



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Title 24 of the Rules of the City of New York

What are we proposing? The Department of Health and Mental Hygiene (the “Department”) is proposing to add a new Chapter 32 (Dogs in Outdoor Dining Areas) to Title 24 of the Rules of the City of New York. A new §1352-e of the New York State Public Health Law (“PHL”) authorizes operators of food service establishments to allow companion or pet dogs to accompany patrons in certain outdoor dining areas of food service establishments subject to control measures approved by a locality’s “enforcement agency.”

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place at 10AM to 12PM on January 26, 2016. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, 8th Floor, Room 8-25
Long Island City, NY 11101-4132

How do I comment on the proposal? Anyone can comment on the proposal by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Office of General Counsel
42-09 28th Street, 14th Floor, CN31
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the New York City Department of Health and Mental Hygiene at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposal at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on January 26, 2016. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before January 26, 2016 at 5:00 p.m.

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by January 12, 2016.

Can I review the comments made on the proposed amendments? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

Where can I find the Department's rules? The rules of the Department of Health and Mental Hygiene can be found in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? This notice is made according to the requirements of City Charter §1043. This proposed rule was not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Statement of Basis and Purpose

Statutory Authority

This amendment to Title 24 of the Rules of the City of New York ("RCNY") is promulgated pursuant to sections 556 and 1043 of the New York City Charter ("the Charter"). Section 556 of the Charter broadly authorizes the Department of Health and Mental Hygiene ("the Department") to regulate all matters pertaining to the health of the City, including the City's food supply. Section 1043 grants the Department rule-making authority.

Background

A new §1352-e of the New York State Public Health Law ("PHL") authorizes operators of food service establishments to allow companion or pet dogs to accompany owner-patrons in certain outdoor dining areas of their establishments, subject to control measures approved by a locality's enforcement agency.

In the City of New York ("the City"), the Department is such enforcement agency, and the Commissioner of the Department is the "permit issuing official" designated in the New York State Sanitary Code (10 NYCRR Chapter 1) to enforce provisions of the Sanitary Code applicable to the operation of food service establishments. Food service establishments in the City are also subject to provisions of the New York City Health Code, Chapter 23 (Title 24 of the RCNY) and various provisions of the New York City Administrative Code and the State Public Health Law. The Department's Division of Environmental Health enforces the provisions of the Administrative, Sanitary and Health Codes and Department rules applicable to food service establishments.

PHL §1352-e overrides New York City Health Code §81.25 and New York State Sanitary Code §14-1.183, which together prohibit any live animals other than service animals and food fish in tanks in such establishments. PHL §1352-e authorizes the owners and operators of food service establishments to decide whether to allow dogs other than service animals in their establishments provided that the "owner ensures compliance with local ordinances related to sidewalks, public nuisance and sanitation; and ... such other control measures approved by the enforcement agency are complied with." These proposed amendments to the Department's rules would constitute the "control measures approved by the enforcement agency."

Proposed Rule

These control measures are necessary to safeguard public health and safety. The proposed rule amends Title 24 of the Rules of the City of New York ("RCNY") to:

- Define terms used in the Chapter in accordance with definitions used in the New York City Health Code and other applicable law;
- Authorize owners of food service establishments to continue to prohibit dogs;
- Require certain policies to be established if owners allow dogs in their establishments, such as only licensed and currently vaccinated dogs may enter establishments;
- Require signage as to whether dogs are being allowed;
- Specify how sanitary conditions are to be maintained and require fencing; and
- Provide that any violation of this Chapter will be cited as a violation of and bear the same penalties as a violation of §81.25 of the Health Code.

The proposed rule is as follows.

New text is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably.

Section 1. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 32 to read as follows:

CHAPTER 32
DOGS IN OUTDOOR DINING AREAS

§32-01 Definitions.

§32-02 Permittee policies and procedures; required control measures.

§32-03 Signage.

§32-04 Physical facilities and sanitation.

§32-05 Penalties.

§32-01 Definitions. When used in this Chapter, the following terms have the following meanings:

(a) *Animal nuisance.* Animal nuisances include, but are not limited to, animal feces, urine, blood, body parts, carcasses, vomitus and pervasive odors; animals carrying, or ill with, diseases communicable to persons or other animals; and dangerous dogs.

(b) *Food* has the same meaning as in Article 71 of the New York City Health Code (Health Code).

(c) *Food service establishment* means (i) an establishment with outdoor dining areas that is permitted by the Department pursuant to Health Code §81.05 or (ii) a retail food establishment or market with outdoor dining area(s) selling food directly to patrons for on premises consumption that is licensed by the Commissioner of the State Department of Agriculture and Markets.

(d) Licensed means that the dog's owner has obtained the dog license required by Chapter 115 of the Laws of 1894, as amended, or that the owner, if not a resident of New York City, has obtained a license to own or harbor the dog as required by the laws of the jurisdiction in which the owner resides.

