



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

**NOTICE OF ADOPTION OF AMENDMENTS TO CHAPTERS 10 AND 13  
OF TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

In accordance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Department of Health and Mental Hygiene (the “Department”) by §556 of the Charter, a notice of intention to amend Title 24 of the Rules of the City of New York was published in the City Record on February 12, 2018, and a public hearing was held on March 14, 2018. After consideration of the testimony and written comments received, and to carry out the directives of Local Law 187, the Department now adopts the following amendments.

**Statement of Basis and Purpose**

**Introduction**

Smoking is a leading cause of preventable premature death in New York City, increasing the risks of lung cancer, heart disease, and many other health hazards. To counter this threat, in 1988 the City enacted the Smoke-Free Air Act (SFAA), which has been amended several times. The 2002 amendments restricted tobacco smoking in various indoor and outdoor public places. Despite the substantial progress in reducing both environmental smoke exposure and smoking, hookah smoking has been increasing in popularity as more establishments serve hookah, and its prevalence has been increasing, in particular, among the City’s youth.

Hookah or water pipe smoking involves heating “shisha”, which is typically composed of tobacco and/or other flavored or unflavored herbal substances, over burning charcoal, to create smoke that travels through a pipe immersed in cooling water, and that is inhaled by the smoker through a mouthpiece. Regardless of whether the shisha contains tobacco, hookah smoking poses significant health risks to smokers and nonsmokers, including employees, at establishments that serve hookah. Hookah smoking produces emissions from burning both charcoal and shisha. Burning charcoal creates health hazards by emitting carbon monoxide, fine particulate matter, and various toxicants. Burning shisha has also been shown to emit multiple harmful substances regardless of its tobacco content, including carbon monoxide, polycyclic aromatic hydrocarbons, fine particulate matter, tar, and volatile aldehydes.

While risks associated with non-tobacco hookah smoking are established, air quality in the City’s hookah establishments is further compromised by evidence that many of them have been found to be serving shisha that contains tobacco. Tobacco-containing shisha has been shown to emit phenols, nicotine, and NNAL, a tobacco-specific nitrosamine. Therefore, patrons of hookah establishments may be smoking tobacco unwittingly, in addition to inhaling the harmful substances emitted by charcoal and shisha. To address

these concerns, Local Law 187 of 2017 amended the SFAA to ban the smoking of non-tobacco shisha except at existing establishments that require a permit from the Department. Local Law 190 of 2017 also requires establishments that obtain a permit for serving non-tobacco shisha to post signage developed by the Department that warns of its risks. These proposed amendments implement these laws.

Furthermore, given the health risks posed by non-tobacco smoking, Local Law 191 increases the minimum age for legal sales to 21 years of age for non-tobacco smoking products, including shisha that does not contain tobacco, pipes, water pipes, rolling papers, and herbal cigarettes.

### No Changes Made in Response to Comments Received by the Department

Approximately 20 people commented on the proposed rule at the public hearing held on March 14, 2018. Nearly all of the comments related to the requirement that an establishment generate at least 50% of its annual gross sales from the on-site sale of non-tobacco smoking products in order to obtain or renew a permit to operate as a non-tobacco hookah establishment. However, Local Law 187 already added this requirement to the Administrative Code:

To obtain and renew a permit issued pursuant to this section for a non-tobacco hookah establishment, a person shall demonstrate that: 1. Such non-tobacco hookah establishment generated 50 percent or more of its total annual gross sales during the preceding calendar from the on-site sale of non-tobacco smoking products. . . .

See Administrative Code § 17-513.5(g)(1). The Department does not have the authority to eliminate this requirement. Thus, no changes are being made to the definition of a non-tobacco hookah establishment in subdivision (bb) of section 10-01 or to the requirement in section 10-18 that a non-tobacco hookah 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 in order to obtain a permit.

The Department has made two additional changes to the proposed rule to clarify their application.

Section 10-21(c) has been amended to provide that the required warning signs, which will be provided by the Department and will vary in content, must contain two of four possible warning statements.

Section 10-23(b) has been amended to provide that a person is responsible for expert costs incurred by the Department only in the event that the Department proves at a hearing that such person violated subdivision (a) of section 17-508 of the New York City Administrative Code or subdivision 1 of section 1399-s of the New York State Public Health Law.

## Statutory Authority

The Department's authority for these rules is found in section 1043 of the New York City Charter and sections 17-513 and 17-706 of the New York City Administrative Code.

## Amendments

The Department amends subdivision (p) of section 10-01 of Title 24 of the Rules of the City of New York, adds paragraphs (aa) through (ee) to section 10-01, and adds new sections 10-18 to 10-24. The Department also amends section 13-06 of Title 24 of the Rules of the City of New York.

The amendments are as follows.

Note: Deleted material appears in [brackets]. New material is underlined. The terms "shall" and "must" appear interchangeably and are mandatory.

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Section 1. Subdivision (p) of section 10-01 of Title 24 of the Rules of the City of New York is amended to read as follows:

(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.

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Section 2. Section 10-01 of Title 24 of the Rules of the City of New York is amended by adding paragraphs (aa) through (ee) to read as follows:

(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.

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Section 3. Chapter 10 of Title 24 of the Rules of the City of New York is amended by adding new sections 10-18, 10-19, 10-20, 10-21, 10-22, 10-23, and 10-24 to read as follows:

§ 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 non-tobacco 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 I 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 non-tobacco 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 non-tobacco 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.

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Section 4. Subdivision (a) of section 13-06 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 13-06. Signage.

(a) *Age restriction sign.* Pursuant to subdivision (c) of §17-706 of the Administrative Code, any person operating a place of business where cigarettes, tobacco products, liquid nicotine, electronic cigarettes, [herbal cigarettes, non-tobacco shisha, pipes, or rolling papers] or non-tobacco smoking products are sold or offered for sale must post in a conspicuous place a sign, printed on a white card in bold red letters that are at least one-half inch in height and capitalized as indicated below, which states:

**“PROHIBITED for SALE to persons UNDER 21:**

**Cigarettes, cigars, [chewing] smokeless tobacco, [powdered tobacco,] other tobacco products, [or] electronic cigarettes and component parts, liquid nicotine,**

**[and**

**“PROHIBITED for SALE to persons UNDER 18:**

**Non-tobacco] non-tobacco shisha, herbal cigarettes, pipes, rolling papers, or smoking paraphernalia”**