

#1

From: BollesBeaven, Paul [<mailto:pbollesbeaven@ushgnyc.com>]
Sent: Monday, September 26, 2011 1:18 PM
To: Elliott Marcus
Subject: RE: Next FSTAC Meeting

Dear Elliott,

You undoubtedly know Austin Publicover in our office and he is passionate and talented when it comes to the health code and our adherence to it. I enlisted his help in reviewing the amended Article 81 and his comments/questions are below. You should also be aware that he wrote me the following: "I believe this is Elliott's initiative, and I want to give him credit for consolidating the many amendments to Article 81, as well as clarifying the language and creating a better flow. He and his team have done an outstanding job—this is the first readable version of Article 81 that I've ever perused. Upon October 27th approval, I hope that DOHMH is able to put this online quickly. The "current" Article 81 available online is from 2004."

So given that, here are his comments:

- Page 4 (81.04 summary) provides that manufactured frozen desserts (MFDs) be identified, manufactured, and sold in accordance with Article 4-A of the State Agriculture and Markets Law. Why are they changing this? How will they enforce, and does this mean that any MFD violations are now referred to AgriMarkets, and if so, do those violations still affect our letter grade?
- Page 8 provides definitions of what DOHMH regulates, and such things as "ice cream shops" are not included. Does this mean that a Dunkin Donuts/Baskin Robbins would be inspected by DOHMH and AgriMarkets? If so, this has huge implications for all of our operations, as it would mean two different agencies inspecting their own "areas", and two different sets of fines. It is more probable that DOHMH will enforce Article 4-A, but why can't DOHMH adopt their own resolutions about manufactured frozen desserts?
- Page 10 defines "cured food" and most certainly affects our refrigerated sausage fermentation at USC, GT, EMP. There is no provision for refrigerated fermentation in the Code, but Beth Torin has said in the past that if meats are curing in a refrigerated environment, they don't need a HACCP plan. Why the change? And when will DOHMH inspector begin enforcing this rule? I need to know in order to begin filing new curing HACCPs with DOHMH, otherwise we'll get hit with 10 – 28 point violations.
- Page 10, last line in "cut leafy greens" definition includes the word "torn". But the very reason this amendment was adopted is because blades and cutting implements introduce bacteria into the greens, moving them from a shelf-stable food to a Potentially Hazardous Food. When leafy greens are torn with a clean & gloved hand, there is little to no chance for bacteria to be introduced. DOHMH inspectors have routinely approved "torn" leafy greens as being shelf-stable. I would like to see this word removed or the science behind torn leafy greens becoming PHFs.
- Page 11, section (m)—"otherwise acceptable to the Dept" for other-than NSF or ANSI certified materials. What is the standard by which the Dept accepts non-NSF and non-ANSI certified materials? How does the Dept determine this?
- Page 12, (and back to my Page 8 argument), AgriMarkets' Article 4-A, section 71-b through 71-d provides standards for an application, a renewal, a fee, etc for MFDs. Are we to pay these fees? If not, DOHMH must adopt its own version of AgriMarkets' Article

4-A, wherein standards for MFDs are established for enforcement, but there is no confusion over licensure.

- Page 13, section (aa): are “shared kitchens” exclusive to caterers? Would Maialino qualify, given the commingled nature of the ware washing operation?
- Page 14, section (kk): same as above re: shared kitchens.
- Page 15, section (a): same as ‘Page 12’ comments above: DOHMH is enforcing Article 4-A? Any additional fees?
- Page 24, section (b): eggs are still 41 degrees F and below. FDA established 45 degrees F as a safe temperature. DOHMH states on page 2 that the proposed rule is for updating Article 81 in accordance with the FDA’s 2009 Food Code. Yet these archaic temperature standards still exist. Is not what’s good for the nation good enough for New York City?
- Page 25, we really need to get on our cooks about actually ***using*** thermometers when cooking, especially during a Health inspection. DOHMH has smartly re-codified so that having a thermometer in your sleeve is no longer enough. Although I applaud this, I know we are going to see this violation time & again in our fine dining operations.
- Page 26, we should give strong praise to the TCS rule that allows strict controls and criteria to exist alongside reality. We all know that food does not become dangerous upon dropping below 140F, and 81.10 acknowledges this. This amendment, passed in July 2010 alongside the letter grade system, is wonderful. Each of our restaurants should take full advantage of DOHMH criteria for labeling, we will save ourselves from dozens of temperature violations each year.
- Page 30, section (iv), I am NOT comfortable with this at all, the science does not bear this out, and you will make people sick or kill them with C. botulinum if your product is kept with “no shelf life restriction”. Ultra-rapid (blast-chill) or slow freezing does not destroy C. botulinum spores, and it will not inactivate the toxins. When thawing frozen ROP product, any heat between 40 - 120 degrees F can activate the spores’ germination, causing new toxins to be manufactured. In fact, a Journal of Infectious Diseases study in 1933 demonstrated C. botulinum to be capable of surviving eight repeated freezings & thawing. There needs to be a provision here for thawing frozen ROP (time, temp, or method), and beginning on page 29 into page 30, there is no restriction on product placed in ROP, e.g. fish and aquatic animals have exponentially higher Clostridia counts than mammals and must be handled differently.
- Page 40, (a), foot-operated trash receptacle—we need to get these in the restaurant ASAP. First, we need clarity from DOHMH if a “Thomas Keller counter” with a square aperture in it is acceptable to use if a trash bin is kept underneath it. Can DOHMH clarify if this kind of dump is legal?
- Page 42, (3), DOHMH is really going to allow a quarter inch gap under doors??? This has not been the case in the past, and we were cited for an eighth inch gap at USC on the upstairs gap on office exit door going out to building stairwell.
- Page 42, (4), a little grammatical housekeeping in the last sentence, “...contain one or more roaches, other insects, or rodents” to mirror the beginning of the section.

