

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION
OF AMENDMENTS TO ARTICLE 5 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 5 (General Permit Provisions) of the New York City Health Code (the “Health Code”) was published in the City Record on September 21, 2011, and a public hearing was held on October 26, 2011. No comments or testimony were received at this hearing, but corrections and one amendment have been made after further receipt of a comment at a hearing on amendments to Article 81. At its meeting on December 13, 2011, the Board of Health adopted the following resolution.

STATEMENT OF BASIS AND PURPOSE

Statutory Authority

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

Basis and purpose of the rule change

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

The following substantive changes have been made:

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

§5.03 Definitions. This section adds a new definition for “arm’s length transaction.”

§5.05 Applications. Applicants for permits will continue to provide all the information currently required by the Department to enable the Department to determine the entities or individuals responsible for the permitted activity. This section has been amended to prohibit granting a “new” permit to operate a business to entities or individuals who cannot prove that they purchased the business in accordance with an arm’s length transaction. The Department’s concern is that entities or individuals who have not operated a permitted business activity in compliance with the Health Code reincorporate or form some

other allegedly “new” operating entity as a means to avoid correcting violations and paying fines or penalties previously assessed against them in their operation of a similar business at the same or another location. “Arm’s length transaction” is newly defined in §5.03 (Definitions), based on definitions in the Administrative Code and the rules of other City agencies. In commenting at a hearing on proposed amendments to Article 81 of the Health Code on October 27, 2011, a representative of the New York State Restaurant Association suggested that the Department should require that “permittees, food establishment owners and their agents” provide e-mail addresses so they may receive notifications of proposed regulatory changes, permit renewals, public hearings and other important information. The Department agrees that not only food establishment permittees, but all permittees would benefit from such notifications and should be required to provide such information, and has amended this section accordingly.

§5.07 Expiration dates; fees and §5.09 Registration and certification fees. These sections have been extensively revised to delete references to permits, registrations and certificates of qualification (formerly applicable to laboratory personnel who are currently regulated by the State Department of Health) that are no longer issued by the Department. Descriptions of certain permits and licenses have also been updated, and a typographical error has been corrected in the fee for renewal of a permit for a bathing establishment with a pool. The \$245 fee for permits for both seasonal and annually operating pools was included in Health Code amendments adopted June 26, 1990, but incorrectly printed in the published Health Code. No changes have been made in the actual fees charged for permits except where permit fees have been amended by other law, such as permit fees for summer camps. This permit fee increase, from \$100 to \$200 for summer camps, is the same as the fee specified in New York Public Health Law §1393. Provisions related to fees for mobile vending have been simplified without changing the amount of any such fees. All mobile vending license and permit fees in the Health Code are the same as fees authorized by Administrative Code §17-308. A license fee authorized by Health Code §175.102 for a research and development installation using radioactive materials has been in effect since 1994, but was inadvertently omitted from the permit fee listings printed in this section. This licensing fee is now included in the listings.

§5.11 Permit not transferable; exception. No substantive change in the current provision has been made. However, a new provision requires existing permittees to notify the Department in writing within 10 business days of any change in officers, directors, shareholders, partners or members of a permitted entity so that the Department can maintain more accurate records regarding individuals responsible for actions of the permittee. The final resolution addresses an issue raised at the Board’s September 13, 2011 meeting, and limits the applicability of the requirement to provide notice of such changes to relatively small business entities, such as individual owners, closely held corporations, limited liability companies and partnerships.

§5.13 Conditions of permit and Health Code to be observed. This section was amended to incorporate a reference to other applicable law under which a permit or license may be issued.

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

§5.19 Denial, suspension and revocation; when effective; service of notice. This section was amended to incorporate a reference to orders that are issued as notice of such actions.

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

The resolution is as follows.

Matter that is underlined is new.

Matter in [brackets] is deleted.

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

**ARTICLE 5
GENERAL PERMIT PROVISIONS**

§5.01 Scope.

§5.03 Definitions.

§5.05 Applications.

§5.07 Expiration dates; fees.

§5.09 Registration fees.

§5.10 [Reserved]

§5.11 Permits not transferable; exception.

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

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

§5.17 [Suspension] Permit suspension and revocation [by Board or Commissioner].

