

New York City Department of Health and Mental Hygiene

Notice of Adoption of Amendments to Chapter 6 of Title 24 of the Rules of the City of New York Concerning the Reduction or Waiving of Monetary Penalties for Certain First-Time Violations

In accordance with Section 389(b) of the New York City Charter (“Charter”) which 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,” and Section 1043(a) of the Charter which 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,” a notice of public hearing and opportunity to comment on the proposed rules to amend Chapter 6 of Title 24 of the Rules of the City of New York was published in the City Record on December 1, 2022, and a public hearing was held on January 3, 2023. No one testified at the hearing and no written comments were received. On its own initiative, the Department has made certain technical changes to the proposal, including the following:

- correcting violation points for condition level V for violation code 6J in Appendix 6-A
- making corrections to violation code 10B in Appendix 6-B
- adding violation code 28-05, which relates to product labeling requirements, in Appendix 6-C-2
- reducing the monetary penalties for 3E potable water violation conditions IV and V in Appendix 6-C.

Statement of Basis and Purpose

Local Law 80 of 2021, effective January 14, 2022, amends various provisions of Title 17 of the New York City Administrative Code, requiring the Department to reduce or waive monetary penalties for certain first-time violations of the New York City Health Code or Administrative Code provisions that address food service establishments, including mobile food vending units, mobile food vending commissaries, child care programs and pet shops.

The Department is now adopting amendments to Chapter 6 of Title 24 of the Rules of the City of New York to implement Local Law 80 of 2021, as well as to make other necessary changes, as indicated below.

Specific Changes Adopted

Revised § 6-02

This adopted rule amends section 6-02 by defining the terms “cure” and “first-time violation.”

New § 6-23 and § 6-24

The adopted rule adds section 6-23, which details the rules for submitting proof of having corrected a first-time violation. The adopted rule also adds section 6-24, which describes when the Department will accept the submitted proof of correction.

Revised Appendices 6-A and 6-B

The adopted rule amends Appendices 6-A and 6-B by adding new violations concerning the adulteration of food to align with Appendices for Chapter 23 of Title 24 of the Rules of the City of New York and by correcting typographical errors.

Revised Appendices 6-C, 6-C-2 and 6-C-3

Appendices 6-C, 6-C-2 and 6-C-3 specify monetary penalties for mobile food vending violations that are adjudicated at the Office of Administrative Trials and Hearings (“OATH”), using a schedule similar to that of Chapter 23 Appendix C (Food Service Establishment and Non-Retail Food Service Establishment Penalty Schedule) in the Department’s rules.

The adopted rule amends Appendices 6-C, 6-C-2 and 6-C-3 by indicating which first-time violations are subject to either unconditional waiver of a monetary penalty or waiver of such penalty if proof of correction has been accepted. The adopted rule also includes reductions in penalties made in the Administrative Code where the violations are not subject to cure.

Additionally, the adopted rule lowers some penalties, amends the penalty table to correct typographical errors, and adds other violation descriptions and penalties. For example, the proposed rule would add penalties for violations of Administrative Code § 16-401, which prohibits food service establishments from offering plastic beverage straws, splash sticks, or stirrers to customers.

Statutory Authority

The authority for these adopted rules is found in New York City Charter § 556 and Local Law 80 of 2021.

“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.

The amendments are as follows:

Section 1. Section 6-02 of Chapter 6 of Title 24 of the Rules of the City of New York is amended by adding new definitions of “cure” and “first-time violation” in alphabetical order to read as follows:

Cure means that the respondent has submitted proof of having corrected a first-time violation and the Department has accepted such proof.

First-time violation means a violation of law, listed in Appendix 6-C, 6-C-2, or 6-C-3 of this Chapter, committed by a respondent for the first time and cited on a summons that either is pending or has not been adjudicated by OATH as defaulted or sustained.

§ 2. Chapter 6 of Title 24 of the Rules of the City of New York is amended by adding new sections 6-23 and 6-24 to read as follows:

§6-23 Submitting proof of correction for eligible first-time violations.

(a) Submission of proof of correction must be in writing in a form approved or provided by the Department.

- (b) The proof must be submitted to the Department electronically or in person within seven (7) calendar days of the date the violation was issued as recorded on the summons.
- (c) The proof must be affirmed by the permittee or their authorized representative that it is complete and accurate to the best of such person's knowledge.
- (d) Submission of any false statements in support of a proof of correction may be subject to penalties prescribed for violations of Health Code § 3.19 and other applicable law.
- (e) A permittee whose first-time violation is pending at OATH for adjudication is not eligible to submit a proof of correction for a subsequent identical violation.

§6-24 Acceptance of proof of correction for eligible first-time violations.

- (a) The Department must accept proof of correction if it determines that the proof is adequately documented and submitted timely in accordance with § 7-10 of this Chapter. Acceptance of proof of correction constitutes a cure and an admission of the violation for all purposes, except as provided in subdivision (b) of this section.
- (b) A first-time violation whose proof of correction has been accepted by the Department will not be subject to a civil penalty.
- (c) The determination of whether a violation is a first-time violation shall be based solely on the records of the Department.
- (d) The Department may require further documentation in addition to the proof of correction and may inspect the establishment or take any other action as it deems necessary before acceptance or rejection of such proof.
- (e) Nothing in this Chapter limits the authority of the Department to conduct other inspections or take any other action it deems necessary to enforce any provision of law within the jurisdiction of the Department.

