an immediate hazard.
- **IMMEDIATE SUMMONS** - Violations requiring an immediate summons (e.g., locked exit, smoking on a construction site, illegal storage of LPG, illegal use of kerosene space heaters).
- **GOVERNMENT AGENCIES (except NYC mayoral agencies)** - Federal, State, or other non-City government agencies (MTA, Port Authority, Tri-Borough Bridge and Tunnel Authority, etc.). Reporting violations of law in the these premises are generally the subject of special reports, an A-8, or other means as indicated in Directives issued by FDNY. **(NOVs issued to a New York City agency shall be processed as per BISP Manual, Chapter 4 section 4.2.4 (b).)**

Note: Do not use the NOV to enforce New York State Laws. (Examples: NYS Labor Law, NYS Multiple Dwelling Law)

3. The NOV Process

3.1 A member performing an inspection of a premises who observes a violation (of the Fire Code, Fire Department Rules, certain provisions of the New York City Building Code and other laws and rules that the Department is authorized to enforce) shall cite such violation(s) on the face of the NOV form. Violations of the Fire Code and/or Administrative Code are categorized into Violation Categories (VCs), which are set forth in 3 RCNY 109-02 and are numbered 1 to 30.

Not more than 7 VCs are to be cited on each NOV. If a member observes violations that fall into more than 7 VCs, issue additional NOVs.

3.2 NOVs are processed and managed by the Enforcement Unit of the Bureau of Fire Prevention. After issuing an NOV, units shall forward the white (ECB) copy and the blue (FDNY Records Unit Copy) to the Bureau of Fire Prevention Enforcement Unit for processing.

3.3 Respondents have thirty five (35) days to file a Certificate of Correction to the Bureau of Fire Prevention's Enforcement Unit. When the Certificate of Correction is returned to the Enforcement Unit indicating that the violations have been corrected, and is accompanied by appropriate supporting documentation, the NOV will be reviewed by the Enforcement Unit of the Bureau of Fire Prevention. If the NOV is deemed "Cured" no further action is required by the respondent. Failing this, the respondent must appear at the Environmental Control Board ("ECB") for a hearing.

3.4 If a respondent wishes to challenge an NOV, the respondent or their representative must appear for a hearing at the ECB location on the date and time indicated on the NOV.

3.5 The ECB hearing is conducted by an Administrative Law Judge ("ALJ") and the FDNY is represented by an ECB Representative from the Legal Enforcement Unit of the Bureau of Legal Affairs.

If the respondent does not cure the violation or attend the hearing, the ECB will enter a default judgment. The default penalty is \$1,000 for each VC.

If a respondent is cited for the same violation, at the same premises, more than once in eighteen (18) months, the respondent will not be offered the opportunity to certify correction of the violation and avoid penalties, and multiple offense penalties will be imposed if the ALJ upholds the violation after an ECB hearing. The default penalty for multiple offenses is \$5,000 for each VC.

3.6 If re-inspection of a premise is required after a default, guilty verdict, or stipulation, the unit shall re-inspect the premises and, if warranted, issue a new NOV. Units will be notified which premises require re-inspection by a Reinspection Order Form (see Addendum 1 Appendix D).

4. Extensions OF TIME TO COMPLY

Certain violations requiring documentation to be submitted by the respondent may be eligible for a stipulation to extend the time to correct. A request for a stipulation extending compliance time must be made by the Respondent at the ECB hearing and is subject to the approval of FDNY and the ECB. If an extension is approved, a Stipulation specifying a new date for compliance will be provided to the respondent.

5. RESTRICTIONS OR MODIFICATIONS TO SOME VCs

Units shall not issue an NOV for a violation of VC 20 for a five (5) year test or inspection of a sprinkler or standpipe system. If such test or inspection is required, forward an A-8 to Bureau of Fire Prevention, Fire Suppression Unit.

The inspecting member should make an entry in the RBIS system under the referral tab noting the reason for the referral.

The Bureau of Fire Prevention can quickly determine what action must be taken regarding the test or inspection.

6. DESCRIPTION OF THE NOV

6.1 The NOV is a five (5) part form.

6.2 Each set of pages is labeled and color-coded as follows:

- **White** ECB (1st) Copy, Top – (Forward to Enforcement Unit)
- **Gold** Certificate of Correction (2nd) Copy – (Serve to Respondent)
- **Blue** FDNY Records Unit (3rd) Copy – (Forward to Enforcement Unit)
- **Pink** Fire Department Issuing Unit (4th) Copy – (File in Building Folder)
- **Green** Respondent's (5th) Copy – (Serve to Respondent)

6.3 The front of each page is identical on all forms; however, the reverse side of each page varies:

- **White Copy** contains the Affidavit (Certificate) of Service on the reverse side.
- **Gold Copy** contains the Affidavit (Certificate) of Correction on the reverse side and shall be served upon the respondent.
- **Blue Copy** is identical to the White Copy.
- **Pink Copy** is identical to the White Copy.
- **Green Copy** contains information relating to location of ECB Hearing Offices, Correction Requirements and the Table of Maximum Penalties and shall be served upon the respondent.

