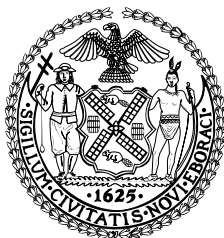


# **Article 81**

## **of the New York City HEALTH CODE**



**Current as of July 14, 2004**

---

# Article 81

## *Food Preparation and Food Establishments*

- §81.01** Scope
- §81.03** Definitions
- §81.05** Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments
- §81.07** Food; sanitary preparation, protection against contamination
- §81.09** Food; temperature requirements
- §81.11** Food; disposition if unfit for human consumption; re-service of food prohibited
- §81.13** Foodworkers; health; clothing
- §81.15** Food protection course
- §81.17** Food service establishments and non-retail food processing establishments; premises; location; general requirements
- §81.19** Food service establishments and non-retail food processing establishments; premises; lighting and ventilation
- §81.21** Food service establishments and non-retail food processing establishments; premises; plumbing, water supply, floors, walls and ceilings, vehicles
- §81.23** Food service establishments and non-retail food processing establishments; premises; conditions conducive to rodent or insect and pest life prohibited; rodent proofing
- §81.25** Food service establishments and non-retail food processing establishments; animals prohibited
- §81.27** Food service establishments and non-retail food processing establishments; food-worker use of tobacco and consumption of food on premises; spitting prohibited
- §81.29** Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided
- §81.31** Food service establishments and non-retail food processing establishments; equipment and utensils to be made of nontoxic materials
- §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 unclean equipment, utensils and vehicles; denial, suspension and revocation of permits; enforcement
- §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
- §81.51** Examination of most recent inspection report by patron or customer; posting sign

**§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 applicable provisions of this Code 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 so as to prevent health hazards. This Article applies to all establishments formerly classified as eating places, restaurants, 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.

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

(a) **Comminuted.** “Comminuted” means reduced in size by methods including chopping, flaking, grinding, mincing; or a mixture of fish or meat products that have been reduced in size and restructured and reformulated.

(b) **Contaminated.** “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 (60 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.

(c) **Controlled-location vending machine.** 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.

(d) **Easily cleanable.** “Easily cleanable” means readily accessible and of such material and finish that residues may be completely removed by normal cleaning methods.

(e) **Easily movable equipment.** “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.

(f) **Equipment.** “Equipment” means all stoves, ranges, microwave ovens, hoods, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables and similar items, other than utensils, used in the operation of a food service establishment or non-retail food processing establishment.

(g) **Food-contact surfaces.** “Food-contact surfaces” means 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.

(h) **Food-grade.** “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 the National Sanitation Foundation or its equivalent.

(i) **Foodworker.** “Foodworker” means foodhandler or any employee 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) of this Code.

(j) **Food service establishment.** “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.

(k) **Food vending machine.** A “food vending machine” means a self-service device which, when activated, dispenses unit servings of food or beverage without requiring replenishing between each vending operation.

(l) **Food vending machine commissary.** 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.

(m) **Food vending machine operation.** 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.

(n) **Imminent health hazard.** “Imminent health hazard” means any violation, condition, 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 food.

(o) **Indirect drain.** “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.

(p) **Non-retail food processing establishment.** “Non-retail food processing establishment” means a place 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.

(q) **Potentially hazardous food.** “Potentially hazardous food” means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, crustacea, cooked potato, cooked rice, or ingredients 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 (Aw) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below.

(r) **Processed fish.** “Processed fish” means fish that has been cured, salted, marinated, dried, pickled, fermented or smoked for human consumption.

(s) **Sanitization.** “Sanitization” means effective bactericidal treatment by heat or chemical means which 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.

(t) **Single service articles.** “Single service articles” means cups, containers, lids, or closures, plates, knives, spoons, stoppers, paddles, straws, placemats, 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.

(u) **Stand.** “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.

(v) **Temporary food service establishment.** “Temporary food service establishment” means any food service establishment which operates at a fixed location for a temporary period of time, not to exceed 14 consecutive days, in connection with a single event or celebration such as a fair, carnival, circus, public exhibition, advertising campaign or business promotion, religious or fraternal organization function or transitory gathering. In addition 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.

