



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Adoption of Proposed Amendments to Title 24 of the Rules of the City of New York

In compliance with § 1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Department by §§556 and 1043 of said Charter, a notice of intention to add a new Chapter 32 (Dogs in Outdoor Dining Areas) to Title 24 of the Rules of the City of New York was published in the City Record on December 11, 2015 and a public hearing was held on January 26, 2016. Nine persons testified at the public hearing and 51 written comments were received, including several from persons who testified at the hearing. In response to the comments received, changes were made to the original proposal and are discussed below.

Statement of Basis and Purpose

Statutory Authority

This amendment to Title 24 of the Rules of the City of New York (“RCNY”) is promulgated pursuant to sections 556 and 1043 of the New York City Charter (“the Charter”). Section 556 of the Charter broadly authorizes the Department of Health and Mental Hygiene (“the Department”) to regulate all matters pertaining to the health of the City, including the City’s food supply. Section 1043 grants the Department rule-making authority.

Background

New York State Public Health Law (“PHL”) §1352-e authorizes operators of food service establishments to allow companion or pet dogs to accompany owner-patrons in certain outdoor dining areas of their establishments, subject to control measures approved by a locality’s enforcement agency.

In the City of New York (“the City”), the Department is the local enforcement agency, and the Commissioner of the Department is the “permit issuing official” designated in the New York State Sanitary Code (10 NYCRR Chapter 1) to enforce provisions of the Sanitary Code applicable to the operation of food service establishments. Food service establishments in the City are also subject to provisions of the New York City Health Code, Chapter 23 (Title 24 of the RCNY) and various provisions of the New York City Administrative Code and the State Public Health Law. The Department’s Division of Environmental Health enforces the provisions of the Administrative, Sanitary and Health Codes and Department rules applicable to food service establishments.

PHL §1352-e was enacted in 2015. It overrides New York City Health Code §81.25 and New York State Sanitary Code §14-1.183, which prohibit live animals, other than service animals or food fish in an establishment’s tank, from being in a food service establishment. PHL §1352-e gives owners of food service establishments the discretion to decide whether to allow companion dogs into their establishments, provided that the “owner ensures compliance with local ordinances related to sidewalks, public nuisance and sanitation; and ... such other control measures approved by the enforcement agency are complied with.” This new Chapter 32 constitutes the “control measures approved by the enforcement agency.”

Chapter 32

The control measures in Chapter 32 are necessary to safeguard public health and safety. The new Chapter contains the following provisions.

Definitions. Defines terms used in the Chapter in accordance with definitions used in the New York City Health Code and other applicable law. A definition for “service dog” has been added to clarify that service dogs are defined in accordance with the definition of “service animal” by the U.S. Department of Justice in implementing the Americans with Disability Law.

Policies. Reinforces that food service establishments may under State law prohibit all dogs, other than service dogs, from entering their establishments. If an owner or operator chooses to allow companion dogs to be in an establishment’s outdoor dining area, this section requires that the establishment have certain policies. In response to comments, and because dogs in New York City are already required to be licensed and currently vaccinated against rabies, food service establishment operators will not be required to enforce these provisions before permitting patrons’ pet dogs in outdoor dining areas.

Signage. Requires that permittees who choose to allow companion dogs to be in their establishments post signage and clarifies that all food service establishments must allow service dogs accompanying persons with disabilities to be in all areas of their establishments.

Sanitary conditions. Specifies how sanitary conditions are to be maintained. The original proposal required a barrier to “prevent” contact between dogs in outdoor dining areas on sidewalks and pedestrians and dogs on the adjacent sidewalk. This requirement has been amended to allow a food service establishment to use a barrier or other method that “effectively limits” such contact.

Violations. Provides that any violation of this Chapter will be cited as a violation of and bear the same penalties as a violation of §81.25 of the Health Code.

The rule is as follows.

New text is underlined.

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

Section 1. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 32 to read as follows:

CHAPTER 32 **DOGS IN OUTDOOR DINING AREAS**

§32-01 Definitions.

§32-02 Permittee policies and procedures; required control measures.

§32-03 Signage.

§32-04 Physical facilities and sanitation.

§32-05 Penalties.

§32-01 Definitions. When used in this Chapter, the following terms have the following meanings:

(a) Animal nuisance. Animal nuisances include, but are not limited to, animal feces, urine, blood, body parts, carcasses, vomitus and pervasive odors; animals carrying, or ill with, diseases communicable to persons or other animals; and dangerous dogs.

(b) Food has the same meaning as in Article 71 of the New York City Health Code (Health Code).

(c) Food service establishment means an establishment with outdoor dining areas that is permitted by the Department pursuant to Health Code §81.05.

