



**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 (the “Department”) is proposing to amend Article 131 of the New York City Health Code in the following ways: amend section 131.07 to conform to the minimum temperature requirements of 27-2029 of the New York City Administrative Code, specify the authority responsible for issuing violations and orders related to section 131.07, and eliminate the opportunity for appeal provided in section 131.19 for cases when the Commissioner declines a request to modify provisions of Article 131.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 11:30 a.m. to 1:30 p.m. on Thursday, November 14, 2024. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL:
<https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m9bc11adbf5e11f8d92e6a6a1cc0e200>

If prompted to provide an event number or password, please enter the following:
Webinar number: **2331 017 5219**, Password: **5jEpEhkZB77** (55373459 from phones)

- **Phone:** For access, dial: **(646) 992-2010** or **(408) 418-9388**; then please enter the following access code: **233 101 75219**.

How do I comment on the proposed amendments? Anyone can comment on the proposed amendments by:

- **Website.** You may submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You may email comments to resolutioncomments@health.nyc.gov.
- **Mail.** You may mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 30
Long Island City, NY 11101-4132
- **Fax.** You may fax comments to Department at 347-396-6087.
- **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 Svetlana Burdeynik at 347-396-6078 /6116. You can also sign up in the hearing before the hearing begins on November 14, 2024. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? Written comments must be received on or before November 14, 2024, at 5:00 pm.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address 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 October 31, 2024.

Can I review the comments made on the proposed amendment? You can review the comments made online on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and public testimonials received by the Department will be made available to the public within a reasonable period of time.

What authorizes the Department to make this amendment? Section 389(b) of the New York City 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 27-2029 of the New York City Administrative Code sets the minimum temperature to be furnished in dwellings where centrally-supplied heat is required to be provided.

Where can I find the Department rules and the Health Code? The Department’s rules and the 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

Local Law 86 of 2017 amended paragraph 2 of subdivision a of § 27-2029 of the New York City Administrative Code to mandate that dwellings in which centrally-supplied heat is required maintain a minimum temperature of 62 degrees Fahrenheit between the hours of 10 p.m. and 6 a.m. during the period of October 1st to May 31st regardless of the outside temperature. The Department is proposing to update section 131.07 of the New York City Health Code (“Health Code”) to align with the current overnight temperature requirement of section 27-2029.

The Department proposes an additional amendment to section 131.07 to clarify that enforcement of complaints about inadequate heat in multiple dwellings is being handled by the Department of Housing Preservation and Development (HPD).

Finally, the Department proposes to eliminate the appeal process in section 131.19 for cases when the Commissioner declines a request to modify provisions of Article 131 as they apply to a specific property. Such an appeal is not required by law and is an inefficient use of agency resources, and this proposal would conform the modification provision in 131.19 to modification provisions in other articles of the Health Code.

Statutory Authority

The authority for these rules is found in the New York City Charter §§ 556 and 1043 of the New York City Charter and § 27-2029 of the New York City Administrative Code.

The proposed amendment is as follows:

“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.

Deleted material is in [brackets]; new text is underlined; ellipses (***) indicate unamended text.

Section 1. RESOLVED, that paragraph (1) of subdivision (c) of section 131.07 of Article 131 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York is amended, and a new subdivision (e) is added, to read as follows:

(c) Unless otherwise provided by written contract or lease, or as provided by applicable law, including this Code, the minimum temperatures required by subdivision (a) of this section shall be maintained as follows:

(1) [In a dwelling, during the months between October first and May thirty-first between the hours of six a.m. and ten p.m.: a temperature of at least 68 degrees F when the outside temperature falls below 55 degrees F (12.78 degrees C) and during the hours between 10 p.m. and 6 a.m. a temperature of at least 55 degrees F (12.78 degrees C) whenever the outside temperature falls below 40 degrees F (4.44 degrees C)]A minimum temperature shall be maintained as required in subdivision a of § 27-2029 of the Administrative Code in any dwelling covered by such section; and

(e) In multiple dwellings, violations of and orders requiring compliance with this section may be issued by the Department, or by the Department of Housing Preservation and Development, or any successor agency.

Section 2. RESOLVED, that section 131.19 of Article 131 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York is amended to read as follows:

§131.19 Modification by Commissioner. When the strict application of any provision of this article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this article and upon such condition as, in [his or her] their opinion are necessary to protect life and health. [The denial by the Commissioner of a request for modification may be appealed to the Board in the manner provided pursuant to 24 RCNY Health Code § 5.21.]

**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 Minimum Temperature Requirements for Dwellings with Centrally Supplied Heat

REFERENCE NUMBER: DOHMH-144

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

June 6, 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: Amendment of Minimum Temperature Requirements for Dwellings with Centrally Supplied Heat

REFERENCE NUMBER: 2024 RG 050

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: June 4, 2024