



THE NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE

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Health

Enforcement Guidelines for Common Sanitary Violations

Introduction

The New York City Department of Health and Mental Hygiene inspects all 24,000 restaurants in New York City at least once each year. Inspections evaluate restaurants' compliance with the food safety rules found in the New York City Health Code and Health Department regulations.

To promote thorough, scientific and standardized inspections, Health Inspectors:

- Participate in months of classroom instruction on food safety science, New York City's food safety regulations, the inspection process, customer service and dispute resolution.
- Undergo field training that includes accompanying senior inspectors on inspections and then being shadowed by these experienced inspectors who provide feedback and individualized training.
- Enroll in advanced course work and field training to be standardized with qualifications of the New York State Department of Health.
- Follow an inspection checklist that includes every item requiring examination along with descriptions of conditions that constitute food safety violations. The inspection checklist and guide to condition levels are available on the Health Department website, nyc.gov/health/foodservice.
- Receive regular supervisory checks reviewing their inspection reports.
- Consult the Food Safety Enforcement Guidelines, which provides detailed instructions on evaluating each item that is part of the inspection.

This version of the Enforcement Guidelines addresses some of the most common violations: Food Protection Certificate; Holding Food at Safe Temperatures; Protecting Food from Contamination; Maintaining Food Contact Surfaces; Maintaining Non-food Contact Surfaces; Plumbing; Integrated Pest Management.

Food Protection Certificate

- **Summary of the Rule**

The Health Code requires every food service establishment to employ a supervisor of food operations who has a Health Department Food Protection Certificate. A supervisor with this certificate must be on duty and present at the establishment anytime the establishment is receiving, preparing, storing or serving food or when the establishment is open to the public. The supervisor must have the Food Protection Certificate on site and available for inspection.

- **How Does This Rule Protect Public Health?**

One of the most important steps a food service establishment can take is to train the person who supervises operations in food protection. A supervisor trained in food protection understands food safety rules and helps all other food workers in the establishment follow those rules. Health Department records show that restaurants without a trained food protection supervisor are much more likely to have critical and public health hazard violations.

- **Regulations**

- Checklist Violation Number 4A: *Food Protection Certificate not held by supervisor of food operations*
- Health Code Section 81.15(a): *Food protection certificate required*
- Health Code Section 81.15(b): *Certificate available for inspection*
- Health Code Section § 81.03(bb): *Definition of “operating or in operation”*

- **Inspector Guidelines:**

To determine whether the establishment is violating the rule requiring a supervisor with a Food Protection Certificate to be present during operations, the inspector must ask:

- Does the regulation apply?

Is there a food worker receiving, preparing, storing or serving food? Or, is the establishment open to the public? In any of these circumstances, there must be a supervisor of operations on site with a Food Protection Certificate.

- Is there a person on site at the establishment with a Food Protection Certificate?
 - Yes: No citation
 - No: The inspector must cite the violation.
 - The violation must be cited even if the establishment can show the Food Protection Certificate of an employee that is not present. The

Health Code requires that at least one certificate-holder be present at all times during operations.

- The violation must be cited if the person who has the Food Protection Certificate is at the establishment but cannot show the Certificate. The Health Code requires that the Certificate be available at all times for inspection by the Health Department.
 - The violation must be cited if the certificate-holder is not present at the establishment when the inspection begins, even if she or he subsequently returns before the inspection is completed.
 - If the supervisor of operations has enrolled in the Food Protection Certificate Course but has not completed the class and there is no other Certificate-holder on site, the violation will be cited.
- Check: Does the photograph on the Food Protection Certificate match the person claiming to be the Certificate-holder? Some old certificates have no photo, and the inspector must look at a photo ID of the Certificate-holder to confirm the name. If it is unclear whether the person claiming to have the Food Protection Certificate actually has one, the inspector must call a supervisor.