I hope these are helpful to you and your team. Please let me know if you have any questions about these or want any clarification.

Thank you,

Paul

Paul Bolles-Beaven
Senior Managing Partner, Operations

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Union Square Cafe * Gramercy Tavern * Eleven Madison Park * Blue Smoke * Jazz Standard
Shake Shack * The Modern * Cafe 2 * Terrace 5 * Union Square Events * Maialino * Hospitality Quotient

#2

Health Code Facilities

Alberto [alberto@lugoloungeny.com]

Sent: Friday, October 21, 2011 12:01 PM**To:** Resolution Comments**Importance:** High

10/25/2011 12:01 PM
10/25/2011 12:01 PM

Hello,

I believe that the department has overlooked a new trend of Grocery Stores (Bodegas) selling ready to eat food. These facilities have boomed in the last three years selling food with a full line of steam tables displayed food. Their level of inspection seems to be overlooked too often. The presence of live animals (cats), the lack of food safety and protection training, the lack of infrastructure implementation, among others should raise a red flag. The city should at least require such establishments to obtain a "restaurant" like permit and not just a Grocery (deli) retail permit. A letter grade system should also be required to such establishments.

Please work on enforcing and/or prohibiting such establishments for the sake of consumer health and safety.

Thank You.

Alberto

81.31 OUTDOOR COOKING, FOOD, & BEVERAGE FACILITIES

AMIRJSYED@aol.com

Sent: Friday, October 21, 2011 3:06 PM

To: Resolution Comments

Here are some things to consider about this Amendment:

- Smoke is bad for the public
- the grease dripping from these carts leads to dirty sidewalks attracting pests
- lack of proper sanitary practices by the vendors
- their products lead to more garbage in the public area
- their customers disturb surrounding business by invading their shops and establishments, often loitering, polluting, using their restrooms, and even stealing their condiments, utensils, and beverages.

Amir J. Syed

#4

comments on doh code

Laure Travers [lauretravers@yahoo.com]

Sent: Tuesday, October 25, 2011 3:22 PM

To: Resolution Comments

Dear Associate Commissioner Rena Bryant:

Thank you for offering food service establishment an opportunity to comment on the proposed amendments to article 81.

I established, own and operate a small neighborhood bar located on Canal street in Manhattan. Although I have no comment on the amendments at hand, I would like to seize this opportunity for you to consider the following additional amendments. You might like some and not others, and I might very well have not considered all the facts and be unknowledgeable about certain dangers. So it is very humbly that I am asking you to consider them individually and for their merit. I appreciate your time and attention tremendously.

The rule requiring bathroom doors to self-close makes it cumbersome to wash the bathrooms and might serve little health purpose.

The rule requiring bars which have no kitchen to have all of their bartenders trained for the department of health food safety certificate (since there is typically only one employee at a time in such establishments) seems overtly prudent. It could be amended to require the supervisor who trains them (who cannot be present at all times) to be trained (in establishments with no kitchen), or to develop an alleged version of the food protection certificate for bartenders?

The requirements to post signs informing customers about choking, allergies, or the dangers of drinking while pregnant seem redundant since people are already aware of these facts.

The requirement that cutting boards should have no "deep" cuts seem difficult to implement.

The requirement that bartenders use latex gloves and/or tongs to garnish drinks with lime and lemon could be exaggeratedly prudent

Preventing pets like dogs to enter food establishment (rather than kitchens or food prep areas) also seem overtly prudent, as they cannot contaminate food or drinks as long as they stay in the room used by customers.

