



Department of Health and Mental Hygiene

Board of Health

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Article 161 of the New York City Health Code

What are we proposing? The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 161 (Animals) of the New York City Health Code to restore references to regulated pet shops, and to amend Article 5 of such Code addressing the corresponding permit fees and expiration dates.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments on May 10, 2016 at 2:00PM to 4:00PM at

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 3rd floor, Room 14-43
Long Island City, NY 11101-4132

How do I comment on the proposed amendments to the Health Code? Anyone can comment on the proposed amendments by:

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the New York City Department of Health and Mental Hygiene at 347-396-6088
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on May 10, 2016. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on May 10, 2016.

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by April 26, 2016.

Can I review the comments made on the proposed amendments? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. 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 by the Department's Office of the General Counsel.

What authorizes the Board of Health to make these amendments? Sections 558 and 1043(a) of the City Charter authorize the Board of Health to adopt and amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. This proposed amendment was not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find the Health Code and the Department's rules? The Health Code and the rules of the Department of Health and Mental Hygiene are in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Board of Health must meet the requirements of §1043 of the City Charter when creating or changing the Health Code. This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the Health Code) are authorized by sections 558 and 1043 of the New York City Charter (the Charter). Sections 558(b) and (c) of the Charter empower the Board of Health (the Board) to amend the Health Code and to include in the Health Code all matters to which the authority of the New York City Department of Health and Mental Hygiene (the Department) extends. Section 1043 grants the Department rulemaking authority.

Background

The Department's Bureau of Veterinary and Pest Control Services enforces Health Code Article 161 pertaining to the control of animals in the City. Article 161 currently requires pet shops other than those selling dogs and cats to have permits and to comply with other provisions of the Health Code. The N.Y. State Agriculture and Markets Law Article 26-A ("Care of Animals by Pet Dealers") formerly prohibited local regulation of "pet dealers," defined in such State law as an entity that sells more than nine animals (dogs and/or cats) to the public per year. See Agriculture and Markets Law §§400 subdivisions (1) and (4) and 400-a. Effective January 10, 2014, this law was amended and a new §407 authorizes local regulation of these entities, provided that the local law is no less stringent than Article 26-A or effectively results in banning of all sales of dogs or cats "raised and maintained in a healthy and safe manner."

On January 17, 2015, Local Law 5 of 2015 was enacted, and on June 2, 2015 was further amended by Local Law 53. Read together, Title 17 of the New York City Administrative Code now authorizes the Department to regulate pet shops selling dogs and cats. As a result, Administrative Code § 17-372 requires such pet shops to hold permits issued by the Commissioner of the Department. The law was supposed to have become effective June 1, 2015, but was stayed on that date as a result of a challenge in the U.S. Court for the Eastern District of New York by certain pet shops and animal dealers. On October 20, 2015 it was upheld by the court and is therefore now in effect.

Amendments to Health Code Articles 5 and 161

The Department is requesting that the Board of Health amend those provisions of Article 161 that currently explicitly state that they are not applicable to sales of dogs and cats by pet dealers regulated under Article 26-A of the Agriculture and Markets Law, since pet shops selling these animals are again regulated by the Department. Pet shops selling only animals other than dogs and/or cats continue to be regulated by the Department and none of the proposed changes would substantively affect those pet shops. In conjunction with these amendments, the Department is proposing that the permit fees and expiration dates set forth in Health Code Article 5 also be amended to be consistent with the fees set forth in the new Administrative Code §17-374.

The resolution is as follows.

Shall and must denote mandatory requirements and may be used interchangeably.

New text is underlined; deleted material is in [brackets].

RESOLVED, that the definition of “pet shop” in §161.02 of Article 161 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, is amended, to be printed together with explanatory notes to read as follows:

§161.02 Definitions.

Pet shop means a facility other than an animal shelter where live animals are sold, exchanged, bartered, or offered for sale as pet animals to the general public at retail for profit. [A pet shop shall not mean a pet dealer exclusively selling dogs and cats that is subject to Article 26-A of the Agriculture and Markets Law. However, a pet shop where animals other than, or in addition to, dogs and cats are sold shall hold a pet shop permit issued by the Commissioner and shall comply with all other applicable provisions of this Code and other applicable law.]

Notes: The definition of “pet shop” was amended by resolution adopted by the Board of Health at its _____, 2016 meeting to delete exclusion of “pet dealers” previously exclusively regulated under Article 26-A of the Agriculture and Markets Law.

RESOLVED, that paragraph (1) of subdivision (a) and subdivision (f) of §161.09 of Article 161 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, are amended, to be printed together with explanatory notes to read as follows:

§161.09 Permits to keep certain animals.

(a) *Permit required.*

(1) No person shall operate a pet shop, grooming parlor, boarding kennel or training establishment for small animals whose possession is not prohibited by §161.01 of this Article, without a permit issued by the Commissioner [except that a pet shop that exclusively sells dogs and cats and is regulated by Article 26-A of the Agriculture and Markets Law, or successor law, shall not require a permit issued by the Commissioner].

* * *

(f) *Small animal handling course required.* No person who is charged with the supervision of a pet shop or business for the sale or offer for sale of dogs, cats or other small animals, or the boarding or grooming of small animals, or animal training, or similar type of operations, shall engage or be employed in such capacity unless he or she obtains a certificate indicating the successful completion of a course, acceptable to the Department, in the care and handling of such animals. [Such certificate shall not be required for persons who are pet dealers who exclusively sell dogs and cats, in accordance with Article 26-A of the Agriculture and Markets Law.]

Notes: Paragraph (1) of subdivision (a) and subdivision (f) were amended by resolution of the Board adopted at its meeting on _____, 2016 to delete exclusion of “pet dealers” previously exclusively regulated under Article 26-A of the Agriculture and Markets Law.

RESOLVED, that the table of permits and permit fees in subdivision (a) of §5.07 of Article 5 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, are amended, to be printed together with explanatory notes to read as follows:

§5.07 Expiration dates; fees.

(a) Applications for permits and for renewal thereof shall be accompanied by payment of fees prescribed by the following table. Permits shall expire and be renewed in accordance with the expiration date, if any, prescribed by such table:

| Description of Activity [Under] <u>under</u> permit | Health Code or other Law Section Reference | Fee | Date Expiration |
|---|--|-----|-----------------|
|---|--|-----|-----------------|

ANIMALS:

| | | | |
|--|-----------|---------|-------------|
| Permit to operate a pet shop <u>without dogs and/or cats</u> , boarding kennel, training establishment for small animals or grooming parlor, where animals are kept overnight. | 161.09(a) | \$70.00 | December 31 |
|--|-----------|---------|-------------|

ANIMALS:

Permit to operate a pet shop with dogs
and/or cats.

Admin. Code
§ 17-374

\$300

Two years from
date issued

* * *

Notes: Subdivision (a) was amended by Board of Health resolution adopted at its _____, 2016 meeting to add a new permit fee for pet shops that sell dogs and/or cats pursuant to NYC Administrative Code §17-374.

**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 to the Health Code Provisions Relating to Pet Stores

REFERENCE NUMBER: DOHMH 65

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. Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Norma Ponce
Mayor's Office of Operations

Date: November 30, 2015

**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 to the Health Code Provisions Relating to Pet Stores

REFERENCE NUMBER: 2015 RG 135

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 30, 2015