

ARTICLE 5
GENERAL PERMIT PROVISIONS

§5.01 Scope.

§5.03 Definitions.

§5.04 Operating without a permit; sanctions.

§5.05 Applications.

§5.07 Expiration dates; fees.

§5.09 Registration and certification fees.

§5.11 Permits not transferable; exception.

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

§5.15 Permit to be kept on premises; mutilation prohibited.

§5.17 Permit suspension and revocation.

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

§5.21 Appeal to Board; stay of action.

§5.01 Scope.

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

§5.03 Definitions.

When used in this Code:

- (a) Arm's length transaction means a sale of a business for consideration that reflects the fair market value of such business or its assets, between two informed and willing parties, that is not made, wholly or in part, for the purpose of enabling the seller to avoid liability for violations issued by the Department. A sale shall be presumed not to be an arm's length transaction if it is
 - (1) A sale to an individual, or to a corporation or other business that is owned by the spouse, domestic partner, parent, grandparent, child or stepchild of any of any of the sellers, or is the direct descendent of a grandparent, the spouse or domestic partner of any of the sellers;
 - (2) A sale to an individual or entity that has a business or financial interest in the seller;
or
 - (3) A sale to an entity in which any of the sellers has a business or financial relationship.
- (b) Permit means a written license and authorization to carry on specified activities as regulated by this Code or other applicable law enforced by the Department, and includes a registration required by this Code or other applicable law.
- (c) Permittee means a natural person or other entity who holds a valid permit issued by the Board or Commissioner pursuant to this Code or other applicable law enforced by the Department.

§5.04 Operating without a permit; sanctions.

- (a) *Operation without a permit deemed a nuisance.* Operating a business or conducting an activity regulated by the Health Code (“Code”) without the permit required by the Code is hereby declared a nuisance.
 - (1) No person may operate a business or conduct an activity regulated by the Code without the permit required by the Code.
 - (2) No person may allow the operation of a business or conducting of an activity regulated by the Code in any property owned by such person unless the person operating such business or conducting such activity has a permit required by the Code.
- (b) *Order to cease and desist.* When the Department determines that a business or activity regulated by the Code is being operated or conducted without the permit required by the Code, the Commissioner or designee may order the person operating the business or conducting the activity to cease and desist from such business or activity. The Department may also order the person who owns the premises in which the business is operated or activity conducted to take whatever action may be necessary to prohibit such business or activity from continuing on such premises.
- (c) *Sealing and padlocking.* If the business or activity ordered to cease and desist continues without the required permit, the Commissioner or designee may, after providing a hearing at the City Office of Administrative Trials and Hearings (OATH) for the person operating such business or conducting such activity and the owner of the premises, take any measure authorized by the Code or other applicable law to enforce an order to cease and desist. Such measures may include, but are not limited to, ordering and arranging for the premises to be sealed and padlocked.

§5.05 Applications.

- (a) *Forms provided by Department.* Application for a permit or for the renewal of a permit shall be made and submitted on forms furnished by the Department. Applications may be submitted on paper or electronically.
- (b) *Applicant to be legally competent.* The applicant shall be 18 years of age or over.
- (c) *Applications to be complete.* The application shall contain all information required by the Department. If the applicant for the permit is a sole proprietorship, the application shall be signed by the individual who will be the permittee. If the applicant is a partnership, the application shall be signed by a partner. If the applicant is a limited partnership, the application shall be signed by the managing or general partner. If the applicant is a corporation, the application shall be signed by an officer or director of the corporation or by any member, if management is vested in members. If the applicant is a limited liability company, the application shall be signed by any manager of the limited liability company. Such signature shall constitute an agreement that the permittee assumes responsibility for the conduct of the business, occupation or other activity concerned in accordance with the requirements of the Code or other applicable law.
- (d) *Application contents.* In addition to the following information, application shall be accompanied by such other information, evidence or documentation as the Department may require or as may be provided for in this Code or other applicable law enforced by the Department. The application shall, at a minimum, include:

