

## Chapter 873 **SANITARY CODE\***

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**\*Editor's note:** The last complete revision of the Sanitary Code was promulgated in 1959 to be effective September 1, 1959. At that time the Sanitary Code consisted of Articles I through XII. The following is the disposition of those Articles: Article I was repealed effective 9-1-1971 and replaced by Article I of this chapter; Article II is included as Article IV of this chapter; Article III was repealed effective 1-1-1976 and replaced by Article V of this chapter; Article IV is included as Article VI of this chapter; Article V is included as Article VII of this chapter; Article VI was repealed effective 6-1-1976; Article VII is included as Article VIII of this chapter; Article VIII is included as Article IX of this chapter; Article IX was repealed effective 9-1-1971 and replaced by Article X of this chapter; Article X was repealed effective 6-1-1976; Article XI is included as Article XI of this chapter; Article XII is included as Article XII of this chapter.

Inasmuch as Ch. 873 contains duplicative section numbers (for example, there is a § 873.411 in both Articles IV and V), when reference is made to a particular section number in Ch. 873 the corresponding article number should also be utilized. This issue is currently under review by the county.

**Cross references:** Department of Health, Ch. 149; public health, Ch. 261.

**Statutory references--**Authority, Public Health Law, §§ 309, 348 and 349.

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## **ARTICLE I. SHORT TITLE; GENERAL DEFINITIONS, GENERAL PROVISIONS**

### **Sec. 873.100. Short title.**

The rules and regulations herein contained together with any and all amendments thereto shall constitute and comprise the Sanitary Code of the County of Westchester and shall be known and may be cited as the Westchester County Sanitary Code.

(Added 11-20-1986, eff. 11-20-1986\*)

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**\*Editor's note:** This resolution added a new Article I and also repealed former Article I, effective 9-1-1971 as amended.

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### **Sec. 873.101. General definitions.**

1. Whenever used in this code, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:
  - a. *Board*. The term "board" means the Board of Health of the County of Westchester.
  - b. *The Code*. The term "the code" means the Sanitary Code of the County of Westchester.
  - c. *Charter*. The term "Charter" means the Charter of the County of Westchester.
  - d. *Communicable disease*. The term "communicable disease" means infectious, contagious or communicable disease.
  - e. *County*. The term "county" means the County of Westchester.
  - f. *Commissioner*. The term "commissioner" means the Commissioner of Health of the County of Westchester.
  - g. *Department*. The term "department" means the Department of Health of Westchester County.
  - h. *Health district*. The term "health district" means the geographical area comprising the County of Westchester.
  - i. *Certificate*. When used in the code, the words "certificate," "permit" or "license" are interchangeable.
  - j. *Permit*. The term "permit" means a written license and authorization to carry on a specified activity or activities as regulated by this code, the New York State Sanitary Code, the Public Health Law, or the Environmental Conservation Law, and includes any written approval issued by the commissioner or his duly designated representative.
  - k. *Permittee*. The term "permittee" means a person who holds a valid permit issued by the commissioner, the department, the State Department of Health, or the State Department of Environmental Conservation.
  - l. *Person*. The term "person" means any individual, firm, profit or not-for-profit corporation, cooperative, association, partnership, institution, political subdivision, government agency, public body, joint-stock association, trust, estate, or other group of individuals or combination of the foregoing, or any other legal entity whatsoever, except the State of New York and its agencies.
  - m. *Public Health Council*. The term "Public Health Council" means the Public Health Council of the State of New York.
  - n. *Municipality*. The term "municipality" means a city, town or village located within the County of Westchester.
  - o. *State*. The term "state" means the State of New York.
  - p. *State Sanitary Code*. The term "State Sanitary Code" means the rules and regulations promulgated by the Public Health Council of the State of New York and designated as the State Sanitary Code.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.102. Applicability; legal effect.**

1. The provisions of the code shall be in force throughout the County of Westchester.
2. The provisions of this code shall have the force and effect of law.
3. It shall be the duty of the Board of Health and the commissioner to enforce each and every provision of this code.
4. Nothing herein contained in this code shall be construed to restrict the power of any city, town or any village to adopt and enforce additional ordinances or enforce existing ordinances relating to health and sanitation, provided that such ordinances are not inconsistent with the provisions of the Public Health Law, the Environmental Conservation Law or the State Sanitary Code.
5. Whenever the sense of the code may require:
  - a. Any singular word or term used herein shall also be read as in the plural; and
  - b. Any masculine word or term used herein shall also be read as in the feminine.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.103. Legal presumptions; evidence; reports as evidence.**

1. As provided by the Public Health Law, certified copies of the code shall be received in evidence in all courts and proceedings in the county.
2. As provided by the Public Health Law, every rule, regulation, order and direction adopted by the board shall state the date on which it takes effect; and a copy thereof signed by the commissioner or his deputy shall be filed as a public record in the department, in the State Department of Health and in the office of the Westchester County Clerk; and shall be published in such manner as the board may from time to time determine.
3. As provided by the Public Health Law, the written reports of state and local health officers, inspectors, investigators, nurses and other representatives of state and local health officers on questions of fact pertaining to, concerning or arising under and in connection with complaints, alleged violations, investigations, proceedings, actions, authority and orders, related to the enforcement of this code, the Public Health Law, the Environmental Conservation Law, the State Sanitary Code or any local health regulation shall be presumptive evidence of the facts so stated therein, and shall be received as such in all courts, administrative hearings and places.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.104. Construction.**

1. This code is intended to be consistent with the applicable federal and state law

and shall be construed, whenever necessary, to achieve such consistency.

2. This code shall be liberally construed for the protection of health and safety in the health district.

**Sec. 873.105. Separability of provisions.**

1. In the event that any provision of this code is declared unconstitutional or invalid, the constitutionality or validity of every other provision of the code shall not be affected thereby.
2. In the event that the applicability of any provision of this code to any person or circumstance is held to be invalid, the applicability of such provision to other persons and circumstances shall not be affected thereby.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.106. Saving clause.**

1. Nothing contained in this code shall affect or impair any act done or right accruing, accrued or acquired or any penalty, forfeiture or punishment incurred prior to the time when this act shall take effect, under or by virtue of the provision or provisions of law or the Sanitary Code, as in force immediately prior to the time this code shall take effect, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this code shall not have taken effect.
2. When enacted pursuant to the Public Health Law of the State of New York, an act of the board which adds or purports to add a new article, section, subdivision or other provision to the code shall take effect, shall be deemed and construed as having been added to such code, as amended by this code, and shall be given full effect according to its context as if the same had been added expressly and in terms of such code, and shall be deemed and construed to have been inserted in such code, in the appropriate respective position in regard to and as modifying the effect of the corresponding provision or provisions of such code, as herein adopted and promulgated.
3. Reference in any law to an existing article, section, subdivision or other provision of the Westchester County Sanitary Code, as in force immediately prior to the time this code shall take effect, shall be deemed and construed to refer to the corresponding article, section, subdivision or other provision of such law, as renumbered, modified or amended by this code.
4. Reference in any general, special or local law, rule, regulation or public document to any provision or provisions of the Westchester County Sanitary Code, as in force immediately prior to the time this code shall take effect, shall be deemed to be and construed as a reference to the corresponding provision or provisions of such code, irrespective of whether such provision or provisions is or are contained in one or more than one article, section, subdivision or other part thereof.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.107. Sanitary code; certified copies.**

The commissioner or his deputy shall furnish certified copies of the code and its amendments for a fee of \$1.00 per page of the code.

(Added 11-20-1986, eff. 11-20-1986)

**ARTICLE II. THE DEPARTMENT OF HEALTH; ADMINISTRATION AND ENFORCEMENT**

**Sec. 873.200. The Board of Health; officers; meetings.**

1. The board shall be organized and constituted as required by the provisions of the Public Health Law and the Charter of the County of Westchester.
2. The board shall meet one day of each month.
3. The President or other presiding officer of the board may call special meetings thereof when, in his judgment, the protection, preservation or improvement of the public health of the county or any part thereof requires it, and as otherwise provided in the Public Health Law of the State of New York; in the event that a special meeting, in the judgment of the President or the president's designee, is required and there is insufficient time for the calling of an in-person meeting; the President or other presiding officer shall personally telephone the membership of the board and record the subject matter thereof, the member with whom discussion took place and the vote or response of such member of the board.
4. A majority of the 13 members of the board shall constitute a quorum at any regular or special meeting of the board.
5. The board shall elect a President from among its members, who shall serve as presiding officer of the board.
6. The board shall elect a Vice President from among its members, who shall serve as presiding officer of the board in the absence of the president.
7. The board may adopt by a majority vote bylaws for the proper conduct of its affairs, election of officers and appointment of committees, not inconsistent with law.

(Added 11-20-1986, eff. 11-20-1986\*)

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**\*Editor's note:** This resolution added a new Article II and also repealed former Article II, effective 9-1-1971, as amended.

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**Sec. 873.201. The Board of Health; general powers.**

1. General powers.
  - a. As provided by the Charter and the Administrative Code of the County of Westchester, and subject to the provisions of the Public Health Law, the Environmental Conservation Law, and the State Sanitary Code, the board

shall adopt, promulgate, amend or repeal rules and regulations affecting public health in the county.

- b. From time to time, the board shall make and publish such rules and regulations not inconsistent with the Public Health Law, the Environmental Conservation Law, and the State Sanitary Code as it may deem necessary and proper for the execution and enforcement thereof.
2. At the request of the commissioner, the board shall consider any matter relating to the preservation, protection and improvement of the public health and may advise the commissioner thereon.
3. From time to time, the board may submit to the commissioner any recommendations relating to the preservation, protection and improvement of the public health.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.202. The Board of Health; quasi-judicial powers.**

1. As provided by the Public Health Law, the board may:
  - a. Issue subpoenas;
  - b. Compel the attendance of witnesses;
  - c. Administer oaths to witnesses and compel them to testify;
  - d. By resolution, designate one of its members to sign and issue subpoenas;
  - e. Issue warrants to any peace officer of any municipality in the health district or to the Sheriff of the county to apprehend and/or remove such person or persons as cannot otherwise be subjected to its orders or regulations;
  - f. Prescribe and impose penalties for the violation of, or failure to comply with any of its orders or provisions of the code, or of the State Sanitary Code not exceeding \$1,000.00 for each single violation or failure;
  - g. Make, without publication thereof, such orders and regulations for the suppression of nuisances and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or upon which may exist the cause of other nuisances to other premises, or cause the same to be conspicuously posted thereon;
  - h. Maintain actions in any court of competent jurisdiction to restrain by injunction violators of its orders and the orders, rules, and regulations of the board, or otherwise to enforce such orders and regulations, and
  - i. By resolution, designate the commissioner or any person or persons as a hearing officer to conduct a formal hearing or hearings for the purpose of holding and conducting hearings for and on behalf of the board, taking testimony and reporting findings of fact, conclusions of law and recommendations concerning any investigation, complaint, charge,

inquiry, study or violations within the jurisdiction of the department and having the powers of the board in this article.

(Added 11-20-1986, eff. 11-20-1986; amended 10-18-2001, eff. 10-18-2001)

**Sec. 873.203. The commissioner; general powers.**

1. As provided by the Public Health Law, the commissioner shall:
  - a. Make an annual sanitary survey and maintain sanitary supervision over the territory within the county;
  - b. Make a sanitary inspection periodically of all places of public assemblage, and report thereon to those responsible for the maintenance of such places of public assemblage;
  - c. Promote the spread of information as to the cause, nature and prevention of prevalent diseases, and the preservation and improvement of health;
  - d. Take such steps as may be necessary to secure prompt and full reports by physicians of reportable diseases;
  - e. Take such steps as may be necessary to secure prompt and complete registration of births and deaths;
  - f. Attend conferences called by the State Commissioner of Health or his authorized representatives;
  - g. Enforce within the county the provisions of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, State Sanitary Code and the code.
2. Notwithstanding any other law, the commissioner may promulgate, adopt and administer Administrative rules, regulations and standards which the commissioner deems necessary or desirable to carry out or enforce the provisions of the code. Such rules and regulations and standards shall become effective upon promulgation by the commissioner.
3. Whenever the commissioner is empowered to or charged with the responsibility to do or perform an act, he may designate any officer or employee of the department to do or perform the act in his place and stead.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.204. The commissioner; emergency powers.**

1. As provided by the Public Health Law (§ 352), the commissioner may authorize action necessary to alleviate emergencies where an imminent imperilment to the public health and safety exists.
2. Upon the occurrence of an emergency where an imminent imperilment to the public health and safety exists, the commissioner, or his or her designee, shall notify the County Executive, the Office of Public Affairs, county legislators(s) and local elected officials from the areas affected by the emergency.

(Added 11-20-1986, eff. 11-20-1986; amended by L.L. No. 18-1998)

**Sec. 873.205. Inspections; in general.**

1. As provided by law, the commissioner or any authorized representative of the department may inspect any premises, matter or thing within its jurisdiction, including but not limited to, any premises where an activity regulated by the Public Health Law, State Sanitary Code, the Environmental Conservation Law, or any and all regulations promulgated pursuant thereto, or the code is carried on.
2. As provided by law, the representatives of the department may inspect any record required to be kept pursuant to law or regulation within the jurisdiction of this department.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.206. Inspections; interference.**

1. As provided by law, no person shall interfere with, obstruct or refuse to allow any employee or authorized representative of the department to enter upon and inspect any premises, place or thing within the jurisdiction of the department, in the discharge of his official duties or of department business.
2. As provided by law, no person shall interfere with, obstruct or refuse to allow the examination of any occupant of any premises, place or thing by an authorized employee or representative of the department, in the discharge of his official duties.
3. As provided by law, no person shall molest or resist any representative of the department in the discharge of his official duties.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.207. Inspections; taking samples.**

As provided by law, the commissioner or any authorized representative of the department may take and remove any substance or thing or any necessary part or portion thereof from any premises or place as a sample for investigation or evidence when in the opinion of such representative, such substance or thing may be dangerous or detrimental to the public health, or is required for sampling, testing or analysis for the protection of public health and the environment.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.208. Notices; posting; destroying.**

1. Notices shall be in the English language; provided, however, if the department is of the opinion that the person or persons to whom a required warning, notice or instructional sign is addressed may not understand the English language, the department may require that such warning, notice or sign shall appear legibly both in English and such other designated foreign language as may be necessary.
2. No person shall remove, mutilate, conceal, obstruct or tear down any notice or placard of the department posted in or on any premises or public place except by written permission of an authorized representative of the commissioner.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.209. Investigations; formal hearings.**

1. The board may cause to be held a hearing on any application, complaint, circumstances, or alleged violation of the laws and regulations within the jurisdiction of the department.
2. Notice of hearing.
  - a. A formal hearing shall be on due and adequate notice to the person or persons concerned and shall be set down for a day certain.
  - b. A notice of hearing shall set forth:
    - i. The time and place of the hearing;
    - ii. Charges and violations complained of, if any, with specific reference to the provisions and sections of the law, rule and regulation involved;
    - iii. The right to present evidence;
    - iv. The right to examine and cross-examine witnesses;
    - v. The right to be represented by counsel; and,
    - vi. That failure to appear shall constitute a default by the respondent, that the hearing may proceed in his absence and a determination made based upon evidence submitted by the department or a warrant may be issued compelling his attendance.
3. Witnesses.
  - a. On the return day of a hearing, the hearing officer shall note the appearances of the persons attending the hearing.
  - b. Witnesses shall be sworn and testimony shall be recorded either by a certified stenographer or by use of an electronic recording device.
  - c. Transcripts.
    - i. The testimony shall be transcribed upon the request of any interested party.
    - ii. The party so requesting the transcript shall pay the costs and expenses in connection therewith.
4. After each hearing, the hearing officer shall prepare findings of fact, conclusions, and recommendations upon which the board shall make a formal order, setting forth the determination, conditions, if any, to be complied with, and civil penalties, if any.
5. The order of the board following a hearing shall be filed in the department, and a copy thereof shall be served on all respondents as provided for in section 873.210 of this article.
6. Nothing herein contained shall preclude the department from taking any action in

addition to or apart from the formal hearing herein provided for, as may be provided by law; nor shall the department be precluded from taking such other action by virtue of the order of the board made pursuant to this section.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.210. Investigations; hearings; service of notice.**

Unless otherwise expressly provided for by law, or by any other provision of the code, or the State Sanitary Code, service of notice of hearings shall be made as follows:

1. By delivering the notice within the health district to the person to be served, or if the person is not an individual, with a partner of a partnership, or a member of the group concerned, or with an officer of the corporation; or
2. By delivering the notice within the health district to a person of suitable age and discretion who is in charge of the office or premises concerned at the actual office or premises and by mailing the notice to the last known residence, place of business, dwelling place, or usual place of abode of the person to be served; or
3. By affixing the notice to the door of the premises concerned within the health district and by mailing the notice to the last known residence, place of business, dwelling place or usual place of abode of the person to be served; or
4. By enclosing the notice in a postpaid envelope addressed to the person to be served at his place of business, dwelling place, usual place of abode or last known address, and depositing such envelope at a United States Post Office or official depository under the exclusive care and custody of the United States Postal Service, within the health district, for delivery by either first class or certified mail, return receipt requested; or
5. By any combination of the provisions contained in this section.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.211. Investigations; hearings; appearances.**

1. At any hearing conducted pursuant to the code, any party to the proceedings may appear personally or with counsel and shall be given the opportunity to produce evidence and witnesses and, at a hearing, to cross-examine witnesses.
2. At any hearing conducted pursuant to the code, if a party shall appear without counsel, the hearing officer shall advise such party of his right to counsel; and that if he desires to proceed without counsel, that he may call witnesses, cross-examine witnesses and produce evidence in his behalf.
3. At any hearing, a party appearing on behalf of, as agent for, or in the absence of any person who is an owner, permittee or other party responsible, under the code or by law for any of the violations alleged in the petition, shall produce at the hearing written authorization signed by that person, owner, permittee or responsible party:

- a. Authorizing the party or agent to act on behalf of that person, owner, permittee or responsible party at the hearing; and
  - b. Stating that the person, owner or responsible party, shall be bound by any of the findings, recommendations or conclusions adopted by the board.
4. Appearances shall be noted on the official record of hearings.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.212. Investigations; hearings, adjournments.**

1. The hearing officer may grant adjournments upon request of any party to the proceedings, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a day certain.
2. If an adjournment is requested in advance of the hearing date, such request shall be presented to the hearing officer in writing, and shall specify the reason for such request.
3. In considering an application for adjournment of a hearing, the hearing officer shall consider whether the purpose of the hearing will be affected or defeated by the granting of such adjournment.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.213. Investigations; hearings; subpoenas; addition of parties.**

1. The board, or any member of the board designated by resolution of the board for such purpose, or the hearing officer, shall issue subpoenas upon request of any party to the proceedings of any hearing set down by the board.
2. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.
3. The hearing officer may add a party to the proceedings upon due and adequate notice to both the party to be added and the parties named in the proceedings.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.214. Investigations; hearings; procedure.**

1. The hearing officer shall not be bound by the strict rules of evidence in the conduct of a hearing, but the determination shall be founded upon sufficient legal evidence to sustain it.
2. Upon the conclusion of a hearing, the board shall take such action upon such findings, determinations and recommendations as it deems proper, and shall execute an order carrying such findings and determinations into effect.
3. The actions of the board may include the assessment of civil penalties, as provided by law and by the code.
4. An order of suspension or revocation of any permit or license may contain such provisions, as to renewal or reinstatement, as the board may direct.

