

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Chapter 1 of Title 24 of the Rules of the City of New York

What are we proposing? The Department of Health and Mental Hygiene is proposing to amend Chapter 1 (Posting Regulations for Vendors of Alcoholic Beverages) of Title 24 of the Rules of the City of New York to require signage at swimming pools that indicates competitive breath holding is prohibited and warns swimmers of the risks involved. This proposed amendment was not included in the Department's Regulatory Agenda for this fiscal year because the need for the amendment was not anticipated at the time the Regulatory Agenda was published.

When and where is the hearing The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00AM until 12:00PM on November 24, 2015. The hearing will be at

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 3rd Floor, Room 3-32
Long Island City, NY 11101-4132

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail comments to
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax comments to New York City Department of Health and Mental Hygiene 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 can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on November 24, 2015. You can speak for up to five minutes.

Is there a deadline to submit comments? Comments must be received on or before 5:00 p.m. on November 24, 2015.

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 November 10, 2015.

Can I review the comments made on the proposed rule? You can 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

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

Where can I find the Department's rules? The rules of the Department of Health and Mental Hygiene can be found in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? This notice is made according to the requirements of City Charter §1043.

Statement of Basis and Purpose

Background

Repetitive or prolonged underwater swimming or breath-holding can be deadly. During these activities the levels of oxygen and carbon dioxide in the body can drop, delaying the breathing reflex. Coupled with the lack of oxygen to the brain, a swimmer can lose consciousness and drown. This risk is heightened when breath-holding is coupled with intentional hyperventilation caused by repeatedly taking deep breaths, or when done as a competitive activity.

The Department has identified four drowning incidents in New York City and 12 other incidents in New York State between 1988 and 2011 that were confirmed or suspected to have been caused by a loss of consciousness underwater due to lack of oxygen caused by intentional hyperventilation or by competitive, repetitive or prolonged underwater swimming or breath-holding. Four of the sixteen swimmers involved died in incidents associated with intentional hyperventilation. Yet, many swimmers are unaware of the risks associated with these activities.¹

The Department has also studied relevant policies, practices and guidance of multiple jurisdictions and organizations with respect to these specific swimming behaviors. Several jurisdictions require pool operators to post signs regarding the risks associated with prolonged breath-holding activities and extended underwater swimming. These signage requirements can be found in the rules of local governmental jurisdictions that regulate pool facilities and in the policies of large governmental entities and non-governmental organizations that own and operate pool facilities. Additionally, governmental agencies and safety awareness organizations have developed guidance and educational materials that promote swimming behavior rules and signage requirements to reduce the risks associated with these activities.

Article 165 of the New York City Health Code regulates bathing establishments, including swimming pools, spa pools and spray grounds. Health Code §165.41(u)(2)(K) was added by the Board of Health on September 10, 2013, and authorizes the Department to design and mandate posting of a pictogram that informs swimmers of the dangers of underwater breath-holding behaviors—taking deep breaths, one after the other, before swimming underwater—and of breath-holding contests, to warn and prevent swimmers from engaging in these deadly swimming activities.

Proposed Changes

The Department is proposing to amend Chapter 1 of Title 24 of the Rules of the City of New York to require pool operators to post signs warning of the dangers of prolonged underwater breath-holding behaviors. Chapter 1 currently only requires signage about the risks of drinking alcohol during pregnancy in food service establishments. The Department is proposing to reorganize this Chapter so that

¹ C. Boyd, et al., Fatal and nonfatal drowning outcomes related to dangerous underwater breath-holding behaviors – New York State, 1988-2011, CDC MMWR, May 22, 2015, 64, 19, 518-521.

its provisions will apply to various signs required by the Department in various settings. The requirement for a sign warning of use of alcohol in pregnancy is proposed in section 1-01 of the Chapter, and the requirements for the new underwater breathing sign are proposed in section 1-02 of the Chapter. The Department is proposing minor changes in section 1-01 of the Chapter regarding alcohol use warning signs to make the section more consistent and readable, though the substantive requirements will remain unchanged from the current Chapter 1.

