

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF INTENTION
TO AMEND ARTICLE 161 OF THE NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

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, notice is hereby given of the proposed amendment of Article 161 (Animals) of the New York City Health Code (the “Health Code”).

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:00 A.M. TO 12:00 NOON ON TUESDAY, FEBRUARY 3, 2010 IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. MONDAY, FEBRUARY 2, 2010. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL BUSINESS HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY JANUARY 20, 2010. REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P.M. ON FEBRUARY 3, 2010. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., TUESDAY, FEBRUARY 3, 2010. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED. COMMENTS RECEIVED AFTER FEBRUARY 3, 2010 WILL BE CONSIDERED TO THE EXTENT POSSIBLE.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT’S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the 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 Commissioner and the Department of Health and Mental Hygiene (the Department) extends. Section 1043 grants the Department rule-making authority.

Statement of Basis and Purpose

Introduction

As part of a comprehensive review of the Health Code, the DOHMH proposes that Board of Health update various provisions of Article 161 of the Health Code to assure that it provides adequate legal tools for the Board and DOHMH to effectively address the City's current public health needs related to animals, and to provide consistency with other applicable law. The revisions reflect current law, policies and practices and update provisions regarding permits and licenses, dangerous dogs, shelter animals, pest management and stables for horses. Not all sections of the Article would be amended, however. The following changes are proposed.

§ 161.01. Wild and other animals prohibited

The title of this section has been amended to add the term "other animals" to more correctly reflect its provisions, indicating that possession of certain animals other than "wild" animals is prohibited in the City.

Paragraph (4) of subdivision (a) is new, and adds to the places where wild animals may be kept, a veterinary or other health care facility that is providing care to such animals.

Former paragraph (4), renumbered as paragraph (5) would require that a permit be obtained to exhibit and use animals whose possession or use would otherwise be prohibited; that animals for which there is a USDA approved rabies vaccine be vaccinated prior to use; that a permit application be submitted by the user or exhibitor in advance of the proposed use; and that a fee may be imposed for such permit.

The following additions are proposed to the prohibited animals list in subdivision (b): in paragraph (2), the term "cross-breed" in addition to "hybrid or cross-breed offspring of a wild cat and domesticated or other cat;" in paragraph (10), "turtles or tortoises with a carapace length of less than four (4) inches;" in paragraph (14), "nutria;" in paragraph (15) "pigs, including pot bellied pig, goats, cattle;" and a new paragraph (18) prohibited "sea mammals ... and other predatory marine and freshwater animals and fishes including, but not limited to, sharks and piranha."

In response to a petition to commence rule making, the Department examined reports of bee stings and found that such incidents are minimal. As a result the Department is proposing to amend paragraph (12) to allow New Yorkers to keep hives of non-aggressive honey bees. No permit would be required, only notification to the Department, and appropriate practices to avoid creating a nuisance would have to be used. A definition of a beekeeping nuisance has been added to the definition of "animal nuisance" in §161.02.

§ 161.02. Definitions.

This section includes additional terms and updated definitions to harmonize with applicable law and to reflect current practice.

The existing terms, "shelter", "attack or guard dog" (eliminating the term "attack"), "boarding kennel", "stable", "grooming parlor", and "pet shop" have been updated to reflect modern usage and practice, "pet animal" has been removed, and the following terms and their definitions have been added:

“adoption”
“animal behaviorist”
“animal nuisances”
“animal rescue group”
“cat”
“dangerous dog”
“dog”
“exposure to rabies”
“hybrid or cross-breed”
“lost, stray and homeless animals”
“owner”
“service dog”
“severe injury”
“small animal”
“State Sanitary Code”

The addition of these terms and their definitions updates and brings the Article into greater conformity with its regulatory scope.

§ 161.04. Dog licenses.

Subdivision (a) now includes specifications that animal rescue groups are required to obtain a license for any dog harbored by them for longer than six months.

A new subdivision (c) requires animal rescue groups to provide an animal shelter from which they obtain animals with proof that owners of dogs adopted through their efforts have licensed such dogs.

Subdivision (d) has been added to include an additional tag for service dogs and to waive the fee for such tags, a Department practice consistent with dog licensing requirements in the rest of the State. Instead of requiring that individuals with disability produce proof of disability, this provision requires only proof that the animal has been trained to provide services needed by such persons and is more consistent with provisions of the Americans with Disabilities Act.

A new subdivision (e) allows for the sale of licenses in any manner not prohibited by law.

Current subdivision (c) (Enforcement) has been renumbered as subdivision (f) and has been amended to authorize issuance of notices of violation for failure to comply by any peace officer.

§ 161.05. Dogs to be restrained.

Subdivision (c) has been amended to authorize any peace officer to issue a notice of violation for failure to comply with its requirements.

§ 161.06. Dogs and cats to be vaccinated and treated prior to change in ownership.

This section has been amended to update the reference to rabies vaccination requirements in Article 11 of the Health Code.

§ 161.07. Dangerous dogs.

It is proposed that this section be repealed and recodified in its entirety. As recodified, the section specifies procedures for addressing the perennial problem of dogs that are a danger because their owners are generally unable or unwilling to control them. The new section would provide a hearing to any owner disagreeing with the Department’s assessment of his or her dog, but would specify a length of time that a dog which has inflicted injuries can be kept in a shelter prior to that hearing. It also modernizes and adds control measures to those currently available to the Department in §161.07.

§ 161.09. Permits to keep certain animals.

This section has been updated and extensively revised. Subdivision (a) would no longer require that a pet shop that exclusively sells dogs and cats and is a pet dealer regulated by Article 26-A of the Agriculture and Markets Law, or successor law be permitted by the Department. Similarly, subdivision (f) excludes such persons from holding a certificate in small animal holding.

Current subdivision (c) has been deleted. Sales of live rabbits and poultry are regulated by the US Department of Agriculture and the State Department of Agriculture and Markets.

Current subdivisions (d) (e) (f) have been relettered but are substantively the same. The relettered subdivision (c) has been amended to allow the possession or use of cattle, swine, sheep or goats only at a zoo, farm exhibit, or other place in accordance with §161.01(a) of this Article. The relettered subdivision (g) requires that the owners of trained guard dogs have their dogs implanted with a microchip as a permanent identification, and that they supply the identification number to the Department. Paragraph (2) of this subdivision requires owners or other persons in control of any premises in which a trained guard dog is kept to post a durable sign or notice warning the public of the presence of such trained guard dog, rather than the Department providing the sign. Requirements for the content of the sign are listed, including the name and other contact information for the owner of the guard dog. Paragraph (3) requires that all persons who train, sell or rent guard dogs must post a durable sign or notice stating that a copy of this section shall be provided by the trainer, seller or renter of a guard dog to any person who uses such dogs, warning that all users shall comply with licensing, tagging, microchipping and signage requirements.

§ 161.11. Prevention of nuisances; cleaning.

Subdivision (b) has been amended to incorporate the definition of animal nuisance in §161.02.

Subdivision (c) has been amended to include reference to equipment required to maintain sanitary conditions.

§ 161.15. Keeping of small animals for sale, boarding, grooming, or training.

Subdivision (a) has been amended to clarify that animals to be sold or held for sale, or boarded, groomed or trained shall not be kept in any room in which a person lives and that only live food fish species from a source authorized by applicable law to supply such fish, or fish kept as pets in an ornamental aquarium, shall be sold or held for sale or kept, respectively, in the same place where food or drink is sold for human consumption.