(e) Outdoor dining area means an area operated and controlled by a food service establishment that is located outdoors and is used by patrons of the establishment to dine. Such areas include, but are not limited to, (i) a licensed unenclosed sidewalk café as defined in the §20-223(c) of the Administrative Code of the City of New York (Administrative Code) or successor provision, and (ii) an outdoor dining area not located on a sidewalk that is accessed directly from the street or through a passage of the establishment, if such passage is completely separated from any dining, food preparation or food, equipment or utensil storage areas of the establishment. An enclosed sidewalk café, as defined in §20-223(b) of the Administrative Code, is not an outdoor dining area.

(f) Permittee means (i) the person or entity holding a permit issued pursuant to §81.05 of the Health Code to operate a food service establishment that has a designated outdoor dining area, or (ii) the owner or operator of a retail food establishment holding a permit or license issued by the Commissioner of the New York Department of Agriculture and Markets if such retail establishment serves food for immediate consumption at an outdoor dining area.

(g) Under control of the dog's owner means that the dog is on the floor of the outdoor dining area, within arm's length reach of the owner; and is (i) on a leash securely held by the owner, (ii) a leash tied to a table or chair leg, or (iii) in a crate.

§32-02 Permittee policies and procedures; required control measures.

(a) Permittee's discretion. A permittee may choose to allow dogs that are not service dogs to accompany their owners in the outdoor dining areas of the permittee's establishment, in accordance with §1352-e of the New York Public Health Law and this Chapter. A permittee is not obligated to allow dogs, other than service dogs, to be in outdoor dining areas of an establishment and nothing in these rules shall give a dog owner the right to bring a dog into any establishment where dogs are prohibited by the owner or this Chapter.

(b) Required control measures. Permittees who choose to allow dogs other than service dogs to be with their owners in outdoor dining areas must comply with this Chapter, and may impose any restrictions or additional control measures that they deem necessary for controlling dogs in their outdoor dining areas.

(1) Removal of dogs. The permittee must request that a dog owner remove from the establishment any dog that menaces, threatens or bites any person or other dog. The permittee shall not serve a dog owner who refuses to comply with a request to remove such a dog.

(2) Dogs to be licensed and vaccinated. A dog must be licensed and have a rabies vaccination to be with its owner in an outdoor dining area. Permittees must check to see that dogs are wearing a collar with a license tag.

(3) Injury reports. A permittee must report to the Department any bite or other injury to a person caused by a dog within 24 hours of the injury. The report must be submitted to “311” by telephone or electronically. The report must include the name, address and phone number of the dog’s owner, the dog’s license number, and the name, address and phone number of the person bitten. Permittees must call “911” immediately following an injury to a person when the owner of a dog that bites or causes other injury refuses to provide his or her contact information.

(4) Access limited to outdoor dining areas. Dogs other than service dogs are not allowed in any area of a food service establishment that is not an outdoor dining area as defined in §32-01 of this Chapter.

(5) Aisle space. Dogs may not obstruct the 36-inch aisle space between tables in unenclosed sidewalk cafés, as required by 10 RCNY § 2-55(a), or successor provision.

§32-03 Signage.

A permittee who allows dogs that are not service dogs to accompany their owners in outdoor dining areas must post the following sign at or near the entrance to the food service establishment:

Companion dogs are only allowed in certain outdoor dining area(s) of this establishment.

Only service dogs are allowed in other parts of this establishment.

Your companion dog must be licensed and currently vaccinated against rabies to remain in the outdoor dining area with you.

You are responsible for controlling your dog at all times.

§32-04 Physical facilities and sanitation.

(a) Facilities to be clean, sanitary. In accordance with Article 81 of the Health Code, the Agriculture and Markets Law and rules of the Commissioner of the State Department of Agriculture and Markets, permittees must maintain outdoor dining areas in a clean and sanitary condition at all times. Dogs must not be allowed to touch any dining table surfaces.

(b) Animal nuisances to be removed immediately. Animal nuisances, including, but not limited to, feces, urine, blood, or vomitus, must be removed immediately by establishment employees who do not also prepare or serve food. Areas contaminated with such nuisances must be cleaned and sanitized immediately upon the removal of the nuisance. Animal nuisances must be disposed of in accordance with applicable law.

(c) *Barriers.* If an outdoor dining area where dogs are permitted to be abuts a sidewalk, there must be a barrier between that area and the sidewalk that prevents dogs in the outdoor dining area from having contact with persons or animals on the sidewalk.

§32-05 Penalties.

Violations of this Chapter shall be cited and shall have the same penalties imposed as other violations of §81.25 of the Health Code, or successor provision, listed in Appendix 23-C of Chapter 23 of this title.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

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

RULE TITLE: Presence of Dogs in Restaurants

REFERENCE NUMBER: DOHMH-61

RULEMAKING AGENCY: DOHMH

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/ [Stephen Narloch]
Mayor's Office of Operations

[11/10/2015]
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Presence of Dogs in Restaurants

REFERENCE NUMBER: 2015 RG 128

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
Acting Corporation Counsel

Date: November 10, 2015