- **Correcting the Violation**

If the establishment is cited for this violation, the inspector should explain that a supervisor of food operations must enroll in and pass the Food Protection Certificate Course. The inspector will explain that the course is available in multiple languages, and can be taken in person, or online. The inspector should encourage the person in charge to send as many staff as possible for training to promote redundancy and food safety. To learn more about the Food Protection Certificate Course, visit nyc.gov/health/foodservice.

Holding Food at Safe Temperatures

- **Summary of the Rule**

The Health Code requires food service establishments to keep potentially hazardous food at safe temperatures. There are two options: food can be kept below 41 or above 140 degrees Fahrenheit, *or* food can be kept at room temperature for brief periods if the establishment monitors the time and temperature using Time as a Public Health Control. There are some exceptions.

- **How Does This Rule Protect Public Health?**

Keeping potentially hazardous food at safe temperatures is critical to protecting diners from foodborne illness. Potentially hazardous food includes meat, fish, dairy products, cooked rice, cooked vegetables and sliced fruit. When these foods are held between 41 and 140 degrees Fahrenheit, they are in the “temperature danger zone” and hazardous bacteria and other pathogens can grow rapidly. If the food is held in the temperature danger zone for too long, there can be enough growth of these pathogens that the food can make people sick. Keeping cold food below 41 degrees and hot food above 140 degrees, or keeping food at room temperature for only a limited time, is one of the best ways to protect diners from foodborne illnesses.

- **Regulations**

- Checklist Violation Number 2B: *Hot food item not held at or above 140°F*
- Checklist Violation Number 2G: *Cold food held above 41°F (smoked fish and reduced oxygen packaged foods held above 38°F) except during necessary preparation*
- Health Code Section 81.03 *Definitions*
- Health Code Section 81.09 *Potentially hazardous foods; temperature control for safety.*
- Health Code Section 81.10 *Time as a Public Health Control*
- Health Code Section 81.12 *Reduced Oxygen Packaging Food*

- **Inspector Guidelines:**

To determine whether the establishment is violating the requirement to keep food at safe temperatures, the inspector must consider:

- Is the item a potentially hazardous food?
 - If no, there is no violation.
 - If yes, determine whether the establishment is using temperature control or Time as a Public Health Control for this food item.
- Is the Establishment is Using Temperature Control? If yes:
 - Is the food in the Temperature Danger Zone (41-140 degrees)?

- No: There is no violation.
 - Note: some foods must be held below 34 degrees or 38 degrees Fahrenheit.
- Yes:
 - Determine why the food is in the temperature danger zone:
 - Is the food being cooled or re-heated or is it under necessary preparation? If so, there may be no violation. Check that the establishment is using proper cooling, re-heating or preparation procedures. Cooling must take place in a refrigerated unit and not at room temperature.
 - If the food is not being cooled, re-heated or prepared, determine why the food is in the temperature danger zone.
 - Ask how the food was prepared.
 - Measure the temperature of holding units to check whether they are set to be cold or hot enough.
 - Check whether the establishment is using the equipment properly.
 - Assess the establishment's temperature tracking procedures.

If the food is being held in the temperature danger zone, and there is no permissible reason, the inspector will issue a violation.

- Is the Establishment using Time as a Public Health Control (TPHC)?
 - Are label requirements met? The label must show the:
 - Time the food was removed from temperature control.
 - Temperature of the food when it was removed from temperature control.
 - Time at which the food must be discarded, served or cooked.
 - For cold food being held the maximum time of 6 hours, the food's temperature must have been taken and recorded on the label after the food was out for 4 hours.
 - Are temperature requirements met? At the time the food is removed from temperature control, the food must have been:
 - Below 41 degrees for cold food or above 140 degrees for hot food.
 - Are time requirements met?
 - If the food began hot, it cannot be held at room temperature for more than 4 hours. After that, if it hasn't been served, it must be discarded.
 - If the food began cold, after the food has been held at room temperature for four hours, the establishment must take the food's temperature. If the food is still colder than 70 degrees Fahrenheit it can be held at room temperature for 2 more hours. If the temperature is 70 degrees Fahrenheit or above, the food must immediately be discarded, served or cooked.
 - Is TPHC being used for foods that must be kept under temperature control?
 - The establishment may not use TPHC for

- Eggs that will be served in senior centers, charitable feeding programs, adult day care programs, custodial care and health care facilities assisted living programs, day care, preschool or primary and secondary schools.
- Food sold in mobile food vending units, vending machines, temporary food service establishments, self-service areas, self-service salad bars or buffets.
- Preparation and holding of opened or packaged smoked or vacuum-packed food products.
- If TPHC is used for any of these, the inspector will issue a violation.