- (1) The name, age, gender, residence and business address, and telephone numbers of the permittee, each member of partnership, limited liability company or group, and each officer of the corporation, as applicable.
 - (2) The ability of the permittee, or of its individual members or officers, to read and write English.
 - (3) To the extent that such information is relevant to the conduct of the business, trade, occupation or other activity under permit, information concerning the permittee, its individual members or officers, relating to education, training or experience, moral character, physical health, addiction to alcohol or habit-forming drugs, history of prior criminal conviction, including violations and offenses, history of mental illness, and record of insolvency or bankruptcy.
 - (4) Proof of current Workers' Compensation and Disability Benefits insurance coverage for all employees, or of a certificate of exemption filed with the New York State Workers' Compensation Board.
 - (5) The e-mail address of (i) the individual owner of the permitted business, (ii) the person exercising daily management and control of the permitted business, or (iii) the person who is authorized by law to accept service of process on behalf of the permittee.
 - (6) Any information that the Department determines may be necessary in order to contact the permittee in the event of an emergency.
- (e) *Compliance with applicable law.* The Commissioner shall not issue a new or renewal permit unless, on the basis of the application and other papers submitted, and on the basis of Department or City investigation, if any, he or she is satisfied that the provisions of this Code or other applicable law enforced by the Department will be met.
- (f) *Outstanding fines or penalties.* The Commissioner shall not issue or renew a permit unless there are no unpaid outstanding fines, penalties or forfeitures imposed by the Administrative Tribunal established by §558 of the Charter, by the OATH Health Tribunal or the Environmental Control Board for violations of this Code or other applicable law enforced by the Department, which are due and payable by the applicant or the permittee.
- (g) *Outstanding uncorrected violations.* The Commissioner shall not issue a new permit to any entity based on a sale or change of ownership of a permitted business or activity where Department or other records show outstanding uncorrected violations or unpaid fines and penalties, unless the applicant submits proof satisfactory to the Department that the transfer of the business was the result of an arm's length transaction. Such proof shall consist of documents showing that:
- (1) The applicant has assumed complete management, control and operation of the permitted business or activity from the prior permittee;
 - (2) The applicant has paid market value consideration for the material assets of the permitted business; and
 - (3) Neither the applicant nor any member or officer of a partnership or corporation is related by blood or marriage to the owners or managers of the entity holding the permit prior to the transfer of the permitted business.
- The Commissioner's denial of an application pursuant to this subdivision shall be a final agency determination not subject to appeal to the Board of Health.

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

§5.07 Expiration dates; fees.

(a) Applications for permits and for renewal thereof shall be accompanied by payment of fees prescribed by the following table. Permits shall expire and be renewed in accordance with the expiration date, if any, prescribed by such table:

Description of Activity under permit	Health Code or other Law Section Reference	Fee	Date Expiration
ANIMALS:			
Permit to operate a pet shop without dogs and/or cats, boarding kennel, training establishment for small animals or grooming parlor, where animals are kept overnight.	161.09(a)	\$70.00	December 31
ANIMALS:			
Permit to operate a pet shop with dogs and/or cats.	Admin. Code § 17-374	\$300.00	Two years from date issued
ANIMALS:			
Permit to operate solely a grooming parlor where animals are not kept overnight.	161.09(a)	\$30.00	December 31
ANIMALS:			
Permit to operate a shelter for homeless animals	161.09(b)	None	December 31
ANIMALS:			
Permit to operate a stable for horses	161.09 (d)	\$35.00	December 31
ANIMALS:			
To operate a snake farm engaged in the preparation of antivenin	161.09 (e)	\$70.00	December 31
BARBER SHOP:			
Permit to conduct a barber shop	163.03	\$15.00	October 31
BATHING BEACH:			
Permit to operate a bathing beach or construct or maintain a bathing beach facility	167.05(a)	\$595.00 for original \$375.00 for renewal season	November 1

BATHING ESTABLISHMENT:			
Permit to construct or maintain a bathing establishment	165.05		April 30 (November 1 if seasonal)
—without pool		\$1,120.00 for original \$260.00 for renewal	
—with pool		\$1,980.00 for original	
		\$245.00 for renewal annual	
		\$245.00 for renewal seasonal	
CHILDREN'S SUMMER CAMPS:			
Permit to operate any children's summer camp	48.05	\$200	April 1 through September 15 annually
CHILD CARE SERVICE:			
Application to conduct a child care service	47.03	\$100.00	
Permit to conduct a child care service.	47.09	\$100.00 per year plus \$1.00 per child	Up to two years from date of issuance
FOOD SERVICE ESTABLISHMENT:			
Permit to maintain or operate a food service establishment.	81.05(c)	\$280.00	One year from last day of the month in which the initial application was submitted or, in the case of a renewal, one year from date of last permit expiration
NON-RETAIL FOOD PROCESSING ESTABLISHMENT:			

