

New York City Department of Environmental Protection

Notice of Adoption of Rule

Pursuant to the authority vested in the Commissioner of the Department of Environmental Protection (“DEP”) by subdivision a of section 1043 of the New York City Charter and section 24-105 of the Administrative Code of the City of New York, DEP is promulgating and adopting rules to provide a procedure for public hearings regarding objections to variance applications filed pursuant to section 24-110 of the Administrative Code.

A proposed version of this rule was published in the City Record on February 11, 2022. A public hearing regarding the rule was held on March 16, 2022. The only comments received suggested that the rule also include specific requirements detailing what must be included in a variance petition. DEP is considering conducting a separate rulemaking process to establish such requirements.

Statement of Basis and Purpose

This rule adds a new Chapter 61 to Title 15 of the Rules of the City of New York governing public hearings held by the Department of Environmental Protection (“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 maintained 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 promulgating this rule in order to establish the procedure governing such public hearings. This rule provides for notice to be posted on the DEP website regarding each variance petition 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 a variance petition for which a hearing was held 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 promulgate this 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 Held Pursuant to Administrative Code 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.