- **Correcting the Violation**

The inspector should instruct the establishment on avoiding this violation in the future, including by repairing its refrigerator, recalibrating thermometers, establishing temperature tracking processes, or creating TPHC labels.

Because holding food at unsafe temperatures is a public health hazard, it requires immediate correction. The inspector will help the establishment make these corrections immediately.

If the establishment is using Time as a Public Health Control and hot food has been out of temperature control for more than four hours, or cold food has reached a temperature of at least 70 degrees after four hours out of temperature control or has been out for six or more hours, the inspector will instruct the operator to discard the food.

If the establishment is using temperature control, the method for correcting the violation will depend on multiple factors, including the food's temperature; the process being used, that is, whether the food is under preparation or being held, cooled or reheated; the time the food has been out of temperature control; and the cooking, reheating or cooling procedures used.

Protecting Food from Contamination

- **Summary of the Rule**

The Health Code requires food service establishments to protect food from contamination during food storage, preparation, transportation and display.

- **How Does This Rule Protect Public Health?**

When food becomes contaminated, the person eating it can become sick. Contamination can occur in many different ways, such as when raw meat, poultry or fish touches or drips onto ready-to-eat food like salad ingredients; when food is left uncovered, exposing it to dust, flies or splashes from cleaning fluid; when customer self-service areas do not provide customers with serving utensils, tongs, deli paper or other barriers to prevent bare hand contact with food; or when food or utensils are placed on unsanitary surfaces.

- **Regulations**

- Checklist violation 6C: *Food not protected from potential source of contamination during storage, preparation, transportation, display or service.*
- Health Code section 81.07 (a), (d), (e) *Food; sanitary preparation, protection against contamination.*

- **Inspector Guidelines**

To determine whether the food service establishment is protecting food from contamination, the inspector must evaluate food handling practices that can lead to contamination. If any of these are found, a violation must be issued:

- Observe food preparation to see whether food is exposed to contamination.
 - For example, is salad prepared away from prep areas where raw meat is chopped?
- Examine food storage areas, including refrigerators, to see whether:
 - Raw meat, poultry or fish is touching or directly above ready-to-eat food.
 - Clean, ready-to-eat food is touching unwashed food.
 - Cooked food is left uncovered even after it has cooled.
 - Food is left uncovered under a vent, allowing condensate to drip onto it.
 - Food is exposed to dust, splashes from cleaning activities or other contaminants.

Check any customer self-service area such as a salad bar, buffet or bread bin. If any of the following conditions are not met, then a violation must be issued:

- Tongs, deli paper or other barriers must be provided to allow customers to avoid bare hand contact with food.
- A sneeze guard must be in place to protect food.

Assess food storage containers.

- Food must be stored in food grade materials. For example, food that is not being thrown away must not be stored in garbage bags.
- Food storage containers must seal tightly to keep out pests.
- Containers should be labeled with contents to prevent confusion and misuse.
- Containers should be kept at least 6 inches off the floor.
- Observe food service: uneaten food such as bread in a basket may not be re-served to other patrons.

- **Correcting the Violation**

If the establishment is cited for this violation, the inspector must discard any contaminated food, instruct the operator to move any food that is in contact with a non-food grade container, paper or bag into something made of food-grade material, and instruct the operator to move food or food equipment away from any potential contaminant.