(w) **Utensil.** “Utensil” means any tableware, such as knives, forks, spoons, glasses, cups and the like, and kitchenware, implements or containers used for storage, preparation, transfer, conveyance or service of food.

(x) **Wholesale food establishment.** “Wholesale food establishment” means any establishment which sells food or which manufactures food for other than retail sale directly to the consumer.

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

(a) An operator of a food service establishment or non-retail food processing establishment shall construct, equip, furnish, maintain and operate such establishment in compliance with this Article and all other applicable federal, state and city laws, rules and regulations.

(b) Prior to new construction or major renovation of a food service establishment or non-retail food processing establishment, or at any time thereafter where the Department determines that the public health and safety requires a Departmental review of the physical plant of such establishment, the Department may require such establishment to submit sketches or plans showing the floor layout, equipment, plumbing, ventilation, refuse storage facilities, sewage disposal facilities and similar information on a form acceptable to the Department. Submission and review of plans shall not relieve the operator of such establishment or his or her successor from meeting all requirements of this section.

(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.

(d) A permit for a food service establishment or non-retail food processing establishment shall be issued subject to the establishment being constructed, maintained and operated in compliance with this Code, and not presenting a danger to the health or safety of the consumer or to the public. The condition of the establishment, including its equipment, utensils, personnel, mode of operation, surroundings, water supply, sewage disposal, waste handling, furnishings, food and appurtenances, and, if applicable, past history of compliance or non-compliance, shall be considered in determining whether its operation may be dangerous or detrimental to the public health. If the pre-permitting inspection indicates that such conditions are unsatisfactory, the operator shall be advised of the violations which prevent issuance of such permit.

(e) Religious, fraternal and charitable organizations which provide food services more often than once a week shall obtain a permit pursuant to this Article; provided, however, that an organization providing food service less frequently than once a week shall notify the Department in writing of its intention to engage in such food service operations and shall obtain authorization from the Department. Such authorization may be issued for a term not to exceed two years. The payment of a fee for such authorization shall not be required. The provisions of this subsection shall not limit in any way the right of the Department to take any actions necessary to protect the public health.

(f) 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 could be a basis for permit revocation or suspension under this Article.

**§81.07 Food; sanitary preparation, protection against contamination.**

(a) Food shall be free of and protected against contamination and shall be manufactured, prepared, processed or packed with clean and sanitary utensils and equipment. Surfaces with which food comes in contact shall be impervious. Food which will not be washed or cooked shall be protected from cross-contamination from food which is required to be washed or cooked. 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. Raw fruits and vegetables shall be thoroughly washed with potable water before serving. Raw chicken and raw fish that are received in ice in shipping containers may remain in such condition while being stored or awaiting preparation, display, service or sale.

(b) 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.

(c) 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 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 inches (14.24 centimeters) above the floor, or at a greater height if necessary to permit cleaning of the storage area.

(e) Food shall be displayed only in equipment such as cleanable containers, cabinets, display cases or similar protective equipment that protects such food from contamination. Self-service equipment shall have protective shields or guards to prevent unnecessary contamination or contact by patrons. The quantity of food displayed shall be minimized to that necessary to meet immediate needs.

(f) 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 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 utensils shall be provided for dispensing food by foodworkers and for self-service.

(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) 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) 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.

#### **§81.09 Food; temperature requirements.**

(a) Potentially hazardous food shall be refrigerated at 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:

(1) 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 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 roast beef and/or rare beef steaks shall be heated to the following minimum temperatures unless otherwise ordered by the consumer:

<i>Temperature</i>		<i>Temperature</i>		<i>Temperature</i>	
<i>°C (°F)</i>	<i>Time</i>	<i>°C (°F)</i>	<i>Time</i>	<i>°C (°F)</i>	<i>Time</i>
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 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) for 15 seconds, unless otherwise ordered by the consumer;

(5) 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 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) 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) cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order may be served at any temperature;

(9) 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) 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) Intact shell eggs shall be stored at an ambient temperature of 45 degrees Fahrenheit (7.2 degrees Celsius) or below.