Subdivision (e) has been added to require that a holder of a permit to operate a boarding kennel obtain proof from the dog's owner that any dog provided services is up to date on all vaccinations in accordance with §17-366 of the Administrative Code. The owner shall maintain such proof on the premises, and shall provide such records for inspection to the Department upon request.

§ 161.17. Small animals kept for sale, shelters, kennels and training establishments; physical facilities and maintenance.

This section has been amended to reference Article 131 (Buildings) and Article 151 (Pest Prevention and Management).

§ 161.19. Keeping of livestock, live poultry and rabbits.

The title of this section has been amended to add the term "livestock."

Subdivision (a) has been amended to prohibit keeping a live rooster, duck, goose or turkey in the City of New York except in a slaughterhouse inspected by or on behalf of the US

Department of Agriculture and the State Department of Agriculture and Markets or other places in accordance with §161.01 (a).

Subdivision (b) has been amended to reference applicable law and this Article's definition of animal nuisances.

Subdivision (c) contains provisions of current §161.09 (c).

§ 161.21. Horse stables; rabies vaccination for horses; nuisance prevention.

The current section, "Yarding of horses, cattle, swine, sheep and goats," is being repealed as outdated, and a repealed §161.23, "Stables for horses; physical facilities and maintenance," has been recodified and renumbered as §161.21. The new section provides general requirements for horse stables that are required to hold a permit pursuant to §161.09, including horse stables used in rental horse businesses regulated by Chapter 4 of the Title 24 of the Rules of the City of New York. Chapter 4 now includes only rules applicable to stables maintained by rental horse businesses. The new requirements reflect both the recommendations of the Advisory Board established pursuant to §17-331 of the Administrative Code and standards of the State Department of Agriculture and Markets Horse Health Assurance Program. The Department believes such standards, which reflect modern stable management practices, are appropriate for all commercial stables because they promote the safety and health of horses, and that of people who work and have other contact with horses, and prevent and control diseases of horses and other nuisance conditions at stables. New safety requirements include installation of sprinkler systems, emergency management procedures, establishing emergency contact information, and equipping stables with horse trailers for emergency care of horses. Stable operators will be required to have all horses in commercial stables immunized against rabies.

§ 161.23 Sterilization of shelter animals.

This section is new and addresses obligations for sterilization of shelter animals. Since 2002, Administrative Code §17-804 has required that dogs and cats released from an animal shelter must be spayed or neutered. The Administrative Code is silent regarding pre-adoption release of animals to animal rescue groups. Since 2002, the Mayor's Alliance for NYC's Animals, Inc., has actively promoted formal agreements with such groups, enabling them to take animals from shelters. These agreements relieve the City's shelters of overcrowding, and reduce pressures to euthanize adoptable animals. The groups hold dogs and cats until their adoption by permanent owners. This new Health Code provision would require shelters to sterilize dogs and cats before they are released to an animal rescue group, when practicable. It establishes an obligation for the animal rescue groups to maintain proof of sterilization of animals released to adopters, if the animals are not already sterilized. It also establishes procedures for management of cases whereby owners of animals being released from a shelter who object to sterilization of their dogs and cats may post a bond and take the animal out of the shelter, pending the owner's litigation of the matter, and establishes a spay neuter fund with the proceeds of forfeited bonds in the event that the owner does not timely commence litigation or does not prevail in court. Sums collected from forfeited bonds would be dedicated to cover the costs of free or subsidized spay and neuter services for dogs and cats.

§161.25 Modification by the Commissioner.

This section is new and would authorize the Commissioner in specific instances to modify the application of provisions of this Article.

The resolution is as follows.

Matter deleted is [bracketed].

Matter that is new is underlined.

Resolved, that subdivisions (a) and (b) of §161.01 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby are, amended, to be printed, together with explanatory notes, to read as follows:

§161.01. Wild and other animals prohibited.

(a) No person shall sell or give to another person, possess, harbor, [or]keep, or yard wild or other animals identified in [subsection (b) of] this section or in regulations promulgated by the Commissioner pursuant to [subsection] subdivision (e) of this section other than in:

(1) A zoological park or aquarium operated by the Department of Parks, by the Wildlife Conservation Society, or by the Staten Island Zoological Society; or

(2) A laboratory operated pursuant to §504 of the Public Health Law; or

(3) A circus or native wildlife rehabilitator licensed by federal or state agencies; or

(4) A veterinary hospital or other veterinary or medical facility where veterinary care is provided for such animals; or

[(4) A place which has received the approval of the Department to exhibit or use such animals, and which has protective devices to prevent such animal from escaping or injuring the public. The Department may impose reasonable conditions and time limits on the granting of such approval.]

(5) A place that exhibits, uses or displays such animals, including, but not limited to, a rodeo, petting zoo, farm museum, school or similar institution, film, television, photographic or other production, or for commercial or other purposes, in accordance with a permit issued by the Commissioner. The Commissioner may impose reasonable conditions and time limits on such exhibitions, usages or displays when issuing such permits, including a condition that the place where animals are exhibited, used or displayed have protective devices to preventing animals from escaping or injuring the public.

(A) An application for a permit to exhibit, use or display animals shall be submitted to the Department at least five (5) business days prior to such exhibition, use or display by the person or entity that proposes to exhibit, use or display such animals.

(B) Any animal of a species for which a rabies vaccine licensed and approved by the USDA is available shall be currently vaccinated against rabies in accordance with the vaccine manufacturer's instructions sufficiently in advance of any permit being issued for its exhibition, use or display, so that such vaccine shall be effective at the time of the animal's exhibition, use or display.

(C) The Department may impose a fee to cover its costs in issuing such permits.

(b) For the purposes of this Code, a wild animal[s are] is deemed to be any animal[s] which [are]

is naturally inclined to do harm and capable of inflicting harm upon human beings and all such animals are hereby prohibited pursuant to [subsection] subdivision (a) of this section. Such animals shall also include: (i) any animals specified by the Commissioner in regulations promulgated pursuant to this section; (ii) any native or exotic wildlife whose possession or sale is prohibited because they are designated as protected or endangered pursuant to any federal, state or local law, regulation, or rule; and (iii) any of the following animals:

(1) All dogs other than domesticated dogs (*Canis familiaris*), including, but not limited to, wolf, fox, coyote, hyaena, dingo, jackal, dhole, fennec, raccoon dog, zorro, bush dog, aardwolf, cape hunting dog and any hybrid or cross-breed offspring of a wild dog and domesticated dog.

(2) All cats other than domesticated cats (*Felis catus*), including, but not limited to, lion, tiger, leopard, ocelot, jaguar, puma, panther, mountain lion, cheetah, wild cat, cougar, bobcat, lynx, serval, caracal, jaguarundi, margay and any hybrid or cross-breed offspring of a wild cat and domesticated or other cat.

