

New York City Department of Health and Mental Hygiene

Notice of Adoption of Amendments to Chapter 7 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 7 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 8 written comments were received, which were broadly supportive of the reduction or waiving of monetary penalties for certain violations. No changes have been made to the proposal as published by the Department, which now acts to adopt these amendments as detailed below.

Statement of Basis and Purpose

Background

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 amending Chapter 7 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 Proposed Amendments

Revised § 7-01

Section 7-01 is amended by defining the terms “first-time violation,” “cure,” and “summons.” The amendment also removes the lettered subdivision designators so that the definitions are now listed in alphabetical order.

New §§ 7-10 and 7-11

Sections 7-10 and 7-11 are added to Chapter 7 and provide the requirements for the submission of proof of correction for a first-time violation and the acceptance of such proof by the Department.

Revised Appendix 7-A

Appendix 7-A is amended to reflect the changes made to the Administrative Code by Local Law 80 of 2021 with respect to child care programs and pet shop violations, as well as to add penalties for not testing drinking water for lead in child care programs and school-based programs for children ages 3 through 5 as required under the Health Code.

Statutory Authority

The authority for these rules is found in the 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 7-01 of Chapter 7 of Title 24 of the Rules of the City of New York is amended to read as follows:

§7-01 Definitions.

When used in this Chapter, the following terms have the following meanings:

[(a)] **Administrative Code** or **Admin. Code** [refers to] means the Administrative Code of the City of New York.

[(b)] **Charter** means the New York City Charter.

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

[(c)] **Environmental Control Board** [is] means the board that exists in the OATH Hearings Division pursuant to Charter §1049-a.

First-time violation means a violation of law, listed in Appendix 7-A 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.

[(d)] **NYCHC or Health Code** [refers to] means the New York City Health Code, found in Title 24 of the Rules of the City of New York.

[(e)] **NYSPHL** [refers to] means the New York State Public Health Law.

OATH means the New York City Office of Administrative Trials and Hearings (OATH).

[(f)] **OATH Trials Division** [is] means the tribunal of [the Office of Administrative Trials and Hearings (OATH)] OATH, established by Charter §1048(1) to conduct adjudicatory hearings for all agencies of the City of New York.

[(g)] **OATH Hearings Division** includes the tribunal established by the Board of Health pursuant to Charter §558 and transferred to OATH by Mayoral Executive Order 148 (2011).

[(h)] **Premises** [refer to] means real property consisting of a building and land on which it is situated.

"Same premises" [refers to] means (i) a specific building, or (ii) a group of buildings co-located in a development owned by the same entity.

[(i)] **RCNY** [refers to] means the Rules of the City of New York.

Summons means a document, including a notice of violation, issued by the Department to a respondent, that specifies the charges forming the basis of an adjudicatory proceeding at the Office of Administrative Trials and Hearings.

§ 2. Chapter 7 of Title 24 of the Rules of the City of New York is amended by adding new sections 7-10 and 7-11, to read as follows:

§ 7-10 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.

§7-11 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 7-A of Chapter 7 of Title 24 of the Rules of the City of New York is amended by adding rows NYCHC 43.24(a), NYCHC 47.09(b), NYCHC 47.43(a), NYCHC 47.73(b)(2), Admin Code 17-377(b), and Admin Code 17-1703(c) in numerical order by section number, by amending row NYCHC 161.09(f), and by adding a sentence at the end to read as follows:

Section of Law	Violation Description	Standard Penalty	Default Penalty
<u>NYCHC 43.24(a)</u>	<u>Drinking water not tested for lead as required.</u>	<u>\$400</u>	<u>\$800</u>
<u>NYCHC 47.09(b)</u> <u>Admin Code 17-1304(a)</u>	<u>Failure to disclose serious injury or death</u>	<u>\$1,000</u>	<u>\$2,000</u>
<u>NYCHC 47.43(a)</u>	<u>Drinking water not tested for lead as required.</u>	<u>\$400</u>	<u>\$800</u>
<u>NYCHC 47.73(b)(2)</u> <u>Admin Code 17-1303</u>	<u>Availability of childcare service inspection information not posted*</u>	<u>\$500</u>	<u>\$1,000</u>
<u>NYCHC 161.09(f)</u>	No certificate of completion of small animal care and handling course	<u>[\$500] \$400</u>	<u>[\$1,000] \$800</u>
<u>Admin Code 17-377 (b)</u>	<u>Permit not placed in a clean, transparent cover and clearly visible to the public*</u>	<u>\$100 per day</u>	<u>\$100 per day</u>
<u>Admin Code 17-1703 (c)</u>	<u>Failure to conspicuously post required notices*</u>	<u>\$100 per day</u>	<u>\$100 per day</u>

*Violation is subject to cure; see section 7-10 of this Chapter.