

NEW YORK CITY FIRE DEPARTMENT

Notice of Adoption of
New Fire Department Rule
3 RCNY 310-03, entitled
“Non-Tobacco Hookah Establishments”

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Fire Commissioner of the City of New York pursuant to Sections FC102.6.3 and FC310.7 of the New York City Fire Code (Title 29 of Administrative Code of the City of New York), and in accordance with the requirements of Section 1043 of the New York City Charter, that the New York City Fire Department has adopted the above final rule.

The public hearing was held on February 6, 2020. The rule shall take effect on July 1, 2020.

The Notice of Adoption, final rule and the Statement of Basis and Purpose of Final Rule, will be available on the Fire Department’s website (www.nyc.gov/fdny) and NYCRULES (www.nyc.gov/NYCRULES).

Statement of Basis and Purpose of Final Rule

The Fire Department adopts this rule to implement certain provisions of Local Law No. 187 of 2017.

The local law regulates hookah establishments, businesses that provide water pipes (hookah), heated by charcoals and containing non-tobacco products, for on-premises smoking. One goal of the law is to minimize the risk that hookah pipes and charcoals may contribute to the creation of fire hazards.

The local law amended the Fire Code to allow smoking on the premises of these businesses, and requires that such businesses obtain permits from the Fire Department and the Department of Health and Mental Hygiene (DOHMH). The local law also enacted Fire Code Section 310.7, which established, or authorized the Fire Department to establish, fire safety requirements for the storage of charcoal; the preparation, handling, use and disposal of lighted charcoal; and the handling and use of smoking paraphernalia. The local law also requires that persons holding Fire Department Certificates of Fitness supervise such activities, and mandates provision of portable fire extinguishers and flameproofing of decorations.

This rule implements the requirements of Local Law 187 and prescribes fire safety measures for the use of combustibles in non-tobacco hookah establishments by:

- specifying the types of ovens or other heating devices that may be used to heat the charcoal and maintain lighted coals, and related ventilation to exhaust the heat and gases generated by the lighted coals;
- detailing the manner for safe storage of charcoal, and providing several options for indoor and outdoor storage;

- requiring noncombustible surfaces in the charcoal preparation area and in the smoking area;
- prescribing the manner for safe handling of lighted charcoal and the disposal of spent charcoal and other combustible waste;
- prohibiting flammable and combustible liquids in the preparation of lighted charcoal, either as a fuel or an accelerant; and
- requiring the installation of carbon monoxide alarms.

The rule requires non-tobacco hookah establishments to have on-premises staff obtain a Certificate of Fitness by January 1, 2021, and comply with other operational and maintenance requirements by October 1, 2020. Such establishments are required to comply with the design and installation requirements of the rule (including any necessary improvements to the oven and ductwork) and to obtain a Fire Department permit by October 1, 2021.

Public Comments and the Fire Department’s Response

In addition to the usual methods of notifying the public of the rule, the Fire Department made targeted efforts to solicit comment from non-tobacco hookah establishments operating with a permit issued by DOHMH. First, the Fire Department sent a letter by first class mail to each permitted establishment, notifying it of the hearing date and providing information about where to view the rule and how to provide comment. Second, the Fire Department emailed the same information to establishments that had provided their email address to DOHMH. At least one individual who offered public comment acknowledged receipt of both forms of correspondence.

The Fire Department received no written comments. Approximately 15 people attended the hearing, including hookah establishment owners and patrons. The Fire Department responds to their public comments as follows:

Design and Installation Requirements

- Comment: Why can’t the same stove be used to heat charcoal and prepare food?

Response: The New York City Mechanical Code (MC) regulates the design and installation of exhaust systems. MC506.3.5 requires that a separate exhaust system serve a solid fuel burning appliance. Exhaust systems serving solid fuel equipment is designed slightly differently and requires more stringent maintenance. For example, different types of filters (with spark arrestors) are used in the exhaust system for solid fuel-fired appliances. Such filters are not compatible with the exhaust systems used for commercial cooking equipment producing grease.

- Comment: Is a sprinkler required for outdoor storage of solid fuel?

Response: No.