Preventing customers to smoke in outside areas is so unlikely to cause workers to experience second hand smoking that it also seem over cautious.

Again, I hope you forgive my boldly expressing my concerns, and that maybe you find at least one of my suggestions interesting.

Sincerely,

Laure Travers, Clandestino, 35 Canal, NYC

<http://www.clandestinonyc.com/>

Señores de Sanidad.

My Nombre es Carlos A. RECEIVED
DOMMH/OFFICE OF THE SECT
RECORDS & COMM. OFFICER
62810 OCT 27 PM 2:22
Tengo un certificado de Sanidad, Expedido por
El Departamento de Sanidad de New York.

En esta Carta Quiero Manifestarles Que soy
Uno de los New Yorkinos en contacto con todo
lo que Ustedes estan haciendo por mejorar
la salud de todos a aquellos consumidores de
N.Y. y que Nuestra Ciudad sea Una de las
Mas agradables por todos los turistas y la
Poblacion en General de Queer. ~~problemas~~. Nuestra
Gastronomia que bien amplia que si es.

My proposito con la presente es de proponerles
a todas las Directivas de ese Departamento
De por que No exigible a toda a quella
Persona que trabaje En cuestion de Venta y
Preparacion de alimentos Un certificado de Sanidad.

Expedido por el Departamento de Sanidad
de la Ciudad de New York y yo se
que de esa manera todo Mundo Va a brindar
un servicio, tanto en preparación, Manipulación,
y Entrega del alimento con un excelente servicio.
Que Nuestra Ciudad sea la más apetecida por
todo el mundo en querer venir a probar
Nuestra gastronomía.

Si alguna persona en Sanidad con un cargo
importante desea saber como podríamos
certificar a todos, " Cocineros, Meseros, Vendedores y
deliveres " Si gusta con mucho placer me
encantaría Manifestarle My idea y yo se
de ante una que la ciudad haría unos
Varios Millones de dolares. y Nuestra Gente.
Nuestros turistas. Nuestra Ciudad sea Ciudad
Modelo del Mundo.

Gracias por leerlas Atte. Carlos A. Castaño.

10/20/2011

1917 4027268.

718 6517709

{ Por Favor
en
Español

My name is Carlos A. Castano.

I have a certificate of health provided by the Department of Health. In this letter I want to manifest that I am one of the New Yorkers happy with everything that your department is doing to improve the health of all consumers, and NY and that our New York City is one of the most agreeable for all tourist and the general public who wants to taste our food which is very ample.

My purpose is to present to all the Directors of the Department is to why not require all person who work in the sale and preparation of foods to obtain a food protection certificate provided by the Department of Health in the City of New York and I know that this way everyone would provide a service so much on the preparation, manipulation and service of food with excellent services that our City be the most appetizing in the entire world and they would come and taste our foods.

If a person in Health with a charge of so important desires now we could certify all. Cooks, waiters, sellers, delivery persons with lots of pleasure I would like to manifest my idea and I know beforehand that the city would make millions of dollars and our people, our tourist, our City would be a Models city for the world.

Thank you,
Carlos A. Castano



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Comments

of

Andrew Rigie

Executive Vice President, Greater New York City Chapters

New York State Restaurant Association

on the

**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**

October 27, 2011

10:00a.m.

New York City Department of Health and Mental Hygiene

125 Worth Street

Third Floor Boardroom 331

New York, New York 10013

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Good morning. My name is Andrew Rigie and I am the Executive Vice President of the Greater New York City Chapter of the New York State Restaurant Association (NYSRA), a trade group that represents approximately 5000 food service establishments in New York City. Our Food Service Establishment (FSE) members represent one of the largest constituencies regulated by the New York City Department of Health and Mental Hygiene (DOH) and DOH regulations.

New York City is a culinary mecca and a home to more than 24,000 foodservice establishments, which employ more than a quarter million people. Our restaurants provide some of the most traditional, diverse, creative, cutting-edge and sought after dining experiences in the world.

Yet to ensure this status as a first class dining city we must ensure that our food safety practices are first class too. To that end, NYSRA and its FSE members regularly provide their staff with the most up-to-date food safety training and work hard to provide the best, and safest, food in the world.

NYSRA welcomes revisions to Article 81 that result in modern, effective, and easily understood regulations. The proposed revisions seek to remove both antiquated and duplicitous regulations of FSEs. And the effort to have the Health Code more aligned with the United States Food & Drug Administration's 2009 *Food Code* is to be commended. NYSRA generally supports governmental initiatives that streamline business operations for FSE operators. Accordingly, NYSRA supports many of the proposed revisions to Article 81.

