

Title 58: Department of Cultural Affairs

Chapter 1: Joint Living-Work Quarters for Artists

§ 1-01 Applicability.

These Regulations shall apply to all applications for artist's certification submitted to the Department of Cultural Affairs (the "Department") for purposes of occupancy of joint living-work quarters for artists in zoning districts M1-5A and 5B.

§ 1-02 Artist's Certification Committee and Appeals Board.

(a) *Qualifications, powers and duties.*

(1) *The Committee.* The Commissioner of the Department of Cultural Affairs (the "Commissioner") shall appoint an Artist's Certification Committee (the "Committee"), the members of which shall review and make recommendations regarding the disposition of applications for certification. Such committee shall consist of up to 18 members, none of whom shall be a member of the staff of the Department. There shall be, if feasible, at least one member appointed from each of the following disciplines: painting, sculpture, crafts, photography, film/video, dance, music, writing and performance/theater. The remaining members of the Committee may be arts educators, arts administrators or representatives of arts or other community organizations. Unless otherwise waived by the Commissioner, all members shall reside or work in New York City.

(2) *The Appeals Board.* In the event that pursuant to 58 RCNY § 1-06(b), an appeal is taken of the Commissioner's denial of a particular application, the Commissioner shall appoint an Artist's Certification Appeals Board (the "Appeals Board") to make the initial recommendation with regard to such appeal. The Appeals Board shall consist of at least 6 members, selected from a list prepared on a yearly basis of individuals

(i) engaged in the disciplines referred to in 58 RCNY § 1-02(a)(1) or

(ii) otherwise engaged in the arts as arts educators, arts administrators or representatives of arts or other community organizations, none of whom shall have been members of the Committee at the time such application was initially reviewed. Such Appeals Board shall contain if possible at least 3 members engaged in the disciplines referred to in 58 RCNY § 1-02(a)(1), and in particular, 1 to 2 members engaged in the art form for which the applicant has applied, and one member of the staff of the Department other than the Artist's Certification Coordinator referred to in 58 RCNY § 1-03. Unless otherwise waived by the Commissioner, any person appointed by the Commissioner to be a member of any Appeals Board shall reside or work in New York City.

(b) *Term.*

(1) *Length.* The members of the Committee shall serve for a three year term and shall be divided into three classes consisting of not more than six members each.

(2) *New appointments.* Each year in June, the Commissioner shall appoint members to fill the places of the class whose term expires in that year, and such newly appointed members shall serve for a term which begins on September 1 of that year and expires on August 31, three years hence. Members may be re-appointed for one additional 3-year term but no member who has served two consecutive three-year terms may serve an additional term until at least one year after the expiration of his or her second term.

(3) *Filling vacancies for an unexpired term.* The Commissioner may at any time fill any vacancy among the members of the Committee for the unexpired term of such vacant position, but such appointment shall be subject to the requirement set forth in 58 RCNY § 1-02(a)(1) as to representation of each of the media referred to in such section.

(4) *Resignations and leaves.* A member may resign at any time prior to the expiration of his or her term by delivering a letter of resignation to the Commissioner, and such resignation shall be effective as of the date specified in such letter. A leave of absence not to exceed one year may be taken by any member.

(5) *Removal of Committee members.* The Commissioner may, after consultation with the Committee, remove a member from the Committee whenever the Commissioner concludes, in the reasonable exercise of his or her discretion, that service by that member is no longer appropriate. Grounds for removal shall include, but not be limited to, the fact that such member

(i) no longer resides or works in New York City or

(ii) has incurred three or more unexcused absences from regularly scheduled monthly meetings of the Committee in any one year period beginning September 1.

(c) *Meetings.* The Committee shall meet during the first week of each month except July and August and at such other times as may be scheduled by the Department. A record shall be kept of each regularly scheduled meeting and shall include, among other matters, a listing of each applicant whose application is considered at such meeting and the recommendation or other action taken with regard to such application.

§ 1-03 Artist's Certification Coordinator.

