**Zoning Resolution**

THE CITY OF NEW YORK
**Zohran K. Mamdani, Mayor**

CITY PLANNING COMMISSION
**Sideya Sherman, Chair**

# 62-70 - MAINTENANCE AND OPERATION REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS

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## 62-70 - MAINTENANCE AND OPERATION REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS

LAST AMENDED
4/22/2009

## 62-71 - Operational Requirements

LAST AMENDED
2/2/2011

(a) Hours of operation

All #waterfront public access areas# shall be open to the public at the times indicated in the table in this Section, except when required to be closed for repairs, and for no more than one day each year in order to preserve the private ownership of such area, as set forth in the maintenance and operation agreement required pursuant to Section 62-74 (Requirements for Recordation).

HOURS OF OPERATION FOR WATERFRONT PUBLIC ACCESS AREAS

| Districts | April 15 to October 31 | November 1 to April 14 |
|---|---|---|

| | | |
|---|---|---|
| #Zoning lots# containing #predominantly# #community facility# #uses# in:<br><br>R3 R4 R5<br><br>C1 or C2 in R3 thru R5<br><br>C3 C4-1 C8<br><br>M1 M2 M3 | Dawn to dusk* | Dawn to dusk* |
| #Zoning lots# containing #predominantly# #commercial# #uses# in all districts | Dawn to dusk or business closing, whichever is later** | Dawn to dusk or business closing, whichever is later** |
| All other #zoning lots# providing #waterfront public access areas# | 6:00 A.M. to 10:00 P.M. | 7:00 A.M. to 8:00 P.M. |

* Dawn shall be defined as one half hour before sunrise, and dusk shall be defined as one half hour after sunset

** #Waterfront public access areas# on #zoning lots# containing predominantly #commercial# #uses# shall not be required to be open to the public beyond 10 P.M. from April 15th to October 31st and 8 P.M. from November 1st to April 14th

(b) Rules of conduct

Rules of conduct for the #waterfront public access area# shall be established with the Department of Parks and Recreation and set forth in the maintenance and operation agreement as required pursuant to Section 62-74. Such rules of conduct shall not prohibit typical promenade activities consistent with public enjoyment of the waterfront, such as walking, jogging, sitting or reclining, gathering in small groups, or consumption of food or non-alcoholic beverages.

## 62-72 - Performance and Maintenance Requirements

LAST AMENDED
4/22/2009

(a) Performance and maintenance

(1) The property owner shall be responsible for the completion and maintenance of all required #waterfront public access areas# on the #zoning lot#. No certificate of occupancy shall be issued until all required #waterfront public access area# improvements are completed except as otherwise provided in a phasing plan pursuant to Sections 62-811 (Waterfront public access and visual corridors) or 62-822 (Modification of waterfront public access area and visual corridor requirements).

(2) To ensure the maintenance of the #waterfront public access areas#, prior to obtaining any certificate of occupancy, the property owner shall post security in the form of a maintenance bond, letter of credit or other security acceptable to the Department of Parks and Recreation (DPR), with the DPR in an amount certified by a registered architect or landscape architect to be sufficient to cover 125 percent of the cost of

maintaining the #waterfront public access areas# for a 12 month period following final completion of such #waterfront public access areas#. The security shall be replaced every five years with a new security in an amount sufficient to cover 125 percent of the current annual cost of maintaining the #waterfront public access areas#, as certified by a registered architect or landscape architect. The security shall be in effect for the life of the #development#.

(b) Maintenance and liability

Any declaration by the owner, its successor or assigns, or agreement between the owner, its successor or assigns, and the City of New York, provided in accordance with Section 62-74 (Requirements for Recordation) regarding the maintenance and operation of a required #waterfront public access area# as established in Section 62-52 (Applicability of Waterfront Public Access Area Requirements), shall provide that:

(1) the owner, its successor or assigns, will construct and be responsible for ordinary maintenance and repair of all such areas;

(2) the City will indemnify and defend the owner, its successor or assigns, for judgments resulting from litigation of claims of personal injury on such areas in accordance with reasonable provisions and procedures in the declaration and the maintenance and operation agreement, provided that the owner, its successor or assigns, has fully complied with the design and maintenance requirements set forth in this Resolution and the maintenance and operation agreement; and

(3) in the event such areas are destroyed or substantially damaged as a result of flood, storm, fire or other acts of God, reconstruction shall be the responsibility of the City, provided that such destruction or damage is not the result of the negligence of the owner, or of the owner's failure to construct or maintain such areas in accordance with the provisions of this Resolution and the maintenance and operation agreement.

## 62-73 - Request to Transfer Title to Certain Waterfront Public Access Areas

LAST AMENDED
4/22/2009

(a) The owner of a #zoning lot# on a #waterfront block# may, at the owner's option, and prior to commencement of design and construction of #waterfront public access areas#, make a request directed to the Office of the Mayor (Request) to transfer to the City of New York its fee simple absolute interest, free and clear of any encumbrances that are not deemed acceptable by the City, in the #waterfront public access area# on such #zoning lot#.

