



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 5 (“Pet Shops”) to Title 24 of the Rules of the City of New York to implement the new requirements set forth in Subchapter 9 of Chapter 3, Chapter 8 and Chapter 17 of Title 17 of the Administrative Code of the City of New York.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments from 10AM to 12PM on December 11, 2017. The hearing will be at:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, Room 14-34
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
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 December 11, 2017. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on December 11, 2017.

What if I 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. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by November 24, 2017.

This location is wheelchair-accessible.

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 these amendments? 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. Section 1043 grants the Department rule-making authority. Moreover, Local Laws 5, 7 and 8 of 2015, as amended by Local Laws 53 and 55 of 2015, added a new Chapter 17 and amended Chapters 3 and 8 of Title 17 of the Administrative Code regarding the sale of dogs and cats in pet shops. The Department is authorized to promulgate rules necessary for implementation of these local laws, including the form and manner for required records. These rules were not included in the Department's FY '17 regulatory agenda because of an administrative oversight.

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 laws govern the rulemaking process? This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

Background

Local Laws 5, 7 and 8 of 2015, as amended by Local Laws 53 and 55 of 2015, added a new Chapter 17 and amended Chapters 3 and 8 of Title 17 of the Administrative Code regarding the sale of animals in pet shops. The Administrative Code now requires that pet shops selling dogs or cats acquire them only from holders of the United States Department of Agriculture ("USDA") Class A licenses. Additionally, pet shops must document and maintain information about the sources, sales, health and breeding histories of the dogs and cats they sell. The shops must sterilize dogs and cats that are at least eight weeks old and two pounds in weight, and dogs and cats must have microchips implanted before being sold.

The Department is proposing to add a new Chapter 5 to Title 24 of the Rules of the City of New York to implement these recently enacted provisions of the Administrative Code.

In compliance with §§1043(a) and 389(b) of the New York City Charter, a notice of public hearing and notice of intent to add a new Chapter 5 ("Pet Shops") to Title 24 of the Rules of the City of New York were published in the City Record on January 31, 2017, and a public hearing was held on March 2, 2017. No written comments were received and no individuals testified at the hearing.

Subsequent to the public hearing, however, the Department decided to revise the proposal because the USDA website has been changed and currently contains only some of the inspection reports relating Class A licensees. As a result, the proposal has been revised to clarify the means of complying with Administrative Code §§17-1702(a) and 17-1703.

The Proposed Amendment

The Department is proposing to add a new Chapter 5 to Title 24 of the Rules of the City of New York to implement these recently enacted provisions of the Administrative Code. To implement the recordkeeping and consumer disclosure requirements of the Administrative Code, the proposed rules require pet shops to collect and maintain required information, and to provide it to prospective purchasers as mandated, using only forms provided by the Department. The forms are listed on the checklist below. Requiring

standardized forms promotes compliance by assuring that pet shops completing the documents will have collected all of the information required by the Administrative Code, and facilitates Department review and pet owners' understanding of records.

The Administrative Code directs the Department to set fees that a pet shop may collect for providing prospective purchasers with USDA inspection reports. The proposed rules set nominal copying fees of up to \$.25 per page.

To enable the Department to promptly issue dog license tags to people purchasing dogs at pet shops, the proposed rules require that a pet shop submit any dog license application completed in paper copy to the Department within 10 days of the sale. Pet shops enrolled in the Department's online dog licensing system may avoid this paperwork.

Dogs and cats offered for adoption at pet shops by permitted animal shelters and incorporated not-for-profit animal rescue groups are exempt from these new laws. To assist enforcement officers in determining when this is the case, the proposed rules require pet shops to maintain, on site and available for inspection, a copy of the animal shelter's permit issued by the Commissioner or the rescue group's proof of not-for-profit status, for as long as these organizations are using the pet shop's space.

The changes made to the proposed rule subsequent to the public hearing would clarify the means of complying with relevant provisions of Administrative Code Sections 17-1702 and 17-1703. The Department welcomes comments from the public regarding this change.

Finally, these provisions do not apply when a cat or dog is sold by a person who breeds and sells fewer than a total of 25 dogs and cats per calendar year directly from where such dogs and cats are born and raised on the breeder's residential premises.

The Administrative Code establishes penalties of \$500 per violation per day.

