

NEW YORK CITY BOARD OF HEALTH

In the matter of the application of

NATIONAL BLACK LEADERSHIP  
COMMISSION ON HEALTH, LATINO  
COMMISSION ON AIDS, HOUSING WORKS,  
INC., and TREATMENT ACTION GROUP, for  
the commencement of rulemaking pursuant to  
New York City Health Code Article 9,

Petitioners.

**PETITION TO NEW YORK  
CITY BOARD OF HEALTH TO  
COMMENCE EMERGENCY  
RULEMAKING PURSUANT TO  
NEW YORK CITY HEALTH  
CODE ARTICLE 9**

The National Black Leadership Commission on Health, the Latino Commission on AIDS, Housing Works, Inc., and the Treatment Action Group (together “Petitioners”), for their emergency Petition pursuant to Article 9 of the New York City Health Code, state as follows:

1. Petitioner, National Black Leadership Commission on Health, champions the promotion of health and prevention of diseases to reduce disparities and achieve equity within the Black community.
2. Petitioner, Latino Commission on AIDS, is a New York City based nonprofit organization that works through its extensive network of partner organizations and community leaders to mobilize an effective community response to meet the health challenges and address the impact of HIV/AIDS, Hepatitis & STIs in Latinx communities nationwide, in order to eradicate health disparities.
3. Petitioner, Housing Works, Inc., is the one of the largest AIDS service organizations in the United States, providing housing assistance, health care, behavioral health, care coordination, job training, and other services to over 12,000 homeless and formerly homeless people in New York City who are living with HIV/AIDS and other chronic conditions.

4. Petitioner, Treatment Action Group, is an independent, activist and community-based research and policy think tank fighting for better treatment, prevention, a vaccine, and a cure for HIV, tuberculosis, and hepatitis C virus.

5. On June 8, 2020, the Chair of the New York City Board of Health (the “Board”), and the Commissioner of the New York City Department of Health and Mental Hygiene, Oxiris Barbot (the “Commissioner”), declared that:

Racism is a public health crisis. The murder of George Floyd at the hands of police officers is part of the system of racism that permits police brutality, unjust policing and mass incarceration. In NYC, Black and Brown communities face the disproportionate impact, grief and loss from the COVID-19 pandemic on top of the trauma of state sanctioned violence. The NYC Department of Health and Mental Hygiene is committed to addressing structural racism within our own institution and addressing racism as a social determinant of health as part of our mission to protect the health of New Yorkers. To make lasting change, we call on our sister city agencies to address structural racism in their own organizations: Join us in this stand against injustice to do better in service of Black, Brown and all New Yorkers.

6. This Petition asks the Board to make the aspirational concrete.

7. First, Petitioners ask the Board to convene an emergency session to consider this Petition and adopt the new rules, changes and amendments it seeks.

8. When convened, Petitioners ask the Board to officially declare, consistent with the Chair’s declaration dated June 8, as set forth above in ¶ 5 (the “June 8 Declaration”), and pursuant to the New York City Charter (“Charter”) § 506, that racism constitutes a “great and imminent peril to the public health.”

9. Concurrent with, but separate from, the declaration sought in ¶ 8 above, Petitioner also asks the Board to declare, consistent with the June 8 Declaration, and pursuant to New York City Health Code § 301(d), that racism constitutes “a public health emergency.”

10. When the Board is convened, and irrespective of whether the Board declares that racism constitutes a “great and imminent peril to the public health” pursuant to Charter § 506, or that racism constitutes a “public health emergency” pursuant to New York City Health Code § 301(d), Petitioners also ask the Board to consider and adopt the following rules designed to give meaning to the June 8 Declaration and address racism and over-policing as a public health crisis:

1. *Immediate priorities to track and address the disparate impact of COVID-19 on Black and Latinx New Yorkers:*

- a. Require that DOHMH provide daily data on COVID-19 testing, diagnoses, hospitalization, and deaths, disaggregated by race, ethnicity, age, gender identity, zip code and census tract of residence, housing status, occupation, use of public transportation, likely exposure (including NYPD detention and participation in a public demonstration), and other relevant characteristics.
- b. Require that DOHMH collect and analyze information on NYC policies, actions, and other factors that have a potential impact on COVID-19 exposure and health outcomes in communities of color, such as reductions in public transportation (e.g., number and capacity of subway trains and buses, reductions in public transportation services, etc.); housing density and conditions (e.g., homeless in shelter, homeless on the street or sleeping on public transportation, doubled-up housing situations, multigenerational households. etc.); lack of documented immigration status; lack of insurance coverage; other relevant factors.
- c. Require DOHMH to provide specific guidance to medical and social service providers on equitable practices to collect more accurate and relevant demographic categories and improve health equity in COVID-19 outcomes.
- d. Prohibit mandatory quarantine or isolation orders with fines or other penalties attached and support voluntary quarantine or isolation by providing necessary supports and/or incentives, to include at a minimum appropriate accommodation, adequate nutrition, access to medicines, medical and behavioral health services as needed, and other assistance determined to be required on an individual basis.

2. *Ongoing actions to address racism as a public health crisis:*

- a. Assess internal NYC agency policies and procedures to ensure racial equity is a core principle and a priority.
- b. Work to create inclusive NYC agencies and contractors and identify specific activities to increase diversity in staffing and leadership.
- c. Incorporate inclusion and equity in agency policies and procedures, including comprehensive education and trainings to increase awareness of the impacts of structural and institutionalized racism.
- d. Provide guidance to NYC agencies and medical and social service providers on equitable practices to collect more accurate and relevant demographic categories in order to track and improve health equity.
- e. Develop concrete strategies designed to improve health in communities of color.

