



**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**BOARD OF HEALTH**

**NOTICE OF ADOPTION  
OF AMENDMENTS TO ARTICLE 5  
OF THE NEW YORK CITY HEALTH CODE**

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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 5 of the New York City Health Code (the “Health Code”) was published in the City Record on April 22, 2013 and a public hearing was held on May 23, 2013. No testimony was given, one written comment was received, and no changes have been made to the resolution. At its meeting on June 28, 2013, the Board of Health adopted the following resolution.

**STATEMENT OF BASIS AND PURPOSE**

*Statutory authority*

These amendments to the New York City Health Code (the “Health Code”) are made 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 the authority to regulate all matters affecting health in the City of New York. Sections 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 changes*

1. Adding a new §5.04 re: operation without a permit.

The Board is amending Article 5 of the Health Code to add a new §5.04, authorizing the Department to padlock and seal premises where businesses are operating without required permits. The term permit, as defined in §5.03(b) of the Health Code, includes licenses and registrations.

Several times a year, the Department identifies businesses operating without the permits required by the Health Code. These businesses include swimming pools and spas, pet shops, food service establishments, animal shelters, animal grooming and kennel facilities and commercial stables. The Department regards such businesses, which are unregulated and uninspected, as nuisances, inherently dangerous to life or health. The definition of a nuisance and the Department’s authority to order the abatement of a nuisance derive from New York City Administrative Code (“Administrative Code”) §17-142 *et seq.*

Currently, if the Department identifies an unpermitted business and determines that the operators of the business are unwilling to obtain the necessary permit, it orders the operators of the business to cease and desist operation. The Department also orders the owners of the building in which the business is located to take whatever measures may be necessary to prohibit the operation of the unpermitted business on their property. If the business continues to operate without obtaining a necessary permit, the

Department schedules a hearing at the City Office of Administrative Trials and Hearings (OATH) Tribunal, where the business operator and property owner may show cause why the Department should not padlock and seal the premises, pursuant to the Department's nuisance abatement authority under Administrative Code §17-145.

The amendment to Article 5 codifies this practice in the Health Code, providing notice to businesses of the likely consequences of operating without necessary permits or in violation of orders to cease and desist from operation, and enables the Department to continue acting expeditiously to protect public health. This remedy will be utilized only when the Department has conducted a thorough investigation and has exhausted less stringent measures to obtain compliance with permitting or other Health Code requirements, such as meetings, telephone calls or correspondence with the operator of an unpermitted business or the property owner.

## 2. Amending §5.05(d) re: requiring e-mail addresses for non-emergency communications.

Health Code §5.05(c) requires a permit application to contain all information required by the Department. In December 2011, as part of an extensive revision of Article 5 ("General Permit Provisions") of the Health Code, §5.05(d) was amended to require permit applicants to provide in their applications for new and renewal permits an "[e]-mail address and other information to enable the Department to contact the permitted entity in an emergency."

This addition was made in response to a comment received from the New York State Restaurant Association on earlier revisions to Article 81 ("Food Preparation and Food Establishments") of the Health Code that stated:

We suggest that the Department develop a system to collect the email addresses of DOH permit holders, FSE owners and their agents. This system could be used [as] a vehicle for the DOH to disseminate important information regarding permit renewals, changes to the Health Code, public hearings and other important information.

The Department agrees with the New York State Restaurant Association that all permittees would benefit from e-mail notifications and should be required to provide e-mail addresses. Thus, Health Code §5.05(d) is being broadened to allow the Department to collect and use e-mail addresses from all permittees to send them information about non-emergency matters, such as newsletters generally promoting food and environmental safety, proposed Health Code changes, and other issues of educational and technical interest to permittees in the many areas regulated by the Department. As required under applicable laws, the Department will continue to mail and personally serve letters denying issuance of new permits, Commissioner's orders, notices of violation, and permit or license renewal applications; and will continue to publish proposed amendments to the Health Code.

E-mail is a medium that provides for the immediate and timely, but also cost-efficient, communication of educational materials, information on rule changes, and other important notices. Electronic communication conserves increasingly limited staff resources and saves considerable amounts of money in mailing and reproduction costs. Such communication aids the Department in protecting and promoting the health of all New Yorkers, and helps it foster productive working relationships with regulated businesses.