5. The board may direct a rehearing or require the taking of additional evidence, and may rescind or affirm, in whole or in part, a prior determination after such rehearing.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.215. Investigations; post-hearing procedures.**

1. The board shall cause to be served upon the respondents, copies of findings of fact, conclusions and recommendations and orders made as a result of a formal hearing.
2. Service of findings of fact, conclusions and recommendations and order shall be made in the manner prescribed for the service of notice of hearings.
3. A copy of any order made by the board shall be filed as a public record in the department and shall be published in such manner as the board may from time to time determine.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.216. Enforcement; seizure; embargo; condemnation; disposition.**

1. Seizure and embargo.
  - a. When, in the opinion of the commissioner or the commissioner's representative, an article, substance or thing is deemed unfit for human consumption, or does not meet the requirements of the State Sanitary Code or the code, or otherwise constitutes a danger or is prejudicial to the public health, the commissioner or the commissioner's representative may seize, embargo or condemn such material.
  - b. The commissioner or the commissioner's representative may destroy, render harmless, or otherwise dispose of all seized, embargoed or condemned material or may direct the owner or person in control thereof to do so.
  - c. When the commissioner or the commissioner's representative determines that embargoed material consists in part of materials which are not in violation of the State Sanitary Code or the code, and which may be salvaged, or that embargoed materials or any part thereof can be brought into compliance with the law, the commissioner or the commissioner's representative shall permit the owner or person in control, unless, in the opinion of the commissioner or the commissioner's representative, the protection of the public health otherwise requires, to separate salvageable portions, or to bring such materials into compliance with the State Sanitary Code or the code at the place of embargo or other place acceptable to the commissioner or the commissioner's representative.
  - d. When seized, embargoed or condemned material is disposed of by the commissioner or the commissioner's representative otherwise than by destruction, it shall be returned to the owner or person in control after it has been rendered harmless.

2. All activities carried on pursuant to this section shall be done in a manner consistent with the maintenance of the public health, giving due regard to the property rights of the owner or person in control of the affected material.
3. Except where the protection of the public health requires immediate action, the commissioner or the commissioner's representative shall not seize, embargo, condemn, destroy, render harmless or otherwise dispose of any material pursuant to subsection 1. of this section, until the owner or person in control is notified by an effective means of communication and is given opportunity to be heard.
4. Any article, substance or thing embargoed pursuant to the provisions of this section shall be identified by the placing and physical attachment thereon of an identification tag or label which shall state the alleged nature and description of the article, substance or thing, the reason for embargo, the date of embargo and the signature of the commissioner or the commissioner's representative effecting or causing such embargo.
5. No article, substance or thing embargoed pursuant to the provisions of this section shall be used, removed, destroyed or otherwise disposed of while under such embargo except by and under the direction of the commissioner or the commissioner's representative.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.217. Enforcement; violations; notice.**

1. Upon the finding of a noncompliance, violation or violations of the Public Health Law, the Environmental Conservation Law, within the jurisdiction of the department, the State Sanitary Code, the provisions of the code or the rules and regulations promulgated thereunder, or any other code and the rules and regulations promulgated thereunder within the jurisdiction of the department, the commissioner or his representative may serve a notice of noncompliance or violation in writing, setting forth therein the nature of the noncompliance or violation.
2. A notice of noncompliance or of violation served pursuant to the provisions of this section may be served in person, by mail, by telegraph, or by posting such notice conspicuously on the premises.
3. Such notice shall provide that the noncompliance or violation shall be abated and shall set forth the date or dates of violation and section of code claimed violated.
4. In the event that the objectionable conditions are not removed pursuant to and in accordance with the notice of noncompliance or violation notice, and if the nature of the noncompliance or violation requires immediate control for the protection of life and health, to give public notice, the commissioner or his representative may cause to be conspicuously posted on the premises or equipment, an appropriate notice or sign, which notice or sign shall not be removed except as authorized in writing by the commissioner or his representative.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.218. Enforcement; violations; criminal penalties.**

1. As provided by the Public Health Law, the provisions of the State Sanitary Code shall have the force and effect of law and the noncompliance or nonconformance with any provision thereof shall constitute a violation, punishable, on conviction for a first offense, by a fine not exceeding \$250.00 or by imprisonment not exceeding 15 days, or both; and for a second or subsequent offense, by a fine not exceeding \$500.00 or by imprisonment not exceeding 15 days, or both.
2. As provided by the Public Health Law, any noncompliance or nonconformance with any provision of the code or of a rule or regulation duly made thereunder shall constitute a violation punishable on convictions for a first offense by a fine of not more than \$250.00 or by imprisonment for not more than 15 days, or by both such fine and imprisonment; and for a second or subsequent offense by a fine not exceeding \$500.00 or by imprisonment for not exceeding 15 days, or both.
3. As provided by the Public Health Law, a person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by the board, or the commissioner, is guilty of a misdemeanor; except, however, that where such order or regulation applies to a tenant with respect to his own dwelling unit, or to an owner-occupied one-or two-family dwelling, such person is guilty of an offense for the first violation punishable by a fine not to exceed \$50.00 and, for a second or subsequent violation, is guilty of a misdemeanor punishable by a fine not to exceed \$500.00 or by imprisonment not to exceed six months, or by both such fine and imprisonment.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.219. Enforcement; violations; civil penalties.**

1. Any person who violates, disobeys or disregards the terms of any lawful order or regulation of the State Sanitary Code, the code, or the board shall be subject to the imposition of a civil penalty by the board, not exceeding \$1,000.00 for each single violation or failure or omission to act.
2. The penalty provided for by this section may be sued for and recovered by the board in any court of competent jurisdiction.
3. An action or cause of action for the recovery of a penalty under this section may be settled or compromised by the board after proceedings are brought to recover such penalties prior to the entry of judgment therefor.
4. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them to be violations, misdemeanors or felonies or prescribing the penalty therefor.

(Added 11-20-1986, eff. 11-20-1986; amended 10-18-2001, eff. 10-18-2001)

**Sec. 873.220. Enforcement; violations; other than by prosecution.**

1. Notwithstanding enforcement of the code by way of prosecution, recovery of civil penalties, revocation of permits, seizure, embargo and condemnation, or other means, the department, by its duly authorized representative, may seek to obtain voluntary compliance with the code by way of notice, permit, warning or educational means.

2. Nothing in this section shall be construed to require that such noncompulsory methods must be employed or attempted before proceeding by way of compulsory or other legally prescribed procedures.

(Added 11-20-1986, eff. 11-20-1986)

### **Sec. 873.221. Enforcement; compliance; bonds and undertakings.**

The commissioner may require any person subject to the provisions of the code to file with the commissioner a bond or undertaking in such form, including but not limited to bank or certified check, as shall be deemed by the commissioner to be adequate, to ensure compliance with any order, permit, license or approval issued by the commissioner, pursuant to the provision of the code, the Public Health Law or the State Sanitary Code.

(Added 11-20-1986, eff. 11-20-1986)

## **ARTICLE III. PERMITS AND LICENSES: GENERAL PROVISIONS**

### **Sec. 873.300. Permits and licenses; applications.**

1. Application for a permit or for the renewal of a permit shall be made on forms furnished by the department and shall contain all information called for by said forms and shall be accompanied by the applicable fee, if any.
2. Initial permits and renewals.
  - a. Application for an initial permit shall be accompanied, if required by the department, by a written official document or statement issued by the appropriate municipal authority having jurisdiction and concern with the zoning laws, ordinances or regulations of the municipality in which the operation, facility, activity, premises, or use for which the permit is sought, stating that the operation, facility, activity, premises or use, if permitted, will not violate any existing zoning laws, ordinance or regulation of such municipality.
  - b. Application for a permit or for the renewal of a permit shall be accompanied by such other information, evidence or documentation as the department may require, or as may be otherwise provided by the code.
3. In addition to the information specifically required to be submitted to the department, or if no specific information is required for certain permits, the department may require the following information:
  - a. The name, age, residence and business address of the applicant and, if the applicant is a partnership or other group, of each member of such partnership or group; and, if the applicant is a public corporation, of each officer of the corporation; and, if the applicant is a nonpublic corporation, including a not-for-profit corporation, the name of each of the shareholders.
  - b. To the extent that such information is relevant to the conduct of the

business, trade, occupation or activity for which the permit is to be issued, information concerning the applicant, its individual members or officers, relating to education, training or experience, physical health, addiction to alcohol or habit-forming drugs, history of prior criminal conviction, including violations and offenses, other than motor vehicle offenses, history of mental illness, and record of insolvency or bankruptcy.

4. Application for a permit or for the renewal of a permit shall be made and signed by:
  - a. In the case of an individual who is to be the permittee, by the individual, or by his representative, who is duly authorized in writing to make such application;
  - b. In the case of a partnership which is to be the permittee, by a general partner or a representative of the partnership, who is duly authorized in writing to make such application;
  - c. In the case of an unincorporated association or group which is to be the permittee, by a director, duly authorized officer or duly authorized representative of the association or group, who shall submit a certified copy of a resolution of the governing Board or executive committee of such association or group, authorizing the making of such application; or
  - d. In the case of a corporation which is to be the permittee, by a director, duly authorized officer or duly authorized representative of the corporation, who shall submit a copy of a resolution bearing the corporate seal of corporation, authorizing the making of such application; or
  - e. In the case of a municipality which is to be the permittee, other than the county, by the executive officer or his representative, who is duly authorized in writing to make such application.
5. Age requirement.
  - a. Every individual applicant for a permit or for renewal of a permit shall be 18 years of age or over; and, in the case of a partnership applicant, the partner signing the application shall be 18 years of age or over.
  - b. The department may waive this requirement for an individual applicant, if such applicant appears to be sufficiently competent and responsible as to assure that the public health will not be jeopardized if a permit is granted to such applicant and provided that such applicant appears to be in a position to be liable for any violation that may occur during the operation, conduct or maintenance of the activity authorized by the permit.
6. What application constitutes.
  - a. Application for a permit or for renewal of a permit shall constitute an agreement that the permittee assumes responsibility for the operation, conduct and maintenance of the activity authorized by the permit, in accordance with the provisions of the code and the conditions required by the permit, and to inspections pertaining thereto.
  - b. Application for a permit or for renewal of a permit shall constitute a consent to inspection of the premises and collection of samples.

7. Pending approval, disapproval or other consideration of an application for renewal of a permit required by the code and received by the department, the existing permit shall be deemed to be in full force and effect until such renewal application is acted upon; provided, however, that this provision shall not apply to a renewal application that was not submitted to and filed with the department prior to the expiration date of the existing permit.

(Added 11-20-1986, eff. 11-20-1986\*)

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**\*Editor's note:** This resolution added a new Article II and also repealed former Article II, effective 9-1-1971, as amended.

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### **Sec. 873.301. Permits and licenses; posting; expiration.**

1. Every permit shall expire on the date stated in the permit, but may be extended by the department in writing for a specified limited time for cause.
2. An application for renewal of a permit shall be submitted not later than 60 days prior to the expiration date of such permit, unless otherwise required by the code or by law.
3. A permittee shall comply with the conditions contained in the permit and the provisions of the code under which such permit was issued.
4. Every permit shall be kept on the premises designated or covered by the permit and shall be posted in a conspicuous place on such premises, in such manner as to be clearly visible to the public, and shall be available for inspection at all times by the department.
5. Permits shall remain the property of the department and shall be surrendered to a duly authorized representative of the department on demand upon the expiration thereof or when suspended or revoked as herein provided.

(Added 11-20-1986, eff. 11-20-1986)

### **Sec. 873.302. Permits and licenses; by municipalities.**

No provision of the code shall be construed to restrict or abrogate the authority of any municipality in the county to issue permits or licenses pursuant to any ordinance of such municipality; provided, however, that the issuance of such municipal permit or license shall not relieve the permittee from the obligation to comply with the applicable requirements of the code.

(Added 11-20-1986, eff. 11-20-1986)

### **Sec. 873.303. Permits and licenses; not transferable.**

1. A permit issued to a particular permittee or for a designated purpose, place, or vehicle shall not be valid for use by any other person or for any other purpose, place or vehicle.

2. Any attempted or purported transfer of a permit to a person not designated as the permittee therein, or for a purpose or place not authorized by such permit automatically revokes such permit.
3. In the event of a change in ownership of an individually owned or partnership business or a corporation other than a publicly held corporation, the permit shall not be transferable.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.304. Permits and licenses; suspension and revocation.**

1. The commissioner may suspend or revoke a permit which was issued by the department for violation or nonconformance with the conditions or requirements or provisions of the code under which such permit was issued.
2. The board may suspend or revoke a permit for cause after due notice and hearing.
3. Nothing herein contained shall interfere with the authority of the commissioner or his representative duly authorized in writing to summarily suspend and revoke a permit issued by the department, pending a hearing on the merits, if in the opinion of the commissioner, or his representative duly authorized in writing, the immediate protection of the public health demands such summary action; provided, however, that the permittee shall be entitled to a hearing by the board as soon after such summary action as is practicable and within 15 days after such summary action.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.305. Permits and licenses; refusal to issue.**

1. The department may refuse to issue a permit or a renewal thereof when the application therefor is incomplete or not accompanied by the required fee, if any.
2. The department may refuse to issue a permit or renewal thereof when the applicant fails to provide any information required by the department in addition to the information furnished on the application.
3. The department may refuse to issue a permit or renewal thereof if the application or investigation thereof indicates to the department that the activity or premises to be covered by the permit applied for does not meet the requirements of the code or other provision of law; or that the maintenance, conduct or operation of such activity or premises does not meet the requirements of the code or provisions of law or may result in a public health hazard.
4. The department may refuse to issue a permit or renewal thereof or a certificate of approval for any activity, operation or premises that, in the opinion of the department, may result in a condition which may be dangerous or harmful to health and life, or that fails to meet the requirements of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, the State Sanitary Code or the requirements of the code.
5. Approval of an application for a permit shall be denied for any sufficient or

competent reason including, but not limited to, any of the following:

- a. The proposed construction, location, purpose, business or other act pertaining thereto is in violation of the provisions of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, the State Sanitary Code, the code, or any local municipal law, ordinance or regulation pertaining thereto;
- b. Inaccurate, incomplete, false or misleading information stated in the application, including any plans or other data submitted in support thereof or competency to perform not shown to the satisfaction of the commissioner;
- c. Failure to correct existing violations of regulations pertaining to any particular place, vehicle or business after service of written notice thereof, whether or not related to the pending application; except, however, that the department may approve the application if existing violations have been substantially corrected in the opinion of the department; or
- d. Failure to comply with any previous or outstanding order issued by the board or the commissioner after service of written notice thereof, whether or not related to the pending application; except, however, that the department may approve the application if, in the opinion of the department, there has been full or substantial compliance with the previous or outstanding order.
- e. Failure to attend and complete a required training course.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.306. Permits and licenses; denial; suspension; revocation; forfeiture; effective date.**

1. Except as may otherwise be ordered by the board or by the commissioner, the denial of a permit or certificate of approval or the suspension or revocation of a permit or certificate of approval shall become final five days after service of a notice thereof, exclusive of the day of service, on the applicant or permittee concerned.
2. Service of a notice of denial or refusal to issue a permit or certificate of renewal shall be made in the manner provided in the code for the service of a notice of hearing.
3. If no action has been taken under a permit or written approval within the period specified in the permit or written approval or if no period is specified, within a period of one year following the date of issuance thereof, or within a period beyond which the purpose, need or usefulness of the permit or written approval no longer exists, the permit or written approval shall become null and void.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.307. Permits and licenses; denial; appeal.**

1. When the department refuses to issue a permit or a renewal thereof or a

certificate of approval, the applicant may appeal such action to the board by serving a notice of appeal in writing on the department addressed to the commissioner or to the board within ten days following the service of notice of denial or refusal to issue the permit.

2. The notice of appeal shall contain:
  - a. The full name of the applicant, permittee or party affected;
  - b. The type of permit or certificate of approval for which the application was made or the nature of the action complained of;
  - c. The place of business listed in the application to which the appeal relates;
  - d. A statement that the applicant or permittee or other party affected appeals to the board to review the action of the department; and,
  - e. The signature of the applicant, permittee or party affected, or, if the permittee or party affected is not an individual, the signature and title of a partner or other individual of the partnership or group, or of an officer of a corporate applicant, permittee or party affected.
3. Within three days following service of the notice of appeal, or simultaneous with such service, the applicant, permittee or party affected shall submit a memorandum addressed to the commissioner or to the board containing his objection to the action of the department.
4. The board may affirm or overrule the action of the department, either in whole or in part, or it may set the matter down for a hearing upon notice as provided in Article II of the code.
5. In the event that the circumstances require action that in the opinion of the commissioner cannot await the convening of the board, the commissioner shall cause to be issued and served in the name of the board a notice of hearing to take testimony and evidence relative to the appeal; provided, however, that the hearing officer designated to hold such hearing shall be a person other than the commissioner and one who prior to the hearing has been designated by the board to hold hearings on behalf of the board.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.308. Permits and licenses; operation without permit.**

1. The commissioner or his representative duly authorized in writing shall have the authority and power to order the cessation of operations or construction of any business, establishment or facility required by the code to have obtained a permit for the operation or construction of any business, establishment or facility but which is being operated or constructed without such permit.
2. The commissioner may employ the assistance of law enforcement officers and other officials as provided by the provisions of the Public Health Law and other applicable statutes and rules and regulations to enforce the order herein provided for.
3. The owner or operator of any business, establishment or facility closed or directed to cease operations or construction pursuant to this section shall be

entitled to a hearing to be held within a reasonable time; provided, however, that the owner or operator of such business, establishment or facility requests a hearing in writing within ten days of the order of the commissioner or his representative duly authorized in writing.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.309. Permits and licenses; failure to comply; cessation of construction and operation.**

1. The board or the commissioner or his representative duly authorized in writing may issue a written notice to be served upon the person or permittee involved, or upon any person connected with or working in or about a construction or operation to cease the construction or operation, whereupon the construction or operation shall immediately cease, under the following circumstances:
  - a. That the process of construction or the operation involved reveals conditions otherwise than as indicated in the approved plans and application, and permits as issued; or,
  - b. That the construction or operation involved is in violation of any ordinance or regulation of any duly constituted government authority or any political subdivision; or,
  - c. That the construction or operation involved is otherwise than in accordance with standards, rules and regulations pertaining to such construction or the conditions of a permit or written approval issued pursuant to the provisions of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, the State Sanitary Code or the code.
2. Service of the written notice shall be made in the manner prescribed for the service of notice of hearings.
3. The permittee shall be entitled to a hearing by the board within a reasonable time; provided, however, that the permittee requests a hearing, in writing, within ten days of the service of the written notice.
4. The commissioner may employ the assistance of law enforcement officers and other officials as provided by provisions of the Public Health Law and other applicable statutes and rules and regulations to enforce the written notice herein provided for.

(Added 11-20-1986, eff. 11-20-1986)

**ARTICLE IV. COMMUNICABLE DISEASE CONTROL**

**Sec. 873.400. Communicable diseases; definitions.**

Whenever used in this article, unless otherwise expressly stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereafter set forth or indicated:

1. *Adult.* The term "adult" means a person fifteen (15) years of age or over.

