



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 23 (Food Service Establishment Sanitary Inspection Procedures and Letter Grading) 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
- **Mail.** You can mail comments to DOHMH at:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th 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 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 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

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 23 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 changes proposed

Revised § 23-01

This proposed rule would amend section 23-01 by defining the terms “cure,” “first-time violation,” and “summons.”

New § 23-09 and § 23-10

The proposed rule would add section 23-09, which details the rules for submitting proof of having corrected a first-time violation. The proposed rule would also add section 23-10, which describes when the Department will accept the submitted proof of correction.

Revised Appendix 23-A

The proposed rule would amend Appendix 23-A to include language about refillable, reusable beverage containers, rephrase language for prohibited substances, and correct typographical errors.

Revised Appendix 23-B

The proposed rule would amend Appendix 23-B to include language about refillable, reusable beverage containers, rephrase language for prohibited substances, and correct typographical errors.

Revised Appendix 23-C

Appendix 23-C specifies monetary penalties for food service establishment violations that are adjudicated at the Office of Administrative Trials and Hearings (“OATH”).

Local Law 80 added section 17-1508(c) of the Administrative Code, reducing penalties and providing for a cure for any food service establishment first-time violation for failing to post a “sign, poster, image, card or other required information.” However, Local Law 80 also added a section 17-1508(d) of the Administrative Code, providing that no cure process shall be applicable if the Department determines that “the posting of such sign, poster, image, card or other required information is required in order to mitigate a risk of immediate death or serious injury to the general public or patrons of such establishment.” Accordingly, the Department has determined the following postings are not subject to cure under §17-1508(c): allergen warnings and resuscitation equipment signs.

This proposed rule would amend Appendix 23-C 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 proposed amendments to Appendix 23-C also include reductions in penalties made in the Administrative Code where the violations are not subject to cure.

Additionally, the proposed 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 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 23-01 of Chapter 23 of Title 24 of the Rules of the City of New York is amended by adding the definitions of “cure,” “first-time violation,” and “summons” 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, identified in Appendix 23-C 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.

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 OATH.

§ 2. Chapter 23 of Title 24 of the Rules of the City of New York is amended by adding sections 23-09 and 23-10 to read as follows:

§ 23-09 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, except that the cure period of a first-time violation of Administrative Code § 17-504(f) is within thirty (30) days of the issuance of the notice of violation.
- (c) Such 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.

§ 23-10 Acceptance of proof of correction for eligible first-time violations.

- (a) The Department must accept the proof of correction if it determines that the proof is adequately documented and submitted timely in accordance with §23-09 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 23-A of Chapter 23 of Title 24 of the Rules of the City of New York is amended by amending rows 4F, 4P, 5C, 6A, 6C, and 6J to read as follows:

APPENDIX 23-A						
FOOD SERVICE ESTABLISHMENT & NON RETAIL FOOD SERVICE ESTABLISHMENTS INSPECTION WORKSHEET						
Critical Violations	Conditions					Score
	I	II	III	IV	V	
4F* Food[, food] preparation area, food storage area, or other area used by employees or patrons, contaminated by sewage or liquid waste.	-	-	-	10	28	
4P [Food held, kept, prepared, processed, packaged or served with a prohibited substance] <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	7	8	9	10	28	
6A Personal cleanliness inadequate. Outer garment soiled with possible contaminant. [Food worker not properly dressed; sleeveless garment worn or bare midriff exposed.] Effective hair restraint not worn when required. Jewelry worn on hands or arms: fingernail polish worn; or fingernails not kept clean and trimmed.	5	6	7	8	-	

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>	5	6	7	8	-	
6J	[Commissary or other approved facility maintains no or incomplete records of mobile food vending units serviced] <u>Refillable, reusable beverage container filled with TCS foods.</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>[-] 8</u>	28	

§ 4. Appendix 23-B of Chapter 23 of Title 24 of the Rules of the City of New York is amended by amending rows 4F, 4N, 4P, 5C, 6A, 6C, and 6J to read as follows:

APPENDIX 23-B: FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS - A GUIDE TO CONDITIONS						
	Violation	Condition I	Condition II	Condition III	Condition IV	Condition V
4F*	Food[, food] preparation area, food storage area, or any other 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 facility'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 food preparation or food storage area during November 1 through March 1. Example: two flies in dry non-food area in January.	6 - 10 filth flies or FRSA flies in one area; or 2 - 5 filth flies in two areas. Example: 7 live flies in food preparation area; or 2 flies in the dry food storage area and 1 in basement.	11 - 15 filth flies or FRSA flies in one area; 6 - 10 in two areas; or 2 - 5 flies in three areas. Example: 12 live flies in food preparation area; 4 flies in the dry food storage area and 5 flies in basement; or 1 fly observed in walk-in refrigerator food preparation area and dry storage area.	16 - [20] <u>30</u> filth flies or FRSA flies in one area; 11 - 15 in two areas; 6 - 10 filth flies in three areas; or 1 - 5 in four areas. Example: 17 filth flies in food preparation area; 10 filth flies in dry food storage area and 5 filth flies in basement; or 2 filth flies observed in walk-in	More than 30 filth flies, FRSA flies and/or other conditions exist conducive to infestation of filth flies. Example: 40 flies in the basement garbage area; and other conditions exist conducive to filth fly infestation, i.e. openings to the outer air, water, food, decaying matter, and/or sewage. Inspector must call office to

					refrigerator, food preparation area, garbage area and dry storage area.	discuss closing or other enforcement measures.
4P	[Food held, kept, prepared, processed, packaged or served with a prohibited substance] <u>Food containing a prohibited substance held, kept, offered, prepared, processed, packaged, or served.</u>				Any food held, kept, offered, prepared, processed, packaged or served with any prohibited substance.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures
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 or piece of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves in a walk-in unit.	Two food contact surfaces or pieces of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves in a walk-in unit and [cutting board made from untreated wood] <u>customer's refillable, reusable container made from polystyrene.</u>	Three food contact surfaces or pieces of equipment improperly constructed, located, and/or unacceptable material used. Example: painted shelves of a walk-in unit, <u>customer's refillable, reusable container made from polystyrene,</u> cutting board made from untreated wood and acidic foods placed in pewter bowl.	Four or more food contact surfaces or pieces of equipment improperly constructed, located, and/or unacceptable material used. Example: painted shelves of a walk-in unit, cutting board made from untreated wood, acidic foods placed in pewter bowl and solder and flux used to repair food contact equipment or no culinary sink or other acceptable method provided for washing food.	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.

