

Essex Market

88 Essex Street



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I. OPERATING HOURS, ACCESS, AND DELIVERIES

Operating Hours

Essex Market (the "Market") will be open to the public seven days per week year-round. The Market will be closed on New Year's Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Essex Market Vendors ("Vendors") may close their Stalls for up to ten days per calendar year for vacation purposes. Vendors must submit their vacation days in writing to the Market Manager at least three weeks prior to the planned closing for vacation. No more than three Vendors may be closed at any one time for vacation, and permission shall be granted by the Market Manager on a first come, first serve basis. Vendors shall remain responsible for the payment of all charges and complying with all other conditions under the Permit and shall post clear and professional looking signage on their Stall informing customers of the intent to close.

All Vendors are **required** to open and staff their Stalls to the public at all times between the hours of 10AM and 8PM, from Monday to Saturday, and from 10AM to 6PM on Sundays (except the above listed holidays). If appropriate, Vendors may choose to open their respective Stalls earlier at any point between 8AM-10AM.

After Hours Zone

Vendors who are in the "After Hours Zone" will enter an agreement in writing with EDC to pay an additional fee (the "After Hours Fee") towards the cost of additional security, porters, and building engineers. Vendors in the After Hours Zone are **required** to open their Stalls from 10AM to 10PM from Monday to Saturday, and from 10AM to 8PM on Sundays (except the above listed holidays). Individual Vendors may request to **close at 9PM** in writing to the Market Manager.

Access

Vendors will not have access to the Building's roofs nor any mechanical, electrical, telephone or other rooms serving the Market without written permission from EDC.

Vendors will have priority access to elevator E-01, as outlined in Exhibit A. The Dock Master will be responsible for regulating the access to the elevators. Elevator E-01 may be used by the Facility Maintenance Operator and Market Line Vendors. Facility Maintenance Operator may use E-01 to access the sub cellar for maintenance and operations. Market Line Vendors may only use E-01 to deliver goods to the communal walk-in refrigerator located in the basement level of the Market Line.

Deliveries

Hours for Deliveries

Hours of operation for loading dock deliveries are 12AM to 4PM, every day of the week, and the docks will be manned for 16 hours a day. Wait time for each delivery truck is capped at 20

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minutes. Three bays will be available for Market deliveries, and deliveries should be cleared in advance with the Dock Master.

Vendors will be priority users of the two Essex Market bays. The Dock Master will be responsible for regulating the access to the loading dock bays. The two Essex Market bays are outlined in Exhibit E.

Trash sorting, storage and pickup activities will take place in the loading area. The Facilities Maintenance Operator will spread these activities across the Market Line and one of the Essex Market bays so that there is a bay always available for Essex Market Vendor's loading and unloading activities. Essex Market Vendors have priority use of the Market Line bay for unloading and loading activities if both Essex Market bays are occupied by the Market Line or by the Facility Maintenance Operator.

If the Market Line loading dock bay is occupied for maintenance related operations, Market Line vendors may use the Essex Market bays, if the two bays are not occupied by the Essex Market Vendors.

Exceptions may be granted with prior written approval from EDC. Deliveries can be scheduled for between the hours of 4PM-12AM with prior approval from the Facility Maintenance Operator. Deliveries scheduled during this time will be charged \$100 per delivery.

In all cases, EDC reserves the right to modify the foregoing delivery times and impose restrictions. EDC may require Vendors to comply with the New York City Department of Transportation's Off-Hour Delivery Program best practices, as outlined in Exhibit K.

Delivery Regulations

Vendors must be present for their delivery to be accepted.

All delivery drivers whose vehicles have commercial plates must enter through the loading dock on Norfolk Street as shown on Exhibit E. Deliveries must be received in the loading dock and transported down to the floor of the Market directly and immediately into a designated Space. Deliveries may never be left (whether temporarily or otherwise) in common areas or hallways.

Mail and/or deliveries from the United States Post Office, UPS, FEDEX and other couriers, as well as all packages requiring signature must be delivered directly to the applicable Vendor's Stall.

The common areas shall not be obstructed or encumbered by any Vendor or used for any purpose other than egress to and from the applicable Stall and for delivery of merchandise and equipment in a prompt and efficient manner, using elevators and passageways designated for such delivery by EDC.

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Vendors may use personal vehicles for deliveries but must adhere to the insurance requirements as outlined in Market Permits. Parking of personal vehicles is prohibited unless Vendors are actively engaging in deliveries.

Vendor shall provide notice and schedule with EDC prior to moving any heavy machinery, bulky matter, freight, furniture, large boxes, crates, fixtures or any other large object (collectively, "Large Objects") into or out of the Market and shall pay to EDC any cost incurred by EDC in connection therewith. If such Large Objects require special handling, Vendor agrees to (i) employ or contract persons holding all necessary licenses to perform such work, (ii) ensure all such work complies with all applicable Legal Requirements and (iii) conduct such work only during hours designated by EDC.

Vendors and Vendors' contractors who provide construction management services are subject to and must comply with the Insurance Requirements in Exhibit D.

All dollies, hand trucks and containers used to transport materials within the building must be in good condition and be equipped with rubber tires, side guards and such other safeguards as EDC may require.

Vendors shall be responsible for the payment of all repair costs associated with damage to the Market or its surroundings caused by the transport of any materials.

No pallet jacks are allowed on the common area retail floor.

EDC reserves the right to inspect all articles brought into the Market and exclude from the Market all articles that violate the requirements of this Manual or any Contract or other written arrangement between Vendor and EDC.

II. VENDOR PERMITS AND REGULATORY COMPLIANCE

Permits

All Vendors must obtain and maintain the following Permits:

- Operating Permit issued by EDC. These Permits are valid for one year with two one-year extensions and must be re-issued every three years.
- Certificate of Authority issued by the New York State Department of Taxation and Finance.
- *If the Vendor is a retailer of fresh ingredients or groceries*, a 20-c or 28 License issued by the New York State Department of Agriculture and Markets.
- *If the Vendor sells prepared foods to consume on the premises*, a Food Service Establishment Permit issued by the New York City Department of Health and Mental Hygiene (NYCDOHMH).
 - A holder of the NYC DOHMH Qualifying Certificate in Food Protection must be present in the Stall at all times.

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- *If engaging in the sale of alcohol, whether for on-premises or off-premises consumption, a license or Permit issued by the New York State Liquor Authority.*
- *If operating cooktops, ovens, or other equipment requiring ventilation and fire suppression systems, EDC will work with the Facility Maintenance Operator to pass all New York City Fire Department inspections. The Market Manager and Vendor must coordinate the bi-annual inspection visits.*

Vendors must provide copies of the NYCDOHMH, NYS Ag & Markets, FDNY, or other inspection reports to the Market Manager promptly upon receipt. Vendors are required to maintain and update their inspection reports and appropriate certificates and permits in accordance to government regulations.

Vendors must display Permits prominently at their Stalls, along with other required signage (e.g. Choking Victim or "Employees Must Wash Hands" signs required by DOHMH).

Vendors shall not (i) misrepresent any merchandise offered for sale, (ii) take unfair advantage of a purchaser or (iii) attempt to take such unfair advantage.

Vendors must acknowledge that the Rules and Regulations Manual is in addition to and supplements all laws, ordinances, rules, and regulations of the City, State and Federal Governments and all terms and obligations set forth in any lease, license, or Permit.

Sale of Alcoholic Beverages

Vendors serving alcohol must abide by all alcohol policies for the Market, which include:

- Obtaining proper New York State Liquor Authority licenses.
- Checking identification for the age of every person served.
- Prohibiting all Guests who buy alcohol for on-premises consumption from leaving the permitted premises.
- Operating under "ServSafe" or similar methods, and refuse service to inebriated or visibly intoxicated individuals.
- Vendors must have their individual security camera system to meet all SLA requirements.

Regulatory Compliance

All food service Vendors and their employees must comply fully with all food and safety Legal Requirements and guidelines issued or promulgated by City, State, and Federal Governments including, without limitation, those of the NYC Department of Health and Mental Hygiene ("NYC DOHMH") and the New York State Department of Agriculture and Markets.

Vendors under jurisdiction of the New York State Department of Agriculture and Markets must comply with all regulations set forth in Exhibit I.

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Vendors under jurisdiction of the NYCDOHMH must comply with all regulations set forth in Exhibit J.

Each Stall will be reviewed independently.

General Guidelines

The following "Good Practice" guidelines are included for reference. All Vendors must comply in full with the regulations proscribed by their oversight agencies, which include but are not limited to the following:

- Exercising the highest personal and oral hygiene standards while in their Stall and other areas of the Market.
- Wearing the appropriate gloves at all times when handling food and food products.
- Wearing caps, hats, hairnets or other hair coverings to keep hair from contacting exposed food, food contact surfaces, and clean equipment or utensils that have contact with food.
Refraining from touching exposed areas of the body such as the face or hair.
- Washing hands frequently, especially after using the bathroom, touching money, touching exposed areas of the body such as the face or hair, or blowing nose.
- Wearing only closed-toe footwear in all service or preparation areas.
- Covering or bandaging open cuts or wounds at all times.
- Labeling and dating all stored food clearly.
- Storing food in a sanitary manner to prevent cross contamination.
- Abiding by all handwashing and ware-washing regulations, including:
 - Washing hands in hand-wash sinks only, not in cookware-washing sinks
 - Keeping soap and paper towels adjacent to each hand-wash sink
 - Washing utensils, cookware, etc. in ware-washing sinks only, never in hand-wash sinks
 - Washing all dishes, utensils, cookware, etc. in a commercial grade dishwasher or three-compartment stainless steel sink, using the correct chemicals and procedures
 - Keeping sanitizing solution with the proper PH levels and a towel nearby to sanitize utensils quickly when needed

III. STALL SANITATION AND MAINTENANCE

General Obligations

Vendors are responsible for cleaning and maintaining their entire Stalls and common areas extending twelve (12") inches from their Stalls. EDC is responsible for cleaning and maintaining all remaining portions of the common areas.

Nightly Obligations

Vendors are responsible for the following nightly obligations:

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- Cleaning the Stall to a generally acceptable standard.
- Pulling all equipment from walls and thoroughly cleaning underneath and behind.
- Removing all trash and exposed food to a location designated by EDC and as shown in Exhibit A.
- Cleaning and sanitizing all surfaces and floors. **Floors must be scrubbed with a nylon brush.**
- Covering, labeling and properly storing all food.
- Clearing floor sink drain catch and scrubbing floor sinks with bleach.
- Capping all beverage taps and covering all speed pours.
- Turning off all auxiliary power and gas equipment.

Weekly Obligations

If applicable, Vendors are responsible for thoroughly cleaning hood filters and maintaining standard weekly hood maintenance logs to be kept in the Stall and as provided in Exhibit B attached hereto. Weekly hood maintenance is defined as cleaning the hood up to its elbow length.

Cooking Oil Disposal

Vendors who have a food service business must properly dispose of cooking fat and oil. The Facility Maintenance Operator will clean and maintain grease interceptors on a regular basis. Any grease and oil spills, leaks, or trails must be immediately cleaned by the Vendor.

Extermination and Pest Control

Vendors are expected to comply with all procedures and preventative efforts implemented by EDC with respect to their Stalls. Vendors must immediately report any signs of pests or vermin to the EDC. The Facility Maintenance Operator is responsible for implementing an effective extermination program. Vendors are expected to comply with all procedures and preventative efforts with respect to their Spaces. Vendors must immediately report any signs of pests or vermin to Management. If Vendor fails to comply with EDC's extermination requirements, then EDC may retain additional extermination services at the applicable Vendor's expense.

Fire Extinguishers

EDC will provide and maintain all common area fire extinguishers as per NFPA 10 requirements. If, as a result of any specific equipment installed by Vendor for its Space, any additional or specific types of fire extinguishers are required in order to satisfy NFPA 10 requirements, Vendor shall be required to install and maintain the same at its sole cost and expense.

Waste Disposal, Recycling, and Composting

Vendors must comply with the following rules related to waste disposal:

- All boxes must be broken down, bundled together, and placed in the designated cardboard storage area as shown in Exhibit A.

- All excess product, empty or broken-down boxes, or other refuse must be stored within the limits of Vendor's Stall or immediately transported to the trash room.
- Garbage must be kept in a lidded container with the lid secured. Vendor shall ensure that all garbage is taken to the designated garbage disposal location as-needed, at a minimum on a daily basis. Garbage must be placed in heavy grade plastic bags. All boxes shall be flattened and tied before placing them in the designated garbage disposal location. Common area garbage cans are for the use of Guests only. Vendor shall comply with all EDC recycling and/or composting regulations and procedures. Vendor shall not use the Market garbage room to dispose of anything other than garbage generated by its operations within the Market.
- All trash must be placed in appropriately color-coded plastic bags. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles.
- Any trails or leaks from food or trash transport must be immediately and thoroughly cleaned and sanitized.
- At no time will any inventory, products, tools, equipment, or other items used in connection with or generated from any Space be permitted in the service corridors or common areas including, without limitation, garbage, trash, supplies, stock, pallets, and construction materials.
- Vendors must comply with all present and future laws, ordinances, rules orders and regulations, of all State, Federal, and New York City departments, commissions, agencies and boards (collectively, "Legal Requirements") regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash.

IV. CODE OF CONDUCT

Fines and Fees

Essex Market Director may fine Vendors who violate the following rules. Infractions can be reported directly to the Essex Market Director by other Vendors, Security, and/or Guests. In addition to and without limiting any of the other remedies which EDC may seek in accordance with the Permit and/or at law or in equity (including, though not limited to, charging the Permittee for the cost of performance in accordance with Section 14 of the Permit and/ or the termination of the Permit), the Essex Market Director may fine Vendors who violate the rules set forth in Exhibit G entitled "Fines and Fees" of the Permit.

Vendors can appeal the determination by emailing and/or sending a letter to the EDC Executive Director of Public Markets. The letter must outline the violation, justification of appeal, and any relevant documentation.

Vendors may be fined for violations outlined in Exhibit G occurred around in/our around their Stall, the Sub-Cellar, Loading Dock.

General Observations

No Vendor shall cause or maintain a public nuisance. A public nuisance means committing an act or failing to perform a duty, which act or omission annoys, injures or endangers the comfort, health or safety of other persons or offends the public decency.

Disorderly conduct, loitering, gambling and loud or obscene language in or around the Market is prohibited.

All activities and behavior of Vendors and their Agents must be conducted in such a way as to not interfere with the normal conduct of business at the Market or other Market operations, and must at all times be professional and respectful of all employees, agents, Vendors, tenants, users, occupants, patrons and other Vendors at the Market.

Vendors must not discriminate with respect to its use of its market Stall or other space in the Market or in its conduct of its business against any person because of race, creed, color, national origin, sex, sexual orientation, age or disability; and Vendor must not permit or tolerate any of its Agents engaging in such discrimination. In the event of any claim of acts or discrimination made against the Vendor or its Agents, Vendor must conduct an investigation. As a result of that investigation, Vendor must provide EDC with a written evaluation of the alleged claim and appropriate response, if any. Vendor must then advise the EDC and engage in appropriate corrective action, if and to the extent appropriate, that are reasonably calculated to be commensurate with the seriousness of the offense and assure that the workplace within the Vendor's Stall and throughout Market are free from any such acts of discrimination.

Vendor must not engage, and must not permit any of Vendor's Agents to engage, in any form of harassment with respect to the use of Vendor's market Stall or any other space in the Market or in the conduct of Vendor's business. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her, or his/her relatives', friends', or associates' race, color, creed, ethnicity, religion, sex, sexual orientation, gender identity and/or expression, pregnancy, age, national origin, marital and domestic partnership status, citizenship status, disability, veteran and military status, genetic identity and expression, being the victim of domestic violence, stalking or sex offenses, or any other characteristic or status protected under federal, state or local law, and that: (i) has the purpose or effect of creating an intimidating, hostile, or offensive work or market environment; (ii) has the purpose or effect of unreasonably interfering with an individual's working, buying and/or selling performance; or (iii) otherwise adversely affects an individual's employment, purchasing, supplying, selling and/or shopping experience at the Market.

Vendors and/or Vendor's Agents may not secretly or otherwise tape, film, or electronically or mechanically record another Vendor Vendor's agents, or Guests, or tape, film, or electronically or mechanically record the facility, area or operations.

No bicycles or vehicles shall be brought into or kept in or about any non-designated areas.

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New York State law prohibits smoking in public spaces and the NYC Department of Health and Mental Hygiene prohibits food workers from smoking any substance or using tobacco in any form, including vaporizers and electronic cigarettes, within the Market. Smoking and tobacco use, in any form (including vaporizers and electronic cigarettes), are prohibited in any part of Market and also within 50 feet of any public entrance thereto.

Vendor shall use the Market in compliance with, and shall not cause or permit the Market to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Vendor or the Market (collectively "Environmental, Health and Safety Laws").

Animals

The only animals that are permitted inside the Market are service animals. Under Title II and III of the Americans with Disabilities Act (ADA), service animals are limited only to dogs. Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals. Only the following inquiries are allowed with respect to service animals: (1) is the dog a service animal required because of a disability? and (2) what work or task has the dog been trained to perform? It is not permitted to ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

Noises, Odors, and Vibrations

Vendors shall not permit or suffer their respective Stalls to be occupied or used in a manner that is offensive or objectionable to EDC or other occupants of the space by reason of excessive noise, lack of cleanliness, unpleasant or noxious odors or vibrations or that interferes in any way with other permits or those having business therein. Vendors are not allowed to hawk their goods.

Music

Vendors may play music in their respective Stalls but are asked to be respectful to their neighboring Vendors. If issues about music arise, Vendors should contact the Market Manager, and the Market Manager will make the final decision.

Internet Usage

Vendor has access to a public wireless connection for which EDC is responsible for maintaining. Vendors are responsible for acquiring individual internet services for business purposes.

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Crowd and Line Management

EDC reserves the right to implement line management and other crowd control procedures and/or a notification system, which Vendor shall comply with upon notice of such implementation.

Market Security may refuse the privilege of service to, or access to Market by, any Guest engaging in behavior that is disruptive, prejudicial to the safety, character, reputation, or interest of Market, or otherwise interferes with the operations of Market.

Emergencies and Accidents Procedure

Who to Contact

In the event Vendor becomes aware of an emergency affecting any employee or Guest of the Market, EDC and the Market Manager should be contacted immediately.

Upon discovering or receiving information of a medical emergency, for either an employee or Guest, call 911.

Required Incident Report

The following information will be requested:

- Type of emergency (trip and fall, specific medical condition, bleeding, etc.)
- The location, name, age, male/female, consciousness/un-consciousness of the person involved and nearest entrance. Any other relevant information such as clothing (such as high heels) or the condition of the person involved (such as inebriation) should also be noted.
- At the conclusion of the emergency, fill out and submit to EDC at its office either a “Guest Incident Report” or “Employee Incident Report”. See Exhibit F.

Solicitation/Canvassing

Unapproved solicitation, canvassing and distribution of any advertising, including but not limited to promotional handbills, leaflets, pamphlets, flyers, handouts, or other advertising materials, is prohibited in the Market. EDC reserves the right to immediately remove the group or organization violating the prohibitions in the foregoing sentence.

Hazardous Materials

No Vendors or its contractors, employees or agents shall at any time bring into or keep upon the Space or within the Market any flammable, combustible, explosive, or otherwise hazardous or dangerous substance or material, however, the foregoing shall not prohibit Vendor or its contractors, employees or agents from using customary cleaning solvents and solutions so long as the same are used, stored and disposed of in accordance with applicable Legal Requirements.

V. STALL AND EQUIPMENT DESIGN, REPAIRS, AND ALTERATIONS

Equipment Policy for Original Market Vendors

The below policy is only applicable for the Original Vendors of 88 Essex Street. The policy below applies to the Equipment outlined in Appendix A of the 2019 Market Stall Permit Form.

Ownership

EDC owns the Equipment in the Permittee's Market Stall, and if applicable, Sub-Cellar Units. Vendors are allowed and encouraged to purchase their own equipment to use in their Stalls, and if appropriate, the Sub-Cellars. Any supplemental equipment that Vendors purchase should be communicated to EDC to avoid confusion about equipment ownership if and when Vendors vacate the Stall.

When Vendors vacate the Stall, Vendors cannot take the Equipment with them. If Vendors terminate their Permit in advance of the Permit term, Vendors are responsible for the cost of the removal of the Equipment incurred by EDC. If a Vendor's Permit is terminated by EDC for cause, then the Vendor will be charged for the cost of the Equipment installation and removal.

Tracking of ownership

EDC will maintain a database of the serial number, make, and model of all Equipment that EDC owns. If Vendors purchase supplemental equipment, the Vendor's supplemental equipment must also be logged into the database.

The database will also track the warranty, length of the useful life of the Equipment, and maintenance efforts conducted by the Vendor.

Vendor Responsibility

Maintenance and Repair

Vendors are responsible for the maintenance for the Equipment for the length of their permits. As required by the Permit, Vendors must adhere to the best recommended maintenance practices for the applicable equipment. Vendors must pay for the maintenance of their own equipment. Only pre-certified and approved maintenance contractors should be used for to maintain the EDC owned Equipment.

If Equipment repair requires either building wide plumbing and infrastructure system coordination, the Vendor should coordinate with the Facility Maintenance Operator. Costs to repair the building infrastructure will not be passed on to the Vendor.

Insurance

Vendors should procure and maintain both business interruption and property insurance. EDC is not financially responsible for the repair of the equipment. EDC is not financially responsible if EDC owned Equipment malfunctions and causes a loss of income. Vendors should make a claim against their business interruption insurance to recover any loss of income due to Equipment malfunction. Vendors should make a claim to repair their Equipment against their property insurance.

Change of Equipment

EDC Responsibility

EDC will provide Equipment for a Vendor when the Vendor initially moves into a Stall. For the length of the Vendor's Permit, EDC is not responsible to provide additional equipment. EDC will not replace equipment unless the Equipment is faulty due to manufacturer error, and only if the Equipment is covered under warranty. EDC is not responsible for any loss of income incurred by the Vendor during the fit-out period for the replacement Equipment.

EDC will not replace the equipment if it is not usable due to Vendor's actions.

Vendor Responsibility

If an EDC owned Equipment becomes damaged beyond repair due to the Vendors actions, Vendors are responsible for replacing the Equipment. If a Vendor replaces Equipment due to Vendor fault, then EDC will own the replacement Equipment. If EDC purchases the replacement Equipment, EDC will charge the Vendor for the cost of purchase and replacement.

If a Vendor elects to upgrade and/or replaces Equipment due to a change in business model or Vendor preference, the Vendor must submit their intention to do so to EDC in writing. EDC will then amend their Permit to indicate that the EDC owned Equipment is no longer utilized by the Vendor and list the new equipment is Vendor owned. EDC will be responsible for the cost of storage of the EDC owned equipment. Vendor will be responsible for the cost to procure the upgraded equipment, installation, and removal of the EDC owned equipment.

Out of Use Equipment

EDC is responsible for the storage and tracking of equipment that is in good condition but out of use. If a Vendor vacates the stall before the end of their permit period, the Vendor is responsible for any applicable storage and removal costs of the EDC owned equipment that may be incurred by EDC. EDC may incur these costs in the efforts to find a new Vendor who will use the prematurely vacated stalls.

Equipment Policy for Vendor Owned Equipment

Vendors, at its sole cost and expense, shall keep and maintain their Stalls and all FF&E in good repair and condition.

Vendors shall not make any improvements or alterations to their Stalls except with the prior written consent of EDC.

Design Criteria

Each Vendor is responsible for the design, fabrication, and installation of their Stall, unless otherwise noted in the Market Stall Permit. Vendors should fit-out, alter and improve their Space (a "Fit-Out") to brand and promote their own identity and functionality while operating

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within the communal context of Essex Market, as outlined in the Design Guidelines, shown in Exhibit H.

Equipment Standards

EDC reserves the right to approve all equipment installed and used by Vendors. All equipment must be commercial grade; appliances and equipment designed for household use (including refrigerators, blenders, toaster ovens, and similar) is not permitted. Equipment placed on the floor or that is not easily moved must be on casters to enable regular cleaning underneath and behind such equipment. Gas powered, or fueled equipment must be connected with flexible tubing. All equipment must be acquired with a customary warranty or insurance. Vendors must keep all equipment in good repair

Standard Material Palette

For all food preparation and service areas, surfaces must be cleanable, anti-microbial, and fully compliant with NYC DOHMH guidelines. Materials such as Masonite, brick, stone, wood, thin gauge metal, stucco or other porous materials are not permitted. Vendors must cover all guest-facing surfaces with materials other than painted drywall, such as tile, glass, acrylic, wallpaper, wood, metal or brick. All interior finishes must comply with the New York City Building Code's requirements as to flame spread, smoke development and toxicity, and Vendor shall provide EDC with evidence of such compliance for all specified finishes.

Storefronts

For those Stalls that lie adjacent to an exterior-facing glass wall, excluding Restaurant spaces, a storefront treatment of display equipment or demising wall (or another approved methodology) must span the width of the Stall. The demising wall must be no higher than forty-two (42") inches from the floor finish, unless written approval for a variance therefrom is obtained from EDC. Retractable storefront enclosures are not permitted. There must be appropriate employee access into the Space. Vendors are not permitted to place signage on the glass.

Signage

All signage must be approved by EDC and comply with Legal Requirements for food service establishments, and is to be displayed using the materials and methods described in this Manual, or in the Design Guidelines (Exhibit H).

Each Stall has a defined area, not to exceed three feet in length and two feet in height, where three-dimensional Stall signage can be placed. Stall Signage (indicating the Vendor's name, branding, and identity) must be designed and fabricated professionally with finishes applied to a wood or metal substrate.

Menus can include printed signs, blackboards, press-on letter boards, and similar All menu signage must be clearly legible and logical to all Guests.

Lighting

EDC will provide lighting for the common areas. Additional Stall lighting is considered an alteration and thereby subject to EDC approval. For more information, please refer to the Design Guidelines Exhibit H.

Design Review

Each Fit-Out is subject to the formal review and approval of EDC. The review by EDC or any of its representatives of drawings and/or plans and specifications for any Fit-Out or Stall is not intended to verify the Vendor's engineering or design requirements and/or solutions, and EDC shall have no liability therefor. The review by EDC is performed to determine that the Fit-Out and all subsequent improvements, repairs, and alterations (sometimes referred to as "Alterations") adhere to Market's procedures and requirements set forth herein, comply with applicable Permit conditions, and be compatible with all aesthetic, mechanical, electrical, plumbing and other building systems of the Market ("Systems"), and comply with the requirements of the applicable Contract.

Repairs, Alterations, and Stall Fit-Outs

Any and all Stall alterations and repairs, including cosmetic alterations, must be approved by EDC. EDC retains the right to deny any alterations not consistent with EDC construction standards and Design Guidelines (Exhibit H).

Emergency Repairs

Vendor shall provide written notice to the EDC within twenty-four (24) hours of any significant damage to the Stall or surrounding area. EDC or EDC's designee may inspect the Premises during the Period and may direct Vendor to repair or perform maintenance work on the Premises. Vendor shall be, continue and remain liable for any uninsured destruction, loss or damage to the Premises during the Permit Period. In the event of any such loss or damage for which Vendor becomes liable as aforesaid, Vendor shall, at its sole cost and expense, promptly repair or replace the property so lost or damaged in accordance with plans and specifications approved by EDC and EDC or, at the discretion of EDC or EDC, pay in cash the value of repairs or rebuilding, such value to be determined by EDC, in lieu of performance of such repairs to or rebuilding of the Premises.