Permit to maintain or operate a non-retail food processing establishment.	81.05(c)	\$200.00	One year from end of the month in which the initial application was submitted or, in the case of a renewal, one year from date of last permit expiration
TEMPORARY FOOD SERVICE ESTABLISHMENTS:			
Permit to maintain or operate a temporary food service establishment	88.03(a)	\$70.00	One year from end of the month in which the initial application was submitted or, in the case of a renewal, one year from date of last permit expiration
PRESCRIPTION FORMULA PREPARATION:			
Permit to prepare prescription formula	115.05	\$50.00	March 31
FROZEN DESSERTS:			
Permit to manufacture and sell frozen desserts at retail	NY PHL §225 (5)(s)	\$25.00 per annum	At time of expiration of associated food service establishment or mobile food vending permit.
MOBILE FOOD VENDOR LICENSE:			
Food vendor license to vend, peddle, sell, offer for sale, distribute or give away food from a vehicle, pushcart, or other mobile food vending unit	89.07	Seasonal: \$10 per year; Full-term: \$50 for two years	Seasonal: April 1 through October 31; Full-term: two years from end of the month in which

			the initial application was submitted or, in the case of a renewal, two years from date of last permit expiration.
MOBILE FOOD VENDING UNIT:			
Permit to maintain or operate a mobile food processing unit on or in which foods are processed or prepared, or on or in which potentially hazardous foods are handled	89.05	Seasonal: \$35 per season Full-term: \$200 for two years	Seasonal: April 1 through October 31 Full-term: two years from end of the month in which the initial application was submitted or, in the case of a renewal, two years from date of last permit expiration.
MOBILE FOOD UNIT:			
Permit to maintain or operate a mobile food non-processing unit.	89.05(a)	Seasonal: \$15 per season Full-term: For first permit, \$75 for first two years. For all permits after first permit, \$50 for two years.	Seasonal: April 1 through October 31 Full-term: Two years from end of month in which the initial application was submitted or, in the case of a renewal, two years from date of last permit expiration.
MOBILE FOOD UNIT COMMISSARY:			
Permit to maintain or operate a mobile food unit commissary which prepares and processes food for mobile food units.	89.05(e)	\$200.00	One year from end of the month in which the initial application was submitted or in

			the case of renewal, one year from date of last permit expiration.
PATHOGENS:			
Permit to possess or cultivate pathogens	15.03(a)	\$225.00	April 30
COMMUNITY PRIVATE SEWAGE DISPOSAL			
Permit to construct and maintain private sewage disposal system involving 15 or more dwellings:	143.11		
-initial permit		\$1,310.00	December 31
-annual renewal		\$1,870.00	December 31
RADIATION INSTALLATION:			
Certified registration fee for radiation installations that possess and use radiation therapy machines capable of operation at 500 kV (photons) and/or 500 keV (electrons) and above		\$600.00	30 days after billing date. Good for 5 years after date of issuance.
License fee for new radiation installations that transfer, receive, possess or use radioactive materials	175.102		
—Specific—Teletherapy		\$1,365.00	30 days after billing date. Good for 5 years after date of issuance.
—Specific—Medical		\$1,350.00	30 days after billing date. Good for 5 years after date of issuance.
—Specific—Other		\$570.00	30 days after billing date. Good for 5 years after date of issuance.
—Broad—Medical		\$3,135.00	30 days after billing date. Good for 5 years after date of issuance.

--Broad—Research and Development		\$3,135.00	30 days after billing date. Good for 5 years after date of issuance.
License renewal fee for radiation installations that transfer, receive, possess or use radioactive materials	175.102		
Specific—Teletherapy		\$1,165.00	30 days after billing date. Good for 5 years after date of issuance
—Specific—Medical		\$1,150.00	30 days after billing date. Good for 5 years after date of issuance
—Specific—Other		\$440.00	30 days after billing date. Good for 5 years after date of issuance
—Broad—Medical		\$1,520.00	30 days after billing date. Good for 5 years after date of issuance
—Broad—Research and Development		\$1,520.00	30 days after billing date
- For each amendment to any of the above radiation installation licenses or renewals		\$235.00	30 days after billing date
TANNING FACILITY:			
Permit to operate a tanning facility	177.05(a)	\$30.00 (\$1.25 per month or each portion of a month thereof)	Up to 2 years from date of issuance
WATER SUPPLY:			
Permit to engage or hold self out as engaging in the business of cleaning, painting or coating of a water tank that is part of a drinking water supply system of a building	141.09 (b)	\$220.00 for original \$35.00 for renewal	December 31
WATER SUPPLY:			

