

ARTICLE 9
PETITIONING THE BOARD OF HEALTH
TO COMMENCE RULEMAKING

§9.01 Definitions.

- (a) *Petition* shall mean a request or application for the Board to add to, alter, amend or repeal a provision of the New York City Health Code.
- (b) *Petitioner* shall mean the person who files a petition.
- (c) *Rule* shall have the meaning set forth in §1041(5) of the New York City Charter.

§9.03 Scope.

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

§9.05 Procedures for submitting petitions; responses to petitions.

- (a) Any person may petition the 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 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 to the 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 to the 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 to the 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 to the Board shall stamp the petition with the date it was received and will assign the petition a number. The Secretary will forward the petition to the Board, the Commissioner and appropriate staff of the Department.
- (f) Within sixty days from the date the petition is received by the Secretary, the 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 has granted a petition to initiate rulemaking, the actual petition shall be made part of the record before the Board at the time that the rulemaking is initiated. In proceeding with such rulemaking, neither the Department nor the Board shall be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Department's or Board's discretion. Neither

shall the Board be bound to enact the substance of a petition to initiate rulemaking which has been granted by the Commissioner.

- (2) In cases where the 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. Any member of the Board may object to a denial of a petition and an objection made within ten (10) days of the Commissioner's notice to the Board of his or her intention to deny, shall cause the petition to be placed before the entire Board for consideration as to whether such petition should be granted or denied.
- (g) The Commissioner's decision to grant, or deny a petition in the absence of the objection of any member of the Board, or a decision by the Board to grant or deny a petition, shall be a final decision which is not subject to judicial review pursuant to Charter §1043(f).
- (h) In the event the petition needs to be placed before the entire Board pursuant to subsection (f) above and the sixty (60) day time period specified to decide a petition is about to expire, the Commissioner may deny the petition, provided that the petition shall thereupon be automatically renewed, or, upon the consent of the petitioner, the Commissioner may extend the time for consideration beyond the sixty (60) day period specified by §1043(f) of the Charter.

§9.07 Public Notice.

- (a) This article shall be made available to members of the public with the following information:
 - (1) The procedures for submitting petitions for rulemaking including the location at which any necessary forms may be obtained, and
 - (2) The name, business address, facsimile number, electronic mail address, online address and telephone number of the Secretary to the Board.
- (b) The name, business address, facsimile number, electronic mail address, online address and telephone number of the Secretary to the Board, and the location at which any necessary form may be obtained shall be published in the City Record. Notice of any change in the above information shall be published as soon as practicable in the City Record. Such notice shall not constitute a rule as defined in the Charter §1041(5).