6A	<p>Personal cleanliness inadequate. Outer garment soiled with possible contaminant. [Food worker not properly dressed; sleeveless garment worn or bare midriff exposed.] Effective hair restraint not worn where required. Jewelry worn on hands or arms; fingernail polish worn or fingernails not kept clean and trimmed</p>	<p>One food worker without clean outer garment or hair restraint or wearing prohibited jewelry or fingernail polish, or fingernails not kept clean and trimmed.</p>	<p>Two food workers without clean outer garments and/or hair restraints or wearing prohibited jewelry or fingernail polish or fingernails not kept clean and trimmed.</p>	<p>Three food workers without clean outer garments and/or hair restraints or wearing prohibited jewelry or fingernail polish or with fingernails not kept clean and trimmed.</p>	<p>Four or more food workers without clean outer garments and/or hair restraints, or wearing prohibited jewelry or fingernail polish or fingernails not kept clean and trimmed.</p>	
6C	<p>Food, supplies or equipment not protected from potential source of contamination during storage, preparation, transportation, display or service or <u>from customer's refillable, reusable container.</u></p>	<p>One food item or kind of supply not protected during storage, preparation, transportation, display or service or <u>from customer's refillable, reusable container.</u> Example: one tray of uncovered assorted pastries or supply of clean table linen in customer self-service area <u>or customer's refillable, reusable container directly touches the cappuccino milk frother.</u></p>	<p>Two food items or supplies not protected during storage, preparation, transportation, display or service <u>or from customer's refillable, reusable container.</u> Example: one tray of uncovered pastries or supply of clean table linen in customer self-service area and one cooked steak on prep table under fly strip</p>	<p>Three food items or supplies not protected during storage, preparation, transportation, display or service <u>or from customer's refillable, reusable container.</u> Example: one tray of uncovered pastries or supply of clean table linen in customer self-service area; one cooked steak on prep table under fly strip and self-service buffet without sneeze guard.</p>	<p>Four or more food items or supplies not protected during storage, preparation, transportation, display or service <u>or from customer's refillable, reusable container.</u> Example: one tray of uncovered pastries or supply of clean table linen in customer self-service area; one cooked steak on prep table under fly strip, <u>customer's refillable, reusable container directly touches the cappuccino milk frother,</u> buffet without sneeze guard and uncovered bucket of marinating chicken on floor of walk-in refrigerator.</p>	

6J	[Commissary or other approved facility maintains no or incomplete records of mobile food vending units serviced] <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>	<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>	[No or incomplete records kept. Inspector must call office to discuss corrective action.]
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§ 5. Appendix 23-C of Chapter 23 of Title 24 of the Rules of the City of New York are amended to read as follows:

Appendix 23-C: Food Service Establishment and Non-Retail Food Processing Establishment 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	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	Rare roast 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 for 15 seconds; 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] <u>\$500</u>
02C	NYCHC 81.09(d)	[CRITICAL] <u>Critical</u>	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] <u>Critical</u>	Commercially processed TCS food not heated to 140°F within 2 hours		\$200	\$200	\$250	\$300	
02E	NYCHC 81.09(f)(5)	[CRITICAL] <u>Critical</u>	Whole frozen poultry or poultry breast, other than a single portion, cooked frozen or partially thawed		\$200	\$200			

02F	NYCHC 81.11	[CRITICAL] <u>Critical</u>	Meat, fish, or shellfish offered, served raw or partially cooked with no 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] <u>\$500</u>
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
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 81.12(d)(2)	Public Health Hazard	Reduced oxygen packaged raw TCS foods not held at proper temperatures		\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged TCS foods not held at proper temperatures		\$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] <u>\$500</u>
02I	NYCHC 81.09(e)(2)	[CRITICAL] <u>Critical</u>	TCS food not cooled to 41°F when prepared from ambient temperature ingredients within 4 hours		\$200	\$200	\$250	\$300	
02J	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged TCS foods not properly cooled		\$250	\$300	\$350	\$400	\$600
03A	NYCHC 81.04	Public Health Hazard	Food from unapproved or unknown source, or home cooked					\$400	\$600
03A	NYCHC 81.12(c)	Public Health Hazard	Reduced oxygen packaged foods not from an approved source					\$400	\$600
03A	NYCHC 81.12(e)	Public Health Hazard	Reduced oxygen packaged fish not frozen before processing					\$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 animals' meat not from an approved source					\$400	\$600
03A	NYCHC 81.07(m)	Public Health Hazard	Animal slaughter in establishment					\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish not from an approved source					\$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 premises					\$400	\$600
03C	NYCHC 81.07(c)	Public Health Hazard	Whole eggs cracked, not clean; other eggs unpasteurized		\$250	\$300	<u>\$350</u>	\$400	\$600
03D	NYCHC 81.07(b)	Public Health Hazard	Food packages, hermetically sealed containers, or [canned] packaged food swollen, leaking and/or rusted; not labeled; not segregated from packaged foods [intact cans]		[\$250] <u>\$200</u>	[\$300] <u>\$200</u>	[\$350] <u>\$200</u>	[\$400] <u>\$200</u>	[\$600] <u>\$200</u>
03E	NYCHC 81.20(a)	Public Health Hazard	Potable water not provided; inadequate***	<u>\$0</u>				[\$400] <u>\$100</u>	[\$600] <u>\$100</u>

