



## **Department of Health and Mental Hygiene**

### **Board of Health**

#### **Notice of Adoption (#1) of Amendments to Articles 11 and 161 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 11 and 161 of the New York City Health Code (the “Health Code”) was published in the City Record on December 12, 2014 and a public hearing was held on January 21, 2015. Three people testified and seven written comments were received, including two from people who testified. Changes made to the resolution in response to comments are discussed below. At its meeting on March 10, 2015 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 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***

The Department’s Bureau of Veterinary and Pest Control Services, which enforces Article 161 pertaining to the control of animals in the City, has requested that the Board amend various 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> Accordingly, the Board has amended 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.

***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 Board is amending this section to require that horses' owners, as well as the stables where they are kept, maintain proof that their horses are vaccinated. Health Code §11.29 is also being amended to:

1. Add 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 Board is adding 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—vaccinations and prohibition of 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 dogs have been vaccinated against rabies and certain other diseases. The Board is amending this section to clarify that this requirement is also applicable to grooming parlors, training establishments and pet shops that provide boarding, grooming or training services for dogs. In addition, these businesses will need to obtain proof from the owners of cats and other animals subject to rabies for which a rabies vaccine is approved that these animals have been vaccinated against rabies. In response to comments from operators of grooming parlors that owners of dogs frequently do not have copies of all vaccination documents, and that the grooming parlor must contact veterinarians to get such information, the amendment has been further changed to allow owners of dogs brought in for grooming to attest that their dogs have the required vaccinations and to provide contact information for the veterinarian who vaccinated the dogs. Boarding kennels will continue to require proof of dogs having all required vaccinations. And, since all dog and cat owners must show proof that their animals have current rabies vaccinations, owners will be required to provide this proof, and training and grooming establishments will be required to maintain such proof, for all such animals receiving services.

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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.”)

The Board is also adding a provision mirroring a State law that prohibits grooming parlors and other facilities that handle small animals from drying an animal using an unattended 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 prohibits use of such devices in grooming facilities; this amendment enables 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 subdivision (a) 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] 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] 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.

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*Notes:* Subdivision (a) of section 161.01 was amended by resolution adopted March 10, 2015 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.

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.

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*Notes:* §161.02 was amended by resolution of the Board of Health adopted at its March 10, 2015 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 subdivision (e) of §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, regarding proof of vaccinations for dogs at boarding kennels, is hereby REPEALED and new subdivisions (e) and (f) are added, 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.

(1) Proof of rabies vaccination. Holders of permits to operate animal boarding kennels, grooming parlors, training establishments and pet shops providing boarding, grooming and/or training services 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 there is a USDA approved rabies vaccine for such animal, or that the animal has a medical condition for which rabies vaccination is contraindicated. A copy of a rabies vaccination certificate or 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 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 providing boarding, grooming and/or training services must obtain proof from the owner of each dog provided services that such 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 one year and provided to the Department upon request.

(B) Grooming parlors. 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, or (ii) a receipt from a veterinary office for vaccines provided, (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 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 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.

*Notes:* Subdivision (e) of §161.15 was repealed and restated by resolution of the Board of Health adopted at its March 10, 2015 meeting to clarify that businesses providing certain services for animals subject to rabies must require proof from the animals' owners that the animals have been vaccinated against rabies and businesses that provide services for dogs obtain proof or an attestation from the dogs' owners that the dogs have been vaccinated against other common diseases.

Subdivision (f) was added to §161.15 by resolution of the Board of Health adopted at its March 10, 2015 meeting. This provision prohibits animal businesses from using cage or box dryers that are not handheld, when providing services to small animals, and enables the Department to enforce a prohibition New York Agriculture and Markets Law §353-e, currently applicable statewide, including in New York City.

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 March 10, 2015 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, possess or harbors in New York City a dog, horse or cat four months of age or older, other than a dog, horse 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 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 March 10, 2015 to require rabies vaccinations for horses as well as dogs and cats, consistent with 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.