



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 Department of Health and Mental Hygiene is proposing to amend Chapter 10 of Title 24 of the Rules of the City of New York to: (1) reflect amendments to the Smoke-Free Air Act made by Local Law 152 of 2013 prohibiting the use of electronic cigarettes in certain places; (2) facilitate enforcement of the Smoke-Free Air Act; and (3) repeal provisions that are out of date.

When and where is the Hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10:00AM until 12:00PM on September 15, 2014. The hearing will be at

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, Room 14-43
Long Island City, NY 11101-4132

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov.
- **Mail.** You can mail written comments to the NYC Department of Health and Mental Hygiene, Office of General Counsel, Gotham Center, 42-09 28th Street, 14th Floor, CN 31, Long Island City, New York 11101.
- **Fax.** You can fax written comments to the NYC Department of Health and Mental Hygiene, Office of General Counsel, 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) 396-6078/6116. You can also sign up in the hearing room before the hearing begins on September 15, 2014. You can speak for up to five minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by or before 5:00 p.m. on September 15, 2014.

Do you 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. You must tell us by September 2, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by DOHMH will be made available to the public within a reasonable period of time by the DOHMH Office of the General Counsel.

What authorizes the Department to make this rule? Section 1043 of the New York City Charter and sections 17-503, 17-504, 17-505, 17-506, 17-513, 17-513.3 and 17-513.4 of the New York City Administrative Code authorize the Department to make this proposed rule. This proposed rule was not included in the Department's regulatory agenda for this fiscal year because Local Law 152 had not been enacted when the agenda was prepared.

Where can I find the Commission's rules? The Department's rules are in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose

On December 30, 2013, Local Law 152 was enacted. It amended sections 17-502, 17-503, 17-504, 17-505, 17-506, 17-507, 17-508, 17-510, 17-512 and 17-513.2 of Chapter 5 of Title 17 of the New York City Administrative Code (Smoke-Free Air Act). It also added sections 17-513.3 (Retail Tobacco Store and Retail Electronic Cigarette Store Registration), and 17-513.4 (Retail Tobacco Store and Retail Electronic Cigarette Store Verification) to Chapter 5. These changes to the Smoke-Free Air Act took effect on April 29, 2014. The local law prohibits the use of electronic cigarettes in all locations where smoking is currently prohibited and requires establishments to post signage informing customers of these new restrictions. Local Law 152 also requires both retail tobacco stores and retail electronic cigarette stores to register with the Department of Health and Mental Hygiene (“DOHMH”), and grants the Department authority to establish a system for verifying the total annual gross sales of retail tobacco stores and retail electronic cigarette stores to determine their eligibility for certain smoking and electronic cigarette use exemptions.

The Department is proposing to amend Chapter 10 of Title 24 of the Rules of the City of New York (RCNY) to reflect the amendments to the Smoke-Free Air Act in Local Law 152, and repeal provisions of Chapter 10 that are no longer applicable due to these amendments to the Smoke-Free Air Act. The amendments proposed here will also clarify certain provisions in Chapter 10 to facilitate compliance with, and enforcement of, the Smoke-Free Air Act. These proposed amendments, together with the provisions of Chapter 5 of Title 17 of the Administrative Code, affect the use of electronic cigarettes in enclosed areas in public places and in places of employment in New York City.

The proposed amendments:

- Specify the locations where electronic cigarette use is prohibited;
- Specify the content of the signage required in locations where electronic cigarette use is prohibited;
- Describe the registration requirements for retail tobacco stores and retail electronic cigarette stores; and
- Repeal obsolete provisions of the Department’s Rules related to separate smoking rooms in bars and owner operated bars that have been repealed in the Smoke-Free Air Act.

DOHMH’s authority to promulgate these rules is found in section 1043 of the New York City Charter and sections 17-503, 17-504, 17-505, 17-506(a), 17-513, 17-513.3 and 17-513.4 of the New York City Administrative Code.

New material is underlined

[Deleted material is in brackets]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The heading and list of sections of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

CHAPTER 10

SMOKING AND THE USE OF ELECTRONIC CIGARETTES
UNDER THE NEW YORK CITY SMOKE-FREE AIR ACT

§10-01. Definitions and Construction of Words and Terms.

§10-02. Smoking, and Using Electronic Cigarettes, Prohibited.