03E	NYCHC 141.13	Public Health Hazard	Bottled water not from an approved source; not state certified					\$250	\$250
03E	NYCHC 81.20(a)	Public Health Hazard	Cross-connection observed between potable and non-potable water***	\$0				[\$400] \$100	[\$600] \$100
03E	NYCHC 81.20(c)	Public Health Hazard	Carbon dioxide gas lines unacceptable, improper materials used					\$400	\$600
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] Critical	Raw fruits and vegetables not washed prior to cutting, serving		\$200	\$200	\$250	\$300	
03I	NYCHC 81.04(e)	Public Health Hazard	Juice packaged on premises with no or incomplete label, no warning statement					\$400	\$600
04A	NYCHC 81.15(a)	[CRITICAL] Critical	Food Protection Certificate not held by supervisor or manager of food operations						[\$600] \$400
04B	NYCHC [81.13(a)] 81.13(I)	Public Health Hazard	Food worker spitting in establishment					\$400	\$600
04B	NYCHC 81.13(a)	Public Health Hazard	Food worker with illness, communicable disease and/or injury preparing food					\$400	\$600
04C	NYCHC 81.07(j)	Public Health Hazard	Bare hand contact with ready-to-eat food		\$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)(3)	Public Health Hazard	Pesticides not properly labeled, stored or used such that food contamination may occur		\$250	\$300	\$350	\$400	\$600
04E	NYCHC 81.17(g)	Public Health Hazard	Toxic chemicals not properly 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)(2)	Public Health Hazard	Food not protected from cross-contamination		\$250	\$300	\$350	\$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 not protected from adulteration or contamination		\$250	\$300	\$350	\$400	\$600 [\$500]
04H	NYCHC 81.06(b)(3)	Public Health Hazard	Food not discarded in accordance with HACCP plan		\$250	\$300	\$350	\$400	\$600
04I	NYCHC 81.07(l)	Public Health Hazard	Unprotected non-TCS food re-served		\$200	\$200	\$250	\$300	
04J	NYCHC 81.09(g)	[CRITICAL] Critical	Thermometer not provided, calibrated properly, or accessible for use		\$200				
04J	NYCHC 81.12(g)(1)	[CRITICAL] Critical	Thermocouple not provided for ROP TCS foods		\$200				
04K	NYCHC 81.23(a)	[CRITICAL] Critical	Rats or evidence of rats		\$200	\$200	\$250	\$300	\$350

04L	NYCHC 81.23(a)	[CRITICAL] <u>Critical</u>	Mice or evidence of mice		\$200	\$200	\$250	\$300	\$350
04M	NYCHC 81.23(a)	[CRITICAL] <u>Critical</u>	Live roaches		\$200	\$200	\$250	\$300	\$350
04N	NYCHC 81.23(a)	[CRITICAL] <u>Critical</u>	Filth or FRSA flies, other nuisance pests		\$200	\$200	\$250	\$300	\$350
04O	NYCHC 81.25	[CRITICAL] <u>Critical</u>	Live animal other than fish in tank or service animal		\$200	\$200	\$250	\$300	\$350
04P	SSC 14-1.89(a)	Public Health Hazard	Non-food grade liquid nitrogen, dry ice added to food		Condition levels are not applicable. Penalty is \$250 for first violation and \$500 for each subsequent violation				
04P	SSC 14-1.89(d)	Public Health Hazard	Dry ice "smoke" or liquid nitrogen "fog" effect remains at time of service		Condition levels are not applicable. Penalty is \$250 for first violation and \$500 for each subsequent violation				
04P	NYCHC 71.05	Public Health Hazard	[Food held, kept, prepared, processed, packaged or served with prohibited substance] <u>Food containing a prohibited substance held, kept, offered, prepared, processed, packaged, or served</u>					\$400	\$600
05A	NYCHC 81.20(b)	Public Health Hazard	Sewage disposal system not provided, inadequate or unapproved***	\$0				[\$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	NYCHC 81.17(d)	[CRITICAL] <u>Critical</u>	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>
05C	NYCHC 81.07(a)(1)	[CRITICAL] <u>Critical</u>	Culinary sink or alternative method not provided for washing food		\$200	\$200	\$250	\$300	\$350
05D	NYCHC 81.21(a)	[CRITICAL] <u>Critical</u>	Hand wash facilities not provided or not located where required					\$300	\$350
05D	NYCHC 81.21(a)(1)	[CRITICAL] <u>Critical</u>	Hand wash facilities not provided within 25 feet of food preparation, food service area or ware washing area					\$300	\$350
05D	NYCHC 81.21(a)	[CRITICAL] <u>Critical</u>	Hand wash facility not provided with potable running water, or properly equipped					\$300	\$350
05D	NYCHC 81.21(b)	[CRITICAL] <u>Critical</u>	Hand wash facility without soap, drying device					\$300	\$350
05E	NYCHC 81.22(a)	[CRITICAL] <u>Critical</u>	Toilet facilities not provided for employees					\$300	\$350
05E	NYCHC 81.22(b)	[CRITICAL] <u>Critical</u>	Toilet facilities not provided for patrons					\$300	\$350
05E	NYCHC 81.22(d)	[CRITICAL] <u>Critical</u>	Shared patron/employee toilet accessed through kitchen, food prep or storage or utensil washing area					\$300	\$350
05F	NYCHC 81.18	[CRITICAL] <u>Critical</u>	Hot or cold holding equipment not provided or inadequate					\$300	\$350
05F	NYCHC 81.18 (a)(6)	[CRITICAL] <u>Critical</u>	Outdoor refrigerator not locked, secure					\$300	\$350
05G	NYCHC 89.27(c)	[CRITICAL] <u>Critical</u>	Enclosed service area not provided, equipped in mobile food vending commissary					\$300	\$350

