

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF ADOPTION OF AN AMENDMENT TO SECTION 3.07
OF THE NEW YORK CITY HEALTH CODE

In compliance with Section 1043(b) of the New York City Charter a Notice of Intention to Amend Section 3.07 of the New York City Health Code was published in The City Record on June 19, 2003. A public hearing was held on July 24, 2003, at which no testimony was presented, nor were any written comments received. The Board of Health at its December 10, 2003 meeting adopted the following resolution.

STATUTORY AUTHORITY

This amendment to the New York City Health Code (the "Health Code") is promulgated pursuant to Sections 558 and 1043 of the New York City Charter ("Charter"). Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the authority of the Department of Health and Mental Hygiene (the "Department") extends. Section 1043 grants the Department rulemaking authority.

STATEMENT OF BASIS AND PURPOSE

The Board of Health is amending Section 3.07 of the Health Code ("Orders of the Board, Commissioner or Department") by adding a new subdivision (b) which clearly specifies that service by mail (first class, certified, or registered) of orders of the Commissioner and Department is a legally sufficient form of service. Such service may be made upon any person, officer, department or employee as specified in section 17-141 of the Administrative Code of the City of New York (the "Administrative Code"). The Department will be required to maintain records attesting to the form of service used and the identity of the person or entity served in each instance. Personal delivery of such orders will remain a legally acceptable alternative manner of service.

The Department issues many thousands of orders annually. Most of these orders are issued pursuant to the Commissioner's general authority to order the abatement of nuisances and/or compliance with specific provisions of the Health Code. *See*, Charter Sections 555, 556 and 558 and Administrative Code Sections 17-113 and 17-114. Examples include orders to abate lead hazards or to install window guards in children's homes. Other orders are issued pursuant to existing Board of Health resolutions, historically dealing with the occurrence or presence of certain conditions or things that the Board deems to be public health nuisances. Examples are rat infested buildings, garbage strewn properties and vacant lots that create harborage conducive to vermin. In many cases where pest control orders of the Commissioner are issued, the premises subject to the orders are abandoned buildings and vacant lots where there is no landlord or managing agent on site. Service of orders by mail has been a legally accepted alternative form of service under such circumstances.

As amended, Section 3.07 of the Health Code explicitly authorizes service of all orders of the Commissioner or Department (but not orders of the Board) in a manner similar to that authorized by Section 5.19 of the Health Code for service of notices of orders of the Commissioner denying, suspending or revoking permits, and by Section 7.05 of the Health Code for service of notices of violation returnable to the Department's Administrative Tribunal. Pursuant to Section 5.19 of the Health Code, service of notices of orders of the Commissioner denying issuance of a permit or suspending or revoking permits may be made by mail. To initiate an action at the Administrative Tribunal, Section 7.05 of the Health Code authorizes service of notices of violation by certified or registered mail addressed to any person upon whom personal service could be made at the address of the alleged violation, or at the address of the permittee listed on the permit.

Pursuant to both the Administrative Code and their own rules, other City agencies are authorized to use service by mail as an alternative means of service of many of these agencies' orders and notices. Section 19-152(f) of the Administrative Code, for example, specifically authorizes the Department of Transportation to serve its notices or orders to property owners with respect to repairing sidewalks and lots, personally or by certified or registered mail, return receipt requested, addressed to the person whose name appears on city records as being the owner of the premises. If service is refused, ordinary mail service and posting on the premises is authorized. Section 27-2095(a)(3) of the Administrative Code authorizes the service of notices of violation and other notices and orders upon owners of dwellings or managing agents of dwellings by mail to their latest business or residence address. Pursuant to its rules, the Conflicts of Interest Board is authorized to serve notices, orders and other documents upon public servants, by personal delivery to the public servant or by first class mail to the public servant's last known residence or actual place of business. See, 53 R.C.N.Y. Section 2-05 (d).

No comments were received following publication of and public hearing on the proposal and no changes have been made.

The proposal is as follows:

Note - matter underlined is new

RESOLVED, that Section 3.07 of the New York City Health Code, as adopted in 1959, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

3.07 Orders of the Board, Commissioner or Department. (a) No person shall violate an order of the Board, Commissioner or Department.

(b) Service of any order of the Commissioner or Department shall be deemed legally sufficient if made personally by delivery, or if made by ordinary first class, certified or registered mail, return

receipt requested, in no particular order of priority, upon any person, officer, department or employee referred to in Section 17-141 of the Administrative Code. The Department shall maintain records attesting to the manner of service used and the person or entity served in each instance.

Notes:

Section 3.07 was amended on December 10, 2003 by adding a new subdivision (b) specifying that service by mail (first class, certified, or registered) of orders of the Commissioner and Department is a legally sufficient form of service.

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