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 to add rules to implement Local Law 202 of 2019, Local Law 144 of 2021, and Local Law 37 of 2022. These proposed new rules would add penalty schedules for violations related to keeping or selling any force-fed products, open captioning in motion picture theaters, and automated employment decision tools.

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 June 6, 2022. 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: 854 8288 6473
- To participate in the public hearing via videoconference, please follow the online link: https://us02web.zoom.us/j/85482886473?pwd=ZU51Mi9XUlk3OSswWGRZKzFpSURmUT09
 - Meeting ID: 854 8288 6473

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 June 6, 2022. 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 11:59pm on June 6, 2022.

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 June 1, 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, 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 Section 20-104(b) of the New York City Administrative Code 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 to add rules to implement Local Law 202 of 2019, Local Law 144 of 2021, and Local Law 37 of 2022. These proposed new rules would add penalty schedules for violations related to keeping or selling any force-fed products, open captioning in motion picture theaters, and automated employment decision tools.

Local Law 202 of 2019 prohibits any food service establishment or retail food establishment from keeping or selling any force-fed products such as foie gras or any items that contain any force-fed products.

Local Law 144 of 2021 prohibits employers and employment agencies from using an automated employment decision tool unless such tool has been subject to a bias audit within one year of the use of the tool, information about such audit is publicly available, and certain notices have been provided to employees or job candidates. An automated employment decision tool means a computational process that issues simplified scores or recommendations used to assist in making employment decisions.

Local Law 37 of 2022 requires certain motion picture theaters to provide open motion picture captioning for a certain number of movie showings. Open motion picture captioning means the written display of dialogue and non-speech information such as music, the identity of the character who is speaking, and other sounds and sound effects. Open captioning is always displayed, distinguishing it from "closed captioning", which can be turned off by the viewer.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection 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 6-80 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is added to read as follows:

§ 6-80 Open Captioning at Motion Picture Theaters Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules 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 and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin. Code § 20- 699.7(b)	Failure to provide open motion picture captioning	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
Admin. Code § 20- 699.7(d)	Failure to comply with timing requirements for open motion picture captioning	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
Admin. Code § 20- 699.7(e)	Failure to comply with public notice requirements for open motion picture captioning	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
Admin. Code § 20- 699.7(f)	Failure to comply with records requirements	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>

§ 2. A new section 6-81 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is added to read as follows:

§ 6-81 Automated Employment Decision Tools Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

<u>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.</u>

<u>Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).</u>

Each day on which an automated employment decision tool is used in violation of this section gives rise to a separate violation of subdivision a of section 20-871 of the Administrative Code.

<u>Failure to provide any notice to a candidate or an employee in violation of paragraphs 1, 2 or 3 of subdivision b</u> of section 20-871 of the Administrative Code shall constitute a separate violation.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin. Code § 20- 871(a)	Failure to comply with requirements for use of an automated employment decision tool	<u>\$375</u>	<u>\$500</u>	<u>\$1,350</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$1,500</u>
Admin. Code § 20- 871(b)	Failure to comply with notice requirements related to automated employment decision tools	<u>\$375</u>	<u>\$500</u>	<u>\$1,350</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$1,500</u>

Section 1. A new section 6-82 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is added to read as follows:

§ 6-82 Force-Fed Products Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

<u>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.</u>

<u>Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).</u>

Each violation may be treated as a separate and distinct offense. Each day on which a respondent commits a violation may be treated as a separate and distinct offense.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Code	Failure to comply with prohibition on force-fed products or food containing force-fed products	<u>\$1,500</u>	<u>\$2,000</u>	<u>\$1,800</u>	<u>\$2,000</u>	<u>\$2,000</u>	\$2,000

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: Penalties for Violations Relating to Open Captioning in Motion Picture Theaters and Automated Employment Decision Tools

REFERENCE NUMBER: 2022 RG 012

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:

Date: April 27, 2022

- (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

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: Penalties for Violations Relating to Open Captioning in Motion Picture Theaters and Automated Employment Decision Tools

REFERENCE NUMBER: DCWP-16

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	April 28, 2022
Mayor's Office of Operations	Date