



**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing that the Board of Health (“Board”) amend §3.11 of Article 3 (General Provisions) of the New York City Health Code (“Health Code”) found in Title 24 of the Rules of the City of New York. The purpose of this proposed rule is to increase the monetary penalty that can be imposed when either a violation of the Health Code results in serious physical injury or when there is a repeated violation of the Health Code that poses a serious risk to health, and to remove a reference to Article 7 of the Health Code, which was repealed in 2012.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments from 10a.m. to 12p.m. on July 26, 2017. The hearing will be held at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 14th Floor, Room 14-43
Long Island City, NY 11101-4132
This location is wheelchair accessible.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by any of the following:

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to resolutioncomments@health.nyc.gov
- **Mail.** You may mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax comments to the attention of Svetlana Burdeynik at 347-396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must register to speak. You can sign up in advance of the hearing by calling Svetlana Burdeynik at 347-396-6078, or before or during the hearing in the hearing room on July 26, 2017. You can speak for up to five minutes.

Is there a deadline to submit comments? Written comments must be received on or before 5:00 p.m. on July 26, 2017.

Do you need assistance to participate in the hearing? You must tell the Department’s Office of General Counsel 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 above address. You may also tell us by telephone at 347-396-6078. You must tell us by July 12, 2017.

Can I review the comments made on the proposed rules? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by

the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department of Health and Mental Hygiene to make this rule? Sections 558 and 1043 of the New York City Charter authorize the Board to make this proposed change to the Health Code. This proposed rule was not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find the New York City Health Code? The New York City Health Code is located in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Board 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 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Health Code §3.11 currently limits the monetary penalty that can be imposed for a violation of the Health Code to two thousand dollars. In egregious cases, where dangerous conduct is repeated or a violation results in serious physical harm, a more severe penalty is warranted. New York State Public Health Law §12, for instance, authorizes the New York State Department of Health to impose a penalty of five thousand dollars against recidivists who violate rules in cases where the violation poses a serious threat to health or safety. The Public Health Law also authorizes a penalty of ten thousand dollars if the violation of a rule results in serious physical harm to a patient.

The Department proposes that two new subdivisions be added to Health Code §3.11 to enhance penalties in similar circumstances. Similar to Public Health Law §12, a new subdivision (d) would allow a maximum penalty of five thousand dollars for a repeat violation of any section of the Health Code that poses a serious risk of harm to others, and a new subdivision (e) would authorize a penalty of up to ten thousand dollars in cases where a violation of the Health Code causes serious physical injury to any person. The Department also proposes to amend Health Code §3.11(c) to delete a reference to Article 7 of the Health Code, which has been repealed since 2012.

The Board of Health's authority to make changes to the Health Code is found in § 558 of the New York City Charter.

New material is underlined.

Deleted material is in [brackets].

"Shall" and "must" denote mandatory requirements and may be used interchangeably in Department rules, unless otherwise specified or the context clearly indicates otherwise.

The proposed rule changes are as follows:

RESOLVED, that section 3.11 of Article 3 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended, with an explanatory note to read as follows:

§3.11 Civil Enforcement of the Code.

(a) Except as provided in subdivisions (b), [and] (c), (d) and (e) herein, any person who is determined to have violated this Code or any other applicable law or regulation that the Department is authorized to enforce, shall, unless otherwise specified in such other law or regulation, be subject to a fine, penalty and forfeiture of not less than [two-hundred] two hundred and not more than two thousand dollars for each violation of a provision of this Code or any other such applicable law or regulation. Each such violation may be treated as a separate and distinct offense, and in the case of a continuing violation, each day's continuance thereof may be treated as a separate and distinct offense.

(b) Any person who is determined to have conducted, carried on, or in any way engaged in an activity without a permit, license, registration, or other authorization required by this Code shall be subject to a fine, penalty and forfeiture of not less than one thousand and not more than two thousand dollars.

(c) Where a person fails to appear in a proceeding brought [pursuant to Article 7 of] to enforce this Code, the penalties imposed for each sustained violation shall be double the amount that would otherwise be assessed by the hearing examiner, but shall not exceed the maximum penalty specified in subdivision (a), [or] (b) or (d) of this section.

(d) The penalty provided for in subdivision (a) of this section may be increased to an amount not to exceed five thousand dollars for a subsequent violation if the person committed the same violation within twelve months of the initial violation for which a penalty was assessed pursuant to subdivisions (a) or (c) of this section and the violation was a serious threat to the health of an individual or individuals.

(e) The penalty provided for in subdivision (a) of this section may be increased to an amount not to exceed ten thousand dollars if the violation directly results in serious physical harm to any person.

Note: Section 3.11 was amended by resolution adopted by the Board of Health on XXXXX, 2017 to add a new subdivision (d) to enhance the penalties for subsequent violations of the Health Code that seriously threaten the health of others, to add a new subdivision (e) to enhance the penalty for a violation of the Health Code that causes serious physical harm to another, and to delete a reference to Article 7 of the Health Code, which was repealed by the Board in 2012.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Increased Penalties for Health Code Violations That Result in Serious Physical Injury of Serious Threat to Public Health

REFERENCE NUMBER: DOHMH-79

RULEMAKING AGENCY: Board of Health

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) No cure period is provided because the rule establishes penalties for repeat violations and/or violations that result in serious physical harm.

/s/ Jennifer J. Baek
Mayor's Office of Operations

June 6, 2017
Date

**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: Increased Penalties for Health Code Violations That Result in Serious Physical Injury of Serious Threat to Public Health

REFERENCE NUMBER: 2017 RG 048

RULEMAKING AGENCY: Board of Health

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 5, 2017