

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to Comment on Proposed Amendment of Article 81 and Repeal of Articles 91, 93, 95, 97, 101, 103, 113 and 121 of the New York City Health Code, found in Title 24 of the Rules of the City of New York.

**Date / Time:** October 27, 2011 from 10AM to 12PM

**Location:** New York City Department of Health and Mental Hygiene  
125 Worth Street  
Third Floor Boardroom, Room 331  
New York, NY 10013

**Contact:** Rena Bryant  
(347) 396-6071

### Instructions

Prior to the hearing, you may submit written comments about the proposed amendment by mail to:

New York City Department of Health and Mental Hygiene  
Board of Health  
Office of the Secretary to the Board  
Attention: Rena Bryant  
2 Gotham Plaza  
42-09 28th Street  
Room 14-15  
Long Island City, NY 11101

or electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) or by e-mail to [RESOLUTIONCOMMENTS@HEALTH.NYC.GOV](mailto:RESOLUTIONCOMMENTS@HEALTH.NYC.GOV) or online (without attachments) at <http://www.nyc.gov/html/doh/html/notice/notice.shtml> on or before 5:00 P.M., on October 27, 2011. Comments received after this date will be considered to the extent practicable.

To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by October 13, 2011.

Copies of written comments received by the Secretary to the Board of Health and transcript of the public hearing will be available for public inspection within a reasonable time after receipt, between the hours of 9:00 A.M. and 5:00 P.M. at:

New York City Department of Health and Mental Hygiene  
Board of Health  
Office of the Secretary to the Board  
Attention: Rena Bryant

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42-09 28th Street  
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The Department's general policy is to make written comments available for public viewing on the internet. All Comments received, including any personal information provided, will be posted without change to <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

### **The Proposed Rule**

The Department of Health and Mental Hygiene (the "Department" or "DOHMH") is proposing to eliminate multiple articles of the Health Code that are obsolete. These articles address processes and industries no longer regulated by the Department and extensively and comprehensively regulated instead by the U.S. Department of Agriculture or the New York State Department of Agriculture and Markets.

The Department also proposes to amend Article 81 to update its provisions in accordance with the United States Food and Drug Administration ("FDA") 2009 *Food Code* and to generally reorganize Article 81 to facilitate compliance by revising or adding definitions, adding subtitles, consolidating related sections, and deleting obsolete provisions.

The proposed rule also creates a category for "shared kitchens" in response to an interest in creating these new facilities, which are commercial kitchens that are rented or leased by more than one food service establishment, and liberalizes the use of Time as a Public Health Control.

In combination, these changes to the rules will make it easier for establishments to comply by making the rules easier to understand, consistent with the 2009 *Food Guide* and by locating all the rules for food service establishments in one article of the Health Code.

### **Statement of Basis and Purpose**

#### **Statutory Authority**

These amendments to the New York City Health Code (the "Health Code") are issued according to §§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 health in the city of New York.
- Section 558(b) and (c) of the Charter empowers 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 an extensive revision of the Health Code, the Department proposes that the Board repeal, as no longer necessary, the following Articles:

- 91 (Meat and Meat Products; Slaughtering of Animals);
- 93 (Poultry; Slaughtering, Eviscerating and Processing);

- 95 (Sausage Manufacturing and Smoking, Preparing or Preserving of Meat);
- 97 (Horsemeat and Slaughtering of Horses);
- 101 (Shellfish and Fish);
- 103 (Establishments Engaged in Preparing, Preserving or Smoking Fish);
- 113 (Frozen Desserts), and,
- 121 (Other Food Establishments: Dry Warehouses; Edible Egg Breaking; Bakeries, Mineral, Spring and Other Waters; Carbonated and Other Beverages).

These articles regulate processes and industries, including wholesale food processing establishments, that are no longer regulated by the Department, but that are now extensively and comprehensively regulated by the U.S. Department of Agriculture and the Department of Agriculture and Markets. These obsolete provisions were in the City’s earlier Sanitary Code and were then imported into the Health Code in 1959. The Department proposes, however, that certain provisions of these repealed articles that relate to the safe holding and processing of food in food service establishments and non-retail food processing establishments be incorporated into Article 81.

The Department is also proposing that the Board amend Article 81, in accordance with guidelines from the FDA 2009 *Food Code*, by repealing obsolete provisions, updating other provisions, , and generally reorganizing the Article to make compliance easier.

With respect to Article 81, the following changes are proposed:

§81.01 – Scope. Amendments have been proposed to clarify to which entities the Article applies. References to wholesale markets and shellfish and fish markets have been deleted as DOHMH no longer regulates these activities.

§81.03 – Definitions. New definitions have been proposed for terms used in the Article, including:

- “adequate or sufficient means,”
- “caterer,”
- “cured foods,”
- “cut leafy greens,”
- “frozen dessert,”
- “non-retail food processing establishment,”
- “operating or in operation,”
- “ready-to-eat food,”
- “shared kitchen,”, and,
- “ware washing.”

The term “wholesale food service establishment” has been deleted.

The definitions of certain terms have been amended to be consistent with their usage in the article. These terms include:

- “equipment”, to clarify that this term includes any component of tools, fixtures, and articles within an establishment;
- “imminent health hazards”, to clarify that this term also is used interchangeably with “public health hazards;”
- “non-retail food processing establishment”, to incorporate caterers and shared kitchen operations; and,

- “stand”, to clarify that the term is to be used only in temporary food service establishments.

§81.04 – Approved sources of food. This section is new. It incorporates provisions from §81.07 and Articles 101 and 113 and clarifies that food and meat products may not be served or sold by a food service establishment unless such products are inspected and approved by the U.S. Department of Agriculture or the FDA. This section includes a requirement from the to-be-repealed Article 101 which requires that all food service establishments maintain shellfish tags for 90 days, consistent with provisions of the State Sanitary Code, and that frozen desserts be identified, manufactured and sold in food service establishments in accordance with Article 4-A of the State Agriculture and Markets Law.

§81.05 – Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments. The Department proposes that subdivision (c) be amended so that new establishments may open for business without having to request a pre-permit inspection. Under the State Sanitary Code, establishments in New York State are allowed to open 22 days after they submit a permit application. This proposal would amend the Health Code to mirror the statewide requirements. The proposal would also add a new subdivision (f), requiring caterers and other users of “shared kitchens” to obtain individual permits for their operations. Subdivisions (g) and (h) govern operation of shared kitchens. Current subdivision (f) would be relettered as subdivision (i).

§81.06 – Prevention of imminent health hazards. It is proposed that the title and the term as used in subdivision (a) be modified to include “public health hazards” since both terms are used interchangeably in this Code, the Commissioner’s rules, and in the State Sanitary Code. Additionally, it is proposed that subdivision (c) be amended to add fermentation and drying as processes that require approval by the Department of a Hazard Analysis and Critical Control Point plan. This would apply only to processes used to preserve fish, meats, and sausages in food service establishments.

§81.07 – Food; sanitary preparation, protection against contamination. It is proposed that titles be added to each subdivision to make the section more readable and that the section be amended to include a number of provisions from other sections that relate to prevention of food contamination.

- A new paragraph (1) is added to subdivision (a) requiring a dedicated culinary sink for washing food prior to other preparation.
- A new subdivision (h) has been added to this section from current §81.37 (f) for storing dispensing utensils between uses.
- It is proposed that current subdivision (i), relating to approved sources of foods, be deleted from this section and included in the new §81.04 on approved sources.
- Current subdivision (k), relating to worker hygiene, would be deleted from this section and included in §81.13 on worker hygiene practices.
- A new subdivision (l) prohibiting re-service of previously served food (now in §81.11) is added.
- A new subdivision (o) regarding use of drinking straws (currently in §81.45) is added to this section.
- To prevent leaching of harmful substances into foods heated in a microwave oven, a new subdivision (p) requires that plastic containers used in microwaving be approved by the FDA.

- A new subdivision (q) incorporates current provisions of §81.13 about prohibiting non-essential persons from work areas.
- New subdivision (r) (from current §81.11) requiring food unfit for consumption to be denatured has been amended and added to this section.
- The proposed amendment to subdivision (r) clarifies the process of denaturing food to render it unpalatable, e.g., by altering its appearance, in circumstances when such foods are not safe for consumption. The proposed amendment to subdivision (l) clarifies that foods previously served may not be served to other patrons unless such foods were originally prepackaged and the packages remain intact.
- Additionally, it is proposed that provisions being maintained from some of the repealed articles be included in this section, i.e., prohibitions on using unpasteurized milk, from Article 111 (repealed in September, 2010), and slaughtering animals for food, from Articles 91, 93, and 97. These prohibitions would only apply to the food service establishments and non-retail food processing establishments regulated by Article 81.

§81.08 – Foods containing artificial trans fat. The Department proposes deleting subdivision (d), which contains effective dates that had already passed for the various provisions of the section.

§81.09 – Food; temperature requirements. This section would be amended to add titles for each subdivision. Subdivision (c) also would be amended to delete paragraphs (1) and (2) because the Department no longer regulates wholesale fish markets. Subdivision (d)'s requirements for advising consumers regarding foods that are not heated to Code standards would be clarified. The Department is proposing the inclusion of new paragraphs (1) and (2) in subdivision (e) to specify, in accordance with the FDA 2009 *Food Code*, the methods an operator can use to properly cool food to control the growth of pathogens. An addition to subdivision (h), former subdivision (i), is proposed to require the *use*, not just possession, of thermometers to evaluate food temperatures.

§81.10 – Time as a public health control. It is proposed that this section be amended to allow use of time as a public health control for takeout/delivery foods, to allow use in holding fish and aquatic animal products, and raw foods. The proposed amendments adhere more closely to the FDA 2009 *Food Code* recommendations, and results of studies conducted by the FDA and others. See, e.g., Conference for Food Protection Council III, Committee Report, "Time as a public health control," January 27, 2004; FDA consumer handling practices study, FDA *Food Code*, 2009, Public Health Reasons, §3-501.19.

§81.11 – Food; disposition if unfit for human consumption; re-service of food prohibited. As noted, this section would be repealed and its provisions included in §81.07, as previously described.

§81.12 – Reduced oxygen packaging; cook chill and *sous vide* processing. To reflect FDA 2009 *Food Code* guidelines on cooling packaged foods, it is proposed that paragraph (4) of subdivision (d) be repealed and recodified.

§81.13 – Food workers; health; clothing. It is proposed that the title of this section be changed to "Food workers: health; hygienic practices." Provisions for hand washing would be moved from §81.07 to this section, to consolidate all provisions related to food worker hygiene in this section.

§81.15 – Food protection course. Subheads have been added to this section to clarify provisions and to facilitate compliance. Additionally, paragraph (2) of subdivision (a) has been deleted as duplicative.

§81.17 – General requirements; design, construction, materials and maintenance. It is proposed that this section (Food service establishments and non-retail food processing establishments; premises; location; general requirements) be repealed and recodified. As recodified, it updates requirements for the physical space and attributes of a facility, differentiating requirements for food contact and non-food contact surfaces, incorporating recommendations from the FDA 2009 *Food Code*.

§81.18 – Cold and hot storage and holding facilities. This section is new, and is derived from current §81.35 (Food service establishments and non-retail food processing establishments; refrigeration and hot storage facilities). Its provisions have been updated in accordance with the FDA 2009 *Food Code*, clarifying expectations and good practices.

§81.19 – Lighting and ventilation. It is proposed that this section (Food service establishments and non-retail food processing establishments; premises; lighting and ventilation) be repealed and recodified, with updated lighting requirements reflecting the FDA 2009 *Food Code* guidance and existing ventilation requirements.

§81.20 – Plumbing and water supply. This would be a new section, incorporating and clarifying plumbing provisions in existing §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles).

§81.21 – Hand wash sinks. It is proposed that this section (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles) be repealed and recodified. The new section would incorporate and update provisions from current §81.29 (Food service establishments and non-retail food processing establishments; premises, employee toilets, wash basins, lockers and patron toilets to be provided), reflecting the importance of adequate and conveniently located hand wash sinks in preventing the transmission of food borne illness.

§81.22 – Employee and patron toilets. This would be a new section, incorporating and clarifying existing provisions in current §81.29 for patron toilets, and requiring that establishments currently without patron toilets install them if and when they renovate their physical facilities.

