

ENVIRONMENTAL CONTROL BOARD

NOTICE OF OPPORTUNITY TO COMMENT on Proposed Rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board by Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the Charter, that the Environmental Control Board proposes to amend subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, setting forth penalties for offenses adjudicated by the Environmental Control Board. New matter in the following rule is underlined, and deleted material is in brackets. 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.

Written comments regarding the proposed rule may be sent to James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038, on or before December 7, 2010. Members of the public may also submit comments on the rule electronically through NYC RULES at www.nyc.gov/nycrules. A public hearing regarding the proposed rule will be held on December 7, at 5:00 p. m., at ECB, 66 John Street, 10th Floor, Conference Room, New York, N.Y. 10038. Persons seeking to testify are requested to notify James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038, (212) 361-1515 on or before December 7, 2010. Persons who need a sign language interpreter or other accommodation for a disability are asked to notify James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038, (212) 361-1515 by November 30, 2010. Persons interested in receiving written comments and a transcript of oral comments on the proposed rule may request them by writing to: James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038.

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 by adding two new head notes directly following the title of that penalty schedule, "§3-110 Health Code and Misc. Food Vendor Violations Penalty Schedule," to read as follows:

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

For multiple rodent violations issued under NYC Health Code section 151.02(a), Administrative Code section 17-133.1 provides that the minimum civil penalty for violations pertaining to the eradication or elimination of rodents, rodent harborages or other rodent related nuisances shall be not less than \$300. The penalty for each subsequent violation at the same premises and under the same ownership or control, within a two-year period, shall be double the amount of the previous violation. The maximum penalty is \$2000 for a Health Code violation. See Health Code, section 3.11.

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 adding three new charges immediately before the entry in that penalty schedule for NYC Health Code 81.07(a), "Food not free of or protected against contamination," to read as follows:

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

Section/Rule	Description	Penalty	Default
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NYC Health Code <u>3.05</u>	Failing to comply with <u>Department, Board of Health, or Commissioner's Order to abate or remediate nuisance condition(s)</u>	<u>\$1000</u>	<u>\$2000</u>
NYC Health Code <u>3.07</u>	Failing to take reasonable <u>precautions to protect health and safety</u>	<u>\$1000</u>	<u>\$2000</u>
NYC Health Code <u>3.09</u>	Failing to abate or remediate <u>nuisance</u>	<u>\$1000</u>	<u>\$2000</u>

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 by adding eleven new charges immediately after the entry in that penalty schedule for NYC Health Code 139.07(a), "Smoking on Public Transport Facility," to read as follows:

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

Section/Rule	Description	Penalty	Default
NYC Health Code <u>151.02(a)</u>	Failure to eliminate rat infestation shown by active rat signs: one or more live rats, or rat droppings, burrows, runways, tracks, rub marks or gnaw marks; in interior or exterior of premises; initial (#1) and repeat violations (#2, 3, 4 or more in 24 month period).	1 st Violation: <u>\$300</u> 2 nd Violation: <u>\$600</u> 3 rd Violation: <u>\$1,200</u> 4 th Violation or more in 24 month period: <u>\$2,000</u>	1 st Violation: <u>\$600</u> 2 nd Violation: <u>\$1200</u> 3rd Violation or more in 24 month period: <u>\$2,000</u>
NYC Health Code <u>151.02(a)</u>	Failure to eliminate conditions conducive to rodent infestation of premises via holes, gaps in floors, walls, ceilings, pipes, baseboards, screens, doors, and sills; initial (#1) and repeat violations (#2, 3, 4 or more in 24 month period).	1 st Violation: <u>\$300</u> 2 nd Violation: <u>\$600</u> 3 rd Violation: <u>\$1,200</u> 4 th Violation or more in 24 month period: <u>\$2,000</u>	1 st Violation: <u>\$600</u> 2 nd Violation: <u>\$1200</u> 3rd Violation or more in 24 month period: <u>\$2,000</u>
NYC Health Code <u>151.02(a)</u>	Failure to eliminate conditions conducive to rodents--e.g., via interior and/or exterior debris, dense vegetation; initial (#1) and repeat violations (#2, 3, 4 or more in 24 month period).	1 st Violation: <u>\$300</u> 2 nd Violation: <u>\$600</u> 3 rd Violation: <u>\$1,200</u> 4 th Violation or more in 24 month period: <u>\$2,000</u>	1 st Violation: <u>\$600</u> 2 nd Violation: <u>\$1200</u> 3rd Violation or more in 24 month period: <u>\$2,000</u>

		<u>\$2,000</u>	
NYC Health Code <u>151.02(a)</u>	<u>Failure to properly and thoroughly eliminate conditions conducive to pests and to the presence of pests other than rodents or mosquitoes.</u>	<u>\$ 300</u>	<u>\$ 600</u>
NYC Health Code <u>151.02(b)</u>	<u>Failure to eliminate conditions conducive to pests, e.g., uncovered garbage cans or containers, garbage spillage, uncontained garbage</u>	<u>\$300</u>	<u>\$600</u>
NYC Health Code <u>151.02(c)</u>	<u>Failure to comply with Department or Commissioner's Order; pest management plan not complied with; no inspections and/or exterminator visits documented.</u>	<u>\$1000</u>	<u>\$2000</u>
NYC Health Code <u>151.02(c)</u>	<u>Failure to comply with Department or Commissioner's Order; pest management plan not complied with: no notice to tenants posted or provided.</u>	<u>\$1000</u>	<u>\$2000</u>
NYC Health Code <u>151.02(c)</u>	<u>Failure to comply with Department or Commissioner's Order; pest management plan not complied with: pests and/or conditions conducive to pests, access and harborage not eliminated.</u>	<u>\$2000</u>	<u>\$2000</u>
NYC Health Code <u>151.02(e)</u>	<u>Using pesticides alone in the management of pest infestations.</u>	<u>\$300</u>	<u>\$600</u>

Section 4. 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 and deleting the entries below to read as follows:

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

Section/Rule	Description	Penalty	Default
NYC Health Code [131.041] <u>131.13 (c)</u>	Failure to remove refrigerator door, locking device or hinges from discarded refrigerator	\$ 200	\$ 400

[NYCHC 131.11]	[Waste receptacles]	\$ [200]	\$ [400]
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Statement of Basis and Purpose

The Environmental Control Board is amending its 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.

In January of 2009, the Board of Health changed Article 151 of the Health Code. These changes allow various City agencies to issue violations under Article 151. These agencies include the Department of Health and Mental Hygiene (DOHMH), the Department of Buildings, the Department of Housing Preservation and Development and the Department of Sanitation.

To better protect the public health, ECB is adding penalties for violations under Article 151. The separate charges will help inform the public of what needs to be done to prevent pests and other rodents. These violations include:

- Failure to comply with DOHMH orders
- Maintaining or failing to correct nuisances
- Violations relating to rodents, bed bugs and other pests
- Maintaining conditions conducive to pest harborage
- Failure to develop and maintain pest management plans

The penalty amounts for some of these charges are found in Health Code section 3.11. Penalties for rat violations are found in Administrative Code section 17-133.1.

In Section 4, ECB is amending the section of law for failing to remove a lock from a discarded refrigerator. ECB is also deleting the charge for section 131.11. These changes are needed because Article 131 of the Health Code was amended in October of 2009.