§ 3. Appendix 6-A of Chapter 6 of Title 24 of the Rules of the City of New York is amended by adding a new row 4P and amending rows 4F, 5C, 5H, 6C, and 6J to read as follows:

APPENDIX 6-A							
SELF-INSPECTION WORKSHEET FOR MOBILE FOOD VENDING UNITS (MFVU)							
Critical Violations		Conditions					Score
		I	II	III	IV	V	
4F*	Food[, food] preparation area, food storage area, or other area used by food worker or food vendor contaminated by sewage or liquid waste.	-	-	-	10	28	
4P	<u>Food containing a prohibited substance held, kept, offered, prepared, processed, packaged, or served.</u>	-	-	-	10	28	

5C+	Food contact surface, <u>refillable, reusable containers</u> , or equipment improperly constructed, placed or maintained. Unacceptable material used. Culinary sink or other acceptable method not provided for washing food. Potable water tank and plumbing improperly constructed or designed.	7	8	9	10	28	
5H+	No facilities available to wash, rinse, and sanitize utensils or equipment [and/or refillable returnable containers] <u>No approved written standard operating procedure for avoiding contamination by refillable returnable containers.</u>	-	-	-	10	28	
6C	Food, supplies or equipment not protected from potential source of contamination during storage, preparation, transportation, display or service <u>or from customer's refillable, reusable container.</u> Condiments not in single-service containers or dispensed directly by the vendor.	5	6	7	8	-	
6J	[No approved written standard operating procedure for avoiding contamination by refillable returnable containers] <u>Refillable, reusable beverage container filled with TCS foods.</u>	[-] 5	[-] 6	[-] 7	8	[28] =	

§ 4. Appendix 6-B of Chapter 6 of Title 24 of the Rules of the City of New York is amended by adding a new row 4P and amending rows 4F, 4N, 5C, 5H, 6C, 6J and 10B to read as follows:

APPENDIX 6-B						
MOBILE FOOD VENDING UNIT (MFVU) INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS						
	Violation	Condition I	Condition II	Condition III	Condition IV	Condition V
4F*	Food[, or food] preparation or storage area, or any area used by employees or patrons, contaminated by sewage or liquid waste.				Food[, or food] preparation or food storage area, or any area used by employees or patrons, contaminated by sewage or liquid waste.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4N	Filth flies or food/refuse/sewage associated (FRSA) flies or other nuisance pests in MFVU’s food and/or non-food areas. FRSA flies include house flies, blow flies, bottle flies, flesh flies, drain flies, Phorid flies and fruit flies.	1-5 filth flies or FRSA flies in the MFVU during November 1 through March 1. Example: two flies in the MFVU in January.	6-10 filth flies or FRSA flies in the MFVU area. Example: seven live flies in the MFVU	11-15 filth flies or FRSA flies in the MFVU. Example: 12 live flies in the MFVU	[16 -20] <u>16-30</u> filth flies or FRSA flies in the MFVU. Example: 17 filth flies in the MFVU	More than 30 filth flies, FRSA flies and/or other conditions exist conducive to infestation of filth flies. Example: 40 flies in the MFVU; and other conditions exist conducive to filth fly infestation, e.g., openings to the outer air, water, food, decaying matter and/or sewage.

						Inspector must call office to discuss closing or other enforcement measures.
4P*	Food containing a <u>prohibited substance held, kept, offered, prepared, processed, packaged, or served.</u>				<u>Any food held, kept, offered, prepared, processed, packaged or served with any prohibited substance.</u>	<u>Failure to correct any condition of a public health hazard at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.</u>
5C+	Food contact surface, <u>refillable, reusable containers</u> , or equipment improperly constructed placed or maintained. Unacceptable material used. Culinary sink or other acceptable method not provided for washing food	One food contact surface, <u>refillable, reusable containers</u> , or piece of equipment improperly constructed, maintained, placed and/or unacceptable material used. Example: painted shelves in a low boy refrigerator unit	Two food contact surfaces, <u>refillable, reusable containers</u> , or pieces of equipment improperly constructed, placed, maintained, and/or unacceptable material used. Example: painted shelves in [allow] <u>a low boy</u>	Three food contact surfaces, <u>refillable, reusable containers</u> , or pieces of equipment improperly constructed, placed, maintained and/or unacceptable material used. Example: painted shelves of a low boy unit, cutting board made from untreated wood and [acidic foods placed in pewter bowl] <u>customer's refillable, reusable container made from polystyrene.</u>	Four or more food contact surfaces, <u>refillable, reusable containers</u> , or pieces of equipment improperly constructed, placed, maintained, and/or unacceptable material used. Example: painted shelves of a low boy refrigerator unit, cutting board made from untreated wood, acidic foods placed in pewter bowl and solder and flux used to repair	Failure to correct as pre-permit serious (PPS) violation or on any inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures

			refrigerator unit and [cutting board made from untreated wood] <u>customer's refillable, reusable container made from polystyrene.</u>		food contact equipment or no culinary sink or other acceptable method provided for washing food.	
5H+	No facilities available to wash, rinse, and sanitize utensils or equipment [and/or refillable returnable containers]. <u>No approved written standard operating procedure for avoiding contamination by refillable returnable containers.</u>				No facilities available to wash rinse and sanitize utensils or equipment [and/or refillable returnable containers]. <u>No approved written standard operating procedure for avoiding contamination by refillable returnable containers.</u>	Failure to correct as pre-permit serious (PPS) violation or on any inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures
6C	Food, supplies or equipment not protected from potential source of contamination during storage, preparation, transportation, display or service <u>or from customer's refillable, reusable container.</u> Condiments not in	One food item not protected during storage, preparation, transportation, display or service. Example: one tray of uncovered assorted pastries or supply of wax paper used to wrap bagels stored under the	Two food items not protected during storage, preparation, transportation, display or service. Example: one tray of	Three food items not protected during storage, preparation, transportation, display or service. Example: one tray of uncovered pastries; one cooked steak on prep table under fly strip and fresh cut fruit in the service window.	Four or more food items not protected during storage, preparation, transportation, display or service. Example: one tray of uncovered pastries; wax paper used to wrap bagels stored	