§10-03. Smoking, and Using Electronic Cigarettes, Not Regulated.

§10-04. Tobacco, and Electronic Cigarette, Promotion Public Events.

§10-05. Enclosed Rooms for Patients of Certain Residential Health Care Facilities and Day Treatment Programs.

[§10-06. Owner Operated Bars.]

§10-07. Tobacco Bars.

§10-08. Membership Associations.

[§10-09. Separate Smoking Room in Bars.]

§10-10. Outdoor Dining Areas.

§10-11. Ashtrays.

§10-12. Signs.

§10-13. Enforcement.

§10-14. Construction.

§10-15. Waiver of State Law.

[Appendix A. Specifications for Separate Smoking Rooms.]

§10-16. Retail Tobacco Stores.

§10-17. Retail Electronic Cigarette Stores.

§2. Subdivision (n) of section 10-01 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(n) **Outdoor dining area.** "Outdoor dining area" shall mean any patio, courtyard, sidewalk cafe, backyard, rooftop or terrace, or other outdoor area of a restaurant [where food or drink is served], with or without seating, that is designated for the consumption or service of food or drink.

§ 3. Subdivisions (o) and (t) of section 10-01 of Chapter 10 of Title 24 of the Rules of the City of New York, subdivision (o) defining “Owner operated bar” and subdivision (t) defining “separate smoking room,” are REPEALED,

§ 4. Section 10-01 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to add new subdivisions (w), (x), (y), and (z) to read as follows:

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

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

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

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

§ 5. The heading and subdivision (a) of section 10-02 of Chapter 10 of Title 24 of the Rules of the City of New York are amended to read as follows:

§10-02 Smoking, and Using Electronic Cigarettes, Prohibited.

(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) 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) 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.

§ 6. Subdivision (c) of section 10-02 of Chapter 10 of Title 24 of the Rules of the City of New York, permitting smoking by owners of establishments and certain others when the establishment is closed, is REPEALED.

§ 7. 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, and Using Electronic Cigarettes, Not Regulated.

Smoking [is], and using electronic cigarettes, are not regulated in:

(a) Private residences, provided, however, that smoking [is], and using electronic cigarettes, 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; [and]

(d) [Retail] Registered retail tobacco stores, as defined in [§17-502(u) of the Act.] §10-01(y) of these rules; and

(e) Registered retail electronic cigarette stores, as defined in §10-01(z) of these rules, provided however, that only the use of electronic cigarettes is not regulated in such stores.

§ 8. Section 10-04 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

§10-04 Tobacco, and Electronic Cigarette, Promotion Public Events.

Smoking, and using electronic cigarettes, 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:

(a) Notice of the public event shall be provided to the Department on forms furnished by the Department. Completed forms shall be received by the Department no later than two (2) weeks prior to the event.

(i) The Department may charge a fee not to exceed \$100.00 per notice.

(ii) Signs shall be posted in accordance with §10-12 of these rules and shall [state] contain one of the following messages:

(A) "SMOKING PERMITTED AT THIS EVENT. NOTICE OF THIS EVENT HAS BEEN FILED WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT."

(B) "ELECTRONIC CIGARETTE USE PERMITTED AT THIS EVENT. NOTICE OF THIS EVENT HAS BEEN FILED WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT."

(C) “SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED AT THIS EVENT. NOTICE OF THIS EVENT HAS BEEN FILED WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT.”

(b) Service of food and drink shall be incidental to the promotion and sampling of tobacco products or electronic cigarettes.

(c) If tobacco products are to be distributed at the event for sampling, such distribution shall be in compliance with all laws and rules relating to the distribution of tobacco products, including but not limited to §§17-176[, 17-618] and 20-202 of the Administrative Code and §1399-bb of the Public Health Law.

(d) (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.

(ii) No such facility will be authorized to permit electronic cigarette use on more than five (5) days in any calendar year.

§ 9. Section 10-05 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

§10-05 Enclosed Rooms for Patients of Certain Residential Health Care Facilities and Day Treatment Programs.

Smoking, and using electronic cigarettes, may be permitted in an enclosed room, as defined in §10-01(g) 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 [rooms have] room has been designated for smoking, and using electronic cigarettes, by patients, in accordance with the following terms and conditions:

(a) [Such] Smoking, and electronic cigarette use, rooms shall comply with all applicable Building Code and Fire Code requirements [and].

