



## Department of Health and Mental Hygiene

### Board of Health

#### Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Articles 11 and 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 11 (Reportable Diseases and Conditions) and Article 161 (Animals) of the New York City Health Code. Some of the proposed amendments were not included in the Department's Regulatory Agenda for this fiscal year because the Department did not anticipate the need for those amendments at that time.

**When and where is the hearing?** The Department will hold a public hearing on the proposed Health Code amendments from 2PM to 4PM on January 21, 2015 in  
Room 3-32  
New York City Department of Health and Mental Hygiene  
Gotham Center, 42-09 28<sup>th</sup> Street, 3<sup>rd</sup> Floor  
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 Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov)
- **Mail.** You can mail written comments to  
New York City Department of Health and Mental Hygiene  
Gotham Center, 42-09 28<sup>th</sup> 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 347-396-6087
- **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 January 21, 2015. 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 January 21, 2015.

**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 January 7, 2015.

**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?** Section 558 of the City Charter authorizes 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 rule-making authority.

### ***Background***

In May 2014, the Commissioner of the Department of Health and Mental Hygiene granted a petition from an individual asking that the Board consider amending Article 161 to remove ferrets from the list of animals prohibited as pets in the City of New York. This proposal would initiate the process of amending the Health Code and begin a public comment period on whether ferret ownership should be legalized.

The Department's Bureau of Veterinary and Pest Control Services enforces Article 161 pertaining to the control of animals in the City. It requests that the Board of Health also amend various other provisions of Article 161 and Article 11 of the Health Code related to animal control.

### ***Amendments to Health Code §161.01(a)—Circuses and Other Animal Exhibitions***

Health Code §161.01 prohibits the possession of wild and other animals that present hazards to human health and safety. Subdivision (a) allows for certain exceptions and requires permits for temporary exhibitions, displays and other uses of prohibited animals. Circuses and wildlife rehabilitators are currently exempt from this section's permit requirements, and while many voluntarily obtain permits from the Department, they are not obligated to do so.

Recently, the Department identified some circuses and a wildlife rehabilitator who intended to exhibit or use animals to entertain the public in settings that were not safe. In one instance, circus animals had not been tested to rule out infection with a disease that could be transferred to humans. In other instances, circus animals were kept in enclosures that either did not adequately protect the public or were too small. Although circuses are required to comply with the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., administered by the U.S. Department of Agriculture, this law only imposes limited animal care, animal health and public safety requirements. In yet another instance, a wildlife rehabilitator proposed to present adult performing bears on a theatre stage without barriers to protect the audience from the animals, and without adequate enclosures for the bears to stay in when they were not performing. The Department was able to use its general nuisance authority to address exhibitions and performances that do not adequately protect the public.

The Department believes circuses and wildlife rehabilitators should be required to have appropriate measures in place to adequately protect the public; and they should only be permitted to perform in the City if they comply with requirements that the City deems necessary to protect public health and safety. Federal law does not preempt the local regulation of circuses.<sup>1</sup> The Department therefore requests that the Board amend subdivision (a) of section 161.01 of the Health Code to require that circuses and wildlife rehabilitators in the City obtain permits from the Department in all cases when they intend to exhibit or use performing animals.

#### ***Amendments to Health Code §§161.01(b)(4)—Prohibited Animals***

Health Code §161.01(b)(4) currently prohibits persons from harboring ferrets in New York City. Following the procedures described in Health Code §9.05, an individual petitioned the Board of Health to amend Article 161 to remove ferrets from the list of animals that cannot be kept in the City. By letter dated May 16, 2014, the Commissioner, as the Board's Chairperson, granted the petition and responded that the Board would consider an amendment to legalize ferrets no later than December 2014. The proposed amendment would remove the prohibition on keeping domestic ferrets as pets, but would require certain safeguards. The proposed amendment requires that these pets:

- Be immunized against rabies in accordance with Health Code §11.29;
- Be sterilized to prevent their reproduction, and
- Be restrained when outdoors.

The requirement to sterilize is being proposed to prevent an overpopulation of ferrets that could become a burden on the animal shelter system and as a part of responsible pet ownership. Additionally, sterilization may help reduce aggression and musky odor, and provide health benefits to the animal. The Department is also proposing that this provision be effective September 1, 2015, roughly six months after the expected adoption of this provision, if the Board of Health adopts this proposal, to allow time for government and non-government agencies and property owners to develop and put into effect appropriate policies and guidance.

