



**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
COMMISSIONER OF HEALTH AND MENTAL HYGIENE**

**NOTICE OF ADOPTION OF AMENDMENTS TO
APPENDIX 23-C OF CHAPTER 23
OF TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

In compliance with §1043(a) of the New York City Charter (the “Charter”), a notice of intention to amend Appendix 23-C of Chapter 23 (“Food Service Establishment Sanitary Inspection Procedures”) of Title 24 of the Rules of the City of New York was published in the City Record on April 14, 2015 providing an opportunity for comments to be submitted on or before May 15, 2015. No public hearing was held since it was determined that there was no public purpose for such a hearing. One written comment was received, but no change has been made in response to the comment. The \$200 penalty for violation code 22H (miscellaneous Health Code violations) was inadvertently omitted from the proposed rules and has been restored to the final rule.

Statutory Authority

Amendment of Appendix 23-C of Chapter 23 of Title 24 of the Rules of the City of New York is authorized by §§389(b) and 1043 (a) of the Charter. Charter §389(b) provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.” Charter §1043(a) authorizes each agency to “adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.”

The authority for these rules is found in §556 of the New York City Charter and §81.51 of the New York City Health Code (the Health Code).

Statement of Basis and Purpose of Proposed Rule

Background

The Department of Health and Mental Hygiene (the Department) regulates food service establishments, which include a broad range of businesses and not-for-profit operations that provide food in individual portion sizes for consumption by members of the public, and enforces Article 81 (Food Preparation and Food Establishments) of the New York City Health Code (the Health Code). Health Code §81.51 authorizes the Commissioner of the Department to promulgate rules for establishing a system for grading and classifying inspection results. Chapter 23 (Food Service Establishment Sanitary Inspection Procedures and Letter Grading) of Title 24 of the Rules of the City of New York implements such a system, and consists of rules as well as three appendices: Appendix 23-A (Food Service Establishment Inspection Worksheet); Appendix 23-B (Food Service Establishment Inspection Scoring Parameters-A Guide to Conditions) and Appendix 23-C (Food Service Establishments and Non Retail Food Service Establishments Penalty Schedule).

Reason for making changes

At its March 10, 2015 meeting, the New York City Board of Health amended Article 81, reorganizing and renumbering several sections. Renumbering the Health Code sections means that certain

violations listed and described in Appendix 23-C must also be renumbered, and in a few cases the brief descriptions of violations updated to accurately reflect these amendments to the Health Code.

Changes made

All references are to the Health Code or, where indicated, to the State Sanitary Code (SSC), except as described below.

The following is the list of the scored violations where the violation number and/or description must be changed:

<u>Violation Code</u>	<u>Current Citation</u>	<u>Renumbered Citation and/or Amended Description</u>
02A	81.09(a)(1) or (5)	81.09(c)(1) and 81.09(c)(5) – separates the violations for poultry and poultry stuffings from those for stuffed and tenderized meats and meat stuffings
02A	81.09(a)(2)	81.09(c)(2) – pork heating temperature changed from 155 degrees F to 150 degrees F
02A	81.09(a)(3)	81.09(c)(3)
02A	81.09(a)(4)	81.09(c)(4)
02A	81.09(a)(6)	81.09(c)(6)
02A	81.09(a)	81.09(c) – other food heating temperature changed from 145 degrees F to 140 degrees F
02C	81.09(a)(7)	81.09(d)
02D	81.09(a)(10)	81.09(d)(2)
02E	81.09(g)(5)	81.09(f)(5)
02F	81.09(d)	81.11
02G	81.09(c)	81.09(a)(3)
02G	81.09(b)	81.09(a)(2)
02I	81.09(f)	81.09(e)(2)
03B	81.04(c)	same – adds term “required” to describe shellfish tags
03C	81.04(c)	same – deletes violation for “source of eggs”
03E	SSC14-1.121	NYCHC 141.13
03E	81.20(d)	81.20(c) – spelling error “improse” corrected to “improper”
03F	81.07(K)	81.07(k) – lower case subdivision referenced
03G	81.07 (a)(5)	81.07(a)(4)
04C	81.07(J)	81.07 (j) – lower case subdivision referenced
04E	81.23(d)(3)	same – deletes pesticides not properly “stored” and moves to 4E below;
04E	SSC14-1.60	deleted; duplicates a general violation 08C
04H	81.07(a)(3)	81.07 (a)(2)
04J	81.09(h)	81.09(g) – deletes “used”
05A	81.09(b) and (c)	81.09 (b)
05H	81.29(a)	81.29
06B	81.13(g)	same – adds “e-cigarettes” to smoking prohibition for food workers
06D	81.27(c)	81.27(b)
06F	81.27(d)	81.27(c)
08B	81.24(a)(1)	81.24(a)
08B	81.24(b)	81.24(c)
08C	SSC14-1.60 (e)	81.23(d)(4)
08C	81.23(e)	81.17(g)