§81.23 – Pest management and control. This section (Food service establishments and non-retail food processing establishments; premises, conditions conducive to rodent or insect and pest life prohibited; rodent proofing) would be substantially amended to reflect modern concepts and pest management practices.

§81.24 – Garbage and waste disposal. This section would be new, but is derived without substantive changes from current §81.37 (Food service establishments and non-retail food processing establishments; premises, equipment and utensils; cleaning methods). The proposed provision reflects best practices when an establishment may need access to open garbage containers during periods of active food preparation.

§81.25 – Live animals. The title of this section (Food service establishments and non-retail food processing establishments; animals prohibited) has been amended and the provision has been updated to reflect current regulations implementing the Americans with Disabilities Act.

§81.27 – Cleaning premises, equipment and utensils. This section is new. Former §81.27 (Food service establishments and non-retail food processing establishments; foodworker use of tobacco and consumption of food on premises; spitting prohibited) is repealed, and its provisions

incorporated in a new §81.13, described above. The new §81.27 includes updated and clarified provisions from current §81.37.

§81.29 – Dishwashing and ware washing. This section is new and replaces former §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided) which is being repealed. The new section incorporates, updates and clarifies provisions for adequate dishwashing and ware washing from current §81.37 (c), (d), (e) and (j).

§81.31 – Outdoor cooking, food and beverage preparation facilities. This section is new, and replaces former §81.31 (Food service establishments and non-retail food processing establishments; equipment and utensils to be made of non-toxic materials), which is being repealed. The new section establishes food safety requirements for food service establishments that want to add outdoor cooking to their operation. Cooking on sidewalks would continue to be prohibited, except as currently authorized at temporary events, pursuant to Article 88 of this Code or by mobile food vending units pursuant to Article 89 and other applicable law.

As noted above, §§81.33, 81.35, 81.37, and 81.45 are being repealed and their provisions updated and included in various new sections described above.

§81.47 – Water potability certificates. The Department is requesting that this provision be repealed since it is not applicable to any of the food service establishments regulated by the Health Code. Meat and other food packagers are required by the U. S. Department of Agriculture under the Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 451-470; 601-695; 7 U.S.C. 450; 1901-1906) to have their water certified for potability. A fee for this certification would remain in Article 5 of the Code and be charged when DOHMH provides such certifications.

§81.49 – Modification by the Commissioner. Although no substantive change is being proposed, the section should be renumbered as §81.55, so that it appears as the last provision of the Article, making it clear that it covers all matters regulated by the Article.

The resolution is as follows.

Deleted matter is in [brackets].

New matter is underlined.

RESOLVED, that §81.01 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, to be printed together with explanatory notes to read as follows:

**§81.01 Scope.**

The provisions of this Article shall apply equally to all food service establishments and non-retail food processing establishments, [except as otherwise limited herein,] and shall be construed in a manner that protects the health and safety of the public. All other applicable provisions of this Code and the rules of the Commissioner shall be complied with in addition to the requirements set forth in this Article. Owners and operators of food service establishments and

non-retail food processing establishments shall operate such establishments in a sanitary manner so as to prevent imminent or public health hazards and to otherwise protect the public health.

This Article applies to all food service establishments [formerly classified as eating places,] and non-retail processing establishments where food, as defined in Article 71 of this Code, is prepared and offered for service, including but not limited to:

- mobile food vending units,
- mobile food vending commissaries,
- other food commissaries and shared or communal kitchens that are not inspected or regulated according to the State Agriculture and Markets Law,
- vending machines,
- temporary food service establishments,
- caterers,
- cafeterias,
- charitable organizations' kitchens,
- social clubs,
- delicatessens,
- restaurants, and,
- bars. [retail food processing establishments, retail non-processing food establishments, wholesale food establishments, shellfish and fish markets and commissaries. Any references anywhere in this Code to the aforementioned establishments are hereby deemed to mean the establishments defined and regulated hereunder.]

The terms “establishment” or “food establishment” when used in this Article shall refer to a food service establishment or non-retail processing establishment regulated by this Code.

*Notes:* §81.01 was amended by resolution adopted on XXX, to clarify the kinds of entities regulated by the Department and the law applicable to the operation of such entities. These entities are those delineated in memoranda of understanding between the State Departments of Health and Agriculture and Markets which identify the applicability of law and regulations and the respective jurisdictions of local public health agencies in supervising food processing and sales in New York State.

RESOLVED, that §81.03 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

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

(a) Adequate or sufficient means able to accomplish the purposes for which something is intended, and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, or an activity conducted or act performed in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, consistent with generally accepted public health standards, is adequate or sufficient within the meaning of this Article.

(b) Aquatic animal means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including but not limited to alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

[(b)] (c)  $A_w$  means water activity, which is the measure of the free moisture in a food, and is indicated by the symbol  $A_w$ . Its numeric value is the quotient of the water vapor pressure of the food substance divided by the vapor pressure of pure water at the same temperature.

(d) Caterer means a food service establishment holding a permit issued by the Commissioner that prepares food and may provide transportation for, and service of food at, a location other than the establishment. A caterer also is any person who prepares food at a permitted food service or non-retail processing establishment for service at another location.

[(c)] (e) Comminuted means reduced in size by methods including chopping, flaking, grinding, mincing; or a mixture of aquatic animals or meat products that have been reduced in size and restructured and reformulated.

[(d)] (f) Contaminated means adulterated or spoiled food, or food and equipment which is exposed to filth, toxic substances, rodent or insect contact or infestation, or potentially hazardous foods held at temperatures between 41 degrees Fahrenheit (5 degrees Celsius) and 140 degrees Fahrenheit (57 degrees Celsius) for a period of time exceeding that reasonably required for preparation, including potentially hazardous foods which are not heated or cooked to the temperatures specified in §81.09, or food in or subject to any condition which could permit the introduction of pathogenic microorganisms or foreign matter, including manual contact during service or preparation if such foods will not be subsequently cooked or heated to the temperatures specified in §81.09.

[(e)] (g) A controlled-location vending machine means a food vending machine which dispenses only food that is not potentially hazardous, can be serviced in a sanitary manner by an untrained person at the location and is located where it is protected from environmental contamination, abuse and vandalism.

[(f)] (h) Cook chill processing means a type of reduced oxygen packaging process in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or

crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens (pathogens that grow slowly at refrigerated temperatures and that include, but are not limited to, *Listeria monocytogenes*, *Clostridium botulinum* and *Yersinia enterocolitica* or *yersiniosis*).

[(g)] (i) Critical control point means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

[(h)] (j) Critical limit means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

[(k)] Cured food means food preserved by drying, salting, smoking or pickling, or a combination of such methods.

[(l)] Cut leafy greens means leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes, but is not limited to:

- iceberg lettuce,
- romaine lettuce,
- leaf lettuce,
- butter lettuce,
- baby leaf lettuce (i.e., immature lettuce or leafy greens),
- arugula or rocket lettuce,
- escarole,
- endive,
- spring mix,
- spinach,
- cabbage,
- kale, and,
- chard or any other cut, shredded, sliced, chopped or torn edible green leafy vegetable.

[(i)] (m) Easily cleanable means readily accessible and of such material and finish that residues may be completely removed by normal cleaning methods.

[(j)] (n) Easily movable equipment means equipment that is mounted on wheels or casters with flexible, extensible, or quick disconnecting utility connections, if any, so that the equipment may be easily moved for cleaning.

[(k)] (o) Equipment means any tool, item, fixture or article used in the operation of a food service establishment, and any component of such tool, item, fixture and article including but not limited to, all stoves, ranges, microwave ovens, hoods, [meatblocks,] meat blocks, tables, counters,

refrigerators, sinks, dishwashing machines, [steamtables] steam tables and similar items, other than utensils, used in the operation of a food service establishment or non-retail food processing establishment.

[(l)] (p) Food-contact surfaces mean the surfaces of equipment, utensils, tableware and kitchenware, such as ladles, colanders, serving spoons, spatulas, pots and pans, which normally come into contact with food or from which liquids and residues may drain back into food or onto other food-contact surfaces.

[(m) Food-grade means intended to be used with food products, utensils or equipment without reacting with such food products, and without imparting odor, color or taste to such food products, or approved by] (q)Food grade material means material used in the construction and design of food contact surfaces, equipment and utensils that is certified as meeting the standards of the National Sanitation Foundation (NSF) or [its equivalent] any other organization utilizing a process approved by the American National Standard Institute (ANSI) or that is otherwise acceptable to the Department.

[(n) Foodworker means foodhandler] (r)Food worker or food handler means any person who works in a food service establishment or non-retail food processing establishment, including but not limited to any person described in §11.01[(f)] (l) of this Code.

[(o)] (s) Food service establishment means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

[(p)] (t) A food vending machine means a self-service device [which] that when activated, dispenses unit servings of food or beverage without requiring replenishing between each vending operation.

[(q)] (u) A food vending machine commissary means a place where food, containers or supplies are processed or packaged and prepared for use in food vending machines.

[(r)] (v) A food vending machine operation means the place where food vending machines are located and includes the food vending machines, machine servicing equipment, utensils, personnel, single-service articles, tables, chairs, that part of the premises used in connection with the food vending machine operation and all other appurtenances required and used to operate and maintain the food vending machines.

(w) Frozen dessert means:

- ice cream,
- frozen custard,
- French ice cream,

- French custard ice cream,
- artificially sweetened ice cream,
- ice milk,
- artificially sweetened ice milk,
- fruit sherbet,
- non-fruit sherbet,
- water ices,
- non-fruit water ices,
- confection frozen without stirring,
- dairy confection frozen without stirring,
- manufactured dessert mix,
- frozen confection,
- melloream frozen dessert,
- parevine,
- frozen yogurt,
- freezer made shakes,
- freezer made milk shakes,
- dietary frozen dessert,
- whipped cream confection, and,
- bisque tortoni,

as all such products are commonly known, together with any mix used in making such frozen desserts, and any products that are similar in appearance, odor or taste to such products, or are prepared or frozen as frozen desserts are customarily prepared and frozen, whether made with dairy products or non-dairy products, and chips or flakes of ice made from water with or without additives, served to the customer with or without flavoring, in accordance with standards of identity for such foods established in Article 4-a of the State Agriculture and Markets Law, or successor statute.

[(s)] (x) Hazard Analysis and Critical Control Point (HACCP) plan means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the National Advisory Committee on Microbiological Criteria For Foods.

[(t)] (y) Imminent health hazard or public health hazard means any violation, condition, or combination of violations or conditions making it probable that food served to the public by the establishment or its continued operation will be injurious or dangerous to the health of any person consuming such foods.

[(u)] (z) Indirect drain means a waste line which does not connect directly with the drainage system, but conveys and discharges liquid wastes through an air break into an approved plumbing fixture or receptacle that is directly connected to the drainage system.

[(v)] (aa) Non-retail food processing establishment means a [place] facility where food is processed, prepared, stored or packed for consumption off the premises and not given or sold directly to the consumer. This shall include but not be limited to mobile food vending commissaries, food vending machine commissaries [and places where fish or shellfish is kept, sold or offered for sale which are not otherwise regulated or permitted by the Department of Agriculture and Markets, or other appropriate regulatory agency], and shared or communal kitchens where space and equipment are rented, leased or otherwise contracted for use by other persons, such as caterers.

(bb) Operating or in operation means that one or more food workers in a food service establishment is receiving, preparing, storing or serving food or that the establishment is open to the public.

[(w)] (cc) Packaged means bottled, canned, cartoned, securely bagged, or securely wrapped, and does not include a wrapper, carry out box, or other non durable container used to containerize food for the purpose of facilitating food protection during service and receipt of the food by the consumer.

[(x)] (dd) pH means the symbol for the negative logarithm of the hydrogen ion concentration [which] that is a measure of the degree of acidity or alkalinity of a solution.

[(y)] (ee) Potentially hazardous food (PHF) or time and temperature controlled for safety (TCS) food means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, crustacea and other aquatic animals, foods of plant origin that have been heat treated; garlic in oil mixtures that support the growth of *Clostridium botulinum* or toxin formation; cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxins formation; raw bean or seed sprouts; or other foods in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, or growth of *C. botulinum*. The term does not include food with a water activity ( $a_w$ ) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below. A food may be deemed not potentially hazardous because of the combined effect of  $a_w$  and pH other than as previously specified [above] if supported by a food product assessment acceptable to the Department.

