



Department of Health and Mental Hygiene

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department is proposing to amend Chapter 23 (Food Service Establishment Sanitary Inspection Procedures and Letter Grading) of Title 24 of the Rules of the City of New York to add a new Appendix C with fixed penalties for adjudicated violations and to change the name of the former Administrative Tribunal to the Health Tribunal.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM until 12:00 PM on April 29, 2014. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, Room 14-43
Long Island City, NY 11101-4132

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

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to
Roslyn Windholz, Secretary to the Board of Health
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to New York City Department of Health and Mental Hygiene at 347-396-6088
- **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 Svetlana Burdeynik at 347-396-6078/6116. You can also sign up in the hearing room before or during the hearing on April 29, 2014. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on April 29, 2014.

Do you need assistance to participate in the hearing? You must tell the Secretary 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 347-396-6078/6116. You must tell us by April 15, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the

website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by DOHMH will be made available to the public within a reasonable period of time by the DOHMH Office of the General Counsel.

What authorizes the Department of Health and Mental Hygiene to make this rule? Sections 556 and 1043 of the City Charter and §81.51 of the New York City Health Code authorize the Department to make this proposed rule. This proposed rule was not included in the Department's regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the Department's rules? The rules of the Department of Health and Mental Hygiene are in title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of §1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose of Proposed Rule

The authority for these rules is found in §§556 and 558 of the New York City Charter and §81.51 of the New York City Health Code (the Health Code).

Introduction.

The Department of Health and Mental Hygiene (the Health Department) regulates food service establishments, which include a broad range of businesses and not-for-profit operations that provide food in individual portion sizes for consumption by members of the public. The Department is proposing to amend Chapter 23 to establish a schedule of fixed penalties for violations sustained against food service establishments and to update some definitions used in the Chapter.

Establishment of fixed penalties for food service establishment violations.

In accordance with S 558(e) of the Charter, the Board of Health established an administrative tribunal within the Health Department to enforce the provisions of the New York City Health Code (Health Code). By Executive Order No. 148 (June 8, 2011), the Mayor transferred this tribunal to the Office of Administrative Trials and Hearings ("OATH"). Since July 3, 2011 it has operated the Health Tribunal, which is where all violations issued to food service establishments, other than mobile food vending units, are adjudicated.

OATH's rules for the Health Tribunal, found in Title 48 RCNY Chapter 6, (specifically 48 RCNY § 6-02) require it to impose fines and pecuniary penalties in accordance with Article 3 of the Health Code. Unless otherwise specified, Health Code §3.11 requires that there be a penalty of at least \$200 and no more than \$2000 whenever a violation of the Health Code, or other law enforced by the Health Department, is found to have occurred. Currently, the hearing examiners who adjudicate notices of violation at the Health Tribunal decide within these parameters what the penalty will be when they sustain a violation. At other City agencies' administrative tribunals, including the Environmental Control Board at OATH where notices of violation issued to mobile food vendors are adjudicated, penalties are fixed by law and not left to

the discretion of hearing examiners. The Health Department believes that similarly having fixed penalties at the Health Tribunal will promote consistency and fairness in decision making and provide predictability for those whose notices of violation are decided there.

Eventually the Department will be proposing rules fixing penalties for all violations that are adjudicated at the Health Tribunal. Chapter 23 is being amended first to add a new Appendix C fixing penalties for any violation that can be cited against a food service establishment on inspection because the majority of notices of violation heard at the Health Tribunal are issued to food service establishments. Some violations listed in Appendix C, however, are cited more broadly than just against food service establishments. Examples include failing to prevent or maintaining a nuisance in violation of Health Code §§3.07 or 3.09, or obstructing an inspection in violation of Health Code §3.15(a). The penalties prescribed for these violations will apply to all notices of violation of these provisions adjudicated at the Health Tribunal, regardless of whether the respondent is a food service establishment.

Amended definitions and references to the former Administrative Tribunal

Article 7 of the Health Code, which contained the procedural rules of the Administrative Tribunal when it was located within the Department, was repealed after its transfer to OATH. The definitions of “Administrative Tribunal” and “notice of violation” in §23-01 of Chapter 23, and the references to the Department’s Administrative Tribunal in §23-07, are being amended to reflect this repeal and the fact that Health Tribunal is now at OATH. The definition of “notice of violation” is being amended to be consistent with the definition in OATH’s rules at 48 RCNY §6-01, which currently reads:

Notice of Violation or “NOV” means the document issued by the petitioner to a respondent which specifies the charges forming the basis of an adjudicatory proceeding before the Tribunal.

