

CHAPTER 10
SMOKING AND THE USE OF ELECTRONIC CIGARETTES
UNDER THE NEW YORK CITY
SMOKE-FREE AIR ACT

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§10-01. Definitions and Construction of Words and Terms.

- (a) **Act.** "Act" shall mean 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" shall have 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) **Commissioner.** "Commissioner" shall mean the Commissioner of the New York City Department of Health and Mental Hygiene.
- (d) **Compensation.** "Compensation" shall mean any money, gratuities, privileges or benefits received in return for work performed or services rendered.

- (e) **Department.** "Department" shall mean the New York City Department of Health and Mental Hygiene.
- (f) **Employee.** "Employee" shall mean 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) **Enclosed room.** "Enclosed room" shall mean 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 shall remain closed while people are smoking in the room unless the windows open to the exterior. Any doors shall 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 shall be ventilated in a manner that shall prevent emission of smoke to any other interior part of the facility.
- (h) **Entrance.** "Entrance" shall mean every means of entering or exiting a room, facility, or premises ordinarily used by the public and/or employees.
- (i) **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 pre-packaged 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) **Membership association.** "Membership association" shall have the meaning set forth in §17-502(ff) of the Act.
- (k) **On-site agent.** "On-site agent" shall mean an employee designated by a building operator, owner or manager to inform persons that smoking is prohibited on the building premises.
- (l) **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" shall include any time that employees are present in such establishment or any time the establishment is open to the public.
- (m) **Overhang.** "Overhang" shall mean any roof, ceiling or other complete or partial covering of, or over, an outdoor dining area of a restaurant.
- (n) **Outdoor dining area.** "Outdoor dining area" shall mean 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.
- (p) **Permittee.** "Permittee" shall mean 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) **Place of employment.** "Place of employment" shall have the meaning set forth in §17-502(m) of the Act.
- (r) **Principal owner.** "Principal owner" shall have the meaning set forth in §17-502(hh) of the Act.
- (s) **Rules.** "Rules" shall mean Chapter 10 of Title 24 of the Rules of the City of New York.

- (u) **State law.** "State law" shall mean Article 13-E of the Public Health Law of the State of New York ("Regulation of Smoking in Certain Public Areas"), as amended.
- (v) **Tobacco bar.** "Tobacco bar" shall have the meaning set forth in §17-502(jj) of the Act.
- (w) **Electronic cigarette.** "Electronic cigarette" has the meaning described in §17-502(qq) of the Act.
- (x) **Restaurant.** "Restaurant" has the meaning described in §17-502(r) of the Act.
- (y) **Retail tobacco store.** "Retail tobacco store" has the meaning described in §17-502(u) of the Act.
- (z) **Retail electronic cigarette store.** "Retail electronic cigarette store" has the meaning described in §17-502(rr) of the Act.
- (aa) **Hookah.** "Hookah" shall mean a type of water pipe with a long flexible tube for drawing smoke through water and cooling it.
- (bb) **Non-tobacco hookah establishment.** "Non-tobacco hookah establishment" shall mean an establishment that, as of October 17, 2017, generated fifty percent or more of its total annual gross sales during the preceding calendar year from the on-site sale of non-tobacco smoking products, continues to meet that fifty percent threshold for gross annual sales annually, and that has a permit issued by the Department.
- (cc) **Non-tobacco smoking product.** "Non-tobacco smoking product" shall mean any product that does not contain tobacco or nicotine and that is designed for human use or consumption by the inhalation of smoke, including but not limited to (i) pipes, water pipes, rolling papers, and any other component part, or accessory of such product and (ii) shisha, as defined in subdivision z of section 17-702 of the Administrative Code.
- (dd) **Shisha.** "Shisha" shall mean any product made primarily of tobacco or other leaf, or any combination thereof, smoked or intended to be smoked in a hookah or water pipe as set forth in subdivision z of section 17-702 of the Administrative Code.
- (ee) **Smoking.** "Smoking" means inhaling, exhaling, burning, or carrying any lit or heated cigar, cigarette, little cigar, pipe, water pipe, herbal cigarette, non-tobacco smoking product, or any similar form of lighted object or device designed for human use or consumption by the inhalation of smoke.