#### ***Amendment to Health Code §§161.21 and 11.29—Rabies Vaccinations***

In 2010, Health Code §161.21 was amended to require that stables keep current rabies vaccination certificates for the horses they house. The Department is requesting that the Board further amend this

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<sup>1</sup> See, e.g., 7 U.S.C. 2145(b); *Dehart v. Town of Austin*, 39 F.3d 718, 722 (7th Cir. 1994) (“[T]he Animal Welfare Act expressly contemplates state and local regulation of animals.”)

section to require that horses' owners, as well as the stables where they are kept, maintain proof that their horses are vaccinated.

The Department also proposes that Health Code §11.29 be amended to:

1. Add ferrets and horses to the list of animals that must be immunized against rabies and
2. Change the terms "dogs" and "cats" in this section to "animals" to reflect that other animals would be specifically required to be currently vaccinated against rabies.

#### ***Amendment to Health Code §161.02—Definitions***

The Department is proposing that the Board add a definition for "operating" or "in operation" to clarify that an animal business or facility regulated by the Health Code is required to comply with all of the provisions of the Health Code that apply to it regardless of whether the facility or business is open to the public.

#### ***Amendments to §161.15—Cage or Box Dryers***

This section currently requires boarding kennels to obtain proof from the owners of the dogs for which they care that the animals have been vaccinated against rabies and certain other diseases. The Department is proposing that the Board amend this section to clarify that this requirement is applicable to grooming parlors and training establishments. In addition, these businesses would have to obtain proof from the owners of cats and ferrets that these types of animals have been vaccinated against rabies.

The Department is also proposing that the Board add a provision mirroring a State law requirement that prohibits grooming parlors and other facilities that handle small animals from drying an animal using the heating element contained in a cage or box dryer. These types of dryers have been associated with injuries and deaths of pets left unattended during drying. State Agriculture & Markets Law §353-e already prohibits their use in grooming facilities; this amendment would enable the Department to enforce this ban in the businesses it regulates.

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 subdivisions (a) and (b) of §161.01 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:

#### **§161.01 Wild and other animals prohibited.**

(a) (1) Prohibitions; exceptions. No person shall sell or give to another person, possess, harbor, keep, or yard wild or other animals identified in this section or in regulations promulgated by the Commissioner pursuant to subdivision (e) of this section other than in:

[(1) A] (i) a zoological park or aquarium operated by the Department of Parks and Recreation, by the Wildlife Conservation Society, or by the Staten Island Zoological Society; or

[(2) A] (ii) a laboratory operated pursuant to §504 of the Public Health Law; or

[(3) A circus or native wildlife rehabilitator licensed by federal or state agencies; or

(4) A] (iii) a veterinary hospital or other veterinary or medical facility where veterinary care is provided for such animals; or

[(5) A place that exhibits, uses or displays such animals, including, but not limited to,] (iv) a temporary exhibit, performance or display that has been issued a permit by the Commissioner.

(2) Permits. Persons who own, operate, manage or control any premises, businesses or activities in which such animals will be exhibited or displayed, or persons who propose to exhibit or display such animals, including, but not limited to, in a rodeo, circus or other performance, petting zoo, farm museum, school or similar institution, or for a film, television, photographic or other production or a media or non-media event, or for commercial, educational or other purposes, [in accordance with] must obtain a permit issued by the Commissioner.

(A) The Commissioner may impose reasonable conditions and time limits on such exhibitions, usages or displays when issuing such permits, including [a condition that the place] requiring proof of insurance, and a showing that places where animals are to be exhibited, used or displayed have protective devices [to preventing] that the Department is satisfied will prevent animals from escaping or injuring the public.

[(A)] (B) All animals exhibited or displayed shall have received all species appropriate immunizations and have been tested for zoonotic diseases in accordance with federal and state law and guidelines, and recommendations of the Association of Zoos and Aquariums, or other recognized animal health authorities. The Commissioner may prohibit the use, display or exhibition of an animal that, in the opinion of the Commissioner, carries an unreasonable risk of exposing persons to zoonotic diseases or physical harm.