The proposal is as follows.

“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.

Deleted material is in [brackets]; new text is underlined.

Section 1. Section 23-01 of Chapter 23 of Title 24 of the Rules of the City of New York is amended to repeal the definition of “Administrative Tribunal,” to amend the definition of “Notice of violation” and to add a definition of “Health Tribunal” as follows:

[Administrative Tribunal shall mean the Administrative Tribunal of the Department established in Article 7 of the Health Code.]

* * *

Health Tribunal means the Health Tribunal at OATH, the adjudicatory body established by §558 of the New York City Charter, formerly known as the Department’s Administrative Tribunal, whose operation was transferred to OATH by Executive Order No. 148, effective July 3, 2011.

* * *

Notice of violation [shall have the same meaning as in Article 7 of the Health Code] means the document issued by the Department to a respondent that specifies the charges forming the basis of an adjudicatory proceeding at the Health Tribunal and seeks a monetary penalty.

* * *

§2. Section 23-05 of Chapter 23 of Title 24 of the Rules of the City of New York is retitled and amended to add a new subdivision (c), effective four months from the date of publication of the final rule in the City Record, as follows:

§23-05 [Issuance of notices] Notices of violation[s.] and penalties for sustained violations.

* * *

(c) A Health Tribunal hearing examiner must impose the penalty set forth in Appendix C of this Chapter for any sustained violation.

§3. Subdivision (c) and paragraphs (1), (2), (3), (4) and (7) of subdivision (d) of Section 23-07 of Title 24 of the Rules of the City of New York are amended solely to substitute the term “Health Tribunal” for “Administrative Tribunal” or “Department’s Administrative Tribunal” as follows:

§23-07. Posting letter grades.

* * *

(c) If an establishment required by §81.51 of the Health Code to post a letter grade receives a score of 14 or more points on the reinspection, and is not closed by the Department, the Department shall provide the establishment with a “grade pending” card and a grade card displaying the letter grade that corresponds with its inspection score at the reinspection. The establishment shall immediately post either the grade card or the “grade pending” card. If the establishment elects to post the “grade pending” card, it may only do so until it has had an opportunity to be heard at the [Department’s Administrative Tribunal] Health Tribunal pursuant to subdivision (d) of this section and §81.51 of the Health Code.

(d) Effect of adjudication at the [Administrative Tribunal] Health Tribunal on grading of establishments required by §81.51 of the Health Code to post letter grades:

(1) If the establishment appears personally at the [Administrative Tribunal] Health Tribunal and as a result of such proceeding the score received on a reinspection does not change the grade, the establishment shall immediately upon receipt of the notice of decision remove any posted “grade pending” card and post the grade card provided by the Department at such inspection.

(2) Subject to the provisions of paragraph (3) of this subdivision, if the establishment does not appear at the [Administrative Tribunal] Health Tribunal on or before the scheduled hearing date, [in accordance with Article 7 of the Health Code,] the establishment shall, on the date of the hearing, post the letter grade card provided by the Department at the reinspection.

(3) If the establishment appears at the [Administrative Tribunal] Health Tribunal on the scheduled date but is unable to proceed, or if the establishment makes a timely request for an adjournment and such adjournment is granted, the establishment may continue to post the “grade pending” card and defer posting the letter grade card until the adjourned hearing date. In no event shall an establishment fail to post the grade card after the adjourned hearing date if the establishment is not able to proceed on such date.

(4) If the establishment appears at the [Administrative Tribunal] Health Tribunal and as a result of such proceeding the score received for the reinspection changes in a way that results in a change of grade, the Department shall provide the establishment with a new letter grade card that shall be promptly posted by the establishment in place of any other letter grade card or “grade pending” card.

* * *

(7) The disposition of any notice of violation at the [Administrative Tribunal] Health Tribunal shall not affect any provision of this Chapter or other applicable law other than the issuance of a grade.

* * *

§4. Chapter 23, found in Title 24 of the Rules of the City of New York, is amended to add a new Appendix C.

