

## New York City Department of Environmental Protection

### Notice of Public Hearing and Opportunity to Comment on Proposed Rule

**What are we proposing?** The Department of Environmental Protection (“DEP”) is proposing to amend its rules to provide a procedure for public hearings regarding objections to variance applications filed pursuant to section 24-110 of the Administrative Code.

**When and where is the hearing?** DEP will hold a public hearing on the proposed rule online. The public hearing will take place at 11 am on March 16, 2022. To participate in the public hearing, please follow these instructions:

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 347-921-5612,,175078561#](#)

Phone Conference ID: 175 078 561#

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

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov).
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19<sup>th</sup> Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to DEP’s Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by March 16, 2022.

**What if I need assistance to participate in the hearing?** You must tell DEP's Bureau of Legal Affairs if you need a reasonable accommodation because 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 718-595-6531. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by March 9, 2022.

**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, a transcript of the hearing and copies of the written comments will be available to the public at the Department's Bureau of Legal Affairs.

**What authorizes the Department to make these rules?** Sections 1403 of the New York City Charter ("Charter") and sections 24-105 and 24-110 of the Administrative Code of the City of New York authorize the Department to make these proposed rules. These proposed rules were not included in the Department's regulatory agenda for this Fiscal Year because they were not anticipated at the time the Agenda was published.

**Where can I find the Department's rules?** The Department's rules are in Title 15 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The Department must meet the requirements of Section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

### **Statement of Basis and Purpose**

The proposed rule would add a new Chapter 61 to Title 15 of the Rules of the City of New York governing public hearings held by DEP pursuant to section 24-110 of the Administrative Code.

Section 24-110 is the variance section of the Air Pollution Control Code, often referred to as the Air Code, which is codified in Title 24, Chapter 1 of the Administrative Code. Section 24-110 provides for a public hearing to be held (a) if any person transmits to DEP a written objection to a variance petition pursuant to such section no later than 21 days after the publication of a notice of such petition on a website by or on behalf of the city pursuant to such section, or (b) if the DEP Commissioner determines that such a hearing would be advisable.

DEP is proposing to promulgate a rule establishing the procedure governing such public hearings. The proposed rule provides for notice to be posted on the DEP website regarding each public hearing to be held, requires such notice to explain how comments can be submitted, and establishes that the commissioner of DEP, or his or her designee, will consider the comments before rendering a decision regarding whether the variance will be granted.

Section 1403 of the New York City Charter and sections 24-105 and 24-110 of the Administrative Code of the City of New York authorize DEP to issue this proposed rule.

New material is underlined.

§ 1. Title 15 of the Rules of the City of New York is amended by adding a new Chapter 61 to read as follows:

#### Chapter 61. Public Hearings Pursuant to Section 24-110

##### § 61-01 Definitions

For the purposes of this chapter, the following terms have the following meanings:

Commissioner. The term “commissioner” means the commissioner of the department, or his or her designee.

Department. The term “department” means the department of environmental protection.

##### § 61-02 Public Hearing Procedures

a. If a person files a written objection to a variance petition within twenty-one days from the department’s publication of a notice pursuant to subdivision (c) of section 24-110 of the administrative code or if the commissioner determines that a public hearing regarding such variance petition would be advisable, the department shall hold a public hearing regarding such variance petition.

b. The department shall post a notice regarding each variance petition public hearing on its website. The following information shall be included in each notice:

1. The date and time of the hearing;
2. The subject matter of the hearing, including a brief summary of the variance petition;
3. Information regarding how to appear at the hearing, either in person or by remote means; and
4. Information regarding how written comments can be submitted.

c. For a variance petition for which such a public hearing is held, the commissioner shall consider all comments received at such hearing and submitted in writing prior to such hearing before making a decision regarding whether to grant such variance.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**

**253 BROADWAY, 10<sup>th</sup> FLOOR**

**NEW YORK, NY 10007**

**212-788-1400**

**CERTIFICATION / ANALYSIS**

**PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Hearings of Objections to Air Code Violations**

**REFERENCE NUMBER: DEP-79**

**RULEMAKING AGENCY: Department of Environmental 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) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

February 3, 2022

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:** Hearings of Objections to Air Code Violations

**REFERENCE NUMBER:** 21 RG 052

**RULEMAKING AGENCY:** DEP

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

Date: February 3, 2022

Acting Corporation Counsel