09B	81.09(g)	81.09(f)
10B	81.20(c)	81.20(b) – term “maintain” corrected to read “maintained”
10E	SSC14-1.44	81.18(a)
10H	81.29(a)(1)	81.29(a)
10H	81.29(a)(2)	81.29(a)
10H	81.29(a)(3)	81.29(b)(1)
10H	81.29(a)(4)	81.29(b)(2)
10H	81.29(a)(2)	81.29(a) – test kit for manual/chemical sanitizing
10H	81.29(a)(4)	81.29(b)(2) – test kit for mechanical/chemical sanitizing
10I	SSC 14-1.110(e)	81.07(o)

In the list of unscored violations, a new violation code 22G containing a penalty for violations of Administrative Code §16-329 (c) which prohibits use of expanded polystyrene single service articles, is being added.

One person commented on the brief descriptions of the violations during the comment period for this Rule, but no changes have been made to the penalties originally published or to the violations as described.

In addition, the original publication of Appendix 23-C in June 2014 indicated, in the Statement of Basis and Purpose, that

Eventually the Department will be proposing rules fixing penalties for all violations that are adjudicated at the Health Tribunal. Chapter 23 is being amended first to add a new Appendix C fixing penalties for any violation that can be cited against a food service establishment on inspection because the majority of notices of violation heard at the Health Tribunal are against food service establishments. *There are violations listed in Appendix C, however, that are cited more broadly than just against food service establishments. Examples include failing to prevent a nuisance in violation of Health Code §§3.07 or 3.09, or obstructing an inspection in violation of Health Code §3.15(a). The penalties proscribed for these violations ... will apply in all notices of violation adjudicated at the Health Tribunal and not just when the respondent is a food service establishment.*
(emphasis added)

However, a statement of this intent was not explicitly included in the published tables at that time. To further clarify that penalties listed for violations of Article 3 of the Health Code must be applied to all sustained violations that are adjudicated at the OATH Health Tribunal, not just those cited and issued to food service establishments, a note to this effect is now being added to Appendix 23-C.

The amendments are as follows.

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

Deleted material is in [brackets]; new text is underlined.

Section 1. Appendix 23-C of Chapter 23, found in Title 24 of the Rules of the City of New York, is amended as follows:

CHAPTER 23 – APPENDIX [C] 23-C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

SCORED VIOLATIONS

VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*
02A	NYCHC 81.09[(a)(1)or (5)](c)(1)	Public Health Hazard	Poultry, poultry stuffing [containing meats, stuffed meats:] not heated to 165°F for 15 seconds				\$400	\$600
02A	NYCHC 81.09[(a)](c)(2)	Public Health Hazard	Pork/food containing pork not heated to [155°F] 150°F for 15 seconds				\$400	\$600
02A	NYCHC 81.09[(a)](c)(3)	Public Health Hazard	Rare roast beef/steak not heated to minimum time/temperature				\$400	\$600
02A	NYCHC 81.09[(a)](c)(4)	Public Health Hazard	Ground meat not heated to 158°F				\$400	\$600
02A	NYCHC 81.09(c)(5)	Public Health Hazard	Stuffed meats, fish, ratites and tenderized meats not heated to 165°F for 15 seconds				\$400	\$600
02A	NYCHC 81.09[(a)](c)(6)	Public Health Hazard	Shell eggs/food containing shell eggs not heated 145°F for 15 seconds				\$400	\$600
02A	NYCHC 81.09[(a)](c)	Public Health Hazard	Other potentially hazardous hot food not heated to [145°F] 140°F for 15 seconds				\$400	\$600
02B	NYCHC 81.09(a)	Public Health Hazard	Hot potentially hazardous food not held at 140°F or above	\$250	\$300	\$350	\$400	\$600
02C	NYCHC 81.09[(a)(7)](d)	CRITICAL	Previously heated and cooled potentially hazardous hot food not reheated to 165°F for 15 seconds within 2 hours	\$200	\$200	\$250	\$300	
02D	NYCHC 81.09[(a)(10)](d)(2)	CRITICAL	Commercially processed potentially hazardous food not heated to 140°F within 2 hours	\$200	\$200	\$250	\$300	
02E	NYCHC 81.09[(g)](f)(5)	CRITICAL	Whole frozen poultry or poultry breast, other than a single portion, cooked frozen or partially thawed	\$200	\$200			
02F	NYCHC [81.09(d)]81.11	CRITICAL	Meat, fish, or shellfish served raw or partially cooked				\$300	
02G	NYCHC 81.09(a)	Public Health Hazard	Cold potentially hazardous food not held at 41°F or below	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.09[(c)](a)(3)	Public Health Hazard	Processed or smoked fish not held at or below 38°F	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.09[(b)](a)(2)	Public Health Hazard	Eggs not held at ambient temperature of 45°F or below	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.12(d)(2)	Public Health Hazard	Reduced oxygen packaged raw foods not held at proper temperatures	\$250	\$300	\$350	\$400	\$600
02G	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged cold foods not held at proper temperatures	\$250	\$300	\$350	\$400	\$600