CHAPTER 23 APPENDIX C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

SCORED VIOLATIONS

<u>VIOLATION CODE</u>	<u>CITATION</u>	<u>CATEGORY</u>	<u>VIOLATION DESCRIPTION</u>	<u>VIOLATION PENALTY CONDITION I*</u>	<u>VIOLATION PENALTY CONDITION II*</u>	<u>VIOLATION PENALTY CONDITION III*</u>	<u>VIOLATION PENALTY CONDITION IV*</u>	<u>VIOLATION PENALTY CONDITION V*</u>
02A	NYCHC 81.09(a)(1) or (5)	Public Health Hazard	Poultry, stuffing containing meats, stuffed meats: not heated to 165°F for 15 seconds				\$400	\$600
02A	NYCHC 81.09(a)(2)	Public Health Hazard	Pork/food containing pork not heated to 155°F for 15 seconds				\$400	\$600
02A	NYCHC 81.09(a)(3)	Public Health Hazard	Rare roast beef/steaks not heated to minimum time/temperature				\$400	\$600
02A	NYCHC 81.09(a)(4)	Public Health Hazard	Ground meat not heated to 158°F				\$400	\$600
02A	NYCHC 81.09(a)(6)	Public Health Hazard	Shell eggs/food containing shell eggs not heated 145°F for 15 seconds				\$400	\$600
02A	NYCHC 81.09(a)	Public Health Hazard	Other potentially hazardous hot food not heated to 145°F for 15 seconds				\$400	\$600
02B	NYCHC 81.09(a)	Public Health Hazard	Hot potentially hazardous food not held at 140°F or above	\$250	\$300	\$350	\$400	\$600
02C	NYCHC 81.09(a)(7)	CRITICAL	Previously heated and cooled potentially hazardous hot food not reheated to 165°F for 15 seconds within 2 hours	\$200	\$200	\$250	\$300	
02D	NYCHC 81.09(a)(10)	CRITICAL	Commercially processed potentially hazardous food not heated to 140°F within 2 hours	\$200	\$200	\$250	\$300	
02E	NYCHC 81.09(g)(5)	CRITICAL	Whole frozen poultry or poultry breast, other than a single portion, cooked frozen or partially thawed	\$200	\$200			
02F	NYCHC 81.09(d)	CRITICAL	Meat, fish, or shellfish served raw or partially cooked					
02G	NYCHC 81.09(a)	Public Health Hazard	Cold potentially hazardous food not held at 41°F or below			\$250	\$300	\$350
02G	NYCHC 81.09(c)	Public Health Hazard	Processed or smoked fish not held at or below 38°F	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.09(b)	Public Health Hazard	Eggs not held at ambient temperature of 45°F or below	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.12(d)(2)	Public Health Hazard	Reduced oxygen packaged raw foods not held at proper temperatures	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged cold foods not held at proper temperatures	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged foods not held at proper temperatures	\$250	\$300	\$350	\$400	\$600
02H	NYCHC 81.09(e)	Public Health Hazard	Potentially hazardous food not cooled by approved method	\$250	\$300	\$350	\$400	\$600
02I	NYCHC 81.09(f)	CRITICAL	Potentially hazardous food not cooled to 41°F when prepared from ambient temperature ingredients within 4 hours	\$200	\$200	\$250	\$300	
02J	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged foods not properly cooled	\$250	\$300	\$350	\$400	\$600
03A	NYCHC 81.04	Public Health Hazard	Food not from an approved source				\$400	\$600
03A	NYCHC 81.12(c)	Public Health Hazard	Reduced oxygen packaged foods not from an approved source				\$400	\$600
03A	NYCHC 81.12(e)	Public Health Hazard	Reduced oxygen packaging fish not frozen before processing				\$400	\$600
03A	NYCHC 81.04(b)	Public Health Hazard	Meat not from an approved source				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish not from an approved source				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish improperly tagged or labeled				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish tags not retained at least 90 days				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Wholesale shellfish records not on premises				\$400	\$600
03C	NYCHC 81.07(c)	Public Health Hazard	Eggs cracked, dirty or unpasteurized; source of eggs not identified on container				\$250	\$300
03D	NYCHC 81.07(b)	Public Health Hazard	Food packages damaged; cans of food swollen, leaking and/or rusted	\$250	\$300	\$350	\$400	\$600
03E	NYCHC 81.20(a)	Public Health Hazard	Potable water not provided; inadequate				\$400	\$600
03E	SSC 14-1.121	Public Health Hazard	Bottled water not from an approved source				\$250	\$250

