

## **NOTICE OF PUBLIC HEARING**

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

**Date / Time:** May 15, 2012 at 3:30 PM

**Location:** ECB  
66 John Street  
10<sup>th</sup> Floor, Conference Room  
New York, N.Y. 10038

**Contact:** James Macron  
Counsel to the Board  
ECB  
66 John Street  
10<sup>th</sup> Floor  
New York, N.Y. 10038  
(212) 361-1515

### **Proposed Rule Amendment**

Pursuant to 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](http://www.nyc.gov/nycrules), by May 15, 2012. If you wish to testify, please notify James Macron by May 15, 2012.
- To request a sign language interpreter or other accommodation for a disability, please contact James Macron by May 8, 2012.
- 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, 10<sup>th</sup> Floor, New York, N.Y. 10038.

### **Statement of Basis and Purpose**

Pursuant to the authority vested in the Environmental Control Board (ECB) by Sections 1049-a and 1043 of the New York City Charter, ECB is amending 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 (“Penalty Schedule”).

**Section 1**

On January 20, 2012, amended and renumbered provisions of Article 81 of the New York City Health Code went into effect. To maintain consistency and avoid confusion, the Environmental Control Board (ECB) is amending the charges in its penalty schedule to conform to the renumbered code. All descriptions and penalties remain the same.

**Section 2**

Section 2 changes the statutory citation for Health Code Section 113.03(c)(2) or 113.07 to Health Code section 3.11. After review, DOHMH determined that the Health Code sections were duplicative with Part 14, Subpart 14-5.180 of the Public Health Law § 225 of the State of New York. As a result, on January 20, 2012, Health Code 113.03(c)(2) and 113.07 were repealed when Article 81 was renumbered. Health Code 3.11, the new citation, allows the DOHMH to enforce permit requirements of applicable law or regulation.

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

Section 1. 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 revise the following charges:

<b>Section/Rule</b>	<b>Description</b>	<b>Penalty</b>	<b>Default</b>
NYC Health Code [81.07(l)] <u>81.07(j)</u>	Foods prepared or served with bare-hand contact	\$385	\$770
NYC Health Code [81.29(c)] <u>81.21</u>	Hand washing facilities not provided	\$200	\$400
NYC Health Code [81.37(a)] <u>81.27</u>	Cart Utensils, equipment unclean	\$200	\$400
NYC Health Code [81.27(a)] <u>81.27(d)</u>	Wiping cloth used on food contact surfaces not stored in sanitizing solution	\$300	\$600

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 by revising the charge currently listed as “NYC Health Code 113.03(c)(2)) or NYC Health Code 113.07, Vending frozen desserts w/o appropriate permit,” as follows:

<b>Section/Rule</b>	<b>Description</b>	<b>Penalty</b>	<b>Default</b>
NYC Health Code [113.03(c)(2)] or [113.07] <u>3.11</u>	Vending frozen desserts w/o appropriate permit	\$1000	\$2000

**NEW YORK CITY LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-788-1087**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Amendment of Health Code and Miscellaneous Food Vendor  
Violations Penalty Schedule**

**REFERENCE NUMBER: 2012 RG 023**

**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: March 21, 2012

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Health Code and Miscellaneous Food Vendor  
Violations Penalty Schedule**

**REFERENCE NUMBER: OATH/ECB-21**

**RULEMAKING AGENCY: 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) Does not provide a cure period because a cure period would run counter to the proposed rule's goal of preventing risks to public health and worker safety.

/s/ Rachel Squire  
Mayor's Office of Operations

March 21, 2012  
Date