However, regulations should be removed or revised whenever they are unclear, duplicitous, or create unjustifiable regulations. FSEs strive to comply with the numerous regulations impacting their business, especially the Health Code. And one recurring concern raised by FSEs is that certain technical violations of the Health Code, especially those that have no impact on food safety, can result in unnecessary, punitive fines. Worse, these violations can result in a negative letter-grade rating which results in thousands of dollars or fines, appeal costs, re-inspection costs and a loss of business if issued a Grade Pending, B or C letter grade. The impact of these violations falls hard on local small business owners.

For example, in section 81.27(a) of the proposed regulation, FSEs may receive violations and be fined for accumulations of "food residue and grease." This regulation fails to address the realities of food preparation – sometimes messes are made and they cannot be cleaned up during busy food preparation periods. For example, grease splatter on walls when using fryers and grills. Here, NYSRA suggests an equally protective version of the regulation that provides

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for the realities of FSE operations. NYSRA believes that violations should **only** occur if the accumulation of dust, dirt, or food residue is not in relation to necessary preparation and/or clean preparation of food. Also, a reasonable amount of time to clean up any dirt and dust should be provided for in the proposed regulation.

NYSRA seeks to have a Health Code that is consistent with the FDA's 2009 *Food Code* so that FSEs are not operating under two sets of standards. Though New York City will continue to maintain its own code, NYSRA requests that it be as stream-lined and user-friendly for FSEs so they follow the Health Code, ensure public safety and thrive as businesses.

For these reasons, NYSRA requests that you consider our written comments to the proposed revisions to Article 81 and revise the proposed regulations before adoption.

The New York State Restaurant Association supports much of the proposal if adequate revisions and safeguards are adopted to remove subjectivity in the Health Code. It is this very subjectivity – as highlighted in NYSRA's seven pages of technical comments (attached) – that leads to resentment, confusion, and frustration among FSEs. NYSRA, FSEs, and the Department of Health all desire the same goal – the safest and most vibrant restaurant industry in the world. Clarifying these regulations will help all interested parties meet that goal.

We suggest that the Department develop a system to collect the email addresses of DOH permit holders, FSE owners and their agents. This system could be used as a vehicle for the DOH to disseminate important information regarding permit renewals, changes to the Health Code, public hearings and other important information.

A vital part of NYSRA's mission is to continue to work cooperatively with the City to develop a fair and equitable regulatory environment that encourages the success and growth of New York City's world famous restaurant industry. I thank you for the opportunity to comment here today on behalf of NYSRA and the entire food service industry; we are encouraged by the City's efforts to reduce regulatory burdens on Food Service Establishments and optimistic such efforts will succeed.

Respectfully Submitted,



Andrew Rigie

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**New York State Restaurant Association's Technical Comments to Proposed
Revisions to Article 81**

1. § 81.03(kk). Communal kitchens. The proposed regulations should clarify who shall be responsible for violations levied against a communal/shared kitchen.
2. § 81.07(a)(1). The use of a dedicated compartment sink for food preparation is a best practice for food preparation. However the mandate to have a dedicated compartment sink for food preparation will increase costs to those establishments that have built their kitchens prior to the enactment of this proposed regulation. Hence, this regulation should be mandated for all new food service and non-retail processing establishments that open or remodel after the effective date of this proposed regulation. Any grandfathered establishment could be required to utilize proper sanitization techniques before utilizing a non-dedicated compartment sink for food preparation.
3. § 81.07(h). Dispensing Utensils. This section appears to apply to buffet service but could impact operations in a kitchen where holding trays are utilized to serve prepared food. The requirement that a dipper well, with running water, be installed in each kitchen where service trays are holding food is impracticable. We suggest that a control be utilized to allow such utensils to be used in a kitchen for a period of time without resorting to installation of a dipper well. This could be accomplished by defining what the maximum interval between intermittent use shall be.
4. § 81.07(p). Establishments should be able to utilize microwave safe

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containers that do not have the “microwave safe” icons or labeling if they maintain manufacturer’s literature evidencing such designation. This is a important caveat as many establishments have containers that meet the safety conditions of this regulation but the containers are not labeled by the manufacturer as such.

5. § 81.09(a)(9). Potentially Hazardous Foods; temperature control for safety. This proposed regulation requires reheating in microwave ovens to minimum temperature of 190°F. This is a major deviation from the FDA 2009 *Food Code* which requires a microwave reheat to be a minimum of 165°F. We request the regulation and the FDA 2009 *Food Code* be consistent.
6. § 81.10. Table 1. NYSRA fully supports time as a public health control which is an approved method of maintaining food safety in the FDA 2009 *Food Code*. However, temperature readings, especially after the removal of food from a properly functioning refrigerator, are unnecessary as the food will be at temperature. The FDA 2009 *Food Code*¹ also only requires the discard time on the food label. Adopting this practice will allow for consistency with the FDA 2009 *Food Code*. NYSRA also requests that a model label acceptable to the Department of Health be included in the regulation so that FSEs have a clear guide on how they must label food when utilizing time as a public health control procedures.
7. § 81.10. Hot holding temperature. The FDA 2009 *Food Code* allows for hot holding temperature of 135°F versus the 140°F hot holding temperature in the proposed regulation. The proposed regulation should conform to the FDA 2009 *Food Code*.

