

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

**NOTICE OF ADOPTION TO AMEND VARIOUS PROVISIONS OF  
ARTICLE 167 OF THE NEW YORK CITY HEALTH CODE**

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of said Charter, the Notice of Intention was published in the City Record on September 29, 2006. A public hearing was held on October 31, 2006. One person testified and the Department received 2 written comments. On the basis of those comments, the Department has made a change to the language of proposed §167.21(b). This modification to §167.21(b) now indicates that the safety items listed in §167.21(a) shall be provided within 500 feet, or as specified in each individual Beach Safety Plan. Additionally, certain technical changes have been made to §§ 167.03 and 167.09. For §167.03, brackets are being added to indicate re-lettered subdivisions “[p]” and “[q]”. For §167.09(a), due to a technical oversight, certain text that is being deleted from the current version of the Health Code was not so indicated in the Notice of Intention; the deleted text in §167.09(a) is now correctly bracketed indicating its deletion. At its meeting on December 5, 2006, the Board of Health adopted the following resolution.

**STATUTORY AUTHORITY**

These amendments to the New York City Health Code (“Health Code”) are proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter (“Charter”). Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene (“Department”) jurisdiction to regulate all matters affecting health in the City of New York. Specifically, Section 556 (a)(3) requires the Department to, “exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto....” 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 Department’s authority extends. Section 1043 of the Charter grants rule-making powers to the Department.

**STATEMENT OF BASIS AND PURPOSE**

The Department is responsible for protecting the health and safety of the public who use permitted bathing beaches by providing for the proper construction, operation and maintenance of these facilities within New York City. Article 167 of the New York City Health Code sets forth standards for the operation and maintenance of bathing beaches under permit by the Department.

In order to maintain consistency with relevant New York State Department of Health requirements and to provide greater clarity to bathing beach operators and the public, it is proposed that certain changes be made to various provisions of Article 167, as stated below. Specifically, and for example, the current definition of “public health hazard” in the Health Code consists merely of a list of items that constitute a “public health hazard.” The Department wishes to expand that list to include additional items that rise to the seriousness of a “public health hazard.” Also, in order to provide greater clarity and guidance to both bathing beach

operators and the public, the Department wishes to add a general definition of “public health hazard” applicable to this Article.

#### **AMENDMENTS TO THE HEALTH CODE**

Section 167.03 is being amended such that the following definition of “public health hazard” is to be added to the list of definitions, and is to read as follows: “*Public Health Hazard*’ is any condition which poses an imminent threat to the health or safety of the public.” This definition is derived from the New York State Department of Health’s Environmental Health Manual, Technical Reference, Item No. ADM2, dated 3/3/03. Therefore, the Department requests that Section 167.03 of the Health Code be amended to include the above definition of “public health hazard.” Also, Section 167.17(c)(4) is being amended such that the word “defined” is replaced by the word “illustrated” and to read as follows: “Presence of public health hazards as *illustrated* in §167.09.”

Section 167.09(a) is being amended such that the requirements found in the sections below are to be added so as to reflect that violations of these requirements constitute a “public health hazard”:

- §167.05(a), (c) (operating without a valid permit issued by the Department);
- §167.23(a) (operating without a Department-approved Beach Safety Plan);
- §167.29(b)(4),(5) (failure to provide depth markings, safety lines and diving requirements);
- §167.37(f)(1), (f)(2)(B),(C) (failure to provide appropriate safety and warning signs, e.g., when diving/swimming/bathing is allowed).

Additionally, the list of existing “public health hazards” in Section 167.09(a) is being amended to include citations to the applicable Health Code sections where none are currently cited.

Finally, Section 167.21(b) is being amended to correct a technical unit error from “yards” to “feet”, in order to be consistent with the intent of the relevant New York State Sanitary Code provision [i.e., 10 NYCRR § 6-2.17 (b)(1)], which provides that, “Lifesaving equipment shall be readily accessible at all bathing beaches.” The Department is further amending this subdivision to alternatively allow provision of safety equipment per an approved Beach Safety Plan. The Department believes this change is consistent with the NYS Sanitary Code, and will continue to promote public safety, while properly accounting for each individual beach’s water conditions, topography, crowd size, department and infrastructure. Accordingly, the amended Section 167.21(b) reads: “*At least one set of the items listed in (2), (3) and (4) above shall be provided for each 500 feet of beachfront or fraction thereof, or as specified in the approved Beach Safety Plan, and shall be readily accessible to the lifeguards therein.*”

The adopted rule is as follows:

Note - Matter in brackets [ ] to be deleted

Matter underlined is new

**RESOLVED**, that Section 167.03 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as last amended by resolution, on March 11, 2004, be

and the same hereby is amended to include a new subdivision (o) and to re-letter subsequent subdivisions, to be printed together with explanatory notes, to read as follows:

### §167.03 Definitions

\*\*\*\*\*

(o) “Public Health Hazard” is any condition which poses an imminent threat to the health or safety of the public.

(p) "Qualified Lifeguard" means an individual possessing the qualifications of supervision Level I and IIB as defined in §167.19(c) of this Article.