The Affidavit of Service (Certificate) on the rear of the White, Blue and Pink Copies must be completed separately to avoid print from appearing on the front of these copies.

7. Instructions for Preparing an NOV
(THE NUMBERS CORRESPOND TO THE SPECIFIC INSTRUCTIONS)

1 F.P.I.M.S. Account No.

Field (Company) Units - leave blank
District Office Inspectors **only** - enter account number in these spaces.

2 FP Unit

Field (Company) Units - leave blank
District Office Inspectors **only** – enter Unit in these spaces.

3 ADMIN CO. **UNIT PHONE #**

Enter the Company of the administrative district where the address is located.

| Unit Code # | Unit Type |
|-------------|-----------|
| 5 | Engine |
| 6 | Marine |
| 7 | Ladder |
| 8 | Squad |

For example, Engine Company 274 is written as:

Leading zeros shall be entered when the Company number has less than three (3) digits. For example, Ladder Company 7 is written as:

The Company's phone number must be included in space provided.

4 C. B. #

Enter the number of the Community Board in which the premise is located. Refer to Appendix B for appropriate Community Board Number.

Leading zeros will be entered when a Community Board Number has less than two (2) digits

5 For E. U. Use Only:

Leave Blank

6 NOV #

The NOV number will be printed on the NOV form in this space. A bar code will be printed below the number. The bar code is used by ECB to identify the NOV. Do not issue NOVs without a number and bar code to respondents. NOVs without numbers and bar codes are to be used for training purposes only. If you require NOVs to issue to respondents, contact the Bureau of Fire Prevention, Enforcement Unit.

7

Petitioner, New York City Fire Department vs. Respondent:

||| ||| ||| ||| ||| ||| ||| ||| ||| ||| ||| ||| ||| ||| ||| |||

Respondent is: owner managing agent tenant city agency daycare center

Enter the name of the person or entity responsible for correcting the violation.
Check only one (1) of the above applicable boxes.

1. **Owner** – If the violation is against the building, name the building owner as the respondent. If the building owner is a corporation, name the corporation as the respondent and check the box for “owner.”

Note: A corporation is a company whose name is followed by the words “Corporation” or the abbreviation “Corp., LLC” or “Inc.” **Do not use** “OWNER OF” if the building owner is a corporation - name the corporation.

2. Managing Agent – If a Managing Agent operates the building, name the agent as the respondent and check the appropriate box.

3. Tenant – Only write an NOV to a tenant if the violation is of something that the tenant has complete control over (i.e., range hood unit in a restaurant or fire extinguishers in a store or office). Do not write an NOV to a tenant of a multiple dwelling. If the NOV is for the tenant, issue the NOV in the name of the business/entity responsible for the occupancy.

For example: the entry for a violation against John's Pizza in which the pizzeria is a tenant in the building is as follows:

J O H N S P I Z Z A

Respondent is: owner managing agent tenant city agency daycare center

Do not issue an NOV to a tenant of a multiple dwelling. This would constitute improper service resulting in dismissal of NOV

4. City Agency – name the agency. For a New York City Department of Homeless Services (“DHS”) building enter DHS. Enter the name of the building/shelter in the Add Info/AKA section. All NOVs issued for premises owned by city agencies should be forwarded to the Bureau of Fire Prevention Enforcement Unit to be served. Do not leave copies of the violation at the premises. Forward all parts, except pink (Fire Department issuing Unit Copy), to the Fire Prevention Enforcement Unit.

Respondent is: owner managing agent tenant city agency daycare center

Name of the Housing Project entered in Add Info/AKA:

C A R L T O N H O U S E

5. **Daycare center** - If the premises is a daycare center, enter the name of the daycare center as the respondent and check the appropriate box. For example:

A B C | D A Y | C A R E |

Respondent is: owner managing agent tenant city agency daycare center

If unsuccessful in identifying the name and address of the owner or managing agent of record, conduct a Finance Property search or contact the BISP Hotline at 718-281-3877.

As a last resort, if unable to determine the owner's name, the respondent shall be identified with the entry "OWNER OF" followed by the building address. For example: for a violation against a building located at 34 Jones Street the entry will appear as follows:

W N E R | O F | 3 4 | J O N E S | S T | |

Respondent is: owner managing agent tenant city agency daycare center

8 Place of Occurrence (Premises Address)

Enter the street address (use the same standards as AUC 210, Fire and Emergency Reports).

9 Mailing Address (if different from premises address)

Fill in the mailing address for the respondent if it is different from the premises address, for example, use the managing agent's address if the building's managing agent is responsible for correcting the violation.

10

Add Info/AKA

Enter: Out of city address (if applicable and known); or
Post Office Box; or
C/O (Care of) Address.