§10-02. Smoking, and Using Electronic Cigarettes, Prohibited.

- (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) 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) 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.

§10-03. Smoking, and Using Electronic Cigarettes, Not Regulated.

Smoking, and using electronic cigarettes, are not regulated in:

- (a) Private residences, provided, however, that smoking, and using electronic cigarettes, 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 §10-01(y) of these rules; and
- (e) Registered retail electronic cigarette stores, as defined in §10-01(z) of these rules, provided however, that only the use of electronic cigarettes is not regulated in such stores.

§10-04. Tobacco, and Electronic Cigarette, Promotion Public Events.

Smoking, and using electronic cigarettes 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:

- (a) Notice of the public event shall be provided to the Department on forms furnished by the Department. Completed forms shall be received by the Department no later than two (2) weeks prior to the event.
 - (i) The Department may charge a fee not to exceed \$100.00 per notice.
 - (ii) Signs shall be posted in accordance with §10-12 of these rules and shall contain one of the following messages:
 - (A) "SMOKING PERMITTED AT THIS EVENT. NOTICE OF THIS EVENT HAS BEEN FILED WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT.
 - (B) "ELECTRONIC CIGARETTE USE PERMITTED AT THIS EVENT. NOTICE OF THIS EVENT HAS BEEN FILED WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT."
 - (C) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED AT THIS EVENT. NOTICE OF THIS EVENT HAS BEEN FILED WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT."
- (b) Service of food and drink shall be incidental to the promotion and sampling of tobacco products or electronic cigarettes.

- (c) If tobacco products are to be distributed at the event for sampling, such distribution shall be in compliance with all laws and rules relating to the distribution of tobacco products, including but not limited to §§17-176 and 20-202 of the Administrative Code and §1399-bb of the Public Health Law.
- (d) (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.
- (ii) No such facility will be authorized to permit electronic cigarette use on more than five (5) days in any calendar year.

§10-05. Enclosed Rooms for Patients of Certain Residential Health Care Facilities and Day Treatment Programs.

Smoking, and using electronic cigarettes, may be permitted in an enclosed room, as defined in §10-01(g) 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:

- (a) Smoking, and electronic cigarette use, rooms shall comply with all applicable Building Code and Fire Code requirements.
- (b) Smoking rooms shall have the prior approval of the New York City Fire Department and, on request of any person authorized to enforce the Act, the operator or person in charge of the facility shall make available for inspection the most recent inspection report from the Fire Department showing such approval.
- (c) No persons other than patients of such facilities shall be allowed to smoke or use electronic cigarettes in such rooms.
- (d) Signs shall be posted in accordance with §10-12 of these rules and shall contain one of the following messages:
 - (i) "SMOKING PERMITTED. IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT, ONLY PATIENTS OF THIS FACILITY MAY SMOKE IN THIS ROOM."
 - (ii) "ELECTRONIC CIGARETTE USE PERMITTED, IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT, ONLY PATIENTS OF THIS FACILITY MAY USE ELECTRONIC CIGARETTES IN THIS ROOM."
 - (iii) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED. IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT, ONLY PATIENTS OF THIS FACILITY MAY SMOKE OR USE ELECTRONIC CIGARETTES IN THIS ROOM."
- (e) In addition, operators of residential health care facilities defined in §17-502(q) of the Act, which are prohibited by the State law from allowing smoking on premises under their management or control, may apply to the Department for a waiver of the State law pursuant to §10-15 of these rules. If a waiver of the State law is granted, such rooms shall

be constructed and operated in accordance with subdivisions (a), (b), (c), and (d) of this section.

§10-07. Tobacco Bars.