(c) All processed fish products shall be prepared, distributed and sold 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 at refrigerated temperatures that do not exceed 41 degrees Fahrenheit (5 degrees Celsius).

(d) When meat, fish or molluscan shellfish is served raw or after heat treatment 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 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.

(f) 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) 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 conventional cooking facilities as part of a continuous cooking process, or when the entire uninterrupted cooking process takes place in a 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) 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) Thermometers for measuring the temperature of food shall be provided and readily accessible to ensure compliance with the temperature requirements specified in this section. Metal stem-type, numerically scaled, indicating thermometers accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) which 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) Whenever necessary, to prevent public health hazards the Department may, in specific instances, impose additional requirements on an establishment. The Department shall describe in writing the conditions of operation that have been imposed, the reasons therefor, shall provide such document to the permit holder, and shall maintain such document with the records of the Department.

(k) Potentially hazardous foods may be maintained at 45 degrees Fahrenheit (7.2 degrees Celsius) or between 41 degrees Fahrenheit (5 degrees Celsius) and 45 degrees Fahrenheit in existing refrigeration equipment which is incapable of maintaining foods at 41 degrees Fahrenheit or less, but only when the equipment is in place and already in use in the establishment. However, operators of such establishments shall upgrade or replace existing equipment to maintain food at 41 degrees Fahrenheit or less no later than July 1, 2003.

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

(a) Food which 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 which are held or offered for sale. As used in this subsection, to denature means to treat the food with a disinfectant or other substance satisfactory to the Department which alters the appearance or odor of the food such that the denatured food is clearly identified as being inedible.

(b) Food which has been served to the public without protection from contamination shall not be re-served.

**§81.13 Foodworkers; health; clothing.**

(a) No person shall work or shall be knowingly or negligently permitted to work in a food 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) All foodworkers 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.

(c) Persons who are not essential to the food establishment operations shall not be allowed in the food preparation, food storage or warewashing 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.

**§81.15 Food protection course.**

(a) (1) No person who is charged with 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, except that supervisors of mobile food non-processing units as defined in section 89.01(e) shall be exempt from this requirement. A person holding such certificate shall be on the premises 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 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) Such certificate shall be available for inspection at all times by the Department.

(c) 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 Section 81.15(a)(2) 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 RCNY, Chapter 21, Section 21-02.

(d) The Department may require the holder of a certificate to complete a course when the Department finds continuing violations of the Code or when a food borne 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) 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 Section 81.15(a)(2) shall not be subject to this subsection.

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

(a) Food shall not be processed, prepared, packed or stored in, and food service establishments and non-retail food processing establishments shall not be located in rooms used for dwelling purposes or in any room used for sleeping purposes. The premises shall be of a size sufficient to prevent overcrowding and adequate space shall be provided for the conduct of operations and for effective cleaning and inspection.

(b) Food service establishments and non-retail food processing establishments 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.

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

(a) Food service establishments and non-retail food processing establishments shall be permanently lighted to provide at least 30 footcandles of light on all food preparation surfaces and at equipment or utensil washing work levels, and at least 20 footcandles of light at a distance of 30 inches from the floor in utensil and equipment storage areas, lavatory and toilet areas, walk-in refrigerating units, dry food storage areas, and in dining areas during cleaning operations.

(b) All artificial lighting fixtures 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 are likely to contaminate food, shall be provided with suitable guards to prevent broken glass from falling into food or onto food-contact surfaces.

(c) Food service establishments and non-retail food processing establishments shall be adequately ventilated to prevent excessive heat, steam, condensation, vapors, odors, smoke and fumes. Ventilation to the outside air shall comply with applicable law and regulation and shall not create a nuisance or unlawful emission. Intake and exhaust ducts shall be constructed and maintained to prevent dust, dirt or other contaminants from entering the establishment. Mechanical ventilation shall be installed in rooms where odors, vapors or fumes originate. 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.

