

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
COMMISSIONER OF HEALTH AND MENTAL HYGIENE**

**NOTICE OF ADOPTION OF A NEW CHAPTER 29
("ANIMAL POPULATION CONTROL PROGRAM")
IN TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

In compliance with §§1043(a) and 389 (b) of the New York City Charter, a notice of public hearing and notice of intent to add a new Chapter 29 ("Animal Population Control Program") to Title 24 of the Rules of the City of New York was published in the City Record on December 29, 2010, and a public hearing was held February 3, 2011. One person testified at the hearing and submitted a written comment, and two other persons submitted written comments. The proposed rule was modified in response to one of the comments.

Statutory Authority

This rule is promulgated pursuant to §§389(b) and 1043(a) of the New York City Charter (the "Charter"). Charter §389(b) provides that "heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law." Charter §1043(a) similarly provides that each "agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law." Sections 17-811 and 812, added to Title 17 of the Administrative Code of the City of New York ("Administrative Code") by the State legislature in Chapter 59 of the Laws of New York 2010, provide that the "commissioner may promulgate any rules necessary for implementing and carrying out the provisions of this section prior to its effective date."

Statement of Basis and Purpose

On June 22, 2010, the Governor signed into law Chapter 59 of the Laws of 2010 amending Title 17 of the Administrative Code. The law added new §§17-811 and 17-812, establishing an animal population control program in New York City. Section 17-811, effective January 1, 2011, provides that the Department shall "promulgate rules and regulations to establish and implement an animal population control program within one hundred and eighty days from the effective date of this section." *See, e.g.* §27 of Chapter 59 of the Laws of 2010. The purpose of the Administrative Code provisions and these rules is "to reduce the population of unwanted stray and dogs and cats thereby reducing potential threats to public health and safety and reducing the cost of caring for these animals." The new law indicates that such purpose shall be accomplished by encouraging City residents who own dogs and cats to have the animals spayed and neutered by providing no cost or low cost spaying and neutering services. The Department is authorized to create clinics or mobile units, and establish criteria for owner eligibility for such services that are "acceptable by the agencies performing the services." The funds for this effort are those unspent moneys paid by the City to and accumulated in the State Animal Population Control Fund (State Fund), which was previously established by Chapter 473 of the Laws of 1995. The State Fund, implemented in accordance with §117-A of the Agriculture and Markets Law and amendments to Chapter 115 of the Laws of 1894 (the New York City dog license law), required that owners of dogs that were not spayed or neutered pay an additional amount of \$3.00 when obtaining an annual dog license. Chapter 59 authorizes the City Council or Board of Health to increase this amount, and authorizes the Department to solicit additional funds from public or private sources to supplement the unspent moneys in the State Fund to promote free or low cost spay/neuter. Local Law 9, signed into law by the Mayor on February 1, 2011, added a new §17-813 to the City Administrative Code, adding \$25.50 to the cost for licensing an unaltered dog.

This rule specifies how the Department will implement this law. Because the Department believes that pet owner education is one of the most important ways to encourage such owners to take advantage of low cost spay/neuter services, the rules authorize the expenditure of funds for outreach and education to pet owners promoting the value of having their pets spayed/neutered, licensed, properly treated and vaccinated, and showing other indicia of responsible pet ownership. One commenter objected to the use of these funds for any purpose other than direct spay neuter services. The Department agrees that provision of direct services is a priority, and has amended the rule accordingly. However, a provision authorizing use of funds for public education has been maintained, since without adequate public information about the value and availability of these services, the public will not take advantage of them.

The new rule authorizes the Department to fund direct services provided by animal protective and shelter agencies, through contracts with organizations such as the American Society for the Prevention of Cruelty to Animals (ASPCA) and the City's current animal control contractor, Animal Care and Control (AC&C). If additional funds become available, the rules authorize the Department to broaden the list of recipients of funds to pet owners receiving spay/neuter services from private veterinarians. The proposed rule indicates that the Department will fund free or low cost spay/neuter services provided to owners who show certain kinds of documents as proof of the owners' eligibility for such services.

Another commenter expressed support for the proposed rule, and suggested that the rule allow for animal sterilization by other than surgical means. The Department agrees with this comment and has amended the definition of sterilization to recognize that non-surgical services, such as US Department of Agriculture or FDA-approved non-surgical sterilization, will be supported by the new fund. A third commenter suggested that these funds also be directed to investigate illegal dog-fighting activities. While the Department agrees that this would be a worthwhile activity, the Department does not have the authority to enforce State humane law provisions that prohibit dog fighting, and does not consider such enforcement to be an activity the animal population control fund may appropriately support.

