



City Council Meeting and Workshop

January 7, 2013

Agenda

5:30 P.M. Workshop

- A. Constitutional Amendment on Campaign Finance – Clint Deschene
- B. Joint TIF Policy – Roland Miller
- C. Commuter Services between Lewiston-Auburn and Portland – Clint Deschene

7:00 P.M. City Council Meeting

Pledge of Allegiance

- I. Consent Items** – All items listed with an asterisk (*) are considered as routine and will be approved in one motion. There will be no separate discussion of these items unless a Councilor or citizen so requests. If requested, the item will be removed from the consent agenda and considered in the order it appears on the agenda.

1. Order 02-01072012*

Confirming Chief Crowell's appointment of Constables without firearms for the Auburn Police Department.

II. Minutes

December 17, 2012

III. Reports

Mayor's Report

Committee Reports

- **Transportation**
 - Androscoggin Transportation Resource Center – Mayor LaBonte
 - Lewiston Auburn Transit – Councilor Gerry
 - Airport, Railroad – Councilor Hayes
 - Bike-Ped Committee – Councilor Shea
- **Housing**
 - Community Development Block Grant, Neighborhood Stabilization Program, Auburn Housing Authority – Councilor Gerry
- **Economic Development**
 - L-A Economic Growth Council, Auburn Business Development Corp. – Councilor Shea
- **Education**
 - Auburn School Committee – Councilor Young
 - Auburn Public Library – Councilor LaFontaine
 - Great Falls TV – Councilor Young and Councilor Shea
- **Environmental Services**
 - Auburn Water District, Auburn Sewerage District – Councilor Crowley
 - Mid-Maine Waste Action Corp. – Councilor Walker
- **Recreation**

Auburn City Council Meeting & Workshop

January 7, 2013

- Recreation Advisory Board – Councilor Walker
- Public Safety
 - LA 911 – Councilor Walker

City Councilors' Reports

City Manager's Report

IV. Communications, Presentations and Recognitions

- V. **Open Session** – Members of the public are invited to speak to the Council about any issue directly related to City business which is *not on this agenda*. Time limit for open sessions, by ordinance, is 45 minutes.

VI. Unfinished Business

1. Ordinance 07-12172012

Approving the amendment to the Business Licensing Ordinance regarding the adoption of applicable State of Maine Rules. Public hearing, second and final reading.

VII. New Business

1. Order 03-01072013

Authorizing the City Manager to execute a lease agreement between the City of Auburn and the Androscoggin Historical Society for the Knight House and the Downing Shoe Shop.

VIII. Executive Session

- Discussion of a personnel issue (the City Manager's evaluation) with possible action to follow, pursuant to 1 M.R.S.A. §405(6)(A).
- Discussion regarding labor contracts with possible action to follow, pursuant to 1 M.R.S.A. §405(6)(D).

- IX. **Open Session** – Members of the public are invited to speak to the Council about any issue directly related to City business which is *not on this agenda*.

X. Future Agenda/Workshop Items

XI. Adjournment

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405(6). Those applicable to municipal government are:

- A. Discussion of personnel issues

Auburn City Council Meeting & Workshop

January 7, 2013

- B. Discussion or consideration by a school board of suspension or expulsion
- C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency
- D. Labor contracts
- E. Contemplated litigation
- F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;
- G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and
- H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.



**City Council
Workshop Information Sheet**

City of Auburn

Council Workshop Date: January 7, 2013

Item A

Author: Sue Clements-Dallaire, City Clerk

Subject: Constitutional Amendment on Campaign Finance

Information: The Mayor and Council have been asked to consider passing a resolve supporting an amendment to the U.S. Constitution in regards to campaign finance issues.

Financial: None

Action Requested at this Meeting: Discussion

Previous Meetings and History:

Attachments:

A draft resolve in support of the Constitutional Amendment

Resolution on U.S. Constitutional Amendment on Campaign Finance

(as prepared by Craig Saddlemire, Lewiston City Councilor and adopted unanimously by the Lewiston City Council, but with the city name changed to Auburn for consideration by the Auburn City Council)

WHEREAS, government of, by, and for the people is a cherished American ideal, and the right of self-governance is fundamental; and

WHEREAS, it is the right of the people to alter the government when it becomes destructive to the goals of securing the right to life, liberty, and the pursuit of happiness articulated in the Declaration of Independence; and

WHEREAS, United States Supreme Court rulings, beginning with *Buckley v. Valeo* and continuing through *Citizens United v. FEC* and others, have interpreted the First Amendment and its application to elections in such a way as to disproportionately elevate the role of wealthy special interests in elections and diminish the voices and influence of ordinary Americans; and

WHEREAS, the citizens of the City of Auburn are deeply concerned that the proliferation of unlimited campaign contributions can unfairly influence our local, state, and federal elections, elected representatives, and public policy; and

WHEREAS, the current legal landscape severely constrains the range of options available to correct these problems through normal legislative means.

THEREFORE BE IT RESOLVED that the City of Auburn hereby calls on our state and federal representatives to support an amendment to the Constitution of the United States that would:

First, differentiate the spending of money in elections from First Amendment activities;

Second, empower state and federal governments to regulate the raising and spending of funds in elections;

Third, clarify that only human beings, not Corporations, are endowed with constitutional rights relating to freedom of speech.

BE IT FURTHER RESOLVED that the City of Auburn calls on other communities and jurisdictions across the state to join this action by passing similar resolutions.



City Council
Workshop Information Sheet

City of Auburn

Council Workshop Date: January 7, 2013

Item B

Author: Roland G. Miller, Director of Community & Economic Development

Subject: Joint Tax Increment Financing Policy

Information: The work of convincing new and current business owners that Auburn is the right place to make the next investment is a competitive undertaking. Our sister city, Lewiston, faces the same challenge each day. In recognition of the need to cooperate in promoting the Auburn/Lewiston region to investors a protocol was developed (originally adopted in 1998 and updated in 2004) stipulating how both cities and LAEGC would approach client handling in working to attract development to our broader community. A comprehensive review of this protocol is currently underway but not yet concluded.

Within the above referenced protocol it is recognized business attraction incentives are likely to be in play as an investor works to reduce risk by creating a competitively advantageous market position. One of the principal incentives available to Maine communities is Tax Increment Financing (TIF). Recognizing the potential for a client to posture one community against another, the cities of Auburn and Lewiston worked together in drafting a **Joint Tax Increment Financing Policy**. This policy was originally adopted by both communities in 1999 and subsequently updated and adopted in 2004. A working committee, staffed by LAEGC, has completed a review of the policy currently in place and has a revised updated policy ready for your consideration (copy attached).

Financial: None

Action Requested at this Meeting: None

Previous Meetings and History: Originally adopted in 1999, updated and readopted in 2004 and updated and adopted by the LAEGC Board of Directors in October 2012.

Attachments: Revised Joint Tax Increment Financing Policy

Joint Tax Increment Financing Policy

The *Cities of Auburn and Lewiston Tax Increment Financing (TIF) Policy* includes the following:

- Purpose
- Eligibility Requirements
- General Guidelines
- Terms
- Performance Standards
- Applicant and Fees Information
- Annual Review
- Definitions

The Cities of Auburn and Lewiston are referred to as “the City” or “Cities” in this policy.

Purpose

The four (4) primary reasons and public benefits for the Cities tax increment financing policy are, as follows:

1. To establish a collaborative and joint approach to economic development in the Cities when tax increment financing is involved;
2. To stimulate expansion of the City commercial/industrial tax base;
3. To retain and create employment, to secure long-term quality jobs; and
4. To establish standards upon which the City Councils will consider authorizing a TIF.

Eligibility Requirements

Any current or potential owner of taxable property in the City may request the creation of a TIF district subject to this policy.

The establishment of a TIF district is an action by the City Council. A TIF is not a right under Maine law, and meeting these guidelines does not create a right or entitlement to any applicant.

For a TIF application to be considered by the Cities, the project must seek to meet or exceed the following criteria:

Types of Businesses. The business expansion or establishment of one (1) of the following businesses is encouraged:

- research facility;
- high-technology facility;
- manufacturing/assembly;
- regional distribution, warehousing and transportation projects;
- financial and insurance services;
- telecommunication intensive;
- back office operations;
- energy related businesses/projects;
- professional, technical and scientific services;
- taxable medical offices & facilities;

- a business which is significantly involved in the exporting of goods or services outside of Maine; or
- other businesses/industries deemed appropriate by the City Council.

Real Property Improvements and Job Creation.

Minimum Investment. To qualify for a credit enhancement, [t] here must be real estate investments of a minimum of \$2 million or the creation of a minimum of twenty-six (26), full-time equivalent jobs which meet or exceed “livable wage”¹. Companies assisted shall provide employees access to benefits to include health insurance; vacation and sick leave; and a retirement plan.

Exceptional Investment. A project may qualify as “exceptional investment” if initial total real estate investments are at least \$5 million or at least 100 new full-time livable wage jobs are created. It should be noted that the “minimum investment” level of \$2 million must be met. Companies assisted shall provide employees access to benefits to include health insurance; vacation and sick leave; and a retirement plan. Exceptional investment enables the Cities to consider a higher level of financial participation or provide for a longer time period for a TIF.

Job Retention. There must be real estate investments of a minimum of \$2 million and the retention of the existing workforce.

GENERAL GUIDELINES

This policy recognizes tax increment financing will be provided by a credit enhancement agreement. The applicant must provide any and all other documentation that will protect the City’s economic and financial position, and/or that confirm both the letter and spirit of the underlying agreement between the applicant and the City.

A TIF may be granted only for the additional value of eligible real estate investments, subject to limitations by the City. The City will not allow TIF’s for investments made before the application is filed or any building and/or property improvements begun without notification of the construction, expansion, or modernization date.

If a leased facility is a TIF, the agreement may be executed by the lessor and lessee. In such cases, the lessor must demonstrate binding contracts with the lessee to guarantee job retention or creation. The TIF agreement should include the lease.

In all instances, applicants requesting tax increment financing must demonstrate:

Economic Necessity. The City’s participation is economically necessary, and involvement by the City is needed in order for the project to be undertaken. Justification for economic need and the City involvement must be demonstrated by:

- A need to offset public/private infrastructure costs unique to the site;
- A need to offset economic advantages available to the corporate entity if it should build or expand outside of the Cities; or
- The unavailability of sufficient private or other public funding sources to meet the full capital investment needs of the corporate entity seeking assistance.

¹Livable wage for a single parent w/1 child and adjusted every two (2) years, as defined by the Maine Department of Labor Center for Workforce Research and Information. Please refer to the Definition Section of this policy.

Financial Capability. Financial capability to undertake the project must be evidenced prior to review.

Location Considerations. The project improves a blighted area or building in need of redevelopment or an area identified as a priority by the City, such as the downtown area or business/industrial parks.

Regulatory Compliance. Compliance with all statutory and regulatory guidelines of the City, the State of Maine, and the Federal Government is required.

TERMS

Effective Date. TIFs are granted upon approval by the Maine Department of Economic and Community Development (DECD). The Original Assessed Value is established as of the March 31st valuation date immediately preceding the date of submittal to DECD as defined in statute. If a modernization project includes facility replacement, the TIF value shall be the value of the new investment minus the value of the existing real property.

Amount of Value. The TIF is based upon capital costs for each year that the TIF is in effect. In general the amount of value the City will share with the business is directly related to the extent to which the project meets the guidelines set forth in this policy.

Minimum Investment. A maximum tax benefit of up to 40% is available for projects with real estate investments of a minimum of \$2,000,000. The determination of municipal participation will be based upon the amount of business investment, type of business, number and quality of jobs retained/created and other considerations outlined in this policy.

Exceptional Investment. A tax benefit exceeding 40% may be available based upon real estate investments which meet the exceptional level of investment.

TIME PERIOD

- **Minimum Investment.** The TIF time period ranges from five, but not to exceed twenty years. The length of the time period for a TIF will be based upon the amount of business investment, type of business, number and quality of jobs retained/created and other considerations outlined in this policy.
- **Exceptional Investment.** The TIF time period may extend beyond twenty years for projects which meet the exception level of investment.

PERFORMANCE STANDARDS

It is the policy of the City that a TIF is a business partnership and that the recipient of the TIF must meet the standards that led to the City approving the TIF. Any company or business that is granted a TIF, or its tenants if they are part of the incentive program, must meet the following standards:

Capital Improvements. Within one (1) year of the TIF agreement being approved by (DECD), a minimum of 40% of the capital funds for the designated project must be spent.

Within two (2) years of the TIF agreement being approved by (DECD), a minimum of 80% of the capital funds for the designated project must be spent.

Within three (3) years of the TIF agreement being approved by the State Department of Economic & Community Development (DECD), 100% of the capital funds for the designated

project must be spent.

Employment Retention/Creation. When new jobs are designed as part of the TIF agreement, a minimum of 50% of the new jobs must be filled within two (2) years of the project's completion.

When new jobs are designed as part of the TIF agreement, 100% of the new jobs must be filled within three (3) years of the project's completion.

If the project involves job retention, then at least 95% of the jobs must remain filled for a minimum of three (3) years.

The City Administrator's/Manager's office will determine, in cooperation with the TIF recipient prior to the execution of the TIF, the methodology of reporting job retention/creation.

Penalty. If any of the above standards are not met, the TIF benefits may be voided by the respective City Council.

Use of Local Contractors. Any business that is granted a TIF agrees to use local contractors where possible.

APPLICATION PROCESS

Application Information and Contact. The Economic and Community Development office of each City will act as a clearinghouse and coordinate all activity regarding tax increment financing proposals. Working with potential applications, the office will:

- Maintain a tax increment financing application;
- Provide information on tax increment financing;
- Discuss project proposals and accept preliminary application from the applicant;
- Review preliminary application based upon City TIF Policy with the City Administrator/Manager;
- Advise the applicant on findings of City Staff and preliminary result of City Council review;
- Schedule a City Council meeting for action on a TIF application and provide assistance to the City Administrator/Manager in the formulation of a recommendation to the City Council;
- Submit application to the State Department of Economic and Community Development (DECD) based on the direction of the City Council; and
- Monitor on-going public and private investment in the development project.

Administrative and Extraordinary Expenses. In addition, any administrative and extraordinary out-of-pocket expenses incurred by the City in connection with the tax increment

financing proposal will be reimbursed by the applicant whether or not tax increment financing is approved.

PERIODIC REVIEW

This policy shall be reviewed periodically by the Auburn and Lewiston City Councils and revised as necessary.

DEFINITIONS

Livable Wage. The reference to livable wage shall be defined by the Maine Department of Labor Center for Workforce Research and Information.

Full-Time Equivalent Job. Combining jobs to equal full-time (approximately 40-hours per week) employment.

EXCEPTIONS FROM TIF POLICY

Exceptions to the TIF Policy may be granted in accordance with the Joint Economic Development Protocol.

Adopted by the Lewiston City Council on March 1, 1999

Adopted by the Auburn City Council on March 2, 1999

Updated and Approved by the Lewiston and Auburn City Councils in February, 2004.



**City Council
Workshop Information Sheet**

City of Auburn

Council Workshop Date: January 7, 2013

Item C

Author: Sue Clements-Dallaire, City Clerk

Subject: Commuter Service between the Municipalities of Portland, Lewiston and Auburn

Information: The cities of Portland, Lewiston and Auburn would like to evaluate the feasibility of developing high-quality commuter service (be it rail or bus) between Portland and Lewiston/Auburn.

Financial:

Action Requested at this Meeting: Discussion

Previous Meetings and History:

Attachments:

- Draft Resolve from Portland

MAYOR MICHAEL F. BRENNAN
KEVIN J. DONOHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

RESOLUTION IN SUPPORT OF A PORTLAND NORTH PASSENGER COMMUTER SERVICE BETWEEN THE MUNICIPALITIES OF PORTLAND, LEWISTON-AUBURN

WHEREAS the City of Portland would like to evaluate the feasibility of developing high-quality passenger commuter service between Portland, and Lewiston-Auburn, be it rail or bus; and

WHEREAS it is recognized that there is a growing need for commuter service between Portland, Lewiston, and Auburn, that will help accommodate the many commuters from the Lewiston-Auburn area that travel Portland and places south for employment, medical and entertainment, and

WHEREAS all three municipalities support the goal of reducing single-passenger vehicle trips and work toward developing commuter service either from use of existing or future rail corridors or from a public bus commuter services

WHEREAS MaineDOT conducted the Portland North Project as part of a New Starts Transportation Program under the former Administration led Federal Transportation Program in 2010, which focused on addressing congestion mitigation, this new study will follow a broader set of standards to include land use, economic development, environmental, congestion mitigation and economic justice

WHEREAS the municipalities of Portland, Lewiston and Auburn view this study as part of a broader collaboration where communities can assist each other in addressing commuting, employment and other sustainable practices that enhances the livability of all three communities, and

WHEREAS the participating municipalities desire to work through the Portland region MPO, (), Portland Area Comprehensive Transportation System (PACTS) and from the Lewiston-Auburn MPO, Androscoggin Transportation Resource Center (ATRC) to jointly conduct and manage the study for the municipalities and their constituents

NOW THEREFORE BE IT RESOLVED, that the municipalities of Portland, Lewiston and Auburn hereby endorse this Resolution and look forward to working collaboratively toward seeking project funding and management through PACTS and ATRC and to work together on completing the feasibility evaluation of future high quality passenger commuter service between Portland and Lewiston, and Auburn.

BE IT FURTHER RESOLVED, that the Portland City Council directs the City Manager to take the steps necessary to work with officials of PACTS, ARTC, and the Cities of Lewiston and Auburn on seeking program funding to advance this project toward implementation.



City Council Agenda Information Sheet

City of Auburn

Council Meeting Date: January 7, 2013

Order 02-01072013*

Author: Phillip L. Crowell, Jr., Chief of Police

Subject: Confirm Chief Crowell's appointment and re-appointment of Constables without firearms for the Auburn Police Department.

Information: Chief of Police Crowell requests that the Auburn City Council appoint or re-appoint civilians to serve documents on behalf of the Auburn Police Department. These civilians will act as Constables without firearms.

Financial: n/a

Action Requested at this Meeting: Motion to confirm Chief Crowell's appointment and re-appointment of Constables without firearms for the Auburn Police Department.

Previous Meetings and History: Annually, request is made for appointments and re-appointments for the next calendar year.

Attachments:

- Memo from Chief Crowell
- Order 02-01072013



Auburn Police Department



Memorandum

Phillip L. Crowell
Chief of Police

Jason D. Moen
Deputy Chief

Rita P. Beaudry
Office Manager

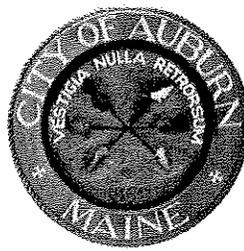
To: Mayor LaBonte and Members of the City Council
From: Phillip L. Crowell, Jr., Chief of Police
Date: December 3, 2012
Re: CONSTABLES

We request that the following named persons be appointed or re-appointed to serve documents as Constables on behalf of the Auburn Police Department for 2013.

Lucien Asselin	Civil Process Only	Without Firearm	Re-appointment
Steven Chouinard	Civil Process Only	Without Firearm	Re-appointment
Harry Darling	Civil Process Only	Without Firearm	Re-appointment
Harry Gorman	Civil Process Only	Without Firearm	Re-appointment
Claire Barclay	Civil Process Only	Without Firearm	Re-appointment
Matthew Conde	Civil Process Only	Without Firearm	Re-appointment
Kenneth Edgerly	Civil Process Only	Without Firearm	Re-appointment
Joan Godbout	Civil Process Only	Without Firearm	Re-appointment
Ellery Hewey	Civil Process Only	Without Firearm	Re-appointment
Nicholas Kyllonen	Civil Process Only	Without Firearm	Re-appointment
Donald Linscott	Civil Process Only	Without Firearm	Re-appointment
Cynthia MacDonald	Civil Process Only	Without Firearm	Re-appointment
George Mathews	Civil Process Only	Without Firearm	Re-appointment
Sheryl Mathews	Civil Process Only	Without Firearm	Re-appointment
Jerry Webster	Civil Process Only	Without Firearm	Re-appointment
Jeffrey Campbell	Civil Process Only	Without Firearm	Appointment
Glenn Garry	Civil Process Only	Without Firearm	Appointment
Janice Jannetty	Civil Process Only	Without Firearm	Appointment

Janice Lare	Civil Process Only	Without Firearm	Appointment
Kristal Parshall	Civil Process Only	Without Firearm	Appointment
Erik Rider	Civil Process Only	Without Firearm	Appointment

Tizz Crowley, Ward One
Robert Hayes, Ward Two
Mary Lafontaine, Ward Three
David Young, Ward Four



Leroy Walker, Ward Five
Belinda Gerry, At Large
Joshua Shea, At Large

Jonathan LaBonte, Mayor

IN CITY COUNCIL

ORDER 02-01072013

ORDERED, that the following civilians be appointed or re-appointed to serve documents as Constables without firearms on behalf of the Auburn Police Department:

Lucien Asselin	Civil Process Only	Without Firearm	Re-appointment
Steven Chouinard	Civil Process Only	Without Firearm	Re-appointment
Harry Darling	Civil Process Only	Without Firearm	Re-appointment
Harry Gorman	Civil Process Only	Without Firearm	Re-appointment
Claire Barclay	Civil Process Only	Without Firearm	Re-appointment
Matthew Conde	Civil Process Only	Without Firearm	Re-appointment
Kenneth Edgerly	Civil Process Only	Without Firearm	Re-appointment
Joan Godbout	Civil Process Only	Without Firearm	Re-appointment
Ellery Hewey	Civil Process Only	Without Firearm	Re-appointment
Nicholas Kyllonen	Civil Process Only	Without Firearm	Re-appointment
Donald Linscott	Civil Process Only	Without Firearm	Re-appointment
Cynthia MacDonald	Civil Process Only	Without Firearm	Re-appointment
George Mathews	Civil Process Only	Without Firearm	Re-appointment
Sheryl Mathews	Civil Process Only	Without Firearm	Re-appointment
Jerry Webster	Civil Process Only	Without Firearm	Re-appointment

Jeffrey Campbell	Civil Process Only	Without Firearm	Appointment
Glenn Garry	Civil Process Only	Without Firearm	Appointment
Janice Jannetty	Civil Process Only	Without Firearm	Appointment
Janice Lare	Civil Process Only	Without Firearm	Appointment
Kristal Parshall	Civil Process Only	Without Firearm	Appointment
Erik Rider	Civil Process Only	Without Firearm	Appointment

IN COUNCIL REGULAR MEETING DECEMBER 17, 2012 VOL. 33 PAGE 83

Mayor LaBonte called the meeting to order at 7:00 P.M. in the Council Chambers of Auburn Hall. All Councilors were present.

Den 7 from Cub Scout Troop 111 led the assembly in the salute to the flag.

I. Consent Items*- None

II. Minutes

Motion was made by Councilor LaFontaine and seconded by Councilor Hayes to approve the minutes of the December 3, 2012. Passage 7-0.

III. Reports

Mayor's Report – Mayor LaBonté reported.

City Councilors' Reports – Councilors Shea, LaFontaine, Young, Crowley, and Gerry reported.

City Manager's Report – City Manager Deschene Reported.

Finance Director, Jill Eastman – November 2012 Monthly Report

Motion was made by Councilor Crowley and seconded by Councilor Gerry to accept the November 2012 Monthly Report. Passage 7-0.

IV. Communications, Presentations and Recognitions - None

V. Open Session

Cameron, resident of Auburn

VI. Unfinished Business – None

VII. New Business

1. Ordinance 07-12172012 Approving the amendment to the Business Licensing Ordinance regarding the adoption of applicable State of Maine Rules. First Reading.