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

(a) Food service establishments and non-retail food processing establishments shall have plumbing and plumbing fixtures to carry potable hot and cold water adequate to supply all parts of the establishment. Plumbing and fixtures shall be properly connected, vented and drained to prevent contamination of the City water supply or any other potable water supply. Water supply outlets and connections to water supply fixtures or equipment shall be designed and constructed to prevent back-flow into the water supply.

(b) Sewage and liquid wastes shall be carried to the sewer or sewage disposal system so as to prevent contamination of the premises and its contents. There shall be no direct connection between the sewage system and any drains from fixtures and equipment used for storage, preparation, or processing of food.

(c) Condensation and waste water pipes from such fixtures and equipment shall be discharged into a properly trapped, sewer-connected, clean, open sink, or other acceptable method of drainage. Waste lines from equipment required to have indirect drains shall be installed to prevent back-flow from sewers and other drains and waste lines. Condensation pipes shall be located and protected to prevent condensation or dropping of any liquid on foodstuffs or food equipment.

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

(e) Floors and floor coverings of food storage, food preparation, and utensil washing areas, and floors of 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 and in good repair. Carpeting is prohibited in food preparation areas.

(f) Walls and ceilings of food storage, food preparation and utensil-washing areas shall be smooth and non-absorbent, constructed of a hard, light-colored material, and, along with doors and windows, shall be easily cleanable, and kept clean and in good repair. Light fixtures, vent covers, fans, ducts, decorative materials and other materials affixed to walls and ceilings shall be easily cleanable and shall be kept clean and in good repair, and installed and sealed to prevent insect harborage.

(g) Vehicles used for the transportation of food shall be kept clean and sanitary at all times.

---

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

(a) Food service and non-retail food processing establishments shall be kept free of rodents, insects and other pests, and of any condition conducive to rodent or insect and other pest life. Premises, equipment and fixtures shall be of construction, design and material so as to be rodent proof.

(b) All openings into the outer air 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 shall take extermination and preventive measures necessary to maintain the establishment free of rodents, insects and other pests. Pesticides shall be properly labeled, authorized for use, and used in accordance with 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.

(d) 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.

**§81.25 Food service establishments and non-retail food processing establishments; animals prohibited.**

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, fish in aquariums, seeing-eye dogs accompanying sightless persons, hearing or service dogs accompanying and assisting disabled persons, or patrol dogs accompanying police officers.

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

Smoking or use of tobacco in any form in any room where food is prepared, processed or packaged is prohibited. Foodworkers shall eat only in designated areas and in a manner that protects food, equipment and utensils from contamination. Spitting anywhere in an establishment is prohibited.

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

(a) Food service establishments and non-retail food processing establishments shall have a sufficient number of toilets for the employees which shall be clean, sanitary and

in good repair so as to comply with the New York City Administrative Code, Title 27, Building Code Reference Standards, RS 16, §P104.0 (Plumbing Fixtures), et seq., or successor provision.

(b) A supply of toilet tissue shall be provided at all times at each toilet. Easily cleanable receptacles for waste paper and other refuse shall be provided. At least one receptacle shall be covered in any toilet room used by women.

(c) Food service establishments and non-retail food processing establishments shall have a sufficient number of wash basins with hot and cold running water in or near the lavatory and in or near food preparation areas to assure cleanliness of employees. Soap and single use towels or mechanical drying devices shall be provided. There shall be conspicuously posted near or above the wash basins signs directing employees to wash hands after use of the toilet. The use of common drinking cups is prohibited.

(d) Dressing and locker areas shall not be located as to present a contamination hazard.

(e) Food service establishments with a seating capacity of 20 or more, except those in operation on or before December 5, 1977 shall provide toilet facilities for patrons. The requirements outlined in subsection (a) above shall also apply to patron toilets.

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

(a) No food service establishment or non-retail food processing establishment shall have or use any equipment or utensil in the manufacture, processing, preparation or service of food containing lead, cadmium or any other substance which is toxic or may react with food, cleaning or sanitizing materials, to form harmful compounds, or render food unwholesome or detrimental to health. Food contact surfaces of utensils and equipment shall not be painted, and shall not impart odor, color or taste to food. Materials used to construct or repair equipment shall be of sufficient strength and thickness to withstand ordinary usage and to permit cleaning and sanitizing. The use or keeping of utensils and containers which are chipped, cracked, rusted, corroded, badly worn, or in such condition that they cannot be easily rendered clean and sanitary is prohibited.

