



DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

**NOTICE OF ADOPTION
OF AMENDMENTS TO ARTICLES 3 AND 151
OF THE NEW YORK CITY HEALTH CODE**

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Articles 3 and 151 of the New York City Health Code (the “Health Code”) was published in the City Record on April 22, 2013 and a public hearing was held on May 23, 2013. No testimony or written comments were received, and no changes have been made to the resolution. At its meeting on June 28, 2013, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the “Health Code”) are issued in accordance with §§556, 558, 1043 and 1046 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the “Department”) with authority to regulate all matters affecting health in the city of New York. Paragraphs (b) and (c) of §558 of the Charter empower the Board of Health (the “Board”) to amend the Health Code and provide how the Health Code will be enforced. Section 1043 of the Charter gives the Department rulemaking powers and §1046 authorizes City agencies to adopt rules governing adjudications.

Background of Amendments

On November 2, 2010, New York City voters approved Charter revisions including an amendment authorizing the Mayor, by Executive Order, to consolidate certain administrative tribunals into OATH. In addition, the Charter amendment required the establishment of a committee whose mandate was to recommend which tribunals or types of cases should be transferred to OATH. The Mayor's Committee on Consolidation of Administrative Tribunals (“Mayor’s Committee”) issued its “Report and Recommendations,” dated June 7, 2011, containing an Appendix with recommended modifications to rules of the various tribunals (“Report” and “Appendix”).

By Executive Order No. 148 (June 8, 2011) (the “Executive Order”), the Mayor ordered the “transfer of the administrative tribunals established by the Board of Health pursuant to Section 558 of the Charter” to OATH, effective July 3, 2011. According to the Executive Order, certain provisions of the Health Code and other Rules of the City of New York pertaining to the Department’s Administrative Tribunal, as well as some additional interim procedures, would be deemed interim rules of OATH in accordance with the Mayor’s Committee’s Report and Appendix. These provisions, rules, and procedures, were designated interim rules until OATH itself completed official rulemaking in accordance with the Charter.

At its meeting on December 13, 2011, the Board adopted a Resolution repealing Article 7 (“Administrative Tribunal”) of the Health Code, and amending other provisions of the Health

Code that refer to Article 7 and/or the Administrative Tribunal. Certain provisions of Article 7 survived the transfer to OATH and were added to Article 3 (“General Provisions”) of the Health Code. These provisions, incorporated in a new §3.12 (“Administrative Tribunal”) became effective July 20, 2012 when the OATH rules for the OATH Health Tribunal became effective.

Section 3.12 of the Health Code was further amended by the Board at its June 12, 2012 meeting (also made effective July 20, 2012) to provide for service of notices of violations (NOVs) returnable to the Environmental Control Board (ECB) (“Administrative Tribunal and Environmental Control Board proceedings”), which under the Charter has concurrent jurisdiction with the former Administrative Tribunal to adjudicate NOVs issued for violations of the Health Code. ECB’s rules provide that NOVs returnable to ECB that are not served personally pursuant to Charter §1049-a(d)(2) may be served “alternatively as provided by the statute, rule or other provision of law governing the violation alleged.” 48 RCNY §3-31 (c).

As amended, Health Code §3.12 (c) currently provides that NOVs returnable to ECB may be served personally, or by any form of mail delivery “that provides proof of mailing and receipt.” Health Code §151.05, which was adopted by the Board on March 15, 2011 and provides for hearing of NOVs returnable to ECB, similarly requires proof of mailing and receipt. The Department has been serving NOVs returnable to ECB by US Postal Service (USPS) first class mail. Although no return receipt is provided with this method of mailing, a uniquely numbered certificate of mailing provided by the USPS was used to track delivery. Until recently, the USPS website reported the actual address where the NOV was delivered and the date and time of its delivery when the number of the certificate of mailing was entered online. The USPS website, however, no longer provides address-specific information, but only the zip code where the mail was delivered. Because Health Code §3.12 (c) currently requires proof of receipt of the NOV, ECB has advised the Department that NOVs mailed this way will be dismissed if service of the NOV is challenged by the respondent. The dismissals will be automatic and occur even though respondents receive their NOVs and appear at their hearings. Accordingly, the Board is further amending §3.12 (c) and §151.05 (b) to delete the requirement that it prove receipt of an NOV as an essential element of service to avoid these dismissals.

City agencies are authorized by §1046(b) of the Charter to make rules governing service of notices of adjudicatory hearings, as well as other elements of such proceedings; how notice is to be proved is not specified.

“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.

The resolution is as follows:

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

RESOLVED, that paragraph (2) of subdivision (c) of §3.12 of Article 3 (General Provisions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes as follows:

§3.12 Administrative Tribunal and Environmental Control Board proceedings.

* * *

(c) *Service of notices of violations returnable to the Environmental Control Board.*

(1) *Personal service.* Notices of violation returnable to the Environmental Control Board may be served in person upon (i) the person alleged to have committed the violation, (ii) the permittee or registrant, (iii) the person who was required to hold the permit or to register, (iv) a member of the partnership or other group concerned, (v) an officer of the corporation, (vi) a member of a limited liability company, (vii) a management or general agent, or (viii) any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged.

(2) *Service by mail.* Notices of violation returnable to the Environmental Control Board may be served by [certified or registered] mail [through] deposited with the U.S. Postal Service, or [by any type of mail utilizing] any other mailing service [that provides proof of mailing and receipt,] to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of (i) the alleged violator, (ii) the individual who is listed as the permittee or applicant in the permit issued by the Board or the Commissioner or in the application for a permit, or (iii) the registrant listed in the registration form. In the case of service by mail, documentation of [delivery or receipt provided by the delivery or] mailing [service is] is sufficient proof of service of the notice of violation.

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Notes: Paragraph (2) of subdivision (c) of §3.12 was amended by resolution adopted June 28, 2013, to clarify that mail service of notices of violation returnable to the Environmental Control Board is sufficient if proof of mailing alone is shown.

RESOLVED, that subdivision (b) of §151.05 of Article 151 (Rodents, Insects and Other Pests) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes as follows:

§151.05 Notices of violation.

* * *

(b) *Service of a notice of violation.* A notice of violation shall be served by delivery to an owner or other person in control of property or premises, upon a member of the partnership, limited liability company or other group, upon an officer, director or managing agent of a corporation, or upon any other person of suitable age and discretion owning or in control of such property.

Service may be made to such person(s) at the address of the premises that is the subject of the NOV or at such person's last known residence or business address,

(1) By personal delivery in accordance with Article 3 of the New York Civil Practice Law and Rules or Article 3 of the Business Corporations Law; or

(2) By [certified or registered] mail delivered by the U.S. Postal Service or by any other type of mailing [or delivery] service, [that provides proof of mailing or receipt by the respondent.] Documentation of [delivery or receipt provided by the delivery or] mailing [service] shall be sufficient proof of service of the notice of violation.

Notes: Paragraph 2 of subdivision (b) of §151.05 was amended by resolution adopted June 28, 2013 to clarify that mail service of notices of violation returnable to the Environmental Control Board is sufficient if proof of mailing alone is shown.