Motion was made by Councilor LaFontaine and seconded by Councilor Hayes.
Public comment – No one from the public spoke. Passage 6-1, (Councilor Crowley).

2. Order 98-12172012 Authorizing the City Manager to sign the option agreement on One Minot Avenue.

IN COUNCIL REGULAR MEETING DECEMBER 17, 2012 VOL. 33 PAGE 84

Motion was made by Councilor LaFontaine and seconded by Councilor Walker.

Motion was made by Councilor LaFontaine and seconded by Councilor Walker to amend the order to include the second parcel number (230-063).

Public comment – No one from the public spoke.

Passage 6-0-1, (Councilor Hayes abstained).

Passage of order as amended 5-1-1, (Councilor Gerry opposed, Councilor Hayes abstained).

3. **Order 99-12172012** Approving a zero percent interest rate loan to the 9-1-1 Committee in the amount of \$27,500, payable in eight quarterly payments of \$3,437.50 each in order to upgrade the center's phone lines.

Motion was made by Councilor LaFontaine and seconded by Councilor Walker.

Motion was made by Councilor LaFontaine and seconded by Councilor Walker to amend the order noting the funds will be taken from the unallocated bonds proceeds instead of from the emergency reserve fund.

Public comment – No one from the public spoke.

Passage 7-0.

Passage as amended 7-0.

4. **Order 100-12172012** Authorizing the City Manager to use funds from the Unallocated Bond Proceeds up to the amount of \$35,000 for the Athletic Fields Analysis Phase I \$17,500 and Phase II \$17,500.

Motion was made by Councilor LaFontaine and seconded by Councilor Hayes.

Public comment – no one from the public spoke.

Passage 7-0.

- VIII. **Executive Session** - Discussion of a personnel issue (the City Manager's evaluation), pursuant to 1 M.R.S.A. §405(6)(A).

Discussion of this item was held during the workshop.

IN COUNCIL REGULAR MEETING DECEMBER 17, 2012 VOL. 33 PAGE 85

Executive Session - Discussion regarding labor contracts, pursuant to 1 M.R.S.A. §405(6)(D).

Motion was made by Councilor Crowley and seconded by Councilor LaFontaine. Passage 7-0, 7:55 P.M.

The Mayor declared Council out of Executive Session at 8:31 P.M.

Executive Session - Discussion regarding contemplated litigation, pursuant to 1 M.R.S.A. §405(6)(E).

Motion was made by Councilor LaFontaine and seconded by Councilor Walker. Passage 7-0, 8:32 P.M.

The Mayor declared Council out of Executive Session at 8:46 P.M.

IX. Open Session – No one from the public spoke

X. Future Agenda/Workshop Items – None

XI. Adjournment

Motion was made by Councilor Crowley and seconded by Councilor LaFontaine to adjourn. Passage 7-0, 8:50 P.M.

A True Copy.

ATTEST *Susan Clements Dallaire*
Susan Clements-Dallaire, City Clerk

MANAGER'S REPORT

January 7, 2013

Twin Rink Ice Arena

The owner should be completing the layout of the floor plans by early January. It is the intent of staff to present these to the Council and also begin a process to have them available for the public at various locations and on-line. The City must remember that we have input but do not own the building. The City will lease the building and we have input to design but ultimately the project hinges on the \$8.5 million dollar budget.

Staff continues to research marketing and operations possibilities. Meetings will be occurring throughout January to explore options. Many innovative ideas have been proposed by staff to research and I look forward to sharing our direction in late winter.

Discussion and questions still arise about why work has not started. The process to approve the project has taken longer than anticipated; the owner is working with his general contractor to develop bid ready plans for subcontractors. The schedule remains unchanged with a goal to have skating ready for the youth leagues in the fall. Until a schedule is prepared it is premature to discuss when activity will start.

Another exciting development is the concept of a "design reception/dinner". Staff is coordinating the possibility of a dinner to unveil the design and fundraising activities, when more details are prepared those will be shared.

Comprehensive Plan Implementation

The Assistant City Manager has begun the process to develop an Implementation Committee of staff to oversee the objectives of the plan. No timetable is set as of this report but it should begin this winter.

The process intended will develop a report every six months to update the community and Council on progress.

Water Shed Review Process

One aspect of the Comprehensive Plan was implementing a Technical Review Committee, to review the Lake Auburn overlay provisions. As City Manager I have reviewed with staff, the Water District, and some identified residents and/or stake holders a process. I have also researched potential firms from prior contacts I have developed in the area of water protection.

At this time the City will be issuing an RFP that will be reviewed by staff, presented to the Planning Board for comment, and then reviewed and authorized by the City Council. One unique aspect of the RFP will be a category giving a higher score to firms without prior relationships with the City of Auburn, City of Lewiston or the Water District. The purpose of this category is to facilitate a firm that will provide a fresh perspective for Auburn. A key component of my review was the need to illicit a review from a firm without existing relationships on our watershed.

National League of Cities Annual Convention, March 10-14, 2013

The City of Auburn has not attended this event in the past few years. I recommend to the Council that this is an event the City should attend. This is an important opportunity for Auburn to go to Washington DC and meet with our Congressman and Senators to explain the needs and concerns of our constituents. I have attended once in my career and it definitely is a benefit.

TIF Allocation for Transportation Facility

The City has been working with our potential partner regarding the plan and site of this facility the Council supported with an allocation of funds in December. Due to the holidays it has been difficult to obtain a response so that a press release or announcement could be made to the City. I am confident that the proper approvals will be in hand soon and announcement forthcoming.

Chamber of Commerce Annual Banquet/Attendance Costs

Recently a request was made for an agenda item regarding a policy for City funded attendance at functions. I took this opportunity to discuss the matter with the Councilor recommending and it was agreed that a report on how I intend to handle these types of situations may suffice.

The method I propose is based on the necessity of Auburn to be represented at events that impact the City and/or our services. The Mayor, City Manager, and Assistant City Manager are the individuals I feel are hired or directed per charter to represent the City. It follows that the cost of attendance for events be paid by the City for these persons or if circumstances require their designee. Additionally and Councilor appointed by the Mayor to serve on various boards (i.e. LAEGC) may have fees paid with approval of the City Manager's office to assure adequate funding is in place.

Please understand this is not a policy but a procedure to follow and understand.

Recycling

Recently a resident brought to the attention of a Councilor the recycling guidelines posted on the website. The question regarded the acceptance of plastics #1 through #7. Upon research this has been the practice since before I was appointed City Manager but had not been publically shared with the City. I am taking this opportunity to make the Council aware of this process and will be announcing in a more public manner to inform the residents.

Council Schedule

The Council has a significant amount of work load and it requires meetings and topics to be moved so as to allow staff time to prepare agendas. I would propose that I attach the current draft of meetings with my report. This will keep the Council apprised of the workload and intended dates and will also indicate the dates of additional meetings when determined. I do not intend to have the schedule adopted by the Council but I do hope that by providing it a Councilor can share input when appropriate.

Budget

The process with staff remains to have a CIP for Council review at a workshop late in January. I have also directed all City Departments to submit their annual budget requests by mid January. These will be reviewed and presented to the City Manager and Finance Director through mid February. In the middle of February I will finalize a City Manager proposed budget and intend to present to Council in early March. This is more aggressive and earlier than in the past. The reason is sustain a goal to have the budget reviewed and adopted in April so that when the School Validation Vote occurs the City budget is done simultaneously too and citizens may understand the full impact of both budgets.

Open Items from Public

None.

City of Auburn, Maine

"Maine's City of Opportunity"

Office of the City Manager

TO: Mayor and City Council
FROM: Clint Deschene, City Manager
DATE: December 17, 2012
RE: Tentative End of the Year Schedule

The following is the tentative schedule for the remainder of 2012 and start of 2013:

Date	Day	Time	Meeting	Place
January 2	Wednesday	6:00pm	Joint Meeting – School and Council 1. Joint Approval of Procurement Policy	Council Chambers
January 5	Saturday	9:00am to 3:00pm	Goal Setting Retreat	CMCC
January 7	Monday	5:30pm & 7:00pm	Council Workshop 1. Draft Comp Plan Implementation Committee Process 2. New Industrial Park status update including financial report and revenue sharing potential (ABDC) 3. Constitutional Amendment/Campaign Finance 4. Joint TIF Policy Council Meeting 1. CDBG Program Changes Adopted 2. Androscoggin Historical Society Plans	Council Chambers
January 21	Monday	N/A	Martin Luther King Holiday – Auburn Hall is Closed	N/A

City of Auburn

January 22	Tuesday	5:30pm & 7:00pm	Council Workshop: 1. Budget (Set School Validation Date) 2. Capital 3. Comp Committee 4. Street/Sidewalk Design Ordinances (Bike/Ped Committee) 5. Great Falls Plaza Budget and Design (15 min)	Council Chambers
			Council Meeting 1. Constitutional Amendment/Campaign Finance 2. Joint TIF Policy	
February 4	Monday	5:30pm & 7:00pm	Council Workshop: 1. LEAD (Reine) 2. Community Forest Board Ordinance	Council Chambers
			Council Meeting	
February 11	Monday	5:30pm	Council Workshop: 1. Budget	Council Chambers
February 18	Monday	N/A	President's Day Holiday – Auburn Hall is Closed	N/A
February 19	Tuesday	5:30pm & 7:00pm	Council Workshop: 1. Athletic Fields Report (Next steps for a recreation master plan)	Council Chambers
			Council Meeting 1. LEAD 2. Community Forest Board Ordinance	
February 25	Monday	5:30pm	Council Workshop: 1. Budget	Council Chambers
March 4	Monday	5:30pm & 7:00pm	Council Workshop: Council Meeting	Council Chambers

City of Auburn

March 11	Monday	5:30pm	Council Workshop: 1. Budget 2. School Joint Meeting (Budget, New High School, other)	Council Chambers
March 18	Monday	5:30pm & 7:00pm	Council Workshop: Council Meeting	Council Chambers
March 21	Thursday	5:30pm	Council Workshop: 1. City Manager to Present the FY14 Proposed Budget	Council Chambers
March 25	Monday	5:30pm	Council Workshop:	Council Chambers

Notes: The City Council must schedule the following:

1. Joint Meeting w/ Lewiston (Auburn Hosts)
2. The format of Council meetings/committee structure
3. Approval Process and dates for new committee appointment process



City Council Agenda Information Sheet

City of Auburn

Council Meeting Date: January 7, 2012

Ordinance 07-12172012

Author: Eric Cousens, Director of Planning & Permitting

Subject: Proposed amendment to Chapter 24, Article II Licenses Section 24-36 Compliance with Rules & Regulations Required; Approval, Disapproval by City Officials, Council

Information: The Maine Center for Disease Control (CDC) and the Maine Department of Health & Human Services (DHHS) has requested the City specifically adopt these rules by ordinance. The reference to State Statutes that we have relied on in the past is not as specific as it could be and may allow for legal argument in an enforcement case. The CDC and DHHS via a memorandum of agreement with the City have granted the City delegated authority to conduct eating and lodging establishment inspections on behalf of the State of Maine for many years. This change will allow us to continue the licensing and inspection of eating and lodging establishments in Auburn.

Financial: None

Action Requested at this Meeting: Public hearing and request passage of second and final reading.

Previous Meetings and History: First reading on 12/17/2012.

Attachments:

- Copy of Ordinance showing changes
- State of Maine Food Code 2001
- Rules Relating to Lodging Establishments
- Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program
- Ordinance 07-12172012

Article II. Licenses

Sec. 24-26. Complying with Rules and Regulations, Paying Fee, Obtaining License, Prerequisite to Doing Business

Except as otherwise provided, no person shall engage in any business or activity, nor maintain any equipment or device, for which a license or permit is required, without having first complied with all applicable rules and regulations and having paid the proper fee and obtained a license therefore.

Sec. 24-27. Penalty

The violation of any provision of this division shall be punished by a civil penalty, payable to the City, of not less than \$100.00 and not more than \$2,500.00 for each offense, based on the severity of the offense and number of occurrences. Each act of violation and every day upon which any such violation occurs shall constitute a new and separate offense. In addition to such penalty, if the court finds for the City, the City shall recover its costs of suit, including reasonable experts' fees, reasonable attorneys' fees and reasonable and necessary investigative costs.

Sec. 24-28. License for Each Location Required

A license is required for each place or premises where a business regulated by this chapter, or any part thereof, including storage, is conducted. No licensee shall engage in such business in any manner at any place without first obtaining such license. The provisions of this section shall not apply to the following licenses, except that a separate license shall be required for each cart, vehicle, conveyance or other carrier employed by such licensees: peddler, solicitor, sound amplification and taxicab.

Sec. 24-29. Procedure for Application; Payment of Fees

Except when otherwise provided by the ordinances of the City, every application for a license shall be made in writing to the City Clerk or designee upon a form to be provided by the Clerk. Such application shall be signed by the applicant. The proper fee shall be paid to the Clerk at the time of filing the application.

Sec. 24-30. Business Beginning After Application Date

The license fee for any business shall be due and payable before such business is begun, provided, that when the licensee begins such business after the expiration of six months of the current license year, then such licensee shall be required to pay one-half the applicable yearly license fee prescribed, except as provisions otherwise require payment of the full license fee.

Sec. 24-31. Authority to Waive Fees

The City Council is the only authority allowed to waive fees which are prescribed by ordinance. An application for waiver of any fees must be presented in writing to the City Clerk to be brought to the City Council at their next available meeting.

Sec. 24-32. Applicants Required to Furnish Information

Every applicant for a license shall furnish to the City the following information:

- a. Complete and exact name under which the business is proposed to be operated;
- b. If the business is proposed to be operated by an individual under any assumed name, the name of such individual and his address;

- c. If the business is a partnership, the name and address of each partner;
- d. If the business is a corporation, the name and address of the officers of the corporation, and the location of the principal office;
- e. Nature of the business for which a license is desired;
- f. Proposed physical location;
- g. Proof of ownership or legitimate interest in property where business is to be conducted.
- h. In addition to the foregoing, the applicant shall furnish to the City Clerk or designee such other information as may be required by him/her in order to enable him/her to determine the proper classification of the applicant and the appropriate license fee and any other associated costs directly related to the application for a license, such as, but not limited to, the costs of public hearing ads and background check.

Sec. 24-33. Investigation of Applicants

Wherever his/her approval is required or upon the request of the City Clerk, the Police Chief may cause an investigation of any applicant for a license to be conducted prior to approval of such application for a license or permit.

Sec. 24-34. Certification from City Officials

- a. Before an applicant receives a license, the City Clerk shall submit the application for certification to the Code Enforcement Officer, Fire Chief, Chief of Police and City Treasurer or their designee.
- b. Each City Official has the authority to use back ground investigations, City records and any other means necessary to review each application in the course of the approval or denial process.
- c. The Code Enforcement Officer shall inspect the premises to determine whether the facilities are sanitary and in compliance with the provisions of land use regulations, building standards and codes as well as all State of Maine and Municipal rules and regulations for the type of business activities intended to be conducted.
- d. The Fire Chief shall determine whether the premises are free of a health safety and fire hazards and in compliance with all applicable standards.
- e. The Police Chief shall certify that the applicant has not had a history of complaints or problems on the proposed business, applicants, owners or managers; where the approval of the license would be adverse to the public health, safety and welfare of the citizens of the City of Auburn.
- f. The City Treasurer shall certify that all taxes and any monies due to the City of Auburn have been paid and/or are current.

Sec. 24-35. Inspection of Applicant's Premises, Merchandise

Whenever required by the statutes of the State, the ordinances of the City, the regulations of any City department, or upon the request of the City Clerk, an inspection may be made of the applicant's premises and/or merchandise by the City Assessors,

Police Chief, Fire Chief, Code Enforcement Officer, Building Inspector or other duly authorized City official prior to approval of any application for a license or permit. In addition, the premises and/or merchandise of every licensee shall be subject to such inspection at any time during the current license year; and the results of such inspections may be grounds for the suspension or revocation of any license issued by the City.

Sec. 24-36. Compliance with Rules and Regulations Required; Approval, Disapproval by City Officials, Council

a. All licensees and applicants for licenses are required to comply with State Statutes and Rules, City Ordinances and rules and regulations of City Departments which pertain to the business or activity for which a license is desired. State of Maine Rules include and are not limited to:

1. State of Maine Food Code 2001 as adopted by the Maine Department of Human Services 10-144 CMR 200 and the Maine Department of Agriculture, Food and Rural Resources 01-001 CMR 331 May 1, 2001
2. Rules Relating to Lodging Establishments, Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental Health 10-144 CMR 206 January 1, 2003.
3. Rules relating to the Administrative and Enforcement of establishments Licensed by the Health Inspection Program, Department of Health and Human Services, Maine Center for Disease Control Prevention, Division of Environmental Health Inspection Program 10-144 CMR Chapter 201 Last Amended on October 7, 2012.

In any case where the City requires the approval of the Building Inspector, Code Enforcement Officer, Police Chief, Fire Chief or any other City Official prior to issuance of the license, it shall be the duty of the City Clerk or designee to notify in writing the officials whose approvals are required. The officials so notified, or their duly delegated representatives, shall approve or disapprove the application without delay and shall note their approval or disapproval thereon, stating the reasons for any disapproval. When required by the City Council, a hearing will be held at which time the Council shall decide whether to approve or disapprove any application for a license or permit. It shall be the duty of the City Clerk or designee to notify the applicant of the time and place of the hearing. Such notice shall be mailed by the City Clerk, postage prepaid, to the applicant at his last known address at least 48 hours prior to the date set for such hearing. The decision and order of the Council on such hearing shall be final and conclusive.

a-b. Except as set forth in subsection (c) below, a license under this chapter shall be denied if the council makes a finding that:

- 1) The applicant is a corporation which is not licensed to do business in the state;
- 2) The applicant is a corporation, of which, at any time during the previous five years, a principal officer, or a person having an actual or beneficial ownership interest or management authority therein has been convicted of

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.5" + Indent at:
0.75"

- (a) any Class A, Class B, or Class C crime, or (b) a crime committed under the laws of the United States of America or of any other state or territory thereof, which is punishable (whether or not such punishment was actually imposed) by a sentence at least as harsh as that which is authorized for the commission of a Class C crime under Maine law; provided that such conviction was for an offense which is rationally related to the regulation of the business sought to be licensed;
- 3) The applicant has been convicted of (a) any Class A, Class B or Class C crime, or (b) a crime committed under the laws of the United States of America or of any other state or territory thereof, which is punishable (whether or not such punishment was actually imposed) by a sentence at least as harsh as that which is authorized for the commission of a Class C crime under Maine law; provided that such conviction was for an offense which is rationally related to the regulation of the business sought to be licensed;
 - 4) The applicant has had his or her business license revoked within the five years preceding the date of the application;
 - 5) The applicant is a corporation, person or other business entity which does or will employ a person (a) who will be substantially in the ownership or management of the business and the employee's business license has been revoked within the five years preceding the application; or (b) who was a principal of any corporation whose business license has been revoked within the five years preceding the application;
 - 6) The applicant is a corporation, person or other business entity of which any person is a principal who will be substantially involved in the ownership or management of the business and the principal's business license has been revoked within the five years preceding the application;
 - 7) The proposed licensed premises or its use fails to comply with zoning or other land use ordinances;
 - 8) The proposed licensed premises or its use fails to comply with any municipal ordinance or regulation;
 - 9) There exist on or about the premises proposed to be licensed conditions such as waste disposal violations, health or safety violations or other such conditions that unreasonably disturb, interfere with, or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use or enjoy their property in a reasonable manner;
 - 10) The applicant has knowingly furnished false or misleading information on his/her application.

c. In the event that the Council, in an exercise of its sound discretion, determines that (a) there exist extenuating circumstances with respect to the grounds for denial of a license under subsection (b) above; or (b) that the circumstances giving rise to the denial under subsection (b) above can be ameliorated by the imposition of conditions or limitations to the grant of a license, the Council may,

notwithstanding the grounds set forth in subsection (b) above, grant a license to the applicant upon such conditions as the Council in an exercise of its sound discretion deems to be just and appropriate.

Sec. 24-37. Licenses Denied; Appeal

- a. No license or permit shall be issued by the City Clerk or designee following a hearing at which the City Council has disapproved any application for such license. The City Clerk or designee shall deny a license or permit to any person whose application was disapproved by any city official whose approval was required. No license or permit shall be issued to any person who is indebted to the City upon any claim, tax or account which is more than 60 days delinquent. The City Treasurer shall be responsible for making available to the City Clerk or designee and any other license-issuing officers such information as is essential for compliance with this section. In case an application is disapproved, the City Clerk or designee shall then notify the applicant in writing of such denial and shall refund the fee paid in. The City Clerk or designee shall also notify the City Council of such action at the next regularly scheduled meeting of the City Council.
- b. Except as otherwise provided, appeals shall be made by filing a written notice of appeal with the office of the City Clerk or designee within 30 days of the date of any such denial to the Council in writing, whereupon a hearing will be scheduled, at which time the applicant shall have the right to be heard. It shall be the duty of the City Clerk or designee to notify such applicants who have appealed, of the time and place of the hearing. Such notice shall be mailed by the City Clerk, postage prepaid, to the applicant at the address furnished on the application form at least 48 hours prior to the date set for hearing. The City Council may, at that time, approve any application previously denied by the affirmative vote of five or more members of the Council.

Sec. 24-38. Issuance of Licenses

Except where the ordinances of the City require a license to be signed by some other official or where otherwise provided for by the City Council, the City Clerk or designee shall issue all licenses for which an application has been submitted and approved.

Sec. 24-39. Display of Licenses

Every license shall be kept prominently displayed at the place of business of the licensee named in the license, or, in the case of equipment licenses, the license shall be affixed to such machines or equipment as required to allow such license to be inspected at any time by any proper City official.

Sec. 24-40. Change of Location of Licensed Business

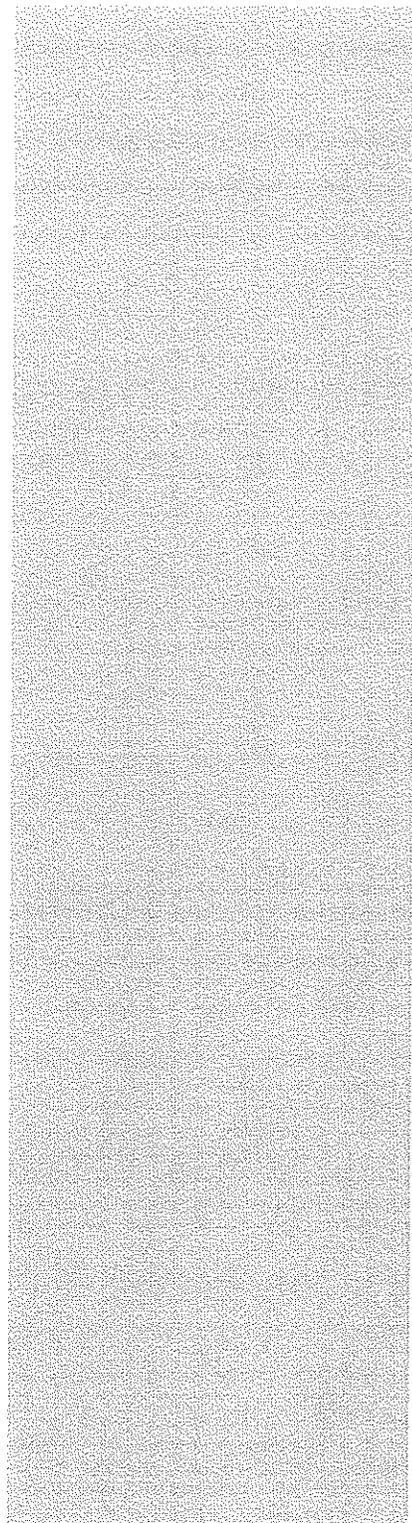
No license issued in accordance with the provisions of this chapter for the conduct of any business at a fixed place designated in the license issued therefore shall be valid for the conduct of such business at any place other than that designated in such license.