05G	NYCHC 89.27(d)	[CRITICAL] <u>Critical</u>	Mobile food vending units cleaned or serviced on street or sidewalk outside commissary					\$300	\$350
05H	NYCHC 81.29	[CRITICAL] <u>Critical</u>	Manual or mechanical tableware, utensil and/or ware washing facilities not provided					\$300	\$350
05H	NYCHC 81.46	[CRITICAL] <u>Critical</u>	No approved [SOP] <u>standard operating procedure</u> for refillable consumer containers					\$300	\$350
05I	NYCHC 81.12(d)(5)	[CRITICAL] <u>Critical</u>	Refrigeration unit used for ROP foods not equipped with an electronic system					\$300	\$350
06A	NYCHC 81.13	[CRITICAL] <u>Critical</u>	Food worker does not maintain personal cleanliness		\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(e)	[CRITICAL] <u>Critical</u>	Fingernails not clean, trimmed, or with nail polish		\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(c)	[CRITICAL] <u>Critical</u>	Clean outer garment not worn		\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(b)	[CRITICAL] <u>Critical</u>	Effective hair restraint not worn*****	\$0	[\$200] \$100	[\$200] \$100	[\$250] \$125	[\$300] \$150	
06A	NYCHC 81.13(f)	[CRITICAL] <u>Critical</u>	Jewelry worn on arm(s) or hand(s)		\$200	\$200	\$250	\$300	
06B	NYCHC 81.13(h)	[CRITICAL] <u>Critical</u>	Eating, drinking in food preparation or other areas*****	\$0	[\$200] \$100	[\$200] \$100	[\$250] \$125	[\$300] \$150	
06B	NYCHC 81.13(g)	[CRITICAL] <u>Critical</u>	Smoking tobacco, using electronic cigarette or other substance in establishment		\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(a)	[CRITICAL] <u>Critical</u>	Food not protected from contamination		\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(q)	[CRITICAL] <u>Critical</u>	Unnecessary traffic through food prep area		\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(d)	[CRITICAL] <u>Critical</u>	Food not properly protected when stored		\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(e)	[CRITICAL] <u>Critical</u>	Food not properly protected when displayed		\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(f)	[CRITICAL] <u>Critical</u>	Condiments for self service not properly dispensed		\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(i)	[CRITICAL] <u>Critical</u>	Supplies and equipment under or near source of contamination		\$200	\$200	\$250	\$300	
06C	NYCHC 81.46(a)	<u>Critical</u>	<u>Beverage dispensing equipment not protecting from potential contamination from customer's reusable, refillable container</u>		\$200	\$200	\$250	\$300	
06D	NYCHC 81.27(b)	[CRITICAL] <u>Critical</u>	Food contact surface not washed, rinsed and sanitized when required		\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(h)	[CRITICAL] <u>Critical</u>	In-use food dispensing utensil not properly stored		\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(g)	[CRITICAL] <u>Critical</u>	Ice not properly dispensed		\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(h)	[CRITICAL] <u>Critical</u>	Food dispensing utensil not provided		\$200	\$200	\$250	\$300	
06F	NYCHC 81.27(c)	[CRITICAL] <u>Critical</u>	Wiping cloth improperly stored and/or sanitized*****	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100		

06F	SSC 14-1.112(c)	[CRITICAL] <u>Critical</u>	No test kit for measuring sanitizing solution concentration		\$200	\$200				
[06J]	[NYCHC 89.27(b)]	[CRITICAL]	[Mobile food vending unit records incomplete or not maintained by commissary]							[\$350]
06J	NYCHC 81.46(a)	<u>Critical</u>	<u>Refillable, reusable beverage container filled with TCS foods.</u>		<u>\$200</u>	<u>\$200</u>	<u>\$250</u>	<u>\$300</u>		
07A	NYCHC 3.15(a)	[CRITICAL] <u>Critical</u>	Obstruction of Department personnel							\$1,000
08A	NYCHC 81.23(a)	[GENERAL] <u>General</u>	Harborage or conditions conducive to pests with pests, signs of pests				\$200	\$200		
08A	NYCHC 81.23(b)(3)	[GENERAL] <u>General</u>	Door openings into the establishment from the outside not properly equipped when pests or signs of pests present				\$200	\$200		
08B	NYCHC 81.24(a)	[GENERAL] <u>General</u>	Garbage cans not pest or water resistant; not covered with tight-fitted lids***	\$0	\$200 <u>\$100</u>					
08B	NYCHC 81.24(c)	[GENERAL] <u>General</u>	Garbage receptacles and covers not cleaned after emptying and prior to reuse***	\$0	[\$200] <u>\$100</u>	[\$200]	[\$200]	[\$200]		
08C	NYCHC 81.23(d)	[GENERAL] <u>General</u>	Pesticides not properly labeled, not authorized for use, or used		\$200	\$200	\$200	\$200	\$200	\$200
08C	NYCHC 81.23(d)(4)	[GENERAL] <u>General</u>	Open bait station used		\$200	\$200	\$200	\$200	\$200	\$200
08C	NYCHC 81.17(g)	[GENERAL] <u>General</u>	Toxic materials not properly stored		\$200	\$200	\$200	\$200	\$200	\$200
09A	NYCHC 81.07(b)	[GENERAL] <u>General</u>	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>	[\$200] <u>\$50</u>	
09B	NYCHC 81.09(f)	[GENERAL] <u>General</u>	Thawing procedures improper		\$200	\$200	\$200	\$200		
09C	NYCHC 81.17(d)(1)	[GENERAL] <u>General</u>	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>	[\$200] <u>\$100</u>	
09C	NYCHC 81.07(m)	[GENERAL] <u>General</u>	Tank holding edible live fish, other aquatic animals not clean, free of debris, algae		\$200	\$200	\$200	\$200		
09D	NYCHC 81.17(a)(2)	[GENERAL] <u>General</u>	Food processed, prepared, packed, or stored in a private home or apartment, or food service establishment rooms used as sleeping or living quarters		\$200	\$200	\$200	\$200		
09E	NYCHC 81.21(c)	[GENERAL] <u>General</u>	Wash hands sign not posted		\$200					
10A	NYCHC 81.22(c)	[GENERAL] <u>General</u>	Toilet facility not properly maintained		\$200	\$200	\$200	\$200		
10A	NYCHC 81.22(c)	[GENERAL] <u>General</u>	Toilet facility not properly supplied		\$200	\$200	\$200	\$200		
10A	SSC 14-1.142(a)	[GENERAL] <u>General</u>	Toilet room not completely enclosed with self-closing door		\$200	\$200	\$200	\$200		
10B	NYCHC 81.20(a)	[GENERAL] <u>General</u>	Potable water not protected from back-flow, back-siphonage or cross-connection***	\$0	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>
10B	NYCHC 81.20(b)	[GENERAL] <u>General</u>	Improper disposal of sewage or liquid waste***	\$0	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>	[\$200] <u>\$100</u>

