

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF INTENTION TO AMEND ARTICLE 151
OF THE NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of the Charter, notice is hereby given of intention to amend Article 151 (Pest Prevention and Management) of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON MONDAY, JANUARY 24, 2011 FROM 10:00 A.M. TO 12:00 NOON IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M., FRIDAY, JANUARY 21, 2011. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY MONDAY, JANUARY 10, 2011.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12 NOON. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ELECTRONICALLY (WITHOUT ATTACHMENTS) THROUGH www.nyc.gov/nycrules OR <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., MONDAY, JANUARY 24, 2011. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED. COMMENTS RECEIVED AFTER JANUARY 24, 2011 WILL BE CONSIDERED TO THE EXTENT POSSIBLE.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

STATUTORY AUTHORITY

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to §§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 (the “Department” or “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 the efficacy of the articles in protecting public health, the Board of Health repealed and recodified Article 151 (Pest Prevention and Management) of the Health Code by resolution adopted at its December 16, 2008 meeting.

One of the provisions of the recodified Article is §151.03 (Elimination of standing water), which authorizes the Department to issue orders to property owners to fill in or drain property or otherwise control the accumulation of standing water, which is a breeding area for mosquitos. This provision does not, however, impose a duty on the owners of such properties to maintain the property free of standing water, and thereby establish an explicit violation of this provision if conditions conducive to breeding of mosquitoes are observed. To clarify that there is an explicit duty of owners of such properties, the Department is requesting that the Board amend §151.03 by adding a new subdivision (a), preserving the current provision as subdivision (b). In addition, an explanatory note provides examples of places and things that promote conditions conducive to mosquito breeding and indicates that violations are usually written for these conditions during periods of the year when mosquitos breed.

Charter §1049-a (c)(2) provides that the Environmental Control Board (“ECB”) shall have concurrent jurisdiction with the Board of Health to “enforce those provisions of the health code ... which the board of health shall designate.” At its meeting in September, 2010, the Board of Health authorized the Department of Sanitation to enforce Article 151, in addition to the Department and the Departments of Housing Preservation and Development and Buildings. Notices of violations issued by the Departments of Sanitation and Buildings are adjudicated at the ECB, and the Department plans to bring the notices of violation it issues of Article 151 to ECB to reduce the numbers of notices of violation currently being heard at the Department’s Administrative Tribunal. The Department is therefore requesting that the Board further amend Article 151 to add a new §151.05 designating ECB to hear such violations and providing for the service of notices of violations of provisions of Article 151 returnable to ECB. If the Board approves this new section, the table of section headings would also require amendment.

Statement Pursuant to Charter §1043

This proposal was not included in the Department’s regulatory agenda because the need for the amendment became known after publication of the regulatory agenda.

The amendment is as follows:

Matter underlined is new.

Matter to be deleted is indicated by [brackets].

RESOLVED, that §151.03 of Article 151 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§151.03 Elimination of standing water.

(a) Persons in control of premises other than a wetland regulated by federal, state or local law shall keep such premises free of accumulations of standing water.

(b) Except for a wetland regulated by federal, state or local law, the Department may order the person(s) in control of any property including, but not limited to, a sunken lot, property below grade, excavation or any other place where [stagnant] standing water may collect, to fill in or drain such property or to employ other methods to prevent conditions conducive to the breeding or harborage of mosquitoes and other pests in a manner consistent with federal, state and local law.

Notes: §151.03 was amended by resolution of the Board of Health adopted on XXX, adding a new subdivision (a) imposing a duty on persons in control of property to maintain such property free of accumulations of standing, stagnant water, and relettering the existing provision as subdivision (b). Locations identified as having accumulations of standing water include, but are not limited to, discarded tires, clogged exterior drains and roof gutters, bird baths, garden accessories, potted plants, swimming and wading pools, pool covers with algae or other unusual vegetation. Violations for such conditions are generally issued during mosquito breeding seasons.

RESOLVED, that Article 151 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to add a new §151.05, to be printed together with explanatory notes to read as follows:

§151.05 Notices of violation.

(a) Designation of Environmental Control Board. In accordance with §1049-a (c)(2) of the Charter, a notice of violation ("NOV") citing a violation of any provision of this Article may be made returnable to the Environmental Control Board in addition to the Administrative Tribunal established pursuant to Article 7 of this Code.

(b) Service of a notice of violation. A notice of violation shall be served by delivery to an owner or other person in control of property or premises, upon a member of the partnership, limited liability company or other group, upon an officer, director or managing agent of a corporation, or upon any other person of suitable age and discretion owning or in control of such property. Service may be made to such person(s) at the address of the premises that is the subject of the NOV or at such person's last known residence or business address.

(1) By personal delivery in accordance with Article 3 of the New York Civil Practice Law and Rules or Article 3 of the Business Corporation Law; or

(2) By certified or registered mail delivered by the U.S. Postal Service or by any other type of mailing or delivery service that provides proof of mailing or receipt by the respondent. Documentation of delivery or receipt provided by the delivery or mailing service shall be proof of service of the notice of violation.

Notes: §151.05 was added by resolution adopted on XXX to designate the Environmental Control Board to hear notices of violation of Article 151, and to provide for service of such notices of violation.

RESOLVED, that the table of section headings of Article 151 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

ARTICLE 151

PEST PREVENTION AND MANAGEMENT

- §151.01** **Definitions**
- §151.02** **Prevention of pests and pest management measures.**
- §151.03** **Elimination of standing water.**
- §151.04** **Enforcement by the Department and other City agencies.**
- §151.05** **Notices of violation.**

Notes: Article 151 was amended by resolution on XXX, adding a new §151.05 designating the Environmental Control Board to hear notices of violation of Article 151, and to provide for service of such notices of violation.