



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Adoption of Amendment to Title 24 of the Rules of the City of New York

In accordance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Department of Health and Mental Hygiene by §556 of the Charter, a notice of intention to amend Title 24 of the Rules of the City of New York by adding a new Chapter 5, governing the retail sale of dogs and cats by pet shops, was published in the City Record on November 8, 2017, and a public hearing was held on December 11, 2017. Seven individuals testified at the hearing and nine written comments were received. A number of changes were made, several in response to the comments received, as discussed below.

Statement of Basis and Purpose

Statutory Authority

Section 556 of the New York City Charter (“Charter”) authorizes the Department of Health and Mental Hygiene (“Department”) to regulate all matters pertaining to the health of the City, and Section 1043 grants the Department rulemaking 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.

Background

As a result of the local laws cited above, 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 implant microchips into such animals prior to their being sold.

The Department is now adding a new Chapter 5 to its rules (codified at 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 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 initially 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 relevant information regarding Class A licensees has been removed from the USDA website. As a result, the proposal has been revised to clarify the means of complying with Administrative Code §§17-1702(a) and 17-1703.

The revised proposed amended rules were published in the City Record on November 8, 2017, and a public hearing on was held on December 11, 2017.

In response to comments received, the Department has further revised the amendment to address concerns about the timing of affidavits required to be provided to pet shops by breeders and the methods by which the pet shops obtain USDA reports. The Department has also made other changes to clarify the means of complying with Chapter 17 of the Administrative Code.

Amendments Adopted

To implement the recordkeeping and consumer disclosure requirements of the Administrative Code, the rules require pet shops to collect and maintain required information, and to provide it to prospective purchasers as mandated, using forms provided by the Department to the extent applicable. 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. These 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 rules require that a pet shop submit any dog license application completed in paper copy to the Department within 10 business days of the sale. Pet shops enrolled in the Department's online dog licensing system can 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 not subject to these new laws to the extent that they are registered with the New York State Department of Agriculture and Markets and are exempted from the definition of "pet dealer" set forth in New York State Agriculture and Markets Law § 400.4. To assist enforcement officers in determining when this is the case, the rules require pet shops to maintain, on site and available for inspection, a copy of the animal shelter's permit issued by the Department or the rescue group's proof of not-for-profit status, and such registration and exemption, at any time such organizations are using the pet shop's space.

Moreover, the requirements of the new laws do not apply to breeders that sell or offer to sell cats and dogs directly to the public, as long as such breeders sell or offer to sell fewer than a total of 25 dogs and cats per calendar year, and such animals are all born and raised on the breeder's residential premises and sold directly from such premises.

Finally, the law establishes penalties of \$500 per violation per day, enforceable by officers and agents of the Department and officers of the New York City Police Department.

Below is a summary checklist of the documents that satisfy the requirements of the 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	√	

Note: New material is underlined. [Deleted material is in brackets.]

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 upon request 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 a dog or cat, diligently check the USDA website for the information and documents specified in Administrative Code §17-1702(a)(2); obtain such information and documents from such website to the extent that they are available there; and, to the extent that such information and documents are not available on such website,

(1) 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, which statement must be kept on site and available for inspection upon request; and

(2) 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, which affidavit must be kept on site and available for inspection upon request.

(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;

(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 (if required pursuant to §5-03(b)(2)).

(d) Alternative timing of affidavits. An affidavit provided to a pet shop from the source of a dog or cat pursuant to this Chapter may be sworn prior to the date the pet shop receives the animal, although no earlier than the date the animal leaves the possession of the source, if, together with the affidavit, the source provides the pet shop with unredacted copies of all USDA inspection reports it received in the three years prior to the swearing of the affidavit, and the affidavit includes a promise to advise the pet shop immediately if, after the affidavit is sworn but before the pet shop's receipt of the animal, the source receives any of the citations, orders, or convictions specified in Administrative Code §17-1702(a)(2).

(e) Statements and documents 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 and documents required by §17-1703(a) of the Administrative Code, on forms made available by the Department to the extent applicable. 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 to the extent applicable.

(f) Copying charges. When a prospective purchaser requests a paper copy of the USDA inspection report(s) related to the breeder that is the 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 or were provided to the pet shop by the breeder, 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 the NYPD.

(g) *Sign.* Every pet shop selling dogs or cats must post conspicuously, in close proximity to the cages of such dogs and cats offered for sale, notices containing the following language in one hundred-point type: "Information on the source of these dogs and cats and the veterinary treatments received by these dogs and cats is available for review by prospective purchasers. United States Department of Agriculture inspection reports are available upon request."

§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 purchaser's residence is outside the City. Such documentation may include a copy of a utility bill, driver's license, tax bill, or other official government document and must be made available for inspection upon request. The pet shop must send each license application and fee to the Department electronically, in person, or by mail, so long as the Department receives the application and fee within 10 business days of the sale of the dog to the purchaser. Failure to provide such required application and fee to the Department within such 10 business-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. Whenever the animal shelter or rescue group is offering animals for adoption at the pet shop, the pet shop must have on site, and available for inspection upon request, the shelter permit or animal rescue group's proof of not-for-profit status, and the shelter or animal rescue group's registration of such status and exemption, issued by the New York State Department of Agriculture and Markets pursuant to New York

State Agriculture and Markets Law Section 408.3, from the definition of “pet dealer” set forth in New York State Agriculture and Markets Law Section 400.4.

(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 organization using such pet shop’s facilities, provided that such pet shop does not have an ownership interest in such animal.

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