- Comment: Requiring installation of a sprinkler system is burdensome on businesses, particularly those who lease the space they occupy, and the threat posed by lighted charcoal

is so minor that a sprinkler system should not be required. It would be cheaper to require fire extinguishers instead.

Response: This rule does not establish sprinkler system requirements but merely references existing New York City Building Code and Fire Code requirements. The rule implements Local Law 187, which requires that the storage of charcoal in hookah establishments be treated in the same way as the storage of wood in restaurants. Existing code requirements require a sprinkler head in solid fuel storage rooms.

As the Fire Department noted at the public hearing, it may be possible to install in the solid fuel storage room a single sprinkler head connected to the domestic water supply, rather than a sprinkler system with a dedicated water supply. A licensed plumber can determine whether this type of installation is allowed at a particular premises and can perform the work.

The rule further offers the practical, low-cost alternative of outdoor storage of charcoal, which eliminates the need for a sprinkler system.

- Comment: Is my new ventilation system with a special filter adequate? What are the ventilation requirements?

Response: Ventilation requirements for all kinds of buildings and businesses are addressed in the New York City Mechanical Code, which is administered by the Department of Buildings (DOB). However, the rule offers the practical, low-cost alternative of using an existing room ventilation system if a small amount of charcoal is prepared indoors with an electric device and a registered design professional or other qualified professional determines such ventilation is adequate to exhaust the heat and gases from lighted coals to the outdoors.

- Comment: Does my existing oven and/or ventilation system comply with the rule?

Response: This question cannot be answered as part of this rulemaking. Business owners should consult a qualified professional and be prepared to present DOB documentation and/or documentation from the qualified professional attesting to the lawful installation of the system and its adequacy for purposes of exhausting the heat and gases from hookah charcoal preparation. The Fire Department will review such documentation when it inspects the premises for the purpose of granting a Fire Department permit.

- Comment: Are there specific requirements for furniture?

Response: Requirements for surfaces and decorations in the smoking area are set forth in Section 310-03(d)(2) of the rule.

- Comment: The rule imposes significant financial burdens (including engineers, ventilation, and special rooms for storage of charcoal) upon hookah establishments. Establishments

are already required to get a Health Department permit and comply with other new restrictions.

Response: The requirements to which objection is made are set forth in Local Law 187, which this rule implements. As noted above, the Fire Department endeavored in its rule to provide practical, low-cost alternatives to facilitate compliance with the requirements of the local law.

- Comment: Other countries, such as Morocco, have figured out how to operate hookah establishments and we should follow their lead rather than try to ban hookah lounges in New York City or prevent new ones from opening.

Response: This objection is directed to the legislative policies enacted by the local law, which are beyond the scope of this rule.

Certificate of Fitness Requirements

- Comment: It is onerous to require a Certificate of Fitness holder at all times on the premises.

Response: This requirement is set forth in Local Law 187, which this rule implements. The Certificate of Fitness requirement is designed to protect the public by ensuring that the business is being operated and maintained in accordance with the applicable code requirements. Requiring a Certificate of Fitness holder to be present on the premises is consistent with how the Fire Code regulates other businesses that present fire safety concerns.

- Comment: How many people at the premises are required to have a Certificate of Fitness?

Response: Only one Certificate of Fitness holder needs to be present at the premises, but such an individual must be present at all times when there are lighted charcoals at the premises.

- Comment: The Certificate of Fitness requirement is burdensome and expensive because there is very high turnover of staff at hookah establishments. There should be ways to minimize the burden on business owners, such as offering group classes at the business establishment.

Response: Obtaining a Fire Department Certificate of Fitness is neither time-consuming nor prohibitively expensive. Free study materials will be posted on the Fire Department's website. The required test, which is computerized, is offered Monday through Friday at Fire Department headquarters without an appointment. Upon passing the exam, the certificate can be obtained on the same day as testing. The cost is \$25.

Special arrangements can be made to provide testing for large groups. Appointments can be scheduled online at <https://www1.nyc.gov/site/fdny/business/all-certifications/cof-online-scheduler.page>.

- Comment: Will DOHMH-permitted establishments be notified when the test materials become available?

Response: The Fire Department anticipates distributing the Certificate of Fitness information, when it becomes available, to DOHMH-permitted hookah establishments for which the Fire Department has an email address. The information will also be posted on the Fire Department website.