2. *Carrier.* The term "carrier" means a person who harbors the pathogenic organism of a communicable disease, but who does not show evidence of the disease; or, a person to whom epidemiologic evidence points as the source of one (1) or more cases, but who refuses to submit specimens of his bodily discharges to the department for examination; or, a person who is reported to the department to be a carrier by the health authorities of the State of New York, or of any other municipality, state, national or international organization of which the United States of America is a member.
3. *Case.* The term "case" means an instance of a communicable disease or condition occurring in a person; or, a person who shows evidence of a reportable disease or condition.
4. *Communicable disease.* The term "communicable disease" means an infectious, contagious disease transmissible by direct or indirect contact as designated in the State Sanitary Code.
5. *Date of last exposure of household contacts.* The term "date of last exposure of household contacts" means the date of the removal of such household contacts to premises other than those where the case or carrier exists, or the date of the removal of the patient to other premises, or the date of release of the patient from isolation.
6. *Hospital associated infections.* The term "hospital associated infections" means (a) an increased incidence or outbreak of disease due to microbiological agents or their toxic products occurring in patients or persons working in the hospital; (b) existence or suspicion of staphylococcal disease, diarrhea of the newborn or other infection in the newborn, including gonorrhoeal conjunctivitis; (c) the occurrence in an infant of two (2) or more explosive stools from any cause in any twenty-four (24) hour period; (d) the admission to the hospital of any infant born in said hospital with diarrhea, staphylococcal infection or any other infection, the onset of which occurred when the infant was twenty-eight (28) days of age or less; and (e) the occurrence in any maternity patient of diarrhea, staphylococcal infection or any other infection, the onset of which occurred either prior to admission or while in the hospital.
7. *Household contacts.* The term "household contacts" means every person who lives in a premises occupied by a case or carrier.
8. *Incidental contacts.* The term "incidental contacts" means persons other than those having household contact with a case or carrier.
9. *Isolate.* The term "isolate" means to confine to premises or in an institution, to a room or ward, under such conditions as will prevent the transmission of the pathogenic organism from a case or carrier to a susceptible person.
10. *Isolation.* The term "isolation" means the care of the case in a hospital approved by the commissioner or his representative; or, the continuous separation of the case in a room used exclusively for care of the case and from which all persons are excluded except the physician, nurse or other person in attendance, and such other persons as may be authorized by

the commissioner.

11. *Quarantine of premises.* The term "quarantine of premises" means the (1) prohibition of ingress or egress of any person other than medical attendants and such other persons as may be authorized by the commissioner or his representative, from the premises where a case, as designated by the commissioner or his representative, exists, or, (2) prohibition of the removal from such premises of any article which may be contaminated with infective material through contact with the case or carrier or with the secretions or excretions, unless such article has been disinfected, and unless permission for such removal, pursuant to instructions from the commissioner or his representative, has been given, and, (3) posting and maintaining at the entrance of the premises where a case or carrier exists, a placard stating the existence therein of a case of communicable disease.
12. *Personal quarantine.* The term "personal quarantine" means restricting household or incidental contacts to premises designated by the commissioner or his representative.
13. *Premises.* The term "premises" means any structure occupied or intended to be occupied, in whole or part, by one (1) or more human beings.

(Added 4-23-1987, eff. 4-23-1987\*)

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**\*Editor's note:** This resolution which added this article also repealed former Article IV, Communicable Diseases, effective 9-1-1959, as amended.

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### **Sec. 873.401. Communicable diseases; general powers and duties of commissioner.**

1. The commissioner or his representative shall:
  - a. Guard against the introduction of communicable diseases as designated in the Code; and
  - b. Report promptly to the State Department of Health all known cases and carriers of communicable disease as required by the State Department of Health.
2. The commissioner or his representative may:
  - a. Provide for care and isolation of any person affected with a communicable disease whenever in his opinion such care or isolation is necessary for the protection of the public health;
  - b. Prohibit and take steps necessary to prevent any contact with the use of premises, places or things known to have been in contact with a case or carrier of communicable disease or suspected of having been in contact with such a case or carrier;
  - c. Require, and if necessary provide, the means for the thorough purification

and cleansing of premises, places or things before any contact or use thereof shall be allowed;

- d. Investigate all physician reports recording patients afflicted with a communicable disease or carrier and whose behavior is such as to expose household or incidental contacts to danger of infection;
- e. Investigate cases of communicable disease, ascertain sources of infection, seek out contacts and take other action to reduce morbidity and mortality, and take any other action and procedures required by the Code;
- f. Inspect and control persons, places and things infected with or exposed to such disease or suspected of having been infected or exposed to such disease.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.402. Communicable diseases; reportable cases.**

1. The diseases designated as communicable diseases shall be deemed reportable communicable diseases and shall include:

Amebiasis

Animal bites for which rabies prophylaxis is given

Anthrax

Babesiosis

Botulism

Brucellosis

Campylobacteriosis

Chancroid

Chlamydia trachomatis infection

Cholera

Cryptosporidiosis

Diphtheria

E. coli 0157:H7 infection

Ehrlichiosis

Encephalitis

Foodborne illness (specify agent)

Giardiasis

Gonococcal infection

Granuloma inguinale

Haemophilus influenzae (invasive disease)

Hantavirus Disease

Hemolytic uremic syndrome

Hepatitis A, B, C, \* non-A, non-B

Hepatitis B carrier in pregnancy

Hepatitis A in a food handler

Histoplasmosis

Hospital associated infection(s)

-increased incidence or outbreak

-staph/strep in the newborn

Kawasaki syndrome

Legionellosis

Leprosy

Leptospirosis

Listeriosis

Lyme disease

Lymphogranuloma venereum

Malaria

Measles

Meningitis

-Aseptic

Haemophilus

Meningococcal

-Other (specify type)

Meningococemia

Mumps

Pertussis

Plague

Pneumococcal infections (invasive disease due to antibiotic resistant streptococcus pneumoniae)

Poliomyelitis

Psittacosis

Rabies

Reye's syndrome

Rocky Mountain spotted fever  
Rubella  
Salmonellosis  
Shigellosis  
Streptococcal infections (invasive disease due to Group A beta hemolytic strep)  
Syphilis  
Tetanus  
Toxic shock syndrome  
Trichinosis  
Tuberculosis  
Tularemia  
Typhoid  
Typhus  
Yellow Fever  
Yersiniosis

2. Notwithstanding any provision or condition in effect, the commissioner may designate any other communicable disease as reportable in order to protect the public health.

(Added 4-23-1987, eff. 4-23-1987; amended 10-15-1998, eff. 10-15-1998; amended 1-27-2000)

**Sec. 873.403. Communicable diseases; duty to report; physicians.**

1. Time limit; contents of report.
  - a. Every physician shall report within 24 hours of the time the case is first seen the full name, age and address of every patient having or suspected of having a reportable communicable disease together with the name of the disease, date of onset, symptoms and any other related information that may be required by the commissioner.
  - b. If a communicable disease is reported verbally, such report shall be thereafter made in writing on forms acceptable to the department.
2. When a case of reportable communicable disease occurs in any institution or hospital, the person in charge of such hospital or institution shall report the case as required in subsection 1. of this section; provided, however, that the physician who initially saw the case shall first report such case to the department and then to the person in charge of the hospital or institution or his representative.
- c. When a case of reportable communicable disease occurs in a state or county institution, the person in charge of such institution shall report the case to the

State Department of Health and to the department as provided by 10 NYCRR 2.10(a).

4. Notwithstanding the provisions contained in this section, an outbreak of any disease or condition, of known or unknown etiology which may be a danger to public health or any unusual manifestation of disease in an individual, shall be reported to the department in writing within 24 hours on forms designated by the department.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.404. Communicable diseases; duty to report; diagnosis after death.**

If a pathologist, medical examiner or other person determines from examination of remains of a deceased person, or from the history of the events leading to death, that at the time of death the said deceased patient apparently was affected with a reportable communicable disease, he shall report the case promptly to the department.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.405. Communicable diseases; duty to report; laboratories.**

It shall be the duty of every laboratory director or his representative having knowledge of a positive test for a reportable communicable disease to report the name and address of the person having or suspected of having such reportable communicable disease to the department within 24 hours.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.406. Communicable diseases; duty to report; schools.**

It shall be the duty of every school medical officer, principal, teacher or other school official having knowledge of a case or suspected case of reportable communicable disease in a pupil, student, member of the faculty or staff to report the name and address of the person having or suspected of having such reportable communicable disease to the department within 24 hours of the time such school official shall have knowledge of the existence or a suspicion of such disease.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.407. Communicable diseases; duty to report; nonphysicians.**

When no physician is in attendance it shall be the duty of the head of the household or the person in charge of any institution, school, hotel, boardinghouse, camp or vessel, or any public health nurse, or any other person having knowledge of a case of any disease presumably communicable to report within 24 hours of having knowledge thereof.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.408. Communicable diseases; duty to report; dairy farm cases.**

1. When a case of salmonella infection (including typhoid and paratyphoid fevers), diphtheria, streptococcal sore throat, scarlet fever, shigellosis (bacillary dysentery), cholera, infectious hepatitis or poliomyelitis occurs on any farm or dairy producing milk, cream, butter or other dairy products for sale or to be consumed in the raw state, it shall be the duty of the physician in attendance to report to the department immediately the existence of such case on such farm or dairy.
2. If no physician is in attendance, it shall be the duty of the owner, lessee or person in charge of such farm or dairy to immediately report to the department the name and address of any person who is affected with a disease presumably communicable who is employed or resides on or in such farm or dairy, or who comes in contact in any way with its products.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.409. Communicable diseases; duty to report; food poisoning.**

1. Every physician, nurse or person in charge of any school, hospital, institution, dispensary, laboratory, labor camp or other camp, who shall have knowledge of the occurrence of a number or group of cases of illness believed to have been due to the consumption of spoiled or poisonous food, shall report the same immediately.
2. The person in charge of a state or county institution in which such cases may occur shall report such cases to the State Health Department and to the department as provided in 10 NYCRR 2.15(b).

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.410. Communicable diseases; reports and records; duty to maintain.**

It shall be the duty of every physician, hospital and institution to keep a record of all cases or suspected cases of communicable disease reported to the department on forms designated by the department.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.411. Communicable diseases; reports and records confidential.**

1. Reports and records of cases of sexually transmitted disease and records of clinical or laboratory examinations for any of such disease shall be deemed confidential and not be subject to inspection by persons other than authorized personnel or representatives of the department and the State Department of Health.
2. Inspection of records.
  - a. Reports and records of cases or carriers of communicable diseases shall not be subject to inspection by persons other than authorized personnel and representatives of the department and the State Department of Health.

- b. The person to whom any records included within this subsection relates, or his legal representative may authorize the commissioner in writing, subscribed and sworn to before a notary public or other person authorized by law, to open such record to inspection; provided, however, that nothing herein contained shall be construed to interfere with the confidential nature of such records as prescribed by Article 45 of the Civil Practice Law and Rules of the State of New York.
3. Disclosure of information for treatment.
  - a. Subsections 1. and 2. of this section shall not be construed to prevent authorized personnel of the department from furnishing appropriate information to a physician or institution providing examination or treatment to a patient suspected or affected with a disease or condition, or to any agency approved by the department for prevention, treatment or social care, or to any person when necessary for the protection of health.
  - b. A person, institution or agency to whom such information may be furnished, or to whom access to records has been given is hereby prohibited from divulging any part thereof so as to disclose the identity of the person to whom such information or record relates, except insofar as such disclosure may be necessary for the treatment of a case or carrier or for the protection of the health of others.
4. Tuberculosis records.
  - a. The commissioner or his representative may disclose information contained in laboratory or other reports relating to cases of tuberculosis only when in his judgment it will serve the best interests of the patient or his family, or contribute to the protection of the public health; for such purposes the commissioner may permit access to such reports by representatives of official or nonofficial agencies concerned with the control of tuberculosis.
  - b. In an action or prosecution for violation of any of the provisions of the Public Health Law, the State Sanitary Code or this code, tuberculosis records made pursuant to the Public Health Law shall be produced pursuant to a duly issued and served subpoena and shall be allowed to be placed in evidence insofar as the same shall be deemed relevant by the court or presiding officer.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.412. Communicable diseases; specimens; duty of physician to furnish.**

1. A physician in attendance of a person affected with, or suspected of being affected with any of the diseases set forth in this section shall submit to a laboratory approved by the State Department of Health for examination such specimens as may be designated by the commissioner or State Commissioner of Health, together with data concerning the history and clinical manifestations pertinent to the examination.
2. The diseases for which specimens are required to be submitted to the provisions

of this section are:

Anthrax

Babesiosis

Botulism

Brucellosis

Campylobacteriosis

Cholera

Congenital rubella syndrome

Conjunctivitis, purulent, of the newborn (28 days of age or less)

Diarrhea occurring in infants 28 days of age or less or weighing less than 2,500 grams (five and one-half pounds)

Diphtheria

Giardiasis

Histoplasmosis

Legionellosis

Leprosy

Leptospirosis

Lyme

Malaria

Meningitis, Hemophilus, Meningococcal

Meningococemia

Plague

Poliomyelitis

Reye's syndrome

Rocky Mountain spotted fever

Salmonellosis

Shigellosis

Syphilis

Tuberculosis, active

Tularemia

Typhoid

Typhus

Yellow fever

Yersiniosis

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.413. Communicable diseases; investigation by commissioner after report.**

1. Upon receiving a report of a case of communicable disease, the commissioner or his representative shall:
  - a. Make such investigation as the circumstances may require for the purpose of verifying the diagnosis, ascertaining the source of infection and discovering contacts and unreported cases; and
  - b. Collect and submit, or cause to be collected and submitted for laboratory examination such specimens as may furnish necessary or desirable information in determining the source of infection or in assisting diagnosis, and furnish and cause to be furnished with the specimens pertinent data on forms prescribed by the commissioner in regard to the history of the case, the physical findings and the epidemiological investigations which indicate the need for the examination requested.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.414. Communicable diseases; precautions by commissioner.**

1. Upon receiving a report of a case of communicable disease, the commissioner or his representative shall:
  - a. Give to a head of every household living in the building in which such case exists or in which a person became affected with a communicable disease, such appropriate circular as may be issued or approved by the commissioner and such advice as may be indicated; and,
  - b. Institute recognized measures which tend to reduce morbidity and mortality.\*

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**\*Editor's note:** Rules and Regulations of the Commissioner Policy No. CD 1-87, eff. 4-23-1987, provides that the term "recognized measures" means the procedures outlined in the latest edition of Control of Communicable Diseases in May by Abram S. Benenson.

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(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.415. Communicable diseases; public notice; placards.**

1. No person shall interfere with or obstruct the commissioner or his representative in the posting of any notice or placard announcing or stating the existence of a case of communicable disease in or on any place or premises, nor shall any person conceal, mutilate or remove such placard or notice, except by permission of the commissioner or his representative.

2. It shall be the duty of the owner, lessee or the person in charge of any place or premises whereon such notice or placard of a case of communicable disease was posted to notify the department immediately in the event such notice or placard has been concealed, mutilated or removed from such place or premises.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.416. Communicable diseases; cleansing; renovation; disinfection; embalming.**

1. Adequate cleansing, renovation or disinfection of rooms, furniture and belongings, when deemed necessary by the commissioner or required by the Public Health Law, the State Sanitary Code or the code, shall immediately follow the release, removal or death of a person affected with a communicable disease.
2. Every funeral director, undertaker, embalmer or other person in charge of the preparation for burial of the body of a deceased person shall:
  - a. Ascertain whether such person died of a communicable disease;
  - b. Clean, disinfect or sterilize immediately after handling, embalming or preparing for burial the body of a person dead of a communicable disease, such parts of the person's garments or utensils or other articles of the funeral director, undertaker, embalmer or other assistants as may have been subject to contamination with infected material;
  - c. Cause the body to be placed in a casket or receptacle promptly if a person died of cholera, glanders, plague or typhus fever, which casket shall be immediately and permanently closed.
3. Subsection 2. of this section shall not be construed to prohibit the embalming of any such body, but if the body is to be embalmed, the funeral director, undertaker or embalmer shall cause such embalming or other preparation to be done immediately upon taking charge of the said body; provided that when a state permit for embalming is required, such embalming shall not be performed, unless such state permit has first been received; and, provided further, that immediately after the embalming procedures have been completed, the body shall be placed in a casket or receptacle as hereinbefore provided.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.417. Communicable diseases; isolation; duties of physician.**

1. Upon discovering a carrier or case of a reportable communicable disease, the attending physician shall cause the patient to be isolated, if in his judgment the carrier or case constitutes a danger to the public health except as provided by section 873.418.
2. The attending physician shall:
  - a. Advise the other members of the household regarding precautions and appropriate specific preventive measures;
  - b. Furnish the patient and any person attending such patient with such detailed instructions regarding the disinfection and disposal of infective

secretions and excretions as may be prescribed by the commissioner.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.418. Communicable diseases; isolation; duties of commissioner.**

1. The commissioner shall establish and maintain appropriate isolation whenever the following cases come to the attention of the department:
  - a. Chicken pox in persons 15 or more years of age.
  - b. Conjunctivitis, purulent, of the newborn.
  - c. Rubella (German measles).
  - d. Hepatitis, infectious.
  - e. Measles.
  - f. Meningitis (all forms) or meningococemia (septicemia).
  - g. Poliomyelitis.
  - h. Streptococcal sore throat (including scarlet fever).
  - i. Typhoid fever.
  - j. Salmonella infection (including paratyphoid fever).
  - k. Shigellosis (bacillary dysentery).
  - l. Mumps.
  - m. Ophthalmia neonatorum.
  - n. Pneumonia.
  - o. Viral hemorrhagic fever.
2. The commissioner shall establish and maintain appropriate isolation of the following cases as well as quarantine of the contacts whenever such cases come to the attention of the department:
  - a. Cholera.
  - b. Plague.
  - c. Typhus fever.
  - d. Diphtheria.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.419. Communicable diseases; food handling and sales.**

No person who suffers from cholera, amebiasis or shigellosis (bacillary dysentery), streptococcal sore throat, scarlet fever, salmonella infection (including paratyphoid fever), poliomyelitis, diphtheria, tuberculosis, infectious hepatitis, superficial staphylococcal infection or typhoid fever, or is a carrier of the organisms causing the above conditions, shall serve or handle in any manner whatsoever food intended for

sale.

(Added 4-23-1987, eff. 4-23-1987)

**Sec. 873.420. Communicable diseases; control of dangerous and careless patients; commitment.**

Whenever a complaint is made by a physician to the department that any person who is a case or carrier of typhoid fever, tuberculosis, diphtheria or other communicable disease and whose behavior is such as to expose members of his family or household or other persons with whom he may be associated to danger of infection, the commissioner or his representative shall forthwith investigate the circumstances alleged, and shall proceed pursuant to and as required by the provisions of the Public Health Law in a court of competent jurisdiction for the purpose of commitment of such person, as the circumstances may require.

(Added 4-23-1987, eff. 4-23-1987)

**ARTICLE V. FOODS**

**Sec. 873.411. Food service establishments; definitions.**

1. Whenever used in this code, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:
  - a. *Catering.* The term "catering" means any service, business, enterprise, activity, facility, establishment or place that is engaged in the preparation of, or the provision of, prepared food or drink, or both, to any person or group of persons, for human consumption, including transportation of such prepared food or drink to any place other than the place of preparation, for a consideration.
  - b. *Eating place.* The term "eating place" means any establishment or operation where food is served or provided for the public with or without charge; provided, however, that it will not include: the business of catering, food vending machine operation, frozen dessert manufacturer, mobile food unit operation and the operation of a retail bakery.
  - c. *Food service establishment.* The term "food service establishment", "service food establishment" or "food establishment" means any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order cafe; delicatessen; luncheonette; grill; tearoom; sandwich shop; soda fountain; bar; tavern; cocktail lounge; night club; roadside stand; take-out prepared food place; retail bakery; industrial feeding establishment; private, public or nonprofit organization or institution, including: schools; nursing homes; day care centers and hospitals; religious and fraternal organizations routinely serving food; catering kitchens; commissary or similar places in which food is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is served or provided for the public, with or without charge.
  - d. *Food vending machine operation.* The term "food vending machine

operation" means the distribution, sale or offering to sell, food or drink, or both, from a vending machine or the furnishing, installation, servicing or maintenance of one (1) or more food or drink vending machines by contract, agreement or ownership.

