

ENVIRONMENTAL CONTROL BOARD

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) by Sections 1049-a and 1043 of the New York City Charter (“Charter”), and in accordance with 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, the Environmental Control Board hereby promulgates the following rule that amends Section 3-107 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (“Food Vendor Administrative Code Penalty Schedule”) and Section 3-109 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (“General Vendor Penalty Schedule”). 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 Rules of the City of New York, and Chapter 3 of Title 48 of the Rules of the City of New York. The rule was published in The City Record on July 3, 2013 and a Public Hearing was held on August 6, 2013.

Statement of Basis and Purpose of Final Rule

The Environmental Control Board (ECB) held a Public Hearing on August 6, 2013 regarding amendments to its Food Vendor Administrative Code Penalty Schedule found in Section 3-107 of Subchapter G of Chapter 3 Title 48 of the Rules of the City of New York (“RCNY”) and its General Vendor Penalty Schedule found in Section 3-109 of Subchapter G of Chapter 3 of Title 48 of the RCNY. A representative from the Department of Consumer Affairs attended the Public Hearing. Neither written comments nor oral testimony were presented at the August 6, 2013 Public Hearing concerning the Proposed Rule.

The rule amends the Food Vendor Penalty Schedule and the General Vendor Penalty Schedule to include recent changes in laws and rules.

Vending Prohibited Within 20 Feet of Residential Building Exits

On March 18, 2013, Local Law 18 of 2013 was enacted. This local law amended Administrative Code sections 17-315 (d) and 20-465(d) to prohibit vending within twenty (20) feet of exits of buildings that are exclusively residential at street level. This law also deleted paragraph (3) of section 20-465 (q), which made it illegal to vend with ten (10) feet from entrances or exits to buildings that are exclusively residential at the street level.

Vending Prohibited Next to No-Standing Zones at Hospitals and Health Facilities

On March 18, 2013, Local Law 19 of 2013 was enacted. This local law amended Administrative Code sections 17-315 (e) and 20-465 (e), making it illegal to vend next to no-standing zones at hospitals or other health facilities.

Changes to Multiple Offense Schedule

Third, on May 8, 2013 the City Council enacted Int. 434-A, which will become effective 120 days from that date. This local law, Local Law 38 of 2013, will become effective on September 5, 2013 and lowers the maximum penalty that can be charged for vending violations subject to a multiple offense schedule from \$1,000 to \$500. The law also narrows the scope of what is considered a subsequent violation to include only violations of the same section of law issued to the same respondent within two (2) years of the date of offense of the previous notice of violation.

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 revise the headnotes, revise the charges listed below to read as follows:

Multiple Offense Schedule (MOS): 1st Violation \$50 (default \$50); 2nd Violation \$100 (default (\$100); 3rd Violation \$250 (default \$250); 4th and subsequent Violation \$500 [(default \$1000); 5th Violation \$750 (default \$1,000); 6th and subsequent Violation \$1,000 (default \$1,000).] (default \$500).

[A 2nd, 3rd, 4th, 5th, 6th or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an “MOS” penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation (s), and where the previous violation(s) was a violation of any section of law that is subject to an “MOS” penalty as indicated in this Penalty Schedule.]

A 2nd, 3rd, 4th or subsequent violation is a violation:

- By the same respondent
- Of the same section of law listed in this Penalty Schedule as subject to an “MOS”
- With a date of occurrence within two (2) years of the date(s) of occurrence of the previous violation(s).

Asterisk (*): Pursuant to §3-81(b), a late admit fee of \$30.00 will be added to the penalty for this charge for a failure to submit a payment by mail or other remote method, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to the NYC Administrative Code and to the Rules of the City of New York (RCNY).

