

## 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"),** ECB hereby promulgated the following rule that amends 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. The rule was published in The City Record on June 6, 2013 and a public hearing was held on July 9, 2013.

### **Statement of Basis and Purpose of Final Rule**

The Environmental Control Board ("ECB") held a Public Hearing on July 9, 2013 regarding amendments to ECB's 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") concerning penalties for violations of various provisions of the NYC Health Code ("Health Code") related to the enforcement of Article 161 (Animals). One member from the public and a representative from the Department of Health and Mental Hygiene ("DOHMH") attended the public hearing and the member of the public testified at the public hearing on the proposed rule. No written comments were received. The Board has considered the testimony from the member of the public concerning the Proposed Rule.

#### **Sections 1, 2 and 3**

These sections add penalties for violations of the Health Code relating to inspections of various animal handling and servicing facilities. These facilities include pet shops that sell small animals (other than cats and dogs), animal shelters and boarding and grooming facilities (including horse stables). In addition, three charges relate to guard dogs.

Notices of violation for these violations when issued by DOHMH are currently returnable at the Health Tribunal. Notices of violation issued for many of these sections of the Health Code by agencies other than the DOHMH are returnable to the ECB and the penalties for their violation are in ECB rules. Among the animal-related Health Code violations already heard at ECB are:

- unlawfully keeping/selling/giving a wild animal,
- control of dogs and other animals to prevent nuisance,
- violations pertaining to dog tags and licenses,
- failure to restrain a dog,
- and owning or harboring a dog or cat which has not been immunized against rabies.

The DOHMH plans to use public health sanitarians from DOHMH's Pest Control Services program, who currently only write notices of violation for rats and rat harborage conditions returnable to ECB, to respond to animal nuisance complaints. Accordingly, DOHMH has requested that adjudication of these animal-related cases be moved to ECB in order to enhance its enforcement efforts.

#### **Section 4**

This section has amended the description for Health Code §89.19(f)(2) to reflect Board of Health amendments of this Health Code provision that became effective July 22, 2011. The 2011 rulemaking resulted from the Board of Health's conclusion that, when properly stored and prepared, most cooked fish and other aquatic animal food products may be safely sold from

either a temporary or a mobile vending establishment. Thus, the provision now allows for the sale and service of cooked fish and aquatic animal products on a mobile food vending unit. The sale and service of raw fish products is still prohibited. The penalty amount remains the same.

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 by adding 2 new charges after the entry in that schedule for NYC Health Code § 3.09, “Failing to abate or remediate nuisance” to read as follows:

<b>Section/Rule</b>	<b>Description</b>	<b>Penalty</b>	<b>Default</b>
NYC Health Code <u>3.15(a)</u>	<u>Interfering with or obstructing Department staff in performing duties</u>	<u>\$1000</u>	<u>\$2000</u>
NYC Health Code <u>3.17</u>	<u>Notice or order of the Department mutilated, obstructed or removed</u>	<u>\$500</u>	<u>\$1000</u>

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 8 new charges after the entry in that schedule for 24 RCNY 6-01(l), “Non-processing unit being operated without proper food processing permit” to read as follows:

<b>Section/Rule</b>	<b>Description</b>	<b>Penalty</b>	<b>Default</b>
NYC Health Code <u>131.09(a)</u>	<u>Failure to provide or maintain adequate lighting</u>	<u>\$200</u>	<u>\$400</u>
NYC Health Code <u>131.09(b)</u>	<u>Failure to provide or maintain adequate ventilation</u>	<u>\$200</u>	<u>\$400</u>
NYC Health Code <u>131.09(c)</u>	<u>Failure to maintain plumbing</u>	<u>\$200</u>	<u>\$400</u>
NYC Health Code <u>131.09(d)(2)</u>	<u>Adequate hand wash facility not provided or not supplied with soap, hand drying device or towels</u>	<u>\$200</u>	<u>\$400</u>
NYC Health Code <u>131.09(d)(4)</u>	<u>Adequate toilet facilities not provided</u>	<u>\$200</u>	<u>\$400</u>
NYC Health Code <u>131.09 (e)</u>	<u>Failure to maintain floors in good repair</u>	<u>\$200</u>	<u>\$400</u>
NYC Health Code <u>131.09 (f)</u>	<u>Failure to maintain walls and ceilings in good repair</u>	<u>\$200</u>	<u>\$400</u>
NYC Health Code <u>131.09(g)</u>	<u>Premises not kept clean and/or in good repair</u>	<u>\$200</u>	<u>\$400</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 19 new charges after the entry in that schedule for NYC Health Code 151.03 (a), "Failure to eliminate standing water with decomposing matter and other conditions conducive to breeding and harborage of mosquitoes; extensive violations" to read as follows:

<b>Section/Rule</b>	<b>Description</b>	<b>Penalty</b>	<b>Default</b>
<u>NYC Health Code 161.01(a)(5)</u>	<u>Exhibiting or displaying exotic or other prohibited animals without a current valid permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.01(a)(5)</u>	<u>Failure to comply with animal exhibition conditions imposed by the Commissioner</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(a)</u>	<u>Operating a boarding kennel, grooming parlor, training establishment or pet shop without a current valid permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(b)</u>	<u>Operating an animal shelter without a current valid permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(d)</u>	<u>Operating a horse stable without a permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(f)</u>	<u>Supervisor of animal business does not have certificate of completion of small animal care and handling course</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code 161.09(g)</u>	<u>Guard dog not registered with the Department</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(g)(1)</u>	<u>Guard dog not microchipped</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.09(g)(2)</u>	<u>Signs warning of presence of trained guard dog not posted</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code 161.13</u>	<u>Self-inspection reports not maintained or provided to the Department</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.15(a)</u>	<u>Residential quarters not separated from animal handling or care activities</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.15(b) and (c)</u>	<u>Failure to comply with dog license application requirements before transferring ownership</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code</u>	<u>Failure to maintain vaccination</u>	<u>\$250</u>	<u>\$250</u>

<u>161.15(e)</u>	<u>records</u>		
<u>NYC Health Code 161.17</u>	<u>Failure to have dogs or cats three months of age and older in individual cages</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.21(b)</u>	<u>Exposed surfaces in stable not kept clean</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.21(f)</u>	<u>Manure or other refuse not maintained in a sanitary manner</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code 161.21(h)</u>	<u>Stable yard not kept clean or not graded to prevent accumulation of liquids</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.21(i)</u>	<u>Owning, boarding, using or bringing into NYC a horse that is not currently actively vaccinated against rabies and/or not providing vaccination records to the Department</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Admin Code 17-197</u>	<u>Improperly restraining animal out of doors</u>	<u>\$250</u>	<u>\$250</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 the charge currently listed as “NYC Health Code 89.19(f)(2), “Preparing, storing, holding or selling aquatic animal,” as follows:

<b>Section/Rule</b>	<b>Description</b>	<b>Penalty</b>	<b>Default</b>
NYC Health Code 89.19(f)(2)	Preparing, storing, holding or selling <u>raw fish or raw</u> aquatic animal	\$385	\$770