	single-service containers or dispensed directly by the vendor.	wastewater tank <u>or</u> <u>customer's refillable, reusables container directly touches the cappuccino milk frother.</u>	uncovered pastries and one cooked steak on prep table under fly strip.		under the waste water tank; <u>customer's refillable, reusables container directly touches the cappuccino milk frother;</u> one cooked steak on kitchen prep table under fly strip, and fresh cut fruit in the service window.	
6J	[No approved written standard operating procedure for avoiding contamination by refillable returnable containers] <u>Refillable, reusable beverage container filled with TCS foods.</u>	<u>One food worker filled a customer's reusable beverage container with mixed fruit milk smoothie.</u>	<u>Two food workers filled a customer's reusable beverage container with fruit milk smoothie, or one food worker filled two customer's containers with mixed fruit milk smoothie.</u>	<u>Three food workers filled a customer's reusable beverage container with fruit milk smoothie, or one food worker filled three customer's containers with mixed fruit milk smoothie.</u>	[No approved written standard operating procedure for avoiding contamination by refillable returnable containers] <u>Four or more food workers filled a customer's reusable beverage container with fruit milk smoothie, or one food worker filled three customer's containers with mixed fruit milk smoothie.</u>	[Failure to correct on any inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures]

10B	Back-siphonage or back-flow prevention device not provided where required; equipment or floor not properly drained; sewage disposal system in disrepair or not functioning properly. Condensation or liquid waste improperly disposed of.	One back-flow prevention device not installed, or equipment or floor not properly drained. Example: vacuum breaker not installed on potable water line connected to the coffee machine or waste water tank draining into a bucket.	Two back-flow prevention devices not installed, or equipment or floor not properly drained. Example: vacuum breaker not installed on potable water line connected to the coffee machine waste water tank drained into a bucket and steam table draining onto sidewalk.	Three back-flow prevention devices not installed, or equipment or floor not properly drained. Example: waste water tank draining into bucket, steam table draining onto sidewalk and no vacuum breaker provided on the hose connected to faucet.	Four [or more] back-flow prevention devices not installed or equipment or floor not properly drained. Example: waste water tank draining into bucket, hot holding unit draining onto sidewalk and no vacuum breaker provided on the hose connected to faucet or ice machine or vacuum breaker not installed on potable water line connected to the coffee machine.	Five or more back-flow prevention devices not installed or equipment or floor not properly drained. Example: waste water tank draining into bucket, hot holding unit draining onto sidewalk, no vacuum breaker provided on the hose connected to faucet, vacuum breaker not installed on potable water line connected to the coffee machine; and no vented check valve on the main water supply pipe.
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* Public Health Hazards (PHH) must be corrected immediately.

§ 5. Appendix 6-C of Chapter 6 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 6-C									
MOBILE FOOD VENDING UNIT (MFVU) PENALTY SCHEDULE									
SCORED VIOLATIONS									
VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	<u>CURE ACCEPTED OR \$0 PENALTY FIRST TIME VIOLATIONS</u>	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*
02A	NYCHC 81.09(c)	Public Health Hazard	Other time and temperature control for safety ("TCS") hot food not heated to 140°F for 15 seconds					\$400	\$600
02A	NYCHC 81.09(c)(1)	Public Health Hazard	Poultry, poultry stuffing, parts and ground, comminuted poultry not heated to 165°F for 15 seconds					\$400	\$600
02A	NYCHC 81.09(c)(2)	Public Health Hazard	Pork/food containing pork not heated to 150°F for 15 seconds					\$400	\$600
02A	NYCHC 81.09(c)(3)	Public Health Hazard	Whole meat roasts and beef steak, rare roast beef or beef steak not heated to minimum time/temperature					\$400	\$600
02A	NYCHC 81.09(c)(4)	Public Health Hazard	Ground, comminuted meat, foods containing ground, comminuted meat not heated to 158°F					\$400	\$600
02A	NYCHC 81.09(c)(5)	Public Health Hazard	Stuffed meats, fish, ratites and tenderized meats not heated to 165°F injected, mechanically tenderized meats not heated to 155°F					\$400	\$600
02A	NYCHC 81.09(c)(6)	Public Health Hazard	Shell eggs/food containing shell eggs not heated 145°F for 15 seconds					\$400	\$600

