

## NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to comment on proposed changes to Parks Department rules governing expressive matter vendors.
- Date / Time:** April 2, 2013 / 10:00 A.M.
- Location:** Chelsea Recreation Center, 430 West 25th Street, New York, NY 10010
- Contact:** General Counsel  
Alessandro G. Olivieri  
Department of Parks and Recreation  
The Arsenal, Central Park,  
830 Fifth Avenue  
New York, NY 10065

### Proposed Rule Amendment

These rules are promulgated pursuant to the authority of the Commissioner of the Department of Parks and Recreation (the "Commissioner") under section 389, 533(a)(9) and 1043 of the New York City Charter. The Commissioner is authorized to establish and enforce rules for the use, government, and protection of public parks and of all property under the charge or control of the Department of Parks and Recreation (the "Department").

These amendments were not included in the Department's regulatory agenda because the Department was not aware of the necessity for the amendments at the time the regulatory agenda was prepared.

### Instructions

- You may send written comments regarding the proposed rule by mail to the contact above or electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) on or before April 2, 2013.
- If you want to testify please notify Peter Schikler at (212) 360-1383 or email at [peter.schikler@parks.nyc.gov](mailto:peter.schikler@parks.nyc.gov).
- If you need a sign language interpreter or other reasonable accommodation at the hearing, please notify Peter Schikler at (212) 360-1383 or email [peter.schikler@parks.nyc.gov](mailto:peter.schikler@parks.nyc.gov) by March 19, 2013.
- Written comments and a tape recording of oral comments received at the hearing will be available for public inspection, as soon as practicable, between 9:00 a.m. and 5:00 p.m. at the Arsenal, Room 313, telephone number (212) 360-1313.

## Statement of Basis and Purpose

The purpose of this proposed rule is to:

- Clarify the Department’s original intent that individuals providing entertainment, such as musical performances, juggling, dance, or other performance arts in exchange for a fee or for a donation are considered vendors and that entertainment services and performances are considered expressive matter under the Department’s rules.
- Indicate clearly that vendors of expressive matter, including entertainers, are exempt from permitting requirements of the Department applicable to vendors of goods or services so long as they comply with the Department’s Expressive Matter Vending Rules.
- Address the recent decision in the Matter of New York Skyline, Inc., 94 A.D.3d 23 (1<sup>st</sup> Dep’t 2012), leave to appeal denied, 2012 N.Y. LEXIS 2019 (Aug. 30, 2012), which held that vendors of tickets to entertainments are exempt from permit requirements of the General Vendors Law, insofar as, without the proposed revisions, that decision could have been construed to similarly exempt entertainers from having to comply with the Department’s Expressive Matter Vending Rules.

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

### **Section 1. Section 1-02 of Title 56 of the Official Compilation of the Rules of the City of New York is amended to read as follows:**

Expressive Matter. “Expressive matter” means materials or objects with expressive content, such as newspapers, books, or writings, or visual art such as paintings, prints, photography, [or] sculpture, or entertainment.

### **§ 2. Section 1-05(b) of Title 56 of the Official Compilation of the Rules of the City of New York is amended to read as follows:**

§ 1-05

(b) Unlawful Vending.

(1) No person in or on any property under the jurisdiction of the Department shall sell, offer for sale, hire, lease or let anything whatsoever, including, but not limited to goods, services, or entertainment, or provide or offer to provide services or items, or entertainment in exchange for a donation (hereinafter “vend”), except under and within the terms of a permit, or except as otherwise provided by law. For the purposes of this entire section, persons who vend as defined herein may be referred to as “vendor” or “vendors.”

**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: AMENDMENT TO RULES REGARDING EXPRESSIVE MATTER  
VENDING**

**REFERENCE NUMBER: 2012 RG 089**

**RULEMAKING AGENCY: DEPARTMENT OF PARKS AND RECREATION**

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 28, 2012

**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: Amendment to Rules Regarding Expressive Matter Vending  
REFERENCE NUMBER: DPR-3  
RULEMAKING AGENCY: Department of Parks and Recreation**

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

1/29/2013