

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**NOTICE OF ADOPTION OF A RESOLUTION
TO REPEAL AND REENACT ARTICLE 151
AND TO REPEAL ARTICLE 171
OF THE NEW YORK CITY HEALTH CODE**

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of the Charter, notice of intention to repeal and reenact Article 151 (Pest Prevention and Management) and to repeal Article 171 (Fumigation and Extermination) of the New York City Health Code was published in the City Record on September 22, 2008, and a public hearing was held on October 27, 2008. Two persons testified at the hearing, written comments were received from seven organizations, and two changes were made to the resolution in response to the comments received. At its meeting on December 16, 2008, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (“DOHMH”) with jurisdiction to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting the public health, the Board of Health has repealed and reenacted Article 151, Rodents, Insects and Other Pests, changing its title to Pest Prevention and Management, to better reflect practice, the regulatory environment, and to assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public concerning prevention and control of rodent, insect and other pest infestations. The main intent of this revised article is to prevent the infestation of rodent, insect or other pests and to prohibit the existence on any premises of conditions conducive to pest infestations through continuous pest management efforts, elimination of harborages and requiring property maintenance practices to eliminate or severely limit the presence of pest populations. Because the regulation of pesticide use is preempted by state law, this article attempts to promote prevention of pests and pest infestations without directly addressing the use of pesticides. The focus on pest management incorporates a hierarchy of actions to prevent and eliminate pests, including structural alterations and repairs, and the elimination of conditions conducive to pest infestations. In addition, for the reasons stated below, the Board has also repealed Article 171 (Fumigation and Extermination).

1. Repeal and reenact Article 151.

Section 151.01 Definitions defines terms used in the article.

The term “conditions conducive to pests” has been added and refers to conditions that attract and contribute to the presence of pests, and require correction.

The term “harborage” remains unchanged from the current Article 151.

The term “person in control” is retained and now refers to responsibility over a “premises” or “property.”

The term “pest” replaces the term “insects and other pests” in current Article 151, and refers to unwanted insects, rodents or other pests as determined by the Department.

The term “pest management” has been added, and replaces the term “eradication.” Pest management consists of prevention, monitoring and control of pests, and is required to maintain a pest free environment. Eradication, the prior term, referred only to the elimination of pests through extermination, too narrow a practice for effective management of pests. Eradication should be interpreted as only one component of “pest management.”

The term “pesticide” has been added to refer to substances or mixtures of substances used to prevent, destroy, repel or mitigate against pests, consistent with the term as defined in the New York Environmental Conservation Law.

The terms “premises” and “property” have been defined to mean building structures, rooms and units of a building, and public parts of buildings, as well as yards, building lots, vacant lots, parks, streets, and vehicles.

Section 151.02 Prevention and pest management measures represents a change from the former Article’s emphasis on eradication methods and extermination and reflects several needs.

First, New York Environmental Conservation Law preempts localities from regulating the use or application of pesticides, and as such, mandating eradication as previously defined to include the use of poisons or pesticides, is no longer permitted. Additionally, effective pest management requires a hierarchy of strategies that prioritize prevention and monitoring, and address the management of pests as a proactive ongoing set of tasks and responsibilities, not just a reaction to the undesired presence of pests.

Subdivision (a), “Properties shall be free of pests,” requires that premises must be kept free from pests and conditions conducive to their presence. This section requires persons in control to take measures that may be necessary to prevent and control these conditions.

Subdivision (b), “Waste shall be managed to prevent pests,” is necessary because improperly handled waste is a significant source of food and harborage for many pests. This subdivision mandates that solid and liquid garbage be stored in containers that prevent the entry of pests, until garbage is ready to be picked up, at which time garbage may be placed in suitable bags or other containers acceptable to the City’s Department of Sanitation and other agencies regulating garbage pickup.

Subdivision (c), “Pest management plans,” defines components of a written management plan, when the Department determines that such a plan is required, including a description of pest management strategies to be employed, a schedule of routine inspections, a list of actions taken when pests are present, instructions to occupants and other users of the premises as to how to report the presence of pests, and the name and contact information for the pest management business or professionals retained by the persons in control. In response to a comment asking who is responsible for routine inspections, paragraph (2) has been amended to read: “A schedule for routine inspections, *determined by the person in control*, for conditions conducive to pests and the presence of pests;...”. In response to another comment indicating that requiring a person in control of a building to duplicate record keeping practices that State law mandates for pesticide applicators is burdensome and not feasible, paragraph (6) has been further amended so that the person in control of a building is required only to maintain a record of the names, not the quantities, of pesticides applied in the premises.