02A	NYCHC 81.09(c)(7)	Public Health Hazard	Raw animal food cooked in microwave not heated to 165°F, not covered, rotated or stirred, not held for 2 minutes				\$400	\$600	
02B	NYCHC 81.09(a)	Public Health Hazard	Hot TCS food not held at 140°F or above	\$250	\$300	\$350	\$400	[\$600] \$500	
02C	NYCHC 81.09(d)	Critical	Previously cooked and cooled TCS food not reheated to 165°F for 15 seconds within 2 hours	\$200	\$200	\$250	\$300		
02D	NYCHC 81.09(d)(2)	Critical	Commercially processed TCS food not heated to 140°F within 2 hours	\$200	\$200	\$250	\$300		
02E	NYCHC 81.09(f)(5)	Critical	Whole frozen poultry or poultry breast, other than a single portion, cooked frozen or partially thawed	\$200	\$200				
02F	NYCHC 81.11	Critical	Meat, fish, eggs or poultry offered, served raw or partially cooked without written consumer advisory	\$200					
02G	NYCHC 81.09(a)	Public Health Hazard	Cold TCS food not held at 41°F or below	\$250	\$300	\$350	\$400	[\$600] \$500	
02G	NYCHC 81.09(a)(2)	Public Health Hazard	Eggs not held at ambient temperature of 45°F or below	\$250	\$300	\$350	\$400	\$600	
02G	NYCHC 81.09(a)(3)	Public Health Hazard	Processed or smoked fish not held at or below 38°F	\$250	\$300	\$350	\$400	\$600	
02H	NYCHC 81.09(e)	Public Health Hazard	TCS food not cooled by approved method	\$250	\$300	\$350	\$400	[\$600] \$500	
02I	NYCHC 81.09(e)(2)	Critical	TCS food not cooled to 41°F when prepared from ambient temperature ingredients within 4 hours	\$200	\$200	\$250	\$300		
03A	NYCHC 81.04	Public Health Hazard	Food from unapproved or unknown source, or home cooked				\$400	\$600	
03A	NYCHC 81.04(b)	Public Health Hazard	Meat not from an approved source				\$400	\$600	
03A	NYCHC 81.04(d)	Public Health Hazard	Exotic and game animal meat not from an approved source				\$400	\$600	

03A	NYCHC 81.07(m)	Public Health Hazard	Animal slaughter on MFVU					\$400	\$600
[03A]	[NYCHC 89.19(d)]	[Public Health Hazard]	[Ice contaminated or not made from potable water]					[\$400]	[\$600]
03A	NYCHC 89.19(f)	Public Health Hazard	Butchering raw meat on MFVU					\$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 required tags not retained at least 90 days					\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish records not on MFVU					\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish not from an approved source					\$400	\$600
03C	NYCHC 81.07(c)	Public Health Hazard	Whole eggs cracked, not clean; other eggs unpasteurized			\$250	\$300	\$350	\$400
03D	NYCHC 81.07(b)	Public Health Hazard	Food packages, hermetically sealed containers, or [canned] <u>packaged</u> food swollen, leaking and/or rusted; not labeled; not segregated from intact [cans] packaged foods.		[\$250] <u>\$200</u>	[\$300] <u>\$200</u>	[\$350] <u>\$200</u>	[\$400] <u>\$200</u>	[\$600] <u>\$200</u>
03E	24 RCNY 6-04(f)	Public Health Hazard	Potable water not provided; inadequate***	\$0				[\$400] <u>\$100</u>	[\$600] <u>\$100</u>
<u>03E</u>	<u>NYCHC 89.19(d)</u>	<u>Public Health Hazard</u>	<u>Ice contaminated or not made from potable water</u>				<u>\$400</u>	<u>\$600</u>	
03E	NYCHC 141.13	Public Health Hazard	Bottled water not from an approved source; not state certified				\$250	\$250	
03E	NYCHC 81.20(c)	Public Health Hazard	Carbon dioxide gas lines unacceptable, improper materials used					\$400	\$600

03E	NYCHC 81.20(a)	Public Health Hazard	Cross-connection observed between potable and non-potable water***	\$0					[\$400] \$100	[\$600] \$100
03F	NYCHC 81.07(k)	Public Health Hazard	Unpasteurized milk and milk products (except aged cheese) served						\$400	\$600
03G	NYCHC 81.07(a)(4)	Critical	Raw fruits and vegetables not washed prior to cutting, serving			\$200	\$200	\$250	\$300	
03H	NYCHC 89.19(f)	Public Health Hazard	Prohibited sale of raw meat, fish, and shellfish						\$400	\$600
03I	NYCHC 81.04(e)	Public Health Hazard	Juice packaged on MFVU with no or incomplete label, no warning statement						\$400	\$600
04B	NYCHC 81.13(a)	Public Health Hazard	Food worker or vendor with illness, communicable disease and/or injury preparing food						\$400	\$600
04B	NYCHC 81.13(i)	Public Health Hazard	Food worker or vendor spitting						\$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; or change gloves when required						\$400	\$600
04E	NYCHC 81.23(d)	Public Health Hazard	Pesticide improperly labeled, stored or used such that food contamination may occur.			\$250	\$300	\$350	\$400	\$600
04F	NYCHC 81.20(b)	Public Health Hazard	Food preparation, food storage, or other area contaminated by sewage or liquid waste***	\$0					[\$400] \$100	[\$600] \$100
04G	NYCHC 81.07(l)	Public Health Hazard	Unprotected TCS food re-served						\$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 adulterated or contaminated		\$250	\$300	\$350	\$400	[\$600] <u>\$500</u>
04H	NYCHC 81.07(a)(2)	Public Health Hazard	Food not protected from cross-contamination		\$250	\$300	\$350	\$400	\$600
04H	NYCHC 89.19(e)	Public Health Hazard	TCS foods improperly stored on ice		\$250	\$300	\$350	\$400	\$600
04H	NYCHC 89.19(j)	Public Health Hazard	Food exposed to contamination when containers stored in cooking water		\$250	\$300	\$350	\$400	\$600
04I	NYCHC 81.07(l)	Critical	Unprotected non-TCS food re-served		\$200	\$200	\$250	\$300	
04J	NYCHC 89.19(b)	Critical	Thermometer not provided, calibrated properly, or accessible for use		\$200				
04K	NYCHC 81.23(a)	Critical	Rats or evidence of rats		\$200	\$200	\$250	\$300	\$350
04L	NYCHC 81.23(a)	Critical	Mice or evidence of mice		\$200	\$200	\$250	\$300	\$350
04M	NYCHC 81.23(a)	Critical	Live roaches		\$200	\$200	\$250	\$300	\$350
04N	NYCHC 81.23(a)	Critical	Filth or FRSA flies, other nuisance pests		\$200	\$200	\$250	\$300	\$350
04O	NYCHC 81.25	Critical	Live animal other than fish in tank or service animal		\$200	\$200	\$250	\$300	
<u>04P</u>	<u>SSC 14-4.96(a)</u>	<u>Public Health Hazard</u>	<u>Non-food grade liquid nitrogen, dry ice added to food</u>					<u>\$400</u>	<u>\$600</u>
<u>04P</u>	<u>SSC 14-4.96(d)</u>	<u>Public Health Hazard</u>	<u>Dry ice “smoke” or liquid nitrogen “fog” effect remains at time of service</u>					<u>\$400</u>	<u>\$600</u>
<u>04P</u>	<u>NYCHC 71.05</u>	<u>Public Health Hazard</u>	<u>Food containing a prohibited substance held, kept, offered, prepared, processed, packaged, or served.</u>					<u>\$400</u>	<u>\$600</u>
05A	NYCHC 89.25(b)	Public Health Hazard	Sewage and liquid waste holding tank not provided, inadequate or unapproved***	<u>\$0</u>				[\$400] <u>\$100</u>	[\$600] <u>\$100</u>
05B	NYCHC 81.19(c)	Public Health Hazard	Harmful noxious gas or vapor detected; CO levels at or exceeding 9 ppm					\$400	\$600

