

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 is proposing a new rule to implement Chapter 45-A of the New York City Charter, added by Local Law 47 for the Year 2016, relating to the Department's licensing authority.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Wednesday, December 5, 2018. The hearing will be in the Department of Consumer Affairs hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

This location has the following accessibility option(s) available: Hearing room at 42 Broadway, 5th Floor, New York, NY 10004 is wheelchair accessible.

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

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rulecomments@dca.nyc.gov.
- **Mail.** You can mail written 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 on Wednesday, December 5, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any written comments to the proposed rule by 5:00 PM on Wednesday, December 5, 2018.

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) 436-0155. Advance notice is requested to allow

sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Monday, December 3, 2018.

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, 1049-b, 2203(c) and 2203(h)(1) of the New York City Charter, Section 20-104 of the New York City Administrative Code, and Section 3 of Local Law 47 of 2016 authorize DCA to make these proposed rules. These proposed rules were included in the regulatory agenda of the Department of Consumer Affairs for this Fiscal Year.

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

What rules govern the rulemaking process? The Department of Consumer Affairs 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(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The City Council enacted Local Law 47 for the Year 2016, adding a new Section 1049-b to Chapter 45-A of the New York City Charter that (i) permits city agencies that issue licenses, permits or registrations and issue notices of violation to deny an application for, or renewal of, any license, permit or registration and may suspend, terminate or revoke any license, permit or registration based on the failure to timely pay those civil penalties; (ii) directs such city agencies to promulgate rules to implement the authority granted by the Law; and (iii) instructs city agencies to explicitly include certain factors of consideration that shall be used to determine whether to deny, suspend, or revoke any license, permit or registration.

The Department of Consumer Affairs (“DCA”) proposes this rule to implement the authority granted by Local Law 47. Specifically, the rule establishes DCA’s power to deny a new or renewal application and to revoke, suspend, cancel, or terminate any license, permit or registration for any license, permit or registration due to the non-payment of civil penalties imposed by OATH and ECB if a sister agency has provided DCA with the information necessary to do so. Moreover, the rule outlines the factors that will be taken into consideration in making this determination, including the amount of time that has passed since the person failed to satisfy a judgment and the amount that is owed.

Sections 1043, 1049-b, 2203(c) and 2203(h)(1) of the New York City Charter, Section 20-104 of the New York City Administrative Code, and Section 3 of Local Law 47 of 2016 authorize DCA to make 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 Amendment

Section 1. Chapter 1 of Title 6 of the Rules of the City of New York is amended to add subsection 1-20, to read as follows:

§ 1-20 Non-Payment of Civil Penalties.

(a) The Commissioner may deny a new or renewal application for any license, permit or registration, and may revoke, suspend, cancel, or terminate any license, permit or registration, if (i) the applicant, licensee, permittee or registrant has failed to timely pay civil penalties imposed by the New York City Environmental Control Board (ECB) or a tribunal of the New York City Office of Administrative Trials and Hearings (OATH), and (ii) an agency has provided the Commissioner with the following information: the name, address, Department license number and license category, where applicable, and information sufficient to determine the delinquency and monetary amount of the outstanding final judgments of the applicant, licensee, permittee or registrant.

(b) In determining whether to exercise the power granted by paragraph (a) of this section, the Commissioner shall consider the amount of time that has passed since the applicant, licensee, permittee or registrant failed to satisfy a final judgment, order or decision for civil penalties from ECB or OATH, the amount of the civil penalty, and any such other matters as justice may require, as follows:

1. New applications for licenses, permits or registrations may be denied where there is an outstanding final judgment of any amount older than thirty (30) days.

2. Licenses, permits or registrations may be suspended, and renewal applications denied, where outstanding final judgments are:

A. Older than sixty (60) days; and

B. Five hundred dollars (\$500) or more.

3. Licenses, permits or registrations may be revoked or cancelled where outstanding final judgments are:

A. Older than ninety (90) days; and

B. One thousand dollars (\$1,000) or more; and

C. The applicant, licensee, permittee or registrant violated any provision the enforcement of which is within the jurisdiction of the Department in the previous five (5) years.

(c) If the applicant, licensee, permittee or registrant breaches the terms of a settlement agreement or payment plan reached with the City for satisfaction of a final judgment, order or decision for civil penalties from ECB or OATH, time will be calculated from the date of the breach or first missed payment, unless otherwise set forth in the agreement.

(d) For purposes of this subsection, a judgment, order or decision for civil penalties from ECB or OATH considered “final” when:

1. An appeal or motion to vacate challenging the judgment, order, or decision has been resolved;

2. The entity or legal representative against whom the judgment, order or decision was imposed fails to appeal within the time allotted by ECB or OATH; or

3. The entity or legal representative against whom the judgment, order or decision was entered on default fails to move to vacate the judgment, order or decision within sixty (60) of the date entered.

**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: Amendment of rules regarding grounds for license suspension and revocation

REFERENCE NUMBER: 2018 RG 088

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: 10/23/2018

**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: Local Law 47 Implementing Rules

REFERENCE NUMBER: DCA-84

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 a cure period would be contrary to the purpose of the proposed rule.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 25, 2018
Date