- e. *Food vending machine operator.* The term "food vending machine operator" means anyone who owns or engages in the business of food vending machine operation.
  - f. *Food vendor.* The term "food vendor" means any person who sells, offers for sale or dispenses any food or drink to the consumer for human consumption from a mobile food unit.
  - g. *Frozen dessert manufacturer.* The term "frozen dessert manufacturer" shall have the meaning ascribed to it in Parts 39 and 240 of the Rules and Regulations of the Department of Agriculture and Markets of the State of New York.
  - h. *Retail bakery.* The term "retail bakery" means an establishment which, as its primary business, sells baked goods directly to the consumer and does not engage in the business of selling baked goods wholesale to commercial establishments except on a limited basis.
  - i. *Contamination.* The term "contamination" means exposing food to: filth, toxic substances, excessive manual contact during preparation or service, rodent or insect contact or infestation, or any condition which permits introduction of pathogenic microorganisms or foreign matter. Potentially hazardous foods held at temperatures between forty-five (45) degrees Fahrenheit [seven and two-tenths (7 2/10) degrees Celsius] and one hundred forty (140) degrees Fahrenheit [sixty (60) degrees Celsius] during display or for a period of time exceeding that reasonably required for preparation are considered to be contaminated.
  - j. *Potentially hazardous food.* The term "potentially hazardous food" means any food that consists in whole or part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms except that it does not include clean, whole, uncracked, odor-free shell eggs.
2. Terms not defined in this section, but defined or used in Part 14 of the State Sanitary Code, shall have the meanings ascribed to them therein.

(§ 1, Art. III, eff. 1-1-1976; amended 4-30-1981, eff. 6-1-1981)

### **Sec. 873.421. Food service establishments; plans.**

- 1. No person shall undertake to construct a food service establishment or make modifications to an existing food service establishment without first submitting to the commissioner plans and specifications and any other information as may be required by the department and without obtaining prior written approval therefor.
- 2. In addition a fee of \$10.00 shall accompany each subsequent review of plans for the same establishment until such plans are approved.

3. The provisions of this section shall not apply where the submission of plans is for:
  - a. The county;
  - b. A municipality;
  - c. A church;
  - d. A synagogue; or
  - e. A public or parochial school.

(§ 2, Art. III, eff. 1-1-1976; amended 11-20-1980, eff. 1-1-1981; 12-20-1990, eff. 1-1-1991)

### **Sec. 873.431. Food service establishments; construction.**

1. All rooms in every food service establishment in which food is stored, prepared or served, or in which utensils are washed or stored, shall be constructed in accordance with the requirements of the State Sanitary Code and the following requirements:
  - a. Doors and other openings to the outside atmosphere other than windows, shall be self-closing, screened or otherwise provided with a means of preventing the entrance of flies or insects through such openings and shall be of rodent-proof construction; and,
  - b. Windows opening to the outside atmosphere shall be screened to prevent the entrance of flies or other insects and shall be of rodent-proof construction and shall be so constructed and installed as to prevent the use of inside sills for any purpose related to the preparation or storage of food or drink.
2. Toilet and handwashing facilities.
  - a. All food service establishments existing on the effective date of this article shall have adequate toilet and handwashing facilities located on, or convenient to, the premises of such food service establishment, which facilities shall be readily accessible to persons employed as food handlers or otherwise.
  - b. All food service establishments constructed or undergoing major renovation after the effective date of this article shall have adequate toilet and handwashing facilities, separate for the respective sexes employed as foodhandlers or otherwise, located on the premises of such food service establishment and readily accessible to such employees; provided, however, that the department may accept toilets and handwashing facilities convenient to the food service establishment when it is not practical to provide such facilities on the premises thereof.
  - c. Durable and legible signs in English and in such other language as may be required by the department shall be posted in each toilet room and at each handwashing facility, not within a toilet room, used by food handlers and other employees, directing all employees to wash and clean their hands after each visit to the toilet and frequently during the hours of

employment to prevent contamination of food and drink.

3.
  - a. All food service establishments designed to seat 50 or more customers at one time for consumption of food or drink in the establishment, or where alcoholic beverages are served, shall have adequate toilet and handwashing facilities readily available to customers.
  - b. Such facilities shall be easily accessible to the customers without passing through food preparation or storage areas, separate for each sex, and shall include at least one toilet and one handwashing basin for each sex.
4. All toilet rooms provided for employees or customers of food service establishments, or both, shall:
  - a. be completely enclosed, provided with self-closing doors and adequately ventilated and lighted;
  - b. be provided with at least one toilet and one handwashing basin;
  - c. be provided with an adequate supply of hot and cold running water, powdered or liquid soap and sanitary individual towels, or the equivalent thereof, for use at all times that such food service establishment is in operation.

(§ 3, Art. III, eff. 1-1-1976; amended 4-29-1976, eff. 5-1-1976)

#### **Sec. 873.441. Food service establishments; permits.**

No person shall operate or maintain a food service establishment in the county without first having made application for, and obtaining, a permit from the department.

(§ 4, Art. III, eff. 1-1-1976)

#### **Sec. 873.451. Food service establishments; maintenance.**

1. Every food service establishment shall employ or engage the services of a custom applicator or exterminator certified by the Department of Environmental Conservation of the State of New York, when required by the department, to provide extermination and preventive measures necessary to maintain the premises free from rodents and insects.
2. Operators of food service establishments shall keep and maintain on the premises records containing the name, address, certification number and reports of the custom applicator or exterminator servicing the establishment.
3. Records required to be kept and maintained by the provisions of this section shall be available at the premises to representatives of the department.
4. No substance shall be kept or used as an insecticide or exterminating agency in any place where food or drink is exposed during sale, preparation, holding or dispensing, or in such manner as to contaminate such food or drink.

(§ 5, Art. III, eff. 1-1-1976)

#### **Sec. 873.452. Food service establishments; food; food contamination.**

No person shall manufacture, produce, pack, possess, use, sell, offer for sale, serve, deliver or give away any potentially hazardous food which contains:

- a. More than 100 hemolytic staphylococcus aureus organisms per gram of food sample; or
- b. More than 100 coliform organisms per gram of food sample; or
- c. More than 100,000 total bacteria per gram of food sample; or
- d. Any fecal coliform, salmonella, shigella or other pathogenic microorganisms.

(Added 4-30-1981, eff. 6-1-1981)

**Sec. 873.461. Food service establishments; sanitation; equipment.**

1. Any food or meat grinder which is not thoroughly and completely cleansed and sanitized after each usage shall be kept under refrigeration of 45 degrees Fahrenheit or less, and shall be cleansed and disinfected at least once every day of use.
2. Any food or meat grinder used for pork or pork products may not be used to grind any other food or meat unless the grinder is dismantled and thoroughly and completely cleansed and sanitized between such usages.

(§ 6, Art. III, eff. 1-1-1976)

**Sec. 873.471. Food service establishments; utensils and containers; single-service articles.**

1. All soda straws, tubes or similar devices for drinking from containers served at a food service establishment shall be individually wrapped.
2. All toothpicks or similar devices served at a food service establishment shall be individually wrapped.
3. All single-service utensils and articles shall be wrapped or dispensed from a single-service dispenser acceptable to the department in such manner as to prevent contamination of surfaces which may come into contact with food or drink or the mouth of the user.

(§ 7, Art. III, eff. 1-1-1976)

**Sec. 873.481. Food service establishments; food vending machine operation; permits; maintenance and operation.**

1. No person shall engage in the business of food vending machine operation without having first obtained a permit therefor from the department. Excluded from such requirement are those machines dispensing products that are not subject to spoilage or temperature sensitivity.
2. The premise or premises used by a vending machine operator for the purpose of readying for use or servicing food or drink vending machines, or for the packaging or preparation of food or drink for transportation to food or drink

vending machine locations, shall be specified in the permit, and no other premises shall be used for such purpose.

3. Each food and drink vending machine shall be kept securely locked or fastened when operative, except during servicing or inspection.
4. The interior of every food vending machine shall be readily available to the department at the premises at which the machine is located, for the purposes of inspection.
5. The operation of a food or drink vending machine in such manner as to constitute an unsanitary condition or a public health hazard, failure to provide a key or opening device or failure to open the interior of the machine for inspection at any reasonable time, shall be sufficient cause for the department to render the machine inoperative or to forthwith embargo the machine and its contents, or to do both; provided, however, that due notice of such action shall be given the permit holder of record or to the person responsible for the care and servicing of such machine.
6. The name, address and telephone number of the permittee shall be legibly, prominently and permanently displayed on the exterior of each food or drink vending machine.

(§ 8, Art. III, eff. 1-1-1976; amended 8-23-1984, eff. 1-1-1985)

**Sec. 873.491. Food service establishments; mobile food unit.**

1. No person shall engage in the business of operating a mobile food unit without first having obtained a permit therefor from the department.
2. Every mobile food unit shall have posted clearly, at all times, on both sides of the outside of the mobile food unit in letters not less than four inches in height and 1 1/2 inches in width, the name and address of the person or persons who owns, leases or operates the business of the mobile food unit, and the department permit number.
3. A permit shall not be required under this section for a food vendor who operates as part of a food service establishment under a valid permit issued pursuant to the provisions of this article.
4. Every food vendor shall file a copy of his route with the department at the time of filing an application for a permit as required by this article and shall file significant changes with the department within ten days thereof.
5. Every food vendor shall maintain the premises or location upon which his mobile food unit is operated in a clean and sanitary condition and free from litter and refuse and shall provide proper receptacles for refuse.

(§ 9, Art. III, eff. 1-1-1976)

**Sec. 873.501. Food service establishments; frozen desserts.**

1. No person shall engage in the business of manufacturing frozen desserts in the county without first having obtained a permit therefor from the department.

2. The plant for the manufacture or processing of frozen desserts, together with the equipment, sanitary facilities, manufacturing processes and the ingredients used therein, shall conform to the provisions of this code and the State Sanitary Code.
3. No person other than the manufacturer or processor of frozen desserts shall sell, offer for sale or deliver any frozen dessert in the county without first having obtained a permit therefor from the department, provided that such frozen dessert shall have been manufactured or processed in a plant or place that shall hold a permit as provided by subdivision 1. of this section.

(§ 10, Art. III, eff. 1-1-1976)

**Sec. 873.511. Food service establishments; catering**

1. No person shall engage in the business of catering without first having obtained a permit therefor from the department.
2. The business of catering shall be conducted from a fixed and designated place of business or location as shown in the permit.
3. Food product temperatures are to be measured and recorded for potentially hazardous food at the time of delivery or service to the customer. No food is to be delivered or served which is not in compliance with Section 14-1.40 of Chapter 1 of the New York State Sanitary Code.
4. A written statement is to be given to the customer. This statement must include the recorded temperatures of the potentially hazardous food at delivery or service and simple instructions regarding refrigeration, hot-holding, cooking or reheating, as applicable. A copy of this statement is to be retained by the caterer for 90 days.
5. The requirements of subsections 3. and 4. of this section shall also apply to all food service establishments that deliver large quantities (amounts of food greater than for single-family consumption) of potentially hazardous food.

(§ 11, Art. III, eff. 1-1-1976; amended 3-17-1994, eff. 3-17-1994)

**Sec. 873.521. Food service establishments; day-care centers.**

No person shall own, operate or maintain a day-care center as defined in the Social Services Law and rules and regulations pertaining thereto if such day care center provides food for the children, staff, personnel or any other persons, without first having obtained a permit as required by the provisions of this article for a food service establishment.

(§ 12, Art. III, eff. 1-1-1976)

**Sec. 873.531. Food service establishments; retail bakeries.**

No person shall maintain or operate a retail bakery without first having obtained a permit therefor from the department.

(§ 13, Art. III, eff. 1-1-1976)

**Sec. 873.541. Food service establishments; food handlers.**

1. No person shall expectorate in any room in which food is prepared, processed, handled, stored or served or in which utensils are washed or stored.
2. The owner and person in charge of a food service establishment and all food handlers employed therein shall be responsible for compliance with the requirements of this article.
3. Upon request by the department, the owner or operator of any food service establishment shall furnish to the department a complete list of all persons engaged in the management, maintenance or operation of such establishment, including the names of the owner or operator and his relatives engaged in the management, maintenance or operation of such establishment.

(§ 14, Art. III, eff. 1-1-1976)

**Sec. 873.551. Food service establishments; food protection; meat or meat products.**

The use of any matter which imparts or retains color to meat or to casings, is prohibited, unless such use complies with the provisions of federal, state and local laws and the rules and regulations promulgated pursuant thereto.

(§ 15, Art. III, eff. 1-1-1976)

**Sec. 873.561. Food service establishments; bakery products; custard-filled.**

1. Custard-filled bakery products shall not be displayed, offered for sale, or sold except on the day of manufacture, which day shall be the day on which manufactured, but may include a period of time of not more than two hours preceding midnight of the previous day.
2. Every particle of the entire custard-mix to be used in the manufacture of custard-filled bakery products shall be brought to and held at a temperature of not less than 200 degrees Fahrenheit continuously for not less than ten minutes and within one hour thereafter shall be placed in a refrigerating temperature of not over 45 degrees Fahrenheit and kept at or below such temperature until applied to the bakery product.
3. Custard-filled bakery products shall not be kept, displayed, offered for sale or transported for sale unless such products shall have been cooled to a temperature of 45 degrees Fahrenheit, or lower, in clean containers filled to a depth of not more than three inches.
4. Custard-filled bakery products shall not be sold or transported for sale or offered for sale unless such products are wrapped or packaged so as to protect the contents from contamination and such wrapper or package shall bear prominently displayed on the outside thereof in legible letters, the name of the manufacturing baker and the day of manufacture.
5. Custard-filled bakery products manufactured, kept, displayed or served in violation of the provisions of this section or of the State Sanitary Code are hereby

declared to be dangerous to the public health and as such, subject to condemnation by any authorized representative of the department.

(§ 16, Art. III, eff. 1-1-1976)

**Sec. 873.571. Food service establishments; food protection; applicability of State Sanitary Code.**

1. All food service establishments shall meet the requirements of the State Sanitary Code, in addition to meeting the requirements of this code.
2. In the case of a conflict between the State Sanitary Code and this code, the more stringent requirement shall prevail.

(§ 17, Art. III, eff. 1-1-1976)

**ARTICLE VI. MILK AND CREAM**

**Sec. 873.581. Designation of grade.**

No milk or cream shall be sold or offered for sale or delivered to consumers unless it shall bear prominently one and only one of the following designations: Certified Pasteurized; Grade A Pasteurized; Certified; Special A Raw.

(§ 1, Art. IV, eff. 9-1-1959)

**Sec. 873.591. Milk labels.**

1. No raw milk shall be sold or offered for sale or delivered to consumers unless the day of the week when and the place where bottling and capping were performed are set forth clearly and legibly on the outer cap, hood or tag or single service container if caps or hoods are not used.
2. No pasteurized cream shall be kept or transported in cans unless the day of the month, the month and year when and the place where pasteurization was performed are set forth clearly and legibly on a tag affixed to every such can.
3. A proof print sketch or proof print of all caps, hoods, tags, single service containers not requiring caps or hoods and labels for milk, cream or milk products shall be submitted to the Department of Health and approval thereof secured before use.

(§ 2, Art. IV, eff. 9-1-1959)

**Sec. 873.601. Inspection of dairies required.**

No milk, cream or milk products shall be sold or offered for sale or delivered to consumers as pasteurized milk, cream or milk products unless an inspection has been made during the previous 12 months of each dairy from which such milk, cream, or milk products are obtained and unless each dairy shall be found by such inspection to comply with the requirements of the State Sanitary Code. Such inspections shall be made only by persons approved for such work by the commissioner. A report of the result of each such inspection shall be made upon an official dairy score sheet approved by the

Department of Health. Such report shall be filed at the pasteurizing plant, creamery or shipping station to which such milk is delivered and kept on file for one year. Each new or additional dairy from which such milk, cream or milk products shall be obtained shall first be inspected by a representative of an official agency and shall be found to be producing milk in conformance to the State Sanitary Code before the milk is received.

(§ 3, Art. IV, eff. 9-1-1959)

**Sec. 873.611. Bacteria counts required.**

1. No milk, cream or milk products shall be sold or offered for sale or delivered to consumers unless a bacteria count shall have been made within the previous month of a sample of the raw milk from each dairy producing such milk for milk, cream or milk products and such samples shall be taken at the pasteurizing plant, creamery, shipping station or bottling plant receiving such milk, from the weigh vat or dump tank containing the entire shipment of the dairy or by compositing from each of the cans, properly agitated, comprising the entire shipment of the dairy.
2. The method used in making such bacteria counts shall be the standard agar plate method or standard direct microscopic method. Reports of all bacteria counts in excess of the requirements of the State Sanitary Code shall be immediately transmitted to the producer of such milk and further bacteria counts on such milk shall be made at intervals of five days after the original count was taken. If three such successive bacteria counts shall be found to be in excess of the requirements of the State Sanitary Code, such milk shall be excluded by the pasteurizing plant, creamery, shipping station or bottling plant and shall not again be received until the condition or conditions causing such excessive counts shall have been corrected as shown by a satisfactory bacteria count made on a composite sample of milk collected at the dairy farm of such producer. The results of all such bacteria counts identified with the names of producers shall be sent to the Department of Health once each month unless other arrangements are authorized by the commissioner.

(§ 4, Art. IV, eff. 9-1-1959)

**Sec. 873.621. Examination of cattle dealers' herds.**

No milk, cream or milk products shall be sold or offered for sale which shall be produced on a dairy farm where the business of buying and selling cattle is carried on unless every dairy animal which shall be brought onto such dairy farm shall first have been physically examined by a licensed veterinarian and found to be sound and healthy. Every dairy animal on each such dairy farm shall be ear-tagged, each such tag shall bear a separate number and an identifying physical description of each animal shall appear on an individual certificate form which shall be attached to the certificate on file covering the veterinarian's examination of the herd on such dairy farm.

(§ 5, Art. IV, eff. 9-1-1959)

**Sec. 873.631. No caps permitted at distributing stations.**

No milk, cream or milk products, bottle caps or hood covers shall be kept, stored

or used at any distributing station, store or place where milk or cream is received in bottles for distribution or in any vehicle while in use for the delivery of milk, cream or milk products.

(§ 6, Art. IV, eff. 9-1-1959)

**Sec. 873.641. Vehicles to bear dealer's name.**

Every wagon, truck or vehicle used in the transportation and distribution of milk, cream or milk products shall have the name and address of the dealer operating such vehicle clearly and legibly set forth on each of the two sides. The name and address shall be in letters which shall be not less than three inches in height and which shall average not less than one and one-half inches in width. Every such wagon, truck or vehicle shall be kept in a clean and sanitary condition.

(§ 7, Art. IV, eff. 9-1-1959)

**Sec. 873.651. Milk bottle closures.**

No milk, cream or milk products shall be sold or offered for sale in bottles unless the pouring lips of such bottles are completely covered, unless special permission has been given by the commissioner for another type of cover. This regulation shall not apply to fermented milk products.

(§ 7, Art. IV, eff. 9-1-1959)

**ARTICLE VII. WATER SUPPLIES**

**Sec. 873.700. Water supplies; definitions.**

When used in this article, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:

1. *Auxiliary source of water.* The term "auxiliary source of water" means a source of water which is not normally used, but which has been approved by the department and the State Department of Health and other state agencies having jurisdiction as a source of water and developed for use when for any reason the normal source or sources fail to meet normal demand therefor.
2. *Domestic use.* The term "domestic use" means water used or intended for use for drinking purposes, food preparation, washing, laundering of clothes, sanitary facilities and purposes, household cleaning or medical purposes.
3. *Emergency source of water.* The term "emergency source of water" means a source of water which has not been developed or approved as a regular or auxiliary source of water and which is developed during an emergency for temporary use as a source of water in case of failure or inadequacy of the regular or auxiliary source of water.
4. *Individual water supply system.* The term "individual water supply system"

means a single system of piping, tanks or other facilities together with a source of water intended to supply a single parcel of land unless the system is a public water supply as defined herein.