[p] (q) "Responsible Person" means a competent individual, at least 18 years of age, employed by the owner or operator of the bathing beach, who is capable of exercising control over the patrons and is trained in the use of lifesaving and safety equipment, in emergency procedures and the Beach Safety Plan.

[q] (r) "Standard Method" means the most recent edition of the publication entitled Standard Methods for the Examination of Water and Wastewater, as published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

Notes: Section 167.03 was amended on December 5, 2006, to include a definition of “public health hazard” as a new subdivision (o) and to re-letter subsequent subdivisions, in order to provide greater clarity to bathing beach operators and the public. Further, this definition is derived from New York State Department of Health guidance.

**RESOLVED**, that subdivision (a) of Section 167.09 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as last amended by resolution, on March 11, 2004, be and the same hereby is amended to add new paragraphs to the list of public health hazards, to be printed together with explanatory notes, to read as follows:

### §167.09 Enforcement

(a) *Public Health Hazards and Closing Criteria.* Where [one or more of the following public health hazard conditions exist] a public health hazard condition exists, including one or more of the following, and said hazard(s) is(are) not immediately corrected, the bathing beach may be immediately closed in whole or in part by the Department and shall remain closed until such conditions are corrected to the satisfaction of the Department and in accordance with the provisions of this Article. The bathing beach in whole or in part shall remain closed until the Department has authorized reopening. Public health hazards shall [mean] include, but not be limited to, any of the following:

- (1) Failure to provide adequate supervision of the beach as prescribed in §167.19;
- (2) Failure to provide all lifesaving and safety equipment as prescribed in §167.21;

- (3) Water quality inadequate as specified in §167.17(c);
- (4) Failure to post public notification signs or advisories as prescribed in §167.27 indicating a potential health hazard or hazardous conditions, when water quality exceeds prescribed standards, in the event of sewage spills and pollution events, or when medical waste/hazardous materials are observed;
- (5) Failure to provide adequate signs indicating that swimming and bathing are prohibited when lifeguards are not on active duty as prescribed in §167.19(a)(4), or when the bathing beach is closed;
- (6) Medical waste, sewage, petroleum or other hazardous materials observed in beach area as prescribed in §167.13(a)(2);
- (7) Use of unapproved or contaminated water supply sources for potable water use as prescribed in §167.31(f);
- (8) Overhead electrical wire within 20 feet horizontally of the bathing beach as prescribed in §167.37(g)(2); [and]
- (9) Operating a bathing beach without a valid permit issued by the Department as prescribed in §167.05(a),(c);
- (10) Operating without an approved Beach Safety Plan as prescribed in §167.23(a);
- (11) Failure to provide depth markings, safety lines and diving requirements as prescribed in §167.29(b)(4),(5);
- (12) Failure to provide appropriate safety and warning signs as prescribed in §167.37(f)(1), (f)(2)(B),(C); and,
- (13) Any other condition determined to be a public health hazard by the Department.

\*\*\*\*\*

Notes: Section 167.09(a) was amended on December 5, 2006, to include that a violation of the requirements contained in Sections 167.05(a), (c); 167.23(a); 167.29(b)(4), (5); and 167.37(f)(1), (f)(2)(B),(C), be deemed a “public health hazard.” Also, Section 167.09(a) was amended to include citations to the applicable Health Code sections where none were cited. These actions were taken in order to provide greater clarity to bathing beach operators and the public.

**RESOLVED**, that subdivision (c) of Section 167.17 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as last amended by resolution, on March 11, 2004, be and the same hereby is amended to replace the word “defined” with the word “illustrated”, to be printed together with explanatory notes, to read as follows:

### **§167.17 Classifications**

\*\*\*\*\*

(c) *Class C: Closed—Temporarily Restricted for Swimming and Bathing.* When one or a combination of any of the following conditions exist, the beach may be closed for bathing.

\*\*\*\*\*

- (4) Presence of public health hazards as [defined] illustrated in §167.09.

\*\*\*\*\*

Notes: Section 167.17(c) was amended on December 5, 2006, such that the word “defined” was replaced by the word “illustrated.”

**RESOLVED**, that subdivision (b) of Section 167.21 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as last amended by resolution, on March 11, 2004, and the same hereby is amended to correct a descriptive technical unit error from “yards” to “feet”, and to allow alternative provision of safety equipment per an approved Beach Safety Plan, to be printed together with explanatory notes, to read as follows:

**§ 167.21 Lifesaving and Safety Equipment.**

\*\*\*\*\*

(b) At least one set of the items listed in (2), (3) and (4) above shall be provided for each 500 [yards] feet of beachfront or fraction thereof, or as specified in the approved Beach Safety Plan, and shall be readily accessible to the lifeguards therein.

\*\*\*\*\*

Notes: Section 167.21(b) was amended on December 5, 2006, to correct a descriptive technical unit error from “yards” to “feet”, in order to be consistent with the intent of the New York State Sanitary Code (see 10 NYCRR §6-2.17(b)(1)). Also, by alternatively allowing for the provision of safety equipment per each approved Beach Safety Plan, the Department believes this language change will continue to promote public safety, while properly accounting for each individual beach’s water conditions, topography, crowd size, department and infrastructure.

Notice of Adoption-Article 167-FINAL