05C	24 RCNY 6-04(f)(2)	Critical	Water tanks and inlet pipes are not constructed of food grade materials that are corrosion resistant, durable and non-absorbent		\$200	\$200	\$250	\$300	\$350
05C	24 RCNY 6-04(i)(3)	Critical	Culinary sink or alternative method not provided for washing food		\$200	\$200	\$250	\$300	\$350
05C	NYCHC 81.17(d)	Critical	Food contact surface, equipment improperly constructed, located and/or made of unacceptable materials		\$200	\$200	\$250	\$300	\$350
<u>05C</u>	<u>NYCHC 81.46(c)</u>	<u>Critical</u>	<u>Refillable, returnable containers constructed with improper materials.</u>		<u>\$200</u>	<u>\$200</u>	<u>\$250</u>	<u>\$300</u>	<u>\$350</u>
05D	24 RCNY 6-04(i)(1)	Critical	Hand wash facility not provided with potable running water, or properly equipped					\$300	\$350
05D	24 RCNY 6-04(i)(1)	Critical	Hand wash facility without soap, drying device					\$300	\$350
05D	24 RCNY 6-04(i)(1)(A)	Critical	Hand washing facilities not provided/obstructed					\$300	\$350
05F	24 RCNY 6-04(l)	Critical	Hot or cold holding equipment not provided or inadequate					\$300	\$350
05H	24 RCNY 6-04(i)(2)(A)	Critical	No facilities to wash, rinse, and sanitize utensils or equipment					\$300	\$350
<u>05H</u>	<u>NYCHC 81.46</u>	<u>Critical</u>	<u>No approved standard operating procedure for refillable consumer containers</u>					<u>\$300</u>	<u>\$350</u>
05I	24 RCNY 6-11(g)	Critical	Service contract or agreement with commissary or other approved facility not provided; documents not kept on MFVU and made available for inspection					\$300	\$350

05J	24 RCNY 6-04(b)(4)	Critical	Food vehicles not provided with partition or self-closing door between the drivers seat and the food preparation area.					\$300	\$350
05J	24 RCNY 6-04(n)	Critical	Ice cream truck not equipped with fully operational warning beepers and signage arm					\$300	\$350
05J	24 RCNY 6-04(o)	Critical	MFVU not equipped or constructed with an overhead structure, or similar device					\$300	\$350
05J	24 RCNY 6-04(p)	Critical	Tamper proof locks or other food security mechanism not provided					\$300	\$350
05J	24 RCNY 6-04(f)(1)	Critical	Potable water tank capacity inadequate					\$300	\$350
05J	24 RCNY 6-04(i)(1)	Critical	Potable water storage tank less than 5 gallons					\$300	\$350
06A	NYCHC 81.13	Critical	Food worker or vendor does not maintain personal cleanliness		\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(b)	Critical	Effective hair restraint not worn****	\$0	[\$200] \$100	[\$200] \$100	[\$250] \$125	[\$300] \$150	
06A	NYCHC 81.13(c)	Critical	Clean outer garment not worn		\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(e)	Critical	Fingernails not clean, trimmed, or with nail polish		\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(f)	Critical	Jewelry worn on arm(s) or hand(s)		\$200	\$200	\$250	\$300	
06A	NYCHC 89.19(i)	Critical	Not properly dressed; sleeveless garment or bare midriff		\$200	\$200	\$250	\$300	
06B	NYCHC 81.13(g)	Critical	Smoking, use of tobacco or electronic cigarette		\$200	\$200	\$250	\$300	
06B	NYCHC 81.13(h)	Critical	Eating, drinking in food preparation or other areas****	\$0	[\$200] \$100	[\$200] \$100	[\$250] \$125	[\$300] \$150	
06C	NYCHC 81.07(a)	Critical	Food not protected from contamination		\$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(i)	Critical	Supplies and equipment under or near source of Contamination.		\$200	\$200	\$250	\$300		
06C	NYCHC 81.07(q)	Critical	Unnecessary traffic through food prep area		\$200	\$200	\$250	\$300		
06C	NYCHC 89.19(h)	Critical	Condiments, seasoning, sugar, dressings: held in inadequate containers, not properly dispensed		\$200	\$200	\$250	\$300		
06C	NYCHC 81.46(a)	Critical	Beverage dispensing equipment not protecting from potential contamination from customer’s reusable, refillable container		\$200	\$200	\$250	\$300		
06D	NYCHC 81.27(b)	Critical	Food contact surface not washed, rinsed and sanitized when required		\$200	\$200	\$250	\$300		
06E	NYCHC 81.07(g)	Critical	Ice not properly dispensed		\$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(h)	Critical	Food dispensing utensil not provided		\$200	\$200	\$250	\$300		
06F	NYCHC 81.27(c)	Critical	Wiping cloth improperly stored and/or sanitized****	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100			
06F	SSC 14-4.112(b)	Critical	No test kit for measuring sanitizing solution concentration		\$200	\$200	\$200			
[06J]	[NYCHC 81.46]	[Critical]	[No approved standard operating procedure for refillable consumer containers]						[\$300]	[\$600]
06J	NYCHC 81.46(a)	Critical	Refillable, reusable beverage container filled with TCS foods.		\$200	\$200	\$250	\$300		
06K	24 RCNY 6-04(p)	Public Health Hazard	MFVU with food left unsecured or unattended for more than one-half hour						\$600	
06L	NYCHC 89.19(d)	Critical	Ice not held in manufacturer' s bag						\$250	
06L	NYCHC 89.19(d)	Public Health Hazard	Ice not obtained in chipped, crushed, or cubed form or not properly packaged.						\$250	

