

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

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**NOTICE OF PUBLIC HEARING**

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**NOTICE OF INTENTION  
TO AMEND TITLE 24 OF THE RULES OF THE CITY OF NEW YORK  
TO ADD A NEW CHAPTER 27 (FOOD ALLERGY INFORMATION)**

IN COMPLIANCE WITH §§1043(a) AND 389(b) OF THE NEW YORK CITY CHARTER (THE "CHARTER") AND PURSUANT TO §17-195 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, NOTICE IS HEREBY GIVEN OF INTENTION TO AMEND TITLE 24 OF THE RULES OF THE CITY OF NEW YORK TO ADOPT A NEW CHAPTER 27 (FOOD ALLERGY INFORMATION).

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:00 A.M.-12:00 P.M. ON OCTOBER 23, 2009 IN THE THIRD FLOOR BOARDROOM AT 125 WORTH STREET, NEW YORK, NEW YORK.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK AT THE HEARING SHOULD NOTIFY RENA BRYANT, SECRETARY TO THE DEPARTMENT, IN WRITING, BY MAIL TO 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, OR BY FAX TO (212) 788-4315 BY 5:00 P.M., OCTOBER 22, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

REGISTRATION OF PERSONS WHO WISH TO SPEAK AT THE HEARING WILL BE ACCEPTED AT THE DOOR ON THE DATE OF HEARING. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO REGISTER BEFORE THE HEARING DATE.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, (212) 788-5242, BY OCTOBER 9, 2009.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED ON OR BEFORE 5:00 P.M. ON OCTOBER 23, 2009 TO RENA BRYANT, SECRETARY TO THE DEPARTMENT, BY MAIL TO 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, OR FAX TO (212) 788-4315 OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> OR E-MAIL TO [RESOLUTIONCOMMENTS@HEALTH.NYC.GOV](mailto:RESOLUTIONCOMMENTS@HEALTH.NYC.GOV). COMMENTS RECEIVED AFTER OCTOBER 23, 2009 WILL BE CONSIDERED TO THE EXTENT POSSIBLE.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

## **Statutory Authority**

This proposed rule is promulgated pursuant to §§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) similarly provides that each “agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.” Section 17-195 (e), added to Title 17 of the Administrative Code of the City of New York (“Administrative Code”) by Local Law 17 of 2009 (LL 17) provides that the “commissioner may promulgate any rules necessary for implementing and carrying out the provisions of this section prior to its effective date.”

## **Statement of Basis and Purpose**

LL17 amended Title 17 of the Administrative Code, adding a new §17-195 (Food allergy posters). §17-195 (a) (2) requires that certain food service establishments (“restaurants where food is sold and space is designated specifically as an eating area”) post information about food allergies in areas where the information may be seen by food workers. LL 17 requires the postings to be made in accordance with the rules of the Department.

These proposed rules define the scope and applicability and the terms that are used in the rule, specifically exempting certain kinds of food service establishments such as charitable feeding programs, mobile food vending units, and temporary food service establishments.

§17-195 (c) provides that such poster shall be posted “in a conspicuous location accessible to all employees involved in the preparation of food and the service of food.” The most important areas identified by the Department for such postings are areas where food orders are placed and retrieved by food workers and where raw ingredients are prepared, and §27-02 specifies such areas.

The proposed rule does not specify the content of postings, since that information may change over time. Instead, the rule authorizes the Department to maintain Department-provided and approved texts in the required languages (English, Spanish, Chinese, Korean and Russian) on its website and to make changes when the Department finds that information should be added or deleted. A sample proposed text for the initial posting is shown below.

### **Sample Text:**

#### ***Food Allergy Alert!***

**Food allergies are serious. Even a small amount of an allergy-causing food can make people sick.**

**When customers tell you they have a food allergy:**

- **Ask the chef or the manager if the allergy-causing food is in the dish ordered.**
- **Ask the chef if the allergy-causing food could have had contact with the dish order during preparation.**
- **Tell the customer that the allergy-causing food is or may be present in their order if it is an ingredient or could have had contact during preparation.**

**The eight most common allergy-causing foods are peanuts, tree nuts, fish, shellfish, eggs, milk, wheat and soy.**

**Call 911 if the customer has an allergic reaction.**

Violations of this Chapter will not be considered sanitary inspection violations, and will not be scored in accordance with Chapter 23 of these rules. Violations that are alleged in complaints or are otherwise not observed by a Department inspector will be addressed in accordance with current Department policies and procedures.

**Statement Pursuant to Charter Section 1042 - Regulatory Agenda**

This proposed rule was not included in the Department's Regulatory Agenda because the law that necessitated this rule was enacted after the Regulatory Agenda was prepared and published.

The proposal is as follows.

Matter underlined is new.

