



THE CITY OF NEW YORK

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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Mayor

Thomas R. Frieden, M.D., M.P.H.
Commissioner

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FOR THE ATTENTION OF THE BOARD OF HEALTH

TO: Thomas R. Frieden, M.D., M.P.H.
Commissioner

THROUGH: Jessica Leighton, Ph.D.
Deputy Commissioner, Environmental Health Services

FROM: Edgar R. Butts, Ph.D., M.B.A.
Assistant Commissioner, Veterinary and Pest Control Services
and
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Director, Veterinary Public Health Services

SUBJECT: Response to public comments and additional modifications regarding
amendments to Article 161.05 of the New York City Health Code

DATE: November 28, 2006

On November 1, 2006 a public hearing was held pursuant to the Notice of Intention to amend Article 161.05 of the New York City Health Code (the "Health Code" or "Code"). Thirty-nine persons testified at the public hearing on behalf of themselves or organizations.

The Department of Health and Mental Hygiene (the "Department") has carefully reviewed the testimony and comments and we summarized our responses below. Supporting comments were received from 13,268 individuals (11,312 of which were included as part of petitions) and organizations. Negative comments were received from 202 individuals and organizations. Comments and the Department's response are summarized below.

RESPONSE TO PUBLIC COMMENTS

A. Comments Supporting the Proposed Amendment

The responses included many comments indicating various public health benefits of amending Article 161.05 of the Health Code. Generally, the comments included:

1) Better community and park safety,

- “I also appreciate how such hours contribute to safer parks and community well being as like minded people gather to enjoy parks.”
- “A few winters back a young man fell through the ice in Prospect Park Lake.” The commenter indicated that the only people present were those walking their dogs – they saw the incident, called for help and the man was saved.
- “In this great big city, off leash time gives owners a chance to develop a sense of community.”

2) Better health for people,

- “Healthy dogs lead to healthy people.”
- “...canines help in the lowering of blood pressure, reducing heart attacks, stroke and reduced stress, and provide a positive influence on patients with mental illness, as well as helping patients recover from illness.”
- “Canines offer benefits to humans. If people want to use the benefits of dogs, we should address the needs of dogs as well.”

3) Exercise opportunities for people,

- “...express, as strongly as I possibly can, how much I value the daily opportunity to take a long walk with my dog off lead.”

4) Socialization opportunities for people,

- “The community also benefits from having residents get to know one another. Meeting other “regulars” in the Park gives busy New Yorkers a chance to create or solidify social relationships that are important to any community.”
- “Additionally, the social implication that results from the off leash policy enhances intellectual exchange, especially regarding canine training and rearing and proper canine socialization.”

5) Community spirit and cohesion.

- “The community also benefits from having residents get to know one another. Meeting other “regulars” in the Park gives busy New Yorkers a chance to create or solidify social relationships that are important to any community.”

- “People with dogs together form a community, and it forms a community across all lines, across race, across class, across age, across gender, across sexual identity lines, it doesn’t matter. Dogs don’t care if you are rich or poor.”

B. Comments Objecting to the Proposed Amendment

1. **General Opposition** – Seventy-nine general comments were received opposing “any effort to amend the NYC leash law.”

Response: We have reviewed the specific concerns and have modified the original proposal. The Department of Health and Mental Hygiene believes that the benefits of modifying Article 161.05 of the Health Code outweigh the risks. Further, the proposed amendment has been de facto in effect in Department of Parks and Recreation parks for over 20 years.