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02G	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged foods not held at proper temperatures	\$250	\$300	\$350	\$400	\$600
02H	NYCHC 81.09(e)	Public Health Hazard	Potentially hazardous food not cooled by approved method	\$250	\$300	\$350	\$400	\$600
02I	NYCHC 81.09[(f)](e)(2)	CRITICAL	Potentially hazardous food not cooled to 41°F when prepared from ambient temperature ingredients within 4 hours	\$200	\$200	\$250	\$300	
02J	NYCHC 81.12(d)(4)	Public Health Hazard	Reduced oxygen packaged foods not properly cooled	\$250	\$300	\$350	\$400	\$600
03A	NYCHC 81.04	Public Health Hazard	Food not from an approved source				\$400	\$600
03A	NYCHC 81.12(c)	Public Health Hazard	Reduced oxygen packaged foods not from an approved source				\$400	\$600
03A	NYCHC 81.12(e)	Public Health Hazard	Reduced oxygen packaging fish not frozen before processing				\$400	\$600
03A	NYCHC 81.04(b)	Public Health Hazard	Meat not from an approved source				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish not from an approved source				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish improperly tagged or labeled				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Shellfish <u>required</u> tags not retained at least 90 days				\$400	\$600
03B	NYCHC 81.04(c)	Public Health Hazard	Wholesale shellfish records not on premises				\$400	\$600
03C	NYCHC 81.07(c)	Public Health Hazard	Eggs cracked, dirty or unpasteurized[; source of eggs not identified on container]	\$250	\$300	\$350	\$400	\$600
03D	NYCHC 81.07(b)	Public Health Hazard	Food packages damaged; cans of food swollen, leaking and/or rusted	\$250	\$300	\$350	\$400	\$600
03E	NYCHC 81.20(a)	Public Health Hazard	Potable water not provided; inadequate				\$400	\$600
03E	[SSC 14-1.121] NYCHC 141.13	Public Health Hazard	Bottled water not from an approved source				\$250	\$250
03E	NYCHC 81.20(a)	Public Health Hazard	Cross-connection observed between potable and non-potable water				\$400	\$600
03E	NYCHC 81.20[(d)](c)	Public Health Hazard	Carbon dioxide gas lines unacceptable, [impropse] improper materials used				\$400	\$600