Section 1. Title 24 of the Rules of the City of New York is hereby amended by adding a new Chapter 27 (Food Allergy Information).

**CHAPTER 27**

**FOOD ALLERGY INFORMATION**

**§27-01. Scope and applicability.**

**§27-02 Definitions.**

**§27-03 Posting and placement of food allergy information.**

**§27-04. Disclosure.**

**§27-05 No limitations on voluntary actions.**

**§27-06. No third party beneficiary.**

**§27-07. Violations and penalties.**

**§27-01. Scope and applicability.** This Chapter implements Local Law 17 of 2009 (adding Administrative Code of the City of New York §17-195) requiring that signs with food allergen information be posted in certain food service establishments where food is sold and seating areas are provided for patrons. This Chapter does not apply to: food service establishments that are mobile food vending units and mobile food vending commissaries, as defined in Article 89 of the Health Code; temporary food service establishments, as defined in Article 88 of the Health Code; or food service programs for children, the elderly and institutionalized populations operated by government agencies or health care, educational, religious, charitable or fraternal organizations.

**§27-02 Definitions.** When used in this Chapter, the following terms shall have the following meanings.

(a) Food means any raw, cooked or processed edible substance, beverage, ingredient, ice or water used or intended for use or for sale, in whole or in part, for human consumption.

(b) Food allergen means a food that triggers an allergic response when ingested by a sensitized person. The symptoms in an allergic response to a food allergen may include: hives, itching, swelling of the eyelids, face, lips, and tongue, runny nose, abdominal cramps, nausea, vomiting, diarrhea, hoarse voice, difficulty breathing, anaphylaxis, and death. The most common food allergens include: peanuts, tree nuts (such as cashews, hazelnuts and walnuts), fish, shellfish or crustacea (such as shrimp, crab, lobster and clams), eggs, milk or milk products, wheat (gluten) and soy.

(c) Food worker means a food worker or food handler as defined in Article 81 of the Health Code, except that it shall not mean a person who delivers food prepared in a food service establishment to patrons' homes, offices or other locations.

(e) Patron or customer means a person who orders from or is served food at a food service establishment.

(f) Poster or posting means a placard, paper or other poster, or a magnetized or other display that contains information about food allergens and that is provided or approved by the Department pursuant to this Chapter.

#### **§27-03 Posting and placement of food allergy information.**

(a) Posting of information. Food allergy information provided or approved by the Department shall be posted in a food service establishment.

(b) Languages and texts. As many posters shall be placed as may be necessary to cover all languages understood by all food workers. The Department shall provide posters with texts in English, Spanish, Chinese, Korean and Russian, maintain the texts of posters on its web site, may approve texts of posters in other languages upon request, and, as it deems necessary, may change and provide approved texts if new or different information about food allergens becomes known.

(c) Placement. Posters shall be placed in conspicuous locations where they are visible to all food workers including, but not limited to, food preparation areas and kitchens where food orders and raw ingredients are processed or prepared and places where food orders are placed and retrieved.

**§27-04. Disclosure.** Food service establishment operators shall disclose to a patron, on request, whether an ingredient containing a specific food allergen is used in preparation of any menu item.

**§27-05. No limitations on voluntary actions.** Nothing in this Chapter shall prohibit a food service establishment operator from taking any other measures to provide information to patrons or employees of the establishment to assist in avoiding patron contact with food allergens, including, but not limited to,

providing additional information to patrons about food allergens in any format, or soliciting patron allergen information.

§27-06. No third party beneficiary. This Chapter is not intended to create any benefit or support a cause of action for any third persons, including individuals with food allergens.

**§27-07. Violations and penalties.**

(a) Violations. It shall be a violation of this Chapter for an operator of a food service establishment to: fail to post the information required by this Chapter in a conspicuous place or places in the establishment; to fail to post the information in areas where it is visible to food workers; to fail to post the information in languages understood by food workers; or to post texts that are not provided or approved by the Department. Violations shall not be scored as sanitary inspection violations pursuant to Chapter 23 of Title 24 of these Rules.

(b) Penalties. The penalty for each violation of subdivision (a) of this section shall be \$100.00 per day, and such penalty shall be doubled if the respondent is found in default at any duly noticed hearing of a notice of violation scheduled at the Department's Administrative Tribunal.

Section 2. The list of Chapter headings in Title 24 of the Rules of the City of New York is hereby amended as follows:

**TITLE 24**

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**CHAPTER 1 POSTING REGULATIONS FOR VENDORS OF ALCOHOLIC BEVERAGES**

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**26 ESTABLISHMENT AND MAINTENANCE OF SEPARATE BOROUGH SPECIFIC WAITING LISTS FOR THOSE SEEKING FRESH FRUITS AND VEGETABLES PERMITS**

**27 FOOD ALLERGY INFORMATION**

9/2/09

Chapter 27 food allergy info intention.doc