



THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Michael R. Bloomberg
Mayor

Thomas R. Frieden, M.D., M.P.H.
Commissioner

nyc.gov/health

SMOKE-FREE AIR ACT
PLAN FILING FOR SEPARATE SMOKING
ROOM IN BAR OR RESTAURANT BAR

THE FOLLOWING DOCUMENTATION IS REQUIRED TO FILE PLANS WITH THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE FOR A SEPARATE SMOKING ROOM IN A BAR OR RESTAURANT BAR

NOTICE AND WARNING: Local Law 47 of 2002, which amended the New York City Smoke-Free Act (SFAA), provides that ***ONLY*** a bar or restaurant bar may construct a separate smoking room where smoking may be allowed. This provision of Local Law 47 was to have been in effect until January, 2006. ***However, Article 13-E of the State Public Health Law, as amended in a bill signed into law by the Governor on March 26, 2003, does not allow smoking in such rooms in the State of New York. Accordingly, after July 25, 2003, smoking will not be permitted in such rooms in New York City.***

- A bar is 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 such beverages. The sale of food will be considered incidental to the sale or consumption of alcoholic beverages if the food service generated less than forty percent (40%) of the total annual gross sales.
- A restaurant bar is a contiguous (touching) area in a restaurant that contains a counter and which is primarily devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the service of food at the bar counter, if served at all, is only incidental to the sale or consumption of such beverages. The sale of food will be considered incidental to the sale or consumption of alcoholic beverages if the food service *at the bar* generated less than forty percent (40%) of the total annual gross sales.

REQUIREMENTS FOR A SEPARATE SMOKING ROOM

- A separate smoking room in a bar or restaurant bar must be constructed in accordance with section 17-502 (w) of the SFAA, and the attached specifications. See attached Appendix A.

- Architectural and/or engineering plans for construction and use of a separate smoking room must be submitted to the Department with Department of Buildings approval.
- In a restaurant bar, a separate smoking room shall be contiguous to, i.e., next to the restaurant bar area and the entrance to such room cannot open into any restaurant dining areas.
- No food or beverage service is permitted in a separate smoking room at any time.
- No employee of a bar or a restaurant bar with a separate smoking room may enter the separate smoking room until at least fifteen (15) minutes after all persons who are smoking have left the room and the room is no longer being used for smoking. If a bar owner or operator with an approved separate smoking room is found in violation of this rule on two (2) or more occasions, the Commissioner will revoke your right to maintain a separate smoking room in the bar.

Section A: Instructions for Filing Plans

The following submission guidelines apply to all persons filing plans:

All applicants must have a current, valid permit to operate a food service establishment issued by the DOHMH.

- All information provided must be either typed or printed clearly in ink.
- The name of the entity must be the same on all supporting documentation submitted.
- The form must be completed and signed where indicated.
- If the owner or operator of the bar or restaurant bar is not filing in person, the person filing on his or her behalf must present a power of attorney on either a standard legal form or an affidavit form provided by the DOHMH.
- The person holding power of attorney must present one acceptable form of his/her photo identification as detailed below (instead of the owner or operator's photo identification).
- Except where noted, "original" documentation should be provided; no copies or faxes will be accepted.
- Attach a check or money order for \$25.00 payable to the "New York City Department of Health and Mental Hygiene" to each form filed.

FILING PLANS:

Submit the completed form, supporting documents, and architectural and/or engineering plans in person to the Bureau of Food Safety and Community Sanitation, 253 Broadway, 13th Floor, New York, New York 10007. The filing will be reviewed to ensure that the form has been correctly completed and that all required documentation is presented. If all required documentation is not provided, you will be notified, and your filing will not be deemed complete.



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Section B: Determining if Your Establishment Is a Bar

All persons filing for a separate smoking room in a bar must complete Section B. *You must provide revenue records separately showing gross sales receipts from sales of food and alcoholic beverages for at least the last 12 months for your application to be evaluated by the Department.*

1. Total annual gross sales of food =

2. Total annual gross sales of alcoholic beverages =

3. Applicant must submit the following supporting documentation to indicate the percentage of sales of liquor and food. All documents submitted must be signed and dated.

- Current Liquor Liability Insurance Policy*; and
- Certified letter from a CPA attesting that he or she has reviewed your financial records for at least the last 12 months and has established that food sales are incidental (less than forty percent (40%)) to the sale of alcoholic beverages. Percentages of the food sales and alcoholic beverages must be indicated in the certified letter.

or

- Current Liquor Liability Audit

* If your liquor liability insurance policy or audit is based on a flat rate (alcoholic beverages and foods are combined), or you are submitting a certified letter from a CPA, you must submit a detailed report from your accountant showing the actual breakdown of food and alcoholic beverage sales for at least the past 12 months and a description of the method used to differentiate the actual sales of food and alcoholic beverages. Formula calculations, estimates or projections are not acceptable.

Section C: Determining if Your Establishment Is a Restaurant Bar

All persons filing plans for a separate smoking room in a restaurant bar must complete Section C. You must provide revenue records separately showing gross sales receipts from the sales of food and alcoholic beverages for the bar only in your establishment for at least the last 12 months for these plans to be evaluated by the Department.

4. Total annual gross sales of food at the restaurant bar = \$

5. Total annual gross sales of alcoholic beverages at the restaurant bar = \$

6. Applicant must submit the following supporting documentation to indicate the percentage of sales of liquor and food. All documents submitted must be signed and dated.

- Certified letter from a CPA attesting that he or she has reviewed your financial records for at least the last 12 months and has established that food sales are incidental (less than forty percent (40%)) to the sale of alcoholic beverages. Percentages of the food sales and alcoholic beverages must be indicated in the certified letter.

Section D. Bar or Restaurant Bar Ownership

(Type or print legibly in blue or black ink; individual's addresses shall be home addresses)

Part 1.

Name of person filing:

CAMIS No.: Permit No.:

Name of Corporation, LLC, Partnership, LLP or Individual Owner(s):

Trade Name/DBA:

Building Number:	Street:
<input type="text"/>	<input type="text"/>

City:	State:	Zip Code:	Telephone:
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> ()

Acknowledgement and Certification

I, _____, state that I am the _____ of
(Name) (Title)

_____, and have completed the above application for registration of
(Name of Applicant Entity)

such entity in connection with establishment of a separate smoking room in a bar and that the statements made therein and the documents submitted are truthful to the best of my knowledge. I further acknowledge that I and the persons I represent are fully aware of the consequences, including the forfeitures and civil and criminal penalties, which may result if any statement and document provided is determined to be false.

Dated: _____

Signature: _____

Sworn to before me
this ____ day of _____, 200 ____.

Notary Public