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03F	NYCHC 81.07((k))(k)	Public Health Hazard	Unpasteurized milk and milk products				\$400	\$600
03G	NYCHC 81.07(a)((5))(4)	CRITICAL	Fruits and vegetables not washed prior to serving	\$200	\$200	\$250	\$300	
04A	NYCHC 81.15(a)	CRITICAL	Food Protection Certificate not held by supervisor or manager of food operations					\$600
04B	NYCHC 81.13(a)	Public Health Hazard	Food worker with illness, communicable disease and/or injury preparing food				\$400	\$600
04C	NYCHC 81.07((j))(i)	Public Health Hazard	Bare hand contact with ready-to-eat foods	\$250	\$300	\$350	\$400	\$600
04D	NYCHC 81.13(d)	Public Health Hazard	Food worker failed to wash hands after contamination				\$400	\$600
04E	NYCHC 81.23(d)(3)	Public Health Hazard	Pesticides not properly [stored] used; food, equipment, utensils, etc., not protected from pesticide contamination	\$250	\$300	\$350	\$400	\$600
[04E	SSC 14-1.60	Public Health Hazard	Chemicals and toxic materials not properly stored	\$250	\$300	\$350	\$400	600]
04F	NYCHC 81.20(b)	Public Health Hazard	Sewage and liquid waste not properly disposed of				\$400	\$600
04G	NYCHC 81.07(l)	Public Health Hazard	Unprotected potentially hazardous food re-served				\$400	\$600
04H	NYCHC 81.07(a)((3))(2)	Public Health Hazard	Food not protected from cross-contamination	\$250	\$300	\$350	\$400	\$600
04H	NYCHC 81.07(a)	Public Health Hazard	Food in contact with toxic material	\$250	\$300	\$350	\$400	\$600
04H	NYCHC 81.07(a)	Public Health Hazard	Food not protected from adulteration or contamination	\$250	\$300	\$350	\$400	\$600
04H	NYCHC 81.06(b)(3)	Public Health Hazard	Food not discarded in accordance with HACCP plan	\$250	\$300	\$350	\$400	\$600
04I	NYCHC 81.07(l)	CRITICAL	Food other than in sealed packages re-served	\$200	\$200	\$250	\$300	
04J	NYCHC 81.09((h))(g)	CRITICAL	Thermometer not provided, [used,] calibrated properly, accessible for use and/or inadequate				\$300	
04J	NYCHC 81.12(g)(1)	CRITICAL	Thermocouple not provided				\$300	
04K	NYCHC 81.23(a)	CRITICAL	Evidence of rats	\$200	\$200	\$250	\$300	\$350
04L	NYCHC 81.23(a)	CRITICAL	Evidence of mice	\$200	\$200	\$250	\$300	\$350
04M	NYCHC 81.23(a)	CRITICAL	Evidence of roaches	\$200	\$200	\$250	\$300	\$350
04N	NYCHC 81.23(a)	CRITICAL	Filth flies	\$200	\$200	\$250	\$300	\$350

CHAPTER 23 – APPENDIX [C] 23-C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

SCORED VIOLATIONS

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04O	NYCHC 81.25	CRITICAL	Live animal other than fish in tank or service animal	\$200	\$200	\$250	\$300	\$350
05A	NYCHC 81.20(b) [and (c)]	Public Health Hazard	Sewage disposal system improper or unapproved				\$400	\$600
05B	NYCHC 81.19(c)	Public Health Hazard	Harmful noxious gas or vapor detected; CO levels at or exceeding 9 ppm				\$400	\$600
05C	NYCHC 81.17(d)	CRITICAL	Food contact surface improperly constructed, located and/or made of unacceptable materials	\$200	\$200	\$250	\$300	\$350
05C	NYCHC 81.07(a)(1)	CRITICAL	Culinary sink or alternative method not provided for washing food	\$200	\$200	\$250	\$300	\$350
05D	NYCHC 81.21(a)	CRITICAL	Hand washing facilities not provided or not located where required				\$300	\$350
05D	NYCHC 81.21(a)(1)	CRITICAL	Hand washing facilities not provided within 25 feet of food preparation area or ware washing area				\$300	\$350
05D	NYCHC 81.21(a)	CRITICAL	Hand wash facility not provided with running water, or properly equipped				\$300	\$350
05D	NYCHC 81.21(b)	CRITICAL	Hand wash facility inadequate				\$300	\$350
05E	NYCHC 81.22(a)	CRITICAL	Toilet facilities not provided for employees				\$300	\$350
05E	NYCHC 81.22(b)	CRITICAL	Toilet facilities not provided for patrons				\$300	\$350
05E	NYCHC 81.22(d)	CRITICAL	Shared patron/employee toilet accessed through kitchen, food prep or storage area				\$300	\$350
05F	NYCHC 81.18	CRITICAL	Hot or cold holding equipment not provided or inadequate				\$300	\$350
05G	NYCHC 89.27(c)	CRITICAL	Enclosed service area not provided, equipped in mobile food vending commissary				\$300	\$350
05H	NYCHC 81.29[(a)]	CRITICAL	Manual or mechanical tableware, utensil and/or ware washing facilities not provided				\$300	\$350
05I	NYCHC 81.12 (d)(5)	CRITICAL	Refrigeration unit not equipped with an electronic system				\$300	\$350
06A	NYCHC 81.13	CRITICAL	Food worker does not maintain personal cleanliness				\$300	\$350
06A	NYCHC 81.13(e)	CRITICAL	Fingernails not clean, trimmed, or with nail polish	\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(c)	CRITICAL	Clean outer garment not worn	\$200	\$200	\$250	\$300	
06A	NYCHC 81.13(b)	CRITICAL	Effective hair restraint not worn	\$200	\$200	\$250	\$300	
06B	NYCHC 81.13(h)	CRITICAL	Eating in food preparation or service areas	\$200	\$200	\$250	\$300	

