



THE CITY RECORD

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THE CITY RECORD

MICHAEL R. BLOOMBERG, Mayor

EDNA WELLS HANDY, Commissioner, Department of Citywide Administrative Services.
ELI BLACHMAN, Editor of The City Record.

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PUBLIC HEARINGS AND MEETINGS

See Also: Procurement; Agency Rules

CITY COUNCIL

HEARING

HEARING BY THE COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS

THE COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS WILL HOLD A HEARING ON WEDNESDAY, SEPTEMBER 21, 2011 AT 10:30 A.M. IN THE 16TH FLOOR COMMITTEE ROOM AT 250 BROADWAY, NEW YORK, NY 10007 ON THE FOLLOWING MATTERS:

Designation

- **Preconsidered-M**, Pursuant to §1303 of the New York City Charter, the Council of the City of New York will vote on the designation of Council Member Michael Nelson to serve as a member of the New York City Waterfront Management Advisory Board. Upon designation, Council Member Nelson will serve an undefined term.

Advice and Consent

- **M 638**, Communication from the Staten Island Borough President submitting the name of Rayann Besser for re-appointment as a member of the New York City Planning Commission pursuant to §§ 31 and 192(a) of the New York City Charter. Should Ms. Besser receive the advice and consent of the Council, she will serve the remainder of a five-year term that expires on June 30, 2016.
- **Preconsidered M**, Communication from the Mayor submitting the name of Deepthiman K. Gowda, M.D., for appointment as a member of the New York City Board of Health pursuant to §§ 31 and 553 of the New York City Charter. Should Dr. Gowda receive the advice and consent of the Council, he will fill a vacancy and be eligible to serve the remainder of a six-year term that expires on May 31, 2016.
- **Preconsidered M**, Communication from the Mayor submitting the name of Pamela Brier for re-appointment as a member of the New York City Board of Health pursuant to §§ 31 and 553 of the New York City Charter. Should Ms. Brier receive the advice and consent of the Council, she will be eligible to serve the remainder of a six-year term that expires on May 31, 2016.
- **Preconsidered M**, Communication from the Mayor submitting the name of Michael L. Goldblum for re-appointment as a member of the New York City Landmarks Preservation Commission ("LPC") pursuant to §§ 31 and 3020 of the New York City

Charter. Should Mr. Goldblum receive the advice and consent of the Council, he will serve the remainder of a three-year term that expires on June 28, 2014.

- **Preconsidered M**, Communication from the Mayor submitting the name of Elizabeth Ryan for re-appointment as a member of the New York City Landmarks Preservation Commission ("LPC") pursuant to §§ 31 and 3020 of the New York City Charter. Should Ms. Ryan receive the advice and consent of the Council, she will serve the remainder of a three-year term that expires on June 28, 2014.
- **M 635**, Communication from the Mayor submitting the name of Roland Lewis for appointment as a member of the New York City Waterfront Management Advisory Board pursuant to §§ 31 and 1303 of the New York City Charter. Should Mr. Lewis receive the advice and consent of the Council, he will be eligible to serve the remainder of a two-year term that expires on August 31, 2013.
- **M 637**, Communication from the Mayor submitting the name of Peggy Shepard for appointment as a member of the New York City Waterfront Management Advisory Board pursuant to §§ 31 and 1303 of the New York City Charter. Should Ms. Shepard receive the advice and consent of the Council, she will be eligible to serve the remainder of a three-year term that expires on August 31, 2014.
- **M 633**, Communication from the Mayor submitting the name of Paula Berry for appointment as a member of the New York City Waterfront Management Advisory Board pursuant to §§ 31 and 1303 of the New York City Charter. Should Ms. Berry receive the advice and consent of the Council, she will be eligible to serve the remainder of a one-year term that expires on August 31, 2012.
- **M 636**, Communication from the Mayor submitting the name of Andrew McGovern for appointment as a member of the New York City Waterfront Management Advisory Board pursuant to §§ 31 and 1303 of the New York City Charter. Should Mr. McGovern receive the advice and consent of the Council, he will be eligible to serve the remainder of a three-year term that expires on August 31, 2014.
- **M 634**, Communication from the Mayor submitting the name of Edward Kelly for appointment as a member of the New York City Waterfront Management Advisory Board pursuant to §§ 31 and 1303 of the New York City Charter. Should Mr. Kelly receive the advice and consent of the Council, he will be eligible to serve the remainder of a two-year term that expires on August 31, 2013.

AND SUCH OTHER BUSINESS AS MAY BE NECESSARY

A Calendar of speakers will be established in advance. Persons interested in being heard should write to the Honorable Christine C. Quinn, Speaker of the City Council, City Hall, New York, New York 10007, setting forth their name, representation and viewpoints.

Michael M. McSweeney
City Clerk, Clerk of the Council

CITY PLANNING COMMISSION

PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN THAT RESOLUTIONS Have been adopted by the City Planning Commission Scheduling public hearings on the following matters to be held at Spector Hall, 22 Reade Street New York, New York, on Wednesday, September 21, 2011 at 10:00 A.M.

BOROUGH OF BROOKLYN Nos. 1 & 2

SPECIAL 4TH AVENUE ENHANCED COMMERCIAL DISTRICT No. 1

CDs 2, 6 & 7 C 110386 ZMK

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section Nos. 16c & 16d, by establishing a Special Fourth Avenue Enhanced Commercial District (EC) bounded by a line midway between Atlantic Avenue and Pacific Street, 4th Avenue, Pacific Street, a line 100 feet southeasterly of 4th Avenue, President Street, a line 150 feet southeasterly of 4th Avenue, the northeasterly boundary line of James J. Byrne Memorial Park and Playground, a line 100 feet southeasterly of 4th Avenue, 24th Street, 4th Avenue, Prospect Avenue, a line 100 feet northwesterly of 4th Avenue, 6th Street, 4th Avenue, Douglass Street, and a line 100 feet northwesterly of 4th Avenue, Borough of Brooklyn, Community Districts 2, 6 and 7, as shown on a diagram (for illustrative purposes only) dated June 20, 2011.

No. 2

CD 2, 6, 7 N 110387 ZRK

IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, relating to Article I, Chapters I, II and IV, and Article XIII, Chapter 2, to establish the Special Fourth Avenue Enhanced Commercial District.

Matter in underline is new, to be added;
Matter in ~~strikeout~~ is old, to be deleted;
Matter within # # is defined in Section 12-10;
* * * indicate where unchanged text appears in the Zoning Resolution

Article I: General Provisions Chapter 1 Title, Establishment of Controls and Interpretation of Regulations

11-12 Establishment of Districts

11-122 Districts established

Special Purpose Districts Establishment of the Special 125th Street District

Establishment of the Special Fourth Avenue Enhanced Commercial District

In order to carry out the special purposes of this Resolution as set forth in Article XIII, Chapter 2, the #Special Fourth Avenue Enhanced Commercial District# is hereby established.

Chapter 2 - Construction of Language and Definitions

12-10 Definitions

Special 125th Street District

Special Fourth Avenue Enhanced Commercial District

The "Special Fourth Avenue Enhanced Commercial District" is a Special Purpose District designated by the letters "EC" in which special regulations set forth in Article XIII, Chapter 2 apply.

* * *

Chapter 4 – Sidewalk Café Regulations

* * *

14-44**Special Zoning Districts Where Certain Sidewalk Cafes are Permitted**

#Enclosed# or #unenclosed sidewalk cafes# shall be permitted, as indicated, in the following special zoning districts, where allowed by the underlying zoning. #Small sidewalk cafes#, however, may be located on #streets# or portions of #streets# within special zoning districts pursuant to the provisions of Section 14-43 (Locations Where Only Small Sidewalk Cafes Are Permitted).

* * *

Brooklyn	#Enclosed Sidewalk Cafe#	#Unenclosed Sidewalk Cafe#
<u>Fourth Avenue Enhanced Commercial District</u>	No	Yes
Bay Ridge District	Yes	Yes
Coney Island District	No	Yes
Coney Island Mixed Use District	Yes	Yes
Downtown Brooklyn District	Yes	Yes
Mixed Use District-8 (Greenpoint-Williamsburg)	Yes	Yes
Ocean Parkway District*	Yes	Yes
Sheepshead Bay District	No	Yes

* #Sidewalk cafes# are not allowed on Ocean Parkway

* * *

Article XIII: Special Purpose Districts

* * *

Chapter 2**Special Fourth Avenue Enhanced Commercial District**

ALL TEXT IN ARTICLE XIII, CHAPTER 2 IS NEW

132-00**GENERAL PURPOSES**

The #Special Fourth Avenue Enhanced Commercial District#, in the Borough of Brooklyn, established in this Resolution is designed to promote and protect public health, safety and general welfare. These general goals include, among others, the following specific purposes:

- to enhance the character of the area by ensuring that ground floor space within buildings is occupied by establishments that promote a lively and engaging pedestrian experience along Fourth Avenue;
- to limit the number of curb cuts along Fourth Avenue in order to minimize conflicts between vehicles and pedestrians; and
- to promote the most desirable use of land in the area and thus preserve, protect and enhance the value of land and buildings and thereby protect City tax revenues.

132-01**Definitions**

Ground floor level

For the purposes of this Chapter, “ground floor level” shall mean a #building’s# lowest #story# located within 30 feet of the Fourth Avenue #street wall# of the #building#.

132-10**GENERAL PROVISIONS**

The provisions of this Chapter shall apply to all #buildings# with Fourth Avenue #street# frontage.

The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.

132-20**SPECIAL USE REGULATIONS**

The special #use# regulations of this Section shall apply to the Fourth Avenue #street walls# of #developments# and to #buildings enlarged# on the #ground floor level#, where such #ground floor level# fronts upon Fourth Avenue. For #buildings# fronting along multiple #streets#, the required percentage of #ground floor level street wall# allocated to certain #uses#, as set forth in this Section, shall apply only to the portion of the #building’s ground floor level# fronting upon Fourth Avenue.

The following shall be exempt from the #use# provisions of this Section:

- #buildings# located in #Commercial Districts# on a #zoning lot# with a width of less than 20 feet, as measured along the Fourth Avenue #street line#, provided such #zoning lot# existed on (date of adoption); and
- any #community facility building# used exclusively for either a #school#, as listed in Use Group 3, or a house of worship, as listed in Use Group 4.

132-21**Special Ground Floor Level Use Requirements in Commercial Districts**

In #Commercial Districts#, the following #use# provisions shall apply to the #ground floor level# of a #building#. In addition to these provisions, permitted #uses# shall comply with the provisions of Sections 132-30 (SPECIAL TRANSPARENCY REGULATIONS), and 132-40 (SPECIAL PARKING REGULATIONS).

- Mandatory #commercial uses# for a portion of the #ground floor level#
- Mandatory #commercial use# regulations shall

apply to an area of a #building’s ground floor level# defined by an aggregate width equal to at least 50 percent of a #building’s# Fourth Avenue #street wall# and a depth equal to at least 30 feet, as measured from the Fourth Avenue #street wall#. Such an area on the #ground floor level# shall be occupied by #commercial uses# listed in Use Groups 5, 6A, 6C excluding banks and loan offices, 7B, 8A, 8B, or 9A.

- Remaining portion of #ground floor level#

The remaining portion of the #ground floor level# shall be occupied by any non-#residential use# permitted by the underlying district regulations, except that:

- #residential# lobbies, and an associated vertical circulation core shall be permitted in such remaining area, provided that the #street wall# width of such lobbies shall not exceed 25 feet, as measured along the Fourth Avenue #street line#. In addition, the 30 foot depth requirement for #commercial uses# pursuant to paragraph (a) of this Section
 - may be encroached upon where necessary to accommodate a vertical circulation core associated with such #residential# lobby; and
 - off-street parking spaces and entrances to such spaces shall comply with the provisions of Section 132-40 (SPECIAL PARKING REGULATIONS).
- Location of #ground floor level#

The finished floor of the #ground floor level# shall be located not higher than two feet above nor lower than two feet below the as-built level of the adjacent Fourth Avenue public sidewalk.

132-22**Special Ground Floor Level Use Requirements in Residence Districts**

In #Residence Districts#, all #uses# permitted by the underlying district regulations are permitted on the #ground floor level#, provided such #uses# comply with the provisions of Sections 132-30 (SPECIAL TRANSPARENCY REGULATIONS), where applicable, and 132-40 (SPECIAL PARKING REGULATIONS).

132-30**SPECIAL TRANSPARENCY REGULATIONS**

The special transparency regulations of this Section shall apply to the Fourth Avenue #street walls# of #developments# and to portions of #buildings enlarged# on the #ground floor level#, where such #ground floor level# fronts upon Fourth Avenue. For #buildings# fronting along multiple #streets#, the required percentage of #ground floor level street wall# allocated to transparent materials, as set forth in this Section, shall apply only to the portion of the #building’s ground floor level# fronting upon Fourth Avenue.

The following shall be exempt from the transparency provisions of this Section:

- #buildings# located in #Residence Districts# where the #ground floor level# of such #buildings# contains #dwelling units# or #rooming units#; and
- #buildings# located in #Commercial Districts# on a #zoning lot# with a width of less than 20 feet, as measured along the Fourth Avenue #street line#, provided such #zoning lot# existed on (date of adoption); and
- any #community facility building# used exclusively for either a #school# or a house of worship.

132-31**Special Ground Floor Level Transparency Requirements**

The #ground floor level street wall# shall be glazed with transparent materials which may include show windows, transom windows or glazed portions of doors, provided such transparent materials have a minimum width of two feet. Such transparency shall occupy at least 50 percent of the surface area of each such #ground floor level street wall# between a height of two feet, and 12 feet, or the height of the ground floor ceiling, whichever is higher as measured from the adjoining sidewalk. The lowest point of any transparency that is provided to satisfy the requirements of this Section shall not be higher than four feet above the #curb level#, with the exception of transom windows, or portions of windows separated by mullions or other structural dividers. In addition, the maximum width of a portion of the #ground floor level street wall# without transparency shall not exceed ten feet.

However, where an entrance to an off-street parking facility is permitted on Fourth Avenue in accordance with the provisions of Section 132-42 (Special Curb Cut Requirements), the transparency requirements of this Section shall not apply to the portion of the #ground floor level street wall# occupied by such entrance.

132-40**SPECIAL PARKING REGULATIONS**

The provisions of this Section shall apply to all #buildings# with Fourth Avenue #street# frontage.

132-41**Special Location of Parking Spaces Requirements**

All off-street parking spaces shall be located within a #completely enclosed building#. Enclosed, off-street parking spaces shall be permitted on the ground floor of a #building# only where they are located beyond 30 feet of such #building’s# Fourth Avenue #street wall#. Entrances to such spaces along Fourth Avenue shall be permitted only where a curb cut is allowed in accordance with the provisions of Section 132-42 (Special Curb Cut Requirements).

132-42**Special Curb Cut Requirements**

For #zoning lots# with frontage along Fourth Avenue and another #street#, curb cuts accessing off-street parking spaces shall not be permitted along Fourth Avenue. Curb cuts accessing off-street parking spaces shall be permitted on Fourth Avenue only where such curb cut is located on a #zoning lot# that:

- is an #interior lot# fronting along Fourth Avenue;
- existed on (date of adoption);
- has a width of at least 60 feet, as measured along the Fourth Avenue #street line#; and
- has a #lot area# of at least 5,700 square feet.

YVETTE V. GRUEL, Calendar Officer**City Planning Commission****22 Reade Street, Room 2E****New York, New York 10007****Telephone (212) 720-3370****s6-21****COMMUNITY BOARDS****■ PUBLIC HEARINGS**

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO. 16 - Tuesday, September 27, 2011 at 7:00 P.M., 444 Thomas S. Boyland Street, Brooklyn, NY

#110259PQK

33 Somers Street

IN THE MATTER OF an application submitted by the Administration for Children’s Services and the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter for the acquisition of property for continued use as a day care center.

s21-27

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF THE BRONX

COMMUNITY BOARD NO. 12 - Thursday, September 22, 2011, 6:30 P.M., Town Hall, 4101 White Plains Road c/o East 229th St., Bronx, NY

BSA# 319-53-BZ

1135 East 227th Street

Public Hearing to gather the consensus/comments of the community regarding an application to extend the term of the variance permitting the maintenance of a gasoline service station and automobile repair shop with no body repairs.

s20-22

PUBLIC NOTICE IS HEREBY GIVEN THAT the following matters have been scheduled for public hearing by Community Boards:

BOROUGH OF BROOKLYN

COMMUNITY BOARD NO. 13 - Wednesday, September 21, 2011, 7:00 P.M., Coney Island Hospital, 2nd Floor (Auditorium), 2601 Ocean Parkway, Brooklyn, NY

Public Hearing on proposed Capital and Expense items for inclusion in Budget Requests for FY 2013.

s15-21

EMPLOYEES RETIREMENT SYSTEM**■ INVESTMENT MEETING**

Please be advised that the next Investment Meeting of the Board of Trustees of the New York City Employees’ Retirement System has been scheduled for Friday, September 23, 2011 at 9:00 A.M. to be held at the New York City Employees’ Retirement System, 335 Adams Street, 22nd Floor, Boardroom, Brooklyn, NY 11201-3751.

s16-22

LANDMARKS PRESERVATION COMMISSION**■ PUBLIC HEARINGS**

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Title 25, chapter 3 of the Administrative Code of the City of New York (Sections 25-307, 25-308, 25-309, 25-313, 25-318, 25-320) (formerly Chapter 8-A, Sections 207-6.0, 207-7.0, 207-12.0, 207-17.0, and 207-19.0), on Tuesday, **September 27, 2011 at 9:30 A.M.** in the morning of that day, a public hearing will be held in the Conference Room at 1 Centre Street, 9th Floor, Borough of Manhattan with respect to the following properties and then followed by a public meeting. Any person requiring reasonable accommodation in order to participate in the hearing or attend the meeting should call or write the Landmarks Commission no later than five (5) business days before the hearing or meeting.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 12-0238 - Block 2113, lot 13 and 14-
121-123 Fort Greene Place - Brooklyn Academy of Music Historic District

A pair of adjacent rowhouses built in 1857. Application is to construct stoops and rooftop additions, demolish existing rear yard additions, and construct new rear yard additions.
Zoned R6B. Community District 2.

CERTIFICATE OF APPROPRIATENESS

BOROUGH OF BROOKLYN 11-0148 - Block 224, lot 2-
113 Columbia Heights - Brooklyn Heights Historic District

A Greek Revival style rowhouse built c. 1837-40. Application is to modify a stair bulkhead constructed without Landmarks Preservation Commission permits. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 11-7865 - Block 20, lot 6-25 Jay Street, aka 19-27 Jay Street - DUMBO Historic District

A Renaissance Revival style factory building designed by Flemer & Koehler and built in 1892. Application is to construct a rooftop addition and replace windows. Zoned MX-2/R-8A. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 12-3332 - Block 235, lot 60-156 Hicks Street - Brooklyn Heights Historic District
An eclectic style house built in 1861-79. Application is to modify a bay window and install a deck. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 12-3568 - Block 253, lot 17-265 Hicks Street - Brooklyn Heights Historic District
An Anglo-Italianate style house built in 1861-1879. Application is to construct a rooftop addition, install a balcony and alter openings. Zoned R6-LH1. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 12-2562 - Block 219, lot 14-46 Willow Street - Brooklyn Heights Historic District
A Greek Revival-style house built in 1841. Application is to construct dormers, alter window openings, and construct a new balcony and deck. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 12-2550 - Block 1951, lot 8-71 St. James Place - Clinton Hill Historic District
An Italianate style rowhouse designed by William B. Nichols, and built in 1868. Application is to remove a window at the rear elevation and install a door and metal railings. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 12-3410 - Block 951, lot 5-185 6th Avenue - Park Slope Historic District
A late Italianate style rowhouse designed by George White and built in 1874. Application is to legalize the replacement of stoop railings without Landmarks Preservation Commission permits. Community District 6.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF BROOKLYN 12-2638 - Block 1228, lot 34-834 St. Mark's Avenue - Crown Heights North Historic District
A semi-attached Georgian style house designed by Slee & Bryson and built in 1919. Application is to install a barrier-free access lift and construct a rear addition. Zoned R6. Community District 8.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 11-6744 - Block 146, lot 18-142 Duane Street - Tribeca South Historic District
An Italianate style store and loft building built in 1860. Application is to construct a pergola on the roof. Community District 1.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 11-8691 - Block 136, lot 7-46 Warren Street - Tribeca South Historic District Extension
An Italianate style store and loft building designed by Samuel Warner, and built c. 1854. Application is to construct an elevator bulkhead. Community District 1.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-3741 - Block 214, lot 4-403 Greenwich Street - Tribeca West Historic District
A mid-20th-century commercial style building designed by Moore and Landsiedel and built in 1947. Application is to demolish the building and construct a new building. Zoned C6-2A (TMU). Community District 1.

BINDING REPORT
BOROUGH OF MANHATTAN 12-3672 - Block 73, lot 2-84 South Street - South Street Seaport Historic District
A utilitarian service building. Application is to enlarge and reclad the existing structure. Zoned C2-8. Community District 1.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-2135 - Block 231, lot 1-301 Canal Street - SoHo-Cast Iron Historic District
A two-story commercial building built c.1955. Application is to replace a storefront, security gate and signage installed without Landmarks Preservation Commission permits. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-3517 - Block 568, lot 9-12 East 11th Street - Greenwich Village Historic District
An Italianate style rowhouse built in 1852. Application is to construct a rear yard addition and install lot line windows. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-2157 - 572, lot 3-406 6th Avenue - Greenwich Village Historic District
A building originally built as a rowhouse in 1839, and altered in 1896 and 1902 with the addition of a sheetmetal facade with Classical Revival style details. Application is to install signage. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-2266 - Block 633, lot 37-703-707 Washington Street, aka 145 Perry Street - Greenwich Village Historic District
A two-story stucco building, used as a freight loading station since 1938. Application is to demolish the building and construct four new buildings. Zoned C1-6A. Community District 2.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-3760 - Block 1287, lot 69-

2-4 East 52nd Street - The Morton and Nellie Plant House - Individual Landmark

An Italianate style townhouse designed by Robert W. Gidson and built in 1905. Application is to modify storefront infill and construct a rooftop addition. Zoned C5-3. Community District 5.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-0176 - Block 1170, lot 1-390 West End Avenue - Apthorp Apartments - Individual Landmark

An Italian Renaissance style apartment building designed by Clinton and Russell and built in 1906-08. Application is to create a new door opening. Community District 7.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-3576 - Block 1244, lot 26-326 West 80th Street - Riverside Drive - West 80th -81st Street Historic District
An Elizabethan Renaissance Revival style town house designed by Clarence True and built in 1898-99. Application is to alter the rear facade and remove special windows. Community District 7.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 11-6843 - Block 1196, lot 35-227 Central Park West, aka 2 West 83rd Street - Upper West Side/Central Park West Historic District
A Renaissance Revival style flats building with neo-Grec and Queen Anne style elements designed by Thom & Wilson and built in 1888-89. Application is to legalize telecom antennas installed in non-compliance with Miscellaneous Amendment 04-2838 and to install additional antennas. Community District 7.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-2790 - Block 1227, lot 36-416 Amsterdam Avenue - Upper West Side/Central Park West Historic District
A Renaissance Revival style tenement building designed by Charles See, and built in 1895. Application is to install new storefront infill and signage. Community District 7.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 12-3185 - Block 1170, lot 142-220 West 79th Street - Upper West Side/Central Park West Historic District
A Renaissance Revival style rowhouse designed by Thom and Wilson and built in 1894. Application is to construct a rear yard addition. Zoned R10A. Community District 7.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 11-4731 - Block 1505, lot 33-75 East 93rd Street - (former) George F. Baker House - Individual Landmark
A modified Federal style residence designed by Delano & Aldrich and built in 1917-18. Application is to install telecom antennas. Community District 8.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 11-9003 - Block 1399, lot 20-851 Lexington Avenue - Upper East Side Historic District Extension
An altered neo-Grec style rowhouse designed by Robert H. Coburn, and built in 1880-81. Application is to modify storefront infill installed without Landmarks Preservation Commission permits. Community District 8.

CERTIFICATE OF APPROPRIATENESS
BOROUGH OF MANHATTAN 11-4803 - Block 1831, lot 33-1912 7th Avenue - First Corinthian Baptist Church (Regent Theater) - Individual Landmark
A Renaissance Revival style theatre building designed by Thomas W. Lamb and built in 1912-1913. Application is to install telecom antennas. Community District 10.

s14-27

TRANSPORTATION

■ PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN, pursuant to law, that the following proposed revocable consents, have been scheduled for a public hearing by the New York City Department of Transportation. The hearing will be held at 55 Water Street, 9th Floor, Room 945 commencing at 2:00 P.M. on Wednesday, October 5, 2011. Interested parties can obtain copies of proposed agreements or request sign-language interpreters (with at least seven days prior notice) at 55 Water Street, 9th Floor SW, New York, NY 10041, or by calling (212) 839-6550.

#1 In the matter of a proposed revocable consent authorizing FB Capital Inc. to construct, maintain and use a fenced-in area on the south sidewalk of East 70th Street, east of Park Avenue, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2022 and provides among other terms and conditions for compensation payable to the City according to the following schedule:

From the Approval Date to June 30, 2022-\$25/annum

the maintenance of a security deposit in the sum of \$5,000 and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

#2 In the matter of a proposed revocable consent authorizing Metro-North Commuter Railroad to continue to maintain and use security bollards on the north sidewalk of East 43rd Street, east sidewalk of Vanderbilt Avenue, north of East 42nd Street and west sidewalk of Lexington Avenue, in the Borough of Manhattan. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2022.

There shall be no compensation required for this revocable consent

there shall be no security deposit and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000.

#3 In the matter of a proposed revocable consent authorizing Brooklyn Events Center, LLC to construct, maintain and use security bollards, concrete security wall with fence and benches on the south sidewalk of Atlantic Avenue, and north sidewalk of Flatbush Avenue, in the Borough of Brooklyn. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2022. There shall be no compensation required for this revocable consent

the maintenance of a security deposit in the sum of \$66,300 and the filing of an insurance policy in the minimum amount of \$250,000/\$1,000,000 for bodily injury and property damage for each occurrence in the aggregate amount of \$100,000

#4 In the matter of a proposed revocable consent authorizing Consolidated Edison Company of NY to construct, maintain and use improvements ancillary to, but not within, a franchise granted prior to July 1, 1990. The improvements consist of antennas, equipment boxes and conduits on the tops and sides of Department of Transportation street light poles, in the Boroughs of Manhattan, Bronx, Brooklyn, Queens and Staten Island. The proposed revocable consent is for a term of ten years from the date of approval by the Mayor to June 30, 2022 and provides among others terms and condition for compensation payable to the city according to the following schedule:

From the Approval Date to June 30, 2012 - \$66,0060/annum.

For the period July 1, 2012 to June 30, 2013 - \$67,921
For the period July 1, 2013 to June 30, 2014 - \$69,842
For the period July 1, 2014 to June 30, 2015 - \$71,763
For the period July 1, 2015 to June 30, 2016 - \$73,684
For the period July 1, 2016 to June 30, 2017 - \$75,605
For the period July 1, 2017 to June 30, 2018 - \$77,526
For the period July 1, 2018 to June 30, 2019 - \$79,447
For the period July 1, 2019 to June 30, 2020 - \$81,368
For the period July 1, 2020 to June 30, 2021 - \$83,289
For the period July 1, 2021 to June 30, 2022 - \$85,210

the maintenance of a security deposit in the sum of \$4,400 and the filing of an insurance policy for bodily injury, including death, or property damage, in the following minimum amounts: \$1,000,000 for any one occurrence, and annual aggregate \$5,000,000.

s14-o5

PROPERTY DISPOSITION

CITYWIDE ADMINISTRATIVE SERVICES

MUNICIPAL SUPPLY SERVICES

■ SALE BY AUCTION

PLEASE NOTE:

THE AUTO AUCTION DATED SEPTEMBER 28, 2011 HAS BEEN CANCELLED.