Such information may include:

[A|K|A| |E|M|P|I|R|E| |S|T|A|T|E| |B|L|D|G|]

For 350 Fifth Ave

or

[H|O|L|L|A|N|D| |H|O|U|S|E|S| | | | | | | | |]

For a New York City Housing Authority Project.

11

Notice of Violation and Order to Correct and Certify Correction:

Notice of Hearing:

Always enter compliance and hearing dates on the NOV, except if issuing to city agency. The Enforcement unit will enter this information upon issuance to the city agency.

To determine the compliance date the inspector shall refer to the ECB Compliance and Hearing Calendar. Each borough has an ECB Compliance and Hearing Calendar indicating the compliance and hearing dates for the current year. To find the compliance date, the inspector will locate the day (vertical column, extreme left side of the Calendar) and month (top of Calendar) that the violation is being issued. The intersecting points of these two (2) lines will show the Compliance Date. The Hearing Date is directly adjacent to it to the right. The Compliance Date is the date by which the Bureau of Fire Prevention Enforcement Unit must receive the Certificate of Correction indicating that the NOV has been corrected by the respondent if respondent wants to cure the violation. The Compliance Date is approximately 35 days from the date the NOV was issued.

When preparing the NOV, **use only the 8:30am or 10:30am hearing times.** Alternate these times to maintain an equal number of hearings at each period. Assign the same hearing time to NOVs issued for the same premises.

Check the box indicating the borough in which the hearing will be conducted. Hearings are scheduled in the borough where the premise is located. The locations of the ECB Hearing Offices are found on the back of the Green (Respondent's) Copy and the Gold (Certificate of Correction) Copy.

12

Violations of the Administrative Code, Fire Department Rules and other Provisions of Law that the Department is Authorized to Enforce. (Stated as VCs #1-30)

1. Upon observation of a violation, the inspecting member should refer to the Standard Form of Order ("SFO") Book, BISP Manual Chapter 4 Addendum 5. The SFO Book includes references to the NOV VCs. If there is a number under the column labeled NOV Violation Category, the inspector can issue an NOV.
2. Enter a check mark in the box citing the VC violated on the NOV.
3. Fill in the applicable blanks and/or circle the appropriate word or words.
4. Use the Description of Violation section (at the bottom) of the NOV to describe the nature of the violation in more detail. Note that the VCs are categories of violations and many are vague regarding the specific violation and/or remedy.

Note: Exceptions to above warranting a summons:

A summons, not an NOV, shall be served immediately upon finding the following conditions:

- Smoking on a construction site.
- Smoking in a factory (Board of Standard and Appeals rules).
- Locked, fastened or bolted doors leading into or out of any factory or in any floor thereof, during working hours (LL., Section 272 Subd.3).
- Propane - illegal storage (See Chapter 5, Reference # 4.1).
- Kerosene heater - illegal use (confiscate).
- As otherwise directed by Fire Department procedures.

5. **Not more than 7 Violation categories (VC) may be cited on each NOV. If a member observes violations that fall into more than 7 VCs, issue additional NOVs.**

13 Repeat Violation (§ 15-229)

A Repeat Violation shall be issued to an owner of a premise when the same respondent is found to violate the same law, rule or regulation at the premises within 18 months of a first violation. **An inspector shall return to evaluate an NOV as directed by the Bureau of Fire Prevention Enforcement Unit for an audit or re-inspection.**

When it is determined that an original, violating condition exists and the same respondent is in control of the premises at an audit or re-inspection, the inspector shall:

1. Issue a new NOV to the respondent.
2. Insert the uncorrected VC number(s) and the number of the original NOV in the blank.
3. Only enter a hearing date on the NOV; do not enter a compliance date. Place x's in the boxes designated for the compliance date, this will indicate that the date was intentionally left blank.
4. Check the REPEAT VIOLATION box. Do not use the Repeat Violation section on the same NOV with any new VC during the inspection. Write out a separate NOV for any new violations observed.
5. Write or print the word REPEAT above each VC number that was cited on the original NOV and that is in violation.
6. Serve the Green (Respondent's) Copy and the Gold (Certificate of Correction) Copy to the respondent.

Note: The Gold (Certificate of Correction) Copy must be served because the respondent still has the opportunity to correct the violation and submit the certificate of correction. The respondent must still appear in ECB court to address the REPEATED offense.

14 False Certification (§15-220.1)

This section of the NOV is to be completed when it is obvious at an audit or re-inspection that the original condition for which a NOV was issued was never corrected and was falsely certified as being corrected.

Inspector shall:

1. Check the FALSE CERTIFICATION box; and
2. Insert the NOV number that was falsely certified in the applicable space.

The Department considers Repeat Violations and False Certifications as serious violations and accordingly assesses higher penalties if the respondent defaults or is found guilty at an ECB hearing. In order to accurately issue a Repeat Violation or False Certification violation, the unit shall bring the previously-issued NOV(s) to the premises when conducting the re-inspection so that the previous NOV number can be accurately recorded on the new NOV. Some NOVs for False Certification may be difficult to prove. In instances where uncertainty exists regarding the issuance of False Certification, it is advisable to issue a Repeat Violation instead of a False Certification.

