

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 procedural amendments to the rule prohibiting injurious conduct by licensees towards Department employees. These proposed amendments outline the procedural steps that the Department and the Office of Administrative Trials and Hearings (“OATH”) would follow in enforcing and adjudicating violations of the injurious conduct rule.

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 Monday, August 15, 2022. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646 931 3860
 - Meeting ID: 846 0395 9919
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/84603959919?pwd=HruFE0UL3ieX-DP8QGLFaatmcle6L3.1>
 - Meeting ID: 846 0395 9919

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) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on Monday, August 15, 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 Monday, August 15, 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) 436-0396 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by noon on August 8, 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 Sections 20-104(b) and 20-104(e) of the New York City Administrative Code authorize the Department to make this proposed rule. This proposed rule was not included in the Department’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 procedural amendments to the rule prohibiting injurious conduct by licensees towards Department employees. These proposed amendments outline the procedural steps that the Department and the Office of Administrative Trials and Hearings (“OATH”) would follow in enforcing and adjudicating violations of the injurious conduct rule.

The injurious conduct rule prohibits licensees and employees of licensees from assaulting, menacing, unlawfully imprisoning, or harassing employees of the Department. The rule allows the Department to immediately suspend a license for violations of the rule, subject to a prompt post-suspension hearing, and to request continued suspension or revocation of the license.

The proposed amendments would make clear that, at the prompt post-suspension hearing, continued suspension of the license must be ordered if the Department is found to have alleged facts that, if true, would constitute a violation of the rule. The proposed amendments also clarify that the alleged violations, and any continued suspension or revocation requested by the Department, would then be adjudicated at a trial to be held within 45 days of the decision following the first prompt post-suspension hearing.

These proposed amendments would also add a prohibition on intentionally damaging property of the Department. The Department has recently experienced incidents in which property of the Department, such as technology being used during an inspection, was intentionally damaged by employees of the business subject to inspection.

Finally, these proposed amendments would clarify that the injurious conduct rule applies to all businesses and their employees. Employees of the Department have been the victim of violations of this rule committed by licensees and non-licensees.

Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(b) and 20-104(e) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to promulgate 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. Chapter 1 of Title 6 of the Rules of the City of New York is amended by adding the following section:

§ 1-21 Injurious Conduct by Licensees.

(a) No [licensee, or employee or agent of a licensee,] person shall assault, menace, unlawfully imprison, or harass, or attempt to assault, menace, unlawfully imprison, or harass, any employee of the Department engaged in carrying out any duty for the Department. No person shall intentionally damage any property of the Department. A licensee found in violation of this subdivision, or a licensee whose employees or agents are found in violation of this subdivision, is subject to suspension and/or revocation of its licenses as provided for in this section.

(b) In addition to any of the powers that may be exercised by the commissioner pursuant to any other provision of law or rule, upon the issuance of a summons alleging a violation of subdivision (a) by a licensee, or employee or agent of a licensee, the commissioner may immediately suspend any license held by the licensee, subject to a prompt post-suspension hearing to be held no more than 7 business days after the

commencement of the suspension. In a summons alleging a violation of subdivision (a), the Department may request suspension or revocation of any license issued by the Department and held by the licensee, in addition to alleging any other violations.

(c) [At the post-suspension hearing prescribed by subdivision (b) of this section, the Department may request continued suspension or revocation of any license held by the licensee.] Post-suspension hearing and trial.

(1) At the post-suspension hearing prescribed by subdivision (b), continued suspension of a license must be ordered if the Department is found to have alleged facts, if true, sufficient to establish a violation of subdivision (a) and the Department establishes by a preponderance of the evidence that continued licensure poses a risk to public safety or the Department's ability to perform enforcement. Suspension ordered pursuant to this subdivision must be continued until a final determination is issued pursuant to subdivision (c)(2).

(2) Following the post-suspension hearing prescribed by subdivision (b), a trial will be held to adjudicate all violations alleged in the summons as well as any continued suspension or revocation requested by the Department. At such trial, the Department must prove by a preponderance of the evidence that the licensee's continued licensure poses a risk to safety or the Department's ability to perform enforcement. Such trial must commence within 45 days of the decision rendered in the post-suspension hearing.

(d) As used in this section, the following terms shall be defined as follows:

(1) "Assault" shall mean to intentionally or recklessly cause physical injury to another person.

(2) "Menace" shall mean to intentionally place another person in reasonable fear of physical injury.

(3) "Unlawfully imprison" shall mean to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his or her liberty by moving him or her from one place to another, or by confining him or her either in the place where the restriction commences or in a place to which he or she has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by physical force, intimidation or deception.

(4) "Harass" shall mean to intentionally and repeatedly harass another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury.

(5) "Person" shall have the same definition as found in Section 20-102 of Title 20 of the New York City Administrative Code.

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 Rule Prohibiting Injurious Conduct by Licensees

REFERENCE NUMBER: 2019 RG 068

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: June 29, 2022

**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: Amendment of Rule Prohibiting Injurious Conduct by Licensees

REFERENCE NUMBER: DCA(DCWP)-99

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

June 29, 2022
Date