

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on Proposed Rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

Date / Time: October 16, 2013 at 3:30 p.m.

Location: ECB
66 John Street
10th Floor, Conference Room
New York, N.Y. 10038

Contact: James Macron
Counsel to the Board
ECB
66 John Street
10th Floor
New York, N.Y. 10038
(212) 436-0594

Proposed Rule Amendment

In accordance with the authority vested in the Environmental Control Board (ECB) by Sections 1049-a and 1043 of the New York City Charter ("Charter"), ECB proposes to amend Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). These rules create penalties for offenses that are heard and decided by ECB pursuant to Sections 1048 and 1049-a of the Charter, Section 7-02 of Chapter 7 of Title 24 of the RCNY, and Chapter 3 of Title 48 of the RCNY.

This rule was not included in the Environmental Control Board's regulatory agenda because it was not anticipated at the time the agenda was created.

Instructions

- Prior to the hearing, you may submit written comments about the proposed rule amendment to James Macron at the address above, or electronically through NYC RULES at www.nyc.gov/nycrules, by October 16, 2013. If you wish to testify, please notify James Macron by October 16, 2013.
- To request a sign language interpreter or other accommodation for a disability, please contact James Macron by October 9, 2013.
- Written comments and a summary of oral comments received at the hearing will be available for thirty days after the hearing by writing to: James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038.

Statement of Basis and Purpose

In accordance with the authority vested in the Environmental Control Board (ECB) by Sections 1049-a and 1043 of the New York City Charter, ECB is amending two (2) penalty schedules--the Food Vendor Administrative Code Penalty Schedule ("Food Vendor Penalty Schedule") found in

Section 3-107 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (“Food Vendor Penalty Schedule”) and the Health Code and Miscellaneous Food Vendor Violations Penalty Schedule (“Health Penalty Schedule”) found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York.

The Department of Health and Mental Hygiene (DOHMH) extensively amended Title 24 RCNY Chapter 6 (Mobile Food Vending), effective April 11, 2013. Chapter 6 expands on general provisions in Health Code Articles 81 and 89. This has resulted in the need for changes in the current ECB Penalty Schedules including the addition of new penalties for Chapter 6 violations.

The most significant changes to Chapter 6 include a new §6-03 (Classification scheme for mobile food vending units). This section classifies units from “A” to “E” according to the kinds of operations (processing or non-processing), the kinds of food served (potentially hazardous requiring temperature control for safety or non-potentially hazardous) and whether or not foods are pre-packaged. The classifications determine the kind of equipment that will be required by the mobile food vendors. Provisions in §6-04 specify materials, construction and design and also require equipment to be properly maintained during use. These violations will be identified in the field while units are in operation and notices of violation will be issued.

Health Code and Chapter 6 penalties to be repealed or amended

The following penalties in §3-110 are being repealed or amended:

- Health Code §81.19 (b) – requires light bulbs to be shielded; replaced by 24 RCNY §6-04 (c), which requires adequate lighting as well as shielded bulbs
- Health Code §81.21 – relating to handwash sinks, and Health Code §89.23 (f), which requires handwash sinks to be provided in accordance with Chapter 6, replaced by specific violations in 24 RCNY §6-04 (d), (f) and (i).
- Health Code §81.31 – as recently amended now relates to outdoor cooking at establishments other than mobile food vending units and is being repealed.
- Health Code §89.05 (d) – not needed; this section authorizes the DOHMH to deny permits to ice cream trucks not equipped with beepers and signage; no penalty needed, since without equipment, permits are not issued
- Health Code §89.23(d) – relates to equipment placement in a mobile food vending unit and is not needed as an operational violation, since improperly-placed equipment would preclude issuance of a permit

Deleted material is in [brackets].
New text is underlined.

Section 1. The Food Vendor Administrative Code Penalty Schedule found in Section 3-107 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to add two new charges after the entry in that penalty schedule for Admin. Code 17-316, “Transfer of food to unlicensed food vendor for resale,” to read as follows:

Section/Rule	Description	Penalty	Default
<u>24 RCNY 6-04(b)(3)</u>	<u>Permit decal not visible and/or obstructed.</u>	<u>MOS</u>	<u>MOS</u>
<u>24 RCNY 6-06(a)</u>	<u>Unit exceeds length or width</u>	<u>MOS</u>	<u>MOS</u>

	<u>restrictions or longer side of unit not placed parallel to curb</u>		
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Section 2. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to delete the following entries:

