

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

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments to Articles 5 and 177 of the New York City Health Code**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing that the Board of Health amend Article 177 of the New York City Health Code (“Health Code”), titled “Tanning Facilities,” to align the Health Code with New York State law and New York State Department of Health regulations regarding the minimum age required to use an ultraviolet radiation device in a tanning facility, amend various relevant definitions, and amend provisions related to recordkeeping and enforcement. The Department also proposes to delete the tanning facility permit fee in Article 5 of the Health Code, as the applicable fee is provided for in New York State regulations.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00AM to 12:00PM on Tuesday, August 30, 2022. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?RGID=r05a9c655f1ed3dc735ad603e8eeb7b74>
If prompted to provide an event number or password, please enter the following:
Webinar number: **2358 106 9170**, Password: **Health** (432584 from phones)
- **Phone:** For access, dial: **(408) 418-9388**; then please enter the following
Access code: **235 8106 9170**

How do I comment on the proposed amendments? Anyone can comment on the proposed amendments by:

- **Website:** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail:** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN 30
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing resolutioncomments@health.nyc.gov before the hearing begins at 10AM on Tuesday, August 30, 2022. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 PM on Tuesday, August 30, 2022.

What if I need assistance to participate in the hearing? You must tell the Department’s Office of General Counsel if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us

by telephone at 347-396-6078. Please give us advance notice to allow sufficient time to arrange the accommodation. Please tell us by Tuesday, August 16, 2022.

Can I review the comments made regarding the proposed amendments? You may review the online comments made on the proposed amendments at <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable time after the hearing by the Department's Office of General Counsel.

What authorizes the Department to make these amendments? Sections 556, 558 and 1043 of the New York City Charter ("Charter") and section 3554 of the New York State Public Health Law authorize the Department to make these proposed amendments.

Where can I find the Department's rules and the Health Code? The New York City Health Code is located in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of Section 1043 of the Charter when amending the Health Code. This notice is made according to the requirements of Section 1043 of the Charter. These amendments were not included in the Department's most recent regulatory agenda because they were not contemplated when the Department published the agenda.

Statement of Basis and Purpose of Proposed Rule

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 New York City Department of Health and Mental Hygiene (the "Department"), however, New York State law and regulations have been amended to prohibit indoor tanning of 17-year-olds, regardless of parental consent. The Department now proposes to amend Article 177 of the Health Code to reflect these changes.

Other Proposed Amendments

The Department also proposes to amend 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 proposes to require 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 proposes to amend 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 to repeal the biennial registration license fee currently set forth in Article 5 of the Health Code. The required fee range is provided by the State in 10 NYCRR § 72-1.4(a).

Statutory Authority

These proposed 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 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 proposal is 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:

§177.03 Definitions.

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

“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.

“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 in 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.

- (c) Public health hazards. ***

- (6) Failure to provide adequate sanitizing of tanning beds, tanning booths, pillows[,], or headrests; or inadequate disinfection of reusable protective eyewear;

§177.11 Operator responsibilities.

- (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.

(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.

- (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:

§177.15 Facilities and equipment.

Each tanning facility must meet the following minimum requirements:

(d) Protective eyewear.

(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:

(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

§177.17 Record keeping.

(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.

(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.

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.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Relating to Tanning Facilities

REFERENCE NUMBER: DOHMH-123

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

July 17, 2022
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Relating to Tanning Facilities

REFERENCE NUMBER: 2022 RG 043

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: July 18, 2022