

**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Notice of Adoption of Amendments
to Chapter 10 of Title 24 of the Rules of the City of New York**

In compliance with section 1043(b) of the New York City Charter (“Charter”), a notice of intention to amend Chapter 10 of Title 24 of the Rules of the City of New York was published in the New York City Record on March 28, 2022, and a public hearing was held on April 27, 2022. At the hearing, one person testified, and two other people submitted comments. The two written comments concerned complaints regarding the smell of cannabis smoke from neighbors’ dwellings, which is not related to the proposed regulation. The testimony raised a question concerning allowance of smoking of cannabis at on-site consumption facilities. However, adult-use on-site consumption licenses have not been granted as of the date of this proposed rule and therefore there are currently no consumption facilities currently operating in New York City. Accordingly, in response to the testimony and the comments received, no changes have been made to the proposed amendment.

Statement of Basis and Purpose

New York City’s Smoke-Free Air Act (“SFAA”) prohibits the smoking, including the smoking of cannabis, in a range of locations, with certain other locations being exempt from the smoking prohibition. The New York State Marijuana Regulation and Taxation Act (MRTA) amended section 1399-q of the New York Public Health Law to prohibit the smoking or vaping of cannabis in some of the locations exempt by the SFAA and New York City regulations. To make the exemption provisions consistent between the two laws, DOHMH is amending seven Chapter 10 sections by:

- adding definitions to section 10-01 and,
- amending sections 10-02, 10-04, 10-07, 10-10, and 10-16 to prohibit the smoking and vaping of cannabis in areas that the New York Public Health Law prohibits such smoking and vaping.

The proposed rule also includes some minor plain language revisions.

The amendment is as follows:

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text

Section 1. Section 10-01 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(a) Act. “Act” means the Smoke-Free Air Act, as provided in Chapter 5, Title 17 of the New York City Administrative Code (the “Administrative Code”), as amended by Local Law No. 47 of 2002.

(b) Bar. “Bar” has the meaning set forth in § 17-502(b) of the Act or subdivision (1) of § 1399-n of the New York State Public Health Law, whichever is more inclusive.

(c) Cannabis. “Cannabis” as defined in paragraph 5 of section 3 of New York State’s Cannabis Law (as added by L 2021, c 92, § 2, eff. March 31, 2021), also known as the “Marihuana Regulation and Taxation Act” (“MRTA”);

[(c)] (d) Commissioner. “Commissioner” means the Commissioner of the New York City Department of Health and Mental Hygiene.

[(d)] (e) Compensation. “Compensation” means any money, gratuities, privileges or benefits received in return for work performed or services rendered.

[(e)] (f) Department. “Department” means the New York City Department of Health and Mental Hygiene.

[(f)] (g) Employee. “Employee” means an employee as defined in § 17-502(h) of the Act. There shall be a rebuttable presumption that any person who performs work or renders services for compensation, for any period(s) of time, at the direction of an operator of an entity or facility which is subject to the provisions of the Act, is an employee of such entity.

[(g)] (h) Enclosed room. “Enclosed room” means a room which is completely enclosed on all sides by solid floor-to-ceiling walls, windows, or solid floor-to-ceiling partitions, and which complies with all applicable Building Code and Fire Code requirements. Any such windows in such room must remain closed while people are smoking in the room unless the windows open to the exterior. Any doors must remain closed while people are smoking in the room except to the extent necessary to permit ingress and egress to and from such room. Such room must be ventilated in a manner that shall prevent emission of smoke to any other interior part of the facility.

[(h)] (i) Entrance. “Entrance” means every means of entering or exiting a room, facility, or premises ordinarily used by the public and/or employees.

[(i)] (j) Incidental service and/or sales of food and/or drink. For the purpose of § 10-04 of these rules, service of food and/or drink shall be deemed “incidental” to the purpose of promoting and sampling tobacco products, where such food and/or drink is prepackaged or requires no on-site preparation or monitoring, and there is no service or self-service of potentially hazardous foods, as defined in § 81.09 of the New York City Health Code, within the enclosed room in which the event is held.

[(j)] (k) Membership association. “Membership association” has the meaning set forth in § 17-502(ff) of the Act.

[(k)] (l) On-site agent. “On-site agent” means an employee designated by a building operator, owner or manager to inform persons that smoking is prohibited on the building premises.

[(l)] (m) Open for business. For the purpose of § 23 of Local Law 47 of 2002 and § 10-02(c) of these rules, the term “open for business” includes any time that employees are present in such establishment or any time the establishment is open to the public.

[(m)] (n) Overhang. “Overhang” means any roof, ceiling or other complete or partial covering of, or over, an outdoor dining area of a restaurant.

[(n)] (o) Outdoor dining area. “Outdoor dining area” means any patio, courtyard, sidewalk cafe, backyard, rooftop or terrace, or other outdoor area of a restaurant, with or without seating, that is designated for the consumption or service of food or drink.