* * *

(10) Reptiles (*Reptilia*). All Helodermatidae (gila monster and Mexican beaded lizard); all front-fanged venomous snakes, even if devenomized, including, but not limited to, all Viperidae (viper, pit viper), all Elapidae (cobra, mamba, krait, coral snake), all Atractaspididae (African burrowing asp), all Hydrophiidae (sea snake), all Laticaudidae (sea krait); all venomous, mid-or rear-fanged, Duvernoy-glanded members of the family Colubridae, even if devenomized; any member, or hybrid offspring of the family Boidae, including, but not limited to, the common or green anaconda and yellow anaconda; any member of the family Pythonidae, including, but not limited to, the African rock python, Indian or Burmese python, Amethystine or scrub python; any member of the family Varanidae, including the white throated monitor, Bosc's or African savannah monitor, Komodo monitor or dragon, Nile monitor, crocodile monitor, water monitor, Bornean earless monitor; any member of the family Iguanidae, including the green or common iguana; any member of the family teiidae, including, but not limited to, the golden, common, or black and white tegu; all members of the family Chelydridae, including snapping turtle and alligator snapping turtle; all turtles and tortoises with a carapace length of less than four (4) inches; and all members of the order Crocodylia, including, but not limited to, alligator, caiman and crocodile.

* * *

(12) All venomous insects, including, but not limited to, [bee,] bees other than non-aggressive honey bees (*Apis mellifera*), hornet and wasp. Persons keeping honey bees shall file a notice with the Department, on a form provided or approved by the Department, containing the beekeeper's

name, address, telephone, e-mail and fax numbers, emergency contact information, and location of the hive, and they shall notify the Department within ten business days of any changes to such information. Beekeepers shall adhere to appropriate beekeeping practices including maintaining bee colonies in moveable-frame hives that are kept in sound and usable condition; providing a constant and adequate water source; locating hives so that the movement of bees does not become an animal nuisance, as defined in §161.02 of this Article; and shall be able to respond immediately to control bee swarms and to remediate nuisance conditions.

* * *

(14) All large rodents (*Rodentia*), including, but not limited to, gopher, muskrat, nutria, paca, woodchuck, marmot, beaver, prairie dog, capybara, sewellel, viscacha, porcupine and hutia.

(15) All even-toed ungulates (*Artiodactyla*) including, but not limited to, deer, antelope, sheep, pigs, including pot bellied pigs, goats, cattle, giraffe and hippopotamus. Such prohibition shall not affect persons who keep livestock in accordance with applicable law.

* * *

(18) Sea mammals (*Cetacea, Pinnipedia and Sirenia*), including, but not limited to, dolphin, whale, seal, sea lion and walrus, and any other predatory marine and freshwater animals and fishes including, but not limited to, sharks and piranhas.

Notes:

Subdivision (a) of §161.01 was amended by resolution adopted on XXX, adding a new paragraph (4) and renumbering former paragraph (4) as paragraph (5), to add to the places where wild animals may be kept a veterinary or other health care facility that is providing care to such animals. Former paragraph (4), now renumbered as paragraph (5) specifies requirements for obtaining a permit to exhibit and use otherwise prohibited animals, and requires rabies vaccination for such animals.

Subdivision (b) of §161.01 was amended by resolution adopted on XXX, adding to the animals prohibited in the City of New York the following: in paragraph (2), cross-breed offspring of wild and domesticated cats; in paragraph (10), turtles or tortoises with a carapace length of less than four (4) inches; in paragraph (14), nutria; in paragraph (15) pigs, including pot bellied pig, goats and cattle; and in paragraph (18) adding other predatory marine animals and fishes including, but not limited to, sharks and piranha. Paragraph (12) was amended to allow beekeeping.

Resolved, that §161.02 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby are, amended, to be printed, together with explanatory notes, to read as follows:

§161.02. Definitions. When used in this article[:], the following terms shall have the following meaning:

Adoption means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring as a pet, a homeless, lost, stray, abandoned, seized, surrendered, or unwanted animal.

Animal behaviorist means a person certified as an applied animal behaviorist or veterinary behaviorist by the Animal Behaviorist Society or other person with qualifications acceptable to the Department, who works with pets and their owners to modify animal behavior, provide socialization training for animals and their owners, and assesses or diagnoses behavioral pathology in animals.

Animal nuisances shall include, but not be limited to, animal feces, urine, blood, body parts, carcasses, vomitus and pervasive odors; animals that carry or are ill with contagious diseases communicable to persons or other animals; and dangerous dogs. A beekeeping nuisance shall mean conditions that include, but not be limited to, aggressive or objectionable bee behaviors, hive placement or bee movement that interferes with pedestrian traffic or persons residing on or adjacent to the hive premises; and overcrowded, deceased or abandoned hives.

Animal rescue group shall mean a not-for-profit organization, group or unincorporated entity that accepts unwanted dogs or cats from an animal shelter or other place and attempts to find homes for, and promote adoption of, such animals by the general public.

[(a)] *Animal* [Shelter] *shelter* or shelter for homeless animals means a not-for-profit facility holding a permit in accordance with §161.09 of this Article where homeless, lost, stray, abandoned, seized, surrendered or unwanted animals are received, harbored, maintained [or] and made available for adoption to the general public, redemption by their owners or other lawful disposition, and which is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other organization devoted to the welfare, protection or humane treatment of animals.

[(d)] *Boarding kennel*[,] business[,], or establishment means a facility other than an animal shelter where animals not owned by the proprietor are sheltered, harbored, maintained, groomed, exercised, fed, or watered in return for a fee.

Cat means a domesticated animal of the species *Felis catus* kept as a pet, except for any animal that is a hybrid or cross-breed of such species whose possession is prohibited in New York City pursuant to §161.01 of this Article.

Dangerous dog means a dog, other than one registered with the Department pursuant to §161.09 of this Article as a guard dog, which menaces, threatens, attacks or bites a person or persons, or

which kills or inflicts physical injury upon any persons, when such persons are peacefully conducting themselves in any place where they may lawfully be, and any dog owned or harbored for the purpose of dog fighting. A Department record of a bite report made pursuant to §11.03 or of a dog bite or other injury made by a police officer shall be prima facie evidence that a dog is dangerous.

Dog means a domesticated animal of the species *Canis familiaris* kept as a pet, but does not mean any other animal that is a hybrid or cross-breed of such species whose possession is prohibited in New York City pursuant to §161.01 of this Article.

Exposure to rabies means a bite or non-bite penetration of the skin; or contamination of an open wound, abrasion, scratch or mucous membrane with saliva or other potentially infectious material from an animal subject to rabies.

[(c)] Grooming parlor, salon, business, or establishment means a facility where animals are presented by their owners for bathing, dipping, clipping, combing, or cleaning for the purpose of improvement of the animal's appearance and or well-being in return for a fee[.] and establishments which provide facilities for owners to groom their own pets.

[(h)] Attack or guard dog] Guard dog means a dog which is trained or used for personal protection, area protection, and/or the apprehension or warding off of an individual by means of barking, threatening gestures, biting, or restraining by the use of its teeth.

Hybrid or cross-breed shall mean the offspring produced by two animals of different breeds, varieties or species.

Lost, stray and homeless animals. For the purpose of determining applicability of the Animal Shelters and Sterilization Act, §§17-801 et seq. of the Administrative Code, lost, stray and homeless animals shall mean any animals owned or formerly owned by residents of the City of New York, or animals whose owners are unknown, that are brought into or accepted by any New York City animal shelter by any person for any reason other than for the purpose of evaluation by an animal behaviorist pursuant to a request of the Department or order of the Commissioner.

Owner means any person who owns, harbors, possesses, adopts, cares for or keeps an animal.

[(g)] Pet animal or small animal means any bird, mammal, reptile, amphibian, fish, arthropod or other invertebrates kept as a pet for exhibit, work, companionship, or protection by a person, possession or which is not prohibited by the Commissioner or any Federal, State or local laws, rules, regulations.]