15

Other Fire Code/Rule ViolationsSPECIFY SECTION**Describe offense below:**

This section may be used for enforcement of specifically-designated sections of the Fire Code, or other laws, rules or regulations enforced by the Fire Department.

The Department will provide further directions on the use of this section by issuing Fire Prevention Information Bulletins and/or other directives when appropriate.

Description of Violation: _____

16

This area of the NOV shall be used to briefly describe the nature of the violation. It is permissible to cite more than one offense for the same VC. This area can also be used to provide remedies for each violation cited. Refer to the Standard Form of Orders for remedy language or the BISP hotline. An NOV supplement sheet can also be utilized if more space is needed to spell out violations and remedies. The remedy should provide the code/rule section violated.

For example:

When several violations are found that fall into different VCs, such as no shut-off valve at oil burner, movable combustible material within five (5) feet of an oil burner, no Certificate of Fitness to dispense motor fuel, no Certificate of Fitness to operate an oxy-acetylene torch, cite the appropriate VCs and describe each VC as appropriate.

VC 17 Certificate of Fitness and Certificates of Qualification

Failed to obtain and/or produce required (Certificate of Fitness/Certificate of Qualification) for 3 of C of F - see below.

VC 26 Heating and Refrigeration Equipment and Systems

Failed to provide and/or maintain required (heating/refrigerating) system for oil burner at basement.

Add specific information in the DESCRIPTION OF VIOLATION section. For example:

Description of Violation: VC 17 - No C of F for: 1) To dispense Motor Fuel, 2) Operate Air Compressor & 3) To use Oxyacetylene Torch. VC 26 - No shut off valve at Oil Tank, 2) Movable combustible material within 5 ft. of furnace.

17

Date of Offense and TimeMonth/Day/Year **Note:** Do not use Military time.

18

Inspector's Identification Number or Reference Number

Obtained from the inspector's pay stub.

19

INSPECTOR'S SIGNATURE _____
PRINT NAME _____

Inspector **must sign and print** name. If the signature and/or printed name is missing, the NOV is invalid and not enforceable!

Note: The NOV is a legal document and as such must be properly prepared and served. The member who signs the NOV must be the same member who witnessed the violation. Members may be called upon to provide witness testimony, and verify the actual violation and their signature in court. Failure to properly execute this document can be grounds for the NOV being dismissed.

20

AFFIDAVIT (CERTIFICATE) OF SERVICE

Located on rear of White (ECB) Copy, the Pink (Fire Department Issuing Unit) Copy, and the Blue (FDNY Records Unit) Copy.

The inspecting member must enter the required information on the White (ECB) copy and the Blue (FDNY Records Unit) Copy separately.

- This is a statement by a member that he/she has served the NOV to a person.
- It is also a statement by the inspector that the NOV was served in accordance with the law.

21

STATE OF NEW YORK, COUNTY OF _____} ss:

Enter the County in which the NOV was served. (New York, Bronx, Kings, Queens, or Richmond).

22

that on _____, 20____, at _____ p.m./a.m.
DATE TIME

Fill in blanks, month/day/year. Do not use military time.

23

at [address:] _____

Enter address of the premises where the NOV was served (in most circumstances, this should be the same premises for which the violation is issued).

24 to 27 Type of Service

All units must comply with the procedures set forth below when issuing an NOV.

A Notice of Violation can only be served:

- Directly upon the owner of the premises responsible for the violation.
- By affixing the NOV upon the premises where the violation has occurred.

Check only one (1) of the four (4) types of service.

Department personnel issuing the NOV must first attempt to identify and locate the owner of the premises that is the subject of the violation. For example, if the violation pertains to an entire building, Department personnel shall attempt to locate the building owner within the building itself. If the violation pertains to a portion of a building, such as a restaurant, Department personnel shall attempt to identify and locate the owner of the establishment within the establishment itself. In either case, if the owner can be located, the NOV shall be served directly upon the owner. If the owner cannot be located within the establishment, Department personnel shall follow the procedures set forth in Section 4, below.

24. 1. Individual Respondent

Personal Service of the NOV directly upon the Owner.

If the premises owner can be located within the building itself, the building owner shall be the party served with the NOV. If the owner cannot be located within the premises, Department personnel shall follow the instructions set forth in Section 4.

25. 2. Partnership Respondent

Personal Service when the premise is owned by a Partnership.

If the owner of the premises is a partnership, the NOV may be served upon one of the following persons authorized to accept service of process at the premises: (1) any partner; or (2) any managing or general agent of the partnership.

26. 3. Corporate Respondent

Personal Service when the premise is owned by a Corporation.