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SCORED VIOLATIONS

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06B	NYCHC 81.13(g)	CRITICAL	Smoking [Tobacco] tobacco, using e-cigarettes or other substance in establishment	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(a)	CRITICAL	Food not protected from contamination	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(q)	CRITICAL	Unnecessary traffic through food prep area	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(d)	CRITICAL	Food not properly protected when stored	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(e)	CRITICAL	Food not properly protected when displayed	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(f)	CRITICAL	Condiments for self service not properly dispensed	\$200	\$200	\$250	\$300	
06C	NYCHC 81.07(i)	CRITICAL	Supplies and equipment placed under overhead sewage pipe	\$200	\$200	\$250	\$300	
06C	NYCHC 81.31	CRITICAL	Cooking by FSE on street, sidewalk, except as authorized by Articles 88, 89					\$350
06D	NYCHC 81.27(b)	CRITICAL	Food contact surface not sanitized; and/or not clean to sight and/or touch	\$200	\$200	\$250	\$300	
06D	NYCHC 81.27[(c)][b]	CRITICAL	Equipment with food contact surfaces not clean and sanitized	\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(h)	CRITICAL	In-use food dispensing utensil not properly stored	\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(g)	CRITICAL	Ice not properly dispensed [or dispensing utensil not properly stored]	\$200	\$200	\$250	\$300	
06E	NYCHC 81.07(h)	CRITICAL	Food dispensing utensil not provided	\$200	\$200	\$250	\$300	
06F	NYCHC 81.27[(d)][c]	CRITICAL	Wiping cloth improperly stored and/or sanitized	\$200	\$200	\$200		
06G	NYCHC 81.06(b) and (c)	Public Health Hazard	Approved HACCP plan not maintained on premises or not approved				\$400	\$600
06H	NYCHC 81.06(b)(4)	CRITICAL	Records and logs not maintained on site					\$350
06I	NYCHC 81.12(d)(6)	CRITICAL	Food not labeled in accordance with the approved HACCP plan				\$300	\$350
07A	NYCHC 3.15(a)	CRITICAL	Obstruction of Department personnel					\$1,000
08A	NYCHC 81.23(a)	CRITICAL	Conditions conducive to pests			\$200	\$200	
08A	NYCHC 81.23(b)	GENERAL	Prevention and control measures not used for pest management			\$200	\$200	
08A	NYCHC 81.23(b)(3)	GENERAL	Door openings into the establishment from the outside not properly equipped			\$200	\$200	
08A	NYCHC 81.23(b)(4)	GENERAL	Pest monitors incorrectly used			\$200	\$200	
08A	NYCHC 81.23(b)(2)	GENERAL	Contract with pest exterminator or record of pest extermination activities not kept on premises			\$200	\$200	
08B	NYCHC 81.24(a)[(1)]	GENERAL	Garbage not properly removed or stored	\$200	\$200	\$200	\$200	

CHAPTER 23 – APPENDIX [C] 23-C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

