



## Legislation Text

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**File #:** Int 0091-2010, **Version:** A

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### Int. No. 91-A

By Council Members Oddo, The Speaker (Council Member Quinn), Ignizio, Koo, Ulrich, Halloran, Fidler, James, Nelson, Rivera, Reyna, Vacca, Vallone, Arroyo, Gennaro, Lappin, Williams, Recchia Jr., Rodriguez, Chin, Greenfield, Jackson, Lander and Rose. Passed Under a Message of Necessity from the Mayor.

A Local Law to amend the New York City charter, in relation to requiring that all proposed rules be reviewed by the law department and the mayor's office of operations.

Be it enacted by the Council as follows:

Section 1. Subdivisions d, e, f, g and h of section 1043 of the New York city charter are relettered subdivisions e, f, g, h and i, respectively, and a new subdivision d is added, to read as follows:

d. 1. The law department and the mayor's office of operations shall review each proposed rule prior to publication of such proposed rule in the City Record. At the conclusion of its review, the law department shall state whether each 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. As part of its review, the mayor's office of operations shall analyze each proposed rule and state: (a) whether such rule is understandable and written in plain language; (b) how the drafting process of the rule, to the extent practicable and appropriate, included analysis sufficient to minimize the compliance costs for the discrete regulated community or communities, to the extent one exists, consistent with achieving the stated purpose of the rule; and (c) why, in the event such rule involves the establishment of a violation, modification of a violation or modification of the penalties associated with a violation without also including a cure period, or other opportunity for ameliorative action by the party or parties subject to enforcement, such cure period or

other opportunity for ameliorative action was not included. Provided, however, that if the proposed rule solely establishes or modifies the amount of a monetary penalty or penalties then the law department statement required by this paragraph shall not be required and the analysis of the office of operations may be limited to the reason or reasons a cure period or other opportunity for ameliorative action was not included.

2. After completing the review as set forth in paragraph one of this subdivision, the law department and the mayor's office of operations shall certify that they have performed such review, and shall promptly transmit a copy of such certification, including the analysis performed by the mayor's office of operations, to the relevant agency. Such agency shall annex such certification and analysis to the full text of the proposed rule as published in the City Record. Such certification and analysis shall also be made available to the public on the city's website and transmitted to the speaker of the city council at the time of publication. In no event shall a proposed rule be submitted for initial publication in the City Record unless the law department and the mayor's office of operations have issued such certification and analysis.

3. This subdivision shall not be construed to create a private right of action to enforce its provisions. Inadvertent failure to comply with this subdivision shall not result in the invalidation of any rule.

4. This subdivision shall not apply to rules that: (i) are promulgated pursuant to the emergency procedures set forth in subdivision i of this section; (ii) are solely concerned with the establishment or modification of the amount of a monetary penalty or penalties, and the underlying violation or a modification of the penalties associated with such violation has previously been analyzed in accordance with paragraph one of this subdivision; (iii) are solely concerned with the establishment or modification of the amount of a fee or fees or (iv) implement particular mandates or standards set forth in newly enacted federal, state, or local laws, regulations or other requirements with only minor, if any, exercise of agency discretion in interpreting such mandates or standards. If an analysis of a proposed rule is not performed pursuant to the exceptions noted in this paragraph, such fact shall be noted and the note annexed to the full text of the proposed rule as published in the City Record.

§2. Paragraph 1 of subdivision b of section 1043 of the New York city charter, as added by vote of the electors at the general election held on November 7, 1988, is amended to read as follows:

1. Each agency shall publish the full text of the proposed rule in the City Record at least thirty days prior to the date set for a public hearing to be held pursuant to the requirements of subdivision [d]e of this section or the final date for receipt of written comments, whichever is earlier. A proposed rule amending an existing rule shall contain in brackets any part to be deleted and shall have underlined or italicized any new part to be added. A proposed rule repealing an existing rule shall contain in brackets the rule to be repealed, or if the full text of the rule was published in the Compilation required to be published pursuant to section one thousand forty-five, shall give the citation of the rule to be repealed and a summary of its contents. Such published notice shall include a draft statement of the basis and purpose of the proposed rule, the statutory authority, including the particular sections and subdivisions upon which the action is based, the time and place of public hearing, if any, to be held or the reason that a public hearing will not be held, and the final date for receipt of written comments. If the proposed rule was not included in the regulatory agenda, such notice shall also include the reason the rule was not anticipated, as required in subdivision c of section one thousand forty-two of this chapter.

§3. Subdivision e of section 1043 of the New York city charter, as amended by local law number 42 for the year 1989, and as relettered by this local law, is amended to read as follows:

e. Opportunity for and consideration of agency and public comment. The agency shall provide the public an opportunity to comment on the proposed rule (i) through outreach to the discrete regulated community or communities, if one exists, provided that this clause shall not be construed to create a private right of action to enforce this requirement; [(i)](ii) through submission of written data, views, or arguments, and [(ii)](iii) at a public hearing unless it is determined by the agency in writing, which shall be published in the notice of proposed rulemaking in the City Record, that such a public hearing on a proposed rule would serve no public purpose. All written comments and a summary of oral comments concerning a proposed rule received

from the public or any agency shall be placed in a public record and be made readily available to the public as soon as practicable and in any event within a reasonable time, not to be delayed because of the continued pendency of consideration of the proposed rule. After consideration of the relevant comments presented, the agency may adopt a final rule pursuant to subdivision [e]f of this section. Such final rule may include revisions of the proposed rule, and such adoption of revisions based on the consideration of relevant agency or public comments shall not require further notice and comment pursuant to this section.

§4. This local law shall take effect 90 days after its enactment into law.

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9/15/10