If the owner of the premises in violation is a corporation, the NOV may be served upon one of the following persons authorized to accept service of process at the premises: (1) a corporate officer (for example, president or vice president); or (2) any corporate director; or (3) any managing or general agent of the corporation; or (4) any person authorized by appointment to receive service of process. Before serving the NOV upon such person, Department personnel shall confirm that the individual has authorization to accept service of process.

If Department personnel cannot locate anyone authorized to accept service of process upon a partnership or a corporation, they shall follow the instructions set forth in Section 4, below.

27

4. Affixing of Notice of Violation and Hearing

When Department personnel are unable to identify an owner within the premises, or, in the case of a partnership or corporate-owned premises, Department personnel have been unable to identify any of the persons authorized to accept the NOV within the premises, Department members shall affix the Green Copy and Gold Copy of the NOV to the premises itself by taping it to a conspicuous place, preferably with the use of masking tape.

In commercial premises, the following locations are recommended for taping the NOV:

- The door to the office of the building's manager.
- Any wall in the building's main lobby, if one exists, preferably near the building's security desk.

In multiple dwellings, the following locations are recommended for taping the NOV:

- The door to the superintendent's residence or office.
- The wall near the building's mailboxes or notice board.
- Any walls in the building's main lobby preferably near the building main entrance.

If none of the foregoing locations are suitable, the NOV shall be conspicuously placed on any hallway wall to which building users have regular access. Department personnel shall NOT affix the NOV outside of the building.

Department personnel shall make a reasonable effort to affix the NOV to a durable surface that will not be damaged by the tape, such as glass, tile, wood, or metal, provided that it is in a conspicuous location, as set forth above.

Note: Affixing an NOV to a counter top or desk top is strongly discouraged, as it may raise questions regarding service.

SERVICE RESTRICTIONS ON EMPLOYEES

Under no circumstance shall Department personnel give a NOV to an employee at the premises that is the subject of the violation, even if the employee offers to accept the NOV. After the NOV has been affixed to the premises, the employee is free to remove it, and Department personnel should not interfere with the employee doing so.

If anyone complains about the fact that an NOV is being affixed to the wall of a premises, Department personnel shall continue to affix the NOV and to inform such person that the Department has the legal right to affix the NOV. However, if anyone attempts to physically stop Department personnel from affixing the NOV or engages in confrontational behavior including threatening Department personnel, the Department personnel shall contact the Police Department for assistance.

28

Description of Individual

Check all boxes that best describe the individual to whom the NOV was served.

This area must be completed for all methods of service.

29

Other identifying characteristics

Enter any special characteristics that will help to further identify the person to whom the NOV was served.

The following areas of the NOV must be completed.

30

Signature

The inspector who served the NOV must sign in this space on the Affidavit; otherwise the NOV is unenforceable.

31

Printed Name

The inspector who served the NOV must print his/her name in this space.

32

Tax Registry Number

Obtained from inspector's pay stub and/or the list kept in the summons book.

33

Sworn to before me on _____

The Company Officer (on duty) must date and sign their name to certify that the Affidavit (Certificate) of Service was prepared and served properly.

