

(7) whether the request itself constitutes a record that, if disclosed, would defeat the purpose for which trade secret status is sought;

(8) whether the record is known outside of the business of the submitting commercial enterprise and the extent to which the record is known by its employees and others involved in the business of the commercial enterprise;

(9) the value of the record to the commercial enterprise and to its competitors;

(10) the amount of effort or money expended by the commercial enterprise in developing the records;

(11) the ease or difficulty with which the record could be properly acquired or duplicated by others; and

(12) any other factors considered relevant.

(c) When a record is submitted to the commission that a commercial enterprise deems to be a trade secret or to include critical infrastructure information, the record shall be excepted from disclosure. Each of the directors of the divisions of the commission, or their designees, shall be responsible for the custody of such records. Each commission employee who has custody of records containing designated trade secrets or critical infrastructure information shall take appropriate measures to safeguard such records and to protect against unauthorized disclosure. Records containing designated trade secrets or critical infrastructure information may be copied, distributed and evaluated only as required by authorized employees involved in the proper conduct of their State duties.

(d) On the initiative of the commission at any time, or upon the written request of any person for access to a record to which trade secret or critical infrastructure information status pursuant to subdivision (b) of this section has been granted or is pending, the commission shall follow the determination procedure set forth in Public Officers Law section 89(5).

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19) and Public Officers Law 87(4)(a).

Racing Law Section 103(2) authorizes the Commission to carry out responsibilities relating to the regulation and enforcement of gaming. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Racing Law Section 104(19) authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities. Public Officers Law 87(4)(2) requires each state agency that maintains records containing trade secrets to promulgate regulations in conformity with the provisions of Section 89(5) of the Public Officers Law.

2. **LEGISLATIVE OBJECTIVES:** As prescribed by the Legislature under the provisions of the Freedom of Information Law, this rulemaking will ensure the people's right to know the process of governmental decision-making by the Commission and permit the review of documents and statistics leading to determinations made by the Commission and simultaneously provide the manner of safeguarding against any unauthorized access to records maintained by the Commission that contain trade secrets or critical infrastructure. The proposed amendment conforms the time to determine records access appeals within the agency to the time prescribed by statute, allows for the delivery of appeal decisions by electronic mail and adds cross-references to statutory requirements.

3. **NEEDS AND BENEFITS:** This rulemaking is necessary to ensure the Commission has rules and regulations that address the safeguarding of records containing trade secrets or critical infrastructure as required by statute. The proposed rule prescribes the manner in which the agency will safeguard against any unauthorized access to records containing trade secrets submitted to the agency. The proposal also conforms the time to determine records access appeals within the agency to the time prescribed by statute, allows for the delivery of appeal decisions by electronic mail and adds cross-references to statutory requirements.

4. COSTS:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the regulated parties.

b. Costs to the regulated agency, the State, and local governments for

the implementation and continuation of the rule: There are no costs to local government because this rule applies to the Commission only. Costs to the Commission are minimal and are already included in the FOIL review process. This will add a step of notifying a person or entity in regard to trade secrets, which the Commission has previously done in keeping with the parameters Public Officers Law.

c. Sources of cost evaluations: The Commission evaluated the impact of the new rule.

5. **LOCAL GOVERNMENT MANDATES:** The proposed rulemaking applies only to the Commission and does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. **PAPERWORK:** The Commission will be required to contact any person or entity that has a trade secret or critical infrastructure information on file with the Commission when the Commission receives a request to disclose that information under FOIL. The person or entity will be required to provide documentation to the Commission informing it that information provided to the Commission contains trade secrets or critical infrastructure.

7. **DUPLICATION:** There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed rule. All state agencies are required to have rules prescribing procedures for maintaining and safeguarding trade secrets.

8. **ALTERNATIVES:** No other alternatives were considered. Public Officers Law 87(4)(2) requires each state agency that maintains records containing trade secrets to promulgate regulations in conformity with the provisions of Section 89(5) of the Public Officers Law. Because the Commission maintains records containing trade secrets, the Commission is required by statute to promulgate this rule.

9. **FEDERAL STANDARDS:** The proposed rule does not exceed any minimum standards imposed by the federal government.

10. **COMPLIANCE SCHEDULE:** The Commission will be able to implement this process immediately upon adoption.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule and amendment will not have any adverse impact on small businesses, local governments, jobs or rural areas. This rule is being promulgated pursuant to paragraph (a) of subdivision 4 of section 87 of the Public Officers Law (Freedom of Information Law) and pertains to the protection of records containing trade secrets or critical infrastructure provided to the NYS Gaming Commission. The proposed amendment conforms the time to determine records access appeals within the agency to the time prescribed by statute, allows for the delivery of appeal decisions by electronic mail and adds cross-references to statutory requirements.