§5.19 Denial, suspension and revocation; when effective; service of notice.

§5.21 Appeal to Board; stay of action.

Introductory Notes:

Article 5 was extensively amended by the Board of Health by resolution adopted December 13, 2011 that modernized its provisions, deleting references to obsolete permits, licenses and registrations, and clarifying that its provisions apply to permits issued for all activities regulated by the Department, consistent with the law authorizing issuance of such permits.

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

§5.01 Scope. Article 5 contains the requirements for permits issued by the Commissioner or the Board of Health for activities regulated by Titles II, III and IV of the Health Code, the State Sanitary Code, 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.

Notes: Section 5.01 was repealed and recodified by resolution adopted on December 13, 2011, deleting obsolete provisions.

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

§5.03 **Definitions.** When used in this Code:

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

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

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

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

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

[(b)] (c) Permittee means a 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.

Notes: §5.03 was amended by resolution adopted December 13, 2011 to add a definition of "arm's length transaction," to re-letter subdivisions (a) and (b), and to recognize other law, in addition to the Health Code, that authorizes the Department or Commissioner to issue permits.

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

§5.05 **Applications.**

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

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

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

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

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

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

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

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

(5) E-mail address and other information to enable the Department to contact the permitted entity in an emergency.

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

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

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

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

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

(3) Neither the applicant nor any member or officer of a partnership or corporation is related 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.

Notes: §5.05 was amended by resolution adopted by the Board of Health on December 13, 2011, updating its provisions to reflect current practice and concerns.

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

§5.07 Expiration dates; fees.

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

Description of Activity Under Permit [Certificate of Qualification]	Health Code or other Law Section Reference	Fee	Date Expiration

ANIMALS:			
Permit to operate a pet shop, boarding kennel, training establishment for small animals or grooming parlor, where animals are kept overnight.	161.09(a)	\$70.00	December 31
ANIMALS:			
Permit to operate solely a grooming parlor where animals are not kept overnight.	161.09(a)	\$30.00	December 31
ANIMALS:			
Permit to [construct or] operate a shelter for homeless animals	161.09(b)	None	[Good until revoked] <u>December 31</u>
[ANIMALS:]			
[Permit to sell or keep for sale live rabbits or live poultry, including chickens, geese, ducks or other fowl]	[161.09(c)]	[None]	[Good until revoked]
[ANIMALS:]			
[Permit to yard horses or keep or yard cattle, swine, sheep or goats]	[161.09(d)]	[None]	[Good until revoked]
ANIMALS:			
Permit to operate a stable for horses	161.09[(e)] <u>(d)</u>	\$35.00	December 31
ANIMALS:			
To [engage in the business of importing or selling any animal of a species which is wild or to] operate a snake farm engaged in the preparation of antivenin	161.09[(f)] <u>(e)</u>	\$70.00	December 31
BARBER SHOP:			
Permit to conduct a barber shop	163.03	\$15.00	October 31
BATHING BEACH:			
Permit to operate a bathing beach or construct or maintain a bathing beach facility	[167.03(a)] <u>167.05(a)</u>	\$595.00 for original \$375.00 for renewal season	November 1
BATHING ESTABLISHMENT:			
Permit to construct or maintain a bathing establishment	165.05[(a)]		April 30 (November 1 if seasonal)
—without pool		\$1,120.00 for original \$260.00 for renewal	
—with pool		\$1,980.00 for original \$245.00 for renewal annual [\$240.00] <u>\$245.00</u> for renewal	