Maintaining Food Contact Surfaces

- **Summary of the Rule**

The Health Code requires food service establishments to keep surfaces that touch food clean and in a condition that prevents buildup of food material. Surfaces such as cutting boards, utensils, deli meat slicers and mixing bowls, must be cleaned after each use and following any activity where contamination may have occurred.

Depending on its use, some contact surfaces must be sanitized to prevent cross-contamination. Surfaces must be kept smooth and free from paint, rust and stains that can contaminate food and make it difficult to see whether the surface has been thoroughly cleaned.

- **How Does This Rule Protect Public Health?**

When surfaces that touch food are not properly cleaned, they can contaminate food and make diners sick. For example, a cutting board used to cut raw chicken must be sanitized before it is used to chop salad ingredients to avoid having salad ingredients contaminated with pathogens from the raw chicken. In addition, because microorganisms can grow in grooves, pits and chips, making them difficult to wash away, food contact surfaces must be made of sufficiently smooth materials and must be well maintained and repaired or replaced over time. Once cutting boards become excessively worn or develop hard-to-clean grooves, they should be discarded.

- **Regulations**

- Checklist Violation Number 6D *Food contact surface not properly washed, rinsed or sanitized after each use and following any activity when contamination may have occurred.*
- Health Code Section 81.03(p) *Definition of food contact surface*
- Health Code Section 81.07(a)(2) *Food; sanitary preparation, protection against contamination*
- Health Code Section 81.17(d) *General requirements: design, construction, materials and maintenance*
- Health Code Section 81.27(b), (c) *Cleaning of premises, equipment and utensils*

- **Inspector Guidelines**

To determine whether the establishment is violating this Health Code rule, the inspector must:

- Examine all surfaces that come in contact with food.
 - Meat slicers must be free from crusted food particles.
 - Cutting boards must be clean and free from pits, chips or grooves deep enough to prevent cleaning and sanitizing
 - Can opener blades must be clean and free from old food debris or grime.

- Ice machines must be free from mold.
- Observe food preparation activities to see whether regular cleaning occurs.
Including:
 - The same cutting board may not be used to prepare raw meat and ready-to-eat food without being washed and sanitized in between uses.
 - Knives, spatulas, scoops and other utensils may not be used to prepare potentially hazardous food such as raw eggs and then on ready-to-eat food without first being sanitized.
 - Mixing bowls, even if used for the same food, must be periodically cleaned to remove food residue.

- **Correcting the Violation**

If the establishment is cited for this regulation, the inspector will discard any food that has potentially been contaminated, direct the operator to clean, and depending on use, sanitize, dirty food contact surfaces before using them again; instruct the operator to repair or replace cutting boards or other surfaces that are grooved, pitted or chipped; and inform the operator to repair, clean or replace any equipment that can no longer be properly cleaned and sanitized. The inspector will provide guidance, if needed, on proper cleaning and sanitizing techniques and schedules.

Maintaining Non-Food Contact Surfaces

- **Summary of the Rule**

The Health Code requires food service establishments to keep surfaces clean, even those surfaces that do not come in contact with food. To ensure proper cleaning, non-food contact surfaces and equipment must be made of materials that are easily cleaned and movable so that the surfaces, equipment, and the areas around them can be cleaned routinely.

- **How Does This Rule Protect Public Health?**

Surfaces that are not regularly cleaned can provide food, water or shelter for pests and can leave surfaces with food particles, dust or dirt that can end up in food. Keeping these non-food contact surfaces clean avoids a pest problem and reduces the chance that food will become contaminated, making customers sick.