Sec. 24-41. Nontransferability

Every license issued by the City shall be a personal privilege and shall not be assignable or transferable.

Sec. 24-42. Severability

In the event that any provision of the Article is held invalid by a court of competent jurisdiction, such ruling shall not affect the remaining provisions which shall remain in full force and effect.



10-144

Department of Human Services

Chapter 200

State of Maine
Food Code
2001

As adopted by:

The Maine Department of Human Services – 10-144 CMR 200
and the
Maine Department of Agriculture, Food and Rural Resources
01-001 CMR 331

Table of Contents

Chapter 1 Purpose and Definitions	1
1-1 TITLE, INTENT, SCOPE.....	1
1-101 Title.....	1
1-102 Intent.....	1
1-103 Scope.....	1
1-2 DEFINITIONS.....	1
1-201 Applicability and Terms Defined.....	1
Chapter 2 Management and Personnel	12
2-1 SUPERVISION	12
2-101 Responsibility	12
2-102 Knowledge.....	12
2-103 Duties.....	13
2-2 EMPLOYEE HEALTH	14
2-201 Disease or Medical Condition	14
2-3 PERSONAL CLEANLINESS	17
2-301 Hands and Arms	17
2-302 Fingernails	18
2-303 Jewelry	18
2-304 Outer Clothing	19
2-4 HYGIENIC PRACTICES	19
2-401 Food Contamination Prevention.....	19
2-402 Hair Restraints	19
2-403 Animals.....	19
Chapter 3 Food.....	20
3-1 CHARACTERISTICS	20
3-101 Condition	20
3-2 SOURCES, SPECIFICATIONS, AND ORIGINAL CONTAINERS AND RECORDS.....	20
3-201 Sources.....	20
3-202 Specifications for Receiving.....	21
3-203 Original Containers and Records.....	23
3-3 PROTECTION FROM CONTAMINATION AFTER RECEIVING	24
3-301 Preventing Contamination by Employees.....	24
3-302 Preventing Food and Ingredient Contamination.....	24
3-303 Preventing Contamination from Ice Used as a Coolant.....	26
3-304 Preventing Contamination from Equipment, Utensils, and Linens	26
3-305 Preventing Contamination from the Premises	28
3-306 Preventing Contamination by Consumers	28
3-307 Preventing Contamination from Other Sources.....	29
3-4 DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN.....	29
3-401 Cooking.....	29
3-402 Freezing	32
3-403 Reheating	32
3-5 LIMITATION OF GROWTH OF ORGANISMS OF PUBLIC HEALTH CONCERN.....	33
3-501 Temperature and Time Control.....	33
3-502 Specialized Processing Methods.....	35

3-6 FOOD IDENTITY, PRESENTATION, AND ON-PREMISES LABELING	36
3-601 Accurate Representation	36
3-602 Labeling	37
3-603 Consumer Advisory	37
3-7 CONTAMINATED FOOD	38
3-701 Disposition	38
3-8 SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS.....	38
3-801 Additional Safeguards.....	38
Chapter 4 Equipment, Utensils, and Linens	39
4-1 MATERIALS FOR CONSTRUCTION AND REPAIR	39
4-101 Multiuse.....	39
4-102 Single-Service and Single-Use	41
4-2 DESIGN AND CONSTRUCTION	41
4-201 Durability and Strength.....	41
4-202 Cleanability	41
4-203 Accuracy	42
4-204 Functionality	43
4-205 Acceptability	47
4-3 NUMBERS AND CAPACITIES	47
4-301 Equipment.....	47
4-302 Utensils, Temperature Measuring Devices, and Testing Devices	48
4-4 LOCATION AND INSTALLATION.....	48
4-401 Location	48
4-402 Installation	49
4-5 MAINTENANCE AND OPERATION.....	49
4-501 Equipment.....	49
4-502 Utensils and Temperature and Pressure Measuring Devices.....	52
4-6 CLEANING OF EQUIPMENT AND UTENSILS.....	52
4-601 Objective.....	52
4-602 Frequency.....	52
4-603 Methods	54
4-7 SANITIZATION OF EQUIPMENT AND UTENSILS	56
4-701 Objective.....	56
4-702 Frequency.....	56
4-703 Methods	56
4-8 LAUNDERING	57
4-801 Objective	57
4-802 Frequency.....	57
4-803 Methods	57
4-9 PROTECTION OF CLEAN ITEMS	57
4-901 Drying	57
4-902 Lubricating and Reassembling.....	58
4-903 Storing.....	58
4-904 Handling	58
Chapter 5 Water, Plumbing, and Waste.....	59
5-1 WATER.....	59

5-101 Source	59
5-102 Quality	59
5-103 Quantity and Availability	60
5-104 Distribution, Delivery, and Retention	60
5-2 PLUMBING SYSTEM	60
5-201 Materials	60
5-202 Design, Construction, and Installation	61
5-203 Numbers and Capacities	61
5-204 Location and Placement	62
5-205 Operation and Maintenance	62
5-3 MOBILE WATER TANK AND MOBILE FOOD ESTABLISHMENT WATER TANK	63
5-301 Materials	63
5-302 Design and Construction	63
5-303 Numbers and Capacities	64
5-304 Operation and Maintenance	64
5-4 SEWAGE, OTHER LIQUID WASTE, AND RAINWATER	64
5-401 Mobile Holding Tank	64
5-402 Retention, Drainage, and Delivery	64
5-403 Disposal Facility	65
5-5 REFUSE, RECYCLABLES, AND RETURNABLES	65
5-501 Facilities on the Premises	65
5-502 Removal	67
5-503 Facilities for Disposal and Recycling	67
Chapter 6 Physical Facilities	67
6-1 MATERIALS FOR CONSTRUCTION AND REPAIR	67
6-101 Indoor Areas	67
6-102 Outdoor Areas	68
6-2 DESIGN, CONSTRUCTION, AND INSTALLATION	68
6-201 Cleanability	68
6-202 Functionality	69
6-3 NUMBERS AND CAPACITIES	71
6-301 Handwashing Facilities	71
6-302 Toilets and Urinals	71
6-303 Lighting	72
6-304 Ventilation	72
6-305 Dressing Areas and Lockers	72
6-306 Service Sinks	72
6-4 LOCATION AND PLACEMENT	72
6-401 Handwashing Facilities	72
6-402 Toilet Rooms	72
6-403 Employee Accommodations	72
6-404 Distressed Merchandise	72
6-405 Refuse, Recyclables, and Returnables	72
6-5 MAINTENANCE AND OPERATION	73
6-501 Premises, Structures, Attachments, and Fixtures - Methods	73
Chapter 7 Poisonous or Toxic Materials	75

7-1 LABELING AND IDENTIFICATION	75
7-101 Original Containers.....	75
7-102 Working Containers.....	75
7-2 OPERATIONAL SUPPLIES AND APPLICATIONS.....	75
7-201 Storage	75
7-202 Presence and Use	75
7-203 Container Prohibitions.....	76
7-204 Chemicals	76
7-205 Lubricants	76
7-206 Pesticides	77
7-207 Medicines.....	77
7-208 First Aid Supplies	77
7-209 Other Personal Care Items	77
7-3 STOCK AND RETAIL SALE.....	77
7-301 Storage and Display	77
Chapter 8 Compliance and Enforcement.....	78
8-1 CODE APPLICABILITY	78
8-101 Use for Intended Purpose.....	78
8-102 Additional Requirements.....	78
8-103 Variances	78
8-2 PLAN SUBMISSION AND APPROVAL	79
8-201 Facility and Operating Plans.....	79
8-202 Confidentiality	80
8-203 Construction Inspection and Approval	80
8-3 PERMIT TO OPERATE	80
8-301 Requirement.....	80
8-302 Application Procedure	81
8-303 Issuance.....	83
8-304 Conditions of Retention.....	83
8-4 INSPECTION AND CORRECTION OF VIOLATIONS.....	84
8-401 Frequency.....	84
8-402 Access	85
8-403 Report of Findings	85
8-404 Imminent Health Hazard.....	86
8-405 Critical Violation	87
8-406 Noncritical Violation	87
8-5 PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES	87
8-501 Investigation and Control.....	87
8-6 NOTICES.....	88
8-601 Service of Notice	88
8-7 REMEDIES	89
8-701 Criteria for Seeking Remedies.....	89
8-702 Holding, Examination, and Destruction of Food.....	89
8-703 Hearing Administration	90
8-704 Civil Proceedings	90
9-1 Statutory Authority.....	90

10-1 Effective Date.....90

INFORMATION TO ASSIST THE USER

Many of the improvements contained in the Food Code are provided to make the document easier to use. Other characteristics, if they are understood by the user, make it easier to follow and apply. These include structure, nomenclature, and methodology.

Food Code provisions address essentially four areas: personnel (Chapter 2), food (Chapter 3), equipment/facilities/supplies (Chapters 4,5,6,7), and compliance and enforcement (Chapter 8). A new user will find it helpful to review the table of contents in order to quickly gain an understanding of the scope and sequence of subjects included within these four areas.

The structural nomenclature of the document is as follows: **(EXAMPLE ONLY)**

Chapter 9

Part 9-1

Subpart 9-101

Section (§) 9-101.11

Paragraph (¶) 9-101.11(A)

Subparagraph 9-101.11(A)(1)

Internal cross referencing is widely used throughout the document to eliminate the need for restating provisions. For example, fixtures and devices necessary for handwashing are relevant to both the plumbing (Chapter 5) and the facilities (Chapter 6) portions. To alert the reader to relevant information and provide a system by which each violation is recorded under the one most appropriate provision, the Code uses the phrase "...as specified under (followed by a Code cite such as a section or paragraph)." It must be determined within the context of the provision whether the cross reference simply provides information to explain the requirement or whether the observed violation is properly recorded against the provision that is cited after the word "under."

The Food Code presents requirements by principle rather than by subject. For example, equipment requirements are presented under headings such as Materials, Design and Construction, Numbers and Capacities, Location and Installation, and Maintenance and Operation rather than by refrigerators, sinks, and thermometers. In this way provisions need be stated only once rather than repeated for each piece or category of equipment. Where there are special requirements for certain equipment, the requirement is delineated under the appropriate principle (e.g., Design and Construction) and listed separately in the index.

Portions of some sections are written in italics. These provisions are not requirements, but are provided to convey relevant information about specific exceptions and alternative means for compliance.

Requirements contained in the Food Code are presented as being in one of 3 categories of importance: critical; "swing" (i.e., those that may or may not be critical depending on the circumstances); and noncritical. An asterisk * after a tagline (which is the language immediately following a section number that introduces the subject of the section) indicates that all of the provisions within that section are critical unless otherwise indicated, as follows:

Any provisions that are "swing" items, are followed by the bold, superscripted letter S and any provisions that are noncritical are followed by the bold, superscripted letter N.

Any unmarked provisions within a section that has an asterisked tagline are critical. All provisions following a tagline that is not marked with an asterisk are noncritical.

Defined words and terms are capitalized in the text of the Food Code chapters to alert the reader to the fact that there is a specific meaning assigned to those words and terms and that the meaning of a provision is to be interpreted in the defined context. A concerted effort was also made to capitalize all forms and combinations of those defined words and terms that were intended to carry the weight of the definition.

Chapter 1 Purpose and Definitions

1-1 TITLE, INTENT, SCOPE

1-101 Title

1-101.10 Food Code.

These provisions shall be known as the Food Code, hereinafter referred to as "this Code."

1-102 Intent

1-102.10 Food Safety, Illness Prevention, and Honest Presentation.

The purpose of this Code is to safeguard public health and provide to CONSUMERS FOOD that is safe, UNADULTERATED, and honestly presented.

1-103 Scope

1-103.10 Statement.

This Code establishes definitions; sets standards for management and personnel, FOOD operations, and EQUIPMENT and facilities; and provides for FOOD ESTABLISHMENT plan review, PERMIT issuance, inspection, EMPLOYEE restriction, and PERMIT suspension.

1-2 DEFINITIONS

1-201 Applicability and Terms Defined

1-201.10 Statement of Application and Listing of Terms.

(A) The following definitions apply in the interpretation and application of this Code.

(B) Terms Defined.

(1) Accredited program.

(a) "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

(b) "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.

(c) "Accredited program" does not refer to training functions or educational programs.

(2) Additive.

(a) "Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, §201(s) and 21 CFR 170.

(b) "Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, §201(t) and 21 CFR 70.

(3) "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, §402 and as stated in 22 MRSA §2156.

(4) "Approved" means acceptable to the REGULATORY AUTHORITY based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(5) " a_w " means water activity which is a measure of the free moisture in a FOOD, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w .

- (6) **"Bed and Breakfast"** is a unique Food Establishment where the general public can stay overnight, and are provided with a "limited menu," serving only a breakfast meal. This meal can be either a full or continental breakfast. Unlike other FOOD ESTABLISHMENTS the meal is prepared in the private home.
- (7) **"Beverage"** means a liquid for drinking, including water.
- (8) **"Bottled drinking water"** means water that is SEALED in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.
- (9) **"Certification number"** means a unique combination of letters and numbers assigned by a SHELLFISH CONTROL AUTHORITY to a MOLLUSCAN SHELLFISH dealer according to the provisions of the National Shellfish Sanitation Program.
- (10) **CIP.**
- (a) **"CIP"** means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and SANITIZING solution onto or over EQUIPMENT surfaces that require cleaning, such as the method used, in part, to clean and SANITIZE a frozen dessert machine.
- (b) **"CIP"** does not include the cleaning of EQUIPMENT such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.
- (11) **"CFR"** means CODE OF FEDERAL REGULATIONS. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.
- (12) **"Code of Federal Regulations"** means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which:
- (a) Is published annually by the U.S. Government Printing Office; and
- (b) Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries rules in 50 CFR.
- (13) **Comminuted.**
- (a) **"Comminuted"** means reduced in size by methods including chopping, flaking, grinding, or mincing.
- (b) **"Comminuted"** includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of 2 or more types of MEAT that have been reduced in size and combined, such as sausages made from 2 or more MEATS.
- (14) **"Confirmed disease outbreak"** means a FOODBORNE DISEASE OUTBREAK in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the FOOD as the source of the illness.
- (15) **"Consumer"** means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an operator of a FOOD ESTABLISHMENT or FOOD PROCESSING PLANT, and does not offer the FOOD for resale.
- (16) **"Corrosion-resistant material"** means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the FOOD to be contacted, the normal use of cleaning compounds and SANITIZING solutions, and other conditions of the use environment.
- (17) **"Critical control point"** means a point or procedure in a specific FOOD system where loss of control may result in an unacceptable health risk.

(18) Critical Item.

(a) **"Critical item"** means a provision of this Code, that, if in noncompliance, is more likely than other violations to contribute to FOOD contamination, illness, or environmental health HAZARD.

(b) **"Critical item"** is an item that is denoted in this Code with an asterisk *.

(19) **"Critical limit"** means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a CRITICAL CONTROL POINT to minimize the risk that the identified FOOD safety HAZARD may occur.

(20) Drinking Water.

(a) **"Drinking water"** means water that meets 40 CFR 141 National Primary Drinking Water Regulations, State of Maine Rules Relating to Drinking Water (Chapter 231, CMR 10-144), and Maine law, Chapter 601 Water for Human Consumption, 22 MRSA §2601 et seq.

(b) **"Drinking water"** is traditionally known as "potable water."

(c) **"Drinking water"** includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(21) **"Dry storage area"** means a room or area designated for the storage of PACKAGED or containerized bulk FOOD that is not POTENTIALLY HAZARDOUS and dry goods such as SINGLE-SERVICE items.

(22) Easily Cleanable.

(a) **"Easily cleanable"** means a characteristic of a surface that:

(i) Allows effective removal of soil by normal cleaning methods;

(ii) Is dependent on the material, design, construction, and installation of the surface; and

(iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into FOOD based on the surface's APPROVED placement, purpose, and use.

(b) **"Easily cleanable"** includes a tiered application of the criteria that qualify the surface as EASILY CLEANABLE as specified under Subparagraph (a) of this definition to different situations in which varying degrees of cleanability are required such as:

(i) The appropriateness of stainless steel for a FOOD preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for CONSUMER dining; or

(ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the CONSUMER dining area.

(23) "Easily movable" means:

(a) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of EQUIPMENT for cleaning; and

(b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the EQUIPMENT to be moved for cleaning of the EQUIPMENT and adjacent area.

(24) **"Employee"** means the PERMIT HOLDER, PERSON IN CHARGE, PERSON having supervisory or management duties, PERSON on the payroll, family member, PERSON performing work under contractual agreement, or other PERSON working in a FOOD ESTABLISHMENT. Volunteers providing services in a FOOD ESTABLISHMENT are subject to the same standards as other EMPLOYEES.

(25) "EPA" means the U.S. Environmental Protection Agency.

(26) Equipment.

(a) "**Equipment**" means an article that is used in the operation of a FOOD ESTABLISHMENT such as a freezer, grinder, hood, ice maker, MEAT block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, TEMPERATURE MEASURING DEVICE for ambient air, VENDING MACHINE, or WAREWASHING machine.

(b) "**Equipment**" does not include items used for handling or storing large quantities of PACKAGED FOODS that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

(27) Fish.

(a) "**Fish**" means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(b) "**Fish**" includes an edible human FOOD product derived in whole or in part from FISH, including FISH that have been processed in any manner.

(28) "**Food**" means a raw, cooked, or processed edible substance, ice, BEVERAGE, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(29) "**Foodborne disease outbreak**" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

(30) "**Food-contact surface**" means:

(a) A surface of EQUIPMENT or a UTENSIL with which FOOD normally comes into contact; or

(b) A surface of EQUIPMENT or a UTENSIL from which FOOD may drain, drip, or splash:

(i) Into a FOOD, or

(ii) Onto a surface normally in contact with FOOD.

(31) "**Food employee**" means an individual working with unPACKAGED FOOD, FOOD EQUIPMENT or UTENSILS, or FOOD-CONTACT SURFACES.

(32) Food Establishment.

(a) "**Food establishment**" For the purposes of this rule, Food Establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides FOOD for human consumption:

(i) Such as a restaurant; satellite or catered food service location; catering operation if the operation provides FOOD directly to a CONSUMER or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; FOOD bank; or other FOOD ESTABLISHMENT as defined in, but not limited to, 22 MRSA §2152 (4A) or Eating Establishment as defined in 22 MRSA §2491(7); and

(ii) That relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(b) "**Food establishment**" includes:

(i) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location *unless the vending or feeding location is PERMITTED by the REGULATORY AUTHORITY*; and

(ii) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the PREMISES.

(c) "Food establishment" does not include:

- (i) An establishment that offers only prePACKAGED FOODS that are not POTENTIALLY HAZARDOUS*
- (ii) A produce stand that only offers whole, uncut fresh fruits and vegetables; Establishments such as farm stands and farmers' markets primarily selling fresh produce not including dairy and meat products;*
- (iii) Storage facilities for native produce;*
- (iv) Fish and shellfish processing establishments inspected under Title 12, section 4682, 6101, 6102 or 6856;*
- (v) Establishments engaged in the washing, cleaning or sorting of whole produce provided the produce remains in essentially the same condition as when harvested. The whole produce may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; and*
- (vi) Establishments that are engaged in the drying of single herbs that are generally recognized as safe under Chapter 21 of the US Code of Federal Regulations, Sections 182 to 189. Single herbs may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process.*
- (vii) A FOOD PROCESSING PLANT; or*
- (viii) A private home that receives catered or home-delivered FOOD.*

(33) Food Processing Plant.

(a) "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores FOOD for human consumption and does not provide FOOD directly to a CONSUMER.

(b) "Food processing plant" does not include a FOOD ESTABLISHMENT as defined under Subparagraph 1-201.10(B)(31).

(34) Game Animal.

(a) "Game animal" means an animal, the products of which are FOOD, that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR Subchapter A - Mandatory Meat Inspection, Part 301, as Poultry in 9 CFR Subchapter C - Mandatory Poultry Products Inspection, Part 381, or as FISH as defined under Subparagraph 1-201.10(B)(26).

(b) "Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(c) "Game animal" does not include ratites such as ostrich, emu, and rhea.

(35) "General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

(36) "Grade A standards" means the requirements of 7 MRSA §2910 with which certain fluid and dry milk and milk products comply.

(37) Group Residence.

(a) "Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals.

(b) "Group residence" includes a domicile for unrelated PERSONS such as a retirement home or a long-term health care facility.

- (38) **"HACCP plan"** means a written document that delineates the formal procedures for following the HAZARD Analysis CRITICAL CONTROL POINT principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- (39) **"Hazard"** means a biological, chemical, or physical property that may cause an unacceptable CONSUMER health risk.
- (40) **"Hermetically sealed container"** means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned FOODS, to maintain the commercial sterility of its contents after processing.
- (41) **"Highly susceptible population"** means a group of PERSONS who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.
- (42) **"Imminent health hazard"** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:
- (a) The number of potential injuries, or
 - (b) The nature, severity, and duration of the anticipated injury.
- (43) **"Injected"** means manipulating a MEAT so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the MEAT such as by processes which may be referred to as "injecting," "pinning," or "stitch pumping."
- (44) **"Juice"**, when used in the context of FOOD safety, means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or purée. This definition does not apply to standards of identity.
- (45) **"Kitchenware"** means FOOD preparation and storage UTENSILS.
- (46) **"Law"** means applicable local, state, and federal statutes, regulations, and ordinances.
- (47) **"Linens"** means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
- (48) **"Meat"** means the flesh of animals used as FOOD including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, *except fish, poultry, and wild game animals as specified under Subparagraphs 3-201.17(A)(3) and (4).*
- (49) **"mg/L"** means milligrams per liter, which is the metric equivalent of parts per million (ppm).
- (50) **"Molluscan shellfish"** means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, *except when the scallop product consists only of the shucked adductor muscle.*
- (51) **Packaged.**
- (a) **"Packaged"** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether PACKAGED in a FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT.
 - (b) **"Packaged"** does not include a wrapper, carry-out box, or other nondurable container used to containerize FOOD with the purpose of facilitating FOOD protection during service and receipt of the FOOD by the CONSUMER.
- (52) **"Permit"** means the license issued by the REGULATORY AUTHORITY that authorizes a PERSON to operate a FOOD ESTABLISHMENT.

(53) **"Permit holder"** means the entity that:

(a) Is legally responsible for the operation of the FOOD ESTABLISHMENT such as the owner, the owner's agent, or other PERSON; and

(b) Possesses a valid PERMIT to operate a FOOD ESTABLISHMENT.

(54) **"Person"** means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

(55) **"Person in charge"** means the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time of inspection.

(56) **Personal Care Items.**

(a) **"Personal care items"** means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a PERSON'S health, hygiene, or appearance.

(b) **"Personal care items"** include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(57) **"pH"** means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

(58) **"Physical facilities"** means the structure and interior surfaces of a FOOD ESTABLISHMENT including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(59) **"Plumbing fixture"** means a receptacle or device that:

(a) Is permanently or temporarily connected to the water distribution system of the PREMISES and demands a supply of water from the system; or

(b) Discharges used water, waste materials, or SEWAGE directly or indirectly to the drainage system of the PREMISES.

(60) **"Plumbing system"** means the water supply and distribution pipes; PLUMBING FIXTURES and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the PREMISES; and water-treating EQUIPMENT.