		seasonal	
[BUTCHER'S REFUSE:]			
[Permit to use a vehicle to remove, dispose of, convey or transport bones, offal, fats, raw hides, hoofs, entrails or other refuse parts of slaughtered animals, or bodies of dead animals, used or to be used in the manufacture or processing of inedible products.]	[155.01]	[\$15.00]	[September 30]
[CHILDREN'S INSTITUTION:]			
[Permit to conduct a children's institution]	[51.03]	[None]	[Two years from date of issuance]
<u>CHILDREN'S [OVERNIGHT] SUMMER CAMPS:</u>			
Permit to operate [a] <u>any</u> children's [overnight] <u>summer</u> camp:	48.05	[\$100] <u>\$200</u>	[March 31, 1975 and thereafter annually March 31] <u>April 1 through September 15 annually</u>
[CHILDREN'S TRAVELING SUMMER DAY CAMPS:]			
[Permit to operate a children's traveling summer day camp]	[48.05]	[\$100]	[March 31 and thereafter annually March 31] [March 31 and thereafter annually March 31]
[COMPRESSED AIR:]			
[Permit to offer for sale, sell, give away or distribute in tanks for underwater breathing use]	[27.03]	[\$30]	[April 30]
[DAY] <u>CHILD CARE SERVICE:</u>			
Application [and temporary permit] to conduct a [day] child care service	[47.09(a)] <u>47.03</u>	\$100.00	[Six months from date of issuance or until permit application is rejected, whichever is the shortest period of time]
[Subsequent permit] <u>Permit</u> to conduct a [day] <u>child</u> care service.	[47.09(a)] <u>47.09</u>	\$100.00 per year plus \$1.00 per child	Up to two years from date of issuance
[DRY WAREHOUSE:]			
[Permit to maintain or operate a dry warehouse]	[121.01]	[\$250]	[March 31]

FOOD SERVICE ESTABLISHMENT:			
Permit to maintain or operate a food service establishment. [(May or may not also include a permit to manufacture frozen desserts at retail)]	81.05(c) [(113.03 c for frozen dessert permit)]	\$280.00 [(additional \$25.00 for frozen dessert permit)]	One year from [date of permit issuance] <u>last day of the month in which the initial application was submitted</u> or, in the case of a renewal, one year from date of last permit expiration
NON-RETAIL FOOD PROCESSING ESTABLISHMENT:			
Permit to maintain or operate a non-retail food processing establishment.	81.05(c) [101.13 and 101.71 (Permits for dealer in shellfish and fish, respectively)]	\$200.00	One year from [date of permit issuance] <u>end of the month in which the initial application was submitted</u> or, in the case of a renewal, <u>one year from date of last permit expiration</u>
TEMPORARY FOOD <u>SERVICE</u> ESTABLISHMENTS:			
Permit to maintain or operate a [retail] temporary food [processing] <u>service</u> establishment	88.03(a)	[\$30.00] <u>\$20.00</u>	Maximum of fourteen (14) <u>consecutive</u> days
[Permit to maintain or operate a retail temporary nonprocessing food establishment]	[88.03(a)]	[\$20]	[Maximum of fourteen (14) days]
[Registration certificate to maintain or operate a retail temporary food establishment]	[88.03(a)]	[No fee]	[One (1) day]
<u>PRESCRIPTION FORMULA [MILK] PREPARATION:</u>			
Permit to prepare <u>prescription</u> formula [for sale or distribution in the City or to offer for sale, sell, give away or distribute formula milk]	115.05	\$50.00	March 31
FROZEN DESSERTS:			
Permit to manufacture <u>and sell</u> frozen desserts at retail	[113.03 (c) (81.05 (c) if issued with food service establishment permit] <u>NY PHL §225 (5)(s)</u>	\$25.00 per annum	At time of expiration of associated food service establishment or <u>mobile food vending</u> permit.

[HORSEMEAT:]			
[Permit to bring into the City, keep, transport, offer for sale or sell horsemeat, whether alone or combined with other ingredients]	[97.05]	[None]	[Good until revoked]
[INFANT FORMULA:]			
[Permit to prepare infant formula for sale, giving away or distribution in the City]	[116.05]	[\$350]	[March 31]
[MILK:]			
[Class A permit]	[111.05]		
[— to operate a receiving station or transfer station]		[\$125]	[December 31]
[— to operate a milk processing plant in New York City]		[\$500]	[December 31]
[— to operate a milk processing plant outside New York City]		[\$150]	[December 31]
[MILK:]			
[Class B permit to offer for sale, give away or distribute a milk product]	[111.07]	[\$75]	[December 31]
[MILK:]			
[Identifying plate for vehicle used in transportation or delivery of milk or a milk product]	[111.11]	[\$15]	[December 31 or when corresponding class A or B permit expires]

