



## DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Articles 139, 153 and 181 of the New York City Health Code

**What are we proposing?** The New York City Department of Health and Mental Hygiene (“the Department”) is proposing that the Board of Health (“the Board”) repeal the following New York City Health Code (“Health Code”) provisions: sections 139.05 and 139.07 of Article 139, section 153.01 of Article 153, and section 181.03 of Article 181. These provisions of the Health Code are redundant, no longer enforced, or no longer needed.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on July 20, 2016. The hearing will be at:

New York City Department of Health and Mental Hygiene  
Gotham Center  
42-09 28<sup>th</sup> Street, 14th Floor, Room 14-43  
Long Island City, NY 11101-4132

**How do I comment on the proposed amendments to the Health Code?** Anyone may comment on the proposed amendments by:

- **Website.** You may submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You may email comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov)
- **Mail.** You may mail comments to:

New York City Department of Health and Mental Hygiene  
Gotham Center – 42-09 28<sup>th</sup> Street, CN 31  
Long Island City, NY 11101-4132

- **Fax.** You may fax comments to the Department at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You may sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You may also sign up in the hearing room before or during the hearing on July 20, 2016. You may speak for up to five minutes.

**Is there a deadline to submit written comments?** Written comments must be received on or before July 20, 2016 at 5:00 pm.

**Do you need assistance to participate in the hearing?** You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by July 6, 2016.

**Can I review the comments made on the proposed amendments?** You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by

the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

**What authorizes the Department to make this rule?** Section 556(c)(1) of the New York City Charter ("Charter") grants the Department jurisdiction to supervise and control the registration of deaths. Section 558(b), (c), and (g) 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(a) of the Charter grants rulemaking powers to the Department.

The proposed repeal of these rules was not included in the Department's regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

**Where can I find the Health Code?** The Health Code is located in Title 24 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

### **Statement of Basis and Purpose**

#### ***Background***

The Department is proposing to repeal as redundant, no longer needed, or no longer enforced, the following provisions of the New York City Health Code (the "Health Code"): sections 139.05 (Littering prohibited) and 139.07 (Smoking prohibited) of Article 139; sections 153.01 (Littering prohibited) of Article 153; and section 181.03 (Spitting prohibited) of Article 181, all of Title 24 of the Rules of the City of New York.

#### ***Repeal sections 139.05 (Littering prohibited) and 153.01 (Littering prohibited)***

Section 139.05 of the Health Code prohibits littering or the creation of an insanitary condition in or on a public transportation facility. The New York City Administrative Code ("Administrative Code") prohibits littering in the City generally. Specifically, Administrative Code §16-118(1) prohibits littering in public spaces. Originally, when promulgated in 1991, Health Code §139.05 was intended to encompass littering in "any public transportation facility which may not be a 'public place' within the meaning of the local law" to distinguish it from the more general Administrative Code §16-118(1). However, Health Code §139.05 is redundant as it is duplicative of Administrative Code §16-118(1) inasmuch as a public transportation facility can be considered a "public space" within the meaning of Administrative Code §16-118(1).

Similarly, Health Code §153.01 prohibiting littering by a person or an employee is duplicative of Administrative Code §16-118(1) which also prohibits littering by persons or their employees "upon any street or public place, vacant lot, air shaft, areaway, backyard court or alley."

#### ***Repeal section 139.07 (Smoking prohibited)***

Health Code §139.07(a) prohibiting smoking or the carrying of "an open flame or a lighted match, cigar, cigarette or pipe in or on a public transportation facility" is duplicative of Administrative Code §17-503 of the City's Smoke-Free Air Act which prohibits smoking in public transportation facilities. In addition, New York City Fire Code ("Fire Code") section 308(3) makes it unlawful to "place

or discard, or cause to be placed or discarded, an open flame, lighted match...where it can cause the ignition of combustible material or combustible waste...” The plain meaning of Fire Code §308(3) would cover public transportation facilities.

Similarly, Health Code §139.07(b) allowing owners or persons in charge of public transportation facilities to designate areas where smoking is permitted is not necessary as Administrative Code § 17-503 and the New York State Health Law § 1399-o prohibit smoking in all areas of public transportation facilities.

***Repeal section 181.03 (Spitting prohibited)***

Health Code §181.03(a) and (b) prohibiting spitting in common public areas or in any public transportation facility and requiring the posting of signs prohibiting spitting at public transportation facilities is no longer enforced and no longer needed as there are rules prohibiting spitting in public transportation facilities and conveyances servicing the city such as Metropolitan Transportation Authority conveyances and facilities (21 NYCRR § 1050.7(a)), Staten Island Rapid Transportation Authority facilities (21 NYCRR § 1040.7(a)), Metro-North facilities and trains (21 NYCRR § 1085.7(a)), and Long Island Railroad terminals, stations, and trains (21 NYCRR § 1097.7(a)). In addition, it is expected that the City Council will amend Administrative Code § 16-118 to prohibit spitting in common areas of private and public buildings and in public transportation facilities.

***Statutory Authority***

These amendments to the Health Code are promulgated pursuant to Sections 558 and 1043 of the New York City Charter (“the Charter”). Section 558 of the Charter empowers 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 rulemaking authority.

The proposal is as follows:

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.

[Deleted material is in brackets.]

RESOLVED, that Section 139.05 of Article 139 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.

RESOLVED, that Section 139.07 of Article 139 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.

RESOLVED, that Section 153.01 of Article 153 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.

RESOLVED, that Section 181.03 of Article 181 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is hereby REPEALED.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Repeal of Certain Health Code Provisions**

**REFERENCE NUMBER: DOHMH-63**

**RULEMAKING AGENCY: DOHMH**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

November 25, 2015  
Date

**NEW YORK CITY LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Repeal of Certain Health Code Provisions**

**REFERENCE NUMBER: 2015 RG 130**

**RULEMAKING AGENCY: Department of Health and Mental Hygiene**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: November 25, 2015