

Environmental Control Board

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) in accordance with Sections 1049-a, 1043, and 533 of the New York City Charter. The ECB has amended its Hudson River Park Penalty Schedule found in Section 3-113 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). The changes 1) create penalties for new Hudson River Park rules prohibiting smoking in non-designated areas and prohibiting geocaching without an issued permit, and 2) amend certain existing penalties related to animals in the park, interfering with trees and vegetation in the park, and boating in the park. These penalties are for offenses that are heard and decided by ECB pursuant to Sections 533, 1048, and 1049-a of the New York City Charter and Chapter 3 of Title 48 of the RCNY. The rule was published in The City Record on December 6, 2013 and a public hearing was held on January 8, 2014.

Statement of Basis and Purpose of Final Rule

Pursuant to Sections 533 and 1049-a of the New York City Charter, the New York City Environmental Control Board (ECB) hears and decides Notices of Violation issued for violations of the rules and regulations of the Hudson River Park Trust relating to the use, government and protection of the Hudson River Park.

The ECB held a public hearing on January 8, 2014 regarding amendments to its Hudson River Park Penalty Schedule found in Section 3-113 of Title 48 of the Rules of the City of New York (RCNY). Four (4) members of the public attended the January 8, 2014 public hearing. Neither written comments nor oral testimony were presented at the January 8, 2014 public hearing concerning the Proposed Rule regarding amendments to ECB's Hudson River Park Penalty Schedule.

Sections 1 and 2

The Hudson River Park Trust recently amended the Hudson River Park rules and regulations found in Title 21 of the New York Codes, Rules, and Regulations (NYCRR). These amendments went into effect on April 4, 2013 and included new provisions prohibiting smoking in non-designated areas and geocaching without an issued permit. ECB has amended its Hudson River Park Penalty Schedule to create penalties for the violations of these newly added provisions.

Section 751.6(v) of Title 21 of the NYCRR prohibits smoking "in all public areas within Hudson River Park except as may be designated by the trust." In Section 1 of this rule, ECB has aligned the Hudson River Park Penalty Schedule with the New York City Department of Parks and Recreation Rules Penalty Schedule ("Parks Rules Penalty Schedule") found in Section 3-116 of

Title 48 of the RCNY by adopting a \$50 standard penalty and a \$50 default penalty for violations of Hudson River Park's smoking ban.

Section 751.7(s) of Title 21 of the NYCRR provides that "Geocaching or other treasure hunting games, activities, devices, logbooks, trinkets, or other materials, are not allowed within Hudson River Park except as may be expressly permitted by the trust." According to a guidance document issued by the New York State Office of Parks, Recreation and Historic Preservation:

Geocaching is an outdoor activity in which the participants use a Global Positioning System (GPS) receiver to place "geocaches" or "caches" and post the GPS coordinates on the internet. Cache-seekers then use their GPS units to locate the site. Some caches are small containers with a variety of items. Visitors to caches can take a few items as souvenirs and leave new items for others to find. Others are virtual caches, where the "treasure" may be simply in the beauty or uniqueness of the site.

Geocaching provides park visitors an opportunity to learn about nature and enjoy the outdoors. Left unmanaged however, this activity has the potential to damage natural and historic resources and can pose a possible risk to visitors. . . .

Any visitor wishing to place a cache must complete an application for a geocache placement permit, which requires review and authorization by the park manager or designee. The permit process will provide for review of all geocache placements to ensure the protection of natural, historic, and archeological resources, and the safety and security of park visitors.

The geocaching restriction was implemented to discourage geocaching without an issued permit, rather than punish the actual offenders. In Section 2, ECB has adopted a \$25 standard penalty and a \$50 default penalty for violations of the geocaching restriction. These amounts are similar to the penalties imposed for unauthorized alcohol consumption in Hudson River Park, which were also adopted to discourage the activity rather than punish offenders.

Sections 3 and 4

Several changes have been made to align the Hudson River Park Rules Penalty Schedule with the Parks Rules Penalty Schedule found in Section 3-116 of Title 48 of the RCNY where the penalties are for similar offenses. For such changes, where the penalty for a Parks rule violation is greater than \$500 (the maximum penalty that can be imposed for violation of a Hudson River Park rule), ECB has adopted the \$500 maximum penalty for violations of the similar Hudson River Park rule.

Section 751.6(i) of Title 21 of the NYCRR prohibits animals that are "unleashed or out of control in the park." In Section 3, ECB has aligned the penalties for unleashed or uncontrolled animals in the Hudson River Park Penalty Schedule with the penalties for unleashed or uncontrolled animals in the Parks Rules Penalty Schedule by adopting a \$400 standard penalty and \$500 default penalty for a third offense, and the \$500 maximum penalty for each subsequent

offense. Further, by making the \$500 penalty applicable to fourth and subsequent offenses, there is no need for a separate entry for a fifth offense, which is accordingly being deleted in Section 4.

