

## New York City Department of Consumer Affairs

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The Department of Consumer Affairs (“DCA” or “Department”) is proposing to amend Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York to establish fixed penalties for the violations of the laws and rules related to general vendors.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Friday, July 20, 2018. The hearing will be in the Department’s hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [rulecomments@dca.nyc.gov](mailto:rulecomments@dca.nyc.gov).
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax comments to Casey Adams, Director of City Legislative Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Friday, July 20, 2018. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes. You must submit any written comments to the proposed rule by 5:00 PM on Friday, July 20, 2018.

**What if I need assistance to participate in the hearing?** You must tell the Department’s External Affairs Division 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 address given above. You may also tell us by telephone at (212) 436-0095 or by email to [cadams@dca.nyc.gov](mailto:cadams@dca.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Wednesday, July 18, 2018.

This location has the following accessibility option(s) available: wheelchair accessible.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Department's External Affairs Division.

**What authorizes the Department of Consumer Affairs to make this rule?** Sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the City Charter, and Sections 20-104(e), 20-471, 20-472(b), 20-472(c) and 20-472(e) of the Administrative Code of the City of New York authorize the Commissioner of the Department to make this proposed rule. This proposed rule was not included in DCA's regulatory agenda for this Fiscal Year because it was not contemplated when DCA published the agenda.

**Where can I find DCA's rules?** The Department's rules are in Title 6 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The Department 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**

DCA proposes to add a new rule, Section 6-68, to Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York, to establish fixed penalties for the violations of the laws and rules related to general vendors. A similar penalty schedule is currently contained in the Rules for the Office of Administrative Trials and Hearings (“OATH”) at Section 3-109 of Subchapter G of Chapter 3 of Title 48. OATH will repeal the penalty schedule contained in its rules at 3-109 on or about the same date that the below proposed rule is promulgated.

DCA’s authority for these rules is found in Sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the City Charter, and Sections 20-104(e), 20-471, 20-427(b), 20-472(c) and 20-402(e) of the Administrative Code of the City of New York.

New material is underlined.

[Deleted material is in brackets.]

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

### **Proposed Rules**

Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new section 6-68 to read as follows:

#### **§ 6-68. General Vendor Penalty Schedule**

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by admitting to the violation, being found in violation in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

<u>Citation</u>	<u>Violation Description</u>	<u>First Violation</u>	<u>First Default</u>	<u>Second Violation</u>	<u>Second Default</u>	<u>Third Violation</u>	<u>Third Default</u>	<u>Fourth and Subsequent Violation</u>	<u>Fourth and Subsequent Default</u>
Admin. Code 20-453	Unlicensed general vendor – one occurrence of unlicensed activity	\$250	\$1,000	\$250	\$1,000	\$250	\$1,000	\$250	\$1,000
Admin. Code 20-453	Unlicensed general vendor – continued unlicensed activity	\$1,000 (plus \$250 per day)	\$1,000 (plus \$250 per day)	\$1,000 (plus \$250 per day)	\$1,000 (plus \$250 per day)	\$1,000 (plus \$250 per day)	\$1,000 (plus \$250 per day)	\$1,000 (plus \$250 per day)	\$1,000 (plus \$250 per day)
Admin. Code 20-461(a)	Failure to carry & exhibit license on demand	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-461(b)	Failure to wear license conspicuously while vending	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-462	Failure to notify DCA of change of info. on license application	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-463	Failure to keep or produce required written record	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-464(a)	Failure to permit regular inspections	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-464(b)	Failure to provide name/address of manufacturer, supplier, distributor or place of storage	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-464(c)	Vending of prohibited goods	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-464(d)	Transfer of license without approval of Comm.	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-465(a)	Vending on sidewalk less than 12ft. wide, or not at curb	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-465(b)	Using more than 8ft. parallel to curb or 3ft. from curb	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
Admin. Code 20-465(c)	Stand or goods touching or leaning against building or structure	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500

