

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on Proposed Rule regarding penalties for offenses adjudicated by the Environmental Control Board (ECB).

Date / Time: July 9, 2013 at 3:30PM

Location: ECB
66 John Street
10th Floor, Conference Room
New York, N.Y. 10038

Contact: James Macron
Counsel to the Board
ECB
66 John Street
10th Floor
New York, N.Y. 10038
(212) 436-0594

Proposed Rule Amendment

In accordance with the authority vested in the Environmental Control Board (ECB) by Sections 1049-a and 1043 of the New York City Charter ("Charter"), ECB proposes to amend Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). These rules create penalties for offenses that are heard and decided by ECB pursuant to Sections 1048 and 1049-a of the Charter, Section 7-02 of Chapter 7 of Title 24 of the RCNY, and Chapter 3 of Title 48 of the RCNY.

This rule was not included in the Environmental Control Board's regulatory agenda because it was not anticipated at the time the agenda was created.

Instructions

- Prior to the hearing, you may submit written comments about the proposed rule amendment to James Macron at the address above, or electronically through NYC RULES at www.nyc.gov/nycrules, by July 9, 2013. If you wish to testify, please notify James Macron by July 9, 2013.
- To request a sign language interpreter or other accommodation for a disability, please contact James Macron by July 2, 2013.
- Written comments and a summary of oral comments received at the hearing will be available for thirty days after the hearing by writing to: James Macron, Counsel to the Board, ECB, 66 John Street, 10th Floor, New York, N.Y. 10038.

Statement of Basis and Purpose

In accordance with the authority vested in the Environmental Control Board (ECB) by Sections 1049-a and 1043 of the New York City Charter, ECB is amending the Health Code and

Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (“Penalty Schedule”) concerning penalties for violations of various provisions of the NYC Health Code (“Health Code”) related to the enforcement of Article 161 (Animals).

Sections 1, 2 and 3

These sections add penalties for violations of the Health Code relating to inspections of various animal handling and servicing facilities. These facilities include pet shops that sell small animals (other than cats and dogs), animal shelters and boarding and grooming facilities (including horse stables). In addition, three charges relate to guard dogs.

Notices of violation for these violations when issued by the Department of Health and Mental Hygiene (“DOHMH”) are currently returnable to the Health Tribunal. Notices of violation issued for many of these sections of the Health Code by agencies other than the DOHMH are returnable to the ECB and the penalties for their violation are in ECB rules. Among the animal-related Health Code violations already heard at ECB are:

- unlawfully keeping/selling/giving a wild animal,
- control of dogs and other animals to prevent nuisance,
- violations pertaining to dog tags and licenses,
- failure to restrain a dog,
- and owning or harboring a dog or cat which has not been immunized against rabies.

The DOHMH plans to use public health sanitarians from DOHMH’s Pest Control Services program, who currently only write notices of violation for rats and rat harborage conditions returnable to ECB, to respond to animal nuisance complaints. Accordingly, DOHMH has requested that adjudication of these animal-related cases be moved to ECB in order to enhance its enforcement efforts.

Section 4

This section amends the description for Health Code §89.19(f)(2) to reflect Board of Health amendments of this Health Code provision that became effective July 22, 2011. The 2011 rulemaking resulted from the Board of Health’s conclusion that, when properly stored and prepared, most cooked fish and other aquatic animal food products may be safely sold from either a temporary or a mobile vending establishment. Thus, the provision now allows for sale and service of cooked fish and aquatic animal products on a mobile food vending unit. The sale and service of raw fish products is still prohibited. The penalty amount remains the same.

Deleted material is in [brackets].
New text is underlined.

Section 1. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to add 2 new charges after the entry in that schedule for NYC Health Code 3.09, “Failing to abate or remediate nuisance” to read as follows:

Section/Rule	Description	Penalty	Default
NYC Health Code 3.15(a)	<u>Interfering with or obstructing Department staff in performing duties</u>	<u>\$1000</u>	<u>\$2000</u>

<u>NYC Health Code 3.17</u>	<u>Notice or order of the Department mutilated, obstructed or removed</u>	<u>\$500</u>	<u>\$1000</u>
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Section 2. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to add 8 new charges after the entry in that schedule for 24 RCNY 6-01(l), "Non-processing unit being operated without proper food processing permit" to read as follows:

