

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

**NEW YORK
CITY BAR**

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COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of horse drawn cabs.

New York City Introduction No. 653-A

Sponsors: Gennaro, Felder, Nelson and Stewart

THIS LEGISLATION IS OPPOSED

A. Summary of Introduction No. 653A

For several years the City Bar Association has urged the Council to enact legislation to ameliorate the extremely harsh conditions under which our City's carriage horses work and live, while, at the same time, stating that such legislation could not create fully humane conditions and that a ban of carriage horse rides was the only truly humane solution. Unfortunately, while Introduction No. 653-A seeks to improve conditions, it would not significantly promote the health, safety and well being of the carriage horses and may actually worsen their conditions. Therefore, the New York City Bar Association opposes Introduction No. 653-A.

Introduction No. 653-A would amend sections 17-330, 20-380, 20-381, and 24-330 of the Administrative Code of the City of New York ("Ad Code") to (1) provide that inspections of stables in which horses working in the horse-drawn carriages are stored, shall be performed by a "single entity that has veterinary training in the care of horses" and eliminates the authority of government employees and the ASPCA to conduct inspections; (2) require that stables shall be certified by the New York State Horse Health Assurance Program ("NYSHHAP"); (3) increase the minimum number of required veterinary examinations from one to two a year; (4) require that, at the time of purchase, horses be between five and twenty years of age; (5) increase the fee the industry may charge customers; (6) provide for a probationary horse-drawn carriage driver license; and (7) require that the Department of Environmental Protection maintain and make available to the horses a source of water all year round.

B. Analysis

1. *Eliminating the regulatory authority of the ASPCA, governmental agencies, and designees of the Commissioner of the Department of Health and Mental Health to inspect the stables could put the horses at risk*

The proposed legislation requires that carriage-horse stables be inspected at least four times a year by “an entity that has veterinarian training.” The legislation does not require that a veterinarian who is licensed pursuant to Article 135 of the Education Law actually conduct the inspections. To the contrary, under this legislation, a person whose veterinary license was revoked or an administrative employee of a professional service corporation organized for the practice of veterinary medicine would be authorized to conduct inspections of stables.

The legislation does not state who would select the entity that has veterinarian training to conduct the inspections and who would pay for the inspections. The legislation appears to permit the carriage-horse industry itself to choose and compensate the inspectors, which could decrease the likelihood of impartiality. Moreover, there is no requirement that the inspections be unannounced or that the results be in writing, be reported to the Department of Health and Mental Hygiene (“DOHMH”), the Department of Consumer Affairs (“DCA”), and the ASPCA, and be subject to the Freedom of Information Law. Finally, there is no requirement that the entity conducting the inspections have the powers of peace officers.

Perhaps most troubling, the legislation eliminates the authority of the ASPCA and the DOHMH and the DCA to conduct periodic regulatory inspections of the carriage horses’ stables.¹ The ASPCA’s authority to conduct inspections without a warrant is important because its officers are peace officers pursuant to section 2.10 of the Criminal Procedure Law and therefore have the authority to issue appearance tickets for violations of animal protection laws that they observe during inspection.² The elimination of the ASPCA’s oversight is problematic given the City Comptroller’s criticism of the horse-drawn carriage industry and the treatment of carriage horses in a 2007 audit, the historic and substantial role the ASPCA has played in protecting the well-being of the carriage horses, and the numerous violations of animal protection laws by stable owners, horse owners, and drivers.³ From July 1, 2005 to December 31, 2006, the ASPCA issued 77 violations to drivers, horse owners and stable owners.⁴

In short, despite documented widespread violations of the laws that protect carriage horses, the legislation does not assure that trained, impartial third parties will be inspecting the carriage horses’ stables and making their reports available to the government and the public.

¹ The ASPCA would retain its law enforcement authority pursuant to the Agriculture and Markets Law. (See Ag & Mkts L. §§ 371-373).

² NY Criminal Procedure Law § 2.20(e); see also NY Comptroller’s Opinion No. 82-46 (February 3, 1982) (peace officers and certain city employees have the authority to issue appearance tickets).

³ The Comptroller’s audit observed that the DOHMH and DCA rely on the ASPCA to perform inspections without a contract and cautioned that the ASPCA could consequently terminate its inspections without notice. The Comptroller recommended that the DOHMH consider a formal agreement for services to ensure continued ASPCA oversight, not the elimination of the ASPCA’s oversight. (City of New York, Office of the Comptroller, Audit Report on the Licensing and Oversight of the Carriage-Horse Industry by the Departments of Health and Mental Hygiene and Consumer Affairs (June 27, 2007), available at http://comptroller.nyc.gov/bureaus/audit/PDF_FILES/MH07_092A.pdf.)

⁴ *Id.* at 8.