[(z)] (ff) Processed fish means fish that has been cured, salted, marinated, dried, pickled, fermented or smoked for human consumption.

(gg) Ready-to-eat food means food that is in a form that is edible without additional preparation or heat treatment to achieve food safety in accordance with the provisions of this Article.

[(aa)] (hh) Reduced oxygen packaging means the reduction of the amount of oxygen in a food packaged by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level) and where the food being packaged requires control of *Clostridium botulinum* or *Listeria monocytogenes* in the final packaged form. Reduced oxygen packaging includes, but is not limited to, vacuum packaging, cook chill packaging, and *sous vide* processing.

[(bb)] (ii) Sanitization means effective bactericidal treatment by heat or chemical means [which] that destroys pathogens on surfaces treated. Acceptable sanitization methods are:

- (1) immersion for at least one-half minute in clean hot water at a temperature of not less than 170 degrees Fahrenheit (76.7 degrees Celsius);
- (2) immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);
- (3) immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having pH not higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);
- (4) immersion in a clean solution containing any other food grade chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as hypochlorite which has been held at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius) for one minute;
- (5) treatment with culinary-quality steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or
- (6) swabbing fixed equipment with a solution of at least twice the strength required for that sanitizing solution when used for immersion.

[(cc)] (jj) Single service articles means cups, containers, lids, or closures, plates, knives, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, toothpicks and all similar articles which are intended by the manufacturer for single eating and drinking usage and generally recognized by the public as items to be discarded after one usage.

[(dd)] (kk) Shared kitchen means a commercial kitchen that is rented or leased by more than one food service establishment operator.

(ll) *Sous vide* processing is a type of reduced oxygen packaging in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, and either served or

rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

[(ee)] (mm) Stand means a movable, portable or collapsible structure, framework, device, container, or other contrivance, other than a vehicle or pushcart, used for displaying, keeping or storing any food at a temporary food service establishment.

[(ff)] (nn) Temporary food service establishment means a food service establishment as defined in Article 88 of this Code. Additional to the provisions of this Article, a temporary food service establishment shall be operated at all times in compliance with the provisions of Article 88 and all applicable provisions of this Code.

[(gg)] (oo) Utensil means any tableware, such as knives, forks, spoons, glasses, cups, dishes and the like, and kitchenware, implements or containers used for storage, preparation, transfer, conveyance or service of food.

[(hh)] Wholesale food establishment means any establishment which sells food or which manufactures food for other than retail sale directly to the consumer.]

(pp) Ware washing means the cleaning and sanitizing of utensils and food contact surfaces of equipment.

*Notes:* Section 81.03 was amended by resolution of the Board of Health adopted on XXX, as adding and amending definitions of terms used in Article 81: adding definitions of adequate or sufficient means, caterer, cured foods, cut leafy greens, frozen dessert, operating or in operation, ready-to-eat food, shared kitchen, and ware washing; amending definitions of contaminated, cook chill processing, equipment, food grade material, food worker or food handler, imminent health hazards, non-retail food processing establishment, and stand; and deleting the term wholesale food service establishment, a type of establishment that is no longer regulated by the Department.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is amended, adding a new §81.04 (Approved sources of food), to be printed together with explanatory notes, to read as follows: **§81.04 Approved sources of food.** Food shall be obtained from sources approved by the appropriate regulatory authority having jurisdiction over such food source and shall comply with all federal, state and city laws, rules, and regulations related to food, the use of food, and food labeling.

(a) *Frozen desserts.* Frozen desserts shall be identified, manufactured, and sold in accordance with Article 4-A of the State Agriculture and Markets Law or any successor statute.

(b) Meat. No meat shall be served or sold in a food service or non-retail food processing establishment unless the meat is inspected and approved by the United States Department of Agriculture or Food and Drug Administration.

(c) Shellfish tags. Fresh and frozen shellfish, shelled or shucked shellfish (oysters, clams or mussels) shall be identified with the name and address of the original shell stock processor, shucker-packer or repacker, and the foreign intrastate and interstate identification number issued pursuant to applicable law. Identification tags shall be retained on the premises for 90 days from the date the shellfish was received by the establishment, in accordance with State Sanitary Code § 14-1.33 (b) or any successor provision.

*Notes:* Section 81.04 was added by resolution adopted by the Board of Health on XXX. It incorporates provisions formerly in §81.07, and adds provisions for service of frozen desserts, meats and poultry, and shellfish in food service establishments. These provisions are derived from former Articles 91, 97, 101, and 113.

RESOLVED, that §81.05 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby is, amended, revising subdivision (c) and adding new subdivisions (f), (g) and (h) and renumbering subdivision (f) as subdivision (i), to be printed together with explanatory notes to read as follows:

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

\* \* \*

(c) Except as specified in this subsection, no person shall operate a food service establishment or non-retail food processing establishment without a permit therefor issued by the Department. [An application for a permit shall be submitted to the Department. A request for a pre-permitting inspection shall be submitted to the Department subsequent to the filing of such application, but not less than 21 days before starting operation of such establishment. In the event the Department does not make an inspection of the establishment during the 21-day period after a request for a pre-permitting inspection is submitted, operations may commence without a permit on the 22nd day, and may be continued without such operations being in violation of this section until such time as the Department makes an inspection and issues a permit or issues an order to cease operation for cause pursuant to §81.39 or other applicable provision of this Code.]

(1) Exception. An establishment may begin operating twenty two days after it has fully submitted its application for a permit to the Department. It may continue to operate without a permit only until such time as the Department inspects the establishment and either issues a permit or an order to cease operation for cause pursuant to §81.39 or other applicable provision of this Code.

\* \* \*

(f) Every person using or contracting for use of shared kitchen space and equipment shall obtain a permit to operate a food service establishment unless such person is licensed or regulated by the Commissioner of Agriculture and Markets pursuant to Article 20-C, or any successor provision, of the Agriculture and Markets Law.

(g) No person operating a shared kitchen shall rent space or equipment in the shared kitchen to an individual who intends to use the facility to prepare food for sale or service to the public and does not have a currently valid food service establishment permit issued by the Commissioner, unless such user is currently licensed or regulated by the Commissioner of Agriculture and Markets.

(h) Upon the request of the Department, the operator of a shared kitchen shall provide a copy of any agreement between the operator and the user. Such agreement shall indicate the purpose of using the shared kitchen, the type of food to be prepared, and the place where the food will be sold.

(i) A permit shall not be issued if the applicant or a principal of an entity applying for such has been denied a permit on the basis of violations of this Code which could have resulted in the suspension or revocation of a permit. A permit may be renewed, provided that the permittee meets all requirements for renewal, the permit has not been revoked or suspended, and the permittee has not been determined to have committed a violation [which] that could be a basis for permit revocation or suspension under this Article.

*Notes:* Section 81.05 was amended by Board of Health resolution adopted on XXX amending subdivision (c) so that new establishments may open for business without having to request a pre-permit inspection. Under the State Sanitary Code, establishments in New York State are allowed to open 22 days after they submit a permit application. This proposal would amend the Health Code to mirror the statewide requirements. Section 81.05 was also amended to add a new subdivision (f) that requires caterers and other users of “shared kitchens” to obtain individual permits for their operations; a new subdivision (g) prohibiting an operator of a shared kitchen from renting space or equipment in a shared kitchen to persons who do not hold individual permits unless such person are licensed and regulated under the Agriculture and Markets Law, and a new subdivision (h) requiring the operator of a shared kitchen to make available to the Department information about the foods prepared at the kitchen and the places where such foods will be sold; and re-lettering subdivision (f) as subdivision (i).

RESOLVED that §81.06 (Prevention of imminent health hazards) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same is hereby amended, to be printed together with explanatory notes to read as follows:

**§81.06 Prevention of imminent or public health hazards.**

(a) *Additional requirements.* Whenever necessary to prevent the occurrence or recurrence of imminent or public health hazards the Department may, in specific instances, impose additional requirements on an establishment. The Department shall describe in writing the terms and conditions of operation that have been imposed, the reasons therefore, shall provide such document to the permit holder, and shall maintain such document with the records of the Department.

(b) *Hazard Analysis and Critical Control Point ("HACCP") plans.*

(1) To prevent the occurrence of an imminent or public health hazard, a HACCP plan shall be prepared by a food service establishment or non-retail processing establishment whenever such establishment prepares, processes, cooks, holds and stores foods in a manner other than as specified in this Code or other applicable law.

\* \* \*

(c) *Prior approval required for certain foods and processing.* Prior approval by the Department of a food service establishment's HACCP plan shall be obtained prior to processing any potentially hazardous food [items] by means of reduced oxygen packaging methods, drying, fermentation, curing [and] or smoking food products on the premises of the food service establishment.

*Notes:* Section 81.06 was amended by resolution adopted on XXX, modifying the title and amending subdivision (a) and paragraph (1) of subdivision (b) to include the term “public health hazards” since both terms are used in this Code, in Department rules, and in the State Sanitary Code. Subdivision (c) was amended to add fermentation and drying as processes that require approval by the Department of a Hazard Analysis and Critical Control Point plan for potentially hazardous foods. This would apply to processes used to preserve fish, meats, and sausages.

RESOLVED, that §81.07 (Food; sanitary preparation, protection against contamination) of Article 81 of the New York City Health Code found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

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

(a) Food protection. Food shall be free of and protected against contamination and shall be manufactured, prepared, processed or packed using clean and sanitary utensils and equipment.

(1) Culinary sink. A dedicated single compartment culinary sink shall be provided and used only for washing fruits, vegetables, meats, and aquatic animal foods prior to other preparation. However, one compartment of a multi-compartment sink may be designated for use solely as a culinary sink.

(2) Food contact surfaces. Surfaces with which food comes in contact shall be impervious.

(3) Prevention of cross-contamination. Food [which] that will not be washed or cooked shall be protected from cross-contamination from food which is required to be washed or cooked.

(4) Storage on ice or in water. Packaged food shall not be stored in direct contact with ice or water if packaging allows the entry of water. Unpackaged food may be stored in direct contact with drained ice, except that whole, raw fruits or vegetables, cut, raw vegetables such as celery or carrot sticks or cut potatoes, and tofu, may be immersed in clean and sanitary undrained ice or water.

(5) Washing raw fruits and vegetables. Raw fruits and vegetables shall be thoroughly washed with potable water before serving.

(6) Storage of raw chicken and fish. Raw chicken and raw fish that are received in ice in shipping containers may remain in such condition, provided the required cold holding temperature is maintained, while being stored or awaiting preparation, display, service or sale.

(b) Packaging. Food packages, including hermetically sealed containers, shall be in good condition so that food is not exposed to spoilage, filth or other contamination and remains suitable for human consumption. Food packages that are swollen, leaking, rusted or otherwise damaged shall be discarded or returned to their distributor. If such packages are to be returned to their distributor, they shall be segregated from intact packages and clearly labeled "Do Not Use" while stored at the establishment.

(c) Eggs. Only clean, whole eggs with shells intact and free from cracks or splits; or pasteurized, liquid, frozen or dry eggs[.]; or pasteurized dry egg products shall be used. All containers in which eggs are received in a food service establishment or non-retail food processing establishment must identify the source of the eggs.

(d) Food storage. Food removed from original containers or packages shall be protected from contamination by storing in clean, sanitized and covered containers and by maintaining proper temperature. Containers of food shall be stored at least [6] six inches (14.24 centimeters) above the floor, in a refrigerator or dry storage area, or at a greater height if necessary to permit cleaning of the storage area. Potentially hazardous raw foods that are not properly packaged or in sealed containers and that may leak or drip shall not be placed in storage above other foods.

(e) Food display.

(1) Containers. Food shall be displayed only in equipment such as cleanable containers, cabinets, display cases or similar protective equipment that protects such food from contamination.

(2) Protective shields. Self-service equipment shall have protective shields or guards to prevent unnecessary contamination or contact by patrons.