[(b)] Pet shop means a facility other than an animal shelter where live animals are sold, exchanged, bartered, or offered for sale as pet animals to the general public at retail for profit. A pet shop shall not mean a pet dealer exclusively selling dogs and cats that is subject to Article 26-

A of the Agriculture and Markets Law. However, a pet shop where animals other than, or in addition to, dogs and cats are sold shall hold a pet shop permit issued by the Commissioner and shall comply with all other applicable provisions of this Code and other applicable law.

Service dog shall mean a dog that has been individually trained to perform tasks for persons with a disability, as defined in Executive Law §292 or successor law, including, but not limited to, providing guidance for persons who are blind, alerting persons who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other tasks.

Severe injury, with respect to an injury inflicted by a dog, means any physical injury inflicted by such dog upon a person that causes at least a broken bone or a disfiguring laceration requiring either multiple stitches or cosmetic surgery.

Small animal means a companion animal such as a dog, cat, fish, bird, rabbit, reptile, gerbil, hamster or other animal whose possession is not prohibited by §161.01 of this Article.

[(f)] Stable for horses means a [rental, boarding, racing, or private facility] building where one or more horses are housed and/or maintained.

State Sanitary Code shall mean Chapter 1 of Title 10 of the Codes, Rules and Regulations of the State of New York, or successor rules.

[(e)] Training establishment for small animals means a facility where small animals, whether or not belonging to the owner or employee of such facility, are trained for any purpose in return for a fee.

Notes: Section 161.02 was amended by resolution adopted on XXX to add definitions for terms used in Article 161.

Resolved, that §161.04 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed, together with explanatory notes, to read as follows:

§161.04. Dog licenses.

(a) License required. A dog license obtained in accordance with Chapter 115 of the New York State laws of 1894, as amended, shall be issued by the Department to every person who owns, possesses, keeps, harbors, adopts, purchases, or cares for a dog in New York City for each dog owned, possessed or controlled by such person, except that an animal shelter shall not be required to obtain a license for any dog kept by such shelter and an animal rescue group shall not be required to obtain a license for any dog harbored by such group for less than six months.

(b) License tag required in public. Every 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 has a collar about its neck with a currently valid metal tag attached thereto bearing the number of the license obtained for such dog in accordance with Chapter 115 of the Laws of 1894 of the State of New York, as amended or [§§109 and 112 of the Agriculture and Markets Law.] subdivision (c) of this section.

(c) Animal rescue groups. Animal rescue groups shall provide an animal shelter from which they obtain dogs or cats with proof acceptable to such shelter that the persons adopting dogs through their efforts have purchased licenses for such dogs.

(d) Service dogs. Owners of licensed dogs may request an additional tag from the Department indicating that the dog is trained to perform a task to assist a person with a disability, without paying an additional fee for such tag. An application for such tag shall be accompanied by a written statement from a trainer whose education, experience and training are acceptable to the Department, stating that such dog has been specifically trained to perform a task or tasks for the person applying for the tag.

(e) Sales of licenses authorized. Licenses may be sold by the Department in any manner that is not prohibited by law. The Department may authorize other persons to sell such licenses, upon such terms and conditions as it deems necessary to promote the sales of licenses. The Department may accept license applications and sell licenses electronically, and may impose a surcharge to cover the actual additional costs of selling licenses electronically, if any, including costs imposed by credit card issuers.

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

Notes: §161.04 was amended on XXX to clarify that dogs released by a shelter to an animal rescue group prior to permanent adoption do not need to be licensed; to authorize issuance of licenses for service dogs without a fee; to authorize sales of dog licenses in any manner; and to authorize any peace office to issue notices of violation for failure to comply with its provisions.

Resolved, that subdivision (c) of §161.05 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby are, amended, to be printed, together with explanatory notes, to read as follows:

§161.05. Dogs to be restrained.

* * *

(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 of Sanitation, [or] the Department of Parks and Recreation, or successor agencies, or any peace officer.

Notes: Subdivision (c) was amended XXX to authorize issuance of notices of violation for violation of subdivision (a) this section by any peace officer.

Resolved, that §161.06 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed, together with explanatory notes, to read as follows:

§161.06. Dogs and cats to be vaccinated and treated prior to change in ownership.

No person shall offer for sale, sell or give away any dog or cat unless such animal has been vaccinated against rabies in accordance with [§11.65 of the] §11.29 of this Code, and treated for parasites or certified in writing by a duly licensed veterinarian to have been tested and found to be free of parasites.

Notes: §161.06 was amended on XXX to reflect the change in numbering of the rabies vaccination requirements in Article 11 of the Health Code.

Resolved, that §161.07 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, repealed and recodified, to be printed together with explanatory notes, to read as follows:

§161.07. Dangerous dogs.

(a) Policy and scope. When the Department receives a report of a dangerous dog, the Department may, in any case where it deems it necessary, investigate the circumstances giving rise to the report and, if the Department determines that the dog is a dangerous dog, it may take any action authorized by applicable law, including this Code, that it deems necessary to protect the public health and safety.

(b) Dogs brought into a shelter. When a dangerous dog is brought into an animal shelter, or when a dog held in an animal shelter injures a person, the operator of the shelter shall, no later than the first business day after the dog is admitted to the shelter or after the dog in the shelter injures a person, report the injury to the Department. The shelter shall obtain from the person owning or presenting the dog, and the report shall, to the extent that the shelter operator has such information, include a description of the circumstances in which injury was caused by the dog; the names, addresses and other contact information for the injured person(s), the dog's owner, and any witnesses to the incident; the types of injuries inflicted by the dog; and any other

information required by the Department. The shelter operator shall thereafter immediately provide the Department with any additional information received about the incident.

(c) Rabies observation period. Any dog that is brought to a shelter after causing an injury to a person or that is involved in any incident that creates a possible exposure to rabies shall be held by the shelter for ten days, over which time such dog shall be observed by a veterinarian to determine whether it has developed signs and symptoms of rabies.

(1) A dog held for rabies observation that is subsequently involved in any other incident potentially exposing any person or animal at the shelter to rabies shall, commencing on the date of the most recent incident, be held by the shelter for an additional ten days to be observed for signs and symptoms of rabies.

(2) If a licensed veterinarian determines that a dog has signs or symptoms consistent with rabies, the dog shall be humanely euthanized and its remains shall be tested for rabies.

(3) The Department may authorize release of a dog to its owner before the expiration of the ten days rabies observation period if the Department determines that the dog is not a dangerous dog, and the owner agrees to continue to observe the dog for signs and symptoms of rabies over the remainder of the observation period and to make daily reports of his or her observations to the Department in accordance with §11.27 (e) of this Code.

(d) Determination of a dangerous dog.

(1) Evaluation of a dog in a shelter. The Department shall make a preliminary determination as to whether any dog being held in a shelter after causing injury to a person is a dangerous dog. In making such determination, the Department shall consider the circumstances of the incident resulting in the dog's placement in the shelter, the nature and severity of the injuries reportedly inflicted by the dog, and the dog's prior history of biting and/or causing injury. When deemed necessary by the Department, an assessment by an animal behaviorist may also be considered.

(2) If dog is determined to be dangerous. If the Department determines that a dog being held at a shelter is dangerous, it shall notify the owner of the dog of such determination in writing, prior to expiration of the ten day rabies observation period. The notification shall include the Department's recommendations for the disposition of the dog, including any control measures authorized by subdivision (g) of this section that the Department deems necessary as conditions for the owner's continued possession of the dog.