Other Requirements

- Most hookah lounges use coconut charcoal, which takes longer to ignite than the easy light variety (five minutes as opposed to one). The easy light is “bad.”

Response: The Fire Department has determined to refrain at this time from regulating the type of charcoal used in the hookah, which is central to the business operations of hookah establishments.

- Comment: How do I obtain a Fire Department permit?

Response: Section 310-03(c)(3) of the rule specifies what information must be provided to the Department in order to obtain a permit. Information about when and how to provide this information to the Department will be posted on the Fire Department website following publication of this final rule. Hookah establishments will be inspected by the Fire Department before a permit is issued.

- Comment: When will my business have to start complying with this rule?

Response: Section 310-03(c)(2) specifies the compliance timeframes.

The entire rule is underlined to indicate that it is a new rule.

Guidance with respect to the interpretation of the Fire Code and Fire Department rules may be obtained using the Public Inquiry Form on the Fire Department’s website, <http://www1.nyc.gov/site/fdny/about/resources/code-and-rules/nyc-fire-code.page>.

Section 1. Chapter 3 of Title 3 of the Rules of the City of New York is amended by adding a new section, § 310-03, to read as follows:

§ 310-03 Hookah Establishments

(a) **Scope.** This section establishes fire safety requirements pursuant to FC310 for all non-tobacco hookah establishments.

(b) **Definitions.** The following terms shall, for purposes of this section, have the meanings set forth herein.

Hookah coal. Charcoal manufactured for use as a heat source in a hookah, or any other combustible material used for this purpose.

Lighted coals. *Hookah coal* undergoing combustion.

Non-tobacco hookah establishment. An establishment for the on-premises sale and use of non-tobacco smoking products, as defined in New York City Administrative Code §17-502(aaa).

(c) **General.** *Non-tobacco hookah establishments* shall be designed, installed, operated and maintained in accordance with FC310 and this section.

(1) **Applicability.** This section shall apply to *non-tobacco hookah establishments.* *Non-tobacco hookah establishments* may lawfully operate only when issued a permit by the New York City Department of Health and Mental Hygiene pursuant to *Administrative Code § 17-513.5.*

(2) **Compliance timeframes.** *Non-tobacco hookah establishments* shall comply with the requirements of this section by the dates set forth below:

(A) Portable fire extinguisher requirements (R310-03(f)): September 1, 2020.

(B) Operational and maintenance requirements other than supervision (R310-03(e)): October 1, 2020.

(C) Supervision requirements (R310-03(c)(4)): January 1, 2021.

(D) Design and installation requirements (R310-03(d)): October 1, 2021.

(E) Permit requirement (R310-03(c)(3)): October 1, 2021.

(3) **Permit.** Pursuant to FC105.6, a permit is required to maintain and operate a *non-tobacco hookah establishment.*

(A) **Original application.** The initial application for a *Department permit* for a *non-tobacco hookah establishment* shall include the following

documentation and such other information and documentation as the Department may require:

- (1) **Health Department permit.** A copy of the permit issued by the New York City Department of Health and Mental Hygiene to operate a *non-tobacco hookah establishment*.
- (2) **Lighted coals preparation.** Documentation of the method by which *lighted coals* will be prepared at the premises, including a plan or diagram showing the layout of the premises, location of the *lighted coals* preparation area and locations of all required clearances; description and/or photographs of the equipment used to prepare the *lighted coals*; any manufacturers' specifications for equipment used in preparing or maintaining *lighted coals*; location and equipment for storage of *hookah coal*; and all other relevant particulars relating to the applicant's storage, handling, use, and disposal of *hookah coals* and *lighted coals*.
- (3) **Department of Building applications.** Any application(s) filed with the *Department of Buildings* with respect to any equipment or other installation designed or used for the preparation and/or maintenance of *lighted coals*, including any hood or ventilation system designed to exhaust smoke and other gases generated by *lighted coals* and/or hookah smoking.
- (B) **Posting.** Department and New York City Department of Health and Mental Hygiene permits to operate a *non-tobacco hookah establishment* shall be conspicuously posted at the premises.
- (4) **Supervision.** In accordance with FC 113 and 310.7.2:
- (A) The storage of *hookah coal* for use with hookah and other smoking paraphernalia in *non-tobacco hookah establishments* shall be under the general supervision of a person holding a *certificate of fitness*.
- (B) The handling and use of *lighted coals* and other solid or liquid flammable and combustible materials in *non-tobacco hookah establishments* shall be under the *personal supervision* of a person holding a *certificate of fitness*. Such a *certificate of fitness* holder shall be present at all times when there are *lighted coals* on the premises.
- (C) A copy of the *certificate(s) of fitness* of the person(s) responsible for such general and personal supervision in *non-tobacco hookah establishments* shall be conspicuously posted at the premises.