(3) Quantities to be limited. The quantity of food displayed shall be minimized to that necessary to meet immediate needs.

(f) Condiment storage. Condiments, seasoning, sugar and dressings shall be provided in individual packages, protected dispensers or containers, or in the original container or pour-type dispensers.

(g) Ice dispensing. Ice for consumption shall be dispensed with scoops, tongs or other utensils, or automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice.

(h) [Food-dispensing] Dispensing utensils. Food dispensing utensils shall be provided for dispensing food by [foodworkers] food workers and for self-service. Between uses, food dispensing utensils shall be stored in the food with the handle extended out of the food; shall be kept clean and dry; or shall be kept in a dipper well with running water at an adequate velocity and volume to remove food residue during intervals between intermittent use.

(i) Food shall be obtained from sources approved by the appropriate regulatory authority having jurisdiction over such food source and shall comply with all federal, state and city laws, rules and regulations related to food, the use of food, and food labeling.]

(j) (i) Supplies and equipment placement. Supplies and equipment shall not be kept or stored under or near any source of contamination, including but not limited to, exposed or unprotected sewer lines. Equipment, unless easily movable, shall be sealed to the floor or raised on concrete or smooth masonry platforms or elevated on legs to provide at least six inches of clearance between the floor and the equipment.

(k) All foodworkers shall maintain hygienic practices and personal cleanliness. Foodworkers shall wash hands and exposed areas of arms thoroughly with soap and warm water before starting work, and as often as necessary to remove soil and any substance that might lead to contamination. Thereafter, hands shall be washed thoroughly after using the toilet, smoking, sneezing, coughing, eating, drinking or otherwise soiling hands before returning to work. Foodworkers shall keep fingernails clean and trimmed.]

(l) (j) Bare hand contact prohibited. Food shall be prepared and served without bare hand contact unless the food will be heated to at least the minimum temperature required under §81.09.

Convenient and suitable utensils, sanitary gloves, waxed paper or an equivalent barrier shall be provided and used to prepare or serve food to eliminate bare hand contact and prevent contamination.

(k) *Unpasteurized milk prohibited.* Except in accordance with federal and state law, raw unpasteurized milk, or any product made from such milk, shall not be served in any food service establishment.

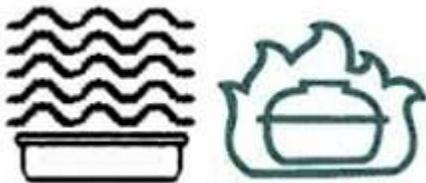
(l) *Re-service of previously served food prohibited.* Except for individually wrapped foods, where the wrapper seal has not been broken or opened, food that has been served to the public shall not be re-served.

(m) *Animal slaughter prohibited.* Except for fresh or saltwater finfish, crustaceans, or mollusks, no live animal shall be slaughtered at any food service or non-retail processing establishment.

(n) *Sausages.* Sausages may be made at a food service establishment only in accordance with a HACCP plan prepared and approved by the Department in accordance with §81.06 of this Article. Sausages made at a food service establishment shall not be sold at wholesale other than at an establishment regulated and inspected by the United States Department of Agriculture.

(o) *Drinking straws.* Drinking straws shall not be offered to the consumer unless they are completely enclosed in a wrapper or dispensed from a sanitary device. Drinking straws shall be discarded immediately after use.

(p) *Microwavable plastic containers.* Only containers that display one of the following “microwave safe” icons, or the words “microwave-safe,” or words to the effect that they are approved for use in microwave ovens shall be used to heat food in a microwave oven.



(q) *Non-essential persons restricted.* Persons who are not essential to the food establishment operations shall not be allowed in the food preparation, food storage or ware washing areas, except that brief visits and tours may be authorized by the operator if steps are taken to ensure that exposed food, clean equipment, utensils, linens, tableware, and unwrapped single-service and single-use articles are protected against contamination.

(r) *Unfit food to be denatured.* Food that has become unfit for human consumption shall be promptly denatured, its label defaced and the product marked condemned, and shall be kept separate and apart from foodstuffs that are held or offered for sale. As used in this subdivision,

the term “denature” means to treat the food with a substance satisfactory to the Department that alters the appearance or odor of the food such that the denatured food is clearly identified as being inedible.

*Notes:* Section §81.07 was amended by resolution adopted on XXX, adding titles in each subdivision to make the section more readable and facilitate compliance. Subdivisions (i), relating to approved sources of foods, and (k), relating to worker hygiene, were deleted and moved to a new §81.04 on approved sources of foods and to §81.13, worker hygiene practices, respectively. Also added was a requirement that only plastic containers marked as microwave-safe be used in microwaving and prohibitions on using unpasteurized milk, from Article 111 (repealed in September, 2010), and slaughtering animals for food, from repealed Articles 91, 93, and 97. Former subdivision (a) of §81.11 was moved to this section as subdivision (r) and amended to clarify the process of denaturing food to render it unpalatable, by altering its appearance, in circumstances when such foods are not safe for consumption, and former subdivision (b) of §81.11 has been added to this section as subdivision (l) and amended to clarify that foods previously served may not be re-served to other patrons unless such foods have been prepackaged and the packages remain intact.

RESOLVED, that subdivision (d) (Effective date) of §81.08 of Article 81 of the New York City Health Code found in Title 24 of the Rules of the City of New York, be, and the same hereby is repealed, to be printed together with explanatory notes to read as follows:

*Notes:* Subdivision (d), which provided that this section would be effective on July 1, 2007 to transfat containing oils, shortenings and margarines used for frying or in spreads, and July 1, 2008 to oils or shortenings used for deep frying of yeast dough or cake batter, and all other foods containing artificial trans fat, was repealed as outdated by resolution of the Board adopted on XXX.

RESOLVED that §81.09 of Title 81, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§81.09 **[Food; temperature requirements.] Potentially hazardous foods; temperature control for safety.**

(a) [Potentially] Temperature controls for safety. Except as specified in §81.10 of this Article, potentially hazardous food shall be refrigerated [at ] to a temperature of 41 degrees Fahrenheit (5

degrees Celsius) or below or kept heated to 140 degrees Fahrenheit (60 degrees Celsius) or above, except during necessary preparation. All parts of potentially hazardous foods requiring cooking are to be heated to 145 degrees Fahrenheit (62.7 degrees Celsius) or above for 15 seconds, except [that:] as follows:

(1) Poultry: poultry, poultry stuffing, stuffed meats and stuffing containing meat shall be heated so all parts are at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds;

(2) Pork: pork and food containing pork shall be heated so all parts of the food are at least 155 degrees Fahrenheit (68.3 degrees Celsius) for 15 seconds[;].

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

Temperature °C (°F)	Time	Temperature °C (°F)	Time	Temperature °C (°F)	Time
54 (130)	121 minutes	58 (136)	32 minutes	61 (142)	8 minutes
56 (132)	77 minutes	59 (138)	19 minutes	62 (144)	5 minutes
57 (134)	47 minutes	60 (140)	12 minutes	63 (145)	3 minutes

(4) Ground meat: ground meat and food containing ground meat shall be heated so that all parts of the food are at least 158 degrees Fahrenheit (69.4 degrees Celsius), unless otherwise ordered by the consumer[;].

(5) Stuffings and comminuted meats; cooking process: poultry, poultry stuffing, stuffed meats and stuffing containing meat; ground or comminuted poultry, beef, pork and other meat products, shall be heated with no interruption of the cooking process[;].

(6) Shell eggs: shell eggs or foods containing shell eggs shall be heated to 145 degrees Fahrenheit (62.8 degrees Celsius) or greater for 15 seconds unless the consumer requests preparation of [a shell egg or food containing] shell eggs in a style such as raw, poached or fried which must be prepared at a temperature less than 145 degrees Fahrenheit in order to comply with the request[;].

(7) Reheating previously cooked food: potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds. The minimum temperature of 165 degrees Fahrenheit (73.9 degrees Celsius) shall be reached within 2 hours of commencing reheating. Reheated food shall be held at or above 140 degrees Fahrenheit (60 degrees Celsius) until served[;].

(8) Immediate service: cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order may be served at any temperature[;].

(9) Microwave reheating: food reheated in a microwave oven shall be covered during heating; food shall be rotated or stirred during heating, or otherwise manipulated according to label instructions, and shall be reheated to a temperature of at least 190 degrees Fahrenheit (88 degrees Celsius) and allowed to stand covered for 2 minutes after reheating[;].

(10) Heating commercially processed foods: commercially processed pre-cooked potentially hazardous food in hermetically sealed containers and precooked potentially hazardous food in intact packages from non-retail food processing establishments shall be heated to 140 degrees Fahrenheit (60 degrees Celsius) within 2 hours of removal from container or package and held at such temperature until served.

(b) Eggs. Intact shell eggs shall be stored at an ambient temperature of 41 degrees Fahrenheit (5 degrees Celsius) or below.

(c) Processed fish. All processed fish products shall be prepared[, distributed and sold] and stored at a temperature that does not exceed 38 degrees Fahrenheit (3.3 degrees Celsius) without interruption until served to the ultimate consumer, except that:

(1) processed fish which contains a water phase salt level of at least 17 percent shall not require refrigerated storage and;

(2) processed fish which contains a water phase level of at least 10 percent, salt water activity of less than 0.85 Aw, or a pH of 4.6 or lower [may be distributed or sold] shall be held at refrigerated temperatures that do not exceed 41 degrees Fahrenheit (5 degrees Celsius).

(d) Consumer advisory. When meat, eggs, fish or molluscan shellfish [is] are served alone or as an ingredient in other foods, and are either raw or after heat treatment are at a temperature [or a time] less than that prescribed in this Code, the consumer shall be notified unless the consumer has previously indicated that he or she desires food to be prepared in such manner.

(e) [Potentially] Cooling. When removed from heat treatment, potentially hazardous food requiring refrigeration shall be cooled so that every part of the product is reduced from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within 2 hours and to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 additional hours.

(1) Foods shall be cooled using one or more of the following methods, based on the type and amounts of food being cooled:

(A) Placing the food in shallow pans to disperse heat quickly;

(B) Dividing the food into smaller or thinner portions;

(C) Using rapid cooling equipment, e.g., quick chill;

(D) Stirring the food in a container placed in an ice water bath;

(E) Using containers that facilitate heat transfer; or

(F) Adding ice as an ingredient.

(2) When placed in cooling or cold holding equipment, food containers shall be:

(A) Arranged in the equipment to provide maximum heat transfer through the container walls, not stacked or nested; and

(B) Loosely covered, or uncovered if protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

(f) Ambient temperature cooling. Potentially hazardous foods shall be cooled to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 hours of preparation when prepared from ingredients at ambient temperature[, such as reconstituted foods and canned tuna].

(g) Thawing frozen foods. Potentially hazardous food shall be thawed:

(1) in refrigerated facilities at a temperature not to exceed 41 degrees Fahrenheit (5 degrees Celsius); or

(2) completely submerged under potable running water at a temperature of 70 degrees Fahrenheit (21.1 degrees Celsius) or below, with sufficient water velocity to agitate and float off loose particles into the overflow; or

(3) in a microwave oven when the food will be immediately transferred to other conventional cooking [facilities] equipment as part of a continuous cooking process, or when the entire uninterrupted cooking process takes place in the microwave oven; or

(4) as part of the conventional cooking process, without interruption.

(5) Whole frozen poultry shall be completely thawed prior to conventional cooking. A single portion may be thawed during the cooking process.

[h] (6) Ready-to-eat potentially hazardous food shall be thawed for a period of time that does not allow thawed portions to rise above 41 degrees Fahrenheit (5 degrees Celsius).

[i] (h) Thermometers. Thermometers for measuring the temperature of food shall be provided, [and] readily accessible, and routinely used to ensure compliance with the temperature requirements specified in this Section. Metal stem-type, numerically scaled, indicating thermometers accurate to plus or minus [2] two degrees Fahrenheit (1.1 degrees Celsius) [which] that are made from materials that will not subject the food to contamination or toxic materials, shall be provided to ensure that proper internal cooking, holding and refrigeration temperatures of all potentially hazardous foods are maintained.

[j] Reserved.]

[k] Reserved.]