Smoking 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:

- (a) The applicant for registration shall show that the tobacco bar has been operated pursuant to a permit issued by the Commissioner in accordance with Articles 5 and 81 of the New York City Health Code by the current and any prior owner since the calendar year ending December 31, 2001.
- (b) Applications to register shall be submitted on forms provided by the Department with such supporting documentation as the Department may require, including but not limited to, copies of tax returns filed with the state and federal governments for such periods of time as the Department may require; copies of tax returns, reports, or other proof submitted to demonstrate compliance with all applicable federal, State and local laws governing the taxation, sale and distribution of tobacco products; and a current retail license to sell tobacco products issued pursuant to §20-202 of the Administrative Code by the Department of Consumer Affairs; other documentation demonstrating that 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; architectural or engineering plans showing the size of the premises occupied by the bar on the date of application for registration; and copies of leases in effect at the time of the initial and annual registration. The Department shall afford such documents such confidentiality as may be provided by applicable law.
- (c) Any change in permittee shall require notice to the Department, in writing, no later than ten (10) business days prior to any change in permittee.
- (d) Any change in location or increase in the size of an existing tobacco bar shall be a violation of these rules and grounds for revocation of the registration of the bar. The permittee shall notify the Department, in writing, no later than ten (10) business days prior to any change in location or increase in the size of an existing tobacco bar.
- (e) Registrations shall not be transferable.
- (f) Registrations shall expire one (1) year from the date the Department issues its approval of such registration. Applications for annual re-registration shall be received by the Department no later than forty-five (45) days prior to their expiration date.
 - (i) The Department may charge a fee not to exceed \$100.00 for each application.
 - (ii) Signs shall be posted in accordance with §10-12 of these rules and shall state:
"SMOKING PERMITTED. THIS IS A TOBACCO BAR REGISTERED WITH
THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT."
- (g) Smoking shall be prohibited in any entity alleging eligibility to register as a tobacco bar until an application for registration has been submitted and the Department has notified the applicant that the Department has approved such application. The Department shall review the application submitted and shall notify the applicant within forty-five (45) days as to whether such application has been approved or has been denied, provided all

information requested has been submitted. If the Department determines, upon review of the documents submitted, and/or upon investigation, that such applicant does not qualify for registration in accordance with the definitions of the Act and these rules, it shall notify the applicant of this determination.

- (h) A copy of the current registration shall, on request, be made available to any person authorized to enforce the Act.
- (i) The Department's determination about the application for registration of any tobacco bar shall be a "final agency determination."

§10-08. Membership Associations.

Smoking may be permitted in not-for-profit membership associations, as defined in §17-502(ff) of the Act and §10-01 of these rules, in accordance with the following terms and conditions:

- (a) An entity which believes itself to be a not-for-profit membership association shall apply to the Department to register to allow smoking on its premises by its members and their guests.
- (b) The application to register shall be submitted to the Department on such forms as the Department provides, and shall include such documentation as the Department may require to demonstrate the eligibility of the entity for such registration. Such submissions shall include, but not be limited to, copies of the entity's by-laws, copies of tax returns filed with the state and federal governments for such periods of time as the Department may require; copies of all insurance policies covering the premises occupied by the entity; copies of documents filed with the Secretary of State and the Attorney General, if applicable, to demonstrate its status as a not-for-profit entity and purpose. The Department shall afford such documents such confidentiality as may be provided by applicable law.
- (c) Registrations shall expire two (2) years from the date the Department issues its approval of such registration. Applications for re-registration shall be received by the Department no later than forty-five (45) days prior to their expiration date.
 - (i) The Department may charge a fee not to exceed \$100.00 for each application.
 - (ii) Signs shall be posted in accordance with §10-12 of these rules and shall state:
"SMOKING PERMITTED. THIS IS A MEMBERSHIP ASSOCIATION WHICH IS REGISTERED WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT."
- (d) The entity shall notify the Department, in writing, no later than ten (10) business days after any change in the employee information entered on the application for registration, or if any persons are engaged as "employees" to perform work or render any services on any premises controlled by the entity. It is a violation of these rules and grounds for revocation of the registration if the entity engages any employees to perform work or render any services on such premises.
- (e) Smoking shall be prohibited in any entity alleging eligibility to register as a not-for-profit membership association until an application for registration has been submitted and the Department has notified the entity that the Department has approved such application. The Department shall review the application submitted and shall notify the entity within forty-five (45) days as to whether such application has been approved or has been denied, provided all information requested has been submitted. If the Department determines,

upon review of the documents submitted, and/or upon investigation, that such entity does not qualify for registration in accordance with the definitions of the Act and these rules, it shall notify the entity of this determination.