The Department's Bureau of Child Care already uses electronic communication to notify permittees of proposed Health Code amendments as well as changes in policies, reporting requirements, and other information affecting a permittee's operation of a child care service. The Bureau has required applicants for new and renewal child care service permits to provide "proof of the service's ability to

receive electronic communications” since September 2009, when the Board amended Article 47 of the Health Code. Health Code §§ 47.09(a) and (c) require e-mail addresses for the child care service’s education director and for one or more other persons designated by the service permittee to receive electronic communications from the Department.

Finally, the Department does not expect this change to overly burden permittees and applicants for new permits. During the week of January 7, 2013, the Department surveyed applicants at the Citywide Licensing Center for Department restaurant permits and found that 57 of the 65 surveyed persons had an e-mail address; and that 49 had used both computers and mobile phones (n=39) to access e-mail for business communications during the past five days, or used either computers (n=5) or a mobile phone (n=1) for the same purpose. Although several persons said they had no interest in obtaining an e-mail address, others said that they could obtain one if they needed it, knew that they would be able to set up a free e-mail account with an internet service provider, and could access their e-mail through family or friends or at nearby public libraries if they were required to have an e-mail address.

Accordingly, the Board is amending §5.05(d) of the Health Code to clarify that communication other than emergency messages may be conveyed by e-mail to permitted entities.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the text below, unless otherwise specified or unless the context clearly indicates otherwise.

The resolution is as follows:

Matter to be deleted is in brackets [ ]

New matter is underlined

RESOLVED, that Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to add a new §5.04 to be printed together with explanatory notes as follows:

**§5.04 Operating without a permit; sanctions.**

(a) Operation without a permit deemed a nuisance. Operating a business or conducting an activity regulated by the Health Code (“Code”) without the permit required by the Code is hereby declared a nuisance.

(1) No person may operate a business or conduct an activity regulated by the Code without the permit required by the Code.

(2) No person may allow the operation of a business or conducting of an activity regulated by the Code in any property owned by such person unless the person operating such business or conducting such activity has a permit required by the Code.

(b) Order to cease and desist. When the Department determines that a business or activity regulated by the Code is being operated or conducted without the permit required by the Code, the Commissioner or designee may order the person operating the business or conducting the activity to cease and desist from

such business or activity. The Department may also order the person who owns the premises in which the business is operated or activity is conducted to take whatever action may be necessary to prohibit such business or activity from continuing on such premises.

(c) Sealing and padlocking. If the business or activity ordered to cease and desist continues without the required permit, the Commissioner or designee may, after providing a hearing at the City Office of Administrative Trials and Hearings (OATH) for the person operating such business or conducting such activity and the owner of the premises, take any measure authorized by the Code or other applicable law to enforce an order to cease and desist. Such measures may include, but are not limited to, ordering and arranging for the premises to be sealed and padlocked.

Notes: §5.04 was added to Article 5 by resolution adopted by the Board of Health on June 28, 2013 to provide notice to persons operating a business or conducting an activity without a permit required by the Code, that such business or activity is deemed a nuisance and is subject to padlocking and sealing if the operators do not cease and desist from such business or activity.

RESOLVED, that §5.05 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

**§5.05 Applications.**

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(d) *Application contents.* [The] In addition to the following information, the application shall be accompanied by such other information, evidence or documentation as the Department may require or as may be provided for in this Code or other applicable law enforced by the Department[, including but not limited to the following]. The application shall, at a minimum, include:

(1) The name, age, gender, residence and business address, and telephone numbers of the permittee, each member of partnership, limited liability company or group, and each officer of the corporation, as applicable.

(2) The ability of the permittee, or of its individual members or officers, to read and write English.

(3) To the extent that such information is relevant to the conduct of the business, trade, occupation or other activity under permit, information concerning the permittee, its individual members or officers, relating to education, training or experience, moral character, physical health, addiction to alcohol or habit-forming drugs, history of prior criminal conviction, including violations and offenses, history of mental illness, and record of insolvency or bankruptcy.

(4) Proof of current Workers' Compensation and Disability Benefits insurance coverage for all employees, or of a certificate of exemption filed with the Workers' Compensation Board.