Section/Rule	Description	Penalty	Default
[NYC Health Code 81.21]	[Handwashing facilities not provided]	[\$200]	[\$400]
[NYC Health Code 81.19 (b)]	[Shatter proof or shielded light bulb not provided when required]	[\$200]	[\$400]
[NYC Health Code 81.19(c)]	[Inadequate ventilation]	[\$200]	[\$400]
[NYC Health Code 89.23(f)]	[Failure to provide hand washing facilities]	[\$550]	[\$1,100]
[NYC Health Code 81.31]	[Equipment not clean; improperly maintained]	[\$300]	[\$600]
[NYC Health Code 89.05(d)]	[Failure to equip ice cream truck with warning beepers and signage arms.]	[\$550]	[\$1,100]
[NYC Health Code 89.23 (d)]	[Failure to design unit to allow for proper cleaning]	[\$385]	[\$770]
[24 RCNY 6-01(l)]	[Non-processing unit being operated without proper food processing permit]	[\$1000]	[\$1000]

Section 3. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to add 15 new charges after the entry in that schedule for NYC Health Code 89.29(g), "Removal or covering of cessation signs or seals" to read as follows:

Section/Rule	Description	Penalty	Default
<u>24 RCNY 6-03(f)</u>	<u>Vending non-food items</u>	<u>\$500</u>	<u>\$1000</u>
<u>24 RCNY 6-04</u>	<u>Using mobile unit for sleeping or residential purposes</u>	<u>\$200</u>	<u>\$400</u>
<u>24 RCNY 6-04(a)</u>	<u>Food contact surfaces not maintained in good repair, or not clean</u>	<u>\$275</u>	<u>\$550</u>
<u>24 RCNY 6-04(b)</u>	<u>Non-food contact surfaces not</u>	<u>\$200</u>	<u>\$400</u>

	<u>maintained in good repair or not clean</u>		
<u>24 RCNY 6-04(b)(4)</u>	<u>No partition or a partition without a self-closing door installed in truck</u>	<u>\$275</u>	<u>\$550</u>
<u>24 RCNY 6-04(c)</u>	<u>Insufficient lighting or unshielded light bulbs</u>	<u>\$200</u>	<u>\$400</u>
<u>24 RCNY 6-04(d)</u>	<u>Insufficient ventilation</u>	<u>\$200</u>	<u>\$400</u>
<u>24 RCNY 6-04(f)</u>	<u>Insufficient or no potable water</u>	<u>\$500</u>	<u>\$1000</u>
<u>24 RCNY 6-04(i)(1)(A)</u>	<u>Handwash sink inaccessible or unobstructed</u>	<u>\$500</u>	<u>\$1000</u>
<u>24 RCNY 6-04(i)(1)(B)</u>	<u>Insufficient or no potable running water for handwash sink.</u>	<u>\$500</u>	<u>\$1000</u>
<u>24 RCNY 6-04(i)(1)(E)</u>	<u>No soap, paper towel/other hand drying device</u>	<u>\$500</u>	<u>\$1000</u>
<u>24 RCNY 6-04(i)(1)(F)</u>	<u>No "wash hands" sign posted.</u>	<u>\$200</u>	<u>\$400</u>
<u>24 RCNY 6-04(l)(1)</u>	<u>No thermometers in cold or hot storage units</u>	<u>\$200</u>	<u>\$400</u>
<u>24 RCNY 6-04(p)</u>	<u>Unit unsecured when left unattended more than 30 minutes.</u>	<u>\$500</u>	<u>\$1000</u>
<u>24 RCNY 6-11(g)</u>	<u>Commissary contract not kept on unit or made available for inspection</u>	<u>\$200</u>	<u>\$400</u>

**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 DOHMH Penalty Schedule (Food Vendors)

REFERENCE NUMBER: 2013 RG 064

RULEMAKING AGENCY: Environmental Control Board

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: August 7, 2013

**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: Food Vendor Penalty Schedules

REFERENCE NUMBER: OATH-ECB-34

RULEMAKING AGENCY: Office of Administrative Trials and Hearings /
Environmental Control Board

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) If it establishes or modifies a violation or penalty, provides a cure period, or if it does not provide a cure period, such cure period is not included because a cure period would run counter to the proposed rule's goal of preventing risks to public health, safety, or the environment.

/s/ Amy Bishop
Mayor's Office of Operations

August 7, 2013
Date