CHAPTER 23 APPENDIX C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

SCORED VIOLATIONS

VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*	
03E	NYCHC 81.20(a)	Public Health Hazard	Cross-connection observed between potable and non-potable water				\$400	\$600	
03E	NYCHC 81.20(d)	Public Health Hazard	Carbon dioxide gas lines unacceptable, improper materials used				\$400	\$600	
03F	NYCHC 81.07(K)	Public Health Hazard	Unpasteurized milk and milk products				\$400	\$600	
03G	NYCHC 81.07(a)(5)	CRITICAL	Fruits and vegetables not washed prior to serving	\$200	\$200	\$250	\$300		
04A	NYCHC 81.15(a)	CRITICAL	Food Protection Certificate not held by supervisor or manager of food operations					\$600	
04B	NYCHC 81.13(a)	Public Health Hazard	Food worker with illness, communicable disease and/or injury preparing food					\$400	\$600
04C	NYCHC 81.07(J)	Public Health Hazard	Bare hand contact with ready-to-eat foods	\$250	\$300	\$350	\$400	\$600	
04D	NYCHC 81.13(d)	Public Health Hazard	Food worker failed to wash hands after contamination					\$400	\$600
04E	NYCHC 81.23(d)(3)	Public Health Hazard	Pesticides not properly stored; food, equipment, utensils, etc., not protected from pesticide contamination	\$250	\$300	\$350	\$400	\$600	
04E	SSC 14-1.60	Public Health Hazard	Chemicals and toxic materials not properly stored	\$250	\$300	\$350	\$400	\$600	
04F	NYCHC 81.20(b)	Public Health Hazard	Sewage and liquid waste not properly disposed of					\$400	\$600
04G	NYCHC 81.07(I)	Public Health Hazard	Unprotected potentially hazardous food re-served					\$400	\$600
04H	NYCHC 81.07(a)(3)	Public Health Hazard	Food not protected from cross-contamination	\$250	\$300	\$350	\$400	\$600	
04H	NYCHC 81.07(a)	Public Health Hazard	Food in contact with toxic material	\$250	\$300	\$350	\$400	\$600	
04H	NYCHC 81.07(a)	Public Health Hazard	Food not protected from adulteration or contamination	\$250	\$300	\$350	\$400	\$600	
04H	NYCHC 81.06(b)(3)	Public Health Hazard	Food not discarded in accordance with HACCP plan	\$250	\$300	\$350	\$400	\$600	
04I	NYCHC 81.07(I)	CRITICAL	Food other than in sealed packages re-served	\$200	\$200	\$250	\$300		
04J	NYCHC 81.09(h)	CRITICAL	Thermometer not provided, used, calibrated properly, accessible for use and/or inadequate						\$300
04J	NYCHC 81.12(g)(1)	CRITICAL	Thermocouple not provided						\$300
04K	NYCHC 81.23(a)	CRITICAL	Evidence of rats	\$200	\$200	\$250	\$300	\$350	
04L	NYCHC 81.23(a)	CRITICAL	Evidence of mice	\$200	\$200	\$250	\$300	\$350	
04M	NYCHC 81.23(a)	CRITICAL	Evidence of roaches	\$200	\$200	\$250	\$300	\$350	
04N	NYCHC 81.23(a)	CRITICAL	Filth flies	\$200	\$200	\$250	\$300	\$350	
04O	NYCHC 81.25	CRITICAL	Live animal other than fish in tank or service animal	\$200	\$200	\$250	\$300	\$350	
05A	NYCHC 81.20(b) and (c)	Public Health Hazard	Sewage disposal system improper or unapproved					\$400	\$600
05B	NYCHC 81.19 (c)	Public Health Hazard	Harmful noxious gas or vapor detected; CO levels at or exceeding 9 ppm					\$400	\$600
05C	NYCHC 81.17(d)	CRITICAL	Food contact surface improperly constructed, located and/or made of unacceptable materials	\$200	\$200	\$250	\$300	\$350	
05C	NYCHC 81.07(a)(1)	CRITICAL	Culinary sink or alternative method not provided for washing food	\$200	\$200	\$250	\$300	\$350	
05D	NYCHC 81.21(a)	CRITICAL	Hand washing facilities not provided or not located where required					\$300	\$350
05D	NYCHC 81.21(a) (1)	CRITICAL	Hand washing facilities not provided within 25 feet of food preparation area or ware washing area					\$300	\$350
05D	NYCHC 81.21(a)	CRITICAL	Hand wash facility not provided with running water, or properly equipped					\$300	\$350
05D	NYCHC 81.21(b)	CRITICAL	Hand wash facility inadequate					\$300	\$350
05E	NYCHC 81.22(a)	CRITICAL	Toilet facilities not provided for employees					\$300	\$350
05E	NYCHC 81.22(b)	CRITICAL	Toilet facilities not provided for patrons					\$300	\$350
05E	NYCHC 81.22(d)	CRITICAL	Shared patron/employee toilet accessed through kitchen, food prep or storage area					\$300	\$350
05F	NYCHC 81.18	CRITICAL	Hot or cold holding equipment not provided or inadequate					\$300	\$350
05G	NYCHC 89.27(c)	CRITICAL	Enclosed service area not provided, equipped in mobile food vending commissary					\$300	\$350
05H	NYCHC 81.29(a)	CRITICAL	Manual or mechanical tableware, utensil and/or ware washing facilities not provided					\$300	\$350