*Notes:* Section 81.09 was amended by Board of Health resolution adopted XXX, adding titles for each subdivision to make it easier to read and to comply with its requirements. Subdivision (d) was amended to add raw or undercooked eggs as a subject for consumer advisory. The United

States Food and Drug Administration (“FDA”) 2009 *Food Code* §3-603.11 recommends that if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permittee shall inform consumers of the significantly increased risk of consuming such foods using written brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. Subdivision (e) was amended, adding new paragraphs (1) and (2) to assist food service establishment operators by specifying methods to be used to properly cool foods to control the growth of pathogens, in accordance with the 2009 *Food Code*. It should be noted that reducing the amount of food being cooled at one time can decrease the time needed to cool hot foods, and minimizes pathogen growth. Larger food items, such as roast turkey, and deep pot stews, rice, or refried beans take longer to cool because of their density and the volume of food from which heat must be removed. Tightly covering containers of hot foods slows cooling. Commercial refrigeration equipment is designed to hold cold foods at temperature, not cool large amounts of food. Subdivision (h), former subdivision (i), was amended to require *use*, not just possession, of thermometers to evaluate food temperatures.

RESOLVED that §81.10 of Title 81, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§81.10 [**Time as a Public Health Control.**] **Time as a public health control.**

(a) *Use of time controls.* Food service establishments may use time as the sole public health control, rather than using time in conjunction with temperature, for holding potentially hazardous [ready-to-eat] foods [to be served and consumed on site], only in accordance with the provisions of this section. Such foods shall not be returned to temperature control at any time with the intent to extend their use.

(1) *Initial temperatures.* [Ready-to eat] Potentially hazardous foods shall be at an initial temperature at or below 41 degrees Fahrenheit (5 degrees Celsius) when removed from cold holding temperature control, or at or above 140 degrees Fahrenheit (60 degrees Celsius) when removed from hot holding temperature control.

(2) *After cold holding.* Ready-to-eat foods and other potentially hazardous foods removed from cold holding temperatures may be kept for a maximum of [four or] six hours without further temperature control provided that at four hours the food has not reached or exceeded an internal temperature of 70 degrees Fahrenheit (21 degrees Celsius). [If such foods will be kept for up to six hours without further temperature control, the temperature of the food shall be measured and

recorded every two hours, and shall not exceed a temperature of 70 degrees Fahrenheit (21 degrees Celsius).] If such food [at or above temperatures of] has reached or exceeded an internal temperature of 70 degrees Fahrenheit (21 degrees Celsius) it shall be discarded immediately.

(3) *After hot holding.* [Ready-to-eat] Potentially hazardous foods removed from required hot holding temperatures may be held at ambient temperatures for no more than four hours after removal from temperature control.

(4) Food shall not be held out of temperature control any longer than provided in paragraphs (2) and (3) of this subdivision and must, by when the respective allowable period of time has passed, either be discarded or served.

(b) *Labeling.* All foods removed from temperature control in accordance with this section shall be labeled or marked as follows:

(1) *Four hour labeling.* Food to be held for up to four hours shall be labeled or marked with the initial temperature at time of removal, and [a] the time, four hours after removal from temperature control, when such food shall be discarded if not served.

(2) *Six hour labeling.* Food to be held for up to six hours shall be labeled or marked with the initial temperature at time of removal, the time removed from cold temperature control, [the] times and temperatures, measured [at two hour intervals] four hours after removal from temperature control, and the time, six hours after removal from temperature control, when such food shall be discarded if not served.

(3) Labels to be kept. Labels or marked containers shall be kept until foods have been served or discarded.

(c) *Limits on use of time as a public health control.* Time shall not be used as the sole means of public health control, and §81.09 shall remain applicable as follows:

(1) Holding raw eggs prior to using such eggs in food prepared for (i) persons who may be at higher risk for food-borne illnesses, such as immunocompromised persons including residents or clients of senior centers, charitable feeding programs, adult day care programs, custodial care and health care facilities, and assisted living programs; (ii) infants and children in day care and pre-school programs; and (iii) pupils in primary and secondary schools.

(2) Preparation and holding of ready-to-eat potentially hazardous foods sold by or in (i) mobile food vending units; (ii) food vending machines; (iii) temporary food service establishments operating in accordance with Article 88 of this Code; or (iv) self-service salad bars or buffets[; or (v) when intended for takeout or delivery].

(3) Preparation and holding of potentially hazardous foods consisting of: (i) aquatic animals, fish or molluscan shellfish and (ii) opened or packaged] smoked or vacuum-packed food products.

(d) *Violations.*

(1) *§81.09 violations.* An establishment shall be in violation of §81.09 of this Code if the Department finds that, while using time as a public health control, the establishment (i) has not discarded food after the times specified in this section; or (ii) has not labeled or marked food as specified in this section.

(2) *§81.07 violations.* Food shall be deemed contaminated and an establishment shall be in violation of §81.07 (a) of this Code if cold potentially hazardous [ready-to-eat ] foods labeled for six hour holding are measured at or above temperatures of 70 degrees Fahrenheit (21 degrees Celsius) after removal from cold temperature control.

§81.10 Table 1. Summary of procedures for using time as a public health control.

<b>Summary of Procedures for Using Time as a Public Health Control</b>				
<b><u>Removal From:</u></b>	<b><u>Maximum Time out of Holding Temperature</u></b>	<b><u>When to Measure Temperature</u></b>	<b><u>What to Note on Required Labels</u></b>	<b><u>When to Discard</u></b>
<u>Cold holding at or below 41°F (5°C)</u>	<u>6 hours</u>	<u>When removed from cold holding, and, at 4 hours after removal</u>	<ul style="list-style-type: none"> <li>• <u>The time and temperature when removed from cold holding, and,</u></li> <li>• <u>The time and temperature 4 hours after removal, and</u></li> <li>• <u>The time to discard, serve, or cook</u></li> </ul>	<u>If temperature is over 70°F (21° C) at 4 hours after removal</u>
<u>Hot holding at or above 140° F (60° C)</u>	<u>4 hours</u>	<u>When removed from hot holding</u>	<ul style="list-style-type: none"> <li>• <u>The time and temperature when removed from hot holding, and,</u></li> <li>• <u>The time 4 hours after removed from hot holding. This is the time when the food must be cooked, served, or discarded</u></li> </ul>	<u>If not served within 4 hours</u>

*Notes:* This section was amended by Board of Health resolution adopted XXX to remove restrictions on use of time as a public health control for takeout/delivery foods, and in holding fish and aquatic animal products, and raw foods, consistent with the 2009 *Food Code* guidelines. See, e.g., FDA 2009 *Food Code* §3-501.19.

RESOLVED that §81.11 (Food; disposition if unfit for human consumption; re-service of food prohibited) of Title 81, found in Title 24 of the Rules of the City of New York, be, and the same hereby is repealed, amended, to be printed together with explanatory notes to read as follows:

Notes: §81.11 (Food; disposition if unfit for human consumption; re-service of food prohibited) was repealed by resolution of the Board of Health adopted on XXX, and its provisions incorporated into §81.07.

RESOLVED that §81.12 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

**§81.12 Reduced oxygen packaging; cook chill and sous vide processing.**

\* \* \*

(d) *Specific requirements.* Foods shall be:

(1) Placed in an ROP package or ROP bag before cooking, or placed in a package or bag immediately after cooking and before reaching an internal temperature below 140 degrees Fahrenheit (60 degrees Celsius).

\* \* \*

[(4) Properly cooled to an internal temperature of 38 degrees Fahrenheit (3.3 degrees Celsius) or below in the ROP package within two hours of cooking; further cooled to an internal temperature of 34 degrees Fahrenheit (1.1 degrees Celsius) or less within six hours of reaching 38 degrees Fahrenheit (3.3 degrees Celsius); held at an internal temperature of 34 degrees Fahrenheit (1.1 degrees Celsius) and consumed or discarded within 30 days after the date of preparation. However, if cooled to an internal food temperature of 38 degrees Fahrenheit (3.3 degrees Celsius), the food may be held at an internal temperature of 38 degrees Fahrenheit (3.3 degrees Celsius) or less for no more than 72 hours before consumption, and if not consumed, shall be discarded.]

(4) Cooled so that every part of the ROP package is reduced from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within two (2) hours and to 41 degrees Fahrenheit (5 degrees Celsius) or below within four (4) additional hours and subsequently:

(i) Cooled to 34 degrees Fahrenheit (1 degree Celsius) within 48 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius) and held at that temperature until consumed or discarded within 30 days after the date of packaging;

(ii) Cooled to 34 degrees Fahrenheit (1 degree Celsius) within 48 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius), removed from refrigeration equipment that maintains a 34 degree Fahrenheit (1 degree Celsius) food temperature and then held at 41 degrees Fahrenheit (5 degrees Celsius) or less for no more than 72 hours, at which time the food shall be consumed or discarded;

(iii) Cooled to 38 degrees Fahrenheit (3 degrees Celsius) or less within 24 hours of reaching 41 degrees Fahrenheit (5 degrees Celsius) and held there for no more than 72 hours from packaging, at which time the food shall be consumed or discarded; or

(iv) Held frozen with no shelf life restriction while frozen until consumed or used.

\* \* \*

*Notes:* Paragraph (4) of subdivision (d) of §81.12 was amended by resolution adopted XXX. Paragraph (4) was repealed and recodified, substituting the FDA 2009 *Food Code* guidelines for cooling ROP packaged foods.

RESOLVED, that §81.13 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

§81.13 [**Foodworkers; health clothing**] **Food workers: health; hygienic practices.** All food workers shall use hygienic practices and maintain personal cleanliness.

(a) Work restriction. No person shall work or shall be knowingly or negligently permitted to work in a food service establishment while afflicted with a boil or infected wound and unless he or she is free from acute, infectious diarrhea, amebiasis, cholera, cryptosporidiosis, diphtheria, E. coli 0157:H7, giardiasis, hepatitis A, poliomyelitis, salmonellosis, shigellosis, streptococcal sore throat (including scarlet fever), superficial staphylococcal infection, tuberculosis, typhoid, or yersiniosis and is not a carrier of organisms causing the above conditions or other disease listed in §11.03 in a communicable form and unless the period of isolation or exclusion prescribed by Article 11 of this Code has ended.

(b) Hair restraints. Food workers shall wear caps, hats, hair nets or other hair coverings to effectively keep hair from having contact with exposed food or food contact surfaces, and clean equipment or utensils that have contact with food. This requirement shall not apply to counter staff who serve only beverages and/or pre-packaged foods, bartenders, baristas, hosts or wait staff.

(c) Clothing. All [foodworkers] food workers shall wear clean, washable outer garments [, and whenever working in an area where food is prepared shall wear caps, hats or hair nets to minimize contact between hair and hands, food, and food-contact surfaces] when starting work and shall replace such garments with clean clothing as often as necessary thereafter to prevent contamination of food or food contact surfaces from soiled or contaminated clothing.

[(c) Persons who are not essential to the food establishment operations shall not be allowed in the food preparation, food storage or ware washing areas, except that brief visits and tours may be authorized by the operator if steps are taken to ensure that exposed food, clean equipment, utensils, linens and unwrapped single-service and single-use articles are protected against contamination.]

(d) Hand washing. Food workers shall wash hands and exposed areas of arms thoroughly with soap and warm water before starting and as often as necessary to remove soil and any substance that might lead to contamination. Thereafter, hands shall be washed thoroughly after using the toilet, smoking, sneezing, coughing, eating, drinking or when otherwise soiling hands before returning to work. When gloves are used as a barrier to protect ready-to-eat food from bare hand contact, hands shall be washed before gloves are put on. Gloves shall be changed after handling raw foods, performing tasks that do not involve food preparation or processing, handling garbage, or any other work where the gloves may have become soiled or contaminated.

(e) Fingernails. Food workers shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough, and unless wearing intact gloves in good repair, shall not wear fingernail polish or artificial fingernails when working with exposed food.

(f) Jewelry. Except for medical alert bracelets or a ring that is smooth and without crevices, such as a wedding band, food workers may not wear jewelry on their arms or hands.

(g) Smoking. Food workers shall not smoke any substance or use tobacco in any form in an establishment.

