

## 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 New York City Department of Health and Mental Hygiene (DOHMH or Department) is proposing to amend Chapter 7 (Adjudicatory Hearings and Violation Fines and Penalties) of Title 24 of the Rules of the City of New York to reflect amendments to the New York City Administrative Code, made by Local Law 80 of 2021, concerning the reduction or waiving of monetary penalties for certain first-time violations. Certain other amendments, corrections, and formatting changes are also being made.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on **Tuesday, January 3, 2023**.

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=mb049c5375e1280c9b65f7b0b6c79d041>

If prompted to provide an event number or password, please enter the following:

Event number: **2345 076 2866**

Password: Health (**432584** from phones)

**Phone:** For access, dial: (408) 418-9388; (646) 992-2010 (New York City) then please enter the following: Access code: 234 507 62866, Password: 432584.

**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 comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov)
- **Mail.** You can mail comments to DOHMH at:  
New York City Department of Health and Mental Hygiene  
Gotham Center, 42-09 28<sup>th</sup> Street, CN 30  
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to DOHMH at (347) 396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing should 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](mailto:resolutioncomments@health.nyc.gov) before the hearing begins at 10AM on January 3, 2023. 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?** Yes, you must submit written comments by January 3, 2023.

**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 December 20, 2022.

**Can I review the comments made on the proposed rules?** You may review the online comments submitted 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 DOHMH to make this rule?** Sections 556 and 1043 of the City Charter and Local Law 80 of 2021 authorize the Department to make this proposed rule. This proposed rule was included in the Department's FY2023 regulatory agenda.

**Where can I find the DOHMH's rules?** DOHMH's rules are in title 24 of the Rules of the City of New York.

**What laws govern the rulemaking process?** DOHMH must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

#### **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 proposing to amend 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 changes, as indicated below.

#### **Specific Proposed Changes**

##### **Revised § 7-01**

The proposed rule would amend section 7-01 by defining the terms "first-time violation," "cure," and "summons." The proposed rule would also remove the lettered subdivision designators so that the definitions are listed in alphabetical order.

## **New §§ 7-10 and 7-11**

The proposed rule would add new sections 7-10 and 7-11, which will 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**

The proposed rule would amend Appendix 7-A 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 proposal is 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 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 to add 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:

<b>Section of Law</b>	<b>Violation Description</b>	<b>Standard Penalty</b>	<b>Default Penalty</b>
<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.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Provisions Relating to First Time Health Code Violations  
(Health Code Chapter 7)**

**REFERENCE NUMBER: DOHMH-120**

**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) The proposed rule reduces or waives monetary penalties for certain first-time violations.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

November 23, 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:** 2022 RG 036

**REFERENCE NUMBER:** Amendment of Provisions Relating to First Time Health Code Violations (Health Code Chapter 7)

**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: November 23, 2022