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**§3.01 General powers of the Department.**

- (a) The Department may inspect any premises, matter or thing within its jurisdiction, including but not limited to any premises where an activity regulated by this Code is carried on, and any record required to be kept pursuant to this Code, in accordance with applicable law.
- (b) In order to determine whether the provisions of this Code or the provisions of other law which the Department has the authority to enforce are being complied with, the Department may investigate or authorize an investigation to be made of any matter, incident, thing, person or event within its jurisdiction.
- (c) Subject to the provisions of this Code or other applicable law, the Department may take such action as may become necessary to assure the maintenance of public health, the prevention of disease, or the safety of the City and its residents.
- (d) Where urgent public health action is necessary to protect the public health against an imminent or existing threat, the Commissioner may declare a public health emergency. Upon the declaration of such an emergency, and during the continuance of such emergency, the Commissioner may establish procedures to be followed, issue necessary orders and take such actions as may be necessary for the health or the safety of the City and its residents. Such procedures, orders or actions may include, but are not limited to,

exercising the Board's authority to suspend, alter or modify any provision of this Code pursuant to subdivision b of section 558 of the New York City Charter, or exercising any other power of the Board of Health to prevent, mitigate, control or abate an emergency, provided that any such exercise of authority or power shall be effective only until the next meeting of the Board, which meeting shall be held within five business days of the Commissioner's declaration if a quorum of the Board can be convened within such time period. If a quorum of the Board cannot be so convened, then said meeting shall be held as soon as reasonably practicable. At its next meeting, the Board may continue or rescind the Commissioner's suspension, alteration, modification of Health Code provisions or exercise of power. An order issued pursuant to this subdivision shall be effective from the time and in the manner prescribed in the order and shall be published as soon as practicable in a newspaper of general circulation in the city and transmitted to the radio and television media for publication and broadcast. In the alternative, in circumstances where the order is directed at a finite number of known persons, the Commissioner may transmit the order to such persons in a manner the Commissioner deems practicable under the circumstances, including but not limited to mail, electronic mail, facsimile, closed electronic network, in person, or by telephone. Copies of orders issued pursuant to this subdivision shall be immediately circulated to and filed with the Board, and the Department shall maintain records attesting to the manner and timing of their publication or transmittal.

- (e) The Commissioner's powers under this section are separate and apart from his or her powers pursuant to other provisions of law, including powers arising from a proclamation of emergency issued by the Mayor under section 24 of Article 2-B of the New York State Executive Law or the Mayor's directions thereunder. Nothing in this section shall be construed to preclude the exercise of the powers granted under this section in combination with powers authorized under any other law or arising from such a proclamation or directions.

### **§3.03 Seizure, embargo, condemnation and disposition of prohibited materials.**

- (a) The Department may seize, embargo or condemn any food, drug, device, cosmetic, article or thing that it determines
  - (1) is unfit for human consumption or use;
  - (2) is in a condition, kind, weight, quality or strength prohibited by this Code or other applicable law;
  - (3) is not labeled as required by this Code or other applicable law;
  - (4) contains false or misleading labeling;
  - (5) is adulterated or misbranded; or
  - (6) constitutes a danger or nuisance, or is otherwise prejudicial to the public health.
- (b) The Department may destroy, render harmless, or otherwise dispose of all seized, embargoed or condemned material without compensation and, in its discretion, at the expense of the owner or person in control thereof, or may direct such owner or person to do so. Embargoed, seized and condemned material which is hazardous shall be disposed of in accordance with applicable law.
- (c) When the Department determines that embargoed material consists in part of materials which are not in violation of the Code and which may be reasonably salvaged, or that embargoed materials or any part thereof can be reasonably brought into compliance with

the Code, the Department shall permit the owner or person in control of such embargoed material, unless the public health otherwise requires, to separate the salvageable portions or to bring such materials into compliance with the Code at the place of embargo or seizure, or other place acceptable to the Department, in a manner directed by the Department. When seized material is disposed of by the Department otherwise than by destruction, it may be released to the owner or person in control if it may be rendered harmless.

- (d) All activities carried on pursuant to this section shall be done in a manner consistent with the maintenance of the public health, giving due regard to the property rights of the owner or person in control of the affected material.
- (e) Except where the Department determines that immediate action is required to protect the public health, the Department shall not seize, embargo, condemn, destroy, render harmless or otherwise dispose of any material pursuant to this section until the owner or person in control is notified by any effective means of communication and is given opportunity to be heard by such personnel of the Department as the Commissioner may designate. No person shall fail to comply with any order or subpoena of the Commissioner requiring disclosure of information concerning the sources or recipients of the embargoed or seized material.

**§3.05 Orders of the Board, Commissioner or Department.**

- (a) No person shall violate an order of the Board, Commissioner or Department.
- (b) Service of any order of the Commissioner or Department shall be deemed legally sufficient if delivered personally or if mailed by ordinary first class, certified or registered mail, express or overnight mail, through the United States Postal Service or through any commercial expedited mail or parcel delivery service, in no particular order of priority, upon any person, officer, department or employee referred to in Section 17-141 of the Administrative Code. The Department shall maintain records attesting to the manner of service used and the person or entity served in each instance. Service of any order issued pursuant to subdivision (d) of section 3.01 of this article shall be deemed legally sufficient if served in accordance with the provisions specified therein.