(h) Eating and drinking. Food workers shall not eat or drink in food preparation or other areas where food, equipment, and utensils may be exposed to contamination, except that a food worker may drink from beverages in closed containers.

(i) No spitting allowed. Spitting anywhere in the establishment is prohibited.

*Notes:* Section 81.13 was substantially amended by resolution adopted on XXX, adding a number of provisions related to food worker hygiene that are recommended in the FDA 2009 *Food Code*. Also added was a new subdivision (d), formerly in §81.07, specifying when food workers need to wash their hands.

RESOLVED, that §81.15 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

**§81.15 Food protection course.**

(a) [(1)] *Food protection certificate required.* No person who is charged with the management or supervision of the operations of a food service establishment or non-retail food processing establishment shall engage or be employed in such capacity unless he or she obtains a certificate issued by the Department subsequent to successful completion of a course in food protection, and passage of an examination administered by the Department. No person required to have a license issued pursuant to §89.03(b) of this Code shall be issued such license unless he or she obtains such a certificate. A person holding such certificate shall be on the premises [or, in the case of a mobile food vendor, at a vending site,] and shall supervise all food preparation activities during all hours of operation. [This paragraph shall not apply to food service establishments operated by religious, fraternal or charitable organizations which are open to the public for the purpose of providing food to the needy, free of charge. Such establishments shall be subject to paragraph (2) of this subsection.]

[ (2) In a food service establishment operated by religious, fraternal or charitable organizations that are exempt from the requirements of paragraph (a)(1) of this section, the person responsible for the supervision of the food preparation or processing operations shall not engage or be employed in such capacity unless he or she has obtained a certificate pursuant to (a)(1) above, or he or she has first completed a course in food protection and obtained a certificate issued by the Department. Such course shall be provided by the Department or conducted by others approved by the Department. Such certificate may be used by the individual only while working at food service establishments subject to this paragraph. A person holding the certificate shall be on the premises during all hours of operation. This paragraph shall not apply to persons already holding a food protection certificate who is or has been charged with supervision of the operations of a regular food service establishment or a non-retail food processing establishment.]

(b) *Certificate available for inspection.* Such certificate shall be available for inspection at all times by the Department.

(c) Courses to be provided or approved by the Department. The Department may conduct such food protection courses, or any part thereof, or approve courses conducted by others. Persons electing to enroll in such courses conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for course registration, materials, training, testing and certificate issuance. Persons [covered under §81.15(a)(2)] who supervise food service operations for a religious, fraternal or charitable organization that is open to the public for the purpose of providing food to the needy, free of charge will not be charged a fee for a food protection course conducted by the Department [and are not required to take the Department's supplemental food protection course required pursuant to 24 R.C.N.Y., Chapter 21, §21-02].

(d) Additional food protection certificate holders; retaking courses. [The]In addition to the manager or supervisor of food operations, the Department may require the permittee, any persons supervising one or more specific food operations or the current holder of a food protection certificate in any food service establishment to complete a course when the Department finds continuing violations of the Code, [or when] a food borne illness outbreak implicates food prepared or processed under the supervision of such person, or when the Department determines that such a course is necessary to acquaint a supervisor with current developments in food protection principles, or when otherwise deemed necessary by the Department for the protection of the public.

(e) Photographs required. Two (2) full-face photographs shall be taken by the Department [or by others approved by the Department] when an applicant registers for such course or applies for such certificate. One photograph shall be affixed to the certificate of completion and the other maintained in the records of the Department. [Persons covered under §81.15(a)(2) shall not be subject to this subsection.]

Notes: §81.15 was amended by resolution adopted on XXX, adding titles to various subdivisions to promote compliance and easier reading, and repealing duplicate provisions and clarifying other requirements.

RESOLVED, that §81.17 (Food service establishments and non-retail food processing establishments: premises; location; general requirements) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed and recodified, to be printed together with explanatory notes as follows:

**§81.17 General requirements: design, construction, materials and maintenance.**

(a) Use of residential premises prohibited.

(1) No food service or non-retail food processing establishment permit shall be issued for, and no food service or non-retail processing establishment shall be located in, a private home or apartment.

(2) Food shall not be processed, prepared, packed or stored in a private home or apartment and no part of any food service establishment shall be located in any rooms used for dwelling or sleeping purposes.

(b) *Size of establishments and work areas.*

(1) *Size.* Adequate space shall be provided for conduct of operations and to enable thorough, regular cleaning, maintenance, and inspection of all areas of an establishment, including but not limited to those used for food preparation, ware washing, storage, dining, and garbage and waste holding and disposal.

(2) *Work spaces.* All work and storage areas shall have unobstructed aisles and working spaces of sufficient width to permit employees to perform their duties readily and without contaminating food or food-contact surfaces.

(3) *Dressing areas.* Dressing and locker areas shall not be located in food preparation, storage or ware washing areas.

(c) *Equipment, installation and maintenance.* Materials used to construct or repair equipment shall be of sufficient strength and thickness to withstand ordinary establishment usage and to permit cleaning and sanitizing. Equipment shall be installed flush with and sealed to the floor, or raised a minimum of six inches above the floor, or easily moveable to allow accessibility for cleaning on all sides, above and underneath the equipment. All equipment shall be maintained in working order.

(d) *Food contact surfaces.* Food contact surfaces of utensils and equipment shall be constructed of food grade materials, shall not be painted, and shall not contain lead, cadmium or any other substance that is toxic or may react with food, cleaning or sanitizing materials to form harmful compounds, or render food unwholesome or detrimental to health, and shall not impart any odor, color or taste to food.

(1) *Surfaces to be easily cleanable and sanitized.* An establishment shall not use equipment, utensils or containers that are chipped, cracked, rusted, corroded, worn or in a condition where food and debris cannot be removed and such items cannot be easily cleaned and sanitized.

(2) *Food grade lubricants.* Establishments shall use food grade lubricants approved by the United States Food and Drug Administration to lubricate equipment. Such lubricants shall not leak or contact food or food contact surfaces. An establishment shall select and use equipment that requires only the use of simple tools for disassembly to encourage and facilitate cleaning and

sanitizing of equipment. Such tools shall include, but not be limited to, mallets, screwdrivers, and open-end wrenches that are kept readily available near the equipment.

(3) Cleaned in place equipment. Equipment designed for in-place cleaning by the circulation or flowing by mechanical means through a piping system shall be constructed so that cleaning and sanitizing solutions circulate through an effective fixed system that allows such solutions to contact all interior food-contact surfaces, and so that the system is self-draining or can be completely evacuated.

(4) Cleaning and polishing food contact surfaces. No substance containing any cyanide preparation shall be used for cleaning or polishing copper, nickel, silver, silver plated ware or any utensils or appliances used in preparation or service of food. Cleaning and polishing formulations shall be used in accordance with the manufacturer's instructions so that such substances do not contaminate food.

(5) Approved sanitizers. Only chemical sanitizers and antimicrobial agents approved by the U.S. Environmental Protection Agency shall be used to clean food and food contact surfaces.

(6) Single service articles. Single service articles shall be manufactured from clean, non-toxic materials and fulfill the requirements of the Food, Drug and Cosmetic Act, as amended. Such articles shall not be reused and shall be discarded immediately after use.

(e) Non-food contact surfaces.

(1) Floors. Floors, floor coverings, and materials used to repair floors of food storage, food preparation, utensil washing areas, walk-in refrigerating units, dressing rooms, locker rooms, lavatories and rest rooms shall be constructed of a hard, smooth, durable, non-absorbent and easily cleanable material and shall be kept clean, without holes or gaps or other unintended openings at floor and wall junctions or around plumbing pipes and fixtures. Carpeting is prohibited on floors in food preparation areas. Mats and duckboards shall be designed to be removable and easily cleanable.

(2) Walls and ceilings. Walls, ceilings, doors, panels, windows, and other interior components of rooms, and equipment such as walk-in refrigerators, and the materials used to repair such components shall be smooth and non-absorbent, constructed of hard, impermeable, light colored materials, and shall be easily cleanable, kept clean and without holes or gaps or other unintended openings at floor, wall and ceiling junctions or around plumbing pipes and fixtures. Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(3) Equipment and fixtures. Equipment and fixtures, including but not limited to, light fixtures, vent covers, fans, ducts, decorative materials, and other materials affixed to walls and ceilings shall be easily cleanable, and kept clean and in working order.

(4) Transportation. Vehicles and other conveyances used for the transportation of food by an establishment shall be kept clean, sanitary, and free of pests, and shall have sufficient equipment in operating condition to maintain temperatures required by this Code for holding potentially hazardous foods.

Notes: §81.17 was repealed and recodified by resolution adopted XXX. It now includes several provisions formerly in §§81.31 and 81.33 and modernizes provisions related to the physical facilities of establishments, in accordance with recommendations from the FDA 2009 *Food Code*.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, amended, adding a new §81.18, to be printed together with explanatory notes, to read as follows:

**§81.18 Cold and hot storage and holding facilities.** A food service establishment shall have adequate refrigeration and hot holding and storage facilities for the proper storage, transportation, display, and service of potentially hazardous foods. Specific refrigeration and hot holding and storage needs shall be based upon the menu, number of meals, frequency of delivery, and preparation in advance of service.

(a) Refrigeration. Refrigerators shall be capable of maintaining and shall maintain potentially hazardous foods at or below 41 degrees Fahrenheit (5 degrees Celsius) at all times. Food preparation procedures should be conducted so that refrigerators are opened on only a limited basis.

(1) Shelving. Shelving for walk-in and reach-in refrigeration units shall be made of food grade material that is smooth and easily cleanable.

(2) Air circulation and cooling ability. Air circulation within refrigeration units shall not be obstructed and shall allow for an even and consistent flow of cold air throughout the units. Fans circulating air within refrigeration units shall be kept clean, dust free, and in working condition. Gaskets shall be kept clean and intact and shall be replaced as needed so that refrigeration units may maintain food at required temperatures.

(3) Thermometers. Refrigeration units shall have numerically scaled or digital indicating thermometers, calibrated to be accurate to (+) or (-) 3 degrees Fahrenheit. The thermometer shall be placed to measure air temperature in the warmest part of the unit.

(4) Placement. Refrigeration units, unless specified by the manufacturer and designed for such use, shall not be located directly adjacent to cooking equipment or other high heat producing equipment which may tax the cooling system's operation.

(5) Walk-in refrigerator floors. Walk-in refrigerator floors that are water-flushed for cleaning or that receive discharge of liquid waste or excessive melt water, shall be non-absorbent and sloped to drain.

(6) Outdoor walk-in refrigerators. Refrigerators located outdoors shall be kept clean, locked, secure, and in operating condition, and shall not permit entry or harborage of pests.

(b) Hot holding. Hot holding and storage equipment shall be capable of maintaining and shall maintain potentially hazardous foods at or above 140 degrees Fahrenheit (60 degrees Celsius) at all times.

(1) Thermometers. Hot holding units shall have numerically scaled or digital indicating thermometers, calibrated to be accurate to (+) or (-) 3 degrees. The thermometer shall be placed to measure air temperature in the coolest part of the unit.

Notes: This section is new, and was added by resolution adopted XXX. It includes some provisions of former §81.35 (Food service establishments and non-retail food processing establishments; refrigerators) which was repealed. Its recodified provisions, applicable to both refrigeration and hot holding and storage equipment, have been updated, consistent with the FDA 2009 Food Code.

RESOLVED, that §81.19 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed and recodified, to be printed together with explanatory notes as follows:

**§81.19. Lighting and ventilation.**

(a) Lighting. Sufficient artificial light shall be provided so that operations and cleaning are conducted safely, and food workers are able to recognize the condition of food, equipment, utensils, and supplies. Artificial lighting shall be provided as follows:

(1) At least 540 lux (50 foot candles) at surfaces where food workers are preparing and processing food and working with utensils or equipment such as knives, slicers, grinders, or saws;

(2) At least 215 lux (20 foot candles) at surfaces where food is provided for consumer self-service such as buffets and salad bars; inside equipment such as reach-in and under-counter refrigerators; and at a distance of 30 inches (75 centimeters) above the floor in areas used for hand washing, ware washing, and equipment and utensil storage, and in toilet rooms; and

(3) At least 108 lux (10 foot candles) at a distance of 30 inches (75 centimeters) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning.