SCORED VIOLATIONS

VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*
08B	NYCHC 81.24[(b)][c]	GENERAL	Garbage receptacles and covers not cleaned after emptying and prior to reuse	\$200	\$200	\$200	\$200	
08C	NYCHC81.23(d)	GENERAL	Pesticides not properly labeled, not authorized for use, or improperly used	\$200	\$200	\$200	\$200	\$200
08C	[SSC 14-1.60(e)] NYCHC 81.23(d)(4)	GENERAL	Open bait station observed	\$200	\$200	\$200	\$200	\$200
08C	NYCHC [81.23(e)] 81.17(g)	GENERAL	Toxic materials not properly stored	\$200	\$200	\$200	\$200	\$200
09A	NYCHC 81.07(b)	GENERAL	Canned food observed dented and not segregated from other consumable foods	\$200	\$200	\$200	\$200	
09B	NYCHC 81.09[(g)][f]	GENERAL	Thawing procedures improper	\$200	\$200	\$200	\$200	
09C	NYCHC 81.17(d)(1)	GENERAL	Food contact surface improperly constructed and maintained; not easily cleanable	\$200	\$200	\$200	\$200	
10A	NYCHC 81.22(c)	GENERAL	Toilet facility not properly maintained	\$200	\$200	\$200	\$200	
10A	NYCHC 81.22(c)	GENERAL	Toilet facility not properly supplied	\$200	\$200	\$200	\$200	
10A	SSC 14-1.142(a)	GENERAL	Toilet room not completely enclosed with self-closing door	\$200	\$200	\$200	\$200	
10B	NYCHC 81.20(a)	GENERAL	Potable water not protected from backflow, back siphonage or cross-connection	\$200	\$200	\$200	\$200	\$200
10B	NYCHC 81.20(b)	GENERAL	Improper disposal of sewage or liquid waste	\$200	\$200	\$200	\$200	\$200
10B	NYCHC 81.20[(c)][b]	GENERAL	Condensation pipes not properly installed or [maintain] maintained	\$200	\$200	\$200	\$200	\$200
10C	NYCHC 81.19(a)	GENERAL	Lighting insufficient; inadequate	\$200	\$200	\$200	\$200	
10D	NYCHC 81.19(c)	GENERAL	Ventilation (mechanical or natural) not provided or inadequate	\$200	\$200	\$200	\$200	
10E	[SSC 14-1.44] NYCHC 81.18(a)(3)	GENERAL	Thermometers not provided in cold storage and/or refrigerator	\$200	\$200	\$200	\$200	
10E	NYCHC 81.18(b)(1)	GENERAL	Thermometers not provided in hot storage or holding units	\$200	\$200	\$200	\$200	
10F	NYCHC 81.17(e)(1)	GENERAL	Flooring improperly constructed and/or maintained	\$200	\$200	\$200	\$200	
10F	NYCHC 81.17(e)(2)	GENERAL	Non-food contact surfaces (wall, ceiling, floors) improperly constructed/maintained	\$200	\$200	\$200	\$200	
10F	NYCHC 81.17 (e) (3)	GENERAL	Non-food contact surface (fixtures, decorative material, fans, etc.) not properly maintained or equipment not properly maintained	\$200	\$200	\$200	\$200	

CHAPTER 23 – APPENDIX [C] 23-C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

SCORED VIOLATIONS

VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*
10G	NYCHC 81.17(a)(2)	GENERAL	Food being processed, prepared, packed, or stored in a private home or apartment.	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)[(1)]	GENERAL	Hot water manual ware washing inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)[(2)]	GENERAL	Manual chemical sanitizing procedure inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29[(a)(3)](b)(1)	GENERAL	High temperature mechanical ware washing inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29[(a)(4)](b)(2)	GENERAL	Mechanical chemical sanitizing procedure inadequate	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29(a)[(2)]	GENERAL	Test kit not accurate or used for manual dishwashing	\$200	\$200	\$200	\$200	
10H	NYCHC 81.29[(a)(4)](b)(2)	GENERAL	Test kit not accurate or used for mechanical dishwashing	\$200	\$200	\$200	\$200	
10I	[SSC 14-1.110 (e)] NYCHC 81.07(o)	GENERAL	Single service items improperly stored or reused	\$200	\$200	\$200	\$200	
10I	NYCHC 81.07(o)	GENERAL	Drinking straws improperly dispensed	\$200	\$200	\$200	\$200	
10J	NYCHC 81.21(c)	GENERAL	Wash hands sign not posted	\$200				
99B	Miscellaneous	GENERAL		\$200	\$200	\$200	\$200	

CHAPTER 23 = APPENDIX [C] 23-C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