(61) **"Poisonous or toxic materials"** means substances that are not intended for ingestion and are included in 4 categories:

(a) Cleaners and SANITIZERS, which include cleaning and SANITIZING agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b) Pesticides, *except* SANITIZERS, which include substances such as insecticides and rodenticides;

(c) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and PERSONAL CARE ITEMS that may be deleterious to health; and

(d) Substances that are not necessary for the operation and maintenance of the establishment and are on the PREMISES for retail sale, such as petroleum products and paints.

(62) **Potentially Hazardous Food.**

(a) **"Potentially hazardous food"** means a FOOD that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

(i) The rapid and progressive growth of infectious or toxigenic microorganisms;

(ii) The growth and toxin production of *Clostridium botulinum*; or

(iii) In raw shell eggs, the growth of *Salmonella Enteritidis*.

(b) "**Potentially hazardous food**" includes an animal FOOD (a FOOD of animal origin) that is raw or heat-treated; a FOOD of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.

(c) "**Potentially hazardous food**" does not include:

(i) An air-cooled hard-boiled egg with shell intact;

(ii) A FOOD with an a_w value of 0.85 or less;

(iii) A FOOD with a pH level of 4.6 or below when measured at 24°C (75°F);

(iv) A FOOD, in an unopened HERMETICALLY SEALED CONTAINER, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(v) A FOOD for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. Enteritidis* in eggs or *C. botulinum* can not occur, such as a FOOD that has an a_w and a pH that are above the levels specified under Subparagraphs (c)(ii) and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

(vi) A FOOD that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition even though the FOOD may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

(63) Poultry.

(a) "**Poultry**" means:

(i) Any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR 381 Poultry Products Inspection Regulations; and

(ii) Any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, whether live or dead, as defined in 9 CFR 362 Voluntary Poultry Inspection Program.

(b) "**Poultry**" does not include ratites.

(64) "Premises" means:

(a) The physical facility, its contents, and the contiguous land or property under the control of the PERMIT HOLDER; or

(b) The physical facility, its contents, and the land or property not described under Subparagraph (a) of this definition if its facilities and contents are under the control of the PERMIT HOLDER and may impact FOOD ESTABLISHMENT personnel, facilities, or operations, and a FOOD ESTABLISHMENT is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(65) "Primal cut" means a basic major cut into which carcasses and sides of MEAT are separated, such as a beef round, pork loin, lamb flank, or veal breast.

(66) "Public water system" has the meaning stated in 40 CFR 141 National Primary Drinking Water Regulations. Specifically, a Public Water System means any publicly or privately owned system of pipes or other constructed conveyances, structures and facilities through which water is obtained for or sold, furnished or distributed to the public for human consumption if such a system has at least 15 service connections, regularly serves an average of at least 25 individuals daily at least 60 days out of the year or bottles water for sale. Any publicly or privately owned system that only stores and distributes water without treating or collecting it; obtains all its water from, but is not owned or operated by, a public water system; and does not sell water or bottled water to any person is not a "public water system." The term "public water system" includes any collection, treatment, storage or distribution pipes or other constructed conveyances, structures or facilities under the control of the supplier of water and used primarily in connection with such a system, and any collection or pretreatment storage facilities not under that control that are used primarily in connection with such a system. The system does not include the portion of service pipe owned and maintained by a customer of the public water system.

(67) Ready-to-Eat Food.

(a) "Ready-to-eat food" means FOOD that is in a form that is edible without washing, cooking, or additional preparation by the FOOD ESTABLISHMENT or the CONSUMER and that is reasonably expected to be consumed in that form.

(b) "Ready-to-eat food" includes:

- (i)** POTENTIALLY HAZARDOUS FOOD that is unPACKAGED and cooked to the temperature and time required for the specific FOOD under Subpart 3-401;
- (ii)** Raw, washed, cut fruits and vegetables;
- (iii)** Whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and
- (iv)** Other FOOD presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

(68) Reduced Oxygen Packaging.

(a) "Reduced oxygen packaging" means:

- (i)** The reduction of the amount of oxygen in a PACKAGE by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding, 21% oxygen atmosphere, and
- (ii)** A process as specified in Subparagraph (a)(1) of this definition that involves a FOOD for which *Clostridium botulinum* is identified as a microbiological HAZARD in the final PACKAGED form.

(b) "Reduced oxygen packaging" includes:

- (i)** Vacuum PACKAGING, in which air is removed from a PACKAGE of FOOD and the PACKAGE is HERMETICALLY SEALED so that a vacuum remains inside the PACKAGE, such as sous vide;
- (ii)** Modified atmosphere PACKAGING, in which the atmosphere of a PACKAGE of FOOD is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the PACKAGING material or the respiration of the FOOD. Modified atmosphere PACKAGING includes: reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen; and

- (iii) Controlled atmosphere PACKAGING, in which the atmosphere of a PACKAGE of FOOD is modified so that until the PACKAGE is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.
- (69) "**Refuse**" means solid waste not carried by water through the SEWAGE system.
- (70) "**Regulatory authority**" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the FOOD ESTABLISHMENT. The state REGULATORY AUTHORITY means the Department of Human Services or the Department of Agriculture, Food and Rural Resources.
- (71) "**Restricted use pesticide**" Shall have the same meaning as in 22 MRSA §1471-C (23).
- (72) "**Safe material**" means:
- (a) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any FOOD;
 - (b) An additive that is used as specified in §409 or 706 of the Federal Food, Drug, and Cosmetic Act; or
 - (c) Other materials that are not ADDITIVES and that are used in conformity with applicable regulations of the Food and Drug Administration.
- (73) "**Sanitization**" means the application of cumulative heat or chemicals on cleaned FOOD-CONTACT SURFACES that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.
- (74) "**Sealed**" means free of cracks or other openings that allow the entry or passage of moisture.
- (75) "**Service animal**" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.
- (76) "**Servicing area**" means an operating base location to which a mobile FOOD ESTABLISHMENT or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding FOOD.
- (77) "**Sewage**" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.
- (78) "**Shellfish control authority**" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of MOLLUSCAN SHELLFISH harvesters and dealers for interstate commerce.
- (79) "**Shellstock**" means raw, in-shell MOLLUSCAN SHELLFISH.
- (80) "**Shucked shellfish**" means MOLLUSCAN SHELLFISH that have one or both shells removed.
- (81) "**Single-service articles**" means TABLEWARE, carry-out UTENSILS, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one PERSON use after which they are intended for discard.
- (82) **Single-Use Articles.**
- (a) "**Single-use articles**" means UTENSILS and bulk FOOD containers designed and constructed to be used once and discarded.
 - (b) "**Single-use articles**" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum FOOD containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under §§4-101.11, 4-201.11, and 4-202.11 for multiuse UTENSILS.

- (83) "**Slacking**" means the process of moderating the temperature of a FOOD such as allowing a FOOD to gradually increase from a temperature of -23°C (-10°F) to -4°C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen FOOD such as spinach.
- (84) "**Smooth**" means:
- (a) A FOOD-CONTACT SURFACE having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;
 - (b) A nonFOOD-CONTACT SURFACE of EQUIPMENT having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and
 - (c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.
- (85) "**Table-mounted equipment**" means EQUIPMENT that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.
- (86) "**Tableware**" means eating, drinking, and serving UTENSILS for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.
- (87) "**Temperature measuring device**" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of FOOD, air, or water.
- (88) "**Temporary food establishment**" means a FOOD ESTABLISHMENT that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.
- (89) "**USDA**" means the U.S. Department of Agriculture.
- (90) "**Utensil**" means a FOOD-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of FOOD, such as KITCHENWARE or TABLEWARE that is multiuse, SINGLE-SERVICE, or SINGLE-USE; gloves used in contact with FOOD; FOOD TEMPERATURE MEASURING DEVICES; and probe-type price or identification tags used in contact with FOOD.
- (91) "**Variance**" means a written document issued by the REGULATORY AUTHORITY that authorizes a modification or waiver of one or more requirements of this Code if, in the opinion of the REGULATORY AUTHORITY, a health HAZARD or nuisance will not result from the modification or waiver.
- (92) "**Vending machine**" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of FOOD in bulk or in packages without the necessity of replenishing the device between each vending operation.
- (93) "**Vending machine location**" means the room, enclosure, space, or area where one or more VENDING MACHINES are installed and operated and includes the storage areas and areas on the PREMISES that are used to service and maintain the VENDING MACHINES.
- (94) "**Warewashing**" means the cleaning and SANITIZING of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT.
- (95) "**Whole-muscle, intact beef**" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

Chapter 2 Management and Personnel

2-1 SUPERVISION

2-101 Responsibility

2-101.11 Assignment.*

The PERMIT HOLDER shall be the PERSON IN CHARGE or shall designate a PERSON IN CHARGE and shall ensure that a PERSON IN CHARGE is present at the FOOD ESTABLISHMENT during all hours of operation.

2-102 Knowledge

2-102.11 Demonstration.*

Based on the risks of foodborne illness inherent to the FOOD operation, during inspections and upon request the PERSON IN CHARGE shall demonstrate to the REGULATORY AUTHORITY knowledge of foodborne disease prevention, application of the HAZARD Analysis CRITICAL CONTROL POINT principles, and the requirements of this Code. The PERSON IN CHARGE shall demonstrate this knowledge by compliance with this Code, by being a certified FOOD protection manager who has shown proficiency of required information through passing a test that is part of an ACCREDITED PROGRAM, or by responding correctly to the inspector's questions as they relate to the specific FOOD operation. The areas of knowledge include:

- (A) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a FOOD EMPLOYEE;
- (B) Explaining the responsibility of the PERSON IN CHARGE for preventing the transmission of foodborne disease by a FOOD EMPLOYEE who has a disease or medical condition that may cause foodborne disease;
- (C) Describing the symptoms associated with the diseases that are transmissible through FOOD;
- (D) Explaining the significance of the relationship between maintaining the time and temperature of POTENTIALLY HAZARDOUS FOOD and the prevention of foodborne illness;
- (E) Explaining the HAZARDS involved in the consumption of raw or undercooked MEAT, POULTRY, eggs, and FISH.
- (F) Stating the required FOOD temperatures and times for safe cooking of POTENTIALLY HAZARDOUS FOOD including MEAT, POULTRY, eggs, and FISH.
- (G) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of POTENTIALLY HAZARDOUS FOOD;
- (H) Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (1) Cross contamination
 - (2) Hand contact with READY-TO-EAT FOODS,
 - (3) Handwashing, and
 - (4) Maintaining the FOOD ESTABLISHMENT in a clean condition and in good repair;
- (I) Explaining the relationship between FOOD safety and providing EQUIPMENT that is:
 - (1) Sufficient in number and capacity, and
 - (2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;
- (J) Explaining correct procedures for cleaning and SANITIZING UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT;

- (K) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;
- (L) Identifying POISONOUS OR TOXIC MATERIALS in the FOOD ESTABLISHMENT and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to LAW;
- (M) Identifying CRITICAL CONTROL POINTS in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this Code;
- (N) Explaining the details of how the PERSON IN CHARGE and FOOD EMPLOYEES comply with the HACCP PLAN if a plan is required by the LAW, this Code, or an agreement between the REGULATORY AUTHORITY and the establishment; and
- (O) Explaining the responsibilities, rights, and authorities assigned by this Code to the:
 - (1) FOOD EMPLOYEE,
 - (2) PERSON IN CHARGE, and
 - (3) REGULATORY AUTHORITY.

2-102.12 Certified Food Protection Manager Required

- (A) Establishments requiring 2 repeat inspections due to multiple critical violations may be required to employ a certified food protection manager.
- (B) Establishments involved in a foodborne disease outbreak may be required to employ a certified food protection manager.

2-103 Duties

2-103.11 Person in Charge.

The PERSON IN CHARGE shall ensure that:

- (A) FOOD ESTABLISHMENT operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under §6-202.111; unless such establishment is a Bed and Breakfast licensed by the Department of Human Services or a home business licensed by the Department of Agriculture Food and Rural Resources, or any other establishment specifically exempted by LAW.
- (B) PERSONS unnecessary to the FOOD ESTABLISHMENT operation are not allowed in the FOOD preparation, FOOD storage, or WAREWASHING areas, except that brief visits and tours may be authorized by the PERSON IN CHARGE if steps are taken to ensure that exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination;
- (C) EMPLOYEES and other PERSONS such as delivery and maintenance PERSONS and pesticide applicators entering the FOOD preparation, FOOD storage, and WAREWASHING areas comply with this Code;
- (D) EMPLOYEES are effectively cleaning their hands, by routinely monitoring the EMPLOYEES' handwashing;
- (E) EMPLOYEES are visibly observing FOODS as they are received to determine that they are from APPROVED sources, delivered at the required temperatures, protected from contamination, UNADULTERATED, and accurately presented, by routinely monitoring the EMPLOYEES' observations and periodically evaluating FOODS upon their receipt;
- (F) EMPLOYEES are properly cooking POTENTIALLY HAZARDOUS FOOD, being particularly careful in cooking those FOODS known to cause severe foodborne illness and death, such as eggs and COMMINUTED MEATS, through daily oversight of the EMPLOYEES' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under §4-203.11 and ¶ 4-502.11(B);

- (G) EMPLOYEES are using proper methods to rapidly cool POTENTIALLY HAZARDOUS FOODS that are not held hot or are not for consumption within 4 hours, through daily oversight of the EMPLOYEES' routine monitoring of FOOD temperatures during cooling;
- (H) CONSUMERS who order raw or partially cooked READY-TO-EAT FOODS of animal origin are informed as specified under §3-603.11 that the FOOD is not cooked sufficiently to ensure its safety;
- (I) EMPLOYEES are properly SANITIZING cleaned multiuse EQUIPMENT and UTENSILS before they are reused, through routine monitoring of solution temperature and exposure time for hot water SANITIZING, and chemical concentration, pH, temperature, and exposure time for chemical SANITIZING;
- (J) CONSUMERS are notified that clean TABLEWARE is to be used when they return to self-service areas such as salad bars and buffets as specified under §3-304.16;
- (K) EMPLOYEES are preventing cross-contamination of READY-TO-EAT FOOD with bare hands by properly using suitable UTENSILS such as deli tissue, spatulas, tongs, single-use gloves, or dispensing EQUIPMENT; and
- (L) EMPLOYEES are properly trained in FOOD safety as it relates to their assigned duties.

2-2 EMPLOYEE HEALTH

2-201 Disease or Medical Condition

2-201.11 Responsibility of the Person in Charge to Require Reporting by Food Employees and Applicants.*

The PERMIT HOLDER shall require FOOD EMPLOYEE applicants to whom a conditional offer of employment is made and FOOD EMPLOYEES to report to the PERSON IN CHARGE, information about their health and activities as they relate to diseases that are transmissible through FOOD. A FOOD EMPLOYEE or applicant shall report the information in a manner that allows the PERSON IN CHARGE to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified under ¶ (C) of this section, if the FOOD EMPLOYEE or applicant:

- (A) Is diagnosed with an illness due to:
- (1) *Salmonella Typhi*,
 - (2) *Shigella* spp.,
 - (3) *Escherichia coli* O157:H7, or
 - (4) Hepatitis A virus;
- (B) Has a symptom caused by illness, infection, or other source that is:
- (1) Associated with an acute gastrointestinal illness such as:
 - (a) Diarrhea,
 - (b) Fever,
 - (c) Vomiting,
 - (d) Jaundice, or
 - (e) Sore throat with fever, or
 - (2) A lesion containing pus such as a boil or infected wound that is open or draining and is:
 - (a) On the hands or wrists, *unless an impermeable cover such as a finger cot or stall protects the lesion and a SINGLE-USE glove is worn over the impermeable cover,*
 - (b) On exposed portions of the arms, *unless the lesion is protected by an impermeable cover, or*
 - (c) On other parts of the body, *unless the lesion is covered by a dry, durable, tight-fitting bandage;*
- (C) Had a past illness from an infectious agent specified under ¶ (A) of this section; or

- (D) Meets one or more of the following high-risk conditions:
- (1) Is suspected of causing, or being exposed to, a CONFIRMED DISEASE OUTBREAK caused by *S. Typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus including an outbreak at an event such as a family meal, church supper, or festival because the FOOD EMPLOYEE or applicant:
 - (a) Prepared FOOD implicated in the outbreak,
 - (b) Consumed FOOD implicated in the outbreak, or
 - (c) Consumed FOOD at the event prepared by a PERSON who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent,
 - (2) Lives in the same household as a PERSON who is diagnosed with a disease caused by *S. Typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus, or
 - (3) Lives in the same household as a PERSON who attends or works in a setting where there is a confirmed disease outbreak caused by *S. Typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus.

2-201.12 Exclusions and Restrictions.*

The PERSON IN CHARGE shall:

- (A) Exclude a FOOD EMPLOYEE from a FOOD ESTABLISHMENT if the FOOD EMPLOYEE is diagnosed with an infectious agent specified under ¶ 2-201.11(A);
- (B) Except as specified under ¶ (C) or (D) of this section, restrict a FOOD EMPLOYEE from working with exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES, in a FOOD ESTABLISHMENT if the FOOD EMPLOYEE is:
 - (1) Suffering from a symptom specified under ¶ 2-201.11(B), or
 - (2) Not experiencing a symptom of acute gastroenteritis specified under Subparagraph 2-201.11(B)(1) but has a stool that yields a specimen culture that is positive for *Salmonella Typhi*, *Shigella* spp., or *Escherichia coli* O157:H7;
- (C) If the population served is a HIGHLY SUSCEPTIBLE POPULATION, exclude a FOOD EMPLOYEE who:
 - (1) Is experiencing a symptom of acute gastrointestinal illness specified under Subparagraph 2-201.11(B)(1) and meets a high-risk condition specified under Subparagraphs 2-201.11(D)(1)-(3),
 - (2) Is not experiencing a symptom of acute gastroenteritis specified under Subparagraph 2-201.11(B)(1) but has a stool that yields a specimen culture that is positive for *S. Typhi*, *Shigella* spp., or *E. coli* O157:H7,
 - (3) Had a past illness from *S. Typhi* within the last 3 months, or
 - (4) Had a past illness from *Shigella* spp. or *E. coli* O157:H7 within the last month; and
- (D) For a FOOD EMPLOYEE who is jaundiced:
 - (1) If the onset of jaundice occurred within the last 7 calendar days, exclude the FOOD EMPLOYEE from the FOOD ESTABLISHMENT, or
 - (2) If the onset of jaundice occurred more than 7 calendar days before:
 - (a) Exclude the FOOD EMPLOYEE from a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION, or
 - (b) Restrict the FOOD EMPLOYEE from activities specified under ¶ 2-201.12(B), if the FOOD ESTABLISHMENT does not serve a HIGHLY SUSCEPTIBLE POPULATION.

2-201.13 Removal of Exclusions and Restrictions.

- (A) The PERSON IN CHARGE may remove an exclusion specified under ¶ 2-201.12(A) if:
 - (1) The PERSON IN CHARGE obtains approval from the REGULATORY AUTHORITY; and

- (2) The PERSON excluded as specified under ¶ 2-201.12(A) provides to the PERSON IN CHARGE written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, that specifies that the excluded PERSON may work in an unrestricted capacity in a FOOD ESTABLISHMENT, including an establishment that serves a HIGHLY SUSCEPTIBLE POPULATION, because the PERSON is free of the infectious agent of concern as specified in §8-501.40.
- (B) The PERSON IN CHARGE may remove a restriction specified under:
- (1) Subparagraph 2-201.12(B)(1) if the restricted PERSON:
- (a) Is free of the symptoms specified under ¶ 2-201.11(B) and no foodborne illness occurs that may have been caused by the restricted PERSON,
- (b) Is suspected of causing foodborne illness but:
- (i) Is free of the symptoms specified under ¶ 2-201.11(B), and
- (ii) Provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, stating that the restricted PERSON is free of the infectious agent that is suspected of causing the PERSON'S symptoms or causing foodborne illness, as specified in §8-501.40, or
- (c) Provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or
- (2) Subparagraph 2-201.12(B)(2) if the restricted PERSON provides written medical documentation from a physician, licensed to practice medicine, or, if allowed by LAW, a nurse practitioner or physician assistant, according to the criteria specified in §8-501.40 that indicates the stools are free of *Salmonella Typhi*, *Shigella* spp., or *E. coli* O157:H7, whichever is the infectious agent of concern.
- (C) The PERSON IN CHARGE may remove an exclusion specified under ¶ 2-201.12(C) if the excluded PERSON provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant:
- (1) That specifies that the PERSON is free of:
- (a) The infectious agent of concern as specified in §8-501.40, or
- (b) Jaundice as specified under ¶ 2-201.13(D) if hepatitis A virus is the infectious agent of concern; or
- (2) If the PERSON is excluded under Subparagraph 2-201.12(C)(1), stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.
- (D) The PERSON IN CHARGE may remove an exclusion specified under Subparagraph 2-201.12(D)(1) and Subparagraph 2-201.12(D)(2)(a) and a restriction specified under Subparagraph 2-201.12(D)(2)(b) if:
- (1) No foodborne illness occurs that may have been caused by the excluded or restricted PERSON and the PERSON provides written medical documentation from a physician licensed to practice medicine or, if allowed by LAW, a nurse practitioner or physician assistant, that specifies that the PERSON is free of hepatitis A virus as specified in Subparagraph 8-501.40(D)(1); or
- (2) The excluded or restricted PERSON is suspected of causing foodborne illness and complies with the requirements in Subparagraphs 8-501.40(D)(1) and (D)(2).

2-210.14 Responsibility of a Food Employee or an Applicant to Report to the Person in Charge.*

A FOOD EMPLOYEE or a PERSON who applies for a job as a FOOD EMPLOYEE shall:

- (A) In a manner specified under §2-201.11, report to the PERSON IN CHARGE the information specified under ¶¶ 2-201.11(A)-(D); and
- (B) Comply with exclusions and restrictions that are specified under ¶¶ 2-201.12(A)-(D).

2-201.15 Reporting by the Person in Charge.*

The PERSON IN CHARGE shall notify the REGULATORY AUTHORITY that a FOOD EMPLOYEE is diagnosed with an illness due to *Salmonella Typhi*, *Shigella* spp., *Escherichia coli* O157:H7, or hepatitis A virus.

2-3 PERSONAL CLEANLINESS

2-301 Hands and Arms

2-301.11 Clean Condition.*

FOOD EMPLOYEES shall keep their hands and exposed portions of their arms clean.

2-301.12 Cleaning Procedure.*

- (A) Except as specified in ¶ (B) of this section, FOOD EMPLOYEES shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under ¶ 5-202.12 by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. EMPLOYEES shall pay particular attention to the areas underneath the fingernails and between the fingers.
- (B) *If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, an automatic handwashing facility may be used by food employees to clean their hands.*

2-301.13 Special Handwash Procedures.*

Reserved.

2-301.14 When to Wash.*

FOOD EMPLOYEES shall clean their hands and exposed portions of their arms as specified under §2-301.12 immediately before engaging in FOOD preparation including working with exposed FOOD, clean EQUIPMENT and UTENSILS, and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES and:

- (A) After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- (B) After using the toilet room;
- (C) After caring for or handling SERVICE ANIMALS or aquatic animals as specified in ¶ 2-403.11(B);
- (D) Except as specified in ¶ 2-401.11(B), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- (E) After handling soiled EQUIPMENT or UTENSILS;
- (F) During FOOD preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (G) When switching between working with raw FOOD and working with READY-TO-EAT FOOD; and
- (H) After engaging in other activities that contaminate the hands.

2-301.15 Where to Wash.

FOOD EMPLOYEES shall clean their hands in a handwashing lavatory or APPROVED automatic handwashing facility and may not clean their hands in a sink used for FOOD preparation, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

2-301.16 Hand Sanitizers.