07A	NYCHC 3.15(a)	Critical	Interference or obstruction of Department personnel							\$1,000				
08A	NYCHC 81.23(a)	Critical	Harborage or conditions conducive to pests with pests, signs of pests									\$200	\$200	
08A	NYCHC 81.23(b)(3)	General	Door openings from outside not properly equipped when pests or signs of pests present									\$200	\$200	
08B	NYCHC 81.24(a)	General	Garbage [cans] <u>receptacles</u> not pest or water resistant; not covered with tight-fitted lids***	\$0	[\$200] <u>\$100</u>									
08B	NYCHC 81.24(c)	General	Garbage receptacles and covers not cleaned after emptying and prior to reuse***	\$0	[\$200] <u>\$100</u>									
08B	NYCHC 89.25(a)	General	Garbage, refuse and litter not properly removed or stored		\$200									
08B	NYCHC 89.25(a)	General	Solid and liquid waste discarded on public streets, or in public litter baskets.		\$200									
08C	NYCHC 81.17(g)	General	Toxic materials not properly stored		\$200	\$200	\$200	\$200	\$200					
08C	NYCHC 81.23(d)(4)	General	Open bait station used		\$200	\$200	\$200	\$200	\$200					
08C	NYCHC 89.19(k)	General	Pesticides, other toxic chemicals improperly used/stored on a MFVU.		\$200	\$200	\$200	\$200	\$200					
09A	NYCHC 81.07(b)	General	Dented food cans not segregated from intact packages****	\$0	[\$200] <u>\$50</u>	[\$200] <u>\$50</u>	[\$200] <u>\$50</u>	[\$200] <u>\$50</u>						
09B	NYCHC 81.09(f)	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***	\$0	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>						

09D	24 RCNY 6-04	General	MFVU used as a dwelling, or for sleeping purposes							\$200
09E	NYCHC 81.21(c)	General	Wash hands sign not posted							
10B	24 RCNY 6-04(g)(1)	General	Potable water not protected from back-flow, back-siphonage or cross-connection***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100	
10B	NYCHC 81.20(b)	General	Improper disposal of sewage or liquid waste***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100	
[10B]	[NYCHC 81.20(b)]	[General]	[Condensation pipes not properly installed or maintained]		[\$200]	[\$200]	[\$200]	[\$200]	[\$200]	
10C	24 RCNY 6-04(c)	General	Lighting insufficient; inadequate***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100		
10D	24 RCNY 6-04(d)	General	Ventilation (mechanical or natural) not provided or inadequate		\$200	\$200	\$200	\$200		
10E	24 RCNY 6-04(l)(1)	General	Accurate thermometer not provided in each hot and cold storage or holding equipment		\$200	\$200	\$200	\$200		
10E	24 RCNY 6-04(l)(2)	General	Thermometer not properly located in each hot and cold holding equipment		\$200	\$200	\$200	\$200		
10F	24 RCNY 6-04(b)(2)	General	Exterior non-food contact surfaces: unacceptable materials used		\$200	\$200	\$200	\$200		
10F	24 RCNY 6-04(b)(1)	General	Interior non-food contact surfaces: unacceptable material used, or not clean or sanitary***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100		
10F	NYCHC 81.17(e)(3)	General	Non-food contact surface (equipment, fixtures, decorative material, fans, etc.) not clean or not in working order***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100		

10G	NYCHC 81.29(a)	General	Manual sanitizing procedure inadequate	<div></div>				\$200	<div></div>
10G	NYCHC 81.29(a)(3)(B)	General	Chemical sanitizer unapproved or sanitizing procedure inadequate					\$200	
10G	NYCHC 81.29(a)(3)(B)	General	Test kit not accurate or used for manual dishwashing					\$200	
10H	NYCHC 81.07(o)	General	Single service items improperly stored or reused		\$200	\$200	\$200	\$200	
10H	NYCHC 81.07(o)	General	Drinking straws improperly dispensed		\$200	\$200	\$200	\$200	
10H	NYCHC 89.23(c)	General	Single service items not provided		\$200	\$200	\$200	\$200	
10H	NYCHC 89.23(c)	General	Consumer not provided with single service items.		\$200	\$200	\$200	\$200	
10I	NYCHC 89.19(l)	General	Failure to clean unit at commissary or approved facility at least daily						\$200

*Default Penalties. When a respondent is found in violation of New York City Administrative Code section 17-307 (a)(1) or (b)(1), the penalty for each violation is \$1,000 which may not be increased on default.