CHAPTER 23 APPENDIX C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

SCORED VIOLATIONS

VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*
05I	NYCHC 81.12(d)(5)	CRITICAL	Refrigeration unit not equipped with an electronic system				\$300	\$350
06A	NYCHC 81.13	CRITICAL	Food worker does not maintain personal cleanliness				\$300	\$350
06A	NYCHC 81.13 (e)	CRITICAL	Fingernails not clean, trimmed, or with nail polish	\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(c)	CRITICAL	Clean outer garment not worn	\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(b)	CRITICAL	Effective hair restraint not worn	\$200	\$200	\$250	\$300	
06B	NYCHC 81.13(h)	CRITICAL	Eating in food preparation or service areas	\$200	\$200	\$250	\$300	
06B	NYCHC 81.13(g)	CRITICAL	Smoking Tobacco or other substance in establishment	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(a)	CRITICAL	Food not protected from contamination	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07 (g)	CRITICAL	Unnecessary traffic through food prep area	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(d)	CRITICAL	Food not properly protected when stored	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(e)	CRITICAL	Food not properly protected when displayed	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(f)	CRITICAL	Condiments for self service not properly dispensed	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(i)	CRITICAL	Supplies and equipment placed under overhead sewage pipe	\$200	\$200	\$250	\$300	
6C	NYCHC 81.31	CRITICAL	Cooking by FSE on street, sidewalk, except as authorized by Articles 88, 89					
06D	NYCHC 81.27(b)	CRITICAL	Food contact surface not sanitized; and/or not clean to sight and/or touch	\$200	\$200	\$250	\$300	
06D	NYCHC 81.27(c)	CRITICAL	Equipment with food contact surfaces not clean and sanitized	\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(h)	CRITICAL	In-use food dispensing utensil not properly stored	\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(g)	CRITICAL	Ice not properly dispensed or dispensing utensil not properly stored	\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(h)	CRITICAL	Food dispensing utensil not provided	\$200	\$200	\$250	\$300	
06F	NYCHC 81.27(d)	CRITICAL	Wiping cloth improperly stored and/or sanitized	\$200	\$200	\$200		
06G	NYCHC 81.06(b) and (c)	Public Health Hazard	Approved HACCP plan not maintained on premises or not approved				\$400	\$600
06H	NYCHC 81.06(b)(4)	CRITICAL	Records and logs not maintained on site					\$350
06I	NYCHC 81.12(d)(6)	CRITICAL	Food not labeled in accordance with the approved HACCP plan				\$300	\$350
07A	NYCHC 3.15 (a)	CRITICAL	Obstruction of Department personnel					\$1,000
08A	NYCHC 81.23(a)	CRITICAL	Conditions conducive to pests			\$200	\$200	
08A	NYCHC 81.23(b)	GENERAL	Prevention and control measures not used for pest management			\$200	\$200	
08A	NYCHC 81.23(b)(3)	GENERAL	Door openings into the establishment from the outside not properly equipped			\$200	\$200	
08A	NYCHC 81.23(b)(4)	GENERAL	Pest monitors incorrectly used			\$200	\$200	
08A	NYCHC 81.23(b)(2)	GENERAL	Contract with pest exterminator or record of pest extermination activities not kept on premises			\$200	\$200	
08B	NYCHC 81.24(a)(1)	GENERAL	Garbage not properly removed or stored	\$200	\$200	\$200	\$200	
08B	NYCHC 81.24(b)	GENERAL	Garbage receptacles and covers not cleaned after emptying and prior to reuse	\$200	\$200	\$200	\$200	
08C	NYCHC81.23(d)	GENERAL	Pesticides not properly labeled, not authorized for use, or improperly used	\$200	\$200	\$200	\$200	\$200
08C	SSC 14-1.60(e)	GENERAL	Open bait station observed	\$200	\$200	\$200	\$200	\$200
08C	NYCHC 81.23(e)	GENERAL	Toxic materials not properly stored	\$200	\$200	\$200	\$200	\$200
09A	NYCHC 81.07(b)	GENERAL	Canned food observed dented and not segregated from other consumable foods	\$200	\$200	\$200	\$200	
09B	NYCHC 81.09(g)	GENERAL	Thawing procedures improper	\$200	\$200	\$200	\$200	
09C	NYCHC 81.17(d)(1)	GENERAL	Food contact surface improperly constructed and maintained; not easily cleanable	\$200	\$200	\$200	\$200	
10A	NYCHC 81.22(c)	GENERAL	Toilet facility not properly maintained	\$200	\$200	\$200	\$200	
10A	NYCHC 81.22(c)	GENERAL	Toilet facility not properly supplied	\$200	\$200	\$200	\$200	
10A	SSC 14-1.142(a)	GENERAL	Toilet room not completely enclosed with self-closing door	\$200	\$200	\$200	\$200	
10B	NYCHC 81.20(a)	GENERAL	Potable water not protected from backflow, back siphonage or cross-connection	\$200	\$200	\$200	\$200	\$200
10B	NYCHC 81.20(b)	GENERAL	Improper disposal of sewage or liquid waste	\$200	\$200	\$200	\$200	\$200
10B	NYCHC 81.20(c)	GENERAL	Condensation pipes not properly installed or maintain	\$200	\$200	\$200	\$200	\$200
10C	NYCHC 81.19(a)	GENERAL	Lighting insufficient; inadequate	\$200	\$200	\$200	\$200	
10D	NYCHC 81.19(c)	GENERAL	Ventilation (mechanical or natural) not provided or inadequate	\$200	\$200	\$200	\$200	