(D) The requirements of R310-03(c)(4)(A) through (C) shall be in addition to any and all other *certificate of fitness* requirements applicable to the *non-tobacco hookah establishment's* operations, including the provision of safety personnel in places of assembly.

(d) **Design and installation requirements.** All *non-tobacco hookah establishments*, including those established and operating before the effective date of this section, shall comply with the following design and installation requirements.

(1) **Preparation of lighted coals.** Use of electrically-heated elements designed for use in hookah and other smoking paraphernalia, instead of *lighted coals*, is encouraged but not required. *Lighted coals*, if used, shall be prepared and maintained in one or more of the following manners:

(A) **Indoor electric device.** In one or more *listed* or *approved* electric devices designed to heat *hookah coal* and/or maintain the *lighted coals*, subject to the following requirements:

(1) Such devices are operated in a room or other indoor area in which a ventilation system has been installed that does not recirculate air and is capable of adequately exhausting to the outdoors the heat and gases generated by *lighted coals*, or under a suitable exhaust hood. The adequacy of such ventilation system shall be determined by a design professional or other qualified professional.

(2) If the total electrical current required to operate the device(s) exceeds 12 amperes, a master electrician licensed by the *Department of Buildings* has certified that the electrical wiring in the building or occupancy is sufficient to safely operate the device, or, if more than one device, sufficient to safely operate them simultaneously.

(B) **Indoor commercial cooking stove.** In or on a commercial cooking stove protected by a hood installed in accordance with the *Mechanical Code*, provided that such stove is used exclusively to heat *hookah coal* and/or maintain *lighted coals*.

(C) **Indoor stationary oven.** In an enclosed stationary metal or masonry oven designed for the burning of wood or other solid fuel, installed indoors in accordance with the following requirements:

(1) Such oven is installed in compliance with the requirements of the *Construction Codes*, NFPA 211 and/or ASHRAE standards, as applicable to non-space-heating installations.

(2) Such oven is vented to the outdoors through a chimney or suitable metal exhaust duct in accordance with the *Construction Codes*.

- (3) Such oven is located at least five (5) feet below the ceiling. The ceiling has a minimum one (1)-hour fire rating.
- (4) All walls located between five (5) feet and two (2) feet of such oven have a minimum one (1)-hour fire rating. Walls located two (2) feet or less from such oven have a minimum two (2)-hour fire rating. All wall surfaces are protected by ceramic tile or other non-combustible surface capable of withstanding the heat generated by the preparation and maintenance of *lighted coals*.
- (5) Such oven is installed on a noncombustible base on ceramic tiles or other non-combustible floor surface.
- (6) A durable sign conspicuously posted on a wall near such oven reads: "Oven installation approved for hookah coal use only. Not safe for wood burning or room heating."
- (7) Either the installation of such oven has been approved by the *Department of Buildings*, or an application for approval thereof by the *Department of Buildings* has been filed.

(D) **Outdoor stationary oven.** In a permanently-affixed, enclosed or partially-enclosed masonry oven, installed outdoors, or an enclosed stationary metal oven designed for the burning of wood or other solid fuel, installed outdoors (including, for purposes of this section only, masonry and metal ovens installed on open porches and decks and unenclosed under-eave areas in rear yards), in accordance with the following requirements:

- (1) Such oven is vented through a chimney or suitable metal exhaust duct in accordance with the *Construction Codes*.
- (2) Such oven has overhead weather protection.
- (3) All surfaces within five (5) feet of such outdoor stationary oven are noncombustible, including floors, ceilings and walls. All such noncombustible surfaces shall be constructed of brick, concrete or other weatherproof material capable of withstanding the heat generated by the oven for at least two (2) hours; combustible floors may be covered by a noncombustible mat; and
- (4) Either the installation of such oven has been approved by the *Department of Buildings*, or an application for approval thereof by the *Department of Buildings* has been filed.