- (f) A copy of the current registration shall, on request, be made available to any person authorized to enforce the Act.
- (g) The Department's decision about whether an entity qualifies for registration shall be a "final agency determination."
- (h) Smoking in any indoor premises owned or operated by a membership association shall be limited to times when the association's premises are being used only by its members and guests. "Members' guests" shall not include members of the public invited to attend events open to the public, including, but not limited to, bingo games, theatrical productions, carnivals, rummage sales, or similar events.
- (i) The Commissioner may rescind the registration of a membership association which has been found in violation of subdivision (h) of this section more than three (3) times in any two-year period.

§10-10. Outdoor Dining Areas.

Smoking, and using electronic cigarettes, 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:

- (a) Represents a separate and discrete area of a restaurant, as defined in §17-502(r) of the Act, in which all tables and/or chairs in the outdoor smoking and electronic cigarette use area are located three (3) or more feet apart from all tables and/or chairs in the indoor and outdoor non-smoking and non-electronic cigarettes use areas, measured from the closest leading edges of all tables in the non-smoking and non-electronic cigarette use areas to the closest leading edges of all tables in the area where smoking, and using electronic cigarettes, is permitted and seating, if provided, is arranged so that no chairs in the smoking and electronic cigarette use area may be deliberately or inadvertently placed within the three (3) foot separation area;
- (b) Constitutes no more than twenty-five (25) percent of the total outdoor seating or standing capacity of each outdoor area designated for food or drink consumption;
- (c) Has no roof, ceiling, overhead structure, or other overhang as defined in §10-01 of these rules which either fully or partially covers any part of an outdoor dining area where smoking, and using electronic cigarettes, is permitted; and
- (d) Is clearly designated by signage as an area where smoking, and using electronic cigarettes, is permitted.
- (e) Staff of the establishment shall ask patrons and prospective patrons, prior to seating, whether they prefer seating in a smoking and electronic cigarette use, or no-smoking and no electronic cigarette use, part of an outdoor dining area, or in an area where smoking is not permitted but electronic cigarette use is permitted, if the restaurant has established such an area.

§10-11. Ashtrays.

- (a) *Ashtrays offered for sale.* Ashtrays shall not be used or provided for use in any smoke-free area. Ashtrays which are offered for sale in a smoke-free area other than a retail store

shall be kept within a display case or in an area visible but not otherwise accessible to a customer (such as a shelf behind a cash register).

- (b) *Ashtrays in hotels and motels.* Ashtrays are prohibited in all smoke-free areas of hotels and motels, except that ashtrays may be placed immediately adjacent to hotel and motel public entrances and elevators. The following signs shall be posted at every location in a hotel or motel where ashtrays are permitted:

NO SMOKING
SMOKING IS PROHIBITED IN ALL AREAS
OF THIS HOTEL (MOTEL)
EXCEPT IN GUEST ROOMS DESIGNATED AS SMOKING ROOMS
PLEASE EXTINGUISH YOUR CIGARETTE, CIGAR OR PIPE

§10-12. Signs.

