

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to Comment on Proposed Amendment of Article 5 (General Permit Provisions) of the New York City Health Code found in Title 24 of the Rules of the City of New York

**Date / Time:** July 26, 2012 / 2 P.M. to 4 P.M.

**Location:** New York City Department of Health and Mental Hygiene  
2 Gotham Center, 14<sup>th</sup> Floor, Room 14-45  
42-09 28<sup>th</sup> Street  
Long Island City, NY 11101-4132

**Contact:** Rena Bryant (347) 396-6071  
New York City Department of Health and Mental Hygiene  
Board of Health  
Office of the Secretary to the Board  
2 Gotham Center, 14<sup>th</sup> Floor, Room 14-15, Box 31  
Long Island City, NY 11101-4132

### Instructions

- Prior to the hearing, on or before 5pm, July 26, 2012, you may submit written comments about the proposed amendment by mail to Rena Bryant at the address above, by email at [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov) online (without attachments) at [www.nyc.gov/html/doh/html/notice/notice.shtml](http://www.nyc.gov/html/doh/html/notice/notice.shtml) or electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules)
- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number above by July 12, 2012.
- Copies of written comments and a summary of oral comments received at the hearing will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the contact address above.

### Proposed Amendment

The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 5 of the Health Code to authorize a \$70.00 annual fee for a permit to operate a temporary food service establishment.

## STATEMENT OF BASIS AND PURPOSE

### *Statutory Authority*

These amendments to the New York City Health Code (the “Health Code”) are issued in accordance with §§556, 558 and 1043 of the New York City Charter (the “Charter”).

- Section 556 of the Charter provides the Department of Health and Mental Hygiene (the “Department”) with authority to regulate all matters affecting health in the City of New York.
- Section 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters over which the Department has authority.
- Section 1043 of the Charter gives the Department rulemaking powers.

### *Basis and purpose of the amendment*

The Commissioner currently issues permits for temporary food service establishments (TFSE) to operate for up to 14 days at a time. These permits currently cost \$20.00. Each time a TFSE wants to operate at a new venue, a new permit is required. In practice, however, the Department has observed an increasing number of operators who obtain this permit and operate every weekend, at recurring events, or at many different events throughout the City during any given year.

The Department is proposing that the Board:

- change the TFSE permit to an annual permit, rather than to an event-specific 14-day permit, to reflect how these permits are actually used, and,
- raise the fee for this permit from \$20.00 to \$70.00 to reflect the administrative costs of issuing individual permits.

While the price of the permit will go up, operators will be in a position to save money by purchasing one annual permit at \$70.00 rather than multiple event-specific permits at \$20.00 each. Although an annual permit will be issued, any operator of a TFSE who wishes to participate in any street or other event must still obtain the permission of the event sponsor, and comply with all other applicable provisions of the Health Code and other law.

Specifically, the Department is requesting that the Board amend Article 5 (General Permit Provisions) by raising the fee for a permit for a temporary food service establishment (TFSE) from \$20.00 to \$70.00. The Department will also exercise the authority granted it by the Board in December 2009 when the Board amended Article 88 of the Health Code and authorized the Department to issue an annual TFSE permit fee, based on the fact that many TFSEs operate at events that recur throughout the year, more than 14 days at a time, and sometimes every weekend.

The resolution is as follows:

Matter to be deleted is in brackets [ ]

New matter is underlined

RESOLVED, that §5.07 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

**§5.07 Expiration dates; fees.**

Description of Activity Under Permit	Health Code or other Law Section Reference	Fee	Date Expiration
* * * NON-RETAIL FOOD PROCESSING ESTABLISHMENT: Permit to maintain or operate a non-retail food processing establishment	81.05 (c)	\$200.00	One year from end of the month in which the initial application was submitted or, in the case of a renewal, one year from date of last permit expiration
* * * TEMPORARY FOOD SERVICE ESTABLISHMENTS:	88.03 (a)	[\$20.00] <u>\$70.00</u>	[Maximum of fourteen (14) consecutive days] <u>One year from end of the            month in which the initial            application was submitted or,            in the case of a renewal, one            year from date of last permit            expiration</u>
* * * PRESCRIPTION FORMULA PREPARATION:	115.05	\$50.00	March 31

Notes: §5.07 was amended by resolution adopted XXX to change the \$20.00 fee for a temporary 14-day food service establishment permit to an annual permit with a \$70.00 fee.

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

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

**RULE TITLE: Amendment of Fee for Temporary Food Service Permit (Health Code Article 5)**

**REFERENCE NUMBER: 2012 RG 052**

**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: May 31, 2012

**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: Amendment of Fee for Temporary Food Service Permit (Health Code Article 5)**

**REFERENCE NUMBER: DOHMH-21**

**RULEMAKING AGENCY: DOHMH-21**

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/ Francisco Navarro  
Mayor's Office of Operations

May 31, 2012  
Date