Below is a summary of the documents that would satisfy the requirements of the proposed rule:

Checklist of Required Documents

DOHMH Form Number	Document	Recordkeeping, Subject to Inspection (Maintain for 5 years unless otherwise noted)	Provide to Purchaser
USDA, Animal and Plant Health Inspection Service (APHIS)			
201-D-USDA 7001	Form 7001	√	√
201-D-USDA 7006	Form 7006	√	
n/a	Copy of source's USDA APHIS inspection reports from last 3 years	√	√
NYS Agriculture and Markets, Division of Animal Industry			
204-D-AGMKT-Form A	Veterinary Health Certificate	√ Pet shop to keep original	
205-D-AGMKT-Form C	Receipt	√	√
206-D-AGMKT-Form E	Information Statement	√	√
207-D-AGMKT-Form H	Pedigree (for animal capable of being registered)	√ (if applicable)	√ (if applicable)
208-D-AGMKT-Form I	Consumer Rights/NYS Article 35-D	√	√
New York City-Only Documents			
209-D-VPHS-Purchaser Statement	Purchaser Statement	√ Maintain statement for 10 years and attachments for 5 years	√
n/a	Microchip usage instructions provided by the manufacturer or registration company	√	√
n/a	Sterilization Certification (Record from the veterinarian of sterilization procedure performed on dog or cat)	√	√
n/a	Receipt log showing sale of dog license (if the pet shop does not use the online dog license system and the dog will live in NYC)	√	
213-D-VPHS-Source Affidavit	Affidavit from source	√	
214-D-VPHS-38	Self-inspection of Animal Holding Facilities	√	
203-D-AGMKT-Vet Care Plan	Veterinary Care Plan	√	
215-D-VPHS	Pet Shop statement regarding diligent check of the USDA website	√	

The proposed changes are as follows:

Underlined matter is new.

Section 1. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 5 (“Pet Shops”) to read as follows:

CHAPTER 5

PET SHOPS

§5-01 Scope and applicability. This Chapter applies to any retail sale of a dog or a cat by a pet shop located in New York City that is subject to Chapters 3, 8 and 17 of Title 17 of the Administrative Code. It does not apply to the sale of a cat or dog by a person who breeds and sells directly to consumers fewer than a total of 25 dogs and cats per calendar year where such dogs and cats are born and raised on the breeder’s residential premises. It also does not apply to the sale of any other animal by a pet shop operated in accordance with a permit issued by the Commissioner pursuant to New York City Health Code (“Health Code”) §§5.07 and 161.09. Nothing in this Chapter exempts a pet shop from also complying with any applicable provisions of the Health Code.

§5-02 Definitions. When used in this Chapter, the following terms have the following meanings:

Class A license. “Class A license” means a license issued to a dog or cat breeder by the USDA under the federal Animal Welfare Act (7 USC §§2131-2159) and USDA regulations (9 CFR Chapter 1, Subchapter A).

Permittee. “Permittee” means a person operating a pet shop in the City of New York where dogs or cats are sold with a permit issued by the Commissioner pursuant to §17-372 of the Administrative Code.

Pet shop. “Pet shop” has the same meaning as in §17-371 of the Administrative Code.

§5-03 Records.

(a) Form and manner of records required to document information about dogs and cats sold. For each dog or cat sold, a permittee must collect and maintain the information required by §§17-804(c), 17-815, and 17-1704 of the Administrative Code on forms provided by the Department. The forms may be kept in hard copy or as an electronic record and must be held for five years, except that the signed purchaser statement must be kept for 10 years. Records must be made available to the Department or New York City Police Department (NYPD) officers authorized to enforce New York humane laws.

(b) Sources of dogs and cats. Any pet shop that displays, offers for sale, delivers, barter, auctions, gives away, transfers or sells any dog or cat must obtain such dog or cat from a USDA Class A licensed breeder that, as of the date such pet shop receives such animal, has not received any of the citations or orders specified in Administrative Code §17-1702(a)(2) in connection with its USDA Class A license, to the extent that such information is available from the USDA. In order to satisfy that requirement, such pet shop must, prior to displaying, offering for sale, delivering, bartering, auctioning, giving away, transferring, or selling the animal:

(1) diligently check the USDA website for the information and documents specified in Administrative Code §17-1702(a)(2); and

(2) obtain such information and documents from the USDA website to the extent that they are available on such website; and