(1) The City may accept the Request, provided that transfer will be made in a manner acceptable to the Chairperson of the City Planning Commission and the Commissioner of Parks and Recreation, who may specify conditions for transfer including, without limitation, establishment by the owner of an account for the funding of ordinary maintenance of the #waterfront public access area# and a capital reserve or funding mechanism for future capital repair, and adequate guarantees of access to the #waterfront public access area# and, provided further, that transfer is made pursuant to such instruments, which shall be a condition of certification pursuant to Section 62-811 (Waterfront public access and visual corridors), paragraphs (b) and (c), as are necessary for implementation. Where the Request is for transfer of a phase of the #waterfront public access area# pursuant to a phased implementation of required public access areas certified by the Chairperson pursuant to Section 62-811 or authorized by the City Planning Commission pursuant to Section 62-822 (Modification of waterfront public access area and visual corridor requirements), the City shall consider, in determining whether to accept such Request, such factors as the size, location and access for purposes of maintenance, repair and reconstruction, of the phase which is the subject of the Request, and may

require as a condition of acceptance that the owner make binding commitments to the transfer of subsequent phases.

(2) The Department of Parks and Recreation (DPR) shall review and approve the design and construction specifications for the #waterfront public access areas# proposed for transfer, and transfer of such areas shall be made prior to the issuance of any temporary or permanent certificate of occupancy for any part of the #development# for which such areas are required to be constructed, upon determination by the DPR that construction of such areas is complete, as required pursuant to Sections 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS) and 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS), and is in accordance with the previously approved design and construction specifications, except that signage required pursuant to Section 62-654 may be replaced by DPR signage.

(3) The provisions of Section 62-72 (Performance and Maintenance Requirements), paragraphs (a)(2) and (b), shall not apply to any #waterfront public access area# transferred pursuant to this Section.

In the event of a transfer under this paragraph, (a), the #bulk# and parking computations for the #zoning lot# shall include the transferred property. Such transfer shall not be deemed to have created a #non-compliance#.

(b) For parcels identified in Waterfront Access Plan BK-1, the owners of two or more parcels may, either for purposes of certification pursuant to Section 62-811 or at any time thereafter, submit an alternate plan to the Chairperson for the joint maintenance and operation of #waterfront public access areas# on such parcels, through an association or other entity

established for this purpose or by other method. Such plan may include, in addition to provisions for maintenance and operation, alternate provisions with respect to security, liability and any other matters set forth in Section 62-72, as well as special provisions for reporting and monitoring of compliance with obligations for maintenance and operation of the #waterfront public access areas#. Such plan and any instruments as are necessary for its implementation may be approved by the Chairperson and the Commissioner of Parks and Recreation upon a determination that:

(1) implementation of the plan would enhance maintenance and operation of the #waterfront public access areas# consistent with the purposes of this Chapter; and

(2) participation in the plan is available to owners of contiguous parcels identified in Waterfront Access Plan BK-1 on an equal basis.

## 62-74 - Requirements for Recordation

LAST AMENDED
4/22/2009

All required #visual corridors# and #waterfront public access areas# other than those provided in parks #developed# pursuant to Section 62-59 (Special Regulations for Zoning Lots That Include Parks), once certified in accordance with the provisions of Section 62-811 (Waterfront public access and visual corridors), paragraphs (b) or (c), shall be duly recorded in the form of a signed declaration of restrictions, including a maintenance and operation agreement with the Department of Parks and Recreation when a #waterfront public access area# is provided, indexed against the property, binding the owners, successors and assigns to provide #visual corridors# and to construct and maintain the #waterfront public access areas#, except as provided in the provisions of Section 62-70, inclusive, and

provide public access thereto in accordance with the plans certified by the Chairperson of the City Planning Commission. Such declaration or maintenance and operation agreement shall require that a bond be posted that would ensure that the #waterfront public access areas# are maintained in accordance with the declaration or maintenance and operation agreement and are closed only at authorized times, and shall set forth rules of conduct consistent with the provisions of paragraph (b) of Section 62-71 (Operational Requirements). The filing of such declaration in the Borough Office of the Register of the City of New York shall be a precondition for the issuance of a building permit.

In addition, the preceding #waterfront public access areas# elements shall be recorded on the certificate of occupancy by the Departments of Buildings or Business Services, as applicable, and shall be a condition of issuance of such certificate of occupancy.

For parcels identified in Waterfront Access Plan BK-1 for which an alternate plan for joint maintenance and operation has been approved, or for parcels for which a transfer to the City is proposed pursuant to paragraph (b) of Section 62-73 (Request to Transfer Title to Certain Waterfront Public Access Areas), the provisions of such instruments as are necessary to effectuate such paragraph shall supersede those of the maintenance and operation agreement described in this Section.