(b) Smoking rooms shall have the prior approval of the New York City Fire Department and, on request of any person authorized to enforce the Act, the operator or person in charge of the facility shall make available for inspection the most recent inspection report from the Fire Department showing such approval.

[(b)] (c) No persons other than patients of such facilities shall be allowed to smoke or use electronic cigarettes in such rooms.

[(c)] (d) Signs shall be posted in accordance with §10-12 of these rules and shall [state] contain one of the following messages:

(i) "SMOKING PERMITTED. IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT, ONLY PATIENTS OF THIS FACILITY MAY SMOKE IN THIS ROOM."

(ii) "ELECTRONIC CIGARETTE USE PERMITTED, IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT, ONLY PATIENTS OF THIS FACILITY MAY USE ELECTRONIC CIGARETTES IN THIS ROOM."

(iii) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED. IN ACCORDANCE WITH THE NEW YORK CITY SMOKE-FREE AIR ACT, ONLY PATIENTS OF THIS FACILITY MAY SMOKE OR USE ELECTRONIC CIGARETTES IN THIS ROOM."

[(d)] (e) In addition, operators of residential health care facilities defined in §17-502(q) of the Act, which are prohibited by the State law from allowing smoking on premises under their management or control, may apply to the Department for a waiver of the State law pursuant to §10-15 of these rules. If a waiver of the State law is granted, such rooms shall be constructed and operated in accordance with [subsections] subdivisions (a), (b), [and] (c), and (d) of this section.

§ 10. Section 10-06 of Chapter 10 of Title 24 of the Rules of the City of New York, related to smoking in owner operated bars, is REPEALED.

§ 11. Section 10-09 of Chapter 10 of Title 24 of the Rules of the City of New York, related to separate smoking rooms in bars, is REPEALED.

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

§10-10 Outdoor Dining Areas.

Smoking, and using electronic cigarettes, may be allowed in [a] contiguous "outdoor dining [area] areas," [as defined in] pursuant to §17-503(c) of the Act and as defined in §10-01 of these rules provided that each such area:

(a) Represents a separate and discrete area of a restaurant, as defined in §17-502(r) of the Act, in which all tables [and] and/or chairs in the outdoor smoking and electronic cigarette use area are located

three (3) or more feet apart from all tables [and] and/or chairs in the indoor and outdoor non-smoking and non-electronic cigarettes use areas, measured from the closest leading edges of all tables in the non-smoking [area(s)] and non-electronic cigarette use areas to the closest leading edges of all tables in the area where smoking, and using electronic cigarettes, is permitted and seating, if provided, is arranged so that no chairs in the smoking and electronic cigarette use area may be deliberately or inadvertently placed within the three (3) foot separation area;

(b) Constitutes no more than twenty-five (25) percent of the total outdoor seating or standing capacity of [the establishment] each outdoor area designated for food or drink consumption;

(c) Has no roof, ceiling, overhead structure, or other overhang as defined in §10-01 of these rules which either fully or partially covers any part of [the] an outdoor dining area where smoking, and using electronic cigarettes, is permitted; and

(d) Is clearly designated by signage as an area where smoking, and using electronic cigarettes, is permitted.

(e) Staff of the establishment shall ask patrons and prospective patrons, prior to seating, whether they prefer seating in a smoking and electronic cigarette use, or no-smoking and no electronic cigarette use, part of [the] an outdoor dining area, or in an area where smoking is not permitted but electronic cigarette use is permitted, if the restaurant has established such an area.

§ 13. Section 10-12 of Chapter 10 in Title 24 of the Rules of the City of New York is amended to read as follows:

§10-12 Signs.

(a) "NO SMOKING" and "NO ELECTRONIC CIGARETTE USE" signs or "NO SMOKING OR ELECTRONIC CIGARETTE USE" signs indicating that smoking [is], and using electronic cigarettes, are prohibited shall be conspicuously posted so that they are clearly visible in lobbies and other appropriate locations of buildings and structures where smoking [is], and using electronic cigarettes, are prohibited by the Act and these rules.