**MOS or Multiple Offense Schedule. In accordance with New York City Administrative Code section 17-325, the Multiple Offense Schedule (MOS) applies to a subsequent violation by the same respondent, of the same section of law listed in this Penalty Schedule as subject to the "MOS" with a date of occurrence within two (2) years of the date(s) of occurrence of the first violation. The MOS is to be applied as follows: 1st Violation [\$50] \$25 (default [\$50] \$25); 2nd Violation [\$100] \$50 (default [\$100] \$50); 3rd Violation [\$250] \$100 (default [\$250] \$100); 4th and subsequent Violation [\$500] \$250 (default [\$500] \$250)

*****First-time violations subject to cure.** First-time violations where a monetary penalty is waived because a cure has been accepted. See § 6-23 of this Chapter.

**** **First-time violation subject to a \$0 penalty.**

§ 6. Appendix 6-C-2 of Chapter 6 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 6-C-2				
MOBILE FOOD VENDING UNIT (MFVU) PENALTY SCHEDULE				
UNSCORED VIOLATIONS				
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST TIME VIOLATIONS	VIOLATION PENALTY*

16-01	NYCHC 81.08(a)	Cooking oil, shortening, margarine contains 0.5 grams or more of artificial trans fat		\$200
16-02	NYCHC 81.08(c)	Nutritional fact labels and/or ingredient label is not maintained on site***	\$0	[\$200] \$100
16-03	NYCHC 81.50(c)	Calorie information is not posted on menu and menu board		\$200
16-03	NYCHC 81.50(c)	Total number of calories or total number of discrete calories not posted		\$200
16-03	NYCHC 81.50(c)	Calorie information not posted for standard menu items offered in different varieties		\$200
16-03	NYCHC 81.50(c)	Calorie information not posted for combination meals		\$200
16-03	NYCHC 81.50(c)	Calorie information not posted for toppings		\$200
16-03	NYCHC 81.50(c)	Calorie information font, appearance, term used improper		\$200
16-03	NYCHC 81.50(c)	Calorie information improperly posted for standard menu items offered in three or more combinations		\$200
16-03	NYCHC 81.50(c)	Calorie information for standard menu item offered in two different combinations not posted with a slash between both calorie count		\$200
16-03	NYCHC 81.50(c)	Calorie information for standard menu items that come in two different varieties not posted with a slash between both calorie count		\$200
16-03	NYCHC 81.50(c)	Calorie information improperly posted for standard menu items offered in three or more different varieties		\$200
16-04	NYCHC 81.50(d)	Required nutritional succinct statements not posted on menu(s) for adults and children		\$200
16-06	NYCHC 81.50(e)	Additional nutritional information statement not posted		\$200
16-06	NYCHC 81.50(e)	Written nutritional information not provided in a manner required by Federal Law		\$200
16-08	NYCHC 81.49(b)(1)	No sodium warning icon where required		\$200
16-09	NYCHC 81.49(b)(1)	Sodium warning icon non-compliant with design specifications		\$200
16-10	NYCHC 81.49(b)(2)	No sodium warning statement at point of purchase		\$200
18-03	NYCHC 89.05(a)	Operating a MFVU without a permit in restricted or private space		\$1,000
<u>18-04</u>	<u>NYCHC 89.05(c)</u>	<u>MFVU materially altered after permit decal issued.</u>		<u>\$1,000</u>

18-05	NYCHC 89.07(a)	Operating a MFVU without a license in restricted or private space		\$1,000
18-06	NYCHC 89.13(g)	Allowing unlicensed person to vend		\$1,000
18-07	24 RCNY 6-04(b)(3)	Unobstructed space not provided for posting of permit-decal and grade card		\$500
18-09	NYCHC 89.07(d)	Failure to display license and/or permit documentation		\$200
18-12	NYCHC 3.19	Department document unlawfully reproduced or altered		\$1,000
18-13	NYCHC 3.05(a)	Failure to comply with an Order of the Board of Health, Commissioner or Department		\$1,000
18-14	NYCHC 3.17	Notice, Order or other posted material of the Department mutilated, obstructed, or removed		\$1,000
18-15	NYCHC 81.43(a)	Foodborne illness; failure to notify [department] <u>Department</u>		\$200
18-16	NYCHC 89.13(a)	Failure to permit inspection or present unit at time and place designated by the Department		\$1,000
18-17	NYCHC 3.19	Submitting false, misleading statements, documents; documents unlawfully reproduced or altered		\$1,000
<u>19-05</u>	<u>Admin. Code § 16-401(b)</u>	<u>Providing single-use plastic stirrers or single-use plastic splash sticks</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>
<u>19-06</u>	<u>Admin. Code § 16-401(c)(1)</u>	<u>Providing single-use, non-compostable plastic straws to customers without customer request (including providing such straws at a self-serve station)</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>
<u>19-07</u>	<u>Admin. Code § 16-401(c)(2)</u>	<u>Failure to maintain a sufficient supply of single-use, non-compostable plastic straws</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>
<u>19-08</u>	<u>Admin. Code § 16-401(c)(2)</u>	<u>Failure to provide a single-use, non-compostable plastic straw upon request</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>
<u>19-09</u>	<u>Admin. Code § 16-401(c)(2)</u>	<u>Charging a customer for a single-use, non-compostable plastic straw that the customer has requested or inquiring as to the reason a customer has requested such plastic straw</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>
<u>19-10</u>	<u>Admin. Code § 16-401(c)(3)</u>	<u>Failure to display required signage about plastic straw availability</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>

