



DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

Notice of Adoption of Amendments to Articles 139, 153 and 181 of the New York City Health Code

In compliance with §1043(b) of the New York City Charter (“Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Articles 139, 153 and 181 of the New York City Health Code (“Health Code”) was published in the City Record on June 15, 2016 and a public hearing was held on July 20, 2016. No one testified and no comments were received. At its meeting on September 13, 2016 the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Background

The Board of Health is repealing as redundant, no longer needed, or no longer enforced, the following provisions of the New York City Health Code (“Health Code”): sections 139.05 (*Littering prohibited*) and 139.07 (*Smoking prohibited*) of Article 139; sections 153.01 (*Littering prohibited*) of Article 153; and section 181.03 (*Spitting prohibited*) of Article 181, all of Title 24 of the Rules of the City of New York.

Repeal sections 139.05 (Littering prohibited) and 153.01 (Littering prohibited)

Section 139.05 of the Health Code prohibits littering or the creation of an unsanitary condition in or on a public transportation facility. The New York City Administrative Code (“Administrative Code”) prohibits littering in the City generally. Specifically, Administrative Code § 16-118(1) prohibits littering in public spaces. Originally, when promulgated in 1991, Health Code § 139.05 was intended to encompass littering in “any public transportation facility which may not be a ‘public place’ within the meaning of the local law” to distinguish it from the more general Administrative Code § 16-118(1). However, Health Code § 139.05 is redundant as it is duplicative of Administrative Code § 16-118(1) inasmuch as a public transportation facility can be considered a “public space” within the meaning of Administrative Code § 16-118(1).

Similarly, Health Code § 153.01 prohibiting littering by a person or an employee is duplicative of Administrative Code § 16-118(1) which also prohibits littering by persons or their employees “upon any street or public place, vacant lot, air shaft, areaway, backyard court or alley.”

Repeal section 139.07 (Smoking prohibited)

Health Code § 139.07(a) prohibiting smoking or the carrying of “an open flame or a lighted match, cigar, cigarette or pipe in or on a public transportation facility” is duplicative of Administrative Code § 17-503 of the City’s Smoke-Free Air Act which prohibits smoking in public transportation facilities. In addition, New York City Fire Code (“Fire Code”) § 308(3) makes it unlawful to “place or discard, or cause to be placed or discarded, an open flame, lighted match...where it can cause the ignition of combustible material or combustible waste...” The plain meaning of Fire Code § 308(3) would cover public transportation facilities.

Similarly, Health Code § 139.07(b) allowing owners or persons in charge of public transportation facilities to designate areas where smoking is permitted is not necessary as Administrative Code § 17-503 and the New York State Public Health Law § 1399-o prohibit smoking in all areas of public transportation facilities.

Repeal section 181.03 (Spitting prohibited)

Health Code § 181.03(a) and (b) prohibiting spitting in common public areas or in any public transportation facility and requiring the posting of signs prohibiting spitting at public transportation facilities is no longer enforced and no longer needed as there are rules prohibiting spitting in public transportation facilities and conveyances servicing the city such as Metropolitan Transportation Authority conveyances and facilities (21 NYCRR § 1050.7(a)), Staten Island Rapid Transportation Authority facilities (21 NYCRR § 1040.7(a)), Metro-North facilities and trains (21 NYCRR § 1085.7(a)), and Long Island Railroad terminals, stations, and trains (21 NYCRR § 1097.7(a)). In addition, it is expected that the City Council will amend Administrative Code § 16-118 to prohibit spitting in common areas of private and public buildings and in public transportation facilities.

Statutory Authority

These amendments to the Health Code are promulgated pursuant to Sections 558 and 1043 of the New York City Charter (“the Charter”). Section 558 of the Charter empowers the Board of Health (“the Board”) to amend the Health Code and to include in the Health Code all matters to which the authority of the New York City Department of Health and Mental Hygiene (“the Department”) extends. Section 1043 grants the Department rulemaking authority.

The amendments are as follows:

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.

[Deleted material is in brackets.]

RESOLVED, that Section 139.05 of Article 139 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.

RESOLVED, that Section 139.07 of Article 139 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.

RESOLVED, that Section 153.01 of Article 153 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.

RESOLVED, that Section 181.03 of Article 181 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.