Instead the legislation would seem to allow the horse-drawn carriage industry to choose its own inspectors, and in any event does not provide an inspection system with accountability, incentive to acknowledge any violations by the industry, and obligations to release findings to the government or the public.

2. *A requirement that the stables be certified by NYSHHAP would improve conditions; however, the proposed legislation is flawed*

The proposed legislation requires that carriage-horse stables “shall be certified by the New York State Horse Health Assurance Program.” NYSHHAP is a disease prevention program of the New York State Department of Agriculture, Division of Animal Industry, that promotes horse health through the annual certification of equine operations that have voluntarily agreed to implement certain best management practices.⁵ A requirement that stables be NYSHHAP certified could slightly improve conditions for horses; however, the provision is flawed as drafted.

The NYSHHAP guidelines provide, among other things, that:

- Stalls must be of adequate size so that the horse can raise his head and lie down safely and comfortably. The standard size for a box stall is 12’ by 12’ (size needed for comfort of most mid-sized horses).⁶
- “The riding area must be free of rocks and hazards such as junk, wood or equipment Appropriate footing shall not include mud, ice or other ground conditions that would present a hazard for the horse and rider.”⁷
- “Horses must have access to clean water throughout the day. Dehydration is detrimental to horses’ health, especially in extreme temperatures. Stagnant water may harbor organisms that can cause disease and illness. Types of watering facilities vary, but whatever style used, they should be easy to clean on a daily basis to remove scum and contamination.”⁸

Requiring compliance with the guidelines would address some of the criticisms of the carriage horse industry: the size of the stall and safety of the stables, the painfully hot asphalt in summer, and the lack of clean, fresh water during the work hours. It is unclear whether city traffic would be an unacceptable riding area hazard under the guidelines.

Due to a drafting error, the legislation imposes a duty to certify upon NYSHHAP instead of requiring owners and operators of stables housing carriage horses to obtain and maintain NYSHHAP certification as a condition of licensure. The legislation is further flawed because it does not (1) provide a deadline by which a stable owner must obtain NYSHHAP certification; (2) require that proof of NYSHHAP certification be provided to the DOHMH as a condition of obtaining a license or license renewal; and (3) provide penalties for failing a NYSHHAP inspection.

⁵ NYSHHAP Web site, <http://www.agmkt.state.ny.us/nyshhap/horsehealth.html> (viewed on January 4, 2009).

⁶ NYSHHAP Standards and Certification Manual 34 (Feb. 2008).

⁷ *Id.* at 35.

⁸ *Id.* at 39.

3. *The requirement that the Department of Environmental Protection maintain and make available to the horses a source of water is substantially flawed*

The City Comptroller audit observed that the horses work in less than optimal conditions and that there are no water spigots in the areas in which carriages wait to pick up passengers, making it difficult to obtain drinking water for the horses.⁹ The fact that horses do not have adequate access to water during their long shifts—horses may work up to 10 hours per day¹⁰—is particularly significant because working horses need access to plenty of clean fresh water at all times to maintain health.¹¹ According to NYSHHAP, an average horse consumes five to 15 gallons of water a day and needs to drink approximately a quarter- to a half-gallon of water per hour.¹² Diet, temperature, and exercise can influence water maintenance needs. Water buckets and bowls must be cleaned frequently.¹³ Electric water heaters are necessary in winter to prevent water from getting too cold.¹⁴

The proposed legislation makes an effort to improve the situation but does not adequately address the need for water. It requires the Department of Environmental Protection (“DEP”) to maintain and make available to the horses a source of water all year round. However, the legislation does not require the carriage-horse owners and operators to allow horses access and adequate time to drink water provided by the DEP. There is no requirement that the water be potable or that troughs be heated in winter or cleaned on a daily or more frequent basis. The legislation should be amended to place the primary duty to ensure that carriage horses have adequate water on the carriage-horse owners and operators, instead of the DEP, and impose a penalty for noncompliance.

The legislation currently provides, “It shall be unlawful to draw water from such fixtures except to water horses or other animals. It shall be unlawful to tamper with such fixtures.” The law should be clarified to state that the crime is a class A misdemeanor. This is consistent with New York Agriculture and Markets Law section 353, which provides that any person who “deprives any animal of necessary sustenance food or drink, or neglects or refuses to furnish it such sustenance or drink” is guilty of a class A misdemeanor. Penal Law section 80.05 provides that a class A misdemeanor is punishable by a fine of up to \$1,000 and Penal Law section 70.15 provides that imprisonment shall not exceed one year.

4. *The legislation does not address the most critical concerns relating to the carriage horse industry*

In 1989, the City Council enacted the Administrative Code provisions relating to carriage horses to “assure the health and safety of motorists and pedestrians” and “insure the proper care

⁹ Comptroller Audit, *supra* note 2, at 11.

