



Office of Temporary and Disability Assistance

KATHY HOCHUL
Governor

BARBARA C. GUINN
Acting Commissioner

August 23, 2023

By Email to: scaliaa@dss.nyc.gov

Ann Marie Scalia
General Counsel
New York City Department of Social Services
150 Greenwich Street, 42nd Floor
New York, NY 10007

Re: **Waivers of State Shelter Regulations to Increase Total Shelter Capacity**

Dear Ann Marie Scalia:

By letter dated August 9, 2023, to Assistant Attorney General William Bristow, who at the time represented the State of New York in *Callahan v. Carey*, Index No. 42582/1979 (Sup. Ct. N.Y. Co.), New York City Assistant Corporate Counsel Daniel R. Perez requested, among other things, that the Office of Temporary and Disability Assistance (“OTDA”) waive several OTDA adult shelter regulations to allow the City to maximize shelter capacity and have greater flexibility to accommodate the large numbers of new migrant arrivals to the City. On Tuesday, August 15, 2023, OTDA Acting Commissioner Barbara Guinn, Deputy General Counsel Douglas Goglia and I teleconferenced with your staff and you to discuss New York City’s waiver requests.

OTDA underscores that OTDA’s adult shelter regulations are applicable only to facilities operated by or for the New York City Department of Homeless Services (“DHS”) that are used to provide emergency shelter to recipients of temporary housing assistance. OTDA’s shelter regulations do not apply to Humanitarian Emergency Response and Relief Centers or facilities operated by New York City agencies such as the New York City Department of Housing Preservation and Development or the New York City Department of Emergency Management, and waivers are not needed with respect to those facilities.

OTDA is willing to grant most of the waivers requested by the City with respect to areas of shelters used to accommodate new arrivals on an emergency basis when space is not otherwise available. Based on DHS census reports, sufficient space is currently available in the DHS system for adults. Additionally, the newly opened congregate facility for adults and the planned opening of additional emergency congregate facilities is expected to reduce pressure on the DHS adult shelter system.

When any of the emergency regulatory waivers are invoked, DHS must submit a report to OTDA within 48 hours that identifies the facility or facilities where the waivers are being invoked and the regulation(s) being waived. OTDA may require DHS to limit the timeframe for waiver approval dependent on the waivers being used and specific consideration of the facility where the waiver is used.

OTDA will not waive:

- (1) the operational plan requirements set forth in **18 NYCRR § 491.3(c)**;
- (2) the resident rights enumerated in **18 NYCRR § 491.12**; and

- (3) the requirement that residents with communicable diseases or infections be properly isolated and quarantined in **18 NYCRR § 491.14(d)(3)**.

The following regulations afford DHS and DHS shelters ample flexibility and need not be waived:

- (1) **18 NYCRR § 491.12(c)(2)** (Right to leave and return to the facility and grounds at reasonable hours in accordance with the rules of the facility). Facilities may adopt rules with respect to reasonable ingress and egress.
- (2) **18 NYCRR § 491.12(c)(6)** (Right to receive and send mail). There is no regulatory requirement that mail services be provided on site, and the City agrees that residents at least will have access to mail off-site.

While OTDA would consider relaxing the space requirements set forth in **18 NYCRR § 491.18(h)(7) and (8)(i) and (ii)**, OTDA does not have authority to waive the same or similar local building and fire code. OTDA is willing to further discuss these regulatory requirements.

Waivers of the following regulations are approved to the extent that existing shelter space becomes insufficient to shelter new arrivals, and should be invoked only when necessary and for so long as an emergency need for additional space continues to exist:

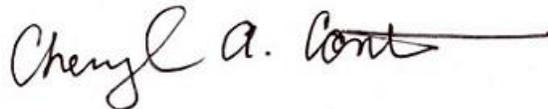
- (1) **18 NYCRR § 491.14(a) and (d)(1) and (2)** (health services; waived with respect to preventative health services only);
- (2) **18 NYCRR § 491.14(e)(2)(vii)** (transportation between shelters and intake sites);
- (3) **18 NYCRR § 491.18(e)(2)** (mattress size and bedding);
- (4) **18 NYCRR § 491.18(e)(3), (4) and (5)** (bed linens, blankets, towels and personal hygiene supplies);
- (5) **18 NYCRR § 491.18(e)(11)** (dining area furnishings);
- (6) **18 NYCRR § 491.18(e)(12)** (living rooms, sitting rooms, lounges and recreation area furnishings);
- (7) **18 NYCRR § 491.18(e)(13)** (laundry facilities);
- (8) **18 NYCRR § 491.18(e)(14)** (telephones);
- (9) **18 NYCRR § 491.18(h)(1), (2), (3), (4) and (5)** (space for dining and leisure activities);
- (10) **18 NYCRR § 491.18(h)(8)(iii), (iv), (vi), (vii), (viii) and (ix)** (bedrooms); and
- (11) **18 NYCRR § 491.18(h)(10)** (storage space).

As to the shelter staffing requirements set forth in **18 NYCRR §§ 491.8(a), 491.14(c), and 491.14(f)(2) and (8)**, you agreed during our teleconference to clarify the City's waiver request and propose staffing ratios that are workable but would not unreasonably impact the safety and security of shelter residents and staff.

OTDA looks forward to receiving the City's proposal and will continue to work with the City to help accommodate the large numbers of new migrant arrivals.

With kindest regards.

Sincerely,

A handwritten signature in black ink that reads "Cheryl A. Contento" with a long horizontal flourish extending to the right.

Cheryl A. Contento
Deputy Commissioner
Division of Shelter Oversight and Compliance

cc: Acting Commissioner Barbara C. Guinn
Tiffinay M. Rutnik
Commissioner Molly Wasow Park