[(o)] (p) Repealed.

[(p)] (q) Permittee. “Permittee” means a person who holds a valid permit issued pursuant to Articles 5 and 81 of the New York City Health Code to operate a bar, restaurant or other food service establishment or who holds a valid permit issued pursuant to section 17-513.5 of the New York City Administrative Code to operate a non-tobacco hookah establishment.

[(q)] (r) Place of employment. “Place of employment” shall have the meaning set forth in § 17-502(m) of the Act.

[(r)] (s) Principal owner. “Principal owner” has the meaning set forth in § 17-502(hh) of the Act.

[(s)] (t) Rules. “Rules” means Chapter 10 of Title 24 of the Rules of the City of New York.

[(t)] (u) Repealed.

[(u)] (v) State law. “State law” means Article 13-E of the Public Health Law of the State of New York (“Regulation of Smoking in Certain Public Areas”), as amended.

[(v)] (w) Tobacco bar. “Tobacco bar” has the meaning set forth in § 17-502(jj) of the Act.

[(w)] (x) Electronic cigarette. “Electronic cigarette” has the meaning described in §17-502(qq) of the Act.

[(x)] (y) Restaurant. “Restaurant” has the meaning described in §17-502(r) of the Act.

[(y)] (z) Retail tobacco store. “Retail tobacco store” has the meaning described in §17-502(u) of the Act.

[(z)] (zz) Retail electronic cigarette store. “Retail electronic cigarette store” has the meaning described in §17-502(rr) of the Act.

Section 2. Subdivision (c) of section 10-02 of chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

[(c) Repealed] (c) Smoking cannabis or using electronic cigarettes to vape cannabis shall be prohibited in the following areas:

(i) Private residences housing child day care centers, as defined in §17-502(d) of the Act, or health care facilities, in accordance with §17-505 of the Act;

(ii) Private automobiles;

(iii) Retail tobacco stores;

(iv) Tobacco bars;

(v) Outdoor dining areas of food service establishments;

(vi) Enclosed rooms in food service establishments, bars, catering halls, convention halls, hotel and motel conference rooms, and other such similar facilities, including the time such enclosed areas or rooms are being used exclusively for functions where the public is invited for the primary purpose of promoting and sampling tobacco products or electronic cigarettes;

(vii) Retail electronic cigarette stores.

Section 3. Section 10-03 of chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 10-03. Smoking Tobacco, and Electronic Cigarette Use to Vape Nicotine, Promotion Public Events.

Smoking tobacco, and using electronic cigarettes to vape nicotine, are not regulated in:

- (a) Private residences, provided, however, that smoking tobacco, and using electronic cigarettes to vape nicotine, are prohibited in private residences housing child day care centers, as defined in § 17-502(d) of the Act, or health care facilities, in accordance with § 17-505 of the Act;
- (b) Hotel and motel guest rooms;
- (c) Private automobiles;
- (d) Registered retail tobacco stores, as defined in 24 RCNY § 10-01(y); and
- (e) Registered retail electronic cigarette stores, as defined in 24 RCNY § 10-01(z), provided however, that only the use of electronic cigarettes to vape nicotine is not regulated in such stores.

Section 4. The introductory paragraph of section 10-04 of chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

Smoking tobacco, and using electronic cigarettes to vape nicotine, may be permitted in an enclosed room, as defined in §10-01(g) of these rules, in a restaurant, bar, cabaret, catering hall, convention hall, hotel or motel conference room, or other such similar facility, where smoking is otherwise prohibited, when the public is invited to attend a specific event held for the primary purpose of promoting and sampling tobacco products or electronic cigarettes, provided that:

Section 5. The introductory paragraph of section 10-07 of chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

Smoking tobacco or using electronic cigarettes to vape nicotine shall be permitted in tobacco bars, as defined in § 17-502(jj) of the Act and § 10-01 of these rules, which were in existence in the calendar year ending December 31, 2001, and in which ten (10) or more percent of the bar's total gross annual income was derived from the on-site sale of tobacco products and rental of humidors, in accordance with the following terms and conditions:

Section 6. The introductory paragraph of section 10-10 of chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

Smoking tobacco, and using electronic cigarettes that do not contain cannabis, may be allowed in contiguous “outdoor dining areas,” pursuant to §17-503(c) of the Act and as defined in §10-01 of these rules provided that each such area:

Section 7. Subdivision (a) of section 10-16 of chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(a) Smoking tobacco, and using electronic cigarettes to vape nicotine, [are] is permitted in retail tobacco stores that have registered with the Department in accordance with the following terms and conditions.

Section 8. Subdivision (a) of section 10-17 of chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(a) Electronic cigarette use to vape nicotine is permitted in retail electronic cigarette stores that have registered with the Department in accordance with the following terms and conditions.