(d) Licensed means that the dog's owner has obtained the dog license required by Chapter 115 of the Laws of 1894, as amended, or that the owner, if not a resident of New York City, has obtained a license to own or harbor the dog as required by the laws of the jurisdiction in which the owner resides.

(e) Outdoor dining area means an area operated and controlled by a food service establishment that is located outdoors and is used by patrons of the establishment to dine. Such areas include, but are not limited to, (i) a licensed unenclosed sidewalk café as defined in the §20-223(c) of the Administrative Code of the City of New York (Administrative Code) or successor provision, and (ii) an outdoor dining area not located on a sidewalk that is accessed directly from the street or through a passage of the establishment, if such passage is completely separated from any dining, food preparation or food, equipment or utensil storage areas of the establishment. An enclosed sidewalk café, as defined in §20-223(b) of the Administrative Code, is not an outdoor dining area.

(f) Permittee means the person or entity holding a permit issued pursuant to §81.05 of the Health Code to operate a food service establishment that has a designated outdoor dining area.

(g) Service dog means a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.

(h) Under control of the dog's owner means that the dog is on the floor of the outdoor dining area, within arm's length reach of the owner, and is (i) on a leash securely held by the owner, (ii) a leash tied to a table or chair leg, or (iii) in a crate.

§32-02 Permittee policies and procedures; required control measures.

(a) Permittee's discretion. A permittee may choose to allow dogs that are not service dogs to accompany their owners in the outdoor dining areas of the permittee's establishment, in accordance with §1352-e of

the New York State Public Health Law and this Chapter. A permittee is not obligated to allow dogs, other than service dogs, to be in outdoor dining areas of an establishment and nothing in these rules shall give a dog owner the right to bring a dog into any establishment where dogs are prohibited by the owner or this Chapter.

(b) *Required control measures.* Permittees who choose to allow dogs other than service dogs to be with their owners in outdoor dining areas must comply with this Chapter, and may impose any restrictions or additional control measures that they deem necessary for controlling dogs in their outdoor dining areas.

(1) *Removal of dogs.* The permittee must request that a dog owner remove from the establishment any dog that menaces, threatens or bites any person or other dog. The permittee shall not serve a dog owner who refuses to comply with a request to remove such a dog.

(2) *Injury reports.* A permittee must report to the Department any bite or other injury to a person caused by a dog within 24 hours of the injury. The report must be submitted to “311” by telephone or electronically. The report must include the name, address and phone number of the dog’s owner, the dog’s license number, and the name, address and phone number of the person bitten. Permittees must call “911” immediately following an injury to a person when the owner of a dog that bites or causes other injury refuses to provide the owner’s contact information.

(3) *Access limited to outdoor dining areas.* Dogs other than service dogs are not allowed in any area of a food service establishment that is not an outdoor dining area as defined in §32-01 of this Chapter.

(4) *Aisle space.* Dogs may not obstruct the 36-inch aisle space between tables in unenclosed sidewalk cafés, as required by 10 RCNY § 2-55(a), or successor provision.

§32-03 **Signage.**

A permittee who allows dogs that are not service dogs to accompany their owners in outdoor dining areas must post a sign at or near the entrance to the food service establishment with the following statement:

Companion dogs are only allowed in certain outdoor dining area(s) of this establishment.

Only service dogs are allowed in other parts of this establishment.

Your companion dog must be licensed and currently vaccinated against rabies to remain in the outdoor dining area with you.

You are responsible for controlling your dog at all times.

An establishment that chooses not to allow dogs, other than service dogs, to accompany their owners is not required to post any signage regarding its policy toward dogs.

§32-04 Physical facilities and sanitation.

(a) Facilities to be clean, sanitary. In accordance with Article 81 of the Health Code, the New York State Agriculture and Markets Law and rules of the Commissioner of the State Department of Agriculture and Markets, permittees must maintain outdoor dining areas in a clean and sanitary condition at all times. Dogs must not be allowed to touch any dining table surfaces.

(b) Animal nuisances to be removed immediately. Animal nuisances must be removed immediately by establishment employees who do not also prepare or serve food. Areas contaminated with such nuisances must be cleaned and sanitized immediately upon the removal of the nuisance. Animal nuisances must be disposed of in accordance with applicable law.

(c) Barriers. If an outdoor dining area where dogs other than service dogs are permitted abuts a sidewalk, the permittee must create a physical barrier or use other means to effectively limit contact between dogs in the outdoor dining area and dogs and people on the sidewalk.

§32-05 Penalties.

Violations of this Chapter shall be cited and shall have the same penalties imposed as other violations of §81.25 of the Health Code, or successor provision, listed in Appendix 23-C of Chapter 23 of this title.