Section/Rule	Description	Penalty	Default
Admin. Code 17-315(d)	Vending [pushcart or stand] <u>unit</u> against display window or within 20 ft. of entrance of any building or <u>within 20 feet from exits, including service exits, to buildings that are exclusively residential at street level</u>	MOS	MOS
Admin. Code 17-315(e)	<u>Vending in [In] bus stop, sidewalk next to a hospital or health facility no standing zone</u> or <u>within 10 ft. of [drive]driveway, subway, crosswalk, [etc.]</u>	MOS	MOS
24 RCNY [6-01 (m)] 6-07(b)	Green Cart umbrella not opened while vending	MOS	MOS
24 RCNY [6-01 (m)] 6-07(b)	Green Cart umbrella not safely secured or in good condition or repair	MOS	MOS

Section 2. . The General Vendor Penalty Schedule Section 3-109 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to revise the headnotes and charges listed below to read as follows:

Multiple Offense Schedule (MOS): 1st Violation \$50 (default \$50); 2nd Violation \$100 (default \$100); 3rd Violation \$250 (default \$250); 4th and subsequent Violation \$500 [(default \$1000); 5th Violation \$750 (default \$1,000); 6th and subsequent Violation \$1,000 (default \$1,000).] (default \$500).

[A 2nd, 3rd, 4th, 5th, 6th or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an “MOS” penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation (s), and where the previous violation(s) was a violation of any section of law that is subject to an “MOS” penalty as indicated in this Penalty Schedule.]

A 2nd, 3rd, 4th or subsequent violation is a violation:

- By the same respondent
- Of the same section of law listed in this Penalty Schedule as subject to an “MOS”
- With a date of occurrence within two (2) years of the date(s) of occurrence of the previous violation(s).

Asterisk (*): Pursuant to §3-81(b), a late admit fee of \$30.00 will be added to the penalty for this charge for a failure to submit a payment by mail or other remote method, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to the NYC Administrative Code and to the Rules of the City of New York (RCNY).

Section/Rule	Description	Penalty	Default
Admin. Code 20-465(d)	Stand or goods against display window or within 20 ft. of entrance of any building <u>or within 20 feet from exits, including service exits, to buildings that are exclusively residential at street level</u>	MOS	MOS
Admin. Code 20-465(e)	Vending in bus stop, taxi stand, <u>sidewalk next to a hospital or health facility no standing zone,</u> or within 10 ft. of drive/subway/corner	MOS	MOS
Admin. Code 20-465(q)	Vending within 20 ft. of sidewalk cafes; within 5 ft of bus shelters, newsstands, public telephones, disabled access ramps[; within 10 ft. of residential entrance or exit]	MOS	MOS



OATH The Environmental Control Board

A Division of the Office of Administrative Trials and Hearings

ECB Manhattan
66 John St., 10th Floor
New York, NY 10038
Telephone: (212) 560-6270

FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

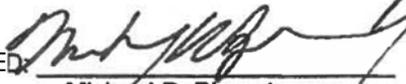
I hereby find, pursuant to Section 1043, subdivision f, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of a Final Environmental Control Board rule that amends the Environmental Control Board's ("ECB") Food Vendor Administrative Code Penalty Schedule and General Vendor Penalty Schedule to include changes in laws and rules that are required by recent legislative enactments. ECB's Food Vendor Administrative Code Penalty Schedule is found in Section 3-107 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York and ECB's General Vendor Penalty Schedule is found in Section 3-109 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York.

This immediate implementation is essential to effectuate changes in vending-related penalties already effective 90 days after the March 18, 2013, enactment of Local Laws 18 and 19 of 2013. Local Law 18 amended New York City Administrative Code sections 17-315(d) and 20-465(d) to prohibit vending within twenty (20) feet of exits that are exclusively residential at street level and deleted paragraph(3) of section 20-465(q), which made it illegal to vend within ten (10) feet from entrances or exits to buildings that are exclusively residential at the street level. Local Law 19 amended New York City Administrative Codes sections 17-315(e) and 20-465(e), making it illegal to vend next to no-standing zones at hospitals.

Local Law 38 of 2013 becomes effective on September 5, 2013, 120 days after its May 8, 2013, enactment. This Local Law lowers the maximum penalty that can be charged for vending violations that are subject to a multiple offense schedule from \$1,000.00 to \$500.00. This law also narrows the scope of what is considered a subsequent violation to include only violations of the same section of law that are issued to the same respondent within two (2) years of the date of offense of the previous notice of violation.

In view of the fact that this Final Rule implementing these legislative changes would not take effect until sometime in the early part of October, 2013, it is important that the changes be implemented upon publication of the Final Rule in The City Record, rather than waiting for the thirty (30) day publication period to elapse.


Suzanne A. Beddoe
Chief Administrative Law Judge, OATH
Chairperson, ECB

APPROVED: 
Michael R. Bloomberg
Mayor

DATE: September 4, 2013