



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

**Notice of Adoption of Amendments to Article 5 and Article 177  
of the New York City Health Code**

In accordance with section 1043 of the New York City Charter (“Charter”) and pursuant to the authority granted to the Board of Health (“Board”) by section 558 of the Charter, a notice of intention to amend Articles 5 and 177 of the New York City Health Code (“Health Code”) was published in the City Record on July 29, 2022 inviting the public to offer comments on these proposed amendments. The New York City Department of Health and Mental Hygiene (“Department”) held a public hearing on these proposed amendments on August 29, 2022. No one testified at the public hearing and no written comments were received. The Department made no changes to the proposed amendments and requested that the Board adopt the proposed amendments as published in the City Record. At its meeting on October 25, 2022, the Board of Health adopted the following resolutions.

**Statement of Basis and Purpose**

*Background*

The health risks of tanning are well known. Tans are caused by the skin’s reaction to ultraviolet (UV) radiation, and any exposure to UV rays can lead to skin cancer and other diseases. The World Health Organization’s International Agency for Research on Cancer found that indoor tanning devices cause carcinogenicity in humans and that the risk of melanoma increases by 75% when the use of tanning devices starts before 30 years of age. In addition, a study of adolescent indoor tanning practices between 1998 and 2004 found that over 60% of indoor tanners between the ages of 16 and 18 years old reported experiencing erythema, or burns, after indoor tanning sessions.

The earlier a person begins indoor tanning and the more frequently they tan, the greater their risk of developing skin cancer. Research has demonstrated a strong “dose response” relationship between melanoma risk and the total hours of indoor tanning over a person’s lifetime.

*Proposed Increase of Minimum Age to Use Indoor Tanning Facility*

Currently, Article 177 of the New York City Health Code (“Health Code”) prohibits indoor tanning facilities from serving minors under 17 years of age, but not minors who are 17 years of age or older. That is because until recently, New York State law precluded localities from prohibiting indoor tanning for 17-year-olds. (New York State law and regulations instead required parental consent for tanning by 17-year-olds.) With the complete support of the Department, however, New York State law and regulations were amended to prohibit indoor tanning of 17-year-olds, regardless of parental consent. The Department now amends Article 177 of the Health Code to reflect these changes from the State.

*Other Proposed Amendments*

The Department also now amends Article 177's provisions relating to cleaning, sanitizing and disinfecting equipment and supplies used at tanning facilities, as well as to clarify operators' obligation to produce records of annual timer tests to the Department upon request and to allow records to be maintained in an electronic format. Moreover, the Department is now requiring operators of tanning facilities in New York City that maintain a website to post on such website a disclaimer describing the health risks of tanning.

Finally, the Department is amending Article 177 to increase the inspection fee for each UV radiation device from \$50 to \$200, as provided in section 72-1.5(b) of Title 10 of the New York Codes, Rules, and Regulations ("NYCRR"), and repealing the biennial registration license fee currently set forth in Article 5 of the Health Code. The required fee range is provided in 10 NYCRR § 72-1.4(a).

*Statutory Authority*

These amendments are made pursuant to sections 556, 558 and 1043 of the New York City Charter. Section 556 of the Charter grants the Department jurisdiction to regulate all matters affecting health in the City of New York. 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 rulemaking powers to the Department. Additionally, section 3554(3) of the New York State Public Health Law and regulations of the New York State Department of Health ("NYSDOH") (located in 10 NYCRR §§ 72-1.1(e) and 72-1.2(b) and (c)) authorize NYSDOH to enable local jurisdictions to enact and enforce local regulations concerning tanning facilities.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (\*\*\*) indicate unamended text.

The amendments are as follows:

**RESOLVED**, that Article 177 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

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**§177.03        Definitions.**

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"Disinfect" means adequate antimicrobial treatment by a disinfectant capable of destroying pathogenic non-spore forming bacteria, viruses, fungi, parasites and protozoa on treated surfaces.

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"Sanitize" means adequate antimicrobial treatment by a disinfectant determined to be capable of [destroying] reducing the number of pathogenic [organisms] spore forming bacteria on treated surfaces.

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“Tanning facility” means any establishment located in New York City where one or more ultraviolet radiation devices are used, offered, or made available for use by any human being, [for which] whether or not a fee is charged[, ] directly or indirectly.

**§177.05 General requirements.**

- (a) [Except as provided for in subdivision (b) of this section, a] A tanning facility cannot be in operation unless the facility has been issued a permit by the Department.
- (b) [A facility in possession of a State-issued permit on the effective date of this Article will be deemed in compliance with this section and must continue to operate in compliance with the terms of its State-issued permit. Upon the expiration of the facility’s State-issued permit, the facility must apply to the Department for a permit as specified in this section. Upon the expiration of its State-issued permit, any such facility may not continue to operate unless it has been issued a permit by the Department.
- (c) [A facility’s permit to operate must be conspicuously posted within the tanning facility. [Upon the effective date of this Article and until its State-issued license expires, a facility operating pursuant to a State-issued permit must conspicuously post such permit within the tanning facility.]
- [(d)] (c) In addition to the [application] permit fee prescribed in [Article 5 of this Code] Section 72-1.4(a) of Title 10 of the New York Codes, Rules and Regulations (“NYCRR”), an application for a permit must also be accompanied by payment of an inspection fee, as authorized by 10 NYCRR § 72-1.5(b), in the amount of [ \$50] \$200 for each ultraviolet radiation device at the tanning facility.
- [(e)] (d) \*\*\*