(C) An application for a permit to exhibit, use or display animals shall be submitted to the Department at least [five (5)] ten (10) business days prior to the arrival of such animals into New York City in preparation for such exhibition, use or display by the person or entity that proposes to exhibit, use or display such animals or the person in control of the premises where such animals will be exhibited, used or displayed.

[(B)] (D) Any animal of a species for which a rabies vaccine licensed and approved by the USDA is available shall be currently vaccinated against rabies in accordance with the vaccine manufacturer's instructions sufficiently in advance of any permit being issued for its exhibition, use or display, so that such vaccine shall be effective at the time of the animal's exhibition, use or display.

[(C)] (E) The Department may impose a fee to cover its costs in issuing such permits.

(b) Prohibited animals. For the purposes of this Code, a wild animal is deemed to be any animal which is naturally inclined to do harm and capable of inflicting harm upon human beings and all such animals are hereby prohibited pursuant to subdivision (a) of this section. Such animals shall also include: (i) any

animals specified by the Commissioner in regulations promulgated pursuant to this section; (ii) any native or exotic wildlife whose possession or sale is prohibited because they are designated as protected or endangered pursuant to any federal, state or local law, regulation, or rule; and (iii) any of the following animals:

\* \* \*

(4) All fur bearing mammals of the family Mustelidae, including, but not limited to weasel, marten, mink, badger, ermine, skunk, otter, pole cat, zorille, wolverine, stoat and ferret, except for the domestic ferret (*Mustelidae putorius furo*) after September 1, 2015. Such domestic ferrets must be restrained when out of doors and vaccinated against rabies in accordance with Article 11 of this Code. All such domestic ferrets six months of age or older must be medically or surgically sterilized, and no person shall barter, give away or sell any ferrets that are not sterilized. Owners must maintain and provide proof of sterilization to the Department upon request.

\* \* \*

*Notes:* Subdivision (a) of section 161.01 was amended by resolution adopted XXX by the Board of Health to clarify requirements for permits to exhibit, display or use animals whose possession is otherwise prohibited in subdivision (b) of this section. Paragraph (4) of subdivision (b) of §161.01 was also amended to allow domestic ferrets to be kept as pets, to be effective September 1, 2015.

RESOLVED, that §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 add a new definition of “operating or in operation,” to be inserted alphabetically and be printed together with explanatory notes to read as follows:

**§161.02 Definitions.**

\* \* \*

**Operating or in operation.** An animal business or facility regulated by this Article is “operating” or “in operation” if any animals are being harbored or kept on its premises, and regardless of whether such business or facility is open to the public.

\* \* \*

*Notes:* §161.02 was amended by resolution of the Board of Health adopted at its XXX meeting to add a definition of “operating” or “in operation” to clarify that animal businesses and facilities subject to regulation under Article 161 are required to comply with requirements of the Health Code regardless of whether they are open to the public.

RESOLVED, that §161.15 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 by amending subdivision (e) and adding a new subdivision (f), to be printed together with explanatory notes to read as follows:

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

\* \* \*

(e) Proof of vaccinations required.

A holder of a permit to operate a boarding kennel, grooming parlor, or training establishment shall require proof from the owner of each dog provided services that such dog is currently actively vaccinated against rabies, distemper, adenovirus, parainfluenza, parvovirus and Bordetella, [shall maintain such proof on the premises, and shall provide such records for inspection to the Department upon request] and proof from the owner of each cat or ferret provided services that such cat or ferret is currently actively vaccinated against rabies. Proof of such vaccinations shall be maintained on the premises and provided to the Department upon request.

(f) Cage or box dryers prohibited. Facilities that care for or provide services to any small animal shall not dry any such animal using a cage or box dryer equipped with a heating element.

*Notes:* Subdivision (e) of §161.15 was amended by resolution of the Board of Health adopted at its XXX meeting to clarify that businesses providing various services to dogs and cats must require proof from the animals' owners that the animals have been vaccinated against rabies and other common diseases and adding a new subdivision (f) which prohibits animal businesses from using cage or box dryers when providing services to small animals.

