



**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 State’s Cannabis Law (as added by L 2021, c 92, §2, eff. March 31, 2021), also known as the “Marihuana Regulation and Taxation Act” (“MRTA”) amended the Clean Indoor Air Act, section 1399-q of the New York Public Health Law (“Public Health Law”) to prohibit the smoking or vaping of cannabis in certain locations. Accordingly, the New York City Department of Health and Mental Hygiene (“Department” or “DOHMH”) is proposing to amend Chapter 10 of Title 24 of the Rules of the City of New York to be similarly amended.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 10AM until 12PM on **April 27, 2022**.

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=mc3e927d6d7f2a32c5de1cc22ebd66078>

If prompted to provide an event number or password, please enter the following:

Webinar number: **2332 067 4304**, Password: **Health** (432584 from phones)

- **Phone:** For access, dial: **(408) 418-9388**; then please enter the following
Access Code: **233 206 74304**.

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 30
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 webinar chat when hearing begins on April 27, 2022. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received by April 27, 2022 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 April 13, 2022.

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.” Public Health Law 1399-r(3) provides that “[n]othing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.”

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

New York City’s Smoke-Free Air Act (“SFAA”) prohibits the smoking, including the smoking of cannabis, in a range of locations, with certain other locations being exempt from the smoking prohibition. The New York State Marijuana Regulation and Taxation Act (MRTA) amended section 1399-q of the New York Public Health Law to prohibit the smoking or vaping of cannabis in some of the locations exempt by the SFAA and New York City regulations. To make the exemption provisions consistent between the two laws, DOHMH is amending seven Chapter 10 sections by:

- adding definitions to section 10-01 and,
- amending sections 10-02, 10-04, 10-07, 10-10, and 10-16 to prohibit the smoking and vaping of cannabis in areas that the New York Public Health Law prohibits such smoking and vaping.

The proposed rule also includes some minor plain language revisions.

The amendment is as follows:

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 10-01 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(a) Act. “Act” means 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” has 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) Cannabis. “Cannabis” as defined in paragraph 5 of section 3 of New York State’s Cannabis Law (as added by L 2021, c 92, § 2, eff. March 31, 2021), also known as the “Marihuana Regulation and Taxation Act” (“MRTA”);

[(c)] (d) Commissioner. “Commissioner” means the Commissioner of the New York City Department of Health and Mental Hygiene.

[(d)] (e) Compensation. “Compensation” means any money, gratuities, privileges or benefits received in return for work performed or services rendered.

[(e)] (f) Department. “Department” means the New York City Department of Health and Mental Hygiene.

[(f)] (g) Employee. “Employee” means 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)] (h) Enclosed room. “Enclosed room” means 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 must remain closed while people are smoking in the room unless the windows open to the exterior. Any doors must 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 must be ventilated in a manner that shall prevent emission of smoke to any other interior part of the facility.

[(h)] (i) Entrance. “Entrance” means every means of entering or exiting a room, facility, or premises ordinarily used by the public and/or employees.

[(i)] (j) 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 prepackaged 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)] (k) Membership association. “Membership association” has the meaning set forth in § 17-502(ff) of the Act.

[(k)] (l) On-site agent. “On-site agent” means an employee designated by a building operator, owner or manager to inform persons that smoking is prohibited on the building premises.

[(l)] (m) 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” includes any time that employees are present in such establishment or any time the establishment is open to the public.

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

[(n)] (o) Outdoor dining area. “Outdoor dining area” means 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.

[(o)] (p) Repealed.

[(p)] (q) Permittee. “Permittee” means 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)] (r) Place of employment. “Place of employment” shall have the meaning set forth in § 17-502(m) of the Act.

[(r)] (s) Principal owner. “Principal owner” has the meaning set forth in § 17-502(hh) of the Act.

[(s)] (t) Rules. “Rules” means Chapter 10 of Title 24 of the Rules of the City of New York.

[(t)] (u) Repealed.

[(u)] (v) State law. “State law” means Article 13-E of the Public Health Law of the State of New York (“Regulation of Smoking in Certain Public Areas”), as amended.

[(v)] (w) Tobacco bar. “Tobacco bar” has the meaning set forth in § 17-502(jj) of the Act.

[(w)] (x) Electronic cigarette. “Electronic cigarette” has the meaning described in §17-502(qq) of the Act.

[(x)] (y) Restaurant. “Restaurant” has the meaning described in §17-502(r) of the Act.

[(y)] (z) Retail tobacco store. “Retail tobacco store” has the meaning described in §17-502(u) of the Act.

[(z)] (zz) Retail electronic cigarette store. “Retail electronic cigarette store” has the meaning described in §17-502(rr) of the Act.

Section 2. Subdivision (c) of section 10-02 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

[(c) Repealed] (c) Smoking cannabis or using electronic cigarettes to vape cannabis shall be prohibited in the following areas:

(i) 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;

(ii) Private automobiles;

(iii) Retail tobacco stores;

(iv) Tobacco bars;

(v) Outdoor dining areas of food service establishments;

(vi) Enclosed rooms in food service establishments, bars, catering halls, convention halls, hotel and motel conference rooms, and other such similar facilities, including the time such enclosed areas or rooms are being used exclusively for functions where the public is invited for the primary purpose of promoting and sampling tobacco products or electronic cigarettes;

(vii) Retail electronic cigarette stores.

Section 3. Section 10-03 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 10-03. Smoking Tobacco, and Electronic Cigarette Use to Vape Nicotine, Promotion Public Events.

Smoking tobacco, and using electronic cigarettes to vape nicotine, are not regulated in:

- (a) Private residences, provided, however, that smoking tobacco, and using electronic cigarettes to vape nicotine, 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 24 RCNY § 10-01(y); and
- (e) Registered retail electronic cigarette stores, as defined in 24 RCNY § 10-01(z), provided however, that only the use of electronic cigarettes to vape nicotine is not regulated in such stores.

Section 4. Section 10-04 of Chapter 10 of Title 24 of the Rules of the City of New York is 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) 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:

Section 5. Section 10-07 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

Smoking tobacco or using electronic cigarettes to vape nicotine 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:

Section 6. Section 10-10 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

Smoking tobacco, and using electronic cigarettes that do not contain cannabis, 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:

Section 7. Subdivision (a) of section 10-16 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(a) Smoking tobacco, and using electronic cigarettes to vape nicotine, [are] is permitted in retail tobacco stores that have registered with the Department in accordance with the following terms and conditions.

Section 8. Subdivision (a) of section 10-17 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(a) Electronic cigarette use to vape nicotine is permitted in retail electronic cigarette stores that have registered with the Department in accordance with the following terms and conditions.

**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: Limitations on use of Marihuana

REFERENCE NUMBER: 2021 RG 099

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: March 16, 2021

**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: Limitations on use of Marihuana

REFERENCE NUMBER: DOHMH-116

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

March 18, 2022
Date