Alterations

In connection with Alterations for which Vendor is required to submit plans to EDC pursuant to the terms of the applicable Permit, the following information must be submitted for EDC's review and written approval prior to commencement of any Alterations. EDC's review will not commence until the EDC is in receipt of the following items, submitted as one complete package:

- A letter of intent to perform construction, which shall include a brief description of the proposed alterations, the reason for the work, the intended date and duration of work, and a list of any contractors and subcontractors involved in the work.

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Essex Market: Rules and Regulations

- If applicable, EDC may request additional information, such as a digital set of schematic drawings showing the Stall layout, equipment specifications, or where alterations will be made.

Once EDC completes its review, the Vendor will receive written approval permitting them to start work.

Process for Fit-Outs

In connection with Alterations for which Vendor is required to submit plans to EDC pursuant to the terms of the applicable Permit, the following information must be submitted for the EDC's review and written approval prior to commencement of any Alterations. EDC's review will not commence until the EDC is in receipt of the following items, in one complete package:

- A letter of intent to perform construction, which shall include a brief description of the proposed alterations, the reason for the work, the intended date and duration of work, and a list of any contractors and subcontractors involved in the work.
- All work being submitted to a governing (e.g. New York City Department of Buildings) must be approved by EDC prior to submission. Please see [\(Exhibit C\)](#) for submission instructions and owner information. All design documents must be submitted as typewritten originals, signed and sealed.
- All work related to the Fire Department of New York and/or ansul systems must be coordinated through EDC
- A digital set of plans and specifications setting forth the full scope of work involved in performing such Alterations. All plans and specifications must be signed and sealed by an architect or professional engineer, registered in the state of New York.
- The required insurance certificates and licenses, along with the necessary endorsements, from the contractor and all subcontractors.

If there are any addenda (or other revisions or substitutions) which occur subsequent to the submission of the foregoing plans and specifications, the same must be promptly delivered to EDC for its review and written approval.

Once EDC approves the submission, the Vendor may proceed with the project.

Contractors Rules and Regulations

Vendors and their contractors (including subcontractors and materialmen) shall comply with the rules and regulations set forth in this Manual regarding work in Market, including the hours of availability of the elevators and the manner of handling materials, equipment and debris to avoid conflict and interference with other Vendors and building operations.

Vendor's contractors, subcontractors and materialmen agree to hold EDC and their respective employees, agents, contractors and consultants, harmless from and against all suits, claims, actions, loss costs or expenses (including claims for worker's compensation) based on any

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personal injury, death or property damage caused in the performance or work by Vendor or its contractors, subcontractors and materialmen.

All work must be performed in a first-class manner and in compliance with all applicable laws (including, without limitation, applicable Local Laws, NYC Building Code, Americans with Disabilities Act, and OSHA regulations). No waiver of responsibility for incomplete, inadequate or defective adjoining work will be considered.

All temporary security and fire safety provisions are subject to review and approval of EDC.

No Vendor shall deface any part of the interior or exterior of Essex Market. No boring, cutting or stringing of wires shall be permitted, except with prior consent of EDC, and as EDC may direct.

Work may not commence until a secure construction enclosure has been erected in accordance with EDC's specifications therefor.

EDC has the right to stop all work not in compliance with plans and specifications approved by EDC. EDC also reserves the right to uncover or dismantle work which EDC reasonably suspects of not being consistent with plans and specifications approved by EDC, is not in compliance with Legal Requirements or is inconsistent with Contract requirements. If any part of Vendor's Alterations is not in conformity with the plans and specifications approved by EDC, Vendor shall be charged for the reasonable costs of corrective work done by EDC's contractors engaged for such purpose by EDC, provided that, except in the case of an emergency, EDC gives Vendor notice and a reasonable opportunity to cure before proceeding with such corrective work.

EDC may, at discretion, compile a punch list addressing incomplete items of the Alterations being performed by Vendor. Vendor's contractor must respond to EDC's punch list within 48 hours and with due diligence.

Copies of all final (approved) controlled inspection certificates shall be furnished to EDC prior to occupancy of the Stall.

Upon completion of Alterations, Vendor shall submit promptly to EDC (where applicable):

- All sign-off documents which pertain to work filed from DOB and all other agencies having jurisdiction; EDC hereby reserving the right to obtain all necessary sign-offs at Vendor's sole cost and expense if this documentation is not provided within ninety (90) days after completion of the Alterations.
- If required by EDC, as-built drawings.
- A properly executed air balancing report signed by a licensed professional engineer.
- Duplicate sets of all operating and maintenance manuals, guarantees and warranties
- Occupancy by Vendor will be withheld if Vendor has not obtained all required sign-offs and all controlled inspections required for the applicable Alterations.

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Essex Market: Rules and Regulations

All deliveries or removal of construction materials and construction-related items must be completed prior to 8:00 a.m. or commenced after 8:00 p.m., or otherwise made during times designated by EDC.

If shutdowns of any mechanical or electrical risers are required in connection with Alterations, such shutdown shall be performed by EDC's contractors at Vendor's expense or, at EDC's option, supervised by EDC's representative at Vendor's expense. All shutdowns must be approved and scheduled in writing at least one week in advance and performed on an overtime basis during specified hours when no Vendor are open for business or any other operating activity.

For fit-outs, Vendor's contractors shall have a superintendent or foreman at the Stall at all times, police and secure the work and materials at all times, and continually keep the Space orderly.

The attachment of any construction materials, equipment or fixtures to Essex Market's HVAC enclosures will not be permitted.

Chasing of structural slab or masonry walls will not be permitted without the consent of EDC.

All valves or equipment controlling Vendor owned mechanical, electrical and plumbing systems must be tagged and identified.

All access to and from Essex Market must be made through the loading dock/freight elevator areas and related service corridors (and not through the public access ways).

All construction personnel must sign in daily and carry picture ID at all times. Construction personnel found in non-designated areas will be ejected from the premises.

The permitted hours for performing Repairs & Alterations within the Market are Monday through Friday, 8:00 a.m. – 5:00 p.m., pending EDC approval. All fit-outs must be coordinated with EDC to determine when work can be done. For work performed outside the permitted hours, Vendor shall pay the charges imposed by EDC (which may include the cost for additional porters and building engineers) for such "after hours" work. In addition, Vendor shall pay for security costs incurred by EDC with respect to the performance of Alterations by Vendor (regardless of the hours during which the same are performed).

Any construction activity which causes or is likely to cause excessive noise or vibration or otherwise disturb other Vendor or Guests (including, without limitation, demolition, core drilling, chopping or the use of pneumatic tools) must be performed only during the hours designated by EDC for the same. All demolition performed by or on behalf of Vendor (other than demolition that is to be performed by EDC in accordance with the terms of the Contract, if applicable) shall be supervised by EDC's representative at Vendor's reasonable expense.

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Essex Market: Rules and Regulations

The removal of any hardware, fixtures and other building-standard reusable equipment must be coordinated with EDC and, if requested by EDC, saved and delivered to EDC upon removal of the same.

All abandoned ductwork, conduit wiring or piping with any hung ceiling areas which will not be used after any work hereunder must be removed as part of such work.

All installed equipment requiring access for maintenance/repair must be installed in a manner where access is readily available and otherwise approved by EDC, with properly rated access doors (if applicable).

All equipment having moving parts must be mounted on or suspended by properly designed vibration absorbers.

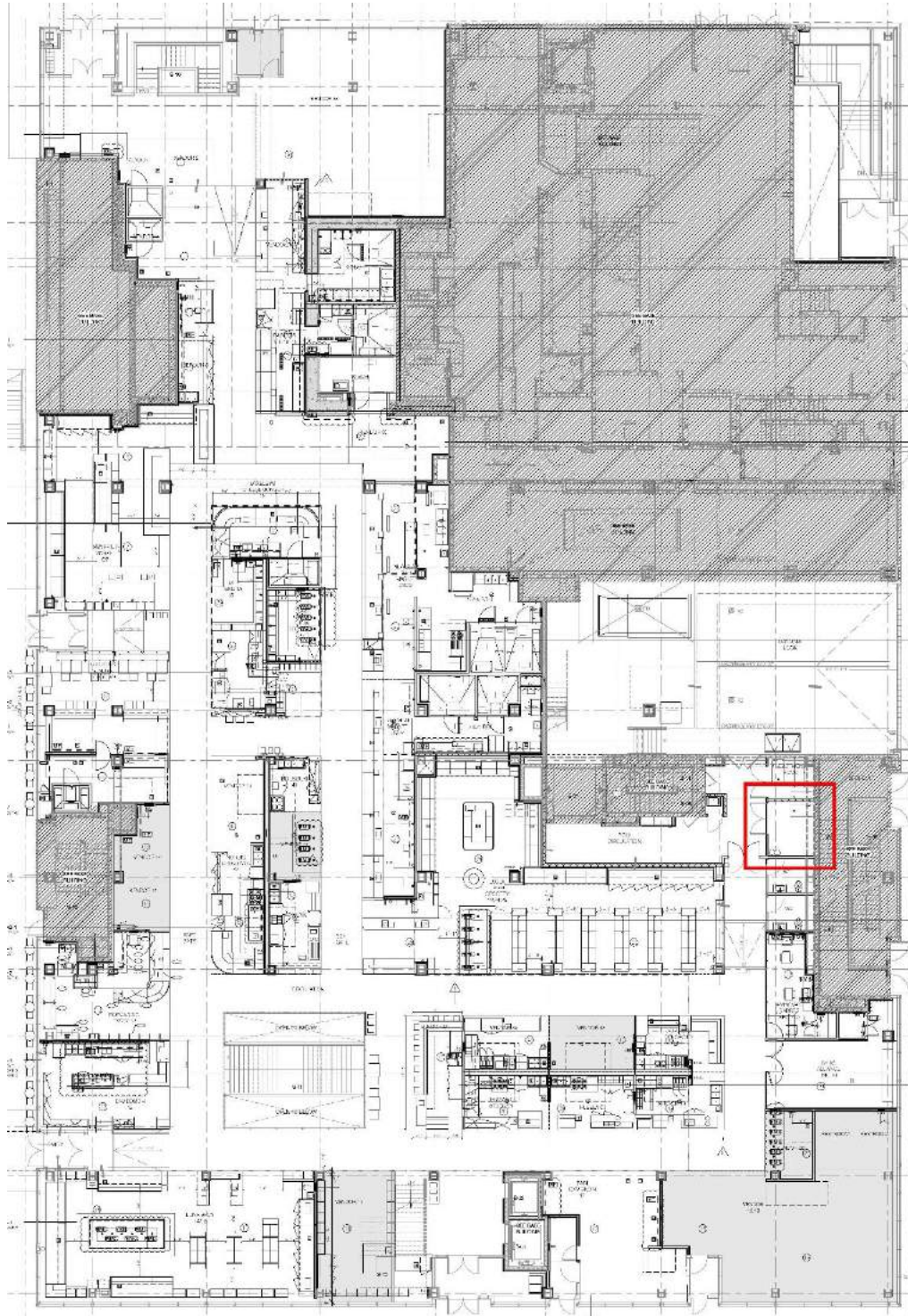
VI. VENDOR RESOURCES

Essex Street Market Vendor's Association

The Essex Market Vendor's Association is an EDC approved merchants' association. Vendors are encouraged to become a member of such organization and abide by the by-laws of such organization and remain as a member in good standing of such organization.

EXHIBIT A

Trash Room Diagrams



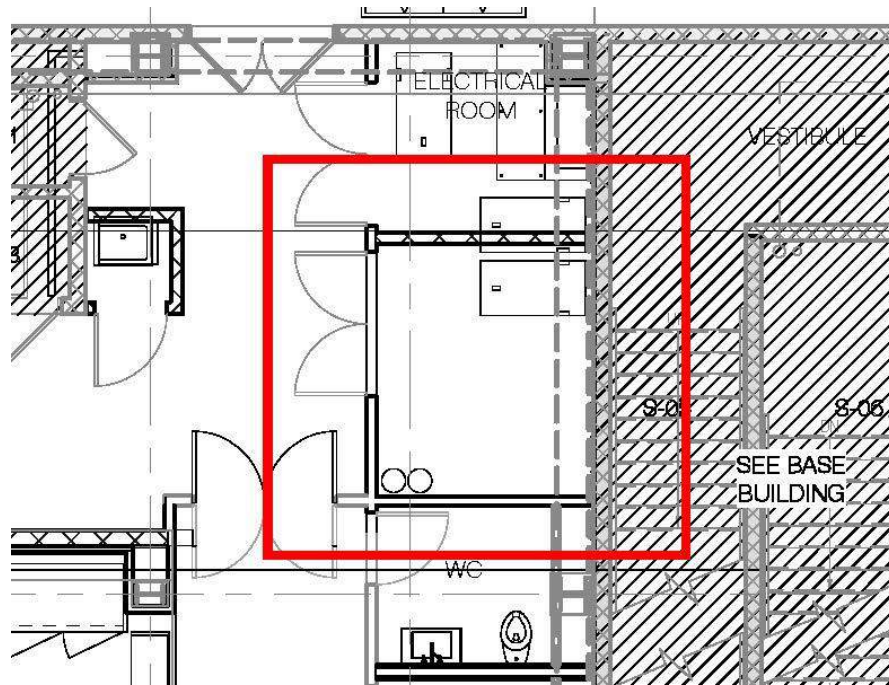


EXHIBIT C

EDC Submission Instructions and Owner Information

Tenant Improvement or Repair

Submission FAQs

Why do I need to go through this process?

NYCEDC must provide authorization for all work occurring on City- and NYCEDC-owned properties. Applicants should follow the guidelines below to ensure all governing agency submissions (e.g., DOB, SBS, LPC, DEP, USACE, etc.) are processed efficiently.

What do I need to submit?

The below chart provides detail on what documents are required for each type of improvement or repair project, but in general, you will need to submit:

1. A request letter on company letterhead describing at minimum:
 - The scope of work, including a brief description of the improvement or repair
 - Reason for work (repair, improvement, etc.)
 - Project timeline, including intended dates and duration of construction
 - Anticipated design/construction team
2. Signed and sealed design documents, submitted as typewritten originals; more information is available in the NYC Department of Buildings' filing guide
3. Signed and sealed drawings, submitted as a PDF to operations@edc.nyc
4. Owner authorization letters, if applicable

Note: Submissions should not be stapled.

	Improvement or Repair	Preliminary Design Approval	Event Requiring Alt-2 or Alt-3 Permit (DOB)
Request letter	✓	✓	✓
Signed and Sealed Documents	✓		✓
Signed and Sealed Drawings	✓		✓
Schematic Design and Drawings		✓	
Event Briefing Sheet			✓
TPA Letter			✓

Who do I list as owner?

Name: Rory Melvin
Title/Relationship to Owner: Senior Vice President
Business Name: NYCEDC
Phone: 212.312.3800

Where do I send the submission?

Mail: NYCEDC, Attention: Operations/Tenant Improvement
110 William Street, 6th Floor
New York, NY 10038
Email: operations@edc.nyc

What happens next?

NYCEDC aims to review all complete submissions within three business days and may request revisions and additional documents as a result of its review. It is the applicant's responsibility to submit a revised package.

Still have questions?

If you have questions or concerns about your submission that are not addressed here, please reach out to the Operations Helpdesk at 212.312.3800 or operations@edc.nyc.

For more information on filing with the Department of Buildings (DOB), please refer to DOB's filing guide.

NYCEDC

EXHIBIT D

Insurance Requirements

- a) Commercial General Liability Insurance.
- i. The Permittee shall maintain Commercial General Liability (“CGL”) insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence. [In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000).] This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the DSBS Commissioner, and shall be "occurrence" based rather than "claims-made." By way of example and not limitation, no policy delivered hereunder shall limit (whether by exception, exclusion, endorsement, script or other modification) any of the following CG 00 01 coverage attributes:
- (A) contractual liability coverage insuring the contractual obligations of the insureds;
 - (B) employer’s liability coverage;
 - (C) coverage for claims arising under New York Labor Law;
 - (D) the right of the insureds to name additional insureds including the Permitter and the City;
 - (E) the applicability of CGL coverage to the Permitter, Permit Administrator, or the City as an additional insured in respect of liability arising out of any of the following claims: (x) claims against the Permitter, Permit Administrator, or the City by employees of an Insured, or (y) claims against the Permitter, Permit Administrator, or the City by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing, or (z) claims against the Permitter, Permit Administrator, or the City arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer;
 - (F) designated premises endorsement.
- ii. Such CGL insurance shall name Permitter and the City, together with their members, officials, officers, directors and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2011 and CG 2026.
- b) Workers’ Compensation, Employers Liability, and Disability Benefits Insurance. The Permittee shall maintain Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Permittee’s operations under this Permit, and such insurance shall comply with the laws of the State of New York.
- c) Business Automobile Liability Insurance.

- i. With regard to all operations under this Permit, the Permittee shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use (including loading and unloading) of any owned (including Permittee’s personal vehicles), non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.
 - ii. If vehicles are used for transporting Hazardous Materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.
- d) Liquor Liability Coverage.
- i. If Permittee is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages or if any alcoholic beverage will be sold, served, provided, or given away for consumption on or off the Premises or any portion thereof at any time, Permittee shall maintain or cause to be maintained a Liquor Legal Liability insurance coverage policy, including, without limitation, coverage against any claim for loss of means of support with minimum limits of [One Million Dollars (\$1,000,000) per occurrence] and [Two Million Dollars (\$2,000,000) in the aggregate].
- e) Insert if needed: [Umbrella Liability Insurance.
- i. The Permittee shall maintain Umbrella Liability insurance with a limit of not less than [insert number here] million dollars (\$[X],000,000) per occurrence and aggregate covering the Commercial General Liability, Automobile Liability, and Employer’s Liability policies, which shall apply on a vertical erosion rather than horizontal erosion basis.]
- f) General Requirements for Insurance Coverage and Policies.
- i. Policies of insurance required under this Exhibit shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the DSBS Commissioner and/or Permitter.
 - ii. Policies of insurance required under this Exhibit shall be primary and non-contributing to any insurance or self-insurance maintained by the Permitter and/or the City.
 - iii. There shall be no self-insurance program or self-insurance retention with regard to any insurance required under this Exhibit unless approved in writing by the DSBS Commissioner and/or the Permitter. The Permittee shall ensure that any such self-insurance program provides the Permitter and the City with all rights that would be provided by traditional insurance under this Exhibit, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.
 - iv. The limits of coverage for all types of insurance required under this Exhibit shall be the greater of (x) the minimum limits set forth in this Exhibit or (y) the limits provided to the Permittee under all primary, excess and umbrella policies covering operations under this Permit.
 - v. All required policies, except for Disability Benefits insurance, shall provide that the issuing insurance company provide the Permittee with advance written notice in the event such policy is

non-renewed, cancelled or terminated for any reason, and Permittee shall provide such notice within three (3) days of receipt thereof to the [DSBS Commissioner, New York City Department of Small Business Services, 110 William Street, New York, New York 10038, with a copy to] Executive Vice President, Asset Management, New York City Economic Development Corporation, 110 William Street, New York, New York 10038, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

- vi. All required policies, except for Disability Benefits, shall include a waiver of the right of subrogation against the City and Permitter .
- vii. Any construction manager providing construction management services in connection with any or contractor or subcontractor providing materials and/or labor and/or other services in connection with any work or operations at the Premises (collectively, "Contractors") are required to obtain the types and amounts of insurance listed in this Exhibit C with the same terms and conditions as otherwise noted in this Exhibit C, which coverage shall continue for the duration of the Contractor's performance of the work and/or operations at the Premises (and thereafter, if extended coverage is indicated). Permitter and the City of New York shall be protected as additional insureds on ISO Form CG 2010 or CG 20 38; and CG 20 37 on policies held by all Contractors without regard to privity of contract. When providing evidence of insurance, the Contractor must provide a completed ACORD 855 NY form if requested by Permitter or Permit Administrator.

g) Proof of Insurance.

- i. Certificates of Insurance for all insurance required in this Exhibit must be submitted to and accepted by the Permitter and/or the DSBS Commissioner prior to or upon execution of this Permit.
- ii. For Workers' Compensation, Employers Liability Insurance, and Disability Benefits insurance policies, the Permittee shall submit one of the following:
 - (A) C-105.2 Certificate of Worker's Compensation Insurance;
 - (B) U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
 - (C) Request for WC/DB Exemption (Form CE-200);
 - (D) Equivalent or successor forms used by the New York State Workers' Compensation Board; or
 - (E) Other proof of insurance in a form acceptable to the Permitter and/or the DSBS Commissioner. ACORD forms are not acceptable proof of workers' compensation coverage.
- iii. For all insurance required under this Exhibit other than Workers Compensation, Employers Liability, and Disability Benefits, the Permittee shall submit one or more Certificates of Insurance in a form acceptable to the DSBS Commissioner or Permitter. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by a list of the Declarations and Endorsements and the provision(s) or endorsement(s) in the Permittee's policy/ies (including its general liability policy) by which the Permitter and the City have been made an additional insured, as required herein. If

the Certificate in question evidences liability coverage, such Certificate shall name the Permitter and the City as additional insureds in the following manner:

“The City of New York (the “City”) and the New York City Economic Development Corporation are each an additional insured on a primary and non-contributory basis. The referenced CGL is written on ISO Form CG-0001 without modification to the contractual liability, employer’s liability or waiver-of-subrogation provisions thereof, and contains no endorsement limiting or excluding contractual liability coverage or coverage for claims arising under New York Labor Law, covering the following premises: Essex Street Market, 115 Delancey Street, New York, New York 10002;”

If the insurance is held by any third party other than the Permittee (i.e., a contractor, subcontractor), the description shall also include:

“The City of New York and the New York City Economic Development Corporation are each an additional insured without regard to privity of contract.”

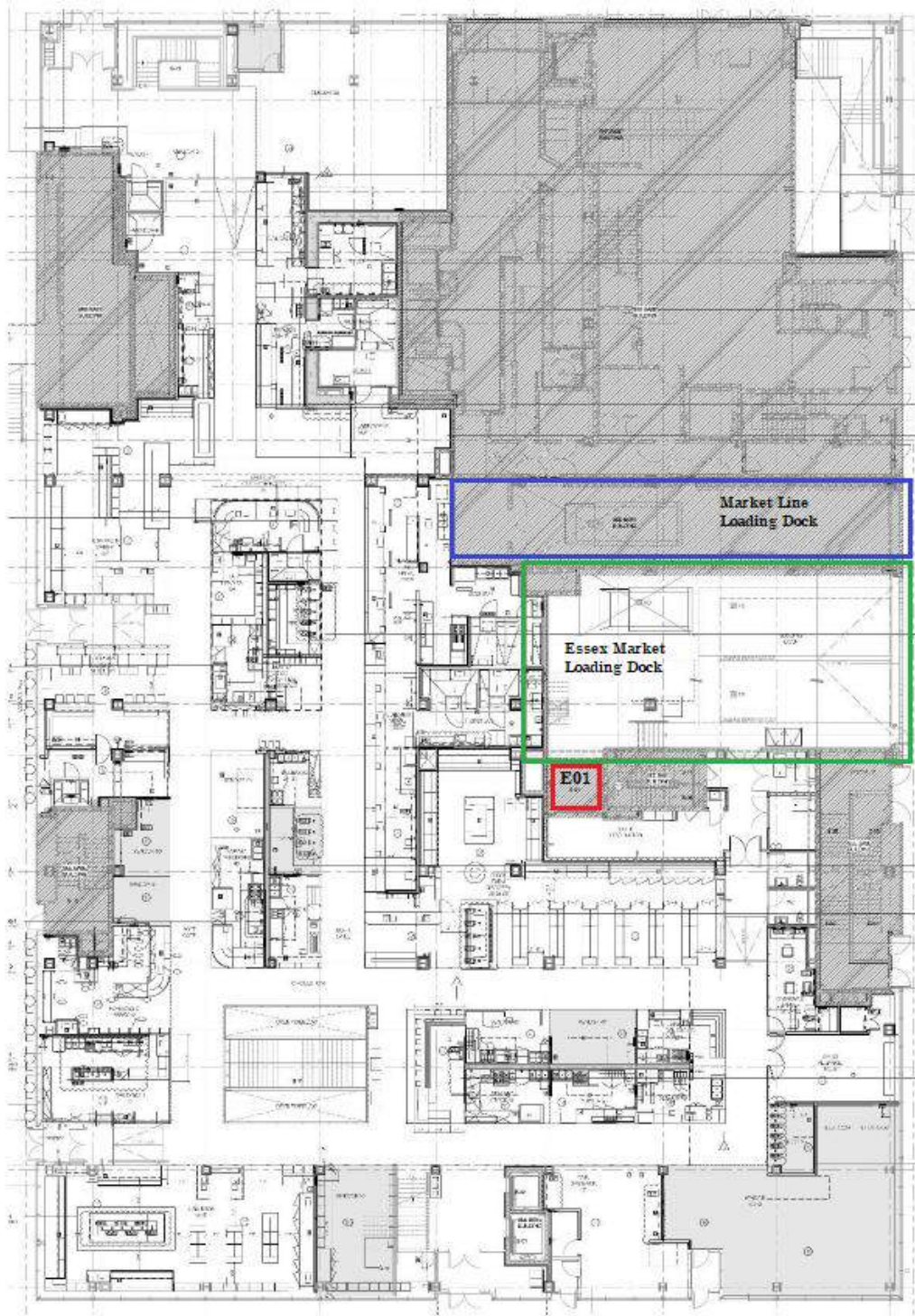
- iv. Certificates of Insurance confirming renewals of insurance shall be submitted to the DSBS Commissioner and Permitter prior to the expiration date of coverage of all policies required under this Permit. Such Certificates of Insurance shall comply with subsections (ii) and (iii) directly above.
 - v. Acceptance or approval by the DSBS Commissioner and/or Permitter of a Certificate of Insurance or any other matter does not waive Permittee’s obligation to ensure that insurance fully consistent with the requirements of this Exhibit is secured and maintained, nor does it waive Permittee’s liability for its failure to do so.
 - vi. The Permittee shall be obligated to provide the Permitter [and DSBS Commissioner] with a copy of any policy of insurance required under this Exhibit upon request by the DSBS Commissioner, Permitter, the City or the New York City Law Department.
- h) Miscellaneous.
- i. Except as set forth in (a)(i), the Permittee may satisfy its insurance obligations under this Exhibit through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
 - ii. The Permittee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the Permitter or the City is an insured under the policy.
 - iii. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Exhibit, the Permittee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Permit (including notice to Commercial General Liability insurance carriers for events relating to the Permittee’s own employees) no later than twenty (20) days after such event or in accordance with the notice provisions in the relevant policies, whichever is earlier. For any policy where the Permitter and/or the City is an Additional Insured, such notice shall expressly specify that “this notice is being given on behalf of the City of New York and New York City Economic Development Corporation as Additional Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named

insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Permittee shall simultaneously send copies of such notice to the (1) City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and (2) New York City Economic Development Corporation, attn: General Counsel, 110 William Street, New York, New York 10038.