Section 751.6(k) of Title 21 of the NYCRR requires the removal of animal waste in Hudson River Park. In Section 3, ECB has aligned the penalties for failure to remove animal waste in the Hudson River Park Penalty Schedule with the penalties for failure to remove canine waste in the Parks Rules Penalty Schedule by adopting a \$250 standard penalty and a \$250 default penalty for each violation.

Section 751.7(j) of Title 21 of the NYCRR prohibits planting, pruning, foraging, growing, maintaining, or fertilizing or interfering with any trees, plants, flowers, shrubbery or other vegetation in Hudson River Park. In Section 3, ECB has aligned the penalties for “planting/pruning/interfering with tree/vegetation without permit” in the Hudson River Park Penalty Schedule with the penalties for “destruction of tree branch/pruning without permit/minor tree abuse” in the Parks Rules Penalty Schedule by adopting a \$100 standard penalty and a \$400 default penalty for each violation.

The remaining changes in Section 3 deal with various boating restrictions. Since enactment of the current penalty schedule, experience has shown that these penalties are disproportionate to the risk involved.

In the case of Section 751.8(f) of Title 21 of the NYCRR, which prohibits boats to be operated within Hudson River Park at a speed greater than five miles per hour, the current \$50 standard penalty and \$200 default penalty have proven inadequate deterrents. Because the risk of potential harm to other park users is great if vessels are operated at an excessive speed, ECB has raised this penalty to the \$500 maximum.

As to the other three boating restrictions, similar to the geocaching restriction above, the intent is to discourage the activity rather than punish offenders. Therefore ECB has lowered these penalties by adopting a \$50 standard penalty and a \$200 default penalty.

ECB’s authority for these rules is found in Sections 533 and 1049-a of the New York City Charter.

New material is underlined.

[Deleted material is in brackets.]

Section 1. The Environmental Control Board has amended its Hudson River Park Penalty Schedule found in Section 3-113 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding a new entry after the entry in the penalty schedule for Section 751.6(u), “Use of prohibited vessels, i.e. jet skis, cigarette boats, etc.,” to read as follows:

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
<u>751.6(v)</u>	<u>Failure to comply with smoking restrictions</u>	<u>\$50</u>	<u>\$50</u>

Section 2. The Environmental Control Board has amended its Hudson River Park Penalty Schedule found in Section 3-113 of Subchapter G of Title 48 of the Rules of the City of New York by adding a new entry after the entry in the penalty schedule for Section 751.7(r), “Failure to comply with rollerblading/skating etc. restrictions,” to read as follows:

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
<u>751.7(s)</u>	<u>Geocaching/treasure-hunting without a permit</u>	<u>\$25</u>	<u>\$50</u>

Section 3. The Environmental Control Board has amended its Hudson River Park Penalty Schedule found in Section 3-113 of Subchapter G of Title 48 of the Rules of the City of New York by revising eight existing penalties, to read as follows:

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
751.6(i)	Unleashed or uncontrolled animals in park – 3 rd Offense	[\$300] <u>\$400</u>	\$500
751.6(i)	Unleashed or uncontrolled animals in park – 4 th [Offense] and <u>Subsequent Offenses</u>	[\$400] <u>\$500</u>	\$500
751.6(k)	[Fail] <u>Failure</u> to remove animal waste	[\$50] <u>\$250</u>	[\$100] <u>\$250</u>
751.7(j)	Planting/pruning/interfering with tree/vegetation without permit	[\$50] <u>\$100</u>	[\$200] <u>\$400</u>
751.8(f)	Use of excessive speed by vessel	[\$50] <u>\$500</u>	[\$200] <u>\$500</u>
751.8(j)(2)	Unauthorized and non-emergency repair of vessels	[\$100] <u>\$50</u>	[\$400] <u>\$200</u>
751.8(j)(3)	Failure to deposit garbage in designated receptacles	[\$100] <u>\$50</u>	[\$400] <u>\$200</u>
751.8(q)	Use of non-motorized vessels in restricted areas	[\$100] <u>\$50</u>	[\$400] <u>\$200</u>

Section 4. The Environmental Control Board has amended its Hudson River Park Penalty Schedule found in Section 3-113 of Subchapter G of Title 48 of the Rules of the City of New York by deleting the following entry:

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
[751.6(i)]	[Unleashed or uncontrolled animals in park – 5 th Offense]	[\$500]	[\$500]