5. *Person.* The term "person" means, except for any federal or state agencies, any individual, firm, public or private corporation, association, partnership, institution, political subdivision, government agency, public body, joint-stock association, trust, estate or other group of individuals or combination of the foregoing or any other legal entity whatsoever, and includes the plural as well as the singular.
6. *Potable water.* The term "potable water" means water which meets the drinking water quality requirements established in Part 5 of the State Sanitary Code.
7. *Private water supply or private water system.* The term "private water supply or private water system" means a single system of piping, tanks or other facilities together with a source of water installed to supply buildings located on not less than two (2) and not more than four (4) parcels of land not occupied by the owner of the source of water or employees thereof unless the system is a public water supply as defined herein.
8. *Public water supply or public water system.* The term "public water supply or public water system" means a water system which provides piped water to the public for human consumption, if such system has at least five service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year, which term shall include:
  - a. Source, collection, treatment, storage and distribution facilities under control of the supplier of water to such system and used in connection with such system; and
  - b. Source, collection or pretreatment storage facilities not under control which are used in connection with such system.
9. *Sanitary.* The term "sanitary" means a condition or state that is free from filth or infective matter.
10. *Source of public water supply.* The term "source of public water supply" means any groundwater aquifer, surface water body or watercourse from which water is taken, either periodically or continuously, for drinking, culinary or food-processing purposes or which has been designated for present or future use as a source of water supply for domestic or municipal purposes.
11. *Water treatment plant.* The term "water treatment plant" means any facility, equipment or device which, through the addition of chemicals or through any other means or combinations of treatment, shall change the physical, chemical, radiological or microbiological quality of the water.

(Added 6-22-1989, eff. 6-22-1989\*)

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**\*Editor's note:** This resolution added a new Article VII and also repealed former Article

**Sec. 873.701. Water supplies; potable water; standards of quality; safety.**

1. No person shall provide or make available or accessible a supply of water for domestic use, unless such water supply is potable and unless the source, treatment and distribution of such water shall be so protected from actual or potential pollution and so maintained as to deliver at all times a potable water.
2. Water delivered for domestic use shall not contain microbacterial, chemical, radiological or other contamination in such quantity as may be injurious to health or as may indicate such water to be unsatisfactory for human consumption as determined by a test or tests in a laboratory approved for such purpose by the State Department of Health.
3. No person shall permit any connection between a potable water supply and an unapproved auxiliary water supply or any structure containing sewage, nonpotable water or other substance injurious to health, except in such manner as to prevent the entrance of such liquid or substance into the potable water supply system and otherwise in conformity with the provisions of the Code.
4. No spring basin, collection basin, well or infiltration gallery used as a source of water supply, nor any main, standpipe, reservoir, tank or other pipe or structure through which water is delivered to consumers for potable purposes shall be placed in use after it has been constructed, cleaned or repaired until such structure or main has been disinfected in a manner approved by the State Department of Health.\*

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**\*Editor's note:** For standards for disinfecting a main or structure, see Rules and Regulations of the Commissioner Policy No. WS 1-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

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5. Use other than domestic.
  - a. No person shall provide or maintain a water supply in or for the use of the occupants of any habitable building or at any public place for use other than for domestic use which does not comply with this Code and the requirements of the department unless each outlet is provided with a permanent, prominent and legible label or sign reading "UNSAFE WATER, DO NOT DRINK."
  - b. No drinking fountains, outlets or taps shall be connected to a source of nonpotable water.
6. Any person who shall provide or make accessible a supply of water for domestic use shall submit to the department a report of bacteriological examination of such delivered water made by a laboratory approved for the purpose by the State Commissioner of Health, as often as the department may deem necessary, provided that the frequency of such examinations shall not be less than that set

forth in the State Sanitary Code.

7. Potable water delivered to consumers shall comply with the drinking water standards established by the State Department of Health.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.702. Water supplies; bottled drinking water; permit.**

1. The sale, offering for sale or delivery of bottled natural or distilled water intended for domestic use is prohibited unless the person bottling such water shall have been approved by the State Commissioner of Health.\*

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**\*Editor's note:** For standards used to determine compliance with this section, see Rules and Regulations of the Commissioner Policy No. WS 2-1989, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

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2. Bottled drinking water sold, offered for sale or delivered for human consumption or domestic use shall comply with the drinking water standards established by the State Department of Health.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.703. Water supplies; potable water; factories; institutions; similar establishments.**

1. Whenever a public water supply is available, no water from any other water supply system shall be furnished for human consumption or domestic use unless such other water supply system has been approved by the department in accordance with the Code.
2. If no satisfactory public water supply is available, the water for domestic use shall comply with the drinking water standards provided for by the Department of Health of the State of New York.
3. Water not approved for domestic use.
  - a. If the water supply for industrial or fire protection purposes is obtained entirely or in part from a source not approved for domestic use, this supply shall be distributed through an independent piping system having no connection with the system for domestic use.
  - b. Each faucet or other outlet furnishing water not safe for domestic use shall be provided with a permanent, prominent and legible label or sign "UNSAFE WATER, DO NOT DRINK."
  - c. No drinking fountain, outlets or taps shall be connected to a nonpotable source of water.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.704. Water supplies; ice.**

1. No person shall give, sell, offer for sale or deliver any artificial ice unless such ice shall have been produced from a potable water supply and manufactured, prepared and delivered under clean and sanitary conditions.
2. No person shall give, sell, offer for sale or deliver any natural ice for domestic refrigeration or for use in foods or beverages.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.705. Water supplies; treatment and abandonment.**

1. Whenever the department shall determine that water delivered to consumers for domestic use does not meet the requirements of the State Sanitary Code or the Code, the supplier of such water supply shall be notified of such condition, in writing.
2. The notice herein provided for may order the treatment or posting of such water supply or any portion of the distribution system or connections that do not meet the requirements of the State Sanitary Code or of the Code.
3. The commissioner may order the abandonment, sealing or posting of such water supply or any portion of the distribution system or connections that do not meet the requirements of the State Sanitary Code or the Code.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.706. Water supplies; continuation of water service.**

1. Any person who shall have contracted, undertaken or who is bound by any document or other legal obligation to furnish a supply of water for use in any habitable building shall maintain an adequate supply of water complying with the standards of the Code and the State Sanitary Code.
2. No person who shall have contracted, undertaken or who is bound by the terms of any agreement, whether verbal or written, or other legal obligation to supply water for use in any habitable building, while so obligated, shall shut off or discontinue service except as permitted by the Public Health Law or the State Sanitary Code.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.707. Water supplies; public and private water systems; approval of plans and completed works; and certificate for use.**

1. No person shall make, install or construct or allow to be made, installed or constructed a private or public water system or any addition to or modification thereof which may affect the quality of the water or which may affect the adequacy of the supply thereof until the plans and specifications shall have been submitted to and received the prior approval of the commissioner.\*

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\***Editor's note:** For standards used to evaluate the construction of a public or private water system, see Rules and Regulations of the Commissioner Policy No. WS 3-89, which is on file in the office of the Commissioner of Health.

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2. The application for approval of plans to construct a private or public water system shall be made on forms provided by the department and shall be accompanied by such engineering reports, plans, specifications, reports of bacterial, chemical, physical and microscopic analyses of the water source and such other information as may be required by the department, and in accordance with the requirements of the department.
  3. An application for approval of plans for a private water supply shall be accompanied by evidence, satisfactory to the department, that there is no public water supply available to the premises to be served by such private water supply or that it is not practicable or economically feasible to connect to a public water supply.
  4. Form of plans.
    - a. The department may prescribe the number of copies and the format in which the information required by this section shall be submitted.
    - b. Plans, specifications, soil and groundwater information shall contain the signature, seal and address of the professional engineer or registered and licensed architect pursuant to the Education Law of the State of New York under whose supervision such plans, specifications, soil and groundwater information was prepared.
  5. No person shall place public or private water supply into service or to be used or allow such water supply to be placed into service or to be used until he has applied for and received prior approval of the completed works and certificate for use from the commissioner.\*

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**\*Editor's note:** As to expiration dates of such certificates, see Rules and Regulations of the Commissioner Policy No. WS 4-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

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6. All public and private water supplies must operate and maintain their equipment, facilities and appurtenances to ensure continued compliance with this Code.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.708. Water supplies; individual water supply systems; approval of plans and completed works; and certificate for use.**

1. No person shall undertake to construct any new building or structure requiring an individual water supply system or make, install or construct or allow to be made, installed and constructed an individual water supply system until the plans and specifications first shall have been submitted to and received the approval of the department.
2. Application for approval of plans to construct an individual water supply system shall be made on forms provided by the department and shall be accompanied

by such engineering reports, plans, specifications and such other information as may be required by the department and in accordance with the requirements of the department.

3. An individual water supply system shall be constructed and maintained in conformity with the plans and specifications approved by the department and in compliance with the terms of any approvals issued in respect thereto and with the provisions of the Code.
4. No person shall use any new individual water supply system to furnish water for domestic use or any new building be occupied without first obtaining a valid certificate issued by the department to use such system.\*

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**\*Editor's note:** For expiration dates of such certificates, see Rules and Regulations of the Commissioner Policy No. WS 6-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

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5. Certification.
  - a. Application for a certificate for use of a new individual water supply system shall be made, in writing, to the department and shall be accompanied by a written statement from a professional engineer or architect licensed and registered to practice in the State of New York, certifying that the new individual water supply system has been constructed in accordance with the approved permit to construct, plans and specifications.
  - b. The issuance of a certificate for use shall not be construed as a guaranty by the department that the system has been properly constructed or will function satisfactorily.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.709. Water supplies; water supply systems; construction; inspections.**

1. No water supply system shall be constructed otherwise than in accordance with the plans and specifications filed with and approved by the department.
2. The department may inspect any water supply system at any time during or after construction and may prohibit the operation and use of such system until the department is satisfied that the water supply system is constructed in accordance with the approved plans and specifications and approved amendments thereto and is capable of producing water of satisfactory quality for intended purposes.
3. No person shall construct or abandon any water well unless a permit has first been secured from the permit issuing official.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.710. Water supplies; water supply systems; operation records;**

**permits.**

1. *Supervision.*
  - a. Every public and private water supply system shall be under the supervision of at least one water supply system operator.
  - b. All water supply system operators and assistant operators shall meet the qualification requirements of the department, provided that such persons shall be deemed qualified if they hold a certificate from the Department of Health of the State of New York in the proper grade pursuant to the provisions of the State Sanitary Code.
2. *Daily records.*
  - a. Any person who owns or operates a public or private water supply system shall keep complete daily records of the operation of any water treatment or disinfection of water required pursuant to the provisions of all applicable codes and the conditions of any written approval issued pursuant thereto.
  - b. Complete daily records of operation herein required shall be kept on forms furnished or approved by the department or the State Commissioner of Health.
  - c. A copy of daily records of operation shall be forwarded to the department at the end of each month of operation within ten days thereafter.
  - d. Daily operating records and reports of laboratory tests shall be readily available and produced for inspection by representatives of the department.
3. *Permits.* No person shall operate a public or private water system without a valid permit issued by the commissioner.

(Added 6-22-1989, eff. 6-22-1989; amended 11-19-1992, eff. 1-1-1993)

**Sec. 873.711. Water supplies; water supply systems; emergency changes.**

1. No owner or operator of any public or private water supply system shall:
  - a. Take, use or cause to be taken for use for water supply purposes water from an emergency source other than the regular or auxiliary sources of water supply;
  - b. Discontinue the disinfection or treatment of any public or private water supply; or
  - c. Make any change whatsoever which may affect the quality of such water supply without first having notified the commissioner and the State Commissioner of Health or representative therefor by telephone and without having obtained the prior approval of the commissioner or the State Commissioner of Health for such change.
2. A printed copy of this section and of the appropriate section of the State Sanitary Code relating to emergency changes affecting water supply shall be permanently posted in the office of the owner and operator of each public or private water

supply.

3. All owners or operators of any public or private water supply shall notify the department as soon as practicable but within 24 hours of any emergency condition, including but not limited to the interruption in the water supply.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.712. Water supplies; water supply systems; connections.**

1. Where a public water main is available, no new connection or arrangement for a water supply shall be made other than an individual service to the public water main for each building to be served.
2. Connection with public water supply.
  - a. When a public water supply is or shall become available and accessible to any occupied building or structure served by an individual water supply system, the owner may be required at his expense to install a connection thereto, in accordance with any regulations of the owner of such public water supply system, within 90 days after the date of an order, in writing, issued by the commissioner or the commissioner's representative to do so, provided that the water main is readily accessible to any property line of such premises and is otherwise capable of providing adequate service.
  - b. The commissioner may, upon prior written application, waive the strict compliance with the provisions of subsection 2.a. above in a particular case, subject to appropriate conditions, where such waiver is in harmony with the general purpose and intent of this Code.
3. Where a public water supply is available, no person shall maintain an individual water supply system for domestic use without first having obtained a special permit therefor from the department, and no direct physical connection shall be maintained or permitted between such individual system and the public water supply system without the prior written approval of the owner of the public water supply and the department.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.713. Water supplies; unsafe well or spring.**

1. Whenever the commissioner or the commissioner's representative shall determine, upon the basis of laboratory examinations of samples of water from a well or spring or from a sanitary survey of a well spring, that the consumption of water from such well or spring may be injurious or hazardous to health, the use of such well or spring shall be discontinued forthwith upon notice of such determination.
2. The commissioner or the commissioner's representative may take such action as he may deem necessary to effect the discontinuance of a well or spring the consumption of water from which may be injurious or hazardous to health or which may be a potential danger to health, unless written permission is obtained from the commissioner or the commissioner's representative for the use of such water in such manner and for such purpose as will not endanger health.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.714. Water supplies; new houses and buildings, disinfection.**

1. Before occupancy of a house or building constructed after the effective date of this Code, the public water system thereof shall be effectively flushed with water from the water source provided to service the premises, after which a sample of water shall be collected from the water distribution system of such house or building, shall be submitted to a laboratory acceptable to the State Department of Health for bacterial analysis and the results of such tests shall be on file and available on the premises.
2. In the event that the laboratory analysis indicates that the microbiological quality does not meet the standards for microbiological quality for water for domestic use as set forth in the State Sanitary Code, the public water system shall be effectively disinfected and microbiological sampling and analysis repeated until the microbiological quality meets the standards.

(Added 6-22-1989, eff. 6-22-1989)

**Sec. 873.715. Water supplies; separability.**

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 6-22-1989, eff. 6-22-1989)

**ARTICLE VIII. SEWERAGE, SEWAGE AND REFUSE\***

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**\*Editor's note:** An amendment adopted July 19, 2001, amended Art. VIII of the Sanitary Code in its entirety, in effect repealing and reenacting said article to read as herein set out. The former Art. VIII, §§ 873.701--873.811, pertained to similar subject matter and was derived from §§ 1--12 of Art. VII, effective Sept. 1, 1959.

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**Sec. 873.720. Purpose.**

The purpose of this article is two-fold.

- A. The first purpose is to ensure that the health and safety of the drinking water and other natural resources of the County of Westchester is preserved and that potential threats to such natural resources are monitored and reduced through the implementation of a system whereby providers of separate sewage disposal system services will be licensed by the Commissioner of Health and subject to reporting requirements which will enable the Department of Health to record and monitor all available data relating to separate sewage disposal systems located within Westchester County, and to establish database and public education systems pursuant thereto; and

- B. The second purpose is to ensure that the sewage and other wastewater generated from habitable buildings and properties in Westchester County is processed in the most environmentally appropriate manner possible by requiring all separate sewage disposal systems constructed or installed in Westchester County conform to the standards established in the New York State Public Health Law, by the Board of Health and/or the Commissioner of Health, and/or to require, where possible, the connection of such buildings or properties to public sewer systems.

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.721. Definitions.**

Whenever used in this article, the following terms shall have the meaning set forth below:

- A. *Construction* shall mean installation or replacement of sewage disposal system components, including soil, gravel, pipes, tankage, pits, junction boxes, and all associated appurtenances and/or distribution systems.
- B. *Septic system contractor* shall mean an individual who engages in the performance of any one (1) or more of the following services, or who offers to provide the following services for a fee, in Westchester County, with respect to separate sewage disposal systems: construction; installation; repair and/or rehabilitation; and servicing, except for evacuation of septage.
- C. *Licensed septic system contractor and/or licensee* means a septic system contractor who possesses a valid license issued by the Westchester County Commissioner of Health pursuant to the provisions outlined in section 873.722 herein.
- D. *Individual* means any person, firm, company, association, corporation, partnership, co-partnership, joint-stock company, trust, governmental entity, or any other legal business entity and/or the employees thereof.
- E. *Harmful or deleterious substance* shall mean one (1) or a combination of the following:
  - (1) Roof, cellar, foundation, footing, area, storm, surface or ground water.
  - (2) Discharge of domestic sewage in excess of one hundred fifty (150) gallons per day per capita or at a rate exceeding three hundred (300) gallons per capita per day within any one-hour period.
  - (3) Liquid, gaseous, solid or other trade or industrial waste for which a written approval has not been obtained from the official agency having by law responsible charge of the receiving sanitary sewer or sewer treatment works to which such sewer is tributary, when having one (1) or more of the following characteristics at point of discharge:
    - a. Volume exceeding the limits acceptable to the above

official agency.

- b. Solids in excess of one thousand (1,000) parts per million.
  - c. Viscosity in excess of 1 10/100.
  - d. Temperature lower than thirty-two (32) degrees Fahrenheit or above one hundred fifty (150) degrees Fahrenheit.
  - e. Color in excess of five hundred (500) parts per million.
  - f. Biochemical oxygen demand in excess of four hundred (400) parts per million.
  - g. Chlorine demand in excess of twenty-five (25) parts per million measured after thirty (30) minutes holding at sixty-eight (68) F.
  - h. Suspended solids in excess of three hundred (300) parts per million.
  - i. Settleable solids measured by Imhoff cone in one (1) hour in excess of ten (10) milliliters per liter of discharge.
  - j. Hydrogen ion concentration below four and one-half (4.5) or in excess of nine and one-half (9.5).
  - k. Unshredded garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dye stuffs, grit, abrasives, metal filings, trimmings or other offensive material exclusive of domestic waterborne sewage.
  - l. Chemicals or chemical compounds which are toxic, inflammable or explosive by themselves or upon acidification, alkalization, oxidation or reduction, or are strong reducing agents, inflammable or explosive gases, liquids or solids.
  - m. Viable pathogenic bacteria, other than normally discharged in raw domestic sewage.
  - n. Radioactive material which is not readily soluble in water and in an amount such that the radioactivity shall not exceed one (1) microcurie of Strontium-90 or Polonium-210; or one hundred (100) microcurie of Iodine-131 or Potassium-32, or any other radioactive material having a half-life of more than thirty (30) days; or ten (10) microcuries of other radioactive material; for each one million (1,000,000) gallons of sewage in the receiving sewer. This limit shall not apply to any radioactive material which has been diluted and homogeneously mixed with stable isotopes of the same element in the same chemical form to the extent that the dose rate does not exceed three hundred (300) millirems per week.
- F. *Offensive material* shall mean any sewage, fecal matter, manure, offal,

garbage, dead animals, meat wastes, blood, tankage, brine, urine or any putrescible organic matter or the contents of privies, cesspools, septic tanks or chemical toilets, either in liquid or solid state, or any other substance or liquid dangerous or prejudicial to health.

