



NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

**Notice of Public Hearing and Opportunity to Comment on
the Amendment of Provisions of Article 161 of the New York City Health Code**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department” or “DOHMH”) is proposing that the Board of Health (“Board”) repeal provisions in Article 161 (Animals) of the New York City Health Code (“Health Code”) that authorizes it to issue special tags for service dogs to people with disabilities. The Department is proposing that the Board eliminate the special tags because their existence may imply that accommodations must be made only for people whose service dogs are wearing them even though the Americans with Disabilities Act (“ADA”) specifically provides that proof of special licensure for service dogs is not required. The Department is also proposing that the Board amend two other sections of Article 161 to simplify their language and slightly broaden their scope.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10AM until 12PM on July 24, 2017. The hearing will be held at:
New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 14th Floor, Room 14-43
Long Island City, NY 11101-4132
This location is wheelchair accessible.

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

- **Website:** You may submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You may email comments to resolutioncomments@health.nyc.gov
- **Mail:** You may mail 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 may fax comments to the Department at 347-396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. Speakers have up to five minutes to make their comments. You can sign up in advance of the hearing by calling Svetlana Burdeynik at 347-396-6078, or before or during the hearing in the hearing room on July 24, 2017.

Is there a deadline to submit written comments? Written comments must be received on or before July 24, 2017, at 5:00 pm.

Do you need assistance to participate in the hearing? You must tell the Office of Legal Affairs 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 July 10, 2017.

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 Department to make this amendment? Subdivisions 558(b), (c), and (g) of the New York City Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043(a) of the Charter grants rulemaking powers to the Department. These rules not included in the FY17 regulatory agenda because the need for them had not yet been recognized.

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

What rules govern the rulemaking process? The Department must satisfy the requirements of section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of section 1043(b) of the Charter.

The proposed amendment of these provisions were not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Statement of Basis and Purpose

Service Dog Tags

As part of a comprehensive review and update of the Health Code, on March 16, 2010, the Board of Health adopted several amendments to Article 161 of the Health Code. The amendments included adding a definition of the term "service dog" in section 161.02 and a new subdivision (d) in section 161.04 that authorizes the Department to provide, at an additional cost, a second tag in addition to a regular license to the owner of a service dog. Such tags were available in other parts of the State. The amendments were intended to make them similarly available to people with disabilities residing in the City who might want to alert others that their dogs were service animals and thus should be allowed to accompany them.

While the provisions of the Health Code allowing the Department to issue service dog tags were well-intentioned, their existence may actually be frustrating the purposes of the ADA¹ and New York State and City Human Rights Laws.^{2 3} The ADA prohibits places of business or other public accommodation, landlords, and employers from discriminating against people with disabilities. Such discrimination includes refusal to allow entrance of a service animal, which the ADA defines as any dog that is individually trained to do work or perform tasks for the benefit of an individual with disabilities, without regard to whether the animal has a specific tag identifying it as a service dog.⁴ Because the Department offers the optional service dog tags, some entities are confused and mistakenly only accommodate individuals whose service dogs are wearing them. Similarly, the Department has been

¹ Americans with Disabilities Act of 1990, Pub. L. No. 101-336 (1990).

² NYS Executive Law § 290, et seq.; see §§ 296(2) and 296(14); NYS Civil Rights Law §§ 47 and 47-b.

³ NYC Administrative Code § 8-107(4).

⁴ 28 C.F.R. § 36.104; see also at § 35.104. As noted recently by the New York City and State Bar Associations Joint Task Force on Service Animals in New York State (accessible online at http://documents.nycbar.org/files/guide-to-the-use-of-service-animals-in-new-york-state.html#_edn1), the New York City Human Rights Law does not define "service animal."

informed that some individuals with disabilities mistakenly believe they must have service dog tags in order to exercise their rights under the law. Indeed, the ADA regulations specifically provide that a public accommodation or entity “shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.”⁵ Thus, rather than facilitating compliance with disability laws, the tags may impede individuals from exercising their rights and might inadvertently lead a business to refuse service to a person with a disability whose dog does not have a tag.

In order to remove the inadvertent barriers created by the service dog tag provision of the Health Code, the Department therefore proposes that the Board of Health repeal the provision and remove the definition of “service dog” from Article 161 of the Health Code. The Mayor’s Office for People with Disabilities and the City Commission on Human Rights agree that the Department should stop issuing service dog tags because the tags are not necessary; both agencies are concerned that the tags could actually work to the disadvantage of people with disabilities and tend to confuse some business owners, leading them to unintentionally violate the ADA.