RESOLVED, that subdivision (i) of §161.21 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:

**§161.21 Stables for horses; physical facilities and maintenance; and rabies vaccination.**

\* \* \*

(i) All horses owned, boarded, used or brought into the City of New York for any purpose shall have an annual rabies vaccination. Every person who owns a horse and every person who owns or maintains a stable for horses in the City of New York shall maintain a record of such horse's rabies vaccinations and make such records available to officers, agents and employees of the Department for examination upon request. Requirements for rabies vaccination for horses shall apply to all horses housed or brought into any stable in the City of New York regardless of whether the stable is required to hold a permit issued pursuant to this Article.

*Notes:* Subdivision (i) of §161.21 was amended by Board of Health resolution adopted at its XXX meeting to require that horse owners as well as owners of stables maintain certificates of required rabies vaccinations and make such certificates available for examination by the Department on request.

RESOLVED, that §11.29 of Article 11 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:

**§11.29 Rabies: compulsory vaccination.**

(a) *Vaccination required.* Any person who owns or harbors in New York City a dog, horse, domestic ferret or cat four months of age or older, other than a dog, horse, domestic ferret or cat exempt from vaccination requirements pursuant to subdivision (d) of this section, shall have such animal actively vaccinated against rabies, as defined in §11.27 of this Article.

(b) *Vaccination certificates and reports to the Department.* The veterinarian either administering the vaccine or responsible for supervising the vaccination shall give to the [dog or cat's] animal's owner a rabies vaccination certificate. Within five days of performing a vaccination, the veterinarian shall report such vaccination to the Department by forwarding to the Department a completed form [designed] provided or approved by the Commissioner via facsimile, mail or electronic transmission acceptable to the Department. In the case of [a dog or cat] an animal whose health would be adversely affected as a result of a vaccination, the veterinarian shall give to the [dog or cat's] animal's owner a signed and dated statement indicating this. In addition, the veterinarian shall, on a form prescribed by the Commissioner, report this information to the Department via facsimile, mail or electronic submission acceptable to the Department within five days of having determined that the administration of a vaccine would adversely affect the health of the [dog or cat] animal.

(c) *Filing vaccination certificates.* The rabies vaccination certificate and the form prescribed by the Commissioner to be forwarded to the Department shall be dated and signed by the veterinarian and shall include the following information: a description of the [dog or cat] animal, its age, color, sex, and breed; the dog's license number; the name and address of the owner; whether the [dog or cat] animal was vaccinated or exempted from vaccination by reason of the adverse effect such vaccination would have on [the] its health [of such dog or cat], and, if vaccinated, the type of vaccine injected, its duration of immunity, the amount and manner of injection, the name of the manufacturer, and the lot number and expiration date of the vaccine. The vaccination certificate shall be effective for the duration of immunity. Upon the expiration of the certificate, the owner shall have [his or her dog or cat] the animal revaccinated in accordance with this section.



(d) Exemptions. Active vaccination against rabies shall not be required for dogs, horses, domestic ferrets or cats actually confined to the premises of incorporated societies, devoted to the care or hospital treatment of lost, strayed or homeless animals, or confined to the premises of public or private hospitals devoted to the treatment of sick animals, or confined for the purposes of research to the premises of colleges or other educational or research institutions, or for dogs or cats actually confined to the premises of a person, firm or corporation actually engaged in the business of breeding or raising dogs or cats for profit and are so licensed as a class A dealer under the Federal Laboratory Animal Welfare Act or if such vaccination would adversely affect the health of the [dog or cat] animal as determined by a duly licensed veterinarian.

*Notes:* Section 11.29 was amended by resolution adopted on XXX to require rabies vaccinations for horses and ferrets as well as dogs and cats, consistent with the amendment of the Health Code §161.01(b)(4) to allow keeping domestic ferrets as pets and with the requirement in Health Code §161.21 (i), in effect since 2010, that all horses owned, boarded, used or brought into the City have annual rabies vaccinations.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**

**253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

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

**RULE TITLE:** Amendment of Rules Governing Animals (Health Code Art. 161)

**REFERENCE NUMBER:** 2014 RG 093

**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 the Health Code requires immediate compliance due to public health concerns

/s/ Jacob Sack  
Mayor's Office of Operations

Date: December 2, 2014

**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 Rules Governing Animals (Health Code Art. 161)

**REFERENCE NUMBER:** 2014 RG 093

**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: December 1, 2014