



PART 3, Regulation Summary

HEALTH CODE EXTRACTS

The following sections, extracted from the New York City Health Code, are presented here because they relate specifically to permit suspension, revocation and the inspection process.

§3.1 5 Interfering with or obstructing Department personnel; gifts, gratuities and bribes.

(a) No person shall interfere with or obstruct Department personnel in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or Board.

(b) No person shall give or offer a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, and drink, to an employee or agent of the Department engaged in carrying

out an inspection, survey or examination or in the performance of any other duty for the Department or Board.

Notes:

This section is derived from S.C. §186. The section has been expanded to include interference with or obstruction of any Department personnel during the performance of any duty for the Department or Board.

The section heading was amended and subsection (b) was added on October 6, 1992 to specifically prohibit the giving or offering of gifts, gratuities, benefits, favors or bribes, or any other thing of value to an employee of the Department in the course of the performance of duty by such employee.

Section 566 of the Charter provides for right of entry of officers of the Department. See also, section 3.01 and the annotations thereto, particularly Frank v. Maryland, 79 S. Ct. 804 (1959), District of Columbia v. Little, 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950) and People v. Maddeus, 5 A.D. 2d 886, 172 N.Y.S. 2d 607 (2d Dept. 1958) aff'd without opinion 4 N.Y. 2d 1003, 177 N.Y.S. 2d 517 (1958). For a case interpreting S.C. §186, see People v. Strudled, 96 Misc. 650, 161 N.Y.S. 1105 (Gen. Sess. 1916).

§5.17 Suspension and revocation by Board or Commissioner.

(a) The Board may suspend or revoke any permit for willful or continued violation of this Code or for such other reason as the Board determines is sufficient grounds for suspension or revocation.

(b) When, pursuant to this Code, a permit is issued by the Commissioner, he may suspend or revoke such permit for willful or continued violation of this Code or for such other reason as he determines is sufficient grounds for suspension or revocation.

(c) When, pursuant to this Code, a permit is issued by the Commissioner, he or she may suspend or revoke such permit for the giving or offering to an employee or agent of the Department engaged in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or Board, a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, or drink.



LOCAL LAW 12

Regulations Regarding Resuscitation Equipment

Taverns and restaurants that sell food for on-premise consumption are required to have resuscitation equipment on the premises.

Resuscitation equipment required includes:

- ▶ 1 adult exhaled resuscitation mask
- ▶ 1 pediatric exhaled air resuscitation mask
- ▶ 2 pair of latex gloves

Masks must be certified for use by the U.S. Food and Drug Administration.

Notice must be provided to customers that the resuscitation equipment is available, where it is available, and where they can

learn CPR. This information can be provided on a sign or on the menu

The owner of the establishment or the staff are under no obligation to use the equipment or give medical assistance to a victim.

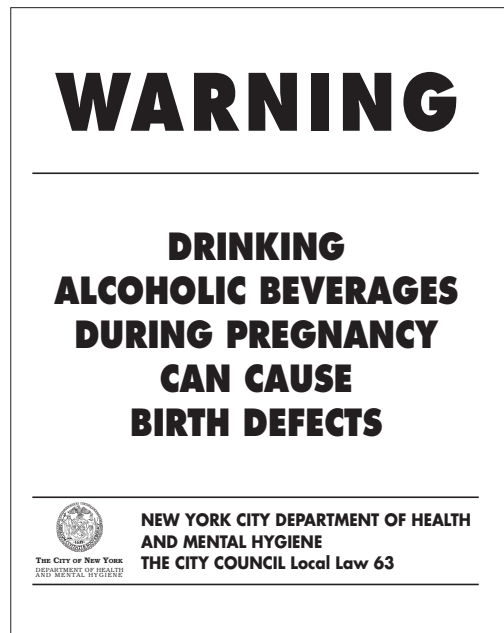
LOCAL LAW 63

Dangers of Consuming Alcoholic Beverages During Pregnancy

All food service establishments selling at retail any alcoholic beverage (alcohol, spirits, liquor, wine or beer) for on-premise consumption must post a sign stating:

“Warning: Drinking alcoholic beverages during pregnancy can cause birth defects.”

Example of alcoholic beverages sign.

