



**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing rules to allow the public to petition the Department for creating, amending or deleting rules promulgated by the Department.

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on February 22, 2024. The hearing will be conducted by video conference accessible via internet or telephone.

- **Internet.** To participate in the public hearing, please register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m90fdb5943d57106cedb45cff48540e27>
If prompted to provide an event number or password, please enter the following:
Event number: **2347 771 3678**
Password: Health (432584 from phones and video systems)
- **Phone:** For access, dial: **(646) 992-2010, (408) 418-9388**, then please enter the following:
Access code: **234 777 13678**
Password: Health (432584 from phones and video systems)

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 directly to the Department: resolutioncomments@health.nyc.gov
- **Mail:** You can mail written comments to the Department:
New York City Department of Health and Mental Hygiene
Office of the General Counsel
Gotham Center, 42-09 28th Street, 14th Floor, CN 30
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the Department at 347-396-6087.
- **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 Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 10AM on February 22, 2024. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on February 22, 2024.

What if I need assistance to participate in the hearing? You must tell the Department’s Office of General Counsel if you need a reasonable accommodation of a disability at the hearing, including whether you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by February 8, 2024.

Can I review the comments made regarding the proposed rules? You may review the online comments made on the proposed rules at <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time after the hearing by the Department’s Office of General Counsel.

What authorizes the Department to make this rule? Section 389(b) of the New York City Charter (“Charter”) provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.” Section 1043(a) of the Charter similarly provides that each “agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.” Section 1043(g) of the Charter allows for any person to petition an agency to consider the adoption of any rule. These proposed rules were not included in the Department’s 2023 regulatory agenda as they were not contemplated at the time of the publication of such agenda.

Where can I find the Department’s rules and the New York City Health Code? The Department’s rules and the New York City Health Code (“Health Code”) are located in Title 24 of the Rules of the City of New York.

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

Statement of Basis and Purpose of Proposed Rule

In accordance with Charter § 1043(g), any person may petition an agency to consider the adoption of any rule and each agency is to prescribe by rule the procedure for submission, consideration and disposition of such petitions. This proposed Chapter 37 provides procedures for how the public may petition the Department to amend, adopt or delete a rule promulgated by this Department.

Statutory Authority

These rules are promulgated pursuant to Charter §1043(g).

The proposed rules are as follows.
New material is underlined.

RESOLVED, that Title 24 of the rules of the city of New York is amended by adding a new Chapter 37 to read as follows:

Chapter 37 **Petitioning the Department to Commence Rulemaking**

§ 37.01 **Definitions.**

- (a) Department means the New York City Department of Health and Mental Hygiene.
- (b) Petition means a request or application by a member of the public for the Department to create, amend or repeal a rule promulgated by the Department.
- (c) Petitioner means the person who submits a petition.
- (d) Rule shall have the meaning set forth in § 1041(5) of the New York City Charter (“Charter”) and, for the purposes of this Chapter, means only those provisions of law contained in, or to be

contained in, Title 24 of the Rules of the City of New York with numerical Chapter headings and also known as Commissioner of Health Regulations (“Commissioner Regulations”). For the purposes of this Chapter, rule does not include any provision of the New York City Health Code.

§ 37.03 **Scope.**

This Chapter governs the procedures by which the public may petition the Department to commence rulemaking of Commissioner Regulations pursuant to § 1043(g) of the Charter.

§ 37.05 **Procedures for Submitting Petitions; Responses to Petitions.**

- (a) Any person may petition the Department to consider the adoption, amendment or repeal of a rule. The petition must be in writing and must contain the following information:
 - (1) The rule to be considered, including proposed language for adoption;
 - (2) A statement as to the purpose of the rule, amendment or repeal and the Department's authority to promulgate the rule;
 - (3) Petitioner's argument(s) in support of adoption of the rule, amendment or repeal;
 - (4) The period of time the rule should be in effect, if applicable;
 - (5) Whether the person submitting the petition represents another individual or an organization;
 - (6) The name, address and telephone number of the petitioner or his or her authorized representative.
 - (7) The signature of petitioner or their representative.
- (b) Illegible petitions will not be accepted.
- (c) All petitions must be delivered to the office of the Secretary to the Department by mail, courier, facsimile, electronic mail or online.
- (d) The petitioner must promptly communicate any changes in the information required by this section in writing to the office of the Secretary to the Department.
- (e) Upon receipt of a petition submitted in the proper form, the Secretary to the Department will stamp the petition with the date it was received and assign the petition a number and a date-stamped receipt with the petition number shall be sent to the petitioner. The Secretary will forward the petition to the Commissioner and appropriate staff of the Department for their review.
- (f) Within sixty (60) days from the date the petition is properly received by the Secretary to the Department, the Commissioner will either deny such petition in a written statement to the petitioner containing the reasons for denial, or state in writing to the petitioner the intention to grant the petition and to initiate rulemaking on the subject matter by a specified date. In all cases where the Commissioner has granted a petition to initiate rulemaking, the Department is not bound by any specific language proposed by the petitioner.
- (g) The Commissioner's decision to grant or deny a petition will be a final decision which is not subject to judicial review pursuant to § 1043(g) of the Charter.

**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: Procedures for Submission of Rulemaking Petitions

REFERENCE NUMBER: DOHMH-138

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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

January 9, 2024
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: Procedures for Submission of Rulemaking Petitions

REFERENCE NUMBER: 2023 RG 100

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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
Senior Counsel

Date: January 8, 2024