Section 81.10(a)(1) also states that Potentially Hazardous Foods shall be at an initial temperature at or below 41°F when removed from cold storage. There is no reference to the FDA interpretation that allows tomatoes to be

¹ See 2009 FDA *Food Code* at § 3-501.19.



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sliced from room temperature and held sliced for no longer than four (4) hours at room temperature prior to discard.²

8. § 81.13(b). The proposed regulation should be clarified to only apply to food workers by modifying the last sentence as follows: “. . . bartenders, baristas, hosts, wait staff, or staff performing similar functions.” In additions, “visors” should be added as a permissible hair control clothing item in this section and section 81.13(c).
9. § 81.17(b). This proposed regulation requires “adequate space” for the size of an establishment but fails to delineate specific guidance for FSEs. FSEs submit plans to the Department of Buildings for approval and such approval is the City’s approval to operate as a FSE. If the Health Code is to add specific requirements for operations, it must do so.
10. § 81.19(c). This proposed regulation also fails to provide specific guidance to FSEs. Simply stating “adequate ventilation” is required provides no guidance to an FSE. Assuming the FSEs plans have been submitted to, and approved by the Department of Buildings, this should satisfy this requirement.
11. § 81.19(c). Many establishments serve prepared foods and do not have any cooking facilities on premises. Therefore, this proposed regulation should only apply to FSEs that utilize gas for cooking. In addition, the installation of properly calibrated carbon monoxide detectors should satisfy an FSEs obligations under this proposed regulation.
12. § 81.15(a). Food protection certificate required. The code now seeks to require any “person who is charged with the management or supervision of the operations of a food service establishment” to obtain a food protection certificate issued by the Department. Many FSEs have multiple management or supervisory duties, including non-food related supervisory functions. The proposed regulation fails to delineate that supervisors and

² See <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/ucm215053.htm>



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managers of food preparation services should be required to have a food protection certificate. In addition, the proposed regulation should be clarified to only require a minimum of one manager or supervisor with certification present during food preparation and not every manager or supervisor.

13. § 81.15(d). The proposed regulation allows the Department to require additional food protection courses when the Department finds “continuing violations of the Code.” This is a subjective standard that provides no guidance to an FSE. What is a continuing violation of the code should be defined.
14. § 81.18(b)(1). Hot holding thermometers. Certain FSEs do not utilize traditional hot holding units to maintain food temperatures. Instead, they have developed specialized hot holding cabinets that maintain food temperature via conduction or radiant heat. As such, these units do not have air temperatures that can be regulated or read via thermometers reading air temperatures. An exception to this regulation should be allowed for the use of properly calibrated and maintained equipment that maintains proper temperature
15. § 81.21. Hand wash sinks. This regulation seeks to require the installation of hand wash sinks no more than “25 feet from any food preparation, service or ware washing area” and that it shall “be unobstructed by doors or equipment.” This regulation will require a huge capital outlay for existing establishments that have already designed and built their establishments in accordance with then existing regulations. Hence, we request this regulation not impact existing FSEs but only new establishments. In addition, the “unobstructed” requirement is unfeasible and can lead to subjective fines where the FSE utilizes swinging doors (or similar devices that do not impede access to a sink) to limit visual access to food preparation areas.

The proposed regulation seeks to require a “foot operated covered trash receptacle.” This requirement is excessive, restrictive, and not based on the



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FDA 2009 *Food Code*. Providing a “trash receptacle” or “dedicated trash receptacle” satisfies the public health concerns of the Department.

16. § 81.22(a). The regulation could be read to require separate toilet facilities for employees. The regulation should be clarified to make clear that facilities for customers shall satisfy the requirement in proposed section 81.22(a).
17. § 81.27(a). As noted throughout these comments, the proposed regulations fail to address the realities of food preparation – sometimes messes are made and they cannot be cleaned up during busy food preparation periods. For example, grease splatter on walls when using fryers and grills.

In addition, operators have been cited for reasons inconsistent with the intent of the regulation. For example, shoe scuffs on white tiles and poppy seeds on bagel shop floors have been a basis for a violation of this regulation.

The proposed regulation could address this by stating “accumulations of dust, dirt . . ., not in relation to necessary preparation and/or clean preparation of food, shall be cleaned as necessary to prevent such accumulations.” Also, a reasonable amount of time to clean up any dirt and dust should be provided for in the proposed regulation.