PUBLIC AUCTION SALE NUMBER 12001-E

NOTICE IS HEREBY GIVEN of a public auction of City fleet vehicles consisting of cars, vans, light duty vehicles, trucks, heavy equipment and miscellaneous automotive equipment to be held on WEDNESDAY, OCTOBER 12, 2011 (SALE NUMBER 12001-E). Viewing is on auction day only from 8:30 A.M. until 9:00 A.M. The auction begins at 9:00 A.M.

LOCATION: 570 Kent Avenue, Brooklyn, NY (in the Brooklyn Navy Yard between Taylor and Clymer Streets).

A listing of vehicles to be offered for sale in the next auction can be viewed on our website, on the Friday prior to the sale date at:

<http://www.nyc.gov/autoauction> or
<http://www.nyc.gov/autoauctions>

Terms and Conditions of Sale can also be viewed at this site.

For further information, please call (718) 417-2155 or (718) 625-1313.

s20-o12

POLICE

OWNERS ARE WANTED BY THE PROPERTY CLERK DIVISION OF THE NEW YORK CITY POLICE DEPARTMENT.

The following listed property is in the custody, of the Property Clerk Division without claimants.

Recovered, lost, abandoned property, property obtained from prisoners, emotionally disturbed, intoxicated and deceased persons; and property obtained from persons incapable of caring for themselves.
Motor vehicles, boats, bicycles, business machines, cameras, calculating machines, electrical and optical property, furniture, furs, handbags, hardware, jewelry, photographic equipment, radios, robes, sound systems, surgical and musical instruments, tools, wearing apparel, communications equipment, computers, and other miscellaneous articles.
INQUIRIES

Inquiries relating to such property should be made in the Borough concerned, at the following office of the Property Clerk.

FOR MOTOR VEHICLES

(All Boroughs):

- * College Auto Pound, 129-01 31 Avenue, College Point, NY 11354, (718) 445-0100
- * Gowanus Auto Pound, 29th Street and 2nd Avenue, Brooklyn, NY 11212, (718) 832-3852
- * Erie Basin Auto Pound, 700 Columbia Street, Brooklyn, NY 11231, (718) 246-2029

FOR ALL OTHER PROPERTY

- * Manhattan - 1 Police Plaza, New York, NY 10038, (212) 374-4925.
- * Brooklyn - 84th Precinct, 301 Gold Street, Brooklyn, NY 11201, (718) 875-6675.
- * Bronx Property Clerk - 215 East 161 Street, Bronx, NY 10451, (718) 590-2806.
- * Queens Property Clerk - 47-07 Pearson Place, Long Island City, NY 11101, (718) 433-2678.
- * Staten Island Property Clerk - 1 Edgewater Plaza, Staten Island, NY 10301, (718) 876-8484.

j1-d31

PROCUREMENT

"The City of New York is committed to achieving excellence in the design and construction of its capital program, and building on the tradition of innovation in architecture and engineering that has contributed to the City's prestige as a global destination. The contracting opportunities for construction/construction services and construction-related services that appear in the individual agency listings below reflect that commitment to excellence."

ADMINISTRATION FOR CHILDREN'S SERVICES

■ SOLICITATIONS

Human / Client Services

NON-SECURE DETENTION GROUP HOMES –

Negotiated Acquisition – Judgment required in evaluating proposals - PIN# 06811N0004 – DUE 05-31-13 AT 2:00 P.M. – The Administration for Children's Services, Division of Youth and Family Justice is soliciting applications from organizations interested in operating non-secure detention group homes in New York City. This is an open-ended solicitation; applications will be accepted on a rolling basis until 2:00 P.M. on 5/31/13.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Administration for Children's Services, 150 William Street, 9th Floor, New York, NY 10038.
Patricia Chabla (212) 341-3505; Fax: (212) 341-3625; patricia.chabla@dfa.state.ny.us

j1-n14

CITYWIDE ADMINISTRATIVE SERVICES

■ INTENT TO AWARD

Goods & Services

BLOOM ENERGY CORPORATION - 100KW FUEL CELL AND RELATED SERVICES – Sole Source –

Available only from a single source - PIN# 85612S0003 – DUE 10-03-11 AT 5:00 P.M. – The Bloom fuel cell will be used by the City of New York Department of Citywide Administrative Services ("DCAS") to provide electricity to City Hall.

DCAS intends to enter into a sole source negotiation with Bloom Energy Corporation for the 100kw Bloom Energy fuel cell, installation, interconnection, and warranty services.

Any firm which believes that it can also provide this 100kw Bloom fuel cell along with the accompanying installation, interconnection, and warranty services is invited to express an interest by letter, which must be received no later than 5:00 P.M., on Monday, October 3, 2011 to the attention of Robert Aboulafia, Deputy Agency Contracting Officer, DCAS Office of Contracts, 18th Floor North, One Centre Street, New York, NY 10007 or email: raboulafia@dcas.nyc.gov; Phone: (212) 669-3538; Fax: (212) 669-3570.

s15-21

MUNICIPAL SUPPLY SERVICES

■ SOLICITATIONS

Goods

FRUITS AND VEGETABLES, FRESH - DOC –

Competitive Sealed Bids – PIN# 8571200099 – DUE 10-06-11 AT 10:00 A.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Department of Citywide Administrative Services, 1 Centre Street, 18th Floor, New York, NY 10007.
Anna Wong (212) 669-8610; Fax: (212) 669-7603; dcasdmssbids@dcas.nyc.gov

s21

■ AWARDS

Goods

NYS CONTR FOR TALLY TONER CARTRIDGE AND MAINT. KIT – Intergovernmental Purchase – PIN# 23590070 – AMT: \$417,300.00 – TO: Peripheral Company Inc., P.O. Box 1055, Medford, NJ 08055-6055. NYS Contract #58412.

● **NYS CONTR FOR APPLE COMPUTER EQUIPMENT - NYPD** – Intergovernmental Purchase – PIN# 23590052/8571200105 – AMT: \$115,960.00 – TO: Apple, Inc., 1 Infinite Loop, Cupertino, CA 95014. NYS Contract #PT65428.

● **FLEET MANAGEMENT SERVICES - OGS** – Intergovernmental Purchase – PIN# 8571200011 – AMT: \$6,800,000.00 – TO: Automotive Rentals Inc., 4001 Leadenhall Road, Mt. Laurel, NJ 08054. NYS Contract #PS63512.

Suppliers wishing to be considered for a contract with the Office of General Services of New York State are advised to contact the Procurement Services Group, Corning Tower, Room 3711, Empire State Plaza, Albany, NY 12242 or by phone: 518-474-6717.

s21

■ VENDOR LISTS

Goods

EQUIPMENT FOR DEPARTMENT OF SANITATION – In accordance with PPB Rules, Section 2.05(c)(3), an acceptable brands list will be established for the following equipment for the Department of Sanitation:

- A. Collection Truck Bodies
- B. Collection Truck Cab Chassis
- C. Major Component Parts (Engine, Transmission, etc.)

Applications for consideration of equipment products for inclusion on the acceptable brands list are available from: Mr. Edward Andersen, Procurement Analyst, Department of Citywide Administrative Services, Office of Citywide Procurement, 1 Centre Street, 18th Floor, New York, NY 10007. (212) 669-8509.

j5-d31

COMPTROLLER

■ AWARDS

Services (Other Than Human Services)

50H HEARINGS AND ANCILLARY SERVICES – Renewal – PIN# 01509BLA0004 – AMT: \$934,206.00 – TO: Billig S Brooks, 80 Broad Street, Suite 2401, New York, NY 10004.

s21

ENVIRONMENTAL PROTECTION

PROCUREMENT MANAGEMENT OFFICE

■ INTENT TO AWARD

Goods

LUDLUM EQUIPMENT – Sole Source – Available only from a single source - PIN# 2802021 – DUE 10-03-11 AT 11:00 A.M. – Department of Environmental Protection intends to enter into a sole source agreement with Safe Environment Engineering for their Ludlum equipment. Any firm which believes it can also provide the required equipment is invited to do so indicate by letter or e-mail to attention of Ira M. Elmore, Deputy Agency Chief Contracting Officer, Department of Environmental Protection, 59-17 Junction Blvd., 17th Floor, Flushing, NY 11373. (718) 595-3259; Fax: (718) 595-3295; ielmore@dep.nyc.gov

s19-23

Goods & Services

CHARM SOFTWARE AND TRAINING – Sole Source – Available only from a single source - PIN# 2802018 – DUE 10-03-11 AT 11:00 A.M. – Department of Environmental Protection intends to enter into a sole source agreement with Mark Eltgroth LLC for their CHARM software and training. Any firm which believes it can also provide the required software and training is invited to do so indicate by letter or e-mail to attention of Ira M. Elmore, Deputy Agency Chief Contracting Officer, Department of Environmental Protection, 59-17 Junction Blvd., 17th Floor, Flushing, NY 11373. (718) 595-3259; Fax: (718) 595-3295; ielmore@dep.nyc.gov

s19-23

HEALTH AND HOSPITALS CORPORATION

The New York City Health and Hospitals Corporation is regularly soliciting bids for supplies and equipment at its Central Purchasing Offices, 346 Broadway, New York City, Room 516, for its Hospitals and Diagnostic and Treatment Centers. All interested parties are welcome to review the bids that are posted in Room 516 weekdays between 9:00 a.m. and 4:30 p.m. For information regarding bids and the bidding process, please call (212) 442-4018.

j1-d31

■ SOLICITATIONS

Goods

COMPRESSION SLEEVES AND SUPPLIES – Competitive Sealed Bids – PIN# QHN2012-1012EHC – DUE 10-07-11 AT 2:00 P.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Queens Health Network, 82-68 164th Street, "S" Building, 2nd Floor, Jamaica, NY 11432. Debra Baez (718) 883-6005; Fax: (718) 883-6222; pertuzd@nychhc.org

s21

Goods & Services

PROVIDE MONTHLY JANITORIAL SERVICES FOR THE ALEXANDER HAMILTON CLINIC – Competitive Sealed Bids – PIN# 11212010 – DUE 10-07-11 AT 3:00 P.M. Mandatory site visit scheduled for 9/27/11 and 9/28/11 at 11:00 A.M. both days at 2690 Frederick Douglass Boulevard. No bids will be mailed out after 9/30/11.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Lincoln Hospital Center, 234 East 149th Street, Bronx, NY 10451. Erik Bryan (718) 579-5532; Fax: (718) 579-4746; erik.bryan@nychhc.org

s21

Construction / Construction Services

QUEENS HOSPITAL CENTER: HEAL 11 - PACU/RECOVERY EXPANSION – Competitive Sealed Proposals – PIN# 34201101-B – DUE 10-24-11 AT 1:30 P.M. – The project is bid under the WICKS Law Reform. One General Construction Contract will be issued for this project. The G.C. Contract includes other three trades (Electrical Work, Mechanical Work, and Plumbing Work). Construction Work Estimate range between \$0.94M - \$1.15M. Goals: 19 percent MBE, 4 percent WBE. Bid documents are available at a non-refundable fee of \$50.00 per set, payable with either company check or money order. Mandatory pre-bid meetings and/or site visits are scheduled for Tuesday, October 04, 2011 and Wednesday, October 05, 2011 at 10:00 A.M. on both dates, at Queens Hospital Center, Facilities Management Dept., F-Building, 2nd Floor Conference Room, New York 11432. Each pre-bid conference will be followed by a walk-through. All prospective interested bidders must attend at least one of these meetings in order to submit a bid.

● **QUEENS HOSPITAL CENTER: HEAL 11 - NEW MODULAR BUILDING** – Competitive Sealed Proposals – PIN# 34201101-C – DUE 10-24-11 AT 1:30 P.M. – The project is bid under the WICKS Law Reform. One General Construction Contract will be issued for this project. The G.C. Contract includes other three trades (Electrical Work, Mechanical Work, and Plumbing Work). Construction Work Estimate range between \$2.26M - \$2.76M. Goals: 19 percent MBE, 4 percent WBE. Bid documents are available at a non-refundable fee of \$50.00 per set, payable with either company check or money order. Mandatory pre-bid meetings and/or site visits are scheduled for Tuesday, October 04, 2011 and Wednesday, October 05, 2011 at 1:00 P.M. on both dates, at Queens Hospital Center, Facilities Management Dept., F-Building, 2nd Floor Conference Room, New York 11432. Each pre-bid conference will be followed by a walk-through. All prospective interested bidders must attend at least one of these meetings in order to submit a bid.

Technical questions must be submitted in writing, by email to Emmanuel obtain using obadinae@nychhc.org no later than five (5) calendar days before bid opening.

Requires Trade Licenses (where applicable) under Article AAA of the State of New York. Please see above for the M/WBE goals that applies to each contract. These goals apply to any bid submitted of \$100,000 or more. Bidders not complying with these terms may have their bids declared non-responsive.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Health and Hospitals Corporation, 346 Broadway, 12 West, New York, NY 10013.
Emmanuel Obadina (212) 442-3680; Emmanuel.Obadina@nychhc.org

s21

Construction Related Services

REMOVE 2000GA OIL TANK – Competitive Sealed Bids – PIN# 1-5511200010 – DUE 10-14-11 AT 2:00 P.M.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
Sea View Hospital, 460 Brielle Avenue, Room 134, Staten Island, NY 10314. Pedro Irizarry (718) 317-3375; Fax: (718) 980-1021; pedro.irizarry@seaviewsi.nychhc.org

s21

HEALTH AND MENTAL HYGIENE

AGENCY CHIEF CONTRACTING OFFICER

■ SOLICITATIONS

Human / Client Services

NEW YORK/NY III SUPPORTED HOUSING CONGREGATE – Competitive Sealed Proposals – Judgment required in evaluating proposals - PIN# 81608PO076300R0X00-R – DUE 09-18-12 AT 4:00 P.M. – The Department is issuing a RFP to establish 3,000 units of citywide supportive housing in newly constructed or rehabilitated single-site buildings for various homeless populations pursuant to the New York III Supported Housing agreement. The subject RFP will be open-ended and proposals will be accepted on an on-going basis. The RFP is available on-line at <http://www.nyc.gov/html/doh/html/acco/acco-rfp-nynyccongregate-20070117-form.shtml>. A pre-proposal conference was held on March 6, 2007 at 2:00 P.M. at 125 Worth Street, 2nd Floor Auditorium, New York, N.Y. Any questions regarding this RFP must be sent in writing in advance to Contracting Officer at the above address or e-mailed to the above address. All proposals must be hand delivered at the Agency Chief Contracting Officer, Gotham Center, CN#30A, 42-09 28th Street, 17th Floor, Queens, NY 11101-4132, no later than September 18, 2012. As a minimum qualification requirement for (1) the serious and persistent mentally ill populations, the proposer must be incorporated as a not-for-profit organization, and (2) for the young adult populations, the proposer must document site control and identify the source of the capital funding and being used to construct or renovate the building.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
 Health and Mental Hygiene, ACCO, Gotham Center, CN#30A, 42-09 28th Street, 17th Floor, Queens, NY 11101-4132.
 Huguette Beauport (347) 396-6633; hbeauport@health.nyc.gov

a6-s17

BUREAU OF COMMUNICATIONS

■ INTENT TO AWARD

Services (Other Than Human Services)

AGENCY AD FOR MEDIA CAMPAIGNS – Negotiated Acquisition – PIN# 12CM026101R0X00 – DUE 09-22-11 AT 4:00 P.M. – The Department’s Bureau of Communications intend to enter a one year negotiated acquisition extension agreement to provide public health education and media campaigns for the Department of Health and Mental Hygiene with the following vendors: Bandujo Advertising and Design; Casbah Pictures, Inc.; Global Strategy Group; LPNY, Inc., Lovett Productions; Mind4, Inc.; Rivet Markcom, Inc.

Health and Mental Hygiene, 42-09 28th Street, 8th Floor.
 Jeffrey Escoffier (347) 396-4024; jescoffi@health.nyc.gov

s15-21

HOMELESS SERVICES

■ AWARDS

Human/Client Services

SINGLE ROOM OCCUPANCY/SRO – Required/Authorized Source – PIN# 07111R0003002 – AMT: \$626,868.00 – TO: Community Access, Inc., 2 Washington Street, 9th Floor, N.Y., N.Y. 10004.

s21

SINGLE ROOM OCCUPANCY/SRO – Required/Authority Source – PIN# 07111R0003013 – AMT: \$793,050.00 – TO: Pibly Residential Program, 2415 Westchester Avenue, Bronx, NY 10461.

● **SINGLE ROOM OCCUPANCY** – Required/Authorized Source – PIN# 07111R0003005 – AMT: \$713,034.00 – TO: Crown Heights Residence for Adults, HDFC, 2090 Adam Clayton Powell Jr. Blvd., Ste. 203, NY, NY 10027.

s21

OFFICE OF THE MAYOR

CRIMINAL JUSTICE COORDINATOR’S OFFICE

■ INTENT TO AWARD

Human/Client Services

MEDIATION SERVICES AND CONFLICT RESOLUTION INCLUDING ARBITRATION SERVICES – Renewal – PIN# 00209P0015CNVR001 – DUE 09-23-11 AT 3:00 P.M. – Safe Horizon, Inc. located at 2 Lafayette Street, New York, NY 10007. In currently under contract with the City by and through the Criminal Justice Coordinator’s Office (CJC) to provide mediation and arbitration services in New York and Kings Counties. CJC will be exercising the renewal option set forth in the original agreement. Safe Horizon has opted to subcontract out mediation and arbitration services in New York and Kings Counties to New York Peace Institute located at 346 Broadway, Suite 400W, New York, NY 10013. The term of the renewal will be 7/1/11 to 6/30/12. The anticipated annual amount of the contract will be \$299,278. Additionally, there is an option to renew either for one year from July 1, 2012 to June 30, 2013 or for two years from July 1, 2012 to June 30, 2014.

In accordance with Section 4-04 of the Procurement Policy Board Rules (PPB), the Criminal Justice Coordinator’s Office (CJC) is exercising its option to renew the above referenced contract for the period of one year beginning 7/1/11 to 6/30/12.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
 Office of the Mayor, 1 Centre Street, Room 1012 North, New York, NY 10007. Renise Ferguson (212) 788-2758; Fax: (212) 312-0831; rferguson@cityhall.nyc.gov

s21

NYC & COMPANY

■ SOLICITATIONS

Goods

LICENSING RIGHTS FOR CALENDARS, POSTERS AND OTHER PRINTED PRODUCTS – Request for Proposals – PIN# NYCCO-11-0914 – DUE 10-28-11 AT 12:00 P.M. – Available trademarks, include iconic City agencies such as the FDNY, NYPD, Department of Parks and Recreation, Taxi and Limousine Commission, Department of Sanitation, Department of Transportation and the Mayor’s Office of Film, Theatre and Broadcasting and the recently developed NYC logo. If you are interested in obtaining a copy of this solicitation, you can register your contact information on the form provided at www.nycgo.com/licensing. Once you have completed the form, you will be able to view and download a copy of the RFP. Alternatively, you may send a written request for the RFP, along with your contact information to Kevin Konrad at the address above or via email to licensing@nycgo.com. Any questions should be directed to Kevin Konrad at (212) 484-1200. There will be a pre-proposal conference held on September 28, 2011 at 1:30 P.M. at 810 Seventh Avenue, 3rd Fl. Attendance at this conference is optional. Submissions will be considered from manufactures, master licenses, agents or other parties. Prospective licenses are invited to compete for multiple classifications. Thank you in advance for your interest in creating quality licensed products for the City of New York.

NYC & Company, 810 7th Avenue, 3rd Floor, NY, NY 10019.
 Kevin Konrad (212) 484-1200; licensing@nycgo.com

s14-27

PARKS AND RECREATION

REVENUE AND CONCESSIONS

■ SOLICITATIONS

Services (Other Than Human Services)

RENOVATION, OPERATION AND MAINTENANCE OF A NEWSSTAND – Competitive Sealed Bids – PIN# M89-C-NS-2011 – DUE 10-24-11 AT 3:00 P.M. – At Union Square Park, Manhattan.
TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115.

Parks and Recreation, The Arsenal-Central Park, 830 Fifth Avenue, Room 407, New York, NY 10021.
 Davita Mabourakh (212) 360-1397; Fax: (212) 360-3434; davita.mabourakh@parks.nyc.gov

s20-03

■ AWARDS

Services (Other Than Human Services)

OPERATION AND MAINTENANCE OF A PARKING LOT – Other – PIN# B251-PL – The City of New York Department of Parks and Recreation (“Parks”) has awarded as a concession the operation and maintenance of a parking lot for the accommodation of the public at Manhattan Beach, Brooklyn, to City University of New York, on behalf of

Kingsborough Community College, 535 E. 80th Street, New York, NY 10075. The concession, which was solicited by a Different Selection Procedure approved by the Franchise and Concessions Review Committee on 10/13/2010, operates pursuant to a Sole Source Concession Agreement for a four (4) season term, expiring May 10, 2015. Compensation to the City will be as follows: Season 1: September 12, 2011 - May 15, 2012 - \$114,000; Season 2: September 10, 2012 - May 12, 2013 - \$114,000; Season 3: September 9, 2013 - May 11, 2014 - \$114,000; Season 4: September 8, 2014 - May 10, 2015 - \$114,000.

s21

SANITATION

AGENCY CHIEF CONTRACTING OFFICER

■ SOLICITATIONS

Services (Other Than Human Services)

REMOVE, STORE, AND DISPOSE DERELICT PASSENGER VEHICLES FROM BROOKLYN – Competitive Sealed Bids – PIN# 82711DV00043 – DUE 10-20-11 AT 11:00 A.M. – This is a Revenue Contract. There will be no pre-bid conference. There is no bid security deposit, performance, or payment bond. If you require additional information please contact Director Keith Woods, 718-642-4309 or by fax at 718-642-3250. Vendor Source # 76618.

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
 Department of Sanitation, 51 Chambers Street, Room 807, New York, NY 10013. ACCO (212) 437-5058; (212) 437-5057;

s21

YOUTH AND COMMUNITY DEVELOPMENT

■ INTENT TO AWARD

Human/Client Services

BEACON COMMUNITY CENTER RENEWALS – Renewal – PIN# 2601200XXXXA – DUE 09-26-11 AT 5:00 P.M. – In accordance with Section 4-04(a) of the Procurement Policy Board Rules, the Department of Youth and Community Development (DYCD) intends to renew the following Beacon Community Center contracts to operate the Centers in Queens which will provide sustained activity for middle school youth in the following six (6) core areas widely recognized as critical for healthy youth development: academic enhancement, life skills, career awareness/school to work transition, civic engagement/community building, recreation/health and fitness, and culture/art. The Contractor’s names and ID numbers, addresses and dollar amounts are indicated below. The term of the contracts shall be from September 1, 2011 to August 31, 2013.

26012009983A - \$664,634
 Goodwill Industries of Greater New York
 4-21 27th Avenue, Astoria, NY 11102

26012009982A - \$800,000
 The Child Center of NY
 60-02 Queens Blvd., Woodside, NY 11377

Use the following address unless otherwise specified in notice, to secure, examine or submit bid/proposal documents, vendor pre-qualification and other forms; specifications/blueprints; other information; and for opening and reading of bids at date and time specified above.
 Department of Youth and Community Development, 156 William Street, 2nd Floor, New York, NY 10033.
 Michael Owh (212) 442-5982; Fax: (212) 676-8129; mowh@dycd.nyc.gov

s21

AGENCY RULES

HEALTH AND MENTAL HYGIENE

■ NOTICE

NOTICE OF ADOPTION OF AMENDMENTS TO ARTICLE 141 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of the Charter, a notice of public hearing and notice of intention to amend Article 141 of the New York City Health Code (the “Health Code”) was published in the City Record on June 22, 2011, and a public hearing was held on July 27, 2011. No written comments were received and 4 individuals testified. These individuals represent tank cleaning companies and generally requested a greater deal of specification in Article 141 in terms of tank cleaning requirements. As such, these comments were outside the scope of these proposed changes, which concern required records and enforcement for non-compliance. Moreover, Article 141 requirements are specifically designed to allow for flexibility and conformance with various nationally-recognized standards in order to avoid being overly-prescriptive or delimiting. Accordingly, the Department does not believe that any changes to the proposal are necessary in response to these comments. At its September 13, 2011 meeting, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

This amendment to the New York City Health Code (“Health Code”) is promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter (“Charter”).

- Section 556 of the Charter provides the Department of Health and Mental Hygiene (“Department”) with

jurisdiction to regulate all matters affecting health in the City of New York.

- Section 556(a)(1) states that the Department shall enforce all provisions of law relative to the necessary health supervision of the purity and wholesomeness of the water supply and the sources thereof;
- Section 556(a)(3) says the Department shall exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto, and,
- Section 556(c)(7) says that the Department shall supervise and regulate the public health aspects of the water supply and sewage disposal and water pollution.
- Section 558(b) and (c) of the Charter empower the Board of Health (“Board”) to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends.
- Section 1043 of the Charter grants the Department rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

The purpose of the amendment is to:

- Clarify that failing to submit inspection reports after the Department of Health asks for them will be understood as meaning that the inspections never occurred, and
- Indicate that a separate violation for failing to conduct an inspection shall be issued for each year that a required inspection report is not submitted to the Department when requested.

Article 141 of the Health Code concerns the maintenance of the purity and sanitary condition of the City’s potable water supply. Thousands of New York City buildings keep their water supplies in water storage tanks. Section 141.07 (“Building Drinking Water Storage Tanks”) requires that whoever is in control of a building with one or more water tanks used to store and use potable drinking water must inspect the tanks each year and maintain inspection records for the Department’s review upon request. This amendment clarifies that failure to submit the required inspection records in response to a Department request will be considered sufficient evidence to prove that no inspection was conducted.

The amendment also revises the current rule to indicate that a separate violation shall be issued for each year that a required inspection report is not submitted to the Department when requested.

The amendment is as follows:

Matter in brackets [] is deleted.
 Matter underlined is new.

RESOLVED, that Section 141.07 of Article 141 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on June 30, 2009, be and the same hereby is amended to add a new subdivision (f) to clarify enforcement of the requirement for building owners to perform annual drinking water tank inspections, to be printed together with explanatory notes to read as follows:

**ARTICLE 141
 WATER SUPPLY SAFETY STANDARDS**

§141.07 Building Drinking Water Storage Tanks

- (a) **Applicability.** The owner, agent or other person in control of a building which has one or more water tanks used to store potable water which is distributed as part of the building’s drinking water supply system shall comply with the provisions of this section. This section does not apply to the domestic hot water system.
- (b) **Inspection Requirements.** The owner, agent or other person in control of a building shall have the water tank inspected at least once annually. The inspection shall include the examination of the general condition of the tank, including but not limited to the condition of overflow pipes, access ladders, air vents, roof access hatches and screens. The interior and exterior of the water tank and its sealed edges and seams shall be inspected for evidence of pitting, scaling, blistering or chalking, rusting, corrosion and leakage. Inspection of sanitary conditions, including the presence of sediment, biological growth, floatable debris and insects in the tank and rodent or bird activity on and around the tank, shall be performed. The inspection shall include sampling of the water in the water tank to verify the bacteriological quality of the water supply in compliance with Subpart 5-1 of the State Sanitary Code. Sample results shall be reported by a State

certified laboratory equipped to analyze drinking water, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater, published jointly by the APHA, the AWWA and the WEF.

(c) **Reporting and Record Keeping.** A written report documenting the results of such inspection shall be maintained by the owner, agent or other person in control of a building for at least 5 (five) years from the date of the inspection and such reports shall be made available to the Department upon request within 5 (five) business days. The inspection report shall state whether or not all applicable requirements were met at the time of inspection and provide a description of any non-compliance with those requirements.

(d) **Public Notice.** The owner, agent or other person in control of a building shall post in an easily accessible location to residents in each building served by a potable water tank a notice that inspection results are available upon request. The notice must be placed in a frame with a transparent cover. The public notice shall include the name, address, and phone number where inspection results can be requested. Upon receipt of a request, the owner or manager shall make a copy of the inspection results available within 5 (five) business days.

