

## New York City Department of Consumer Affairs

### Notice of Adoption

Notice of Adoption to promulgate a new rule that makes it a violation to assault, menace, unlawfully imprison, or harass, or attempt to assault, menace, unlawfully imprison, or harass, any DCA employee. A violation of this rule results in a penalty of \$500 pursuant to Section 20-104(e)(1) of the New York City Administrative Code. This rule also allows DCA to immediately suspend the license of any licensee that violates this rule, subject to a prompt post-suspension hearing, at which DCA may request further suspension or revocation of the license.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer Affairs by Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(b) and 20-104(e) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department repeals Sections 3-111 through 3-131, Section 5-62, and Sections 5-211 through 5-216 of Title 6 of the Rules of the City of New York.

This rule was proposed and published on December 10, 2018. A public hearing was held on January 9, 2019.

### Statement of Basis and Purpose of Rule

The Department of Consumer Affairs (“DCA”) performs approximately 70,000 inspections in New York City and processes approximately 105,000 customers at its licensing centers each year. Recently, DCA staff members have experienced incidents of harassing and menacing behavior while performing duties for DCA. Some of this behavior required the engagement of the New York City Police Department, and some resulted in individuals being arrested or banned from doing business with DCA. These incidents negatively impact DCA’s ability to perform its legal mandates, including, among other things, licensing and inspecting businesses. These incidents are also wasteful of taxpayer dollars, as time must be diverted from DCA’s work to address them.

DCA is promulgating a new rule, Section 1-21 in Chapter 1 of Title 6 of the Rules of the City of New York, that makes it a violation to assault, menace, unlawfully imprison, or harass, or attempt to assault, menace, unlawfully imprison, or harass, any DCA employee. A violation of this rule results in a penalty of \$500 pursuant to Section 20-104(e)(1) of the New York City Administrative Code, as well as the immediate suspension of any DCA license, subject to a prompt post-suspension hearing, at which DCA may request further suspension or revocation of the license.

Finally, this proposed rule amends the License Enforcement Penalty Schedule in Section 6-11 of Chapter 6 of Title 6 of the Rules of the City of New York to add an entry for violations of the proposed Section 1-21.

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.

## Rule Amendment

Section 1. Chapter 1 of Title 6 of the Rules of the City of New York is amended by adding the following section:

### § 1-21 Injurious Conduct by Licensees.

(a) No licensee, or employee or agent of a licensee, shall assault, menace, unlawfully imprison, or harass, or attempt to assault, menace, unlawfully imprison, or harass, any employee of the Department engaged in carrying out any duty for the Department.

(b) In addition to any of the powers that may be exercised by the commissioner pursuant to any other provision of law or rule, upon the issuance of a summons alleging a violation of subdivision (a) by a licensee, or employee or agent of a licensee, the commissioner may suspend any license held by the licensee, subject to a prompt post-suspension hearing held no more than 7 business days after the suspension.

(c) At the post-suspension hearing prescribed by subdivision (b) of this section, the Department may request continued suspension or revocation of any license held by the licensee.

(d) As used in this section, the following terms shall be defined as follows:

(1) "Assault" shall mean to intentionally or recklessly cause physical injury to another person.

(2) "Menace" shall mean to intentionally place another person in reasonable fear of physical injury.

(3) "Unlawfully imprison" shall mean to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his or her liberty by moving him or her from one place to another, or by confining him or her either in the place where the restriction commences or in a place to which he or she has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by physical force, intimidation or deception.

(4) "Harass" shall mean to intentionally and repeatedly harass another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury.

§ 2. Section 6-11 of Chapter 6 of Title 6 of the Rules of the City of New York is amended as follows:

**§ 6-11 License Enforcement Penalty Schedule.**

| <b>Citation</b>      | <b>Violation Description</b>                     | <b>First Violation</b> | <b>First Default</b> | <b>Second Violation</b> | <b>Second Default</b> | <b>Third and Subsequent Violation</b> | <b>Third and Subsequent Default</b> |
|----------------------|--|------------------------|----------------------|-------------------------|-----------------------|---------------------------------------|-------------------------------------|
| <u>6 RCNY § 1-21</u> | <u>Injurious conduct committed by a licensee</u> | <u>\$500</u>           | <u>\$500</u>         | <u>\$500</u>            | <u>\$500</u>          | <u>\$500</u>                          | <u>\$500</u>                        |