(b) Lighting to be shielded. All artificial lighting fixtures including infrared or other heat lamps located over, by or within food storage, preparation, service or display facilities, and facilities

where utensils and equipment are cleaned and stored, which may shatter due to extreme heat, temperature changes or accidental contact and may contaminate food upon shattering, shall be fitted with light bulbs that are coated with a shatterproof sealant or otherwise rendered shatterproof or shall be shielded and encased, with end caps or other devices, to prevent broken glass from falling into food or onto food-contact surfaces.

(c) Ventilation. Establishments shall be adequately ventilated to prevent excessive heat, steam, condensation, vapors, odors, smoke, and fumes.

(1) Mechanical ventilation shall be installed in rooms where odors, vapors or fumes originate.

(2) Ventilation hoods and devices shall be constructed and installed to prevent grease or condensation from collecting on walls or ceilings and from dripping into food or onto food-contact surfaces.

(3) Intake and exhaust ducts shall be constructed and maintained to prevent dust, smoke and fumes, dirt or other contaminants from entering the establishment.

(4) Ventilation to the outside air shall comply with applicable law and regulation and shall not create a nuisance or unlawful emission.

(5) Concentrations of carbon monoxide gases shall not exceed nine (9) parts per million.

Notes: §81.19 (Food service establishments and non-retail food processing establishments: premises: lighting and ventilation) was repealed and recodified by resolution adopted on XXX. Recodified lighting standards were substantively updated, incorporating recommendations from the FDA 2009 *Food Code*. The acceptable level of carbon monoxide of 9 ppm is based on the U.S. Environmental Protection Administration's National Ambient Air Quality Standards for an eight hour average concentration. See, 40 CFR §50.8.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to add a new §81.20 (Plumbing and water supply), to be printed together with explanatory notes, as follows:

**§81.20 Plumbing and water supply.**

(a) Potable water supply. An establishment shall be equipped with plumbing and plumbing fixtures, in accordance with applicable law, that safely supply potable water, as defined in Part 5 of the State Sanitary Code (10 NYCRR Chapter 1), to all parts of the establishment. Plumbing and fixtures shall be properly connected, vented, and drained to prevent contamination of the potable water supply. Potable water supply fixtures or other equipment connected to the potable water supply shall be designed and constructed or equipped with a device that prevents back-flow or siphonage into, or cross connection with the water supply.

(b) Disposal of sewage and liquid waste. Sewage and liquid wastes other than grease and oil waste shall be conveyed to the sewer or sewage disposal system so as to prevent contamination of the premises and its contents. Grease and oil wastes shall be disposed of in accordance with applicable laws.

(1) Indirect waste connection required. There shall be no direct connection between the sewage system and any drains from plumbing fixtures and equipment used for hot and cold storage, or mechanical processing of food. Waste lines from equipment required to have indirect drains shall be installed to prevent back-flow from sewers and other drains and waste lines.

(2) Direct drainage. Waste water pipes shall be discharged into a properly trapped, sewer-connected, clean, slop sink, or other acceptable method of drainage.

(c) Condensation. Plumbing pipes shall be installed and maintained in a manner that prevents waste water or condensation from contact with food or equipment.

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

Notes: A new §81.20 was added by resolution adopted by the Board of Health on XXX. The new section incorporates and updates provisions applicable to water supply and plumbing from former §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles).

RESOLVED, that §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed and recodified, to be printed together with explanatory notes as follows:

**§ 81.21 Hand wash sinks.**

(a) Location. Hand washing sinks shall be installed in food preparation, food service, and ware washing areas, and in or adjacent to employee and patron toilet rooms, and may be located between such areas.

(1) Sufficient sinks shall be provided so that a hand washing sink is no more than 25 feet from any food preparation, service or ware washing area.

(2) Any area in which a hand wash sink is located shall be unobstructed by doors or equipment, and access shall be kept clear to enable its use as required by this Code. Hand washing sinks shall not be used for purposes other than hand washing.

(3) An automatic hand washing sink shall be used in accordance with the manufacturer's instructions. A self-closing, slow-closing or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet. A steam mixing valve shall not be used.

(b) Soap, towels, trash receptacle. Soap or detergent; single use disposable towels or mechanical drying devices; and a foot operated covered trash receptacle shall be provided. A supply of towels or a towel dispenser shall be located immediately adjacent to the hand wash sink, and available without requiring the user to open drawers, cabinets or other enclosures that could lead to recontamination of hands.

(c) Wash hands signs. Signs directing employees to wash hands after use of toilet shall be conspicuously posted near or above all hand washing sinks. Signs shall be posted in English and all languages as necessary so as to be understood by all food workers in an establishment.

Notes: Former §81.21 (Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles) was repealed and recodified by resolution of the Board of Health adopted XXX. As recodified, this section updates provisions from former Article 81 sections and adds new requirements for installing hand wash sinks to encourage and enable food workers to wash hands as necessary to prevent transmission of food borne illnesses.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to add a new §81.22, to be printed together with explanatory notes, as follows:

**§81.22 Employee and patron toilets.**

(a) Toilets required. Toilet facilities shall be provided for employees and shall be equipped with a minimum number of water closets, urinals, and other plumbing fixtures as required by Chapter 4 of the New York City Plumbing Code, Administrative Code §28-PC 403, or any successor law.

(b) Patron toilets required. Food service establishments with a seating capacity of 20 or more, except those located in premises where a permitted food service establishment operated on or before December 5, 1977, shall provide toilet facilities for patrons. Establishments with a seating capacity of 20 or more in premises where a permitted food service establishment operated on or before December 5, 1977 shall, when undergoing renovations of sufficient scale to require a construction permit from the Department of Buildings, install and thereafter provide one or more patron toilets equipped as required by subdivision (a) of this section.

(c) Toilet rooms. All toilets shall be properly flushed and trapped, adequately lighted and ventilated, maintained in sanitary, operating condition, and furnished with supplies of toilet tissue and easily cleanable covered receptacles for waste paper and other refuse.

Notes: §81.22 was adopted by resolution of the Board of Health on XXX. It incorporates and updates provisions related to required employee and patron toilets from former §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided).

RESOLVED, that §81.23 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

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

(a) Establishments to be pest free. Food service and non-retail food processing establishments shall be kept free of rodents, insects and other pests, as defined in Article 151 of this Code, and of [any condition] conditions conducive to [rodent or insect and other pest life] pests, which shall include but not be limited to the following:

(1) Accumulated refuse and other material on or in which pests may shelter, hide or nest;

(2) Presence of cracks, gaps or holes in establishments' exteriors or interiors that permit free movement of pests;

(3) Presence of food or water refuse and wastes accessible to and capable of sustaining or attracting a pest population including, but not limited to, standing water or other liquid wastes, grease and food residue and improperly closed food containers.

(b) Prevention. Premises, equipment and fixtures shall be of a construction, design and material so as to [be rodent proof] prevent and control entry and harborage of pests.

(1) Daily inspections. Permittees shall inspect the premises and incoming food and supplies daily to determine presence of pests and to prevent entry of and infestation by pests.

(2) Exterminator required. Permittees shall contract with a pest management professional certified by New York State Department of Environmental Conservation to provide preventive measures and extermination services necessary to maintain their establishments free of pests. At the request of the Department, the permittee shall make available for inspection a fully executed copy of a contract with a pest management professional to provide at least monthly preventive inspections and services, and where pests are observed, to provide services for their elimination.

(3) Doors. All doors opening into the establishment from the outside shall be equipped with barriers such as anti-rodent brushes or a space no larger than one-quarter of an inch (six millimeters) to prevent entry of rodents.

(4) Pest monitors. As part of an integrated pest management program, an establishment may use sticky monitoring traps or stations that are examined to determine if the establishment has a roach, other insect or rodent infestation. Such monitoring traps or stations shall be marked with the date the station was placed, and a date, no later than one month thereafter, or an earlier date, to be established by the pest management professional, when the traps or stations shall be removed and discarded. Such traps and stations shall be removed as soon as they contain one or more rodents.

[(b) All openings into the outer air that are kept open shall be effectively screened and doors shall be self-closing, unless other effective means such as effective fly fans or effective air curtains are provided to prevent the access by insects and other pests.]

(c) [Operators of food service establishments and non-retail food processing establishments] Pest infestations. Permittees shall take [extermination and] all preventive, control, and extermination measures necessary to maintain the establishment free of [rodents, insects and other] pests. When the Department determines that an establishment has a persistent pest infestation and conditions conducive to pests, the Department may order the permittee to institute and maintain a pest management plan in accordance with §151.02 (c) of this Code.

(d) Pesticide applications. Pesticides shall be properly labeled, authorized for use, and used only by licensed pest professionals in accordance with Part XX of the New York State Environmental Conservation Law and Title 6 of the New York Codes, Rules and Regulations (N.Y.C.R.R.) Part 325, or any successor regulation, and applied so that:

(1) There is no hazard to employees or other persons.

(2) There is no pesticide spraying in food preparation and service areas while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored.

(3) Food, equipment, utensils, linens, and single-service or single use articles are protected from contamination or toxic residues from pesticide drip, drain, fog, splash or spray on by removal, impermeable coverings or other measures, and by cleaning and sanitizing after pesticide application.

[Poisonous] (e) Toxic materials. Where labels permit, poisonous and toxic materials shall be stored in areas designated solely for such purpose, or in a storage area outside the food, equipment and utensil storage area. Bactericides and cleaning compounds shall not be stored with

insecticides, rodenticides or other poisonous materials. Insecticides and rodenticides shall be kept in their original containers.

[Insecticide spraying is prohibited in food preparation and service areas while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored.]

Notes: Section 81.23 was extensively revised and updated by resolution adopted by the Board of Health on XXX. The need for the revision is clearly shown by Department data indicating that in calendar year 2010, 51% of food service establishments were cited for pest violations, and that among the approximately 2,300 establishments closed for imminent or public health hazards, 62% were closed for pest violations.

RESOLVED, that Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to add a new §81.24, to be printed together with explanatory notes as follows:

**§81.24 Garbage and waste disposal.** Garbage and wastes shall be stored, handled, and disposed of in a manner that protects food and food-contact surfaces from contamination, and does not create a condition conducive to pests or a nuisance.

(a) Garbage storage and removal.

(1) Garbage and wastes shall be removed from the establishment daily for collection or stored in a pest-proof room or in easily cleanable, watertight, rodent-resistant, and insect-resistant containers with tight fitting lids.

(2) Solid and putrescible wastes placed on sidewalks for collection shall be held in tightly covered containers lined with plastic bags until collected and disposed of in accordance with applicable law, including but not limited to Title 16 of the Administrative Code and the rules of the Departments of Sanitation and Small Business Services, or successor agencies.

(b) Containers to be cleaned after emptying. Garbage receptacles and covers shall be cleaned immediately after emptying.

Notes: §81.24 was added by resolution of the Board of Health adopted on XXX. It includes provisions from former sections of Article 81 related to garbage and waste accumulations and disposal.

RESOLVED, that §81.25 of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is amended, to be printed together with explanatory notes as follows:

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

No live animal shall be kept, housed or permitted to enter into or remain in any food service establishment [or non-retail food processing establishment]. This section shall not apply to edible fish, crustacea, [shellfish] mollusks, or fish in aquariums[,]; [seeing-eye dogs accompanying sightless persons, hearing or] service dogs or other animals accompanying and [assisting] trained to assist disabled persons[,]; or [patrol] working dogs accompanying police officers.

Notes: §81.25 was amended by resolution adopted XXX to be consistent with similar provisions in Article 161 of the Code, reflecting current regulations implementing the Americans with Disabilities Act.

RESOLVED, that §81.27 (Food service establishments and non-retail food processing establishments; foodworker use of tobacco and consumption of food on premises; spitting prohibited) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, and a new §81.27 (Cleaning of premises, equipment and utensils) be added, to be printed together with explanatory notes to read as follows:

**§81.27 Cleaning of premises, equipment and utensils.**

(a) Non-food contact surface components. Floors, walls, ceilings, and other non-food contact surfaces shall be kept free of accumulations of dust, dirt, food residue, grease, and other debris and shall be cleaned as necessary to prevent such accumulations.