Simplifying language and other amendments

The Mayor’s Office of Operations, working with the City’s rulemaking agencies, the Law Department, and the Office of Management and Budget, conducted a retrospective review of the City’s rules to identify rules that should be, among other possible changes, simplified to help support public understanding and compliance. The proposed amendments to sections 161.15 and 161.17 were identified through this initiative.

As part of this text simplification process, the Department proposes to alleviate confusion whether small animals may be sold, groomed, trained, or boarded in homes. This confusion has arisen due to the use of the word “room” in Health Code subdivision 161.15(a) rather than the word “dwelling.” The definition of “home occupation” in section 12-10 of the New York City Zoning Resolution⁶ specifically provides that commercial animal kennels are not permitted as “home occupations.” Health Code section 161.02 defines a “boarding kennel business” as a facility other than an animal shelter where animals not owned by the proprietor are sheltered, harbored, maintained, groomed, exercised, fed, or watered in return for a fee. The Department therefore proposes that the Board amend subdivision 161.15(a) to replace the word “room” with the word “dwelling” and adding the phrase “in return for a fee” to clarify where the sale, boarding, grooming, and/or training of small animals for a fee is allowed.

Similarly, the other changes in this proposed rule, except the following two amendments, would improve clarity. The two substantive changes being proposed are:

1. Proposed changes to Health Code subdivision 161.15(d)

Currently, subdivision (d) only prohibits the sale or holding for sale, boarding, grooming or training any dog or cat that has, or has been exposed to, a communicable disease. The Department proposes the Board replace the phrase “a dog or cat” with “any animal” so that communicable disease among all types of animals can be better controlled and avoided.

2. Proposed changes to Health Code section 161.17

The Department proposes that the Board add parasites communicable to other animals and humans to the conditions prohibited for dogs and cats in group socialization or play areas operated by permitted entities. The goal of this addition is to better protect the health of animals and humans from communicable conditions.

⁵ 28 C.F.R. § 36.302(c)(6); *see also* at § 35.136(f).

⁶ Accessible online at <https://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art01c02.pdf>.

Statutory Authority

These amendments to the Health Code are promulgated pursuant to Sections 558 and 1043 of the New York City Charter. Section 558 of the Charter empowers the Board to amend the Health Code and to include in the Health Code all matters to which the authority of Department extends. Section 1043 grants the Department rulemaking authority.

The proposal is as follows:

Matter in [brackets] is repealed.

Matter underlined is new.

RESOLVED, that section 161.02 of Article 161 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended, with an explanatory note to read as follows:

§ 161.02 Definitions.

* * *

[*Service dog* shall mean a dog that has been individually trained to perform tasks for persons with a disability, as defined in Executive Law §292 or successor law, including, but not limited to, providing guidance for persons who are blind, alerting persons who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other tasks.]

* * *

Note: By resolution adopted XXXXXXXXXXXX, the Board of Health repealed the definition of "service dog" from section 161.02 and repealed the provision of section 161.04 for the issuance of service dog tags.

RESOLVED, that section 161.04 of Article 161 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended, with an explanatory note to read as follows:

§ 161.04 Dog licenses.

* * *

(d) [*Service dogs*. Owners of licensed dogs may request an additional tag from the Department indicating that the dog is trained to perform a task to assist a person with a disability, without paying an additional fee for such tag. An application for such tag shall be accompanied by a written statement from a trainer whose education, experience and training are acceptable to the Department, stating that such dog has been specifically trained to perform a task or tasks for the person applying for the tag.

(e)] *Sales of licenses authorized*. Licenses may be sold by the Department in any manner that is not prohibited by law. The Department may authorize other persons to sell such licenses, upon such terms

and conditions as it deems necessary to promote the sales of licenses. The Department may accept license applications and sell licenses electronically, and may impose a surcharge to cover the actual additional costs of selling licenses electronically, if any, including costs imposed by credit card issuers.

(f) (e) *Enforcement.* Notices of violation for failure to comply with this section may be issued by any authorized employee, officer or agent of the Department, the Department of Sanitation, the Department of Parks and Recreation, or successor agencies, or by special patrolmen or patrolwomen who have been delegated such duties by their employers.

Note: By resolution adopted XXXXXXXXXXXX, the Board of Health repealed the definition of “service dog” from section 161.02 and repealed the provision of section 161.04 for the issuance of service dog tags.

RESOLVED, that section 161.15 of Article 161 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended, with an explanatory note to read as follows:

§ 161.15 Keeping of small animals for sale, boarding, grooming, or training.