Subdivision (d), “Elimination of conditions conducive to pests and the presence of pests,” describes the pest management actions that may be ordered by the Department to control pests. These actions include the physical removal of pest nests, waste and other debris, the elimination

of pest entry and travel via the sealing and closure of openings, the elimination of harborage, the elimination of harborages and the elimination of pest food sources.

Subdivision (e) prohibits the use of pesticides alone to substitute for pest management measures required by this section. Pesticide use should not be the first and only line of defense against pests.

Section 151.03 Elimination of standing water authorizes the Department, with the exception of protected wetlands, to order the correction of standing water problems in areas other than protected wetlands lots, excavations or other places to prevent the breeding and harborage of mosquitoes and other pests.

Section 151.04 Enforcement by the Department and other City agencies authorizes the Department to issue orders to enforce this Article and conveys the same authority to the City's Departments of Buildings and Housing Preservation and Development.

2. Repeal Article 171

The Board of Health has repealed Article 171 (Fumigation and Extermination), as no longer necessary. The U.S. Environmental Protection Agency comprehensively regulates substances used as pesticides, and the New York State Department of Environmental Conservation currently comprehensively regulates all aspects of pesticide use in New York State. See, e.g., Environmental Conservation Law Article 33 and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

The proposal is as follows.

Matter underlined is new.

Matter in brackets [] is deleted.

RESOLVED, that the list of section headings for Article 151 and Article 151 (Rodents, Insects and Other Pests) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, as last amended by resolution on the twelfth of December two thousand and two, be, and the same hereby is, repealed and reenacted, to be printed with explanatory notes to read as follows:

Article 151

Pest Prevention and Management

§151.01 Definitions

§151.02 Prevention of pests and pest management measures

§151.03 Elimination of standing water

§151.04 Enforcement by the Department and other City agencies.

Introductory Notes:

Article 151 was repealed and reenacted by resolution on December 16, 2008, as part of a comprehensive review of the Health Code to assess the efficacy of the Code in protecting the public health, to provide adequate legal tools to effectively address the health and safety needs of the public concerning prevention and control of rodent, insect or other pest infestations. The title of the Article was changed from “Rodents, Insects and Other Pests,” to “Pest Prevention and Management,” to better reflect practice and the regulatory environment where the emphasis has shifted from use of pesticides to primary prevention of pests and infestations. The article’s intent remains unchanged, namely, the prevention of infestations of rodent, insect or other pest life and to keep premises free of conditions conducive to pest infestations through continuous pest management efforts, the elimination of harborages and the institution of property maintenance practices designed to eliminate or severely limit the presence of pest populations. Because pesticide use is comprehensively regulated by state law, this article attempts to promote primary prevention methods of pest control and the secondary prevention of infestations without directly addressing how and by whom pesticides may be employed. The focus on pest management practices incorporates a hierarchy of actions to prevent and eliminate pests, including structural alterations and repairs, and the elimination of conditions conducive to pest infestations.

§151.01 Definitions. When used in this article:

(a) Conditions conducive to pests means conditions of property construction, operation and maintenance in occupied or vacant property that promote or allow for the establishment of pest populations, their feeding, breeding and proliferation, and foster the creation of harborage conditions. Such conditions may include but are not limited to: the presence of weeds or other vegetation that are sources of food or shelter for rodents; accumulation of refuse and other material in or on which pests may find shelter, hide or nest; the presence of cracks, gaps or holes in building exteriors or interiors that enable the free movement of pests; the presence of food or water accessible to, and capable of, sustaining a pest population; or unsanitary conditions that attract pests.

(b) Harborage means any condition that provides shelter or protection for rodents, insects or other pests.

(c) Person in control means the owner, part owner, managing agent or occupant of premises or property, or any other person who has the use or custody of the same or any part thereof.

(d) Pest includes any unwanted member of the Class *Insecta*, including but not limited to mosquitoes, or of the Order *Rodentia*, including but not limited to the Norway rat, and any other unwanted plant, animal or fungal life that the Department determines is a pest because it is destructive, annoying or a nuisance.