10C	NYCHC 81.19(a)	[GENERAL] <u>General</u>	Lighting insufficient; inadequate ***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100	
10D	NYCHC 81.19(c)	[GENERAL] <u>General</u>	Ventilation (mechanical or natural) not provided or inadequate		\$200	\$200	\$200	\$200	
10E	NYCHC 81.18(a)(3)	[GENERAL] <u>General</u>	Accurate thermometers not provided or not properly located in cold storage and/or refrigerator unit		\$200	\$200	\$200	\$200	
10E	NYCHC 81.18(b)(1)	[GENERAL] <u>General</u>	Accurate thermometers not provided or not properly located in hot storage or holding unit		\$200	\$200	\$200	\$200	
10F	NYCHC 81.17(e)(1)	[GENERAL] <u>General</u>	Flooring: unacceptable material used, not maintained or not clean***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100	
10F	NYCHC 81.17(e)(2)	[GENERAL] <u>General</u>	Non-food contact surfaces (wall, ceiling): unacceptable materials used: not maintained or not clean***	\$0	[\$200] \$100	[\$200] \$100	[\$200] \$100	[\$200] \$100	
10F	NYCHC 81.17(e)(3)	[GENERAL] <u>General</u>	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] <u>General</u>	Hot water manual ware washing inadequate		\$200	\$200	\$200	\$200	
10G	NYCHC 81.29(a)	[GENERAL] <u>General</u>	Manual chemical sanitizing procedure inadequate		\$200	\$200	\$200	\$200	
10G	NYCHC 81.29(b)(1)	[GENERAL] <u>General</u>	High temperature mechanical ware washing inadequate		\$200	\$200	\$200	\$200	
10G	NYCHC 81.29(b)(2)	[GENERAL] <u>General</u>	Mechanical chemical sanitizing procedure inadequate		\$200	\$200	\$200	\$200	
10G	NYCHC 81.29(a)(3)(B)	[GENERAL] <u>General</u>	Test kit not accurate or used for manual dishwashing		\$200	\$200	\$200	\$200	
10G	NYCHC 81.29(b)(2)	[GENERAL] <u>General</u>	Test kit not accurate or used for mechanical dishwashing		\$200	\$200	\$200	\$200	
10H	NYCHC 81.07(o)	[GENERAL] <u>General</u>	Single service items improperly stored or reused		\$200	\$200	\$200	\$200	
10H	NYCHC 81.07(o)	[GENERAL] <u>General</u>	Drinking straws improperly dispensed		\$200	\$200	\$200	\$200	

APPENDIX 23-C FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
15-01	NYSPHL 1399-o	Smoking or electronic cigarette use allowed in prohibited area		\$1,000	\$2,000
15-05	Admin. Code 17-177(b)	Tobacco vending machine in public place other than tavern		\$300 (1st violation); \$500 (2nd violation) \$1,000 (3rd and subsequent violations)	Same as appearance penalties

15-06	Admin. Code 17-177(c)(1)	Tobacco vending machine less than 25 feet from tavern entry		\$300 (1st violation); \$500 (2nd violation); \$1,000 (3rd and subsequent violations)	Same as appearance penalties
15-07	Admin. Code 17-177(c)(1)	Tobacco vending machine not directly visible to premises owner		\$300 (1st violation); \$500 (2nd violation); \$1,000 (3rd and subsequent violations)	Same as appearance penalties
15-08	Admin. Code 17-177(d)	Tobacco vending machine sign not durable or lacks required information		\$300 (1st violation); \$500 (2nd violation); \$1,000 (3rd and subsequent violations)	Same as appearance penalties
15-09	Admin. Code 17-177(d)	Sign not posted on tobacco vending machine or not visible to the public		\$300 (1st violation); \$500 (2nd violation); \$1,000 (3rd and subsequent violations)	Same as appearance penalties
15-13	Admin. Code 17-176(b)	Tobacco products distributed at less than basic cost		\$500 (1st violation); \$1,000 (2nd and subsequent violations)	Same as appearance penalties
15-14	Admin. Code 17-176.1(b)	Selling discounted cigarettes		\$1,000 (1st violation); \$2,000 (2nd violation in 5 years); \$5,000 (3rd and subsequent violations in 5 years)	Same as appearance penalties
15-15	Admin. Code 17-176.1(c)	Selling discounted tobacco products		\$1,000 (1st violation); \$2,000 (2nd violation in 5 years); \$5,000 (3rd and subsequent violations in 5 years)	Same as appearance penalties
15-16	Admin. Code 17-176.1(d)	Selling cigarettes, other tobacco products, non-tobacco shisha below the price floor		\$1,000 (1st violation); \$2,000 (2nd violation in 5 years); \$5,000 (3rd and subsequent violation in 5 years)	Same as appearance penalties
15-17	NYSPHL 1399-cc(2)	Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha, electronic cigarettes to underage individual		[\$1000] <u>\$1,500</u> (1st violation); [\$1,500] <u>\$2,500</u> (2nd and subsequent violations)	Same as appearance penalties
15-17	NYSPHL 1399-cc(2)	Failure to conspicuously post the required tobacco sign		[\$1000] <u>\$1,500</u> (1st violation); [\$1,500] <u>\$2,500</u> (2nd and subsequent violations)	Same as appearance penalties
15-17	NYSPHL 1399-cc(3)	Failure to obtain proper identification from purchaser		[\$1000] <u>\$1,500</u> (1st violation); [\$1,500] <u>\$2,500</u> (2nd and subsequent violations)	Same as appearance penalties
[15-17]	[NYSPHL 1399-cc(5)]	[Failure to obtain proper identification from purchaser]		[\$1,000 (1st violation); \$1,500 (2nd and subsequent violations)]	[Same as appearance penalties]
15-17	NYSPHL 1399-cc(5)	Improper use of electronic transaction information		\$1,000 (1st violation); [\$1,500] <u>\$1,000</u> (2nd and subsequent violations)	Same as appearance penalties
15-17	NYSPHL 1399-cc(7)	Failure to store tobacco products, herbal cigarettes behind a counter accessible only to store personnel or in a locked container		[\$1000] <u>\$1,500</u> (1st violation); [\$1,500] <u>\$2,500</u> (2nd and subsequent violations)	Same as appearance penalties
15-17	NYSPHL 1399-dd	Unlawful sale of tobacco products, herbal cigarettes, or electronic cigarettes in vending machines		[\$1000] <u>\$1,500</u> (1st violation); [\$1,500] <u>\$2,500</u> (2nd and subsequent violations)	Same as appearance penalties
15-17	NYSPHL 1399-ee (2)	Sale of tobacco products with a suspended or revoked retail dealer registration		\$2,500	Same as appearance penalties