(A) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

(1) Comply with one of the following:

(a) Be an APPROVED drug that is listed in the FDA publication **Approved Drug Products with Therapeutic Equivalence Evaluations** as an APPROVED drug based on safety and effectiveness; or

(b) Have active antimicrobial ingredients that are listed in:

(i) The FDA monograph for OTC Health-Care Antiseptic Drug Products as an antiseptic handwash, or

(ii) The USDA **List of Proprietary Substances and Nonfood Compounds**, Miscellaneous Publication No. 1419; and

(2) Comply with one of the following:

(a) Have components that are exempted from the requirement of being listed in federal FOOD ADDITIVE regulations as specified in 21 CFR 170.39 - Threshold of regulation for substances used in food-contact articles; or

(b) Comply with and be listed in:

(i) 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a FOOD ADDITIVE with conditions of safe use, or

(ii) 21 CFR 182 - Substances Generally Recognized as Safe, 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe for use in contact with FOOD; and

(3) Be applied only to hands that are cleaned as specified under §2-301.12.

(B) If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under Subparagraph (A)(2) of this section, use shall be:

(1) Followed by thorough hand rinsing in clean water before hand contact with FOOD or by the use of gloves; or

(2) Limited to situations that involve no direct contact with FOOD by the bare hands.

(C) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.

2-302 Fingernails**2-302.11 Maintenance.**

(A) FOOD EMPLOYEES shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(B) *Unless wearing intact gloves in good repair*, a FOOD EMPLOYEE may not wear fingernail polish or artificial fingernails when working with exposed FOOD.

2-303 Jewelry**2-303.11 Prohibition.**

While preparing FOOD, FOOD EMPLOYEES may not wear jewelry on their arms and hands. *This section does not apply to a plain ring such as a wedding band.*

2-304 Outer Clothing**2-304.11 Clean Condition.**

FOOD EMPLOYEES shall wear clean outer clothing to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

2-4 HYGIENIC PRACTICES**2-401 Food Contamination Prevention****2-401.11 Eating, Drinking, or Using Tobacco.***

(A) Except as specified in ¶ (B) of this section, an EMPLOYEE shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES; or other items needing protection can not result.

(B) *A FOOD EMPLOYEE may drink from a closed BEVERAGE container if the container is handled to prevent contamination of:*

(1) *The EMPLOYEE'S hands;*

(2) *The container; and*

(3) *Exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.*

2-401.12 Discharges from the Eyes, Nose, and Mouth.*

FOOD EMPLOYEES experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; or unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.

2-402 Hair Restraints**2-402.11 Effectiveness.**

(A) Except as provided in ¶ (B) of this section, FOOD EMPLOYEES shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

(B) *This section does not apply to FOOD EMPLOYEES such as counter staff who only serve BEVERAGES and wrapped or PACKAGED FOODS, hostesses, and wait staff if they present a minimal risk of contaminating exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.*

2-403 Animals**2-403.11 Handling Prohibition.***

(A) Except as specified in ¶ (B) of this section, FOOD EMPLOYEES may not care for or handle animals that may be present such as patrol dogs, SERVICE ANIMALS, or pets that are allowed as specified in Subparagraphs 6-501.115(B)(2)-(5).

(B) *FOOD EMPLOYEES with SERVICE ANIMALS may handle or care for their SERVICE ANIMALS and FOOD EMPLOYEES may handle or care for FISH in aquariums or MOLLUSCAN SHELLFISH or crustacea in display tanks if they wash their hands as specified under §2-301.12 and ¶ 2-301.14(C).*

Chapter 3 Food

3-1 CHARACTERISTICS

3-101 Condition

3-101.11 Safe, Unadulterated, and Honestly Presented.*

FOOD shall be safe, UNADULTERATED, and, as specified under §3-601.12, honestly presented.

3-2 SOURCES, SPECIFICATIONS, AND ORIGINAL CONTAINERS AND RECORDS

3-201 Sources

3-201.11 Compliance with Food Law.*

(A) FOOD shall be obtained from sources that comply with LAW.

(B) FOOD prepared in a private home may not be used or offered for human consumption in a FOOD ESTABLISHMENT unless such establishment is a Bed and Breakfast licensed by The Department of Human Services or a home business licensed by The Department of Agriculture Food and Rural Resources, or any other establishment specifically exempted by law.

(C) PACKAGED FOOD shall be labeled as specified in LAW, including 21 CFR 101 FOOD Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, 9 CFR 381 Subpart N Labeling and Containers, 22 MRSA §2157, and as specified under §§3-202.17 and 3-202.18.

(D) *Fish, other than MOLLUSCAN SHELLFISH, that are intended for consumption in their raw form and allowed as specified in Subparagraph 3-401.11(C)(1) may be offered for sale or service if they are obtained from a supplier that freezes the FISH as specified under §3-402.11; or frozen on the PREMISES as specified under §3-402.11 and records are retained as specified under §3-402.12.*

(E) WHOLE-MUSCLE, INTACT BEEF steaks that are intended for consumption in an undercooked form without a CONSUMER advisory as specified in ¶ 3-401.11(C) shall be:

(1) Obtained from a FOOD PROCESSING PLANT that packages the steaks and labels them to indicate that they meet the definition of WHOLE-MUSCLE, INTACT BEEF; or

(2) If individually cut in a FOOD ESTABLISHMENT:

(a) Cut from WHOLE-MUSCLE INTACT BEEF that is labeled by a FOOD PROCESSING PLANT to indicate that the beef meets the definition of WHOLE-MUSCLE, INTACT BEEF,

(b) Prepared so they remain intact, and

(c) If PACKAGED for undercooking in a FOOD ESTABLISHMENT, labeled to indicate that they meet the definition of WHOLE-MUSCLE, INTACT BEEF.

(F) MEAT and POULTRY that is not a READY-TO-EAT FOOD and is in a PACKAGED form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in LAW, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

3-201.12 Food in a Hermetically Sealed Container.*

FOOD in a HERMETICALLY SEALED CONTAINER shall be obtained from a FOOD PROCESSING PLANT that is regulated by the FOOD regulatory agency that has jurisdiction over the plant.

3-201.13 Fluid Milk and Milk Products.*

Fluid milk and milk products shall be obtained from sources that comply with GRADE A STANDARDS as specified in LAW or by standards established by 7 MRSA §2910 and 2904-A.

3-201.14 Fish.*

(A) FISH that are received for sale or service shall be:

(1) Commercially and legally caught or harvested; or

(2) APPROVED for sale or service.

(B) MOLLUSCAN SHELLFISH that are recreationally caught may not be received for sale or service.

3-201.15 Molluscan Shellfish.*

(A) Except as specified in ¶ (C) of this section, MOLLUSCAN SHELLFISH shall be obtained from sources according to LAW and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(B) MOLLUSCAN SHELLFISH received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

(C) MOLLUSCAN SHELLFISH may be obtained from the holder of a current shellfish license as specified in 12 MRSA §6601.

3-201.16 Wild Mushrooms.*

(A) Except as specified in ¶ (B) of this section, mushroom species picked in the wild shall be obtained from sources where each mushroom is identified by the Latin binomial name in the fresh state by a person with local mushroom picking experience and training recognized by a national mycological organization.

(B) *This section does not apply to:*

(1) *Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the FOOD regulatory agency that has jurisdiction over the operation; or*

(2) *Wild mushroom species if they are in PACKAGED form and are the product of a FOOD PROCESSING PLANT that is regulated by the FOOD regulatory agency that has jurisdiction over the plant.*

3-201.17 Game Animals.*

(A) If GAME ANIMALS are received for sale or service they shall be:

(1) Commercially raised for food and:

(a) Raised slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, or

(b) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction, and

(c) Raised, slaughtered, and processed according to:

(i) LAWS governing MEAT and POULTRY as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, and

(ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an APPROVED veterinarian or veterinarian's designee; or

(2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and APPROVED" in accordance with 9 CFR 352 Voluntary Exotic Animal Program or rabbits that are processed in accordance with the Law (CMR 01-001, Chapter 332).

3-202 Specifications for Receiving

3-202.11 Temperature.*

(A) Except as specified in ¶ (B) of this section, refrigerated, POTENTIALLY HAZARDOUS FOOD shall be at a temperature of 5°C (41°F) or below when received.

(B) *If a temperature other than 5°C (41°F) for a POTENTIALLY HAZARDOUS FOOD is specified in LAW governing its distribution, such as LAWS governing milk, MOLLUSCAN SHELLFISH, and shell eggs, the FOOD may be received at the specified temperature.*

- (C) POTENTIALLY HAZARDOUS FOOD that is cooked to a temperature and for a time specified under §§3-401.11 - 3-401.13 and received hot shall be at a temperature of 60°C (140°F) or above.
- (D) A FOOD that is labeled frozen and shipped frozen by a FOOD PROCESSING PLANT shall be received frozen.
- (E) Upon receipt, POTENTIALLY HAZARDOUS FOOD shall be free of evidence of previous temperature abuse.

3-202.12 Additives.*

FOOD may not contain UNAPPROVED FOOD ADDITIVES or ADDITIVES that exceed amounts specified in 21 CFR 170-180 relating to FOOD ADDITIVES, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR 318.7 Approval of substances for use in the preparation of products, or pesticide residues that exceed provisions specified in 40 CFR 185 Tolerances for Pesticides in Food.

3-202.13 Shell Eggs.*

Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. CONSUMER Grade B as specified in 7 CFR Part 56 - Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight classes for Shell Eggs, and 7 CFR Part 59 - Regulations Governing the Inspection of Eggs and Egg Products.

3-202.14 Eggs and Milk Products, Pasteurized.*

- (A) Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.
- (B) Fluid milk and milk products shall be obtained from sources that comply with 7 MRSA §2910, 2904-A.
- (C) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - Frozen Desserts.
- (D) Cheese shall be obtained pasteurized *unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133 - Cheeses and Related Cheese Products, for curing certain cheese varieties.*

3-202.15 Package Integrity.*

FOOD packages shall be in good condition and protect the integrity of the contents so that the FOOD is not exposed to ADULTERATION or potential contaminants.

3-202.16 Ice.*

Ice for use as a FOOD or a cooling medium shall be made from DRINKING WATER.

3-202.17 Shucked Shellfish, Packaging and Identification.

- (A) Raw SHUCKED SHELLFISH shall be obtained in nonreturnable packages which bear a legible label that identifies the:
- (1) Name, address, and CERTIFICATION NUMBER of the shucker-packer or repacker of the MOLLUSCAN SHELLFISH; and
 - (2) The "sell by" date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.
- (B) A package of raw SHUCKED SHELLFISH that does not bear a label or which bears a label which does not contain all the information as specified under ¶(A) of this section shall be subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

3-202.18 Shellstock Identification.*

- (A) SHELLSTOCK shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that deperates, ships, or reships the SHELLSTOCK,

as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list:

(1) Except as specified under ¶ (C) of this section, on the harvester's tag or label, the following information in the following order:

- (a) The harvester's identification number that is assigned by the SHELLFISH CONTROL AUTHORITY,
- (b) The date of harvesting,
- (c) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the SHELLFISH CONTROL AUTHORITY and including the abbreviation of the name of the state or country in which the shellfish are harvested,
- (d) The type and quantity of shellfish, and
- (e) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days;" and

(2) Except as specified in ¶ (D) of this section, on each dealer's tag or label, the following information in the following order:

- (a) The dealer's name and address, and the CERTIFICATION NUMBER assigned by the SHELLFISH CONTROL AUTHORITY,
- (b) The original shipper's CERTIFICATION NUMBER including the abbreviation of the name of the state or country in which the shellfish are harvested,
- (c) The same information as specified for a harvester's tag under Subparagraphs (A)(1)(b)-(d) of this section, and
- (d) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."

(B) A container of SHELLSTOCK that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under ¶ (A) of this section shall be subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(C) If a place is provided on the harvester's tag or label for a dealer's name, address, and CERTIFICATION NUMBER, the dealer's information shall be listed first.

(D) *If the harvester's tag or label is designed to accommodate each dealer's identification as specified under Subparagraphs (A)(2)(a) and (b) of this section, individual dealer tags or labels need not be provided.*

3-202.19 Shellstock, Condition.

When received by a FOOD ESTABLISHMENT, SHELLSTOCK shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or SHELLSTOCK with badly broken shells shall be discarded.

3-203 Original Containers and Records

3-203.11 Molluscan Shellfish, Original Container.

(A) Except as specified in ¶¶ (B) and (C) of this section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(B) *SHELLSTOCK* may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a *CONSUMER* may be removed from the display or display container and provided to the *CONSUMER* if:

(1) The source of the *SHELLSTOCK* on display is identified as specified under §3-202.18 and recorded as specified under §3-203.12; and

(2) The *SHELLSTOCK* are protected from contamination.

(C) *SHUCKED SHELLFISH* may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a *CONSUMER'S* request if:

(1) The labeling information for the shellfish on display as specified under §3-202.17 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(2) The shellfish are protected from contamination.

3-203.12 Shellstock, Maintaining Identification.*

(A) Except as specified under Subparagraph (B)(2) of this section, *SHELLSTOCK* tags shall remain attached to the container in which the shellstock are received until the container is empty.

(B) The identity of the source of *SHELLSTOCK* that are sold or served shall be maintained by retaining *SHELLSTOCK* tags or labels for 90 calendar days from the date the container is emptied by:

(1) Using an *APPROVED* record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the *SHELLSTOCK* are sold or served; and

(2) If *SHELLSTOCK* are removed from their tagged or labeled container:

(a) Using only 1 tagged or labeled container at a time, or

(b) Using more than 1 tagged or labeled container at a time and obtaining a *VARIANCE* from the *REGULATORY AUTHORITY* as specified in §8-103.10 based on a *HACCP PLAN* that:

(i) Is submitted by the *PERMIT HOLDER* and *APPROVED* as specified under §8-103.11,

(ii) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this section, and

(iii) Ensures that *SHELLSTOCK* from one tagged or labeled container are not commingled with *SHELLSTOCK* from another container before being ordered by the *CONSUMER*.

3-3 PROTECTION FROM CONTAMINATION AFTER RECEIVING

3-301 Preventing Contamination by Employees

3-301.11 Preventing Contamination from Hands.*

(A) *FOOD EMPLOYEES* shall wash their hands as specified under §2-301.12.

(B) *Except when washing fruits and vegetables as specified under §3-302.15 or when otherwise APPROVED*, *FOOD EMPLOYEES* should not contact exposed, *READY-TO-EAT FOOD* with their bare hands and should use suitable *UTENSILS* such as deli tissue, spatulas, tongs, *SINGLE-USE* gloves, or dispensing *EQUIPMENT*.

(C) *FOOD EMPLOYEES* shall minimize bare hand and arm contact with exposed *FOOD* that is not in a *READY-TO-EAT* form.^S

3-301.12 Preventing Contamination when Tasting.*

A *FOOD EMPLOYEE* may not use a *UTENSIL* more than once to taste *FOOD* that is to be sold or served.

3-302 Preventing Food and Ingredient Contamination

(A) *FOOD* shall be protected from cross contamination by:

(1) Separating raw animal foods during storage, preparation, holding, and display from:

(a) Raw READY-TO-EAT FOOD including other raw animal FOOD such as FISH for sushi or MOLLUSCAN SHELLFISH, or other raw READY-TO-EAT FOOD such as vegetables, and

(b) Cooked READY-TO-EAT FOOD;

(2) *Except when combined as ingredients*, separating types of raw animal FOODS from each other such as beef, FISH, lamb, pork, and POULTRY during storage, preparation, holding, and display by:

(a) Using separate EQUIPMENT for each type, or

(b) Arranging each type of FOOD in EQUIPMENT so that cross contamination of one type with another is prevented, and

(c) Preparing each type of FOOD at different times or in separate areas;

(3) Cleaning EQUIPMENT and UTENSILS as specified under ¶ 4-602.11(A) and SANITIZING as specified under §4-703.11;

(4) Except as specified in ¶ (B) of this section, storing the FOOD in packages, covered containers, or wrappings;

(5) Cleaning HERMETICALLY SEALED CONTAINERS of FOOD of visible soil before opening;

(6) Protecting FOOD containers that are received PACKAGED together in a case or overwrap from cuts when the case or overwrap is opened;

(7) Storing damaged, spoiled, or recalled FOOD being held in the FOOD ESTABLISHMENT as specified under §6-404.11; and

(8) Separating fruits and vegetables, before they are washed as specified under §3-302.15 from READY-TO-EAT FOOD.

(B) *Subparagraph (A)(4) of this section does not apply to:*

(1) *Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;*

(2) *PRIMAL CUTS, quarters, or sides of raw MEAT or slab bacon that are hung on clean, SANITIZED hooks or placed on clean, SANITIZED racks;*

(3) *Whole, uncut, processed MEATS such as country hams, and smoked or cured sausages that are placed on clean, SANITIZED racks;*

(4) *FOOD being cooled as specified under Subparagraph 3-501.15(B)(2); or*

(5) *SHELLSTOCK.*

3-302.12 Food Storage Containers, Identified with Common Name of Food.

Working containers holding FOOD or FOOD ingredients that are removed from their original packages for use in the FOOD ESTABLISHMENT, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the FOOD *except that containers holding FOOD that can be readily and unmistakably recognized such as dry pasta need not be identified.*

3-302.13 Pasteurized Eggs, Substitute for Raw Shell Eggs for Certain Recipes.*

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of FOODS such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified BEVERAGES that are not:

(A) Cooked as specified under Subparagraphs 3-401.11(A)(1) or (2); or

(B) Included in Subparagraph 3-401.11(D).

3-302.14 Protection from Unapproved Additives.*

(A) FOOD shall be protected from contamination that may result from the addition of, as specified in §3-202.12:

(1) Unsafe or unAPPROVED FOOD or COLOR ADDITIVES; and

(2) Unsafe or unAPPROVED levels of APPROVED FOOD and COLOR ADDITIVES.

(B) A FOOD EMPLOYEE may not:

- (1) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a FOOD considered to be a good source of vitamin B₁; or
- (2) Serve or sell FOOD specified under Subparagraph (B)(1) of this section that is treated with sulfiting agents before receipt by the FOOD ESTABLISHMENT, *except that grapes need not meet this subparagraph.*

3-302.15 Washing Fruits and Vegetables.

(A) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in READY-TO-EAT form except as specified in ¶ (B) of this section and *except that whole, raw fruits and vegetables that are intended for washing by the CONSUMER before consumption need not be washed before they are sold.*

(B) *Fruits and vegetables may be washed by using chemicals as specified under §7-204.12.*

3-303 Preventing Contamination from Ice Used as a Coolant

3-303.11 Ice Used as Exterior Coolant, Prohibited as Ingredient.

After use as a medium for cooling the exterior surfaces of FOOD such as melons or FISH, PACKAGED FOODS such as canned BEVERAGES, or cooling coils and tubes of EQUIPMENT, ice may not be used as FOOD.

3-303.12 Storage or Display of FOOD in Contact with Water or Ice.

(A) PACKAGED FOOD may not be stored in direct contact with ice or water if the FOOD is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(B) Except as specified in ¶¶ (C) and (D) of this section, UNPACKAGED FOOD may not be stored in direct contact with undrained ice.

(C) *Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.*

(D) *Raw chicken and raw FISH that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.*

3-304 Preventing Contamination from Equipment, Utensils, and Linens

3-304.11 Food Contact with Equipment and Utensils.*

FOOD shall only contact surfaces of EQUIPMENT and UTENSILS that are cleaned as specified under Part 4-6 of this Code and SANITIZED as specified under Part 4-7 of this Code.

3-304.12 In-Use Utensils, Between-Use Storage.

During pauses in FOOD preparation or dispensing, FOOD preparation and dispensing UTENSILS shall be stored:

(A) Except as specified under ¶ (B) of this section, in the FOOD with their handles above the top of the FOOD and the container;

(B) In FOOD that is not POTENTIALLY HAZARDOUS with their handles above the top of the FOOD within containers or EQUIPMENT that can be closed, such as bins of sugar, flour, or cinnamon;

(C) On a clean portion of the FOOD preparation table or cooking EQUIPMENT only if the in-use UTENSIL and the FOOD-CONTACT surface of the FOOD preparation table or cooking EQUIPMENT are cleaned and SANITIZED at a frequency specified under §§4-602.11 and 4-702.11;

(D) In running water of sufficient velocity to flush particulates to the drain, if used with moist FOOD such as ice cream or mashed potatoes;

(E) In a clean, protected location if the UTENSILS, such as ice scoops, are used only with a FOOD that is not POTENTIALLY HAZARDOUS; or

(F) In a container of water if the water is maintained at a temperature of at least 60°C (140°F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).

3-304.13 Linens and Napkins, Use Limitation.

LINENS and napkins may not be used in contact with FOOD *unless they are used to line a container for the service of FOODS and the LINENS and napkins are replaced each time the container is refilled for a new CONSUMER.*

3-304.14 Wiping Cloths, Use Limitation.

(A) Cloths that are in use for wiping FOOD spills shall be used for no other purpose.

(B) Cloths used for wiping FOOD spills shall be:

- (1) Dry and used for wiping FOOD spills from TABLEWARE and carry-out containers; or
- (2) Wet and cleaned as specified under ¶ 4-802.11(D), stored in a chemical sanitizer at a concentration specified in §4-501.114, and used for wiping spills from FOOD-CONTACT and nonFOOD-CONTACT SURFACES of EQUIPMENT.

(C) Dry or wet cloths that are used with raw animal FOODS shall be kept separate from cloths used for other purposes, and wet cloths used with raw animal FOODS shall be kept in a separate sanitizing solution.

(D) Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of FOOD debris and visible soil.

3-304.15 Gloves, Use Limitation.

(A) If used, SINGLE-USE gloves shall be used for only one task such as working with READY-TO-EAT FOOD or with raw animal FOOD, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(B) Except as specified in ¶ (C) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with FOOD that is subsequently cooked as specified under Part 3-4 such as frozen FOOD or a PRIMAL CUT of MEAT.

(C) *Slash-resistant gloves may be used with READY-TO-EAT FOOD that will not be subsequently cooked if the slash-resistant gloves have a SMOOTH, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a SMOOTH, durable, nonabsorbent glove, or a SINGLE-USE glove.*

(D) Cloth gloves may not be used in direct contact with FOOD *unless the FOOD is subsequently cooked as required under Part 3-4 such as frozen FOOD or a PRIMAL CUT of MEAT.*

3-304.16 Using Clean Tableware for Second Portions and Refills.

(A) Except for refilling a CONSUMER's drinking cup or container without contact between the pouring UTENSIL and the lip-contact area of the drinking cup or container, FOOD EMPLOYEES may not use TABLEWARE, including SINGLE-SERVICE ARTICLES, soiled by the CONSUMER, to provide second portions or refills.

(B) Except as specified in ¶ (C) of this section, self-service CONSUMERS may not be allowed to use soiled TABLEWARE, including SINGLE-SERVICE ARTICLES, to obtain additional FOOD from the display and serving EQUIPMENT.

(C) *Drinking cups and containers may be reused by self-service CONSUMERS if refilling is a contamination-free process as specified under ¶¶ 4-204.13(A), (B), and (D).*

3-304.17 Refilling Returnables.

(A) A take-home FOOD container returned to a FOOD ESTABLISHMENT may not be refilled at a FOOD ESTABLISHMENT with a POTENTIALLY HAZARDOUS FOOD.

(B) Except as specified in ¶ (C), a take-home FOOD container refilled with FOOD that is not POTENTIALLY HAZARDOUS shall be cleaned as specified under ¶ 4-603.17(B).

(C) *Personal take-out BEVERAGE containers, such as thermally insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under ¶¶ 4-204.13(A), (B), and (D).*

3-305 Preventing Contamination from the Premises

3-305.11 Food Storage.