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SCORED VIOLATIONS

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10E	NYCHC 81.18(a)(3)	GENERAL	Thermometers not provided in cold storage and/or refrigerator	\$200	\$200	\$200	\$200	
10E	NYCHC 81.18(b)(1)	GENERAL	Thermometers not provided in hot storage or holding units	\$200	\$200	\$200	\$200	
10F	NYCHC 81.17 (e)(1)	GENERAL	Flooring improperly constructed and/or maintained	\$200	\$200	\$200	\$200	
10F	NYCHC 81.17(e)(2)	GENERAL	Non-food contact surfaces (wall, ceiling, floors) improperly constructed/maintained	\$200	\$200	\$200	\$200	
10F	NYCHC 81.17(e)(3)	GENERAL	Non-food contact surface (fixtures, decorative material, fans, etc.) not properly maintained or equipment not properly maintained	\$200	\$200	\$200	\$200	
10G	NYCHC 81.17(a)(2)	GENERAL	Food being processed, prepared, packed, or stored in a private home or apartment.	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)(1)	GENERAL	Hot water manual ware washing inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)(2)	GENERAL	Manual chemical sanitizing procedure inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)(3)	GENERAL	High temperature mechanical ware washing inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)(4)	GENERAL	Mechanical chemical sanitizing procedure inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)(2)	GENERAL	Test kit not accurate or used for manual dishwashing	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)(4)	GENERAL	Test kit not accurate or used for mechanical dishwashing	\$200	\$200	\$200	\$200	
10I	SSC 14-1.110 (e)	GENERAL	Single service items improperly stored or reused	\$200	\$200	\$200	\$200	
10I	NYCHC 81.07(o)	GENERAL	Drinking straws improperly dispensed	\$200	\$200	\$200	\$200	
10J	NYCHC 81.21(c)	GENERAL	Wash hands sign not posted	\$200				
99B	Miscellaneous	GENERAL		\$200	\$200	\$200	\$200	\$200

