

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
COMMISSIONER OF HEALTH AND MENTAL HYGIENE**

**NOTICE OF ADOPTION OF AMENDMENT TO CHAPTER 6 (FOOD UNITS)
OF TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

In compliance with Sections 1043(a) and 389(b) of the New York City Charter (The “Charter”) and pursuant to Title 17, Chapter 3, Subchapter 2, Sections 17-307(b)(4)(c), and 17-324 of the New York City Administrative Code, a notice of intention to amend Chapter 6 (Food Units) of Title 24 of the Rules of the City of New York was published in the City Record of April 28, 2008 and a public hearing was held on May 29, 2008. No written comments or testimony was received. No further amendments have been made to the proposed rule change.

Statutory Authority

This amendment is authorized by §§389(b) and 1043(a) of the New York City Charter (the “Charter”). Charter §389(b) provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.” Charter §1043(a) authorizes each agency to “adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.” These rules are further authorized pursuant to §§17-307 and 17-324 of the Administrative Code of the City of New York (the “Administrative Code”). §17-324 provides that “the commissioner ... shall make such rules as deemed necessary for the proper implementation and enforcement of this subchapter.” More specifically, §307(b)(4)(c) of the Administrative Code provides that “within eight months of the effective date of the local law adding this paragraph, the commissioner may exempt by rule” any police precinct where it is determined “the rate of consumption of fresh fruits and vegetables in the precinct is not substantially lower than the citywide average” and which “does not have an elevated rate of nutrition-related health problems compared to the rest of the city.”

Statement of Basis and Purpose

Local Law No. 9 of 2008 amended Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code authorizing the Commissioner of Health and Mental Hygiene to issue up to one thousand (1000) newly created “fresh fruits and vegetables permits”, as defined in §17-306(r) of the Administrative Code, which unlike other full term permits issued pursuant to Subchapter 2, solely authorize holders thereof to exclusively vend “fresh fruits and vegetables”. Local Law No. 9 of 2008 also established a new type of pushcart called a “green cart,” which is defined in §17-306(s) of the Administrative Code as a “pushcart used exclusively by those issued fresh fruits and vegetables full-term permits” and §17-307(b)(4)(b) of the Administrative Code designates specific police precincts within the City of New York within which fresh fruits and vegetables permits may be used. Pursuant to §17-307(b)(4)(c) of the Administrative Code, however, the commissioner may within eight months of its effective date exempt by rule any such police precinct upon determining that the rate of consumption of fresh fruits and vegetables in that precinct is not substantially lower than the citywide average and that the precinct does not have an elevated rate of nutrition-related health problems compared to the rest of the city.

Local Law No. 9 of 2008 was enacted to make fruits and vegetables more accessible in underserved neighborhoods. Since its enactment, the Department has refined its ability to estimate the rate of consumption of fruits and vegetables in those police precincts where fresh fruits and vegetables permits may be used pursuant to §17-307(4)(b) of the Administrative Code. Using consumption data at the zip code level, more precise estimates of consumption in each precinct were calculated than were

previously derived from larger area estimates. Citywide, 14.5 percent of residents reported when surveyed that they had consumed no fruits or vegetables on the previous day. With its revised methodology, the Department now estimates that the rate of consumption of fruits and vegetables is not lower than the citywide average in two police precincts currently covered by Local Law No. 9, specifically the 45th precinct in the Bronx and the 72nd precinct in Brooklyn. The Department has also evaluated the health status of the residents of these two precincts, comparing their rates of hospitalization for heart disease, cancer and diabetes, as well as their rates of obesity and diabetes, with the overall rates for city residents. All of the specified hospitalization rates for these two precincts were either comparable to or lower than the citywide averages. According to self-reported survey data, rates of diabetes were comparable to the citywide average for both precincts; the rate of obesity was comparable to the citywide rate for one precinct, but was higher than the citywide rate for the other. Taken together, these multiple data points fail to demonstrate that either precinct has an overall elevation of nutrition-related health problems compared to the rest of the City. Based on these findings, the Department proposes that the 45th and 72nd police precincts be exempted by rule as designated areas within which fresh fruits and vegetables permits may be used to vend.

Statement Pursuant to Charter Section 1042 - Regulatory Agenda

This rule was not included in the Department's Regulatory Agenda because the law which necessitated this amendment to Chapter 6 of Title 24 of the Rules of the City of New York was enacted after the Regulatory Agenda was prepared.

THE RULE IS AMENDED AS FOLLOWS:

Note - Matter underlined is new

Section 1. Section 6-01 (Mobile Food Units) of Chapter 6 (Food Units) of Title 24 of the Rules of the City of New York is amended by adding a new subdivision (o) to read as follows:

(o) Exemption of police precincts where green carts may vend. Notwithstanding any provision in §17-307(b)(4)(b) of the New York City Administrative Code, no fresh fruits and vegetables permit shall be designated for use within either the 45th or 72nd police precinct of the City of New York.

§2. This rule shall take effect June 11, 2008.