



## 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 Department of Health and Mental Hygiene (the Department) is proposing the repeal of Chapter 11 to Title 24 of the Rules of the City of New York (Conservation of Water). This rule orders businesses regulated by the Department to serve water when requested only and to immediately repair leaks. The rules are being repealed because they are not necessary and they discourage the consumption of water, a healthy beverage. This Chapter was identified as one that should be repealed as part of a comprehensive rules review initiative undertaken by the NYC Mayor's Office of Operations.

**When and where is the hearing?** The Department has determined that there is no public purpose to holding a hearing.

**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 comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov).
- **Mail.** You can mail comments to:

New York City Department of Health and Mental Hygiene  
Gotham Center  
42-09 28<sup>th</sup> Street, CN 31  
Long Island City, NY 11101-4132

- **Fax.** You can fax comments to the Department at 347-396-6087.

**Is there a deadline to submit comments?** Written comments must be received on or before 5:00 p.m. on October 20, 2017.

**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, copies of all comments submitted online and all written comments concerning the proposed rule will be available to the public at the Department's Office of General Counsel in Long Island City.

**What authorizes the Department to make this rule?** Sections 556 and 1043 of the City Charter 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 it published the agenda.

**Where can I find the Department's rules?** The Department's rules are in title 24 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 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**

Chapter 11 of Title 24 of the New York City Rules applies to food service establishments and other businesses that operate pursuant to licenses and permits issued by the Department. To conserve water, it prohibits these businesses from serving water, unless requested by a customer, and commands that they immediately repair leaks, drips, seepages and other losses of water. The chapter establishes a penalty of \$500 for a violation of its rules and provides that repeated wastes of water can result in the business being closed.

Chapter 11 is not actively enforced by the Department. It does not issue violations to businesses for having leaky sinks, or seek to determine whether water it observes flowing “is in actual and immediate use in the conduct of the permittee’s business....” Nor is Chapter 11 needed. Pursuant to federal and state law, fixtures now used must meet certain flow requirements.<sup>1</sup> Businesses pay for water and, thus, have a financial interest in fixing dripping and linking faucets and toilets. Larger leaks can be addressed by the City’s Department of Environmental Protection pursuant to Administrative Code section 24-316. In times of drought, the City has other rules that limit consumption and the Commissioner or Board of Health could through their nuisance authorities direct in such times that leaks and other seepages be immediately repaired and that restaurants stop freely serving water.

Absent such conditions, water should be readily served. The Department encourages New Yorkers to consume tap water as a healthier drinking option.<sup>2</sup> To the extent that Chapter 11 prohibits businesses from offering water unless specifically requested, it is inconsistent with this encouragement. Studies suggest that making healthier beverages, like water, more convenient increases their selection.<sup>3 4 5</sup> Freely providing water may thus lead to it being chosen over less healthy choices.

Working with the City’s rulemaking agencies, the Law Department, and OMB, the Office of Operations conducted a retrospective rules review of the City’s existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. Chapter 11 was identified as a chapter of rules that should be repealed through this initiative.

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<sup>1</sup> ECL section 15-0314 and 10 CRF Part 430.

<sup>2</sup> [www1.nyc.gov/site/doh/health/health-topics/sugary-drinks.page](http://www1.nyc.gov/site/doh/health/health-topics/sugary-drinks.page).

<sup>3</sup> Thorndike AN, Riis J, Sonnenberg LM, Levy ED. Traffic-light labels and choice architecture: promoting healthy food choices. *AJPM* 2014; 46(2):143-9.

<sup>4</sup> Thorndike AN, Sonnenberg L, Riis J, Barraclough S, Levy DE. A 2-phase labeling and choice architecture intervention to improve healthy food and beverage choices. *AJPH* 2012; 102(3): 527-33.

<sup>5</sup> Eibel B, Mijanovich T, Abrams C, Dunn L, Nonas C, Cappola K, Onufrak S, Park S. A water availability intervention in the New York City public schools: influence on youths’ water and milk behaviors. *AJPH* 2015; 105(2): 365-72.

The Department's authority for this repeal is found in section 1043 of the New York City Charter. Because the Department is not required to provide waivers under the CAAA, there is no reason to have public testimony on whether this rule should be repealed.

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.

Chapter 11 in Title 24 of the Rules of the City of New York, relating to the conservation of water, is hereby repealed.

**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: Repeal of Water Use Requirements (Title 24, Chapter 11)**

**REFERENCE NUMBER: DOHMH-80**

**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

September 7, 2017  
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: Repeal of Water Use Requirements (Title 24, Chapter 11)**

**REFERENCE NUMBER: 2017 RG 052**

**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  
Acting Corporation Counsel

Date: September 6, 2017