

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection (DEP) is proposing to amend its rules to clarify that the (E) designation process is applicable for any review or determination pursuant to the City Environmental Quality Review (CEQR) as set forth in 15 RCNY § 24-02.

When and where is the hearing? DEP will hold a public hearing on the proposed rule online. The public hearing will take place at 11 am on February 7, 2024. To participate in the public hearing, please follow these instructions:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 271 603 380 166

Passcode: Nazzx4

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 347-921-5612,,313153834#](#)

Phone Conference ID: 313 153 834#

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

- **Website.** You can submit comments to the DEP through the NYC rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the DEP Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the DEP Bureau of Legal Affairs, at 718-595-6543.
- **By 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 718-

595-6531. You can also sign up in the hearing room before the hearing begins on February 7, 2024. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by February 7, 2024.

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 718-595-6531. Advance notice is required to allow sufficient time to arrange the accommodation. Please tell us by January 31, 2024.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. Copies of the written comments will be available to the public at the Bureau of Legal Affairs.

What authorizes the DEP to make this rule? Section 15(e), 1403 and 1404 of the City Charter and § 11-15 of the Zoning Resolution of the City of New York authorize DEP to make this proposed rule. This proposed rule was not included in DEP's regulatory agenda for this fiscal year.

Where can I find DEP's rules? DEP's rules are in Title 15 of the Rules of the City of New York.

What rules govern the rulemaking process? DEP must meet the requirements of section 1043(c) of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

New York City, like other municipalities, is facing a crippling housing crisis which has real and direct human consequences, including high rents, displacement pressure, segregation, gentrification, poor housing quality, tenant harassment, homelessness, and other effects of a market where residents have very limited options because of housing scarcity. Almost every hardship of the City housing market can be traced back to an acute shortage of housing. The housing shortage drives up prices for everyone.

Among the factors contributing to the City's housing crisis are the time and resources required to complete environmental reviews that are ultimately unnecessary because they consistently result in determinations that the proposed developments have no potential for significant adverse environmental impacts. Over the past ten years, an average of 350 housing, commercial and infrastructure projects per year were subject to review through the CEQR process.

All 350 went through the first process—the production of an Environmental Assessment Statement (EAS). Of those, approximately twelve projects each year required the more involved process of preparation of an Environmental Impact Statement (EIS). Most housing projects subject to land use approvals or public financing must conduct an Environmental Assessment Statement (EAS) that typically takes six to eight months to complete and can cost hundreds of thousands of dollars. Yet, only a few of these smaller projects are found to have a potential for significant impacts on the environment. To address this, the City agencies that develop or approve housing are simultaneously each adopting a new Type II rule to exempt housing developments up to a certain size from further environmental review. Exempting these projects from review under SEQRA and CEQR will decrease their overall cost and shorten the time typically needed to complete the approval process, resulting in delivery of new homes faster to residents that need housing today.

The State Environmental Quality Review Act (SEQRA) requires state and local agencies to consider the potential environmental impacts of actions that the agency proposes to approve, fund, or undertake. NYS Environmental Conservation Law Article 8. New York State regulations implementing SEQRA divide state and local actions into three types: Type I, Type II and Unlisted Actions. Type II actions are agency actions that will not have a significant impact on the environment or are otherwise not subject to review and are therefore exempted from further environmental review. 6 NYCRR § 627.5. The State regulations list 46 specific actions as exempt Type II actions and also authorize all state and local agencies to adopt their own lists of Type II actions to supplement the State list. 6 NYCRR § 617.5(b) and (c). To include an action on an agency Type II list, the agency must establish that its action will not have a significant adverse impact on the environment under the criteria established by the State and that its action is not a Type I action as defined by the State regulations. 6 NYCRR § 617.5(b)(1)-(2). Every agency is authorized to adopt its own Type II list.

The City Planning Commission has proposed to amend 62 RCNY § 5-05 to add new residential housing developments up to a certain size, as described below, to its list of Type II actions, exempting those developments from the requirements of SEQRA and the City's procedures for implementing SEQRA, known as the City Environmental Quality Review procedures or CEQR.

To determine the appropriate size of housing developments to be exempted and the appropriate conditions those developments would need to satisfy in order to ensure that they will not have a significant impact on the environment, staff from multiple City agencies reviewed projects with completed applications between January 2013 and May 2023 before the four City agencies and offices that approve, fund or undertake new housing and that propose to adopt this new Type II rule: the City Planning Commission, the Department of Housing Preservation and Development, the Board of Standards and Appeals, and the Office of the Mayor, acting through the Office of Environmental Coordination. In total, the agencies reviewed more than 1,000 projects, including projects that had received negative declarations, conditional negative declarations, and positive declarations under CEQR. That universe was then narrowed to exclude projects that did

not facilitate new housing and housing projects proposing greater than 1000 units, which would exceed the State threshold for Type I actions and therefore be ineligible for Type II listing.

Based on this analysis of past environmental reviews, the agencies concluded that housing developments of up to 250 new units in higher and medium density districts and up to 175 new units in lower density districts that meet certain other density-related and site-specific criteria do not result in significant adverse impacts. As relevant to this proposed rule, the site-specific criteria include employing the City's existing (E) designation process to address any potential site-specific hazardous materials, air quality, or noise issues, excluding sites adjacent to arterial highways or in certain coastal flood areas, and avoiding developments becoming a source of air quality impacts by requiring that they forego use of fossil fuels.

(E) Designation rules are currently found in Chapter 24 of Title 15 of the Rules of the City of New York ("RCNY") within the DEP section of the City's rules. In order to clarify that the (E) designation process applies to any review or determination pursuant to CEQR and to conform with the proposed Type II rule amendment described above, DEP proposes an amendment to 15 RCNY § 24-02 as follows.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 24-02 of Title 15 of Chapter 24 of the Rules of the City of New York is amended to read as follows:

§ 24-02 Applicability. This chapter shall apply in connection with [the environmental] any review or determination pursuant to City Environmental Quality Review (CEQR) of any Zoning Amendment or Zoning Action subject to review and approval pursuant to §§ 197-c and 197-d of the New York City Charter where one or more tax lots in the area subject to the Zoning Amendment or Zoning Action have been identified by the Lead Agency as likely to be developed as a direct consequence of the action.

**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 Rules Relating to the (E) Designation Process

REFERENCE NUMBER: DEP-101

RULEMAKING AGENCY: Department of Environmental 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) 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

December 22, 2023
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 Rules Relating to the (E) Designation Process

REFERENCE NUMBER: 2023 RG 105

RULEMAKING AGENCY: Department of Environmental 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
Senior Counsel

Date: December 22, 2023