

**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
BOARD OF HEALTH**

**NOTICE OF ADOPTION TO AMEND  
ARTICLE 167 OF THE NEW YORK CITY HEALTH CODE**

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, the Notice of Intention to Amend Article 167 of the New York City Health Code was published in the City Record on December 23, 2008. A public hearing was held on January 28, 2009. No one testified at this public hearing and the Department received no written comments. The Board of Health at its March 24, 2009 meeting, adopted the following resolution.

**STATUTORY AUTHORITY**

These amendments to the New York City Health Code (“Health Code”) are proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter (“Charter”). Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene (“Department”) jurisdiction to regulate all matters affecting health in the City of New York. Specifically, Section 556 (a)(3) requires the Department to, “exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto....” Sections 558 (b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants rule-making powers to the Department.

**STATEMENT OF BASIS AND PURPOSE**

The Department is responsible for protecting the health and safety of the public who use permitted bathing beaches by providing for the proper construction, operation and maintenance of these facilities within New York City. Article 167 of the Health Code sets forth standards for the operation and maintenance of bathing beaches operating under permit by the Department.

The boundary restricting bathing currently defined under § 167.05(d) is inconsistent with the surface water classifications (usage designations) contained in New York State Department of Environmental Conservation (NYSDEC) regulations (see 6 NYCRR Parts 700, 701, 890, 891; see also, <http://www.dec.ny.gov/chemical/23853.html>). Successful improvements of pollution control programs and continued comprehensive upgrades to wastewater treatment infrastructure have resulted in a significant improvement in water quality, therefore, providing for the possibility for additional permitted bathing facilities in previously restricted areas. Accordingly, some of the previously restricted areas for bathing under §167.05(d) are now classified by NYSDEC to allow bathing (SB-primary contact). Pursuant to 6 NYCRR 700.1, “primary contact recreation” means recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence. Primary contact recreation includes, but is not limited to, swimming, diving, water skiing, skin diving and surfing.

In order to maintain consistency with the surface water classifications as defined under NYSDEC regulations, the defined boundary lines restricted for bathing under §167.05(d) are

replaced with boundary lines of water classification used for primary contact as defined by the NYSDEC.

### **CHANGES TO THE HEALTH CODE**

The list of restricted boundaries in §167.05 (d)(1)-(6) is deleted. Also, §167.05(d) is amended to allow boundaries delineated for primary contact as defined by applicable surface water classification regulations of the NYSDEC.

The rule is as follows:

Note - Matter in brackets [ ] is to be deleted.

Matter underlined is new.

**RESOLVED**, that subdivision (d) of Section 167.05 of Article 167 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on March xx, 2004, be and the same hereby is amended to update certain boundary lines of water classification used for primary contact recreation, to be printed together with explanatory notes, to read as follows:

#### **§ 167.05 Permit Applications.**

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(d) *Restriction.* No person shall operate, construct or maintain and no permit shall be issued for a bathing beach within 750 feet of the point of discharge of the outlet of any sanitary sewer, the flow of which would contribute in any way to the pollution of the waters used by the bathers, [or located along the City waterfront within the following boundary lines:

- (1) In the Borough of Manhattan: Along the Hudson River, from the Harlem River to the Battery; along the East River, from the Battery to the Harlem River; or along the Harlem River, from the Hudson River to the East River; or
- (2) In the borough of the Bronx: Along the Hudson River, from the boundary line between the cities of New York and Yonkers to the Harlem River; along the Harlem River, from the Hudson River to the East River; or, along the East River, from the Harlem River to Fort Schuyler; or,
- (3) In the Borough of Queens: Along the East River, from Willet's Point (Fort Totten) to Newtown Creek, including Little Bay, Powell's Cove, Flushing Bay and Bowery Bay; or
- (4) In the Borough of Brooklyn: Along the East River and Upper New York Bay from Newtown Creek to Norton's Point, including Gowanus Bay, the Narrows and Gravesend Bay; or,
- (5) In the Boroughs of Brooklyn and Queens: Along the Brooklyn- Queens shore of Jamaica Bay from Sheepshead Bay, Brooklyn to the Queens-Nassau line, along the Queens-Nassau line to the northerly side of Far Rockaway; and along the northerly side of the Rockaway Peninsula to Rockaway Point, including Sheepshead Bay, Rockaway Inlet, and all of Jamaica Bay with its estuaries and islands; or,

(6) In the Borough of Staten Island: Along the Raritan Bay, Arthur Kill and Kill Van Kull, from Page Avenue east of Tottenville to New Brighton; or along the Upper New York Bay and the Narrows, from New Brighton to the northerly boundary of Fort Wadsworth Reservation] and located outside the boundary delineated for primary contact recreation as defined by applicable regulations of the New York State Department of Environmental Conservation (see 6 NYCRR § 700.1; see also, 6 NYCRR Parts 890, 891). “Primary contact recreation” shall mean recreational activities where the human body may come in direct contact with raw water to the point of complete body submergence. Primary contact recreation includes, but is not limited to, swimming, diving, water skiing, skin diving and surfing.

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Notes: On March 24, 2009, the Board of Health amended language in §167.05(d) of the Health Code to maintain consistency with New York State Department of Environmental Conservation regulations concerning surface water classifications and primary contact recreation for New York City waters.