(e) **Corrective Actions.** When an inspection identifies any unsanitary condition, the owner, agent or other person in control of a building shall take the necessary steps to immediately correct the condition. If water sampling analysis of the water tank finds noncompliance with the bacteriological quality standards as outlined in Subpart 5-1 of the State Sanitary Code, this condition shall be reported to the Department within 24 hours. If it is found that the quality of such water is attributed to the sanitary condition of the water tank, the owner, agent or other person in control of a building shall clean the tank in accordance with section §141.09 of this Article. A water tank shall be cleaned whenever directed by the Department to correct an unsanitary condition.

(f) **Enforcement.** If an inspection report required by subdivision (b) of this section is not submitted to the Department when requested, such failure to submit shall be considered *prima facie* evidence that no inspection was conducted for the time period in question. A separate violation shall be issued for each year for which a required inspection report was not submitted to the Department when requested.

Notes: On September 13, 2011, the Board of Health amended §141.07 of Article 141 of the Health Code to add a new subdivision (f) to clarify enforcement of the requirements for building owners who fail to perform annual drinking water tank inspections.

☛ s21

NOTICE OF ADOPTION OF A RESOLUTION TO REPEAL ARTICLE 23 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the "Charter") and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice of intention to repeal Article 23 (Weight Reducing Groups) of the New York City Health Code (the "Health Code") was published in the City Record on June 22, 2011 and a public hearing was held on the proposal on July 26, 2011. No written comments or testimony were received. At its meeting on September 13, 2011, the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the "Health Code") are issued according to §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department") with authority to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

Basis and purpose of the rule change

As part of a comprehensive review of the Health Code, the Department of Health and Mental Hygiene (the Department or DOHMH) is requesting that the Board of Health repeal Article 23 (Weight Reducing Groups). The Department has not registered weight reducing groups, nor has it enforced Article 23's provisions for many years. Removing Article 23 from the books would reflect the Department's non-regulatory practice with regard to weight reducing groups.

Accordingly, the Department requests the Board to repeal Article 23.

The resolution is as follows:

RESOLVED, that Article 23, relating to Weight Reducing Groups, and the list of section headings in Article 23 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby are, REPEALED.

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NOTICE OF PUBLIC HEARING

Subject: Opportunity to Comment on Proposed Amendment of Article 5 (General Permit Provisions) of the New York City Health Code, (Title 24 of the Rules of the City of New York)

Date / Time: October 26, 2011, 10:00 A.M. – 12:00 P.M.

Location: New York City Department of Health and

Mental Hygiene
2 Gotham Center, 14th Floor, Room 14-44
42-09 28th Street
Long Island City, NY 11101-4132

Contact: Rena Bryant (347) 396-6071
New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
2 Gotham Center, 14th Floor, Room 14-15, Box 31
Long Island City, NY 11101-4132

Proposed Rule

The Department of Health and Mental Hygiene is proposing that the Board of Health amend Article 5 of the Health Code, related to general permit provisions. The amendments are intended to modernize permitting requirements and delete provisions that have become obsolete, such as listings of permits that the Department no longer issues. Remaining permit fees are unchanged.

Instructions

- Prior to the hearing, on or before 5:00 P.M., October 26, 2011 you may submit written comments about the proposed amendment by mail to Rena Bryant at the address above, by email at resolutioncomments@health.nyc.gov, online (without attachments) at www.nyc.gov/html/doh/html/notice/notice.shtml, or electronically through NYC RULES at www.nyc.gov/nycrules.

- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number above by October 12, 2011.

- Copies of written comments and a summary of oral comments received at the hearing will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the contact address above.

STATEMENT OF BASIS AND PURPOSE

Statutory Authority

These amendments to the New York City Health Code (the "Health Code") are issued in accordance with §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department") with authority to regulate all matters affecting the health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

Basis and purpose of the rule change

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the Department of Health and Mental Hygiene (the Department or DOHMH) is requesting that the Board of Health amend Article 5 ("General Permit Provisions"). The amendments are intended to modernize permitting requirements and delete provisions that have become obsolete, such as listings of permits that the Department no longer issues. Remaining permit fees are unchanged.

The following substantive changes are proposed:

§5.01 Scope. This article will be made applicable to all permits issued by the Department, Commissioner or Board of Health, regardless of whether issuance of such permits is authorized by the Health Code, the Charter, the N.Y.C. Administrative Code ("Administrative Code"), Department rule, or State law or rule. Its provisions would also be made generally applicable to both initial permit issuance and renewals.

§5.03 Definitions. This section would add a new definition for "arm's length transaction."

§5.05 Applications. Applicants for permits would continue to provide all the information currently required by the Department to enable the Department to determine the entities or individuals responsible for the permitted activity. The Department is proposing that this section be amended to prohibit granting a "new" permit to operate a business to entities or individuals who cannot prove that they purchased the business in accordance with an arm's length transaction. The Department's concern is that entities or individuals who have not operated in compliance with the Health Code reincorporate or form some other "new" operating entity as a means to avoid correcting violations and paying fines or penalties previously assessed against them in their operation of a similar business at the same or another location. "Arm's length transaction" is newly defined in §5.03 (Definitions), based on definitions in the Administrative Code and the rules of other City agencies.

§5.07 Expiration dates; fees and §5.09 Registration and certification fees. These sections would be extensively revised to delete references to permits, registrations and certificates of qualification (formerly applicable to laboratory personnel who are currently regulated by the State Department of Health) that are no longer issued by the Department. Descriptions of certain permits and licenses would also be updated. However, no changes are proposed in the actual fees charged for current permits except where permit fees have been amended by other law, such as permit fees for summer camps. This permit fee increase to \$200 for

summer camps is in accordance with New York Public Health Law §1393. Provisions related to fees for mobile vending have been simplified without changing the amount of any such fees. All mobile vending license and permit fees in the Health Code are the same as fees authorized by Administrative Code §17-308. A license fee authorized by Health Code §175.102 for a research and development installation using radioactive materials has been in effect since 1994, but was inadvertently omitted from the listings in this section. This licensing fee is now included in the listings.

§5.11 Permit not transferable; exception. No substantive change in the current provision is proposed. However, the Department is requesting that an addition be made to require existing permittees to notify the Department in writing within 10 business days of any change in officers, directors, shareholders, partners or members of a permitted entity so that the Department can maintain records regarding individuals responsible for actions of the permittee.

§5.13 Conditions of permit and Health Code to be observed. It is proposed that this provision be amended to incorporate a reference to the other applicable law under which a permit or license may be issued.

§5.17 Suspension and revocation by Board or Commissioner. It is proposed that this section be repealed and recodified, updating its procedures for revocation and suspension of permits and licenses. This section also outlines the opportunity for respondents to comment following receipt of a report from the administrative law judge conducting a hearing as to whether a license or permit should be further suspended or revoked.

§5.19 Denial, suspension and revocation; when effective; service of notice. It is proposed that this section be amended to incorporate a reference to orders that are issued as notice of such actions.

§5.21 Appeal to Board; stay of action. Provisions relating to permit revocation and suspension would be amended to reflect current practice. The most important change would be that continued operation of a permitted business or activity closed by the Department would not be allowed during the pendency of an appeal to the Board when the Commissioner has ordered revocation or suspension of the permit. In instances where a food service establishment or child care program has been closed for imminent or public health hazards that have not been corrected, resulting in the suspension of the permit, there is no public health rationale for authorizing continued operation of the establishment or service while an appeal to the Board is pending.

The resolution is as follows.

Matter that is underlined is new.

Matter in [brackets] is deleted.

RESOLVED, that the table of section headings and the Introductory Notes to Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

ARTICLE 5 GENERAL PERMIT PROVISIONS

- §5.01 Scope.**
- §5.03 Definitions.**
- §5.05 Applications.**
- §5.07 Expiration dates; fees.**
- §5.09 Registration fees.**
- §5.10 [Reserved]**
- §5.11 Permits not transferable; exception.**
- §5.13 Conditions of permit and Health Code to be observed.**
- §5.15 Permit to be kept on premises; mutilation prohibited.**
- §5.17 [Suspension] Permit suspension and revocation [by Board or Commissioner].**
- §5.19 Denial, suspension and revocation; when effective; service of notice.**
- §5.21 Appeal to Board; stay of action.**

Introductory Notes:

Article 5 was extensively amended by the Board of Health by resolution adopted xxx that modernized its provisions, deleting references to obsolete permits, licenses and registrations, and clarifying that its provisions apply to permits issued for all activities regulated by the Department, consistent with the law authorizing issuance of such permits.

RESOLVED, that §5.01 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be repealed and recodified, to be printed together with explanatory notes as follows:

§5.01 Scope. Article 5 contains the requirements for permits issued by the Commissioner or the Board of Health for activities regulated by Titles II, III and IV of the Health Code, the State Sanitary Code and the Administrative Code of the City of New York. The requirements for permits relating to vital records may be found in Title V of the Code.

Notes: Section 5.01 was repealed and recodified by resolution adopted on XXX, deleting obsolete provisions.

RESOLVED, that §5.03 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be amended, to be printed together with explanatory notes as follows:

§5.03 Definitions. When used in this Code:

(a) Arm's length transaction means a sale of a business for consideration that reflects the fair market value of such

business or its assets, between two informed and willing parties, that is not made, wholly or in part, for the purpose of enabling the seller to avoid liability for violations issued by the Department. A sale shall be presumed not to be an arm's length transaction if it is

(1) A sale to an individual, or to a corporation or other business that is owned by the spouse, domestic partner, parent, grandparent, child or stepchild of any of any of the sellers, or is the direct descendent of a grandparent, the spouse or domestic partner of any of the sellers;

(2) A sale to an individual or entity that has a business or financial interest in the seller; or

(3) A sale to an entity in which any of the sellers has a business or financial relationship.

(b) Permit means a written license and authorization to carry on specified activities as regulated by this Code or other applicable law enforced by the Department, and includes a [certificate of approval] registration required by this Code or other applicable law.

([b]) (c) Permittee means a person or other entity who holds a valid permit issued by the Board or Commissioner pursuant to this Code or other applicable law enforced by the Department.

Notes: §5.03 was amended by resolution adopted XXX to add a definition of "arm's length transaction," to re-letter subdivisions (a) and (b), and to recognize other law, in addition to the Health Code, that authorizes the Department or Commissioner to issue permits.

RESOLVED, that §5.05 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.05 Applications.

(a) Forms provided by Department. Application for a permit or for the renewal of a permit shall be made and submitted on forms furnished by the Department [(1) by the individual who is to be the permittee, or (2) if a partnership or group other than a corporation is to be the permittee, by one individual who is a member of the group, or (3) if a corporation is to be the permittee, by an officer of the corporation]. Applications may be submitted on paper or electronically.

(b) Applicant to be legally competent. The applicant shall be [21] 18 years of age or over. [The Commissioner, in his discretion, may waive this requirement for an applicant who is 18 years of age or over and under 21 years of age and who, in the opinion of the Commissioner, is sufficiently competent and responsible as to assure that the public health will not be jeopardized if a permit is granted to him or for the business, trade or occupation for which he is applying.]

(c) Applications to be complete. The application shall contain all information [called for] required by the [forms] Department. [It] If the applicant for the permit is a sole proprietorship, the application shall be signed by the [applicant] individual who will be the permittee. If the applicant is a partnership, the application shall be signed by a partner. If the applicant is a limited partnership, the application shall be signed by the managing or general partner. If the applicant is a corporation, the application shall be signed by an officer or director of the corporation or by any member, if management is vested in members. If the applicant is a limited liability company, the application shall be signed by any manager of the limited liability company. [and such] Such signature shall constitute an agreement that the permittee assumes responsibility for the conduct of the business, occupation or other activity concerned in accordance with the requirements of the Code or other applicable law.

(d) Application contents. The application shall be accompanied by such other information, evidence or documentation as the Department may require or as may be provided for in this Code[,] or other applicable law enforced by the Department, including but not limited to [In addition to the information specifically required to be submitted pursuant to this Code in applying for a permit or for the renewal thereof, or, if no specific information is required for certain permits pursuant to this Code, the Department may require] the following: [information]

(1) The name, age, [sex] gender, residence and business address, and telephone numbers of the permittee, each member of partnership, limited liability company or group, and each officer of the corporation, as applicable. [If the permittee is a partnership or other group, of each member of such partnership or group, and if the permittee is a corporation, of each officer of the corporation.]

(2) The ability of the permittee, or of its individual members or officers, to read and write English; and,],

(3) To the extent that such information is relevant to the conduct of the business, trade, occupation or other activity under permit, information concerning the permittee, its individual members or officers, relating to education, training or experience, moral character, physical health, addiction to alcohol or habit-forming drugs, history of prior criminal conviction, including violations and offenses, history of mental illness, and record of insolvency or bankruptcy.

(4) Proof of current Workers' Compensation and Disability Benefits insurance coverage for all employees, or of a certificate of exemption filed with the Workers' Compensation Board.

(5) Information to enable the Department to contact the permitted entity in an emergency.

(e) Compliance with applicable law. The Commissioner shall not issue a new or renewal permit unless, on the basis of the application and other papers submitted, and on the basis of Department or City investigation, if any, he or she is satisfied that the provisions of this Code or other applicable law enforced by the Department will be met.

(f) Outstanding fines or penalties. The Commissioner shall not issue or renew a permit unless[, on the basis of the application and other papers submitted, he is satisfied that] there are no unpaid outstanding fines, penalties or forfeitures imposed by the Administrative Tribunal established by [Article 7] §558 of the Charter, by the OATH Health Tribunal or the Environmental Control Board for violations of this Code or other applicable law enforced by the Department, which are due and payable by the applicant or the permittee.

(g) Outstanding uncorrected violations. The Commissioner shall not issue a new permit to any entity based on a sale or change of ownership of a permitted business or activity where Department or other records show outstanding uncorrected violations or unpaid fines and penalties, unless the applicant submits proof satisfactory to the Department that the transfer of the business was the result of an arm's length transaction. Such proof shall consist of documents showing that:

(1) The applicant has assumed complete management, control and operation of the permitted business or activity from the prior permittee;

(2) The applicant has paid market value consideration for the material assets of the permitted business; and

(3) Neither the applicant nor any member or officer of a partnership or corporation is related to the owners or managers of the entity holding the permit prior to the transfer of the permitted business.

The Commissioner's denial of an application pursuant to this subdivision shall be a final agency determination not subject to appeal to the Board of Health.

(h) Acceptance of application and fee no bar to denial of permit. The acceptance of an application and fee for a new permit shall not prevent the Commissioner from taking any action that he or she deems necessary, including, but not limited to, denial of a permit if Department or other investigation or pre-permit inspections disclose conditions or circumstances indicating that a new permit should not be issued. If a new permit is denied, the application fee shall not be refunded.

Notes: §5.05 was amended by resolution adopted by the Board of Health on XXX, updating its provisions to reflect current practice and concerns.

RESOLVED, that §5.07 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.07 Expiration dates; fees.

(a) [Application] Applications for permits [and certificates of qualifications] and for renewal thereof shall be accompanied by payment of fees prescribed by the following table. [The Department may delay collection of the fee prescribed until the issuance of the permit or certificate of qualification.] Permits [and certificates of qualification] shall expire and be renewed in accordance with the expiration date, if any, prescribed by such table:

Description of Activity Under Permit [Certificate of Qualification]	Health Code or other Law Section Reference	Fee	Date Expiration
ANIMALS: Permit to operate a pet shop, boarding kennel, training establishment for small animals or grooming parlor, where animals are kept overnight.	161.09(a)	\$70.00	December 31
ANIMALS: Permit to operate solely a grooming parlor where animals are not kept overnight.	161.09(a)	\$30.00	December 31
ANIMALS: Permit to [construct or] operate a shelter for homeless animals	161.09(b)	None	[Good until revoked] December 31
[ANIMALS:] [Permit to sell or keep for sale live rabbits or live poultry, including chickens, geese, ducks or other fowl]	[161.09(c)]	[None]	[Good until revoked]
[ANIMALS:] [Permit to yard horses or keep or yard cattle, swine, sheep or goats]	[161.09(d)]	[None]	[Good until revoked]
ANIMALS: Permit to operate a stable for horses	161.09(e) (d)	\$35.00	December 31
ANIMALS: To [engage in the business of importing or selling any animal of a species which is wild or to] operate a snake farm engaged in the preparation of antivenin	161.09(f) (e)	\$70.00	December 31
BARBER SHOP: Permit to conduct a barber shop	163.03	\$15.00	October 31
BATHING BEACH: Permit to operate a bathing beach or construct or maintain a bathing beach facility	[167.03(a)] 167.05(a)	\$595.00 for original \$375.00 for renewal season	November 1
BATHING ESTABLISHMENT: Permit to construct or maintain a bathing establishment	165.05(a)		April 30 (November 1 if seasonal)
—without pool		\$1,120.00 for original \$260.00 for renewal	
—with pool		\$1,980.00 for original \$245.00 for renewal annual \$240.00 for renewal seasonal	
[BUTCHER'S REFUSE:] [Permit to use a vehicle to remove, dispose of, convey or transport bones, offal, fat, raw hides, hoofs, entrails or other refuse parts of slaughtered animals, or bodies of dead animals, used or to be used in the manufacture or processing of inedible products.]	[155.01]	[\$15.00]	[September 30]
[CHILDREN'S INSTITUTION:] [Permit to conduct a children's institution]	[51.03]	[None]	[Two years from date of issuance]

CHILDREN'S [OVERNIGHT] SUMMER CAMPS: Permit to operate [a] any children's [overnight] summer camp:	48.05	[\$100] \$200	[March 31, 1975 and thereafter annually March 31] April 1 through September 15 annually
[CHILDREN'S TRAVELING SUMMER DAY CAMPS:] [Permit to operate a children's traveling summer day camp]	[48.05]	[\$100]	[March 31 and thereafter annually March 31] [March 31 and thereafter annually March 31]
[COMPRESSED AIR:] [Permit to offer for sale, sell, give away or distribute in tanks for underwater breathing use]	[27.03]	[\$30]	[April 30]
[DAY] CHILD CARE SERVICE: Application [and temporary permit] to conduct a [day] child care service	[47.09(a)] 47.03	\$100.00	[Six months from date of issuance or until permit application is rejected, whichever is the shortest period of time]
[Subsequent permit] Permit to conduct a [day] child care service.	[47.09(a)] 47.02	\$100.00 per year plus \$1.00 per child	Up to two years from date of issuance
[DRY WAREHOUSE:] [Permit to maintain or operate a dry warehouse]	[121.01]	[\$250]	[March 31]
FOOD SERVICE ESTABLISHMENT: Permit to maintain or operate a food service establishment. [May or may not also include a permit to manufacture frozen desserts at retail]	81.05(c) [(113.03 c for frozen dessert permit)]	\$280.00 [(additional \$25.00 for frozen dessert permit)]	One year from date of permit issuance or, in the case of a renewal, one year from date of last permit expiration
NON-RETAIL FOOD PROCESSING ESTABLISHMENT: Permit to maintain or operate a non-retail food processing establishment.	81.05(c) [101.13 and 101.71 (Permits for dealer in shellfish and fish respectively)]	\$200.00	One year from date of permit issuance or in the case of a renewal, one year from date of last permit expiration
TEMPORARY FOOD SERVICE ESTABLISHMENTS: Permit to maintain or operate a [retail] temporary food [processing] service establishment	88.03(a)	\$30.00	Maximum of fourteen (14) Days
[Permit to maintain or operate a retail temporary nonprocessing food establishment]	[88.03(a)]	[\$20]	[Maximum of fourteen (14) days]
[Registration certificate to maintain or operate a retail temporary food establishment]	[88.03(a)]	[No fee]	[One (1) day]
PRESCRIPTION FORMULA [MILK] PREPARATION: Permit to prepare prescription formula [for sale or distribution in the City or to offer for sale, sell, give away or distribute formula milk]	115.05	\$50.00	March 31
FROZEN DESSERTS: Permit to manufacture and sell frozen desserts at retail	[113.03 (c) (81.05 (c) if issued with food service establishment permit) NY PHL §225 (5)(g)]	\$25.00 per annum	At time of expiration of associated food service establishment or mobile food vending permit.
[HORSEMEAT:] [Permit to bring into the City, keep, transport, offer for sale or sell horsemeat, whether alone or combined with other ingredients]	[97.05]	[None]	[Good until revoked]
[INFANT FORMULA:] [Permit to prepare infant formula for sale, giving away or distribution in the City]	[116.05]	[\$350]	[March 31]
[MILK:] [Class A permit]	[111.05]		
— to operate a receiving station or transfer station		[\$125]	[December 31]
— to operate a milk processing plant in New York City		[\$500]	[December 31]
— to operate a milk processing plant outside New York City		[\$150]	[December 31]
[MILK:] [Class B permit to offer for sale, give away or distribute a milk product]	[111.07]	[\$75]	[December 31]
[MILK:] [Identifying plate for vehicle used in transportation or delivery of milk or a milk product]	[111.11]	[\$15]	[December 31 or when corresponding class A or B permit expires]
MOBILE FOOD [UNIT] VENDOR LICENSE: Food vendor license to vend, peddle, sell, offer for sale, distribute or give away food from a vehicle, pushcart, [stand] or other mobile food vending unit	[89.03(b)] 89.07	[For licenses expiring on January 31, 1994:] \$50 for two years. [For each additional month beyond two years, add prorated amount of	[For licenses expiring on January 31, 1994: Last day of month from twenty-four months to thirty-three months from January 31, 1994, as determined in accordance with and 5.07(1.)] Seasonal: April 1 through October 31
		two year fee.) Seasonal: \$10 per year. Full-term: \$50 for two years	31; Full-term: two years from date issued
		[For licenses expiring after January 31, 1994 and all newly issued licenses: \$50 for two years.]	[For licenses expiring after January 31, 1994 and all newly issued licenses: Last day of month two years from date of issuance.]
[MOBILE FOOD UNIT:] [Temporary food vendor license to vend, peddle, sell, offer for sale, distribute or give away food from a vehicle, pushcart, stand or other mobile food unit.]	[89.03(d)]	[\$10]	[4 months or less from date of issue]
MOBILE FOOD VENDING UNIT: [Class A permit] Permit to maintain or operate a mobile food processing unit on or in which foods are processed or prepared, or on or in which potentially hazardous foods are handled	[89.03(a)] 89.05	For full-term permits [expiring on January 31, 1994:] \$200 for two years. [For each additional month beyond two years, add prorated amount of two year fee.] For seasonal permits: \$35 per season	[For] Full-term permits: two years from date issued [expiring on January 31, 1994: Last day of month from twenty-four months to thirty-three months from January 31, 1994, as determined in accordance with §§89.03(d) and 5.07(1.)] Seasonal permits: April 1 through October 31
		[For permits expiring after January 31, 1994 and all newly issued permits: \$200.]	[For permits expiring after January 31, 1994 and all newly issued permits: Last day of month two years from date permit application is approved by the Department]
[MOBILE FOOD UNIT:] [Temporary Class A permit to maintain or operate a mobile food processing unit on or in which foods are processed or prepared, or on or in which potentially hazardous foods are handled]	[89.03(d)]	[\$35]	[4 months or less from date of issue]
MOBILE FOOD UNIT: [Class B permit] Permit to maintain or operate a mobile food non-processing unit [on or in which foods other than potentially hazardous foods are handled and on or	[89.03(a)] 89.05(a)		[For permits expiring on January 31,

in which foods are not prepared or processed]		1994: \$50 for two years. For each additional month beyond two years, add prorated amount of two year fee. For permits expiring after January 31, 1994: \$50 for two years. For first permit, \$75 for first two years. For all permits after first permit, \$50 for two years.	Last day of month from twenty-four months to thirty-three months from January 31, 1994, as determined in accordance with §§89.03(d) and 5.07(1). Two years from date issued.
[MOBILE FOOD UNIT:]	[89.03(d)]	[\$15.00]	[4 months or less from date of issue]
[MOBILE FOOD UNIT COMMISSARY:]	[89.03(c)]	[\$300.00]	[January 31, biennially]
[MOBILE FOOD UNIT DEPOT:]	[89.03(c)]	[\$200.00]	[January 31, biennially]
[PATHOGENS:]	[15.03(a)]	[\$225.00]	[April 30]
[POULTRY SLAUGHTERING:]	[93.03]	[\$150.00]	[December 31]
[PRIVATE SEWAGE DISPOSAL SYSTEM:]	[143.05(d)]	[\$725.00]	[Good for two years after date of issuance]
[PRIVATE SEWAGE DISPOSAL, COMMUNITY SYSTEM:]	[143.11]	[\$730.00]	[Good for two years from date of issuance]
[COMMUNITY PRIVATE SEWAGE DISPOSAL]	[143.11]		
[RADIATION INSTALLATION:]		\$600.00	30 days after billing date. Good for 5 years after date of issuance
[RADIATION SOURCES:]	[175.06(e)]	[\$100.00]	[As specified in each permit]
[SUMMER DAY CAMPS:]	[48.05]	[\$100]	[March 31, 1975 and thereafter annually March 31]
[WATER POLLUTION CONTROL:]	[145.03]		

[—initial permit]		[\$1,310.00]	[December 31]
[—annual renewal]		[\$1,870.00]	[December 31]
[— for a treatment plant of 100,000 gallons/day or lower capacity:]			
[—initial permit]		[\$1155]	[December 31]
[—annual renewal]		[\$1300]	[December 31]
[— for a pumping station of over 100,000 gallons/day capacity:]			
[—initial permit]		[\$975]	[December 31]
[—annual renewal]		[\$710]	[December 31]
[— for a pumping station of over 100,000 gallons/day or lower capacity:]			
[—initial permit]		[\$870]	[December 31]
[—annual renewal]		[\$710]	[December 31]
WATER SUPPLY:			
Permit to engage or hold self out as engaging in the business of cleaning, (or scaling water coils or the business of cleaning, scaling or painting or coating [the inside of water tanks] of a water tank that is, [which are] part of a drinking water supply system of a building [see also subsection (e) of this section])	[141.07(a)] [141.09(b)]	\$220.00 for original \$35.00 for renewal	December 31
WATER SUPPLY:			
Permit to engage or hold self out as engaging in the business of chemical treatment of the drinking water supply within a building [see also subsection (e) of this section]	[141.07(a)] [141.11(b)]	\$495.00 for original \$70.00 for renewal	March 31 March 31
WATER SUPPLY:			
Permit to use water from a well located in the City:	[141.09(a)] [141.17(a)]		
— for purposes other than drinking	[141.17(b)(2)]	\$300.00 for original \$15.00 for renewal	December 31
— for drinking	[141.17(b)(1)]	\$1,090.00 for original \$340.00 for renewal	May 31
[WATER:]			
[Importation, manufacture or bottling in containers for sale or distribution in the City as artificial, natural, spring, mineral or other water for human consumption]	[141.04]	[\$695.00 for original \$530.00 for renewal]	[December 31] [December 31]
[WATER:]			
[Importation, transportation, sale or giving away of for other than drinking purposes]		[\$200.00 for original \$155.00 for renewal]	
YEAR-ROUND AFTER SCHOOL AND YOUTH CENTERS:			
Permit to operate a year-round after school or youth center	48A.05	\$100.00	December 31 biennially

[(b) When a permit or certificate of qualification has a stated expiration date and application therefor is made when more than one-half of the fee period has expired, one-half of the prescribed fee shall be paid. This requirement does not apply, however, (1) if the prescribed fee is less than ten dollars, or (2) if application is being made for renewal of a permit or certificate of qualification which has expired, or (3) if, in the opinion of the Department, the business, trade or occupation concerned is seasonal.]

[(c) (1) When a person, pursuant to this code, is required to obtain two or more permits relating to manufacture or sale of food on the same premises, he shall apply for all of such permits and he shall pay the fee for each separate permit.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if such permittee maintains a food sanitation control program and system of self-inspection which the Commissioner is satisfied provides sufficient safeguards to protect life and health and which substantially reduces the time to be spent by the Department in inspecting his premises, the permit fees applicable to the following total number of units and permits required on the same premises shall be reduced as follows:]

[Total Number of Units and Permits On Same Premises]	[Percent Reduction]
10-14	15%
15-19	20%
20-24	25%
25-29	30%
30-39	40%
40 and over	50%

[(d) When the Commissioner has authorized inspection of a food or related establishment located outside the City, the operator of the establishment or other party in interest shall pay an inspection fee of 150 dollars for each day, consisting of seven hours or part thereof during which an employee of the Department spends traveling to and from and inspecting the establishment. In addition the operator of the establishment or other party in interest shall pay all necessary expenses including but not limited to expenses for travel, lodging and meals.]