(3) If a dog is not determined to be dangerous. If the Department determines that a dog being held at a shelter is not dangerous, it shall notify the shelter that the dog may be returned to its owner at the end of the rabies observation period, provided the dog has been vaccinated against rabies, licensed, and surgically sterilized in accordance with applicable law.

(4) Other disposition. A dog surrendered to a shelter by its owner for any reason shall be made available for adoption or humanely euthanized, in accordance with applicable law. However, a dog that is surrendered by its owner as a dangerous dog or a dog trained for dog fighting shall not be made available for adoption by any person unless the shelter operator has completed a behavioral evaluation of the dog showing that the dog is not a dangerous dog, provided the results of the evaluation to the Department, and the Department has approved the release of the dog for adoption.

(e) Dogs that are not brought to a shelter. If the Department receives a report that a dog not being held by a shelter to be observed for symptoms and signs of rabies is dangerous, the Department may order the dog's owner to make the dog available for examination by an animal behaviorist, or may order any other control measures authorized by subdivision (g) of this section for protection of public health and safety.

(1) Place of examination. The Department may arrange for the examination to be conducted at a shelter or other place where the Department determines the public will be adequately protected. If a dog is brought by its owner to a shelter for examination pursuant to this section, the dog shall not be deemed a homeless or abandoned dog, and the shelter shall not be required to surgically sterilize the dog prior to releasing it to its owner. However, such dog shall not be released unless it is currently vaccinated against rabies in accordance with Health Code §11.29, and has been licensed in accordance with §161.04 of this Article.

(2) Failure to present dog for examination. If an owner fails to comply with an order of the Department to make his or her dog available for examination by an animal behaviorist, the owner's failure to comply with such order shall be evidence in any hearing commenced by the Department that the dog is dangerous and that its owner is perpetuating a nuisance in violation of §3.07 of this Code.

(f) Hearings.

(1) Owner objections. The Department shall notify the owner of a dog of its preliminary determination that the dog is dangerous and of any control measures authorized by subdivision (g) of this section that it deems necessary to protect public health and safety. If the owner does not agree with the Department's preliminary determination or that the proposed control measures are necessary, the Department shall serve the owner with a petition and notice of hearing to show cause at a hearing to be held at the City's Office of Administrative Trials and Hearings (OATH) why the dog should not be found to be a dangerous dog and why conditions should not be imposed on the dog and owner to protect the public's health and safety.

(2) Scheduling hearings.

(A) An OATH hearing shall be scheduled by the Department for a date and time that is no more than twenty days after the petition is mailed to the owner, and the petition and notice of hearing shall be mailed to owner no later than fifteen days after the dog's entry into the shelter, unless the owner of the dog and the Department agree to a later date. If the last dates for mailing and scheduling a hearing fall on a Saturday, Sunday or City holiday, the date of mailing the petition and scheduling the hearing shall be the next business day.

(B) Such time periods shall not apply when the owner's identity and address are not known when a dog is first admitted to a shelter. In such cases, when the Department subsequently learns the owner's identity and address, and if the time for reclaiming a dog from a shelter has not expired, the time period to schedule a hearing set forth in paragraph (2) above shall start to run on the date the Department learns the owner's identity and address.

(3) Severe injuries. A dog that has caused a severe injury to any person, or a dog that the Department determines, based on the circumstances that prompted the Department's investigation, was prevented from inflicting severe injury by the action of a third party or other circumstance, shall continue to be held in a shelter until and unless the Commissioner has received a report and recommendation of an OATH administrative law judge finding that the dog is not a dangerous dog.

(4) Other injuries. A dog that does not meet the criteria in paragraph (3) above, may remain with its owner or, if held in a shelter, shall be returned to its owner, at the completion of the rabies observation period, to remain with its owner pending an OATH hearing.

(5) Abandonment. If an owner of a dog that is preliminarily determined to be dangerous and that is being held at a shelter fails to appear at an OATH hearing and is found in default, or if the identity or address of a dog's owner is unknown, such dog shall be deemed abandoned and shall be disposed of in accordance with applicable law.

(g) Control measures authorized. The Commissioner may order any action deemed necessary to control a dangerous dog and prevent injuries to persons, including, but not limited to, ordering that a dangerous dog be:

(1) Surrendered for the purpose of humane euthanasia;

(2) Permanently removed from the City;

(3) Muzzled whenever it is in a public place or in any open or unfenced area abutting on a public place;

(4) Evaluated, at the owners' expense, by an animal behaviorist to determine whether the animal and any persons handling the animal may be trained in the safe management of the animal, and be

trained when indicated:

(5) Spayed or neutered, if the owner does not maintain proof satisfactory to the Department that the animal was previously altered;

(6) Microchipped to enable identification of the dog if it inflicts further injury; or

(7) Confined in a place where there are sufficient barriers between the dog and passersby lawfully on public streets and areas abutting the owner's property.

(h) *Guard dogs.* Any dog owned, kept, engaged in or trained to attack persons that is not currently registered with the Department as a guard dog pursuant to §161.09(g) shall be deemed to be a dangerous dog and shall be surrendered to the Department, upon the request of the Department, by the person who owns, possesses or controls it, for the purpose of performing an examination and for such other disposition as the Department may order in accordance with this section.

(i) *Dogs kept for dog fighting.* Any dog owned, kept, engaged in or trained for dog fighting, or any dog owned, kept or trained to attack persons and not properly registered as a guard dog pursuant to §161.09 (g), shall be deemed to be a dangerous dog and shall be surrendered to the Department by the person who owns, possesses or controls it, for the purpose of performing an examination and for such other disposition as the Department may order in accordance with subdivision (g) of this section.

(j) *Dangerous dogs presumed to be a nuisance.* When the Department determines that a dog is dangerous in accordance with this section, it shall be presumed that the owner or other person who harbored the dog trained, caused or permitted the dog to be dangerous, so as to establish a prima facie maintenance of a nuisance in violation of §3.09 of this Code.

(k) *Impoundment.* A dog that is in a public area and that is menacing persons, or a dog that has caused a severe injury to a person, or a dangerous dog owned by a person who has violated an order of the Commissioner issued pursuant to this section, may be impounded by the Department or by a police or other peace officer, or killed by a police or other peace officer, if capture is dangerous.

(l) *Disclosure of medical information.* In addition to submitting the reports of animal bites required by Article 11 of this Code, upon receipt of a written request from the Department, a medical or other health care provider shall forward to the Department copies of medical records concerning diagnosis and treatment of bites or other injuries to persons that were inflicted by, or resulted from attacks by dogs or other animals.

(m) *Public information relating to dangerous dogs.*

(1) Copies of records and reports maintained by the Department concerning dangerous dogs may

be made available in accordance with the Public Officers Law, provided that, if the persons injured who are the subjects of such records are not the persons requesting such reports, such reports shall be redacted of all identifying information about the subjects, complainants and person(s) injured or menaced.

(2) Information about injuries caused by dangerous dogs contained in medical and other records obtained by the Department may be disclosed in the course of OATH proceedings to owners of dogs, their attorneys, and to administrative law judges at OATH if such information is relevant to a determination as to whether a dog is dangerous or has caused severe injury to a person. Such information shall not be further disclosed without authorization of the person to whom the records pertain except when disclosure may be necessary in further proceedings related to the OATH matter.