Permit to engage or hold self out as engaging in the business of chemical treatment of the drinking water supply within a building	141.11(b)	\$495.00 for original \$70.00 for renewal	March 31 March 31
WATER SUPPLY:			
Permit to use water from a well located in the City:	141.17(a)		
— for purposes other than drinking	141.17(b)(2)	\$300.00 for original \$15.00 for renewal	December 31
—for drinking	141.17(b)(1)	\$1,090.00 for original \$340.00 for renewal	May 31
YEAR-ROUND AFTER SCHOOL AND YOUTH CENTERS:			
Permit to operate a year-round after school or youth center	48A.05	\$100.00	December 31 biennially

- (b) When a permit or certificate of qualification has a stated expiration date and application therefor is made when more than one-half of the fee period has expired, one-half of the prescribed fee shall be paid. This requirement does not apply, however,
- (1) if the prescribed fee is less than ten dollars, or
 - (2) if application is being made for renewal of a permit or certificate of qualification which has expired, or
 - (3) if, in the opinion of the Department, the business, trade or occupation concerned is seasonal.
- (c) If the permittee is a non-profit organization, the Commissioner may, in his or her discretion, waive the requirement for a permit fee.
- (d) The fee for a food service establishment permit specified in §5.07(a) shall be all inclusive and no separate fee shall be charged for pre-permitting inspections or annual or renewal cycle inspections. Such fee shall not be refundable.

§5.09 Registration and certification fees.

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

- (c) The Commissioner shall not register or re-register any occupation, trade, business or activity unless, on the basis of the application and other papers submitted, he/she is satisfied that there are no fines, penalties or forfeitures imposed pursuant to §558 of the New York City Charter, by the OATH Health Tribunal or the Environmental Control Board for violations of this Code or other applicable law enforced by the Department which are due and payable by the registrant.
- (d) A person registering a trained guard dog pursuant to subdivision (g) of §161.09 of this Code shall pay a registration fee of ten dollars. Such registration shall remain effective for the life of the animal unless sooner revoked.
- (e) A person requesting a report certifying the potability of the water supply pursuant to 9 CFR §416.2 (g), or any successor rule, at a wholesale food processing establishment regulated by the U.S. Department of Agriculture shall pay an annual fee of two hundred seventy dollars for each site where a wholesale food processing establishment is conducted by such person.
- (f) A person establishing, maintaining or operating a radiation installation required to be registered pursuant to §175.51(b) of this Code shall pay a registration fee of one hundred dollars for each installation by at least thirty (30) days prior to the expiration date specified on the registration certificate.

§5.11 Permits not transferable; exception.

Any purported or attempted transfer of a permit to a person not named therein as permittee or any change in the place of business stated in a permit shall void such permit. When a permit is issued to two or more individuals, to a partnership or to a group other than a partnership, and one or more of the individuals concerned ceases to be active in the conduct of the business or activity or otherwise ceases to be a permittee, the Commissioner may approve in writing, the continuation of the business or activity by the remaining permittees during the unexpired period of such permit. The permittee shall notify the Department in writing within ten (10) business days of any change in the owner(s), officers, directors, shareholders, partners or members of a permitted entity that is owned by a sole proprietor, or that is a closely held corporation or small limited liability company, or a partnership, consisting of fewer than five (5) shareholders, members or partners, who directly operate and manage the business, and serve as directors or officers of the corporation, with no outside investors. Notice of such changes shall not be required if the permittee is a publicly held corporation or limited liability company whose shareholders or members do not manage or control the entity or participate in its business activities.

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

- (a) A person holding a permit, including the officers and directors of a corporation holding a permit shall comply with the conditions contained in his/her permit as well as with all applicable provisions of this Code or other law enforced by the Department.
- (b) A person holding a permit, including the officers and directors of a corporation holding a permit, shall be jointly and severally liable for violations of the conditions of the permit or of this Code committed by employees or agents of the person or corporation when such acts are committed in the regular course of the permitted business of such person or corporation, or on the premises subject to the permit, or in the course of using the permit.

§5.15 Permit to be kept on premises; mutilation prohibited.

A permit shall be kept on the premises designated on the permit. It shall be placed in a clean, transparent cover or frame and displayed in such a manner as to be clearly visible to the public. It shall be available for inspection at all times by the Department. No person shall mutilate, obstruct or tear down a permit.

§5.17 Permit suspension and revocation.