**§177.07 Enforcement.**

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- (c) Public health hazards. \*\*\*
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  - (6) Failure to provide adequate sanitizing of tanning beds, tanning booths, pillows[, ] or headrests; or inadequate disinfection of reusable protective eyewear;

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**§177.11 Operator responsibilities.**

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- (e) The operator must ensure that each patron using an ultraviolet radiation device possesses adequate protective eyewear; such protective eyewear must comply with 21 CFR § 1040.20(c)(4) or any successor regulation.
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- (g) If the operator maintains any web page that lists, advertises or otherwise displays the indoor tanning services available at a tanning facility, or any web page through which a prospective patron may reserve an indoor tanning service at a tanning facility, such web page must contain the following disclaimer message, which must be clearly displayed in minimum 10-size font of contrasting color:

UV radiation from indoor tanning devices can cause:

- Skin Cancer, including melanoma, the type of skin cancer responsible for the most deaths
- Eye burns that can cause intense pain and negatively affect vision
- Sunburn (discomfort, pain and tenderness on the skin)
- Early skin aging, such as wrinkles and age spots

**§177.13 Patron identification and[, ] acknowledgements[and consent].**

(a) Patron identification and age verification.

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- (2) No one under [seventeen (17)] eighteen (18) years of age will be permitted to use an ultraviolet radiation device in a tanning facility. [Any patron who is seventeen (17) years of age must provide the operator with a paternal consent form as described in subdivision (b) of this section before being allowed to use an ultraviolet radiation device.]
- (3) The operator must conspicuously post a sign in or near the facility reception area that reads in prominent print:

[IF YOU ARE UNDER THE AGE OF 17, YOU ARE PROHIBITED FROM TANNING. IF YOU ARE 17 YEARS OLD, YOU MUST HAVE YOUR PARENT OR LEGAL GUARDIAN SIGN A WRITTEN CONSENT FORM, IN FRONT OF A TANNING FACILITY OPERATOR, BEFORE YOU CAN TAN.]

PERSONS UNDER 18 YEARS OF AGE ARE PROHIBITED FROM USING UV RADIATION DEVICES. PERSONS 18 YEARS OF AGE OR OLDER MUST PROVIDE A DRIVER LICENSE OR OTHER PHOTO IDENTIFICATION ISSUED BY A GOVERNMENT OR EDUCATIONAL INSTITUTION BEFORE USING UV RADIATION DEVICES.

[(b) Consent form required for patrons aged 17. The operator may not permit anyone who is seventeen (17) years of age to use an ultraviolet radiation device at the operator's tanning facility unless that person provides the operator with a written consent form prescribed by the State. The written consent form must:

- (1) Be signed and dated by the person's parent or legal guardian in the presence of the operator or designated employee;
- (2) Be signed and dated by the operator or designated employee;
- (3) Indicate that by signing, the person's parent or legal guardian acknowledges that he or she has received and read the Health Risk Advisory, as described in subdivision (c) of this section, and the Statement of Acknowledgment, as described in subdivision (d) of this section; and
- (4) Indicate that by signing, the parent or legal guardian acknowledges that the person has agreed to wear protective eyewear. The consent form expires twelve (12) months from the date it was signed. The original signed consent form must be retained by the facility for a period of twelve (12) months and may be retained off-premises, provided that an electronic image or copy of the original signed consent form is readily available to the owner, operator or employee responsible for the operation of

the ultraviolet radiation device of such facility.]

[c] (b) Health Risk Advisory. \*\*\*

[d] (c) Statement of Acknowledgement. No patron may undergo ultraviolet radiation exposure at a tanning facility without reading and signing a Statement of Acknowledgement, in a form prescribed by the [State] Department, that meets the following requirements:

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### **§177.15 Facilities and equipment.**

Each tanning facility must meet the following minimum requirements:

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(d) Protective eyewear.

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(2) The protective eyewear that the operator provides, unless it is single-use disposable eyewear, must be cleaned and then disinfected after each use as specified in subdivision (e) of this section.

(e) Sanitation. The operator must maintain all facilities in a sanitary condition. The facilities must meet the following minimum requirements:

(1) Ultraviolet radiation devices and protective eyewear must be cleaned [with an adequate disinfectant or sanitizer] and then sanitized after each use, according to the following minimum provisions:

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(iii) Linens and other cloth.

A. Pillows and headrests must be covered in an easily cleanable material and must be cleaned and then sanitized with an adequate disinfectant after each use; and

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### **§177.17 Record keeping.**

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(c) The operator must maintain records showing the results of annual timer tests as detailed in section 177.11(c) of this Article. The operator must maintain each record for a minimum of two (2) years, and such records must be kept on site and made available to the Department immediately upon request, subject to applicable law. If such records are maintained electronically, Department staff must be allowed to access such records while on-site, subject to applicable law.

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(e) Records required by this section may be stored by the operator in electronic format, provided that such format can, upon inspection of the facility or request by the Department, print or produce a file in portable document format (PDF) containing the individual records required by this section.

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**RESOLVED**, that subdivision (a) of Section 5.07 of Article 5 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended by deleting the line beginning TANNING FACILITY: Permit to operate a tanning facility.