

## **NOTICE OF PUBLIC HEARING**

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

**Date / Time:** August 6, 2013 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) 436-0594

### **Proposed Rule Amendment**

In accordance with 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 August 6, 2013. If you wish to testify, please notify James Macron by August 6, 2013.
- To request a sign language interpreter or other accommodation for a disability, please contact James Macron by July 30, 2013.
- 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**

In accordance with the authority vested in the Environmental Control Board (ECB) by Sections 1049-a and 1043 of the New York City Charter, ECB is amending two (2) penalty schedules--the Food Vendor Administrative Code Penalty Schedule ("Food Vendor Penalty Schedule") found in

Section 3-107 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (“Food Vendor Penalty Schedule”) and the General Vendor Penalty Schedule found in Section 3-109 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York.

The proposed rule amends the Food Vendor Penalty Schedule and the General Vendor Penalty Schedule to include recent changes in laws and rules.

### **Vending Prohibited Within 20 Feet of Residential Building Exits**

First, on March 13, 2013, the City Council adopted and the Mayor signed into law Int. 727-A. This bill amended Administrative Code sections 17-315 (d) and 20-465(d) to prohibit vending within twenty (20) feet of exits of buildings that are exclusively residential at street level. The bill also deleted paragraph (3) of section 20-465 (q), which made it illegal to vend with ten (10) feet from entrances or exits to buildings that are exclusively residential at the street level.

### **Vending Prohibited Next to No-Standing Zones at Hospitals and Health Facilities**

Second, on the same date, the Council adopted Int. 789-A. This law amends Administrative Code sections 17-315 (e) and 20-465 (e), making it illegal to vend next to no-standing zones at hospitals or other health facilities.

### **Changes to Multiple Offense Schedule**

Third, on May 8, 2013 the City Council enacted Int. 434-A, effective 120 days from that date. The law lowers the maximum penalty that can be charged for vending violations subject to a multiple offense schedule from \$1,000 to \$500. The law also narrows the scope of what is considered a subsequent violation to include only violations of the same section of law issued to the same respondent within two (2) years of the date of offense of the previous notice of violation.

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

---

**Section 1.** The Food Vendor Administrative Code Penalty Schedule found in Section 3-107 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to revise the headnotes, revise the charges listed below to read as follows:

Multiple Offense Schedule (MOS): 1<sup>st</sup> Violation \$50 (default \$50); 2<sup>nd</sup> Violation \$100 (default \$100); 3<sup>rd</sup> Violation \$250 (default \$250); 4<sup>th</sup> and subsequent Violation \$500 [(default \$1000); 5<sup>th</sup> Violation \$750 (default \$1,000); 6<sup>th</sup> and subsequent Violation \$1,000 (default \$1,000).] (default \$500).

[A 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an “MOS” penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation (s), and where the previous violation(s) was a violation of any section of law that is subject to an “MOS” penalty as indicated in this Penalty Schedule.]

A 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> or subsequent violation is a violation:

- By the same respondent
- Of the same section of law listed in this Penalty Schedule as subject to an “MOS”
- With a date of occurrence within two (2) years of the date(s) of occurrence of the previous violation(s).

Asterisk (\*): Pursuant to §3-81(b), a late admit fee of \$30.00 will be added to the penalty for this charge for a failure to submit a payment by mail or other remote method, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to the NYC Administrative Code and to the Rules of the City of New York (RCNY).

Section/Rule	Description	Penalty	Default
Admin. Code 17-315(d)	Vending [pushcart or stand] <u>unit</u> against display window or within 20 ft. of entrance of any building <u>or within 20 feet from exits, including service exits, to buildings that are exclusively residential at street level</u>	MOS	MOS
Admin. Code 17-315(e)	<u>Vending in [In] bus stop, sidewalk next to a hospital or health facility no standing zone or within 10 ft. of [drive]driveway, subway, crosswalk, [etc.]</u>	MOS	MOS
24 RCNY [6-01 (m)] 6-07(b)	Green Cart umbrella not opened while vending	MOS	MOS
24 RCNY [6-01 (m)] 6-07(b)	Green Cart umbrella not safely secured or in good condition or repair	MOS	MOS

**Section 2.** . The General Vendor Penalty Schedule Section 3-109 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to revise the headnotes and charges listed below to read as follows:

Multiple Offense Schedule (MOS): 1<sup>st</sup> Violation \$50 (default \$50); 2<sup>nd</sup> Violation \$100 (default \$100); 3<sup>rd</sup> Violation \$250 (default \$250); 4<sup>th</sup> and subsequent Violation \$500 [(default \$1000); 5<sup>th</sup> Violation \$750 (default \$1,000); 6<sup>th</sup> and subsequent Violation \$1,000 (default \$1,000).] (default \$500).

[A 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> or subsequent violation is a violation by the same respondent of a section of law listed in this Penalty Schedule that is subject to an “MOS” penalty as indicated in this Penalty Schedule, with a date of occurrence within 2 years of the date of occurrence of the previous violation (s), and where the previous violation(s) was a violation of any section of law that is subject to an “MOS” penalty as indicated in this Penalty Schedule.]

A 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> or subsequent violation is a violation:

- By the same respondent
- Of the same section of law listed in this Penalty Schedule as subject to an “MOS”
- With a date of occurrence within two (2) years of the date(s) of occurrence of the previous violation(s).

Asterisk (\*): Pursuant to §3-81(b), a late admit fee of \$30.00 will be added to the penalty for this charge for a failure to submit a payment by mail or other remote method, as per §3-32, within 30 days of the mailing date of the default order issued against respondent.

All citations are to the NYC Administrative Code and to the Rules of the City of New York (RCNY).

<b>Section/Rule</b>	<b>Description</b>	<b>Penalty</b>	<b>Default</b>
Admin. Code 20-465(d)	Stand or goods against display window or within 20 ft. of entrance of any building <u>or within 20 feet from exits, including service exits, to buildings that are exclusively residential at street level</u>	MOS	MOS
Admin. Code 20-465(e)	Vending in bus stop, taxi stand, <u>sidewalk next to a hospital or health facility no standing zone,</u> or within 10 ft. of drive/subway/corner	MOS	MOS
Admin. Code 20-465(q)	Vending within 20 ft. of sidewalk cafes; within 5 ft of bus shelters, newsstands, public telephones, disabled access ramps[; within 10 ft. of residential entrance or exit]	MOS	MOS

**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 Food Vending Penalty Schedules

**REFERENCE NUMBER:** 2013 RG 047

**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: June 20, 2013

**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:** Vendor Multiple Offense Schedules

**REFERENCE NUMBER:** OATH-ECB-31

**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) If it establishes or modifies a violation or penalty, provides a cure period, or if it does not provide a cure period, such cure period is not included because it would run counter to the proposed rule's goal of preventing risks to public health and safety.

/s/ Amy Bishop  
Mayor's Office of Operations

June 20, 2013  
Date