- iv. The Permittee's failure to secure and maintain insurance in complete conformity with this Exhibit, or to give the insurance carrier timely notice on behalf of the Permitter and/or the City, or to do anything else required by this Exhibit shall constitute a material breach of this Permit. Such breach shall not be waived or otherwise excused except by written consent from Permitter, and shall not be excused by any inaction by the Permitter or the City at any time.
- v. Insurance coverage in the minimum amounts provided for in this Exhibit shall not relieve the Permittee of any liability under this Permit, nor shall it preclude the Permitter or the City from exercising any rights or taking such other actions as are available to any or all of them under any other provisions of this Permit or the law.
- vi. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Exhibit, the Permittee shall at all times fully cooperate with the Permitter and the City with regard to such potential or actual claim.
- vii. The Permittee waives all rights against the Permitter and the City including their members, officials, officers, directors and employees, for any damages or losses that are covered under any insurance required under this Exhibit (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Permittee and/or its employees, agents, or servants of its contractors or subcontractors.
- viii. In the event the Permittee requires any entity, by contract or otherwise, to procure insurance with regard to the performance of any work at the Premises or for any operations under this Permit and requires such entity to name the Permittee as an additional insured under such insurance, the Permittee shall ensure that such entity also name the Permitter and the City, including their members, officials, officers, directors and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26 or CG 20 38 (or its equivalent) without regard to privity of contract .
- ix. In the event the Permittee receives notice, from an insurance company or other person, that any insurance policy required under this Exhibit shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Permittee shall immediately forward a copy of such notice to the [DSBS Commissioner, New York City Department of Small Business Services, 110 William Street, New York, New York 10038, with a copies to each of] (1) New York City Economic Development Corporation, attn.: Executive Vice President, Asset Management and the General Counsel, 110 William Street, New York, New York 10038, and (2) New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Permittee shall ensure that there is no interruption in any of the insurance coverage required under this Exhibit.

EXHIBIT E

Loading Dock Diagrams



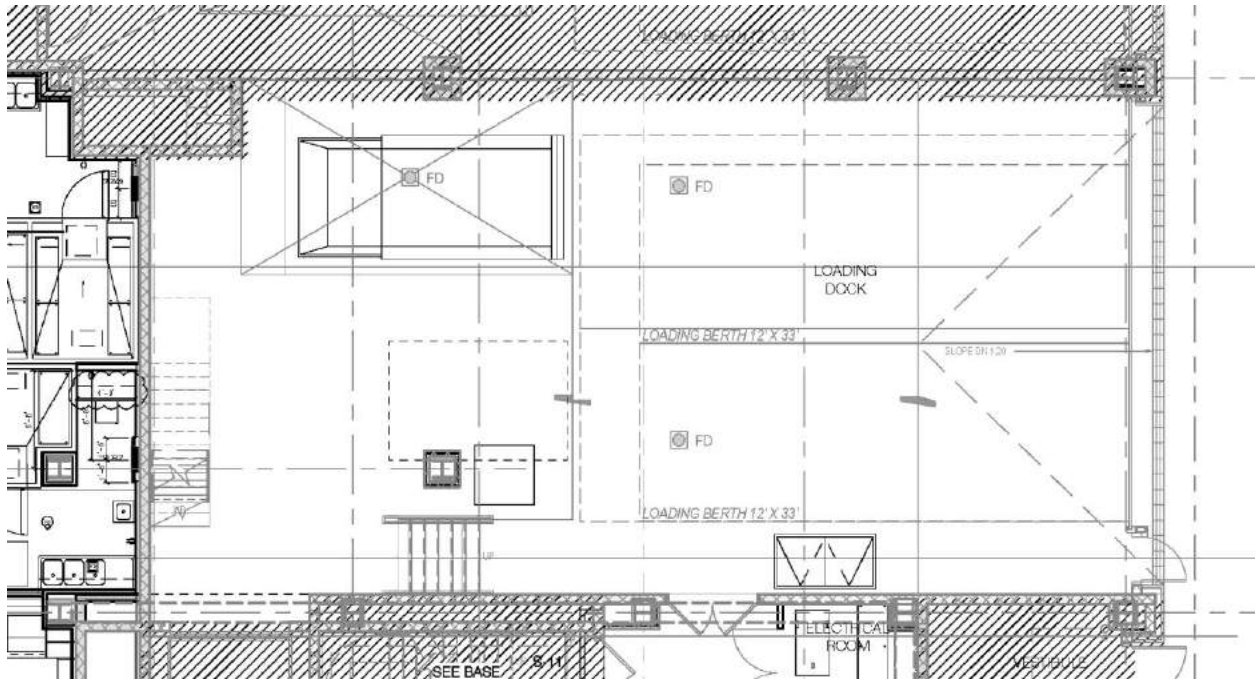


EXHIBIT F
Incident Report

ESSEX MARKET **EMPLOYEE INCIDENT REPORT**

REPORTED BY _____ DATE OF REPORT _____
TITLE/ROLE _____ INCIDENT # _____

INCIDENT DETAILS

NAME _____ GENDER _____ AGE _____

INCIDENT TYPE

TRIP AND FALL BLEEDING MEDICAL CONDITION OTHER _____

LOCATION (including stall number if applicable) _____

DATE OF INCIDENT _____ TIME OF INCIDENT _____

INCIDENT DESCRIPTION

DETAILS OF PERSON INVOLVED e.g. condition, relevant clothing, etc.

ACTION TAKEN

SUPERVISOR NAME _____ TITLE _____
SIGNATURE _____ DATE _____

EXHIBIT G

Fines and Fees Specified Rules

Infraction	Fine
Not Operating During Required Hours of Operations	\$100
Hawking	\$50
Non-Compliance With Garbage Removal Policies	\$100
No Prices Posted	\$50
Non-Compliance of Weekly Hood Cleaning	\$150
Failure to Comply to Dock Master Hours	\$100
Playing Loud and/or Disruptive Music	\$50
Obstruction of Common Area	\$100
Failure to Comply to Market Rules and Regulations	\$100

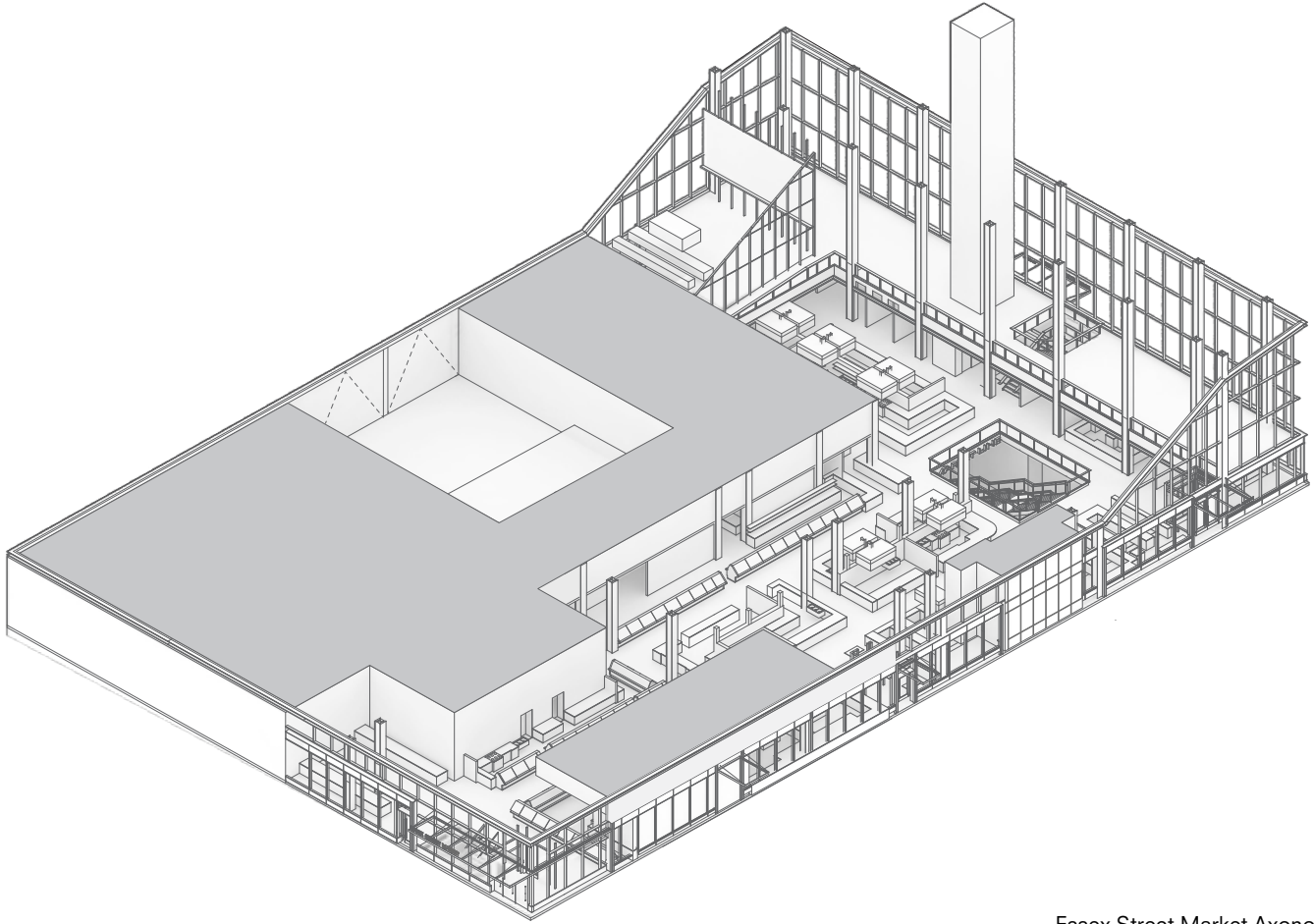
EXHIBIT H
Design Criteria

ESSEX STREET MARKET

VENDOR DESIGN GUIDELINES



ESM VENDOR DESIGN GUIDELINES // PREFACE



Essex Street Market Axonometric

This document has been compiled to clarify the design, material and construction guidelines for the Essex Street Market moving forward.

This memo is based on the material palette and design intent as documented in the 100% Construction Documents issued by SHoP Architects dated April 6, 2016.

DRAWING SHEET REFERENCES

For each vendor design to conform to the design intent in the future, the following drawings should be referenced for materials, details and dimensions:

- + A-040 MATERIAL PALETTE
- + A-102 1ST FLOOR PLAN
- + A-122 1ST FLOOR CEILING PLAN
- + A-151 1ST FLOOR VENDOR EQUIPMENT PLAN
- + A-700-701 INTERIOR ELEVATIONS AND DETAILS
- + A-720-721 TYPICAL VENDOR CANOPY DETAILS
- + A-732 DEMONSTRATION KITCHEN ENLARGED DRAWINGS
- + A-904 INTERIOR DETAILS

ESSEX CROSSING - ESM - MAY 2018

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DELANCEY STREET
ASSOCIATES

sh p

LOWER EAST SIDE // HISTORICAL TRADITION



The relocation the new Essex Street Market is not the first move for this Lower East side institution. To give the original street cart vendors in the area a home, the city moved the street inside.

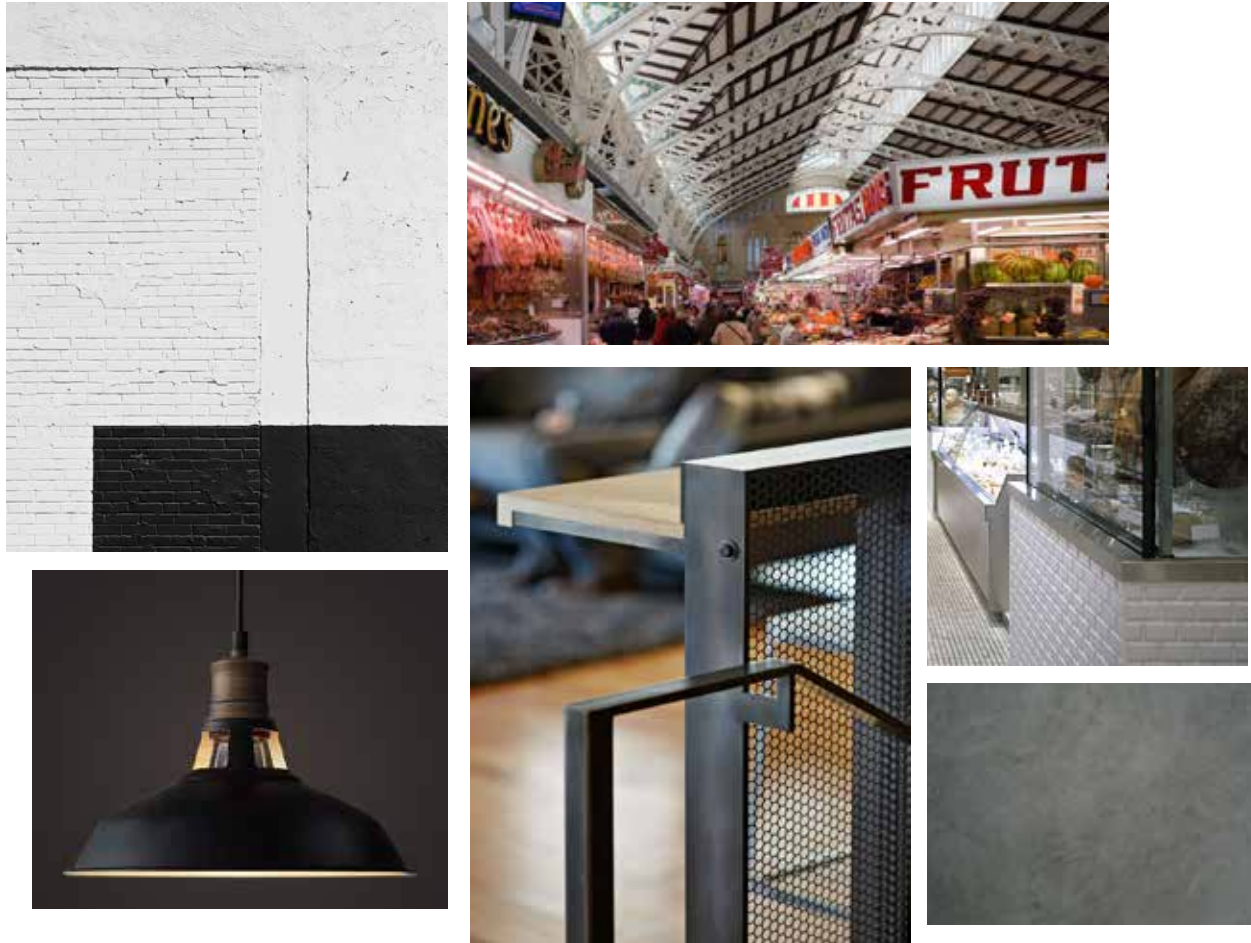
In September 2018, after over 60 years in its original relocation, the NYCEDC led Essex Street Market will reopen at 180 Broome Street, putting an exclamation point on the long awaited, SHoP Architects designed, Essex Crossing master plan that is transforming one of the last grand urban developments in Lower Manhattan.

ESSEX STREET MARKET // EXTERIOR



As seen walking east through Soho, across Allen Street, along Broome Street, the Essex Street Market shines with a new triple height, vaulted public piazza of food, drink, commerce and culture. The honed concrete ground floor and mezzanine is a continuation of vibrancy of the street outside. With a consistent New York subway tile backdrop the fumed oak and stainless-steel equipment of the original 28 Essex Street Market Vendors will each have their very own visual presence. The blackened steel vendor canopies throughout evoke the original street storefront and house unique way finding signage for each vendor, all tied together under the bone white scalloped ceiling which scoops available daylight with its southern orientation. This signage driven aesthetic is reinforced with a prominent location for the original and refurbished 30 ft. long Essex Street Meat Market neon sign.

ESSEX STREET MARKET // MOOD & TEXTURE



Each vendor design will have a common material relationship to each other even while including a pallet that is specific to the privately-owned shop, open for business.

The NYCEDC, along with SHoP Architects, Hugh Boyd Architect and JRA have provided design guidance throughout the design and construction process and will continue to provide input as required as vendors locations evolve. The face of New York street storefronts is always changing, and the new Essex Street Market will continually evolve at the same pace.

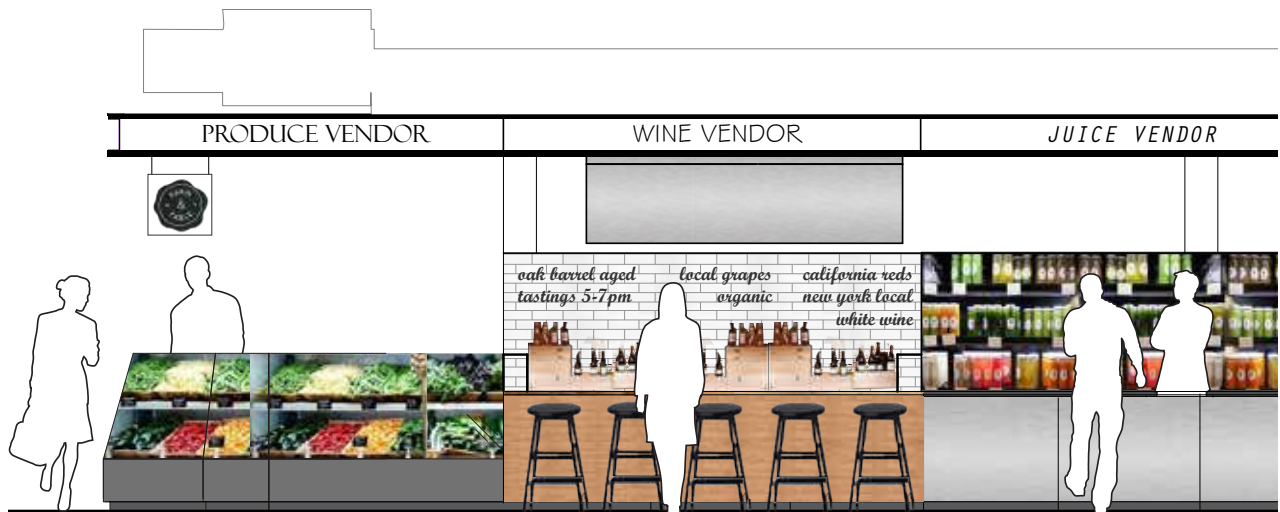
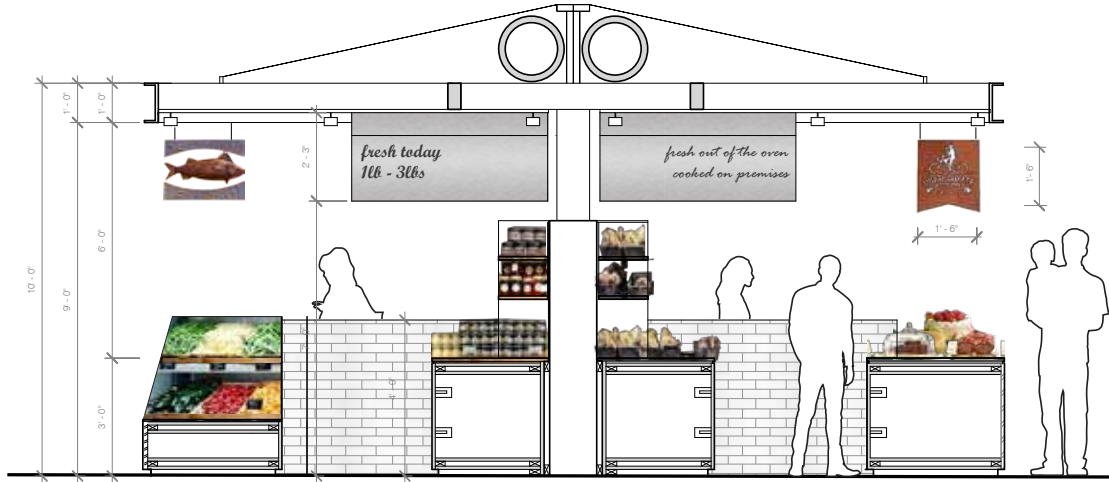
ESSEX STREET MARKET // MATERIALS



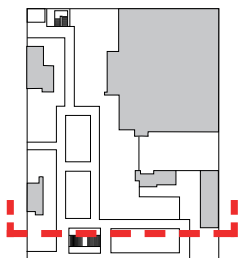
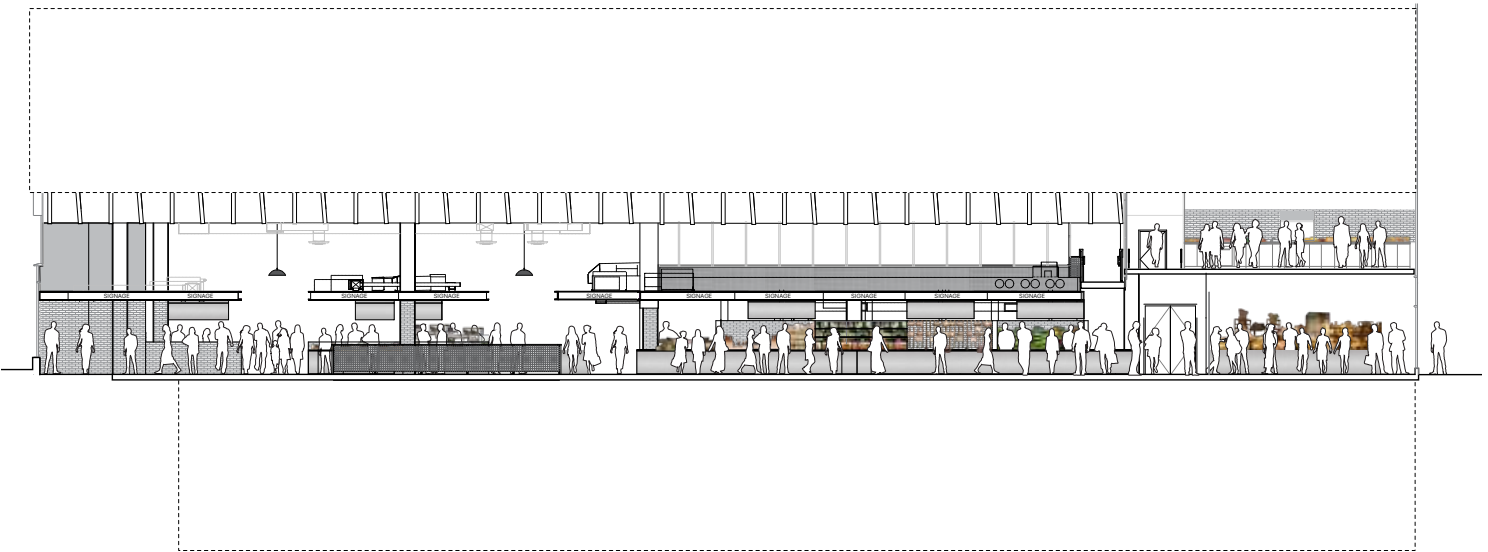
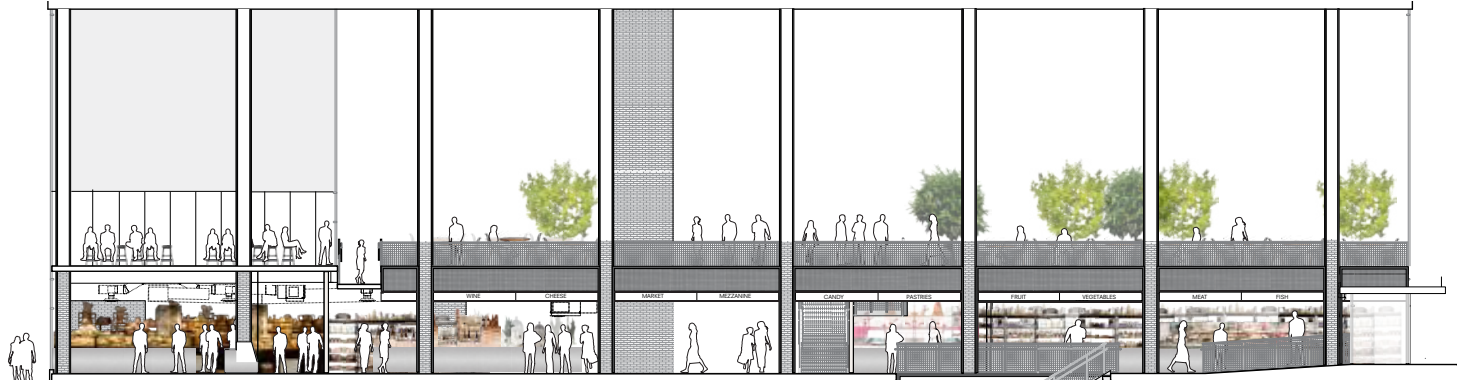
ESSEX STREET MARKET // MARKET PRECEDENTS



ESSEX STREET MARKET // VENDOR STALL MATERIALS



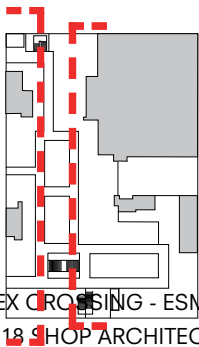
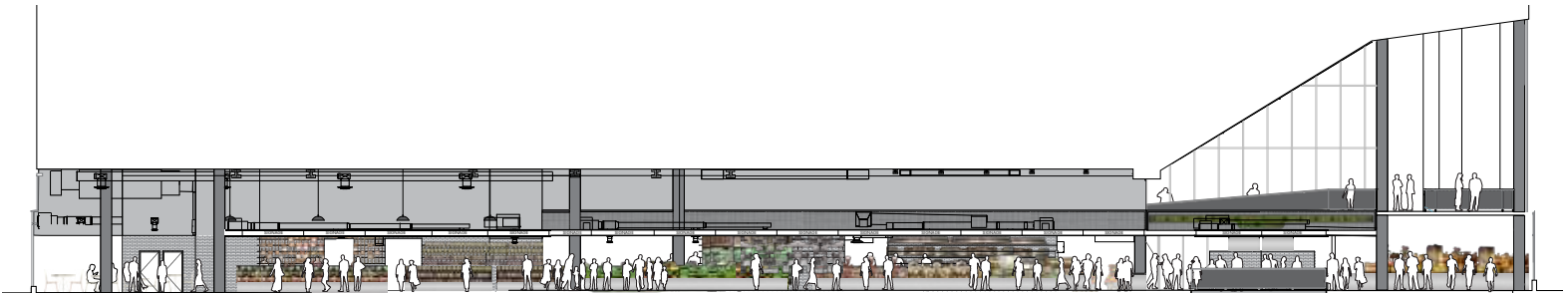
ESM AND MARKET LINE // N/S ELEVATIONS



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ESM AND MARKET LINE // E/W ELEVATIONS



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ESSEX STREET MARKET // INTERIOR VIEWS

