



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

Notice of Adoption of Amendments to Title 24 of the Rules of the City of New York

In compliance with section 1043(b) of the New York City Charter (“Charter”), a notice of intention to amend Chapter 10 of Title 24 of the Rules of the City of New York was published in the New York City Record on February 12, 2024. The amendment to Chapter 10 prohibits smoking of tobacco and electronic cigarettes in outdoor dining areas of restaurants, removed provisions related to discretionary waivers of state law on smoking, and corrected certain references to definitions that appear in various sections in this Chapter. At the public hearing held on March 14, 2024, one person testified in support of the proposed amendments. Additionally, seventeen written comments were received. Seven of the written comments were in support of the amendments citing the dangers of secondhand smoke and other public health concerns with smoking. Ten written comments were submitted that opposed the amendments, citing that the smoking of tobacco and electronic cigarettes in outdoor dining areas would harm their favorite restaurant or is not necessary. There are no amendments made to the proposed rule in response to the submitted comments.

Statement of Basis and Purpose

The Department is adopting the amendments to Chapter 10 of Article 24 of the Rules of the City of New York regarding smoking in outdoor dining set ups. Local Law number 121 for the year 2023 (the “Local Law”) became law in August 2023. Among amendments to various provisions of the City’s outdoor dining laws, the Local Law amended Administrative Code section 17-503(c), part of the Smoke-Free Air Act, to prohibit smoking of tobacco products and use of electronic cigarettes in outdoor dining areas of restaurants, which previously was permitted in certain situations. To bring Chapter 10 in line with this amendment, the Department amending its rules by deleting section 10-10, which allowed smoking in outdoor dining areas of restaurants, and the definition of “overhang” in section 10-01(n), which is no longer necessary.

The Department is also adopting technical amendments to clean up the text of Chapter 10. Firstly, section 10-15 of Chapter 10, which had addressed discretionary waivers of state regulation of smoking in certain public areas, was repealed in July 2017. However, some references to these waivers and the repealed section remained in Chapter 10; the Department is adopting amendments to clean up references that were overlooked at the time of this earlier amendment.

In addition, in August 2022, the Department amended Chapter 10 to align with the New York State Marijuana Regulation and Taxation Act (Chapter 92 of the Laws of 2021), including adding a definition of “cannabis” to section 10-01. This addition resulted in re-lettering of definitions of words that follow “cannabis.” The Department is now correcting citations to these definitions that appear in sections 10-03, 10-04, and 10-05 to reflect the new lettering.

The amendment is as follows:

New material is underlined.
[Deleted material is in brackets.]

Section one. Subdivision (n) of section 10-01 of Title 24 of the Rules of the City of New York, relating to the definition of “overhang” for purposes of chapter 10 of Title 24, is amended to read as follows:

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

§ 2. Subdivisions (a) and (b) of section 10-02 of Title 24 of the Rules of the City of New York are amended to read as follows:

(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) } §§17-503 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)] §§17-503 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].

§ 3. Subdivisions (d) and (e) of section 10-03 of Title 24 of the Rules of the City of New York are amended to read as follows:

(d) Registered retail tobacco stores, as defined in 24 RCNY [§10-01(y)] §10-01(z); and

(e) Registered retail electronic cigarette stores, as defined in 24 RCNY [§10-01(z)] §10-01(z-1), provided however, that only the use of electronic cigarettes to vape nicotine is not regulated in such stores.

§ 4. The opening paragraph of section 10-04 of Title 24 of the Rules of the City of New York and paragraph (i) of subdivision (d) of such section 10-04, are 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)] §10-01(h) 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:

(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.

§ 5. The opening paragraph of section 10-05 of Title 24 of the Rules of the City of New York is amended to read as follows:

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

§ 6. Subdivision (e) of section 10-05 of Title 24 of the Rules of the City of New York, relating to waivers for smoking rooms in residential health care facilities, and Section 10-10 of Title 24 of the Rules of the City of New York, relating to smoking in outdoor dining areas, are REPEALED.