

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION
OF AMENDMENTS TO ARTICLE 5
OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 5 of the New York City Health Code (the “Health Code”) was published in the City Record on June 19, 2012 and a public hearing was held on July 26, 2012. No one testified but two written comments were received. No changes have been made to the resolution. At its meeting on September 13, 2012, the Board of Health adopted the following resolution.

Statutory Authority

These amendments to the New York City Health Code (the “Health Code”) are issued in accordance with §§556, 558 and 1043 of the New York City Charter (the “Charter”).

- Section 556 of the Charter provides the Department of Health and Mental Hygiene (the “Department”) with authority to regulate all matters affecting health in the City of New York.
- Section 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters over which the Department has authority.
- Section 1043 of the Charter gives the Department rulemaking powers.

Statement of Basis and Purpose

The Commissioner currently issues permits for temporary food service establishments (TFSE) to operate for up to 14 days at a time. These permits currently cost \$20.00. Each time a TFSE wants to operate at a new venue, a new permit is required. In practice, however, the Department has observed an increasing number of operators who obtain this permit and operate every weekend, at recurring events, or at many different events throughout the City during any given year.

The Board of Health is amending the TFSE provisions in Article 5 to:

- change the TFSE permit to an annual permit, rather than to an event-specific 14-day permit, to reflect how these permits are actually used, and,
- raise the fee for this permit from \$20.00 to \$70.00 to reflect the administrative costs of issuing individual permits.

While the price of the permit will go up, operators will be in a position to save money by purchasing one annual permit at \$70.00 rather than multiple event-specific permits at \$20.00 each. Although an annual permit will be issued, any operator of a TFSE who wishes to participate in any street or other event must still obtain the permission of the event sponsor, and comply with all other applicable provisions of the Health Code and other law.

Two written comments were received from local community organizations, objecting to the repeal of the one day permit stating that food service establishments in their neighborhoods that participated in single events during the year would need to pay a \$70 fee for permits to operate a TFSE at

the event. However, the analysis of the costs to the Department of charging a TFSE permit fee showed that the same costs apply whether the permit is being issued for one event or multiple events and the Department may not establish any permit fee that does not reflect the actual costs of issuing the permit. In addition, Health Code §88.05 (c) provides that any food service establishment holding a currently valid permit does not need to obtain an additional TFSE permit to participate in any temporary event.

Accordingly, Article 5 (General Permit Provisions) has been amended, changing the fee for a permit for a TFSE from \$20.00 to \$70.00, and, in accordance with Health Code §88.05 (d), all TFSE permits will be good for one year, recognizing the fact that many TFSEs operate at events that recur throughout the year, more than 14 days at a time, and sometimes every weekend.

The resolution is as follows:

Matter to be deleted is in brackets []

New matter is underlined

RESOLVED, that §5.07 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.07 Expiration dates; fees.

Description of Activity Under Permit * * *	Health Code or other Law Section Reference	Fee	Date Expiration
NON-RETAIL FOOD PROCESSING ESTABLISHMENT: Permit to maintain or operate a non-retail food processing establishment	81.05 (c)	\$200.00	One year from end of the month in which the initial application was submitted or, in the case of a renewal, one year from date of last permit expiration
TEMPORARY FOOD SERVICE ESTABLISHMENTS:	88.03 (a)	[\$20.00] <u>\$70.00</u>	[Maximum of fourteen (14) consecutive days] <u>One year from end of the month in which the initial application was submitted or, in the case of a renewal, one year from date of last permit expiration</u>

PRESCRIPTION FORMULA

PREPARATION: 115.05 \$50.00 March 31

* * *

Notes: §5.07 was amended by resolution adopted September 13, 2012 changing the \$20.00 fee for a temporary 14-day food service establishment permit to an annual permit with a \$70.00 fee.