The proposed rulemaking does not impact local governments and will not have an adverse impact on small businesses.

The proposed rulemaking imposes no adverse impact on rural areas. The rule applies uniformly throughout the state.

The proposed rulemaking will have no adverse impact on job opportunities.

The proposed rulemaking will not adversely impact small businesses, local governments, jobs or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required and have not been prepared.

Hudson River Park Trust

NOTICE OF ADOPTION

Proposed Action Is the Amendment of Rules and Regulations for Hudson River Park

1.D. No. HPT-19-20-00011-A

Filing No. 475

Filing Date: 2020-07-31

Effective Date: 2020-10-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Repeal of sections 751.2, 751.5; renumbering of sections 751.1, 751.3, 751.4, 751.6, 751.7, 751.8 to 751.01-751.06; addition of section 751.07; and amendment of new sections 751.01-751.06 of Title 21 NYCRR.

Statutory authority: Hudson River Park Act, L. 1998, ch. 592

Subject: Amendment of rules and regulations for Hudson River Park.

Purpose: To create a new penalty schedule for the enforcement of violations of Park rules.

Substance of final rule: Section numbers are modified from 751.1 to 751.01, etc. Former Section 751.2 on Variance has been moved to be a new subparagraph (e) in Section 751.01 and former Section 751.5 on Permits has been moved to be a new subparagraph (b) in Section 751.03. Section numbers that follow are renumbered in their current order.

Very minor changes to wording that do not change the substance of the rule have been made throughout the proposed rules and language that sets out criteria or other factors for review has been clarified to state that such criteria or factors "include but are not limited to".

The following definitions under Section 751.02 are modified: In Authorized swimming and wading area, the name of the NYC Department of Health is amended to include Mental Hygiene. Environmental Control Board is amended to refer to the Office of Administrative Trials and Hearings ("OATH") pursuant to chapter 45-a of the New York City Charter. General Project Plan is amended to cite to the actual General Project Plan dated July 16, 1998. Hudson River Park is redefined to clarify that the southern boundary is the northern seawall of Battery Park City, the eastern boundary is the western border of the Route 9A bikeway/Greenway, and the western boundary is the U.S. pierhead line.

Section 751.03(b) on Permits is modified as follows: Subparagraph (1) adds language that clarifies the issuance of a permit does not create a property right and such permits are terminable at will by the Trust. Subparagraph (2)(v) clarifies that the Trust may prohibit vehicles from driving or parking within the Park. Subparagraph (2)(vii) revises language regarding duty of permittees to restore the site after an event. Subparagraph (7) on insurance and subparagraph (13) on liability are modified to remove the Executive Department, New York City Region of State Parks, Recreation and Historic Preservation Commission and the City of New York Department of Parks and Recreation as additional insureds and indemnitees. Subparagraph (9) provides that the Trust will issue a permit in 30 days instead of 20 days of receipt of a complete application to be consistent with other rule sections that provide a 30-day review period. Subparagraph (14) has been revised to correct the phone number for reporting accidents or other incidents that occur in the Park.

Section 751.03(c) on Penalties is amended to refer to the new Section 751.07 penalty schedule added to the Trust rules and to the jurisdiction of OATH to hear such claims of violations of the Trust rules.

The last paragraph of Section 751.03(g) regarding demonstration permits has been moved to be a new subparagraph (h) entitled Demonstration permit fees.

Section 751.04 on Prohibited activities and uses is modified as follows: Language is added to inform the public that violators of the Trust rules will be subject to a civil penalty pursuant to the new penalty schedule at Section 751.07. Subparagraph (a) is amended to clarify that no property or equipment on or within the Park can be destroyed. The prohibition in subparagraph (b)(1) against destroying trees, plants, flowers, shrubs under subparagraph (b)(1) is separated into two separate sub-subparagraphs (i) and (ii). Subparagraph (c)(4) is revised to state that the disposal of abandoned property will be disposed of pursuant to law. Subparagraph (e) adds drones to the list of prohibited aviation uses and also clarifies that helicopter usage as needed by first responders is permitted. Subparagraph (g) expands and clarifies the types of abuse against animals that are prohibited in the Park. Subparagraph (m)(3) changes the word "charge" to "fee." Subparagraph (q) adds hammocks tied to trees as a prohibited use. Subparagraph (v) clarifies that electronic cigarettes are also banned from the Park.