[(e) When a person is required to obtain two permits from the Commissioner, one pursuant to section 141.05(a) and the other pursuant to section 141.07(a), he shall apply for both permits, but he shall pay only the fee prescribed in subsection (a) of this section for the permit to engage or hold self out as engaging in the business of chemical treatment of the drinking water supply within a building issued pursuant to section 141.07(a) and the expiration date for such permit shall apply also to the permit issued pursuant to section 141.05(a).]

[(f) When a person is required to obtain two permits, one pursuant to section 101.13 and the other pursuant to section 101.71, he shall file a single application for both permits and pay one fee. If the fees are of different amounts, he shall pay the larger one.]

[(g) (b) If the permittee is a non-profit organization, the Commissioner may, in his discretion, waive the requirement for a permit fee.

[(h) Notwithstanding the provisions of this section and related sections of this Code, the Commissioner may suspend, for such period of time as he deems appropriate, the requirements for permits and permit fees for such types of food establishments specified by him and which are licensed and inspected pursuant to the Agriculture and Markets Law.]

[(i) (c) The fee for a food service establishment permit specified in §5.07(a) shall be all inclusive and no separate fee shall be charged for pre-permitting inspections or annual or renewal cycle inspections. Such fee shall not be refundable.

[(j) (1) Pursuant to §89.03(d) of this Code, full-term mobile food vendor licenses and Class A and Class B mobile food unit permits, as identified in subsection (a), that expire on January 31, 1994 shall be renewed for a license or permit term of not less than two years nor more than two years and nine months. Licenses and permits shall be issued so as to expire at the end of each month up to two years and nine months from January 31, 1994 in order to achieve staggered expiration dates. For licenses and permits expiring after January 31, 1994 and all newly issued licenses and permits, the expiration date shall be the last day of the month two years from the date that the license is issued or the permit application is approved by the Department.

(2) The duration of mobile food vendor licenses expiring on January 31, 1994 and renewed pursuant to subdivision (1) of this subsection, shall be determined by the final digit of the individual licensee's social security number. A license of an individual whose social security number has a final digit of "0" shall be renewed for a two year term and the fee shall be that specified in subsection (a). A license held by an individual whose social security number has a final digit of "1" through "9" shall be renewed for an additional one through nine months, respectively.

(3) The duration of mobile food unit permit(s) expiring on January 31, 1994 and renewed pursuant to subdivision (1) of this subsection by an individual shall be determined by the final digit of the individual permittee's social security number. The permit(s) of an individual whose social security number has a final digit of "0" shall be renewed for a two year term and the fee shall be that specified in subsection (a). Permits held by an individual whose social security number has a final digit of "1" through "9" shall be renewed for an additional one through nine months, respectively.

(4) The duration of mobile food unit permit(s) expiring on January 31, 1994 and renewed pursuant to subdivision (1) of this subsection by a partnership or group other than a corporation shall be determined by the final digit of the social security number of the individual who last submitted a permit application of permit renewal application on behalf of the partnership or group. Permit(s) held by a partnership or group where the individual last submitted a permit application or permit renewal application on behalf of the partnership or group has a social security number ending in "0" shall be renewed for a two year term and the fee shall be that specified in subsection (a). Where this individual has a social security number with a final digit of "1" through "9", the permit(s) shall be renewed for an additional one through nine months.

(5) The duration of mobile food unit permits expiring on January 31, 1994 and renewed pursuant to subdivision (1) of this subsection by a corporation shall be determined by the final digit of the corporation's New York State Tax Authority number. A permit issued to a corporation having a New York State Tax Authority number ending in "0" shall be renewed for a two year term and the fee shall be that specified in subsection (a). Those permits issued to corporations having New York State Tax Authority numbers ending in "1" through "9" shall be renewed for an additional one through nine months.

(6) Fees for each additional month beyond two years that a mobile food vendor license or mobile food unit permit is in effect shall be determined by adding a prorated amount of the two year fee for each month beyond two years.]

Notes: §5.07 was amended by resolution of the Board of Health adopted XXX, resulting in the deletion of previously listed permits that are no longer issued by the Department. No permit fees were changed.

RESOLVED, that §5.09 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.09 Registration and certification fees.

(a) [The registration of a shipper of shellfish pursuant to §101.03 shall expire on the date of expiration of the registrant's state or provincial shellfish certificate or permit.]

[(b) If a registrant is a non-profit organization, the Commissioner, in his or her discretion, may waive the requirement for a registration fee prescribed pursuant to this section.

[(c) (b) Registration shall be made on forms furnished by the Department. A person required to register with the Department pursuant to any provision of this Code in addition to specific information called for by such provision shall give information, relating to the occupation, trade, business or activity concerned as the Department may require. If no registration fee or expiration date is set forth in this section, no registration fee is required but the registrant shall notify the Department whenever information furnished at the time of registration is no longer accurate.

[(d) A person registering a weight reducing group pursuant to §23.03 shall pay an annual registration fee of twenty dollars, for each location. Such registration shall expire on December 31 of each year.]

[(e) (c) The Commissioner shall not register or re-register any occupation, trade, business or activity unless, on the basis of the application and other papers submitted, he/she is satisfied that there are no fines, penalties or forfeitures imposed by the Administrative Tribunal established by Article 7 Section 558 of the New York City Charter, by the OATH Health Tribunal or the Environmental Control Board for violations of this Code or other applicable law enforced by the Department which are due and payable by the registrant.

[(f) A person registering an outlet from a disposal facility pursuant to §145.06 shall pay an annual registration fee of eight hundred forty dollars. Such registration shall expire on December 31 of each year.]

[g](d) A person registering a trained guard [or attack] dog pursuant to [subsection (1)] subdivision (g) of §161.09 of this Code shall pay a registration fee of ten dollars. Such registration shall remain effective for the life of the animal unless sooner revoked.

[(h) A person registering as the operator of a wholesale frozen desserts manufacturing plant, or of a wholesale frozen desserts distributing plant, or of a combined wholesale frozen desserts manufacturing and distributing plant within the City pursuant to §113.03(a) shall pay an annual fee of twenty-five dollars for each location. A person registering as a shipper of frozen desserts into the City pursuant to §113.03(b) shall pay an annual registration fee of twenty-five dollars.]

[(i) (e) A person [registering for] requesting a [Certificate of Water Potability] report certifying the potability of the water supply pursuant to [§81.47 of this Code] 9 CFR §416.2 (g), or any successor rule, at a wholesale food processing establishment regulated by the U.S. Department of Agriculture shall pay an annual [registration] fee of two hundred seventy dollars for each location f] in which a wholesale food processing establishment is conducted by such person. [Such registration shall expire on May 31 of each year.]

[(j) (f) A person establishing, maintaining or operating a radiation installation required to be registered pursuant to §175.51(b) of this Code shall pay a registration fee of one hundred dollars for each installation by at least thirty (30) days prior to the expiration date specified on the registration certificate.

Notes: §5.09 was amended by resolution adopted XXX, repealing general requirements for registrations, in subdivisions (a), (b) and (c), that are now in §5.05 of this Article regarding permits generally, and repealing obsolete provisions relating to registrations of activities the Department no longer regulates.

RESOLVED, that §5.11 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.11 Permits not transferable; exception.

Any purported or attempted transfer of a permit to a person not named therein as permittee or any change in the place of business stated in a permit shall void such permit. When a permit is issued to two or more individuals, to a partnership or to a group other than a partnership, and one or more of the individuals concerned ceases to be active in the conduct of the business or activity or otherwise ceases to be a permittee, the Commissioner may approve in writing, the continuation of the business or activity by the remaining permittees during the unexpired period of such permit. The permittee shall notify the Department in writing within ten (10) business days of any change in the officers, directors, shareholders, partners or members of a permitted entity.

Notes: Section 5.11 was amended by resolution adopted on XXX adding a requirement for a permittee to notify the Department in writing when there is a change in the persons responsible for operation, management and control of a permitted entity.

RESOLVED, that subdivision (a) of §5.13 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.13 Conditions of permit and Health Code to be observed.

(a) A person holding a permit, including the officers and directors of a corporation holding a permit shall comply with the conditions contained in his/her permit as well as with all applicable provisions of this Code or other law enforced by the Department.

(b) A person holding a permit, including the officers and directors of a corporation holding a permit, shall be jointly and severally liable for violations of the conditions of the permit or of this Code committed by employees or agents of the person or corporation when such acts are committed in the regular course of the permitted business of such person or corporation, or on the premises subject to the permit, or in the course of using the permit.

Notes: Subdivision (a) of §5.13 was amended by resolution adopted XXX to add a reference to compliance with conditions imposed on permittees by other law enforced by the Department.

RESOLVED, that §5.17 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be repealed and recodified, to be printed together with explanatory notes as follows:

§5.17 Permit suspension and revocation.

(a) Basis for action. A permit may be ordered suspended or revoked for:

(1) Willful or continued violation of this Code or for such other reason as the Commissioner or Board determines is sufficient grounds for suspension or revocation.

(2) The giving or offering to an employee or agent of the Department or other government agency, engaged in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or such agency, a gift, gratuity, benefit, favor or bribe, including but

not limited to money, food, or drink.

(3) Submission or display by a permittee of a forged document or other document that contains false or misleading statements, or making a false or misleading statement to the Department.

(b) Hearings. When permanent revocation of a permit is sought or a permitted entity is ordered to close and its permit is ordered suspended, if the Department determines that such permit should be permanently revoked, or such suspension continued, the Department shall schedule a hearing at the City Office of Administrative Trials and Hearings (OATH) within 15 days of closure. The purpose of the hearing is to allow the permittee to show why its continued operation is not a public health or imminent health hazard and why it should be allowed to reopen.

(c) Post hearing procedures. Following receipt of a copy of the report and recommendation of an OATH administrative law judge to the Commissioner, a respondent may respond to the findings and recommendations in the administrative law judge's report by submitting written comments to the Commissioner within 10 calendar days of receipt of the report, if received by e-mail or fax, or 15 days if received by mail. The Commissioner may then take such action as may be necessary, adopting all or part of the findings and recommendations, and may issue an order revoking, further suspending or reinstating the permit. If the OATH judge's recommendation is to allow the permittee to reopen, and the Commissioner adopts the recommendation, the Commissioner may impose whatever conditions he or she deems necessary for the continued safe operation of the permitted business.

(d) Permits to be surrendered. All permits revoked pursuant to this section or in accordance with other applicable law shall be surrendered to the Department upon receipt of the order. Permits or licenses that are not surrendered in accordance with this section may be seized by any employee or agent of the Department or officer of the New York City Police Department.

Notes: Section 5.17 was repealed and recodified by resolution adopted by the Board of Health at its XXX meeting. Its procedures for revocation and suspension of permits and licenses have been updated and provide an opportunity for respondents to comment following receipt of a report from the administrative law judge conducting a show cause hearing as to whether a license or permit should be further suspended or revoked.

RESOLVED, that §5.19 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.19 Denial of issuance or renewal, suspension and revocation; when effective; service of order or notice.

(a) Effective date. Except as otherwise ordered by the Board, the action of the Commissioner denying issuance or renewal of a permit, or suspending or revoking a permit, shall become final five days after service of an order or other notice thereof, exclusive of the day of service, on the applicant or permittee concerned.

(b) Service. Service of an order or notice shall be made as follows:

(1) Enclosing the order or notice in a postpaid envelope directed to the applicant or permittee at the address listed in the application or permit and depositing such envelope at a United States Post Office or in a mail box or mail chute maintained by the United States Post Office; or,

(2) Leaving the order or notice with the applicant or permittee or, if the permittee is not an individual, with a member of the partnership or other group concerned or with an officer of the corporation; or,

(3) Posting the order or notice at the entrance door of the premises listed in the application or permit.

Notes: Section §5.19 was amended by resolution adopted by the Board of Health on XXX to include reference to an order or other form of notice of revocation, suspension or other action by the Department pertaining to a permit or license.

RESOLVED, that §5.21 of Article 5 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes as follows:

§5.21 Appeal to Board; stay of action.

(a) Service of notice of appeal. When the Commissioner [suspends or revokes] orders that a permit be revoked or suspended for reasons other than the discontinuance, sale or transfer of the business, occupation, trade or other matter for which the permit was issued, or refuses to issue or renew a permit, or when a provision of this Code specifically authorizes an appeal to the Board [pursuant to this section, or when a request for the approval of an inspection service is denied], the applicant or permittee [or aggrieved party affected thereby] may appeal such action to the Board by serving a notice of appeal upon the Secretary of the Department within [five] ten business days following the service of an order or other notice of the action of the Commissioner.

(b) Contents of notice of appeal. The notice of appeal shall be addressed to the Board and shall contain:

(1) The full name of the applicant[,] or permittee [or party affected];

(2) The type of permit issued or for which

application was made [or the nature of the action complained of];

(3) The place of business listed in the application or permit [or to which the appeal relates];

(4) The date of the application [or permit or the date of the original request to the Commissioner];

(5) The date of the action and the nature of the action taken by the Commissioner;

(6) A statement that the applicant or permittee [or other party affected] appeals to the Board to review the action of the Commissioner; and,

(7) The signature of the applicant[,] or permittee [or party affected] or, if the permittee [or party affected] is not an individual, the signature and title of a partner or other individual of the partnership or group permittee [or party affected], or of an officer of a corporate permittee [or party affected].

(c) Perfecting an appeal. Within [three] ten business days following service of the notice of appeal, the applicant[,] or permittee [or party affected] shall submit a memorandum addressed to the Board [containing his objections] specifying the objections to the action of the Commissioner. The Department shall prepare and submit a memorandum in reply to the Secretary with a copy to the permittee, no later than ten days after receipt of the permittee's memorandum. No additional replies or sur-replies shall be accepted. The Secretary shall submit all memoranda, exhibits, and a ballot to the attention of the individual members of the Board within ten business days after the issuance of the Department's memorandum. Individual Board members shall mark their ballots, voting to grant or deny the appeal, or to abstain from voting, and return the ballots to the Secretary as soon as practicable after marking the ballots. The Secretary shall notify the permittee of the Board's action, and such notification shall constitute a final agency determination.

(d) Closure for public health or imminent health hazards.

(1) Temporary closures. There shall be no appeal to the Board if the Commissioner or designee orders the temporary closure of any permitted activity, business or facility and temporary suspension of its permit because of uncorrected public health or imminent health hazards.

(2) No reopening after hearing. A permittee ordered closed for public health or imminent health hazards shall remain closed during OATH hearing proceedings and during the pendency of any appeal to the Board.

(e) Closure for other than public health or imminent health hazards. In all other appeals, [Unless] unless the Board orders that the action of the Commissioner remain in full force and effect during the pendency of an appeal, such action shall be stayed by the effective service of a notice of appeal until final determination by the Board.

Notes: §5.21 was amended by resolution of the Board of Health adopted XXX. As amended, the provision no longer allows entities ordered closed for imminent or public health hazards to operate while appeals to the Board are pending.

NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087

CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Proposed Amendments to Article 5 (General Permit Provisions) of the New York City Health Code

REFERENCE NUMBER: 2011 RG 080

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 Date: September 7, 2011
Acting Corporation Counsel

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Proposed Amendments to Article 5 (General Permit Provisions) of the New York City Health Code

REFERENCE NUMBER: DOHMH-8

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi 9/7/2011
Mayor's Office of Operations Date

• s21

NOTICE OF PUBLIC HEARING

Subject: Opportunity to Comment on Proposed Amendment of Article 81 and Repeal of Articles 91, 93, 95, 97, 101, 103, 113 and 121 of the New York City Health Code, found in Title 24 of the Rules of the City of New York.

Date / Time: October 27, 2011 from 10:00 A.M. to 12:00 P.M.

Location: New York City Department of Health and Mental Hygiene
125 Worth Street
Third Floor Boardroom, Room 331
New York, NY 10013

Contact: Rena Bryant
(347) 396-6071

Instructions

Prior to the hearing, you may submit written comments about the proposed amendment by mail to:

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Plaza
42-09 28th Street
Room 14-15
Long Island City, NY 11101

or electronically through NYC RULES at www.nyc.gov/nycrules or by e-mail to RESOLUTIONCOMMENTS@HEALTH.NYC.GOV or online (without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on October 27, 2011. Comments received after this date will be considered to the extent practicable.

To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by October 13, 2011.

Copies of written comments received by the Secretary to the Board of Health and transcript of the public hearing will be available for public inspection within a reasonable time after receipt, between the hours of 9:00 A.M. and 5:00 P.M. at:

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Plaza
42-09 28th Street
Room 14-15
Long Island City, NY 11101

The Department's general policy is to make written comments available for public viewing on the internet. All Comments received, including any personal information provided, will be posted without change to <http://www.nyc.gov/html/doh/html/comment/comment.shtml>

The Proposed Rule

The Department of Health and Mental Hygiene (the "Department" or "DOHMH") is proposing to eliminate multiple articles of the Health Code that are obsolete. These articles address processes and industries no longer regulated by the Department and extensively and comprehensively regulated instead by the U.S. Department of Agriculture or the New York State Department of Agriculture and Markets.

The Department also proposes to amend Article 81 to update its provisions in accordance with the United States Food and Drug Administration ("FDA") 2009 *Food Code* and to generally reorganize Article 81 to facilitate compliance by revising or adding definitions, adding subtitles, consolidating related sections, and deleting obsolete provisions.

The proposed rule also creates a category for "shared kitchens" in response to an interest in creating these new facilities, which are commercial kitchens that are rented or leased by more than one food service establishment, and liberalizes the use of Time as a Public Health Control.

In combination, these changes to the rules will make it easier for establishments to comply by making the rules easier to understand, consistent with the 2009 *Food Guide* and by locating all the rules for food service establishments in one article of the Health Code.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the "Health Code") are issued according to §§556, 558 and 1043 of the New York City Charter (the "Charter").

- Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department") with authority to regulate all matters affecting health in the city of New York.
- Section 558(b) and (c) of the Charter empowers the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters over which the Department has authority.
- Section 1043 of the Charter gives the Department rulemaking powers.

Basis and purpose of the rule change

As part of an extensive revision of the Health Code, the Department proposes that the Board repeal, as no longer necessary, the following Articles:

- 91 (Meat and Meat Products; Slaughtering of Animals);
- 93 (Poultry; Slaughtering, Eviscerating and Processing);
- 95 (Sausage Manufacturing and Smoking, Preparing or Preserving of Meat);
- 97 (Horsemeat and Slaughtering of Horses);
- 101 (Shellfish and Fish);
- 103 (Establishments Engaged in Preparing, Preserving or Smoking Fish);
- 113 (Frozen Desserts), and,
- 121 (Other Food Establishments: Dry Warehouses; Edible Egg Breaking; Bakeries, Mineral, Spring and Other Waters; Carbonated and Other Beverages).

These articles regulate processes and industries, including wholesale food processing establishments, that are no longer regulated by the Department, but that are now extensively and comprehensively regulated by the U.S. Department of Agriculture and the Department of Agriculture and Markets. These obsolete provisions were in the City's earlier Sanitary Code and were then imported into the Health Code in 1959. The Department proposes, however, that certain provisions of these repealed articles that relate to the safe holding and processing of food in food service establishments and non-retail food processing establishments be incorporated into Article 81.

The Department is also proposing that the Board amend Article 81, in accordance with guidelines from the FDA 2009 *Food Code*, by repealing obsolete provisions, updating other provisions, and generally reorganizing the Article to make compliance easier.

With respect to Article 81, the following changes are proposed:

§81.01 – Scope. Amendments have been proposed to clarify to which entities the Article applies. References to wholesale markets and shellfish and fish markets have been deleted as DOHMH no longer regulates these activities.

§81.03 – Definitions. New definitions have been proposed for terms used in the Article, including:

- "adequate or sufficient means,"
- "caterer,"
- "cured foods,"
- "cut leafy greens,"
- "frozen dessert,"
- "non-retail food processing establishment,"
- "operating or in operation,"
- "ready-to-eat food,"
- "shared kitchen," and,
- "ware washing."

The term "wholesale food service establishment" has been deleted.

The definitions of certain terms have been amended to be consistent with their usage in the article. These terms include:

- "equipment", to clarify that this term includes any component of tools, fixtures, and articles within an establishment;
- "imminent health hazards", to clarify that this term also is used interchangeably with "public health hazards;"
- "non-retail food processing establishment", to incorporate caterers and shared kitchen operations; and,
- "stand", to clarify that the term is to be used only in temporary food service establishments.

§81.04 – Approved sources of food. This section is new. It incorporates provisions from §81.07 and Articles 101 and 113 and clarifies that food and meat products may not be served or sold by a food service establishment unless such products are inspected and approved by the U.S. Department of Agriculture or the FDA. This section includes a requirement from the to-be-repealed Article 101 which requires that all food service establishments maintain shellfish tags for 90 days, consistent with provisions of the State Sanitary Code, and that frozen desserts be identified, manufactured and sold in food service establishments in accordance with Article 4-A of the State Agriculture and Markets Law.

§81.05 – Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments. The Department proposes that subdivision (c) be amended so that new establishments may open for business without having to request a pre-permit inspection.

Under the State Sanitary Code, establishments in New York State are allowed to open 22 days after they submit a permit application. This proposal would amend the Health Code to mirror the statewide requirements. The proposal would also add a new subdivision (f), requiring caterers and other users of "shared kitchens" to obtain individual permits for their operations. Subdivisions (g) and (h) govern operation of shared kitchens. Current subdivision (f) would be relettered as subdivision (i).

§81.06 – Prevention of imminent health hazards. It is proposed that the title and the term as used in subdivision (a) be modified to include "public health hazards" since both terms are used interchangeably in this Code, the Commissioner's rules, and in the State Sanitary Code. Additionally, it is proposed that subdivision (c) be amended to add fermentation and drying as processes that require approval by the Department of a Hazard Analysis and Critical Control Point plan. This would apply only to processes used to preserve fish, meats, and sausages in food service establishments.

§81.07 – Food; sanitary preparation, protection against contamination. It is proposed that titles be added to each subdivision to make the section more readable and that the section be amended to include a number of provisions from other sections that relate to prevention of food contamination.

- A new paragraph (1) is added to subdivision (a) requiring a dedicated culinary sink for washing food prior to other preparation.
- A new subdivision (h) has been added to this section from current §81.37 (f) for storing dispensing utensils between uses.
- It is proposed that current subdivision (i), relating to approved sources of foods, be deleted from this section and included in the new §81.04 on approved sources.
- Current subdivision (k), relating to worker hygiene, would be deleted from this section and included in §81.13 on worker hygiene practices.
- A new subdivision (l) prohibiting re-service of previously served food (now in §81.11) is added.
- A new subdivision (o) regarding use of drinking straws (currently in §81.45) is added to this section.
- To prevent leaching of harmful substances into foods heated in a microwave oven, a new subdivision (p) requires that plastic containers used in microwaving be approved by the FDA.
- A new subdivision (q) incorporates current provisions of §81.13 about prohibiting non-essential persons from work areas.
- New subdivision (r) (from current §81.11) requiring food unfit for consumption to be denatured has been amended and added to this section.
- The proposed amendment to subdivision (r) clarifies the process of denaturing food to render it unpalatable, e.g., by altering its appearance, in circumstances when such foods are not safe for consumption. The proposed amendment to subdivision (l) clarifies that foods previously served may not be served to other patrons unless such foods were originally prepackaged and the packages remain intact.
- Additionally, it is proposed that provisions being maintained from some of the repealed articles be included in this section, i.e., prohibitions on using unpasteurized milk, from Article 111 (repealed in September, 2010), and slaughtering animals for food, from Articles 91, 93, and 97. These prohibitions would only apply to the food service establishments and non-retail food processing establishments regulated by Article 81.

§81.08 – Foods containing artificial trans fat. The Department proposes deleting subdivision (d), which contains effective dates that had already passed for the various provisions of the section.

§81.09 – Food; temperature requirements. This section would be amended to add titles for each subdivision. Subdivision (c) also would be amended to delete paragraphs (1) and (2) because the Department no longer regulates wholesale fish markets. Subdivision (d)'s requirements for advising consumers regarding foods that are not heated to Code standards would be clarified. The Department is proposing the inclusion of new paragraphs (1) and (2) in subdivision (e) to specify, in accordance with the FDA 2009 *Food Code*, the methods an operator can use to properly cool food to control the growth of pathogens. An addition to subdivision (h), former subdivision (i), is proposed to require the use, not just possession, of thermometers to evaluate food temperatures.

§81.10 – Time as a public health control. It is proposed that this section be amended to allow use of time as a public health control for takeout/delivery foods, to allow use in holding fish and aquatic animal products, and raw foods. The proposed amendments adhere more closely to the FDA 2009 *Food Code* recommendations, and results of studies conducted by the FDA and others. See, e.g., Conference for Food Protection Council III, Committee Report, "Time as a public health control," January 27, 2004; FDA consumer handling practices study, FDA *Food Code*, 2009, Public Health Reasons, §3-501.19.

§81.11 – Food; disposition if unfit for human consumption; re-service of food prohibited. As noted, this section would be repealed and its provisions included in §81.07, as previously described.

§81.12 – Reduced oxygen packaging; cook chill and *sous vide* processing. To reflect FDA 2009 *Food Code* guidelines on cooling packaged foods, it is proposed that paragraph (4) of subdivision (d) be repealed and recodified.

§81.13 – Food workers; health; clothing. It is proposed that

the title of this section be changed to "Food workers: health; hygienic practices." Provisions for hand washing would be moved from §81.07 to this section, to consolidate all provisions related to food worker hygiene in this section.

§81.15 – Food protection course. Subheads have been added to this section to clarify provisions and to facilitate compliance. Additionally, paragraph (2) of subdivision (a) has been deleted as duplicative.

§81.17 – General requirements; design, construction, materials and maintenance. It is proposed that this section (Food service establishments and non-retail food processing establishments; premises; location; general requirements) be repealed and recodified. As recodified, it updates requirements for the physical space and attributes of a facility, differentiating requirements for food contact and non-food contact surfaces, incorporating recommendations from the FDA 2009 *Food Code*.

§81.18 – Cold and hot storage and holding facilities. This section is new, and is derived from current §81.35 (Food service establishments and non-retail food processing establishments; refrigeration and hot storage facilities). Its provisions have been updated in accordance with the FDA 2009 *Food Code*, clarifying expectations and good practices.

§81.19 – Lighting and ventilation. It is proposed that this section (Food service establishments and non-retail food processing establishments; premises; lighting and ventilation) be repealed and recodified, with updated lighting requirements reflecting the FDA 2009 *Food Code* guidance and existing ventilation requirements.

§81.20 – Plumbing and water supply. This would be a new section, incorporating and clarifying plumbing provisions in existing §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles).

§81.21 – Hand wash sinks. It is proposed that this section (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles) be repealed and recodified. The new section would incorporate and update provisions from current §81.29 (Food service establishments and non-retail food processing establishments; premises, employee toilets, wash basins, lockers and patron toilets to be provided), reflecting the importance of adequate and conveniently located hand wash sinks in preventing the transmission of food borne illness.

§81.22 – Employee and patron toilets. This would be a new section, incorporating and clarifying existing provisions in current §81.29 for patron toilets, and requiring that establishments currently without patron toilets install them if and when they renovate their physical facilities.

§81.23 – Pest management and control. This section (Food service establishments and non-retail food processing establishments; premises, conditions conducive to rodent or insect and pest life prohibited; rodent proofing) would be substantially amended to reflect modern concepts and pest management practices.

§81.24 – Garbage and waste disposal. This section would be new, but is derived without substantive changes from current §81.37 (Food service establishments and non-retail food processing establishments; premises, equipment and utensils; cleaning methods). The proposed provision reflects best practices when an establishment may need access to open garbage containers during periods of active food preparation.