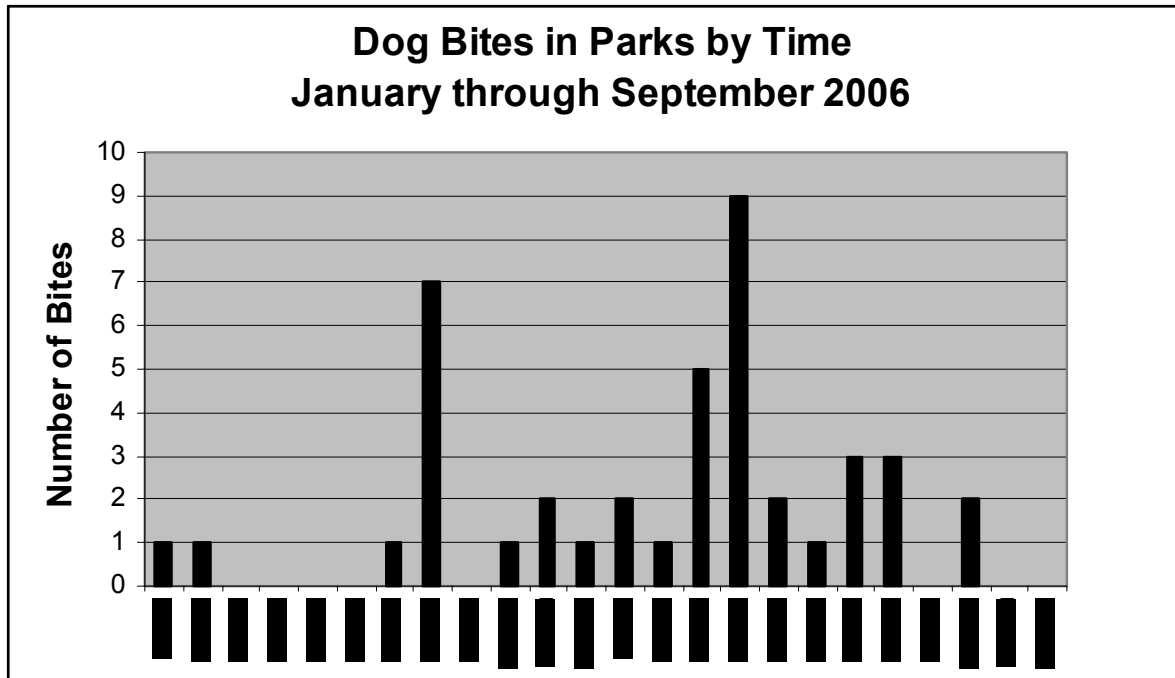
2. **Physical Attacks by Dogs** – Concern was expressed regarding the potential of dogs biting or attacking humans (38 comments).

Comments included: “I have been attacked by a dog and my son was attacked by a dog, both incidents being in Central Park.” Additionally, one comment was received about the lack of data regarding dog bites in parks. This comment was “There have been no studies done on off leash activity in NYC...no statistics kept on bites occurring in parks by dogs on their leashes verses bites by dogs not on leashes...”.

Response: Information reported to the DOHMH on dog bites show 93 (2.3 %) of 4,082 dog bites were reported in parks in 2004 and that 86 (2.2%) of 3,956 dog bites were reported in parks in 2005. Current reported data for the period from January thru September 2006 show that of 2,991 bites 55 (1.5%) occurred in parks.

The number of reported dog bites to humans has decreased in the City annually since 1993. Animal bites are reportable under Health Code Section 11.03. The Department is in the process of updating its animal bite reporting program. In addition to accepting reports by telephone, mail and fax, the Department is now accepting on-line reports through the Department’s Universal Reporting Form.

The DOHMH has reviewed data on the 55 dog bites that were reported in NYC parks from January through September 2006. A graphic of these dog bites by hour of the day is provided below. A majority of the bites with known hours of bite occurred during daytime (“non-off leash”) hours (n=30) during probably peak hours of dog walking in the park, than at the off leash hours during the night (n=12). Bites are only slightly more likely to occur by unleashed dogs than leashed dogs: of the thirty-five dogs for which leashing status was reported - regardless of time of the bite, sixteen were leashed and nineteen were not leashed.



- Uncontrolled Dogs, Dog on Dog Attacks and Irresponsible Owners** – Fourteen comments expressed concern regarding activity of uncontrolled dogs in parks, ten comments expressed concern for knockdown of humans by off leash dogs and three comments alleged that unleashed dogs would form dog packs. Eight comments expressed concern regarding the potential of dog on dog attacks. Eleven comments expressed concern of the dangers from dogs in parks with irresponsible owners.