(b) Cutting blocks and boards shall be smooth and clean, and constructed of hard maple or equivalent nonabsorbent material.

(c) Tubing used for beverages or beverage ingredients shall be fabricated from food-grade materials.

**§81.33 Food service establishments and non-retail food processing establishments; equipment and utensils; design construction and placement.**

Equipment shall be constructed to be easily cleanable, shall be clean and in good repair, shall have nontoxic food-contact surfaces, and shall not contaminate food. Equipment using lubricants shall use food-grade lubricants which shall not leak or contact food or food-contact surfaces. Where disassembly is required for cleaning, such disassembly shall not require more than the use of simple tools such as mallet, screwdriver and open-end wrench, which tools shall be readily available near the equipment. Equipment designed for in-place cleaning 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.

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

A food service establishment or non-retail food processing establishment shall have a sufficient number of refrigerators, hot food storage facilities, and accurate thermometers or other temperature recording instruments, to ensure food is kept at temperatures required by this Code. Temperature measuring devices shall be accurate to plus or minus two degrees Fahrenheit (1.1 degrees Celsius) and shall be located to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility. Refrigerators and hot storage facilities shall be kept clean, sanitary and in good repair.

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

(a) The premises of a food service establishment or non-retail food processing establishment, its equipment and utensils shall be cleaned at least once a day and more frequently when necessary. Cloths used for wiping food spills from tables and tableware shall be kept clean and dry and used only for this purpose. 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. 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.

(b) Equipment and utensils shall be effectively cleaned and sanitized. Unless it is specifically constructed to permit in-place cleaning and inspection, equipment shall be disassembled prior to each cleaning.

(c) Hot water used for sanitizing in a manual operation shall be 170 degrees Fahrenheit (76.6 degrees Celsius). A numerically scaled, indicating thermometer accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) shall be readily available at the sink for frequent checks of water temperature. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware and equipment in the hot water shall be provided.

(d) Chemicals used for sanitizing shall not be used in concentrations which will leave toxic residues on surfaces treated. A test kit or other device shall be used that accurately measures the parts per million concentration of the solution used, and the pH when it affects the performance of the chemical sanitizer.

(e) Cleaning and sanitizing machines or other mechanical equipment and devices used for the cleaning and sanitizing of utensils, equipment and food contact surfaces shall be installed and maintained in good repair and operated in accordance with manufacturer's instructions. Mechanical dishwashing machines shall be equipped with thermometers to check their operation.

(f) Utensils used in the preparation, service or transportation of food shall be cleaned after each use, effectively cleaned and sanitized and shall be air dried after sanitizing. Between uses, food dispensing utensils shall be stored in the food with the handle extended out of the food, or clean and dry, or in a dipper well with running water at an adequate velocity and volume to cleanse them during intervals between intermittent use.

(g) All new bottles, receptacles and other containers, other than paper or plastic single service containers, shall be thoroughly rinsed or subjected to a cleansing process for the purpose of removal of lint, glass splinters and other foreign materials, prior to their being used in the preparation, service or transportation of food.

(h) No substance containing any cyanide preparation shall be used for the cleaning or polishing of copper, nickel, silver, silverplated ware or any other utensils or appliances used in preparation or service of food.

(i) Food service establishments and non-retail food processing establishments, where food is processed for distribution in containers designed to be used more than once, shall have separate areas with suitable troughs and sinks for the cleansing of such containers.

(j) Drainboards of adequate size shall be provided and used for the proper handling of soiled items prior to washing and of clean items following sanitization. Drainboards shall be self-draining and located and constructed so that they do not interfere with the proper use of the dishwashing facilities. Use of easily movable tables for the storage of soiled items or the use of easily movable tables for the storage of clean items following sanitization is allowed.