Statement Pursuant to Charter Section 1042 - Regulatory Agenda

The rule was not included in the Department's Regulatory Agenda because the law that necessitated this rule was not enacted until after the Regulatory Agenda was promulgated. The proposal is as follows.

Matter underlined is new.

Section 1. Title 24 of the Rules of the City of New York is hereby amended by adding a new Chapter 29 (ANIMAL POPULATION CONTROL PROGRAM) to read as follows:

CHAPTER 29

ANIMAL POPULATION CONTROL PROGRAM

§29-01 Authority to establish a program and expend funds.

§29-02 Definitions.

§29-03 Eligibility requirements.

§29-01 Authority to establish a program and expend funds. In accordance with this Chapter, the Department is authorized to expend funds maintained in the Animal Population Control Fund established pursuant to §§17-811 and 17-812 of the Administrative Code of the City of New York, to the extent such

funds are available, by subsidizing provision of free or low cost spay and neuter services directly to owners of cats and dogs who would otherwise be unable to pay for such services, and by establishing and supporting programs for the education of owners of dogs and cats regarding the benefits of having their dogs and cats spayed or neutered.

§29-02 Definitions. When used in this Chapter, the following terms shall have the following meanings.

Animal shelter or *shelter for homeless animals* means a not-for-profit facility holding a permit in accordance with §161.09 of the New York City Health Code (Health Code), or successor provision, where homeless, lost, stray, abandoned, seized, surrendered or unwanted animals are received, harbored, maintained and made available for adoption to the general public, redemption by their owners or other lawful disposition, and which is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other organization devoted to the welfare, protection or humane treatment of animals.

Cat means a domesticated animal of the species *Felis catus* kept as a pet, but does not mean any animal that is a hybrid or cross-breed of such species whose possession is prohibited in New York City pursuant to §161.01 of the Health Code, or successor provision.

Dog means a domesticated animal of the species *Canis familiaris* kept as a pet, but does not mean any other animal that is a hybrid or cross-breed of such species whose possession is prohibited in New York City pursuant to §161.01 of the Health Code or successor provision.

Owner shall mean any individual who resides in the City of New York who possesses, harbors or cares for one or more dogs or cats.

Spay/neuter services shall mean services provided by a veterinarian licensed to practice veterinary medicine in the State of New York to alter dogs and cats by surgical methods, or by other methods approved by the US Food and Drug Administration or US Department of Agriculture and acceptable to the Department, to prevent such animals from reproducing, and shall include all accessory or supportive veterinary services deemed necessary by the veterinarian, including, but not limited to, rabies and other vaccinations, and an assessment of the general health of the animal receiving such service.

§29-03 Eligibility requirements.

(a) *Service providers.* The Department may enter into contracts with or award grants or otherwise reimburse for spay and neuter services New York City animal shelters or animal protective associations, and to the extent that funds are or become available, to private veterinarians practicing in New York City, for the purpose of providing free or low cost spay/neuter services. Service providers receiving such contracts or grants shall provide free or low cost spay/neuter services to eligible persons, including, but not limited to, persons receiving Medicaid or other government subsidized health insurance, Medicare, Social Security, Social Security Disability, other disability benefits, food stamps, public assistance;

seniors and disabled persons holding reduced fare MetroCards; and residents of public housing or recipients of Section 8 or successor federal housing program subsidies or vouchers.

(b) Owners. To receive spay/neuter services for their dogs or cats, owners of animals shall be residents of New York City, and shall submit proof to the provider of spay/neuter services to demonstrate the owners' eligibility for free or low cost spay/neuter services. Such proof may include, but shall not be limited to originals or copies of documents showing that the owner is a recipient or beneficiary of a program providing a subsidy or benefit listed in subdivision (a) of this section. An owner with a complaint about services provided or denied pursuant to a contract authorized by this Chapter may contact the Department via 311.

§2. The list of Chapter headings in Title 24 of the Rules of the City of New York is amended to read as follows:

TITLE 24

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

**CHAPTER 1 POSTING REGULATIONS FOR VENDORS OF ALCOHOLIC
 BEVERAGES**

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**CHAPTER 28 RESTRICTION ON THE SALE OF CERTAIN FLAVORED
 TOBACCO PRODUCTS**

CHAPTER 29 ANIMAL POPULATION CONTROL FUND