MOBILE FOOD [UNIT] VENDOR LICENSE:			
Food vendor license to vend, peddle, sell, offer for sale, distribute or give away food from a vehicle, pushcart, [stand] or other mobile food <u>vending</u> unit	[89.03(b)] <u>89.07</u>	[For licenses expiring on January 31, 1994: \$50 for two years. For each additional month beyond two years, add prorated amount of two year fee.] <u>Seasonal:</u> <u>\$10 per year;</u> <u>Full-term:</u> <u>\$50 for two years</u>	[For licenses expiring on January 31, 1994: Last day of month from twenty-four months to thirty-three months from January 31, 1994, as determined in accordance with and 5.07(1).] <u>Seasonal:</u> <u>April 1 through October 31;</u> <u>Full-term:</u> <u>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.</u>
		[For licenses expiring after January 31, 1994 and all newly issued licenses: \$50 for two years.]	[For licenses expiring after January 31, 1994 and all newly issued licenses: Last day of month two years from date of issuance.]
[MOBILE FOOD UNIT:]			
[Temporary food vendor license to vend, peddle, sell, offer for sale, distribute or give away food from a vehicle, pushcart, stand or other mobile food unit.]	[89.03(d)]	[\$10]	[4 months or less from date of issue]

MOBILE FOOD VENDING UNIT:			
[Class A permit] <u>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</u>	[89.03(a)] <u>89.05</u>	[For permits expiring on January 31, 1994: \$200 for two years. For each additional month beyond two years, add prorated amount of two year fee.] <u>Seasonal: \$35 per season</u> <u>Full-term: \$200 for two years</u>	[For permits expiring on January 31, 1994: Last day of month from twenty-four months to thirty-three months from January 31, 1994, as determined in accordance with §§89.03(d) and 5.07(l).] <u>Seasonal: April 1 through October 31</u> <u>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</u>
		[For permits expiring after January 31, 1994 and all newly issued permits: \$200.]	[For permits expiring after January 31, 1994 and all newly issued permits: Last day of month two years from date permit application is approved by the Department.]
[MOBILE FOOD UNIT:]			
[Temporary Class A permit to maintain or operate a mobile food processing unit on or in which foods are processed or prepared, or on or in which potentially hazardous foods are handled]	[89.03(d)]	[\$35]	[4 months or less from date of issue]

MOBILE FOOD UNIT:			
[Class B permit] <u>Permit</u> to maintain or operate a mobile food non-processing unit [on or in which foods other than potentially hazardous foods are handled and on or in which foods are not prepared or processed]	[89.03(a)] <u>89.05(a)</u>	[For permits expiring on January 31, 1994: \$50 for two years. For each additional month beyond two years, add prorated amount of two year fee. For permits expiring after January 31, 1994: \$50 for two years.] <u>Seasonal: \$15 per season</u> <u>Full-term: For first permit, \$75 for first two years. For all permits after first permit, \$50 for two years.</u>	[For permits expiring on January 31, 1994: Last day of month from twenty-four months to thirty-three months from January 31, 1994, as determined in accordance with §§89.03(d) and 5.07(l).] <u>Seasonal: April 1 through October 31</u> <u>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.</u>
		[For newly issued permits: \$50 for first year. \$25 for each succeeding year.]	[For permits expiring after January 31, 1994 and all newly issued permits: Last day of month two years from date permit application is approved by the Department.]
[MOBILE FOOD UNIT:]			
[Temporary Class B permit to maintain or operate a mobile food non-processing unit on or in which foods other than potentially hazardous foods are handled and on or in which foods are not prepared or processed]	[89.03(d)]	[\$15.00]	[4 months or less from date of issue]