| | | | | |
|--|---|------------------------------------|-------------|---|
| 1 | 2 | 3 | 4 | 5 |
| For E.U. Use Only: FPIMS Date / / Initials | | | | |
| F.P.I.M.S. Account No. [REDACTED] | | FP Unit | ADMIN. C.O. | C.B. # [REDACTED] UNIT PHONE # [REDACTED] |
| ENVIRONMENTAL CONTROL BOARD CITY OF NEW YORK | | NOTICE OF VIOLATION AND HEARING | | |
| NOV# [REDACTED] 6 | | | | |
| Petitioner, New York City Fire Department vs Respondent: | | | | |
| Respondent is: <input type="checkbox"/> owner <input type="checkbox"/> managing agent <input type="checkbox"/> tenant <input type="checkbox"/> city agency <input type="checkbox"/> daycare center | | | | |
| Place of Occurrence (Premises Address) | | | | |
| BLDG [REDACTED] Prefix [REDACTED] Street Name [REDACTED] | | | | |
| Type [REDACTED] Suffix [REDACTED] Zip Code [REDACTED] Boro Code [REDACTED] 1=Man; 2=Bx; 3=Si; 4=Bklyn; 5=Qns | | | | |
| Mailing Address (If different from premises address) | | | | |
| BLDG [REDACTED] Prefix [REDACTED] Street Name [REDACTED] | | | | |
| Type [REDACTED] Suffix [REDACTED] Zip Code [REDACTED] Boro Code [REDACTED] 1=Man; 2=Bx; 3=Si; 4=Bklyn; 5=Qns; 6=Out of city | | | | |
| Add Info/AKA [REDACTED] | | | | |
| 10 Notice of Violation and Order to Correct and Certify Correction: | | | | |
| PLEASE TAKE NOTICE that the premises cited above is in violation of the requirements of law. It is further ORDERED by the FIRE COMMISSIONER that these violations be corrected and certified to be in compliance with the requirements of law within 35 days of the date of issuance. Certification must be made on the Certificate of Correction (Gold Copy). The Certificate of Correction and all proof of compliance MUST BE RECEIVED by the Bureau of Fire Prevention, Enforcement Unit, 9 MetroTech Center, Brooklyn, New York 11201-3857 (718) 999-2392 by close of business on [REDACTED]. First offenders who properly certify correction will avoid a hearing and penalty. All other respondents must appear at the Environmental Control Board (ECB) hearing indicated below. | | | | |
| 11 Notice of Hearing: | | | | |
| If the Certificate of Correction IS NOT RECEIVED by the date indicated above OR if no date is indicated above, the respondent MUST APPEAR at a hearing on [REDACTED] at 8:30am, 10:30am, 1:30pm, at the ECB Hearing Office located in Brooklyn Manhattan Queens Staten Island Bronx. (The address for each location is provided on the reverse side of this form.) Proceedings will be held under the authority of Section 1049-a of the NYC Charter and the rules promulgated thereunder. This hearing is your opportunity to answer and defend the allegations set forth below. If you do not appear, you will be held in default and subject to maximum penalties. REPEAT OFFENDERS MUST APPEAR at the hearing on the scheduled date. | | | | |
| Upon investigation, the Fire Department has determined that the above named respondent is in violation of the New York City Administrative Code and/or rules promulgated thereunder with respect to the following requirements (which have been consolidated into violation categories (VC) for enforcement purposes, as set forth in Fire Department rule 3 RCNY §109-02): | | | | |
| 12 | | | | |
| VC 1 | Portable Fire Extinguishers and Fire Hoses | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain [REDACTED] required (portable fire extinguishers/ fire hoses/other) at [REDACTED] LOCATION | | | |
| VC 2 | Combustible Waste Containers | | | |
| <input type="checkbox"/> | Failed to provide required container(s) for combustible waste and/or store combustible waste in a container at [REDACTED] LOCATION | | | |
| VC 3 | Permits | | | |
| <input type="checkbox"/> | Failed to (obtain/renew/possess) a permit for [REDACTED] TYPE OF PERMIT | | | |
| VC 4 | Unlawful Quantity or Location of Regulated Material | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain required quantity of (Manufacture/Storage/Handle/Use) [REDACTED] AMOUNT in violation of permit/quantity/location restrictions. MATERIAL | | | |
| VC 5 | Posting of Permits and Recordkeeping | | | |
| <input type="checkbox"/> | Failed to post a permit and/or (maintain/produce) records for [REDACTED] SPECIFY at [REDACTED] LOCATION | | | |
| VC 6 | Signs, Postings, Notices and Instructions | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain required (signs/postings/notices/instructions) for [REDACTED] at [REDACTED] TYPE LOCATION | | | |
| VC 7 | Labels and Markings | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain required label, or other marking for [REDACTED] at [REDACTED] LOCATION | | | |
| VC 8 | Accumulation and Removal of Combustible Waste | | | |
| <input type="checkbox"/> | Failed to timely remove combustible waste and/or allowed the accumulation of combustible waste and/or vegetation at [REDACTED] LOCATION | | | |
| VC 9 | Means of Egress | | | |
| <input type="checkbox"/> | Failed to provide egress free from obstructions or impediments, and/or failed to maintain required egress at [REDACTED] LOCATION | | | |
| VC 10 | Overcrowding | | | |
| <input type="checkbox"/> | Failed to limit number of persons in [REDACTED] to [REDACTED] NUMBER OF PERSONS at [REDACTED] LOCATION | | | |
| VC 11 | General Maintenance | | | |
| <input type="checkbox"/> | Failed to maintain [REDACTED] in (good working order/clean condition) or in compliance with (general maintenance/housekeeping) requirements. SPECIFY | | | |
| VC 12 | Fire Protection Systems | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain required [REDACTED] at [REDACTED] LOCATION | | | |
| VC 13 | Flame-Resistant Materials | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain required flame-resistant materials [REDACTED] at [REDACTED] LOCATION | | | |
| VC 14 | Fire-Rated Doors and Windows | | | |
| <input type="checkbox"/> | Failed to (provide/protect/maintain) required (fire-rated/self-closing) door or window at [REDACTED] LOCATION | | | |
| VC 15 | Fire-Rated Construction | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain required fire-rated construction of [REDACTED] at [REDACTED] LOCATION | | | |
| VC 16 | Ventilation | | | |
| <input type="checkbox"/> | Failed to provide and/or maintain required ventilation [REDACTED] at [REDACTED] for [REDACTED] SPECIFY PURPOSE | | | |
| 13 | | | | |
| 14 | | | | |
| 15 | | | | |
| 16 Description of Violation: [REDACTED] | | | | |
| 17 I personally observed the commission of the above offense(s) or personally reviewed the office records indicating the offense(s) charged above. All statements made herein are affirmed under penalty of perjury. Date of Offense: [REDACTED] / [REDACTED] / [REDACTED] Time: [REDACTED] a.m./p.m. | | | | |
| 18 Inspector's Identification Number [REDACTED] | | | | |
| 19 INSPECTOR'S SIGNATURE _____ PRINT NAME _____ | | | | |
| AFFIDAVIT (CERTIFICATE) OF SERVICE (COMPLETE REVERSE SIDE) ECB COPY | | | | |