15-17	NYSPHL 1399-dd-1	Public display of tobacco product or electronic cigarette advertisements, or smoking paraphernalia, within 500 feet of a school	500 (1st violation); \$1,000 (2nd and subsequent violations)	Same as appearance penalties
15-17	NYSPHL 1399-gg	Unlawful out-of-package sales or minimum package size violation	\$1,500 (1st violation); \$2,500 (2nd and subsequent violations)	Same as appearance penalties
15-17	NYSPHL 1399-ll	Unlawful sale of bidis	\$500	Same as appearance penalties
15-17	NYSPHL 1399-mm	Unlawful sale of gutka	\$500	Same as appearance penalties
15-21	Admin. Code 17-715	Flavored tobacco products sold, offered for sale	\$1,000 (1st violation); \$2,000 (2nd violation in 36 months); \$5,000 (3rd and subsequent violations in 36 months)	Same as appearance penalties
15-22	24 RCNY 28-06	No original labels of tobacco and non-tobacco smoking products currently sold, offered for sale	\$1,000	Same as appearance penalty
15-26	24 RCNY 10-11(b)	"No smoking" sign not posted at hotel entrance or elevators where ashtrays are placed	\$500	\$1,000
15-27	24 RCNY 10-12(a)	Required signage not conspicuously posted.	\$1,000	Same as appearance penalty
15-28	24 RCNY 10-12(c)	Non-compliant signage	\$500	\$1,000
15-29	24RCNY 10-12(c)(iv)(D)	Smoking or electronic cigarette use signage lacks required warning	\$1,000	Same as appearance penalty
15-30	24 RCNY 10-20(a)	Hookah equipment in Non-tobacco Hookah Establishment (NTHE) not cleaned, sanitized	\$1,000	Same as appearance penalty
15-31	24 RCNY 10-20(b)	New individually wrapped mouthpiece not provided to each NTHE hookah patron	\$1,000	Same as appearance penalty
15-32	24 RCNY 10-21(d)	Warning sign re dangers of hookah smoking not posted at street entrance to NTHE	\$1,000	Same as appearance penalty
15-33	24 RCNY 10-21(e)	Warning sign re: dangers of hookah smoking not posted in each room or area of NTHE where smoking is allowed	\$1,000	Same as appearance penalty
15-34	24 RCNY 13-04(a)	Retail dealer tobacco, non-tobacco age restriction signage not conspicuously posted	\$500	[\$1,000] Same as appearance penalty
[15-35] 15-34	24 RCNY 13-04(a)	Retail dealer tobacco, non-tobacco age restriction signage non-compliant	\$500	[\$1,000] Same as appearance penalty
15-35	24 RCNY 13-04(b)	Retail dealer cigarette tax stamp sign not posted conspicuously	[\$1,000] \$500	Same as appearance penalty
[15-35]	[24 RCNY 13-04(b)]	[Retail dealer cigarette tax stamp signage non-compliant]	[\$1,000]	[Same as appearance penalty]

15-36	24 RCNY 10-21(g)	Sign prohibiting entry of persons under 21 not posted at public entrance(s) to NTHE		\$1,000	Same as appearance penalty
15-37	Admin. Code 17-504(f)	Workplace SFAA policy not prominently posted in workplace****	\$0	[\$400 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)] <u>\$50 (1st violation); \$100 (2nd violation) \$150 (3rd and subsequent violations in 12 months)</u>	Same as appearance penalty
15-38	Admin. Code 17-506(b)	Screen shot prohibiting smoking, electronic cigarette use not shown in motion picture theatre		\$400 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalty
15-39	Admin. Code 17-506(d)	Ashtray in smoke-free area		\$400 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalty
15-40	Admin. Code 17-506.1(b)(1)	Initial multiple dwelling smoking policy not distributed to tenants or posted by owner		\$100	Same as appearance penalty
15-41	Admin. Code 17-506.1(b)(7)	Multiple dwelling smoking policy not distributed to tenants or posted annually by owner		\$100	Same as appearance penalty
15-42	Admin. Code 17-508(b)	Failure to make a good faith effort to inform smokers or electronic cigarette users of Smoke-Free Air Act prohibitions		\$400 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalty
[15-47]	[24 RCNY 13-06(a)]	["Minimum age" sign not posted; required information missing from sign]		[\$500]	[1,000]
15-48	Admin. Code 17-703.1	Cigarette tax stamp sign not posted		**\$500	[1,000] <u>Same as appearance penalties</u>
15-49	Admin. Code 17-703.2	Sale of cigarette package without tax stamp		**\$2,000 1st violation; \$5,000 (2nd and subsequent violations in 3 years)	Same as appearance penalties
15-50	Admin. Code 17-704	Cigarettes, tobacco products sold in packages without health warning or not in minimum quantities		\$1,000 (1st violation), [\$5,000] <u>\$2,000</u> (2nd and subsequent violations in 3 years)	Same as appearance penalties
15-51	Admin. Code 17-704(a)	Out of package sale of tobacco product(s)		**\$1,000 (1st violation), [\$5,000] <u>\$2,000</u> (2nd and subsequent violations in 3 years)	Same as appearance penalties
[15-52]	[Admin. Code 17-704(b)]	[Cigars priced at or below \$3.00 each sold in packages containing less than four cigars]		[\$1,000 (1st violation), \$2,000 (2nd and subsequent violations in 3 years)]	[Same as appearance penalties]
<u>15-52</u>	<u>Admin. Code 17-176.1(f)</u>	<u>Cigars sold or offered for sale for less than the cigar price floor</u>		<u>\$1,000 (1st violation), \$2,000 (2nd and subsequent violations in 3 years)</u>	<u>Same as appearance penalties</u>
15-53	Admin. Code 17-704.1	Unlawful delivery of cigarettes, tobacco products or electronic cigarettes		**\$1,000 (1st violation), \$2,000 (2nd and subsequent violations in 3 years)	Same as appearance penalties

