

**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The NYC Department of Health and Mental Hygiene (“Department”) is proposing rules governing changes to the types of foods that may be sold from a food cart or truck with a fresh fruits and vegetables permit (“green cart”) and locations where a green cart may vend as required by section 13 of Local Law 18 of 2021.

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 10:00AM to 12:00PM on Wednesday, May 11, 2022. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m32048f3f8f37ab2ef88f59ac5a132734>

If prompted to provide an event number or password, please enter the following:
Webinar number: **2332 731 5540**, Password: **Health** (432584 from phones)

- **Phone:** For access, dial: **(408) 418-9388**; then please enter the following
Access code: **233 273 15540**

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 website at <http://rules.cityofnewyork.us>.
- **Email:** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail:** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN30
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 10AM on May 11, 2022. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5 p.m. on May 11, 2022.

What if I need assistance to participate in the hearing? You must tell the Department’s Office of General Counsel if you need a reasonable accommodation of a disability at the hearing, including whether you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by April 27, 2022.

Can I review the comments made regarding the proposed rules? You may review the online comments made on the proposed rules at <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time after the hearing by the Department’s Office of General Counsel.

What authorizes the Department to make this rule? Section 389(b) of the New York City Charter (“Charter”) provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.” Section 1043(a) of the Charter similarly provides that each “agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.” Section 13 of Local Law 18 of 2021 requires the Department to undergo rulemaking if it will expand the types of healthful foods that may be sold by a green cart pursuant to section 17-324.1 of the Administrative Code of the City of New York and to expand the police precincts where a green cart may vend.

Where can I find the Department’s rules and the Health Code? The Department’s rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter. These proposed rules were not included in the Department’s regulatory agenda.

Statement of Basis and Purpose of Proposed Rule

The New York City Administrative Code (“Administrative Code”) established the green cart program (“Program”) in 2008 to expand access to fresh produce by designating 1,000 mobile food vending permits for the sale of whole, uncut fruits and vegetables in police precincts that otherwise have limited access to these healthy foods. Local Law 18 of 2021 (“Local Law 18”) expanded the Program by allowing green cart vendors to also offer bottled water; prepackaged, cut or sliced fruits and vegetables, and other foods the Department’s Commissioner may designate; and single-ingredient nuts, and authorizing the Department to designate green cart vending in additional police precincts where the rate of fresh produce consumption is substantially lower than the citywide average and the rate of nutrition-related health problems is elevated when compared to the rest of the city. This proposed rule specifies details about the additional foods and designates the police precincts where vending is newly allowed.

Statutory Authority

As amended by Local Law 18, sections 17-307(a) and (c) and 17-324.1 of the Administrative Code allow the Department to expand by rule items that green carts may vend and locations where green carts may vend.

The proposed rules are as follows.

Deleted material appears in [brackets]. New material is underlined. The terms “shall” and “must” may be used interchangeably and denote mandatory requirements unless the context clearly indicates otherwise.

Section 1. Paragraph (5) of subdivision (a) of section 6-03 of Chapter 6 of Title 24 of the Rules of the City of New York is amended to read as follows:

(5) Class E mobile food vending unit means a green cart or [other non-processing] mobile food vending unit in or on which only non-potentially hazardous uncut fruits and vegetables are sold or held for sale or service.

Section 2. The row regarding Class E in Table 1 of section 6-05 of Chapter 6 of Title 24 of the rules of the City of New York is amended to read as follows:

<p>Class E: Non-potentially hazardous uncut fruit and vegetables [(including green carts)]; <u>raw prepackaged shelled nuts and shelled nuts.</u> <u>No other foods.</u></p>	No	No	No	No	Yes	No	No	No	No
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Section 3. Section 6-07 of Chapter 6 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 6-07. Green Cart Foods Offered and Vending Locations.

(a) [The Department will permanently affix on each green cart a decal that is easily identifiable and distinguishable from any other decal on the green cart. Such decal shall contain the fresh fruits and vegetables permit number issued to the owner of each such green cart and the borough and police precincts in which the green cart is authorized to operate. A decal may not be removed or transferred to any other mobile food vending unit, except by the Department.] Foods offered. Green carts may offer only the following foods:

(i) Unprocessed, unfrozen, raw fruits and vegetables that have not been combined with other ingredients.

(ii) Prepackaged raw, cut or sliced fruits or vegetables, which may include dried herbs and spices and which do not contain added sodium or added natural or artificial sweeteners.

(iii) Prepackaged, still or carbonated water, which may contain flavoring or minerals but does not contain sodium or natural or artificial sweeteners and must have zero calories.

(iv) Raw, single-ingredient nuts. Shelled nuts must be prepackaged.

(b) [In addition to the above requirements specific to green carts, green carts must comply with all other applicable requirements pertaining to Class E mobile food vending units.]

All packaged foods must be labeled in accordance with NYS Department of Agriculture and Markets regulations.

(c) *Exemption of police precincts where green carts may vend.* Notwithstanding any provision in §17-307(b)(4)(b) of the Administrative Code, no fresh fruits and vegetables permit may be designated for use within either the 45th or 72nd police precincts of the City of New York.

(d) *Additional police precincts where green carts may vend.* Notwithstanding any provision in § 17-307(b)(4)(b) of the Administrative Code, fresh fruits and vegetables permits may be used within the 63rd and 69th police precincts of the City of New York.

**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: Amendment of Green Cart Rules

REFERENCE NUMBER: DOHMH-118

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/ Francisco X. Navarro
Mayor's Office of Operations

March 8, 2022
Date

**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: Amendment of Green Cart Rules

REFERENCE NUMBER: 2022 RG 006

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: March 9, 2022