(k) Garbage and waste materials shall not be permitted to accumulate or to become a nuisance, but shall be stored, handled and disposed of in a sanitary manner that protects food and food-contact surfaces from contamination. Such materials shall be kept in easily cleanable, tightly covered, watertight, rodent-proof, insect-proof containers, which shall be lined with plastic or wet-strength paper bags or shall be disposed of promptly, without intervening storage. The garbage receptacles and their covers shall be properly cleansed immediately upon emptying.

(l) Laundry facilities shall be used only for the washing and drying of linens, clothes, uniforms and aprons. Laundry facilities shall be in a separate room for such purpose except that such room may also be used for storage of packaged foods, packaged single-service articles and employee clothing. Clean laundry shall be protected from contamination. Dirty laundry shall be stored in non-absorbent laundry containers or bags until removed for laundering.

**§81.39 Food service establishments and non-retail food processing establishments; sealing of unclean equipment, utensils and vehicles; denial, suspension and revocation of permits; enforcement.**

(a) When, in the opinion of an inspector or authorized employee of the Department, any equipment, utensil or vehicle in a food service establishment or non-retail food processing establishment presents an imminent health hazard, is in an unclean condition, or in disrepair or damaged to such an extent so as to render it unsafe, such equipment, utensil, vehicle or any part thereof may be ordered sealed and its use immediately discontinued upon the approval of the director of the bureau of the Department enforcing this Article. Upon such sealing, the representative of the Department shall affix thereto labels or conspicuous signs bearing the word "unclean" or any other wording necessary to describe the sanitary condition or safety of the sealed equipment, utensil or vehicle, and he or she shall also prepare or cause to be prepared an order of the Commissioner or Department. The order and notice shall direct the discontinuance of the use or operation of the unclean article until it shall have been cleaned and made sanitary and safe, and the seals, labels or signs removed by a representative or with the authorization of the Department.

(b) When a food service establishment or non-retail food processing establishment is found upon inspection to be operating without a valid permit in violation of §81.05 of this Code, the Department may order such establishment to close and cease all food operations immediately, and to remain closed until the establishment or operation has obtained and displays a valid permit.

(c) In addition to the forfeitures and penalties set forth in Articles 3 and 5 of this Code, the Department may deny, suspend or revoke any permit or authorization issued pursuant to this Article when serious, repeated or persistent violations of any of the provisions of this Code have been found, or where interference with personnel of the Department in the performance of their duties or a violation of §5.17 occurs. Any person ordered to cease operation and service pursuant to this Article shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(d) The Department may deny or suspend a permit or authorization and order immediate cessation of operations and/or service of food at a food service establishment or non-retail food processing establishment if continued operation is an imminent hazard to public health. Any person ordered to cease operations and/or service of food pursuant to this subsection shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(e) Any order or notice issued pursuant to this section shall be served by personal delivery to the owner or person in charge of the food establishment, or by any method authorized by §§17-141 or 17-148 of the New York City Administrative Code, and an original thereof shall be filed with the Department.

(f) Seals, labels, signs, notices and orders affixed by the Department shall not be removed except by order of the Commissioner or his or her designated representative and not until the objectionable condition is removed or corrected.

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

(a) No person shall employ a food vending machine for the sale of packaged food or beverages in closed bottles or containers unless:

- (1) the machine is designed and constructed to allow effective cleaning and maintenance and to remain free from insect and rodent harborages and other nuisances;
- (2) the machine is designed and constructed so as not to become a hazard to children or others while in use or under foreseeable conditions of abuse;
- (3) potentially hazardous foods shall be kept at or below 45 degrees Fahrenheit (7.2 degrees Celsius) or at or above 140 degrees Fahrenheit (60 degrees Celsius);
- (4) the machine and the surrounding area are kept clean and sanitary.

