

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the proposed amendment of Article 165 of the New York City Health Code, related to swimming pools.

Date / Time: August 9, 2013/ 10AM to 12PM

Location: New York City Department of Health and Mental Hygiene
42-09 28th Street
14th Floor, Room 14-44
Queens, NY 11101

Contact: Rena Bryant
New York City Department of Health and Mental Hygiene
Board of Health
Secretary to the Board of Health
42-09 28th Street, CN31
Queens, NY 11101
(347) 396-6071

Proposed Rule

The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 165 of the New York City Health Code to require the posting of signage by bathing establishment operators warning that intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding can be dangerous; and to clarify the responsibilities of a pool operator regarding discouraging such activities and the supervision required if they do occur, and to require the updating of a pool's safety plan.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment by mail to Ms. Bryant at the contact address above, or electronically through NYC RULES at www.nyc.gov/nycrules or by email to RESOLUTIONCOMMENTS@HEALTH.NYC.GOV or online (without attachments) at <http://www.nyc.gov/html/doh/html/about/notice.shtml> on or before 5:00 P.M., August 9, 2013.
- If you are interested in pre-registering to speak, please notify Rena Bryant by August 8, 2013. Please include a phone number where, if necessary, you may be reached during normal business hours. You can also register at the door until 10 AM; however, preference will be given to those who pre-register. At the public hearing, you can speak up to five minutes.

- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by July 26, 2013.
- Copies of written comments and a summary of oral comments received at the hearing will be available for public inspection within a reasonable time after the hearing between the hours of 9:00 A.M. and 5:00 P.M. at the contact address above.
- 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/about/comment.shtml>.

STATUTORY AUTHORITY

These amendments to the New York City Health Code (“Health Code”) are proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter (“Charter”). Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene (“Department”) jurisdiction to regulate all matters affecting health in the City of New York. Specifically, Section 556 (a)(3) requires the Department to, “exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto...” 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 Department’s authority extends. Section 1043 of the Charter grants rule-making powers to the Department.

STATEMENT OF BASIS AND PURPOSE

Intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding can be dangerous. 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.

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.

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 material that promotes swimming behavior rules and/or signage requirements to reduce the risks of the above activities.

Article 165 of the Health Code addresses bathing establishments, including swimming pools. The Department is proposing that this article be amended to require that the operators of bathing establishments discourage intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding, but if allowed, only under supervision in accordance with the pool's approved pool safety plan. The amendments would also require all pool operators to post signage advising swimmers that these activities are dangerous.

The Department also proposes to require pool operators to update their safety plan when there are programing or operational changes at the facility and/or as directed by the Department.

PROPOSED CHANGES TO THE HEALTH CODE

The following changes to Article 165 are proposed:

- §165.19 - Pool Safety Plan – The proposed amendments would require a pool's safety plan to be updated when there are changes to operations or conditions and/or as directed by the Department.
- §165.21 (l) - Facility Operating Policy – The proposed amendments would add a provision stating that intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding be discouraged, and permitted only when supervised in accordance with a pool safety plan approved pursuant to §165.19.
- §165.41(u)(2)(k) - Safety and Warning Signs – The proposed amendments would add a requirement to include a sign warning that intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding are dangerous and can be deadly. This rule will take effect 90 days after adoption by the Board of Health.

The proposal is as follows:

Matter in brackets [] is to be deleted.

Matter underlined 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.

RESOLVED, that §165.19 of Article 165 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, is amended and to be published with explanatory notes, to read as follows:

ARTICLE 165

BATHING ESTABLISHMENTS

§165.19 Pool Safety Plan.

The operator[s] of a pool[s] and/or spray ground[s] shall develop, maintain and implement a written safety plan which consists of policies and procedures to be followed by the personnel during normal operation and emergencies for protecting the public from accidents and injuries. The [S]safety plan[s] must include procedures for daily bather supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first aid and summoning help. The safety plan shall be approved by the department and shall be accessible for use and inspection by the department at all times. The owner or pool operator shall review the plan periodically and update the plan [whenever a change occurs in] before making any change to operations, conditions, or the facility or when directed to do so by the department. Changes made to the plan shall be submitted to the department for approval before implementation.

Notes: §165.19 was amended by resolution of the Board of Health adopted on XXX to require the pool operator to update its safety plan when directed to do so by the Department in addition to when updates are necessary because of changes in operation or programs offered at the pool.

RESOLVED, that §165.21 of Article 165 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, is amended and to be published with explanatory notes, to read as follows:

§165.21 Facility Operating Policy.

* * *

(1) Intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding are strongly discouraged, and allowed only when supervised in accordance with the pool safety plan approved in accordance with §165.19.

Notes: Subdivision (1) of §165.21 was added by resolution of the Board of Health adopted on XXX to require the pool operator to permit certain underwater activities only under supervision as described in the approved pool safety plan.

RESOLVED, that paragraph (2) of subdivision (u) of §165.41 of Article 165 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, is amended and to be published with explanatory notes, to read as follows:

§165.41 General Requirements for Pools.

(u) Safety and warning signs.

(2) Warning signs. A sign or signs shall be securely posted in a conspicuous place or places in the pool area and bather preparation facility and shall provide the following information:

(K) “Intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding are dangerous and can be deadly.” The sign shall include a pictogram designed by the Department that conveys these dangers.

Notes: Paragraph (2) of Subdivision (u) of §165.41 was amended by resolution of the Board of Health adopted on XXX to require the pool operator to add signage that “Intentional hyperventilation and competitive, repetitive or prolonged underwater swimming or breath-holding are dangerous and can be deadly,” and that the sign include a pictogram designed by the Department that conveys these dangers. Section 164.41(2)(k) will take effect 90 days after adoption by the Board of Health. Nothing in this Section prevents the operator from posting any additional sign or adding language to required signs alerting bathers to activities that are limited or prohibited under the facility’s safety plan.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

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

RULE TITLE: Hyperventilation Sign in Bathing Establishments

REFERENCE NUMBER: 2013 RG 051

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: June 21, 2013

**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: Hyperventilation Sign in Bathing Establishments

REFERENCE NUMBER: DOHMH-32

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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/ Ruby B. Choi
Mayor's Office of Operations

June 21, 2013
Date