§81.25 – Live animals. The title of this section (Food service establishments and non-retail food processing establishments; animals prohibited) has been amended and the provision has been updated to reflect current regulations implementing the Americans with Disabilities Act.

§81.27 – Cleaning premises, equipment and utensils. This section is new. Former §81.27 (Food service establishments and non-retail food processing establishments; foodworker use of tobacco and consumption of food on premises; spitting prohibited) is repealed, and its provisions incorporated in a new §81.13, described above. The new §81.27 includes updated and clarified provisions from current §81.37.

§81.29 – Dishwashing and ware washing. This section is new and replaces former §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided) which is being repealed. The new section incorporates, updates and clarifies provisions for adequate dishwashing and ware washing from current §81.37 (c), (d), (e) and (j).

§81.31 – Outdoor cooking, food and beverage preparation facilities. This section is new, and replaces former §81.31 (Food service establishments and non-retail food processing establishments; equipment and utensils to be made of non-toxic materials), which is being repealed. The new section establishes food safety requirements for food service establishments that want to add outdoor cooking to their operation. Cooking on sidewalks would continue to be prohibited, except as currently authorized at temporary events, pursuant to Article 88 of this Code or by mobile food vending units pursuant to Article 89 and other applicable law.

As noted above, §§81.33, 81.35, 81.37, and 81.45 are being repealed and their provisions updated and included in various new sections described above.

§81.47 – Water potability certificates. The Department is requesting that this provision be repealed since it is not applicable to any of the food service establishments regulated by the Health Code. Meat and other food packagers are required by the U. S. Department of Agriculture under the

Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 451-470; 601-695; 7 U.S.C. 450; 1901-1906) to have their water certified for potability. A fee for this certification would remain in Article 5 of the Code and be charged when DOHMH provides such certifications.

§81.49 – Modification by the Commissioner. Although no substantive change is being proposed, the section should be renumbered as §81.55, so that it appears as the last provision of the Article, making it clear that it covers all matters regulated by the Article.

The resolution is as follows.
Deleted matter is in [brackets].
New matter is underlined.

RESOLVED, that §81.01 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed together with explanatory notes to read as follows:

§81.01 Scope.

The provisions of this Article shall apply equally to all food service establishments and non-retail food processing establishments, [except as otherwise limited herein,] and shall be construed in a manner that protects the health and safety of the public. All other applicable provisions of this Code and the rules of the Commissioner shall be complied with in addition to the requirements set forth in this Article. Owners and operators of food service establishments and non-retail food processing establishments shall operate such establishments in a sanitary manner so as to prevent imminent or public health hazards and to otherwise protect the public health. This Article applies to all food service establishments [formerly classified as eating places,] and non-retail processing establishments where food, as defined in Article 71 of this Code, is prepared and offered for service, including but not limited to:

- mobile food vending units,
- mobile food vending commissaries,
- other food commissaries and shared or communal kitchens that are not inspected or regulated according to the State Agriculture and Markets Law, vending machines,
- temporary food service establishments,
- caterers,
- cafeterias,
- charitable organizations' kitchens,
- social clubs,
- delicatessens,
- restaurants, and,
- bars. [retail food processing establishments, retail non-processing food establishments, wholesale food establishments, shellfish and fish markets and commissaries. Any references anywhere in this Code to the aforementioned establishments are hereby deemed to mean the establishments defined and regulated hereunder.]

The terms "establishment" or "food establishment" when used in this Article shall refer to a food service establishment or non-retail processing establishment regulated by this Code.

Notes: §81.01 was amended by resolution adopted on XXX, to clarify the kinds of entities regulated by the Department and the law applicable to the operation of such entities. These entities are those delineated in memoranda of understanding between the State Departments of Health and Agriculture and Markets which identify the applicability of law and regulations and the respective jurisdictions of local public health agencies in supervising food processing and sales in New York State.

RESOLVED, that §81.03 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§81.03 **Definitions.** When used in this Title and Code:

(a) Adequate or sufficient means able to accomplish the purposes for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, or an activity conducted or act performed in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, consistent with generally accepted public health standards, is adequate or sufficient within the meaning of this Article.

(b) Aquatic animal means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including but not limited to alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

[(b)] (c) A_w means water activity, which is the measure of the free moisture in a food, and is indicated by the symbol A_w. Its numeric value is the quotient of the water vapor pressure of the food substance divided by the vapor pressure of pure water at the same temperature.

(d) Caterer means a food service establishment holding a permit issued by the Commissioner that prepares food and may provide transportation for, and service of food at, a location other than the establishment. A caterer also is any person who prepares food at a permitted food service or non-retail processing establishment for service at another location.

[(c)] (e) Comminuted means reduced in size by methods including chopping, flaking, grinding, mincing; or a mixture of aquatic animals or meat products that have been reduced in size and restructured and reformulated.

[(d)] (f) Contaminated means adulterated or spoiled food, or food and equipment which is exposed to filth, toxic substances, rodent or insect contact or infestation, or potentially hazardous foods held at temperatures between 41

degrees Fahrenheit (5 degrees Celsius) and 140 degrees Fahrenheit (57 degrees Celsius) for a period of time exceeding that reasonably required for preparation, including potentially hazardous foods which are not heated or cooked to the temperatures specified in §81.09, or food in or subject to any condition which could permit the introduction of pathogenic microorganisms or foreign matter, including manual contact during service or preparation if such foods will not be subsequently cooked or heated to the temperatures specified in §81.09.

[(e)] (g) A controlled-location vending machine means a food vending machine which dispenses only food that is not potentially hazardous, can be serviced in a sanitary manner by an untrained person at the location and is located where it is protected from environmental contamination, abuse and vandalism.

[(f)] (h) Cook chill processing means a type of reduced oxygen packaging process in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens (pathogens that grow slowly at refrigerated temperatures and that include, but are not limited to, *Listeria monocytogenes*, *Clostridium botulinum* and *Yersinia enterocolitica* or *yersiniosis*).

[(g)] (i) Critical control point means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

[(h)] (j) Critical limit means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

(k) Cured food means food preserved by drying, salting, smoking or pickling, or a combination of such methods.

(l) Cut leafy greens means leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes, but is not limited to:

- iceberg lettuce,
- romaine lettuce,
- leaf lettuce,
- butter lettuce,
- baby leaf lettuce (i.e., immature lettuce or leafy greens),
- arugula or rocket lettuce,
- escarole,
- endive,
- spring mix,
- spinach,
- cabbage,
- kale, and,
- chard or any other cut, shredded, sliced, chopped or torn edible green leafy vegetable.

[(i)] (m) Easily cleanable means readily accessible and of such material and finish that residues may be completely removed by normal cleaning methods.

[(j)] (n) Easily movable equipment means equipment that is mounted on wheels or casters with flexible, extensible, or quick disconnecting utility connections, if any, so that the equipment may be easily moved for cleaning.

[(k)] (o) Equipment means any tool, item, fixture or article used in the operation of a food service establishment, and any component of such tool, item, fixture and article including but not limited to, all stoves, ranges, microwave ovens, hoods, [meatblocks,] meat blocks, tables, counters, refrigerators, sinks, dishwashing machines, [steamtables] steam tables and similar items, other than utensils, used in the operation of a food service establishment or non-retail food processing establishment.

[(l)] (p) Food-contact surfaces mean the surfaces of equipment, utensils, tableware and kitchenware, such as ladles, colanders, serving spoons, spatulas, pots and pans, which normally come into contact with food or from which liquids and residues may drain back into food or onto other food-contact surfaces.

[(m)] Food-grade means intended to be used with food products, utensils or equipment without reacting with such food products, and without imparting odor, color or taste to such food products, or approved by] (q) Food grade material means material used in the construction and design of food contact surfaces, equipment and utensils that is certified as meeting the standards of the National Sanitation Foundation (NSF) or [its equivalent] any other organization utilizing a process approved by the American National Standard Institute (ANSI) or that is otherwise acceptable to the Department.

[(n)] Foodworker means foodhandler] (r) Food worker or food handler means any person who works in a food service establishment or non-retail food processing establishment, including but not limited to any person described in §11.01[(f)] (l) of this Code.

[(o)] (s) Food service establishment means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

[(p)] (t) A food vending machine means a self-service device [which] that when activated, dispenses unit servings of food or beverage without requiring replenishing between each vending operation.

[(q)] (u) A food vending machine commissary means a place where food, containers or supplies are processed or packaged and prepared for use in food vending machines.

[(r)] (v) A food vending machine operation means the place where food vending machines are located and includes the food vending machines, machine servicing equipment, utensils, personnel, single-service articles, tables, chairs, that part of the premises used in connection with the food vending machine operation and all other appurtenances required and used to operate and maintain the food vending machines.

(w) Frozen dessert means:

- ice cream,
- frozen custard,
- French ice cream,
- French custard ice cream,
- artificially sweetened ice cream,
- ice milk,
- artificially sweetened ice milk,

- fruit sherbet.
- non-fruit sherbet.
- water ices.
- non-fruit water ices.
- confection frozen without stirring.
- dairy confection frozen without stirring.
- manufactured dessert mix.
- frozen confection.
- melloream frozen dessert.
- parevine.
- frozen yogurt.
- freezer made shakes.
- freezer made milk shakes.
- dietary frozen dessert.
- whipped cream confection, and.
- bisque tortoni.

as all such products are commonly known, together with any mix used in making such frozen desserts, and any products that are similar in appearance, odor or taste to such products, or are prepared or frozen as frozen desserts are customarily prepared and frozen, whether made with dairy products or non-dairy products, and chips or flakes of ice made from water with or without additives, served to the customer with or without flavoring, in accordance with standards of identity for such foods established in Article 4-a of the State Agriculture and Markets Law, or successor statute.

[(s)] (x) Hazard Analysis and Critical Control Point (HACCP) plan means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the National Advisory Committee on Microbiological Criteria For Foods.

[(t)] (y) Imminent health hazard or public health hazard means any violation, condition, or combination of violations or conditions making it probable that food served to the public by the establishment or its continued operation will be injurious or dangerous to the health of any person consuming such foods.

[(u)] (z) Indirect drain means a waste line which does not connect directly with the drainage system, but conveys and discharges liquid wastes through an air break into an approved plumbing fixture or receptacle that is directly connected to the drainage system.

[(v)] (aa) Non-retail food processing establishment means a [place] facility where food is processed, prepared, stored or packed for consumption off the premises and not given or sold directly to the consumer. This shall include but not be limited to mobile food vending commissaries, food vending machine commissaries [and places where fish or shellfish is kept, sold or offered for sale which are not otherwise regulated or permitted by the Department of Agriculture and Markets, or other appropriate regulatory agency], and shared or communal kitchens where space and equipment are rented, leased or otherwise contracted for use by other persons, such as caterers.

(bb) Operating or in operation means that one or more food workers in a food service establishment is receiving, preparing, storing or serving food or that the establishment is open to the public.

[(w)] (cc) Packaged means bottled, canned, cartoned, securely bagged, or securely wrapped, and does not include a wrapper, carry out box, or other non durable container used to containerize food for the purpose of facilitating food protection during service and receipt of the food by the consumer.

[(x)] (dd) pH means the symbol for the negative logarithm of the hydrogen ion concentration [which] that is a measure of the degree of acidity or alkalinity of a solution.

[(y)] (ee) Potentially hazardous food (PHF) or time and temperature controlled for safety (TCS) food means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, crustacea and other aquatic animals, foods of plant origin that have been heat treated; garlic in oil mixtures that support the growth of *Clostridium botulinum* or toxin formation; cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxins formation; raw bean or seed sprouts; or other foods in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, or growth of *C. botulinum*. The term does not include food with a water activity (a_w) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below. A food may be deemed not potentially hazardous because of the combined effect of a_w and pH other than as previously specified [above] if supported by a food product assessment acceptable to the Department.

[(z)] (ff) Processed fish means fish that has been cured, salted, marinated, dried, pickled, fermented or smoked for human consumption.

(gg) Ready-to-eat food means food that is in a form that is edible without additional preparation or heat treatment to achieve food safety in accordance with the provisions of this Article.

[(aa)] (hh) Reduced oxygen packaging means the reduction of the amount of oxygen in a food packaged by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level) and where the food being packaged requires control of *Clostridium botulinum* or *Listeria monocytogenes* in the final packaged form. Reduced oxygen packaging includes, but is not limited to, vacuum packaging, cook chill packaging, and *sous vide* processing.

[(bb)] (ii) Sanitization means effective bactericidal treatment by heat or chemical means [which] that destroys pathogens on surfaces treated. Acceptable sanitization methods are:

(1) immersion for at least one-half minute in clean hot water at a temperature of not less than 170 degrees Fahrenheit (76.7 degrees Celsius);

(2) immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(3) immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine

and having pH not higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(4) immersion in a clean solution containing any other food grade chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as hypochlorite which has been held at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius) for one minute;

(5) treatment with culinary-quality steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(6) swabbing fixed equipment with a solution of at least twice the strength required for that sanitizing solution when used for immersion.

[(cc)] (jj) Single service articles means cups, containers, lids, or closures, plates, knives, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, toothpicks and all similar articles which are intended by the manufacturer for single eating and drinking usage and generally recognized by the public as items to be discarded after one usage.

[(dd)] (kk) Shared kitchen means a commercial kitchen that is rented or leased by more than one food service establishment operator.

(ll) *Sous vide* processing is a type of reduced oxygen packaging in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, and either served or rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

[(ee)] (mm) Stand means a movable, portable or collapsible structure, framework, device, container, or other contrivance, other than a vehicle or pushcart, used for displaying, keeping or storing any food at a temporary food service establishment.

[(ff)] (nn) Temporary food service establishment means a food service establishment as defined in Article 88 of this Code. Additional to the provisions of this Article, a temporary food service establishment shall be operated at all times in compliance with the provisions of Article 88 and all applicable provisions of this Code.

[(gg)] (oo) Utensil means any tableware, such as knives, forks, spoons, glasses, cups, dishes and the like, and kitchenware, implements or containers used for storage, preparation, transfer, conveyance or service of food.

[(hh)] Wholesale food establishment means any establishment which sells food or which manufactures food for other than retail sale directly to the consumer.]

(pp) Ware washing means the cleaning and sanitizing of utensils and food contact surfaces of equipment.

Notes: Section 81.03 was amended by resolution of the Board of Health adopted on XXX, as adding and amending definitions of terms used in Article 81: adding definitions of adequate or sufficient means, caterer, cured foods, cut leafy greens, frozen dessert, operating or in operation, ready-to-eat food, shared kitchen, and ware washing; amending definitions of contaminated, cook chill processing, equipment, food grade material, food worker or food handler, imminent health hazards, non-retail food processing establishment, and stand; and deleting the term wholesale food service establishment, a type of establishment that is no longer regulated by the Department.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is amended, adding a new §81.04 (Approved sources of food), to be printed together with explanatory notes, to read as follows:

§81.04 Approved sources of food. Food shall be obtained from sources approved by the appropriate regulatory authority having jurisdiction over such food source and shall comply with all federal, state and city laws, rules, and regulations related to food, the use of food, and food labeling. (a) *Frozen desserts.* Frozen desserts shall be identified, manufactured, and sold in accordance with Article 4-A of the State Agriculture and Markets Law or any successor statute. (b) *Meat.* No meat shall be served or sold in a food service or non-retail food processing establishment unless the meat is inspected and approved by the United States Department of Agriculture or Food and Drug Administration. (c) *Shellfish tags.* Fresh and frozen shellfish, shelled or shucked shellfish (oysters, clams or mussels) shall be identified with the name and address of the original shell stock processor, shucker-packer or repacker, and the foreign intrastate and interstate identification number issued pursuant to applicable law. Identification tags shall be retained on the premises for 90 days from the date the shellfish was received by the establishment, in accordance with State Sanitary Code § 14-1.33 (b) or any successor provision.

Notes: Section 81.04 was added by resolution adopted by the Board of Health on XXX. It incorporates provisions formerly in §81.07, and adds provisions for service of frozen desserts, meats and poultry, and shellfish in food service establishments. These provisions are derived from former Articles 91, 97, 101, and 113.

RESOLVED, that §81.05 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, revising subdivision (c) and adding new subdivisions (f), (g) and (h) and renumbering subdivision (f) as subdivision (i), to be printed together with explanatory notes to read as follows:

§81.05 Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments.

(c) Except as specified in this subsection, no person shall operate a food service establishment or non-retail food processing establishment without a permit therefor issued by the Department. [An application for a permit shall be submitted to the Department. A request for a pre-permitting inspection shall be submitted to the Department subsequent to the filing of such application, but not less than 21 days before starting operation of such establishment. In the event

the Department does not make an inspection of the establishment during the 21-day period after a request for a pre-permitting inspection is submitted, operations may commence without a permit on the 22nd day, and may be continued without such operations being in violation of this section until such time as the Department makes an inspection and issues a permit or issues an order to cease operation for cause pursuant to §81.39 or other applicable provision of this Code.]

(1) *Exception.* An establishment may begin operating twenty two days after it has fully submitted its application for a permit to the Department. It may continue to operate without a permit only until such time as the Department inspects the establishment and either issues a permit or an order to cease operation for cause pursuant to §81.39 or other applicable provision of this Code.

(f) Every person using or contracting for use of shared kitchen space and equipment shall obtain a permit to operate a food service establishment unless such person is licensed or regulated by the Commissioner of Agriculture and Markets pursuant to Article 20-C, or any successor provision, of the Agriculture and Markets Law.

(g) No person operating a shared kitchen shall rent space or equipment in the shared kitchen to an individual who intends to use the facility to prepare food for sale or service to the public and does not have a currently valid food service establishment permit issued by the Commissioner, unless such user is currently licensed or regulated by the Commissioner of Agriculture and Markets.

(h) Upon the request of the Department, the operator of a shared kitchen shall provide a copy of any agreement between the operator and the user. Such agreement shall indicate the purpose of using the shared kitchen, the type of food to be prepared, and the place where the food will be sold.

(i) A permit shall not be issued if the applicant or a principal of an entity applying for such has been denied a permit on the basis of violations of this Code which could have resulted in the suspension or revocation of a permit. A permit may be renewed, provided that the permittee meets all requirements for renewal, the permit has not been revoked or suspended, and the permittee has not been determined to have committed a violation [which] that could be a basis for permit revocation or suspension under this Article.

Notes: Section 81.05 was amended by Board of Health resolution adopted on XXX amending subdivision (c) so that new establishments may open for business without having to request a pre-permit inspection. Under the State Sanitary Code, establishments in New York State are allowed to open 22 days after they submit a permit application. This proposal would amend the Health Code to mirror the statewide requirements. Section 81.05 was also amended to add a new subdivision (f) that requires caterers and other users of "shared kitchens" to obtain individual permits for their operations; a new subdivision (g) prohibiting an operator of a shared kitchen from renting space or equipment in a shared kitchen to persons who do not hold individual permits unless such person are licensed and regulated under the Agriculture and Markets Law, and a new subdivision (h) requiring the operator of a shared kitchen to make available to the Department information about the foods prepared at the kitchen and the places where such foods will be sold; and re-lettering subdivision (f) as subdivision (i).

RESOLVED that §81.06 (Prevention of imminent health hazards) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same is hereby amended, to be printed together with explanatory notes to read as follows:

§81.06 Prevention of imminent or public health hazards.

(a) *Additional requirements.* Whenever necessary to prevent the occurrence or recurrence of imminent or public health hazards the Department may, in specific instances, impose additional requirements on an establishment. The Department shall describe in writing the terms and conditions of operation that have been imposed, the reasons therefore, shall provide such document to the permit holder, and shall maintain such document with the records of the Department.

(b) *Hazard Analysis and Critical Control Point ("HACCP") plans.*

(1) To prevent the occurrence of an imminent or public health hazard, a HACCP plan shall be prepared by a food service establishment or non-retail processing establishment whenever such establishment prepares, processes, cooks, holds and stores foods in a manner other than as specified in this Code or other applicable law.

(c) *Prior approval required for certain foods and processing.*

Prior approval by the Department of a food service establishment's HACCP plan shall be obtained prior to processing any potentially hazardous food [items] by means of reduced oxygen packaging methods, drying, fermentation, curing [and] or smoking food products on the premises of the food service establishment.

Notes: Section 81.06 was amended by resolution adopted on XXX, modifying the title and amending subdivision (a) and paragraph (1) of subdivision (b) to include the term "public health hazards" since both terms are used in this Code, in Department rules, and in the State Sanitary Code. Subdivision (c) was amended to add fermentation and drying as processes that require approval by the Department of a Hazard Analysis and Critical Control Point plan for potentially hazardous foods. This would apply to processes used to preserve fish, meats, and sausages.

RESOLVED, that §81.07 (Food; sanitary preparation, protection against contamination) of Article 81 of the New York City Health Code found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§81.07 Food; sanitary preparation, protection against contamination.

(a) *Food protection.* Food shall be free of and protected against contamination and shall be manufactured, prepared, processed or packed using clean and sanitary utensils and equipment.

(1) *Culinary sink.* A dedicated single compartment culinary sink shall be provided and used only for washing fruits, vegetables, meats, and aquatic animal foods prior to other preparation. However, one compartment of a multi-compartment sink may be designated for use solely as a culinary sink.

(2) *Food contact surfaces.* Surfaces with which food comes in contact shall be impervious.

(3) *Prevention of cross-contamination.* Food [which] that will not be washed or cooked shall be protected from cross-contamination from food which is required to be washed or cooked.

(4) *Storage on ice or in water.* Packaged food shall not be stored in direct contact with ice or water if packaging allows the entry of water. Unpackaged food may be stored in direct contact with drained ice, except that whole, raw fruits or vegetables, cut, raw vegetables such as celery or carrot sticks or cut potatoes, and tofu, may be immersed in clean and sanitary undrained ice or water.

(5) *Washing raw fruits and vegetables.* Raw fruits and vegetables shall be thoroughly washed with potable water before serving.

(6) *Storage of raw chicken and fish.* Raw chicken and raw fish that are received in ice in shipping containers may remain in such condition, provided the required cold holding temperature is maintained, while being stored or awaiting preparation, display, service or sale.

(b) *Packaging.* Food packages, including hermetically sealed containers, shall be in good condition so that food is not exposed to spoilage, filth or other contamination and remains suitable for human consumption. Food packages that are swollen, leaking, rusted or otherwise damaged shall be discarded or returned to their distributor. If such packages are to be returned to their distributor, they shall be segregated from intact packages and clearly labeled "Do Not Use" while stored at the establishment.

(c) *Eggs.* Only clean, whole eggs with shells intact and free from cracks or splits; or pasteurized, liquid, frozen or dry eggs[;]; or pasteurized dry egg products shall be used. All containers in which eggs are received in a food service establishment or non-retail food processing establishment must identify the source of the eggs.

(d) *Food storage.* Food removed from original containers or packages shall be protected from contamination by storing in clean, sanitized and covered containers and by maintaining proper temperature. Containers of food shall be stored at least [6] six inches (14.24 centimeters) above the floor, in a refrigerator or dry storage area, or at a greater height if necessary to permit cleaning of the storage area. Potentially hazardous raw foods that are not properly packaged or in sealed containers and that may leak or drip shall not be placed in storage above other foods.

(e) *Food display.*

(1) *Containers.* Food shall be displayed only in equipment such as cleanable containers, cabinets, display cases or similar protective equipment that protects such food from contamination.

(2) *Protective shields.* Self-service equipment shall have protective shields or guards to prevent unnecessary contamination or contact by patrons.

(3) *Quantities to be limited.* The quantity of food displayed shall be minimized to that necessary to meet immediate needs.

(f) *Condiment storage.* Condiments, seasoning, sugar and dressings shall be provided in individual packages, protected dispensers or containers, or in the original container or pour-type dispensers.

(g) *Ice dispensing.* Ice for consumption shall be dispensed with scoops, tongs or other utensils, or automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice.

(h) [Food-dispensing] *Dispensing utensils.* Food dispensing utensils shall be provided for dispensing food by [foodworkers] food workers and for self-service. Between uses, food dispensing utensils shall be stored in the food with the handle extended out of the food; shall be kept clean and dry; or shall be kept in a dipper well with running water at an adequate velocity and volume to remove food residue during intervals between intermittent use.

(i) Food shall be obtained from sources approved by the appropriate regulatory authority having jurisdiction over such food source and shall comply with all federal, state and city laws, rules and regulations related to food, the use of food, and food labeling.]

(j) (i) *Supplies and equipment placement.* Supplies and equipment shall not be kept or stored under or near any source of contamination, including but not limited to, exposed or unprotected sewer lines. Equipment, unless easily movable, shall be sealed to the floor or raised on concrete or smooth masonry platforms or elevated on legs to provide at least six inches of clearance between the floor and the equipment. [k] All foodworkers shall maintain hygienic practices and personal cleanliness. Foodworkers shall wash hands and exposed areas of arms thoroughly with soap and warm water before starting work, and as often as necessary to remove soil and any substance that might lead to contamination. Thereafter, hands shall be washed thoroughly after using the toilet, smoking, sneezing, coughing, eating, drinking or otherwise soiling hands before returning to work. Foodworkers shall keep fingernails clean and trimmed.]

(l) (j) *Bare hand contact prohibited.* Food shall be prepared and served without bare hand contact unless the food will be heated to at least the minimum temperature required under §81.09. Convenient and suitable utensils, sanitary gloves, waxed paper or an equivalent barrier shall be provided and used to prepare or serve food to eliminate bare hand contact and prevent contamination.

(k) *Unpasteurized milk prohibited.* Except in accordance with federal and state law, raw unpasteurized milk, or any product made from such milk, shall not be served in any food

service establishment.

(l) *Re-service of previously served food prohibited.* Except for individually wrapped foods, where the wrapper seal has not been broken or opened, food that has been served to the public shall not be re-served.

(m) *Animal slaughter prohibited.* Except for fresh or saltwater finfish, crustaceans, or mollusks, no live animal shall be slaughtered at any food service or non-retail processing establishment.

(n) *Sausages.* Sausages may be made at a food service establishment only in accordance with a HACCP plan prepared and approved by the Department in accordance with §81.06 of this Article. Sausages made at a food service establishment shall not be sold at wholesale other than at an establishment regulated and inspected by the United States Department of Agriculture.

(o) *Drinking straws.* Drinking straws shall not be offered to the consumer unless they are completely enclosed in a wrapper or dispensed from a sanitary device. Drinking straws shall be discarded immediately after use.

(p) *Microwavable plastic containers.* Only containers that display one of the following "microwave safe" icons, or the words "microwave-safe," or words to the effect that they are approved for use in microwave ovens shall be used to heat food in a microwave oven.



(q) *Non-essential persons restricted.* Persons who are not essential to the food establishment operations shall not be allowed in the food preparation, food storage or ware washing areas, except that brief visits and tours may be authorized by the operator if steps are taken to ensure that exposed food, clean equipment, utensils, linens, tableware, and unwrapped single-service and single-use articles are protected against contamination.

(r) *Unfit food to be denatured.* Food that has become unfit for human consumption shall be promptly denatured, its label defaced and the product marked condemned, and shall be kept separate and apart from foodstuffs that are held or offered for sale. As used in this subdivision, the term "denature" means to treat the food with a substance satisfactory to the Department that alters the appearance or odor of the food such that the denatured food is clearly identified as being inedible.

Notes: Section §81.07 was amended by resolution adopted on XXX, adding titles in each subdivision to make the section more readable and facilitate compliance. Subdivisions (i), relating to approved sources of foods, and (k), relating to worker hygiene, were deleted and moved to a new §81.04 on approved sources of foods and to §81.13, worker hygiene practices, respectively. Also added was a requirement that only plastic containers marked as microwave-safe be used in microwaving and prohibitions on using unpasteurized milk, from Article 111 (repealed in September, 2010), and slaughtering animals for food, from repealed Articles 91, 93, and 97. Former subdivision (a) of §81.11 was moved to this section as subdivision (r) and amended to clarify the process of denaturing food to render it unpalatable, by altering its appearance, in circumstances when such foods are not safe for consumption, and former subdivision (l) of §81.11 has been added to this section as subdivision (l) and amended to clarify that foods previously served may not be re-served to other patrons unless such foods have been prepackaged and the packages remain intact.