(3) to the extent that any such information and documents are not available on the USDA website,

(A) prepare a statement, signed and dated by the pet shop on the date it checked the USDA website, listing any of the prior three years for which inspection reports regarding the breeder that was the source of the animal were unavailable on the date checked, and listing any of the prior five years for which USDA administrative law judge decisions were unavailable on the date checked. Such statement must be kept on site and available for inspection; and

(B) obtain an affidavit, sworn to by the USDA Class A licensed breeder that was the source of the animal, attesting that as of the date the pet shop received the animal such breeder has not received any of the citations or orders specified in Administrative Code §17-1702(a)(2) in connection with its USDA license. Such affidavit must be kept on site and available for inspection; and

(4) not display, offer for sale, deliver, barter, auction, give away, transfer, or sell the animal if the source can be determined through the USDA website or is otherwise known to the pet shop to have any of the citations or orders specified in Administrative Code §17-1702(a)(2).

(c) Source affidavit. A permittee must obtain a sworn and notarized affidavit from every USDA Class A licensed breeder supplying a cat or dog to the permittee, stating that as of the date the permittee received such animal:

(1) the breeder's USDA Class A license has not received a finally determined order from the USDA during the prior five years, in connection with its USDA class A license, to cease and desist or to pay a civil penalty;

(2) the breeder's USDA class A license has not been suspended during the prior five years;

(3) the breeder has never been convicted in any jurisdiction of an animal abuse crime; and

(4) the breeder has not been convicted in the last five years of a violation of the minimum standards of animal care provided for in New York Agriculture and Markets Law §401; and

(5) the breeder has not received any of the citations or orders specified in Administrative Code §17-1702(a)(2) in connection with its USDA Class A license.

(d) Statements required to be provided to purchasers of dogs and cats. A pet shop selling a dog or cat must provide to each purchaser, and to any prospective purchaser upon request, the statement required by §17-1703(a) of the Administrative Code, on forms made available by the Department. Such pet shop must also provide to every purchaser the information and documents required by Administrative Code §17-815, on forms made available by the Department.

(e) Copying charges. When a prospective purchaser requests a paper copy of the USDA inspection report(s) related to the breeder-source of a specific dog or cat, a permittee must provide the two most recent USDA inspection reports, to the extent that such reports were available from the USDA when the pet shop received the animal, and may charge the requester up to \$.25 per page. A permittee may not charge a purchaser for providing statements or any other document that must be provided to a purchaser or to the Department or NYPD.

§5-04 Dog licenses. Before selling any dog, a pet shop must obtain from the prospective purchaser an application and the appropriate fee for a dog license or a written statement from the purchaser that the dog will live outside of the City of New York, and a copy of a document establishing that the residence is outside the City. Such documentation may include a copy of a utility bill, driver's license, or tax bill, or another official government document. The pet shop may send the application and fee or statement and proof of out-of-City residence to the Department electronically, in person or by mail, so long as the Department receives the application and fee within 10 days of the sale of the dog to the purchaser. Failure to provide the required application and fee or statement and documentation to the Department within such 10-day period will subject the pet shop to civil penalties pursuant to Administrative Code §17-1707.

§5-05 Adoption promotions at pet shops. (a) A pet shop that allows an animal shelter or non-profit animal rescue group to use its facilities to offer animals for adoption must obtain a copy of either the permit issued to the animal shelter by the Commissioner pursuant to Health Code §161.09 , or proof of the animal rescue group's incorporated not-for-profit status. The pet shop must have the shelter permit or animal rescue group's proof of not-for-profit status on site and available for inspection whenever the shelter or rescue group is offering animals for adoption at the pet shop.

(b) A pet shop will not be required to comply with the requirements of §§5-03 and 5-04 of this Chapter regarding any dog or cat offered for adoption by an animal shelter or animal rescue group using such pet shop's facilities under this section.

§5-06. **Enforcement.** Employees and agents of the Department and officers of the New York City Police Department are authorized to enforce the provisions of this Chapter.

**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: Sale of Dogs and Cats in Pet Shops

REFERENCE NUMBER: DOHMH-85

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 the rule's authorizing statute does not provide a cure period.

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

November 1, 2017
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: Sale of Dogs and Cats in Pet Shops

REFERENCE NUMBER: 2016 RG 092

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 1, 2017