(A) Except as specified in ¶¶ (B) and (C) of this section, FOOD shall be protected from contamination by storing the FOOD:

- (1) In a clean, dry location;
- (2) Where it is not exposed to splash, dust, or other contamination; and
- (3) At least 15 cm (6 inches) above the floor.

(B) *FOOD in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling EQUIPMENT as specified under §4-204.122.*

(C) *Pressurized BEVERAGE containers, cased FOOD in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.*

3-305.12 Food Storage, Prohibited Areas.

FOOD may not be stored:

- (A) In locker rooms;
- (B) In toilet rooms;
- (C) In dressing rooms;
- (D) In garbage rooms;
- (E) In mechanical rooms;
- (F) Under sewer lines that are not shielded to intercept potential drips;
- (G) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
- (H) Under open stairwells; or
- (I) Under other sources of contamination.

3-305.13 Vended Potentially Hazardous Food, Original Container.

POTENTIALLY HAZARDOUS FOOD dispensed through a VENDING MACHINE shall be in the package in which it was placed at the FOOD ESTABLISHMENT or FOOD PROCESSING PLANT at which it was prepared.

3-305.14 Food Preparation.

During preparation, unPACKAGED FOOD shall be protected from environmental sources of contamination.

3-306 Preventing Contamination by Consumers

3-306.11 Food Display.

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the CONSUMER before consumption, FOOD on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar FOOD guards; display cases; or other effective means.

3-306.12 Condiments, Protection.

(A) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected FOOD displays provided with the proper UTENSILS, original containers designed for dispensing, or individual packages or portions.

(B) Condiments at a VENDING MACHINE LOCATION shall be in individual packages or provided in dispensers that are filled at an APPROVED location, such as the FOOD ESTABLISHMENT that provides FOOD to the VENDING MACHINE LOCATION, a FOOD PROCESSING PLANT that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the VENDING MACHINE LOCATION.

3-306.13 Consumer Self-Service Operations.*

(A) Raw, UNPACKAGED animal FOOD, such as beef, lamb, pork, POULTRY, and FISH may not be offered for CONSUMER self-service. *This paragraph does not apply to CONSUMER self-service of READY-TO-EAT FOODS at buffets or salad bars that serve FOODS such as sushi or raw shellfish; ready-to-cook individual portions for immediate cooking and consumption on the PREMISES such as CONSUMER-cooked MEATS or CONSUMER-selected ingredients for Mongolian barbecue; or raw, frozen, shell-on shrimp or lobster.*

(B) CONSUMER self-service operations for READY-TO-EAT FOODS shall be provided with suitable UTENSILS or effective dispensing methods that protect the FOOD from contamination.^N

(C) CONSUMER self-service operations such as buffets and salad bars shall be monitored by FOOD EMPLOYEES trained in safe operating procedures.^N

3-306.14 Returned Food and Reservice of Food.*

(A) Except as specified in ¶ (B) of this section, after being served or sold and in the possession of a CONSUMER, FOOD that is unused or returned by the CONSUMER may not be offered as FOOD for human consumption.

(B) Except as specified under ¶ 3-801.11(C), *a container of FOOD that is not POTENTIALLY HAZARDOUS may be transferred from one CONSUMER to another if:*

- (1) *The FOOD is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or*
- (2) *The FOOD, such as crackers, salt, or pepper, is in an unopened original PACKAGE and is maintained in sound condition.*

3-307 Preventing Contamination from Other Sources

3-307.11 Miscellaneous Sources of Contamination.

FOOD shall be protected from contamination that may result from a factor or source not specified under Subparts 3-301 - 3-306.

3-4 DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN

3-401 Cooking

3-401.11 Raw Animal Foods.*

(A) Except as specified under ¶ (B) and in ¶¶ (C) and (D) of this section, raw animal FOODS such as eggs, FISH, MEAT, POULTRY, and FOODS containing these raw animal FOODS, shall be cooked to heat all parts of the FOOD to a temperature and for a time that complies with one of the following methods based on the FOOD that is being cooked:

(1) 63°C (145°F) or above for 15 seconds for:

- (a) Raw shell eggs that are broken and prepared in response to a CONSUMER'S order and for immediate service, and
- (b) Except as specified under Subparagraphs (A)(2) and (3) and ¶ (B) of this section, FISH, MEAT, and pork including GAME ANIMALS commercially raised for FOOD as specified under Subparagraph 3-201.17(A)(1) and GAME ANIMALS under a voluntary inspection program as specified under Subparagraph 3-201.17(A)(2);

(2) 68°C (155°F) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and INJECTED MEATS; the following if they are COMMINUTED: FISH, MEAT, GAME ANIMALS commercially raised for FOOD as specified under Subparagraph 3-201.17(A)(1), and GAME ANIMALS under a voluntary inspection program as specified under Subparagraph 3-201.17(A)(2); and raw eggs that are not prepared as specified under Subparagraph (A)(1)(a) of this section:

Minimum	
Temperature °C (°F)	Time
63 (145)	3 minutes
66 (150)	1 minute
70 (158)	< 1 second (instantaneous)

; or

(3) 74°C (165°F) or above for 15 seconds for POULTRY, wild GAME ANIMALS as specified under Subparagraphs 3-201.17(A)(3) and

(4) stuffed FISH, stuffed MEAT, stuffed pasta, stuffed POULTRY, stuffed ratites, or stuffing containing FISH, MEAT, POULTRY, or ratites.

(B) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham, shall be cooked:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature:

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs)	4.5 kg (10 lbs) or More
Still Dry	177°C (350°F) or more	121°C (250°F) or more
Convection	163°C (325°F) or more	121°C (250°F) or more
High Humidity¹	121°C (250°F) or less	121°C (250°F) or less

¹ Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

; and

(2) As specified in the following chart, to heat all parts of the FOOD to a temperature and for the holding time that corresponds to that temperature:

Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Minutes
54 (130)	121	58 (136)	32	61 (142)	8
56 (132)	77	59 (138)	19	62 (144)	5
57 (134)	47	60 (140)	12	63 (145)	3

¹ Holding time may include postoven heat rise.

(C) A raw or undercooked *WHOLE-MUSCLE, INTACT BEEF* steak may be served or offered for sale in a *READY-TO-EAT* form if:

- (1) The *FOOD ESTABLISHMENT* serves a population that is not a *HIGHLY SUSCEPTIBLE POPULATION*,
- (2) The steak is labeled to indicate that it meets the definition of "*WHOLE-MUSCLE, INTACT BEEF*" as specified under ¶ 3-201.11(E), and
- (3) The steak is cooked on both the top and bottom to a surface temperature of 63°C (145°F) or above and a cooked color change is achieved on all external surfaces.

(D) A raw animal *FOOD* such as raw egg, raw *FISH*, raw-marinated *FISH*, raw *MOLLUSCAN SHELLFISH*, or steak tartare; or a partially cooked *FOOD* such as lightly cooked *FISH*, soft cooked eggs, or rare *MEAT* other than *WHOLE-MUSCLE, INTACT BEEF* steaks as specified in ¶ (C) of this section, may be served or offered for sale in a *READY-TO-EAT* form if:

- (1) The *FOOD ESTABLISHMENT* serves a population that is not a *HIGHLY SUSCEPTIBLE POPULATION*, and
- (2) The *CONSUMER* is informed as specified under §3-603.11 that to ensure its safety, the *FOOD* should be cooked as specified under ¶ (A) or (B) of this section; or
- (3) The *REGULATORY AUTHORITY* grants a *VARIANCE* from ¶ (A) or (B) of this section as specified in §8-103.10 based on a *HACCP PLAN* that:
 - (a) Is submitted by the *PERMIT HOLDER* and *APPROVED* as specified under §8-103.11,
 - (b) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe *FOOD*, and
 - (c) Verifies that *EQUIPMENT* and procedures for *FOOD* preparation and training of *FOOD EMPLOYEES* at the *FOOD ESTABLISHMENT* meet the conditions of the *VARIANCE*.

3-401.12 Microwave Cooking.*

Raw animal *FOODS* cooked in a microwave oven shall be:

- (A) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- (B) Covered to retain surface moisture;
- (C) Heated to a temperature of at least 74°C (165°F) in all parts of the food; and
- (D) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

3-401.13 Plant Food Cooking for Hot Holding.

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 60°C (140°F).

3-402 Freezing**3-402.11 Parasite Destruction.***

(A) Except as specified in ¶ (B) of this section, before service or sale in READY-TO-EAT form, raw, raw-marinated, partially cooked, or marinated-partially cooked FISH other than MOLLUSCAN SHELLFISH shall be frozen throughout to a temperature of:

(1) -20°C (-4°F) or below for 168 hours (7 days) in a freezer; or

(2) -35°C (-31°F) or below for 15 hours in a blast freezer.

(B) *If the FISH are tuna of the species Thunnus alalunga, Thunnus albacares (Yellowfin tuna), Thunnus atlanticus, Thunnus maccoyii (Bluefin tuna, Southern), Thunnus obesus (Bigeye tuna), or Thunnus thynnus (Bluefin tuna, Northern), the FISH may be served or sold in a raw, raw-marinated, or partially cooked READY-TO-EAT form without freezing as specified under ¶ (A) of this section.*

3-402.12 Records, Creation and Retention.

(A) Except as specified in ¶ 3-402.11(B) and ¶ (B) of this section, if raw, raw-marinated, partially cooked, or marinated-partially cooked FISH are served or sold in READY-TO-EAT form, the PERSON IN CHARGE shall record the freezing temperature and time to which the FISH are subjected and shall retain the records at the FOOD ESTABLISHMENT for 90 calendar days beyond the time of service or sale of the FISH.

(B) *If the FISH are frozen by a supplier, a written agreement or statement from the supplier stipulating that the FISH supplied are frozen to a temperature and for a time specified under §3-402.11 may substitute for the records specified under ¶ (A) of this section.*

3-403 Reheating**3-403.10 Preparation for Immediate Service.**

Cooked and refrigerated FOOD that is prepared for immediate service in response to an individual CONSUMER order, such as a roast beef sandwich au jus, may be served at any temperature.

3-403.11 Reheating for Hot Holding.*

(A) Except as specified under ¶¶ (B) and (C) and in ¶ (E) of this section, POTENTIALLY HAZARDOUS FOOD that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the FOOD reach a temperature of at least 74°C (165°F) for 15 seconds.

(B) Except as specified under ¶ (C) of this section, POTENTIALLY HAZARDOUS FOOD reheated in a microwave oven for hot holding shall be reheated so that all parts of the FOOD reach a temperature of at least 74°C (165°F) and the FOOD is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.

(C) READY-TO-EAT FOOD taken from a commercially processed, HERMETICALLY SEALED CONTAINER, or from an intact package from a FOOD PROCESSING PLANT that is inspected by the FOOD REGULATORY AUTHORITY that has jurisdiction over the plant, shall be heated to a temperature of at least 60°C (140°F) for hot holding.

(D) Reheating for hot holding shall be done rapidly and the time the FOOD is between the temperature specified under ¶ 3-501.16(B) or (C) and 74°C (165°F) may not exceed 2 hours. (E) *Remaining unsliced portions of roasts of beef that are cooked as specified under ¶ 3-401.11(B) may be reheated for hot holding*

using the oven parameters and minimum time and temperature conditions specified under 3-401.11(B).

3-5 LIMITATION OF GROWTH OF ORGANISMS OF PUBLIC HEALTH CONCERN

3-501 Temperature and Time Control

3-501.11 Frozen Food.

Stored frozen FOODS shall be maintained frozen.

3-501.12 Potentially Hazardous Food, Slacking.

Frozen POTENTIALLY HAZARDOUS FOOD that is slacked to moderate the temperature shall be held:

(A) Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under ¶ 3-501.16(C); or

(B) At any temperature if the FOOD remains frozen.

3-501.13 Thawing.

Except as specified in ¶ (D) of this section, POTENTIALLY HAZARDOUS FOOD shall be thawed:

(A) Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under ¶ 3-501.16(C); or

(B) Completely submerged under running water:

(1) At a water temperature of 21°C (70°F) or below,

(2) With sufficient water velocity to agitate and float off loose particles in an overflow, and

(3) For a period of time that does not allow thawed portions of READY-TO-EAT FOOD to rise above 5°C (41°F), or 7°C (45°F) as specified under ¶ 3-501.16(C), or

(4) For a period of time that does not allow thawed portions of a raw animal FOOD requiring cooking as specified under ¶ 3-401.11(A) or (B) to be above 5°C (41°F), or 7°C (45°F) as specified under ¶ 3-501.16(C), for more than 4 hours including:

(a) The time the FOOD is exposed to the running water and the time needed for preparation for cooking, or

(b) The time it takes under refrigeration to lower the FOOD temperature to 5°C (41°F), or 7°C (45°F) as specified under ¶ 3-501.16(C);

(C) As part of a cooking process if the FOOD that is frozen is:

(1) Cooked as specified under ¶ 3-401.11(A) or (B) or §3-401.12, or

(2) Thawed in a microwave oven and immediately transferred to conventional cooking EQUIPMENT, with no interruption in the process; or

(D) *Using any procedure if a portion of frozen READY-TO-EAT FOOD is thawed and prepared for immediate service in response to an individual CONSUMER'S order.*

3-501.14 Cooling.*

(A) Cooked POTENTIALLY HAZARDOUS FOOD shall be cooled:

(1) Within 2 hours, from 60°C (140°F) to 21°C (70°F); and

(2) Within 4 hours, from 21°C (70°F) to 5°C (41°F) or less, or to 7°C (45°F) as specified under ¶ 3-501.16(C).

(B) POTENTIALLY HAZARDOUS FOOD shall be cooled within 4 hours to 5°C (41°F) or less, or to 7°C (45°F) as specified under ¶ 3-501.16(C) if prepared from ingredients at ambient temperature, such as reconstituted FOODS and canned tuna.

(C) Except as specified in ¶ (D) of this section, a POTENTIALLY HAZARDOUS FOOD received in compliance with LAWS allowing a temperature above 5°C (41°F) during shipment from the supplier as specified in ¶ 3-202.11(B), shall be cooled within 4 hours to 5°C (41°F) or less, or 7°C (45°F) or less as specified under ¶ 3-501.16(C).

(D) Shell eggs need not comply with ¶ (C) of this section if the eggs are placed immediately upon their receipt in refrigerated EQUIPMENT that is capable of maintaining FOOD at 5°C (41°F) or less, or 7°C (45°F) or less as specified under ¶ 3-501.16(C).

3-501.15 Cooling Methods.

(A) Cooling shall be accomplished in accordance with the time and temperature criteria specified under §3-501.14 by using one or more of the following methods based on the type of FOOD being cooled:

- (1) Placing the FOOD in shallow pans;
- (2) Separating the FOOD into smaller or thinner portions;
- (3) Using rapid cooling EQUIPMENT;
- (4) Stirring the FOOD in a container placed in an ice water bath;
- (5) Using containers that facilitate heat transfer;
- (6) Adding ice as an ingredient; or
- (7) Other effective methods.

(B) When placed in cooling or cold holding EQUIPMENT, FOOD containers in which FOOD is being cooled shall be:

- (1) Arranged in the EQUIPMENT to provide maximum heat transfer through the container walls; and
- (2) Loosely covered, or uncovered if protected from overhead contamination as specified under Subparagraph 3-305.11(A)(2), during the cooling period to facilitate heat transfer from the surface of the FOOD.

3-501.16 Potentially Hazardous Food, Hot and Cold Holding.*

Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under §3-501.19, POTENTIALLY HAZARDOUS FOOD shall be maintained:

(A) At 60°C (140°F) or above, *except that roasts cooked to a temperature and for a time specified under ¶ 3-401.11(B) or reheated as specified in ¶ 3-403.11(E) may be held at a temperature of 54°C (130°F); or*

(B) At 5°C (41°F) or less, except as specified under ¶ (C) of this section and §§3-501.18, and 4-04.111.

(C) At 7°C (45°F) or between 7°C (45°F) and 5°C (41°F) in existing refrigeration EQUIPMENT that is not capable of maintaining the FOOD at 5°C (41°F) or less if:

- (1) The EQUIPMENT is in place and in use in the FOOD ESTABLISHMENT; and
- (2) Within 10 years of the REGULATORY AUTHORITY'S adoption of this Code, the EQUIPMENT is upgraded or replaced to maintain FOOD at a temperature of 5°C (41°F) or less.
 - (a) If, during this period of time, the EQUIPMENT is replaced, it shall be replaced with EQUIPMENT that meets §(B) above.
 - (b) This EQUIPMENT is to be used for short term storage of food only.

3-501.17 Ready-to-Eat, Potentially Hazardous Food, Date Marking.* **RESERVED**

3-501.18 Ready-to-Eat, Potentially Hazardous Food, Disposition.*

(A) Refrigerated, READY-TO-EAT, POTENTIALLY HAZARDOUS FOOD prepared in a FOOD ESTABLISHMENT and dispensed through a VENDING MACHINE with an automatic shut-off control that is activated at a temperature of:

- (1) 5°C (41°F) shall be discarded if not sold within 7 days; or
- (2) 7°C (45°F) shall be discarded if not sold within 4 days.

3-501.19 Time as a Public Health Control.*

(A) Except as specified under ¶ (B) of this section, if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of POTENTIALLY HAZARDOUS FOOD before cooking, or for READY-TO-EAT POTENTIALLY HAZARDOUS FOOD that is displayed or held for service for immediate consumption:

- (1) The FOOD shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the FOOD is removed from temperature control,
- (2) The FOOD shall be cooked and served, served if READY-TO-EAT, or discarded, within 4 hours from the point in time when the FOOD is removed from temperature control,
- (3) The FOOD in unmarked containers or packages or marked to exceed a 4 hour limit shall be discarded, and
- (4) Written procedures shall be maintained in the FOOD ESTABLISHMENT and made available to the REGULATORY AUTHORITY upon request, that ensure compliance with:
 - (a) Subparagraphs (A)(1)-(4) of this section, and
 - (b) §3-501.14 for FOOD that is prepared, cooked, and refrigerated before time is used as a public health control.

(B) In a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION, time only, rather than time in conjunction with temperature, may not be used as the public health control for raw eggs.

3-502 Specialized Processing Methods**3-502.11 Variance Requirement.***

A FOOD ESTABLISHMENT shall obtain a VARIANCE from the REGULATORY AUTHORITY as specified in §8-103.10 and under §8-103.11 before smoking FOOD as a method of FOOD preservation rather than as a method of flavor enhancement; curing FOOD; brewing alcoholic BEVERAGES; using FOOD ADDITIVES or adding components such as vinegar as a method of FOOD preservation rather than as a method of flavor enhancement or to render a FOOD so that it is not POTENTIALLY HAZARDOUS; packaging FOOD using a REDUCED OXYGEN PACKAGING method *except as specified under §3-502.12 where a barrier to *Clostridium botulinum* in addition to refrigeration exists*; custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT; or preparing FOOD by another method that is determined by the REGULATORY AUTHORITY to require a VARIANCE.

3-502.12 Reduced Oxygen Packaging, Criteria.*

(A) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under §3-502.11, a FOOD ESTABLISHMENT that packages FOOD using a REDUCED OXYGEN PACKAGING method and *Clostridium botulinum* is identified as a microbiological HAZARD in the final PACKAGED form shall ensure that there are at least two barriers in place to control the growth and toxin formation of *C. botulinum*.

(B) A FOOD ESTABLISHMENT that packages FOOD using a REDUCED OXYGEN PACKAGING method and *Clostridium botulinum* is identified as a microbiological HAZARD in the final PACKAGED form shall have a HACCP PLAN that contains the information specified under ¶ 8-201.14(D) and that:

- (1) Identifies the FOOD to be PACKAGED;
- (2) Limits the FOOD PACKAGED to a FOOD that does not support the growth of *Clostridium botulinum* because it complies with one of the following:
 - (a) Has an a_w of 0.91 or less,
 - (b) Has a pH of 4.6 or less,
 - (c) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the U.S.D.A. using substances specified in 9 CFR 318.7 Approval of substances for use in the preparation of products and 9 CFR 381.147 Restrictions on the use of substances in poultry products and is received in an intact package, or

- (d) Is a FOOD with a high level of competing organisms such as raw MEAT or raw POULTRY;
- (3) Specifies methods for maintaining FOOD at 5°C (41°F) or below;
- (4) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
 - (a) Maintain the FOOD at 5°C (41°F) or below, and
 - (b) Discard the FOOD if within 14 calendar days of its packaging it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption;
- (5) Limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
- (6) Includes operational procedures that:
 - (a) Prohibit contacting FOOD with bare hands,
 - (b) Identify a designated area and the method by which:
 - (i) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination, and
 - (ii) Access to the processing EQUIPMENT is restricted to responsible trained personnel familiar with the potential HAZARDS of the operation, and
 - (c) Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES; and
- (7) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the:
 - (a) Concepts required for a safe operation,
 - (b) EQUIPMENT and facilities, and
 - (c) Procedures specified under Subparagraph (A)(6) of this section and ¶ 8-201.14(D).

(C) *Except for FISH that is frozen before, during, and after packaging*, a FOOD ESTABLISHMENT may not package FISH using a REDUCED OXYGEN PACKAGING method.

3-6 FOOD IDENTITY, PRESENTATION, AND ON-PREMISES LABELING

3-601 Accurate Representation

3-601.11 Standards of Identity.

PACKAGED FOOD shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and Standards of Identity or Composition, and the general requirements in 21 CFR 130 - Food Standards: General and 9 CFR 319 Subpart A - General.

3-601.12 Honestly Presented.

(A) FOOD shall be offered for human consumption in a way that does not mislead or misinform the CONSUMER.

(B) FOOD or COLOR ADDITIVES, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a FOOD.

(C) No food containing surimi or surimi product may be served in Maine for consumption on or off premises, unless on the menu and all notices advertising the food it is clearly and conspicuously labeled as "imitation lobster", "imitation crab", "imitation" followed by the name of the seafood imitated, "processed seafood", "surimi", "lobster-processed seafood salad", "crab-processed seafood salad or other terms as approved by the Maine Dept. of Marine Resources.

(D) A food is deemed to be misbranded if a Food Establishment sells, offers for sale or serves in any food establishment any food or food product, whether or not in package form, to which that person has added monosodium glutamate, unless:

- (1) The package in which that food or food product is offered for sale conspicuously bears a label or stamp indicating that the food or food product contains monosodium glutamate;
- (2) When the food or food is offered for consumption and is not packaged, a conspicuous label or sign is placed on the food, immediately next to the food, immediately next to the food's listing on the menu, or in an open manner where the food order or food product is obtained, indicating that the food or food product contains monosodium glutamate; or
- (3) There is a conspicuously displayed directory to which consumers can refer for information on the contents of unpackaged products for sale.

3-602 Labeling

3-602.11 Food Labels.

- (A) FOOD PACKAGED in a FOOD ESTABLISHMENT, shall be labeled as specified in LAW, including 21 CFR 101 - Food Labeling, and 9 CFR 317 Labeling, Marking Devices, and Containers.
- (B) Label information shall include:
- (1) The common name of the FOOD, or absent a common name, an adequately descriptive identity statement;
 - (2) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the FOOD;
 - (3) An accurate declaration of the quantity of contents;
 - (4) The name and place of business of the manufacturer, packer, or distributor; and
 - (5) Except as exempted in the Federal Food, Drug, and Cosmetic Act §403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 - FOOD Labeling and 9 CFR 317 Subpart B Nutrition Labeling.
- (C) Bulk FOOD that is available for CONSUMER self-dispensing shall be prominently labeled with the following information in plain view of the CONSUMER:
- (1) The manufacturer's or processor's label that was provided with the FOOD; or
 - (2) A card, sign, or other method of notification that includes the information specified under Subparagraphs (B)(1), (2), and (5) of this section.
- (D) *Bulk, UNPACKAGED FOODS such as bakery products and UNPACKAGED FOODS that are portioned to CONSUMER specification need not be labeled if:*
- (1) *A health, nutrient content, or other claim is not made;*
 - (2) *There are no state or local LAWS requiring labeling; and*
 - (3) *The FOOD is manufactured or prepared on the PREMISES of the FOOD ESTABLISHMENT or at another FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT that is owned by the same PERSON and is regulated by the FOOD regulatory agency that has jurisdiction.*

3-602.12 Other Forms of Information.