(b) "SMOKING PERMITTED" or "ELECTRONIC CIGARETTE USE PERMITTED" signs or "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED" signs shall be posted outside the entrances to and within [separate smoking rooms and] enclosed rooms for smoking and electronic cigarette use. Such signs shall also be posted within [registered tobacco bars, registered owner operated bars, registered membership associations and] tobacco and electronic cigarette promotion public events, as

defined in the Act and these rules. “SMOKING PERMITTED” signs must also be posted within registered tobacco bars and registered membership associations, as defined in the Act and these rules.

(c) All signs required to be posted pursuant to the Act shall conform to the following specifications:

(i) Lettering and symbols shall be at least one-half (1/2) inch in height and shall be color contrasted so that all information is clear, conspicuous, and easily readable.

(ii) The size of lettering or symbols on "SMOKING PERMITTED" and "ELECTRONIC CIGARETTE USE PERMITTED" and “SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED” signs shall not exceed the size of lettering or symbols on "NO SMOKING" and "NO ELECTRONIC CIGARETTE USE" and “NO SMOKING OR USING ELECTRONIC CIGARETTES” signs in the same establishment.

(iii) Signs shall be printed on durable material.

(iv) Wording and symbols listed below are Department-approved. However, except for the Warning set forth in [(c)(iv)D] subparagraph (c)(iv)(D) of this section, other similar wording may be used.

(A) No smoking signs:

(1) International symbol or

(2) "NO SMOKING"

(B) Smoking permitted sign, including the warning in subparagraph (D) [below] of this paragraph:

(1) "SMOKING PERMITTED IN THIS ROOM" or

(2) "SMOKING PERMITTED"

(C) No smoking except in enclosed [or separate smoking] room for smoking sign, to be posted within establishments where smoking is permitted by the Act and these rules:

"NO SMOKING EXCEPT IN ENCLOSED ROOM" [or

"NO SMOKING EXCEPT IN SEPARATE SMOKING ROOM"]

(D) All "SMOKING PERMITTED" and “SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED” signs shall include the following warning: “WARNING: TOBACCO SMOKE CAUSES CANCER, HEART DISEASE, AND LUNG DISEASE, AND CAN HARM YOUR BABY.”

(E) No electronic cigarette use signs:

"NO ELECTRONIC CIGARETTE USE"

(F) Electronic cigarette use permitted sign:

(1) "ELECTRONIC CIGARETTE USE PERMITTED IN THIS ROOM" or

(2) "ELECTRONIC CIGARETTE USE PERMITTED" or

(G) No using electronic cigarettes except in enclosed room for electronic cigarette use sign, to be posted within establishments where electronic cigarette use is permitted by the Act and these rules:

"NO ELECTRONIC CIGARETTE USE EXCEPT IN ENCLOSED ROOM"

(H) No smoking and electronic cigarette use signs:

"NO SMOKING OR ELECTRONIC CIGARETTE USE"

(I) Smoking and electronic cigarette use permitted signs, including the warning in subparagraph (D) of this paragraph:

(1) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED IN THIS ROOM" or

(2) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED"

(J) No smoking and using electronic cigarettes except in enclosed room for smoking and electronic cigarette use sign, to be posted within establishments where smoking and electronic cigarette use is permitted by the Act and these rules:

"NO SMOKING OR USING ELECTRONIC CIGARETTES EXCEPT IN ENCLOSED ROOM"

(d) Signs shall not be required to be posted in areas not regulated by the Act [aor] or these rules.

§ 14. Subdivisions (b) and (e) of section 10-13 of Chapter 10 of Title 24 of the Rules of the City of New York are amended to read as follows:

(b) [On or before June 30, 2003, every] Every employer shall establish and/or update a written smoking policy that conforms with the Act and these rules. Every employer must establish and/or update a written electronic cigarette use policy that conforms with the Act and these rules.

(e) Where the Commissioner has issued a license or permit pursuant to Articles 5 and 81 of the Health Code, he or she may suspend or revoke such permit for such reasons as she or he determines is sufficient grounds for suspension or revocation, in accordance with §5.17(b) of the Health Code. Such reasons may include, but not be limited to, willful [and] or continuous violations of the Smoke-Free Air Act and these rules.

§ 15. Subdivision (a) of section 10-14 of Chapter 10 of Title 24 of the Rules of the City of New York is amended to read as follows:

(a) The provisions of these rules shall not be interpreted or construed to permit smoking or electronic cigarette use where it is prohibited or otherwise restricted by other applicable laws, rules or regulations.

