



NYC Rules

[Advanced Search](#)[SET TEXT SIZE:](#)[TRANSLATE THIS PAGE](#)[PRINTER FRIENDLY](#)[NEWSLETTER SIGN-UP](#)[LOGIN](#) | [REGISTER](#)

Animals (Article 161) and Reportable Diseases and Conditions (Article 11)

Proposed Rules: Closed to Comments ([View Public Comments Received:95](#))

Agency: Department of Health and Mental Hygiene

Comment By: Wednesday, January 21, 2015

Keywords: [animals](#) [article 161](#) [reportable diseases](#)

Download Copy of Proposed Rule (.pdf):  [p-dohmh_12-12-14_c_art_161.pdf](#)

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the Health Code) are authorized by sections 558 and 1043 of the New York City Charter (the Charter). Sections 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 authority of the New York City Department of Health and Mental Hygiene (the Department) extends. Section 1043 grants the Department rule-making authority.

Background

In May 2014, the Commissioner of the Department of Health and Mental Hygiene granted a petition from an individual asking that the Board consider amending Article 161 to remove ferrets from the list of animals prohibited as pets in the City of New York. This proposal would initiate the process of amending the Health Code and begin a public comment period on whether ferret ownership should be legalized.

The Department's Bureau of Veterinary and Pest Control Services enforces Article 161 pertaining to the control of animals in the City. It requests that the Board of Health also amend various other provisions of Article 161 and Article 11 of the Health Code related to animal control.

Amendments to Health Code §161.01(a)—Circuses and Other Animal Exhibitions

Health Code §161.01 prohibits the possession of wild and other animals that present hazards to human health and safety. Subdivision (a) allows for certain

exceptions and requires permits for temporary exhibitions, displays and other uses of prohibited animals. Circuses and wildlife rehabilitators are currently exempt from this section's permit requirements, and while many voluntarily obtain permits from the Department, they are not obligated to do so.

Recently, the Department identified some circuses and a wildlife rehabilitator who intended to exhibit or use animals to entertain the public in settings that were not safe. In one instance, circus animals had not been tested to rule out infection with a disease that could be transferred to humans. In other instances, circus animals were kept in enclosures that either did not adequately protect the public or were too small. Although circuses are required to comply with the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., administered by the U.S. Department of Agriculture, this law only imposes limited animal care, animal health and public safety requirements. In yet another instance, a wildlife rehabilitator proposed to present adult performing bears on a theatre stage without barriers to protect the audience from the animals, and without adequate enclosures for the bears to stay in when they were not performing. The Department was able to use its general nuisance authority to address exhibitions and performances that do not adequately protect the public.

The Department believes circuses and wildlife rehabilitators should be required to have appropriate measures in place to adequately protect the public; and they should only be permitted to perform in the City if they comply with requirements that the City deems necessary to protect public health and safety.

Federal law does not preempt the local

regulation of circuses.^[1] The Department therefore requests that the Board amend subdivision (a) of section 161.01 of

the Health Code to require that circuses

and wildlife rehabilitators in the City obtain permits from the Department in all cases when they intend to exhibit or use performing animals.

Amendments to Health Code §§161.01(b)(4)—Prohibited Animals

Health Code §161.01(b)(4) currently prohibits persons from harboring ferrets in New York City. Following the procedures described in Health Code §9.05, an individual petitioned the Board of Health to amend Article 161 to remove ferrets from the list of animals that cannot be kept in the City. By letter dated May 16, 2014, the Commissioner, as the Board's Chairperson, granted the petition and responded that the Board would consider an amendment to legalize ferrets no later than December 2014. The proposed amendment would remove the prohibition on keeping domestic ferrets as pets, but would require certain safeguards. The proposed amendment requires that these pets:

- Be immunized against rabies in accordance with Health Code §11.29;
- Be sterilized to prevent their reproduction, and
- Be restrained when outdoors.

The requirement to sterilize is being proposed to prevent an overpopulation of ferrets that could become a burden on the animal shelter system and as a part of responsible pet ownership. Additionally, sterilization may help reduce aggression and musky odor, and provide health benefits to the animal. The Department is also proposing that this provision be effective September 1, 2015, roughly six months after the expected adoption of this provision, if the Board of Health adopts this proposal, to allow time for government and non-government agencies and property owners to develop and put into effect appropriate policies and guidance.

Amendment to Health Code §§161.21 and 11.29—Rabies Vaccinations

In 2010, Health Code §161.21 was amended to require that stables keep current rabies vaccination certificates for the horses they house. The Department is requesting that the Board further amend this section to require that horses' owners, as well as the stables where they are kept, maintain proof that their horses are vaccinated.