- G. *Privy* shall mean any facility or structure provided for the temporary storage or disposal of human excreta without water carriage.
- H. *Sanitary landfill* shall mean the controlled process of disposing of refuse or offensive material by depositing, compacting in layers and completely covering all such refuse and material.
- I. *Separate sewage disposal system* shall mean the whole or any part of a system or facilities or means for the treatment or modification or ultimate disposal of water-borne sewage or domestic wastes or trade wastes or offensive material, regardless of location with respect to any building or structure or premises thereby served. Such system shall include but shall not be limited to facilities for the treatment or modification or required control of harmful or deleterious substance before discharge to a sewage disposal system (individually and/or collectively referred to herein as "SSDS").

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.722. Licensing requirements for septic system contractors.**

Notwithstanding any other provision of this chapter to the contrary:

- A. Beginning on April 1, 2002, each and every person who provides or offers to provide services as a septic system contractor in Westchester County shall have obtained a license from the Commissioner in accordance with the requirements of this section. No person may provide or offer to provide services as a septic system contractor after April 1, 2002, without first having obtained such a license, except as may be authorized by the commissioner pursuant to section 873.722 C.(12), below.
- B. Application requirements.
  - (1) Any individual who seeks to operate as a septic system contractor in Westchester County shall submit an application to the commissioner on a form to be provided by the commissioner, along with the initial non-refundable application fee in the amount set forth below.
  - (2) Any individual who seeks to operate as a septic system contractor in Westchester County shall also be required to participate in a licensing instruction program developed and implemented by the department, or its duly authorized designee, which program shall include both course work in the areas of septic system construction, installation and operation and standard examinations relating to the matters covered by such course work.
  - (3) As part of the licensing instruction program, the department shall hold courses and examinations periodically, at such time and in such locations as the commissioner shall specify. Any person who

has completed the application form and submitted the required application fee and licensing instruction program fee, shall be eligible to participate in the next regularly scheduled license instruction program. Pursuant to such licensing instruction program, the department shall conduct such examinations, which may take the form of written, oral and/or practical examinations, as it deems necessary to test the applicants' knowledge of SSDS construction, installation, repair, and rehabilitation.

C. Licensing.

- (1) Upon the successful completion of the licensing instruction program, including successful completion of the examination to the satisfaction of the commissioner, and the payment of the biennial licensing fee, the commissioner shall issue a license certificate to the individual, which license shall indicate that the holder thereof is entitled to engage in the work or occupation of a licensed septic system contractor. All licenses shall expire two years from the date of issuance.
- (2) The licensee shall carry the license certificate on his person at all times while engaging in or performing the work for which the license has been issued in Westchester County. Such license shall be shown to any properly interested person, including customers, upon request. The licensee shall also conspicuously post a sign, at the primary public street entrance to the work site, which sign shall contain the licensee's Department of Health license number in a form to be specified by the commissioner.
- (3) Licenses issued by the department pursuant to this section shall be utilized only by the person named on such license and shall be non-transferable. The license of one individual shall not be deemed to satisfy the separate licensing requirements applicable to employees, contractors and/or subcontractors of such individual where such employees, contractors and/or subcontractors are performing services which require a license pursuant to this section.
- (4) All such construction; installation; repair and/or rehabilitation; and servicing of SSDS in Westchester County, except for the evacuation of septage, shall be subject to the direct supervision of the licensee. For purposes of this subsection, "direct supervision" shall mean that the licensed individual shall be responsible for all activities on site, and shall, during the course of providing such services, be physically present at the work site.
- (5) Exceptions to licensing requirements. The provisions of this section shall not apply to individuals who are employees of any federal or state agencies, when such individuals are acting within the scope of that employment.
- (6) Fees. The non-refundable fees which shall be paid to the department in connection with the application and licensing procedures outlined herein shall be:

- a. Original application fee: \$200.00 per applicant.
  - b. License instruction program fee (including the cost of examination): \$100.00 per applicant for initial exam; \$25.00 for re-issuance of examinations and/or for renewal examinations.
  - c. Biennial license/renewal fee: \$200.00 per licensee.
- (7) The commissioner may require the participation of licensed septic system contractors at department-sponsored informational seminars at any time during any licensing term in order to ensure that all licensed septic system contractors are informed of developing issues, technologies, and laws which may impact the performance of services by the licensed septic system contractor in Westchester County.
- (8) A licensed septic system contractor shall comply, at its own expense, with the provisions of all applicable federal, state and municipal laws, rules, regulations or requirements including, but not limited to, all federal, state and municipal laws, rules, regulations or requirements applicable to the licensee as an employer of labor or otherwise. All licensees shall be required to comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the services hereunder.
- (9) Renewal. No person shall perform the services of a licensed septic system contractor after the expiration of the license issued by the department. The licensed septic system contractor may seek renewal of its license by submitting a renewal application, on the form provided by the department, to the department not less than 30 days in advance of the expiration date of the licensed septic system contractor's existing license. Prior to the approval of the renewal license, the licensed septic system contractor shall be required to submit a completed application and pay the biennial renewal fee of \$200.00, as referenced above, prior to the department's issuance of the renewal license, and may be required to successfully complete a renewal examination. The commissioner may, in his discretion, require any licensee who fails to submit the renewal application within the time frames specified above to submit an application and fees, in accordance with this section, as though the licensee had not previously been licensed by the commissioner.
- (10) The commissioner may refuse to issue or renew a license in the event that an individual fails to satisfactorily complete the licensing instruction program, examination, or renewal examination, or fails to comply with the licensing standards outlined herein.
- (11) Upon the issuance of a license by the commissioner, the names and contact information for each licensed septic system contractor shall be placed on a public registry to be maintained by the

commissioner and made available for consumer review and reference.

- (12) The commissioner, in his discretion, may issue a temporary license to a prospective licensed septic system contractor in the case of an emergency where, in the opinion of the commissioner, the condition of a SSDS poses a threat to public health and safety, provided however, that the duration of such temporary license shall not exceed six months. The commissioner may, in his discretion, refuse to issue a temporary license or suspend any existing temporary license where the commissioner deems the qualifications or work practices of the holder of the temporary license to be unsatisfactory, or where the threat to public health and safety has been eliminated to the satisfaction of the commissioner. The issuance of such a temporary license may be utilized by its holder only with respect to the emergency identified and which formed the basis for issuance of the temporary license, and shall not entitle the holder thereof to provide services as a licensed septic system contractor in Westchester County generally. The holder of such a temporary license shall be required to pay pro rata fees, in accordance with the fees established in subsection C.(6), above, on a month-to-month basis for the term of such temporary license.

(Added 7-19-2001, eff. 7-19-2001)

**Sec. 873.723. Standards applicable to licensed septic system contractors.**

- A. All licensed septic system contractors shall comply with all provisions set forth in this Article VIII to the extent that such provisions relate to licensed septic system contractors or SSDS, and to any other provision of this chapter which relates to license holders.
- B. All licensed septic system contractors shall comply with all standards of workmanship as may be established in the training programs to be provided by the department, or its designee, pursuant to such licensing program, or generally in the industry.
- C. No person shall knowingly engage in any fraud or material deception of the commissioner, the department, or any Westchester County consumer with respect to the qualifications or licensing status of the individual, its employees, or independent contractors, or the services which are offered or provided to any such consumer, in connection with the services regulated hereunder.
- D. No person shall knowingly cooperate with any individual engaged in any fraud or material deception of the commissioner, the department, or any Westchester County consumer with respect to the qualifications or licensing status of the individual, its employees, or independent contractors, or the professional services which are offered or provided by such individual to any such consumer, in connection with the services regulated hereunder.

(Added 7-19-2001, eff. 7-19-2001)

**Sec. 873.724. Reporting requirements for licensed septic system contractors.**

Notwithstanding any other provision of this chapter to the contrary:

- A. Each and every licensed septic system contractor shall be required to complete a septic system data form in the form provided by the commissioner upon the completion of any on-site services performed with respect to any SSDS in Westchester County, which form shall specify the service provided to the property owner and any other information which the commissioner, in his discretion, may deem appropriate. Each and every licensed septic system contractor shall be required to issue a copy of the septic system data form to both the commissioner and to the owner of the facility which is served by such SSDS within ten business days of the service date. Such septic system data forms shall include language which informs the property owner that all licensed septic system contractors shall be required to maintain their Westchester County license; shall be required to display such license and license number to the property owner upon request; and shall specify the contact information for the department.
- B. In the event that any service provided by the licensed septic system contractor indicates that the SSDS presents a significant threat to public health, safety and/or the environment, the licensed septic system contractor shall state the existence and nature of such emergency clearly on the face of such septic system data form, and shall issue a copy of the septic system data form to both the commissioner and to the owner of the facility which is served by the SSDS within three business days of the service date.
- C. To the extent that the condition of any given SSDS is such that the licensed septic system contractor cannot bring the SSDS into compliance with all applicable federal, state and municipal laws, rules, regulations or requirements, the licensed septic system contractor shall advise the consumer of such condition in advance of providing any services to the consumer with respect to such SSDS, and shall note on the face of any septic system data form prepared with respect to such SSDS both the existence of such condition and the subsequent efforts, if any, made by the licensed septic system contractor to bring the SSDS into conformance with such laws, rules and regulations, and the consumer's assent to same.
- D. Licensed septic system contractors shall be required to maintain a copy of each and every septic system data form for a period of not less than six years from the date of service.
- E. The commissioner shall maintain a database of the records for each SSDS, which records are to be provided by all licensed septic system contractors, and shall include, but not be limited to, the following information, where applicable:
  - (1) Residence address;
  - (2) Number of bedrooms;

- (3) Number of bathrooms;
- (4) Square footage of residence/commercial structure;
- (5) Type of sewage disposal system;
- (6) Grade/slope of disposal area;
- (7) Percolation rate at disposal area;
- (8) Distance from well, if applicable;
- (9) Well yield (gallons per minute), if applicable;
- (10) Depth of well (feet), and physical characteristics of well, if applicable;
- (11) Date of system installation;
- (12) Name of system installer;
- (13) A listing of current and previous owners; and
- (14) Maintenance history.

- F. The information contained in such database shall be made available for inspection by members of the public at reasonable times during the regular business hours of the department.

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.725. Penalties and enforcement.**

Except as expressly stated in this Article VIII, any person who is deemed to have violated section 873.723 hereof, shall be subject to enforcement proceedings in accordance with the provisions of sections 209--215; 217--221; and 304--309 of this chapter. Each day of a continuing violation shall constitute a separate and distinct violation hereunder. This provision is not, however, intended to impose any liability or affirmative obligation upon the owner of any real property which is served by an SSDS regarding any such services which may be provided on such property by any unlicensed individual where that individual represented to such owner that he or she was a licensed septic system contractor.

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.726. Permit required for separate sewage systems.**

- A. No person shall undertake to construct any new building or structure requiring a separate sewage disposal system or to construct such system to serve any existing building or structure without first having obtained the written approval for such system issued pursuant to the Public Health Law or by the commissioner.
- B. No such system for the subsurface disposal of sewage shall hereafter be approved on any building site not having in existence on the date of approval the required usable area. Such area thereafter shall be so isolated and protected as to effectively prevent removal, displacement, compaction or other adverse physical change in the characteristics of the soil or in the drainage of the area

designated for such usage.

- C. Such separate sewage disposal system shall be constructed, installed, repaired and/or rehabilitated in accordance with the standards, rules or regulations duly promulgated by the commissioner and with the terms or conditions of the permit issued therefor or approved amendments thereto.
- D. Whenever inspection indicates the construction to be otherwise than in accordance with the Public Health Law or this Code or the conditions of any permit or written approval issued pursuant thereto or the standards applicable to said construction, all work shall cease upon written notice served upon any person connected with or working in or about the said system or any part thereof, or by registered mail to the last recorded address of the person named in such permit or approval. Thereafter no further work shall be done other than to remedy such violation and to proceed with work in compliance with the aforementioned requirements, provided the inspector determines that the work may properly proceed. Otherwise, the written approval shall terminate and no further work shall be undertaken until a new written approval shall have been obtained.

Whenever considered necessary by the inspector, any covered work shall be promptly uncovered for inspection at any time before issuance of the certificate of completion. Any approval shall be subject to modification or change as may be directed in writing by a representative of the commissioner due to conditions found during construction, provided that such inspector may at his discretion require all or part of the construction to cease until approval of the necessary modification or change has been obtained in the same manner as the original approval.

- E. No new separate sewage disposal system shall be placed in operation nor shall any new building requiring such system be occupied until a certificate shall have been issued indicating that such disposal system has been constructed in compliance with the terms of the approval issued and the requirements of this code. Such certificate of completion may be issued by the commissioner or by any building or plumbing inspector of a local municipality within the Health District duly authorized by the commissioner so to do. Such certificate of completion may be issued upon receipt of written certification by a professional engineer, registered architect or land surveyor, licensed to practice in the State of New York, stating that the system has been installed under his supervision as shown on plans submitted with such certification in accordance with the terms of the approval and the requirements of this code.
- F. In the event of the failure of any separate sewage disposal system installed under the approval of the commissioner or otherwise, the owner of the building or structure served thereby shall forthwith cause an investigation to be made of the reason for such failure and shall place the system in a proper and sanitary operating condition by any legal means within such period of time as may be determined by the commissioner to be reasonable to perform such work. During such investigation any portion of the system may be left open for inspection provided it is protected so as to effectively prevent direct contact with the sewage contents. The findings of the commissioner shall be presumptive evidence of the cause of failure. In the event the owner is not subject to legal process, the occupant of the premises shall be responsible for the maintenance of the separate sewage disposal system in a satisfactory and sanitary condition during such occupancy.

- G. The issuance of any approval or certification pursuant to the provisions of this code shall not be construed as a guaranty by the commissioner or the Westchester County Department of Health or any employee or agent that the system has been properly constructed or will function satisfactorily, nor shall it in any way restrict the actions or powers of the commissioner in the enforcement of any law or regulation.

(Added 7-19-2001, eff. 7-19-2001)

**Sec. 873.727. Sewer connection required.**

The owner of any habitable building or property used for human occupancy, employment, recreation or other purpose abutting upon any street, alley or right-of-way in which there is located a public sanitary sewer may be required to install at the expense of such owner suitable toilet facilities therein and to connect such facilities directly with the public sanitary sewer, in accordance with any local regulations of the municipality owning such sewer, within 90 days after date of an order in writing issued by the commissioner to do so, provided that such sewer is within 100 feet of any property line of such premises and is otherwise accessible. Where a public sanitary sewer is available no new arrangement shall be made other than an individual connection to serve each building site.

(Added 7-19-2001, eff. 7-19-2001)

**Cross references:** Department of Environmental Facilities, Chs. 128 and 237; Environmental Coordinating Agency, Ch. 342; environmental facilities sewer ordinance, Ch. 824; sanitary sewer districts, Ch. 964.

**Sec. 873.728. Sewer connections in sewerred areas.**

Within the corporate limits of any city or village or within a town sewer district, no new habitable building shall be occupied unless served by a connection to the public sanitary sewer system, provided that a temporary system for the separate disposal of sewage or other wastes may be installed to serve an individual and isolated premises in accordance with the requirements of this code when the prior written consent of the municipal council or board or its duly authorized representative having jurisdiction over such sewer district is filed with the application. Such temporary facilities shall be approved only when a method of ultimately providing for a connection to a public sanitary sewer is indicated by the municipal governing council or board. This regulation shall not apply to a building site of 40,000 square feet or more in area which contains the usable area otherwise required.

(Added 7-19-2001, eff. 7-19-2001)

**Sec. 873.729. Building served by separate sewers.**

Where a public sanitary sewer is not available and accessible, every habitable building hereafter constructed shall be properly plumbed and the building sewer shall be connected to a separate sewage disposal system complying with the provisions of this code, and no other means for the disposal of water-borne sewage shall be employed. When a public sanitary sewer shall become available to the property so served, a direct connection shall be made to such public sanitary sewer and any separate sewerage

facilities shall be abandoned and every tank or pit in such system shall be opened, emptied of any sewage and completely filled in with inert material.

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.730. Protection of public sewers.**

No person shall discharge or cause the discharge of any harmful or deleterious substance to any sanitary sewer or separate sewage disposal system so as to endanger the use of or the materials of construction of such sewer or system or so as to result in the stoppage or other failure of the sewerage system or subsequent sewage treatment, unless a permit for such discharge has been secured from the official agency having by law responsible charge of such sewerage system or sewage treatment works and such discharge conforms to the terms of such permit.

No unauthorized person shall break, damage, destroy, uncover, interfere with or commit any act which shall harm any structure, device, equipment or treatment process which is a part of a public sanitary sewerage system or sewage treatment works.

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.731. Exposure of sewage.**

No person shall construct, or maintain any privy, cesspool, sewage disposal system, pipe or drain so as to expose or discharge the sewage contents or other deleterious liquid or matter therefrom to the atmosphere or on the surface of the ground or into any storm sewer or drain nor so as to endanger any source of supply of drinking water nor so as to discharge into any water course or body of water unless approval for such discharge shall have been issued therefor in accordance with the provisions of this code or the Public Health Law.

Complete daily records shall be kept of the operation of any sewage or waste treatment or chlorination as required under the provisions of any written approval for discharge issued therefor in accordance with the provisions of this code or the Public Health Law.

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.732. Temporary facilities on construction.**

Any builder, contractor or other person employing men on the construction of any highway, building or structure shall provide or cause to be provided a temporary privy or privies or other satisfactory toilet facilities at a convenient place upon the premises, or readily accessible thereto and the same shall be properly enclosed and the contents thereof shall be completely covered with clean inert material or otherwise effectively treated or removed immediately by the end of each shift or working day.

(Added 7-19-2001, eff. 7-19-2001)

### **Sec. 873.733. Disposal of offensive material.**

A. *Storage.* No person shall permit, deposit, store or hold any offensive material on any premises or place or in any building or structure unless such material is so

treated, screened, covered or placed as not to create a nuisance detrimental to health. All containers for the storage of such material shall completely confine the material, shall be rodent and insect proof and shall be kept in an inoffensive and sanitary condition at all times.

- B. *Privies.* No person shall hereafter construct, or provide any privy unless it is constructed and maintained so that all human excreta is received in a water-tight vault or receptacle wherein the contents are continuously subjected to an effective disinfectant. The commissioner may require the use of any existing privy to be discontinued, the contents removed, and the pit filled with inert material, whenever the use of such privy is no longer necessary or whenever such privy is located, constructed or maintained otherwise than in conformity to the provisions of the State or County Sanitary Code, or creates a nuisance. All privies shall be properly enclosed and screened, ventilated, lighted, kept in repair and shall be maintained at all times in a clean and sanitary condition. No privy shall be located or maintained within ten feet of any property line, within 25 feet of any public street or way or within 25 feet of any door or window of any building used for human occupancy. No such facilities shall be constructed under or within any building or structure intended or used for human occupancy.
- C. *Protection of facilities.* No person shall dispose of any substance into any plumbing line, sewer, privy or separate sewage disposal system other than that which said facility is designed or is intended to receive.
- D. *Burial or discharge.* No person shall dispose of any offensive material by burial unless it shall be buried at least 250 feet from any source of water supply or so disposed of at such other place that no water supply will be polluted and where nuisance will not be created, subject to regulations for the protection of public water supplies adopted pursuant to the provisions of the Public Health Law.
- E. *Garbage fed to hogs.* No garbage shall be fed to hogs unless said garbage has first been heated to at least 212 degrees Fahrenheit continuously for 30 minutes in apparatus and by methods approved by the commissioner.