- (a) "NO SMOKING" and "NO ELECTRONIC CIGARETTE USE" signs or "NO SMOKING OR ELECTRONIC CIGARETTE USE" signs indicating that smoking, and using electronic cigarettes, are prohibited shall be conspicuously posted so that they are clearly visible in lobbies and other appropriate locations of buildings and structures where smoking, and using electronic cigarettes, are prohibited by the Act and these rules.
- (b) "SMOKING PERMITTED" or "ELECTRONIC CIGARETTE USE PERMITTED" signs or "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED" signs shall be posted outside the entrances to and within enclosed rooms for smoking and electronic cigarette use. Such signs shall also be posted within tobacco and electronic cigarette promotion public events, as defined in the Act and these rules. "SMOKING PERMITTED" signs must also be posted within registered tobacco bars and registered membership associations, as defined in the Act and these rules.
- (c) All signs required to be posted pursuant to the Act shall conform to the following specifications:
- (i) Lettering and symbols shall be at least one-half (1/2) inch in height and shall be color contrasted so that all information is clear, conspicuous, and easily readable.
 - (ii) The size of lettering or symbols on "SMOKING PERMITTED" and "ELECTRONIC CIGARETTE USE PERMITTED" and "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED" signs shall not exceed the size of lettering or symbols on "NO SMOKING" and "NO ELECTRONIC CIGARETTE USE" and "NO SMOKING OR USING ELECTRONIC CIGARETTES" signs in the same establishment.
 - (iii) Signs shall be printed on durable material.
 - (iv) Wording and symbols listed below are Department-approved. However, except for the Warning set forth in subparagraph (c)(iv)(D) of this section, other similar wording may be used.
 - (A) No smoking signs:
 - (1) International symbol or
 - (2) "NO SMOKING"
 - (B) Smoking permitted sign, including the warning in subparagraph (D) of this paragraph:
 - (1) "SMOKING PERMITTED IN THIS ROOM" or

- (2) "SMOKING PERMITTED"
- (C) No smoking except in enclosed or separate smoking room for smoking sign, to be posted within establishments where smoking is permitted by the Act and these rules:
"NO SMOKING EXCEPT IN ENCLOSED ROOM"
- (D) All "SMOKING PERMITTED" and "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED" signs shall include the following warning: "WARNING: TOBACCO SMOKE CAUSES CANCER, HEART DISEASE, LUNG DISEASE AND CAN HARM YOUR BABY."
- (E) No electronic cigarette use signs:
"NO ELECTRONIC CIGARETTE USE"
- (F) Electronic cigarette use permitted sign:
(1) "ELECTRONIC CIGARETTE USE PERMITTED IN THIS ROOM" or
(2) "ELECTRONIC CIGARETTE USE PERMITTED" or
- (G) No using electronic cigarettes except in enclosed room for electronic cigarette use sign, to be posted within establishments where electronic cigarette use is permitted by the Act and these rules:
"NO ELECTRONIC CIGARETTE USE EXCEPT IN ENCLOSED ROOM"
- (H) No smoking and electronic cigarette use signs:
"NO SMOKING OR ELECTRONIC CIGARETTE USE"
- (I) Smoking and electronic cigarette use permitted signs, including the warning in subparagraph (D) of this paragraph:
(1) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED IN THIS ROOM" or
(2) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED"
- (J) No smoking and using electronic cigarettes except in enclosed room for smoking and electronic cigarette use sign, to be posted within establishments where smoking and electronic cigarette use is permitted by the Act and these rules:
"NO SMOKING OR USING ELECTRONIC CIGARETTES EXCEPT IN ENCLOSED ROOM"
- (d) Signs shall not be required to be posted in areas not regulated by the Act or these rules.

§10-13. Enforcement.

- (a) Every owner, operator, employer, manager, or other person in control of a building, public place, or place of employment, or on-site agent shall comply with the applicable information and notification provisions of §17-507 of the Act.
- (b) Every employer shall establish and/or update a written smoking policy that conforms with the Act and these rules. Every employer must establish and/or update a written electronic cigarette use policy that conforms with the Act and these rules.
- (c) Any certification of correction required pursuant to §17-508(g) of the Act shall be filed with the Department within twenty (20) days of the date the order to correct was issued.
 - (i) The certification shall include the name and address of the premises and the docket number of the notice of violation and attach a copy of the order to correct and the Department's inspection report; shall be typed or clearly printed in ink; shall list and state for each violation that such violation has been corrected and briefly describe