The Commissioner shall appoint an Artist's Certification Coordinator (the "Coordinator") who shall be a member of the staff of the Department and who shall be responsible for the administration of the artist's certification procedure. Among other matters, the Coordinator shall review applications, maintain files pertaining to artist's certification, answer inquiries from the public, schedule meetings of the Committee, and prepare the agenda for and the record of each such meeting.

§ 1-04 Application Procedures.

(a) *Submission of application.* An application form for artist's certification may be downloaded from the Department's website, picked up in person, or requested by mail from the Department's offices located at 31 Chambers Street, 2nd Floor, New York, New York 10007. The completed application must be returned to the Department, together with the required documentation, in person or by mail to the Department's offices, addressed to the attention of the Artist's Certification Coordinator. The Coordinator shall then review such application for completeness. If an application is considered to be incomplete, the Coordinator shall attempt to contact and advise the applicant as to what additional material should be submitted. The applicant may then either submit additional material or request that the application be considered as originally submitted, in which case the Coordinator shall bring such application before the Committee pursuant to 58 RCNY § 1-04(c).

(b) *Required elements.*

(1) *Basic information.* To be complete, an application for artist's certification must ordinarily include the following:

(i) A description of the applicant's art form or art occupation.

(ii) An explanation as to

- (A) why occupancy of a joint living-work quarters for artists is important to the applicant in carrying out his or her art form or art occupation,
- (B) how such space is or will be used for such purpose, and
- (C) if the applicant currently lives and works in the same space, a diagram and/or photographs of such space.

(iii) A professional resume indicating, with reference to the applicant's particular art form or art occupation, professional experience (or a combination of professional training and experience) sufficient to demonstrate a serious, consistent commitment to such art form or occupation – such resume must also include other information as to the applicant's educational background, professional training, and public presentation of his or her work, e.g., exhibitions, performances, publications and the like, all such information to include relevant dates.

(iv) Documentation appropriate to the applicant's field evidencing his or her work and its dissemination to the public, e.g.,

Visual Artists – 15 to 20 slides and/or photographs of work

Set and Costume Designers – photographs of work

Choreographers – photographs and/or video tapes or films of work, notated dance scores

Composers – scores, tapes and/or recordings of compositions

Filmmakers and Video Artists – films and/or videotapes

Writers – samples of published work such as books, magazines, anthologies, broadsides, audio- and/or video or phonograph recordings of readings and performances

All applicants – documentation of performances, publications, readings or showing of work to public such as programs, films, announcements or reviews.

(v) Additional material which demonstrates outside recognition of his or her standing as a professional in his or her art form or art occupation, e.g., reviews, written proof of grants, awards or fellowships, or relevant union or guild memberships.

(vi) The names, addresses and telephone numbers of two people recognized in the applicant's field who may be contacted as to the applicant's professional involvement as an artist.

(2) *Supplemental data.* In addition to the material referred to in 58 RCNY § 1-04(b)(1), the applicant may submit such other information as the applicant believes may support his or her request for artist's certification. The applicant may also be asked to submit further material relevant to his or her art form or art occupation in the event that:

(i) the Coordinator determines that the application is incomplete or

(ii) the Committee believes that it needs such additional material in order to make its recommendation. In such instances and in the case of an application being reconsidered pursuant to 58 RCNY § 1-06(a), the applicant may request that a studio visit be made to his or her studio or work place. Provided such space is located in New York City, the Coordinator, accompanied by another member of the Committee, shall use best efforts to comply with such request.

(c) *Review of application.*

(1) At each regularly scheduled meeting of the Committee, subject to Paragraph (2) of this subdivision, all those applications considered complete by the Coordinator shall be presented to the Committee for review. The Coordinator shall first separate the applications into different categories according to art form or occupation and shall then assign each category of applications to a two member panel of the Committee, at least one member of which, if possible, should be engaged in the same or a related art form or occupation. Each panel shall then review the applications in its category and shall recommend to the Coordinator the action to be taken by the Commissioner with regard to each such application. The Coordinator may, in his or her discretion, present any application to the full Committee for discussion.

(2) The Coordinator shall have the discretion not to assign a particular application for review by a panel in the event that, after consultation with the Committee, where feasible, the Coordinator determines that such application clearly demonstrates that the applicant is entitled to certification. The Coordinator shall present any such application to the Commissioner at such time as those applications reviewed by the Committee are presented to the Commissioner for action.

