

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF ADOPTION OF AN AMENDMENT
TO ARTICLE 161 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 161 of the New York City Health Code (the “Health Code”) was published in the City Record on September 29, 2006, and a public hearing on the proposal was held November 1, 2006. Thirty-nine persons testified, and more than 13,000 written comments (11,312 in the form of signatures on petitions) were received. At a meeting of the Board of Health on December 5, 2006, the following resolution was adopted.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Section 558(b) and (c) of the Charter empowers 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 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The New York City Department of Health and Mental Hygiene (the Department) is authorized and required by law to promote and protect the health and safety of New York City residents and visitors by promoting an environment free from animal-borne diseases and hazards, as well as those caused by other vectors. The Department enforces Article 161 and Article 11 of the New York City Health Code (“Health Code”) and provisions of other applicable law related to ownership and management of animals in the City of New York.

State and City laws and regulations require that dogs (a) be actively vaccinated against the disease of rabies (Health Code §11.66), (b) be licensed (Ch. 115, laws of 1894, as amended), (c) have a dog license tag attached to the dog’s collar when the animal is in a public place (Health Code §161.04), and be restrained by a leash or chain not more than six feet in length when the animal is in a public place (Health Code §161.05).

In addition to the Department, special patrolmen employed by Animal Care and Control of New York City, Inc., New York City Department of Sanitation (DSNY) K-9 enforcement agents, and Police Department (NYPD) officers issue violations to the owners of dogs in a public place that do not have a dog license tag attached to their collars and for unrestrained dogs. Department of Parks and Recreation (DOPR) enforcement agents enforce Health Code §§161.03, 161.04 and 161.05 in DOPR facilities.

In 1942, restraining a dog in New York City public areas by a leash or chain, replaced a Board of Health requirement that dogs in public areas be muzzled. DOPR’s current rules generally require that dogs be leashed in DOPR facilities, except as permitted by the DOPR commissioner. See DOPR rules, 56 RCNY §§1-04(i) (“Failure to control animals”) and 1-05(s)(3) (“Dog runs”). In the 1990’s DOPR initiated a policy of ACourtesy Hours@ to accommodate dog owners in certain areas of some parks that did not have dog runs, enabling them to exercise their dogs off leash during the hours of 9 p.m. and 9 a.m. DOPR has informed the Department that this policy was implemented at the request of dog owners who

had no alternative place to exercise their dogs. DOPR has requested that the Board of Health amend §161.05 of the Health Code to provide explicit authorization for the DOPR “off the leash” policy in the areas and facilities within DOPR’s jurisdiction.

The Department, like DOPR, realizes that alternative space for dogs to exercise is not generally available in our urban environment. The Department recommends adoption of an amendment to §161.05 of the Health Code to allow dog owners who comply with formal DOPR rules to exercise their dogs off leash, in specific areas of specified park facilities during specified times. Department data for 2004 show that 93 (2.3%) of 4,082 dog bites reported Citywide occurred in DOPR facilities, and that about the same proportion, 86 (2.2%) of the 3,956 dog bites reported citywide, occurred in DOPR facilities in 2005. These bite reports do not indicate whether the biting dog was restrained or off leash. The Department supports codification of DOPR’s policy of ACourtesy Hours,@ which has existed for more than 15 years, whereby DOPR will adopt specific rules concerning where and when dogs may be off the leash in City parks areas and facilities. In addition, rabies remains endemic in New York City and the numbers of cases of rabies in wildlife appears to be increasing: from six positive cases in 2003, to 14 in 2004, doubling to 28 cases in 2005. Wild animals, many subject to rabies, reside in City parks, and also enter New York City from suburban habitats, seeking open spaces in the City, including those in parks. While rabies remains endemic in the City, all dogs must be vaccinated against rabies, in accordance with Health Code §§11.65 and 11.66. However, when dogs are off the leash in park areas and facilities and not under their owners’ constant observation, the dogs are at greater risk of exposure to rabid animals than leashed dogs. Accordingly, this Health Code amendment will require DOPR to adopt rules providing that owners of dogs off the leash maintain and present proof that their dogs have current rabies vaccinations. Finally, the proposed amendment requires the DOPR to provide the public with appropriate information concerning dog licensing and rabies vaccination requirements, as well as times when, and places where, in DOPR areas and facilities, dogs will be allowed off the leash.