**§3.07 General standards to protect health and safety; prohibited acts; necessary acts and precautions.**

No person shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual unless the act is authorized by law. No person shall fail to do any reasonable act or take any necessary precaution to protect human life and health.

**§3.09 Abatement of nuisances.**

No person shall commit or maintain a nuisance as defined in §17-142 of the Administrative Code, and no person shall allow such a nuisance to exist or to be created in respect of any matter, thing, chattel or premises which he or she owns or controls.

**§3.11 Civil Enforcement of the Code.**

- (a) Except as provided in subdivisions (b) and (c) herein, any person who is determined to have violated this Code or any other applicable law or regulation that the Department is authorized to enforce, shall, unless otherwise specified in such other law or regulation, be

subject to a fine, penalty and forfeiture of not less than two-hundred and not more than two thousand dollars for each violation of a provision of this Code or any other such applicable law or regulation. Each such violation may be treated as a separate and distinct offense, and in the case of a continuing violation, each day's continuance thereof may be treated as a separate and distinct offense.

- (b) Any person who is determined to have conducted, carried on, or in any way engaged in an activity without a permit, license, registration, or other authorization required by this Code shall be subject to a fine, penalty and forfeiture of not less than one thousand and not more than two thousand dollars.
- (c) Where a person fails to appear in a proceeding 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, but shall not exceed the maximum penalty specified in subdivision (a) or (b) of this Section, or in the other applicable law or regulation.
- (d) The penalty provided for in subdivision (a) of this section may be increased to an amount not to exceed five thousand dollars for a subsequent violation if the person committed the same violation within twelve months of the initial violation for which a penalty was assessed, pursuant to subdivisions (a) or (c) of this section and the violation was a serious threat to the health of an individual or individuals.
- (e) The penalty provided for in subdivision (a) of this section may be increased to an amount not to exceed ten thousand dollars if the violation directly results in serious physical harm to any person.

### **§3.12 Administrative Tribunal and Environmental Control Board proceedings.**

- (a) *Administrative Tribunal.* The Administrative Tribunal established by the Board of Health pursuant to §558 of the Charter is hereby continued. It shall be operated by and within the City's Office of Administrative Trials and Hearings and known as the Health Tribunal at OATH.
- (b) *Proceedings at the Health Tribunal at OATH and the Environmental Control Board.* 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 shall bring a proceeding at either the Health Tribunal at OATH or at the Environmental Control Board, and such proceedings shall be governed by the procedures of such Tribunal or Board, as the case may be.
- (c) *Service of notices of violations returnable to the Environmental Control Board.*
  - (1) *Personal service.* Notices of violation returnable to the Environmental Control Board may be served in person upon (i) the person alleged to have committed the violation, (ii) the permittee or registrant, (iii) the person who was required to hold the permit or to register, (iv) a member of the partnership or other group concerned, (v) an officer of the corporation, (vi) a member of a limited liability company, (vii) a management or general agent, or (viii) any other person of suitable age and discretion as may be appropriate, depending on the organization or character of the person, business, or institution charged.
  - (2) *Service by mail.* Notices of violation returnable to the Environmental Control Board may be served by mail deposited with the U.S. Postal Service, or any other mailing service, to any such person at the address of the premises that is the subject of the NOV or, as may be appropriate, at the residence or business address of (i) the alleged violator,

(ii) the individual who is listed as the permittee or applicant in the permit issued by the Board or the Commissioner or in the application for a permit, or (iii) the registrant listed in the registration form. In the case of service by mail, documentation of mailing is sufficient proof of service of the notice of violation.

- (d) *Decisions.* The decisions of the Environmental Control Board shall be final; the decisions of the Health Tribunal at Oath shall be final, except in the case of any appeal from an adjudication of a violation of Article 13-E of the Public Health Law.
- (e) *Appeals pursuant to Article 13-E of the Public Health Law.* 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 shall, 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 shall be served on the respondent by certified or registered mail. Where appropriate, the Commissioner's decision shall 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 shall constitute a final agency determination.

### **§3.13 Enforcement of this Code otherwise than by prosecution or other compulsory means.**

In lieu of enforcement of this Code by way of prosecution, recovery of civil penalties, revocation of permits, seizure, embargo and condemnation, and other compulsory means, the Department may seek to obtain the voluntary compliance with this Code by way of notice, warning or other educational means; this section does not, however, require that such non-compulsory methods be used before proceeding by way of compulsory enforcement.

### **§3.15 Interfering with or obstructing Department personnel; gifts, gratuities and bribes.**

- (a) No person shall interfere with or obstruct Department personnel in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or Board.
- (b) No person shall give or offer a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, and drink, to an employee or agent of the Department engaged in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or Board.