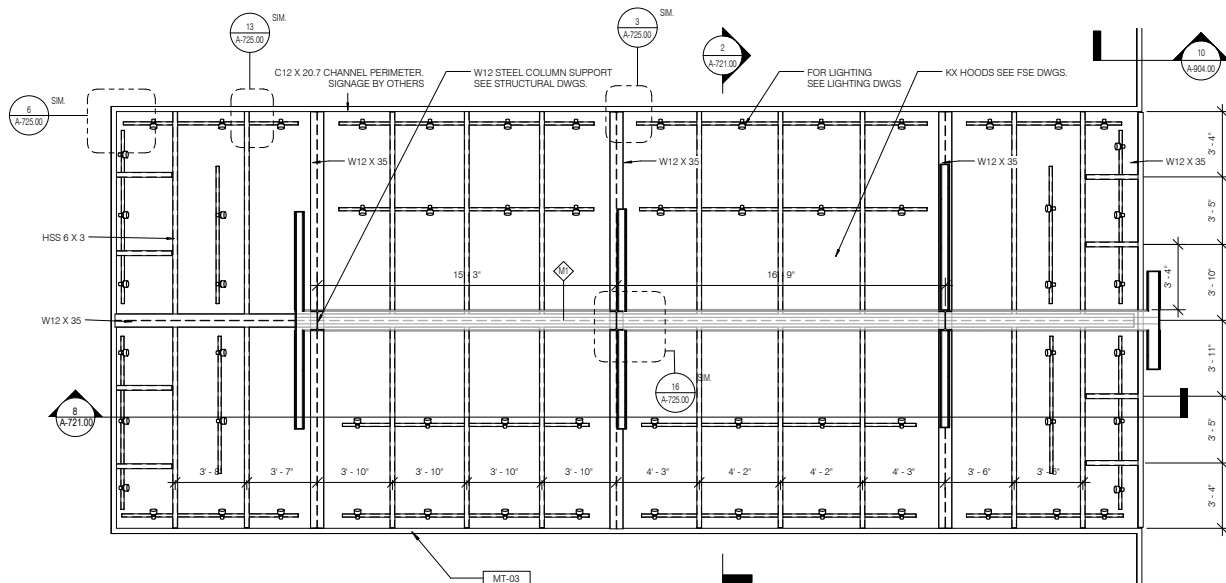
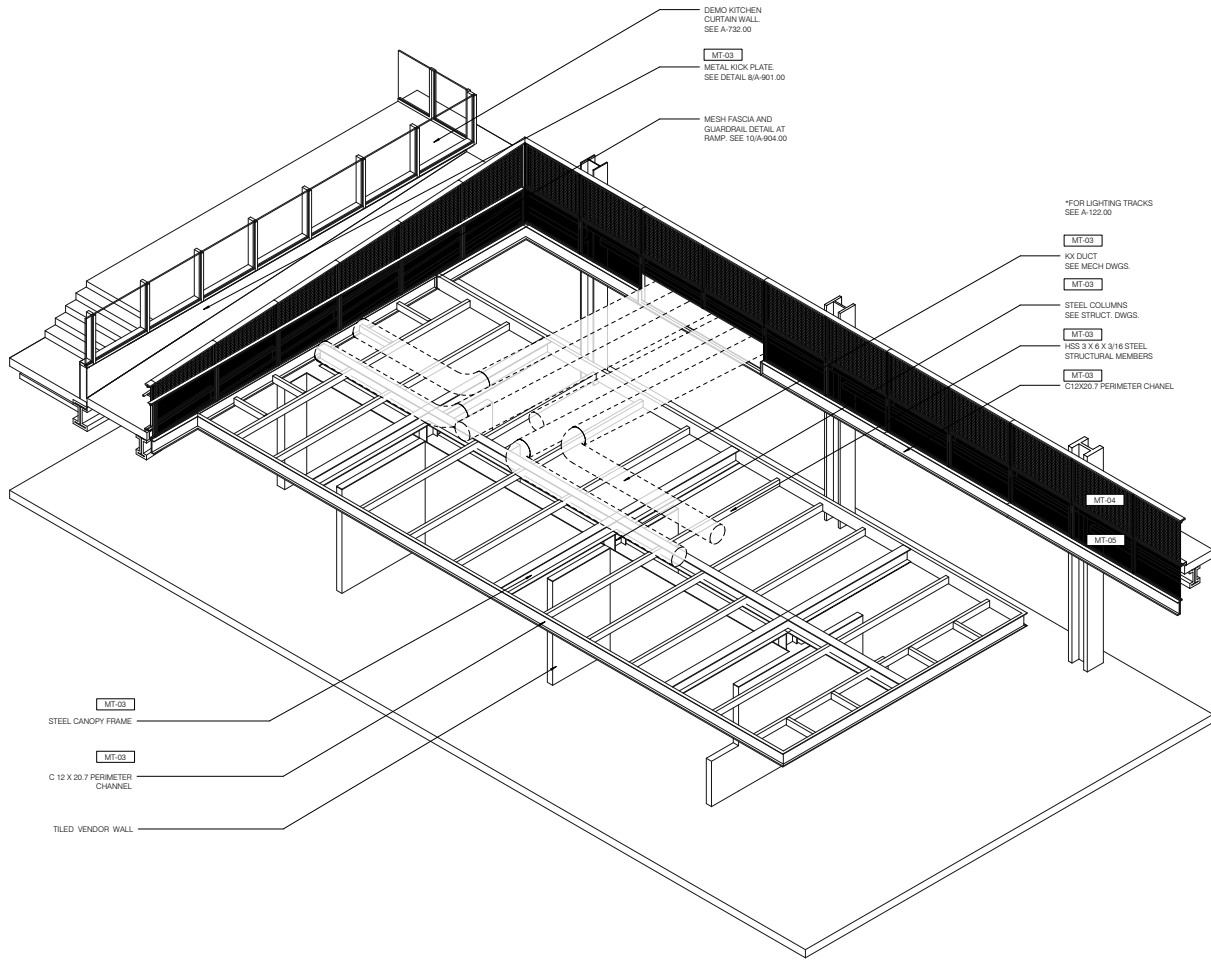


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DELANCEY STREET ASSOCIATES



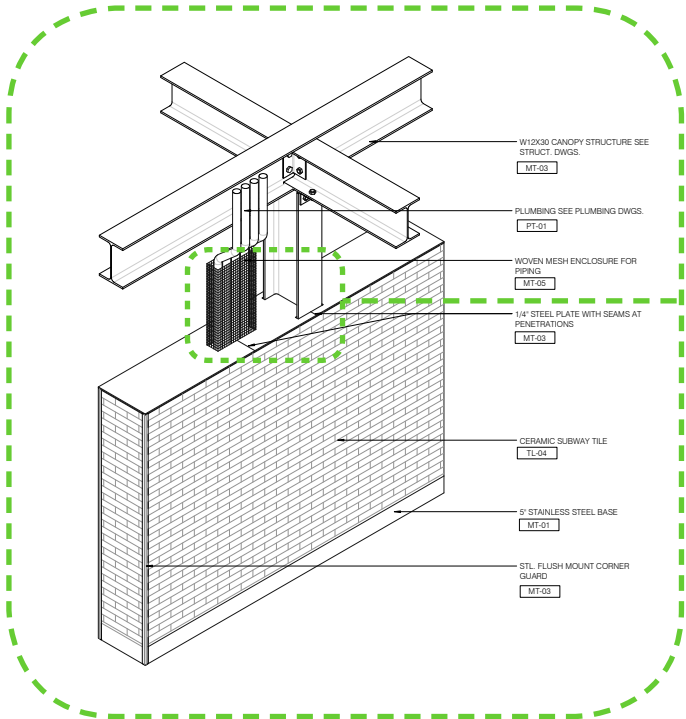
ESM // TYP. VENDOR CANOPY AXON. & RCP



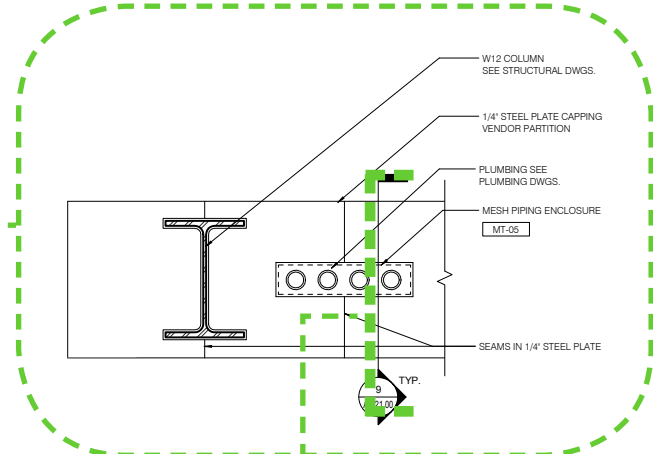
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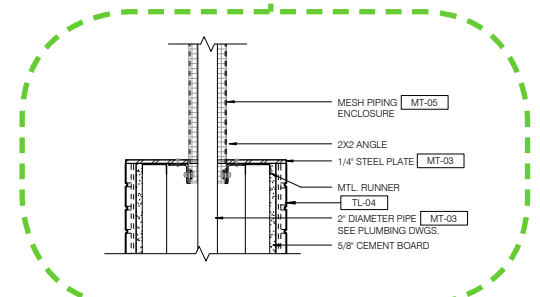
ESM// TYPICAL VENDOR CANOPY E/W SECTION & DETAILS



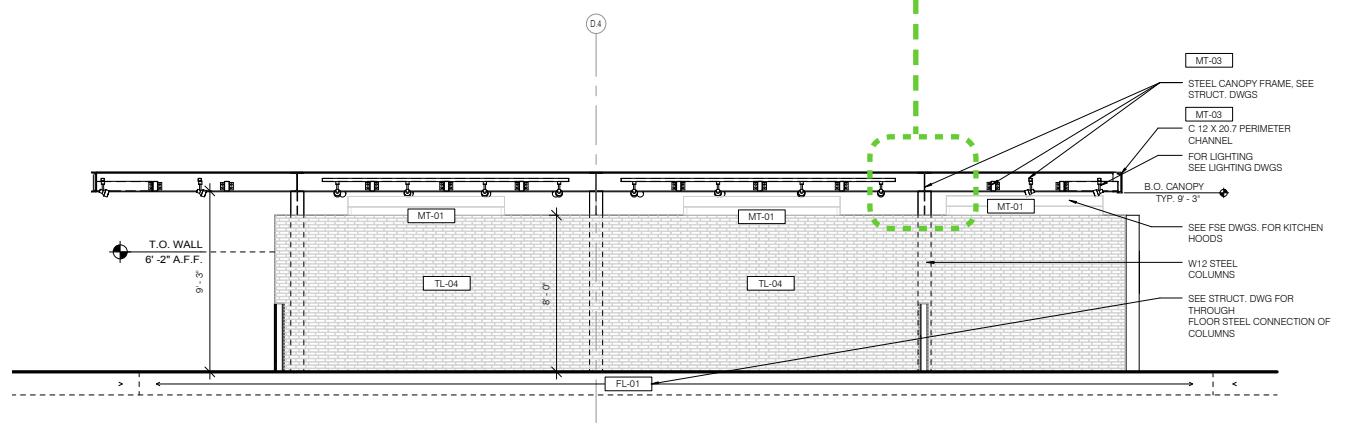
VENDOR STALL TILE WALL AXON



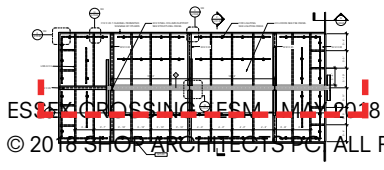
PLAN DETAIL @ T.O. VENDOR CANOPY WALL



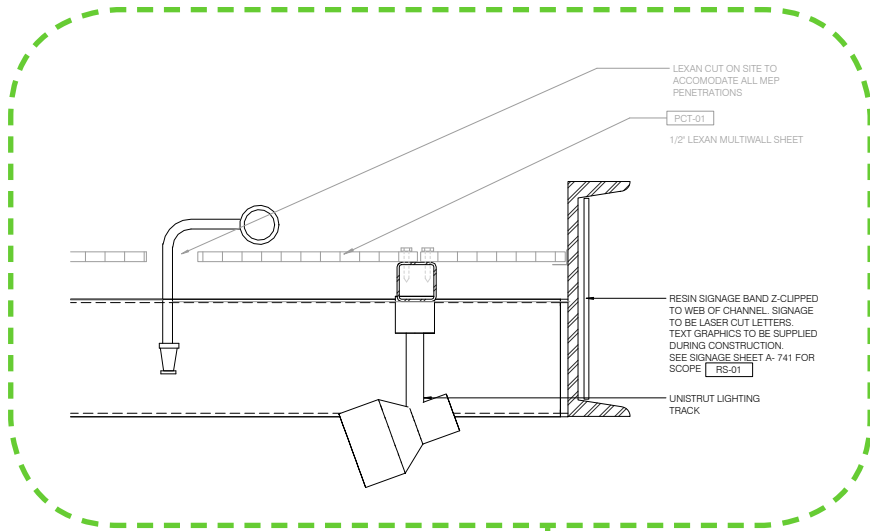
T.O. VENDOR WALL MESH DETAIL



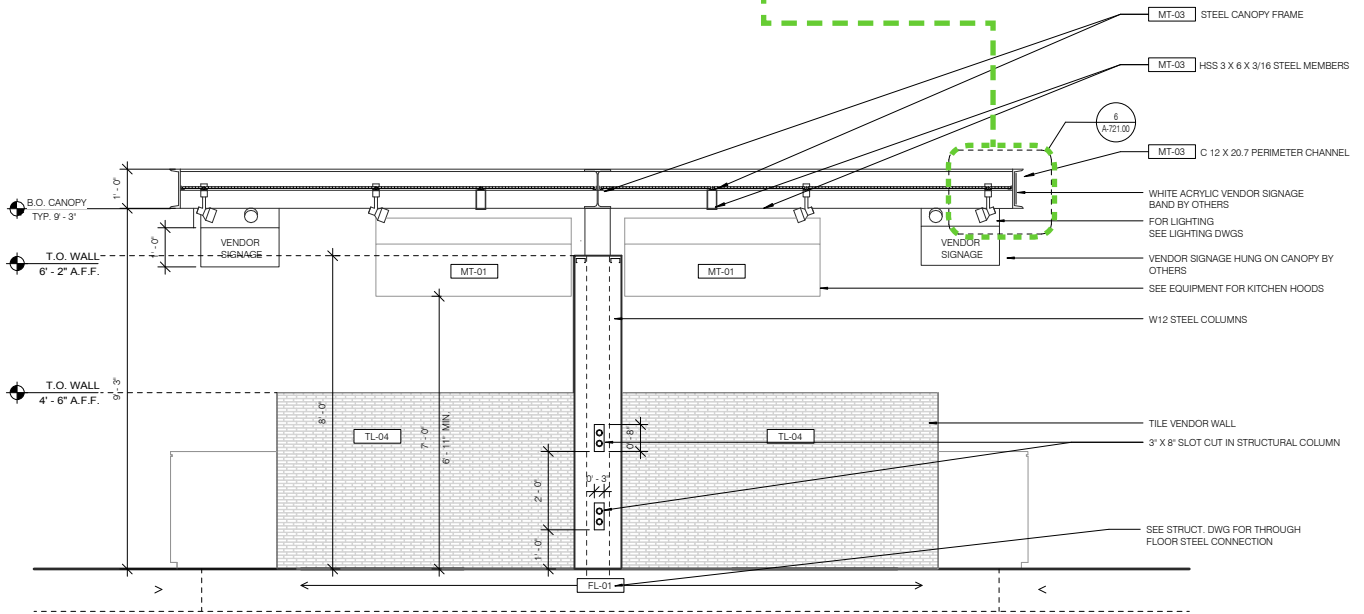
B. TYPICAL VENDOR STALL E/W SECTION



ESM// TYPICAL VENDOR CANOPY N/S SECTION & DETAILS



CANOPY SIGNAGE / LIGHTING SECTION DETAIL



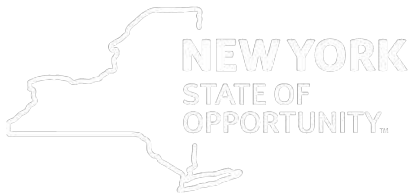
TYPICAL VENDOR STALL N/S SECTION

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ESM// TYPICAL VENDOR CANOPY LIGHTING CUTS

EXHIBIT I

New York State Department of Markets and Agriculture Guidelines



Agriculture and Markets

Andrew M. Cuomo, *Governor* | Richard A. Ball, *Commissioner*

Find a Farmers' Market

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Available Circulars (NYS Food Safety Rules and Regulations):

The Circulars listed below are provided to **GUIDE** you through the NYS Food Safety Rules and Regulations that pertain to your type of business. Reading and complying with each of these documents will help you **PREPARE** for an inspection by one of our inspectors! Click on this link to view a copy of the guideline our inspectors use to conduct **SANITARY INSPECTION!!** ([PDF](#))

Following the Department's sanitary inspection of a retail food store, the inspector will issue the store a '**Notice of Inspection**'. The Notice of Inspection will give the store an "A", "B", or "C" letter grade, which corresponds to the results of their most recent sanitary inspection.

- **A** - No critical deficiencies were found. (*Food safety program in place is working.*)
- **B** - Although critical deficiencies were found, they were corrected at time of inspection. (*Room for continuous improvement.*)
- **C** - Critical deficiencies were found but were not or could not be corrected. (*Need for immediate corrective action.*)

The Department requires that the Notice of Inspection be posted in an obvious location near each public entrance to the retail store. Consumers can also request copies of the inspection notice from the retailer. To view a copy of the 'Notice of Inspection', click [here](#).

Food Distributed Free of Charge Canned, Perishable Food or Farm Products

Article 4D Liability for Canned, Perishable Food or Farm Products Distributed Free of Charge ([PDF](#))

Commercial Feed or Pet Food

941 1 NYCRR Part 257 Manufacture & Distribution of Commercial Feed ([PDF](#))

943 1 NYCRR Part 257, Manufacture and Distribution of Commercial Feed ([PDF](#))

Fish Processing/Fish Smoking ([20C License](#))

1032 Article 17 and 1 NYCRR Part 262 Fish Processing and Smoking Establishments ([PDF](#))

Food Processing Establishment ([20C License](#))

933 Article 17 and 1 NYCRR 261 Good Manufacturing Practices ([PDF](#))

938 1 NYCRR Part 276 - Food Processing Establishments ([PDF](#))

951 Article 20-C Sections 251-z-1 to 251-z-13 Licensing of Food Processing Establishments ([PDF](#))

1029 Record Keeping and Product Coding Requirements for Food Processing Establishments License 20-C ([PDF](#))

934 1 NYCRR Part 272.1 Meat for Sale at Retail ([PDF](#))

942 Article 17 Sections 214-h-1 to 214-h-8 and 1 NYCRR Part 345 Unit Pricing ([PDF](#))

New York State Kombucha Processing Requirements ([PDF](#))

FAQ for 20C Food Processing Wholesale Document ([PDF](#))

Retail Food Store ([28 License](#))

911 Article 17 Food and Food Products ([PDF](#))

936 1 NYCRR Part 272-2, Advertising and Marketing of Food for Sale at Retail ([PDF](#))

962 Article 17 and 1 NYCRR Part 271 Rules and Regulations Relating to Retail Food Stores ([PDF](#))
(In Chinese [PDF](#)) (In Spanish [PDF](#))

Retail Establishment Processing Food (20C License)

911 Article 17 Food and Food Products ([PDF](#))

936 1 NYCRR Part 272-2, Advertising and Marketing of Food for Sale at Retail ([PDF](#))

962 Article 17 and 1NYCRR Part 271 Rules and Regulations Relating to Retail Food Stores ([PDF](#))
(In Chinese [PDF](#)) (In Spanish [PDF](#))

Required Food Safety Education Training ([PDF](#))

934 1 NYCRR Part 272.1 Meat for Sale at Retail ([PDF](#))

942 Article 17 Sections 214-h-1 to 214-h-8 and 1 NYCRR Part 345 Unit Pricing ([PDF](#))

951 Article 20-C Sections 251-z-1 to 251-z-13 License of Food Processing Establishments ([PDF](#))

938 Food Processing Establishments ([PDF](#))

New York State Kombucha Processing Requirements ([PDF](#))

FAQ for 20C Retail Food Stores Doc ([PDF](#))

Refrigerated Warehouse/Locker (19 License)

831 Article 19 Refrigerated Warehouses and Locker Plants ([PDF](#))

Food Salvager (17B License)

855 Article 17-B Licensing of Food Salvagers ([PDF](#))

Maple Syrup and Sugar

947 Article 13D Section 160U, 203 & 204 and 1 NYCRR 175-176, 276.1 and 276.4 Maple Syrup and Sugar ([PDF](#))

Meat and Poultry - Regulated by the USDA

914 Article 5B Sale of Meat and Article 5D Sale of Poultry and Poultry Products ([PDF](#))

Rendering Plant/Disposal Plants/Transportation Services (5C License: [Disposal](#) | [Transportation](#))

Article 5C Licensing of Rendering Plants ([PDF](#))

Article 5-C Disposal Plants and Transportation Services ([PDF](#))

Slaughterhouses (5A License)

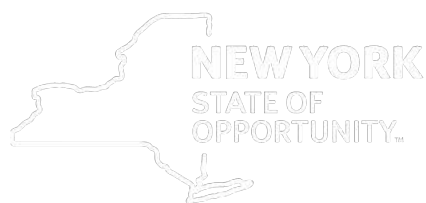
925 Article 5A Licensing of Slaughterhouses ([PDF](#))

FAQ for 5A Slaughterhouses Doc ([PDF](#))

FSI 1122 - 5A Vacuum Packaging Record ([PDF](#))

Food Warehouse (28D License)

933 Article 17 and 1 NYCRR 261 Good Manufacturing Practices ([PDF](#))



Agriculture and Markets

Andrew M. Cuomo, *Governor* | Richard A. Ball, *Commissioner*

Find a Farmers' Market

Description of Food Processing

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Baking:

bread, rolls, pastries, pies, cookies, etc., wholesale or retail in-store bakery operations, including bake-off operations

Blending:

spices, herbs, seasonings at retail or wholesale

Bottling at Retail or Wholesale:

fresh fruit juices
soft drinks
apple cider

Catering:

off-site service of foods prepared at establishment
(off –site preparation may require local H.D. Permit)

Cooking or Heat Treatment - Retail or Wholesale:

frying or cooking fish
cooking lobster, shrimp
raw pretzels
re-warming pretzels - popcorn
retail popcorn popping
wholesale popcorn popping
chocolate candy molds or forms
melting chocolate, hot chocolate unit
cooking chicken wings, meat products, hot dogs, meat loaf, sausage
eggs

Cooking or Heat Treatment:

lasagna, pasta and sauce, complete dinners, pizza, nachos and cheese, soups, meat pies, knishes
cappuccino units

Curing or Brining:

retail ham, corned beef briskets, pigs knuckles, feet, tail
wholesale U.S.D.A. processing plant
salted fish

Cutting, slicing, eviscerating or shucking:

cold cuts, ready-to-eat meat
cheeses
bread, rolls, bagels
fish filleting, shellfish shucking, whole fish eviscerating
cut fruit or melon
cut vegetables into ready-to-eat sizes

Dehydrating:

fruit
vegetables
beef jerky
herbs and spices

Freezing:

frozen dessert machine, ice cream, yogurt, slush, ice milk
shaved ice, serving dish or cone hard ice cream
retail ice production and packaging

Grinding:

poultry or meat at retail
grating cheeses
retail coffee grinding, wholesale coffee grinding

Mixing Meat & Grinding with:

seasoning, meat loaf mix, meatball mix, pan sausage or patties

Mixing Salad Items:

tuna fish, macaroni, potato, coleslaw
fruit salad
vegetable salad mix

Packing/Repacking from Bulk at Retail or Wholesale:

exposed candy
cheese curd
salads; tuna, chicken, egg, mixed foods and pasta, etc.
pasta - cooked or dry
dried fruit
dried vegetables
cereals
ready-to-eat sprouts or cut vegetables
acidified foods - vegetables
exposed ready-to-eat foods

Retail Repacking of:

stuffing sausage into casings

Pickling or Marinating:

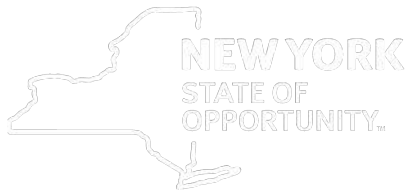
fish, herrings,
meat, poultry,
vegetables, cabbage,
fruit, olives

Roasting:

beef and meats
coffee
nuts
barbecue chicken, ribs, beef

Smoking:

fish
meat and meat products
cheeses



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Food Establishment Licenses

The Division of Food Safety and Inspection is responsible for the licensing and inspection of food establishments operating in the following capacities:

The terms “food” and “food product” shall include **ALL** articles of food, drink, confectionery or condiment, whether simple, mixed or compound, used or intended for use by humans or animals, and shall also include **ALL** substances or ingredients to be added to food for any purpose. This definition shall be construed as including chewing gum.

If you need assistance, please call 800-554-4501.

Food Processor

If I process one of the foods below; I need a 20-C license. A Food Service Operation (such as a restaurant, café, pizza shop), contact your [local health department](#).

- Cooking, boiling, broiling, frying, grilling, freezing, drying, roasting, heating or reheating food
- Mincing/Grinding/Slicing/Curing/Brining - meat, cheese, fish, vegetables, fruit, bagels, bread etc
- Use of a cappuccino machine
- Baking
- Preserving - fruits or vegetables - jams, jellies, chutneys, salsa, sauces, etc
- Canning or Pickling - fruits, vegetables, meats, etc
- Bottling - Oils, Drinks (shakes, juices, coffee, teas, apple cider, etc)
- Repacking uncooked foods, ready-to-eat foods, salads, fruit, dried fruit, vegetables, cereals, granola, nuts, yoghurt cups, etc
- Preparing ready-to-eat salads: tuna, chicken, egg, mixed foods, meats and pasta dishes, etc
- Smoking: fish, meat and meat products, cheeses, etc
- Pickling or Marinating: fish, herrings, meat, poultry, vegetables, cabbage, fruit, olives
- Dehydrating: fruit, vegetables, beef, chicken, pork, fish, herbs and spices
- Catering: off-site service of foods prepared at establishment (Note: off-site preparation may require local Health department permit)
- Freezing: frozen dessert machine, ice cream, yogurt, slush, ice milk, shaved Ice, serving dish or cone hard ice cream, retail ice production and packaging

Article 20-C Food Processing Establishment:

Who's Required:

Food manufactures, processing plants, wholesale bakeries and retail food establishments (i.e., grocery stores) that conduct any type of food preparation including but not limited to, meat and cheese slicing, heating foods, sandwich making, operating beverage dispensing machines, and preparing sushi, salad bars, or other ready to eat exposed food packaging activity.

Application: [Food Processing Establishment](#)

[Regulation](#)

[Description of Food Processing](#)

Exemptions:

Note: The following processing facilities are exempt from 20-C Licensing (see 1 NYCRR: 276.4 for further details)

They must however adhere to good manufacturing practices (GMPs)

- o Licensed by State Liquor Authority as Farm Winery
- o Licensed by State Liquor Authority as Farm Cidery
- o Licensed by State Liquor Authority as Farm Brewery
- o Licensed by State Liquor Authority as Farm Distiller
- o Honey Producers
- o Maple Syrup Processors
- o Hop Processors
- o Home Processors
- o Slicing & Packaging of Cheese at Farmer's Market

Retailer

If I am a retailer that does not process foods; I need a 28 license.

Article 28-A Retail Food Store (No Food Processing):

Who's Required:

Any Retail Food Store within the State where food and food products are offered to the consumer and intended for off-premises consumption and conducts no food processing as defined above. This includes stores which sell fluid milk, shell eggs and refrigerated meats.

Application: [Retail Food Store](#)

[Regulation](#)

Warehouse

If I am a warehouse that stores/distributes food (excluding Raw Agriculture Commodities (RACs); I need a 28-D license.

Article 28-D Food Warehouse:

Who's Required:

Any food warehouse facility within the State in which food is held for commercial distribution.

Application: [Food Warehouse](#)

[Regulation](#)

Food Salvager

If I am a Food Salvager; I need a 17-B license.

Article 17-B Food Salvager:

Who's Required:

A business that receives distress or damaged food or food use products for reconditioning, culling and or sorting for the purpose of resale of satisfactory products.

Application: [Food Salvager](#)

[Regulation](#)

Refrigerated Warehouse/Locker

If I own a refrigerated warehouse or locker that stores/distributes refrigerated foods; I need a 19 license.

Article 19 Refrigerated Warehouse/Locker:

Who's Required:

A facility that offers refrigerated storage space for rent in their building for the storage of food commodities or produce owned by other businesses. The commodities being held must be lot coded and not held for over two years without approval for extended storage. Produce only facilities pay a reduced license fee.

