



**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 (“Department” or “DOHMH”) is proposing to amend Chapter 10 of Title 24 (“Smoke-Free Air Act”) to establish requirements for a business to obtain a permit to operate a non-tobacco hookah establishment in the City. Regulating non-tobacco hookah establishments would strengthen the City’s ability to enforce compliance with the Smoke-Free Air Act by preventing non-tobacco hookah establishments from serving shisha containing tobacco to unsuspecting consumers and by assisting the DOHMH in taking action against establishments that do so. Furthermore, the Department is proposing to amend Chapter 13 of Title 24 to establish the contents of a sign that must be posted at a place of business where cigarettes or other tobacco products, electronic cigarettes, and smoking paraphernalia are sold to state that the sale of such products to a person under the age of 21 is prohibited.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 2PM to 4PM on March 14, 2018. The hearing will be at the offices of the New York City Department of Health and Mental Hygiene at 42-09 28th Street, Room 14-31, 14th floor, Long Island City, NY 11101-4132. This location is wheelchair-accessible.

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, 2018. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before March 14, 2018, at 5:00 pm.

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 February 28, 2018.

Can I review the comments made on the proposed rules?

You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available for review by the public at the Department's Office of the Secretary.

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." Charter Section 1043(a) 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." Section 17-513 of the Administrative Code of the City of New York "Smoke- Free Air Act" authorizes the Commissioner of Health to "promulgate rules in accordance with the provisions contained in this chapter, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this chapter."

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

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 was amended in 2002 to restrict 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, especially among the City's youth.

Hookah or water pipe smoking involves heating "shisha", which is typically composed of a wad of tobacco and/or other flavored or unflavored leafy 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 charcoal. The charcoal creates health hazards for smokers and those exposed to secondhand smoke by emitting carbon monoxide, fine particulate matter, and various toxicants. In addition, smoking non-tobacco shisha has been shown to emit harmful substances equal to or greater than quantities emitted by smoking tobacco-containing shisha, 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 compromised further 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, unsuspecting patrons of hookah establishments may be smoking tobacco unwittingly, in addition to 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 where non-tobacco shisha may be smoked to post signage developed by the Department that warns of its risks. These proposed amendments implement these laws, which prohibit smoking of tobacco-containing shisha at any existing non-tobacco hookah smoking establishment and only allow the smoking of non-tobacco shisha at establishments permitted by the department.

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.

Proposed Amendments

These proposed amendments implement Local Laws 187 and 190 and set forth requirements for obtaining a permit to operate a non-tobacco hookah establishment in the City. The rules address the significant health hazards posed by hookah smoking by: (1) protecting the integrity of the City's Smoke-Free Air Act, which was intended to provide all New Yorkers with access to clean air in public places and workplaces by discouraging smoking and reducing exposure to secondhand smoke for nonsmokers; (2) continuing the City's efforts to de-normalize smoking and reduce tobacco dependence; and (3) restricting access to establishments where non-tobacco hookah smoking can take place to persons over 21 years of age.

These proposed amendments also implement Local Law 191 and set forth the required language for a sign regarding the minimum legal sales age of 21 for the sale of tobacco products, electronic cigarettes, non-tobacco smoking products, and smoking paraphernalia that must be posted in a place of business where such products are sold.

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.

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

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 17-325.3 of the New York City Administrative Code to operate a non-tobacco hookah establishment.

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 16, 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, 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.

Section 3. Chapter 10 of Title 24 of the Rules of the City of New York is amended by adding new sections 10-17, 10-18, 10-19, 10-20, 10-21, 10-22, and 10-23 to read as follows:

§ 10-17 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 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 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.

§ 10-18 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.

§ 10-19 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.

§ 10-20 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) Warning signs must include a combination of all 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 to non-smokers.

(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."

§ 10-21 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.

§ 10-22 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. Any person issued a permit to operate a non-tobacco hookah establishment shall be responsible for the costs incurred by the Department for any expert testimony related to proving, at a hearing, a violation of subdivision a of section 17-508 of the Administrative Code or subdivision 1 of section 1399-s of the Public Health Law. 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.

§ 10-23 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.

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”**

**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: Permitting of Non-Tobacco Hookah Establishments

REFERENCE NUMBER: DOHMH-86

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 the violations pose significant risks to public health and safety.

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

February 8, 2018
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: Permitting of Non-Tobacco Hookah Establishments

REFERENCE NUMBER: 2017 RG 112

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: February 8, 2018