AFFIDAVIT (CERTIFICATE*) 20 SERVICE

The undersigned being duly sworn*, deposes and says, that s/he is not a party to the action and is over eighteen (18) years of age, that on 22, 20_____, at _____ p.m./a.m. at [address:]
23, s/he served the attached
Notice of Violation and Hearing on the Respondent named herein, as follows:

24 1. **Individual Respondent**
[] by delivering a true copy to [insert name:] _____
_____, who is the respondent.

25 2. **Partnership Respondent**
[] by delivering a true copy to [insert name:] _____
who is the [insert position:] _____, of said respondent.

26 3. **Corporate Respondent**
[] by delivering a true copy to [insert name:] _____
who is the [insert position:] _____, of said respondent.

27 4. **Affixing of Notice of Violation and Hearing**

A. I attempted to personally serve the attached Notice of Violation and Hearing on the respondent named herein but was unable to do so because, having entered the premises and having identified myself, I was:

1. [] advised by [insert name:] _____
that the respondent was not present;
2. [] advised by [insert name:] _____
that an appropriate representative of the partnership respondent or corporate respondent was not present;
3. [] unable to secure identification of the person(s) present;
4. [] advised by [insert name:] _____ that no
officer, director, managing agent, agent, or partner of respondent partnership/corporation was present.

B. [] Thereupon, I affixed the Notice of Violation and Hearing at the foregoing location in
the following place: _____

[The following is to be completed if a person was served with the Notice of Violation and Hearing.]

28 Description of Individual. Deponent describes the individual served as follows:

| | | | | | |
|---------------------------------|--------------------------------------|-------------------------------------|---------------------------------------|------------------------------------|---|
| <input type="checkbox"/> Male | <input type="checkbox"/> White Skin | <input type="checkbox"/> Black Hair | <input type="checkbox"/> 14-20 yrs. | <input type="checkbox"/> Under 5' | <input type="checkbox"/> Under 100 lbs. |
| <input type="checkbox"/> Female | <input type="checkbox"/> Black Skin | <input type="checkbox"/> Brown Hair | <input type="checkbox"/> 21-35 yrs. | <input type="checkbox"/> 5'0"-5'3" | <input type="checkbox"/> 100-130 lbs. |
| | <input type="checkbox"/> Yellow Skin | <input type="checkbox"/> Blond Hair | <input type="checkbox"/> 36-50 yrs. | <input type="checkbox"/> 5'4"-5'8" | <input type="checkbox"/> 131-160 lbs. |
| | <input type="checkbox"/> Brown Skin | <input type="checkbox"/> Gray Hair | <input type="checkbox"/> 51-65 yrs. | <input type="checkbox"/> 5'9"-6'0" | <input type="checkbox"/> 161-200 lbs. |
| | <input type="checkbox"/> Red Skin | <input type="checkbox"/> White Hair | <input type="checkbox"/> Over 65 yrs. | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200 lbs. |
| | | | <input type="checkbox"/> Balding | | |

29 Other identifying characteristics: _____
Signature: _____ 30
Printed Name: _____ 31
Tax Registry Number: _____ 32

Sworn to before me on 33, 20 .

Signature of Certifying Officer

*If not sworn, this statement shall constitute a certificate of service.

8. VOIDING AN NOV

If an error is made on an NOV, the entire NOV must be voided.

- Write the word VOID across the face of the NOV.
- Return all copies to the Bureau of Fire Prevention Enforcement Unit except the Pink (Fire Department Issuing Unit) Copy. This copy is kept for Company (Unit) records.

9. FORWARDING NOV TO HEADQUARTERS

After serving the NOV upon the owner or affixing it to the premises, Department personnel shall forward to the Bureau of Fire Prevention Enforcement Unit the White (ECB) Copy and the Blue (FDNY Records Unit) Copy. The issuing unit shall keep in its building file the Pink (Fire Department Issuing Unit) Copy.

10. RECORDKEEPING PROCEDURES - FILE SYSTEM

In order to standardize and facilitate the gathering of information and the tracking of NOVs the following recordkeeping procedures shall be followed:

1. Outstanding NOVs - Pink Fire Department Issuing Unit Copy
 - Keep in a designated area of a file drawer (similar to the system used for outstanding VOs).
 - Keep in numerical order. (This makes it easier to track an NOV.)
2. When an NOV is “cured” a copy is returned to the issuing unit.
 - Attach all related NOV documents.
 - File in building record folder for premise address.