(E) **Outdoor portable heating device.** In a *listed* or *approved* electric oven or other portable electric device, or an *approved* masonry or metal oven, or

barbecue, that is secured against movement, installed outdoors at an approved location, and installed in accordance with R310-03(d)(1)(D)(2) and (3), and, if an electric device, R310-03 (d)(1)(A)(2).

(2) Smoking area

(A) Smoking paraphernalia. Use of hookah designed to hold the lighted coals in a metal container that can be securely closed is encouraged but not required. Hookah and other smoking paraphernalia used with lighted coals shall be designed for such use and used in accordance with manufacturer's instructions, subject to the following requirements:

(1) No combustible material other than hookah coal shall be used in a hookah without prior Department approval.

(2) Hookah and other smoking paraphernalia shall not be used and shall be removed from the premises when, by reason of wear or damage, it is unstable or otherwise likely to cause the lighted coals to be dislodged.

(B) Surfaces. Floors, tables or other surfaces upon which hookah or other smoking paraphernalia are placed shall be noncombustible or fully protected by a noncombustible mat.

(C) Decorations. Drapes and other decorations in non-tobacco hookah establishments shall be flame-resistant in accordance with FC805 and R805-01.

(e) Operational and Maintenance Requirements

(1) Storage of hookah coal for immediate use. Hookah coal for immediate use (other than lighted coals) shall be stored in the same manner as solid fuel used for commercial cooking operations, as set forth in FC609.5.2. Not more than one day's supply of hookah coal may be stored in the same room as the oven or other heating device used to prepare lighted coals, and such hookah coal shall be stored in accordance with the following restrictions:

(A) Hookah coal shall not be stored within three (3) feet of the oven or other heating device.

(B) Hookah coal shall not be stored above the oven or other heating device, or above any flue or vent.

(C) Hookah coal shall be stored in a metal or other noncombustible cabinet or container with a securely-fitting lid,

(2) **Storage of additional hookah coal.** All hookah coal in excess of one day's supply shall be stored in compliance with the following requirements:

(A) **Indoor storage.** Hookah coal stored indoors shall be in:

(1) a room dedicated to the storage of not more than 150 cubic feet (4.3 m³) of solid fuel, provided that such storage room is protected by a sprinkler system and enclosed by a minimum of 1-hour fire barriers and horizontal assemblies (walls, floor and ceiling) constructed in accordance with the *Building Code*; or

(2) a building or occupancy protected throughout by a sprinkler system, in metal cabinets dedicated to the storage of solid fuel that:

(2.1) are designed and constructed in accordance with FC2703.8.7 (for hazardous materials storage);

(2.2) are placed on a stable, noncombustible surface; and

(2.3) have a maximum aggregate capacity of 75 cubic feet (2.1 m³); or

(3) metal cabinets designed and installed in accordance with R310-03(e)(2)(A)(2) that are located in a room that is protected and enclosed in accordance with R310-03(e)(2)(A)(1) but not dedicated to the storage of solid fuel.

(B) **Outdoor storage.** Hookah coal stored outdoors shall be in accordance with FC315.3, or in well-constructed metal cabinets or containers (with welded seams) that:

(1) are used exclusively for the storage of the hookah coal;

(2) have securely-closing, close-fitting metal doors or lids;

(3) are placed on concrete or another stable, noncombustible surface;

(4) have a maximum aggregate capacity of 75 cubic feet (2.1 m³); and

(5) are designed and constructed in accordance with FC2703.8.7 (for hazardous materials storage) or, if not located within 6 feet (1829 mm) of a combustible surface, are designed and well-constructed of steel having a thickness of not less than 0.0478 inch (1.2 mm) (18 gauge).