MOBILE FOOD UNIT COMMISSARY:			
[Class A permit] <u>Permit</u> to maintain or operate a mobile food unit commissary which prepares and processes food for mobile food units [and which may also serve as a mobile food unit depot]	[89.03(c) 89.05(e)]	[\$300.00] \$200.00	[January 31, biennially] <u>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</u>
[MOBILE FOOD UNIT DEPOT:]			
[Class B permit to maintain or operate a mobile food unit depot, or food establishment which stores or sells food for distribution to mobile food units]	[89.03(c)]	[\$200.00]	[January 31, biennially]
PATHOGENS:			
Permit to possess or cultivate pathogens	15.03(a)	\$225.00	April 30
[POULTRY SLAUGHTERING:]			
[Permit to conduct poultry slaughtering pursuant to Section 325 of the Sanitary Code of the City of New York in effect on effective date of Code]	[93.03]	[\$150.00]	[December 31]
[PRIVATE SEWAGE DISPOSAL SYSTEM:]			
[Permit for evaluation of site and sub-soil]	[143.05(d)]	[\$725.00]	[Good for two years after date of Issuance]
[PRIVATE SEWAGE DISPOSAL, COMMUNITY SYSTEM:]			
[Fee for evaluation of application for permit to construct and maintain a private drain]	[143.11]	[\$730.00]	[Good for two years from date of issuance]
<u>COMMUNITY PRIVATE SEWAGE DISPOSAL</u>			
[Fee for evaluation of application for permit] <u>Permit</u> to construct and maintain [and for annual evaluation of maintenance:] <u>private sewage disposal system involving 15 or more dwellings:</u>	143.11		
[— for a treatment plant of over 100,000 gallons/day capacity:]			
—initial permit		\$1,310.00	December 31
—annual renewal		\$1,870.00	December 31
[— for a treatment plant of 100,000 gallons/day or lower capacity:]			
[—initial permit]		[\$1,155.00]	[December 31]

[—annual renewal]		[\$1,300.00]	[December 31]
[— for a pumping station of over 100,000 gallons/day capacity:]			
[—initial permit]		[\$975.00]	[December 31]
[—annual renewal]		[\$710.00]	[December 31]
[— for a pumping station of 100,000 gallons/day or lower capacity:]			
[—initial permit]		[\$975.00]	[December 31]
[—annual renewal]		[\$710.00]	[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
<u>--Broad—Research and Development</u>		<u>\$3,135.00</u>	<u>30 days after billing date Good for 5 years after date of issuance</u>
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
[RADIATION SOURCES:]			
[Permit to sell, assemble, transfer or repair new or used radiation equipment, or sell, transfer or distribute radioactive materials]	[175.06(e)]	[\$100.00]	[As specified in each permit]
[SUMMER DAY CAMPS:]			
[Permit to operate a summer day camp]	[48.05]	[\$100]	[March 31, 1975 and thereafter annually March 31]
[WATER POLLUTION CONTROL:]			
[Permit to construct or operate a disposal facility which results in the discharge of waste into the waters of the City or to make any change in an existing disposal facility which will affect the type, volume or the treatment of the waste involved:]	[145.03]		
[— for a treatment plant of over 100,000 gallons/day capacity:]			
[—initial permit]		[\$1,310.00]	[December 31]
[—annual renewal]		[\$1,870.00]	[December 31]
[— for a treatment plant of 100,000 gallons/day or lower capacity:]			
[—initial permit]		[\$1155]	[December 31]
[—annual renewal]		[\$1300]	[December 31]
[— for a pumping station of over 100,000 gallons/day capacity:]			
[—initial permit]		[\$975]	[December 31]
[—annual renewal]		[\$710]	[December 31]
[— for a pumping station of over 100,000 gallons/day			

or lower capacity:]			
[—initial permit]		[\$870]	[December 31]
[—annual renewal]		[\$710]	[December 31]
WATER SUPPLY:			
Permit to engage or hold self out as engaging in the business of cleaning, [or scaling water coils or the business of cleaning, scaling or] painting <u>or coating</u> [the inside of water tanks] <u>of a water tank that is</u> [which are] part of a drinking water supply system of a building [(see also subsection (e) of this section)]	[145.05(a)] <u>141.09 (b)</u>	\$220.00 for original \$35.00 for renewal	December 31
WATER SUPPLY:			
Permit to engage or hold self out as engaging in the business of chemical treatment of the drinking water supply within a building [(see also subsection (e) of this section)]	[141.07(a)] <u>141.11(b)</u>	\$495.00 for original \$70.00 for renewal	March 31 March 31
WATER SUPPLY:			
Permit to use water from a well located in the City:	[141.09(a)] <u>141.17(a)</u>		
— for purposes other than drinking	<u>141.17 (b)(2)</u>	\$300.00 for original \$15.00 for renewal	December 31
—for drinking	<u>141.17(b)(1)</u>	\$1,090.00 for original \$340.00 for renewal	May 31
[WATER:]			
[Importation, manufacture or bottling in containers for sale or distribution in the City as artificial, natural, spring, mineral or other water for human consumption]	[141.04]	[\$695.00 for original \$530.00 for renewal]	[December 31] [December 31]
[WATER:]			
[Importation, transportation, sale or giving away of for other than drinking purposes]		[\$200.00 for original \$155.00 for renewal]	
YEAR-ROUND AFTER SCHOOL AND YOUTH CENTERS:			
Permit to operate a year-round after school or youth center	48A.05	\$100.00	December 31 biennially

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

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

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

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

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

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

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

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

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

[(i)] (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.

