



## Department of Health and Mental Hygiene

### Board of Health

#### Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Article 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 161 (Animals) of the New York City Health Code to clarify its provisions relating to prohibiting animal nuisances in premises used in common by occupants and the public.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on July 26, 2016. The hearing will be 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

**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 website 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 347-396-6088
- **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 July 26, 2016. 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 July 26, 2016.

**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 July 12, 2016.

**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?** Sections 558 and 1043(a) of the City Charter authorize 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**

The Department's Bureau of Veterinary and Pest Control Services enforces Health Code Article 161 pertaining to the control of animals in the City. Section 161.03(a) of Article 161 currently requires that pet owners control their pets so that they do not commit a nuisance on a "sidewalk of any public place, on a floor, wall, stairway or roof of any public or private premises used in common by the public, or on a fence, wall or stairway of a building abutting on a public place."

A question arose recently as to whether the provision applies to sidewalks and lawns in large residential communities in the City that are open to and used by the public as well as the residents of the local community. The Department is asking the Board to clarify that this provision applies to any area used in common, outdoor or indoor and regardless of whether it is publicly or privately owned.

### ***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 rulemaking authority.

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 section 161.03 of Article 161 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes to read as follows:

**§161.03 Control of dogs and other animals to prevent nuisance.**

(a) A person who owns, possesses or controls a dog, cat or other animal shall not permit the animal to commit a nuisance on a sidewalk of any public place, on a floor, wall, stairway, sidewalk, lawn, garden or roof of any public or private premises used in common by the public, or on a fence, wall [or], stairway or entranceway of a building abutting on a public place.

*Notes:* Subdivision (a) was amended by resolution adopted XXX to clarify the applicability of this section to sidewalks, lawns, gardens or other areas of private premises that are open to the public.

**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 Relating to Animal Nuisances

**REFERENCE NUMBER:** DOHMH-67

**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 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

June 2, 2016  
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 Rules Relating to Animal Nuisances

**REFERENCE NUMBER:** 2015 RG 050

**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: June 2, 2016