

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

NOTICE OF ADOPTION

Revision of New York City Department of Parks and Recreation's Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY INVESTED IN the Commissioner of the Department of Parks & Recreation ("the Department") by Sections 389 and 533(a)(9) of the New York City Charter and in accordance with the requirement of Section 1043 of the New York City Charter, that Parks hereby revises §§1-02 and 1-05(b) of Title 56 of the Official Compilation of Rules of the City of New York.

Written comments regarding the rules were received in accordance with the notice published in the City Record or electronically through NYC RULES at www.nyc.gov/nycrules and a public hearing was held on April 2, 2013 at Chelsea Recreation Center, 430 West 25th Street, New York, NY 10001. Written comments and a recording of the oral testimony from the hearing were made available to the public within a reasonable time after the hearing Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m., at The Arsenal, Room 313, telephone (212) 360-1313.

These amendments were not included in the Parks regulatory agenda because Parks was not aware of the necessity for the amendments at the time the regulatory agenda was prepared.

Statement of Basis and Purpose

The purpose of this proposed rule is to:

- Clarify the Department's original intent that individuals providing entertainment, such as musical performances, juggling, dance, or other performance arts in exchange for a fee or for a donation are considered vendors and that entertainment services and performances are considered expressive matter under the Department's rules.
- Indicate clearly that vendors of expressive matter, including entertainers, are exempt from permitting requirements of the Department applicable to vendors of goods or services so long as they comply with the Department's Expressive Matter Vending Rules.
- Address the recent decision in the Matter of New York Skyline, Inc., 94 A.D.3d 23 (1st Dep't 2012), leave to appeal denied, 2012 N.Y. LEXIS 2019 (Aug. 30, 2012), which held that vendors of tickets to entertainments are exempt from permit requirements of the General Vendors Law, insofar as, without the proposed revisions, that decision could have been construed to similarly exempt entertainers from having to comply with the Department's Expressive Matter Vending Rules.

Deleted material is in [brackets]; new text is underlined.

Section 1. Section 1-02 of Title 56 of the Official Compilation of the Rules of the City of New York is amended to read as follows:

Expressive Matter. “Expressive matter” means materials or objects with expressive content, such as newspapers, books, or writings, or visual art such as paintings, prints, photography, [or] sculpture, or entertainment.

§ 2. Section 1-05(b) of Title 56 of the Official Compilation of the Rules of the City of New York is amended to read as follows:

§ 1-05

(b) Unlawful Vending.

(1) No person in or on any property under the jurisdiction of the Department shall sell, offer for sale, hire, lease or let anything whatsoever, including, but not limited to goods, services, or entertainment, or provide or offer to provide services or items, or entertainment in exchange for a donation (hereinafter “vend”), except under and within the terms of a permit, or except as otherwise provided by law. For the purposes of this entire section, persons who vend as defined herein may be referred to as “vendor” or “vendors.”

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