Application:

[Refrigerated Warehouse/Locker/Fresh Fruit and/or Vegetable Storage Facility](#)
[Financial Statement for Refrigerated Warehouse and/or Locker Plant](#)

[Regulation](#)

Rendering Plant

If I am a rendering plant; I need a 5-C license.

Article 5-C Licensing of Rendering Plant:

Who's Required:

Disposal plants that process animals or inedible meat for other than human consumption require this license. Also, businesses that operate a transportation service for the purpose of transporting for hire unprocessed animal bodies or meat products not intended for human consumption.

Application:

[Disposal Plants](#)
[Transportation Services](#)

[Regulation](#)

EXHIBIT J

New York State Department of Health and Mental Hygiene Guidelines

ARTICLE 81

FOOD PREPARATION AND FOOD ESTABLISHMENTS

- §81.01 Scope.
- §81.03 Definitions.
- §81.04 Approved sources of food.
- §81.05 Permit requirements; 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 Potentially hazardous (time and temperature control for safety) foods.
- §81.10 Time as a public health control; exception to required holding temperatures of potentially hazardous (temperature control for safety) foods.
- §81.11 Consumer advisory; serving raw or undercooked foods.
- §81.12 Reduced oxygen packaging; cook chill and *sous vide* processing.
- §81.13 Food workers: health; hygienic practices
- §81.15 Food protection course.
- §81.17 General requirements: design, construction, materials and maintenance.
- §81.18 Cold and hot storage and holding facilities.
- §81.19 Lighting and ventilation.
- §81.20 Plumbing and water supply.
- §81.21 Hand wash sinks.
- §81.22 Employee and patron toilets.
- §81.23 Integrated pest management.
- §81.24 Garbage and waste disposal.
- §81.25 Live animals.
- §81.27 Cleaning of premises, equipment and utensils.
- §81.29 Dishwashing and ware washing.
- §81.31 Outdoor cooking, food and beverage preparation facilities.
- [§81.33 repealed]
- [§81.35 repealed]
- [§81.37 repealed]
- §81.39 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 repealed]
- §81.46 Refillable, returnable containers.
- [§81.47 repealed]
- §81.49 Sodium warning.
- §81.50 Posting of calorie information.
- §81.51 Grading of inspection results and posting of grades by certain food service establishments.
- [§81.53 repealed]
- §81.55 Modification by Commissioner.

§81.01 Scope.

The provisions of this Article shall apply equally to all food service establishments and non-retail food processing establishments, and shall be construed in a manner that protects the health and safety of the public. All other applicable provisions of this Code, the State Sanitary 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 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.

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.

§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.
- (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.
- (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.
- (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.

(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.

(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*).

(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.

(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.

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

(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.

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

(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.

(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 any other organization utilizing a process approved by the American National Standard Institute (ANSI) or that is otherwise acceptable to the Department, in compliance with §81.17 of this Article.

(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(l) of this Code.

(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.

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

(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.

(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.

(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.

(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.

(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.

(aa) Non-retail food processing establishment means a 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 shared 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.

(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.

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

(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 if supported by a food product assessment acceptable to the Department.

(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.

(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.

(ii) Sanitization means effective bactericidal treatment by heat or chemical means 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 at least 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 for at least one minute in a solution of 200 parts per million quaternary ammonium at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(5) 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;

(6) treatment with culinary-quality steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(7) swabbing fixed equipment with a solution of at least twice the strength required for that sanitizing solution when used for immersion.

(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.

(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.

(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.

(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.

(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.

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

§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 any other authorized government agency.

(c) *Shellfish tags.* Fresh and frozen shellfish, shelled or shucked shellfish (oysters, clams, scallops, scallops with roe attached 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 used, in accordance with State Sanitary Code § 14-1.33 (b) or any successor provision. No tags are required to be kept for shucked scallop abductor muscles.

(d) *Exotic and game animals.* Exotic animals not native to New York State and any game animals served in food service establishments must be obtained from commercially regulated sources, such as those described in regulations of the State Department of Agriculture and Markets found at 1 NYCRR §271-2.2, or successor regulations.

(e) *Labeling unpasteurized packaged juices.*

(1) *Definitions.* For the purposes of this subdivision:

(A) *Juice* means the aqueous (water-based) liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purees.

(B) *Packaged juice* means juice that has been sealed in bottles or other containers.

(2) *Labeling.* Unpasteurized packaged juices prepared by a food service establishment for direct sale to the establishment's patrons must be labeled in accordance with §71.05(d) of this Code so as not to be misbranded, and such label must include the following information:

(A) Food ingredients, using common names;

(B) Food additives, if any;

(C) Name and address of the entity that packaged the juice;

(D) "Use by" date;

(E) The statements: "WARNING: This product has not been pasteurized. It may contain harmful bacteria that can cause serious illness, especially in children, elderly persons and persons with weakened immune systems." and "Must keep refrigerated."

(3) *Juice produced for wider distribution.* Juice produced and/or packaged by any establishment that is distributed at wholesale or to any persons other than the establishment's patrons must be produced and packaged in accordance with 21 CFR Part 120, or any successor regulations.

§81.05 Permitting requirements; technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments.

(a) *Permit required.* Except as specified in this section, no person shall operate a food service establishment or non-retail food processing establishment without a permit therefor issued by the Commissioner.

(b) An operator of a food service establishment or non-retail food processing establishment shall construct, equip, furnish, maintain and operate such establishment in compliance with this Article and all other applicable federal, state and city laws, rules and regulations.

(c) Prior to new construction or major renovation of a food service establishment or non-retail food processing establishment, or at any time thereafter where the Department determines that the public health and safety requires a Departmental review of the physical plant of such establishment, the Department may require such establishment to submit sketches or plans showing the floor layout, equipment, plumbing, ventilation, refuse storage facilities, sewage disposal facilities and similar information on a form acceptable to the Department. Submission and review of plans shall not relieve the operator of such establishment or his or her successor from meeting all requirements of this section.

(d) A food service or non-retail food processing establishment may not operate without a permit for 21 days after submitting an application for a permit unless the Department has conducted an inspection and approved issuance of a permit. If the Department does not make an inspection of the establishment during this 21 day period, operations may commence without a permit on the twenty-second day after submission of an application for a permit, and the establishment may continue operating without being in violation of this section until such time as the Department inspects the establishment and either approves issuance of a permit or issues an order to cease operation for cause in accordance with this Code.

(e) A permit for a food service establishment or non-retail food processing establishment shall be issued subject to the establishment being constructed, maintained and operated in compliance

with this Code, and not presenting a danger to the health or safety of the consumer or to the public. The condition of the establishment, including its equipment, utensils, personnel, mode of operation, surroundings, water supply, sewage disposal, waste handling, furnishings, food and appurtenances, and, if applicable, past history of compliance or non-compliance, shall be considered in determining whether its operation may be dangerous or detrimental to the public health. If the pre-permitting inspection indicates that such conditions are unsatisfactory, the operator shall be advised of the violations which prevent issuance of such permit.

(f) Religious, fraternal and charitable organizations which provide food services more often than once a week shall obtain a permit pursuant to this Article; provided, however, that an organization providing food service less frequently than once a week shall notify the Department in writing of its intention to engage in such food service operations and shall obtain authorization from the Department. Such authorization may be issued for a term not to exceed two years. The payment of a fee for such authorization shall not be required. The provisions of this subsection shall not limit in any way the right of the Department to take any actions necessary to protect the public health.

(g) 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. However, a person holding a non-retail processing establishment permit to operate a shared kitchen shall be responsible for maintaining the condition of the establishment, its equipment, surroundings, water supply, waste handling, furnishings and other appurtenances in accordance with this Code.

(h) 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.

(i) 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.

(j) 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 that could be a basis for permit revocation or suspension under this Article.

§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.

(2) Whenever a HACCP plan is required, such plan shall be submitted to and approved by the Department prior to its implementation, and shall thereafter be maintained at the establishment and be made available to Department inspectors for review upon request.

(3) A HACCP plan shall include the following:

- (i) Types and categories of foods to be addressed by the plan.
 - (ii) Food flow diagram or plan identifying critical control points, specifying ingredients, materials and equipment used in processing, and addressing the food safety concerns identified at each such point.
 - (iii) Standard operating procedures for implementing the plan, including clearly identifying each critical control point; method and frequency of monitoring and controlling each critical control point by a foodworker trained in HACCP plan implementation who is designated by the person in charge of food operations; and the method and frequency whereby the person in charge of food operations routinely verifies that the foodworker is following standard operating procedures and the action to be taken by the responsible foodworker if the critical limits for each critical control point are not met.
 - (iv) The critical limits for each critical control point, and the method and frequency for monitoring and controlling critical limits at each critical control point by the designated foodworker.
- (4) Records/logs shall be maintained by the permittee for at least 90 days after consumption of the food prepared pursuant to the HACCP plan to demonstrate that the HACCP plan has been properly implemented.
- (c) *Prior approval required for certain foods and processing.* Approval by the Department of a food service establishment's HACCP plan shall be obtained prior to processing any potentially hazardous food on the food service establishment's premises by means of reduced oxygen packaging methods, drying, fermentation, curing or smoking food products. No HACCP plan is required for processes that are conducted in accordance with the time and temperature requirements of §81.09 of this Article.

§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, where no culinary sink is provided, foods may be washed in (i) a food grade container or colander or (ii) one compartment of a multi-compartment sink. No sink used for washing foods shall be used as a slop, utility or hand washing sink. All sinks used for washing food shall be indirectly washed, cleaned and sanitized prior to washing food, and between washing raw meats and other foods.
- (2) *Prevention of cross-contamination.* Food that will not be washed or cooked shall be protected from cross-contamination from food which is required to be washed or cooked.
- (3) *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 only be in direct contact with ice if stored in a container that drains, except that whole raw fruits, whole or cut vegetables, and tofu, may be immersed in clean and sanitary ice or water held in a container that does not drain.
- (4) *Washing raw fruits and vegetables.* Raw fruits and vegetables shall be thoroughly washed with potable water before cutting or serving.
- (5) *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 that are free from cracks or splits; or pasteurized liquid, frozen or dry eggs; or pasteurized dry egg products shall be kept and used. No unpasteurized liquid, frozen or dry eggs shall be kept or used in the establishment.

(d) *Food storage.* Containers of food shall be stored at least 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 potential contamination of food.

(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 for consumption.* Ice for consumption shall be dispensed with scoops, tongs or other utensils, or automatic self-service ice-dispensing equipment.

(h) *Utensils.* Food dispensing utensils equipped with handles must be provided for use by food workers and for self-service in dispensing food and ice. Utensil handles must be of sufficient length to prevent bare hand contact with ready to eat potentially hazardous food. Between uses, food dispensing utensils shall be stored in the food with the handles extended so that the handles do not come into contact with food; kept clean and dry on a clean surface; kept in a dipper well with running water at an adequate velocity and volume to remove food residue during intervals between intermittent use; or kept in a container of water maintained at a temperature at or above 135 degrees Fahrenheit and changed at least every four hours and free from accumulated food residue. When stored, all clean and sanitized utensils must be segregated from unclean utensils and equipment to prevent contamination.

(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.

(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, disposable food grade 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. Gloves must 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.

(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.

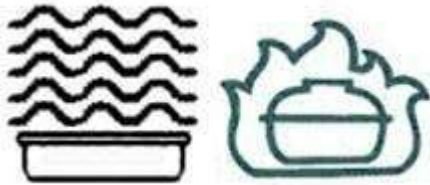
(l) *Re-service of previously served food prohibited.* Except for individually wrapped foods, where the wrapper seal has not been broken or opened, food that has been served to the public shall not be re-served.

(m) *Animal slaughter prohibited.* No live animals except fresh or saltwater finfish, crustaceans, or mollusks, shall be slaughtered at any food service or non-retail processing establishment. Tanks used to hold live fish or crustaceans intended for human consumption must be regularly cleaned and kept free of dead fish and algae.

(n) *Sausages.* Sausages may be made at a food service establishment 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 and other single service articles.* Single service articles must be manufactured from clean non-toxic materials. Such items shall not be reused and must be discarded after use. Single service articles must be handled, transported, stored and dispensed in a manner that protects the food-contact and mouth-contact surfaces of such articles from contamination. Drinking straws shall not be offered to the consumer unless they are completely enclosed in a wrapper or dispensed from a sanitary device.

(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.

§81.08. Foods containing artificial trans fat.

(a) *Artificial trans fat restricted.* No foods containing artificial trans fat, as defined in this section, shall be stored, distributed, held for service, used in preparation of any menu item or served in any food service establishment or by any mobile food unit commissary, as defined in §89.01 of this Code or successor provision, except food that is being served directly to patrons in a manufacturer's original sealed package.

(b) *Definition.* For the purposes of this section, a food shall be deemed to contain artificial trans fat if the food is labeled as, lists as an ingredient, or has vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil. However, a food whose nutrition facts label or other documentation from the manufacturer lists the trans fat content of the food as less than 0.5 grams per serving, shall not be deemed to contain artificial trans fat.

(c) *Labels required.* (1) Original labels. Food service establishments and mobile food unit commissaries shall maintain on site the original labels for all food products:

- (i) that are, or that contain, fats, oils or shortenings, and
- (ii) that are, when purchased by such food service establishments or mobile food unit commissaries, required by applicable federal and state law to have labels, and
- (iii) that are currently being stored, distributed, held for service, used in preparation of any menu items, or served by the food service establishment, or by the mobile food unit commissary.

(2) Documentation instead of labels. Documentation acceptable to the Department, from the manufacturers of such food products, indicating whether the food products contain vegetable

shortening, margarine or any kind of partially hydrogenated vegetable oil, or indicating trans fat content, may be maintained instead of original labels.

(3) Documentation required when food products are not labeled. If baked goods, or other food products restricted pursuant to subdivision (a) of this section, that are or that contain fats, oils or shortenings, are not required to be labeled when purchased, food service establishments and mobile food commissaries shall obtain and maintain documentation acceptable to the Department, from the manufacturers of the food products, indicating whether the food products contain vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil, or indicating trans fat content.

§81.09 Potentially hazardous (time and temperature control for safety) foods.

(a) *Holding and storage temperatures.* Potentially hazardous food must be stored or held at or below 41 degrees Fahrenheit (5 degrees Celsius) or at or above 140 degrees Fahrenheit (60 degrees Celsius) except as follows:

(1) *Immediate service.* Cooked and refrigerated food prepared for immediate service in response to an individual consumer order may be served at any temperature.

(2) *Eggs.* Intact shell eggs must be stored at an ambient temperature of 45 degrees Fahrenheit (7.2 degrees Celsius) or below.

(3) *Processed fish.* All processed fish products must be prepared and stored at a temperature that does not exceed 38 degrees Fahrenheit (3.3 degrees Celsius) without interruption until served to the ultimate consumer, provided, however, that:

(A) Processed fish that contains a water phase salt level of at least 17 percent shall not require refrigerated storage; and

(B) Dry salted fish that 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, must be held at refrigerated temperatures that do not exceed 41 degrees Fahrenheit (5 degrees Celsius).

(4) *Necessary preparation.* Foods may be held out of temperature during active necessary preparation. Active necessary preparation of food does not include time food is being heated, cooled, cooked, reheated or stored and requires temperature control.

(5) *Time as the sole public health control.* When using time alone as a public health control in accordance with §81.10 of this Article.

(b) *Freezing and storage of fish to be served raw, raw marinated or undercooked.*

(1) *Freezing required.* To destroy parasites in fish or fish products that are to be consumed raw, undercooked or raw-marinated, an establishment must either purchase frozen fish or fish products, or freeze fish or fish products prior to service as follows:

Minimum Freezing Temperature	Minimum Storage Temperature	Minimum Freezer Storage Time
-4 degrees F (-20 degrees C)	-4 degrees F (-20 degrees C)	168 hours (7 days); or
-31 degrees F (-35 degrees C)	-31 degrees F (-35 degrees C)	15 hours; or
-31 degrees F (-35 degrees C)	-4 degrees F (-20 degrees C)	24 hours.

(2) *Exceptions to freezing requirement.* Freezing is not required before serving raw or undercooked:

(A) Molluscan shellfish; or

(B) Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), *Thunnus thynnus* (Bluefin tuna, Northern); or

(C) Aquacultured or farm raised fish, such as salmon that are:

(i) Raised in open water in net-pens or in land-based operations such as ponds or tanks, and

(ii) Fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish; or

(D) Fish eggs that have been removed from the skin and rinsed.

(c) *Cooking temperatures.* All parts of potentially hazardous foods requiring cooking are to be heated to 140 degrees Fahrenheit (60 degrees Celsius) or above for 15 seconds, except as follows:

(1) *Poultry.* Whole or ground poultry, poultry parts, all food containing poultry, poultry stuffing and poultry stuffing containing meat must be heated so all parts of the food are at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds with no interruption of the cooking process.

(2) *Pork.* Pork and food containing pork, other than whole pork roasts, and ground and comminuted pork, must be heated so all parts of the food are at least 150 degrees Fahrenheit (65.6 degrees Celsius) for 15 seconds, unless otherwise ordered by the consumer.

(3) *Whole meat roasts.* Roast beef, beef steak, corned beef, lamb roasts, pork and cured pork roasts must be heated to and cooked at the following minimum temperatures for the corresponding time:

Temperature °F (°C)	Cooking Time in Minutes	Temperature °F (°C)	Cooking Time in Minutes
130 (54.4)	112	138 (58.9)	18
131 (55.0)	89	140 (60.0)	12
133 (56.1)	56	142 (61.1)	8
135 (57.2)	36	144 (62.2)	5
136 (57.8)	28	145 (62.8)	4

(4) *Ground and comminuted meat.* Ground meats and comminuted meat products, other than poultry, and food containing ground meat must be heated so that all parts of the food are at least 158 degrees Fahrenheit (69.4 degrees Celsius) with no interruption of the cooking process, unless otherwise ordered by the consumer.

(5) *Stuffings and mechanically tenderized and injected meats.* Stuffed meats, stuffed fish, stuffed ratites and stuffing containing ratites and fish, must be heated to a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) with no interruption of the cooking process, unless otherwise ordered by the consumer. Meats whose exterior surface has been mechanically tenderized or injected by breaking, puncturing, or scoring must be heated to a temperature of at least 155 degrees Fahrenheit (68 degrees Celsius).

(6) *Shell eggs and egg products.* Unpasteurized raw eggs or foods containing unpasteurized raw shell eggs, including but not limited to, drinks, condiments, dressings, desserts and sauces, must be heated to 145 degrees Fahrenheit (62.8 degrees Celsius) or greater for 15 seconds, unless the consumer requests preparation of shell eggs in a style such as raw, poached or fried which in order to comply with the request must be prepared at a temperature less than 145 degrees Fahrenheit.

(7) *Microwaving.* Raw animal foods cooked in a microwave oven must be covered during cooking; rotated or stirred during cooking to a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius); and allowed to stand covered for 2 minutes after cooking.

(8) *Advisory for raw, undercooked foods.* When menu items containing raw or undercooked eggs, meat, fish or other potentially hazardous foods including but not limited to steak tartare, rare duck breasts, uncooked dessert mousse, Caesar salad dressing, sashimi, and ceviche or any other raw or undercooked seafood, are served, the consumer advisory required by §81.11 of this Article must be provided.

(d) *Reheating previously cooked food.* Potentially hazardous food that is cooked, cooled and reheated for hot holding must 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) must be reached within 2 hours of commencing reheating. Reheated food must be held at or above 140 degrees Fahrenheit (60 degrees Celsius) until served.

(1) *Microwave reheating.* Food reheated in a microwave oven must be covered during heating; food must be rotated or stirred during heating, or otherwise manipulated according to label instructions, if provided, and must be reheated to a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) and allowed to stand covered for 2 minutes after reheating.

(2) *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 must 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.

(e) *Cooling.*

(1) *After cooking or removal from hot holding.* Foods removed from cooking or hot holding that require refrigeration must be rapidly cooled from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within 2 hours and from 70 degrees Fahrenheit (21.1 degrees Celsius) to 41 degrees Fahrenheit (5 degrees Celsius) within 4 hours after cooking or removal from hot holding by placing containers of food in an ice bath, a rapid chill unit or adding ice to the food, and

(A) Placing the food in shallow pans or containers (less than 4 inches in height); and/or

(B) Dividing foods into smaller or thinner pieces or portions; and/or

(C) Using containers made of materials that facilitate heat transfer; and/or

(D) Stirring foods that are liquids or semi-liquid, and

(E) Arranging containers in cooling equipment to provide maximum heat transfer through container walls, not stacking or nesting; and

(F) Keeping containers loosely covered, or uncovered if protected from overhead contamination during the cooling period, to facilitate heat transfer from the surface of the food.

(2) *Other cooling.* Potentially hazardous foods removed from cold holding or prepared from or combined with ingredients at room temperatures must be cooled to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 hours of preparation using cooling methods described in paragraph (1) of this subdivision.

(f) *Thawing frozen foods.* Potentially hazardous food must be thawed as follows:

(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 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, other than a single portion intended for service to an individual consumer, must be completely thawed prior to conventional cooking; a single portion may be thawed during the cooking process.

(g) *Thermometers and other temperature measuring devices.* Establishments must provide devices such as thermometers and thermocouples to measure internal temperatures of potentially hazardous foods during cooking, cooling, reheating, hot holding and cold holding. Such devices must be properly calibrated to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius), made from food grade materials that will not expose food to contamination and be kept readily accessible in the establishment's food preparation and hot and cold holding areas.

§81.10. Time as a public health control; exception to required holding temperatures of potentially hazardous (temperature control for safety) foods.

(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 foods, 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.* 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 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 food has reached or exceeded an internal temperature of 70 degrees Fahrenheit (21 degrees Celsius) it shall be discarded immediately.

(3) *After hot holding.* 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) *Tomatoes.* Time as a public health control may be used when slicing whole tomatoes previously held at ambient temperature, and the sliced tomatoes may be held for no more than four hours, and then discarded if not used or consumed.

(5) *Holding limits.* Food shall not be held out of temperature control any longer than provided in paragraphs (2), (3) and (4) 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 at the time it is removed from temperature control with the date and time of removal, temperature at time of removal, and the discard 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 at the time it is removed from cold temperature control with the date and time of removal, temperature at time of removal, the time and temperature measured 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 legibly marked and labels and markings must be kept on food containers 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 attending summer camps, child day care and pre-school programs; and (iii) pupils in primary and secondary schools.

(2) Preparation and holding of 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.

(3) Preparation and holding of potentially hazardous foods consisting of 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 the Department finds that while using time as a public health control, (i) cold potentially hazardous 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 or (ii) is returned to temperature control instead of being discarded.

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

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

§81.11 Consumer advisory: serving raw or undercooked foods.

(a) *Written consumer advisory.* Effective January 1, 2016, when meat, fish, molluscan shellfish, or unpasteurized raw shell eggs are offered alone or as an ingredient in other foods, and are either raw or heated to a temperature below that required by this Code, written notice must be provided to consumers of the increased risk of food borne illness from eating such raw or undercooked foods.

(1) The statement “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness” must appear on menus, menu boards, brochures, signage, food labels, table tents, or placards, with either:

(A) A description or identification of the specific foods being served raw or undercooked, such as “oysters on the half shell (raw oysters),” or “raw-egg Caesar salad dressing,” as applicable; or

(B) Noted by an asterisk or other mark next to the listed food item on a menu or menu board with a footnote that references the statement in paragraph (1) of this subdivision.

(C) Prior to January 1, 2016, an establishment must warn of the increased risk for foodborne illness when serving raw or undercooked foods. Such warning may be given orally and need not be in writing.

(b) *Limitations on service.* Raw or undercooked meat, eggs, fish or molluscan shellfish, either alone, or as an ingredient in other menu items shall not be served in facilities that primarily serve persons who may be at a higher risk for food borne illnesses. Such facilities include those serving immunocompromised persons, senior centers, charitable feeding programs, custodial care facilities, hospitals and health care facilities, as defined in Article 28 of the Public Health Law or successor law; adult day care and assisted living programs; child care, children’s camps and pre-school programs; and elementary and secondary schools.

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

(a) *Scope and applicability.* A food service establishment may package and process food using reduced oxygen packaging (“ROP”), as defined in §81.03 of this Code, in accordance with this section, provided that the food being processed shall have at least two controls in place, including but not limited to time, temperature, Aw or pH, to prevent the growth and formation of *C. botulinum* or *Listeria monocytogenes*.

(b) *Approved Hazard Analysis and Critical Control Point (HACCP) plan required.* A food service establishment shall not utilize ROP processes without obtaining prior Department approval of a Hazard Analysis and Critical Control Point (HACCP) plan. The establishment shall submit to the Department its HACCP plan that conforms to §81.06(c) of this Article for each food item or food category it intends to prepare using a ROP processing technique.

(c) *On-site preparation, consumption, sale and distribution.* Foods processed by ROP shall be prepared and consumed on the premises of the food service establishment, or off premises if the preparation site is properly permitted and wholly owned and operated by the same business entity as the food service establishment, and no ROP food products shall be sold or distributed to any other business entities or consumers.

(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).

(2) Cooked immediately to require minimum internal temperatures specified in §81.09 of this Article or held at a specified temperature and time approved by the Department in the HACCP Plan. However, if such food has an A_w of 0.91 or less; has a pH of 4.6 or less; is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture using substances specified in 9 CFR 424.21, or successor regulation, and is received in an intact package; or is a food with high level of competing organisms such as raw meat or raw poultry, it may be held at 38 degrees Fahrenheit (2.2 degrees Celsius) without being cooked for no more than 14 calendar days, and shall be discarded thereafter.

(3) Protected from contamination after cooking as specified in §81.07 of this Article.

(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.

(5) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily.

(6) Labeled with the product name, date packed, and dates to be discarded, and stored in accordance with a "First-in" "First out" storage rotation procedure, in accordance with the HACCP plan.

(e) *Aquatic animals.* Except for aquatic animals that are frozen before, during, and after packaging, a food establishment may not package aquatic animals using an ROP method.

(f) *Cheese.* A food service establishment may package cheese using an ROP method provided that it limits the cheeses packaged to those commercially manufactured in a food processing plant with no ingredients added by the food establishment, and provided the cheese meets the United States Food and Drug Administration standards of identity specified in 21 CFR §133.150 ("Hard cheeses"); 21 CFR §133.169 ("Pasteurized process cheese"); and 21 CFR §133.187 ("Semisoft cheeses"), or successor regulations. The "use by" date of cheese shall not exceed 30 days after packaging, or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(g) *Equipment.* All equipment used in ROP processing shall be approved by the Department and shall comply with all specifications for equipment in this Article, and the following additional criteria:

(1) Thermometers used in cook chill or sous vide cooking methods shall be food grade thermocouple type, equipped with probe, with a temperature range of -40 degrees Fahrenheit (-40 degrees Celsius) to 212 degrees Fahrenheit (100 degrees Celsius), and shall not contain glass or any parts that can easily fall into food. Thermometers shall be calibrated before each batch process, and at other times in accordance with manufacturers' instructions and whenever calibration could have been compromised by extreme temperatures or after being accidentally dropped.

(2) ROP products that are transported off site to a satellite location of the same business entity shall be kept in containers equipped with verifiable monitoring devices enabling monitoring of time and temperature and kept at temperatures no higher than 38 degrees Fahrenheit (3.3 Celsius) during transportation. Such products or containers shall be labeled with the product name, date packaged, and discard date.

(3) *Sous vide* processed foods shall be cooked in an approved water immersion unit or combination oven (an oven combining convection and added moisture) that can be equipped with an electronic system that continuously monitors time and temperature, and is visually examined for proper operation twice daily. At least one item of each type of food of similar size cooked in a water immersion or combination oven shall have its internal temperature monitored to determine if the food is being cooked to the temperatures required by §81.09 of this Article.