Pool operators will be required to post signs with the specific design and warning text indicated in the proposed rule.

Statutory Authority

New York City Charter (“Charter”) §§ 556 and 1043 authorize these amendments. Pursuant to § 556 of the Charter, the Department has jurisdiction to regulate all matters affecting health in the City of New York. Section 1043 of the Charter gives the Department rulemaking powers. Section 165.41(u)(2)(K) of the New York City Health Code authorizes rulemaking related to posting warning signs at pools of the dangers of repetitive or prolonged underwater swimming or breath-holding.

The proposal is as follows:

Underlined matter is new.

“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.

Section 1. Chapter 1 of Title 24 of the Rules of the City of New York, relating to posting regulations for vendors of alcoholic beverages, is REPEALED and a new Chapter 1 is added to read as follows:

CHAPTER 1

REQUIRED SIGNS

§1-01 Vendors of alcoholic beverages.

§1-02 Dangerous underwater breathing behaviors.

§1-01 Vendors of alcoholic beverages.

(a) Definitions. Words and terms used in this section have the same meaning as in §17-173(a) of the Administrative Code, except that terms not defined in such §17-173(a) have the same meaning as terms defined in the Alcoholic Beverage Control Law.

(b) Applicability. This section applies to owners, operators, and other persons in control of any business establishment that, pursuant to the Alcoholic Beverage Control Law, is required to obtain a license for the retail sale of alcoholic beverages for (i) consumption on the premises, or (ii) for consumption off the premises excluding grocery stores or supermarkets where the primary business purpose is the sale of foods, dry goods, household supplies, and beverages other than alcoholic beverages.

(c) Posting. Owners, operators and other persons described in subdivision (b) of this section must post in each applicable business establishment a sign, provided by the Department, in a conspicuous place visible to patrons, with the following text:

WARNING: Drinking alcoholic beverages during pregnancy can cause birth defects.

§1-02 Dangerous underwater breathing behaviors.

(a) Definitions. Words and terms used in this section have the same meaning as in Article 165 of the New York City Health Code.

(b) Applicability. This section applies to persons owning or operating swimming pools who are required to have a permit issued by the Commissioner pursuant to Article 165 of the Health Code.

(c) Posting. Swimming pool permittees must post a sign, in a location easily seen from the pool deck of each pool in a bathing facility, and in each dressing area, warning swimmers of the dangers of taking deep breaths, one after the other, before swimming underwater, and the prohibition of breath-holding contests.

(d) Sign specifications. Signs must:

(1) Be constructed of durable, resilient, water resistant metal, plastic or other material acceptable to and approved by the Department;

(2) Measure at least 17" in width and 22" in height; and

(3) Bear the pictorial design and text that appears in Appendix 1A of this Chapter that is either downloaded from the Department's website or otherwise obtained from the Department, and that when reproduced incorporates the language, color, size of type, imagery, and other specifications of the Department's pictorial design.

(d) Penalties. Swimming pool permittees who are issued notices of violation returnable to the Hearings Division at the Office of Administrative Trials and Hearings must pay a penalty of \$200 per violation sustained for (i) failure to post the sign, (ii) posting a sign without the Department's required pictorial design or text or as otherwise specified in Appendix 1A of this Chapter and subdivision (d) of this section, or (iii) not posting a sign in a location that is easy to see from the pool deck of each pool in a bathing facility, and in each dressing area. If a person issued a notice of violation fails to appear and is found in default for a violation cited under this section, any penalties to be imposed for such sustained violation will be doubled.

CHAPTER 1 APPENDIX 1A “NO BREATH-HOLDING CONTESTS” Poster



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

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

RULE TITLE: Posting of Required Signs

REFERENCE NUMBER: DOHMH-58

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 the nature of the violation poses a risk to public health and safety.

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

October 19, 2015
Date

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

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

RULE TITLE: Posting of Required Signs

REFERENCE NUMBER: 2015 RG 069

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: October 8, 2015