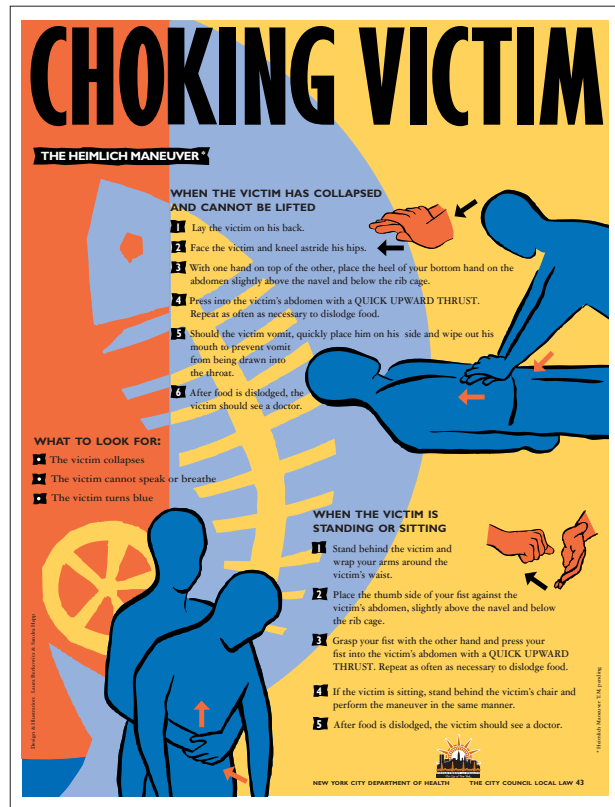




LOCAL LAW 43

Choking Poster Requirement

In a food service establishment, where food is sold to the public, a sign graphically depicting the Heimlich Maneuver or a comparable technique instructing how to dislodge food from a choking person, must be posted in all designated eating areas.



Example of Heimlich Maneuver poster. *Post conspicuously.*

LOCAL LAW 67

Regulations Restricting Tobacco Vending Machines

Distribution of tobacco products through vending machines is prohibited in all food service establishments except taverns.

A “**tavern**” means an establishment where alcoholic beverages are sold and served for on-site consumption and in which the service of food, if served at all, is incidental to the sale of such beverages. Service of food shall

be considered incidental if the food service generates less than 40% of the total annual gross sales.

A tavern owner who chooses to distribute tobacco products may do so through a vending machine that:

- ◆ is placed at least 25 feet from any entrance to the premises and is directly visible by the owner or his or her employee(s)
- ◆ has a sign affixed to it identifying the wholesale or retail dealer’s cigarette license number and expiration date, place of business, and phone number.
- ◆ has a sign stating that the sale of cigarettes to minors is prohibited.

The sign must be in red lettering on a white card.

In addition, the wholesale dealer or retail dealer must post a durable sign containing the applicable cigarette license number and expiration date, and the license holder’s name, place of business and phone number, on the vending machine. This sign must be visible to the public.

For further information, call the Citizens Services Center at **311**.



LOCAL LAW 83

Regulation Restricting the Sale of Tobacco Products to Minors

Retail sellers of tobacco products are prohibited from selling tobacco products to persons under 18 years of age.

- ◆ Sales may be made only to individuals who provide a driver's license or other photographic identification issued by a government entity or school indicating that the person is at least 18 years of age.
- ◆ No employee under the age of 18 is permitted to sell, dispense or handle tobacco products unless that employee is under the direct supervision of the retailer or another employee who is at least 18 years of age and is on the premises.

Post conspicuously.

- ◆ Sales of cigarettes or other tobacco products that have been removed from packaging which bears the health warning is prohibited.
- ◆ Retailers must post a sign in a conspicuous place with the following statement:

“SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW”.

Sale of cigarettes, cigars, chewing tobacco, powdered tobacco, bidis, herbal cigarettes, or other tobacco products, rolling papers or pipes to persons under 18 years of age is PROHIBITED BY LAW.

City of New York
MICHAEL R. BLOOMBERG, MAYOR
GRETCHEN DYKSTRA, Commissioner, Department of Consumer Affairs
THOMAS R. FRIEDEN, MD, MPH, Commissioner, Department of Health & Mental Hygiene

The sign referred to above can be obtained from the Department of Consumer Affairs, 42 Broadway, 5th Floor. If you wish to post your own sign, the law requires that the sign be printed on a white card in red letters at least one-half inch in height.