Comments included: “My ankle was broken by an off the leash dog in Riverside Park...two dogs were chasing one another and one hit my ankle.” “Approximately 1/3 of my cases start out as a dog attacking another dog and then a dog attacking a person.” “Not all dog owners are responsible smart people.”

Response: Parks does not have any rules that specifically address dog-on-dog violence—either at Parks’ Dog Runs or elsewhere within City parks. Parks, however, does explicitly prohibit dog owners from allowing their animals to be out of control in any park, and an owner allowing his or her dog to attack another dog would be a clear example of an animal being out of control regardless of whether it was leashed or unleashed. Similarly, anyone who might allow multiple dogs under their care to run unleashed could be considered to have allowed such dogs to be out of control. Park Enforcement Patrol (PEP) Officers may issue violations to owners who are unable to control their dogs—whether or not such dogs are leashed—regardless of the time of day. Parks has issued almost ten thousand (10,000) summonses since 2002 for unleashed/out of control dogs.

Moreover, a leash law requirement does not guarantee that one will not encounter unleashed dogs in City parks. Clearer rules with formal off-leash opportunities should foster more compliance, rather than less, concerning the proper control of dogs by their owners.

4. **City Liability** – Three comments expressed concern that allowing dogs off leash will increase City liability.

Comments included: “Have you considered the consequences for the city when a child gets mauled or killed in a NYC park by a /legal/off-leash dog, not to mention the effects on the victim and family?”

Response: We have considered concerns that the adoption of the proposed amendment might result in City liability. After consultation with the Law Department, we have concluded that the proposed amendment will not result in an increased risk of liability, because it is anticipated that the modifications in Article 161.05 of the Health Code will allow the Department of Parks and Recreation to better define and regulate areas of the parks that will allow dogs off leash. Parks indicates that selected areas in only approximately 300 of the total of 1,833 parks will allow dogs off leash. Further, codified rules will allow better enforcement by PEP and other entities such as the New York City Police Department

5. **Adverse Effects – Wildlife and Parks**– Twelve comments indicated concern regarding the potential for adverse effects on wildlife, especially on birds during the breeding season, in parks caused by off leash dogs. Additionally, twelve comments expressed concern regarding potential for adverse physical effects on parks caused by off leash dogs.

Comments included: “these animals chase and disturb the birds, eggs and young of ground nesting species.” ... “bitten tails off of squirrels, killed ducks and raccoons.” “Dogs running loose have destroyed habitat by trampling on plantings and vegetation.”

Response: Department of Parks and Recreation has significant experience dealing with issues related to dog owners and the presence of domestic and wild animals in the City’s parks and has found this policy has increased positive uses of parks at less trafficked hours, while not otherwise compromising the safety of other visitors to parks or unduly impacting the natural flora and fauna Section 1-04(i) of Parks’ rules prohibits dogs from certain portions of parks, whether leashed or unleashed, at all times, e.g. (1) playgrounds, (2) zoos, (3) beaches, (4) bathing facilities, and (5) ballfields.

6. **Adverse Effects – Humans and Fear of Unleashed Dogs** – Five comments expressed concern about the perception that dogs are given preference over humans; eleven comments indicated that people were unable to fully utilize the park due to off leash dogs. A total of fifty-six comments indicated that fear of unleashed dogs was a major concern.

Comments included: “Do unleashed dogs deserve eminent domain; are they the dominant species, are their owners more equal then the rest of us?” “It is inevitable that when off leash dogs are introduced to a public area, use of the space by people diminishes.” “Our grandchildren are afraid to go to the park because of fear that they’ll be attacked by dogs.” “I walk my kids to school by the park at 8am. I can’t take a chance with unleashed dogs.”

Response: Leash requirements cannot and do not prevent all incidents of dogs attacking other dogs or people and animal behavior experts have concluded that there is evidence to suggest that well exercised and socialized dogs are less likely to bite other dogs or people.

The last statement is supported in comments submitted by the New York Council of Dog Owner Groups as follows: Dogs need to be properly socialized to be good “canine citizens” (Canine Behavior, 1965). “The vast majority of dogs do benefit greatly from having exercise periods. And walking dogs on a leash is not sufficient exercise” (from an interview with Dr. Nicholas Dodman, a leading animal behaviorist and veterinarian).