(a) [No animals] Dwellings and food service establishments. Animals shall not be sold [or], held for sale, or boarded, groomed or trained in [a room] exchange for a fee in a dwelling in which a person lives. [No aquatic] Aquatic animals, as defined in Article 81 of this Code, [except live food fish species from a source authorized by applicable law to supply such fish or live fish in an ornamental aquarium,] shall not be sold [or], held for sale or kept in the same place where food or drink is sold for human consumption. This subdivision shall not prevent a food service establishment from keeping live fish species intended for human consumption and obtained from a legal food source or from displaying live fish in an ornamental aquarium.

(b) [The holder of a permit issued] Providing and submitting dog license applications.

(1) An entity permitted pursuant to [§161.09 or the person in charge of the place for which the permit is issued, shall] section 161.09 must provide a dog license application to any [individual] person seeking to purchase, adopt, [groom, train, or board] reclaim, or take custody of a dog [, showing no evidence of licensure, with a dog license application, furnished by the Department, which shall be completed by the individual. The holder of a permit to operate a pet shop or shelter or person in charge thereof, shall not transfer possession, title, ownership, control or custody of any dog to a prospective purchaser or adopter without first requiring the purchaser or adopter to submit a completed application for a dog license and to pay all required license fees unless such purchaser or adopter shall execute and submit to such permittee a written] unless the person demonstrates that the dog is already licensed or signs a sworn statement that the dog [to be purchased or adopted is to be harbored] will live outside the City. [The operator of a shelter issued a permit by the Department shall not release an unlicensed dog to

any person unless the person shall complete an application for a license and tender the license fees required by law. Such holder of a permit or person in charge shall forward such completed application and license fees to the Department in such manner as may be specified by the Department, consistent with the New York City Dog License Law enacted by the State legislature (Chapter 115 of the Laws of 1894, as amended). The license shall be issued by the Department.] The person seeking to purchase, adopt, reclaim, or take custody of the dog must complete the application and return it, along with any fees due, to the permitted entity. Such entity must forward the completed application along with any fees to the Department within five (5) business days, and the Department will issue the license and send it to the dog's owner.

(2) Whenever a dog receives training, grooming, or boarding services from an entity permitted pursuant to section 161.09 to provide only those services, the entity must provide the dog owner with a dog license application, unless either the dog owner provides proof that the dog has a Department-issued license, or the dog lives outside of the city.

(c) [A holder of a permit to keep small animals for sale or for boarding, grooming or training, or to shelter homeless animals, shall] An entity permitted pursuant to section 161.09 must maintain and keep for one year a record of purchases [and], sales [and/or a record of], boarding, grooming, training, [providing shelter for] sheltering of homeless animals, [or] and adoption services rendered. When a dog or cat is purchased, sold, adopted or kept, the permittee [shall] must make an entry in the record [which shall contain] that includes (1) the name and address of the person from whom it was purchased [and of the person], to whom it was sold or given for adoption, or [of the person] who ordered boarding, grooming, or training services for such animals[,] and (2) a complete description of the animal, including its age, sex, and breed. [The permittee shall on] On at least a monthly basis, the permittee must report to the Department, on a form furnished by the Department, all licensed and unlicensed dogs which have been sold, adopted, groomed, trained, boarded, sheltered, or otherwise served. Such form [shall] must include the name and address of the dog owner and license number of all licensed dogs as well as any other descriptive information regarding [such] the dog as may be required by the Department.

(d) A holder of a permit to keep small animals for sale, boarding, grooming or training shall not sell or hold [for sale, boarding, grooming or training a dog or cat which] any animal that is affected with or [which] that has been exposed to a disease [which is] communicable among [such] small animals[, and shall not keep such animals] unless [it] such affected or exposed animal is under the care of a licensed veterinarian.

(e) *Proof of vaccinations required.*

(1) *Proof of rabies vaccination.* [Holders of permits to operate animal boarding kennels, grooming parlors, training establishments and pet shops] Prior to providing boarding, grooming [and/or], or training services, an entity issued a permit pursuant to section 161.09 must obtain proof from the owner

of each dog, cat, or other animal [that is provided services] that the animal is currently vaccinated for rabies, [provided that] unless there is [a USDA approved] no USDA-approved rabies vaccine for such animal, or that the animal has a medical condition for which rabies vaccination is contraindicated. [A] Such proof must be either (i) a copy of a rabies vaccination certificate, or (ii) a signed letter from a veterinarian verifying the animal's vaccination status or exemption from vaccination [will constitute such proof]. Such proof must be maintained on the premises for at least one year and provided to the Department upon request.