(4) *Sous vide* cooking equipment shall include a thermal bath and immersion circulator or a combination oven. The thermal bath and immersion circulator shall be a commercial type able to heat water to precise temperatures. The immersion circulator or combination oven shall be equipped with a temperature controller, temperature sensor, heater, and circulating element, and continuous temperature recorder and display accurate to one tenth of a degrees, capable of recording temperatures between 32 degrees Fahrenheit (0 degrees Celsius) and 212 degrees

Fahrenheit (100 degrees Celsius), and large enough to enable complete immersion of the largest piece of food.

(5) ROP processors shall utilize a chamber type vacuum packaging machine with a pump able to achieve a flow rate of 10m³ per hour and capable of heat sealing the food storage bag to maintain the vacuum, or other commercial grade vacuum packaging equipment as approved by the Department in the establishment's HACCP plan or as determined on inspection.

(6) Cook chill processors shall utilize an ice bath or a NSF approved blast or tumble chiller that can lower temperatures of food from 185 degrees Fahrenheit (85 degrees Celsius) to 32-38 degrees Fahrenheit (0-3.3 degrees Celsius) within two hours, and is equipped with a factory installed temperature monitoring device and alarm system. If a tumble chiller is used, the associated ice builder must meet the sanitary requirements of this Article.

(7) Cook chill processors shall utilize a commercial type stainless steel NSF approved cook tank or steam kettle with an agitation mechanism, and factory installed temperature monitoring devices, or other cooking equipment approved by the Department in the establishment's HACCP plan or as determined on inspection.

(8) All cook chill bags (casings) shall be made of food grade plastic, able to withstand temperatures of 212 degrees Fahrenheit (100 degrees Celsius) to -20 degrees Fahrenheit (-28.8 degrees Celsius) and rapid temperature change from 185 degrees Fahrenheit (85 degrees Celsius) to 34 degrees Fahrenheit or below (1 degree Celsius).

§81.13. 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 contaminating food or food contact surfaces. This requirement shall not apply to counter staff, bartenders, baristas, hosts or wait staff when they are preparing or serving beverages or serving food.

(c) *Clothing.* All food workers shall wear clean, washable outer garments 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.

(d) *Hand washing.* Food workers and other employees shall wash hands and exposed areas of arms thoroughly with soap and 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, or using electronic cigarettes, 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.

(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, use tobacco in any form or use electronic cigarettes in any indoor or outdoor area of the premises used by a food service 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.

§81.15. Food protection course.

(a) *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 and shall supervise all food preparation activities during all hours of operation.

(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 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.

(d) *Additional food protection certificate holders; retaking courses.* 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 imminent health hazards, or 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 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.

§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 except in accordance with §251-2-4 of the Agriculture and Markets Law and 1 NYCRR §276.4, or successor provisions, 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, sanitized and maintained.* 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. Surfaces that come into contact with food such as cutting blocks and boards that are subject to scratching and scoring must be replaced or resurfaced if they can no longer be effectively cleaned and sanitized. Food and other debris must be removed from such surfaces and surfaces must be washed and sanitized as needed to prevent contamination.

(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.

(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 cracks, 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 cracks, 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 and hoods, fans, ducts, and decorative materials shall be easily cleanable, and kept clean and in working order.

(f) *Transporting food.* 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.

(g) *Toxic materials and hazardous substances: restrictions, labeling and storage.* Toxic materials and other hazardous substances, as defined in Article 173 of this Code, must be used only when required to maintain sanitary conditions and in accordance with label directions.

(1) *Labels.* Containers of such substances must be prominently labeled in accordance with applicable law and substances applied and removed without creating any risk to the health of any persons and without contaminating food, equipment, utensils and supplies.

(2) *Storage.* Toxic and hazardous materials are to be stored in designated storage areas in which food, equipment and utensils are not stored. Bactericides and cleaning compounds shall not be stored with insecticides, rodenticides or other toxic materials. Insecticides and rodenticides are to be kept in their original containers.

(3) *Toxic residues.* Bactericides, cleaning compounds or other compounds used on food contact surfaces must be rinsed and removed in accordance with label directions so as not to leave any toxic residues.

(4) *Phenolic compounds.* Phenolic compounds may not be used for sanitizing food contact surfaces.

(5) *Medications.* Medicinal first-aid supplies and medications must be kept in non-food storage areas in a manner that does not create a risk of food contamination.

§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 (-) 2 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 (-) 2 degrees. The thermometer shall be placed to measure air temperature in the coolest part of the unit.

§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 and control 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.

§81.20 Plumbing and water supply.

(a) *Potable water supply.* Establishments at all times must have adequate supplies of potable water, as defined in Part 5 of the State Sanitary Code (10 NYCRR Chapter 1). An establishment shall be equipped with plumbing and plumbing fixtures, in accordance with applicable law, that safely supply potable water 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 including but not limited to condensates discharged by equipment, such as refrigerators, ice machines, air conditioners, drain pans, evaporator trays, hoses and other plumbing or cooling lines and fixtures; fluids drained from culinary, slop or ware washing sinks; and fluids discarded after cooking shall be conveyed to the sewer or sewage disposal system so as to prevent contamination of the premises and its

contents and so as not to create harborage conditions. Liquid wastes consisting of discarded grease and oil 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 connections required.* Waste water shall be discharged into properly trapped, sewer-connected plumbing lines.

(c) *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.

§ 81.21 Hand wash sinks.

(a) *Location.* Hand washing sinks equipped with hot and cold potable running water 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 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.

§81.22 Employee and patron toilets.

(a) *Toilet facilities 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 §PC403 of Chapter 4 of the New York City Plumbing Code, Administrative Code Title 28, 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. Toilet rooms must be adequately lighted and mechanically or naturally ventilated, maintained in sanitary operating condition, and furnished with supplies of toilet tissue and easily cleanable receptacles for waste paper and other refuse.

(d) *Shared toilet facilities.* Patrons and employees may use the same toilet facilities, except if patrons would be required to walk through a kitchen, food preparation or storage area, or utensil washing area to access the toilet.

§81.23 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 conditions conducive to pests, as defined in Article 151 of this Code, 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 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 licensed by New York State Department of Environmental Conservation to provide preventive measures and extermination services necessary to maintain their establishments free of pests. Records showing the name, address, Department of Environmental Conservation license number of the exterminator, the services provided, and the effective dates of such contracts shall be kept on the premises of the establishment. At the request of the Department, the permittee shall make available 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-pest tension brushes or a space no larger than one-eighth of an inch (3.1750 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 roaches, other insects or rodents.

(c) *Pest infestations.* Permittees shall take all preventive, control, and extermination measures necessary to maintain the establishment free of 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 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 and toxic residues that result from pesticide application. Such items are to be protected by impermeable coverings or other measures during pesticide application and must be cleaned and sanitized after pesticide application.

(4) The use of unprotected or unlocked bait stations is prohibited in food service establishments.

(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.

§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 and waste stored for removal.* Prior to street placement and pickup, garbage and wastes shall be placed in easily cleanable, watertight, rodent-resistant, and insect-resistant containers with tight fitting lids that must be securely fastened. Containers must be stored in a manner that does not attract pests or create pest harborage conditions.

(b) *Garbage and waste removal.* Solid and putrescible wastes placed on sidewalks for collection shall be disposed of in accordance with applicable law, including but not limited to Title 16 of the Administrative Code and the rules of the Department of Sanitation and the Business Integrity Commission, or successor agencies.

(c) *Containers to be cleaned after emptying.* Garbage receptacles and covers shall be cleaned after emptying and prior to reuse.

§81.25 Live animals.

No live animal shall be kept, housed or permitted to enter into or remain in any food service establishment. This section shall not apply to edible fish, crustacea, mollusks, or fish in aquariums; service dogs or other animals accompanying and trained to assist disabled persons; or working dogs accompanying police officers.

§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.* Food contact surfaces, including food contact surfaces on equipment, 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 must be disassembled for the purpose of cleaning unless specifically constructed to enable cleaning in place. Food contact surfaces must be cleaned and sanitized:

(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 other times as necessary to prevent accumulation of dirt, mold encrusted food, grease or other substances or whenever contamination may have occurred.

(c) *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.

§81.29 Dishwashing and ware washing. Tableware, including dishes, utensils, and equipment must be cleaned and sanitized, as defined in §81.03 of this Article, manually or by machine using either heat or chemical means, in accordance with this section, except that other adequate methods acceptable to the Department may be used.

(a) *Manual washing and sanitizing.* A three compartment sink must be used when washing and sanitizing equipment, dishes and utensils by hand, except where otherwise indicated in this

subdivision. All compartments of the sink must be large and deep enough to permit complete immersion of the largest equipment and utensils to be washed. Items must be:

- (1) Washed in the first compartment in a detergent solution;
- (2) Rinsed free of such solution in clean hot water in the second compartment; and
- (3) Sanitized in the third compartment with hot water or a chemical solution.

(A) *Hot water sanitizing.* Hot water used for sanitizing must be heated to and maintained at or above 170 degrees Fahrenheit (76.6 degrees Celsius). A numerically scaled, indicating or digital thermometer calibrated to be accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) must be used to measure water temperature. Items must be wholly immersed for at least 30 seconds to destroy surface pathogens.

(B) *Chemical sanitizing.* Only anti-microbial pesticides registered with the US Environmental Protection Agency shall be used for manual chemical sanitizing and must be used in sufficient amounts to achieve the sanitization levels required by subdivision (ii) of §81.03 of this Article, without leaving toxic residues on surfaces treated. A test kit or other device must 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.

(C) *Glassware.* Glasses only may be washed in a two-compartment sink using a combination detergent and sanitizer in the first compartment and rinsed in clean water in the second compartment, if the manufacturer of the combination product indicates it may be used in this manner.

(b) *Mechanical washing and sanitizing*

(1) *Heat requirements for mechanical washing.* High temperature machines used for the cleaning and sanitizing of utensils, equipment, and food contact surfaces must be installed, maintained, and kept in working order. Machines must be equipped with thermometers, and operated so that all food contact surfaces achieve a surface temperature of at least 160 degrees Fahrenheit (71 degrees Celsius) in order to destroy surface pathogens.

(2) *Chemical requirements for mechanical washing.* Low temperature machines that use chemicals must be installed, maintained, kept in working order and operated so as to attain effective sanitization. A test kit or other device must 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 and to ensure the chemical sanitizer is used in concentrations that will not leave toxic residues on surfaces treated.

(c) *Drain boards; air drying.* Drain boards of adequate size must be provided and used for the proper handling of soiled items prior to washing, and of clean items following sanitization. Drain boards must 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 must be air dried after sanitizing.

§81.31 Outdoor cooking, food and beverage preparation facilities.

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

(b) *Conducted on the premises owned 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, including, but not limited to, in the establishment's backyard, 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.

§81.33 repealed.

§81.35 repealed.

§81.37 repealed.

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

(a) When, in the opinion of an inspector or authorized employee of the Department, any equipment, utensil or vehicle in a food service establishment or non-retail food processing establishment presents an imminent health hazard, is in an unclean condition, or in disrepair or damaged to such an extent so as to render it unsafe, such equipment, utensil, vehicle or any part thereof may be ordered sealed and its use immediately discontinued upon the approval of the director of the bureau of the Department enforcing this Article. Upon such sealing, the representative of the Department shall affix thereto labels or conspicuous signs bearing the word "unclean" or any other wording necessary to describe the sanitary condition or safety of the sealed equipment, utensil or vehicle, and he or she shall also prepare or cause to be prepared an order of the Commissioner or Department. The order and notice shall direct the discontinuance of the use or operation of the unclean article until it shall have been cleaned and made sanitary and safe, and the seals, labels or signs removed by a representative or with the authorization of the Department.

(b) When a food service establishment or non-retail food processing establishment is found upon inspection to be operating without a valid permit in violation of §81.05 of this Code, the Department may order such establishment to close and cease all food operations immediately, and to remain closed until the establishment or operation has obtained and displays a valid permit.

(c) In addition to the forfeitures and penalties set forth in Articles 3 and 5 of this Code, the Department may deny, suspend or revoke any permit or authorization issued pursuant to this Article when serious, repeated or persistent violations of any of the provisions of this Code have been found, or where interference with personnel of the Department in the performance of their duties or a violation of §5.17 occurs. Any person ordered to cease operation and service pursuant to this Article shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(d) The Department may deny or suspend a permit or authorization and order immediate cessation of operations and/or service of food at a food service establishment or non-retail food processing establishment if continued operation is an imminent hazard to public health. Any person ordered to cease operations and/or service of food pursuant to this subsection shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(e) Any order or notice issued pursuant to this section shall be served by personal delivery to the owner or person in charge of the food establishment, or by any method authorized by §§17-141 or

17-148 of the New York City Administrative Code, and an original thereof shall be filed with the Department.

(f) Seals, labels, signs, notices and orders affixed by the Department shall not be removed except by order of the Commissioner or his or her designated representative and not until the objectionable condition is removed or corrected.

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

(a) No person shall employ a food vending machine for the sale of packaged food or beverages in closed bottles or containers unless:

(1) the machine is designed and constructed to allow effective cleaning and maintenance and to remain free from insect and rodent harborages and other nuisances;

(2) the machine is designed and constructed so as not to become a hazard to children or others while in use or under foreseeable conditions of abuse;

(3) potentially hazardous foods shall be kept at or below 41 degrees Fahrenheit (5 degrees Celsius) or at or above 140 degrees Fahrenheit (60 degrees Celsius);

(4) the machine and the surrounding area are kept clean and sanitary.

(b) No person shall employ a food vending machine for the sale of unpackaged food or for the sale of beverages other than in closed bottles or containers unless the requirements of subsection (a) of this section are met and, in addition, the device is free from lead, cadmium or any other substance which may be so affected by the food or beverage as to form dangerous or deleterious compounds, or as to render food or beverage which comes into contact with such substance unwholesome or detrimental to health, or to impart odor, color or taste to the food. When the food vending machine is connected to a water supply system, it shall be designed and constructed to prevent contamination of the water supply system. Devices which dispense carbonated beverages shall be equipped with an air gap at the water inlet, or a protective device to vent any leaking carbon dioxide to the atmosphere, or any other protective device approved by the Department which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. The water supply contact surfaces in devices which dispense carbonated beverages, from the protective device downstream including the protective device itself, shall not have any copper or copper-lined components in contact with the water supply or the beverage and its other components including any ice making and dispensing apparatus.

(c) There shall be provided in the immediate vicinity of all coin-operated or other mechanical dispensing devices, receptacles for the disposal of food or beverage containers.

(d) Potentially hazardous food shall be dispensed in individual, original containers or wrappers in which it was packaged at the food vending machine commissary or non-retail food processing establishment. Potentially hazardous food shall not be dispensed from bulk supplies.

(e) All food, other than fresh fruit, shall be stored or packaged in clean protective containers, or dispensed into clean single-use containers, and all food shall be prepared and vended in a sanitary manner and shall in all respects comply with the provisions of this Article.

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

(a) When a food service establishment or non-retail food processing establishment learns, has reason to suspect that a person has a food related illness, or is notified of any illness of a person diagnosed by a physician which allegedly resulted from food served at, or originating from, such establishment, the owner or person in charge shall immediately notify the Department. The Department may require the owner or the person in charge to submit, within 24 hours of the telephone report, a written report giving such additional information concerning the complaint as the Department may require. Under applicable provisions of the New York State Public Officers Law, reports may be subject to inspection by persons other than the Commissioner and authorized

personnel of the Department but personal information about the patrons shall be redacted. Such reports shall not be used as a basis for prosecution by the Department.

(b) When a food service establishment or non-retail food processing establishment is subject to an occurrence which might result in contamination of food or food being held out of temperature limits, including but not limited to fire, power outage, or flood, the owner or person in charge shall immediately notify the Department.

§81.45 - repealed.

§81.46 Refillable, returnable containers.

(a) *Beverage containers.* Employees or consumers may refill consumers' personal take-out beverage containers (such as thermally insulated bottles, non-spill coffee cups, and promotional beverage containers) with beverages that are not potentially hazardous foods, provided that beverages are dispensed in a manner that prevents contact with, or contamination of, the food-contact surfaces of the beverage dispensing equipment.

(b) *Other containers.* An establishment providing consumers with returnable containers must wash and sanitize all such containers before reuse in accordance with §81.29 of this Article. An establishment that does not wash and sanitize patrons' containers before reuse must obtain Department approval of a written standard operating procedure that demonstrates that there is no contamination of food and/or food contact surfaces. Such procedure must be maintained on the premises and made available at the time of Department inspection.

(c) *Container materials.* Reusable containers that will be washed and sanitized must be made of food grade materials resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, and of sufficient weight and thickness to be washed and sanitized in accordance with §81.29 of this Article.

§81.49 Sodium warning.

(a) Definitions. When used in this section the following words and terms have the following meanings:

(1) Combination meal means a standard menu item that consists of more than one food item. A combination meal may be represented on the menu or menu board in narrative form, numerically, or pictorially. Some combination meals may include a variable menu item or be a variable menu item, as defined in this subdivision, where the components may vary and the customer selects which components will be included in the meal.

(2) Covered establishment means a food service establishment, as defined in §81.03 of the Health Code and permitted by the Department, that is part of a chain with 15 or more locations doing business under the same name and offering for sale substantially the same menu items.

(3) Food item with a high sodium content means any standard menu item offered by a covered establishment that contains per discrete serving unit more than or equal to 2300 milligrams (mg) of sodium, or a combination meal offered by a covered establishment if any combination of food items available to the consumer contains more than or equal to 2300 mg of sodium.

(4) Food on display means food that is visible to the customer before the customer makes a selection, so long as there is not an ordinary expectation of further preparation by the customer before consumption.

(5) Menu or menu board means a printed list of the names or images of a food item or items, and the primary writing of a covered establishment from which a customer makes an order selection. Menus include breakfast, lunch, and dinner menus; dessert menus; beverage menus; children's menus; other specialty menus; electronic menus; and menus on the internet, and may be in various forms, including booklets, pamphlets, single sheets of paper, or electronic screens. Determining whether a writing is or is part of the primary writing of a covered establishment depends on a number of factors, including whether the writing lists the name of a standard menu item (or an image depicting the standard menu item) and the price of the standard menu item, and

whether the writing can be used by a customer to make an order selection at the time the customer is viewing the writing. Menu boards include menu boards inside the establishment as well as drive-through menu boards outside the establishment.

(6) Point of purchase means any place where a customer may order food within an establishment.

(7) Standard menu item means any individual food item or combination of food items listed or displayed on a menu or menu board that is sold by a covered establishment.

(8) Variable menu item means a standard menu item that comes in different flavors, varieties or combinations and is listed as a single menu item.


(b) Required warning. A covered establishment that offers for sale any food item with a high sodium content must provide the following warning:

(1) An icon must appear on a menu or menu board next to any food item with a high sodium content, or on a tag next to any food on display that is a food item with a high sodium content:



The icon must be a black and white equilateral triangle as wide as it is tall and equal in height to the largest letter in the food item's name, as displayed on the menu, menu board, or tag next to any food on display; and

(2) The following statement must be posted conspicuously at the point of purchase:

“Warning:  indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.”

(d) Enforcement. The monetary penalty for a violation of this section is \$200 dollars. Violations may be adjudicated at any tribunal operated by the Office of Administrative Trials and Hearings.

(e) Effective date. This section takes effect on December 1, 2015.

(f) Severability. If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the section to other persons or circumstances shall not be affected.

§81.50 Posting of calorie information.

(a) *Definitions.* When used in this section the following words and terms have the following meanings:

(1) *Combination meal* means a standard menu item that consists of more than one food item. A combination meal may be represented on the menu or menu board in narrative form, numerically, or pictorially. Some combination meals may be a variable menu item where the components may vary and the customer selects which components will be included in the meal. Some combination meals may include a variable menu item as a part of the meal. A combination meal shall not mean a special price offer to a customer to combine standard menu items for which calorie information is already posted on the menu or menu board.

(2) *Covered establishment* means a food service establishment or similar retail food establishment that is part of a chain with 15 or more locations nationally doing business under the same name and offering for sale substantially the same menu items, or a food service establishment or similar establishment that is not part of such a chain that voluntarily registers with the United States Food and Drug Administration to be subject to the federal requirements for nutrition labeling of standard menu items pursuant to 21 CFR 101.11(d), or successor regulation.

(3) *Custom order* means a food order prepared in a specific manner in response to an individual customer's request, which requires the covered establishment to deviate from its usual preparation of a standard menu item.

(4) *Daily special* means a food item prepared and offered for sale on a particular day that is not routinely listed on a menu or menu board, or other offer and that is promoted by the covered establishment as a special item for that day.

(5) *Food on display* means restaurant-type food that is visible to the customer before the customer makes a selection, so long as there is not an expectation of further preparation by the customer before consumption.

(6) *Food that is part of a customary market test* means food that appears on a menu or menu board for less than 90 consecutive days to test customer acceptance of the food.

(7) *Menu or menu board* means a printed list of the names or images of a food item or items and the prices of such items, that is the primary writing of a covered establishment from which a customer makes an order selection. Menus include breakfast, lunch, and dinner menus; dessert menus; beverage menus; children's menus; other specialty menus; electronic menus; and menus on the internet, and may be in various forms, including booklets, pamphlets, single sheets of paper, or electronic screens. Determining whether a writing is or is part of the primary writing of a covered establishment depends on a number of factors, including whether the writing lists the name of a standard menu item (or an image depicting the standard menu item) and the price of the standard menu item, and whether the writing can be used by a customer to make an order selection at the time the customer is viewing the writing. Menu boards include menu boards inside the establishment as well as drive-through menu boards outside the establishment.

(8) *Offering for sale substantially the same menu items* means offering for sale a significant proportion of menu items that use the same general recipe and are prepared in substantially the same way with substantially the same food components.

(9) *Similar retail food establishment* means an establishment such as a convenience store, grocery or supermarket that serves restaurant-type food.

(10) *Restaurant-type food* means food that is (i) usually eaten on the premises of or while walking away from a food service establishment, or soon after arriving at another location, or (ii) processed and prepared primarily in a similar retail establishment and offered for sale to customers for either immediate or later consumption in or outside such establishment.

(11) *Self-service food* means restaurant-type food that is available at a salad bar, buffet line, cafeteria or similar self-service facility that is served by customers themselves and includes self-service beverages.

(12) *Standard beverage fill* means the fixed amount of a beverage that is less than the full volume of the cup holding the beverage per cup size.

(13) *Standard ice fill* means the fixed amount of ice in a cup of a beverage per cup size.

(14) *Standard menu item* means any individual food item or combination of food items listed or displayed on a menu or menu board that is sold by a covered establishment.

(15) *Temporary menu item* means a food item that appears on a menu or menu board for less than a total of 60 consecutive and non-consecutive days during a calendar year

(16) *Variable menu item* means a standard menu item that comes in different flavors, varieties or combinations and is listed as a single menu item.

(b) *Scope and applicability.* This section applies to standard menu items offered for sale in covered establishments and does not apply to condiments, daily specials, temporary menu items, custom orders, foods that are part of a customary market test or temporary menu items, or to any menu or menu board in a school that is for students in grades 12 or under.

(c) *Posting calorie information.*

(1) *Number of calories.* Menus and menu boards must provide the number of calories contained in each standard menu item. Information must be posted for each item as it is usually prepared and offered for sale. For multiple-serving standard menu items, calorie information must be posted either (i) for the standard menu item as listed, or (ii) for a discrete serving unit provided that the total number of discrete serving units contained in such item is also posted.

(2) *Position, size and color of calorie information.* The number of calories must be listed adjacent to the name or price of the associated standard menu item in a type size that is no smaller than the smaller of either the name or price of the standard menu item. Calorie information must

appear in a color that is the same or at least as conspicuous as that used to list the name of the associated standard menu item and against the same contrasting background, or a background at least as contrasting, as that against which the name of the associated standard menu item is listed.

(3) *“Calories” or “Cal”* The term “Calories” or “Cal” must appear either adjacent to the number of calories for each menu item or as a heading above a column listing the number of calories for each standard menu item. Such term appearing adjacent to calorie information for a standard menu item must meet the same font requirements as such calorie information. Such term appearing as a heading above a column must be listed in a type size that is no smaller than the smallest type size used to list the name or price of any menu item on that menu or menu board and in the same color, or as conspicuous a color, and against the same contrasting background, or a background at least as contrasting, as that used for that name or price.

(4) *Basis for calorie information.* Posted calorie values must have a reasonable basis, which may be derived from the use of nutrient databases, laboratory testing, or other reliable methods of analysis, and be rounded to the nearest ten (10) calories for calorie content values above 50 calories and to the nearest five (5) calories for calorie values 50 calories and below. Zero calories may be declared for any item containing fewer than five (5) calories.

(5) *Self-service food and food on display.* Calorie information must be declared for self-service food and food on display. The calorie information must be declared either (i) for each food item or, (ii) if the food item is not offered for sale in a discrete unit, per serving measured by a standard scoop or cup size. The declaration must identify the serving or discrete unit used to determine the calorie content. The calorie information must be posted either on a sign adjacent to and clearly associated with the corresponding food, or on a sign attached to a sneeze guard above the food item. The sign must identify the food item for which it is declaring calorie information if it is not otherwise clear to which food item the declaration belongs, or, if calorie information is being declared for more than one food item, on a sign or placard located where the customer can view both the food items listed on the sign and their calorie declarations. For self-service beverages, calorie declarations must be accompanied by the total number of fluid ounces in the cup indicated by the term “fluid ounces” and, if applicable, a description of cup size, e.g., small, medium, etc. as applicable.

(6) *Different sizes, flavors and varieties; toppings; combinations.*

(A) *Different sizes, flavors and varieties.* For standard menu items offered in different flavors and varieties, calories must be posted for each listed size, flavor or variety. If all of the listed sizes, flavors or varieties of a standard menu item have the same calorie amount, menus and menu boards must list a single calorie declaration for the standard menu item. If there are only two calorie amounts for all sizes, flavors and varieties of a standard menu item, both calorie amounts must be posted on menus and menu boards for the menu item with a slash between the two calorie amounts. For sizes, flavors and varieties of a standard menu item having more than two calorie amounts, the range of calorie amounts must be posted on menus and menu boards for each such size, flavor and variety.

(B) *Toppings.* When toppings can be added to a standard menu item and such toppings are listed on menus and menu boards, the calories for the standard menu item must be listed as well as the calories for each such topping.

(C) *Combinations.* When a menu or menu board lists two options for standard menu items in a combination meal, the calories must be declared for each option with a slash between the calorie declarations. If three or more options for standard menu items in a combination meal are listed, the range of calorie content values showing the minimum to maximum numbers of calories for all combinations of that standard menu item shall be listed on menus and menu boards. If there is only one possible total calorie amount for the combination, then that total must be listed on menus and menu boards.

(7) *Beverages that are not self-service.* Calories declared for non-self-service beverages must be based on the full-volume of the cup or other container served without ice. If the establishment usually dispenses and offers for sale a standard beverage fill or a standard ice fill, the calories declared must be based on such standard beverage fill or standard ice fill.

(d) *Required nutritional information statements.*

(1) *General requirement.* Menu boards and each page of a menu for a covered establishment must prominently state in a clear and conspicuous manner: “2,000 calories a day is used for general nutrition advice, but calorie needs vary.”

