

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

**NOTICE OF ADOPTION OF THE REPEAL AND REENACTMENT
OF ARTICLE 1 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 of the proposed repeal and reenactment of Article 1 of the New York City Health Code (the “Health Code”) was published in the City Record on January 25, 2008, and a public hearing was held on February 28, 2008. No written comments or testimony were received. At its meeting on March 6, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (“DOHMH”) with jurisdiction to regulate all matters affecting the health in the city of New York. Section 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 DOHMH’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, various provisions of the Health Code are being updated to assure that it provide the adequate legal tools for the Board and the DOHMH to effectively address the City’s current and future public health needs. As part of this broad revision of the Health Code, Article 1 is repealed and reenacted so as to, in large part, update definitional terms used throughout the Code and to eliminate outdated terms.

The amendment is as follows:

Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that the list of article headings for Title I, the Introductory Notes thereto, Article 1, and the section headings for Article 1 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as adopted in nineteen hundred fifty-nine, be and the same hereby are, repealed and reenacted, to be printed together with explanatory notes, to read as follows:

TITLE I
SHORT TITLE, DEFINITIONS AND
GENERAL PROVISIONS

- Article 1 Short Title and General Definitions**
- 3 General Provisions**
 - 5 General Permit Provisions**
 - 7 Administrative Tribunal**
 - 9 Petitioning the Board of Health to Commence Rulemaking**

Introductory Notes:

Title I of the New York City Health Code contains provisions that govern the administration and enforcement of the Code. Much of the material in this title is derived and compiled from prior provisions of the Health Code and of its predecessor, the Sanitary Code.

The annotations to this title of the Code illustrate the power of the Board, Commissioner and Department generally as authorized by statute and as applied in judicial decisions. The Code is municipal legislation which, in accordance with §558 of the New York City Charter, must be consistent with the federal and state constitutions, laws and applicable regulations, and with the City Charter. The legal annotations which follow the provisions of the Code thus also serve to indicate the laws that were considered in the preparation of the Code.

The notes and legal annotations of the Code are generally prepared at the time of the adoption of the provisions of the Code to which they refer. Consequently, these annotations are accurate as of the date of the adoption of this Article.

Article 1
SHORT TITLE AND GENERAL DEFINITIONS

§1.01 Short title.

§1.03 General definitions.

Introductory Notes:

Article 1 refers to the Code by its title, the New York City Health Code, the designation by which the Code has been known since its last full revision adopted by the Board in 1959. Article 1 defines terms throughout the Code, including Commissioner, Department, City, State, and person.

§1.01 Short title.

The health or sanitary code of the city of New York shall be known and may be cited as the New York City Health Code.

Notes:

a. Derivation. This section was repealed and reenacted by resolution adopted on March 6, 2008. It modifies the former §1.01, which in 1959 had replaced S.C. §1, to make it clear that the official title of this Code is the New York City Health Code. Prior to 1959 this Code had been referred to as the “Sanitary Code of The City of New York” as entitled and adopted by the Board as of June 8, 1939. The earlier history of the Code refers to the “Sanitary Code of the Board of Health of the Department of Health of The City of New York,” which prior to January 1, 1938 constituted Chapter 20 of the Code of Ordinances of The City of New York. On January 1, 1938, pursuant to state law (L. 1937, c. 929), the Code of Ordinances became the New York City Administrative Code and the Sanitary Code, now the Health Code, became a separate body of law. Whenever any law or regulation refers to the “Sanitary Code” in effect in New York City, it is to this code, i.e., the New York City Health Code, to which the reference runs. These earlier designations reflect the Code’s long history. The complete revision of the Code adopted by the Board of Health in 1959, in which the revised Code is referred to as the New York City Health Code, is not only a formal designation of its short title, but is also a clear indication of the more contemporary emphasis of the Code. Since 1959 the Code has emphasized the advancement of the public health in the City, rather than its earlier more limited focus on sanitary regulations, and it reflects the more affirmative view of the purposes of the Code in marking the City’s direction in advancing, as well as protecting, the health of its citizens in the fields of environmental sanitation and communicable and chronic disease control and prevention.

