

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to comment on proposed amendment of Section 205.19(a)(1) and (2) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, pertaining to the removal of human remains from place of death or termination of pregnancy.

**Contact:** Rena Bryant  
(347) 396-6071  
New York City Department of Health and Mental Hygiene  
2 Gotham Center, 14<sup>th</sup> Floor, Room 14-44  
42-09 28<sup>th</sup> Street  
Long Island City, NY 11101-4132

### **Proposed Rule**

The Department of Health and Mental Hygiene is proposing that the Board of Health amend Section 205.19 of the Health Code to correct an inadvertent error made at the time the provisions were presented for adoption in September 2009. The proposed amendment would replace the word “a” with the word “the.”

There will be no public hearing on this proposal to amend Health Code §205.19(a)(1) and (2) since the amendment is to correct an inadvertent error made at the time this section was drafted for adoption in September 2009. The proposed language reads as the provision appeared when the section was proposed for amendment in June 2009 and for which there was a public hearing. Therefore, a hearing on this proposed amendment would serve no public purpose.

The proposal was not included in the Department’s Regulatory Agenda because the Department was not aware of the need for the amendment when the Regulatory Agenda was published.

### **Instructions**

- You may submit written comments about the proposed amendment by mail to:

New York City Department of Health and Mental Hygiene  
Board of Health  
Office of the Secretary to the Board  
Attention: Rena Bryant  
2 Gotham Center, 14<sup>th</sup> Floor, Room 14-15, Box 31  
Long Island City, NY 11101-4132

Written comments may also be sent electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) or by email to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov) or online

(without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on October 25, 2011.

- Copies of written comments will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at:

New York City Department of Health and Mental Hygiene  
Board of Health  
Office of the Secretary to the Board  
Attention: Rena Bryant  
2 Gotham Center, 14<sup>th</sup> Floor, Room 14-05, CN 30  
Long Island City, NY 11101-4132

### **Statement of Basis and Purpose**

#### *Statutory Authority*

These amendments to the New York City Health Code (the “Health Code”) are proposed in accordance with §§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”) with authority 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 over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

#### *Basis and purpose of the rule change*

The Department of Health and Mental Hygiene is requesting that the Board of Health amend Article 205 (Deaths and Disposals of Human Remains), correcting an inadvertent error made in section 205.19(a)(1) and (2) when Article 205 was presented to the Board of Health for adoption at its September 2009 meeting.

Section 205.19 addresses the removal of human remains from place of death or termination of pregnancy. In its **Notice of Intention** the relevant excerpt of Section 205.19(a)(1) read as follows: “Prior authorization of the Department shall not be required to remove human remains to a county in **the** State contiguous to the City...When a death or termination of pregnancy occurs under circumstances which do not require notification to the Office of Chief Medical Examiner, the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within **the** State contiguous to the City...” (emphasis added). Similarly, Section 205.19(a)(2) read as follows: “Notwithstanding the requirements of paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of **the** State contiguous

to the City...” (emphasis added). In the **Notice of Adoption** presented to the Board of Health the word “**the**” was inadvertently replaced with “**a,**” in both paragraphs and therefore changed the intent of the Department.

Accordingly, the Department requests the Board to amend Article 205, section 205.19, subdivisions (a)(1) and (2).

The resolution is as follows:

Matter in brackets [ ] is to be deleted.

Matter underlined is new.

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**RESOLVED**, that §205.19 and subdivisions (a)(1) and (2) of §205.19 of Article 205 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on September 22, 2009, be and the same hereby are amended, to be printed together with explanatory notes, to read as follows:

## **ARTICLE 205**

### **DEATHS AND DISPOSALS OF HUMAN REMAINS**

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#### **§205.19 Removal of human remains from place of death or termination of pregnancy.**

(a) (1) Except as specified in this section, no person shall remove human remains from the place of death or termination of pregnancy unless a certificate of death or termination of pregnancy and a confidential medical report, if any, have been filed electronically with the Department by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, or unless such documents have been delivered to a funeral director, undertaker or to the person in charge of the City mortuary pursuant to §205.03 or §203.03, or unless a burial, cremation, interim or transportation permit has been issued pursuant to §205.21. Prior authorization of the Department shall not be required to remove human remains to a county in [a] the State contiguous to the City. However, an appropriate permit shall be obtained prior to burial or cremation of human remains, temporary holding of remains pursuant to subdivision (b) of §205.13, or transportation to any other area, as required pursuant to this Article. When a death or termination of pregnancy occurs under circumstances which do not require notification to the Office of Chief Medical Examiner, the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within [a] the State contiguous to the City by a licensed funeral director or undertaker if such person has in his or her

possession a certificate of death or termination of pregnancy including any confidential medical report, or if such certificate and confidential medical report, if any, have been filed electronically with the Department by the person required to report the death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03. If, however, the death or termination of pregnancy is required to be reported to the Department by the Office of Chief Medical Examiner pursuant to §205.03(a)(3) or §203.03(a)(4), the remains may be removed from the place of death, termination of pregnancy or autopsy by the funeral director or undertaker if either he or she has received a completed death or termination of pregnancy certificate from the medical examiner who had taken charge of the remains, or if a death or termination of pregnancy certificate has been electronically filed by the Office of Chief Medical Examiner.

(a)(2) Notwithstanding the requirements of paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of [a] the State contiguous to the City if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the Office of Chief Medical Examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate pursuant to paragraph (2) of subdivision (a) of §205.03, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death.

**Notes:** Subsections (a)(1) and (2) of §205.19 were amended to correct an inadvertent error made at the time the provisions were presented for adoption in September 2009. The proposed amendment would replace the word “a” with the word “the,” as the provisions read when it was proposed in June 2009.

**NEW YORK CITY LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-788-1087**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Amendment of Health Code Article 205 (Transfer of Human Remains)**

**REFERENCE NUMBER: 2011 RG 082**

**RULEMAKING AGENCY: Department of Health and Mental Hygiene**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
2011  
Acting Corporation Counsel

Date: September 6,

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1526**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Health Code Article 205 (Transfer of Human Remains)**

**REFERENCE NUMBER: DOHMH-9**

**RULEMAKING AGENCY: Department of Health and Mental Hygiene**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi  
Mayor's Office of Operations

9/8/2011  
Date