

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing a new penalty schedule to implement Local Law 64 of 2021, which creates restrictions on single-use plastic beverage straws, beverage stirrers, and beverage splash sticks (collectively, “single-use beverage plastics”).

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00AM on Wednesday, October 13. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-558-8656
 - Meeting ID: 851 2322 0217
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/85123220217?pwd=WTJFbk5pa0c4dTNxSFVsc1I4VVBiZz09>
 - Meeting ID: 851 2322 0217

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

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **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) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on Wednesday, October 13. 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 Wednesday, October 13.

What if I need assistance to participate in the hearing? You must tell DCWP’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 may tell us by telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Friday, October 8.

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 DCWP 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 DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Local Law 64 of 2021 authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in the Department of Consumer and Worker Protection’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCWP’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? DCWP 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 and Worker Protection (“DCWP” or “Department”) is proposing a new penalty schedule to implement Local Law 64 of 2021, which creates restrictions on single-use plastic beverage straws, beverage stirrers, and beverage splash sticks (collectively, “single-use beverage plastics”).

Local Law 64 restricts food service establishments – such as restaurants, cafes, delis, bars, grocery stores and food trucks – from providing single-use plastic straws, stirrers and splash sticks to customers. Food service establishments are prohibited from providing single-use plastic stirrers and splash sticks. Food service establishments are prohibited from providing non-compostable, single-use plastic straws (“plastic straws”) except upon request by a customer.

For customers who request a plastic straw, food service establishments must provide one free of charge, without inquiring about the reason for the request. Food service establishments must stock plastic straws to fulfill customer requests and must post signs advertising the straws’ availability at self-serve stations. Compostable plastic straws (“compostable straws”) may be provided upon request only for use on-premises, but only if the food service establishment properly separates and disposes of those straws through a commercial composting provider or via another method specified in Administrative Code Section 16-306.1(c)(1).

Food service establishments that violate provisions of Local Law 64 are liable for civil penalties from \$100 to \$400 per violation.

To implement Local Law 64, DCWP is proposing a new penalty schedule of single-use beverage plastics violations.

Sections 1043 and 2203(f) of the New York City Charter and Local Law 64 of 2021 authorize DCWP 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 Amendments

Section 1. A new Section 6-74 is added to Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York to read as follows:

§ 6-74 Single-Use Beverage Plastics Penalty Schedule

All citations are to Title 16 of the Administrative Code of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by admitting to the violation, being found in violation in a decision, or entering into a settlement agreement for violating the same provision of law or rule, on a different day within twelve months of the prior violation(s).

| <u>Citation</u> | <u>Violation Description</u> | <u>First Violation</u> | <u>First Default</u> | <u>Second Violation</u> | <u>Second Default</u> | <u>Third and Subsequent Violation</u> | <u>Third and Subsequent Default</u> |
|----------------------------|--|------------------------|----------------------|-------------------------|-----------------------|---------------------------------------|-------------------------------------|
| Admin. Code § 16-401(b) | Providing single-use plastic stirrers or single-use plastic splash sticks | \$100 | \$100 | \$200 | \$200 | \$400 | \$400 |
| Admin. Code § 16-401(c)(1) | Providing single-use, non-compostable plastic straws to customers without customer request (including providing such straws at a self-serve station) | \$100 | \$100 | \$200 | \$200 | \$400 | \$400 |
| Admin. Code § 16-401(c)(2) | Failure to maintain a sufficient supply of single-use, non-compostable plastic straws, | \$100 | \$100 | \$200 | \$200 | \$400 | \$400 |
| Admin. Code § 16-401(c)(2) | Failure to provide a single-use, non-compostable plastic straw upon request | \$100 | \$100 | \$200 | \$200 | \$400 | \$400 |
| Admin. Code § 16-401(c)(2) | Charging a customer for a single-use, non-compostable plastic straw that the customer has requested or inquiring as to the reason a customer has requested such plastic straw | \$100 | \$100 | \$200 | \$200 | \$400 | \$400 |
| Admin. Code § 16-401(c)(3) | Failure to display required signage about plastic straw availability | \$100 | \$100 | \$200 | \$200 | \$400 | \$400 |
| Admin. Code § 16-401(d) | Providing compostable straws to be used outside of the food establishment's premises; failure to appropriately dispose of compostable straws; failure to maintain required bins for disposal of compostable straws | \$100 | \$100 | \$200 | \$200 | \$400 | \$400 |

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: Implementation of Limitations on Single Use Beverage Plastics

REFERENCE NUMBER: DCWP-6

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

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

August 31, 2021
Date

**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: Implementation of Limitations on Single Use Beverage Plastics

REFERENCE NUMBER: 2021 RG 067

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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: August 31, 2021