The Department also proposes that Health Code §11.29 be amended to:

1. Add ferrets and horses to the list of animals that must be immunized against rabies and
2. Change the terms "dogs" and "cats" in this section to "animals" to reflect that other animals would be specifically required to be currently vaccinated against rabies.

Amendment to Health Code §161.02—Definitions

The Department is proposing that the Board add a definition for “operating” or “in operation” to clarify that an animal business or facility regulated by the Health Code is required to comply with all of the provisions of the Health Code that apply to it regardless of whether the facility or business is open to the public.

Amendments to §161.15—Cage or Box Dryers

This section currently requires boarding kennels to obtain proof from the owners of the dogs for which they care that the animals have been vaccinated against rabies and certain other diseases. The Department is proposing that the Board amend this section to clarify that this requirement is applicable to grooming parlors and training establishments. In addition, these businesses would have to obtain proof from the owners of cats and ferrets that these types of animals have been vaccinated against rabies.

The Department is also proposing that the Board add a provision mirroring a State law requirement that prohibits grooming parlors and other facilities that handle small animals from drying an animal using the heating element contained in a cage or box dryer. These types of dryers have been associated with injuries and deaths of pets left unattended during drying. State Agriculture & Markets Law §353-e already prohibits their use in grooming facilities; this amendment would enable the Department to enforce this ban in the businesses it regulates. This section is being repealed.

^[1] See, e.g., 7 U.S.C. 2145(b); *Dehart v. Town of Austin*, 39 F.3d 718, 722 (7th Cir. 1994) (“[T]he Animal Welfare Act expressly contemplates state and local regulation of animals.”)

[Public Hearing](#)

Subject: Proposed resolution to amend Animals (Article 161) and Reportable Diseases and Conditions (Article 11) of the New York City Health Code

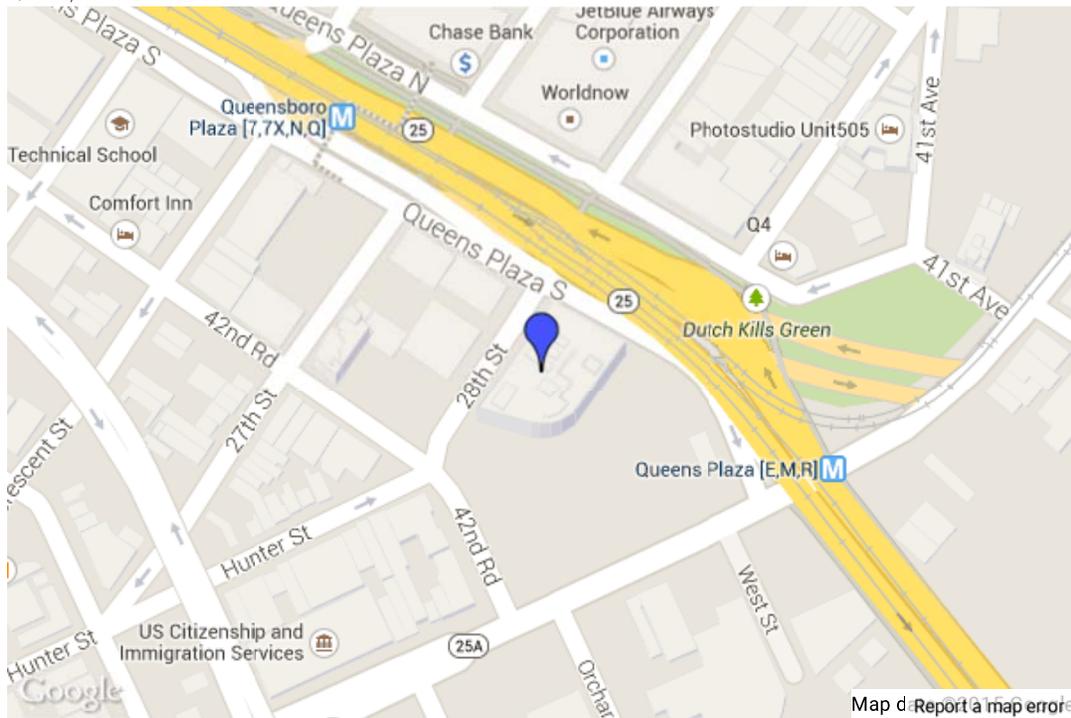
Public Hearing Date: Wednesday, January 21, 2015 - 2:00pm

Contact: Svetlana Burdeynik at (347) 396-6078 or resolutioncomments@health.nyc.gov

Location: New York City Department of Health and Mental Hygiene, Gotham Center

42-09 28th Street, Room 3-32

Queens, NY 11101-4132



[Public Hearing 2](#)

[Public Hearing 3](#)



[View Comments](#)