18. § 81.29(a)(2). This section requires measuring the parts per million of the chemical sanitizer used as well as the pH level of the solution. No similar requirement exists in the FDA 2009 *Food Code*. This procedure is also not a standard operating procedure for most FSEs. Most FSEs are constantly making up fresh sanitizer solution throughout the day and the testing requirement is an excessive procedure that is not justified by the FDA 2009 *Food Code*.

Integrated Pest Management

NYSRA believes the adoption of an integrated pest management program is a



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positive addition to regulations.

19. § 81.23(a). This section allows for a subjective determination as to what constitutes “conditions” conducive to pests. For example, standing water and food scraps often accumulate during busy food preparation times. Yet, these items, when timely cleaned up, do not constitute conditions that are conducive to pests. And the proposed regulation allows an inspector to levy points for the “presence of food or water refuse and wastes accessible to and capable of sustaining or attracting a pest population.” What these conditions are leads to a huge amount of subjectivity on the part of an inspector. A clearer, more objective, standard to guide FSEs and Department of Health inspectors must be considered for this section.

Similarly, section 81.23(a)(1) does not define when accumulated refuse will not result in a violation. Refuse, usually food scraps, are generated during food preparation periods and the timely clean-up of these materials should not result in a violation. Also, “other material” is an unclear standard. Unfortunately, vermin can hide in nearly any area, including non-refuse items, and simply stating “other material” may not be accumulated leaves a wide level of interpretation for an inspector.

Finally, FSEs should be provided with a reasonable opportunity to correct violations of 81.23(a)(2) and not be cited for a monetary fine. This is especially true because “violations” of this section of the proposed regulation may occur where there is absolutely no evidence of pests. Why should an FSE who has a pest free operation be fined for a violation of this section of the proposed regulation? A more practical, and reasonable, approach is to cite for violation and allow a period to correct the alleged violation. This also recognizes the reality that many FSEs are leasees and may have to have landlords correct certain physical situations (e.g. loose grout, doors or door frames) which they do not have control over.

20. § 81.23(b)(2). An FSE should only be required to contract with a pest management service if a condition warranting such an expenditure is found by an inspector. Also, an FSE should be provided with a reasonable amount



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of time to produce a copy of a contract with a pest management professional upon an inspector's request.

21. § 81.23(e). Toxic materials. The proposed regulation is unclear as to what is a "poisonous or toxic" material. Also, "where labels permit" needs to be clarified.
22. § 81.24. Garbage waste and disposal. This proposed regulation effectively seeks to have garbage stored in air-tight containers which are unavailable for the market (e.g. outside metal dumpsters). In addition, it seeks to have FSEs be held responsible for the cleaning of garbage receptacles *immediately* after emptying. Many FSEs have garbage pickups in the night when staff is not there to *immediately* clean garbage receptacles. Better practical and effective language would require "cleaning daily or as often as necessary to maintain containers free of food residue, soils, odors, or other accumulations conducive to the growth of pests."

In addition, there is no practical way for FSEs to clean metal dumpsters, a responsibility traditionally borne by their carting companies for safety and insurance reasons.

Finally, this proposed regulation should be clarified to ensure it only applies to garbage storage outside of the premises and not garbage cans utilized inside the FSE's establishment during normal operations (e.g. food preparation or in customer areas).

Respectfully Submitted,



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#7

Article 81

pd@gowanus.com

Sent: Thursday, October 27, 2011 4:56 PM

To: Resolution Comments

To Whom It May Concern:

In renewed support of my objections to parts of the proposed amendments to Article 81 of the NYC Health Code:

I was present in the summer of 2010 at a town hall meeting in Greenpoint revolving around the closure of the Greenpoint Food Market.

In sum and substance the Department of Agriculture and Markets and the Department of Health said that they were there to inform and to assist in the navigation of the, sometimes counterproductive or counter intuitive, application of both agencies rules.

In the end it was clear that the department of agriculture and markets did allow for a home kitchen for some products.

As the stated purpose of the amendments is to bring NYC and NYS closer together in law and application of that law I find it disconcerting that the proposed amendments seek to:

81.17

--make it illegal to prepare ANY food in a home kitchen when Agriculture and Markets allows it.

--make it illegal to store food in a home when agriculture and markets allows it.

--

In addition the portions of 81.05(f) that require every user of a kitchen, when that kitchen is rented, have another permit is an onerous regulation that serves no public health purpose. A kitchen that is inspected and a supervisor who has DOH certification is enough.

In addition to that 81.05(g) requires each kitchen that rents space to be a clearing house for all places the renter sells their products.

Enough already.