- **Regulations**

- Checklist Violation Number 10F: *Non- food contact surface improperly constructed. Unacceptable material used. Non-food contact surface or equipment improperly maintained and/or not properly sealed, raised, spaced or movable to allow accessibility for cleaning on all sides, above and underneath the unit.*
- Health Code Section §81.17(e)(1) *Flooring improperly constructed/maintained*
- Health Code Section §81.17(e)(2) *Walls and ceilings*
- Health Code Section §81.17(e)(3) *Equipment and fixtures improperly constructed/maintained*
- Health Code Section §81.18 *Cold and hot storage holding equipment*

- **Inspector Guidelines:**

To determine whether the establishment is improperly maintaining non-food contact surfaces, the inspector must:

- Observe non-food contact surfaces to see whether these are kept clean. For example, there must be no:
 - Accumulation of water on the floor or elsewhere
 - Grease or old food particles on the floor, walls or on or behind equipment
- Examine surface materials to see whether they are well maintained. For example, there must be no:
 - Ceiling, wall or floor tiles that are missing or broken
 - Shelves, cabinets and tops of counters with holes or gaps. Shelving, cabinets and counter tops must be made of hard, durable materials that are non-absorbent and easily cleaned.
 - Peeling, cracked or chipped paint on walls, ceilings, floors or equipment
 - Rusted shelving
 - Dirty and dusty fans in refrigeration equipment

- Equipment seals and lids that do not close tightly
 - Refrigeration unit(s) with a build-up of frost or ice which can block air flow and leads to loss of cooling
- **Correcting the Violation**

If the establishment is cited for this violation, the inspector will review proper cleaning techniques and schedules.

Plumbing

- **Summary of the Rule**

The Health Code requires food service establishments to be equipped with properly constructed plumbing that supplies the establishment with potable water and carries waste to the sewer or sewage disposal system without backflow. The sewage system and drains must not be directly connected to fixtures or equipment used for storage, preparation or processing of food. Sewage pipes may not run directly over any area where food is stored or prepared, and hoses carrying potable water must be made of approved materials, be smooth, durable, nonabsorbent and corrosion-resistant. Plumbing must be kept in good working order. Grease traps must be clean and well maintained.

- **How Does This Rule Protect Public Health?**

Properly installed and maintained plumbing keeps food, food storage areas and food preparation surfaces free from water contaminated with human and other waste, and it prevents leaks that can become a source of water for roaches, mice and other pests. Hoses carrying potable water must be made of approved materials so they do not leach contaminants into the water. When plumbing is well designed and maintained it keeps waste water away from food and helps prevent foodborne illness.

- **Regulations**

- Checklist Violation Number 5A: *Sewage disposal system improper or unapproved.*
- Checklist Violation Number 10B: *Plumbing not properly installed or maintained*
- Health Code Section §81.20 *Plumbing and water supply.*

- **Inspector Guidelines:**

To determine whether the establishment has properly installed and maintained plumbing, the inspector will check that:

- Potable water comes from the city's water system or from an approved source.
- Equipment connected to the potable water supply is equipped with an air gap, vacuum breaker or double check valve.
- Sewage pipes are directly wasted to the main sewer system.
- Sewage pipes are not located over food preparation tables, storages areas and storage units unless these locations are protected from possible leakage.
- Plumbing systems and hoses that convey potable water are made of food-grade, approved materials that are smooth, durable, nonabsorbent, and corrosion-resistant.

- **Correcting the Violation**

If the inspector finds a plumbing violation, and the inspection occurs before the Department has issued a permit to the establishment, the plumbing problem must be corrected before the Department will issue a permit.

If the establishment is operating, the inspector will direct the operator to move any food preparation table or storage unit located under sewer pipes. If the plumbing violation cannot be corrected during the inspection, the inspector will call the Food Safety Office to receive directions from a supervisor.

If the inspector determines there may be a public health risk created by inadequate plumbing, the inspector will call the office and the Department may order the establishment to close as a temporary, emergency measure until the situation is corrected.

To help the operator avoid this violation in the future, the inspector should review plumbing requirements and good maintenance practices. If appropriate, the inspector might refer the operator to information on backflow prevention, available at http://www.nyc.gov/html/dep/html/forms_and_permits/backflow_faq.shtml#a1 and on grease traps, available at http://www.nyc.gov/html/dep/html/businesses/busgrease_wide.shtml.

Integrated Pest Management

- **Summary of the Rule**

The Health Code requires food service establishments to be free from roaches, rats, mice and flies and, even when these pests are not present, to maintain an establishment free from the conditions that can lead to pests.