(Added 7-19-2001, eff. 7-19-2001)

#### **Sec. 873.734. Removal and transportation of offensive material.**

No person shall remove or transport or permit the removal or transportation of any offensive material except in such manner and in or by such conveyance as will prevent the creation of a nuisance or the loss or discharge of such material in any public place. All such material shall be so handled, covered or treated that it cannot escape or be accessible to rodents, flies or other insects or create a nuisance. All vehicles and implements used in connection therewith shall be kept in an inoffensive and sanitary condition and when not in use shall be so stored or kept as not to create a nuisance.

(Added 7-19-2001, eff. 7-19-2001)

#### **Sec. 873.735. Permit required for collection.**

No person, except a municipality, shall engage in the business of removing, collecting or transporting offensive material without first having obtained a permit therefor from the commissioner.

(Added 7-19-2001, eff. 7-19-2001)

**Sec. 873.736. Approval of disposal area.**

- (a) The operation or maintenance of a dump for the disposal of refuse or offensive material is hereby declared to constitute a public health nuisance. No offensive material or combustible refuse shall be disposed of other than through the use of a sanitary landfill established, operated and maintained in accordance with standards established by the Commissioner of Health, or by use of an incinerator constructed, operated and maintained so as to comply with other requirements of the Sanitary Code or of the Public Health Law.
- (b) Any person, including a municipal corporation, who uses or permits the use of any land or water as a public place of disposal of offensive material or combustible refuse by means of a sanitary landfill shall obtain a permit therefor from the commissioner.
- (c) At any disposal area all material of any type whatsoever shall be deposited, controlled, treated, covered or handled in such a manner as not to create offensive odors, a breeding place for insects, vermin or rodents, the dissemination or dust or fires or the exposure of any person to toxic, poisonous or hazardous substances.

(Added 7-19-2001, eff. 7-19-2001)

**ARTICLE IX. SANITATION OF HABITABLE BUILDINGS**

**Sec. 873.821. Definitions.**

- 1. "Dwelling unit" shall mean a room or group of rooms with facilities for regular preparation of meals and occupied or intended to be occupied by one household consisting of one (1) family as a home where its members live and sleep.
- 2. "Habitable building" shall mean any structure intended to be occupied in whole or in part by one (1) or more human beings.
- 3. Exception. Except where specifically defined elsewhere in this code, the definitions and standards contained in the Recommended Standard Plumbing Code promulgated by the State Department of Health and in the State Building Construction Code Applicable to One- and Two-Family Dwellings and the State Building Construction Code Applicable to Multiple Dwellings and any subsequent amendments thereto or revisions thereof shall apply.

(§ 1, Art. VIII, eff. 9-1-1959)

**Sec. 873.831. General provisions.**

- 1. *Scope.* Every existing habitable public or private building which is in whole or in part leased by the owner or his agent or which is permitted to be used by patrons or by the general public and every habitable building hereafter constructed shall comply with the following minimum requirements.
- 2. *Structure.* Every habitable building shall be constructed of durable material

capable of providing adequate protection from the elements and excessive moisture. All parts thereof shall be kept in good repair and structurally sound and fit for human habitation. Such materials shall be used as may be necessary to maintain all living rooms in a clean and sanitary condition.

3. *Lighting and ventilation.* Every room and passageway in any habitable building shall be provided with lighting and ventilation obtained by suitable and safe natural or artificial means or a combination thereof and adequate for the health and safety of every occupant. Every opening or equipment provided for ventilating purposes shall be maintained in repair and free of obstruction and shall be of such construction as to be readily opened, securely closed or operated.
4. *Plumbing.* Each and every plumbing fixture, pipe, drain, sewer and sewer connection shall be properly plumbed, of sanitary design and construction and maintained in repair and in sanitary condition.
5. *Minimum plumbing fixtures.* Every habitable building shall be provided with at least the minimum number and type of plumbing fixtures specified by the Recommended Standard Plumbing Code or such number and type which in the opinion of the commissioner shall be necessary for the particular type of occupancy; provided that any privy now in use in lieu of any water closet as may be otherwise required may be continued in use until such time as its abandonment is ordered by the commissioner.
6. *Overcrowding.* Every dwelling unit shall contain not less than 400 cubic feet of air space nor less than 65 square feet of floor space per occupant; provided that in stores, offices and multiple dwellings the space requirements contained in the State Building Construction Code Applicable to Multiple Dwellings shall apply; and provided further that this regulation shall not apply to occupancies otherwise subject to the supervision of appropriate state agencies. No dwelling unit shall be occupied by more than 2.0 persons per habitable space.
7. *Insects and pests.* All approved means necessary or required shall be taken to eliminate flies, insects, rodents or other vermin from any habitable building and to prevent the breeding or harboring of such vermin on the premises.
8. *Equipment requirements.* Except as otherwise provided in this Code or other Public Health Law, equipment in one- and two-family dwellings and in multiple dwellings shall meet the requirements of the State Building Construction Code Applicable to One- and Two-Family Dwellings or the State Building Construction Code Applicable to Multiple Dwellings or more restrictive local laws or ordinances, as the case may be, and shall be maintained at all times in repair and in a safe and sanitary condition. In all buildings where heating, mechanical, electrical equipment, incinerators, elevators and dumbwaiters, or equipment capable of emitting radioactivity are provided such equipment shall be maintained at all times in repair and in a safe and sanitary condition so as not to create a health hazard and shall be designed, installed, maintained and operated in conformity with generally accepted standards under conditions of normal usage.

(§ 2, Art. VIII, eff. 9-1-1959)

## **Sec. 873.841. Heating of occupied buildings.**

1. A person who has contracted or undertaken to furnish heat, or who is required by any contract, agreement, lease or other arrangement or by law, to heat or furnish heat to any building or part thereof, occupied as a place of habitation shall furnish heat to every occupied room in such building or part thereof so as to maintain temperatures as follows:
  - a. Not less than 68 degrees Fahrenheit between the hours of 6:00 a.m. and 10:00 p.m. whenever the temperature outside of the building or part thereof shall fall below 55 degrees Fahrenheit; and
  - b. Not less than 60 degrees Fahrenheit between the hours of 10:00 p.m. and 6:00 a.m. whenever the temperature outside of the building or part thereof shall fall below 55 degrees Fahrenheit.
2. A person who has contracted or undertaken or who is required by any contract, agreement, lease or other arrangement or by law to heat or furnish heat to any building or portion thereof, occupied as a business establishment or for public or governmental purposes where one or more persons are employed, shall furnish heat for every occupied room in such building, or portion thereof, so that a minimum air temperature of 68 degrees Fahrenheit may be maintained therein during the usual working hours established and maintained in a building, or portion thereof, occupied as a business establishment or for public or governmental purposes, unless other hours are provided by a contract or agreement.
3. For the purposes of this section the temperature within a place of habitation or any building or portion thereof occupied as a business establishment or for public or governmental purposes where one or more persons are employed shall be that obtained at a distance of 18 inches above the average floor level and three feet from an outside wall of the room in which such temperature is obtained.
4. An owner, agent or responsible person in charge of a building for which heat is required to be furnished pursuant to this section shall be liable for failure to comply with this section.
5. Any person who is required to furnish heat pursuant to this section shall maintain the device, system or both, which provides such heat, in a safe and operable condition.
6. Inspections.
  - a. Any person who is required to furnish heat pursuant to this section shall cause the device, system or both, which provides such heat, to be inspected annually by a person qualified to make such inspection.
  - b. A record of such inspection shall be maintained on the premises and a copy shall be furnished to the department upon request.
7. In the event of failure or malfunction of the device, system or both, which provides heat to a building or part thereof as required by this section, the department may require that the owner, agent or responsible person in charge shall provide an acceptable and safe method of providing heat until the failure or malfunction is repaired.

8. The provisions of this section shall not apply to a building or portion thereof used and occupied as a trade, business or occupation where low air temperatures are essential and unavoidable nor where failure to maintain the required temperature is the direct result of a negligent or malicious act of the occupant, necessary repairs or alterations or any cause beyond the control of the owner, agent or responsible person in charge; except as may otherwise be required by the department pursuant to section 873.861.\*

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**\*Editor's note:** The original subsection referred to a nonexistent subdivision five so the reference to section 873.861 was inserted since that is apparently the correct reference.

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(§ 3, Art. VIII, eff. 9-1-1959; amended 11-21-1974, eff. 12-15-1974; 12-4-1975, eff. 1-1-1976)

### **Sec. 873.851. Prohibited occupancies.**

1. No person shall occupy any building, place or vehicle as a place of habitation unless adequate and sanitary facilities for the disposal of sewage have been provided therefor.
2. No person shall occupy any habitable building unless a safe and adequate supply of potable water is available. Drinking cups for common use shall not be used or permitted at any public place nor provided for use by employees.
3. No cellar, hallway, closet, bathroom or any room where there is a water-closet or any place dangerous or prejudicial to life or health shall be used for a place of sleeping or residence.

(§ 4, Art. VIII, eff. 9-1-1959)

### **Sec. 873.861. Maintenance of premises.**

Every habitable building and every part thereof shall be kept clean and free from any accumulation of offensive material, rubbish or similar matter and shall be kept free of insect, vermin or rodent infestation. It shall be the responsibility of each occupant or tenant to keep in a clean condition that portion of the property which he occupies or over which he has control. No person shall deposit any material into any plumbing fixture which may result in the failure of such fixture, but this shall not relieve the owner of the responsibility of placing such fixture in repair. It shall be the responsibility of the person having possession of or being in charge of any property as owner, executor, administrator, trustee, guardian or agent to maintain any property under such control in compliance with the provisions of the Sanitary Code.

The owner or agent of a multiple dwelling, as defined in the Multiple Residence Law, shall post in a conspicuous place at the main entrance to such dwelling the name and address of the owner who shall reside in the County of Westchester or the name and address of a responsible person residing in the County of Westchester who shall be the duly authorized agent designated by written instrument on file with the person or department charged with the enforcement of the Multiple Residence Law or the Commissioner of Health, which person shall be in responsible charge of such premises

and responsible for compliance with any and all provisions of this code.

(§ 5, Art. VIII, eff. 9-1-1959)

**Sec. 873.871. Storage and removal of refuse.**

1. The person in charge of a habitable building shall provide and maintain therein for the use of the occupants proper receptacles for the storage of garbage and refuse and shall cause such offensive material to be removed from the premises at least once each week, except that combustible material may be destroyed in an incinerator operated in such manner as to produce no nuisance.
2. In buildings having two or more dwelling units or rooming units and in the absence of written agreement to the contrary the owner or his agent shall be held responsible for the provision of such receptacles conveniently located in sanitary enclosures on the premises and readily accessible to tenants at all times and shall be responsible for the removal of such material at least once a week or more often as may be necessary to prevent the creation of a nuisance.

(§ 6, Art. VIII, eff. 9-1-1959)

**Sec. 873.881. Drainage.**

Every court, yard or other area on the premises of any habitable building shall be so graded or drained as to prevent the accumulation of water within or without the building.

(§ 7, Art. VIII, eff. 9-1-1959)

**Sec. 873.891. Unsanitary buildings.**

Whenever any building, or a part thereof, shall become unsanitary, or any dwelling shall become so unsanitary as to be unfit for human habitation or whenever occupancy of a building or dwelling shall cause an unsanitary condition on or adjacent to the premises thereof and such condition shall be determined by the commissioner, after due notice to the owner and hearing thereon, to constitute a nuisance or condition detrimental to life and health, the commissioner may issue an order requiring the owner thereof to abate said nuisance or condition by placing said building or dwelling in a sanitary or habitable condition within a time specified in said order. Upon the failure of such owner to comply with said order, the commissioner may issue a further order, to be affixed conspicuously upon such building or dwelling and served upon the occupant or lessee thereof and upon the owner thereof or his agent, requiring all persons to vacate such building or dwelling and to discontinue its use at such time as shall be stated in said order and until such time as the building or dwelling shall be placed in a sanitary, or habitable condition and the nuisance abated. Upon the failure of such building or dwelling to be vacated within the time specified, the board of Health may issue a warrant to the Sheriff directing that such building or dwelling shall be vacated, and the Sheriff shall forthwith execute such warrant pursuant to law.

(§ 8, Art. VIII, eff. 9-1-1959)

**Sec. 873.901. Standards.**

In determining compliance with the provisions of this article, the commissioner may be guided by the provisions of the Recommended Standard Plumbing Code promulgated by the New York State Department of Health, or the American Standard Plumbing Code, known as ASA A40.7-1949, or the State Building Construction Code Applicable to One- and Two-Family Dwellings, or the State Building Construction Code Applicable to Multiple Dwellings and any subsequent amendments thereto or revisions thereof; or the provisions of any building, plumbing or other code enacted by the local municipality in which the building is located, provided that the provisions of such Code do not permit lower or less exacting requirements than required by the Sanitary Code.

(§ 9, Art. VIII, eff. 9-1-1959)

### **Sec. 873.911. Housing hygiene and occupancy.\***

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**\*Editor's note:** By resolution of 8-19-1982, the Board of Health adopted Part 21, the State Hygiene and Occupancy Code, of the New York State Sanitary Code, in its entirety, to be effective 9-1-1982.

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(Added as § 10, Art. VIII, 11-21-1974, eff. 1-1-1975 and 12-15-1974; repealed 12-4-1975, eff. 1-1-1976)

### **Sec. 873.921. Heating of business establishments.**

(Added as § 11, Art. VIII, 1-23-1975, eff. 1-1-1976; repealed 12-4-1975, eff. 1-1-1976)

### **Sec. 873.931. Termination of fuel supply for nonpayment.**

(Added 11-29-1979, eff. 11-29-1979, expired 5-1-1980)

## **ARTICLE X. REALTY SUBDIVISIONS**

### **Sec. 873.931. Realty subdivisions; declaration of policy.**

1. The purposes of the provisions of this article are to promote healthful and safe environmental conditions within and adjacent to all types of realty subdivisions and to assist local municipal agencies to achieve healthful communities. To this end, public water supply and public sewerage facilities should be provided, whenever possible, and be constructed and maintained in accordance with accepted state and national standards.
2. Separate water supply systems shall be considered temporary systems. Such systems are inadequate in many areas of the health district to meet domestic needs in new realty subdivisions.
3. In considering applications for approval of realty subdivisions, community needs and potential hazards, both natural and man-made, may be considered for the purpose of assuring residents clean air, clean water, clean recreational areas and clean land.

(§ 1100, Art. 11, eff. 9-1-1971)

**Cross references:** Department of Environmental Facilities, Chs. 128 and 237; Department of Planning, Ch. 191; Planning Board, Ch. 277, Art. IV; environmental facilities sewer ordinance, Ch. 824; sanitary sewer districts, Ch. 964.

**Sec. 873.941. Realty subdivisions; definitions.**

1. *Realty subdivisions.* The term "realty subdivision" means any tract of land which is divided into more than two (2) habitable building sites or parcels on any site along an existing or proposed street, highway, easement or right-of-way or other means or proposed means of access, road or street, for sale, lease or rent, regardless of whether the sites are to be sold or offered for sale or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description.
2. *Usable area.* The term "usable area" means the general area required and suitable for the normal and reasonable development of each building site in a realty subdivision to permit the provision of water supply and sewage facilities to serve the area for the proposed occupancy in accordance with provisions of local ordinances, watershed rules and regulations and the requirements of the department or other provisions of law.
3. *Separate water supply system.* The term "separate water supply system" shall mean a single system of piping, tanks or other facilities together with a source of water intended to supply a single building site.
4. *Separate sewerage system.* The term "separate sewerage system" shall mean a single system of piping, tanks or other facilities serving only a single building and disposing of sewage or other liquid wastes into the soil of the lot.
5. *Public water system.* The term "public water system" shall mean a water supply and necessary appurtenances together with a distribution system serving more than one (1) lot, whether owned by a municipal corporation or private utility.
6. *Public sewerage system.* The term "public sewerage system" shall mean a system utilized for the collection and disposal of sewage or other wastes of a liquid nature, including the various devices for the treatment of such wastes serving more than one (1) lot, whether owned by a municipal corporation or private utility.
7. *Dry sewer.* The term "dry sewer" shall mean a pipe intended to carry domestic waste at such time as sewerage and treatment facilities are constructed and available.

(§ 1101, Art. 11, eff. 9-1-1971)

**Sec. 873.951. Realty subdivisions; approval of plans.**

1. No person shall engage in the development of a realty subdivision or sell, offer for sale or contract for sale of land therein or erect any permanent building thereon without first obtaining the approval of the department for the proposed methods of providing water and sewerage facilities and land drainage, and until such plan shall have been filed in the office of the Clerk of the County of

Westchester.

2. A plan submitted to the department pursuant to this section shall show methods of providing adequate water supply and adequate disposition of sewage and land drainage to serve each building site according to the standards and requirements of the department.
3. The installation of any water supply and any sewerage disposal facilities, public or separate, shall be in accordance with the plans approved by the department, the state Department of Health, the state Department of Environmental Conservation or approved revision or revisions thereof.
4. The approval of any realty subdivision plan under and pursuant to the provisions of the Public Health Law and this code shall become effective only upon filing of the approved plan in the office of the Clerk of the County of Westchester within one year of the date of approval.
5. Approval.
  - a. The approval by the department of the proposed methods of providing water and sewerage facilities and land drainage shall be indicated by a stamp or endorsement on the face of the original tracing of the subdivision plan.
  - b. Such approval by the department shall be obtained prior to the filing of any map or plan showing such subdivision of land in the office of the Clerk of the County of Westchester or in any other required public office.
6. The original tracing of the subdivision plan shall show on the face thereof the written consent of the owner of record approving the filing of said map.
7. If a plan is disapproved by the department, such plan shall be returned to the person who submitted the plan with a summary of the reasons for disapproval.
8. (Reserved)
9. As a condition of such approval, the department may require the installation within a specified period, in accordance with the plans presented or approved revisions thereof, of the whole or any part of the water, sewerage or land drainage facilities for said realty subdivision; or the department may require that the land shall have been suitably improved and shall have adequate land drainage and usable areas for such installations before approval of the plan.
10. In addition to any other cause as otherwise provided in this code, the department shall deny approval of any realty subdivision if it appears that a condition or hazard detrimental to health or safety may be created thereby or, if it appears that excessive demands may be imposed upon any public or community facility or service proposed to serve such subdivision.
11. Plans and specifications for the construction of any proposed public water supply or public sewerage systems shall be submitted to and shall receive approval of the department, the state Department of Health, or the state Department of Environmental Conservation, prior to the approval of the plans for the realty subdivision to be served.

(§ 1102, Art. 11, eff. 9-1-1971; amended 2-26-1987, eff. 4-1-1987)

**Sec. 873.961. Realty subdivisions; application for approval; required data.**

1. The original tracing shall show methods for furnishing adequate water supply, sewerage and drainage to serve each building site.
2. Applications for approval shall be accompanied by such maps, plans, reports, specifications and data as the department may require or direct.
3. The department may require that a report and such plans as may be needed, covering the following environmental factors may be submitted:
  - a. The method of solid waste collection and disposal;
  - b. The extent to which proposed land uses and structures may cause air pollution;
  - c. The methods for grading to prevent changes in soil percolation capacity and to provide for adequate collection and disposal of surface and ground water;
  - d. The methods to prevent contravention of surface and ground water quality standards;
  - e. The effect on the subdivision of environmental pollutants or hazards either on the property or from surrounding areas resulting from such facilities, activities or conditions as industrial or commercial structures or operations, highways, solid waste disposal sites, swamps, quarries, sink holes, limestone deposits, gravel pits, airports, watercourses, agricultural uses, floodplains and unstable soil condition;
  - f. The potential effect of the subdivision on environmental factors in surrounding areas.
4. The department may require that a test well be constructed on the site of a realty subdivision.