- how the correction was accomplished, and shall indicate how respondent plans to prevent such violation(s) from recurring.
- (ii) Such supporting documentation as the Department may require shall be submitted with the certification.
 - (iii) The certification shall be signed and dated by the permittee, owner, director, officer, partner, manager, operator or other person having control, and shall be sworn to before a notary public.
 - (iv) The certification shall be mailed or delivered to the Department at the address specified on the order to correct.
- (d) Violations of the Act shall be punishable as provided in the Act. Violations of these rules which are not also violations of the Act shall be subject to a penalty not to exceed one thousand dollars (\$1,000), in accordance with §555(b)(2) of the New York City Charter.
- (e) Where the Commissioner has issued a license or permit pursuant to Articles 5 and 81 of the Health Code, he or she may suspend or revoke such permit for such reasons as she or he determines is sufficient grounds for suspension or revocation, in accordance with §5.17(b) of the Health Code. Such reasons may include, but not be limited to, willful or continuous violations of the Smoke-Free Air Act and these rules.

§10-14. Construction.

- (a) The provisions of these rules shall not be interpreted or construed to permit smoking or electronic cigarette use where it is prohibited or otherwise restricted by other applicable laws, rules or regulations.
- (b) If any provision of this Chapter is adjudged invalid by any court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this Chapter.

§10-16. Retail Tobacco Store Registration.

- (a) Smoking, and using electronic cigarettes, are permitted in retail tobacco stores that have registered with the Department in accordance with the following terms and conditions.
 - (i) Applications to register must be submitted on paper or electronically in a form approved or provided by the Department. Applications must include:
 - (A) the name and address of the store;
 - (B) name, address, phone number and email address of the store's owner; and
 - (C) an affirmation from the store's owner that on-site tobacco product sales generate more than fifty (50) percent of the store's total annual gross sales, or, for stores that have been in operation for less than one (1) year, that based on the store's inventory and business plan, tobacco sales will likely generate more than fifty (50) percent of the store's total annual gross sales.
 - (ii) Applicants must submit to the Department, within five (5) days of demand, supporting documentation, including but not limited to:
 - (A) a current retail license to sell cigarettes issued by the Department of Consumer Affairs pursuant to §20-202 of the Administrative Code;
 - (B) copies of tax returns filed with the local, state and federal governments;

- (C) reports or other documents that demonstrate compliance with all applicable federal, state and local laws governing the taxation, sale and distribution of tobacco products; and
 - (D) documentation, including sales records, internal accounting reports, or analyses of inventory, sales and wholesale purchases, demonstrating that more than fifty (50) percent of the store's total gross annual income was derived from the on-site sale of tobacco products.
- (b) Registered retail tobacco stores must update their application to reflect any change in the information entered on the application for registration no later than ten (10) business days after any such change.
 - (c) Registered retail tobacco stores must maintain written or electronic records of inventory, annual sales and purchases, for each product offered for sale, and submit such records to the Department within five (5) days of a demand for such records. The Department may review such records to verify the total annual gross sales of registered retail tobacco stores.
 - (d) Maintaining a retail tobacco store registration while failing to derive more than fifty (50) percent of total gross annual income from the on-site sale of tobacco products is a violation of these rules and grounds for revocation of the store's registration.

§10-17. Retail Electronic Cigarette Store Registration.

- (a) Electronic cigarette use is permitted in retail electronic cigarette stores that have registered with the Department in accordance with the following terms and conditions.
 - (i) Applications to register must be submitted on paper or electronically and in a form approved or provided by the Department. Applications must include:
 - (A) the name and address of the store;
 - (B) the name, address, phone number and email address of the store's owner; and
 - (C) an affirmation from the store's owner that on-site electronic cigarette sales generate more than fifty (50) percent of the store's total annual gross sales, or, for stores that have been in operation for less than one (1) year, that based on the store's inventory and business plan, electronic cigarette sales will likely generate more than fifty (50) percent of the store's total annual gross sales.
 - (ii) Applicants must submit to the Department, within five (5) days of demand, supporting documentation, including but not limited to:
 - (A) copies of tax returns filed with the local, state and federal governments; and
 - (B) documentation, including sales records, internal accounting reports, or analyses of inventory, sales and wholesale purchases, demonstrating that more than fifty (50) percent of the store's total gross annual income was derived from the on-site sale of electronic cigarettes.
- (b) Registered retail electronic cigarette stores must update their application to reflect any change in the information entered on the application for registration no later than ten (10) business days after any such change.