¹⁰ 24 RCNY § 4-05(c)

¹¹ MORDECAI SEIGAL, THE UNIVERSITY OF DAVIS BOOK OF HORSES: A COMPLETE MEDICAL REFERENCE GUIDE FOR HORSES AND FOALS 75 (1996)

¹² NYSHHAP, Equine Water Needs

<http://www.agmkt.state.ny.us/nyshhap/infodocs/Fast%20Facts%20Equine%20Water%20Needs.pdf> (viewed on January 4, 2009).

¹³ *Id.*

¹⁴ *Id.*

and handling of the horses and to further safeguard the horses and the public from the hazards of traffic.”¹⁵ Since then, the problem of traffic congestion has increased in its severity—more than 800,000 cars enter Manhattan beneath 60th Street each weekday.¹⁶ Despite the increase in traffic, Introduction No. 653-A does nothing to address the health and safety of motorists and pedestrians or safeguard the horses and public from traffic hazards, which are illustrated by the numerous documented traffic accidents involving carriage horses. For example, on August 31 2008, two horses pulling a wedding buggy in Brooklyn became startled and proceeded to run wildly through the street, propelling the driver onto the windshield of a parked vehicle.¹⁷ On September 14, 2007, a spooked horse reared up and turned its carriage over, charging a tree and another carriage.¹⁸ This sent a second horse running against traffic and plowing into a Mercedes-Benz. The horse died on the pavement near Center Drive. On July 3, 2007, a spooked horse flipped over his carriage and collided with a taxi on Central Park South.¹⁹ A motorcyclist and a bike were hit with the carriage. One person was hospitalized and the horse suffered several gashes on its right hind leg. On June 2, 2007, a spooked horse galloped into traffic still attached to his carriage.²⁰ An SUV struck the horse at 54th Street and Seventh Avenue and the horse fell to the pavement. On April 13, 2007, a taxi crashed into a carriage while a horse was working.²¹ In addition, a documentary film shows horses being spooked by city noises and weaving in and out of traffic nearly missing cars, and horse-carriage drivers reading books while driving carriages carrying passengers through City streets.²²

The Committee notes that the ASPCA supports a bill to ban carriage horses in New York City.²³ The ASPCA is not opposed, in principle, to the use of horses to pull carriages, "provided that animals' physiological and behavioral needs are fully met, housing and stable conditions are humane, and their working hours and conditions—such as temperature, humidity, proximity to traffic and rest periods—are carefully regulated."²⁴ The ASPCA stated that the City's environment cannot provide "horses with these fundamental necessities to ensure their safety and well being" and that "[i]ncreased accidents, the recent death of a carriage horse and the city comptroller's report all underscore the urgency to get these horses off the streets."²⁵

Although the legislation attempts to address problems in the stables by requiring NYSHHAP certification, the legislation does not address harsh conditions on the hack line that were documented in the Comptroller's report, such horses being left to stand in pools of fouled water due to the lack of adequate drainage, or the lack of shade and burning asphalt that the horses must endure in summer months. The legislation does not ensure that horses have adequate—or any—turnout time and it does not shorten their working day.

¹⁵ See Local Law No. 89-1989 § 1

¹⁶ Regional Plan Association, Congestion Pricing in New York City: Making the Case, *available at* <http://www.rpa.org/pdf/Spotlight40.pdf>.

¹⁷ Reuven Fenton, *2 Horses Go Buggy*, NY POST (Sept. 1, 2008).

¹⁸ Kerry Burke and Michael White, *Spooked by Drum, Carriage mare Breaks Her Leg in a Wild Dash and Dies. Horse Horror at the Park*, NY DAILY NEWS (Sept. 15, 2007).

¹⁹ Erin Calabrese and Dan Kadison, *Horse and Taxi in Tale of Whoa*, NY POST (July 5, 2007).

²⁰ Coalition to Ban Horse Drawn Carriages Web site, <http://www.banhdc.org/archives/ch-acc-20070602.html>

²¹ *Id.*, <http://www.banhdc.org/archives/ch-acc-20070413.html>

²² Trailer for BLINDERS: THE TRUTH BEHIND THE TRADITION (McMoss Productions 2007), *available at* <http://www.blindersthemovie.com/trailers/>

²³ ASPCA Press Release (Dec. 8, 2007), *available at* http://www.aspc.org/site/PageServer?pagename=press_120807

²⁴ *Id.*

²⁵ *Id.*

C. Summary

For these reasons, the City Bar Association opposes Introduction No. 653A-2007. The traffic in NYC streets is too congested to provide a safe environment for carriage horses and the proposed legislation does nothing to address that fundamental problem.

The City Bar Association continues to support Introduction 658-2007, which would ban the carriage-horse industry altogether in New York City. The Committee is aware of a proposal to replace the carriages with “green” replicas of Model T Fords and other classic cars. Such a proposal would provide a safe and enjoyable alternative for tourists while preserving jobs for workers in the horse-drawn carriage industry and potentially increasing revenues for the City.