The Veterinary Medical Association of New York City stated that “This interaction [allowing dog to be off leash] would reduce animal anxiety and reduce the propensity for animals to injure people.”

- 7. Animal Waste** – Sixteen comments indicated concern regarding the presence of dog feces and waste in parks occurring for off leash dogs, four comments on potential for spread of zoonotic disease and one comment stated “off leash dog owners harass(ing) park users when asked to keep their pets under control or clean up after them.”

Comments included: "Wildlife, people and other dogs will all have greater exposure to "pernicious zoonotic infections". "Off leash dogs often defecate out of their owner's sight so the pooper scooper laws are being broken."

Response: Parks currently requires dog owners to clean up after their pets. Specifically, Section 1-04(j)(1) of Parks' rules states that “[n]o person shall allow any dog in his custody or control to discharge any fecal matter in any park unless he promptly removes and disposes of same...”. Indeed, in over twenty years of experience with the “courtesy hours” policy of informally allowing off-leash opportunities in certain parks, there does not appear to be any serious problem regarding the accumulation of dog waste in City parks attributable to unleashed dogs. Moreover, Parks believes that clearer rules formally allowing off-leash opportunities for dogs, with certain restrictions, will tend to foster greater, rather than less, respect for other Parks rules, including the rules regarding animal waste removal. Further, since Parks has also recently expanded its PEP Officers ranks, the enforcement potential to address such violations will be much greater.

- 8. Poor History and Lack of Enforcement** – Five comments indicated that there is a lack of enforcement by Department of Parks and Recreation.

One comment was: “Parks enforcement of the leash law at present is non existent and they have not presented any plan for better enforcement if off leash activity is written into law.” Additionally, one comment stated that there was a history of unsuccessful "off leash" policy in parks. This comment stated, “In no way has this been a “successful 20 year policy” as some claim rather an act of physical necessity.” One comment stated that there was not enough space allotted in parks for dog runs and one comment indicated that there is a perceived preference by Parks of Manhattan over Queens. “Parks in Manhattan currently have 16 dog runs to serve 1.3 million people. Yet Queens with its population of 2.2 million

people have 7 dog runs. It is clear that Parks prefer to spend their money in upper class Manhattan while unleashing the dogs on middle and lower class Queens.”

Response: Parks has recently hired additional permanent PEP Officers, resulting in a net increase of one hundred and sixty-three (163) new Officers since 2004 and Parks has issued almost ten thousand (10,000) summonses since 2002 for unleashed/out of control dogs. However, with a parks system of over one thousand, eight hundred (1,800) individual park sites covering approximately twenty-nine thousand (29,000) acres it is difficult to deploy our PEP Officers in such a way as to prevent all infractions, whether dog related or otherwise. Notwithstanding this limitation, if a member of the public contacts Parks, they will advise its PEP Officers to take appropriate action, including increasing patrols in areas where Parks has received complaints.

Lastly, courtesy hours have been in place for the last twenty (20) years. In fact, leash requirements cannot and do not prevent all incidents of dogs attacking other dogs or people and animal behavior experts have concluded that there is evidence to suggest that well exercised and socialized dogs are less likely to bite other dogs or people.

9. **Rulemaking Process** – One commenter alleged that the Parks Commissioner is being allowed to change the law.

Comment: This commenter stated, “I wasn’t aware that being Parks Commissioner allowed you to change the law. What a terrific perk! Now it’s the leash law what’s next.”

Response: The off leash allowance was a courtesy implemented during non-peak hours by the Department of Parks and Recreation that had mutual benefits to both Parks and dog owners. The reason for this amendment is to enable Parks to codify these courtesy hours.

CHANGES MADE IN RESPONSE TO PUBLIC COMMENTS

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

amended to authorize the Department's Commissioner to limit or eliminate off-leash privileges in specific DOPR areas and facilities if the Department determines, based on epidemiological evidence, that there is an increase in preventable off leash dog bites or a risk of zoonotic disease transmission in such areas or facilities.

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