



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Adoption of an Amendment Repealing Rules Related to the Conservation of Water

NOTICE IS HEREBY GIVEN that pursuant to the authority vested in the Commissioner of the Department of Health and Mental Hygiene (the Department) by Section 556 of the New York City Charter, and in accordance with the requirements of Section 1043 of the City Charter, the Department hereby repeals Chapter 11 to Title 24 of the Rules of the City of New York (Conservation of Water). These rules prohibited businesses regulated by the Department from serving water unless it was requested by a patron and required them to immediately repair leaks. The rules are being repealed because they are not necessary and they discourage the consumption of water, a healthy beverage. This Chapter was identified as one that should be repealed as part of a comprehensive rules review initiative undertaken by the NYC Mayor's Office of Operations. The proposed rule was published in the City Record on September 22, 2017. There were no written comments and a public hearing on the proposed rule was not held because the Department determined pursuant to New York City Charter section 1043(e) that a hearing would not serve any public purpose.

Statement of Basis and Purpose

Chapter 11 of Title 24 of the New York City Rules applies to food service establishments and other businesses that operate pursuant to licenses and permits issued by the Department. To conserve water, it prohibits these businesses from serving water, unless requested by a customer, and commands that they immediately repair leaks, drips, seepages and other losses of water. The chapter establishes a penalty of \$500 for a violation of its rules and provides that repeated wastes of water can result in the business being closed.

Chapter 11 is not actively enforced by the Department. It does not issue violations to businesses for having leaky sinks, or seek to determine whether water it observes flowing "is in actual and immediate use in the conduct of the permittee's business...." Nor is Chapter 11 needed. Pursuant to federal and state law, fixtures now used must meet certain flow requirements.¹ Businesses pay for water and, thus, have a financial interest in fixing dripping and linking faucets and toilets. Larger leaks can be addressed by the City's Department of Environmental Protection pursuant to Administrative Code section 24-316. In times of drought, the City has other rules that limit consumption and the Commissioner or Board of Health could through their nuisance authorities direct in such times that leaks and other seepages be immediately repaired and that restaurants stop freely serving water.

Absent such conditions, water should be readily served. The Department encourages New Yorkers to consume tap water as a healthier drinking option.² To the extent that Chapter 11 prohibits businesses from offering water unless specifically requested, it is inconsistent with this encouragement. Studies suggest that making healthier beverages, like water, more convenient

¹ ECL section 15-0314 and 10 CRF Part 430.

² www1.nyc.gov/site/doh/health/health-topics/sugary-drinks.page.

increases their selection.^{3 4 5} Freely providing water may thus lead to it being chosen over less healthy choices.

Working with the City's rulemaking agencies, the Law Department, and OMB, the Office of Operations conducted a retrospective rules review of the City's existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. Chapter 11 was identified as a chapter of rules that should be repealed through this initiative.

The Department's authority for this repeal is found in section 1043 of the New York City Charter. Because the Department is not required to provide waivers under the CIAA, there is no reason to have public testimony on whether this rule should be repealed.

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Chapter 11 in Title 24 of the Rules of the City of New York, relating to the conservation of water, is hereby repealed.

³ Thorndike AN, Riis J, Sonnenberg LM, Levy ED. Traffic-light labels and choice architecture: promoting healthy food choices. AJPM 2014; 46)2_143-9.

⁴ Thorndike AN, Sonnenberg L, Riis J, Barraclough S, Levy DE. A 2-phase labeling and choice architecture intervention to improve healthy food and beverage choices. AJPH 2012; 102(3): 527-33.

⁵ Eibel B, Mijanovich T, Abrams C, Dunn L, Nonas C, Cappola K, Onufrak S, Park S. A water availability intervention in the New York City public schools: influence on youths' water and milk behaviors. AJPH 2015; 105(2): 365-72.