- (c) Registered retail electronic cigarette stores must maintain written or electronic records of inventory, annual sales and purchases, for each product offered for sale, and submit such records to the Department within five (5) days of a demand for such records. The Department may review such records to verify the total annual gross sales of registered retail electronic cigarette stores.
- (d) Maintaining a retail electronic cigarette store registration while failing to derive more than fifty (50) percent of total gross annual income from the on-site sale of electronic cigarettes is a violation of these rules and grounds for revocation of the store's registration.

§10-18. Requirements for an Owner of an Establishment to Operate a Non-Tobacco Hookah Establishment.

- (a) The owner of an establishment that, as of October 17, 2017, generated 50% or more of its total annual gross sales from the on-site sale of non-tobacco smoking products during the same calendar year may apply for a permit to operate a nontobacco hookah establishment. Such application must be submitted to the Department no later than October 11, 2018. The applicant for a permit may be an individual proprietor of the establishment or any corporate entity that owns the establishment.
- (b) In addition to other information, the application may require an audited financial statement or other certification prepared by a certified public accountant and signed by both the accountant and the owner, attesting to the accuracy of the information provided by the owner.
- (c) Upon request by the Department, the owner must provide documents supporting the financial statement or other certification required by the Department.
- (d) Upon receipt of a permit from the Department, the owner of a non-tobacco hookah establishment must post the permit in the establishment in a manner that is visible to the public.
- (e) A permit to operate a non-tobacco hookah establishment shall be valid for one year from the date it is granted and may be renewed for additional one year periods.
- (f) In addition to other information, the application for a renewal of such permit may require that the owner of a non-tobacco hookah establishment show that:
 - (1) Such establishment generated 50% or more of its total annual gross sales during the preceding calendar year from the on-site sale of non-tobacco smoking products;
 - (2) Such establishment has been operating as a non-tobacco hookah establishment since at least October 17, 2017, and has not expanded its size or changed its location on or after such date;
 - (3) Such establishment has not been found to have served shisha containing tobacco or nicotine, in violation of subdivision a of section 17-508 or subdivision 1 of section 1399-s of the Public Health Law, after April 16, 2018;
 - (4) Such establishment does not owe a civil penalty for a violation of any provision of this chapter or of chapter 7 of title 17; and
 - (5) The permit issued pursuant to section 17-513.5 has not been revoked pursuant to subdivision l of section 17-508.

- (g) A complete application to renew a permit, including supporting documentation showing that the establishment generated at least 50% of its total annual gross sales during the calendar year preceding the renewal application from the on-site sale of nontobacco smoking products, must be submitted to the Department no later than thirty (30) calendar days before the expiration date of the permit. Failure to timely submit a complete renewal application to the Department by the date on which the permit expires shall authorize the Department to reject submission of the renewal application after such date.

§10-19. Age Limit of Patrons Allowed to Enter a Non-Tobacco Hookah Establishment.

A non-tobacco hookah establishment must not allow a person to enter such establishment unless the person demonstrates, through a valid driver's license or other photographic identification issued by a governmental entity or an educational institution, that the person is at least 21 years of age. Such identification need not be required of any individual who reasonably appears to be at least 30 years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the granting of permission to a person under the age of 21 to enter the establishment.

§10-20. Sanitization, Cleaning, and Handling of Hookah Equipment.

- (a) **Hookah pipe.** All hookah pipes served to patrons must be cleaned and sanitized to the extent practicable prior to service to remove any contaminants that may pose a health risk to patrons.
- (b) **Mouthpiece.** Individually wrapped mouthpiece tips must be provided to each patron at time of service for use only by that individual patron and must be discarded after use.

