

**City of New York  
Environmental Control Board**

**Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The Environmental Control Board (ECB) proposes to amend the Hudson River Park Penalty Schedule 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 are 1) to create penalties for new Hudson River Park rules prohibiting smoking in non-designated areas and prohibiting geocaching without an issued permit, and 2) to amend certain existing penalties related to animals in the park, interfering with trees and vegetation in the park, and boating in the park. These rules create penalties 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.

**When and where is the hearing?** ECB will hold a public hearing on the proposed rule. The public hearing will take place at 3:30 pm on January 8, 2014. The hearing will be in the ECB Conference Room located at 66 John Street, 10th Floor, NY, NY 10006.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to ECB through the NYC rules Web site at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules\_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to ECB, Attention: James Macron, Counsel to the Board, ECB, 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038.
- **Fax.** You can fax written comments to ECB at 212-361-1900.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Elizabeth Nolan at 212-436-0592. You can also sign up in the hearing room before the hearing begins on January 8, 2014. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** You may submit written comments up to January 8, 2014.

**Do you need assistance to participate in the hearing?** You must tell ECB staff if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0592. You must tell us by January 2, 2014.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the

hearing, a transcript of the hearing and copies of the written comments will be available to the public at the ECB's office located at 66 John Street, 10<sup>th</sup> Floor, New York, NY 10038.

**What authorizes ECB to make this rule?** Sections 533 and 1049-a of the City Charter authorize ECB to make this proposed rule. This proposed rule was not included in ECB's regulatory agenda for this Fiscal Year because it was not contemplated when ECB published the agenda.

**Where can I find ECB's rules?** ECB's rules are in Title 48 of the Rules of the City of New York.

**What rules govern the rulemaking process?** ECB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

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

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.

#### **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 seeks to amend the Hudson River Park Penalty Schedule found in Section 3-113 of Title 48 of the Rules of the City of New York (RCNY) 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 rulemaking, ECB proposes to align 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 proposes adopting 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 are proposed with the intent of aligning 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 proposes adopting 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 proposes to align 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 proposes to align 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 proposes to align 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 proposes to raise 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 proposes to lower 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 proposes to amend 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:**

<b>SECTION/RULE</b>	<b>DESCRIPTION</b>	<b>PENALTY</b>	<b>DEFAULT</b>
<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 proposes to amend 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:**

<b>SECTION/RULE</b>	<b>DESCRIPTION</b>	<b>PENALTY</b>	<b>DEFAULT</b>
<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 proposes to amend 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:**

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

**Section 4. The Environmental Control Board proposes to amend 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:**

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

**NEW YORK CITY LAW DEPARTMENT**

**DIVISION OF LEGAL COUNSEL**

**100 CHURCH STREET**

**NEW YORK, NY 10007**

**212-356-4028**

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

**RULE TITLE: Amendment of Hudson River Park Penalty Schedule**

**REFERENCE NUMBER: 2013 RG 086**

**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

Date: November 18, 2013

Acting Corporation Counsel

**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 Hudson River Park Penalty Schedule

**REFERENCE NUMBER:** OATH-ECB-37

**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 the violations pose significant risks to public health and safety, environmental hazards, and/or arise from consequences of immediate events, which make a cure period impracticable under the circumstances.

/s/ Ruby B. Choi

Mayor's Office of Operations

November 18, 2013

Date