Section 751.05 on Regulated uses is modified as follows: Language is added to inform the public that violators of the Trust rules will be subject to a civil penalty pursuant to the new penalty schedule at Section 751.07. Subparagraph (a) is revised to clarify that events cannot significantly interfere with ordinary park use without a permit from the Trust. Subparagraph (i) clarifies that bicycle riding may only occur on designated service roads, access roads, and driveways used by motor vehicles within the Park or on the adjacent Greenway that is outside of the Park and is part of NYS Route 9A. Subparagraphs (o)(3) and (r)(2) clarify that in-line skates, roller skates, skateboards, and scooters may only be used on Park roads, areas designated for such use in the Park, and on the adjacent NYS Route 9A Greenway. Subparagraph (q) has been revised to include new sub-subparagraph numbers.

Section 751.06 on Boating is modified as follows: The term "State" is added before "Department of Motor Vehicles".

A new section 751.07 on Civil Penalties is added that creates a new penalty schedule for violations of Trust rules, which penalty amounts range from \$25 to \$500 depending on type of violation. The penalty schedule is similar to the schedule that has been used by OATH to enforce violations of Trust rules, and which schedule will be rescinded upon final adoption of

the Trust amendments that adopts the Trust's penalty schedule. Penalties would continue to be recovered in a proceeding by the Office of Administrative Trials and Tribunals pursuant to Chapter 21, section 533(a)(9-b) of the New York City Charter.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 751.3(h), 751.07(a) and (b).

Text of rule and any required statements and analyses may be obtained from: Christine Fazio, Hudson River Park Trust, 353 West St., Pier 40, Suite 201, New York, NY 10014, (212) 627-2020, email: cfazio@hrpt.ny.gov

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

A revised regulatory impact statement (RIS), a revised regulatory flexibility analysis (RFA), a revised rural area flexibility analysis (RAFA), and a revised job impact statement (JIS) are not required for this rulemaking adoption because it will not adversely affect small businesses, local governments, rural areas or jobs.

It is evident from the nature of the proposed rule and the nonsubstantive changes made, that the adopted rule will have no adverse impact on job opportunities or job development, no adverse economic impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, or other compliance requirements upon small businesses or local governments. The amendments and nonsubstantive changes involve minor wording and section heading numbering changes to the existing Hudson River Park rules, which outline permitted and prohibited uses and activities within the upland and water areas of Hudson River Park, and the adoption of a penalty schedule that conforms with the New York City Criminal Justice Reform Act and existing penalty schedules used in other parks throughout New York City.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2025, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

During the Trust's public comment period, the Trust received three written comments:

- One comment from the Office of Administrative Trials and Hearings ("OATH") suggested two minor edits to the text of the rules.

- A comment from an individual noted that there is no designated rule about walkers and joggers staying off the bikeway adjacent to the Park and recommended that the Trust's regulations prohibit pedestrians from using the bikeway.

- The third comment was from the New York City Department of Parks and Recreation ("NYC Parks"). As the NYC Parks Enforcement Patrol ("PEP") enforces the Trust's rules within Hudson River Park, NYC Parks requested that the Trust ensure that its rules are as consistent as possible with the rules of NYC Parks found in Title 56 of the Rules of the City of New York ("NYC Parks Rules").

Hudson River Park Trust Responses:

Edits to Text:

The Trust agrees with the minor edits suggested by OATH that corrects a citation to the New York City Charter and corrects the full name of OATH to be the "Office of Administrative Trials and Hearings Environmental Control Board" and the Trust has incorporated these minor edits in the final rule.

Bikeway:

The bikeway is not within the Park's boundaries and therefore is not covered under the Trust's rules for the Hudson River Park. The bikeway is owned by the NYS Department of Transportation and is part of Route 9A. The Trust's understanding is that the bikeway was funded and built as an alternative transportation corridor and that it therefore cannot currently be limited to bicycles or wheeled vehicles alone.

Rules Consistency with NYC Parks Rules:

The Trust agrees with this comment and has strived to increase the consistency in preparing the proposed amendment with the NYC Parks Rules as much as possible. Further, pursuant to Section 533(a)(9) of the New York City Charter, PEP can enforce NYC Parks Rules on property under the jurisdiction of the Trust, provided the Trust has entered into an agreement to provide protection of such property. The Trust is currently under such an agreement with NYC Parks to provide Park Enforcement Patrol security services and thus PEP officers likely will continue to issue summons under NYC Parks Rules as permitted under the New York City Charter and in the contract between the Trust and NYC Parks.