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

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

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

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

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

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

Notes: §5.07 was amended by resolution of the Board of Health adopted December 13, 2011, resulting in the deletion of previously listed permits that are no longer issued by the Department. No permit fees were changed.

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

§5.09 Registration and certification fees.

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

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

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

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

[(e)] (c) The Commissioner shall not register or re-register any occupation, trade, business or activity unless, on the basis of the application and other papers submitted, he/she is satisfied that there are no fines, penalties or forfeitures imposed [by the Administrative Tribunal established by Article 7] 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.

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

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

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

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

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

Notes: §5.09 was amended by resolution adopted December 13, 2011, repealing general requirements for registrations, in subdivisions (a), (b) and (c), that are now in §5.05 of this Article regarding permits generally, and repealing obsolete provisions relating to registrations of activities the Department no longer regulates.

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

§5.11 Permits not transferable; exception.

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

Notes: Section 5.11 was amended by resolution adopted on December 13, 2011 adding a requirement for a permittee to notify the Department in writing when there is a change in the persons responsible for operation, management and control of a permitted entity, but limiting its applicability to sole proprietorships and other small business entities.

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

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

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

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

the permitted business of such person or corporation, or on the premises subject to the permit, or in the course of using the permit.

Notes: Subdivision (a) of §5.13 was amended by resolution adopted December 13, 2011 to add a reference to compliance with conditions imposed on permittees by other law enforced by the Department.

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

§5.17 Permit suspension and revocation.

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

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

(2) The giving or offering to an employee or agent of the Department or other government agency, engaged in carrying out an inspection, survey or examination or in the performance of any other duty for the Department or such agency, a gift, gratuity, benefit, favor or bribe, including but not limited to money, food, or drink.

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

(b) *Hearings.* When permanent revocation of a permit is sought or a permitted entity is ordered to close and its permit is ordered suspended, if the Department determines that such permit should be permanently revoked, or such suspension continued, the Department shall schedule a hearing at the City Office of Administrative Trials and Hearings (OATH) within 15 days of closure. The purpose of the hearing is to allow the permittee to show 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.

Notes: Section 5.17 was repealed and recodified by resolution adopted by the Board of Health on December 13, 2011. Its procedures for revocation and suspension of permits and licenses have been updated and provide an opportunity for respondents to comment following receipt of a report from the administrative law judge conducting a show cause hearing as to whether a license or permit should be further suspended or revoked.

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

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

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

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

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

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

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

Notes: Section §5.19 was amended by resolution adopted by the Board of Health on December 13, 2011 to include reference to an order or other form of notice of revocation, suspension or other action by the Department pertaining to a permit or license.

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

§5.21 Appeal to Board; stay of action.

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

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

- (1) The full name of the applicant[,] or permittee [or party affected];
- (2) The type of permit issued or for which application was made [or the nature of the action complained of];
- (3) The place of business listed in the application or permit [or to which the appeal relates];
- (4) The date of the application [or permit or the date of the original request to the Commissioner];
- (5) The date of the action and the nature of the action taken by the Commissioner;
- (6) A statement that the applicant or permittee [or other party affected] appeals to the Board to review the action of the Commissioner; and,
- (7) The signature of the applicant[,] or permittee [or party affected] or, if the permittee [or party affected] is not an individual, the signature and title of a partner or other individual of the partnership or group permittee [or party affected], or of an officer of a corporate permittee[or party affected].

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

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

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

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

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

Notes: §5.21 was amended by resolution of the Board of Health adopted December 13, 2011. As amended, the provision no longer allows entities ordered closed for imminent or public health hazards to operate while appeals to the Board are pending.