

**City of New York
Office of Administrative Trials and Hearings
Environmental Control Board**

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The NYC Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) proposes to repeal its Noise Code Penalty Schedule. This schedule is found in Section 3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY), and contains penalties for notices of violation issued by the New York City Department of Environmental Protection (DEP) for violations of Title 15 of the RCNY and Titles 10 and 24 of the New York City Administrative Code. DEP is proposing a companion rule adding the Noise Code Penalty Schedule to Title 15 of the RCNY.

When and where is the Hearing? OATH ECB will hold a public hearing on the proposed rule. The public hearing will take place from **10:00 a.m. through 12:00 p.m. on January 26, 2017**. The hearing will be in the OATH ECB Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

This location has the following accessibility option(s) available: Wheelchair Accessible; Large Print.

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

- **Website.** You can submit comments to OATH ECB through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH ECB, Attention: Simone Salloum, Assistant General Counsel, 66 John Street, 10th Floor, New York, NY 10038.
- **Fax.** You can fax written comments to OATH ECB, Attention: Simone Salloum, Assistant General Counsel, at 212-361-1900.
- **Hearing.** You can speak 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 Elizabeth Nolan at 212-436-0708, or you can sign up in the hearing room before the hearing begins on **January 26, 2017**. You can speak for up to three (3) minutes.

Is there a deadline to submit written comments? You may submit written comments up to **12:00 p.m. on January 26, 2017**.

What if I need assistance to participate in the Hearing? You must tell us if you need a reasonable accommodation of a disability to attend the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above or by telephone at 212-436-0708. You must tell us by **January 19, 2017**.

Can I review the comments made on the proposed rule? You can review the comments that are submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at OATH ECB, 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH ECB to make this rule? Section 1049-a of the City Charter authorizes OATH ECB to make this proposed rule. This proposed rule is included in OATH's regulatory agenda for this Fiscal Year.

Where can I find OATH ECB's rules? OATH ECB's rules are in Title 48 of the Rules of the City of New York.

What rules govern the rulemaking process? OATH ECB must meet the requirements of Section 1043(b) of the City Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049-a of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The NYC Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) proposes repealing its Noise Code Penalty Schedule. This schedule is found in 48 RCNY § 3-115, and contains penalties for violations of Title 15 of the RCNY and Titles 10 and 24 of the New York City Administrative Code. At the same time, DEP will enact a penalty schedule for violation of these laws within Title 15 of the RCNY. DEP's penalty schedule will be located in Chapter 47 of Title 15 of the RCNY. OATH ECB is in the process of repealing all penalty schedules in its rules at Subchapter G of Chapter 3 of Title 48 of the RCNY so that they can be relocated to the rules of the enforcement agencies with primary rulemaking and policymaking jurisdiction over the laws that underlie these penalties.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has promulgated penalty schedules, the enforcement agencies have the regulatory authority and expertise to adopt appropriate penalties to address violation of these laws. In addition, moving the penalty schedule will make it easier for the public to find the penalties, which will be located within the same chapter as the rules that contain the substantive violations alleged in the summonses rather than in the OATH ECB schedule. Finally, the proposed rule repeal will speed up the rulemaking process by eliminating the need for board approval of penalties that have already been established by the legislature or that have already undergone the City Administrative Procedure Act (CAPA) process by the enforcement agency. The public will still have the opportunity to comment on proposed penalties during that process.

Working with the City’s rulemaking agencies, the Law Department, the Mayor’s Office of Management and Budget, and the Mayor’s Office of Operations conducted a retrospective rules review of the City’s existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. This proposed rule repeal was identified as meeting the criteria for this initiative.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 3-115 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is REPEALED.

**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: Repeal of Noise Code Penalty Schedule

REFERENCE NUMBER: 2016 RG 110

RULEMAKING AGENCY: Office of Administrative Trials & Hearings

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

Date: December 21, 2016

Acting Corporation Counsel

**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: Repeal of Noise Code Penalty Schedule

REFERENCE NUMBER: OATH-ECB-72

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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 X. Navarro
Mayor's Office of Operations

December 21, 2016
Date