Instead of fostering, within reason, the burgeoning food culture in NYC this effectively ends it.

Disallowing what NYS allows and placing bureaucratic red ink on it is flat out wrong and I urge the DOH to reconsider and evaluate very carefully whether these modifications, which purport to bring NYC closer to NYC in regulations while making what is legal by NYS illegal in NYC and also introducing enough red tape to stifle any nascent creative food business is flat out WRONG.

If someone wants to make tea in a restaurant after hours, what possible harm could there be that requires such tragic and overreaching regulation?

NYC should be in the business of assisting a growing business not killing it before it takes its first breath.

Sincerely,

eric richmond

#8

From: Browne, N. Patricia (Legal Affairs) [mailto:npbrowne@dot.nyc.gov]

Sent: Thursday, October 27, 2011 5:09 PM

To: Martha Robinson; Michelle Robinson

Subject: proposed clarifying language re: Article 81

As discussed last week, below is DOT's proposed clarifying language:

NOTES:

Article 81 of the Health Code broadly applies to all sales of food and defines "food service establishment" to be a place where food is served, including a pushcart, stand or vehicle. Sale of food from a pushcart or vehicle requires a mobile food vending permit, while sale of food from a stand requires a temporary food service establishment permit, and sale of food from any other type of establishment (e.g. kiosk-type structure in a pedestrian plaza) requires a food service establishment permit.

Thank you,

N. Patricia Browne

Associate Counsel

NYC DOT - Office of the General Counsel

55 Water Street, 9th Floor

212-839-6511

npbrowne@dot.nyc.gov

#9

Testa, Christine [Christine.Testa@sodexo.com]

Sent: Friday, October 28, 2011 3:02 PM

To: Resolution Comments

in definitions:

[(c)] (e) Comminuted means -- the term **Jacarded meat** should be added in the definition descriptions.

[(bb)] (ii) Sanitization means --- Quat sanitizer should be measured indicating the use as manufacture recommended.

81-09-

(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[;]. the minimum required temperature is missing. FDA requires 165F for 15 seconds.

(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[;].

What is the purpose for reheating food items to 190F when using the microwave? This is very hot and can cause serious injury. FDA required 165F using a two step method.

(d) *Consumer advisory* -- How should the consumer be notified and what information should the consumer be informed of?

81-15

(c) *Courses to be provided or approved by the Department.*

-- Will this include other food safety training providers such as Servsafe, NEHA , NSF ? How can others become approved by the department?

81.21 Hand wash sinks.

would portable hand washing station be approved at kiosk locations?

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

Live frogs and live turtles are prohibited?

§81.29 Dishwashing and ware washing.

it is not clear if an establishment can continue to use a two compartment sink ware washing and sanitizing method? it only mentions how to use a three compartment sink.

Christine Testa REHS/RS *Regional Health and Safety Coordinator*
 Sodexo Campus Services
 441 East Fordham Road
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#10

Article 81.04

Ben Conniff [ben@lukeslobster.com]

Sent: Saturday, October 29, 2011 2:49 PM

To: Resolution Comments

To Whom It May Concern:

I regret that I was unable to attend the public hearing on the proposed amendments to Article 81. None of the proposed amendments will have an affect on my own business as we already conform to all the proposed rules, however I feel compelled to express my disapproval with one of the amendments.

Section 81.04 requires that all food served at an FSE be inspected by the FDA or USDA. While the proposer of this amendment may have had the safety of consumers in mind, they failed to see the consequences of such a restriction without any allowance for the small, local farming operations that contribute so much to the city's dining culture, and are some of the last hopes for our country's return to a sustainable food supply. While these regulatory agencies have been given more power and oversight through recent Federal legislation, their funding has been gutted by anti-government legislators. They do not have the resources to oversee every farm in the country, so they focus their attention on the giant factory farms that produce the vast majority of our food in a reckless, unsustainable fashion focused on gleaning maximum profits at the expense of the health of our population. Small operators will have an increasingly difficult time getting the FDA and USDA to approve their operations as their resources are spread more thinly in attempts to lower the budget deficit.

If one small family farmer is unable to get the attention they need from regulatory agencies and thus cannot deliver to the New York City market, it will not be a blip on the radar. But this will be true for scores of small farmers, and for the top calibre restaurants that rely on them. Moreover, it will be a major blow to the attempts of the conscientious members of the New York food community who are doing all they can to ensure a healthy, sustainable food system for the country's future.

To keep this amendment from doing irreparable harm, there must be some means of exemption for the small farmers who mean nothing to the FDA, but everything to New York City's restaurant owners and diners.

