



**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

Notice of Adoption of Repeal of Article 153 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 (“Board”) by §558 of said Charter, a notice of opportunity to comment on the repeal of Article 153 of the New York City Health Code (“Health Code”) was published in the City Record on September 20, 2016. No public hearing was held and no comments were received. At its meeting on December 6, 2016, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

On September 13, 2016, the Board of Health promulgated a notice of adoption to repeal, among other sections of the Health Code, §153.01 (*Littering prohibited*) of Article 153 (*Littering and Disposal of Refuse*) of the Health Code. The Statement of Basis and Purpose for that repeal noted that §153.01 duplicated provisions in Title 16 of the New York City Administrative Code (“Administrative Code”), which are currently enforced by the NYC Department of Sanitation (“DSNY”). The Board of Health is now repealing all of the remaining sections of Article 153 since they also are redundant and no longer needed nor enforced.¹

Throughout the City’s history, regardless of the City’s form of government, safe, efficient and effective garbage and waste disposal has presented legal and practical difficulties and is considered an important aspect of public health. Most of Article 153 was adapted from earlier provisions of the City’s Sanitary Code, the precursor of the Health Code, and reflect even earlier colonial ordinances predating the formation of the City, the Health Department and the Board of Health. For example, a 1657 New Amsterdam ordinance is generally credited as the first attempt to prohibit the 1,000 or so inhabitants of that colony from throwing garbage and refuse into the streets.² The City’s various councils and temporary boards of health regulated and enforced waste disposal regulations as a public health matter, even after formation of the City Department of Street Cleaning, the predecessor of DSNY, in the 1890’s.

However, current day-to-day management and regulation of these matters are the responsibility of State and other City agencies. As noted above, DSNY is responsible for enforcement of street cleanliness, littering and dumping laws in accordance with Title 16 of the NYC Administrative Code and Title 16 of the Rules of the City of New York. The NYS Department of Environmental Conservation and City Department of Environmental Protection monitor and maintain the cleanliness of the navigable waters surrounding the city and, in compliance with the federal Clean Waters Act and the NYS Environmental Conservation Law, limit and treat sewage contaminants that may find their way into the city’s waters. The NYC Department of Buildings enforces the Building Code and its rules concerning management of dust and debris at building construction sites.³

¹ Since the Board separately repealed §153.01 on September 13, 2016, that section is not included in this repeal of the remaining sections of Article 153.

² There are many descriptions of the City’s history of struggles with waste disposal. See, e.g., Edwin G. Burrows and Mike Wallace, *Gotham: A History of New York City to 1898*, Oxford University Press, 1999; John Duffy, *A History of Public Health in New York City 1625-1866*, Russell Sage Foundation, 1968; and Robin Nagle, *Picking Up, On the Streets and Behind the Trucks with the Sanitation Workers of New York City*, Farrar, Straus and Giroux, 2013. Professor Nagle is anthropologist in residence at the City Department of Sanitation.

³ It should be noted that the NYC Department of Health & Mental Hygiene continues to enforce Health Code §173.14 mandating safe work practices in renovations that may disturb lead-based paint.

While the Board of Health now repeals the remaining portions of Article 153, which has not been enforced for many years, the Department continues to take very seriously its responsibilities under the NYC Charter which authorizes the Department to “supervise and regulate the public health aspects of sewage disposal and water pollution.”⁴ The Board of Health and the Commissioner supervise and regulate these areas by using their authority under Title 17 of the NYC Administrative Code to order abatement and remediation of any nuisances that might contaminate the City’s navigable waters and streets and that endanger the health of any person or the public health.

Following are brief descriptions of the provisions of Article 153 and the reasons for their repeal:

- §153.01-*Littering prohibited*. As noted above, on September 13, 2016, this section was repealed by the Board as duplicative and no longer needed nor enforced.
- §153.03-*Exposure or agitation of certain materials prohibited*.
This section is essentially the same as NYC Administrative Code §16-118 (3), enforced by DSNY.
- §153.05-*Precautions during construction or demolition work*.
Chapter 33 of the NYC Building Code (*Safeguards during construction or demolition*) comprehensively regulates all matters related to debris and dust created as part of construction or demolition, rendering this provision no longer necessary.
- §153.07-*Exposure of rags, barrels, boxes and other materials prohibited*.
This is a very archaic provision that essentially duplicates prohibitions on littering.
- §153.09-*Throwing or dropping offensive matter into streets, public places, rivers and other places prohibited*.
This provision duplicates provisions of Administrative Code §§16-118 (4) and 16-119 (a).
- §153.11- *Spilling or scattering from vehicles prohibited*.
This provision duplicates NYC Administrative Code §16-118(4) and NYS Vehicle and Traffic Law §380-a (1).
- §153.13- *Interference with Department of Sanitation employees prohibited*.
This provision is identical to NYC Administrative Code §16-118 (7) and subdivision (8) of this section provides for criminal penalties for violations.
- §153.15- *Interference with refuse placed for collection prohibited*.
This provision is similarly incorporated in NYC Administrative Code §16-118 (7).
- §153.19- *Duties of owners or persons in charge of premises*.
Duties of owners are specified in NYC Administrative Code §16-118 (2).
- §153.21- *Removal of dead or diseased animals and offensive materials regulated; use and condition of vehicles*.
DSNY is charged with removal of dead animals and other offensive material, e.g., “night soil.” See, e.g., NYC Administrative Code §16-113.
- §153.23- *Filling of land; use of materials*.
DSNY regulations (16 RCNY Chapter 3 – *Lands, land under water and landfills*) provide for management of landfills in detail.
- §153.25- *Interference with the use of docks, piers and bulkheads for the disposal of offensive materials prohibited*.
Matters relating to use of docks, piers and bulkheads surrounding the city are the responsibility of the City’s Department of Small Business Services. See, NYC Charter §1301(2).

⁴ NYC Charter §556 (c)(7).

Statutory Authority

This repeal of Article 153 of the Health Code is promulgated pursuant to Sections 558 and 1043 of the New York City Charter. Section 558 of the Charter empowers the Board of Health 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 extends. Section 1043 grants the Department rulemaking authority.

The repeal is as follows:

Matter in [brackets] is repealed.

Matter underlined is new.

RESOLVED, that Article 153 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, relating to littering and the disposal of refuse, is hereby REPEALED, with an explanatory note to read as follows:

Notes:

Section 153.01 of Article 153 was repealed by resolution adopted by the Board of Health at its September 13, 2016 meeting. The remainder of Article 153 is now repealed by resolution adopted by the Board of Health at its December 6, 2016 meeting as part of a revision process to modernize and update the Health Code. The provisions of this Article have not been enforced by the Department for many decades, and nearly all of its provisions related to the disposal and management of refuse and waste are substantively incorporated in Title 16 of the NYC Administrative Code and enforced by the NYC Department of Sanitation. Other provisions in Article 153 duplicated law and rules enforced by the NYC Departments of Buildings, Environmental Protection, and Economic Development Corporation, the NYS Department of Environmental Conservation and the US Environmental Protection Administration. Although individual provisions of this Article are no longer enforced by the Department, Title 17 of the NYC Administrative Code authorizes the Board of Health and the Commissioner to order the abatement of any nuisances that may adversely affect the health of any persons or the public health and the Department retains its jurisdiction pursuant to New York City Charter §556 (c)(7) to “supervise and regulate the public health aspects of ... sewage disposal and water pollution.”