(e) Pest management means ongoing prevention, monitoring and pest control activities and the elimination of rodents , insects or other pests from any building, lot, premise or vehicle. This includes, but is not limited to, the elimination of conditions conducive to pests and the use of traps and, when necessary, the use of pesticides.

(f) Pesticide means (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant, as defined in Environmental Conservation Law §33-0101 (35), or successor law, and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

(g) Premises or property means a commercial, private or public building or structure, including all rooms within the property as well as all public areas, halls, stairs, cellars, roofs, shafts, court yards, alleys and areas surrounding the structure. It shall also include all vacant lots, parks, streets and vehicles.

§151.02 Prevention and pest management measures.

(a) Properties shall be free of pests. All premises capable of attracting or supporting rodents, insects and other pests shall be kept free from rodents, insects and other pests, and from any conditions conducive to pests. The person in control of such premises shall take such measures as may be necessary to prevent and control the harborage and free movement of rodents, insects or other pests.

(b) Waste shall be managed to prevent pests. All garbage and other waste and recyclable materials shall be deposited in tightly covered, watertight receptacles made of a material type and grade that is resistant to rodents, insects and other pests until such time that garbage and waste materials are moved to an area for a scheduled pickup, at which time they shall be placed in a suitable bag or other container acceptable to the Department, and to the City Departments of Sanitation and Housing Preservation and Development. Receptacles used for liquid waste shall be constructed to hold contents without leakage.

(c) Pest management plans. When the Department determines that, because of pest infestation or conditions conducive to pests, a written pest management plan is required, it shall order that a person in control of the premises write such a plan, maintain the plan in effect for such time as the

Department shall specify, maintain a copy of the plan on the premises where the infestation or conditions were observed, and make a copy available, upon request, to the Department and, when specified by the Department, to occupants of the premises. In commercial and residential premises, when specified by the Department, the person in control of the premises shall post a sign at the building entrances stating that the pest management plan is in effect and identifying a location on the premises where a copy of the plan may be inspected. The plan shall include the following:

- (1) Pest management strategies that will be employed on such premises;
- (2) A schedule for routine inspections, determined by the person in control, for conditions conducive to pests and the presence of pests;
- (3) Actions to be taken when pests are present;
- (4) Instructions to premises' occupants, tenants or other users on how to report the presence of pests to person(s) in control of the premises, with a notice conspicuously posted at building entrances indicating that such instructions are available and where occupants may obtain a copy;
- (5) The name(s) and contact information for pest management businesses and/or professionals employed or contracted by the persons in control; and
- (6) A log of visits by pest management professional(s) and the names of pesticides, if any, applied on each visit.

(d) *Elimination of conditions conducive to pests and to the presence of pests.* When the Department determines that a premises has pests or conditions conducive to pest life, it may order person(s) in control to take such action as be required by the Department, including, but not limited to, the following:

- (1) Physically remove pest nests, waste, and other debris by vacuuming, washing surfaces, or otherwise collecting and discarding such debris.
- (2) Eliminate existing routes of pest movement by sealing and repairing holes, gaps, and cracks in walls, ceilings, floors, molding, baseboards, around conduits, and around and within cabinets by the use of sealants, plaster, cement, wood or other durable materials.
- (3) Eliminate existing harborages for pests by clearing interior and exterior debris and garbage, and clearing dense weeds, shrubs and other vegetation, if necessary.
- (4) Remove existing sources of water for pests by draining standing water; repairing drains to prevent further accumulation of water; repairing leaks in faucets and plumbing; and maintaining the impermeability of roofs, ceilings, and exterior and interior walls.

(5) Eliminate existing sources of food for pests by keeping the property free of all types of waste and by regularly cleaning and maintaining areas where waste is stored and/or compacted before its removal.

(e) The use of pesticides shall not substitute for pest management measures required by this section.

§151.03 Elimination of standing water.

Except for a wetland regulated by federal, state or local law, the Department may order the person(s) in control of any property including, but not limited to, a sunken lot, property below grade, excavation or any other place where stagnant water may collect, to fill in or drain such property or to employ other methods to prevent the breeding or harborage of mosquitoes and other pests in a manner consistent with federal, state and local law.

§151.04 Enforcement by the Department and other City agencies.

Without limiting the authority of the Department, in addition to the Department, the City Departments of Buildings and Housing Preservation and Development are authorized to enforce this Article.

RESOLVED, that Article 171 (Fumigation and Extermination) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, repealed.