CHAPTER 23 APPENDIX C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

UNSCORED VIOLATIONS

VIOLATION	CITATION	VIOLATION DESCRIPTION	VIOLATION PENALTY*
15A	Admin. Code 17-177(b)	Tobacco vending machine present in a facility other than tavern; initial (#1) and repeat violations (#2, 3 or more)**	\$300 (#1); \$500 (#2) \$1,000 (#3 or more)
15B	Admin. Code 17-177(c)(1)	Tobacco vending machine not 25 feet from door; initial (#1) and repeat violations (#2, 3 or more)**	\$300 (#1); \$500 (#2); \$1,000 (#3 or more)
15C	Admin. Code 17-177(c)(1)	Tobacco vending machine not visible by owner; initial (#1); repeat violations (#2, 3 or more)**	\$300 (#1); \$500 (#2); \$1,000 (#3 or more)
15D	Admin. Code 17-177(d)	Sign not durable and lacks required information; initial (#1) and repeat violations (#2, 3 or more)**	\$300 (#1); \$1,000 (#2 or more)
15D	Admin. Code 17-177(d)	Sign not posted on machine and not visible to the public; initial (#1) and repeat violations (#2 or more)**	\$300 (#1); \$1,000 (#2 or more)
15E	Admin. Code 17-704	Out-of-package sale of tobacco products; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000 (#1); \$2,000 (#2 or more in 36 months)
15F	Admin. Code 17-705	Employee under 18 years of age selling tobacco products without direct supervision of an adult retailer; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000(#1); \$2,000 (#2 or more in 36 months)
15G	Admin. Code 17-706	Sale to persons under 21 observed; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000 (#1); \$2,000 (#2 or more in 36 months)
15H	Admin. Code 17-706	Sign prohibiting sale of tobacco products to persons under 21 not conspicuously posted; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000 (#1); \$2,000 (#2 or more in 36 months)
15I	Admin. Code 17-506(a)	Sign prohibiting smoking or using electronic cigarettes not conspicuously posted; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)**	\$400 (#1); \$500 (#2 in 12 months); \$1,000 (#3 or more in 12 months)
15I	Admin. Code 17-506(a)	Sign permitting smoking or using electronic cigarettes not conspicuously posted; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)**	\$400 (#1); \$500 (#2 within 12 months); \$1,000(#3 or more in 12 months)
15I	24 RCNY 10-11(b)	"No smoking or using electronic cigarettes" sign not posted with ashtrays in hotels, or at hotel entrances*	\$500
15I	24 RCNY 10-12(c)	Sign lettering and color does not meet specifications*	\$500
15J	Admin. Code 17-506(d)	Ashtrays in smoke-free area; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)*	\$400 (#1); \$500 (#2 within 12 months); \$1,000(#3 or more in 12 months)
15K	Admin. Code 17-508(b)	Operator failed to make a good faith effort to inform smokers or users of electronic cigarettes of the Smoke-Free Air Act; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1) violations*	\$400 (#1); \$800 (#2 within 12 months); \$1,600 (#3 within 12 months)
15K	NYSPHL 1399-0	No smoking permitted*	\$1,000
15L	Admin. Code 17-504(f)	Workplace SFAA policy not prominently posted in workplace; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)*	\$400 (#1); \$500 (#2 within 12 months); \$1,000(#3 or more in 12 months)
15M	Admin. Code 17-708	Use of tobacco on school premises*	\$50
15N	Admin. Code 17-176.1	Selling cigarettes, tobacco products, little cigars for less than listed price or price floor; initial (#1) and repeat violations (#2 or #3 within 60 months of #1	\$1,000 (#1); \$2,000 (#2 within 60 months); \$5,000 (#3 within 60 months)
15N	Admin. Code 17-176(b)	Distributing tobacco products at less than basic cost; initial (#1) and repeat violations (#2 or more)*	\$500 (#1); \$1,000 (#2 or more)
15O	Admin. Code 17-714	Sale of herbal cigarettes to minors*	\$2,000
15S	24 RCNY 28-02(a)	Flavored tobacco products sold or offered for sale*	\$500
15T	24 RCNY 28-06	Original label for tobacco products sold or offered for sale*	\$500
16A	NYCHC 81.08(a)	Cooking oil, shortening, margarine contains 0.5 grams or more of artificial trans fat.	\$200
16B	NYCHC 81.08(c)	Nutritional fact labels and/or ingredient label is not maintained on site.	\$200
16C	NYCHC 81.50(c)	Calorie information is not posted on menu and menu board	\$200
16E	NYCHC 81.50(c)	Calorie range of food item(s) that come in different flavors and varieties not provided.	\$200
16F	NYCHC 81.50(c)	Calorie range of food item(s) that comes in different combinations not provided	\$200
18A	NYCHC 81.05(c)	No currently valid permit, registration or other authorization to operate food service establishment	\$1,000
18A	NYCHC 88.05(c)	No currently valid permit, registration or other authorization to operate a temporary food service establishment	\$1,000
18B	NYCHC 3.19	Submitting false, misleading statements, documents; documents unlawfully reproduced or altered.	\$1,000
18C	NYCHC 3.17	Notice of the Department mutilated, obstructed, or removed	\$1,000
18D	NYCHC 3.05(a)	Failure to comply with an Order of the Board of Health, Commissioner, or Department	\$1,000
18E	NYCHC 81.43(a)	Failure to report occurrences of suspected food borne illness to the Department	\$200
18F	NYCHC 81.15(b)	Food Protection Certificate not available for Department inspection	\$200
18F	NYCHC 5.15	Permit not conspicuously displayed or posted	\$200
18G	SSC 14-1.190(a)	Manufacture and sell frozen dessert at retail not authorized on permit	\$200
18H	NYCHC 81.05(g)	Operator of shared kitchen allowing user without currently valid permit	\$500
18H	NYCHC 88.05(a)	Failure of temporary event sponsor to exclude vendor without a currently valid permit	\$500