- (A) If required by LAW, CONSUMER warnings shall be provided.
- (B) FOOD ESTABLISHMENT or manufacturers' dating information on FOODS may not be concealed or altered.

3-603 Consumer Advisory

3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.*

- (A) Except as specified in ¶ 3-401.11(C) and Subparagraph 3-401.11(D)(3) and under ¶ 3-801.11(D), if an animal FOOD such as beef, eggs, FISH, lamb, milk, pork, POULTRY, or shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens is offered in a READY-TO-EAT form as a deli, menu, vended, or other item; or as a raw ingredient in

another READY-TO-EAT FOOD, the PERMIT HOLDER shall inform CONSUMERS by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable CONSUMERS eating such FOODS in raw or undercooked form.

(B) This notification shall read "This food is or may be served raw or undercooked or may contain raw or undercooked foods. Consumption of this food may increase the risk of foodborne illness. Please check with your physician if you have any questions about consuming raw or undercooked foods."

3-7 CONTAMINATED FOOD

3-701 Disposition

3-701.11 Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.*

(A) A FOOD that is unsafe, ADULTERATED, or not honestly presented as specified under §3-101.11 shall be reconditioned according to an APPROVED procedure or discarded.

(B) FOOD that is not from an APPROVED source as specified under §§3-201.11 through .17 shall be discarded.

(C) READY-TO-EAT FOOD that may have been contaminated by an EMPLOYEE who has been restricted or excluded as specified under §2-201.12 shall be discarded.

(D) FOOD that is contaminated by FOOD EMPLOYEES, CONSUMERS, or other PERSONS through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

3-8 SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS

3-801 Additional Safeguards

3-801.11 Pasteurized Foods, Prohibited Reservice, and Prohibited Food.*

In a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION:

(A) PrePACKAGED JUICE or a prePACKAGED beverage containing JUICE, that bears a warning label as specified in 21 CFR, Section 101.17(g) Food Labeling, may not be served or offered for sale;

(B) Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:

(1) FOODS such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, egg nog, ice cream, and egg-fortified BEVERAGES, and

(2) Except as specified in ¶ (E) of this section, recipes in which more than one egg is broken and the eggs are combined;

(C) FOOD in an unopened original package may not be re-served; and

(D) The following FOODS may not be served or offered for sale in a READY-TO-EAT form:

(1) Raw animal FOODS such as raw FISH, raw-marinated FISH, raw MOLLUSCAN SHELLFISH, and steak tartare,

(2) A partially cooked animal FOOD such as lightly cooked FISH, rare MEAT, soft-cooked eggs that are made from raw shell eggs, and meringue, and

(3) Raw seed sprouts.

(E) *Subparagraph (B)(2) of this section does not apply if:*

(1) *The raw eggs are combined immediately before cooking for one CONSUMER'S serving at a single meal, cooked as specified under Subparagraph 3-401.11(A)(1), and served immediately, such as an omelet, soufflé, or scrambled eggs;*

- (2) *The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a READY-TO-EAT form, such as a cake, muffin, or bread; or*
- (3) *The preparation of the food is conducted under a HACCP PLAN that:*
- (a) *Identifies the FOOD to be prepared,*
 - (b) *Prohibits contacting READY-TO-EAT FOOD with bare hands,*
 - (c) *Includes specifications and practices that ensure:*
 - (i) ***Salmonella Enteritidis** growth is controlled before and after cooking, and*
 - (ii) ***Salmonella Enteritidis** is destroyed by cooking the eggs according to the temperature and time specified in subparagraph 3-401.11(A)(2),*
 - (d) *Contains the information specified under ¶ 8-201.14(D) including procedures that:*
 - (i) *Control cross contamination of READY-TO-EAT FOOD with raw eggs, and*
 - (ii) *Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES, and*
 - (e) *Describes the training program that ensures that the FOOD EMPLOYEE responsible for the preparation of the FOOD understands the procedures to be used.*

Chapter 4 Equipment, Utensils, and Linens

4-1 MATERIALS FOR CONSTRUCTION AND REPAIR

4-101 Multiuse

4-101.11 Characteristics.*

Materials that are used in the construction of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT may not allow the migration of deleterious substances or impart colors, odors, or tastes to FOOD and under normal use conditions shall be:

- (A) Safe;
- (B) Durable, CORROSION-RESISTANT, and nonabsorbent;^N
- (C) Sufficient in weight and thickness to withstand repeated repeated WAREWASHING.^N
- (D) Finished to have a SMOOTH, EASILY CLEANABLE surface;^N and
- (E) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.^N

4-101.12 Cast Iron, Use Limitation.

- (A) Except as specified in ¶¶ (B) and (C) of this section, cast iron may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT.
- (B) *Cast iron may be used as a surface for cooking.*
- (C) *Cast iron may be used in UTENSILS for serving FOOD if the UTENSILS are used only as part of an uninterrupted process from cooking through service.*

4-101.13 Lead in Ceramic, China, and Crystal Utensils, Use Limitation.

Ceramic, china, crystal UTENSILS, and decorative UTENSILS such as hand painted ceramic or china that are used in contact with FOOD shall be lead-free or contain levels of lead not exceeding the limits of the following UTENSIL categories:

Utensil Category	Description	Maximum Lead mg/L
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls \geq 1.1 L (1.16 QT)	1
Small Hollowware	Bowls $<$ 1.1 L (1.16 QT)	2.0
Flat Utensils	Plates, Saucers	3.0

4-101.14 Copper, Use Limitation.*

(A) Except as specified in ¶ (B) of this section, copper and copper alloys such as brass may not be used in contact with a FOOD that has a pH below 6 such as vinegar, fruit JUICE, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(B) *Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.*

4-101.15 Galvanized Metal, Use Limitation.*

Galvanized metal may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT that are used in contact with acidic FOOD.

4-101.16 Sponges, Use Limitation.

Sponges may not be used in contact with cleaned and SANITIZED or in-use FOOD-CONTACT SURFACES.

4-101.17 Lead in Pewter Alloys, Use Limitation.

Pewter alloys containing lead in excess of 0.05% may not be used as a FOOD-CONTACT SURFACE.

4-101.18 Lead in Solder and Flux, Use Limitation.

Solder and flux containing lead in excess of 0.2% may not be used as a FOOD-CONTACT SURFACE.

4-101.19 Wood, Use Limitation.

(A) Except as specified in ¶¶ (B), (C), and (D) of this section, wood and wood wicker may not be used as a FOOD-CONTACT SURFACE.

(B) *Hard maple or an equivalently hard, close-grained wood may be used for:*

(1) *Cutting boards; cutting blocks; bakers' tables; and UTENSILS such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and*

(2) *Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C (230°F) or above.*

(C) *Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used. (D) If the nature of the FOOD requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw FOOD may be kept in:*

(1) *Untreated wood containers; or*

(2) *Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.*

4-101.110 Nonstick Coatings, Use Limitation.

Multiuse KITCHENWARE such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching UTENSILS and cleaning aids.

4-101.111 Nonfood-Contact Surfaces.

NonFOOD-CONTACT SURFACES of EQUIPMENT that are exposed to splash, spillage, or other FOOD soiling or that require frequent cleaning shall be constructed of a CORROSION-RESISTANT, nonabsorbent, and SMOOTH material.

4-102 Single-Service and Single-Use**4-102.11 Characteristics.***

Materials that are used to make SINGLE-SERVICE and SINGLE-USE ARTICLES:

(A) May not:

- (1) Allow the migration of deleterious substances, or
- (2) Impart colors, odors, or tastes to FOOD;^N and

(B) Shall be:

- (1) Safe, and
- (2) Clean.^N

4-2 DESIGN AND CONSTRUCTION**4-201 Durability and Strength****4-201.11 Equipment and Utensils.**

EQUIPMENT and UTENSILS shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

4-201.12 Food Temperature Measuring Devices.*

FOOD TEMPERATURE MEASURING DEVICES may not have sensors or stems constructed of glass, *except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.*

4-202 Cleanability**4-202.11 Food-Contact Surfaces.***

(A) Multiuse FOOD-CONTACT SURFACES shall be:

- (1) SMOOTH;
- (2) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
- (3) Free of sharp internal angles, corners, and crevices;
- (4) Finished to have SMOOTH welds and joints; and
- (5) Except as specified in ¶ (B) of this section, accessible for cleaning and inspection by one of the following methods:
 - (a) Without being disassembled,
 - (b) By disassembling without the use of tools, or
 - (c) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.

(B) *Subparagraph (A)(5) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.*

4-202.12 CIP Equipment.

(A) CIP EQUIPMENT shall meet the characteristics specified under §4-202.11 and shall be designed and constructed so that:

- (1) Cleaning and SANITIZING solutions circulate throughout a fixed system and contact all interior FOOD-CONTACT SURFACES, and
- (2) The system is self-draining or capable of being completely drained of cleaning and SANITIZING solutions; and

(B) CIP EQUIPMENT that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior FOOD-CONTACT SURFACES throughout the fixed system are being effectively cleaned.

4-202.13 "V" Threads, Use Limitation.

Except for hot oil cooking or filtering EQUIPMENT, "V" type threads may not be used on FOOD-CONTACT SURFACES

4-202.14 Hot Oil Filtering Equipment.

Hot oil filtering EQUIPMENT shall meet the characteristics specified under §4-202.11 or §4-202.12 and shall be readily accessible for filter replacement and cleaning of the filter.

4-202.15 Can Openers.

Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

4-202.16 Nonfood-Contact Surfaces.

NonFOOD-CONTACT SURFACES shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

4-202.17 Kick Plates, Removable.

Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

- (A) Removable by one of the methods specified under Subparagraphs 4-202.11(E)(1)-(3) or capable of being rotated open; and
- (B) Removable or capable of being rotated open without unlocking EQUIPMENT doors.

4-202.18 Ventilation Hood Systems, Filters.

Filters or other grease extracting EQUIPMENT shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

4-203 Accuracy**4-203.11 Temperature Measuring Devices, Food.**

(A) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to $\pm 1^{\circ}\text{C}$ in the intended range of use.

(B) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit shall be accurate to $\pm 2^{\circ}\text{F}$ in the intended range of use.

4-203.12 Temperature Measuring Devices, Ambient Air and Water.

(A) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to $\pm 1.5^{\circ}\text{C}$ in the intended range of use.

(B) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit shall be accurate to $\pm 3^{\circ}\text{F}$ in the intended range of use.

4-203.13 Pressure Measuring Devices, Mechanical Warewashing Equipment.

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water SANITIZING rinse shall have increments of 7 kilopascals (1 pounds per square inch) or smaller and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the 100-170 kilopascals (15-25 pounds per square inch) range.

4-204 Functionality**4-204.11 Ventilation Hood Systems, Drip Prevention.**

Exhaust ventilation hood systems in FOOD preparation and WAREWASHING areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

4-204.12 Equipment Openings, Closures and Deflectors.

(A) A cover or lid for EQUIPMENT shall overlap the opening and be sloped to drain.

(B) An opening located within the top of a unit of EQUIPMENT that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).

(C) Except as specified under ¶ (D) of this section, fixed piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending into EQUIPMENT shall be provided with a watertight joint at the point where the item enters the EQUIPMENT.

(D) If a watertight joint is not provided:

(1) The piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the FOOD; and

(2) The opening shall be flanged as specified under ¶ (B) of this section.

4-204.13 Dispensing Equipment, Protection of Equipment and Food.

In EQUIPMENT that dispenses or vends liquid FOOD or ice in unPACKAGED form:

(A) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the FOOD shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the FOOD;

(B) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(C) The delivery tube or chute and orifice of EQUIPMENT used to vend liquid FOOD or ice in unPACKAGED form to self-service CONSUMERS shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the EQUIPMENT is:

(1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or

(2) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE; and

(D) The dispensing EQUIPMENT actuating lever or mechanism and filling device of CONSUMER self-service BEVERAGE dispensing EQUIPMENT shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

4-204.14 Vending Machine, Vending Stage Closure.

The dispensing compartment of a VENDING MACHINE including a machine that is designed to vend prePACKAGED snack FOOD that is not POTENTIALLY HAZARDOUS such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

- (A) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
- (B) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE.

4-204.15 Bearings and Gear Boxes, Leakproof.

EQUIPMENT containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant can not leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

4-204.16 Beverage Tubing, Separation.

BEVERAGE tubing and cold-plate BEVERAGE cooling devices may not be installed in contact with stored ice. *This section does not apply to cold plates that are constructed integrally with an ice storage bin.*

4-204.17 Ice Units, Separation of Drains.

Liquid waste drain lines may not pass through an ice machine or ice storage bin.

4-204.18 Condenser Unit, Separation.

If a condenser unit is an integral component of EQUIPMENT, the condenser unit shall be separated from the FOOD and FOOD storage space by a dustproof barrier.

4-204.19 Can Openers on Vending Machines.

Cutting or piercing parts of can openers on VENDING MACHINES shall be protected from manual contact, dust, insects, rodents, and other contamination.

4-204.110 Molluscan Shellfish Tanks.

(A) Except as specified under ¶ (B) of this section, MOLLUSCAN SHELLFISH life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the CONSUMER that the shellfish are for display only.

(B) MOLLUSCAN SHELLFISH life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with a VARIANCE granted by the REGULATORY AUTHORITY as specified in §8-103.10 and a HACCP PLAN that:

- (1) Is submitted by the PERMIT HOLDER and APPROVED as specified under §8-103.11; and
- (2) Ensures that:
 - (a) Water used with FISH other than MOLLUSCAN SHELLFISH does not flow into the molluscan tank,
 - (b) The safety and quality of the shellfish as they were received are not compromised by the use of the tank, and
 - (c) The identity of the source of the SHELLSTOCK is retained as specified under §3-203.12

4-204.111 Vending Machines, Automatic Shutoff.*

(A) A machine vending POTENTIALLY HAZARDOUS FOOD shall have an automatic control that prevents the machine from vending FOOD:

- (1) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain FOOD temperatures as specified under Chapter 3; and
- (2) If a condition specified under Subparagraph (A)(1) of this section occurs, until the machine is serviced and restocked with FOOD that has been maintained at temperatures specified under Chapter 3.

(B) When the automatic shutoff within a machine vending POTENTIALLY HAZARDOUS FOOD is activated:

- (1) In a refrigerated VENDING MACHINE, the ambient temperature may not exceed 5°C (41°F) or 7°C (45°F) as specified under ¶ 3-501.16(C) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or

(2) In a hot holding VENDING MACHINE, the ambient temperature may not be less than 60°C (140°F) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

4-204.112 Temperature Measuring Devices.

(A) In a mechanically refrigerated or hot FOOD storage unit, the sensor of a TEMPERATURE MEASURING DEVICE shall be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot FOOD storage unit.

(B) Except as specified in ¶ (C) of this section, cold or hot holding EQUIPMENT used for POTENTIALLY HAZARDOUS FOOD shall be designed to include and shall be equipped with at least one integral or permanently affixed TEMPERATURE MEASURING DEVICE that is located to allow easy viewing of the device's temperature display.

(C) Paragraph (B) of this section does not apply to EQUIPMENT for which the placement of a TEMPERATURE MEASURING DEVICE is not a practical means for measuring the ambient air surrounding the FOOD because of the design, type, and use of the EQUIPMENT, such as calorod units, heat lamps, cold plates, bainmaries, steam tables, insulated FOOD transport containers, and salad bars.

(D) TEMPERATURE MEASURING DEVICES shall be designed to be easily readable.

(E) FOOD TEMPERATURE MEASURING DEVICES and water TEMPERATURE MEASURING DEVICES on WAREWASHING machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1°C or 2°F in the intended range of use.

4-204.113 Warewashing Machine, Data Plate Operating Specifications.

A WAREWASHING machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

(A) Temperatures required for washing, rinsing, and SANITIZING;

(B) Pressure required for the fresh water SANITIZING rinse *unless the machine is designed to use only a pumped SANITIZING rinse*; and

(C) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

4-204.114 Warewashing Machines, Internal Baffles.

WAREWASHING machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

4-204.115 Warewashing Machines, Temperature Measuring Devices.

A WAREWASHING machine shall be equipped with a TEMPERATURE MEASURING DEVICE that indicates the temperature of the water:

(A) In each wash and rinse tank; and

(B) As the water enters the hot water SANITIZING final rinse manifold or in the chemical SANITIZING solution tank.

4-204.116 Manual Warewashing Equipment, Heaters and Baskets.

If hot water is used for SANITIZATION in manual WAREWASHING operations, the SANITIZING compartment of the sink shall be:

(A) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 77°C (171°F); and

(B) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

4-204.117 Warewashing Machines, Sanitizer Level Indicator.

A WAREWASHING machine that uses a chemical for SANITIZATION and that is installed after adoption of this Code by the REGULATORY AUTHORITY, shall be equipped with a device that indicates audibly or visually when more chemical SANITIZER needs to be added.

4-204.118 Warewashing Machines, Flow Pressure Device.

(A) WAREWASHING machines that provide a fresh hot water SANITIZING rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the WAREWASHING machine; and

(B) If the flow pressure measuring device is upstream of the fresh hot water SANITIZING rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.

(C) Paragraphs (A) and (B) of this section do not apply to a machine that uses only a pumped or recirculated SANITIZING rinse.

4-204.119 Warewashing Sinks and Drainboards, Self-Draining.

Sinks and drainboards of WAREWASHING sinks and machines shall be self-draining.

4-204.120 Equipment Compartments, Drainage.

EQUIPMENT compartments that are subject to accumulation of moisture due to conditions such as condensation, FOOD or

BEVERAGE drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

4-204.121 Vending Machines, Liquid Waste Products.

(A) VENDING MACHINES designed to store BEVERAGES that are PACKAGED in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(B) VENDING MACHINES that dispense liquid FOOD in bulk shall be:

(1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(C) Shutoff devices specified under Subparagraph (B)(2) of this section shall prevent water or liquid FOOD from continuously running if there is a failure of a flow control device in the water or liquid FOOD system or waste accumulation that could lead to overflow of the waste receptacle.

4-204.122 Case Lot Handling Equipment, Moveability.

EQUIPMENT, such as dollies, pallets, racks, and skids used to store and transport large quantities of PACKAGED FOODS received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available EQUIPMENT such as hand trucks and forklifts.

4-204.123 Vending Machine Doors and Openings.

(A) VENDING MACHINE doors and access opening covers to FOOD and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch by:

(1) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or one-sixteenth inch. Screening of 12 or more mesh to 2.5 centimeters

(12 mesh to 1 inch) meets this requirement;

(2) Being effectively gasketed;

(3) Having interface surfaces that are at least 13 millimeters or one-half inch wide; or

(4) Jambs or surfaces used to form an L-shaped entry path to the interface.

(B) VENDING MACHINE service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

4-205 Acceptability**4-205.10 Food Equipment, Certification and Classification.**

FOOD EQUIPMENT that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Parts 4-1 and 4-2 of this chapter.

4-3 NUMBERS AND CAPACITIES**4-301 Equipment****4-301.11 Cooling, Heating, and Holding Capacities.**

EQUIPMENT for cooling and heating FOOD, and holding cold and hot FOOD, shall be sufficient in number and capacity to provide FOOD temperatures as specified under Chapter 3.

4-301.12 Manual Warewashing, Sink Compartment Requirements.

(A) Except as specified in ¶ (C) of this section, a sink with at least 3 compartments shall be provided for manually washing, rinsing, and SANITIZING EQUIPMENT and UTENSILS.

(B) Sink compartments shall be large enough to accommodate immersion of the largest EQUIPMENT and UTENSILS. If EQUIPMENT or UTENSILS are too large for the WAREWASHING sink, a WAREWASHING machine or alternative EQUIPMENT as specified in ¶ (C) of this section shall be used.

(C) *Alternative manual WAREWASHING EQUIPMENT may be used when there are special cleaning needs or constraints and its use is APPROVED. Alternative manual WAREWASHING EQUIPMENT may include:*

- (1) *High-pressure detergent sprayers;*
- (2) *Low- or line-pressure spray detergent foamers;*
- (3) *Other task-specific cleaning EQUIPMENT;*
- (4) *Brushes or other implements;*
- (5) *2-compartment sinks as specified under ¶¶ (D) and (E) of this section; or*
- (6) *Receptacles that substitute for the compartments of a multicompartment sink.*

(D) Before a 2-compartment sink is used:

- (1) The PERMIT HOLDER shall have its use APPROVED; and
- (2) The nature of WAREWASHING shall be limited to batch operations for cleaning KITCHENWARE such as between cutting one type of raw MEAT and another or cleanup at the end of a shift, and:
 - (a) The number of items to be cleaned shall be limited,
 - (b) The cleaning and SANITIZING solutions shall be made up immediately before use and drained immediately after use, and
 - (c) A detergent-SANITIZER shall be used to SANITIZE and shall be applied as specified under §4-501.115, or
 - (d) A hot water SANITIZATION immersion step shall be used as specified under ¶ 4-603.16(C).

(E) A 2-compartment sink may not be used for WAREWASHING operations where cleaning and SANITIZING solutions are used for a continuous or intermittent flow of KITCHENWARE or TABLEWARE in an ongoing WAREWASHING process.

4-301.13 Drainboards.

Drainboards, UTENSIL racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary UTENSIL holding before cleaning and after SANITIZING.

4-301.14 Ventilation Hood Systems, Adequacy.

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

4-301.15 Clothes Washers and Dryers.

(A) Except as specified in ¶ (B) of this section, if work clothes or LINENS are laundered on the PREMISES, a mechanical clothes washer and dryer shall be provided and used.

(B) *If on-PREMISES laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under §4-901.12, a mechanical clothes washer and dryer need not be provided.*

4-302 Utensils, Temperature Measuring Devices, and Testing Devices**4-302.11 Utensils, Consumer Self-Service.**

A FOOD dispensing UTENSIL shall be available for each container displayed at a CONSUMER self-service unit such as a buffet or salad bar.

4-302.12 Food Temperature Measuring Devices.

FOOD TEMPERATURE MEASURING DEVICES shall be provided and readily accessible for use in ensuring attainment and maintenance of FOOD temperatures as specified under Chapter 3.

4-302.13 Temperature Measuring Devices, Manual Warewashing.

In manual WAREWASHING operations, a TEMPERATURE MEASURING DEVICE shall be provided and readily accessible for frequently measuring the washing and SANITIZING temperatures.

4-302.14 Sanitizing Solutions, Testing Devices.

A test kit or other device that accurately measures the concentration in mg/L of SANITIZING solutions shall be provided.

4-4 LOCATION AND INSTALLATION**4-401 Location****4-401.11 Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.**

(A) Except as specified in ¶ (B) of this section, EQUIPMENT, a cabinet used for the storage of FOOD, or a cabinet that is used to store cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be located:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In garbage rooms;
- (4) In mechanical rooms;
- (5) Under sewer lines that are not shielded to intercept potential drips;
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (7) Under open stairwells; or
- (8) Under other sources of contamination.