(2) *Children’s menus.* Instead of the requirement of subparagraph 1 of this paragraph, menus and menu boards, and pages of menus, targeted for children may state either: “1,200 to 1,400 calories a day is used for general nutrition advice for children ages 4 to 8, but calorie needs vary.”; or “1,200 to 1,400 calories a day is used for general nutrition advice for children ages 4 to 8 years and 1,400 to 2,000 calories a day for children ages 9 to 13 years, but calorie needs vary.”

(e) *Additional written nutritional information.* Covered establishments must have written nutritional information on the premises in the manner provided for in 21 CFR 101.11(b)(2)(ii), or successor regulation. The information must be made available to any customer who requests it. All menus and menu boards must prominently state in a clear and conspicuous manner: “Additional nutritional information available upon request.”

(f) *Enforcement.* In addition to the Department, the Department of Consumer Affairs may enforce the requirements of this section.

(g) *Severability.* If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the section to other persons or circumstances shall not be affected.

(h) *Effective date.* This section takes effect December 1, 2016.

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

(a) *Grading.* The Department shall establish and implement a system for grading and classifying inspection results for food service establishments using letters to identify and represent an establishment's degree of compliance with the provisions of this Code, the State Sanitary Code and other applicable laws that require such establishments to operate in a sanitary manner so as to protect public health. The letter "A" shall be the grade representing the highest degree of compliance with such laws. Subject to the provisions of this section, the Department shall provide each operating establishment that it inspects with a letter grade card indicating the establishment's inspection grade, except that no letter grade card shall be provided when the Department orders an establishment closed after an inspection.

(b) *Posting.* Upon receipt, and except as provided in subdivisions (c) and (e), an establishment shall conspicuously post a letter grade card so that it is visible to the general public and to patrons prior to entering the establishment. The letter grade card shall not be defaced, marred, camouflaged or hidden from public view.

(c) *Issuance of grade card.*

(1) *"A" grades.* For any establishment receiving an "A" grade, the Department shall provide the establishment with a letter grade card at the conclusion of the inspection where such grade is determined. The grade card shall be posted immediately.

(2) *Other grades.* For any food service establishment receiving a grade lower than an "A," the Department shall advise the establishment of its inspection grade and the findings upon which it was based. The Department shall conduct a subsequent inspection of the establishment no sooner than seven (7) days after the first inspection. At the conclusion of the second inspection, the Department shall provide the establishment with a letter grade card indicating the inspection grade that the establishment received on that inspection.

(d) *Adjudications.* After any notice of violation (“NOV”) issued at an inspection at which a letter grade card was provided to a food service establishment is heard and determined by the Health Tribunal at the Office of Administrative Trials and Hearings (“OATH”), the Department shall re-grade the inspection results taking into account only the violations alleged in the NOV that were either admitted by the establishment or sustained by a hearing examiner. If re-grading changes the inspection grade, the Department shall issue the food service establishment a new letter grade

card that the establishment shall immediately post instead of or in place of the letter grade card provided by the Department at the conclusion of the inspection resulting in the issuance of the NOV.

(e) *When posting may be deferred.*

(1) Any food service establishment receiving a grade lower than an “A” at a second inspection conducted pursuant to subdivision (c) of this section may defer posting the letter grade card provided by the Department at the conclusion of that inspection until the hearing date scheduled by the Department. If an establishment chooses to defer posting this letter grade card, the establishment shall remove any letter grade card that is currently posted, and instead post a sign provided by the Department advising the public that the establishment’s inspection result is under review and that the results of the inspection can be obtained from the Department.

(2) If an establishment does not appear at the Health Tribunal at OATH on the date scheduled for hearing the NOV referred to in subdivision (d), the establishment shall immediately post the letter grade card issued by the Department at the second inspection conducted pursuant to subdivision (c). If the establishment appears at the Health Tribunal at OATH on the scheduled date, but the hearing is unable to proceed for any reason, or if the establishment makes a timely request for an adjournment and such adjournment is granted, the establishment may continue to defer posting the letter grade card until the adjourned hearing date. In no event shall an establishment defer posting its letter grade card after the adjourned hearing date if the establishment is not able to proceed on such date.

(f) *Scope and applicability.* This section shall not apply to mobile food vending units, mobile food vending commissaries, temporary food service establishments, food service establishments operated in or by primary and secondary schools, hospital-operated cafeterias, correctional facilities, or charitable organizations, including soup kitchens or other prepared food distribution programs, nor to food service establishments operated by not for profit membership organizations for service to their members only.

(g) *No effect on other enforcement.* Nothing in this section shall affect the Department's authority to take any other action necessary to protect the public health or to enforce the provisions of this Code or any other law or rule applicable to operation of a food service establishment.

§81.53 – repealed.

§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 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.



What to Expect When You're Inspected:

A Guide for Food Service Operators

June 2016

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What to Expect When You're Inspected:

A Guide for Food Service Operators

Introduction

The New York City Health Department inspects approximately 27,000 food service establishments (sometimes called “restaurants” here) each year to monitor their compliance with City and State food safety regulations. This guide reviews the inspection process, provides information on the restaurant grading program and includes the *Food Service Establishment Self-Inspection Worksheet* (after page 12) and *Food Service Establishment Inspection Scoring Parameters: A Guide to Conditions* (page 8).

All food workers, including wait staff, should know how to prepare and handle food safely to prevent food-related illnesses. Owners and managers should study this guide, share it with their employees and use the Self-Inspection Worksheet (after page 12) to regularly check their restaurants’ physical and environmental conditions and their employees’ food-handling practices.

The regulations governing these Health Department inspections are in the Rules of the City of New York, Title 24, Chapter 23, titled “Food Service Establishment Inspection Procedures.”

Food Safety Requires Active Management

Operators who monitor their sanitary practices daily and correct violations on their own are more likely to do well on inspections. The Health Department encourages all operators to take advantage of its online resources and classroom courses to learn how to practice food safety and conduct self-inspections to manage and avoid Health Code violations.

The Food Protection Course and Certificate

To promote active management, the Health Code requires food service establishments to have a supervisor of food operations with a Food Protection Certificate on duty during all hours of operation to supervise food preparation and processing. To avoid gaps in supervision, the Health Department recommends that restaurants have more than one staff person with a Food Protection Certificate.

Individuals can earn a Certificate by taking and passing the Health Department’s food protection course, which trains operators in food safety and regulatory requirements. Classes are offered in multiple languages at the Department’s Health Academy and online in English, Chinese and Spanish (<http://www1.nyc.gov/site/doh/business/health-academy/food-protection-online-free.page>). The Academy course runs over five half days, Monday through Friday, with an exam held on the last day. The online course can be taken at any time, but the final exam must be taken at the Health Academy. Department-approved food protection classes are also offered by the City University of New York and the New York State Restaurant Association. Supervisors who have passed one of these classes are eligible to earn a certificate after taking an abbreviated course at the Health Academy and passing a test.



The Inspection

Every food service establishment in New York City receives an unannounced, onsite inspection at least once a year to check if it is meeting Health Code food safety requirements. The inspector may visit anytime the restaurant is receiving or preparing food or drink, or is open to the public.

Health Department inspectors hold bachelor's degrees with significant coursework in science. All inspectors undergo months of intense public health and communications instruction before they conduct an inspection on their own. They are taught to identify and explain to operators which hazards contribute to food-borne illnesses and to document these accurately in an inspection report.

It is a crime to offer—or for the inspector to demand—money, gifts or services of any kind. Legal action will be taken against anyone who offers or accepts a bribe. To report a bribe, or attempted bribe, call the Inspector General's office at 212-825-2141.



Scored Violations

The inspector records observed violations in a handheld computer during the inspection. Each violation is associated with a range of points depending on the type and extent of the violation, and the risk it poses to the public. At the end of the inspection, the points are added together for an inspection score. Lower inspection scores indicate better compliance with the Health Code.

Critical and General Violations

Health Code violations are classified as “critical” or “general” (see the *Self-Inspection Worksheet for Food Service Establishments* after page 12). Critical violations are more likely than general ones to contribute to food-borne illnesses because they may be a substantial risk to the public's health. Critical violations are given more points than general violations. Failing to cook food to required temperatures is a critical violation, while failing to provide an accurate thermometer in a refrigerator is a general violation.

“Public health hazards” are critical violations that pose an immediate health threat. Due to their serious nature, they carry the most points. If an establishment does not correct a public health hazard before the end of the inspection, the Health Department may close it immediately.

“Pre-permit serious items” are critical violations in the design of an establishment, such as improper sewage disposal or lack of a hand-washing facility near the food preparation area. The Health Department will not issue a permit if the establishment has one of these conditions. These violations must be corrected before the restaurant opens, or immediately if the establishment is already open to the public. Because these violations are critical to safe design and operation of the food service establishment, they carry the most points.



TIP: Critical and general violations are listed in the *Self-Inspection Worksheet* included in this booklet. Public health hazards are marked with an asterisk (*) and pre-permit serious violations are marked with a plus sign (+).

Condition Levels

The number of points an establishment receives for a critical or general violation depends on its condition level, meaning the extent and frequency of the violation. Every condition level is determined by a specific set of parameters (see Page 8, *Food Service Establishment Inspection Scoring Parameters – A Guide to Conditions*).

Some violations have more condition levels and parameters than others.

Conditions range from Level I, which carries the fewest points, to Level V, which carries the most points. For example, the presence of one contaminated food item would constitute a Condition Level I violation and would generate the fewest critical violation points.

Four or more different contaminated food items would be a Condition Level IV violation, and the operator would be assessed more violation points. Condition Level V, in most instances, is used to score public health hazards that are not corrected at the time of the inspection and is usually assigned 28 points.

Unscored Violations

Some cited violations may result in a Notice of Violation, fine and/or follow-up inspection, but are not counted toward the inspection score (see the *Self-Inspection Worksheet for Food Service Establishments* after page 12).

The Inspection Report and Notice of Violation

At the end of the inspection, the inspector will:

- Review the results of the sanitary inspection with the operator, explain violations and suggest ways to correct them and improve food safety. Cited violations should be corrected as soon as possible, and the establishment should take steps to prevent them from recurring.
- Issue a printed Inspection Report that states what the inspector observed, the violation points and the inspection score.
- Issue a Notice of Violation if the score was 14 or more points in general violations. The inspector *may* issue a Notice of Violation if a critical violation or an unscored violation was cited. All Notices of Violation are signed by the inspector and the food service operator.
- Provide the date when the Notice of Violation will be heard by a hearing examiner at the Health Hearings Division of the Office of Trials and Hearings (OATH). The back of the Notice of Violation includes contact information for OATH, a description of the hearing process and information about settlement and hearing by mail. Fines are determined at OATH. They range from \$200 to \$2,000 per violation and may be higher for repeated violations.

TIP: Use the *Self-Inspection Worksheet* and *Guide to Conditions* in this booklet to conduct regular self-inspections. These worksheets provide examples of the violations inspectors look for and the points they assign for each. By regularly identifying and immediately correcting violations in your establishment, you not only protect your customers but improve your chances of a successful inspection.

Closings and Re-openings

The Health Department may order a restaurant to temporarily close to correct a public health hazard that cannot be corrected before the end of an inspection or when the restaurant is operating without a valid permit. A restaurant may also be closed if it scores 28 or more points on three consecutive inspections. Prior to closure, an inspector will contact a supervisor, who will determine whether to order the establishment closed. If it is closed, Health Department closure signs must be immediately posted in the window(s) and/or door(s), all operations must cease and the restaurant must remain closed for business until it is authorized by the Health Department to reopen. The Department will monitor the establishment to ensure it remains closed and will issue additional violations for not complying with the closing order.

To reopen, the establishment must submit a written statement to the Health Department indicating that it has corrected all the violations that led to its being closed. The operator may be asked to attend an informal meeting with Health Department supervisors. If it appears that sanitary conditions have improved, an inspector will conduct a reopening inspection while the establishment remains closed to the public. Health Department supervisors will determine whether it may reopen.

After re-opening, the establishment will be inspected for compliance with the Health Code. If it is in sufficient compliance, it may remain open and will be inspected again in about three months. Repeated violations may prompt the Health Department to initiate procedures for the revocation or suspension of the operator's permit at a hearing before OATH. This may result in the establishment being closed for a longer period of time, or permanently.

Restaurant Inspection Website

Consumers may check an establishment's inspection history. Restaurant scores, grades and the details of inspection results are available on the Health Department's searchable restaurant inspection website at nyc.gov/health/restaurants.

Grading

As of July 2010, certain types of food service establishments—including restaurants, coffee shops, bars, nightclubs and most cafeterias and fixed-site food stands—must post letter grades that correspond to their sanitary inspection scores. A score of 0-13 results in a grade of A; 14-27 points, a B; and 28 or more points, a C.

Letter grades are not issued to mobile food vending units, temporary food service establishments, food service establishments operated by primary or secondary schools, hospital-operated cafeterias, correctional facilities, charitable organizations (including soup kitchens or other prepared food distribution programs) or food service establishments operated by not-for-profit membership organizations that serve food only to their members.

TIP: Restaurants with A grades are inspected less often than those with B or C grades.
Score 0 to 13 points = A; Score 14 to 27 points = B; Score 28 or more points = C

Only certain inspections result in a grade. Every food service establishment is scheduled for at least one inspection per year. A restaurant that scores 0 to 13 violation points on its first inspection will receive an A-grade card that must be posted immediately.

An establishment that does not score an A on its initial inspection will not have to post a grade until it has had the opportunity to improve its sanitary conditions and is re-inspected. If an A is issued on re-inspection, the A-grade card must be posted immediately. An establishment receiving a B or C grade on re-inspection receives two cards: one showing the letter grade and one that says “Grade Pending”; one of those cards must be posted immediately.

The final grade is determined at OATH.

The frequency of inspections depends on a restaurant’s score. Restaurants with A grades are inspected less often than those with B or C grades. Frequent inspections of poorer-performing establishments enable the Health Department to closely monitor their food safety practices, while giving them more opportunities to improve their grades.

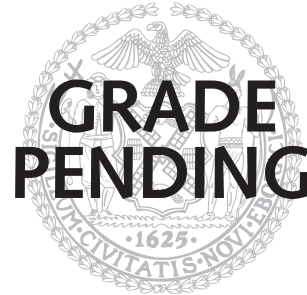
The letter grade or “Grade Pending” card must be posted in a place where it is easily seen by people passing by. It must be on the front window, door or an outside-facing wall. The card must be within 5 feet from the front door or other entrance, and within 6 feet from the ground or floor.

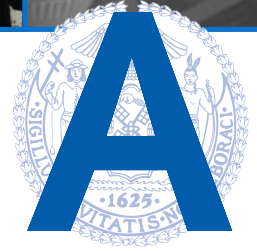
For additional information visit <http://www1.nyc.gov/site/doh/business/food-operators.page>

SANITARY INSPECTION GRADE



SANITARY INSPECTION GRADE





EVERY RESTAURANT CAN ACHIEVE AN

Avoid Common Sanitary Violations

Follow the steps below to practice A-grade food safety and keep your customers safe from food-borne illness. Avoid the most commonly cited violations and improve your chances to achieve an "A."

Be sure employees are trained in basic food safety and supervised by someone who has a food protection certificate.

- Arrange work schedules so that a supervisor with a food protection certificate is on duty whenever your restaurant is receiving or preparing food, or is open to the public.
- Train supervisors to use the Self-Inspection Worksheet to regularly evaluate and improve the restaurant's condition and employees' food safety practices.
- Provide food safety training for all employees who handle food.

Hold food at the proper temperature.

- Review Health Department rules for temperature-holding requirements.
- Be sure equipment used to hold hot and cold food is working properly.
- Use thermometers to monitor the temperature of foods in hot or cold storage.
- Track food taken from hot or cold storage, and record how long it is out.

Control conditions that promote pests.

- Seal all cracks, crevices and holes in walls, cabinets and doors to prevent rodents, cockroaches and flies from entering.
- Install rodent-proof door sweeps on outside doors.
- Store food and garbage in pest-proof containers.
- Clean grease, oil and food particles from all surfaces and equipment, including the floor underneath.
- Keep range hoods clean and grease-free.
- Contract with a pest control professional licensed to work in restaurants.

Protect food from contamination during storage, preparation, transportation and display.

- Keep food covered until served.
- Keep food separated by temperature and type. Avoid cross-contamination by separating potentially hazardous foods (like raw poultry) from ready-to-eat items (like salad mix).

Maintain all food surfaces.

- Clean and sanitize all food-preparation surfaces after each use; remove caked-on food.
- Repair or replace deeply-grooved cutting boards and chipped or broken surfaces so they can be properly sanitized.

Maintain all non-food surfaces.

- Review Health Department rules on acceptable materials; surfaces should be smooth and cleanable.
- Keep all surfaces clean.

Maintain all plumbing and check it frequently.

- Monitor all plumbing fixtures and make needed repairs **immediately**.
- Be sure plumbing is fitted with approved devices (valves, anti-siphonage pieces, vacuum breakers) to prevent backflow.
- Clean and maintain grease traps.



FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS

CRITICAL VIOLATIONS

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
2A* Food not cooked to required minimum temperature.				Failure to properly cook meats, comminuted meats and other potentially hazardous foods (PHFs), unless a consumer specifically asks for a serving of item ordered to be cooked below the minimum temperature.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
2B* Hot food item not held at or above 140°F.	One hot food item out of temperature in one area. Example: one tray of chicken wings held at 115°F.	Two hot food items out of temperature or the same type of food out of temperature in two different areas. Example: one tray of chicken wings and a pot of rice held at 115°F; or one tray of chicken wings on the steam table and one tray of chicken wings in the food preparation area held at 115°F.	Three hot food items out of temperature or the same type of food out of temperature in three different areas. Example: one tray of chicken wings, a pot of rice and platter of roast beef held at 115°F; or one tray of chicken wings on the steam table, one tray of chicken wings in the food preparation area and one basket of chicken near the deep fryer held at 115°F.	Four or more hot food items out of temperature or the same type of food out of temperature in four or more different areas. Example: one tray of chicken wings, a pot of rice, platter of roast beef and tureen of beef stew held at 115°F; or one tray of chicken wings on the steam table, one tray of chicken wings in the food preparation area, one basket of chicken near the deep fryer and a rotisserie machine filled with eleven chickens held at 115°F.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
2C Hot food item that has been cooked and refrigerated is being held for service without first being reheated to 165°F or above within 2 hours.	One cooked and refrigerated hot food item not reheated to 165°F before service. Example: chicken soup.	Two cooked and refrigerated hot food items not reheated to 165°F before service. Example: chicken soup and baked ham.	Three cooked and refrigerated hot food items not reheated to 165°F before service. Example: chicken soup, baked ham and sliced turkey.	Four or more cooked and refrigerated hot food items not reheated to 165°F before service. Example: chicken soup, baked ham, sliced turkey, meatloaf and lobster bisque.	
2D Precooked potentially hazardous food from commercial food processing establishment that is supposed to be heated, but is not heated to 140°F within 2 hours.	One precooked commercially prepared food not heated to 140°F. Example: beef patties.	Two pre-cooked commercially prepared foods not heated to 140°F. Example: beef patties and clam chowder.	Three pre-cooked commercially prepared foods not heated to 140°F. Example: beef patties, clam chowder and smoked turkey.	Four or more pre-cooked commercially prepared foods not heated to 140°F. Example: beef patties, clam chowder, smoked turkey, corned beef and gyros.	

* Public Health Hazards (PHH) must be corrected immediately

+ Pre-permit Serious (PPS) Violations that must be corrected before permit is issued

FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
2E Whole frozen poultry or poultry breasts, other than a single portion, are being cooked frozen or partially thawed.	One whole poultry or poultry breast being cooked from a frozen state. Example: chicken breast.	Two or more whole poultry or poultry breasts being cooked from a frozen state. Example: chicken breast, whole chicken, turkey breast and duck.	Note: For failure to properly cook poultry to the required minimum temperature, *2A cited.		
2F Meat, fish or molluscan shellfish served raw or undercooked without prior notification to customer.				Failure to properly cook meats, comminuted meats, fish, shellfish and other PHFs, unless a consumer specifically asks for their order to be cooked below the minimum temperature.	
2G* Cold food item held above 41°F (smoked fish and Reduced Oxygen Packaged food above 38°F), except during necessary preparation.	One cold food item out of temperature in one area. Example: one slab of unsliced smoked salmon or packet or tray of smoked salmon slices above 38°F or one tray of potato salad above 41°F in service display case.	Two cold food items out of temperature or the same food item out of temperature in 2 different areas. Example: one slab of smoked salmon above 38°F and one tray of sliced tomatoes above 41°F; or one bowl of potato salad in the service display case and one bowl of potato salad in the food preparation area above 41°F.	Three cold food items out of temperature. Example: one slab of smoked salmon above 38°F and tray of sliced tomatoes and platter of tuna salad above 41°F; or one bowl of potato salad in the service display case and one bowl of potato salad in the food preparation area and garlic in oil mixture above 41°F.	Four cold food items out of temperature. Example: one slab of smoked salmon above 38°F and tray of sliced tomatoes, bowl of garlic in oil mixture and bowl of cooked collard greens above 41°F; or one tray of potato salad in the service display case, one tray of potato salad in the reach-in refrigerator and one tray of potato salad on the food preparation table above 41°F.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
2H* Food not cooled by an approved method whereby the internal product temperature is reduced from 140°F to 70°F or less within 2 hours and from 70°F to 41°F or less within 4 additional hours.	One food item not cooled by approved method. Example: one whole, cooked turkey.	Two food items not cooled by approved method. Example: two whole, cooked turkeys.	Three food items not cooled by approved method. Example: two whole, cooked turkeys and one container of deep pot chicken stew.	Four or more food items not cooled by approved method. Example: two whole, cooked turkeys, one container of deep pot chicken stew and 10 pounds of cooked rice.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
2I Food prepared from ingredients at ambient temperature not cooled to 41°F or below within four hours.	One food item prepared from ambient temperature ingredients not cooled to 41°F. Example: tuna salad prepared with canned tuna above 41°F.	Two food items prepared from ambient temperature ingredients not cooled to 41°F. Example: tuna and salmon salads prepared with canned tuna and salmon above 41°F.	Three food items prepared from ambient temperature ingredients not cooled to 41°F. Example: tuna and salmon salads prepared with canned tuna and salmon, and open can of sardines above 41°F.	Four or more food items prepared from ambient temperature ingredients not cooled to 41°F. Example: tuna and salmon salads prepared with canned tuna and salmon, and open cans of sardines and anchovies above 41°F.	
2J* Reduced Oxygen Packaged (ROP) food not cooled by an approved method whereby the internal product temperature is reduced to 38°F within two hours of cooking and if necessary further cooled to a temperature of 34°F within six hours of reaching 38°F.	One ROP food item not cooled by approved method. Example: ROP beef stew (twelve 4-oz packages).	Two ROP food items not cooled by approved method. Example: ROP beef stew (twelve 4-oz packages) and ROP chicken fricassee (two 2-lb packages).	Three ROP food items not cooled by approved method. Example: ROP beef stew (twelve 4-oz packages), ROP chicken fricassee (two 2-lb packages) and ROP pork tenderloin (sixteen 8-oz packages).	Four ROP food items not cooled by approved method. Example: ROP beef stew (twelve 4-oz packages), ROP chicken fricassee (two 2-lb packages), ROP pork tenderloin (sixteen 8-oz packages) and meat sauce (six 1-lb packages).	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3A* Food from unapproved or unknown source or home canned; Reduced Oxygen Packaged (ROP) fish not frozen before processing; or ROP food prepared on premises transported to another site.				One or more food items not from an approved source, or home canned. Example: wild mushrooms or home-canned jellies or ROP fish not frozen before processing.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3B* Shellfish not from approved source, improperly tagged/labeled; tags not retained for 90 days.				One or more containers or kinds of shellfish not from an approved source, improperly tagged/labeled; tags not retained for 90 days. Example: clams not tagged, oyster tags not retained for 90 days, mussels improperly labeled and mussels not tagged.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
3C* Eggs found dirty/cracked; liquid, frozen or powdered eggs not pasteurized.	1-6 dirty/cracked eggs or liquid, frozen or powdered eggs not pasteurized. Example: four dirty and/or cracked eggs; or one container of unpasteurized liquid eggs.	7-12 dirty/cracked eggs; or two containers of liquid, frozen or powdered eggs not pasteurized. Example: nine dirty and/or cracked eggs; or two containers of unpasteurized liquid eggs.	13-24 dirty/cracked eggs; or three containers of liquid, frozen or powdered eggs not pasteurized. Example: 16 dirty and/or cracked eggs; or 14 dirty and/or cracked eggs and two containers of unpasteurized liquid eggs.	25 or more dirty/cracked eggs; or four containers of liquid, frozen or powdered eggs not pasteurized. Example: 25 or more dirty and/or cracked eggs; or 18 dirty and/or cracked eggs and one container of unpasteurized liquid eggs.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3D* Cans of food products swollen, leaking or rusted and not segregated from consumable food.	1-6 cans of food products swollen, leaking or rusted and not segregated from consumable food. Example: one can of tomato paste swollen and one can of salmon rusted and stored on food storage shelf.	7-12 cans of food products swollen, leaking or rusted and not segregated from consumable food. Example: three cans of tomato paste swollen and two cans of salmon and two cans of mushrooms rusted and stored on food storage shelf.	13-18 cans of food products swollen, leaking or rusted and not segregated from consumable food. Example: 10 cans of tomato paste swollen, two cans of salmon and two cans of mushrooms rusted and stored on food storage shelf.	19 or more cans of food products swollen, leaking or rusted and not segregated from consumable food. Example: 10 cans of tomato paste swollen, two cans of salmon and two cans of mushrooms rusted, and 15 cans of baked beans leaking and stored on food storage shelf.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3E* Potable water supply inadequate. Water or ice not potable or from unapproved source. Cross connection in potable water supply system.				Potable water supply inadequate. Water or ice not potable or from unapproved source. Cross connection in potable water supply system.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3F* Unpasteurized milk or milk product present.				Unpasteurized milk or milk product present.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3G Raw food not properly washed prior to serving.	One kind of raw food type not properly washed prior to serving. Example: two heads of lettuce.	Two kinds of raw food types not properly washed prior to serving. Example: two heads of lettuce and one bunch of carrots.	Three kinds of raw food types not properly washed prior to serving. Example: two heads of lettuce, one bunch of carrots and one bunch of broccoli.	Four or more kinds of raw food types not properly washed prior to serving. Example: two heads of lettuce, one bunch of carrots, one bunch of broccoli and one head of cabbage.	