Notes: §161.07 was repealed and recodified on XXX, updating its provisions and clarifying procedures for addressing the serious public health problems presented by dangerous dogs.

Resolved, that §161.09 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed together with explanatory notes, to read as follows:

§161.09. Permits to keep certain animals.

(a) *Permit required.*

(1) No person shall operate a pet shop, grooming parlor, boarding kennel or training establishment for small animals whose possession is not prohibited by §161.01 of this Article, without a permit issued by the Commissioner except that a pet shop that exclusively sells dogs and cats and is regulated by Article 26-A of the Agriculture and Markets Law, or successor law, shall not require a permit issued by the Commissioner.

(2) *Workers' compensation and disability benefits insurance.* No permit required by this Article shall be issued to any person unless such person produces proof satisfactory to the Department that policies for workers' compensation insurance and disability benefits have been secured in accordance with Workers' Compensation Law §56, or successor statute.

(b) *Animal shelter.* No person shall construct or operate a shelter for homeless animals without a permit issued by the Commissioner.

(c) No person shall sell or keep for sale live rabbits or live poultry, including chickens, geese, ducks or other fowl, without a permit issued by the Commissioner. Such permit shall not include the right to slaughter rabbits or poultry for sale as food for human consumption for which a permit must be obtained pursuant to Article 93. A permit shall not be issued for the sale or

keeping for sale of live roosters, ducks, geese or turkeys in the built-up portions of the City. A permit shall not be issued for the sale or keeping for sale of live rabbits or poultry on the same lot as a multiple dwelling as defined in section 4 of the Multiple Dwelling Law or, unless the consent of the occupants is obtained, on the same lot as a two-family home. A permit shall not be issued unless the coops or runways are more than 25 feet from an inhabited building other than a one-family home occupied by the applicant and unless the applicant submits to the Department the written consent of the owner of the lot on which the poultry or rabbits are to be kept.]

[(d)] (c) Keeping and yarding of cattle, swine, sheep and goats prohibited. Except [on premises abutting upon a slaughter house,] as provided in §161.01(a) of this Article, no person shall [yard horses or] keep or yard cattle, swine, sheep or goats, [without a permit issued by the Commissioner. Such permit shall be issued only for unimproved areas of the borough of Richmond used for farming purposes.]

[(e)] (d) Permits for horse stables required. No person shall maintain or operate a stable for horses without a permit issued by the Commissioner except that no permit shall be required where a natural person or family owns a horse stable solely for housing and maintaining horses owned and used by the person or family for its exclusive recreational, non-commercial purposes.

[(f)] (e) Selling of certain animals prohibited. No person shall engage in the business of or hold herself or himself out as engaging in the business of importing, or selling, or offering for sale any animal of a species [which is wild, ferocious, fierce, dangerous, or naturally inclined to do harm or any venomous snake] whose possession is prohibited pursuant to §161.01 of this Article and no person shall operate a [snake farm engaged in the] facility for the preparation or manufacturing of snake or arachnid anti-venom without a permit issued by the Commissioner.

[(g)] (f) Small animal handling course required. No person who is charged with the supervision of a pet shop or business for the sale or offer for sale of dogs, cats or other small animals, or the boarding or grooming of small animals, or animal training, or similar type of operations, shall engage or be employed in such capacity unless he or she obtains a certificate indicating the successful completion of a course, acceptable to the Department, in the care and handling of such animals. Such certificate shall not be required for persons who are pet dealers who exclusively sell dogs and cats, in accordance with Article 26-A of the Agriculture and Markets Law.

[(h)] (1) Such certificate shall be placed in a clean, transparent cover or frame and displayed on the premises where the holder thereof is so engaged or employed in such a manner as to be clearly visible to the public. It shall be available for inspection at all times by the Department. No person shall mutilate, obstruct or tear down such certificate.

[(i)] (2) The holder of such certificate shall successfully complete a refresher course in the care

and handling of such animals when deemed necessary by the Department. The Department may require the holder of such certificate to complete a refresher course acceptable to the Department when the Department finds continuing violations of the Code, or when a zoonotic outbreak implicates animals cared for, treated or held in the establishment she or he supervises, or when the Department requires such course to acquaint him or her with current developments in animal care and handling principles.

[(j)] (3) The Department may conduct such courses or approve courses conducted by educational institutions. Persons electing to enroll in such courses conducted by the Department may be charged a reasonable enrollment fee to defray all or part of the costs incurred by the Department in their administration.

[(k)](g) Guard dogs. No person shall own a trained guard [or attack] dog for use within the City unless she or he has licensed and registered such animal with the Department. Any case of loss, theft or transfer of ownership of a trained guard [or attack] dog shall be reported by the owner to the Department within five (5) days of any such loss, theft or transfer. The Department may charge a reasonable fee to defray all or part of the cost incurred by the Department in the administration of this [subsection] subdivision.

[(l)] (1) Microchipping required. The owner of a trained guard [or attack] dog shall have such dog implanted with a microchip as a permanent identification, and supply the identification number to the Department, and provide and see to it that such animal wears at all times a tag issued by the Department. Such tag shall have printed or stamped thereon, in clear and legible type, the words: "GUARD DOG" [or "ATTACK DOG"]. Such tag shall be suspended at least three quarters of an inch and not more than one and one half inches from a collar worn by such animal. Lost, stolen or damaged tags shall be reported to the Department and may be replaced by the Department at reasonable cost.

[(m) All] (2) Signs to be posted. Owners or other persons in control of any premises in which a trained guard [or attack] dog is kept shall [be provided with] post a durable sign or notice, printed in clear and legible type [and conspicuously displayed], warning the public of the presence of such trained guard [or attack] dog. The sign shall include the name and other contact information for the owner of the guard dog. [All establishments used in the business of training, selling or renting]

(3) Notice required. All persons who train, sell or rent guard [or attack] dogs shall [be provided with] post a durable sign or notice, printed in clear and legible type [and conspicuously displayed, advising the patrons or consumers of the requirements set forth in] stating that a copy of this section [applicable to the use of such animals in the City, and the person engaged in such

business shall provide a written copy of such notice to each of his or her patrons or consumers in a form deemed suitable by the Department] shall be provided by the trainer, seller or renter of a guard dog to any person who uses such dogs, warning that all users shall comply with licensing, tagging, microchipping and signage requirements.

Notes: §161.09 was amended on XXX, relettering several provisions. Subdivision (c) was repealed and subdivision (d) was relettered as subdivision (c), and now prohibits keeping or yarding livestock except as provided in §161.01 (a) of this Article. Subdivision (e) was relettered as subdivision (d). Subdivision (f) was relettered as subdivision (e), and is substantially the same, but adds a requirement for a permit for production of arachnid anti-venom to the permit already required for production of snake anti-venom. Subdivision (h) has been relettered as subdivision (g); subdivision (i) is now paragraph (1); and subdivision (j) is now paragraph (2) of subdivision (g), regulating guard dogs and now requires microchipping, signage and notice requirements for owners of such dogs. The term “attack dog” has been deleted since the Department no longer licenses attack dogs.

Resolved, that §161.11 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed, together with explanatory notes, to read as follows:

§161.11. Prevention of nuisances; cleaning.

(a) A permit required by §161.09 shall not be issued unless the applicant proves to the satisfaction of the Commissioner that the place for which the application is made does not constitute a nuisance because of its proximity to a residential, business, commercial or public building, and that the place will be maintained so as not to become a nuisance.