RESOLVED, that subdivision (d) (Effective date) of §81.08 of Article 81 of the New York City Health Code found in Title 24 of the Rules of the City of New York, be, and the same hereby is repealed, to be printed together with explanatory notes to read as follows:

Notes: Subdivision (d), which provided that this section would be effective on July 1, 2007 to transfat containing oils, shortenings and margarines used for frying or in spreads, and July 1, 2008 to oils or shortenings used for deep frying of yeast dough or cake batter, and all other foods containing artificial trans fat, was repealed as outdated by resolution of the Board adopted on XXX.

RESOLVED that §81.09 of Title 81, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§81.09 [Food; temperature requirements.] Potentially hazardous foods; temperature control for safety.

(a) [Potentially] *Temperature controls for safety.* Except as specified in §81.10 of this Article, potentially hazardous food shall be refrigerated [at] to a temperature of 41 degrees Fahrenheit (5 degrees Celsius) or below or kept heated to 140 degrees Fahrenheit (60 degrees Celsius) or above, except during necessary preparation. All parts of potentially hazardous foods requiring cooking are to be heated to 145 degrees Fahrenheit (62.7 degrees Celsius) or above for 15 seconds, except [that:] as follows:

- (1) *Poultry:* poultry, poultry stuffing, stuffed meats and stuffing containing meat shall be heated so all parts are at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds;
- (2) *Pork:* pork and food containing pork shall be heated so all parts of the food are at least 155 degrees Fahrenheit (68.3 degrees Celsius) for 15 seconds[;];
- (3) *Rare beef:* rare roast beef and/or rare beef steaks shall be heated to the following minimum temperatures unless otherwise ordered by the consumer:

Temperature °C (°F)	Time	Temperature °C (°F)	Time	Temperature °C (°F)	Time
54 (130)	121 minutes	58 (136)	32 minutes	61 (142)	8 minutes

56 (132)	77 minutes	59 (138)	19 minutes	62 (144)	5 minutes
57 (134)	47 minutes	60 (140)	12 minutes	63 (145)	3 minutes

(4) *Ground meat:* ground meat and food containing ground meat shall be heated so that all parts of the food are at least 158 degrees Fahrenheit (69.4 degrees Celsius), unless otherwise ordered by the consumer[;].

(5) *Stuffings and comminuted meats: cooking process:* poultry, poultry stuffing, stuffed meats and stuffing containing meat; ground or comminuted poultry, beef, pork and other meat products, shall be heated with no interruption of the cooking process[;].

(6) *Shell eggs:* shell eggs or foods containing shell eggs shall be heated to 145 degrees Fahrenheit (62.8 degrees Celsius) or greater for 15 seconds unless the consumer requests preparation of [a shell egg or food containing] shell eggs in a style such as raw, poached or fried which must be prepared at a temperature less than 145 degrees Fahrenheit in order to comply with the request[;].

(7) *Reheating previously cooked food:* potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds. The minimum temperature of 165 degrees Fahrenheit (73.9 degrees Celsius) shall be reached within 2 hours of commencing reheating. Reheated food shall be held at or above 140 degrees Fahrenheit (60 degrees Celsius) until served[;].

(8) *Immediate service:* cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order may be served at any temperature[;].

(9) *Microwave reheating:* food reheated in a microwave oven shall be covered during heating; food shall be rotated or stirred during heating, or otherwise manipulated according to label instructions, and shall be reheated to a temperature of at least 190 degrees Fahrenheit (88 degrees Celsius) and allowed to stand covered for 2 minutes after reheating[;].

(10) *Heating commercially processed foods:* commercially processed pre-cooked potentially hazardous food in hermetically sealed containers and precooked potentially hazardous food in intact packages from non-retail food processing establishments shall be heated to 140 degrees Fahrenheit (60 degrees Celsius) within 2 hours of removal from container or package and held at such temperature until served.

(b) *Eggs.* Intact shell eggs shall be stored at an ambient temperature of 41 degrees Fahrenheit (5 degrees Celsius) or below.

(c) *Processed fish.* All processed fish products shall be prepared[, distributed and sold] and stored at a temperature that does not exceed 38 degrees Fahrenheit (3.3 degrees Celsius) without interruption until served to the ultimate consumer, except that:

- (1) processed fish which contains a water phase salt level of at least 17 percent shall not require refrigerated storage and;
- (2) processed fish which contains a water phase level of at least 10 percent, salt water activity of less than 0.85 Aw, or a pH of 4.6 or lower [may be distributed or sold] shall be held at refrigerated temperatures that do not exceed 41 degrees Fahrenheit (5 degrees Celsius).

(d) *Consumer advisory.* When meat, eggs, fish or molluscan shellfish [is] are served alone or as an ingredient in other foods, and are either raw or after heat treatment are at a temperature [or a time] less than that prescribed in this Code, the consumer shall be notified unless the consumer has previously indicated that he or she desires food to be prepared in such manner.

(e) [Potentially] *Cooling.* When removed from heat treatment, potentially hazardous food requiring refrigeration shall be cooled so that every part of the product is reduced from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within 2 hours and to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 additional hours.

(1) Foods shall be cooled using one or more of the following methods, based on the type and amounts of food being cooled:

- (A) Placing the food in shallow pans to disperse heat quickly;
- (B) Dividing the food into smaller or thinner portions;
- (C) Using rapid cooling equipment, e.g., quick chill;
- (D) Stirring the food in a container placed in an ice water bath;
- (E) Using containers that facilitate heat transfer; or
- (F) Adding ice as an ingredient.

(2) When placed in cooling or cold holding equipment, food containers shall be:

- (A) Arranged in the equipment to provide maximum heat transfer through the container walls, not stacked or nested, and
- (B) Loosely covered, or uncovered if protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

(f) *Ambient temperature cooling.* Potentially hazardous foods shall be cooled to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 hours of preparation when prepared from ingredients at ambient temperature[, such as reconstituted foods and canned tuna].

(g) *Thawing frozen foods.* Potentially hazardous food shall be thawed:

- (1) in refrigerated facilities at a temperature not to exceed 41 degrees Fahrenheit (5 degrees Celsius); or
- (2) completely submerged under potable running water at a temperature of 70 degrees Fahrenheit (21.1 degrees Celsius) or below, with sufficient water velocity to agitate and float off loose particles into the overflow; or
- (3) in a microwave oven when the food will be immediately transferred to other conventional cooking [facilities] equipment as part of a continuous cooking process, or when the entire uninterrupted cooking process takes place in the microwave oven; or
- (4) as part of the conventional cooking process, without interruption.
- (5) Whole frozen poultry shall be completely thawed prior to conventional cooking. A single portion may be thawed during the cooking process.

(h) (6) Ready-to-eat potentially hazardous food shall be thawed for a period of time that does not allow thawed portions to rise above 41 degrees Fahrenheit (5 degrees Celsius).

[(i)] (h) Thermometers. Thermometers for measuring the temperature of food shall be provided, [and] readily accessible, and routinely used to ensure compliance with the temperature requirements specified in this Section. Metal stem-type, numerically scaled, indicating thermometers accurate to plus or minus [2] two degrees Fahrenheit (1.1 degrees Celsius) [which] that are made from materials that will not subject the food to contamination or toxic materials, shall be provided to ensure that proper internal cooking, holding and refrigeration temperatures of all potentially hazardous foods are maintained.

[(j) Reserved.]
[(k) Reserved.]

Notes: Section 81.09 was amended by Board of Health resolution adopted XXX, adding titles for each subdivision to make it easier to read and to comply with its requirements. Subdivision (d) was amended to add raw or undercooked eggs as a subject for consumer advisory. The United States Food and Drug Administration ("FDA") 2009 *Food Code* §3-603.11 recommends that if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permittee shall inform consumers of the significantly increased risk of consuming such foods using written brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. Subdivision (e) was amended, adding new paragraphs (1) and (2) to assist food service establishment operators by specifying methods to be used to properly cool foods to control the growth of pathogens, in accordance with the 2009 *Food Code*. It should be noted that reducing the amount of food being cooled at one time can decrease the time needed to cool hot foods, and minimizes pathogen growth. Larger food items, such as roast turkey, and deep pot stews, rice, or refried beans take longer to cool because of their density and the volume of food from which heat must be removed. Tightly covering containers of hot foods slows cooling. Commercial refrigeration equipment is designed to hold cold foods at temperature, not cool large amounts of food. Subdivision (h), former subdivision (i), was amended to require *use*, not just possession, of thermometers to evaluate food temperatures.

RESOLVED that §81.10 of Title 81, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§81.10 [Time as a Public Health Control.] Time as a public health control.

(a) *Use of time controls.* Food service establishments may use time as the sole public health control, rather than using time in conjunction with temperature, for holding potentially hazardous [ready-to-eat] foods [to be served and consumed on site], only in accordance with the provisions of this section. Such foods shall not be returned to temperature control at any time with the intent to extend their use.

(1) *Initial temperatures.* [Ready-to eat] Potentially hazardous foods shall be at an initial temperature at or below 41 degrees Fahrenheit (5 degrees Celsius) when removed from cold holding temperature control, or at or above 140 degrees Fahrenheit (60 degrees Celsius) when removed from hot holding temperature control.

(2) *After cold holding.* Ready-to-eat foods and other potentially hazardous foods removed from cold holding temperatures may be kept for a maximum of [four or] six hours without further temperature control provided that at four hours the food has not reached or exceeded an internal temperature of 70 degrees Fahrenheit (21 degrees Celsius). [If such foods will be kept for up to six hours without further temperature control, the temperature of the food shall be measured and recorded every two hours, and shall not exceed a temperature of 70 degrees Fahrenheit (21 degrees Celsius).] If such food [at or above temperatures of] has reached or exceeded an internal temperature of 70 degrees Fahrenheit (21 degrees Celsius) it shall be discarded immediately.

(3) *After hot holding.* [Ready-to-eat] Potentially hazardous foods removed from required hot holding temperatures may be held at ambient temperatures for no more than four hours after removal from temperature control.

(4) Food shall not be held out of temperature control any longer than provided in paragraphs (2) and (3) of this subdivision and must, by when the respective allowable period of time has passed, either be discarded or served.

(b) *Labeling.* All foods removed from temperature control in accordance with this section shall be labeled or marked as follows:

(1) *Four hour labeling.* Food to be held for up to four hours shall be labeled or marked with the initial temperature at time of removal, and [a] the time, four hours after removal from temperature control, when such food shall be discarded if not served.

(2) *Six hour labeling.* Food to be held for up to six hours shall be labeled or marked with the initial temperature at time of removal, the time removed from cold temperature control, [the] times and temperatures, measured [at two hour intervals] four hours after removal from temperature control, and the time, six hours after removal from temperature control, when such food shall be discarded if not served.

(3) *Labels to be kept.* Labels or marked containers shall be kept until foods have been served or discarded.

(c) *Limits on use of time as a public health control.* Time shall not be used as the sole means of public health control, and §81.09 shall remain applicable as follows:

(1) Holding raw eggs prior to using such eggs in food prepared for (i) persons who may be at higher risk for food-borne illnesses, such as immunocompromised persons including residents or clients of senior centers, charitable feeding programs, adult day care programs, custodial care and health care facilities, and assisted living programs; (ii) infants and children in day care and pre-school programs; and (iii) pupils in primary and secondary schools.

(2) Preparation and holding of ready-to-eat potentially hazardous foods sold by or in (i) mobile food vending units; (ii) food vending machines; (iii) temporary food service

establishments operating in accordance with Article 88 of this Code; or (iv) self-service salad bars or buffets; or (v) when intended for takeout or delivery].

(3) Preparation and holding of potentially hazardous foods consisting of: (i) aquatic animals, fish or molluscan shellfish and (ii) opened or packaged] smoked or vacuum-packed food products.

(d) *Violations.*

(1) *§81.09 violations.* An establishment shall be in violation of §81.09 of this Code if the Department finds that, while using time as a public health control, the establishment (i) has not discarded food after the times specified in this section; or (ii) has not labeled or marked food as specified in this section.

(2) *§81.07 violations.* Food shall be deemed contaminated and an establishment shall be in violation of §81.07 (a) of this Code if cold potentially hazardous [ready-to-eat] foods labeled for six hour holding are measured at or above temperatures of 70 degrees Fahrenheit (21 degrees Celsius) after removal from cold temperature control.

§81.10 Table 1. Summary of procedures for using time as a public health control.

Summary of Procedures for Using Time as a Public Health Control				
Removal From:	Maximum Time out of Holding Temperature	When to Measure Temperature	What to Note on Required Labels	When to Discard
Cold holding at or below 41°F (5°C)	6 hours	When removed from cold holding, and, at 4 hours after removal	<ul style="list-style-type: none"> The time and temperature when removed from cold holding, and, removal, and The time and temperature 4 hours after removal, and The time to discard, serve, or cook 	If temperature is over 70°F (21° C) at 4 hours after removal
Hot holding at or above 140° F (60° C)	4 hours	When removed from hot holding	<ul style="list-style-type: none"> The time and temperature when removed from hot holding, and, The time 4 hours after removed from hot holding. This is the time when the food must be cooked, served, or discarded 	If not served within 4 hours

Notes: This section was amended by Board of Health resolution adopted XXX to remove restrictions on use of time as a public health control for takeout/delivery foods, and in holding fish and aquatic animal products, and raw foods, consistent with the 2009 *Food Code* guidelines. See, e.g., FDA 2009 *Food Code* §3-501.19.

RESOLVED that §81.11 (Food; disposition if unfit for human consumption; re-service of food prohibited) of Title 81, found in Title 24 of the Rules of the City of New York, be, and the same hereby is repealed, amended, to be printed together with explanatory notes to read as follows:

Notes: §81.11 (Food; disposition if unfit for human consumption; re-service of food prohibited) was repealed by resolution of the Board of Health adopted on XXX, and its provisions incorporated into §81.07.

RESOLVED that §81.12 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§81.12 Reduced oxygen packaging; cook chill and sous vide processing.

(d) *Specific requirements.* Foods shall be:

(1) Placed in an ROP package or ROP bag before cooking, or placed in a package or bag immediately after cooking and before reaching an internal temperature below 140 degrees Fahrenheit (60 degrees Celsius).

[(4) Properly cooled to an internal temperature of 38 degrees Fahrenheit (3.3 degrees Celsius) or below in the ROP package within two hours of cooking; further cooled to an internal temperature of 34 degrees Fahrenheit (1.1 degrees Celsius) or less within six hours of reaching 38 degrees Fahrenheit (3.3 degrees Celsius); held at an internal temperature of 34 degrees Fahrenheit (1.1 degrees Celsius) and consumed or discarded within 30 days after the date of preparation. However, if cooled to an internal food temperature of 38 degrees Fahrenheit (3.3 degrees Celsius), the food may be held at an internal temperature of 38 degrees Fahrenheit (3.3 degrees Celsius) or less for no more than 72 hours before consumption, and if not consumed, shall be discarded.]

(4) Cooled so that every part of the ROP package is reduced from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within two (2) hours and to 41 degrees Fahrenheit (5 degrees Celsius) or below within four (4) additional hours and subsequently:

(i) Cooled to 34 degrees Fahrenheit (1 degree Celsius) within 48 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius) and held at that temperature until consumed or discarded within 30 days after the date of packaging;

(ii) Cooled to 34 degrees Fahrenheit (1 degree Celsius) within 48 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius), removed from refrigeration equipment that maintains a 34 degree Fahrenheit (1 degree Celsius) food

temperature and then held at 41 degrees Fahrenheit (5 degrees Celsius) or less for no more than 72 hours, at which time the food shall be consumed or discarded;

(iii) Cooled to 38 degrees Fahrenheit (3 degrees Celsius) or less within 24 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius) and held there for no more than 72 hours from packaging, at which time the food shall be consumed or discarded; or

(iv) Held frozen with no shelf life restriction while frozen until consumed or used.

* * *
Notes: Paragraph (4) of subdivision (d) of §81.12 was amended by resolution adopted XXX. Paragraph (4) was repealed and recodified, substituting the FDA 2009 *Food Code* guidelines for cooling ROP packaged foods.

RESOLVED, that §81.13 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

§81.13 [Foodworkers; health clothing] Food workers; health; hygienic practices. All food workers shall use hygienic practices and maintain personal cleanliness.

(a) *Work restriction.* No person shall work or shall be knowingly or negligently permitted to work in a food service establishment while afflicted with a boil or infected wound and unless he or she is free from acute, infectious diarrhea, amebiasis, cholera, cryptosporidiosis, diphtheria, E. coli 0157:H7, giardiasis, hepatitis A, poliomyelitis, salmonellosis, shigellosis, streptococcal sore throat (including scarlet fever), superficial staphylococcal infection, tuberculosis, typhoid, or yersiniosis and is not a carrier of organisms causing the above conditions or other disease listed in §11.03 in a communicable form and unless the period of isolation or exclusion prescribed by Article 11 of this Code has ended.

(b) *Hair restraints.* Food workers shall wear caps, hats, hair nets or other hair coverings to effectively keep hair from having contact with exposed food or food contact surfaces, and clean equipment or utensils that have contact with food. This requirement shall not apply to counter staff who serve only beverages and/or pre-packaged foods, bartenders, baristas, hosts or wait staff.

(c) *Clothing.* All [foodworkers'] food workers shall wear clean, washable outer garments [, and whenever working in an area where food is prepared shall wear caps, hats or hair nets to minimize contact between hair and hands, food, and food-contact surfaces] when starting work and shall replace such garments with clean clothing as often as necessary thereafter to prevent contamination of food or food contact surfaces from soiled or contaminated clothing.

[(c) Persons who are not essential to the food establishment operations shall not be allowed in the food preparation, food storage or ware washing areas, except that brief visits and tours may be authorized by the operator if steps are taken to ensure that exposed food, clean equipment, utensils, linens and unwrapped single-service and single-use articles are protected against contamination.]

(d) *Hand washing.* Food workers shall wash hands and exposed areas of arms thoroughly with soap and warm water before starting and as often as necessary to remove soil and any substance that might lead to contamination. Thereafter, hands shall be washed thoroughly after using the toilet, smoking, sneezing, coughing, eating, drinking or when otherwise soiling hands before returning to work. When gloves are used as a barrier to protect ready-to-eat food from bare hand contact, hands shall be washed before gloves are put on. Gloves shall be changed after handling raw foods, performing tasks that do not involve food preparation or processing, handling garbage, or any other work where the gloves may have become soiled or contaminated.

(e) *Fingernails.* Food workers shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough, and unless wearing intact gloves in good repair, shall not wear fingernail polish or artificial fingernails when working with exposed food.

(f) *Jewelry.* Except for medical alert bracelets or a ring that is smooth and without crevices, such as a wedding band, food workers may not wear jewelry on their arms or hands.

(g) *Smoking.* Food workers shall not smoke any substance or use tobacco in any form in an establishment.

(h) *Eating and drinking.* Food workers shall not eat or drink in food preparation or other areas where food, equipment, and utensils may be exposed to contamination, except that a food worker may drink from beverages in closed containers.

(i) *No spitting allowed.* Spitting anywhere in the establishment is prohibited.

Notes: Section 81.13 was substantially amended by resolution adopted on XXX, adding a number of provisions related to food worker hygiene that are recommended in the FDA 2009 *Food Code*. Also added was a new subdivision (d), formerly in §81.07, specifying when food workers need to wash their hands.

RESOLVED, that §81.15 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

§81.15 Food protection course.

(a) [(1)] *Food protection certificate required.* No person who is charged with the management or supervision of the operations of a food service establishment or non-retail food processing establishment shall engage or be employed in such capacity unless he or she obtains a certificate issued by the Department subsequent to successful completion of a course in food protection, and passage of an examination administered by the Department. No person required to have a license issued pursuant to §89.03(b) of this Code shall be issued such license unless he or she obtains such a certificate. A person holding such certificate shall be on the premises [or, in the case of a mobile food vendor, at a vending site,] and shall supervise all food preparation activities during all hours of operation. [This paragraph shall not apply to food service establishments operated by religious, fraternal or charitable

organizations which are open to the public for the purpose of providing food to the needy, free of charge. Such establishments shall be subject to paragraph (2) of this subsection.]

(2) In a food service establishment operated by religious, fraternal or charitable organizations that are exempt from the requirements of paragraph (a)(1) of this section, the person responsible for the supervision of the food preparation or processing operations shall not engage or be employed in such capacity unless he or she has obtained a certificate pursuant to (a)(1) above, or he or she has first completed a course in food protection and obtained a certificate issued by the Department. Such course shall be provided by the Department or conducted by others approved by the Department. Such certificate may be used by the individual only while working at food service establishments subject to this paragraph. A person holding the certificate shall be on the premises during all hours of operation. This paragraph shall not apply to persons already holding a food protection certificate who is or has been charged with supervision of the operations of a regular food service establishment or a non-retail food processing establishment.]

(b) Certificate available for inspection. Such certificate shall be available for inspection at all times by the Department.

(c) Courses to be provided or approved by the Department. The Department may conduct such food protection courses, or any part thereof, or approve courses conducted by others. Persons electing to enroll in such courses conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for course registration, materials, training, testing and certificate issuance. Persons [covered under §81.15(a)(2)] who supervise food service operations for a religious, fraternal or charitable organization that is open to the public for the purpose of providing food to the needy, free of charge will not be charged a fee for a food protection course conducted by the Department [and are not required to take the Department's supplemental food protection course required pursuant to 24 R.C.N.Y., Chapter 21, §21-02].

(d) Additional food protection certificate holders: retaking courses. [The] In addition to the manager or supervisor of food operations, the Department may require the permittee, any persons supervising one or more specific food operations or the current holder of a food protection certificate in any food service establishment to complete a course when the Department finds continuing violations of the Code, [or when] a food borne illness outbreak implicates food prepared or processed under the supervision of such person, or when the Department determines that such a course is necessary to acquaint a supervisor with current developments in food protection principles, or when otherwise deemed necessary by the Department for the protection of the public.

(e) Photographs required. Two (2) full-face photographs shall be taken by the Department [or by others approved by the Department] when an applicant registers for such course or applies for such certificate. One photograph shall be affixed to the certificate of completion and the other maintained in the records of the Department. [Persons covered under §81.15(a)(2) shall not be subject to this subsection.]

Notes: §81.15 was amended by resolution adopted on XXX, adding titles to various subdivisions to promote compliance and easier reading, and repealing duplicate provisions and clarifying other requirements.

RESOLVED, that §81.17 (Food service establishments and non-retail food processing establishments: premises; location; general requirements) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed and recodified, to be printed together with explanatory notes as follows:

§81.17 General requirements: design, construction, materials and maintenance.

(a) Use of residential premises prohibited.

(1) No food service or non-retail food processing establishment permit shall be issued for, and no food service or non-retail processing establishment shall be located in, a private home or apartment.

(2) Food shall not be processed, prepared, packed or stored in a private home or apartment and no part of any food service establishment shall be located in any rooms used for dwelling or sleeping purposes.

(b) Size of establishments and work areas.

(1) Size. Adequate space shall be provided for conduct of operations and to enable thorough, regular cleaning, maintenance, and inspection of all areas of an establishment, including but not limited to those used for food preparation, ware washing, storage, dining, and garbage and waste holding and disposal.

(2) Work spaces. All work and storage areas shall have unobstructed aisles and working spaces of sufficient width to permit employees to perform their duties readily and without contaminating food or food-contact surfaces.

(3) Dressing areas. Dressing and locker areas shall not be located in food preparation, storage or ware washing areas.

(c) Equipment, installation and maintenance. Materials used to construct or repair equipment shall be of sufficient strength and thickness to withstand ordinary establishment usage and to permit cleaning and sanitizing. Equipment shall be installed flush with and sealed to the floor, or raised a minimum of six inches above the floor, or easily moveable to allow accessibility for cleaning on all sides, above and underneath the equipment. All equipment shall be maintained in working order.

(d) Food contact surfaces. Food contact surfaces of utensils and equipment shall be constructed of food grade materials, shall not be painted, and shall not contain lead, cadmium or any other substance that is toxic or may react with food, cleaning or sanitizing materials to form harmful compounds, or render food unwholesome or detrimental to health, and shall not impart any odor, color or taste to food.

(1) Surfaces to be easily cleanable and sanitized. An establishment shall not use equipment, utensils or containers that are chipped, cracked, rusted, corroded, worn or in a condition where food and debris cannot be removed and such items cannot be easily cleaned and sanitized.

(2) Food grade lubricants. Establishments shall use food

grade lubricants approved by the United States Food and Drug Administration to lubricate equipment. Such lubricants shall not leak or contact food or food contact surfaces. An establishment shall select and use equipment that requires only the use of simple tools for disassembly to encourage and facilitate cleaning and sanitizing of equipment. Such tools shall include, but not be limited to, mallets, screwdrivers, and open-end wrenches that are kept readily available near the equipment.

(3) Cleaned in place equipment. Equipment designed for in-place cleaning by the circulation or flowing by mechanical means through a piping system shall be constructed so that cleaning and sanitizing solutions circulate through an effective fixed system that allows such solutions to contact all interior food-contact surfaces, and so that the system is self-draining or can be completely evacuated.

(4) Cleaning and polishing food contact surfaces. No substance containing any cyanide preparation shall be used for cleaning or polishing copper, nickel, silver, silver plated ware or any utensils or appliances used in preparation or service of food. Cleaning and polishing formulations shall be used in accordance with the manufacturer's instructions so that such substances do not contaminate food.

(5) Approved sanitizers. Only chemical sanitizers and antimicrobial agents approved by the U.S. Environmental Protection Agency shall be used to clean food and food contact surfaces.

(6) Single service articles. Single service articles shall be manufactured from clean, non-toxic materials and fulfill the requirements of the Food, Drug and Cosmetic Act, as amended. Such articles shall not be reused and shall be discarded immediately after use.

(e) Non-food contact surfaces.

(1) Floors. Floors, floor coverings, and materials used to repair floors of food storage, food preparation, utensil washing areas, walk-in refrigerating units, dressing rooms, locker rooms, lavatories and rest rooms shall be constructed of a hard, smooth, durable, non-absorbent and easily cleanable material and shall be kept clean, without holes or gaps or other unintended openings at floor and wall junctions or around plumbing pipes and fixtures. Carpeting is prohibited on floors in food preparation areas. Mats and duckboards shall be designed to be removable and easily cleanable.

(2) Walls and ceilings. Walls, ceilings, doors, panels, windows, and other interior components of rooms, and equipment such as walk-in refrigerators, and the materials used to repair such components shall be smooth and non-absorbent, constructed of hard, impermeable, light colored materials, and shall be easily cleanable, kept clean and without holes or gaps or other unintended openings at floor, wall and ceiling junctions or around plumbing pipes and fixtures. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(3) Equipment and fixtures. Equipment and fixtures, including but not limited to, light fixtures, vent covers, fans, ducts, decorative materials, and other materials affixed to walls and ceilings shall be easily cleanable, and kept clean and in working order.

(4) Transportation. Vehicles and other conveyances used for the transportation of food by an establishment shall be kept clean, sanitary, and free of pests, and shall have sufficient equipment in operating condition to maintain temperatures required by this Code for holding potentially hazardous foods.

Notes: §81.17 was repealed and recodified by resolution adopted XXX. It now includes several provisions formerly in §§81.31 and 81.33 and modernizes provisions related to the physical facilities of establishments, in accordance with recommendations from the FDA 2009 Food Code.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, amended, adding a new §81.18, to be printed together with explanatory notes, to read as follows:

§81.18 Cold and hot storage and holding facilities. A food service establishment shall have adequate refrigeration and hot holding and storage facilities for the proper storage, transportation, display, and service of potentially hazardous foods. Specific refrigeration and hot holding and storage needs shall be based upon the menu, number of meals, frequency of delivery, and preparation in advance of service.

(a) Refrigeration. Refrigerators shall be capable of maintaining and shall maintain potentially hazardous foods at or below 41 degrees Fahrenheit (5 degrees Celsius) at all times. Food preparation procedures should be conducted so that refrigerators are opened on only a limited basis.