3. *Immediate priorities to address over-policing as a threat to public health and safety:*

- a. Order police to wear masks at all times when they cannot maintain a 6-foot distance from others, and at all times when outside, for the duration of the COVID-19 emergency.
- b. Order police to observe social distancing with and among all persons in custody, and to the extent possible, during arrest or other interactions with members of the public, for the duration of the COVID-19 emergency.
- c. Allow and encourage persons detained by the police for any reason to wear masks and take other actions to protect themselves from SARS-CoV-2 exposure, with police to provide detainees with masks upon request.
- d. Order police to stop custodial arrests of persons participating in public demonstrations or other events, or not observing social distancing, for the duration of the COVID-19 emergency, except where such persons are committing a non-related criminal act that involves violence directed at the person or property of another.
- e. Limit the length of detention for persons arrested during public demonstrations to no more than four (4) hours.
- f. Require that DOHMH provide for the voluntary offer of free SARS-CoV-2 infection and antibody testing of all persons detained by NYPD for the duration of the COVID-19 crisis, followed by contact tracing as indicated.

- g. Order the Department of Corrections to provide sufficient PPE and require its use by all staff members and inmates at Rikers Island and other NYC jails, and require observation of social distancing in all facilities and in every situation (including among inmates in dining halls and other communal areas).
  - h. Prohibit use in NYC of tear gas, pepper spray, “pepper balls” or any other chemical substance used for the purpose of crowd dispersal, by NYPD and other law enforcement, including an immediate end of use of these substances in light of the COVID-19 emergency.
  - i. Prohibit use in NYC of rubber bullets, by NYPD and other law enforcement.
  - j. Prohibit NYPD use of “kettling” and similar tactics to surround or otherwise limit freedom of movement among persons participating in demonstrations or other public gatherings.
4. *Ongoing priorities to improve public health and safety:*
- a. Require the NYPD and the Department of Corrections to establish databases that track officers who have been decertified, continued to fail to follow training requirements or have been fired, and to provide an annual report of this data to the City Council.
  - b. Require law enforcement and corrections officers to intervene when a fellow law enforcement officer acts unlawfully.
  - c. Allow NYPD officers or other law enforcement to use deadly physical force only when necessary to effect an arrest or prevent escape from custody when the person is using a deadly weapon or likely to imminently cause danger to life or serious bodily injury.
  - d. Prohibit the use of military equipment, tactics and procedures by the NYPD.
  - e. Stop police clearing of homeless encampments and police removal of persons sleeping in public transportation or other public areas, and shift responsibility for outreach and other interventions with persons experiencing homelessness to appropriately staffed and trained homeless outreach workers, who will direct NYPD involvement, if any, and shift funding as necessary from the NYPD budget to fund these services.
  - f. Shift responsibility for responses to Emotionally Disturbed Persons and substance use overdoses away from the NYPD, to be handled exclusively by a separate, appropriately staffed and trained entity charged with responding to behavioral health emergencies, and shift funding from the NYPD budget to

fund the new behavioral health response entity, which will then direct NYPD involvement, if any.

- g. Require NYPD to report to DOHMH all injuries and deaths sustained by persons while in police custody and during arrest or other interaction with members of the public, as a Reportable Condition of Public Health Interest under §11.3 of the NYC Public Health Code, including date, time, location, officers involved, nature of injury or cause of death, and demographics of the victim, including race, ethnicity, age, gender identity, sexual orientation, zip code and census tract of residence, and housing status (including data on injuries and deaths during the last 10 years, on a monthly basis going forward, and on a weekly basis for the duration of the COVID-19 emergency).
- h. Require NYPD to report to DOHMH data on use of force during police stops, unannounced police entries, and other interactions with members of the public, as a Reportable Condition of Public Health Interest under §11.3 of the NYC Public Health Code, including date, time, location, officers involved, nature of force used, and demographics of the person or persons targeted for use of force disaggregated by race, ethnicity, age, gender identity, sexual orientation, zip code and census tract of residence, and housing status.
- i. Require NYPD to report to DOHMH data on encounters with people experiencing homelessness and on encounters with Emotionally Disturbed Persons, as Reportable Conditions of Public Health Interest under §11.3 of the NYC Public Health Code, including date, time, location, officers involved, nature and outcome of the encounter, and demographics of the person or persons targeted for the encounter disaggregated by race, ethnicity, age, gender identity, sexual orientation, zip code and census tract of residence, and housing status.
- j. Require NYPD to report to DOHMH all resignations by involved officers while an investigation of policy violations is ongoing.
- k. Require the Department of Corrections to report to DOHMH all injuries and deaths sustained by persons while in custody, as a Reportable Condition of Public Health Interest under §11.3 of the NYC Public Health Code, including date, time, location, type of interactions that led to injury or death (self-harm, detainee interaction, use of force), corrections officers involved, nature of injury or cause of death, type of detention (general population, enhanced supervision, administrative segregation, etc.), housing unit, and demographics of the victim, including race, ethnicity, age, gender identity, and sexual orientation.
- l. Require the Department of Corrections to report to DOHMH data on each instance of the use of “Enhanced” or “therapeutic” detention of jail inmates, as a Reportable Condition of Public Health Interest under §11.3 of the NYC

Public Health Code, including start and end dates of the detention, the stated reason for such detention, and inmate demographics, including race, ethnicity, age, gender identity and sexual orientation.

11. Based on the foregoing, Petitioners respectfully request that their Petition be granted in its entirety, that the Board immediately convene an emergency meeting and at that meeting adopt each and every rule proposed by this Petition.

Dated: June 25, 2020  
New York, New York

**Petitioners**



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