19-11	<u>Admin. Code § 16-401(d)</u>	<u>Providing compostable plastic straws to be used outside of the food establishment's premises; failure to appropriately dispose of compostable plastic straws; failure to maintain required bins for disposal of compostable plastic straws</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>
20-06	24 RCNY 6-19	Current letter grade or Grade Pending card not posted		<u>[\$1,000] \$500</u>
20-07	24 RCNY 6-20(b)	Current letter grade or Grade Pending card removed, destroyed, modified, obscured, or otherwise tampered with		\$1,000
22-05	24 RCNY 6-21(b)	Operating without a location sharing device		\$1,000
22-05	24 RCNY 6-21(c)	Location sharing device removed, obstructed, disposed of, modified or tampered with		\$1,000
22-06	24 RCNY 6-03(b)	Vending non-food items		\$200
22-10	NYCHC 89.23(b)	Vending from any place other than a MFVU		\$200
28-01	NYCHC 3.07	Failure to take reasonable precautions to protect health and safety, e.g., by not securing CO2 or liquefied petroleum gas (LPG) containers		\$1,000
28-01	NYCHC 3.09	Failure to abate or remediate nuisance		\$1,000
28-02	NYCHC 81.07(p)	Microwave safe container not marked or used		\$200
28-03	24 RCNY 6-04(c)	Light fixtures not shielded, shatterproofed, or otherwise protected from accidental breakage		\$200
28-04	NYCHC 89.25(c)	Failure to remove consumer litter, and food spillage caused by the operation		\$200
28-05	NYCHC 71.05	Food adulterated or misbranded		\$500
<u>28-05</u>	<u>NYCHC 71.06(a)</u>	<u>Labeling information required by applicable law not maintained in English.</u>		<u>\$500</u>
28-06	NYCHC 81.23(b)(2)	Contract with pest management professional, record of pest extermination activities not kept on premises		<u>[\$200] \$100</u>

28-07	NYHC 81.31	Unauthorized FSE street, sidewalk cooking		\$350
28-08	24 RCNY 6-06 (a)	MFVU exceeds size requirements		\$200
[99-00	NYHC miscellaneous	Other Health Code unscored violations		\$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 when this Appendix states that a violation is subject to the Multiple Offense Schedule (MOS), the penalty to be imposed upon a respondent found in default for any violation of the rules of the Department in 24 RCNY must be doubled, but may not 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.

** Each such violation is a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof is to be treated as a separate and distinct offense.

*****First-time violations subject to cure.** First-time violations where a monetary penalty is waived because a cure has been accepted. See §6-23 of this Chapter.

§ 7. Appendix 6-C-3 of Chapter 6 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 6-C-3			
MOBILE FOOD VENDING UNIT (MFVU) PENALTY SCHEDULE			
UNSCORED VIOLATIONS			
CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED	PENALTY*
Admin. Code 16-329(c)	Possess, sell expanded polystyrene (EPS) single service articles		[\$250 (1st); \$500 (2nd); \$1,000 (3rd or more in 12 months)] <u>\$100 (1st violation); \$250 (2nd violation)</u> <u>\$500 (3rd and subsequent violations in 12 months)</u>
Admin. Code 17-307(a)(1)	Unlicensed mobile food vendor (public space)		\$1,000
Admin. Code 17-307(b)(1)	Unpermitted MFVU (public space)		\$1,000
Admin. Code 17-307(b)(1)	Vending food other than fresh fruits and vegetables		\$1,000
Admin. Code 17-307(d)	Vending of unapproved items		MOS**
Admin. Code 17-311	Failure to display license and/or [plate] <u>permit***</u>	<u>\$0</u>	MOS**
Admin. Code 17-311(d)	Green Cart vendor failed to carry map showing authorized vending areas***	<u>\$0</u>	MOS**

Admin. Code 17-315(a)	MFVU on sidewalk less than 12 feet, or not at curb***	\$0	MOS**
Admin. Code 17-315(b)	Pushcart touching against building***	\$0	MOS**
Admin. Code 17-315(c)	Items not kept in MFVU (except waste container)		MOS
Admin. Code 17-315(d))	Pushcart against display window or within 20 feet of entrance of any building or within 20 feet from exits, including service exits, to buildings that are exclusively residential at street level		MOS
Admin. Code 17-315(e)	Vending in: bus stop, sidewalk next to a hospital or health facility, no standing zone or within 10 feet of a driveway, subway, crosswalk		MOS
Admin. Code 17-315(h)	Vending on median strip, which is not intended for mall or plaza		MOS
Admin. Code 17-315(i)	Unapproved vending within Parks Department jurisdiction		MOS
Admin. Code 17-315(k), (l)	Vending at time/place prohibited		MOS

*Default Penalties. When a respondent is found in violation of New York City Administrative Code section 17-307 (a)(1) or (b)(1), the penalty for each violation is \$1,000 which may not be increased on default.

****MOS or Multiple Offense Schedule.** In accordance with New York City Administrative Code section 17-325, the Multiple Offense Schedule (MOS) applies to a subsequent violation by the same respondent, of the same section of law listed in this Penalty Schedule as subject to the "MOS" with a date of occurrence within two (2) years of the date(s) of occurrence of the first violation. The MOS is to be applied as follows: 1st Violation \$25 (default \$25); 2nd Violation \$50 (default \$50); 3rd Violation \$100 (default \$100); 4th and subsequent Violation \$250 (default \$250).

*****First-time violations subject to cure. First-time violations where a monetary penalty is waived because a cure has been accepted. See section 6-23 of this Chapter.**

****** First-time violation subject to a \$0 penalty.**