Best wishes,
Ben

--
--

Ben Conniff
Vice President
860.391.4123

Luke's Lobster

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#11

Opportunity to Comment on Proposed Amendment of Article 81

Barham Susanne [Susanne.Barham@us.mcd.com]

Sent: Monday, October 31, 2011 3:55 PM

To: Resolution Comments

Thank you for the opportunity to comment on the proposed amendments to the NYC Health Code. From daily food safety checks and self inspections using the Department of Health scorecard to food safety training for crew and managers, we pride ourselves on being proactive and for keeping food safety a top priority. McDonald's food safety and quality standards are among the highest in the industry and we continually strive to improve upon our safety, quality, service and cleanliness standards in our restaurants.

We feel that further clarification is needed regarding several of the proposed changes. We understand that the NY State Restaurant Association, of which we are members, is submitting extensive comments. We have communicated with the NYSRA regarding these needed clarifications and our specific concerns are addressed in their comments.

Thank you again for this opportunity. Please feel free to contact me or Marcos Quesada our NY Metro Region Director of Operations at marcos.quesada@us.mcd.com if you have any questions or need any additional information.

Susanne Streb Barham | Government Relations Director, East Division | McDonald's USA, LLC
Cell: 919.621.0664 | susanne.barham@us.mcd.com | 4601 Six Forks Road, Suite 306, Raleigh, NC 27609

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#12

Comments to Proposed Amendments to Article 81 of the NYC Health Code

Matthew Shapiro [MShapiro@urbanjustice.org]

Sent: Tuesday, November 01, 2011 4:18 PM

To: Resolution Comments

Attachments: DOHMH Proposal Comments Ar~1.pdf (249 KB)

To Whom It May Concern,

Please see attached for the Street Vendor Project's comments to the proposed amendments to Article 81 of the New York City Health Code. Thank you for your assistance.

Sincerely,

Matthew Shapiro
Staff Attorney
Street Vendor Project
Urban Justice Center
123 William Street, 16 FL
New York, NY 10038
646-602-5679
MShapiro@urbanjustice.org

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Douglas Lasdon, Esq.

November 1, 2011

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

RESOLUTIONCOMMENTS@HEALTH.NYC.GOV

BY U.S. MAIL AND EMAIL

Ms. Bryant,

Please see attached for our comments to the 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.

Please note that we attempted to obtain clarification on the Proposed Amendments by email sent to Mr. Elliot Marcus on October 24, 2011. A copy of the email correspondence is attached for your convenience. We did not receive any response which led to the delay in our submission.

Sincerely,

Matthew Shapiro
Street Vendor Project



**Comments
of
Matthew Shapiro
Staff Attorney, Street Vendor
Project**

My name is Matthew Shapiro and I am a staff attorney at the Street Vendor Project (SVP), part of the Urban Justice Center. SVP is a membership organization of over 1,000 street vendors that advocates for the rights of vendors in New York City. Approximately half of our members are mobile food vendors who sell delicious and diverse food on the street and sidewalks of NYC. The majority of mobile food vendors are immigrants who have come to NYC in search of a better life for themselves and their families. Mobile food vending has, for centuries, provided new immigrants with a means of support along with the opportunity of small business ownership.

SVP welcomes revisions to the Health Code which result in clear and efficient regulation of mobile food vendors without causing unnecessary burdens to these small business workers and owners. While the newly proposed §81.27(a) seeks to regulate the cleanliness of food service establishments, the proposed language is too vague to ensure consistent and fair enforcement. Specifically, the proposed requirement that non-food contact surfaces, “shall be cleaned as necessary to prevent such accumulations” does not provide any objective standards to vendors or health inspectors. It is a reality of food preparation, especially in small areas, such as mobile food vending units, that equipment and food preparation areas will become messy with food debris during busy periods. In addition, vendors, unlike workers in restaurants, typically work alone so it is not possible for them to both prepare food and clean at the same time. SVP encourages the DOHMH to revise this regulation to provide for a prohibition against accumulations of dust, dirt, food residue, grease, and other debris *except* during preparation of food. Additionally, SVP requests that a reasonable time after food preparation is finished to comply with the proposed regulation by cleaning the food preparation areas.

Similarly, SVP encourages the DOHMH to revise the proposed §81.07(a)(1) to provide for the realities of mobile food vending. While food preparation for restaurants always takes place within the food service establishment, mobile food vendors frequently prepare food at authorized DOHMH mobile food vendor commissaries. Since the washing of foods prior to other preparation, typically takes place at a DOHMH approved commissary, it would be unnecessary to require all mobile food vending units to be retrofitted with a second culinary sink. Mobile food vending units already have strict size limitations and it would be a significant financial hardship to require mobile food carts and trucks to install an additional sink. In the alternative we would propose that the new §81.07(a)(1) only apply to new or remodeled mobile food vending units.