



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

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Health and Mental Hygiene (the “Department”) is proposing to amend Chapter 10 of Title 24 of the Rules of the City of New York to no longer allow smoking of tobacco and electronic cigarettes in outdoor dining areas of restaurants, as well as remove provisions related to discretionary waivers of state law on smoking. The Department is also proposing to correct certain references to definitions that appear in various sections in this Chapter.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 10:00 am until 12:00 pm on Thursday, March 14, 2024. 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?MTID=mffb8ce8d9d1aa06c599e382963884cee>
- If prompted to provide an event number or password, please enter the following:
Event number: **2343 829 7914**, Password: **Health** (432584 from phones)
- **Phone:** For access, dial: (646) 992-2010 or (408) 418-9388; then please enter the following
Access Code: **234 382 97914**

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

- **Website.** You can submit comments online to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You may email comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You may fax comments to the Department at 347-396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before the hearing begins on March 14, 2024. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received by the date of the hearing, March 14th by 5:00 pm (EST).

What if I need assistance to participate in the hearing? You must tell the Office of General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may

also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by two weeks before the hearing.

Can I review the comments made on the proposed rules? You may review the online comments made on the proposed rules 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 period of time after the hearing by the Department’s Office of General Counsel.

What authorizes the Department to make this amendment? Section 389(b) of the New York City Charter provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.” Section 1043(a) of the Charter similarly provides that each “agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.” Local Law number 121 for the year 2023 amended section 17-503(c)(1) of the Administrative Code to address smoking in outdoor dining areas of restaurants.

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

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter. These changes were not included in the Department’s legislative agenda because they were not contemplated at that time.

Statement of Basis and Purpose of Proposed Rule

The Department is proposing amendments to Chapter 10 of Article 24 of the Rules of the City of New York regarding smoking in outdoor dining set ups. Local Law 121 (the “Local Law”) became law on August 16, 2023. Among amendments to various provisions of the City’s outdoor dining laws, the Local Law amends Administrative Code section 17-503(c), part of the Smoke-Free Air Act, to prohibit smoking of tobacco products and use of electronic cigarettes in outdoor dining areas of restaurants, which previously was permitted in certain situations. To bring Chapter 10 in line with this amendment, the Department proposes to amend its rules by deleting section 10-10, which allows smoking in outdoor dining areas of restaurants, and the definition of “overhang” in section 10-01(n), which is no longer necessary.

The Department is also proposing technical amendments to clean up the text of Chapter 10. Firstly, section 10-15 of Chapter 10 was repealed in July 2017, and had addressed discretionary waivers of state regulation of smoking in certain public areas. However, some references to these waivers and the repealed section remain in Chapter 10; the Department is proposing to clean up references that were overlooked at the time of this earlier amendment.

In addition, the Department amended Chapter 10 to align it with the New York State Marijuana Regulation and Taxation Act in August 2022, by adding a definition of “cannabis” to section 10-01. This addition resulted in re-lettering of definitions of words that follow “cannabis.” The

Department now proposes to correct certain citations to definitions that appear in sections 10-03, 10-04, and 10-05 to reflect the new lettering.

The amendment is as follows:

New material is underlined.

[Deleted material is in brackets.]

Section one. Subdivision (n) of section 10-01 of Title 24 of the Rules of the City of New York, relating to the definition of “overhang” for purposes of chapter 10 of Title 24, is amended to read as follows:

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

§ 2. Subdivisions (a) and (b) of section 10-02 of Title 24 of the Rules of the City of New York are amended to read as follows:

(a) Except as otherwise specifically provided in the Act, in these rules, or in other applicable law, smoking shall be prohibited in all indoor areas of all public places and places of employment, and certain outdoor areas in accordance with §§[17-503(a)] 17-503 and 17-504 of the Act, and other applicable law, and all enclosed areas regulated by the State law, the Act and these rules, including areas which have any full or partial overhead ceiling, roof or other covering. Except as otherwise specifically provided in the Act, in these rules, or in other applicable law, using electronic cigarettes shall be prohibited in all indoor areas of all public places and places of employment, and certain outdoor areas in accordance with §§[17-503(a)] 17-503 and 17-504 of the Act, and other applicable law, and all enclosed areas regulated by the Act and these rules, including areas that have any full or partial overhead ceiling, roof or other covering.

(b) Smoking shall be prohibited in a tobacco business, as defined by §17-502(aa) of the Act; except that smoking shall be permitted on no more than two floors of a building occupied by such tobacco business, and only within areas of such floors which are designated by such business for the purpose of testing or development of tobacco or tobacco products [and only if such tobacco business has applied for and has been issued a waiver of the State law prohibition on smoking in such premises, in accordance with §1399-u of the State law and §10-15 of these rules].

§ 3. Subdivisions (d) and (e) of section 10-03 of Title 24 of the Rules of the City of New York are amended to read as follows:

(d) Registered retail tobacco stores, as defined in 24 RCNY § [10-01(y)] 10-01(z); and

(e) Registered retail electronic cigarette stores, as defined in 24 RCNY § [10-01(z)] 10-01(z-1), provided however, that only the use of electronic cigarettes to vape nicotine is not regulated in such stores.

§ 4. The opening paragraph of section 10-04 of Title 24 of the Rules of the City of New York and paragraph (i) of subdivision (d) of such Section 10-04, are 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)] 10-01(h) 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:

(i) No such facility shall be authorized to permit smoking pursuant to this section on more than [two (2) days in any calendar year unless such facility has applied for and has been issued a waiver of the State law, in accordance with §1399-u of the State law and §10-15 of these rules, allowing such events to be held in any facility on no more than] five (5) days in any calendar year.

§ 5. The opening paragraph of section 10-05 of Title 24 of the Rules of the City of New York is amended to read as follows:

Smoking, and using electronic cigarettes, may be permitted in an enclosed room, as defined in §[10-01(g)] 10-01(h) of these rules, in certain residential health care facilities offering health related services, as defined in §17-502(q) and (dd) of the Act, and facilities providing day treatment programs, as defined in §17-502(cc) of the Act, which room has been designated for smoking, and using electronic cigarettes, by patients, in accordance with the following terms and conditions:

§ 6. Subdivision (e) of section 10-05 of Title 24 of the Rules of the City of New York, relating to waivers for smoking rooms in residential health care facilities, and Section 10-10 of Title 24 of the Rules of the City of New York, relating to smoking in outdoor dining areas, are REPEALED.

**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 Smoking in Outdoor Restaurants and Certain Public Places

REFERENCE NUMBER: DOHMH-136

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

February 6, 2024
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 Smoking in Outdoor Restaurants and Certain Public Places

REFERENCE NUMBER: 2023 RG 091

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
Senior Counsel

Date: February 6, 2023