

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs (“DCA” or “Department”) is proposing a new rule that would make 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 would result in a penalty of a maximum of \$500 pursuant to Section 20-104(e)(1) of the New York City Administrative Code. This rule would also allow DCA to immediately suspend the license of any licensee that violated this rule, subject to a prompt post-suspension hearing, at which DCA may request further suspension or revocation of the license.

When and where is the hearing? DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Wednesday, January 9, 2019. The hearing will be in the DCA hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Wednesday, January 9, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 5:00 PM On Wednesday, January 9, 2019.

What if I need assistance to participate in the hearing? You must tell DCA’s External Affairs Division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Monday, January 7, 2019.

This location has the following accessibility option(s) available: wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCA to make this rule? 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 authorize the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the Department of

Consumer Affairs' regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCA's rules? The Department's rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed 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 in the course of 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 proposing a new rule, Section 1-21 in Chapter 1 of Title 6 of the Rules of the City of New York, that would make 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 would result in a penalty of a maximum 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 would amend 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.

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 authorize the Department of Consumer Affairs to promulgate these proposed rules.

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.

Proposed Rule Amendments

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, with intent to harass, annoy or alarm another person, to follow such other person in or about a public place, or engage in a course of conduct or repeatedly commit acts which reasonably alarm or seriously annoy such other person and which serve no legitimate purpose.

§ 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.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
<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>

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Prohibition of Injurious Behavior Towards Agency Employees

REFERENCE NUMBER: 2018 RG 119

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose;
and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: November 23, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Injurious Conduct by Licensees

REFERENCE NUMBER: DCA-87

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the nature of this violation is serious and cannot be cured.

/s/ Lindsay Fuller
Mayor's Office of Operations

November 26, 2018
Date