(3) If any panel should be of the opinion that a particular application is incomplete, the panel shall advise the Coordinator of the information such panel believes is necessary to complete the application. The consideration of such an application shall be postponed and it shall not be presented to the Committee again until the applicant supplies the missing information or the applicant requests that the application be considered as originally submitted.

(4) Following each meeting, the Coordinator shall gather the recommendations from each panel and shall present the applications, the recommendations and other pertinent information to the Commissioner, together with a written statement in the case of each application as to the reasons for the recommendations made with regard to the application. At this time, the Coordinator shall also notify all individuals whose applications have been tabled and shall advise them of the additional information requested by the Committee.

(5) The Commissioner shall make the actual determination with regard to each application. After action by the Commissioner, the Coordinator shall issue artist's certification to those individuals whose applications have been granted and shall notify those individuals whose applications have been denied of the reasons for such denial, and of their right to reconsideration and appeal thereof.

(6) If a particular applicant for artist's certification demonstrates in his or her application that he or she works in a heavy or bulky medium, pursuant to § 42-141(b)(ii) of the New York City Zoning Resolution, the certification form issued such applicant may, at the applicant's request, carry a notation to that effect.

(7) Following the determination by the Commissioner or the withdrawal of any application for artist's certification, the Coordinator shall return to the applicant the materials listed in 58 RCNY § 1-04(b)(1)(iv) submitted in support of such application provided that he or she has submitted a self-addressed, stamped envelope for the return of such materials. Alternatively, these materials may be picked up by the applicant at the offices of the Department during regular business hours. Supporting materials which have not been picked up within four months of the date of the Commissioner's determination of the relevant application may be disposed of at the discretion of the Coordinator, except that the Coordinator shall retain possession of materials submitted in support of an application being reconsidered or on appeal until such time as a determination is reached with regard to reconsideration or appeal.

(8) In the event that an applicant whose application has either been tabled or is being held for reconsideration has not submitted the additional material requested by the Coordinator within four months after the date on which such application was either tabled or initially denied, the Coordinator may in his or her discretion consider such application withdrawn. In such instance, the Coordinator may dispose of supporting materials in accordance with 58 RCNY § 1-04(c)(7).

§ 1-05 Criteria for Granting Artist's Certification.

(a) *Statutory basis.* In determining whether to grant an application for artist's certification, the Department shall follow those criteria contained in the definition of an "artist" set forth in Section 276 of Article 7B of the New York State Multiple Dwelling Law, namely that those granted artist's certification be "regularly engaged in the fine arts . . . on a professional basis." Specifically, each applicant granted artist's certification must demonstrate that he or she meets the following criteria:

(1) *Regularly engaged.* The applicant is currently engaged in and demonstrates a serious consistent commitment to his or her art form or art occupation.

(2) *Fine arts.* The applicant is engaged in an art form or art occupation which

(i) can be considered and

(ii) is pursued by the applicant as a "fine art". To demonstrate pursuit of such art form or occupation as a fine art, the application should evidence a substantial element of independent aesthetic judgment by the applicant in pursuing such art form or occupation, i.e., the production of work solely on a commercial, industrial, functional, or work-for-hire basis without evidence of the foregoing elements is not sufficient to demonstrate pursuit of a particular art form or occupation as a fine art.

(3) *Professional basis.* The application should warrant a finding that the applicant is committed to the art form or occupation as his or her primary vocation and that others in the field recognize the applicant as a professional with regard to his or her art form or occupation. The word "professional" in this context does not necessarily refer to the amount of income earned by the applicant from his or her art form or occupation.

(b) *Intent to use joint living-work quarters.* Consistent with the designation of zoning districts M1-5A and M1-5B as manufacturing districts pursuant to the New York City Zoning Resolution, to obtain artist's certification, an applicant must demonstrate an intent to use joint living-work quarters for the purpose of carrying out his or her art form or occupation.

(Amended City Record 12/1/2017, eff. 12/31/2017)

§ 1-06 Right to Reconsideration or Appeal.