UNSCORED VIOLATIONS

VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	VIOLATION PENALTY*
15A	Admin. Code 17-177(b)	Tobacco vending machine present in a facility other than tavern; initial (#1) and repeat violations (#2, 3 or more)**	\$300 (#1); \$500 (#2) \$1,000 (#3 or more)
15B	Admin. Code 17-177(c)(1)	Tobacco vending machine not 25 feet from door; initial (#1) and repeat violations (#2, 3 or more)**	\$300 (#1); \$500 (#2); \$1,000 (#3 or more)
15C	Admin. Code 17-177(c)(1)	Tobacco vending machine not visible by owner; initial (#1); repeat violations (#2, 3 or more)**	\$300 (#1); \$500 (#2); \$1,000 (#3 or more)
15D	Admin. Code 17-177(d)	Sign not durable and lacks required information; initial (#1) and repeat violations (#2, 3 or more)**	\$300 (#1); \$1,000 (#2 or more)
15D	Admin. Code 17-177(d)	Sign not posted on machine and not visible to the public; initial (#1) and repeat violations (#2 or more)**	\$300 (#1); \$1,000 (#2 or more)
15E	Admin. Code 17-704	Out-of-package sale of tobacco products; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000 (#1); \$2,000 (#2 or more in 36 months)
15F	Admin. Code 17-705	Employee under 18 years of age selling tobacco products without direct supervision of an adult retailer; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000(#1); \$2,000 (#2 or more in 36 months)
15G	Admin. Code 17-706	Sale to persons under 21 observed; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000 (#1); \$2,000 (#2 or more in 36 months)
15H	Admin. Code 17-706	Sign prohibiting sale of tobacco products to persons under 21 not conspicuously posted; initial (#1 or more on first day) and repeat violations (#2 or more after first day within 36 months)**	\$1,000 (#1); \$2,000 (#2 or more in 36 months)
15I	Admin. Code 17-506(a)	Sign prohibiting smoking or using electronic cigarettes not conspicuously posted; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)**	\$400 (#1); \$500 (#2 in 12 months); \$1,000 (#3 or more in 12 months)
15I	Admin. Code 17-506(a)	Sign permitting smoking or using electronic cigarettes not conspicuously posted; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)**	\$400 (#1); \$500 (#2 within 12 months); \$1,000(#3 or more in 12 months)
15I	24 RCNY 10-11(b)	"No smoking or using electronic cigarettes" sign not posted with ashtrays in hotels, or at hotel entrances*	\$500
15I	24 RCNY 10-12(c)	Sign lettering and color does not meet specifications*	\$500
15J	Admin. Code 17-506(d)	Ashtrays in smoke-free area; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)*	\$400 (#1); \$500 (#2 within 12 months); \$1,000(#3 or more in 12 months)
15K	Admin. Code 17-508(b)	Operator failed to make a good faith effort to inform smokers or users of electronic cigarettes of the Smoke-Free Air Act; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1) violations*	\$400 (#1); \$800 (#2 within 12 months); \$1,600 (#3 within 12 months)
15K	NYSPHL 1399-0	No smoking permitted*	\$1,000
15L	Admin. Code 17-504(f)	Workplace SFAA policy not prominently posted in workplace; initial (#1) and repeat violations (#2, 3 or more within 12 months of #1)*	\$400 (#1); \$500 (#2 within 12 months); \$1,000(#3 or more in 12 months)
15M	Admin. Code 17-708	Use of tobacco on school premises*	\$50
15N	Admin. Code 17-176.1	Selling cigarettes, tobacco products, little cigars for less than listed price or price floor; initial (#1) and repeat violations (#2 or #3 within 60 months of #1	\$1,000 (#1); \$2,000 (#2 within 60 months); \$5,000 (#3 within 60 months)

CHAPTER 23 = APPENDIX [C] 23-C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