CHAPTER 23 APPENDIX C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

UNSCORED VIOLATIONS

20A	24 RCNY 27.03(c)	Allergy poster not posted or not in correct location; penalty may not be doubled on default	\$100
20B	24 RCNY 27.03(b)	Allergy poster not in languages; penalty may not be doubled on default	\$100
20C	24 RCNY 27.03(b)	Allergy poster is not approved by the Department, and it does not contain the required text; penalty may not be doubled on default	\$100
20D	Admin. Code 17-172(a)	Choking first aid poster not posted	\$200
20D	Admin. Code 17-	Alcohol/pregnancy sign not posted	\$100
20D	24 RCNY 18-02	Resuscitation equipment not available	\$200
20D	24 RCNY 18-04	Resuscitation equipment required notice to all patrons not posted	\$200
20E	NYCHC 81.51	Current letter grade or "Grade Pending" card not conspicuously posted and/or visible to passersby	\$500
20F	NYCHC 81.51	Current letter grade or "Grade Pending" card not posted	\$1,000
22A	NYCHC 3.07	Failure to take reasonable precautions to protect health and safety, e.g., by not securing CO2 cylinders	\$1,000
22A	NYCHC 3.09	Failing to abate or remediate nuisance	\$1,000
22A	NYCHC 131.07(c)(2)	Insufficient heat in commercial premises	\$300
22B	SSC 14-1.142(b)	No covered waste receptacle in women's toilets	\$200
22C	NYCHC 81.19(b)	Light fixtures not shielded, shatterproofed, or otherwise protected from accidental breakage	\$200
22E	NYCHC 81.12(g)	Equipment used for ROP not approved by the Department	\$200
22F	NYCHC 71.05(a) and 71.05 (d)	Misbranded; mislabeled packaged food products	\$200

*Default Penalties. When a respondent is found in default, the penalty for each violation of the Health Code or the State Public Health Law must be doubled, except that in no case may the penalty imposed exceed \$2000.

Except as indicated in this Appendix, when a respondent is found in default for any violation of the rules of the Department found in 24 RCNY, the penalty must be doubled, except that in no case may the penalty imposed exceed \$1,000.

When a respondent is found in default for any violation of the New York City Administrative Code or the New York State Sanitary Code, the penalty shall remain the same as that set forth herein.

**Pursuant to applicable provisions of the New York City Administrative Code, the repeat violation penalty listed in this penalty schedule applies if, within the time period noted in this schedule, a prior violation of the same section of law occurred at the same location and was sustained against the same respondent at the Health Tribunal.

**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: Fixed Penalties for Food Service Establishments Violations

REFERENCE NUMBER: 2013 RG 111

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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: January 13, 2014

**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: Fixed Penalties for Food Service Establishments Violations

REFERENCE NUMBER: DOHMH-36

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Hunter Gradie
Mayor's Office of Operations

January 14, 2014
Date