15-54	Admin. Code 17-705	Employee under 18 years of age selling tobacco products without direct supervision of an adult retailer		**\$1,000(1st violation); \$2,000 (2nd and subsequent violations in 36 months)	Same as appearance penalties
15-55	Admin. Code 17-706(a)	Sale of cigarettes, tobacco products, liquid nicotine to persons under 21 years of age		**\$1000 (1st); \$2,000 (2nd or subsequent in 36 months)	Same as appearance penalties
15-55	Admin. Code 17-706(a)	Sale of cigarettes, tobacco products, liquid nicotine, electronic cigarettes, or non-tobacco smoking products to persons under 21 years of age		**\$1,000(1st violation); \$2,000 (2nd and subsequent violations in 36 months)	Same as appearance penalties
15-55	Admin. Code 17-706(a-1)	Sale of electronic cigarettes to persons under 21 years of age		\$1000 (1st violation); \$2,000 (2nd and subsequent in 36 months)	Same as appearance penalties
15-55	Admin. Code 17-706[(a)]	Sale of non-tobacco smoking products to persons under 21 years of age		**\$1,000 (1st violation); \$2,000 (2nd and subsequent violations in 36 months)	Same as appearance penalties
15-56	Admin. Code 17-719(a)	Person under 21 years of age allowed entry to non-tobacco hookah establishment		\$200 (1st violation); \$500 (2nd and subsequent violations)	Same as appearance penalties
16-01	NYCHC 81.08(a)	Cooking oil, shortening or margarine contains 0.5 grams or more of artificial trans fat		\$200	\$400
16-02	NYCHC 81.08(c)	Nutritional fact labels and/or ingredient label is not maintained on site***	\$0	[\$200] \$100	[\$400] \$200
16-03	NYCHC 81.50(c)	Calorie information is not posted on menu and menu board		\$200	\$400
16-03	NYCHC 81.50(c)	Total number of calories or total number of discrete calories not posted		\$200	\$400
16-03	NYCHC 81.50(c)	Calorie information not posted for standard menu items offered in different varieties		\$200	\$400
16-03	NYCHC 81.50(c)	Calorie information not posted for combination meals		\$200	\$400
16-03	NYCHC 81.50(c)	Calorie information not posted for toppings		\$200	\$400
16-03	NYCHC 81.50(c)	Calorie information font, appearance, term used improper		\$200	\$400
16-03	NYCHC 81.50(c)	Calorie information improperly posted for standard menu items offered in three or more combinations		\$200	\$400
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 counts		\$200	\$400

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 counts		\$200	\$400
16-03	NYCHC 81.50(c)	Calorie information improperly posted for standard menu items offered in three or more different varieties		\$200	\$400
16-04	NYCHC 81.50(d)	Required succinct nutritional statements not posted on menu(s) for adults and children		\$200	\$400
16-06	NYCHC 81.50(e)	Additional nutritional information statement not posted		\$200	\$400
16-06	NYCHC 81.50(e)	Written nutritional information not provided in a manner required by federal law		\$200	\$400
16-08	NYCHC 81.49(b)(1)	No sodium warning icon where required		\$200	\$400
16-09	NYCHC 81.49(b)(1)	Sodium warning icon non-compliant with design specifications		\$200	\$400
16-10	NYCHC 81.49(b)(2)	No sodium warning statement at point of purchase		\$200	\$400
16-11	Admin. Code 17-199.11(b)	Prohibited drink listed on children's meal menu***	\$0	[\$200] \$100	Same as appearance penalty
17-01	24 RCNY 32-03	"Dogs allowed" sign not posted at or near entrance		[\$250] \$200	[\$500] \$200
[17-02]	[24 RCNY 32-03]	["Dogs allowed" sign incomplete]		[\$250]	[\$500]
17-03	24 RCNY 32-04(c)	Effective barrier not provided		\$250	\$500
18-01	NYCHC 81.05(a)	No current valid permit, registration, other authorization to operate establishment		\$1,000	\$2,000
18-02	NYCHC 88.05(c)	No current valid permit to operate temporary food service establishment		\$1,000	\$2,000
18-08	NYCHC 5.15	Permit not conspicuously displayed		\$200	\$400
18-10	NYCHC 88.05(a)	Failure of temporary event sponsor to exclude vendor without current valid permit		\$500	\$1,000
18-11	NYCHC 81.15(b)	Food protection certificate not available for inspection		\$200	\$400
18-12	NYCHC 3.19	Department document unlawfully reproduced or altered		\$1,000	\$2,000
18-12	NYCHC 3.19	Submitting false, misleading statements, documents; documents unlawfully reproduced or altered		\$1,000	\$2,000
18-13	NYCHC 3.05(a)	Failure to comply with an Order of the Board of Health, Commissioner or Department		\$1,000	\$2,000