(§ 1103, Art. II, eff. 9-1-1971)

**Sec. 873.971. Realty subdivisions; filing map.**

Any realty subdivision plan approved by the department shall be filed in the office of the Clerk of the County of Westchester within one year of such approval.

(§ 1104, Art. 11, eff. 9-1-1971)

**Sec. 873.981. Realty subdivisions; usable areas.**

1. A usable area shall not be deemed to include any area occupied by a building, structure, lake, stream, pond or swamp, areas of exposed or underlying rock or ground water within five feet of the ground surface or marginal areas subject to flooding or along streams or other bodies of water.
2. The area intended for separate sewerage systems shall be well drained by natural or approved artificial means.
3. The minimum usable areas specified herein are intended to apply to single-family occupancies.

4. The department may require such usable area as it may deem necessary or adequate for any other type of land usage indicated on the plan or permitted under existing zoning laws, if any.
5. The usable area shall include a protective area not less than ten feet in width laterally on all sides of the separate sewerage system but shall not include such other protective area between any separate sewerage system and any water supply, line of drainage, watercourse or other hazardous condition as the department shall deem necessary and adequate.
6. As applied to separate sewerage systems, the usable area shall contain suitable absorptive natural soils for a depth of not less than seven feet above ground water or ledge rock. No site shall be deemed suitable for development as a soil absorption area which would require the placement or removal of natural soils for a depth greater than one-half the required depth of soil.

(§ 1105, Art. 11, eff. 9-1-1971; amended 5-27-1976, eff. 6-1-1976)

**Sec. 873.991. Realty subdivisions; public systems required.**

1. If in the opinion of the department, a proposed realty subdivision is located in an area in which conditions preclude the installation of separate water supply systems or separate sewerage systems, or both, the department may require installation of a public or community water or sewerage system, or both.
2. If a realty subdivision consists of 50 or more building sites or housing for 200 or more persons, the department may require installation of a public or community water or sewerage system, or both.

(§ 1106, Art. 11, eff. 9-1-1971)

**Sec. 873.1001. Realty subdivisions; separate water and separate sewerage systems.**

1. Where it is proposed to provide separate water supply and separate sewerage systems, each building site shall contain the required usable area for such facilities based upon the particular conditions as determined by appropriate soil investigations and design report acceptable to the department. In any case, the usable area for separate water supply and separate sewerage systems shall not be less than 14,000 square feet.
2. A plan may be required which shall indicate the required usable area for each building site and such other information as the department may require.
3. A separate water supply system shall consist of a drilled well which has a capacity of providing an average yield of not less than five gallons per minute of potable water.
4. The use of individually dug wells or springs shall not be approved.
5. A separate sewerage system shall consist of septic tanks followed by subsurface leaching systems designed for the appropriate land usage.
6. The use of cesspools shall not be approved.

7. Whenever duly approved public water supply or public sewerage systems are made available and accessible for any sites or properties within such subdivision, any prior general approval for construction with separate water supply or separate sewerage systems shall be deemed null and void, and further construction shall be served by individual connections to the public systems so provided.

(§ 1107, Art. 11, eff. 9-1-1971)

**Sec. 873.1011. Realty subdivisions; public water and separate sewerage systems.**

1. Where water is to be provided by provision of or the extension of a public water supply system and sewerage is to be provided by a separate sewerage system on each building site, the usable area for sewerage facilities on each building site shall be based upon the particular conditions on each building site as determined by appropriate soil investigations and design report acceptable to the department. In any case, the usable area for separate sewerage systems shall not be less than 5,000 square feet.
2. Such usable area may be reduced not more than 50 percent where public sanitary sewer mains are installed in accordance with a duly approved plan for sewerage of the community and service connections from the sewer main to the property lines are installed so as to readily serve each site when such public sewerage system is available for use.
3. A plan may be required which shall indicate the required usable area for each building site and such other information as the department may require.
4. A separate sewerage system shall consist of septic tanks followed by subsurface leaching systems designed for the appropriate land usage.
5. The use of cesspools shall not be approved.
6. Whenever duly approved public sewerage facilities are made available and accessible for any sites or properties within such realty subdivision, any prior general approval for separate sewerage systems shall be deemed null and void, and further construction shall be served by individual connections to the public sewerage systems so provided.

(§ 1108, Art. 11, eff. 9-1-1971)

**Sec. 873.1021. Realty subdivisions; public water and public sewerage systems.**

1. Where water and sewerage services are to be provided by public water mains and public sanitary sewers, the required approval may be indicated by stamp or endorsement on the face of the original tracing of the proposed realty subdivision plan indicating that such approval is issued subject to the provision of such systems to serve every habitable building constructed therein.
2. Such systems shall thereafter be installed to serve every habitable structure in such realty subdivision.

3. Where it is proposed to provide water supply to sewerage systems by connection to an existing public water supply or sewerage system, the applicant shall supply the department with a certification, in writing, by the owner of the utility that such systems are adequate and will be furnished and maintained to serve the proposed subdivision.

(§ 1109, Art. 11, eff. 9-1-1971)

**Sec. 873.1031. Realty subdivisions; public water supply; in general.**

Public water supply systems shall be capable of delivering water meeting the provisions of the State Sanitary Code relating to drinking water supplies. Such systems shall provide for continuity of service, and if from a ground water source shall provide at least two separate sources, each of which shall have the required capacity, and the system shall have at least one day's available storage at design capacity.

(§ 1110, Art. 11, eff. 9-1-1971)

**Sec. 873.1041. Realty subdivisions; water and sewerage; joint systems.**

1. No arrangement intended to furnish water from a single well or other source of water to more than one building site, except individual connections from a public water supply shall be approved.
2. No arrangement intended to dispose of sewage by a separate sewerage system to serve more than one building site, except individual connections to a public sanitary sewer, shall be approved.

(§ 1111, Art. 11, eff. 9-1-1971)

**Sec. 873.1051. Realty subdivisions; water and sewerage; existing improvement districts.**

1. Within the corporate limits of any city or village or within any town water or sewer district, no plan for development of a realty subdivision shall be approved except where the plan provides for the extension or extensions of such water or public sanitary sewer systems to serve every habitable structure in such development; provided, however, that where each building site has an area of 40,000 square feet or greater, separate sewerage systems may be approved when, in the opinion of the department, the extension of public sanitary sewer systems is not necessary and each such site contains the required usable area.
2. Within the corporate limits of any city or village or within any town water or sewer district wherein public sewerage is contemplated within five years or less as determined by a resolution of the municipal governing board, interim separate sewerage systems may be permitted by the department provided that:
  - a. Dry sanitary sewers are designed, duly approved and properly installed in accordance with the municipal sewerage plan;
  - b. Capped or plugged plumbing is installed to serve each building and individual sewer connections are installed to the dry sewer; and
  - c. The soil is otherwise suitable for separate sewerage systems.

(§ 1112, Art. 11, eff. 9-1-1971)

**Sec. 873.1061. Realty subdivisions; sale before construction of systems.**

1. Whenever building sites are sold or offered for sale without the actual provision or construction of water supply or sewerage or land drainage systems having been installed, the seller shall furnish to each purchaser of such site at the time of the sale a legible reproduction of the realty subdivision plan bearing the approval of the department and indicating the arrangements for water supply and sewerage approved by the department.
2. The contract of sale or deed to the property shall contain a provision to the effect that the arrangements for water supply and sewage disposal and land drainage shall be installed in accordance with the plans approved by the department prior to the start of construction of any building on the property so acquired.

(§ 1113, Art. 11, eff. 9-1-1971)

**Sec. 873.1071. Realty subdivisions; violations.**

1. No person shall engage in the development of a realty subdivision otherwise than in accordance with the conditions or terms of the approval as given by the department, or approved amendments thereto.
2. Vacation of violations.
  - a. In addition to and independently of any other penalty, whenever the department shall have knowledge of the development of a realty subdivision otherwise than in accordance with the approval as given by the department, or approved amendments thereto, the commissioner shall issue a written notice of violation and such notice shall be served personally or by registered mail to the last-known address of the person filing such map and to the owner or owners of record of lands within such realty subdivision, if known, and to the developer, if known, otherwise by posting conspicuously on the property. A duplicate of such notice may be filed in any public office having jurisdiction.
  - b. After delivery of such notice as herein provided, the further development, sale, offer for sale, or contract for sale or rent of building sites therein and the extension or construction of water or sewerage systems to serve any habitable building therein shall be prohibited; provided, however, that upon submission of evidence satisfactory to the commissioner that the further development of the realty subdivision and the extension or construction of water or sewerage systems to serve any habitable building therein will be continued in accordance with approved plans or approved amendments thereto, the commissioner may authorize in writing the resumption of the development, extension or construction involved on such conditions, including the correction of the violation, as the commissioner shall prescribe. The violation shall not be vacated until such time as the commissioner shall be satisfied that the development, extension or construction involved is proceeding in accordance with the approved plans or amendments thereto.

- c. The sale, offer for sale, or contract for sale or rent of building sites of the realty subdivision shall not be permitted until the violation has been vacated in writing.

(§ 1114, Art. 11, eff. 9-1-1971)

**Sec. 873.1081. Realty subdivisions; applicability of local laws.**

1. Nothing contained in this article shall be construed to abrogate the authority of any municipal or other duly constituted agency having by law authority to regulate or control such subdivisions or any public facilities therein provided or proposed.
2. Nothing contained herein shall be construed to impair or abrogate the powers and functions of the Water Resources Commission or of any state or county agency having jurisdiction as now or hereafter provided by law.

(§ 1115, Art. 11, eff. 9-1-1971)

**Sec. 873.1091. Realty subdivisions; variances.**

1. The commissioner may on written application grant a variance from a specific provision of this article in a particular case, subject to appropriate conditions, where such variance is in harmony with the general purpose and intent of this code.
2. The commissioner may impose more stringent requirements in a specific case when necessary to assure an adequate and satisfactory water supply and sewerage system for the realty subdivision.

(§ 1116, Art. 11, eff. 9-1-1971)

**ARTICLE XI. MISCELLANEOUS PROVISIONS**

**Sec. 873.1101. Definitions.**

1. *Fumigant* shall mean and include any substance which by itself or in combination with any other substance is capable of emitting or emits or liberates a gas, fumes, or vapors and which gas, fumes or vapors, when so emitted or liberated, may be lethal, poisonous or dangerous to human life.
2. *Poisonous insecticide or exterminator* shall mean and include any substance, not a fumigant, used for the destruction or control of insects, fungi, vermin, rodents or other pests and which may be destructive to human life in quantities of sixty (60) grains or less.

(§ 1, Art. XI, eff. 9-1-1959; renumbered as § 1, Art. XIII, eff. 9-1-1971)

**Sec. 873.1111. Pollution of atmosphere.**

(§ 2, Art. XI, eff. 9-1-1959; repealed 2-25-1971 and 6-3-1971, eff. 9-1-1971)

### **Sec. 873.1120. Public function; permit.**

No person shall operate a public function, as defined in Part 18 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

### **Sec. 873.1121. Cleanliness of public toilets.**

Every person who shall provide a toilet for the use of employees, patrons or members or available to the public shall maintain such toilet at all times in a clean, well lighted, ventilated and sanitary condition. An adequate supply of clean toilet paper shall be provided at all times. The floor of any such toilet under and adjacent to a urinal fixture shall be impervious to moisture and properly drained. No drinking cup, towel, hair brush or comb shall be provided for common use in any such toilet or in a washroom, rest room or locker room adjacent thereto. The owner of a building or dwelling, or his agent in charge thereof, wherein two or more tenants shall have common use of a toilet or privy, shall be responsible for the maintenance of such toilet or privy in repair and in a clean and sanitary condition.

(§ 3, Art. XI, eff. 9-1-1959; renumbered as § 3, Art. XIII, eff. 9-1-1971)

### **Sec. 873.1131. Fumigants and insecticides.**

1. *Poisonous insecticides and exterminators.* The handling, storage or use of any poisonous insecticide or exterminator in any place where food or drink is served, sold, processed, kept or offered for sale is prohibited unless the container is labeled as required by the State Sanitary Code and is kept readily available upon the premises until the insecticide or exterminator has been completely removed, or unless a clearly legible sign bearing information identical to the information required on the label of the container is posted conspicuously in every room where such insecticide or exterminator is in use.
2. *Sodium fluoroacetate (1080).* No person shall possess, distribute, sell or offer for sale or deliver or transport other than in interstate traffic, sodium fluoroacetate, also known as Compound 1080, or any solution or preparation made therefrom, unless he shall have first obtained a special permit therefor from the commissioner.
3. *Cyanogen gas.* No person shall use any fumigant emitting or capable of emitting cyanogen gas within any building or structure, other than in an unoccupied commercial or business establishment which is completely isolated and separated from any occupied structure, unless he shall have first obtained a special permit therefor from the commissioner and provided that the use of the fumigant is otherwise undertaken in accordance with rules and regulations adopted pursuant to this code.
4. *Special permits.* A separate application shall be made and a separate permit shall be required for each use of sodium fluoroacetate or cyanogen gas. Such permit shall be issued only to a particular individual, for a specified use or purpose, and for such use or purpose only on a specified date and under such conditions as may be stated thereon. Such permit shall be valid only for the

specified individual, use or purpose and date. The issuance of such permits shall be at the discretion of the commissioner, who shall give due consideration to the qualifications and fitness of the applicant, the need for the use of the specified material and the conditions under which such material is proposed to be used, possessed, delivered or transported. The commissioner may make and promulgate such rules and regulations relating to the use of sodium fluoroacetate or cyanogen gas as he may consider necessary to protect public health and to enforce the provisions of this code.

(§ 4, Art. XI, eff. 9-1-1959; renumbered as § 4, Art. XIII, eff. 9-1-1971)

**Sec. 873.1141. Wading pools.**

No wading pool shall be constructed or made available for public use unless it shall be provided with suitable facilities for replacement of water and for cleaning. Every such wading pool shall be maintained in a clean and sanitary condition and the water used therein shall be from a public water supply or from a source approved by the Department of Health.

(§ 5, Art. XI, eff. 9-1-1959; renumbered as § 5, Art. XIII, eff. 9-1-1971)

**Sec. 873.1151. Public exhibitions prohibited except under permit.**

No person shall set up or operate any transient circus or carnival or public exhibition unless a special permit therefor shall first have been obtained from the commissioner and unless such circus, carnival or exhibition shall, in the provision and maintenance of sanitary facilities and in the preparation, handling and sale of food and drink, conform fully to the provisions of the Sanitary Code.

(§ 6, Art XI, eff. 9-1-1959; renumbered as § 6, Art XIII, eff. 9-1-1971)

**Sec. 873.1161. Unconstitutionality clause.**

In the event any section, paragraph, sentence, clause or phrase of this Sanitary Code shall be declared unconstitutional or invalid for any reason, the remainder of said code shall not be affected thereby.

(§ 7, Art XI, eff. 9-1-1959; renumbered as § 7, Art XIII, eff. 9-1-1971)

**Sec. 873.1171. Migrant labor camp; permits.**

No person shall operate a migrant labor camp, as defined in Part 15 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

**Sec. 873.1181. Temporary resident; permit.**

No person shall operate a temporary residence, as defined in Part 7 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

**Sec. 873.1191. Mobile home park; permit.**

No person shall operate a mobile home park, as defined in Part 17 of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

**ARTICLE XII. BATHING FACILITIES**

**Sec. 873.1200. Swimming pools; permit.**

No person shall operate a swimming pool, as defined in Part 6-1 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 6-22-1989, eff. 6-22-1989\*; amended 3-19-1992, eff. 3-30-1992)

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**\*Editor's note:** This resolution added a new Article XII and also repealed former Article XII, effective 11-12-1987.

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**Sec. 873.1201. Bathing beaches; permit.**

No person shall operate a bathing beach, as defined in Part 6-2 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 6-22-1989, eff. 6-22-1989; amended 3-19-1992, eff. 3-30-1992)

**Sec. 873.1202. Swimming pools; operator.**

All pools larger than 1,000 square feet in surface area or pools disinfected using gas chlorine shall be maintained by a qualified swimming pool treatment operator within one year of the effective date of this section. A "qualified swimming pool treatment operator" shall mean an individual possessing evidence of the successful completion of either of the following courses:

1. A New York State Department of Health Water Treatment Plant Operator Certification Course Type A or B; or
2. An adequate course of instruction regarding the safe and effective operation and maintenance of pool treatment equipment.

(Added 6-22-1989, eff. 6-22-1989; amended 3-19-1992, eff. 3-30-1992)

**Sec. 873.1203. Bathing facilities; certificates.**

1. No person shall operate or maintain or permit the use of any bathing facility

without first having obtained a certificate to operate from the commissioner.\*

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**\*Editor's note:** For issuance and term of certificates, see Rules and Regulations of the Commissioner Policy No. BF 2-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

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2. An application for a certificate to operate shall be made to the department on forms provided by the department at least 30 days before the use of such facility.
3. Every certificate shall be kept on the premises designated by the certificate and shall be posted in a conspicuous place in the premises in such manner as to be visible to the public and shall be available for inspection at all times by the department.
4. This section does not apply to childrens' camps where the bathing beach or swimming pool that is located on the camp's property is solely used for the patrons of the camp.

(Added 6-22-1989, eff. 6-22-1989)

#### **Sec. 873.1204. Bathing facilities; safety.**

1. At least one qualified lifeguard shall be required at all swimming pools for each 75 bathers.\*

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**\*Editor's note:** For exceptions for facilities containing wading and whirlpools, see Rules and Regulations of the Commissioner Policy No. BF-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

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2. The bathers shall be under the direct supervision of the qualified lifeguard.
3. Additional qualified lifeguards shall be required by the commissioner whenever, in his opinion, it is necessary for the protection of the bathers. When more than six lifeguards are required, the commissioner may accept a management safety plan submitted by the operator to justify ratios exceeding one lifeguard per 75 bathers.
4. First-aid equipment.
  - a. All bathing facilities and bathing beaches must have the following equipment on site and readily available:
    - i. A 24-unit first-aid kit.\*

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**\*Editor's note:** For standards for first aid kits, see Rules and Regulations of the Commissioner of Health Policy No. BF 3-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

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- ii. A spine board, minimum six feet long and 16 inches wide, with ten hand holes and two straps.
  - iii. A pocket mask for CPR.
  - iv. Extrication collars.
- b. The following minimum equipment shall at all times be provided and readily available at each swimming pool, white-water slide, wave pool, special purpose pool and movable bottom pool:
  - i. Two rescue tubes with six feet of line.
  - ii. One reaching pole 15 feet long.
- c. The following minimum equipment shall be provided and readily available at each bathing beach:
  - i. Two rescue tubes six feet long.
  - ii. One rescue pole 15 feet long to be located at docks or floats when applicable for such bathing beach.
  - iii. One rescue board.
  - iv. One boat for tidal beaches and for large beach in excess of 500 people.
- d. A responsible person may be employed in lieu of a qualified lifeguard at wading pools.
- e. At spa pools, a responsible person must post an American Red Cross basic life-support CPR or equivalent and be capable of monitoring the operation of the spa pool water treatment equipment.
- f. A warning sign with an area of at least three square feet stating the following caution statements shall be conspicuously posted in the vicinity of the spa:

#### CAUTION

1. Elderly persons and those suffering from heart disease, diabetes, high or low blood pressure should be prohibited from using the spa pool.
2. Unsupervised use by children is prohibited.
3. Do not use while under the influence of alcohol, anticoagulants, antihistamines, vasoconstrictors, vasodilators, stimulants, hypnotics, narcotics or tranquilizers.
4. Do not use alone.
5. Observe a reasonable time limit [e.g. 15 minutes], then shower, cool down and, if you wish, return for another brief stay. Longer exposure may result in nausea, dizziness or fainting.
6. Help can be obtained by using the telephone and posted







































































































































































































