- **How Does This Rule Protect Public Health?**

Roaches, rats, mice and flies can spread diseases as they move around a food service establishment, contaminating food and making customers sick. To keep customers safe, food service operators must exterminate these pests and prevent a pest infestation by eliminating the conditions that allow them to thrive – entry ways, places to shelter, hide or nest and access to food and water.

- **Regulations**

- Checklist Violation Number 4K: *Evidence of rats or live rats present in facility's food and/or non-food areas*
- Checklist Violation Number 4L: *Evidence of mice or live mice present in facility's food and/or non-food areas*
- Checklist Violation Number 4M: *Live roaches present in facility's food and/or non-food areas*
- Checklist Violation Number 4N: *Filth flies or food/refuge/sewage-associated flies present in facility's food and/or non-food areas*
- Checklist Violation Number 8A: *Facility not vermin proof. Harborage or conditions conducive to attracting vermin to the premises and/or allowing vermin to exist*
- Health Code Section §81.23 *Integrated Pest Management*

- **Inspector Guidelines:**

To determine whether the establishment is violating the rule prohibiting pests or conditions that lead to pests, the inspector must look for:

- Live pests
 - Look for live roaches, rats, mice and flies. Use a flashlight to look in dark areas including under and behind equipment where pests are likely to hide. Crouch down to examine areas that are otherwise hard to see. Check food storage areas and food containers. Look in sinks, floor drains and garbage areas.
- Evidence of rats and mice
 - Look for rat and mouse droppings. Rat droppings are typically a $\frac{1}{4}$ to $\frac{1}{2}$ inch in length and capsule-shaped with blunt ends. Mouse droppings are generally about $\frac{1}{8}$ to $\frac{1}{4}$ inch long and rod-shaped.

- Search for rat and mouse grease tracks along walls. A rat's track will generally be $\frac{3}{4}$ of an inch to an inch above the floor and may be accompanied by a track on the floor made by a dragging tail. A mouse's wall track will typically be $\frac{3}{8}$ of an inch above the floor or less.
 - Check any holes for gnaw marks. Holes gnawed by rats are usually about 2 inches or more in diameter with rough edges. Mice gnaw small, clean holes about 1-1/2 inches in diameter.
 - Depending on the establishment's location, check the outside area around the establishment for rat burrows.
- Conditions that promote pests
 - Check for cracks, holes or other openings that would allow pests to enter the establishment, including from other areas within the building. Rats can enter through a hole the size of a quarter and mice fit through a hole the size of a dime. Roaches and flies can fit through any size opening.
 - Check the bottoms of doors that lead from the outside into the establishment to see whether these are equipped with required barriers, such as anti-pest tension brushes or a space no larger than $\frac{1}{8}$ of an inch.
 - Look for accumulated cardboard, papers, old equipment or other garbage creating areas where pests can take shelter, hide, breed or establish nests.
 - Check for presence of old food and grease build-up on walls or equipment. Examine food containers to see whether they are tightly closed and food stored out of pest-resistant storage containers.
 - Inspect for sources of water including dripping plumbing or standing water.

- **Correcting the Violation**

If the establishment is cited for this violation, the inspector should review cleaning procedures and advise the establishment to create and follow a routine cleaning schedule. Areas where pests can take shelter and access food and water must be eliminated. Cracks, holes and other gaps allowing pests to enter the establishment must be repaired. Operators must inspect all deliveries of food and supplies to prevent pests from being carried in with these packages.

The inspector should remind the operator that every establishment is required to enter into a contract with a pest management professional, licensed by New York State Department of Environmental Conservation, to provide preventive measures and extermination services.

In some cases a pest infestation will be so severe that it will constitute an imminent health hazard that cannot be immediately corrected. If the contamination is limited to a food supply, the inspector may require the food to be discarded. If the infestation affects the entire establishment, the inspector will consult Department management, who will determine whether to order the establishment to close as a temporary, emergency measure until the pest infestation can be corrected.