CHANGES MADE IN RESPONSE TO PUBLIC COMMENTS

As noted, publication of this proposal generated substantial public comment. Approximately 13,200 individuals and groups expressed support for the proposal, and 202 individuals and groups expressed opposition to any amendment that would allow dogs to be off the leash under any circumstances stating that this would adversely affect public health. After review of the public comments, and for the same reasons stated in the original Statement of Basis and Purpose, and because the off leash policy has been in effect for approximately 20 years, the Department has no reason to believe that there will be any increased risk to public health as a result of the Health Code change at this time. However, the amendment as originally proposed has been changed to require that DOPR adopt rules allowing dogs to be off the leash in unenclosed DOPR areas and facilities only from 9 p.m. to 9 a.m. To facilitate enforcement by DOPR and identification of dog owners, the rule requires that persons controlling off leash dogs present proof of current dog licensure, as well as of current rabies vaccination, as originally proposed. Many comments of persons opposed to the amendment alleged that persons in control of off leash dogs do not comply with the current unofficial policies. DOPR, after reviewing such comments, has assured the Department that complaints should be made promptly through 311 if there are persons who let dogs run on or off the leash in areas off limits to dogs, or allow dogs to be off leash at impermissible times; or create any nuisance; or menace people, or otherwise behave in any manner that compromises public health, or threatens public safety. DOPR has represented that it will direct its enforcement officers to investigate and address such complaints. In addition, the rule has been further amended to authorize the Department’s Commissioner to limit or eliminate off-leash privileges in specific DOPR areas and facilities if the Department determines, based on epidemiological evidence, that there is an increase in preventable off leash dog bites or a risk of zoonotic disease transmission in such areas or facilities.

In other changes, subdivision (a) of §161.05 has been amended to substitute the term “other restraint” for the term “chain” and there has been a minor, non-substantive, change in subdivision (c) with respect to identifying officers of the Department of Sanitation and the DOPR as authorized to enforce this section.

STATEMENT PURSUANT TO SECTION 1042 – REGULATORY AGENDA

The proposed amendment was not included in the Department’s Regulatory Agenda because it resulted from a recent analysis by the Department.

The proposal is as follows:

Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that §161.05 of the New York City Health Code, set forth in title 25 of the Rules of the City of New York, as amended by resolution adopted on the seventeenth of December, two thousand three, be and the same hereby is amended to be printed together with explanatory notes, as follows:

§161.05 Dogs to be restrained.

(a) Except as specified in subdivision (b) of this section, a [A] person who owns, possesses or controls a dog shall not permit it to be in any public place or in any open or unfenced area abutting on a public place unless the dog is effectively restrained by a leash or [chain] other restraint not more than six feet long.

(b) (1) Dogs within areas and facilities under the jurisdiction and control of the Department of Parks and Recreation (“DOPR”), or successor agency, shall be restrained except as otherwise permitted in accordance with the rules of the DOPR. Such rules shall include provisions that prohibit unrestrained dogs in unenclosed DOPR controlled areas and facilities except during a specified range of time, that shall not begin earlier than 9:00 p.m. and not extend past 9:00 a.m. Such rules shall also specify that persons in control of dogs allowed to be off the leash in such areas and facilities maintain and provide, on demand, proof of current dog licensure and current rabies vaccination when dogs are allowed to be off the leash. In addition, DOPR shall make available to the public, in a manner acceptable to the Department, information concerning rabies vaccination and dog licensure requirements, and the specific locations where and times when dogs may be allowed off the leash in DOPR areas and facilities.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, the Department may, based on epidemiologic evidence indicating an increase in preventable off leash dog bites during off leash hours in areas open to off leash use, or a risk of zoonotic disease transmission, limit or eliminate the use of or access to specific areas or facilities, or parts thereof, under DOPR jurisdiction, by unrestrained dogs.

[(b)] (c) Notices of violation for failure to comply with subdivision (a) of this section may be issued by any authorized employee, officer or agent of the Department, or of the Department[s] of Sanitation [and] or the Department of Parks and Recreation, or successor agencies.

Notes: Section 161.05 was further amended by resolution adopted on December 5, 2006. The substance of the existing provision was relettered as subdivisions (a) and (c) and subdivision (a) was amended to substitute the term “other restraint” for the term “chain,” a more humane term. A new subdivision (b) was added to authorize the Department of Parks and Recreation to adopt rules providing for dogs to be off leash in areas and facilities under its jurisdiction and control, and to require persons controlling dogs off the leash to maintain and provide proof of current dog licensure and rabies vaccination, and for DOPR to provide public information about dog licensing, rabies vaccination, and the times when and locations where dogs are allowed to be off leash. Rellettered subdivision (c) was amended to change the term “Departments of Sanitation and Parks and Recreation” to “Department of Sanitation or the Department of Parks and Recreation.”

hc 161.05 adopt