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
4A Food Protection Certificate (FPC) not held by supervisor of food operations.					FPC not held by the supervisor of food operations.
4B* Food worker prepares food or handles utensil when ill with a disease transmissible by food or has exposed infected cut or burn on hand.				Food worker prepares food or handles utensil when ill with a disease transmissible by food or has exposed infected cut or burn on hand.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4C* Food worker does not use proper utensil to eliminate bare hand contact with food that will not receive adequate additional heat treatment.	One food worker preparing ready-to-eat food with bare hands. Example: one food worker at front food preparation area preparing a sandwich.	Two food workers preparing ready-to-eat foods with bare hands. Example: one food worker at front food preparation area preparing a sandwich and one food worker in kitchen preparing Caesar salad.	Three food workers preparing ready-to-eat foods with bare hands. Example: one food worker at front food preparation area preparing a sandwich, one food worker in kitchen preparing Caesar salad and one food worker in basement preparing shrimp cocktail.	Four or more food workers preparing ready-to-eat foods with bare hands. Example: two food workers at front food preparation area preparing sandwiches, one food worker in kitchen preparing Caesar salad and one food worker in basement preparing shrimp cocktail.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4D* Food worker does not wash hands thoroughly after using the toilet, coughing, sneezing, smoking, eating, preparing raw foods or otherwise contaminating hands.				Food worker does not wash hands after visiting the toilet, coughing, sneezing, smoking, preparing raw foods or otherwise contaminating hands.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4E* Toxic chemical improperly labeled, stored or used so that contamination of food may occur.	One toxic chemical improperly labeled, stored or used so that contamination of food may occur. Example: roach spray.	Two toxic chemicals improperly labeled, stored or used so that contamination of food may occur. Example: roach spray and bleach.	Three toxic chemicals improperly labeled, stored or used so that contamination of food may occur. Example: roach spray, bleach and butane.	Four or more toxic chemicals improperly labeled, stored or used so that contamination of food may occur. Example: roach spray, bleach, butane and rat poison.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4F* Food, food preparation area, food storage area or area used by employees or patrons contaminated by sewage or liquid waste.				Food, food preparation area, food storage area or area used by employees or patrons contaminated by sewage or liquid waste.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION		CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
4G*	Unprotected potentially hazardous food re-served.				Unprotected potentially hazardous food re-served. Example: bowl of cooked rice re-served.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4H*	Raw, cooked or prepared food is adulterated, contaminated or cross-contaminated, or not discarded in accordance with HACCP plan.	One food item is spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce contaminated by raw chicken or custard cream contaminated by mice droppings; or one package of ROP chicken not discarded in accordance with HACCP plan.	Two food items or two batches of same food located in two areas noted spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce and cooked chicken contaminated by raw chicken; or adulterated sausage and fish; or ROP beef stew and ROP chicken fricassee not discarded in accordance with HACCP Plan.	Three food items or three batches of the same food type located in three areas noted spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce, cooked chicken and raw eggs contaminated by raw chicken; or lettuce, tomatoes and figs contaminated by non-potable water; or ROP beef stew, ROP chicken fricassee and ROP pork tenderloin not discarded in accordance with HACCP Plan; or a tray of chicken contaminated with mice droppings in walk-in refrigerator, a basket of chicken under the deep fat fryer contaminated with dust and debris, and a pan of chicken on the service counter cross-contaminated with raw beef drippings.	Four or more food items or four or more batches of the same food type in different areas noted spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce, cooked chicken, raw eggs and cooked rice contaminated by raw chicken; or ROP beef stew, ROP chicken fricassee, ROP pork tenderloin and meat sauce not discarded in accordance with HACCP Plan; or a tray of chicken contaminated with mice droppings in an upper level walk-in refrigerator, a basket of chicken under the deep fat fryer contaminated with dust and debris, a pan of chicken on the service counter cross-contaminated with raw beef drippings and chicken contaminated by mice droppings in the basement walk-in refrigerator.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4I	Unprotected food re-served.	One unprotected food item re-served. Example: unwrapped crackers.	Two unprotected food items re-served. Example: unwrapped crackers and bread.	Three unprotected food items re-served. Example: unwrapped crackers, bread and pickles.	Four or more unprotected food items re-served. Example: unwrapped crackers, bread, pickles and breadsticks.	

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
<p>4J Appropriately scaled metal stem-type thermometer or thermocouple not provided or used to evaluate temperatures of potentially hazardous foods during cooking, cooling, reheating and holding.</p>				Appropriate thermometer(s) or themocouple not provided or used to measure the temperature of potentially hazardous foods.	
<p>4K Evidence of rats or live rats present in facility's food and/or non-food areas.</p>	<p>Rats present in the facility's food or non-food areas. Example: 1-10 fresh rat droppings in one area.</p>	<p>Rats present in the facility's food or non-food areas, demonstrated by 11-30 fresh rat droppings in one area or 1-10 fresh rat droppings in two areas. Example: 25 fresh rat droppings in the food preparation area; or 10 fresh rat droppings in dry food storage area and 10 fresh rat droppings in the basement, food preparation area, bathroom and garbage disposal area.</p>	<p>Rats present in the facility's food or non-food areas, demonstrated by 31-70 rat droppings one area; 11-30 fresh rat droppings in two areas; or 1-10 fresh rat droppings in three areas. Example: 55 fresh rat droppings in food preparation area; or 14 fresh rat droppings in dry food storage area and 16 in basement; or less than 10 fresh rat droppings in the basement, food preparation area and bathroom.</p>	<p>Rats present in the facilities food or non-food areas, demonstrated by 1-2 live rats and/or 71-100 rat droppings in one area; 31-70 fresh rat droppings in two areas; 11-30 fresh rat droppings in three areas; or 1-10 fresh droppings in four areas. Example: 80 fresh rat droppings in food preparation area; or 30 fresh rat droppings in dry food storage area and 16 in basement or less than 10 fresh rat droppings in basement, food prep.</p>	<p>Three or more live rats and/or greater than 100 rat droppings and/or other conditions conducive to infestation of rats, e.g., holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.</p>
<p>4L Evidence of mice or live mice present in facility's food and/or non-food areas.</p>	<p>Mice present in the facility's food or non-food areas; 1-10 fresh mice droppings in one area. Example: eight fresh mice droppings found in pantry.</p>	<p>Mice present in the facility's food or non-food areas. 11-30 fresh mice droppings in one area or 1-10 in two areas. Example: 25 fresh mice droppings in the food preparation area; or 10 fresh mice droppings in dry food storage area and 10 in the basement.</p>	<p>Mice present in the facility's food or non-food areas. 31-70 mice droppings in one areas; 11-30 in two areas; or 1-10 in three areas. Example: 55 fresh mice droppings in food preparation area; 14 fresh mice droppings in dry food storage area and 16 in basement; or fewer than 10 fresh mice droppings in the basement, food preparation area and bathroom.</p>	<p>Mice present in the facility's food or non-food areas; 1-2 live mice and/or 71-100 mice droppings in one area; 31-70 in two areas, 11-30 in three areas; or 1-10 in four areas. Example: 80 fresh mice droppings in food preparation area; 30 fresh mice droppings in dry food storage area and 16 in basement; or fewer than 10 fresh mice droppings in basement, food preparation area, bathroom and garbage disposal area.</p>	<p>Two or more live mice and/or greater than 100 fresh mice droppings and/or other conditions exist conducive to infestation of mice. e.g., holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.</p>

FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
4M Live roaches present in facility's food and/or non-food areas.	Roaches present in the facility's food and non-food areas. Example: two live roaches in the dry food area.	Roaches present in the facility's food and non-food areas. 6-10 roaches in one area; or 1-5 in two areas. Example: seven live roaches in the food preparation area; or two roaches in the dry food storage area and one in the basement.	Roaches present in the facility's food and non-food areas; 11-15 roaches in one area; 6-10 in two areas; or 1-5 in three areas. Example: 12 live roaches in the food preparation area; four roaches in the dry food storage area and five roaches in the basement; or one live roach observed in walk-in, food preparation area and dry storage.	Roaches present in the facility's food and non-food areas; 16-20 roaches in one area; 11-15 in two areas; 6-10 in three areas; or 1-5 in four areas. Example: 17 live roaches in the food preparation area; 10 roaches in the dry food storage area and five roaches in the basement; or one live roach observed in walk-in, food preparation area, garbage area and dry storage area.	Greater than 20 live roaches and/or other conditions exist conducive to infestation of roaches. Example: 45 live roaches and conditions conducive to infestation, such as holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.
4N Filth flies or food/refuse/sewage-associated (FRSA) flies in facility's food and/or non-food areas. Filth flies include house flies, little house flies, blow flies, bottle flies and flesh flies. Food/refuse/sewage-associated flies include fruit flies, drain flies and Phorid flies.	2-5 filth flies or FRSA flies in the food preparation or food storage area during November 1 through March 1. Example: two flies in dry non-food area in January.	6-10 filth flies or FRSA flies in one area; or 2-5 filth flies in two areas. Example: seven live flies in food preparation area; or two flies in the dry food storage area and one in basement.	11-15 filth flies or FRSA flies in one area; 6-10 in two areas; or 2-5 flies in three areas. Example: 12 live flies in food preparation area; four flies in the dry food storage area and five flies in basement; or one fly observed in walk-in refrigerator, food preparation area and dry storage area.	16-20 filth flies or FRSA flies in one area; 11-15 in two areas; 6-10 filth flies in three areas; or 1-5 in four areas. Example: 17 filth flies in food preparation area; 10 filth flies in dry food storage area and five filth flies in basement; or two filth flies observed in walk-in refrigerator, food preparation area, garbage area and dry storage area.	More than 30 filth flies, FRSA flies and/or other conditions exist conducive to infestation of filth flies. Example: 40 flies in the basement garbage area; and other conditions exist conducive to filth fly infestation, e.g., openings to the outer air, water, food, decaying matter and/or sewage. Inspector must call office to discuss closing or other enforcement measures.
4O Live animal other than fish in tank or service animal present in facility's food and/or non-food areas.	Live animal in establishment.	Two live animals in establishment.	Three live animals in establishment.	Four or more live animals in establishment.	
5A* Sewage disposal system improper or unapproved.				Sewage or liquid waste is not disposed of in an approved or sanitary manner; or sewage or liquid waste contaminating food, food storage area, food preparation area, or area frequented by consumers or employees or used as a storage, preparation or utility area.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
5B* Harmful, noxious gas or vapor detected. CO \geq 13 ppm.				Harmful, noxious gas or vapor detected. CO \geq 13ppm.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
5C+ Food contact surface improperly constructed or located; or unacceptable material used.	One food contact surface or piece of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves in a walk-in unit.	Two food contact surfaces or pieces of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves in a walk-in unit and cutting board made from untreated wood.	Three food contact surfaces or pieces of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves of a walk-in unit, cutting board made from untreated wood and acidic foods placed in pewter bowl.	Four or more contact surfaces or pieces of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves in a walk-in unit, cutting board made from untreated wood, acidic food placed in pewter bowl, and solder and flux used to repair food contact equipment.	Failure to correct as pre-permit serious (PPS) on an initial inspection re-inspection, or compliance inspection results in a follow-up inspection and/or closure. Inspector must call office to discuss closing or other enforcement measures.
5D+ Hand-washing facility not provided in or near food preparation area and toilet room. Hot and cold running water at adequate pressure to enable cleanliness of employees not provided at facility. Soap and an acceptable hand-drying device not provided.				Fully equipped hand wash sinks, to include soap and paper towels, not provided or conveniently located in all food preparation areas.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection or compliance inspection results in a follow-up inspection and/or closure. Inspector must call office to discuss closing or other enforcement measures.
5E+ Toilet facility not provided for employees or for patrons when required.				Toilet facility not provided for employees or for patrons when required.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection or compliance inspection results in a follow-up inspection and/or closure. Inspector must call office to discuss closing or other enforcement measures.

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION		CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
5F+	Insufficient or no refrigerated or hot holding equipment to keep potentially hazardous foods at required temperatures.				Refrigerated or hot holding equipment for PHFs not provided.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection or compliance inspection results in a follow-up inspection and/or closure. Inspector must call office to discuss closing or other enforcement measures.
5G+	Separate, enclosed, properly equipped cleaning and service area not provided. (Mobile Vending Commissary)				Separate, enclosed, properly equipped cleaning and service area not provided.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection or compliance inspection results in a follow-up inspection and/or closure. Inspector must call office to discuss closing or other enforcement measures.
5H+	No facilities available to wash, rinse and sanitize utensils and/or equipment.				No facility available to wash, rinse and sanitize utensils and equipment.	Failure to correct. Inspector must call office to discuss enforcement measures.
5I+	Refrigeration used to implement HACCP plan not equipped with an electronic system that continuously monitors time and temperature.				Refrigeration used to implement HACCP plan not equipped with an electronic system that continuously monitors time and temperature.	Inspector must call office to discuss closing or other enforcement measures.
6A	Personal cleanliness inadequate. Outer garment soiled with possible contaminant. Effective hair restraint not worn in an area where food is prepared.	One food worker observed without clean outer garment or hair restraint.	Two food workers observed without clean outer garments and/or hair restraints.	Three food workers observed without clean outer garments and/or hair restraints.	Four or more food workers observed without clean outer garments and/or hair restraints.	
6B	Tobacco use, eating or drinking from open container in food preparation, food storage or dishwashing area.	One food worker eating, smoking and/or drinking from open container in food or ware washing areas or evidence of tobacco use, eating or drinking in food preparation, food storage and dishwashing area.	Two food workers eating, smoking and/or drinking from open container in food or ware washing areas.	Three food workers eating, smoking and/or drinking from open container in food or ware washing areas.	Four or more food workers eating, smoking and/or drinking from open container in food or ware washing areas.	

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
6C Food not protected from potential source of contamination during storage, preparation, transportation, display or service.	One food item not protected during storage, preparation, transportation, display or service.	Two food items not protected during storage, preparation, transportation, display or service.	Three food items not protected during storage, preparation, transportation, display or service.	Four or more food items not protected during storage, preparation, transportation, display or service.	
6D Food contact surface not washed, rinsed or sanitized after each use and following any activity when contamination may have occurred.	One food contact surface not washed, rinsed or sanitized after any activity when contamination may occurred. Example: meat slicer encrusted with old food debris.	Two food contact surfaces not washed, rinsed or sanitized after any activity when contamination may have occurred. Example: meat slicer and cutting board encrusted with old food debris.	Three food contact surfaces not properly washed, rinsed or sanitized after any activity when contamination may have occurred. Example: meat slicer, wooden cutting board and can opener encrusted with old food debris.	Four or more food contact surfaces not properly washed, rinsed or sanitized after any activity when contamination may have occurred. Example: meat slicer, wooden cutting board, can opener and food preparation table encrusted with old food debris, and the interior of the ice machine observed with mold.	
6E Sanitized equipment or utensil, including in-use food-dispensing utensil, improperly used or stored.	One sanitized piece of equipment or utensil improperly used or stored.	Two sanitized pieces of equipment or utensils improperly used or stored.	Three sanitized pieces of equipment or utensils improperly used or stored.	Four or more sanitized pieces of equipment or utensils improperly used or stored.	
6F Wiping cloths soiled or not stored in sanitizing solution.	Two or more wiping cloths used to clean food contact surfaces not stored in sanitizing solution; or test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided; or sanitizer solution not at appropriate level to effectively remove contaminates from wiping cloths.	Two or more wiping cloths used to clean food contact surfaces not stored in sanitizing solution and the test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided; or wiping cloths used to clean food contact surfaces not stored in sanitizing solution and test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided.	Two or more wiping cloths used to clean food contact surfaces are not stored in sanitizing solutions, the test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided and sanitizer solution not at appropriate level to effectively remove contaminates from wiping cloths.		
6G* HACCP plan not approved or approved HACCP plan not maintained on premises.				Approved HACCP plan not maintained on premises.	HACCP plan not approved. Inspector must call office to discuss enforcement measures.

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FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

CRITICAL VIOLATIONS (cont.)

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
6H Records and logs not maintained to show HACCP plan has been properly implemented.					Record and logs not maintained to show HACCP plan has been properly implemented. Inspector must call office to discuss corrective action or other enforcement measures.
6I Food not labeled in accordance with HACCP plan.				Food not labeled in accordance with HACCP plan.	Inspector must call office to discuss corrective action or other enforcement measures.
7A Duties of an officer of the Department interfered with or obstructed.					Duties of an officer of the Department interfered with or obstructed.

FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

GENERAL VIOLATIONS

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
8A Facility not vermin proof. Harborage or conditions conducive to attracting vermin to the premises and/or allowing vermin to exist.			Doors and door thresholds not adequately pest proofed and/or one or two openings in the facility façade (walls, floors, ceilings) and/or other condition conducive to pest entry or breeding.	Doors and door thresholds not adequately pest proofed, with quality materials, and/or three or more openings in the facility façade (walls, floors, ceilings) or other condition conducive to pest entry or breeding.	
8B Covered garbage receptacle not provided or inadequate, except that garbage receptacle may be uncovered during active use. Garbage storage area not properly constructed or maintained; grinder or compactor dirty.	Garbage equipment and facilities not maintained or provided. Example: tight-fitting lid not provided for 32-gallon garbage can used to put garbage out overnight.	Garbage equipment and facilities not maintained or provided. Example: tight-fitting lid not provided for 32-gallon garbage can used to put garbage out overnight and garbage grinder encrusted with old food.	Garbage equipment and facilities not maintained or provided. Example: tight-fitting lids not provided for two 32-gallon garbage cans used to put garbage out overnight and garbage grinder encrusted with old food.	Garbage equipment and facilities not maintained or provided. Example: tight-fitting lids not provided for two 32-gallon garbage cans used to put garbage out overnight; garbage grinder encrusted with old food; and cardboard boxes, food wrappers and 15 empty cartons of milk strewn in the backyard.	

* Public Health Hazards (PHH) must be corrected immediately

+ Pre-permit Serious (PPS) Violations that must be corrected before permit is issued

FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

GENERAL VIOLATIONS

VIOLATION		CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
8C	Pesticide use not in accordance with label or applicable laws. Prohibited chemical used/stored. Open bait station used.	One prohibited pesticide, chemical or bait station not used in accordance with label or applicable laws.	Two types of prohibited pesticides, chemicals or bait stations not used in accordance with label or applicable laws.	Three types of prohibited pesticides, chemicals or bait stations not used in accordance with label or applicable laws.	Four or more types of prohibited pesticides, chemicals or bait stations not used in accordance with label or applicable laws.	Failure to correct. Inspector must call office to discuss enforcement measures.
9A	Canned food product dented and not segregated from consumable food.	1-6 cans dented. Example: one dented can of tomato paste stored on food storage shelf not segregated.	7-12 cans dented. Example: seven dented cans of tomato paste stored on food storage shelf not segregated.	13-24 cans dented. Example: seven dented cans of tomato paste and six dented cans of soy sauce stored on food storage shelf not segregated.	25 or more cans dented. Example: seven dented cans of tomato paste, ten dented cans of soy sauce and five dented cans of tuna fish stored on food storage shelf not segregated.	
9B	Thawing procedures improper.	One frozen food item improperly thawed. Example: whole chicken or beefsteak improperly thawed.	Two frozen food items improperly thawed or the same type of food improperly thawed in two different areas. Example: two chickens and beefsteak improperly thawed or chicken breast improperly thawed in sink and chicken legs improperly thawed on kitchen counter.	Three frozen food items improperly thawed or the same type of food improperly thawed in three different areas. Example: three chickens, beefsteak, and pork shoulder improperly thawed; or chicken breast improperly thawed in sink, chicken legs improperly thawed on kitchen counter and chicken breast improperly thawed in bowl in food preparation area.	Four or more frozen food items improperly thawed or the same type of food improperly thawed in four different areas. Example: four chickens, chicken breast, beefsteak and shrimp improperly thawed; or chicken breast improperly thawed in sink, chicken legs improperly thawed on kitchen counter, chicken breast improperly thawed in bowl in food preparation area and chicken wings improperly thawed near the deep fat fryer.	
9C	Food contact surface not properly maintained.	One food contact surface not properly maintained. Example: one cutting board discolored.	Two food contact surfaces not properly maintained. Example: one cutting board discolored and one plastic cutting board pitted and scratched.	Three food contact surfaces not properly maintained. Example: three cutting boards pitted and scratched.	Four or more contact surfaces not properly maintained. Example: three cutting boards pitted and scratched and four cutting boards at the bar area discolored.	
10A	Toilet facility not maintained and provided with toilet paper, waste receptacle and self-closing door.	One toilet facility not maintained and provided with toilet paper, waste receptacle and self-closing door.	Two toilet facilities not maintained and provided with toilet paper, waste receptacle and self-closing door.	Three toilet facilities not maintained and provided with toilet paper, waste receptacle and self-closing door.	Four or more toilet facilities not maintained and provided with toilet paper, waste receptacle and self-closing door.	

FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

GENERAL VIOLATIONS

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
10B Plumbing not properly installed or maintained; anti-siphonage or backflow prevention device not provided where required; equipment or floor not properly drained; sewage disposal system in disrepair or not functioning properly.	One backflow prevention device not installed, or equipment or floor not properly drained. Example: refrigerator condensation draining into a bucket.	Two backflow prevention devices not installed, or equipment or floor not properly drained. Example: refrigerator condensation draining into a bucket and air conditioner draining onto sidewalk.	Three backflow prevention devices not installed, or equipment or floor not properly drained. Example: refrigerator condensation draining into bucket, air conditioner draining onto sidewalk and no vacuum breaker provided on the hose connected to faucet.	Four or more backflow prevention devices not installed or equipment or floor not properly drained. Example: refrigerator condensation draining into bucket, two air conditioners draining onto sidewalk and no vacuum breaker provided on the hose connected to faucet or ice machine.	Sewage disposal system in disrepair or not functioning properly, 5A also cited.
10C Lighting inadequate; permanent lighting not provided in food preparation areas, ware-washing areas, and storage rooms.	One instance of inadequate lighting.	Two instances of inadequate lighting.	Three instances of inadequate lighting.	Four or more instances of inadequate lighting.	
10D Mechanical or natural ventilation system not provided, improperly installed, in disrepair and/or fails to prevent excessive build-up of grease, heat, steam condensation vapors, odors, smoke and fumes.	One mechanical or natural ventilation system not provided or inadequate. Example: no ventilation provided in bathroom.	Two mechanical or natural ventilation systems not provided or inadequate. Example: no ventilation provided in bathroom and exhaust hood not sufficient to remove excess fumes in kitchen.	Three mechanical or natural ventilation systems not provided or inadequate. Example: no ventilation provided in bathroom, exhaust hood not sufficient to remove excess fumes in kitchen and grease collecting on walls.	Four mechanical or natural ventilation systems not provided or inadequate. Example: no ventilation provided in bathroom, exhaust hood not sufficient to remove excess fumes in kitchen, grease collecting on walls and smoke from smoke-house drifting into dining area.	
10E Accurate thermometer not provided in refrigerated or hot holding equipment.	One refrigeration or hot holding unit not provided with accurate thermometer to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	Two refrigeration or hot holding units not provided with accurate thermometers to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	Three refrigeration or hot holding units not provided with accurate thermometers to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	Four refrigeration or hot holdings units not provided with accurate thermometers to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	

* Public Health Hazards (PHH) must be corrected immediately

+ Pre-permit Serious (PPS) Violations that must be corrected before permit is issued

FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

GENERAL VIOLATIONS

VIOLATION	CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
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.	One 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. Example: wall in food preparation area made of material not easily cleaned.	Two non-food contact surfaces improperly constructed. Unacceptable material used. Non-food contact surfaces 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. Example: wall in food preparation area made of material not easily cleaned and build-up of grease on on the wall adjacent to permanently installed convection oven that is not easily moveable or properly spaced to allow cleaning.	Three non-food contact surfaces improperly constructed. Unacceptable material used. Non-food contact surfaces 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. Example: wall in food preparation area made of material not easily cleaned, build-up of grease on on the wall adjacent to permanently installed convection oven that is not easily moveable or properly spaced to allow cleaning, dried encrusted grease and old food debris under the walk-in refrigerator that is not properly sealed to the floor.	Four non-food contact surfaces improperly constructed. Unacceptable material used. Non-food contact surfaces 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. Example: wall in food preparation area made of brick a material not easily cleanable, build-up of grease on on the wall adjacent to permanently installed convection oven that is not easily moveable or properly spaced to allow cleaning, dried encrusted grease and old food debris under the walk-in refrigerator that is not properly sealed to the floor, and a rug in the food storage area.	
10G Food service operation occurring in room used as living or sleeping quarters.	Food service operation occurring in one room used as living or sleeping quarters.	Food service operation occurring in two rooms used as living or sleeping quarters.	Food service operation occurring in three rooms used as living or sleeping quarters.	Food service operation occurring in four or more rooms used as living or sleeping quarters.	
10H Proper sanitization not provided for utensil ware washing operation.	Manual ware washing inadequate in that one immersion basket not provided or of incorrect size.	Manual ware-washing inadequate in that one immersion basket not provided or of incorrect size and manual ware washing procedure incorrect.	Manual ware-washing inadequate in that one immersion basket not provided or of incorrect size, manual ware washing procedure incorrect and sanitizing test kit or thermometer not provided.	Minimum final rinse temperature of 170°F not maintained or mechanical dishwasher is not operated as per manufacturer's specifications (time or temperature or chemical concentration).	

FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS: A GUIDE TO CONDITIONS (cont.)

GENERAL VIOLATIONS

VIOLATION		CONDITION I	CONDITION II	CONDITION III	CONDITION IV	CONDITION V
10I	Single service item reused, improperly stored, dispensed or not used when required.	Single service item reused, improperly stored, dispensed or not used when required. Example: drinking straws not protected from contamination.	Single service item reused, improperly stored, dispensed or not used when required. Example: drinking straws not properly dispensed and paper plates not protected from contamination.	Single service item reused, improperly stored, dispensed or not used when required. Example: drinking straws not properly dispensed, paper plates not protected from contamination and forks not protected from contamination.	Single service item reused, improperly stored, dispensed or not used when required. Example: drinking straws not properly dispensed, paper plates not protected from contamination, forks not protected from contamination and plastic forks reused.	
10J	“Wash hands” sign not posted at hand-wash facility.	“Wash hands” sign not posted at hand-wash facility.				
99B	General other.	Inspector must call office to discuss corrective action, enforcement measures or appropriate code citations.				



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EXHIBIT K

New York City Department of Transportation Off-Hour Deliveries Overview



Department of Transportation

POLLY TROTTENBERG, Commissioner

Off-Hour Deliveries Overview

What is the Off Hour Deliveries (OHD) program?

The OHD program focuses on shifting truck deliveries from peak period to off hours (7pm to 6am).

What are the types of OHD?

- An attended delivery is when a delivery is made to a location and is received by one or more on-site staff.
- An unattended delivery is when a delivery is made to a location where the driver is provided with a key to the storage (or walk-in refrigerator) area of the business location. Double doors, delivery lockers, or container/storage pods are also used for unattended deliveries.

What are the benefits of OHD?

OHD can result in a wide range of benefits, not only for businesses, but also suppliers and the City as a whole.

By receiving deliveries during off-peak hours, some of the benefits to a business could experience are:

- Having more certainty on truck arrival times, thereby more certainty on product arrival;
- Having goods arrive outside the times customers are in the store, thereby providing a better shopping environment and having staff focus on customers rather than the delivery;
- Allowing businesses to prepare goods before the store opens and having stock on the shelves when the business opens;
- Store front not blocked by a truck;
- Reduced delivery costs; research shows that trucking companies delivering in the off hours received fewer parking tickets, but more importantly were more efficient in the evening hours.

The community and the City benefit through:

- Less congestion as trucks not travelling at the same time as commuters and bus riders;
- Less double parking and traffic congestion in the neighborhood;
- Improved safety as trucks not making journeys in peak pedestrian and bicyclist travel time;
- Reduced emissions as trucks not sitting in traffic;

Nearly 97,000 trucks cross into NYC every day and nearly 25,000 trucks cross into Manhattan each day, 80% travel between 6am and 7pm. Even moving a fraction of those trucks to the off hour period would contribute to achieving the benefits described above.



What is NYCDOT doing to help promote Off Hour Deliveries?

The City would like to see more truck activity moved to the off hour period. NYCDOT is assisting businesses/goods receivers and transport companies move deliveries to the off hours. Examples of assistance to date has been identifying quiet equipment, conducting noise surveys and giving guidance and support to companies in mitigating noise concerns. The City is also currently establishing a recognition program to acknowledge businesses that adopt OHD. The recognition program is expected to launch in 2017.

Learn:

If you'd like to learn more about the program, please contact the Office of Freight Mobility via email at: ohdnyc@dot.nyc.gov or by phone (212) 839-6670.

EXHIBIT L
After Hours Zone