<u>Admin. Code 20-465(d)</u>	<u>Stand or goods against display window or within 20ft. of entrance of any building or within 20ft. from exits, including service exits, to buildings that are exclusively residential at street level</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(e)</u>	<u>Vending in bus stop, taxi stand, sidewalk next to a hospital or health facility no standing zone or within 10ft. of drive/subway entrance or exit/corner</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(f)</u>	<u>Violation of parking rules and regulations</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(g)</u>	<u>Vending in prohibited zone or area</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(i)</u>	<u>Vending on median strip not intended for mall or plaza</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(j)</u>	<u>Vending within Parks jurisdiction without Parks Comm. approval</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(k)</u>	<u>Failure to move after notice of exigent circumstances given</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(m)</u>	<u>Vending over ventilation grill, cellar door, manhole, transformer vault or subway access grating</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(n)</u>	<u>Display of goods on sidewalk surface, blanket, trash receptacle, cardboard boxes or board placed on sidewalk surface; display exceeding 5ft. in height from ground level; or less than 24in. above sidewalk, or less than 12in. above sidewalk where display is vertical; size of table or base less than size of display structure placed thereon; objects placed on base</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>

	<u>larger than size limitations of this section; area other than area under display surface used for storage</u>								
<u>Admin. Code 20-465(o)</u>	<u>Vending from a parked motor vehicle</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(p)</u>	<u>Illegal use of electricity, electrical generating equipment, oil or gasoline powered equipment, machinery of any kind</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465(q)</u>	<u>Vending within 20ft. of sidewalk cafes; within 5ft. of bus shelters, newsstands, public telephones, disabled access ramps</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-465.1</u>	<u>Vending at times/places restricted by rule of Vendor Review Panel</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-466</u>	<u>Transfer of goods/vehicle/stand/pushcart to unlicensed vendor</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-474.1</u>	<u>Unlicensed distribution of goods to a vendor; unlicensed driver, operating on the distributor's behalf, fails to carry proof of the distributor's license or fails to comply with the General Vendor law/rules; failure to notify DCA within 10 days of changes to information in distributor's license application</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin. Code 20-474.2</u>	<u>Distributor's delivery vehicle without the required ID</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY 2-302(a)</u>	<u>Failure to notify DCA after 4 or more violations</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>
<u>6 RCNY 2-302(b)</u>	<u>Failure to notify DCA regarding failure to answer summons/appear for a hearing/pay penalty within 30 days</u>	<u>\$50</u>	<u>\$50</u>	<u>\$100</u>	<u>\$100</u>	<u>\$250</u>	<u>\$250</u>	<u>\$500</u>	<u>\$500</u>

6 RCNY 2-302(c)	Failure to notify DCA of change of address or telephone number	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-302(d)	Failure to notify DCA of supplier's address change	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-303(a)	Failure to keep daily gross receipts record	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-303(b)	Failure to make records available to DCA	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-304(a)	Vending in road where parking/standing prohibited	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-304(b)	Failure to comply with parking meter requirement	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-304(c)	Vending near fire hydrant or in safety zone	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-306	Failure to move after notice of exigent circumstances given	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-307(a)	Misrepresentations concerning merchandise (Consumer Prot. Law)	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-307(b)	Failure to conspicuously display price exclusive of tax	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-307(c)	Failure to offer receipt for purchase	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500
6 RCNY 2-307(d)	Failure to retain duplicate copies of receipts	\$50	\$50	\$100	\$100	\$250	\$250	\$500	\$500

**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:** Promulgation of General Vendors Penalty Schedule

**REFERENCE NUMBER:** 2018 RG 056

**RULEMAKING AGENCY:** Department of Consumer Affairs

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, 2018



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

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Promulgation of General Vendors Penalty Schedule**

**REFERENCE NUMBER: DCA-68**

**RULEMAKING AGENCY: Department of Consumer Affairs**

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 a cure period is not practicable under the circumstances and because some violations pose significant risks to public health and safety.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

June 6, 2018  
Date