



March 14, 2024

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132

Re: Smoking in Outdoor Restaurants and Certain Public Places – Chapter 10 of the Title 24 of the Rules of the City of New York

The Public Health Law Center (PHLC) appreciates this opportunity to submit written comment on the proposed New York City Department of Health and Mental Hygiene (hereinafter “the Department”) Rule entitled “Smoking in Outdoor Restaurants and Certain Public Places.” The [Public Health Law Center](#) is a national non-profit organization that collaborates with others to reduce and eliminate the use of commercial tobacco, promote healthy food, support physical activity, tackle climate change and address other causes of chronic disease. PHLC partners with state and local governments, federal agencies, health advocacy organizations, Tribal health leaders, community coalitions, and others working on public health issues to create healthier communities around the country.

Our funding comes from a variety of sources, including the New York State Department of Health, and allows our team to support public health professionals and communities in their work to end the commercial tobacco epidemic in New York State. The core of our work involves providing tailored [legal technical assistance](#) to help communities use policy to achieve their public health goals. A [suite](#) of commercial tobacco control related resources for New York State can be found on our website: www.publichealthlawcenter.org. The Public Health Law Center does not provide legal representation, nor does it lobby. We submit our comments for educational purposes and do not intend to express an opinion on the rule or policy.

Public Health Benefits of Smoke Free Outdoor Air Policies

Tobacco use is the number one cause of preventable death in New York State.¹ Secondhand smoke has repeatedly been identified as a health hazard, and the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.² In New York State, over 1,400 deaths per year are attributable

¹ U.S. Dep’t of Health & Hum. Servs., The Health Consequences of Smoking: 50 Years Of Progress, A Report of The Surgeon General (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

² U.S. Dep’t of Health & Hum. Servs., The Health Consequences of Involuntary Exposure to Tobacco Smoke, A Report of the Surgeon General (2006), <https://www.ncbi.nlm.nih.gov/books/NBK44324>.

to secondhand smoke exposure.³ The New York State Department of Health recognizes the toxicity of secondhand smoke.⁴ Research has shown that when smokers were present, concentrations of secondhand smoke levels in outdoor areas could be similar to those in indoor areas that allowed smoking.⁵ Many studies have also found that secondhand smoke exposure outdoors can become hazardous, depending on the direction and amount of wind, number and proximity of smokers,⁶ and enclosures such as walls, roofs, or overhangs.⁷

Electronic cigarettes and other vapor products have proliferated and their popularity among youth has soared. Electronic cigarette aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and thus likely poses a risk to human health.⁸ Eliminating the sight and smell of tobacco, electronic cigarettes, and smokeless tobacco in outdoor dining facilities helps promote tobacco- and nicotine-free social norms while protecting the health and wellbeing of residents and visitors. For additional information on tobacco-free outdoor areas, please see PHLC's New York State [model smoke-free outdoor policy](#).

Please contact me (colin.welker@mitchellhamline.edu) for additional information or assistance.



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³ Cigarette Smoking and Secondhand Smoke, N.Y. State Dep't Health (Nov. 2022), https://www.health.ny.gov/prevention/tobacco_control.

⁴ *Id.*

⁵ Cal. Air Res. Bd., Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Part A: Exposure Assessment (Appendix III) (June 24, 2005), https://ww2.arb.ca.gov/sites/default/files/classic/toxics/id/summary/etspt_a.pdf.

⁶ See sources cited in SF Model Policy *infra* notes 12- 14, <https://www.publichealthlawcenter.org/sites/default/files/resources/SF-Outdoor-Model-Ordinance-NYS.pdf>

⁷ James L. Repace, Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles, 34 Wm. Mitchell L. Rev. 1621 (2008), <https://open.mitchellhamline.edu/wmlr/vol34/iss4/15>; Jihee Hwang & Kiyoung Lee, Determination of Outdoor Tobacco Smoke Exposure by Distance from a Smoking Source, 16 Nicotine & Tobacco Rsch. 478 (2014), <https://pubmed.ncbi.nlm.nih.gov/24218368>.

⁸ See sources cited in SF Model policy *infra* notes 19-23, <https://www.publichealthlawcenter.org/sites/default/files/resources/SF-Outdoor-Model-Ordinance-NYS.pdf>