

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

**NOTICE OF ADOPTION
OF AMENDMENTS TO ARTICLE 9 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 Article 9 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

Certain sections of Article 9 of the Health Code are amended pursuant to a comprehensive review of the Health Code. As a result of this assessment of the Health Code, Sections 9.01, 9.03, 9.05 and 9.07 are amended to eliminate unnecessary terms and language. Importantly, the amendment would allow the public to submit petitions electronically by facsimile or electronic mail.

In accordance with Charter Subdivision 1043(f), any person may petition an agency to consider the adoption of any rule and each agency is to prescribe by rule the procedure for submission, consideration and disposition of such petitions. Article 9 provides procedures for how the public may petition the Board to adopt a rule in the Health Code.

The amendment is as follows:

Note – matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that Article 9 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as adopted on the twenty-ninth of June, nineteen hundred ninety-three, be and the same hereby is amended, to be printed together with Introductory Notes, to read as follows:

Introductory Notes:

This article [is new. It] was added on June 29, 1993 in accordance with §1043(f) of the New York City Charter (City Administrative Procedure Act). This provision provides that any person may petition an agency to consider the adoption of any rule. Section 1043(f) further requires that each agency prescribe by rule the procedure for submission, consideration and disposition of such petitions. This article was amended by resolution adopted on March 6, 2008 to eliminate unnecessary terms and update its provisions.

§9.01 Definitions.

(a) [“Person” shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

b] *Petition* shall mean a request or application for the [board] Board to add to, alter, amend or repeal a provision of the New York City Health Code [or to take other action in accordance with §1043 of the City Administrative Procedure Act (New York City Charter, Article 45)].

[c] (b) *Petitioner* shall mean the person who files a petition.

[d] (c) *Rule* shall have the same meaning set forth in §1041(5) of the New York City Charter[and shall mean generally any statement or communication of general applicability that (1) implements or applies law or policy or (2) prescribes the procedural requirements of an agency, including an amendment, suspension, or repeal of any such statement or communication].

§9.03 Scope.

This article shall govern the procedures by which the public may petition the Board [of Health] to commence rulemaking pursuant to §1043(f) of the [New York City] Charter.

§9.05 Procedures for submitting petitions; responses to petitions.

(a) Any person may petition the [board] Board to consider the adoption of a rule. The petition must contain the following information:

(1) The rule to be considered, with the proposed language for adoption;

(2) A statement of the [board’s] Board’s authority to promulgate the rule and its purpose;

(3) Petitioner's argument(s) in support of adoption of the rule;

(4) The period of time the rule should be in effect;

(5) Responses to any questions posed on a form approved by the [secretary] Secretary to the [board] Board for such petitions;

(6) The name, address and telephone number of the petitioner or his or her authorized representative;

(7) The signature of petitioner or his or her representative if the petition is submitted on paper or by facsimile.

(b) Any change in the information provided pursuant to §9.05(a)(6) shall be communicated promptly in writing to the office of the [secretary] Secretary to the [board] Board.

(c) All petitions should be typewritten, if possible, but handwritten petitions shall be accepted, provided they are legible.

(d) All petitions shall be delivered or mailed to the office of the [secretary] Secretary to the [board] Board. Petitions may also be submitted by facsimile, electronic mail or online over the internet.

(e) Upon receipt of a petition submitted in the proper form, the [secretary] Secretary to the [board] Board shall stamp the petition with the date it was received and shall assign the petition a number. The [secretary] Secretary will forward the petition to the [board] Board, the [commissioner] Commissioner and appropriate staff of the Department. [The commissioner is hereby delegated and authorized to grant or deny the petition pursuant to §1043(f) of the New York City Charter, as further provided in this article.]

(f) Within sixty days from the date the petition is received by the [secretary] Secretary, the [commissioner] Commissioner, as Chairperson of the Board, shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the intention to grant the petition and to initiate rulemaking on the subject matter by a specified date.

(1) In all cases where the [commissioner] Commissioner has granted a petition to initiate rulemaking, the actual petition shall be made part of the record before the [board] Board at the time that the rulemaking is initiated. In proceeding with such rulemaking, neither the [department] Department nor the [board] Board shall be bound by the language proposed by petitioner, but may amend or modify such proposed language at the [department's] Department's or [board's] Board's discretion. Neither shall the [board] Board be bound to enact the substance of a petition to initiate rulemaking which has been granted by the [commissioner] Commissioner.

(2) In cases where the [commissioner] Commissioner intends to deny a petition to initiate rulemaking, the petition, the proposed denial, and the reasons therefore, shall be expeditiously provided to the members of the [board] Board. Any member of the [board] Board may object to a denial of a petition and an objection made within ten (10) days of the [commissioner's] Commissioner's notice to the [board] Board of his or her intention to deny, shall cause the petition to be placed before the entire [board] Board for consideration as to whether such petition should be granted or denied.

(g) The [commissioner's] Commissioner's decision to grant, or deny a petition in the absence of the objection of any member of the [board] Board, or a decision by the [board] Board to grant or deny a petition, shall be a final decision which is not subject to judicial review pursuant to [New York City]Charter §1043(f).

(h) In the event the petition needs to be placed before the entire [board] Board pursuant to subsection (f) above and the sixty (60) day time period specified to decide a petition is about to expire, the [commissioner] Commissioner may deny the petition, provided that the petition shall thereupon be automatically renewed, or, upon the consent of the petitioner, the [commissioner] Commissioner may extend the time for consideration beyond the sixty (60) day period specified by §1043(f) of the [New York City] Charter.

§9.07 Public Notice

(a) This article shall be made available to members of the public [along] with the following information:

(1) [the] The procedures for submitting petitions for rulemaking including the location at which any necessary forms may be obtained, and

(2) [the] The name, business address, facsimile number, electronic mail address, online address and telephone number of the [secretary] Secretary to the [board] Board.

(b) The name, business address, facsimile number, electronic mail address, online address and telephone number of the [secretary] Secretary to the [board] Board, and the location at which any necessary form may be obtained shall be published in [The] the City Record. Notice of any change in the above information shall be published as soon as practicable in [The] the City Record. Such notice shall not constitute a rule as defined in the [New York City] Charter §1041(5).