UNSCORED VIOLATIONS

VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	VIOLATION PENALTY*
15N	Admin. Code 17-176(b)	Distributing tobacco products at less than basic cost; initial (#1) and repeat violations (#2 or more)*	\$500 (#1); \$1,000 (#2 or more)
15O	Admin. Code 17-714	Sale of herbal cigarettes to minors*	\$2,000
15S	24 RCNY 28-02(a)	Flavored tobacco products sold or offered for sale*	\$500
15T	24 RCNY 28-06	Original label for tobacco products sold or offered for sale*	\$500
16A	NYCHC 81.08(a)	Cooking oil, shortening, margarine contains 0.5 grams or more of artificial trans fat.	\$200
16B	NYCHC 81.08(c)	Nutritional fact labels and/or ingredient label is not maintained on site.	\$200
16C	NYCHC 81.50(c)	Calorie information is not posted on menu and menu board	\$200
16E	NYCHC 81.50(c)	Calorie range of food item(s) that come in different flavors and varieties not provided.	\$200
16F	NYCHC 81.50(c)	Calorie range of food item(s) that comes in different combinations not provided	\$200
18A	NYCHC 81.05(c)	No currently valid permit, registration or other authorization to operate food service establishment	\$1,000
18A	NYCHC 88.05(c)	No currently valid permit, registration or other authorization to operate a temporary food service establishment	\$1,000
18B	NYCHC 3.19	Submitting false, misleading statements, documents; documents unlawfully reproduced or altered.	\$1,000
18C	NYCHC 3.17	Notice of the Department mutilated, obstructed, or removed	\$1,000
18D	NYCHC 3.05(a)	Failure to comply with an Order of the Board of Health, Commissioner, or Department	\$1,000
18E	NYCHC 81.43(a)	Failure to report occurrences of suspected food borne illness to the Department	\$200
18F	NYCHC 81.15(b)	Food Protection Certificate not available for Department inspection	\$200
18F	NYCHC 5.15	Permit not conspicuously displayed or posted	\$200
18G	SSC 14-1.190(a)	Manufacture and sell frozen dessert at retail not authorized on permit	\$200
18H	NYCHC 81.05(g)	Operator of shared kitchen allowing user without currently valid permit	\$500
18H	NYCHC 88.05(a)	Failure of temporary event sponsor to exclude vendor without a currently valid permit	\$500
20A	24 RCNY 27.03(c)	Allergy poster not posted or not in correct location; penalty may not be doubled on default	\$100
20B	24 RCNY 27.03(b)	Allergy poster not in languages; penalty may not be doubled on default	\$100
20C	24 RCNY 27.03(b)	Allergy poster is not approved by the Department, and it does not contain the required text; penalty may not be doubled on default	\$100
20D	Admin. Code 17-172(a)	Choking first aid poster not posted	\$200
20D	Admin. Code 17-173(2)(b)	Alcohol/pregnancy sign not posted	\$100
20D	24 RCNY 18-02	Resuscitation equipment not available	\$200
20D	24 RCNY 18-04	Resuscitation equipment required notice to all patrons not posted	\$200
20E	NYCHC 81.51	Current letter grade or "Grade Pending" card not conspicuously posted and/or visible to passersby	\$500
20F	NYCHC 81.51	Current letter grade or "Grade Pending" card not posted	\$1,000

CHAPTER 23 – APPENDIX [C] 23-C FOOD SERVICE ESTABLISHMENT AND NON RETAIL FOOD SERVICE ESTABLISHMENT PENALTY SCHEDULE

UNSCORED VIOLATIONS

VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	VIOLATION PENALTY*
22A	NYCHC 3.07	Failure to take reasonable precautions to protect health and safety, e.g., by not securing CO2 cylinders	\$1,000
22A	NYCHC 3.09	Failing to abate or remediate nuisance	\$1,000
22A	NYCHC 131.07(c)(2)	Insufficient heat in commercial premises	\$300
22B	SSC 14-1.142(b)	No covered waste receptacle in women's toilets	\$200
22C	NYCHC 81.19(b)	Light fixtures not shielded, shatterproofed, or otherwise protected from accidental breakage	\$200
22E	NYCHC 81.12(g)	Equipment used for ROP not approved by the Department	\$200
22F	NYCHC 71.05(a) and 71.05(d)	Misbranded; mislabeled packaged food products	\$200
22G	Admin. Code 16-329(c)	Possess, sell expanded polystyrene single service articles	\$250 (#1); \$500 (#2) \$1,000 (#3 or more in 12 months)
99A	NYCHC miscellaneous	Other Health Code unscored violations	\$200

*Default Penalties. When a respondent [if] is found in default, the penalty for each violation of the Health Code or the State Public Health Law must be doubled, except that in no case may the penalty imposed exceed \$2000.

Except as indicated in this Appendix, when a respondent is found in default for any violation of the rules of the Department found in 24 RCNY, the penalty must be doubled, except that in no case may the penalty imposed exceed \$1,000.

When a respondent is found in default for any violation of the New York City Administrative Code or the New York State Sanitary Code, the penalty shall remain the same as that set forth herein.

**Pursuant to applicable provisions of the New York City Administrative Code, the repeat violation penalty listed in this penalty schedule applies if, within the time period noted in this schedule, a prior violation of the same section of law occurred at the same location and was sustained against the same respondent at the Health Tribunal.

The penalties listed in this Appendix for violations of NYCHC sections 3.05(a), 3.07, 3.09, 3.15, 3.17 and 3.19 shall apply to any notice of violation citing these provisions, regardless of whether the respondent is operating a food service establishment.