Section/Rule	Description	Penalty	Default
<u>NYC Health Code 131.09(a)</u>	<u>Failure to provide or maintain adequate lighting</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 131.09(b)</u>	<u>Failure to provide or maintain adequate ventilation</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 131.09(c)</u>	<u>Failure to maintain plumbing</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 131.09(d)(2)</u>	<u>Adequate hand wash facility not provided or not supplied with soap, hand drying device or towels</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 131.09(d)(4)</u>	<u>Adequate toilet facilities not provided</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 131.09 (e)</u>	<u>Failure to maintain floors in good repair</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 131.09 (f)</u>	<u>Failure to maintain walls and ceilings in good repair</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 131.09(g)</u>	<u>Premises not kept clean and/or in good repair</u>	<u>\$200</u>	<u>\$400</u>

Section 3. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to add 19 new charges after the entry in that schedule for NYC Health Code 151.03 (a), "Failure to eliminate standing water with decomposing matter and other conditions conducive to breeding and harborage of mosquitoes; extensive violations" to read as follows:

Section/Rule	Description	Penalty	Default
<u>NYC Health Code 161.01(a)(5)</u>	<u>Exhibiting or displaying exotic or other prohibited animals without a current valid permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.01(a)(5)</u>	<u>Failure to comply with animal exhibition conditions imposed by the Commissioner</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code</u>	<u>Operating a boarding kennel,</u>	<u>\$1000</u>	<u>\$2000</u>

<u>161.09(a)</u>	<u>grooming parlor, training establishment or pet shop without a current valid permit</u>		
<u>NYC Health Code 161.09(b)</u>	<u>Operating an animal shelter without a current valid permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(d)</u>	<u>Operating a horse stable without a permit</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(f)</u>	<u>Supervisor of animal business does not have certificate of completion of small animal care and handling course</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code 161.09(g)</u>	<u>Guard dog not registered with the Department</u>	<u>\$1000</u>	<u>\$2000</u>
<u>NYC Health Code 161.09(g)(1)</u>	<u>Guard dog not microchipped</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.09(g)(2)</u>	<u>Signs warning of presence of trained guard dog not posted</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code 161.13</u>	<u>Self-inspection reports not maintained or provided to the Department</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.15(a)</u>	<u>Residential quarters not separated from animal handling or care activities</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.15(b) and (c)</u>	<u>Failure to comply with dog license application requirements before transferring ownership</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code 161.15(e)</u>	<u>Failure to maintain vaccination records</u>	<u>\$250</u>	<u>\$250</u>
<u>NYC Health Code 161.17</u>	<u>Failure to have dogs or cats three months of age and older in individual cages</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.21(b)</u>	<u>Exposed surfaces in stable not kept clean</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code 161.21(f)</u>	<u>Manure or other refuse not maintained in a sanitary manner</u>	<u>\$500</u>	<u>\$1000</u>
<u>NYC Health Code 161.21(h)</u>	<u>Stable yard not kept clean or not graded to prevent accumulation of liquids</u>	<u>\$200</u>	<u>\$400</u>
<u>NYC Health Code</u>	<u>Owning, boarding, using or</u>	<u>\$500</u>	<u>\$1000</u>

<u>161.21(i)</u>	<u>bringing into NYC a horse that is not currently actively vaccinated against rabies and/or not providing vaccination records to the Department</u>		
<u>NYC Admin Code 17-197</u>	<u>Improperly restraining animal out of doors</u>	<u>\$250</u>	<u>\$250</u>

Section 4. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended to revise the charge currently listed as “NYC Health Code 89.19(f)(2), “Preparing, storing, holding or selling aquatic animal,” as follows:

Section/Rule	Description	Penalty	Default
NYC Health Code 89.19(f)(2)	Preparing, storing, holding or selling <u>raw fish or raw aquatic animal</u>	\$385	\$770

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Penalties for offenses adjudicated by ECB: Food Vendors and Animal Facilities

REFERENCE NUMBER: 2013 RG 027

RULEMAKING AGENCY: Environmental Control Board

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: May 10, 2013

**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: Penalties for offenses adjudicated by ECB: Food Vendors and Animal Facilities

REFERENCE NUMBER: OATH-ECB - 30

RULEMAKING AGENCY: Environmental Control Board

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) Does not provide a cure period because rule violations arise from completed events, the consequences of which are immediate, which makes a cure period impracticable under the circumstances.

/s/ Hunter Gradie
Mayor's Office of Operations

May 10, 2013
Date