For the provisions of the Sanitary Code prior to its full revision in 1959, the City’s Municipal Archives should be consulted.

b. Force and Effect of Provisions of the New York City Health Code. When the New York City Charter of 1938, approved by the electorate upon the recommendation of a charter revision commission appointed pursuant to an enactment of the state legislature, took effect on January 1,

1938, Charter §558a declared, and it still does so, that the Sanitary Code then in effect would continue to be binding and in force except as amended or repealed from time to time, and that it would have the “force and effect of law”. §558b of the 1938 Charter also authorized and empowered the Board of Health “from time to time to add to and to alter, amend or repeal any part of the sanitary code.” Thus, provisions of the Sanitary Code, now the Health Code, in effect on, or traceable to, January 1938, when it was granted the force and effect of law, enjoy the same status within the corporate limits of New York City as an act of the state legislature. Provisions of the New York City Health Code are accorded the status of state law either because they have been explicitly ratified and approved by the state legislature, or because they have been ratified by implication, as occurs when the state legislature amends a state law and continues to exempt its application in New York City (See, *In re Bakers Mutual Ins. Co. of N.Y.*, 301 N.Y. 21, 92 N.E. 2d 49 (1950)). For example, Title IV of Article 21 of the state Public Health Law, regarding the control of rabies was significantly amended by the state legislature in 2002. The provision of that Title exempting the application of the Title in New York City was specifically reenacted. Therefore, provisions of the New York City Health Code in place prior thereto regarding the control of rabies may be said to have the force and effect of state law, as long as they are not less strict than the New York State Sanitary Code.

A provision of the New York City Health Code which is not accorded the status of law may be challenged by a showing that it is not justified under the police power of the state, or that it is arbitrary or unreasonable. See *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E. 2d 731 (1951); *Matter of Wulfsohn v. Burden*, 241 N. Y. 288, 150 N.E. 120, 43 A.L.R. 651 (1925); *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365, 388, 47 S. Ct. 114, 118, 71 L. Ed. 303 (1926); *Town of Islip v. F. E. Summers Coal and Lumber Co.*, 257 N.Y. 167, 169, 170, 177 N.E. 409, 410 (1931); *People ex rel. Knoblauch v. Warden*, 216 N.Y. 154, 110 N.E. 451 (1915).

Challenges to provisions of the Code as mere ordinances have been rare, all the more so because even if Health Code provisions are not accorded the status of law but rather of mere ordinances, it would be difficult to sustain a challenge. If the provision is within the police power, it has the presumption of reasonableness and regularity and the burden of proving otherwise is on the person challenging its validity. Few recent challenges to provisions of the Code on grounds of unreasonableness have been made, and where the constitutionality of certain Code provisions has been questioned, the courts have generally upheld the subject Code provisions and noted that legislation concerning public health and safety is entitled to a strong presumption of

constitutionality. Indeed, a party challenging the constitutionality of a provision designed to foster public health or public safety must establish that such provision is so lacking in reason that it is essentially arbitrary. See New York City Friends of Ferrets v. New York City, 876 F. Supp 529 (S.D.N.Y. 1995), aff'd 71 F.3d 405 (2nd Cir. 1995) and Pet Professionals v. New York City, 215 A.D.2d 742, 627 N.Y.S.2d 728 (2d Dept. 1995).

§1.03 General definitions.

When used in the New York City Health Code:

(a) *Administrative Code* means the Administrative Code of the city of New York including all of its amendments.

(b) *Administrative Tribunal* means the Administrative Tribunal of the Department of Health and Mental Hygiene of the city of New York.

(c) *Board* means the Board of Health of the Department of Health and Mental Hygiene of the city of New York.

(d) *Charter* means the Charter of the city of New York including all of its amendments.

(e) *City* means the city of New York.

(f) *Code* means the New York City Health Code.

(g) *Commissioner* means the Commissioner of Health and Mental Hygiene of the city of New York.

(h) *Department* means the Department of Health and Mental Hygiene of the city of New York. When a provision of this Code gives the Department the authority or the duty to act, such authority or duty vests in the Commissioner or in an employee of the Department specifically designated by the Commissioner, or in any employee of the Department who is given such authority or duty in accordance with the administrative procedures of the Department established by the Commissioner.

(i) *Person* means an individual or partnership, corporation, firm, joint stock association or any other group of individuals who carry on an activity affected, regulated or prohibited by this Code.

(j) *State* means the state of New York.

Notes:

This article was repealed and reenacted by resolution adopted on March 6, 2008.