For further information call the Citizens Services Center at 311.



LOCAL LAW 47

Regulations Restricting the Smoking in Food Establishments**About the Law:**

Local Law 47 of 2002 amended the New York City Smoke Free Air Act (SFAA). The new Smoke-Free Air Act was revised to further prohibit smoking in all indoor workplaces and public areas of food service establishments (to include restaurants and bars), membership associations, hotels, motels, bingo halls, billiard parlors, bowling alleys, sports arenas and recreational facilities, health care and day treatment facilities and religious institutions.

Article 13-E of the New York State Public Health Law, the New York State Clean Indoor Air Act, was revised on March 26, 2003 and became effective on July 24, 2003. The Clean Indoor Air Act (CIAA) further restricts smoking in workplaces and public areas of food service establishments. The CIAA specifically further prohibits smoking in Owner Operated Bars, and Separate Smoking Rooms, and limits the number of Tobacco Promotion Events to two per calendar year per establishment.

Smoking Permitted:

The new Smoke-Free Air Act narrowly defines some exceptions to the prohibitions as outlined below:

TOBACCO PROMOTION

Smoking may be permitted in enclosed rooms in restaurants,

bars, catering halls, convention halls, hotel and motel conference rooms, and other similar facilities only when the public is invited for the “primary purpose” of promoting and sampling tobacco products, provided that:

- Food and drink is incidental to the promotion.
- Operator or sponsor of such event provides notice to DOHMH two weeks prior to the event.
- No more than five* events are to be scheduled within the calendar year.

***Note: The Clean Indoor Air Act limits the number of Tobacco Promotion Events that may occur in NYC to only two per calendar year per establishment without the issuance of a waiver.**

SEPARATE SMOKING ROOM

The SFAA also prohibited the use of separate smoking rooms* in all places of employment, except for bars. All separate smoking rooms had to be registered with the New York City Dept. of Health and Mental Hygiene (DOHMH).

***Note: The Clean Indoor Air Act has prohibited separate smoking rooms throughout NYS, including NYC, without the issuance of a waiver from the NYC DOHMH.**

OUTDOOR DINING

Smoking is prohibited in all food service establishments including restaurants, bakeries, takeouts, fast food, diners, etc., however, smoking may be permitted in the outside dining areas of restaurants only as long as:

- There is no partial or full overhang.
- The “smoking permitted” outdoor dining seating does not exceed twenty-five percent of the total outdoor dining seating capacity.
- The “smoking permitted” outdoor dining seating area is at least three feet away from “non-smoking” outdoor dining seating areas.
- Clearly designed as a “Smoking Permitted” area.

Exempt Entities:

The SFAA provided exemptions for bars that are owner-operated, membership associations, and tobacco bars. Any such entity that believes itself to be exempt from the SFAA has to register with DOHMH. The NYS Clean Indoor Air Act does not allow smoking in owner-operated bars so this exemption is no longer possible in NYC without a waiver in addition to being registered with DOHMH.

The following is a brief description of these exempt entities:

OWNER OPERATED BAR

- The business must be a “Bar”—a business establishment or any portion of a non-profit entity which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons or members on the premises in which the serving of food, if served at all, is only incidental to the sale or consumption of alcoholic beverages. The sale of food will be considered incidental to the sale or consumption of alcoholic beverages if the food service generated less than 40 percent of the total annual gross sales.



- A bar with up to three principal owners, each of whom holds a 25 percent or greater ownership interest in the bar and one of whom is the New York State Liquor Authority Licensee(s) for such bar. A principal owner may also be an individual who holds a 25 percent or greater ownership interest in a partnership, joint venture, corporation or limited liability corporation, which is the sole owner of the bar and is the State Liquor Authority licensee for such bar. *An owner operated bar may have no more than three principal owners.*
- A bar in which, during the hours when the bar is open to the public, guests, members or patrons, all duties with respect to preparing and service of food and drink, cleaning, diswashing, racking glasses, maintaining inventory, stocking shelves and providing security services are performed at all times only by individuals who are principal owners; however cleaning functions may be performed by individuals other than principal owners at times.