(1) Shelving. Shelving for walk-in and reach-in refrigeration units shall be made of food grade material that is smooth and easily cleanable.

(2) Air circulation and cooling ability. Air circulation within refrigeration units shall not be obstructed and shall allow for an even and consistent flow of cold air throughout the units. Fans circulating air within refrigeration units shall be kept clean, dust free, and in working condition. Gaskets shall be kept clean and intact and shall be replaced as needed so that refrigeration units may maintain food at required temperatures.

(3) Thermometers. Refrigeration units shall have numerically scaled or digital indicating thermometers, calibrated to be accurate to (+) or (-) 3 degrees Fahrenheit. The thermometer shall be placed to measure air temperature in the warmest part of the unit.

(4) Placement. Refrigeration units, unless specified by the manufacturer and designed for such use, shall not be located directly adjacent to cooking equipment or other high heat producing equipment which may tax the cooling system's operation.

(5) Walk-in refrigerator floors. Walk-in refrigerator floors that are water-flushed for cleaning or that receive discharge of liquid waste or excessive melt water, shall be non-absorbent and sloped to drain.

(6) Outdoor walk-in refrigerators. Refrigerators located outdoors shall be kept clean, locked, secure, and in operating condition, and shall not permit entry or harborage of pests.

(b) Hot holding. Hot holding and storage equipment shall be capable of maintaining and shall maintain potentially hazardous foods at or above 140 degrees Fahrenheit (60 degrees Celsius) at all times.

(1) Thermometers. Hot holding units shall have numerically scaled or digital indicating thermometers, calibrated to be accurate to (+) or (-) 3 degrees. The thermometer shall be placed to measure air temperature in the coolest part of the unit.

Notes: This section is new, and was added by resolution adopted XXX. It includes some provisions of former §81.35 (Food service establishments and non-retail food processing establishments; refrigerators) which was repealed. Its recodified provisions, applicable to both refrigeration and hot holding and storage equipment, have been updated, consistent with the FDA 2009 Food Code.

RESOLVED, that §81.19 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed and recodified, to be printed together with explanatory notes as follows:

§81.19 Lighting and ventilation.

(a) Lighting. Sufficient artificial light shall be provided so that operations and cleaning are conducted safely, and food workers are able to recognize the condition of food, equipment, utensils, and supplies. Artificial lighting shall be provided as follows:

(1) At least 540 lux (50 foot candles) at surfaces where food workers are preparing and processing food and working with utensils or equipment such as knives, slicers, grinders, or saws;

(2) At least 215 lux (20 foot candles) at surfaces where food is provided for consumer self-service such as buffets and salad bars; inside equipment such as reach-in and under-counter refrigerators; and at a distance of 30 inches (75 centimeters) above the floor in areas used for hand washing, ware washing, and equipment and utensil storage, and in toilet rooms; and

(3) At least 108 lux (10 foot candles) at a distance of 30 inches (75 centimeters) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning.

(b) Lighting to be shielded. All artificial lighting fixtures including infrared or other heat lamps located over, by or within food storage, preparation, service or display facilities, and facilities where utensils and equipment are cleaned and stored, which may shatter due to extreme heat, temperature changes or accidental contact and may contaminate food upon shattering, shall be fitted with light bulbs that are coated with a shatterproof sealant or otherwise rendered shatterproof or shall be shielded and encased, with end caps or other devices, to prevent broken glass from falling into food or onto food-contact surfaces.

(c) Ventilation. Establishments shall be adequately ventilated to prevent excessive heat, steam, condensation, vapors, odors, smoke, and fumes.

(1) Mechanical ventilation shall be installed in rooms where odors, vapors or fumes originate.

(2) Ventilation hoods and devices shall be constructed and installed to prevent grease or condensation from collecting on walls or ceilings and from dripping into food or onto food-contact surfaces.

(3) Intake and exhaust ducts shall be constructed and maintained to prevent dust, smoke and fumes, dirt or other contaminants from entering the establishment.

(4) Ventilation to the outside air shall comply with applicable law and regulation and shall not create a nuisance or unlawful emission.

(5) Concentrations of carbon monoxide gases shall not exceed nine (9) parts per million.

Notes: §81.19 (Food service establishments and non-retail food processing establishments: premises; lighting and ventilation) was repealed and recodified by resolution adopted on XXX. Recodified lighting standards were substantively updated, incorporating recommendations from the FDA 2009 Food Code. The acceptable level of carbon monoxide of 9 ppm is based on the U.S. Environmental Protection Administration's National Ambient Air Quality Standards for an eight hour average concentration. See, 40 CFR §50.8.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to add a new §81.20 (Plumbing and water supply), to be printed together with explanatory notes, as follows:

§81.20 Plumbing and water supply.

(a) Potable water supply. An establishment shall be equipped with plumbing and plumbing fixtures, in accordance with applicable law, that safely supply potable water, as defined in Part 5 of the State Sanitary Code (10 NYCRR Chapter 1), to all parts of the establishment. Plumbing and fixtures shall be properly connected, vented, and drained to prevent contamination of the potable water supply. Potable water supply fixtures or other equipment connected to the potable water supply shall be designed and constructed or equipped with a device that prevents back-flow or siphonage into, or cross connection with the water supply.

(b) Disposal of sewage and liquid waste. Sewage and liquid wastes other than grease and oil waste shall be conveyed to the sewer or sewage disposal system so as to prevent contamination of the premises and its contents. Grease and oil wastes shall be disposed of in accordance with applicable laws.

(1) Indirect waste connection required. There shall be no direct connection between the sewage system and any drains from plumbing fixtures and equipment used for hot and cold storage, or mechanical processing of food. Waste lines from equipment required to have indirect drains shall be installed to prevent back-flow from sewers and other drains and waste lines.

(2) Direct drainage. Waste water pipes shall be discharged into a properly trapped, sewer-connected, clean, slop sink, or other acceptable method of drainage.

(c) Condensation. Plumbing pipes shall be installed and maintained in a manner that prevents waste water or condensation from contact with food or equipment.

(d) Carbonated beverages. All plumbing lines conducting carbon dioxide gas or carbonated beverages shall be manufactured from stainless steel, food-grade plastic or other material that will not produce toxic substances when exposed to carbon dioxide or carbonated water.

Notes: A new §81.20 was added by resolution adopted by the Board of Health on XXX. The new section incorporates and updates provisions applicable to water supply and plumbing from former §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles).

RESOLVED, that §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed and recodified, to be printed together with explanatory notes as follows:

§ 81.21 Hand wash sinks.

(a) Location. Hand washing sinks shall be installed in food preparation, food service, and ware washing areas, and in or adjacent to employee and patron toilet rooms, and may be located between such areas.

(1) Sufficient sinks shall be provided so that a hand washing sink is no more than 25 feet from any food preparation, service or ware washing area.

(2) Any area in which a hand wash sink is located shall be unobstructed by doors or equipment, and access shall be kept clear to enable its use as required by this Code. Hand washing sinks shall not be used for purposes other than hand washing.

(3) An automatic hand washing sink shall be used in accordance with the manufacturer's instructions. A self-closing, slow-closing or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet. A steam mixing valve shall not be used.

(b) Soap, towels, trash receptacle. Soap or detergent; single use disposable towels or mechanical drying devices; and a foot operated covered trash receptacle shall be provided. A supply of towels or a towel dispenser shall be located immediately adjacent to the hand wash sink, and available without requiring the user to open drawers, cabinets or other enclosures that could lead to recontamination of hands.

(c) Wash hands signs. Signs directing employees to wash hands after use of toilet shall be conspicuously posted near or above all hand washing sinks. Signs shall be posted in English and all languages as necessary so as to be understood by all food workers in an establishment.

Notes: Former §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles) was repealed and recodified by resolution of the Board of Health adopted XXX. As recodified, this section updates provisions from former Article 81 sections and adds new requirements for installing hand wash sinks to encourage and enable food workers to wash hands as necessary to prevent transmission of food borne illnesses.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to add a new §81.22, to be printed together with explanatory notes, as follows:

§81.22 Employee and patron toilets.

(a) Toilets required. Toilet facilities shall be provided for employees and shall be equipped with a minimum number of water closets, urinals, and other plumbing fixtures as required by Chapter 4 of the New York City Plumbing Code, Administrative Code §28-PC 403, or any successor law.

(b) Patron toilets required. Food service establishments with a seating capacity of 20 or more, except those located in premises where a permitted food service establishment operated on or before December 5, 1977, shall provide toilet facilities for patrons. Establishments with a seating capacity of 20 or more in premises where a permitted food service establishment operated on or before December 5, 1977 shall, when undergoing renovations of sufficient scale to require a construction permit from the Department of Buildings, install and thereafter provide one or more patron toilets equipped as required by subdivision (a) of this section.

(c) Toilet rooms. All toilets shall be properly flushed and trapped, adequately lighted and ventilated, maintained in sanitary, operating condition, and furnished with supplies of toilet tissue and easily cleanable covered receptacles for waste paper and other refuse.

Notes: §81.22 was adopted by resolution of the Board of Health on XXX. It incorporates and updates provisions related to required employee and patron toilets from former §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided).

RESOLVED, that §81.23 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

§81.23 [Food service establishments and non-retail food processing establishments; premises; conditions conducive to rodent or insect and pest life prohibited; rodent proofing.] Integrated pest management.

(a) Establishments to be pest free. Food service and non-retail food processing establishments shall be kept free of rodents, insects and other pests, as defined in Article 151 of this Code, and of [any condition] conditions conducive to [rodent or insect and other pest life] pests, which shall include but not be limited to the following:

(1) Accumulated refuse and other material on or in which pests may shelter, hide or nest;

(2) Presence of cracks, gaps or holes in establishments' exteriors or interiors that permit free movement of pests;

(3) Presence of food or water refuse and wastes accessible to and capable of sustaining or attracting a pest population including, but not limited to, standing water or other liquid wastes, grease and food residue and improperly closed food containers.

(b) Prevention. Premises, equipment and fixtures shall be of a construction, design and material so as to [be rodent proof] prevent and control entry and harborage of pests.

(1) Daily inspections. Permittees shall inspect the premises and incoming food and supplies daily to determine presence of pests and to prevent entry of and infestation by pests.

(2) Exterminator required. Permittees shall contract with a pest management professional certified by New York State Department of Environmental Conservation to provide preventive measures and extermination services necessary to maintain their establishments free of pests. At the request of the Department, the permittee shall make available for inspection a fully executed copy of a contract with a pest management professional to provide at least monthly preventive inspections and services, and where pests are observed, to provide services for their elimination.

(3) Doors. All doors opening into the establishment from the outside shall be equipped with barriers such as anti-rodent brushes or a space no larger than one-quarter of an inch (six millimeters) to prevent entry of rodents.

(4) Pest monitors. As part of an integrated pest management program, an establishment may use sticky monitoring traps or stations that are examined to determine if the establishment has a roach, other insect or rodent infestation. Such monitoring traps or stations shall be marked with the date the station was placed, and a date, no later than one month thereafter, or an earlier date, to be established by the pest management professional, when the traps or stations shall be removed and discarded. Such traps and stations shall be removed as soon as they contain one or more rodents.

(b) All openings into the outer air that are kept open shall be effectively screened and doors shall be self-closing, unless other effective means such as effective fly fans or effective air curtains are provided to prevent the access by insects and other pests.]

(c) [Operators of food service establishments and non-retail food processing establishments] Pest infestations. Permittees shall take [extermination and] all preventive, control, and extermination measures necessary to maintain the establishment free of [rodents, insects and other] pests. When the Department determines that an establishment has a persistent pest infestation and conditions conducive to pests, the Department may order the permittee to institute and maintain a pest management plan in accordance with §151.02 (c) of this Code.

(d) Pesticide applications. Pesticides shall be properly labeled, authorized for use, and used only by licensed pest professionals in accordance with Part XX of the New York State Environmental Conservation Law and Title 6 of the New York Codes, Rules and Regulations (N.Y.C.R.R.) Part 325, or any successor regulation, and applied so that:

(1) There is no hazard to employees or other persons.

(2) There is no pesticide spraying in food preparation and service areas while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored.

(3) Food, equipment, utensils, linens, and single-service or single use articles are protected from contamination or toxic residues from pesticide drip, drain, fog, splash or spray on by removal, impermeable coverings or other measures, and by cleaning and sanitizing after pesticide application.

[Poisonous] (e) Toxic materials. Where labels permit, poisonous and toxic materials shall be stored in areas designated solely for such purpose, or in a storage area outside the food, equipment and utensil storage area. Bactericides and cleaning compounds shall not be stored with insecticides, rodenticides or other poisonous materials. Insecticides and rodenticides shall be kept in their original containers.

[Insecticide spraying is prohibited in food preparation and service areas while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored.]

Notes: Section 81.23 was extensively revised and updated by resolution adopted by the Board of Health on XXX. The need for the revision is clearly shown by Department data indicating that in calendar year 2010, 51% of food service establishments were cited for pest violations, and that among the approximately 2,300 establishments closed for imminent or public health hazards, 62% were closed for pest violations.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to add a new §81.24, to be printed together with explanatory notes as follows:

§81.24 Garbage and waste disposal. Garbage and wastes shall be stored, handled, and disposed of in a manner that protects food and food-contact surfaces from contamination, and does not create a condition conducive to pests or a nuisance.

(a) Garbage storage and removal.

(1) Garbage and wastes shall be removed from the establishment daily for collection or stored in a pest-proof room or in easily cleanable, watertight, rodent-resistant, and insect-resistant containers with tight fitting lids.

(2) Solid and putrescible wastes placed on sidewalks for collection shall be held in tightly covered containers lined with plastic bags until collected and disposed of in accordance with applicable law, including but not limited to Title 16 of the Administrative Code and the rules of the Departments of Sanitation and Small Business Services, or successor agencies.

(b) Containers to be cleaned after emptying. Garbage receptacles and covers shall be cleaned immediately after emptying.

Notes: §81.24 was added by resolution of the Board of Health adopted on XXX. It includes provisions from former sections of Article 81 related to garbage and waste accumulations and disposal.

RESOLVED, that §81.25 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

§81.25 [Food service establishments and non-retail food processing establishments; animals prohibited.] Live animals.

No live animal shall be kept, housed or permitted to enter into or remain in any food service establishment [or non-retail food processing establishment]. This section shall not apply to edible fish, crustacea, [shellfish] mollusks, or fish in aquariums[,] [seeing-eye dogs accompanying sightless persons, hearing or] service dogs or other animals accompanying and [assisting] trained to assist disabled persons[,] or [patrol] working dogs accompanying police officers.

Notes: §81.25 was amended by resolution adopted XXX to be consistent with similar provisions in Article 161 of the Code, reflecting current regulations implementing the Americans with Disabilities Act.

RESOLVED, that §81.27 (Food service establishments and non-retail food processing establishments; foodworker use of tobacco and consumption of food on premises; spitting prohibited) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, and a new §81.27 (Cleaning of premises, equipment and utensils) be added, to be printed together with explanatory notes to read as follows:

§81.27 Cleaning of premises, equipment and utensils.

(a) Non-food contact surface components. Floors, walls, ceilings, and other non-food contact surfaces shall be kept free of accumulations of dust, dirt, food residue, grease, and other debris and shall be cleaned as necessary to prevent such accumulations.

(b) Food contact surfaces. Equipment food contact surfaces and utensils shall be clean to sight and touch and shall be kept free of dust, dirt, food residues, grease deposits, and other contaminants. Equipment food contact surfaces and utensils shall be cleaned:

(1) Before each use with a different type of raw animal food such as beef, fish, lamb, pork or poultry;

(2) Each time there is a change from working with raw to working with ready-to-eat foods; and

(3) At any time when contamination may have occurred.

(c) Equipment with food contact surfaces. Ice bins, coffee grinders, frozen dessert machines, and similar types of equipment with food contact surfaces shall be cleaned and sanitized at the frequency specified by the manufacturer or at a frequency necessary to prevent the accumulation of encrusted food, mold, grease or other contaminants. Unless specifically constructed to enable cleaning in place, equipment shall be disassembled prior to cleaning.

(d) Cloths. Cloths used for the cleaning and sanitizing of food contact and non-food contact surfaces shall be stored clean and dry, or in a sanitizing solution, between uses.

(1) Moist cloths used for wiping food spills from kitchenware and food contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses.

(2) Moist cloths used for wiping non-food contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses.

Notes: Former §81.27 (Food service establishments and non-retail food processing establishments; food worker use of tobacco and consumption of food on premises; spitting prohibited) was repealed by resolution adopted by the Board of Health on XXX, its provisions updated and incorporated into §81.13, and provisions from former §81.37, related to cleaning of premises, equipment, and utensils were updated and included in a new §81.27.

RESOLVED that §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, and a new §81.29 (Dishwashing and ware washing) be added, to be printed together with explanatory notes as follows:

§81.29 Dishwashing and ware washing.

(a) Sanitizing. Tableware, utensils, and equipment may be cleaned and sanitized manually, or by machine, using either heat or chemical means, as follows.

(1) Manual: heat. Sanitization using hot water in manual operation shall be done in a three-compartment sink.

(i) The first compartment shall be used for washing with hot water and detergent.

(ii) The second compartment shall be used for a clean hot water rinse.

(iii) The third compartment shall heat and maintain water at or above 170 degrees Fahrenheit (76.6 degrees Celsius). Items being sanitized shall be wholly immersed in the third compartment for at least 30 seconds to destroy surface pathogens. A numerically scaled, indicating or digital thermometer calibrated to be accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) shall be used to check water temperature. Immersion baskets that permit complete submersion of tableware, kitchenware and equipment in the third hot water compartment shall be provided and used.

(2) Manual: chemicals. Chemicals used for sanitizing in manual operation shall be used in accordance with the manufacturer's instructions, and shall not be used in concentrations that will leave toxic residues on surfaces treated. A test kit or other device shall be used to accurately measure the parts per million concentration of the solution used, and the pH of the solution when the pH level would affect the performance of the chemical sanitizer.

(3) Mechanical: heat. High temperature machines used for the cleaning and sanitizing of utensils, equipment, and food contact surfaces shall be installed, maintained, and operated in accordance with the manufacturer's instructions, shall be equipped with thermometers, and shall maintain water at or

above 170 degrees Fahrenheit (76.6 degrees Celsius) for at least 30 seconds during the final rinse cycle to destroy surface pathogens.

(4) Mechanical: chemical. Chemicals used in low temperature machines shall be used in accordance with the machine manufacturer's instructions and shall not be used in concentrations which will leave toxic residues on surfaces treated. A test kit or other device shall be used to accurately measure the parts per million concentration of the solution used, and the pH of the solution when the pH level would affect the performance of the chemical sanitizer.

(b) Drain boards: air drying. Drain boards of adequate size shall be provided and used for the proper handling of soiled items prior to washing and of clean items following sanitization. Drain boards shall be self-draining and located and constructed so that they do not interfere with the proper use of ware washing facilities. All tableware, utensils, and food contact equipment shall be air dried after sanitizing.

Notes: Former §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided) was repealed by resolution of the Board of Health adopted XXX, and its provisions were updated and incorporated into §81.22.

RESOLVED, that §81.31 (Food service establishments and non-retail food processing establishment; equipment and utensils to be made of nontoxic materials) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, and a new §81.31 (Outdoor cooking, food and beverage preparation facilities) be added, to be printed together with explanatory notes as follows:

§81.31 Outdoor cooking, food and beverage preparation facilities.

(a) Street and sidewalk cooking prohibited; exceptions. There shall be no cooking on a street or sidewalk, except when an establishment is participating in an event as defined in Article 88 of this Code, or a mobile food vending unit is being operated in accordance with Article 89 and other applicable law, or permission has been obtained from appropriate City agencies.

(b) Conducted by a food service establishment. When permission has been obtained from the Department of Buildings, Fire Department, and other agencies when required, a permitted food service establishment may cook outdoors at the establishment within the premises under the establishment's ownership, management, operation, and control, in accordance with this section, and other provisions of this Article.

(c) Prevention of nuisances. No nuisance shall be created, including from smoke, garbage, noise or pests.

(d) Structural components.

(1) Floors. A hard surface floor whose construction and materials comply with §81.17 of this Code shall be provided.

(2) Food protection. During food and beverage preparation, hot and cold holding, and food storage, food shall be protected at all times by covering with barriers, including, but not limited to, awnings, tents, screens, vermin-resistant containers, or other methods required by §81.07 of this Code. No foods, or clean utensils and equipment, shall be stored outdoors when the outdoor cooking facility is not in operation. A hand wash sink shall be provided if any food is prepared at the outdoor cooking facility.

(3) Overhead protection. Cooking equipment and utensils shall be covered by lids or larger overhead protections such as a tent, canopy, umbrella or other device.

(4) Lighting and ventilation. Lighting and ventilation shall be provided in accordance with §81.19 of this Code.

Notes: §81.31 (Food service establishments and non-retail food processing establishment; equipment and utensils to be made of nontoxic materials) was repealed by resolution adopted XXX, when many of its provisions were updated and incorporated into §81.17, and a new §81.31 was added establishing provisions for outdoor cooking.

RESOLVED, that §81.33 (Food service establishments and non-retail food processing establishments; equipment and utensils; design, construction and placement) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed to be printed together with explanatory notes as follows:

Notes: §81.33 (Food service establishments and non-retail food processing establishments; equipment and utensils; design, construction and placement equipment) was repealed by resolution adopted XXX, when many of its provisions were updated and incorporated into §81.17.

RESOLVED, that §81.35 (Food service establishments and non-retail food processing establishments; refrigerators) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.35 (Food service establishments and non-retail food processing establishments; refrigerators) was repealed by resolution of the Board of Health adopted XXX, when many of its provisions were updated and incorporated into a new §81.18 (Cold and hot storage and holding facilities) was adopted.

RESOLVED, that §81.37 (Food service establishments and non-retail food processing establishments; cleaning of premises, equipment and utensils; cleaning methods) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.37 was repealed by resolution of the Board of Health adopted XXX, when many of its provisions were updated and incorporated into §81.29.

RESOLVED, that §81.45 (Drinking straws and single service

utensils) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.45 (Drinking straws and single service utensils) was repealed by resolution of the Board of Health adopted XXX, when its provisions were updated and incorporated into §81.07.

RESOLVED, that §81.47 (Water potability certificates) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.47 (Water potability certificates) was repealed by resolution of the Board of Health adopted XXX. A fee for issuance of such certificates required by the U.S. Department of Agriculture under the Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 451-470; 601-695; 7 U.S.C. 450; 1901-1906) remains in Article 5 of the Code.

RESOLVED, that §81.49 (Modification by the Commissioner) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, amended and renumbered as §81.55, to be printed together with explanatory notes as follows:

[§81.49] §81.55 Modification by Commissioner.

When the strict application of any provision of this Article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this Article and upon such conditions as in his or her opinion are necessary to provide for clean and sanitary food prepared, manufactured, processed or served in clean and sanitary establishments. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

Notes: Former §81.49 was renumbered as §81.55 by resolution of the Board of Health adopted XXX and the term "prepared" was added.

RESOLVED, that the Table of Section Headings of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is, amended, to be printed with explanatory notes, to read as follows:

ARTICLE 81
FOOD PREPARATION AND FOOD ESTABLISHMENTS

§81.01 Scope.

§81.03 Definitions.

§81.04 Approved sources of food.

§81.05 Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments.

§81.06 Prevention of imminent or public health hazards

§81.07 Food: sanitary preparation, protection against contamination.

§81.08 Foods containing artificial trans fat.

§81.09 [Food; temperature requirements.] Potentially hazardous foods; temperature control for safety.

§81.10 [Time as a Public Health Control.] Time as a public health control.

§81.11 Food; disposition if unfit for human consumption; re-service of food prohibited.]

§81.12 Reduced oxygen packaging; cook chill and *sous vide* processing.

§81.13 [Foodworkers; health; clothing.] Food workers; health; hygienic practices

§81.15 Food protection course.

§81.17 [Food service establishments and non-retail food processing establishments; premises; location; general requirements.]

General requirements: design, construction, materials and maintenance.

§81.18 Cold and hot storage and holding facilities.

§81.19 [Food service establishments and non-retail food processing establishments; premises; lighting and ventilation.]

Lighting and ventilation.

§81.20 Plumbing and water supply.

§81.21 [Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles.]

Hand wash sinks.

§81.22 Employee and patron toilets.

§81.23 [Food service establishments and non-retail food processing establishments; premises; conditions conducive to rodent or insect and pest life prohibited; rodent proofing.]

Integrated pest management.

§81.24 Garbage and waste disposal.

§81.25 [Food service establishments and non-retail food processing establishments; animals prohibited.] Live animals.

§81.27 [Food service establishments and non-retail food processing establishments; foodworker use of tobacco and consumption of food on premises; spitting prohibited.]

Cleaning of premises, equipment and utensils.

§81.29 [Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided.]

Dishwashing and ware washing.

§81.31 [Food service establishments and non-retail food processing establishments; equipment and utensils to be made of non-toxic materials.]

Outdoor cooking, food and beverage preparation facilities. [§81.33 Food service establishments and non-retail food processing establishments; equipment and utensils; design, construction and placement.]

[§81.35 Food service establishments and non-retail food processing establishments; refrigerators and hot storage facilities.]

[§81.37 Food service establishments and non-retail food processing establishments; cleaning of premises, equipment and utensils; cleaning methods.]

§81.39 [Food service establishments and non-retail food processing establishments; sealing of Sealing unclean equipment, utensils and vehicles; denial, suspension and

revocation of permits; enforcement[.]; padlocking.

§81.41 Dispensing devices used to dispense food; construction, cleanliness, refrigeration, safety.

§81.43 Reporting complaints of patrons' illness, emergency occurrences.

[§81.45 Drinking straws and single service utensils.]

[§81.47 Water potability certificates.]

[§81.49 Modification by Commissioner.]

§81.50 Posting of calorie information.

§81.51 Grading of inspection results and posting of grades by certain food service establishments.

§81.55 Modification by Commissioner.

Notes: The table of section headings of Article 81 was amended by Board of Health resolution adopted on XXX to reflect the comprehensive amendment and reorganization of Article 81.

RESOLVED, that Articles 91 (Meat and Meat Products; Slaughtering of Animals); 93 (Poultry; Slaughtering, Eviscerating and Processing); 95 (Sausage Manufacturing and Smoking, Preparing or Preserving of Meat); 97 (Horsemeat and Slaughtering of Horses); 101 (Shellfish and Fish); 103 (Establishments Engaged in Preparing, Preserving or Smoking Fish); 113 (Frozen Desserts) and 121 (Other Food Establishments: Dry Warehouses; Edible Egg Breaking; Bakeries, Mineral, Spring and Other Waters; Carbonated and Other Beverages) of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby are, repealed.

RESOLVED, that the Table of Section Headings in Part A (Food and Drugs) of Title IV (Environmental Sanitation) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and same hereby is amended, to be printed together with explanatory notes, to read as follows:

Article 71	Food, [and] Drugs and Cosmetics
73	[Reserved]
75	[Reserved]
77	[Reserved]
81	Food Preparation and Food Establishments
83	[Reserved]
85	[Reserved]
87	[Reserved]
88	Temporary Food Service Establishments
89	Mobile Food Vending
[91	Meat and Meat Products; Slaughtering of Animals]
[93	Poultry; Slaughtering, Eviscerating and Processing]
[95	Sausage Manufacturing and Smoking, Preparing or Preserving Meat]
[97	Horsemeat; Slaughtering of Horses]
[101	Shellfish and Fish]
[103	Establishments Engaged in Preparing, Preserving or Smoking Fish]
[111	Milk and Milk Products]
[113	Frozen Desserts]
115	Prescription Formula Preparation Facilities
116	[Reserved]
[117	Dairy Food Products]
[121	Other Food Establishments: Dry Warehouses; Edible Egg Breaking; Bakeries, Mineral, Spring and Other Waters; Carbonated and Other Beverages]

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Health Code Article 81 (Food Preparation)

REFERENCE NUMBER: 2011 RG 11

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 Date: September 7, 2011
Acting Corporation Counsel

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Health Code Article 81 (Food Preparation)

REFERENCE NUMBER: DOHMH-3

RULEMAKING AGENCY: DOHMH

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco Navarro
Mayor's Office of Operations

September 7, 2011
Date

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NOTICE OF ADOPTION OF AMENDMENTS TO ARTICLE 165 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the "Charter") and pursuant to the authority granted to the Board of Health by §558 of the Charter, a notice of public hearing and notice of intention to amend Article 165 of the New York City Health Code (the "Health Code") was published in the City Record on June 22, 2011, and a public hearing was held on July 26, 2011. One written comment was submitted and no individuals testified. A written comment to the notice of intention was submitted by the New York State Department of Health (NYSDOH), dated July 26, 2011. NYSDOH is proposing to eliminate its Water Treatment Plant Operator Certificate Courses Type A and B for the purpose of certifying pool operators during a future revision to its regulations because courses addressing pool specific operation and maintenance issues are more relevant. NYSDOH also informed the Department that the term "certified pool operator" is a registered trademark of the National Swimming Pool Foundation. The Department agrees with both points raised in the comment from NYSDOH and has revised its amended language accordingly by eliminating use of Water Treatment Plant Operator Certificate Courses Type A and B for the purpose of certifying pool operators and changing the term "certified pool operator" to "pool operator" to avoid potential trademark infringement. At its meeting on September 13, 2011, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the New York City Health Code ("Health Code") are proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter ("Charter").

- Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene ("Department") jurisdiction to regulate all matters affecting health in the City of New York.
 - Section 556 (a)(3) requires the Department to, "exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto...."
- Sections 558 (b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends.
- Section 1043 of the Charter grants rule-making powers to the Department.

STATEMENT OF BASIS AND PURPOSE

The purpose of the amendment is to expand the options for pool operators who are currently only allowed to take the New York City Department of Health and Mental Hygiene's pool operation course.

The Department is responsible for protecting the health and safety of the public that uses permitted bathing establishments, such as public pools, by assuring their proper construction, operation and maintenance. Article 165 of the Health Code provides the standards for operating and maintaining permitted bathing establishments.

Currently, the City's Health Code requires that bathing establishments be managed by a certified pool operator who has successfully completed a course in swimming pool technology administered only by the Department. The State's Sanitary Code (10 NYCRR §§ 6-1.2, 6-3.2) requires qualified swimming pool treatment operators to complete an adequate course of instruction regarding the safe and effective operation and maintenance of pool treatment equipment.

CHANGES IN RESPONSE TO PUBLIC COMMENTS

A written comment to the notice of intention was submitted by the New York State Department of Health (NYSDOH), dated July 26, 2011, concerning course requirements for pool operators and possible trademark infringement issues. In recognition of the State Department of Health's intent to eliminate use of Water Treatment Plant Operator Certificate Courses, Type A and B, for the purpose of certifying pool operators because courses addressing pool specific operation and maintenance issues are more relevant, the Department similarly proposes eliminating the following language from its proposal: "either of the following courses: (1) a New York State Department of Health Water Treatment Plant Operator Certification Course Type A or B". Accordingly, the amended language in this Notice of Adoption requires: "an adequate course of instruction, as determined by the Department, regarding the safe and effective operation and maintenance of pool treatment equipment". This language is similar to that required by NYSDOH in its analogous regulations (10

NYCRR §§ 6-1.2, 6-3.2). Also, because the Department has been informed by NYSDOH that the term "certified pool operator" is a registered trademark of the National Swimming Pool Foundation, the Department has replaced the term "certified pool operator" with "pool operator" to avoid any possible trademark infringement concerns.

With these rule changes, the Department seeks to expand the range of course options for pool operators in New York City.

The amendment is as follows:

Note - Matter in brackets [] is to be deleted.
Matter underlined is new.

RESOLVED, that §§165.03, 165.15(b), 165.27(b) and 165.29(a) of Article 165 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on March 27, 2009, be and the same hereby is amended to eliminate the term "certified pool operator" and replace it with "pool operator" and to expand the course options for pool operators, to be printed together with explanatory notes, to read as follows:

ARTICLE 165 BATHING ESTABLISHMENTS

§165.03 Definitions.

Pool. "Pool" means an artificial basin, tank, or chamber constructed of concrete, masonry, metal, or other impervious material which contains water and is operated for the purpose of bathing, wading, swimming, diving, water recreation, or therapy. This does not include bath tubs which are drained between uses.

"Pool operator. "Pool operator" means an individual possessing a current certification of the successful completion of [a course in swimming pool technology administered by the Department.] an adequate course of instruction, as determined by the Department, regarding the safe and effective operation and maintenance of pool treatment equipment.

Physical-therapy pool. "Physical-therapy pool" means a pool not intended for swimming or instruction in swimming. A "physical-therapy pool" is medically administered and specifically designed and constructed for hydro-therapy, medical treatment, physical or muscle relaxation, or reserved for use by persons with physical disabilities or other special purposes deemed appropriate by the Department.

§ 165.15 Certifications, Supervision Coverage and Surveillance Requirements.

(a) All bathing establishments shall be maintained and operated in a safe, clean and sanitary condition at all times.

(b) **Certifications.** All bathing establishments shall be operated and supervised by the required certified personnel. The pool operator shall not hire or retain any person who does not have verifiable aquatic supervisory staff qualifications. Copies of the certificates or other documents showing possession of such qualifications shall be kept on file at the facility and shall be readily available for inspection by the Department.

(1) **Pool operator.** A [certified] pool operator shall be designated and shall be responsible for the operation of the bathing establishment in compliance with this Article. No person who is charged with the operation of a bathing establishment shall engage in or be employed in such capacity unless the person obtains a certificate indicating successful completion of [a course in swimming pool technology administered by the department] an adequate course of instruction regarding the safe and effective operation and maintenance of pool treatment equipment. "Adequate" is defined in §165.03 of this Article. An adequate course of instruction shall be determined by the Department. A refresher course [in swimming pool technology] may be required for a licensed pool operator whenever deemed necessary by the [d]Department. The [d]Department may require that a refresher course be taken when continuing violations of the Article are found, when a water borne disease outbreak implicates the pool and/or spray ground water or sanitary conditions at the pool and/or spray ground, or when the [d]Department requires such a course to acquaint the operator with current developments in pool operation [technology].

§ 165.27 Sanitation and Safety.

(b) **Bather loads.** The number of patrons within a pool enclosure shall not exceed the maximum permissible loading established by §165.41(m). The bather load shall be posted at the entrance or at a location where it can be seen by all patrons. The [certified] pool operator shall be responsible for controlling the number of bathers so that the maximum capacity is not exceeded.

§ 165.29 Operation and Maintenance of Mechanical Equipment.

(a) **Manual.** A manual for operation of the pools and/or spray grounds shall be provided, maintained and available to the [certified] pool operator. It shall include instructions for each filter, pump or other piece of equipment, drawings, illustrations, charts, operating instructions and parts list, to permit installation, operation, winterization and maintenance. All valve operating procedures and schedules shall be provided in the equipment room for each mode of operation (recirculation, filtration, backwashing) with piping labeling and flow directions. The mechanical equipment shall be inspected and maintained in accordance with the manufacturers' recommendations and to ensure proper operation.

Notes: On September 13, 2011, the Board of Health amended §§165.03, 165.15(b), 165.27(b) and 165.29(a) of Article 165 of the New York City Health Code to eliminate the term "certified pool operator" and replace it with "pool operator" and to expand the course options for pool operators who are currently only allowed to take the New York City Department of Health and Mental Hygiene's pool operation course.

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NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed amendment of Section 205.19(a)(1) and (2) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, pertaining to the removal of human remains from place of death or termination of pregnancy.

Contact: Rena Bryant
(347) 396-6071
New York City Department of Health and Mental Hygiene
2 Gotham Center, 14th Floor, Room 14-44
42-09 28th Street
Long Island City, NY 11101-4132

Proposed Rule

The Department of Health and Mental Hygiene is proposing that the Board of Health amend Section 205.19 of the Health Code to correct an inadvertent error made at the time the provisions were presented for adoption in September 2009. The proposed amendment would replace the word "a" with the word "the."

There will be no public hearing on this proposal to amend Health Code §205.19(a)(1) and (2) since the amendment is to correct an inadvertent error made at the time this section was drafted for adoption in September 2009. The proposed language reads as the provision appeared when the section was proposed for amendment in June 2009 and for which there was a public hearing. Therefore, a hearing on this proposed amendment would serve no public purpose.

The proposal was not included in the Department's Regulatory Agenda because the Department was not aware of the need for the amendment when the Regulatory Agenda was published.

Instructions

- You may submit written comments about the proposed amendment by mail to:

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Center, 14th Floor, Room 14-15, Box 31
Long Island City, NY 11101-4132

Written comments may also be sent electronically through NYC RULES at www.nyc.gov/nycrules or by email to resolutioncomments@health.nyc.gov or online (without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on October 25, 2011.

- Copies of written comments will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at:

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Center, 14th Floor, Room 14-05, CN 30
Long Island City, NY 11101-4132

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the "Health Code") are proposed in accordance with §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department") with authority to regulate all matters affecting the health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

Basis and purpose of the rule change

The Department of Health and Mental Hygiene is requesting that the Board of Health amend Article 205 (Deaths and Disposals of Human Remains), correcting an inadvertent error made in section 205.19(a)(1) and (2) when Article 205 was presented to the Board of Health for adoption at its September 2009 meeting.

Section 205.19 addresses the removal of human remains from place of death or termination of pregnancy. In its **Notice of Intention** the relevant excerpt of Section 205.19(a)(1) read as follows: "Prior authorization of the Department shall not be required to remove human remains to a county in the State contiguous to the City....When a death or termination of pregnancy occurs under circumstances which do not require notification to the Office of Chief Medical Examiner, the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within the State contiguous to the City..." (emphasis added). Similarly, Section 205.19(a)(2) read as follows: "Notwithstanding the requirements of

paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of the State contiguous to the City..." (emphasis added). In the **Notice of Adoption** presented to the Board of Health the word "the" was inadvertently replaced with "a," in both paragraphs and therefore changed the intent of the Department.

Accordingly, the Department requests the Board to amend Article 205, section 205.19, subdivisions (a)(1) and (2).

The resolution is as follows:

Matter in brackets [] is to be deleted.
Matter underlined is new.

RESOLVED, that §205.19 and subdivisions (a)(1) and (2) of §205.19 of Article 205 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on September 22, 2009, be and the same hereby are amended, to be printed together with explanatory notes, to read as follows:

**ARTICLE 205
DEATHS AND DISPOSALS OF HUMAN REMAINS**

§205.19 Removal of human remains from place of death or termination of pregnancy.

(a) (1) Except as specified in this section, no person shall remove human remains from the place of death or termination of pregnancy unless a certificate of death or termination of pregnancy and a confidential medical report, if any, have been filed electronically with the Department by the person required to report a death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03, or unless such documents have been delivered to a funeral director, undertaker or to the person in charge of the City mortuary pursuant to §205.03 or §203.03, or unless a burial, cremation, interim or transportation permit has been issued pursuant to §205.21. Prior authorization of the Department shall not be required to remove human remains to a county in [a] the State contiguous to the City. However, an appropriate permit shall be obtained prior to burial or cremation of human remains, temporary holding of remains pursuant to subdivision (b) of §205.13, or transportation to any other area, as required pursuant to this Article. When a death or termination of pregnancy occurs under circumstances which do not require notification to the Office of Chief Medical Examiner, the remains may be removed from the place of death, termination of pregnancy or autopsy to another place within the City or to a county within [a] the State contiguous to the City by a licensed funeral director or undertaker if such person has in his or her possession a certificate of death or termination of pregnancy including any confidential medical report, or if such certificate and confidential medical report, if any, have been filed electronically with the Department by the person required to report the death or termination of pregnancy pursuant to subdivision (a) of §205.03 or subdivision (a) of §203.03. If, however, the death or termination of pregnancy is required to be reported to the Department by the Office of Chief Medical Examiner pursuant to §205.03(a)(3) or §203.03(a)(4), the remains may be removed from the place of death, termination of pregnancy or autopsy by the funeral director or undertaker if either he or she has received a completed death or termination of pregnancy certificate from the medical examiner who had taken charge of the remains, or if a death or termination of pregnancy certificate has been electronically filed by the Office of Chief Medical Examiner.

(a)(2) Notwithstanding the requirements of paragraph (1) of this subdivision, in the case of a death from natural causes occurring elsewhere than in a hospital or hospice, such remains may be removed only to a funeral establishment within the City or within a county of [a] the State contiguous to the City if the funeral director, undertaker or person in charge of the mortuary has obtained authorization from the Office of Chief Medical Examiner to remove the remains, or has obtained authorization to remove the remains and assurance from the physician attending the death, or from his or her duly authorized medical associate pursuant to paragraph (2) of subdivision (a) of §205.03, that the death is from natural causes and that said physician or medical associate assumes responsibility for certifying to the cause of death.

Notes: Subsections (a)(1) and (2) of §205.19 were amended to correct an inadvertent error made at the time the provisions were presented for adoption in September 2009. The proposed amendment would replace the word "a" with the word "the," as the provisions read when it was proposed in June 2009.

**NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)
RULE TITLE: Amendment of Health Code Article 205
(Transfer of Human Remains)**

**REFERENCE NUMBER: 2011 RG 082
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 Date: September 6, 2011
Acting Corporation Counsel

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Health Code Article 205
(Transfer of Human Remains)**

REFERENCE NUMBER: DOHMH-9

**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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi 9/8/2011
Mayor's Office of Operations Date

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NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed repeal of Article 7 (Administrative Tribunal) and amendment of Article 1, 3, 47, and 151 of the New York City Health Code, found in Title 24 of the Rules of the City of New York.

Date / Time: October 25, 2011, 10:00 A.M. – 12:00 P.M.

Location: New York City Department of Health and Mental Hygiene
2 Gotham Center, 14th Floor, Room 14-45
42-09 28th Street
Long Island City, NY 11101-4132

Contact: Rena Bryant
(347) 396-6071

Proposed Rule

Pursuant to the authority vested in the Department of Health and Mental Hygiene by §§556, 558 and 1043 of the New York City Charter (the "Charter"), the Department of Health and Mental Hygiene is proposing that the Board of Health repeal Article 7 and amend Articles 1, 3, 47 and 151 of the New York City Health Code.

Specifically, Section 556 of the Charter provides the Department of Health and Mental Hygiene (the "Department") with authority to regulate all matters affecting health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the "Board") to amend the Health Code and to include in the Health Code all matters over which the Department has authority. Section 1043 of the Charter gives the Department rulemaking powers.

These amendments are also promulgated pursuant to revisions to the Charter approved by the voters in 2010, authorizing the Mayor by Executive Order to consolidate certain administrative tribunals by transferring their adjudicatory functions to the Office of Administrative Trials and Hearings (OATH).

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment by mail to

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Center, 14th Floor, Room 14-15, Box 31
Long Island City, NY 11101-4132;
electronically through NYC RULES at www.nyc.gov/nycrules;
by email to RESOLUTIONCOMMENTS@HEALTH.NYC.GOV; or online
(without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on October 25, 2011.

- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by October 11, 2011.
- Copies of written comments and a summary of oral comments received at the hearing will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Board
Attention: Rena Bryant
2 Gotham Center, 14th Floor, Room 14-05, CN 30
Long Island City, NY 11101-4132

- The Department's general policy is to make written comments available for public viewing on the internet. The comments it receives, including any personal information provided with the comment, will be posted without change to <http://www.nyc.gov/html/comment/comment.shtml>.

Statement of Basis and Purpose

Background of the Rule Change

On November 2, 2010, New York City voters approved Charter revisions authorizing the Mayor, by Executive Order, to consolidate certain administrative tribunals into OATH. By Executive Order No. 148 (June 8, 2011) (the "Executive Order"), the Mayor ordered the transfer of the administrative tribunal "established by the Board of Health pursuant to Section 558 of the Charter" to OATH, effective July 3, 2011. The Executive Order further provided that certain provisions of the Health Code and other Rules of the City of New York pertaining to the Department's Administrative Tribunal, as well as some additional interim procedures, would be deemed rules of OATH in accordance with the Report and the Appendix to the Report of the Committee on Consolidation of Administrative Tribunals ("Mayor's Committee") until OATH itself completed rulemaking in accordance with the Charter.

At its meeting on June 14, 2011, the Board of Health adopted a resolution facilitating the transfer by designating the Administrative Tribunal as the "Health Tribunal at OATH, which shall decide questions of fact and law and penalties to be imposed in all matters brought before such Administrative Tribunal."

Summary of the Rule Change

To further facilitate a smooth transition of adjudicatory and appeals functions to the Health Tribunal at OATH, the Department is requesting the following:

- The Board should repeal Article 7, and amend other provisions of the Health Code that refer to Article 7 and/or the Administrative Tribunal to be consistent with the Executive Order and Report and Appendix of the Mayor's Committee.
- Certain provisions of Article 7 will survive the transfer to OATH. It is proposed that these provisions be added to Article 3.
- In addition, it is proposed that the Department's rules in Chapter 7 of Title 24 of the Rules of the City of New York (RCNY), which differentiate the matters previously assigned to the Administrative Tribunal (penalties and fines) and OATH (show cause, permit revocations and suspensions) be incorporated in Article 3 as well.
- In a separate rulemaking process, the Department will propose repealing Chapter 7 of Title 24 RCNY and Chapter 1 of Title 25 RCNY (Adjudications of the former Department of Mental Health and Retardation).

Specific Amendments Proposed

- Article 1 (Short Title and General Definitions). §1.03 (b) currently defines the Administrative Tribunal. Article 1 would be amended by having the definition refer to the new Health Tribunal at OATH and adding a definition for OATH.
- Article 3 (General Provisions).
 - §3.11 (c) currently provides that when a respondent fails to appear at the Administrative Tribunal and is found in default, any penalty imposed will be double that which would have been imposed if the respondent was found in violation after a hearing. This section would be amended to reference the new name of the tribunal and to add provisions recommended by the Mayor's Committee related to:
 - the name of the tribunal (former §7.01);
 - jurisdiction (former §7.03); and
 - surviving provisions of Chapter 7 of Title 24 RCNY.
 - Proposed §3.12 continues the tribunal created by the Board of Health, but transfers its operation to OATH.
- Article 47 (Child Care Services). §47.77 (h) refers to the authority of the Department to issue notices of violation pursuant to Article 7. This would be amended to remove a reference to Article 7.
- Article 151 (Pest Prevention and Management). §151.05 (a) authorizes the Environmental Control Board, in addition to the Administrative Tribunal, to adjudicate notices of violation. This would be amended to remove a reference to Article 7.
- Articles 5 (General Permit Provisions) and Article 81 (Food Preparation and Food Establishments). Changes in text referencing Article 7 and the Administrative Tribunal in these articles have been proposed separately under the rule amendment process, as part of comprehensive amendments of these articles.

Statement Pursuant to Charter § 1043

This proposal was not included in the Department's regulatory agenda because the need for the amendment

became known after publication of the regulatory agenda.

The resolution is as follows:

Matter to be deleted is in [brackets]
Matter to be added is underlined.

Proposed Amendments for the Transfer of Health Tribunal to Office of Administrative Trials and Hearings

RESOLVED, that Article 7 (Administrative Tribunal), and the list of section headings in Article 7 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby are, **REPEALED**, to be printed together with explanatory notes as follows.

Notes: Article 7 was repealed by resolution adopted XXX. The Administrative Tribunal established pursuant to New York City Charter §558 was transferred to the Office of Administrative Trials and Hearings (OATH), to be known as the Health Tribunal at OATH, by Executive Order No. 148, effective July 3, 2011. The Board of Health adopted a resolution on June 14, 2011 to facilitate the transfer that authorized the Health Tribunal at OATH to decide questions of fact and law in any proceeding alleging a violation of the Health Code.

RESOLVED, that subdivision (b) §1.03 (General definitions) of Article 1 (Short Title and Definitions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, and a new subdivision (k) added, to be printed together with explanatory notes as follows.

§1.03 General definitions.

When used in the New York City Health Code:

* * *
(b) *Administrative Tribunal* means the [Administrative Tribunal of the Department of Health and Mental Hygiene of the city of New York.] Health Tribunal at OATH.

* * *
(j) *State* means the state of New York.
(k) OATH means the Office of Administrative Trials and Hearings.

Notes: §1.03 was amended by resolution adopted XXX, amending the definition of the Administrative Tribunal, and adding a definition for OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011) which consolidated the Department's Administrative Tribunal and other City agencies' tribunals with OATH as a result of a 2010 Charter revision.

RESOLVED, that subdivision (c) §3.11 (Civil enforcement of the Code) of Article 3 (General Provisions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, and new subdivisions (d) and (e) added, to be printed together with explanatory notes as follows:

§3.11 Civil Enforcement of the Code

* * *
(c) Where a person fails to appear [in a proceeding] at an adjudicatory hearing to determine whether a monetary penalty should be imposed for any violation of this Code, [brought pursuant to Article 7 of this Code] the penalties imposed for each sustained violation shall be double the amount that would otherwise be assessed by the [hearing examiner] administrative law judge, but shall not exceed the maximum penalty specified in subdivisions (a) or (b) of this [Section, or in the other applicable law or regulation.] section.

Notes: Section §3.11 was amended by resolution adopted XXX, to delete a reference to Article 7 of the Health Code which was repealed when the Administrative Tribunal established by the Board of Health was transferred to OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011).

RESOLVED, that Article 3 (General Provisions) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, and a new section 3.12 added, to be printed together with explanatory notes as follows:

§3.12 Administrative Tribunal
(a) The Administrative Tribunal established by the Board of Health pursuant to §558 of the Charter is hereby continued. It will be operated by and within the City's Office of Administrative Trials and Hearings and known as the Health Tribunal at OATH.

(b) Where the Department seeks a fine or monetary penalty for a violation of this Code or any other State or local law or regulation enforced by the Department, it will bring a proceeding at either the Health Tribunal at OATH or at the Environmental Control Board, and such proceedings will be governed by the procedures of such Tribunal or Board, as the case may be. The decisions of the Environmental Control Board will be final; the decisions of the Health Tribunal at Oath will be final except in the case of any appeal from an adjudication of a violation of Article 13-E of the Public Health Law.

(c) Where there is an appeal from an adjudication of a violation of Article 13-E of the Public Health Law, the Health Tribunal at OATH will, pursuant to the applicable provision of the rules of OATH governing such Tribunal, issue a recommended decision to the Commissioner for him or her to review. Within thirty (30) days of the issuance of the recommendation, the respondent may submit to the Department a written argument why the decision should or should not be followed by mailing by certified or registered mail, emailing, or delivering by hand a copy of the argument to the General Counsel of the Department. After the Department has received the respondent's argument or after

forty-five (45) days have passed from when the Tribunal issued its recommended decision, whichever time is shorter, the Commissioner shall issue a written decision affirming, reversing, or modifying the recommended decision, or remanding the appeal back to the Health Tribunal at OATH for further proceedings. The Commissioner's decision must be served on the respondent by certified or registered mail. Where appropriate, the Commissioner's decision will order the Tribunal to repay the respondent any penalty that has been paid. Except when the Commissioner remands an appeal to the Health Tribunal at OATH for future proceedings, the Commissioner's decision constitutes a final agency determination.

Notes: Section §3.12 was added by resolution adopted XXX, reflecting the transfer of the Administrative Tribunal established by the Board of Health to OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011).

RESOLVED, that subdivision (h) of §47.77 (Closing and enforcement) of Article 47 (Child Care Services) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§47.77 Closing and enforcement.

(h) Department authority not limited by this section. Nothing herein shall be construed to limit the authority of the Department to issue notices of violation [pursuant to Article 7 of this Code] or commence any other proceeding or action provided for by this Code or other applicable law, including actions to deny, suspend or revoke permits.

Notes: Subdivision (h) was amended by resolution adopted XXX to reflect the repeal of Article 7, and the transfer of the Administrative Tribunal established by the Board of Health to OATH, in accordance with Mayor's Executive Order No. 148 (June 8, 2011).

RESOLVED, that §151.05 (Notices of violation) of Article 151 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§151.05 Notices of violation.

(a) *Designation of Environmental Control Board.* In accordance with §1049-a (c)(2) of the Charter, a notice of violation ("NOV") citing a violation of any provision of this Article may be made returnable to the Environmental Control Board in addition to the [Administrative Tribunal established pursuant to Article 7 of this Code] Health Tribunal at OATH.

* * *
Notes: Subdivision (a) of §151.05 was amended by resolution adopted XXX to delete a reference to Article 7 of the Health Code, which was repealed when the Administrative Tribunal established by the Board of Health was transferred to OATH, in accordance with the Mayor's Executive Order No. 148 (June 8, 2011).

RESOLVED, that the amendments proposed herein shall in no event take effect earlier than the effective date of amendments to the rules of OATH codifying the procedures applicable to the Health Tribunal at OATH.

**NEW YORK CITY LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Transfer of Health Tribunal to Office of Administrative Trials and Hearings

REFERENCE NUMBER: 2011 RG 081

RULEMAKING AGENCY: DOHMH

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

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Transfer of Health Tribunal to Office of Administrative Trials and Hearings

REFERENCE NUMBER: DOHMH-7

RULEMAKING AGENCY: Department of Health and Mental Hygiene (DOHMH)

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ RACHEL SQUIRE
Mayor's Office of Operations

September 7, 2011
Date

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LATE NOTICE

EDUCATION

■ NOTICE

Committee on Contracts Agenda

The Department of Education's (DOE) Chancellor's Committee on Contracts (COC) has been asked for approval to enter into contract negotiations with the following organization(s) for the services described below. Other organizations interested in providing these services to the DOE are invited to indicate their ability to do so in writing to Jay G. Miller at 65 Court Street, Room 1201, Brooklyn, NY, 11201. Responses should be received no later than 4:30 P.M., Wednesday, September 28, 2011. Any COC approval will be contingent upon no expressions of interest in performing services by other parties.

Items for Consideration:

1. College Board

Service(s): The Division of Academics, Performance and Supports seeks to extend Contract #9056465 with College Board, a sole-source vendor providing training and testing materials for citywide administration of the Preliminary Scholastic Aptitude Test (PSAT)/National Merit Scholarship Qualifying Test (NMSQT) to 10th and 11th graders.

Term: 7/1/12 - 6/30/17
Estimated Contract Cost Not-to-Exceed: \$7,351,100

2. Temco Service Industries

The Division of School Facilities (DSF) seeks to extend Contract #9172981 with Temco Service Industries, to continue providing Facility Management Services (FMS) to approximately 120 DOE buildings.

DSF is responsible for the repair, maintenance and operation (RMO) of more than 1,200 sites/buildings, each of which has a custodian or building manager who oversees the operations and maintenance of the building. This one-year extension will allow DSF to solicit proposals through Request for Proposals (RFP) R0897 - Facility Management Services.

Term: 11/12/11-11/12/12
Estimated Contract Cost Contract Cost Not-to-Exceed: \$65,000,000

3. New York State Industries for the Disabled, Inc. (NYSID)

The Division of Academics, Performance and Support seeks to extend Contract #9970586 with New York State Industries for the Disabled, Inc. (NYSID), to continuing providing pick-up and destruction of secure testing materials.

NYSID acts as a prime contractor for a statewide network of approximately 148 community rehabilitation agencies and private sector business partners to employ skilled people with disabilities in both facility-based settings and community-based jobs.

NYSID has two member organizations that will be used to provide these services under this contract; Federation Employment and Guidance Services, Inc. (FEGS) will supply the necessary equipment and personnel for collection of materials, and the American Document Security Corporation, will pick-up and dispose of the test materials.

Term: 1/1/12-12/31/12
Estimated Contract Cost Contract Cost Not-to-Exceed: \$150,000

4. Happy Day Transportation

Service(s): The Office of Pupil Transportation seeks approval to extend the current requirements agreement with Happy Day Transportation to provide Pre-Kindergarten/Early Intervention Transportation Services to NYC school children. The proposed contract extension will be for 1 year with all terms and conditions remaining the same as in the expired contract (#9056071).

Term: 7/1/11 - 6/30/12
Total Contract Cost Not-to-Exceed: \$483,118

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