(b) No person shall employ a food vending machine for the sale of unpackaged food or for the sale of beverages other than in closed bottles or containers unless the requirements of subsection (a) of this section are met and, in addition, the device is free from lead, cadmium or any other substance which may be so affected by the food or beverage as to form dangerous or deleterious compounds, or as to render food or beverage which comes into contact with such substance unwholesome or detrimental to health, or to impart odor, color or taste to the food. When the food vending machine is connected to a water supply system, it shall be designed and constructed to prevent contamination of the water supply system. Devices which dispense carbonated beverages shall be equipped with an air gap at the water inlet, or a protective device to vent any leaking carbon dioxide to the atmosphere, or any other protective device approved by the Department which will provide positive protection against the

entrance of carbon dioxide or carbonated water into the water supply system. The water supply contact surfaces in devices which dispense carbonated beverages, from the protective device downstream including the protective device itself, shall not have any copper or copper-lined components in contact with the water supply or the beverage and its other components including any ice making and dispensing apparatus.

(c) There shall be provided in the immediate vicinity of all coin-operated or other mechanical dispensing devices, receptacles for the disposal of food or beverage containers.

(d) Potentially hazardous food shall be dispensed in individual, original containers or wrappers in which it was packaged at the food vending machine commissary or non-retail food processing establishment. Potentially hazardous food shall not be dispensed from bulk supplies.

(e) All food, other than fresh fruit, shall be stored or packaged in clean protective containers, or dispensed into clean single-use containers, and all food shall be prepared and vended in a sanitary manner and shall in all respects comply with the provisions of this Article.

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

(a) When a food service establishment or non-retail food processing establishment learns, has reason to suspect that a person has a food related illness, or is notified of any illness of a person diagnosed by a physician which allegedly resulted from food served at, or originating from, such establishment, the owner or person in charge shall immediately notify the Department. The Department may require the owner or the person in charge to submit, within 24 hours of the telephone report, a written report giving such additional information concerning the complaint as the Department may require. Under applicable provisions of the New York State Public Officers Law, reports may be subject to inspection by persons other than the Commissioner and authorized personnel of the Department but personal information about the patrons shall be redacted. Such reports shall not be used as a basis for prosecution by the Department.

(b) When a food service establishment or non-retail food processing establishment is subject to an occurrence which might result in contamination of food or food being held out of temperature limits, including but not limited to fire, power outage, or flood, the owner or person in charge shall immediately notify the Department.

**§81.45 Drinking straws and single service utensils.**

(a) 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.

(b) 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.

(c) When, in the opinion of an inspector or authorized employee of the Department, a food service establishment or non-retail food processing establishment lacks adequate facilities for cleaning and sanitizing utensils, the director of the bureau having the responsibility to enforce this Article may require the use of single service utensils.

**§81.47 Water potability certificates.**

(a) No person shall conduct or operate a wholesale food establishment without a Certificate of Water Potability issued by the Commissioner when such certificate is required to be obtained by an agency of the United States government or other agency having jurisdiction. Such certificate shall not be issued unless said person shall have first registered with the Department and an inspection for cross-connections is completed and a satisfactory water quality analysis is obtained. The fee for such registration shall be paid pursuant to subsection (i) of §5.09 of this Code.

(b) Registration shall be made on forms furnished by the Department and shall contain the information required thereon.

(c) When any change or alteration is made in such registrant's establishment so that the information registered with the Department is no longer accurate, the registrant shall notify the Department of such change or alteration within 72 hours after it is effected. A change of ownership or address of the facility shall automatically terminate the registration.

**§81.49 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 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.

**§81.51 Examination of most recent inspection report by patron or customer; posting sign.**

Each food service establishment shall post a sign in a conspicuous place near its public entrance or entrances advising that a copy of the most recent inspection report of the Department is available from the New York City Department of Health and Mental Hygiene. Such sign shall contain the telephone number at the Department of Health and Mental Hygiene where such request for an inspection report may be made. Such sign shall set forth the name of the permittee, business name, address and permit number of the establishment, and such other identifying information as may be required by the Department. Such sign, which shall be designed and manufactured by the Department, shall be printed in clear and legible type, and in such a manner as to be readily visible to patrons or customers. Identifying information added to the sign by the permit holder shall also be legible. This section shall not apply to food vendors or food vending businesses as such term are defined in §17-306 of the Administrative Code or successor statutes regulating such businesses.