TOBACCO BAR

- The business must be a “Bar”—a business establishment or any portion of a non-profit entity which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons or members on the premises in which the serving of food, if served at all, is only incidental to the sale or consumption of alcoholic beverages. The sale of food will be considered incidental to the sale or consumption of alcoholic beverages if the food service generated less than 40 percent of the total annual gross sales.
- Has been in business prior to December 31, 2001, and generated ten percent or more its total annual gross income from the on-site sale of tobacco products and rental of on-site humidors.
- Has not expanded its size or changed its location from its size or location as of December 31, 2001.

MEMBERSHIP ASSOCIATION

- Has no employees. Members of the association perform all duties and functions without receiving compensation or benefits.
- Is a not-for-profit organization which has been created for charitable, philanthropic, educational, political, social or other similar purposes.
- Has by-laws or similar governing rules that expressly provides for its members.
- Has established permanent and identifiable membership selection criteria, which will include the acceptance of members by sending a membership card or on a membership roster.
- Conducts elections to select its governing structure and/or body.

Enforcement and Penalties:

The Department of Health and Mental Hygiene is responsible for enforcing Local law 47 which amended the Smoke-free Air Act of New York City. Compliance with the law will be monitored during the routine inspection of your establishment. In addition, the Department will respond to complaints lodged by the public. If the Department receives a complaint alleging smoking in the regulated areas of your establishment, an inspector may be sent to conduct an unannounced inspection, and if warranted, issue a notice of violation. Civil penalties resulting from violations of Local Law 47 of 2002 can result in fines of \$200-\$400 for the first violation, \$500-\$1000 for the second violation, and for a third or subsequent violations, fines of \$1000-\$2000.

The employer, owner or other person in control of a premises in which smoking is prohibited must actively enforce the New York City’s SFAA. The Department of Health and Mental Hygiene will close and or seek to suspend or revoke the permit of any entity that fails to enforce the Act or interferes with, obstructs, or allows employees to interfere with or obstruct the duties of Department personnel.

For further information concerning the construction of a separate smoking room, outdoor dining area, written smoking policy, enclosed room, owner operated bar, membership association, tobacco bar, or “No smoking” or “Smoking Permitted” signs contact the Citizens Services Center at **311**.



WORKPLACE SMOKING POLICY

All employers including bars and restaurants are required to develop, distribute and post a smoking policy, in accordance with the law. The following chart details the minimum requirements

for a written smoking policy along with a sample wording for each section. A valid smoking policy must contain the required sections.

REQUIRED SECTIONS	SAMPLE WORDING
Purpose:	A smoke-free policy has been developed to comply with the New York City Smoke-Free Air Act (Title 17, Chapter 5 of the Administrative Code of the City of New York) and New York State Clean Indoor Air Act (Article 13-E of the New York State Public Health Law), and to protect all employees and visitors from secondhand smoke, an established cause of cancer and respiratory disease. The policy set forth below is effective March 30, 2003 for all [company name] locations.
Smoke-Free Areas:	All areas of the workplace are now smoke-free without exception. Smoking is not permitted anywhere in the workplace, including all indoor facilities and company vehicles with more than one person present. Smoking is not permitted in private enclosed offices, conference and meeting rooms, cafeterias, lunchrooms, or employee lounges.
Sign Requirements:	“No Smoking” signs must be clearly posted at all entrances and on bulletin boards, bathrooms, stairwells and other prominent places. No ashtrays are permitted in any indoor area.
Compliance:	Compliance with the smoke-free workplace policy is mandatory for all employees and persons visiting the company, with no exceptions. Employees who violate this policy are subject to disciplinary action. Any disputes involving smoking should be handled through the company’s procedure for resolving other work-related problems. If the problem persists, an employee can speak to [company department and phone number for complaints] or lodge an anonymous complaint by calling the New York City Department of Health and Mental Hygiene’s complaint line, 1-877-NYC DOH7 (1-877-692-3647) or on the web at nyc.gov/health. DOHMH’s enforcement staff will take appropriate action to resolve the problem. The law prohibits employers from retaliating against employees who invoke the law or who request management’s assistance in implementing it in the workplace.
Smoking Cessation:	[Company name] encourages all smoking employees to quit smoking. The company medical department or worksite wellness program offers a number of services for employees who want to quit. Smoking cessation information is available from the New York Smokers’ Quit Line at 1-866 NY QUIT (1-866-697-8487).
Questions:	Any questions regarding the smoke-free workplace policy should be directed to company department and phone number handling inquiries.