(b) The owner, lessee or person in charge of any place where animals are kept pursuant to a permit required by §161.09, shall take all measures necessary for [insect and rodent control] integrated pest management of insect, rodent and other vermin required by Article 151 of this Code, and shall conduct such place so as not to create an animal nuisance [by reason of the noise of the animals, the escape of offensive odors, or the maintenance of any condition dangerous or prejudicial to public health] as defined in this Article.

(c) Every place where animals are kept pursuant to a permit required by §161.09 shall be equipped with and shall [have] maintain supplies of implements and materials, such as brooms, hoses, hose connections, vacuum cleaners where dusty conditions are found, covered metal receptacles, brushes, disinfectants and detergents, as may be required to maintain sanitary conditions. Such places shall have regularly assigned personnel to maintain sanitary conditions.

Notes: This section was amended on XXX to update its provisions.

Resolved, that subdivision (a) be amended, and a new subdivision (e) be added to §161.15 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, to be printed, together with explanatory notes, to read as follows:

§161.15. Keeping of small animals for sale, boarding, grooming, or training.

(a) [Dogs, cats, birds or other small animals shall not] No animals shall be sold or held for sale, or boarded, groomed or trained in a room in which a person lives. [Such] No aquatic animals, as defined in Article 81 of this Code, except live food fish species from a source authorized by applicable law to supply such fish or live fish in an ornamental aquarium, shall [not] be sold or held for sale or kept in the same place where food or drink is sold for human consumption [unless necessary precautions are taken to prevent contamination of the food or drink and the creation of a nuisance].

* * *

(e) A holder of a permit to operate a boarding kennel shall require proof from the owner of each dog provided services that such dog is currently actively vaccinated against rabies, distemper, adenovirus, parainfluenza, parvovirus and *Bordetella*, shall maintain such proof on the premises, and shall provide such records for inspection to the Department upon request.

Note: Subdivision (a) was amended on XXX to clarify prohibitions on keeping small animals and fish in food service establishments, and a new subdivision (e) was added to require immunizations for dogs provided services in boarding kennels.

Resolved, that §161.17 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed, together with explanatory notes, to read as follows:

§161.17. Small animals kept for sale, shelters, kennels and training establishments; physical facilities and maintenance.

A place issued a permit pursuant to §161.09 of this Article where small animals are kept for sale, a shelter for homeless animals or a kennel or other place where animals are boarded or trained shall meet the requirements of [Article 135 governing walls, floors, ventilation, lighting and plumbing] Articles 131 and 151 of this Code for maintenance of the physical facilities and eliminating conditions conducive to pests. An individual cage shall be provided for the use of each dog or cat three months of age or over except when isolation in a separate cage is medically contraindicated or, as specified in individual cases, animals are caged together for a humane reason. A veterinarian shall provide a written statement and such documentation as the

Department may require indicating the reason why more than one animal should be caged together. Such documentation shall be maintained on the premises and be available for inspection. The floors, walls, implements and cages in such place shall be kept clean and in good repair. Cages shall be disinfected when necessary. Nothing in this Code shall prohibit the establishment of canine or feline congregate socialization or play areas in boarding facilities regulated by this Code provided that animals allowed in such areas are certified by a veterinarian as vaccinated against rabies and free of other diseases transmissible to humans or other animals. Notes: This section was amended on XXX to update references to other Health Code articles and to apply to cats the provisions allowing for congregate play and socialization afforded to dogs in boarding facilities

Resolved, that §161.19 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed, together with explanatory notes, to read as follows:

§161.19. Keeping of livestock, live poultry and rabbits.

(a) No person shall keep a live rooster, duck, goose or turkey in [a built-up portion of] the City of New York except (1) in a slaughterhouse authorized by federal or state law that is subject to inspection by the New York State Department of Agriculture and Markets or the United States Department of Agriculture, or (2) as authorized by §161.01 (a) of this Article.

(b) A person who [holds a permit] is authorized by applicable law to keep for sale or sell livestock, live rabbits or poultry shall keep [them in coops and runways and prevent them from being at large. Coops shall be whitewashed or otherwise treated in a manner approved by the Department at least once a year and at such other times as the Department may direct in order to keep them clean. Coops, runways] the premises in which such animals are held and slaughtered and the surrounding areas [shall be kept] clean and free of animal nuisances.

(c) Live rabbit and poultry markets. Live rabbits and poultry intended for sale shall not be kept on the same premises as a multiple dwelling as defined in section 4 of the Multiple Dwelling Law, or other residence. Coops or runways of live rabbit and poultry markets shall be located at least 25 feet away from any building.

Notes: This section was amended on XXX to modernize provisions related to keeping livestock, poultry and rabbits in the City.

Resolved, that §161.21 (Yarding of horses, cattle, swine, sheep and goats) and §161.23 (Stables for horses; physical facilities and maintenance) of Article 161 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby are

repealed, and that §161.23 (Horse stables; rabies vaccination for horses; nuisance prevention), be recodified, to be printed together with explanatory notes, to read as follows:

§161.21 Horse stables; rabies vaccination for horses; nuisance prevention.

(a) *Applicability and scope.* This section shall apply to all commercial stables, including, but not limited to, stables whose owners board horses for individual horse owners; stables that provide riding lessons and rent horses to the public; stables that board stable owners' or other owners' carriage or other rental horses regulated by Chapter 4 of Title 24 of the Rules of the City of New York; and, except for stables under the jurisdiction of the New York Racing Association, stables that board or temporarily provide housing and maintenance for horses in exhibitions, shows, competitions, or other events. Requirements for rabies vaccination for horses shall apply to all horses housed or brought into any stable in the City of New York regardless of whether the stable is required to hold a permit issued pursuant to this Article. The duty to prevent nuisance and provisions of this Code that require maintenance and sanitation of stables and other premises shall apply to the owners, operators and users of all stables and any other facilities or places where horses are used, kept or boarded.

(b) *Physical facilities.* Stables shall meet all requirements of Articles 131 and 151 of the Code and this Article for maintenance of the physical facilities and eliminating conditions conducive to pests.

(1) *Walls and ceilings.* Walls and ceilings shall be covered with a smooth, nonabsorbent light-colored finish and shall be maintained clean at all times.

(2) *Floors.* Floors shall be level, free of holes and openings and graded for proper drainage to trapped sewer connections.

(3) *Doors.* Doors to the exterior shall be properly rodent-proofed.

(4) *Toilets.* A sufficient number of toilets and sinks with running water, soap and individual clean towels or mechanical drying devices shall be provided for the use of employees.

(5) *Storage areas.* Storage areas shall be of adequate size, and shall be insect and rodent-proofed so as to provide no pest harborage and shall be kept free of pests.

(6) *Fire hazards.* Premises shall be kept free of fire hazards. Effective July 1, 2011, all buildings in which stables are located shall be equipped with an operational sprinkler system installed in accordance with §BC903.3.1.1 of the New York City Building Code, or successor provision.

(8) *Electrical wiring.*

(A) All electrical appliances shall be plugged directly into properly grounded electrical outlets.

(B) Electrical wiring shall be installed and maintained in metal electrical conduits.

(C) Extension cords may be used for brief periods of time, not to exceed three (3) hours, and

such cords shall be disconnected and removed when the appliances or tools to which they are connected are not being used.