18-14	NYCHC 3.17	Notice, Order or other posted material of the Department mutilated, obstructed, or removed		\$1,000	\$2,000
18-15	NYCHC 81.43(a)	Foodborne illness; failure to notify department		\$200	\$400
18-25	NYCHC 81.05(h)	Operator of shared kitchen allows unpermitted user		\$500	\$1,000
18-25	NYCHC 88.05(b)	Temporary event sponsor failed to provide list of all participating establishments at least 30 days before event		\$500	\$1,000
19-01	[16 RCNY 1-11(c)(1)] <u>16 RCNY 1-11(c)(2)</u>	[Organics containers not provided] <u>Organics mixed with non-organics materials</u>		\$250 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-02	16 RCNY 1-11(c)(1)	Organics containers not labeled		\$250 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-03	16 RCNY 1-11(d)(2)	Failure to post sign in organics collection areas		\$250 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-04	Admin. Code 16-329(c)	Possess, sell expanded polystyrene single service articles		[\$250 (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)] <u>\$100 (1st violation); \$250 (2nd violation) \$500 (3rd and subsequent violations in 12 months)</u>	
<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>Same as appearance penalty</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>Same as appearance penalty</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>Same as appearance penalty</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>Same as appearance penalty</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</u>		<u>\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)</u>	<u>Same as appearance penalty</u>

		customer has requested such plastic straw			
19-10	Admin. Code § 16- 401(c)(3)	Failure to display required signage about plastic straw availability		\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)	Same as appearance penalty
19-11	Admin. Code § 16-401(d)	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		\$100 (1st violation); \$200 (2nd violation) \$400 (3rd and subsequent violations in 12 months)	Same as appearance penalty
20-01	[24 RCNY 27.03(c)] 24 RCNY 27-03(c)	Allergy poster not posted or not in correct location		\$100	\$100
20-02	[24 RCNY 27.03(c)] 24 RCNY 27-03(c)	Allergy poster not in language(s) understood by all food workers		\$100	\$100
20-03	24 RCNY 27-[.]03(b)	Allergy poster not approved by the Department		\$100	\$100
[20-04]	[Admin. Code 17-172(a)]	["Choking" poster not posted]		[\$200]	[\$200]
20-04	Admin. Code 17-173(2)(b)	Alcohol use during pregnancy sign not posted***	\$0	\$100	\$100
20-04	24 RCNY 18-04	Resuscitation equipment required notice to patrons not posted		\$200	\$400
20-04	24 RCNY 18-02	Resuscitation equipment not available		\$200	\$400
20-05	24 RCNY 23-07(f)	Current letter grade or "Grade Pending" card not conspicuously posted or visible to passersby		[\$1,000] \$500	[Same as appearance penalty] \$1,000
20-06	24 RCNY 23-07	Current letter grade or Grade Pending card not posted		[\$1,000] \$500	[Same as appearance penalty] \$1,000
20-06	24 RCNY 23-06(d)	Grade card not posted after reopening when FSE ordered closed by BFSCS		[\$1,000] \$500	[Same as appearance penalty] \$1,000
20-07	24 RCNY 23-07	Grade card removed, destroyed, modified, obscured or otherwise tampered with		\$1,000	[Same as appearance penalty] \$2,000
20-08	Admin. Code 17-1507(a)	Failure to post or conspicuously post healthy eating information***	\$0	[\$500] \$100	[Same as appearance penalty] \$200
26-04	NYCHC 89.27(b)	Required records incomplete or not maintained by commissary		\$200	\$400
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	\$2,000
28-01	NYCHC 3.09	Failure to abate or remediate nuisance		\$1,000	\$2,000

28-01	NYCHC 131.07(c)(2)	Insufficient heat in commercial premises		\$300	\$600
28-02	NYCHC 81.07(p)	Microwave safe container not marked or used		\$200	\$400
28-03	NYCHC 81.19(b)	Light fixtures not shielded, shatterproofed, or otherwise protected from accidental breakage		\$200	400
28-04	NYCHC 81.12(g)	Equipment used for ROP not approved by the Department		\$200	\$400
28-05	NYCHC 71.05	Adulterated or misbranded food possessed, manufactured, produced, packed, sold, offered for sale, delivered or given away		\$500	\$1,000
28-06	NYCHC 81.23(b)(2)	Contract with pest management professional, record of pest exterminations, activities not kept on premises		[\$200] <u>\$100</u>	[\$400] <u>\$100</u>
28-07	NYCHC 81.31	Unauthorized FSE street, sidewalk cooking		\$350	\$700
28-09	NYCHC 88.15	No, or insufficient toilets, sinks provided by temporary event sponsor		\$500	\$1,000
28-10	NYCHC 88.19	No, insufficient refuse, trash containers; temporary event area not maintained by sponsor		\$500	\$1,000
[99-00]	[NYCHC miscellaneous]	[Other Health Code unscored violations]		[\$200]	[\$400]

*An appearance penalty is imposed if a respondent appears at a hearing. A respondent appears at a hearing if the respondent physically attends a hearing; attends a hearing remotely by telephone or via the internet; or pleads in violation in accepting a settlement offer.

**Repeat violation penalties for tobacco and non-tobacco smoking and sales. In accordance with Administrative Code section 17-710(a)(5), violations of sections 17-703, 17-703.2, 17-704(a), 17-704.1(a), 17-705 and 17-706(a) and (b) of the Administrative Code must be included in determining the number of sustained repeat violations committed by a tobacco product license holder and subsequent license holder at a place of business unless the subsequent license holder submits documentation of an arm's length transaction in acquiring the business. A violation is considered sustained if the respondent (i) pleads in violation or guilty; (ii) is found in violation or guilty by a decision of a hearing officer as a result of an appearance or if found in default; or (iii) enters into a settlement agreement.

*****First-time violation subject to cure.** First-time violation where a monetary penalty is waived because proof of correction has been accepted. See § 23-09 of this Chapter.

******First-time violation subject to cure with a 30-day cure period.** See, Administrative Code section 17-504.

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

The penalties listed in this Appendix for violations of 24 RCNY Health Code §§ 3.05(a), 3.07, 3.09, 3.15, 3.17 and 3.19 shall apply to any notice of violation or civil summons issued by the Department citing these provisions, regardless of whether the respondent is operating a food service establishment.

**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 Provisions Relating to First Time Health Code
Violations (Health Code Chapter 23)**

REFERENCE NUMBER: DOHMH-127

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: Amendment of Provisions Relating to First Time Health Code Violations (Health Code Chapter 23)

REFERENCE NUMBER: 2022 RG 037

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