**§3.17 Notices, orders and other posted materials not to be mutilated, obstructed or torn down.**

No material, order or notice posted or required to be posted by the Department shall be mutilated, obstructed, torn down or removed unless authorized to do so by the Department or by this Code or other applicable law.

**§3.19 False and misleading statements, reproductions and alterations.**

- (a) No person shall make a false, untrue or misleading statement or forge the signature of another on a certificate, application, registration, report or other document in paper, electronic or any other form or medium, required to be submitted or filed with the Department. No person shall make a false, untrue or misleading oral statement to the Department as to any matter investigated by the Department.
- (b) No person shall reproduce or alter or cause to be reproduced or altered a permit, report, certificate or other document in paper, electronic or any other form or medium, issued by the Commissioner, Department or Board if the purpose or effect of such reproduction or alteration is the evasion or violation of any provision of this Code or any other law.

**§3.21 Use of English language in complying with Code; use of other languages.**

- (a) When the Department or a provision of this Code requires the submission of an application, certificate, report or other document in paper, electronic or any other form, to the Department, any required writing shall be in the English language except that the Department may in its discretion allow the submission of such a required writing in another designated language, if such required writing is accompanied by an accurate, English translation of such writing.
- (b) When the Department or a provision of this Code requires the use of warning or instructional signs or labels, any required writing shall be in the English language. If the Department is of the opinion that the persons to whom a required warning or instructional sign or label is addressed may not understand the English language, the Department may require that such sign or label appear legibly both in English and other designated languages.

**§3.23 Reports of departmental or governmental officials; presumptive evidence of facts.**

Written reports or documents in paper, electronic or any other form concerning a matter or subject within the jurisdiction of the Department or regulated by this Code, which are signed or certified by a person employed by any agency of the City, State or Federal government, shall be presumptive evidence of the facts stated therein.

**§3.25 Inspection of records and proceedings of the Department.**

- (a) Except as prohibited, required or authorized by this Code, including this section, or other applicable law:
  - (1) Records of the Department containing individually identifiable information, or other information that the Department reasonably believes may endanger the health or safety of any person if disclosed, shall be confidential and used only by authorized personnel of the Department or its authorized agents. For the purposes of this section the term "individually identifiable information" shall mean any information or data which by itself

or in combination with any other publicly available information could, in the opinion of the Department, be used to identify a particular individual;

- (2) A person, upon submission of a legally appropriate written request or consent, and proof of identity satisfactory to the Department if deemed necessary by the Department, may inspect, or obtain a copy of, or authorize his or her attorney or representative to inspect or obtain a copy of a file, record, report, proceeding of the Department or any other document, whether oral, written, electronic, visual or in any other form which contains individually identifiable information pertaining to such person; provided that individually identifiable information pertaining to another person is not disclosed. A person who owns, manages, operates or has any legal interest in a premises may, in the manner set forth above, have access to Departmental reports and records of the Department's environmental inspections pertaining to such premises; provided that said records are redacted of any personal information concerning the occupants of such premises. A request to inspect or consent to disclose shall be made in writing and shall describe the information to be inspected or disclosed. Inspections of records shall be permitted during times and at such places as the Department may determine. A written authorization for an attorney or representative to inspect or obtain copies of Department records shall be made on forms provided or a format approved by the Department.
- (b) Subdivision (a) of this section shall not prevent authorized personnel of the Department from furnishing appropriate information to a physician or institution providing examination or treatment to a person suspected of or affected with a disease or condition, to an agency approved by the Department for prevention, treatment or social care, or to any person when necessary for the protection of health. A person, institution or agency to whom such information is furnished or to whom access to records has been given, shall not divulge any part thereof so as to disclose individually identifiable information of the person to whom such information or record relates, except insofar as such disclosure is necessary for the treatment of such person or for the protection of the health of others. Notwithstanding the subdivision (a) or (b) of this section, no such access or disclosure shall occur if such is otherwise prohibited by this Code or other applicable law.
- (c) No person shall violate any term or condition of a written data use agreement, protocol or other understanding upon which the Department has relied to grant access to individually identifiable information or data.
- (d) The Department may charge a reasonable fee, established in accordance with applicable law, for the provision of access to, or inspection or copying of, information, data or records pursuant to this section.

### **§3.27 Compliance with other applicable laws and regulations.**

The approval of any plans or the issuance of any permit pursuant to this Code which involves the construction, alteration or renovation of any building, structure or premises, or the use of any site, or the installation or alteration of any service equipment, regulated by the Building Code or other applicable law, shall not relieve the person receiving such approval or permit from such person's responsibility to comply with all of the applicable provisions of the Building Code, zoning regulations and other applicable laws and regulations.

**§3.29 Construction.**

- (a) This Code is intended to be consistent with the federal and New York State Constitutions, applicable State law and the New York City Charter, and shall be so construed, to the fullest extent possible, whenever necessary to achieve such consistency.
- (b) This Code shall be liberally construed for the protection of the health and safety of the people of the city of New York.

**§3.31 Separability.**

If a provision of this Code is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the applicability of such provision to other persons and circumstances and the constitutionality or validity of every other provision of the Code shall not be affected thereby.