

## **NOTICE OF PUBLIC HEARING**

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

**Date / Time:** February 14, 2012 at 3:30 p.m.

**Location:** ECB  
66 John Street  
10<sup>th</sup> Floor, Conference Room  
New York, N.Y. 10038

**Contact:** James Macron  
Counsel to the Board  
ECB  
66 John Street  
10<sup>th</sup> Floor  
New York, N.Y. 10038  
(212) 361-1515

### **Proposed Rule Amendment**

Pursuant to 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](http://www.nyc.gov/nycrules), by February 14, 2012. If you wish to testify, please notify James Macron by February 14, 2012.
- To request a sign language interpreter or other accommodation for a disability, please contact James Macron by February 7, 2012.
- 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, 10<sup>th</sup> Floor, New York, N.Y. 10038.

### **Statement of Basis and Purpose**

Pursuant to 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”).

**Section 1**

The proposed amendment conforms the Penalty Schedule’s description of violations of New York City Health Code (“Health Code”) Section 3.05 to the actual language of Health Code Section 3.05.

- Section 3.05(a) of the Health Code states that “No person shall violate an order of the Board, Commissioner or Department.” (As defined in Section 1.03 of the Health Code, “Board” refers to the Board of Health of the New York City Department of Health and Mental Hygiene (DOHMH), “Commissioner” refers to the Commissioner of Health and Mental Hygiene, and “Department” refers to DOHMH.)
- The Penalty Schedule, however, currently describes violations of Health Code Section 3.05 as “[f]ailing to comply with Department, Board of Health, or Commissioner’s order to abate or remediate nuisance condition(s).” This language limits enforcement of Section 3.05 to instances of non-compliance with only such orders “to abate or remediate nuisance conditions.”

Because Health Code Section 3.05 prohibits non-compliance with *any* order issued by DOHMH, the Board of Health of DOHMH, or the DOHMH Commissioner, the Penalty Schedule description is being amended to clarify and maintain consistency with the requirement of Health Code Section 3.05. The penalty remains the same.

**Section 2**

Section 2 changes the statutory citation for Health Code Section 89.29(e) to 89.29(g). This change is necessary because on June 14, 2011, the Board of Health amended Section 89.29, resulting in a re-lettering of its subdivisions, so that subdivision (e) became subdivision (g). The description and the penalty remain the same.

New matter is underlined, and deleted material is in [brackets].

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 by revising the description of New York City Health Code Section 3.05 violations as follows:

| <b>Section/Rule</b>  | <b>Description</b>  | <b>Penalty</b> | <b>Default</b> |
|----------------------|---|----------------|----------------|
| NYC Health Code 3.05 | Failing to comply with Department, Board of Health, or Commissioner's Order [to abate or remediate nuisance condition(s)] | \$1,000        | \$2,000        |

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 by revising the section/rule number of what is currently listed as “NYC Health Code 89.29(e)” (“Removal or covering of cessation signs or seals”) as follows:

| <b>Section/Rule</b>             | <b>Description</b>                              | <b>Penalty</b> | <b>Default</b> |
|---------------------------------|---|----------------|----------------|
| NYC Health Code 89.29 [(e)] (g) | Removal or covering of cessation signs or seals | \$1,000        | \$2,000        |

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

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

**RULE TITLE: Amendments to Health Code and Miscellaneous Food Vendor  
Violations Penalty Schedule**

**REFERENCE NUMBER: 2011 RG 108**

**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: December 14, 2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1526**

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

**RULE TITLE:** Amendments to Health Code and Miscellaneous Food Vendor Violations Penalty Schedule

**REFERENCE NUMBER:** OATH-ECB—17

**RULEMAKING AGENCY:** Environmental Control Board (ECB)

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) Does not provide a cure period because the underlying violation provides for a cure period.

/s/ RACHEL SQUIRE  
Mayor's Office of Operations

December 14, 2011  
Date