11. RESCINDING AN NOV ISSUED IN ERROR

To rescind a NOV that was issued in error, the following procedures must be adhered to:

Prior to the scheduled hearing date, the issuing unit must submit a written report to the Supervisor of the Legal Enforcement Unit of the Bureau of Legal Affairs.

The report must be on FDNY letterhead and contain the following information:

- NOV number.
- Cause or basis for the error.
- All supporting evidence/documentation, including a copy of the NOV issued in error.
- Clearly printed (typed) Supervisor's/Officer's name.
- Supervisor's/Officer's telephone number.
- Signature of Supervisor/Officer.

Once the report and supporting documentation are received, the Legal Enforcement Unit will forward them and the necessary completed application to the ECB for a Special Adjudication.

There is no method for an issuing agency to unilaterally rescind, void, or otherwise dispose of an NOV which has already been processed. In addition, issuing units must not send/give any correspondence to the respondent. All matters, regarding such incidents must be handled by the Legal Enforcement Unit.

Questions regarding rescinding NOVs may be directed to the Supervisor of the Legal Enforcement Unit at (718) 999-1378.

12. ECB HEARING ADJOURNMENTS

ECB rules provide that the failure of a member to timely appear on the scheduled adjourned date is grounds for dismissal of a Notice of Violation, absent extraordinary circumstances. When a member is required to appear at the ECB (whether requested by the Department, the Respondent, or the Administrative Law Judge) the Fire Department ECB Representative at the hearing will, if necessary promptly attempt to contact the member or their supervisor to obtain an adjournment upon which the member is available to appear at ECB. If the Fire Department ECB Representative is unable to obtain an adjourned date during the hearing, proposed adjourned dates will be selected at the hearing. The ECB Representative has one (1) week to confirm one of the selected dates.

To avoid dismissal of violations, cooperation of all members and officers is requested by: (a) accepting calls from the ECB Representatives and promptly responding to Legal Enforcement Unit requests to confirm adjourned dates; and

(b) ensure that members attend ECB hearings once they have been scheduled to appear (including reminding them of the appearance a day or two in advance). If the supervisor is aware of any reason that a member cannot attend a hearing, please promptly contact the Legal Enforcement Unit by phone 718-999-1378, fax 718-999-2235.

13. GLOSSARY

| | | |
|---|-----------|--|
| Affidavit (Certificate*) Service | of | (On back of White, Pink and Blue Copies.) Statement by the inspector or a process server that he/she has served a Notice of Violation on the person named or described thereon. If sworn to before a Notary it is an Affidavit of Service. If signed by Company Officer it is a Certificate of Service. |
| Audit | | The Bureau of Fire Prevention Enforcement Unit will specify which NOVs shall be audited. |
| Certificate Correction | of | (Gold Copy) This is an affidavit which the respondent must sign before a notary, after the violations have been corrected. If the Bureau of Fire Prevention Enforcement Unit receives this affidavit and any appropriate documentation, and determines that such documents show compliance before the compliance date, the NOV will be “cured” and the respondent will not need to appear for an ECB hearing or be assessed a penalty. |
| Corrected at Hearing | | Respondents who do not comply with a NOV by the compliance date must attend a hearing. If the respondent or respondent’s representative shows proof of compliance at an ECB hearing the violation would be considered “corrected.” |
| Cured | | The Bureau of Fire Prevention Enforcement Unit will “cure” a NOV if the violation has been corrected and the Bureau of Fire Prevention Enforcement Unit receives the Certificate of Correction and appropriate supporting documentation by the compliance date. |
| Default | | When a Certificate of Correction has not been received by the Bureau of Fire Prevention Enforcement Unit by the compliance date and the respondent does not appear the scheduled ECB hearing. |
| Guilty | | If the respondent attends a hearing at the ECB with no proof of compliance, the ALJ may determine that the respondent violated the laws, rules or regulations cited on the NOV. |
| Personally Abated | | When the violations cited on an NOV are corrected before the inspector leaves the premises. |
| Reinspection (of an NOV) | | Defaults, stipulation defaults, and guilty pleas are to be re-inspected. The Bureau of Fire Prevention Enforcement Unit will notify units of which premises are to be re-inspected by forwarding a Reinspection Order Form. |

| | |
|--------------------------------|---|
| Reinspection Order Form | A two (2) part form sent by the Bureau of Fire Prevention Enforcement Unit to field units, indicating premises to be re-inspected. |
| Respondent | A person or entity to which an NOV is issued. |
| Stipulation | When a respondent is granted an extension of time, beyond compliance date, to comply with a NOV. The ECB must approve a stipulation for it to be valid. |
| Stipulation Default | When a respondent does not comply with a NOV after the stipulated extension of time allowed for compliance. |

BY ORDER OF THE FIRE COMMISSIONER AND CHIEF OF DEPARTMENT