



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

**Notice of Opportunity to Comment
on the Repeal of Article 153 of the New York City Health Code**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing that the Board of Health (“Board”) repeal Article 153 (Littering and Disposal of Refuse) of the New York City Health Code (“Health Code”) as redundant and no longer needed.

When and where is the hearing? The Department has determined that there is no public purpose to holding a hearing.

How do I comment on the proposed amendments to the Health Code? Anyone may comment on the proposed amendments by:

- **Website:** You may submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You may email comments to resolutioncomments@health.nyc.gov
- **Mail:** You may mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax:** You may fax comments to the Department at 347-396-6087.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on October 25, 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.

What authorizes the Department to make this amendment? Section 558(b), (c), and (g) of the New York City Charter empowers the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043(a) of the Charter grants rulemaking powers to the Department.

Where can I find the Department rules and the Health Code? The Department’s rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

The proposed repeal of this Article 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

The Department published in the City Record on June 16, 2016 a notice of intention to repeal, among other sections of the New York City Health Code (“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 proposal noted that §153.01 duplicates 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 Department now is proposing that the Board of Health repeal all of the remaining sections of Article 153 since they also are redundant and no longer needed nor enforced. Since the proposal to repeal §153.01 is pending separately before the Board, that section is not included in this proposal.

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.¹ 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.²

While the Department is proposing that the Board of Health repeal 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.”³ 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.

¹ 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.

² 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.

³ NYC Charter §556 (c)(7).

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

- §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).

Statutory Authority

These amendments to the Health Code are promulgated pursuant to Sections 558 and 1043 of the New York City Charter (“Charter”). Section 558 of the Charter empowers the Board of Health (“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 (“Department”) extends. Section 1043 grants the Department rulemaking authority.

The proposal 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 XXX meeting. The remainder of Article 153 was repealed by resolution adopted by the Board of Health at its XXX 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.”

**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: Repeal of Health Code Article 153 (Littering and Disposal of Refuse)

REFERENCE NUMBER: DOHM-72

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 only repeals an existing rule and does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

August 30, 2016
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: Repeal of Health Code Article 153 (Littering and Disposal of Refuse)

REFERENCE NUMBER: 2016 RG 076

RULEMAKING AGENCY: Board of Health

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: August 30, 2016