(2) *Other vaccinations for dogs.*

(A) *Boarding kennels and training establishments.* [Holders of permits to operate animal boarding kennels, training establishments and pet shops] Prior to providing boarding, grooming [and/or] or training services, an entity issued a permit pursuant to section 161.09 of this Code must obtain proof from the owner of each dog provided services that [such] the dog is currently actively vaccinated against distemper, adenovirus, parainfluenza, parvovirus and Bordetella, or [a letter from a veterinarian] that the animal has a medical condition for which vaccination is contraindicated. Such proof may include, but is not limited to, (i) a receipt from a veterinary office for vaccines provided, (ii) a summary of a veterinary visit prepared by the veterinary office indicating such vaccines were administered, or (iii) a copy of a signed letter from a veterinarian stating that the dog has been so vaccinated or that the dog has a medical condition for which vaccination is contraindicated. The accepted proof must be maintained on the premises for [a period of not less than] at least one year and provided to the Department upon request.

(B) [*Grooming parlors*] Entities providing grooming services only. A holder of a permit to operate a grooming parlor where only grooming services are provided must obtain from the owner of each dog that is provided services either (i) a sworn statement of the owner that the dog is currently actively vaccinated against distemper, adenovirus, parainfluenza, parvovirus and Bordetella along with the name and contact information of the veterinarian who administered the vaccinations, or (ii) a receipt from a veterinary office for vaccines provided, or (iii) a summary of a veterinary visit prepared by the veterinary office indicating such vaccines were administered, or (iv) a copy of a signed letter from a veterinarian stating that the dog has been so vaccinated or that the dog has a medical condition for which vaccination is contraindicated. [An owner's sworn statement must include the name and contact information of the veterinarian who administered the vaccinations.] The accepted proof must be maintained on the premises for [a period of not less than] at least one year[,] and provided to the Department upon request.

(f) *Cage or box dryers prohibited.* Facilities that care for or provide services to small animals [shall] must not dry any such animal using a cage or box dryer or any other dryer that is equipped with a heating element that is not handheld.

Note: Section 161.15 was amended by resolution adopted by the Board of Health on XXXX, 2017 to simplify its text. In addition, to better reflect the requirements of the NYC Zoning Resolution section

12-10 and other provisions of this Code, subdivision (a) was amended to clarify that certain services are not permitted in dwellings. To better protect the City's public health, subdivision (d) was amended to prohibit the sale, boarding, grooming and/or training of all animals with communicable disease unless the animal is under the care of a veterinarian.

RESOLVED, that section 161.17 of Article 161 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended, with an explanatory note to read as follows:

§ 161.17 Small animals kept for sale, shelters, kennels and training establishments; physical facilities and maintenance.

[A place issued a permit pursuant to § 161.09 of this Article where small] A pet shop, boarding kennel, shelter, and any other place where animals are kept [for sale, a shelter for homeless animals or a kennel or other place where animals are boarded or trained shall] that is permitted pursuant to section 161.09 must meet the requirements of Articles 131 and 151 [of this Code for maintenance of the physical] for maintaining facilities and eliminating conditions conducive to pests. The floors, walls, implements, and cages in such place must be kept clean and in good repair, and cages must be disinfected when necessary. An individual cage [shall] must be provided for the use of each dog or cat three months of age or over except when isolation in a separate cage is medically contraindicated or[, as specified in individual cases,] animals are caged together for a humane reason. [A] In such cases, a veterinarian [shall] must provide a written statement and [such] any other documentation [as] required by the Department [may require] indicating the [reason why] reasons more than one animal should be caged together. Such documentation [shall] must be maintained on the premises and be available for inspection. [The floors, walls, implements and cages in such place shall be kept clean and in good repair. Cages shall be disinfected when necessary.] Nothing in this Code [shall prohibit] prohibits the establishment of [canine or feline congregate] dog or cat group socialization or play areas in boarding facilities regulated by this Code, provided that animals allowed in such areas are certified by a veterinarian as vaccinated against rabies and free of other diseases and parasites transmissible to humans or other animals.

Note: Section 161.17 was amended by resolution adopted by the Board of Health on XXXX, 2017 to simplify its text and, to better protect the City's public health, added "parasites and" to the last sentence.

**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 Health Code Provisions relating to Service Dogs and Other Animals
(Health Code Art. 161)**

REFERENCE NUMBER: DOHMH-22

RULEMAKING AGENCY: Board of Health

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/ Francisco X. Navarro

Mayor's Office of Operations

May 17, 2017

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 Health Code Provisions relating to Service Dogs and Other Animals
(Health Code Art. 161)

REFERENCE NUMBER: 2017 RG 018

RULEMAKING AGENCY: Board of Health

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: May 17, 2017