(a) *Reconsideration.*

(1) In the event an applicant is denied artist's certification by the Commissioner, the applicant shall have the opportunity either to

(i) withdraw the application,

(ii) request that it be reconsidered, in which case the applicant shall submit additional material in support of the application, or

(iii) request an immediate appeal of the Commissioner's denial of certification. If within 30 days of the date notice of such denial is given, the Artist's Certification Coordinator has not been notified that the applicant requests either reconsideration or appeal, then the application shall be considered withdrawn. An applicant denied certification whose application has been withdrawn after the initial determination by the Commissioner may submit a new application for certification at any time.

(2) Should an applicant who has been denied certification request reconsideration of his or her application, after the Artist's Certification Coordinator determines that all relevant additional information has been submitted, such application shall be presented to the Committee for reconsideration at the next regularly scheduled meeting. Reconsideration of an application shall be governed by the same procedures set forth herein as to the initial submission of an application.

(b) *Appeal.*

(1) In the event that an application is reconsidered and again denied, or the applicant elects not to submit additional information and have his or her application reconsidered by the Committee, the applicant may take an appeal to the Appeals Board. Upon receipt of a request for an appeal, the Coordinator shall schedule a special meeting of the Appeals Board to consider the appeal. At the meeting, the Coordinator shall present the application, following which the Coordinator shall seek the opinion of each Appeals Board member as to whether the appeal should be granted and the reasons for such opinion. The Coordinator shall then forward a statement of these opinions to the Commissioner who shall then determine whether the appeal should be granted. Following the Commissioner's decision with regard to the appeal, the applicant shall be promptly notified of such decision. In the event the Commissioner determines that the appeal should be granted, the Coordinator shall issue an artist's certification to the applicant.

(2) In the event that the Commissioner determines that the appeal should be denied, then the applicant may submit a new application for artist's certification after a period of one year has elapsed from the date of such determination.

(3) Following determination of the appeal, the Coordinator shall return the materials submitted in support of the application to the applicant in accordance with the procedures set forth in 58 RCNY § 1-04(c)(7). Supporting materials which have not been picked up within four months of the date of the Commissioner's determination of the appeal may be disposed of at the discretion of the Coordinator.

(4) The decision of the Commissioner with reference to a particular appeal shall be considered to be the final determination of the relevant application for purposes of Article 78 of the New York Civil Practice Law and Rules.

§ 1-07 Effect of Artist's Certification.

(a) *Validity.*

(1) Artist's certification shall be valid for so long as the artist so certified resides at the address contained on the certification form. An artist granted artist's certification may apply to the Department for a change in the address indicated on the certification form provided that

(i) such artist returns his or her original certification form and submits adequate proof, such as a signed lease, that he or she now resides at the new address, and

(ii) no more than one year has elapsed since the date certification was granted. The Department will then issue a new certification form containing the new address.

(2) The Department will not accept a request for a change in the address contained on a certification form in the event that such request is made more than one year after the date of such certification. In such instances, the person previously certified shall submit a new application for artist's certification, but unless otherwise requested by the Coordinator, such applicant need only submit information and supporting documentation relevant to that period of time which has elapsed since the date of his or her previous certification. Applications for re-certification shall be governed by the same procedures as set forth herein for the review of initial applications.

(b) *Legal significance.* The legal significance of a certification form issued by the Department is to evidence that the person named therein meets the legislative criteria regarding artist's certification and is therefore eligible to live in joint living-work quarters, in an area and dwelling unit where such use is

permitted by law pursuant to the terms of the city's Zoning Resolution and New York State Multiple Dwelling Law. Artist's certification does not represent a determination by the Department that joint living-work quarters in a particular building is lawful under the Zoning Resolution or any other applicable law or regulation, nor that such space meets the relevant specifications of the Buildings Department Code.

§ 1-08 Nontransferability.

Each artist's certification form is valid only for the person named therein and may not be transferred.

§ 1-09 Submission of False or Fraudulent Information.

The submission of any information in connection with an application for artist's certification which the applicant knows to be false will result in the denial of the application or the revocation of any artist's certification based on such application.