(b) Food contact surfaces. Equipment food contact surfaces and utensils shall be clean to sight and touch and shall be kept free of dust, dirt, food residues, grease deposits, and other contaminants. Equipment food contact surfaces and utensils shall be cleaned:

(1) Before each use with a different type of raw animal food such as beef, fish, lamb, pork or poultry;

(2) Each time there is a change from working with raw to working with ready-to-eat foods; and

(3) At any time when contamination may have occurred.

(c) Equipment with food contact surfaces. Ice bins, coffee grinders, frozen dessert machines, and similar types of equipment with food contact surfaces shall be cleaned and sanitized at the frequency specified by the manufacturer or at a frequency necessary to prevent the accumulation of encrusted food, mold, grease or other contaminants. Unless specifically constructed to enable cleaning in place, equipment shall be disassembled prior to cleaning.

(d) Cloths. Cloths used for the cleaning and sanitizing of food contact and non-food contact surfaces shall be stored clean and dry, or in a sanitizing solution, between uses.

(1) Moist cloths used for wiping food spills from kitchenware and food contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses.

(2) Moist cloths used for wiping non-food contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses.

Notes: Former §81.27 (Food service establishments and non-retail food processing establishments; food worker use of tobacco and consumption of food on premises; spitting prohibited) was repealed by resolution adopted by the Board of Health on XXX, its provisions updated and incorporated into §81.13, and provisions from former §81.37, related to cleaning of premises, equipment, and utensils were updated and included in a new §81.27.

RESOLVED that §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, and a new §81.29 (Dishwashing and ware washing) be added, to be printed together with explanatory notes as follows:

**§81.29 Dishwashing and ware washing.**

(a) Sanitizing. Tableware, utensils, and equipment may be cleaned and sanitized manually, or by machine, using either heat or chemical means, as follows.

(1) Manual: heat. Sanitization using hot water in manual operation shall be done in a three-compartment sink.

(i) The first compartment shall be used for washing with hot water and detergent.

(ii) The second compartment shall be used for a clean hot water rinse.

(iii) The third compartment shall heat and maintain water at or above 170 degrees Fahrenheit (76.6 degrees Celsius).

Items being sanitized shall be wholly immersed in the third compartment for at least 30 seconds to destroy surface pathogens. A numerically scaled, indicating or digital thermometer calibrated to be accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) shall be used to check water temperature. Immersion baskets that permit complete submersion of tableware, kitchenware and equipment in the third hot water compartment shall be provided and used.

(2) Manual: chemicals. Chemicals used for sanitizing in manual operation shall be used in accordance with the manufacturer's instructions, and shall not be used in concentrations that will leave toxic residues on surfaces treated. A test kit or other device shall be used to accurately measure the parts per million concentration of the solution used, and the pH of the solution when the pH level would affect the performance of the chemical sanitizer.

(3) Mechanical: heat. High temperature machines used for the cleaning and sanitizing of utensils, equipment, and food contact surfaces shall be installed, maintained, and operated in accordance with the manufacturer's instructions, shall be equipped with thermometers, and shall maintain water at or above 170 degrees Fahrenheit (76.6 degrees Celsius) for at least 30 seconds during the final rinse cycle to destroy surface pathogens.

(4) Mechanical: chemical. Chemicals used in low temperature machines shall be used in accordance with the machine manufacturer's instructions and shall not be used in concentrations which will leave toxic residues on surfaces treated. A test kit or other device shall be used to accurately measure the parts per million concentration of the solution used, and the pH of the solution when the pH level would affect the performance of the chemical sanitizer.

(b) Drain boards; air drying. Drain boards of adequate size shall be provided and used for the proper handling of soiled items prior to washing and of clean items following sanitization. Drain boards shall be self-draining and located and constructed so that they do not interfere with the proper use of ware washing facilities. All tableware, utensils, and food contact equipment shall be air dried after sanitizing.

Notes: Former §81.29 (Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided) was repealed by resolution of the Board of Health adopted XXX, and its provisions were updated and incorporated into §§81.22.

RESOLVED, that §81.31 (Food service establishments and non-retail food processing establishment; equipment and utensils to be made of nontoxic materials) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, and a new §81.31 (Outdoor cooking, food and beverage preparation facilities) be added, to be printed together with explanatory notes as follows:

**§81.31 Outdoor cooking, food and beverage preparation facilities.**

(a) Street and sidewalk cooking prohibited; exceptions. There shall be no cooking on a street or sidewalk, except when an establishment is participating in an event as defined in Article 88 of this Code, or a mobile food vending unit is being operated in accordance with Article 89 and other applicable law, or permission has been obtained from appropriate City agencies.

(b) Conducted by a food service establishment. When permission has been obtained from the Department of Buildings, Fire Department, and other agencies when required, a permitted food service establishment may cook outdoors at the establishment within the premises under the establishment's ownership, management, operation, and control, in accordance with this section, and other provisions of this Article.

(c) Prevention of nuisances. No nuisance shall be created, including from smoke, garbage, noise or pests.

(d) Structural components.

(1) Floors. A hard surface floor whose construction and materials comply with §81.17 of this Code shall be provided.

(2) Food protection. During food and beverage preparation, hot and cold holding, and food storage, food shall be protected at all times by covering with barriers, including, but not limited to, awnings, tents, screens, vermin-resistant containers, or other methods required by §81.07 of this Code. No foods, or clean utensils and equipment, shall be stored outdoors when the outdoor cooking facility is not in operation. A hand wash sink shall be provided if any food is prepared at the outdoor cooking facility.

(3) Overhead protection. Cooking equipment and utensils shall be covered by lids or larger overhead protections such as a tent, canopy, umbrella or other device.

(4) Lighting and ventilation. Lighting and ventilation shall be provided in accordance with §81.19 of this Code.

Notes: §81.31 (Food service establishments and non-retail food processing establishment; equipment and utensils to be made of nontoxic materials) was repealed by resolution adopted XXX, when many of its provisions were updated and incorporated into §81.17, and a new §81.31 was added establishing provisions for outdoor cooking.

RESOLVED, that §81.33 (Food service establishments and non-retail food processing establishments; equipment and utensils; design, construction and placement) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed to be printed together with explanatory notes as follows:

Notes: §81.33 (Food service establishments and non-retail food processing establishments; equipment and utensils; design, construction and placement equipment) was repealed by resolution adopted XXX, when many of its provisions were updated and incorporated into §81.17.

RESOLVED, that §81.35 (Food service establishments and non-retail food processing establishments; refrigerators) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.35 (Food service establishments and non-retail food processing establishments; refrigerators) was repealed by resolution of the Board of Health adopted XXX, when many of its

provisions were updated and incorporated into a new §81.18 (Cold and hot storage and holding facilities) was adopted.

RESOLVED, that §81.37 (Food service establishments and non-retail food processing establishments; cleaning of premises, equipment and utensils; cleaning methods) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.37 was repealed by resolution of the Board of Health adopted XXX, when many of its provisions were updated and incorporated into §81.29.

RESOLVED, that §81.45 (Drinking straws and single service utensils) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.45 (Drinking straws and single service utensils) was repealed by resolution of the Board of Health adopted XXX, when its provisions were updated and incorporated into §81.07.

RESOLVED, that §81.47 (Water potability certificates) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is repealed, to be printed together with explanatory notes as follows:

Notes: §81.47 (Water potability certificates) was repealed by resolution of the Board of Health adopted XXX. A fee for issuance of such certificates required by the U.S. Department of Agriculture under the Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 451-470; 601-695; 7 U.S.C. 450; 1901-1906) remains in Article 5 of the Code.

RESOLVED, that §81.49 (Modification by the Commissioner) of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby is, amended and renumbered as §81.55, to be printed together with explanatory notes as follows:

[§81.49] **§81.55 Modification by Commissioner.**

When the strict application of any provision of this Article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this Article and upon such conditions as in his or her opinion are necessary to provide for clean and sanitary food prepared, manufactured, processed or served in clean and sanitary establishments. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

Notes: Former §81.49 was renumbered as §81.55 by resolution of the Board of Health adopted XXX and the term “prepared” was added.

RESOLVED, that the Table of Section Headings of Article 81 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is, amended, to be printed with explanatory notes, to read as follows:

## ARTICLE 81

### FOOD PREPARATION AND FOOD ESTABLISHMENTS

§81.01 Scope.

§81.03 Definitions.

§81.04 Approved sources of food.

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

§81.06 Prevention of imminent or public health hazards

§81.07 Food: sanitary preparation, protection against contamination.

§81.08 Foods containing artificial trans fat.

§81.09 [Food; temperature requirements.] Potentially hazardous foods; temperature control for safety.

§81.10 [Time as a Public Health Control.] Time as a public health control.

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

§81.12 Reduced oxygen packaging; cook chill and *sous vide* processing.

§81.13 [Foodworkers; health; clothing.] Food workers: health; hygienic practices

§81.15 Food protection course.

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

General requirements: design, construction, materials and maintenance.

§81.18 Cold and hot storage and holding facilities.

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

§81.20 Plumbing and water supply.

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

Hand wash sinks.

§81.22 Employee and patron toilets.

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

§81.24 Garbage and waste disposal.

§81.25 [Food service establishments and non-retail food processing establishments; animals prohibited.] Live animals.

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

Cleaning of premises, equipment and utensils.

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

Dishwashing and ware washing.

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

Outdoor cooking, food and beverage preparation facilities.

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

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

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

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

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

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

[§81.45 Drinking straws and single service utensils.]

[§81.47 Water potability certificates.]

[§81.49 Modification by Commissioner.]

§81.50 Posting of calorie information.

§81.51 Grading of inspection results and posting of grades by certain food service establishments.

§81.55 Modification by Commissioner.

Notes: The table of section headings of Article 81 was amended by Board of Health resolution adopted on XXX to reflect the comprehensive amendment and reorganization of Article 81.

RESOLVED, that Articles 91 (Meat and Meat Products; Slaughtering of Animals); 93 (Poultry; Slaughtering, Eviscerating and Processing); 95 (Sausage Manufacturing and Smoking, Preparing or Preserving of Meat); 97 (Horsemeat and Slaughtering of Horses); 101 (Shellfish and Fish); 103 (Establishments Engaged in Preparing, Preserving or Smoking Fish); 113 (Frozen Desserts) and 121 (Other Food Establishments: Dry Warehouses; Edible Egg Breaking; Bakeries, Mineral, Spring and Other Waters; Carbonated and Other Beverages) of the New York City Health Code, found in Title 24 of the Rules of the City of New York be, and the same hereby are, repealed.

RESOLVED, that the Table of Section Headings in Part A (Food and Drugs) of Title IV (Environmental Sanitation) of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and same hereby is amended, to be printed together with explanatory notes, to read as follows:

Article 71 Food, [and] Drugs and Cosmetics  
73 [Reserved]  
75 [Reserved]  
77 [Reserved]  
81 Food Preparation and Food Establishments  
83 [Reserved]  
85 [Reserved]  
87 [Reserved]  
88 Temporary Food Service Establishments  
89 Mobile Food Vending  
[91 Meat and Meat Products; Slaughtering of Animals]

- [93 Poultry; Slaughtering, Eviscerating and Processing]
- [95 Sausage Manufacturing and Smoking, Preparing or Preserving Meat]
- [97 Horsemeat; Slaughtering of Horses]
- [101 Shellfish and Fish]
- [103 Establishments Engaged in Preparing, Preserving or Smoking Fish]
- [111 Milk and Milk Products]
- [113 Frozen Desserts]
- 115 Prescription Formula Preparation Facilities
- 116 [Reserved]
- [117 Dairy Food Products]
- [121 Other Food Establishments: Dry Warehouses; Edible Egg Breaking; Bakeries, Mineral, Spring and Other Waters; Carbonated and Other Beverages]

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-788-1087**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Amendment of Health Code Article 81 (Food Preparation)

**REFERENCE NUMBER:** 2011 RG 11

**RULEMAKING AGENCY:** Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: September 7, 2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1526**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Health Code Article 81 (Food Preparation)**

**REFERENCE NUMBER: DOHMH-3**

**RULEMAKING AGENCY: DOHMH**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco Navarro  
Mayor's Office of Operations

September 7, 2011  
Date