§10-21. Warning Signs for Non-Tobacco Hookah Establishments.

- (a) Warning signs provided by the Department regarding the risks associated with nontobacco hookah use must be posted and maintained by the owner, operator, manager or other person having control of the non-tobacco hookah establishment and must be posted in locations that are conspicuous and prominent to patrons.
- (b) In addition to the text required by the Department, warning signs may include information and pictorial images regarding the hazards of non-tobacco hookah products, such as information and images relating to the hazards from their emissions and the adverse health effects associated with non-tobacco hookah use.
- (c) A warning sign provided by the Department shall include, at a minimum, any two of the following statements:
- (1) One hour of hookah smoking can expose you to more carbon monoxide and tar than smoking 10 cigarettes.
 - (2) Hookah smoke contains cancer-causing chemicals.
 - (3) Hookah smoke has chemicals that can increase risk of heart attack and cancer.
 - (4) Secondhand hookah smoke is hazardous.
- (d) One warning sign must be posted above, adjacent to, or on each entrance doorway and must be at least 144 square inches.

- (e) At least one sign shall be posted in each room or area where non-tobacco hookah smoking is allowed and must be at least 576 square inches. (f) The Department may order the removal or change in placement of a sign that is in violation of these regulations.
- (g) An operator of a non-tobacco hookah smoking establishment must post a sign on the entrance to the establishment stating that “NYC Administrative Code §17-719(a) prohibits entry to this establishment to any person under 21 years of age.”

§10-22. Original Labels, Labeling and Packaging of Out-of-Package Sales Required.

Every owner, operator, manager or other person in control of a non-tobacco hookah establishment that sells, or offers for sale, non-tobacco smoking products must maintain on site the original labels, labeling and packaging provided by the manufacturer of any product currently sold or offered for sale in the establishment.

§10-23. Revocations of Permits to Operate Non-Tobacco Hookah Establishments.

- (a) **Revocation.** Where the Commissioner has issued a permit to operate a non-tobacco hookah establishment, he or she shall revoke the permit if:
 - (1) The establishment is found to have violated subdivision a of section 17-508 of the Administrative Code or subdivision 1 of section 1399-s of the Public Health Law; or
 - (2) The establishment is found on two or more occasions to have violated subdivision a of section 17-719 of the Administrative Code; or
 - (3) The owner has submitted any false, untrue or misleading financial statement to the Department, or has made any other misrepresentation or error either in such statement or other certification.
- (b) **Expert costs.** If the Department proves at a hearing that a non-tobacco hookah establishment sold, offered for sale, or allowed tobacco-containing products to be smoked on its premises in violation of subdivision a of section 17-508 of the Administrative Code or subdivision 1 of section 1399-s of the Public Health Law, the permittee of such establishment shall be responsible for the costs incurred by the Department for any expert testimony given at the hearing that relate to proving such violation. Such costs may include, but are not limited to, the travel and lodging of the expert and trial preparation. In the event the permit holder refuses to pay such costs, the Department shall commence a proceeding at a court of competent jurisdiction for the collection of such costs.
- (c) **Inspections and Investigations.** During an inspection or investigation of a public space in a non-tobacco hookah establishment, the owner and employees of the establishment must comply with all Department requests, including but not limited to, requests for reasonable amounts of shisha samples found in any public space in the non-tobacco hookah establishment, such as those that have been served to patrons, for the purpose of testing for tobacco. Failure to allow a Department inspector to obtain shisha samples found in any public space of the non-tobacco hookah establishment or to otherwise comply with a Department request for inspection of any public space shall be presumed to be a violation of subdivision a of section 17-508 or subdivision 1 of section 1399-s of the Public Health Law. A Department inspector may request entry into, or ask for samples of shisha found, in any non-public space in a non-tobacco hookah establishment.

§10-24 Severability.

The unenforceability of any provision in these rules shall not affect the enforceability of any other provisions which shall remain in full force and effect unless a court orders otherwise.