

COMMENT OF THE REAL ESTATE BOARD OF NEW YORK TO THE DEPARTMENTS OF SANITATION, HEALTH AND MENTAL HYGIENE, AND HOUSING AND PRESERVATION ON THE PROPOSED RULE THAT WOULD REQUIRE CERTAIN BUILDINGS TO INSTALL AND UTILIZE WASTE CONTAINERIZATION SYSTEMS

May 28, 2020

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the Departments for the opportunity to comment on the proposed rule that would require certain buildings to install and utilize waste containerization.

New York City stands apart from other municipalities in its waste management, largely a result of its scale and city design. With the country's biggest population, NYC produces 14 million tons of waste a year in a hyper dense built environment that lacks alley space. Consequently, buildings are often forced to temporarily lay waste curbside until it can be collected. Understanding the garbage bags on sidewalks affects New Yorkers' quality of life, impeding pedestrian traffic and posing potential health risks, REBNY supports the departments in their search for a solution to reduce the presence of semi-exposed waste in the public domain.

The proposed rule seeks to mitigate the piling of trash in public by requiring the installation of waste containerization systems in 1) new multiple dwellings with 300+ units, 2) commercial buildings that either alter or enlarge their physical design to be classified as a multiple dwelling building and have 300+ units, and 3) commercial buildings that renovate 50% or more of the floor area to be classified as a multiple dwelling building and have 300+ units. The proposal would further require that any containerized system installations allow for Department of Sanitation (DSNY) drivers to safely and easily access the property, and the area must be well maintained so as not to pose a risk to workers. DSNY would be allowed to request plans of the containerization area to confirm those requirements and reserve the right to deny or suspend collection to buildings that do not comply with the rule. Finally, DSNY will waive the requirement if it determines the property is not suitable for containerization.

REBNY shares in the departments' commitment to cultivating better public health and quality of life. However, we believe the rulemaking initiated by the departments is not the proper venue for the consideration of such a requirement. Instead, REBNY encourages the departments put this idea forward in the Department of Buildings (DOB) current code revision process, which is the general venue in which the requirements for new construction of buildings are discussed and established. Using this DOB process would ensure that all parties involved in the development of new construction standards, including but not limited to owners, architects, engineers, contractors, builders, consultants as well as other City agencies have the opportunity to provide their expertise on the proposal and that the requirements are fully aligned with other sections of code.

In addition, as the departments further consider this issue, the following items should be more fully addressed.

First, the departments and other City agencies must clarify how the rule impacts or conflicts with the requirement of Quality Housing, streetscape standards for the ground floor and other provisions of the Zoning Resolution. Moreover, the rule should be explicit in how the proposed containerization systems would relate to the buildings' floor area ratios (FARs). Hospitals, for example, are required to include waste containerization in their development and are allowed to deduct some of the footprint from the FAR. We encourage the departments to consider similar measures for residential buildings covered by the rule, particularly given constructing a containerization system can lead to frontage loss for ground floor retail.

Recognizing the diversity of the built landscape, the rule allows for DSNY to exempt buildings from complying with the requirements if they are not suited to incorporating waste containerization. This is appropriate and

REBNY encourages the departments to identify the criteria DSNY will use to make that determination. Delineating the circumstances under which DSNY would exempt a covered residential building would ensure the development is not slowed and limit potential issues of DSNY's capacity to process the covered properties.

Further, significantly more clarity needs to be given to how this requirement, and any exemption process, will fit into the project development timeline and other City agency plan review requirements. Specifically, greater detail will need to be given to clarify when the developer should approach DSNY for approval of plans or to ask for an exemption and how that will be communicated to DOB. If the project is not advised whether it needs to include containerization systems until after designs have been drafted, it will lead to delays in projects completing development and delivering additional housing units to the city.

Moreover, the departments should ensure the effective date of the proposed rule is consistent with how buildings are developed. Currently, when changes are made to building design requirements, those changes are typically phased in based on a date by which complete plans have been filed with the Department of Buildings. To be consistent, the implementation of this rule, if adopted, should similarly only apply to those buildings that have not filed complete plans with the Department of Buildings before the effective date.

Thank you for the consideration of these points.

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