(7) Lighting. Interiors and exteriors of stable premises shall be adequately lighted by natural or artificial means so as to permit the activity for which the stables are used to be carried on safely and to permit effective inspection and the cleaning of the premises.

(8) General sanitation and maintenance. All physical facilities and equipment in a stable and any premises abutting a stable shall be kept clean and maintained in good repair. All interior areas and exterior areas surrounding a stable shall be kept clean, shall be properly graded, drained and kept free of nuisances including, but not limited to, odors and accumulation of refuse or excrement.

(9) Equipment. Saddles, blankets, harnesses, bridles and bits and other equipment shall be properly fitted and kept in good repair. Blankets, bridles and bits shall not be used by another horse unless disinfected and treated to remove insects and parasites. Each stable shall have implements and materials such as brooms, hoses, hose connections, covered metal receptacles, brushes, disinfectants and detergents as may be required to maintain sanitary conditions.

(10) Pest management. All stables shall establish procedures for control of pests, birds and other wildlife, and shall institute an integrated pest management program for insect, rodent and other vermin in accordance with Article 151 of this Code.

(11) Stalls. Stalls shall be cleaned as often as necessary to prevent odors and other nuisance conditions. On or after January 1, 2011, no new stables shall be equipped with stalls that are located above the first or street level floor of the stable.

(12) Bedding.

(A) Bedding in stalls shall be changed at least once daily.

(B) Bedding provided shall be at least three inches deep, and shall consist of suitable materials that will absorb fluids and odors and that do not contain any materials toxic to horses.

(C) Straw, hay or other material used as bedding shall not be placed upon a street, sidewalk or roof of a building or in an area that may cause a fire hazard or be conducive to pests.

(c) Food and water.

(1) Troughs and mangers. Troughs and mangers shall be cleaned daily, kept clean and free of rodent and bird droppings.

(2) Feed quality. Stable owners shall provide sufficient nutritional foods appropriate for the type, age and condition of horses boarded at the stable.

(3) Storage. Feed shall be stored in clean, dry, sealed containers secure from horse, rodent and other pest access, kept clean and uncontaminated by rodent feces, insects and non-feed substances

such as dust, mold, vermin and other contaminants.

(4) Hay. Hay shall be kept clean and dry and shall be stored in areas that are inaccessible to birds, rodents, insects and other pests.

(5) Water. Horses shall have access at all times to an adequate and clean water supply. Horse-watering troughs shall be constructed of easily cleanable materials, maintained in a clean and sanitary condition and supplied with potable water.

(d) Manure. Manure shall be collected and disposed of in a manner that does not create a nuisance. All manure and other refuse shall be kept and treated within the stable so as to minimize odors and prevent the breeding of flies or other nuisance conditions.

(e) Rabies vaccination. All horses owned, boarded, used or brought into the City of New York for any purpose shall have an annual rabies vaccination. Every person who owns or maintains a stable for horses shall maintain records of rabies vaccinations and make such records available to officers, agents and employees of the Department for examination upon request.

(f) Emergencies. Every person who holds a permit to operate a stable shall establish and maintain written procedures to respond to fires and other emergencies, and for care of injured or sick horses. A copy of the written procedures shall be kept in the stable, and updated as necessary. Owners shall notify and train all employees in the procedures outlined in the protocols for emergency management. Copies shall be made available to stable employees, and to employees, agents and officers of the Department.

(g) Emergency contact information. Owners of stables shall provide employees with primary and alternative emergency telephone or other contact information for owners of the stable and horses housed in the stable. Owners of horses housed in stables shall provide the owners of such stables with emergency telephone or other contact information.

(h) Trailers. A horse trailer in operating condition shall be maintained at all times in each stable for emergency transport.

Notes: This section was adopted on XXX, applies to all commercial stables in the City and incorporates and modernizes provisions of former §161.23.

Resolved, that Article 161 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended by adding a new §161.23, to be printed together with explanatory notes, to read as follows:

§161.23 Sterilization of shelter animals.

(a) Sterilization required. No animal shall be released from an animal shelter for adoption by or return to a resident of the city of New York without first being spayed or neutered, except if the

animal is exempt from sterilization pursuant to §17-804 of the Administrative Code.

(b) Release to animal rescue groups. Whenever practicable, animals shall not be released by a shelter to an animal rescue group without first being spayed or neutered when such animal is being taken by the animal rescue group to assist in its adoption by others, except if, in the judgment of the shelter veterinarian, the health of the animal would be compromised by sterilization surgery at the time of release to the rescue group. No dog may be released by an animal rescue group to a person who resides in the City of New York unless the dog is sterilized and licensed pursuant to §161.04 of this Article.

(c) Objections to sterilization. Any resident of the City of New York seeking to redeem an animal from a shelter and objecting to its sterilization may bring a cause of action in a court of competent jurisdiction seeking a declaration that such animal need not be sterilized.

(1) Upon delivery to the shelter operator of a bond in the amount of \$20,000, the animal shall be returned to its owner.

(2) The bond amount shall be returned to the owner at the conclusion of the litigation, if the owner prevails in such litigation.

(3) The bond shall be forfeited if

(A) No cause of action is commenced within three months of the release of the animal to its owner, or

(B) The owner does not prevail in such litigation, and the animal either is (i) not returned to the shelter for sterilization or (ii) verifiable proof of sterilization is not submitted to the shelter.

(4) Spay neuter fund established. Sums collected from forfeited bonds shall be transmitted by the shelter operator to the Fund for Public Health in New York, Inc., or other not for profit agency approved by the Department, and placed in an animal spay neuter fund to be established by such fund or other agency. Expenditures of such collected sums shall be authorized by the Department to pay for free or low-cost animal sterilization services.

Notes: This section was adopted on xxx to clarify sterilization requirements for dogs and cats released from a shelter subject to provisions of Administrative Code §17-804. It provides for procedures allowing owners who object to sterilization to remove the animals from the shelter without sterilization, and requiring such persons to post a bond that would be forfeited if the owners failed to prevail in a court challenge, or failed to challenge the sterilization requirement in court. Sums collected from forfeited bonds would be dedicated to cover the costs of free or subsidized spay and neuter services for dogs and cats.

Resolved, that Article 161 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended by adding a new §161.25, to be printed together with explanatory notes, to read as follows:

§161.25 Modification by the Commissioner.

When the strict application of any provision of this article presents practical difficulties or unusual hardship, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose of this article and upon such conditions as, in his or her opinion are necessary to protect public health.

Notes: This section was adopted on xxx to authorize the Commissioner or designee to modify provisions of this Article as necessary.

Resolved, that the Schedule of Section Headings in Article 161 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended to be printed together with explanatory notes, to read as follows:

ARTICLE 161

ANIMALS

§161.01 **Wild and other animals prohibited.**

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§161.07 **[Vicious or dangerous animals.] Dangerous dogs.**

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§161.19. **Keeping of livestock, live poultry and rabbits.**

[§161.21 **Yarding of horses, cattle, swine, sheep and goats.]**

§161.21 **Horse stables; rabies vaccination for horses; nuisance prevention.**

§161.23 **Sterilization of shelter animals.**

§161.25 **Modification by the Commissioner.**

Notes: The Schedule of Section Headings was amended by resolution on XXX to include new §§161.21, 161.23 and 161.25, added that date, and to reflect amendments to the titles of §§161.01 and 161.19.

Article 161 intention.doc