- (a) *Basis for action.* A permit may be ordered suspended or revoked for:
- (1) Willful or continued violation of this Code or for such other reason as the Commissioner or Board determines is sufficient grounds for suspension or revocation.
 - (2) The giving or offering to an employee or agent of the Department or other government agency, engaged in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or such agency, a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, or drink.
 - (3) Submission or display by a permittee of a forged document or other document that contains false or misleading statements, or making a false or misleading statement to the Department.
- (b) *Hearings.* When permanent revocation of a permit is sought or a permitted entity is ordered to close and its permit is ordered suspended, if the Department determines that such permit should be permanently revoked, or such suspension continued, the Department shall schedule a hearing at the City Office of Administrative Trials and Hearings (OATH) within 15 days of closure. The purpose of the hearing is to allow the permittee to show cause why its continued operation is not a public health or imminent health hazard and why it should be allowed to reopen.
- (c) *Post hearing procedures.* Following receipt of a copy of the report and recommendation of an OATH administrative law judge to the Commissioner, a respondent may respond to the findings and recommendations in the administrative law judge's report by submitting written comments to the Commissioner within 10 calendar days of receipt of the report, if received by e-mail or fax, or 15 days if received by mail. The Commissioner may then take such action as may be necessary, adopting all or part of the findings and recommendations, and may issue an order revoking, further suspending or reinstating the permit. If the OATH judge's recommendation is to allow the permittee to reopen, and the Commissioner adopts the recommendation, the Commissioner may impose whatever conditions he or she deems necessary for the continued safe operation of the permitted business.
- (d) *Permits to be surrendered.* All permits revoked pursuant to this section or in accordance with other applicable law shall be surrendered to the Department upon receipt of the order. Permits or licenses that are not surrendered in accordance with this section may be seized by any employee or agent of the Department or officer of the New York City Police Department.

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

- (a) *Effective date.* Except as otherwise ordered by the Board, the action of the Commissioner denying issuance or renewal of a permit, or suspending or revoking a permit, shall become final five days after service of an order or notice thereof, exclusive of the day of service, on the applicant or permittee concerned.
- (b) *Service.* Service of an order or notice shall be made as follows:
 - (1) Enclosing the order or notice in a postpaid envelope directed to the applicant or permittee at the address listed in the application or permit and depositing such envelope at a United States Post Office or in a mail box or mail chute maintained by the United States Post Office; or,
 - (2) Leaving the order or notice with the applicant or permittee or, if the permittee is not an individual, with a member of the partnership or other group concerned or with an officer of the corporation; or,
 - (3) Posting the order or notice at the entrance door of the premises listed in the application or permit.

§5.21 Appeal to Board; stay of action.

- (a) *Service of notice of appeal.* When the Commissioner orders that a permit be revoked or suspended for reasons other than the discontinuance, sale or transfer of the business, occupation, trade or other matter for which the permit was issued, or refuses to issue or renew a permit, or when a provision of this Code specifically authorizes an appeal to the Board may appeal such action to the Board by serving a notice of appeal upon the Secretary of the Department within ten business days following the service of an order or other notice of the action of the Commissioner.
- (b) *Contents of notice of appeal.* The notice of appeal shall be addressed to the Board and shall contain:
 - (1) The full name of the applicant or permittee;
 - (2) The type of permit issued or for which application was made;
 - (3) The place of business listed in the application or permit;
 - (4) The date of the application;
 - (5) The date of the action and the nature of the action taken by the Commissioner;
 - (6) A statement that the applicant or permittee appeals to the Board to review the action of the Commissioner; and,
 - (7) The signature of the applicant or permittee or, if the permittee is not an individual, the signature and title of a partner or other individual of the partnership or group permittee, or of an officer of a corporate permittee.
- (c) *Perfecting an appeal.* Within ten business days following service of the notice of appeal, the applicant or permittee shall submit a memorandum addressed to the Board specifying the objections to the action of the Commissioner. The Department shall prepare and submit a memorandum in reply to the Secretary with a copy to the permittee, no later than ten days after receipt of the permittee's memorandum. No additional replies or surreplies shall be accepted. The Secretary shall submit all memoranda, exhibits, and a ballot to the attention of the individual members of the Board within ten business days after the issuance of the Department's memorandum. Individual Board members shall mark their ballots, voting to grant or deny the appeal, or to abstain from voting, and return the

ballots to the Secretary as soon as practicable after marking the ballots. The Secretary shall notify the permittee of the Board's action, and such notification shall constitute a final agency determination.

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

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

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

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