§ 16. Appendix A of Chapter 10 of Title 24 of the Rules of the City of New York, related to specifications for separate smoking rooms, is REPEALED.

§ 17. Chapter 10 of Title 24 of the Rules of the City of New York is amended to add a new section 10-16 to read as follows:

§10-16 Retail Tobacco Store Registration.

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

(i) Applications to register must be submitted annually on paper or electronically in a form approved or provided by the Department. Applications must include:

(A) the name and address of the store;

(B) name, address, phone number and email address of the store's owner; and

(C) an affirmation from the store's owner that on-site tobacco product sales generate more than fifty (50) percent of the store's total annual gross sales, or, for stores that have been in operation for less than one (1) year, that based on the store's inventory and business plan, tobacco sales will likely generate more than fifty (50) percent of the store's total annual gross sales.

(ii) Applicants must submit to the Department, within five (5) days of demand, supporting documentation, including but not limited to:

(A) a current retail license to sell cigarettes issued by the Department of Consumer Affairs pursuant to §20-202 of the Administrative Code;

(B) copies of tax returns filed with the local, state and federal governments;

(C) reports or other documents that demonstrate compliance with all applicable federal, State and local laws governing the taxation, sale and distribution of tobacco products; and

(D) documentation, including sales records, internal accounting reports, or analyses of inventory, sales and wholesale purchases, demonstrating that more than fifty (50) percent of the store's total gross annual income was derived from the on-site sale of tobacco products.

(b) Registered retail tobacco stores must update their application to reflect any change in the information entered on the application for registration no later than ten (10) business days after any such change.

(c) Registered retail tobacco stores must maintain written or electronic records of inventory, annual sales and purchases, for each product offered for sale, and submit such records to the Department within five (5) days of a demand for such records. The Department may review such records to verify the total annual gross sales of registered retail tobacco stores.

(d) Maintaining a retail tobacco store registration while failing to derive more than fifty (50) percent of total gross annual income from the on-site sale of tobacco products is a violation of these rules and grounds for revocation of the store's registration.

§ 18. Chapter 10 of Title 24 of the Rules of the City of New York is amended to add a new section 10-17 to read as follows:

§10-17 Retail Electronic Cigarette Store Registration.

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

(i) Applications to register must be submitted annually on paper or electronically and in a form approved or provided by the Department. Applications must include:

(A) the name and address of the store;

(B) the name, address, phone number and email address of the store's owner; and

(C) an affirmation from the store's owner that on-site electronic cigarette sales generate more than fifty (50) percent of the store's total annual gross sales, or, for stores that have been in operation for less than one (1) year, that based on the store's inventory and business plan, electronic cigarette sales will likely generate more than fifty (50) percent of the store's total annual gross sales.

(ii) Applicants must submit to the Department, within five (5) days of demand, supporting documentation, including but not limited to:

(A) copies of tax returns filed with the local, state and federal governments; and

(B) documentation, including sales records, internal accounting reports, or analyses of inventory, sales and wholesale purchases, demonstrating that more than fifty (50) percent of the store's total gross annual income was derived from the on-site sale of electronic cigarettes.

(b) Registered retail electronic cigarette stores must update their application to reflect any change in the information entered on the application for registration no later than ten (10) business days after any such change.

(c) Registered retail electronic cigarette stores must maintain written or electronic records of inventory, annual sales and purchases, for each product offered for sale, and submit such records to the Department within five (5) days of a demand for such records. The Department may review such records to verify the total annual gross sales of registered retail electronic cigarette stores.

(d) Maintaining a retail electronic cigarette store registration while failing to derive more than fifty (50) percent of total gross annual income from the on-site sale of electronic cigarettes is a violation of these rules and grounds for revocation of the store's registration.

**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: Use of Electronic Cigarettes

REFERENCE NUMBER: 2014 RG 043

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: August 1, 2014

**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: Smoke-Free Air Act and E-Cigarettes

REFERENCE NUMBER: DOHMH-44

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 requirement for a cure period is mitigated by the extensive notice, outreach, and guidance on compliance to the regulated individuals and communities and because a cure period would present a substantial risk to public health.

/s/ Amy Bishop
Mayor's Office of Operations

August 1, 2014
Date