(C) **Protection.** *Hookah coal*, whether it is stored indoors or outdoors, shall be protected in accordance with the following precautions:

- (1) keeping the doors or lids to a solid fuel storage room, cabinet or container closed, except when the *hookah coal* is being removed or replenished;
- (2) posting a durable sign or marking that reads: “SOLID FUEL – KEEP FIRE AWAY” at the entrance to a solid fuel storage room or other room in which *hookah coal* is stored in a metal cabinet or container in accordance with R310-03(e)(2)(A), or if not in such a room, on the cabinet or container itself; and
- (3) storing *hookah coal* in its original packaging, or in noncombustible containers with securely-closing lids and an internal vertical dimension of not more than 48 inches (1219 mm).

(3) **Preparation of lighted coals.** A maximum of 2.2 (two and two tenths) pounds of *lighted coals*, including *lighted coals* being maintained in an oven, may be prepared and maintained on the premises at any one time. The preparation and maintenance of *lighted coals* shall comply with R310-03(d)(1) and the following requirements:

- (A) All flammable and combustible materials, except *hookah coal* for immediate use subject to the requirements of R310-03(e)(1), shall be kept at least (5) feet away from *lighted coals* and the oven or other device in which the *lighted coals* are being heated.
- (B) Use of any flammable gas or flammable or combustible liquid to light *hookah coals* (other than a lawful piped natural gas installation or an *LPG*-fueled torch for culinary or household use with a capacity of not more than 16.4 ounces), as a fuel or an accelerant, is prohibited.
- (C) All flammable and combustible materials other than *hookah coals* shall be stored in compliance with FC Chapter 27 and/or other applicable requirements of the Fire Code or the *rules*.

(4) **Handling of lighted coals.** *Lighted coals* shall be deemed to constitute an *open flame* when being heated. When not in an oven or other *approved* heating device (as set forth in R310-03(d)(1)), *lighted coals* shall be handled and used in accordance with the following fire safety measures:

- (A) **Persons authorized to handle lighted coals.** All handling of lighted coals shall be by a *certificate of fitness* holder or a trained and knowledgeable person employed at the premises.

- (B) **Maintenance of lighted coals.** Until placed in a hookah or other smoking paraphernalia for customer use, *lighted coals* shall be kept either in an oven or other *approved* heating device, or in a metal container that fully surrounds the *lighted coals* and has a cover that can be used to suppress any flames. Metal containers holding *lighted coals* shall be kept in a place where exposure to air currents and combustible materials is minimized, and they shall not be placed on combustible floors, even if the wood flooring is covered by tile or other noncombustible material.
- (C) **Use in smoking paraphernalia.** *Lighted coals* shall be placed in hookah or other smoking paraphernalia only when such paraphernalia is being prepared for immediate customer use.
- (D) **Customer handling prohibited.** Customers shall not be allowed to “refresh” hookah or other smoking paraphernalia or otherwise handle *lighted coals*.
- (E) **Storage and disposal of spent and discarded hookah coal.** Spent or discarded *hookah coal*, including *lighted coals* used in a hookah or other smoking paraphernalia, shall be collected in a metal or other noncombustible container with a cover, which is used exclusively for such purpose. Collected spent or discarded *lighted coals*, and any ashes, cinders and other fire debris, shall be promptly and thoroughly wetted down to extinguish and cool the coals. The collected spent and discarded *hookah coal* shall be removed from the premises and temporarily stored outdoors for disposal before the *non-tobacco hookah establishment* closes to the public and whenever the *certificate of fitness* holder is not present on the premises.
- (5) **Carbon monoxide alarms.** A *listed* and *labeled* carbon monoxide alarm shall be installed in each and every room in which the *lighted coals* are prepared and/or maintained and in each and every smoking area.
- (f) **Portable Fire Extinguishers.** *Non-tobacco hookah establishments* shall comply with the portable fire extinguisher requirements of FC906 applicable to the occupancy. In addition, a portable fire extinguisher with a 2-A:10-B:C or other *approved* rating shall be provided and maintained in:
- (1) all areas where *lighted coals* are prepared or maintained;
 - (2) each room or area in which hookah or other smoking paraphernalia containing *lighted coals* is used or handled; and
 - (3) each room or area in which smoking occurs.