

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

**NOTICE OF ADOPTION OF AMENDMENTS 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 17-306(s) 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 10, 2008 and a public hearing was held on May 13, 2008. No written comments or testimony was received by the close of the initial comment period ending May 13, 2008 nor during an extended public comment period ending May 29, 2008, notice of which was published in the City Record of May 20, 2008. 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 §§ 17-306 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, § 17-306(s) of the Administrative Code defines a “green cart”, in part, as a “pushcart used exclusively by those issued fresh fruits and vegetables full-term permits” having a “distinctive and easily recognizable appearance in accordance with rules to be established by the commissioner.”

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 authorizes the holder 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 which “must also have a distinctive and easily recognizable appearance in accordance with rules to be established by the commissioner”. §6-01(m)(1) of Title 24 of the Rules of the City of New York provides that all green carts shall have permanently affixed on two sides of each cart either identical permit plates or identical permit decals that are easily identifiable and distinguishable from all other pushcart decals. §6-01(m)(2) provides that all green carts must use the distinctive and readily identifiable green cart umbrella to be provided by the Department. During the initial two-year phase in period that fresh fruits and vegetables permits are to be offered such umbrellas shall be provided, on a one time basis, free of charge to cart owners. Thereafter, for all replacement umbrellas and umbrellas provided by the Department after the

initial two-year phase in period, green cart owners will be required to pay a fee to the Department reimbursing it for the cost it incurred in purchasing each such umbrella. §6-01(m)(2) would further require that green cart umbrellas be safely secured and maintained in good condition and repair at all times and that they be used whenever the green carts are being 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. Subdivision (m) of Section 6-01 (Mobile Food Units) of Chapter 6 (Food Units) of Title 24 of the Rules of the City of New York is relettered subdivision (n), and a new subdivision (m) is added, to read as follows:

(m) Green Carts. (1) The Department shall permanently affix on two sides of each green cart, as that term is defined in §17-306(s) of the Administrative Code, either identical permit plates or identical permit decals that are easily identifiable and distinguishable from other all other pushcart plates or decals. Such plates or decals shall contain the fresh fruits and vegetables permit number issued to the owner of each such green cart and the borough and police precincts in which the green cart is authorized to operate. Permit decals shall not be removed or transferred to any other pushcart.

(2) The Department shall also provide to each green cart owner issued a fresh fruits and vegetables permit a distinctive and readily recognizable “green cart” umbrella. The umbrella shall be safely secured to the green cart and maintained in good condition and repair at all times by the permit holder and shall be displayed in an open position above the green cart whenever the green cart is being used to vend. During the initial two-year phase in period in which these permits are to be offered, an umbrella will be provided by the Department at no cost to the green cart owner at the time that he or she

is initially issued a permit. For any replacement umbrella and any umbrella issued after the two-year phase in period in which these permits are to be offered, the green cart owner shall be required to pay a fee of fifty dollars (\$50.00) reimbursing the Department for the cost of the umbrella. In addition to the above requirements specific to green carts, green carts must comply with all other applicable legal requirements pertaining to mobile food non-processing units.

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