(B) *A storage cabinet used for LINENS or SINGLE-SERVICE or SINGLE-USE ARTICLES may be stored in a locker room.*

(C) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

4-402 Installation**4-402.11 Fixed Equipment, Spacing or Sealing.**

- (A) EQUIPMENT that is fixed because it is not EASILY MOVABLE shall be installed so that it is:
- (1) Spaced to allow access for cleaning along the sides, behind, and above the EQUIPMENT;
 - (2) Spaced from adjoining EQUIPMENT, walls, and ceilings a distance of not more than 1 millimeter or one thirty-second inch; or
 - (3) SEALED to adjoining EQUIPMENT or walls, if the EQUIPMENT is exposed to spillage or seepage.
- (B) TABLE-MOUNTED EQUIPMENT that is not EASILY MOVABLE shall be installed to allow cleaning of the EQUIPMENT and areas underneath and around the EQUIPMENT by being:
- (1) SEALED to the table; or
 - (2) Elevated on legs as specified under ¶ 4-402.12(D).

4-402.12 Fixed Equipment, Elevation or Sealing.

- (A) Except as specified in ¶¶ (B) and (C) of this section, floor-mounted EQUIPMENT that is not EASILY MOVABLE shall be SEALED to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the EQUIPMENT.
- (B) *If no part of the floor under the floor-mounted EQUIPMENT is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).*
- (C) *This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the CONSUMER shopping areas of a retail FOOD store, if the floor under the units is maintained clean.*
- (D) Except as specified in ¶ (E) of this section, TABLE-MOUNTED EQUIPMENT that is not EASILY MOVABLE shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the EQUIPMENT.
- (E) *The clearance space between the table and TABLE-MOUNTED EQUIPMENT may be:*
- (1) *7.5 centimeters (3 inches) if the horizontal distance of the table top under the EQUIPMENT is no more than 50 centimeters (20 inches) from the point of access for cleaning; or*
 - (2) *5 centimeters (2 inches) if the horizontal distance of the table top under the EQUIPMENT is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.*

4-5 MAINTENANCE AND OPERATION**4-501 Equipment****4-501.11 Good Repair and Proper Adjustment.**

- (A) EQUIPMENT shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2.
- (B) EQUIPMENT components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.
- (C) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate FOOD when the container is opened.

4-501.12 Cutting Surfaces.

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and SANITIZED, or discarded if they are not capable of being resurfaced.

4-501.13 Microwave Ovens.

Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 Microwave ovens.

4-501.14 Warewashing Equipment, Cleaning Frequency.

A WAREWASHING machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing EQUIPMENT, UTENSILS, or raw FOODS, or laundering wiping cloths; and drainboards or other EQUIPMENT used to substitute for drainboards as specified under §4-301.13 shall be cleaned:

(A) Before use;

(B) Throughout the day at a frequency necessary to prevent recontamination of EQUIPMENT and UTENSILS and to ensure that the EQUIPMENT performs its intended function; and

(C) If used, at least every 24 hours.

4-501.15 Warewashing Machines, Manufacturers' Operating Instructions.

(A) A WAREWASHING machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(B) A WAREWASHING machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

4-501.16 Warewashing Sinks, Use Limitation.

(A) A WAREWASHING sink may not be used for handwashing.

(B) If a WAREWASHING sink is used to wash wiping cloths, wash produce, or thaw FOOD, the sink shall be cleaned as specified under §4-501.14 before and after each time it is used to wash wiping cloths or wash produce or thaw FOOD. Sinks used to wash or thaw FOOD shall be SANITIZED as specified under Part 4-7 before and after using the sink to wash produce or thaw FOOD.

4-501.17 Warewashing Equipment, Cleaning Agents.

When used for WAREWASHING, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual WAREWASHING EQUIPMENT as specified in 4-301.12(C), shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

4-501.18 Warewashing Equipment, Clean Solutions.

The wash, rinse, and SANITIZE solutions shall be maintained clean.

4-501.19 Manual Warewashing Equipment, Wash Solution Temperature.

The temperature of the wash solution in manual WAREWASHING EQUIPMENT shall be maintained at not less than 43°C (110°F) or the temperature specified on the cleaning agent manufacturer's label instructions.

4-501.110 Mechanical Warewashing Equipment, Wash Solution Temperature.

(A) The temperature of the wash solution in spray type warewashers that use hot water to SANITIZE may not be less than:

(1) For a stationary rack, single temperature machine, 74°C (165°F);

(2) For a stationary rack, dual temperature machine, 66°C (150°F);

(3) For a single tank, conveyor, dual temperature machine, 71°C (160°F); or

(4) For a multitank, conveyor, multitemperature machine, 66°C (150°F).

(B) The temperature of the wash solution in spray-type warewashers that use chemicals to SANITIZE may not be less than 49°C (120°F).

4-501.111 Manual Warewashing Equipment, Hot Water Sanitization Temperatures.*

If immersion in hot water is used for SANITIZING in a manual operation, the temperature of the water shall be maintained at 77°C (171°F) or above.

4-501.112 Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures.

(A) Except as specified in ¶ (B) of this section, in a mechanical operation, the temperature of the fresh hot water SANITIZING rinse as it enters the manifold may not be more than 90°C (194°F), or less than:

- (1) For a stationary rack, single temperature machine, 74°C (165°F); or
- (2) For all other machines, 82°C (180°F).

(B) *The maximum temperature specified under ¶ (A) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and SANITIZING of EQUIPMENT such as meat saws.*

4-501.113 Mechanical Warewashing Equipment, Sanitization Pressure.

The flow pressure of the fresh hot water SANITIZING rinse in a WAREWASHING machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately downstream or upstream from the fresh hot water SANITIZING rinse control valve.

4-501.114 Manual and Mechanical Warewashing Equipment, Chemical Sanitization Temperature, pH, Concentration, and Hardness.*

A chemical SANITIZER used in a SANITIZING solution for a manual or mechanical operation at exposure times specified under ¶ 4-703.11(C) shall be listed in 21 CFR 178.1010 Sanitizing solutions, shall be used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

(A) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart;

Minimum Concentration	Minimum Temperature	
	PH 10 or less °C (°F)	pH 8 or less °C (°F)
mg/L		
25	49 (120)	49 (120)
50	38 (100)	24 (75)
100	13 (55)	13 (55)

(B) An iodine solution shall have a:

- (1) Minimum temperature of 24°C (75°F),
- (2) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, and
- (3) Concentration between 12.5 mg/L and 25 mg/L;

(C) A quaternary ammonium compound solution shall:

- (1) Have a minimum temperature of 24°C (75°F),
- (2) Have a concentration as specified under §7-204.11 and as indicated by the manufacturer's use directions included in the labeling, and

(3) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer's label;

(D) If another solution of a chemical specified under ¶¶ (A)-(C) of this section is used, the PERMIT HOLDER shall demonstrate to the REGULATORY AUTHORITY that the solution achieves SANITIZATION and the use of the solution shall be APPROVED; or

(E) If a chemical SANITIZER other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

4-501.115 Manual Warewashing Equipment, Chemical Sanitization Using Detergent-Sanitizers. If a detergent-SANITIZER is used to SANITIZE in a cleaning and SANITIZING procedure where there is no distinct water rinse between the washing and SANITIZING steps, the agent applied in the SANITIZING step shall be the same detergent-SANITIZER that is used in the washing step.

4-501.116 Warewashing Equipment, Determining Chemical Sanitizer Concentration.

Concentration of the SANITIZING solution shall be accurately determined by using a test kit or other device.

4-502 Utensils and Temperature and Pressure Measuring Devices

4-502.11 Good Repair and Calibration.

(A) UTENSILS shall be maintained in a state of repair or condition that complies with the requirements specified under Parts 4-1 and 4-2 or shall be discarded.

(B) FOOD TEMPERATURE MEASURING DEVICES shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(C) Ambient air temperature, water pressure, and water TEMPERATURE MEASURING DEVICES shall be maintained in good repair and be accurate within the intended range of use.

4-502.12 Single-Service and Single-Use Articles, Required Use.*

A FOOD ESTABLISHMENT without facilities specified under Parts 4-6 and 4-7 for cleaning and SANITIZING kitchenware and TABLEWARE shall provide only SINGLE-USE KITCHENWARE, SINGLE-SERVICE ARTICLES, and SINGLE-USE ARTICLES for use by FOOD EMPLOYEES and SINGLE-SERVICE ARTICLES for use by CONSUMERS.

4-502.13 Single-Service and Single-Use Articles, Use Limitation.

(A) SINGLE-SERVICE and SINGLE-USE ARTICLES may not be reused.

(B) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

4-502.14 Shells, Use Limitation.

Mollusk and crustacea shells may not be used more than once as serving containers.

4-6 CLEANING OF EQUIPMENT AND UTENSILS

4-601 Objective

4-601.11 Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils.*

(A) EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be clean to sight and touch.

(B) The FOOD-CONTACT SURFACES of cooking EQUIPMENT and pans shall be kept free of encrusted grease deposits and other soil accumulations.^N

(C) NonFOOD-CONTACT SURFACES of EQUIPMENT shall be kept free of an accumulation of dust, dirt, FOOD residue, and other debris.^N

4-602 Frequency

4-602.11 Equipment Food-Contact Surfaces and Utensils.*

(A) EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be cleaned:

- (1) Except as specified in ¶ (B) of this section, before each use with a different type of raw animal FOOD such as beef, FISH, lamb, pork, or POULTRY;
- (2) Each time there is a change from working with raw FOODS to working with READY-TO-EAT FOODS;
- (3) Between uses with raw fruits and vegetables and with POTENTIALLY HAZARDOUS FOOD;
- (4) Before using or storing a FOOD TEMPERATURE MEASURING DEVICE; and
- (5) At any time during the operation when contamination may have occurred.

(B) *Subparagraph (A)(1) of this section does not apply if the FOOD-CONTACT SURFACE or UTENSIL is in contact with a succession of different raw animal FOODS each requiring a higher cooking temperature as specified under §3-401.11 than the previous FOOD, such as preparing raw FISH followed by cutting raw poultry on the same cutting board.*

(C) Except as specified in ¶ (D) of this section, if used with POTENTIALLY HAZARDOUS FOOD, EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be cleaned throughout the day at least every 4 hours.

(D) *Surfaces of UTENSILS and EQUIPMENT contacting POTENTIALLY HAZARDOUS FOOD may be cleaned less frequently than every 4 hours if:*

- (1) *In storage, containers of POTENTIALLY HAZARDOUS FOOD and their contents are maintained at temperatures specified under Chapter 3 and the containers are cleaned when they are empty;*
- (2) *UTENSILS and EQUIPMENT are used to prepare FOOD in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:*

(a) The UTENSILS and EQUIPMENT are cleaned at the frequency in the following chart that corresponds to the temperature:

Cleaning	
<u>Temperature</u>	<u>Frequency</u>
5.0°C (41°F) or less	24 hours
>5.0°C - 7.2°C (>41°F - 45°F)	20 hours
>7.2°C - 10.0°C (>45°F - 50°F)	16 hours
>10.0°C - 12.8°C (>50°F - 55°F); and	10 hours

(b) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the FOOD ESTABLISHMENT.

(3) *Containers in serving situations such as salad bars, delis, and cafeteria lines hold READY-TO-EAT POTENTIALLY HAZARDOUS FOOD that is maintained at the temperatures specified under Chapter 3, are intermittently combined with additional supplies of the same FOOD that is at the required temperature, and the containers are cleaned at least every 24 hours;*

- (4) *TEMPERATURE MEASURING DEVICES* are maintained in contact with *FOOD*, such as when left in a container of deli *FOOD* or in a roast, held at temperatures specified under Chapter 3;
- (5) *EQUIPMENT* is used for storage of *PACKAGED* or *UNPACKAGED FOOD* such as a reach-in refrigerator and the *EQUIPMENT* is cleaned at a frequency necessary to preclude accumulation of soil residues;
- (6) The cleaning schedule is *APPROVED* based on consideration of:
- (a) Characteristics of the *EQUIPMENT* and its use,
 - (b) The type of *FOOD* involved,
 - (c) The amount of *FOOD* residue accumulation, and
 - (d) The temperature at which the *FOOD* is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or
- (7) *In-use UTENSILS* are intermittently stored in a container of water in which the water is maintained at 60°C (140°F) or more and the *UTENSILS* and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.
- (E) Except when dry cleaning methods are used as specified under §4-603.11, surfaces of *UTENSILS* and *EQUIPMENT* contacting *FOOD* that is not *POTENTIALLY HAZARDOUS* shall be cleaned:^N
- (1) At any time when contamination may have occurred;
 - (2) At least every 24 hours for iced tea dispensers and *CONSUMER* self-service *UTENSILS* such as tongs, scoops, or ladles;
 - (3) Before restocking *CONSUMER* self-service *EQUIPMENT* and *UTENSILS* such as condiment dispensers and display containers; and
 - (4) In *EQUIPMENT* such as ice bins and *BEVERAGE* dispensing nozzles and enclosed components of *EQUIPMENT* such as ice makers, cooking oil storage tanks and distribution lines, *BEVERAGE* and syrup dispensing lines or tubes, coffee bean grinders, and water vending *EQUIPMENT*:
 - (a) At a frequency specified by the manufacturer, or
 - (b) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

4-602.12 Cooking and Baking Equipment.

- (A) The *FOOD-CONTACT SURFACES* of cooking and baking *EQUIPMENT* shall be cleaned at least every 24 hours. *This section does not apply to hot oil cooking and filtering EQUIPMENT if it is cleaned as specified in Subparagraph 4-602.11(D)(6).*
- (B) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

4-602.13 Nonfood-Contact Surfaces.

NonFOOD-CONTACT SURFACES of *EQUIPMENT* shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

4-603 Methods

4-603.11 Dry Cleaning.

- (A) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only *SURFACES* that are soiled with dry *FOOD* residues that are not *POTENTIALLY HAZARDOUS*.
- (B) Cleaning *EQUIPMENT* used in dry cleaning *FOOD-CONTACT SURFACES* may not be used for any other purpose.

4-603.12 Precleaning.

- (A) *FOOD* debris on *EQUIPMENT* and *UTENSILS* shall be scrapped over a waste disposal unit, scupper, or garbage receptacle or shall be removed in a *WAREWASHING* machine with a prewash cycle.

(B) If necessary for effective cleaning, UTENSILS and EQUIPMENT shall be preflushed, presoaked, or scrubbed with abrasives.

4-603.13 Loading of Soiled Items, Warewashing Machines.

Soiled items to be cleaned in a WAREWASHING machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

(A) Exposes the items to the unobstructed spray from all cycles; and

(B) Allows the items to drain.

4-603.14 Wet Cleaning.

(A) EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(B) The washing procedures selected shall be based on the type and purpose of the EQUIPMENT or UTENSIL, and on the type of soil to be removed.

4-603.15 Washing, Procedures for Alternative Manual Warewashing Equipment.

If washing in sink compartments or a WAREWASHING machine is impractical such as when the EQUIPMENT is fixed or the UTENSILS are too large, washing shall be done by using alternative manual WAREWASHING EQUIPMENT as specified in ¶ 4-301.12(C) in accordance with the following procedures:

(A) EQUIPMENT shall be disassembled as necessary to allow access of the detergent solution to all parts;

(B) EQUIPMENT components and UTENSILS shall be scrapped or rough cleaned to remove FOOD particle accumulation; and

(C) EQUIPMENT and UTENSILS shall be washed as specified under ¶ 4-603.14(A).

4-603.16 Rinsing Procedures.

Washed UTENSILS and EQUIPMENT shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-SANITIZER solution by using one of the following procedures:

(A) Use of a distinct, separate water rinse after washing and before SANITIZING if using:

(1) A 3-compartment sink,

(2) Alternative manual WAREWASHING EQUIPMENT equivalent to a 3-compartment sink as specified in ¶ 4-301.12(C), or

(3) A 3-step washing, rinsing, and SANITIZING procedure in a WAREWASHING system for CIP EQUIPMENT;

(B) Use of a detergent-SANITIZER as specified under §4-501.115 if using:

(1) Alternative WAREWASHING EQUIPMENT as specified in ¶ 4-301.12(C) that is APPROVED for use with a detergent-SANITIZER, or

(2) A WAREWASHING system for CIP EQUIPMENT;

(C) Use of a nondistinct water rinse that is integrated in the hot water SANITIZATION immersion step of a 2-compartment sink operation;

(D) If using a WAREWASHING machine that does not recycle the SANITIZING solution as specified under

¶ (E) of this section, or alternative manual WAREWASHING EQUIPMENT such as sprayers, use of a nondistinct water rinse that is:

(1) Integrated in the application of the SANITIZING solution, and

(2) Wasted immediately after each application; or

(E) If using a WAREWASHING machine that recycles the SANITIZING solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the SANITIZING solution.

4-603.17 Returnables, Cleaning for Refilling.*

(A) Except as specified in ¶¶ (B) and (C) of this section, returned empty containers intended for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT.

(B) A FOOD-specific container for BEVERAGES may be refilled at a FOOD ESTABLISHMENT if:

- (1) Only a BEVERAGE that is not a POTENTIALLY HAZARDOUS FOOD is used as specified under ¶ 3-304.17(A);
- (2) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;
- (3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
- (4) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and
- (5) The container is refilled by:
 - (a) An EMPLOYEE of the FOOD ESTABLISHMENT, or
 - (b) The owner of the container if the BEVERAGE system includes a contamination-free transfer process that can not be bypassed by the container owner.

(C) CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.

4-7 SANITIZATION OF EQUIPMENT AND UTENSILS**4-701 Objective****4-701.10 Food-Contact Surfaces and Utensils.**

EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be SANITIZED.

4-702 Frequency**4-702.11 Before Use After Cleaning.***

UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT shall be SANITIZED before use after cleaning.

4-703 Methods**4-703.11 Hot Water and Chemical.***

After being cleaned, EQUIPMENT FOOD-CONTACT SURFACES and UTENSILS shall be SANITIZED in:

- (A) Hot water manual operations by immersion for at least 30 seconds and as specified under §4-501.111;
- (B) Hot water mechanical operations by being cycled through EQUIPMENT that is set up as specified under §§4-501.15, 4-501.112, and 4-501.113 and achieving a UTENSIL surface temperature of 71°C (160°F) as measured by an irreversible registering temperature indicator; or
- (C) Chemical manual or mechanical operations, including the application of SANITIZING chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under §4-501.114 by providing:
 - (1) Except as specified under Subparagraph (C)(2) of this section, an exposure time of at least 10 seconds for a chlorine solution specified under ¶ 4-501.114(A),
 - (2) An exposure time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38°C (100°F) or a pH of 8 or less and a temperature of at least 24°C (75°F),
 - (3) An exposure time of at least 30 seconds for other chemical SANITIZING solutions, or
 - (4) An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields SANITIZATION as defined in Subparagraph 1-201.10(B)(70).

4-8 LAUNDERING

4-801 Objective

4-801.11 Clean Linens.

Clean LINENS shall be free from FOOD residues and other soiling matter.

4-802 Frequency

4-802.11 Specifications.

(A) LINENS that do not come in direct contact with FOOD shall be laundered between operations if they become wet, sticky, or visibly soiled.

(B) Cloth gloves used as specified in ¶ 3-304.15(D) shall be laundered before being used with a different type of raw animal FOOD such as beef, lamb, pork, and FISH.

(C) LINENS and napkins that are used as specified under §3-304.13 and cloth napkins shall be laundered between each use.

(D) Wet wiping cloths shall be laundered daily.

(E) Dry wiping cloths shall be laundered as necessary to prevent contamination of FOOD and clean serving UTENSILS.

4-803 Methods

4-803.11 Storage of Soiled Linens.

Soiled LINENS shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of FOOD, clean EQUIPMENT, clean UTENSILS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

4-803.12 Mechanical Washing.

(A) Except as specified in ¶ (B) of this section, LINENS shall be mechanically washed.

(B) *In FOOD ESTABLISHMENTS in which only wiping cloths are laundered as specified in ¶ 4-301.15(B), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a WAREWASHING or FOOD preparation sink that is cleaned as specified under §4-501.14.*

4-803.13 Use of Laundry Facilities.

(A) Except as specified in ¶ (B) of this section, laundry facilities on the PREMISES of a FOOD ESTABLISHMENT shall be used only for the washing and drying of items used in the operation of the establishment.

(B) *Separate laundry facilities located on the PREMISES for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering FOOD ESTABLISHMENT items.*

4-9 PROTECTION OF CLEAN ITEMS

4-901 Drying

4-901.11 Equipment and Utensils, Air-Drying Required.

After cleaning and SANITIZING, EQUIPMENT and UTENSILS:

(A) Shall be air-dried or used after adequate draining as specified in ¶ (a) of 21 CFR 178.1010 Sanitizing solutions, before contact with FOOD; and

(B) *May not be cloth dried except that UTENSILS that have been air-dried may be polished with cloths that are maintained clean and dry.*

4-901.12 Wiping Cloths, Air-Drying Locations.

Wiping cloths laundered in a FOOD ESTABLISHMENT that does not have a mechanical clothes dryer as specified in ¶ 4-301.15(B) shall be air-dried in a location and in a manner that prevents contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and the wiping cloths. *This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under §4-501.114.*

4-902 Lubricating and Reassembling**4-902.11 Food-Contact Surfaces.**

Lubricants shall be applied to FOOD-CONTACT SURFACES that require lubrication in a manner that does not contaminate FOOD-CONTACT SURFACES.

4-902.12 Equipment.

EQUIPMENT shall be reassembled so that FOOD-CONTACT SURFACES are not contaminated.

4-903 Storing**4-903.11 Equipment, Utensils, Linens, and Single-Service and Single-Use Articles.**

(A) Except as specified in ¶ (D) of this section, cleaned EQUIPMENT and UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES shall be stored:

- (1) In a clean, dry location;
- (2) Where they are not exposed to splash, dust, or other contamination; and
- (3) At least 15 cm (6 inches) above the floor.

(B) Clean EQUIPMENT and UTENSILS shall be stored as specified under ¶ (A) of this section and shall be stored:

- (1) In a self-draining position that allows air drying; and
- (2) Covered or inverted.

(C) SINGLE-SERVICE and SINGLE-USE ARTICLES shall be stored as specified under ¶ (A) of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(D) *Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as specified under §4-204.122.*

4-903.12 Prohibitions.

(A) Except as specified in ¶ (B) of this section, cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be stored:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In garbage rooms;
- (4) In mechanical rooms;
- (5) Under sewer lines that are not shielded to intercept potential drips;
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (7) Under open stairwells; or
- (8) Under other sources of contamination.

(B) *Laundered LINENS and SINGLE-SERVICE and SINGLE-USE ARTICLES that are PACKAGED or in a facility such as a cabinet may be stored in a locker room.*

4-904 Handling**4-904.11 Kitchenware and Tableware.**

(A) SINGLE-SERVICE and SINGLE-USE ARTICLES and cleaned and SANITIZED UTENSILS shall be handled, displayed, and dispensed so that contamination of FOOD- and lip-contact surfaces is prevented.

(B) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by EMPLOYEES and by CONSUMERS if CONSUMER self-service is provided.

(C) Except as specified under ¶ (B) of this section, SINGLE-SERVICE ARTICLES that are intended for FOOD- or lip-contact shall be furnished for CONSUMER self-service with the original individual wrapper intact or from an APPROVED dispenser.

4-904.12 Soiled and Clean Tableware.

Soiled TABLEWARE shall be removed from CONSUMER eating and drinking areas and handled so that clean TABLEWARE is not contaminated.

4-904.13 Preset Tableware.

IF TABLEWARE is preset:

- (A) It shall be protected from contamination by being wrapped, covered, or inverted;
- (B) Exposed, unused settings shall be removed when a CONSUMER is seated; or
- (C) Exposed, unused settings shall be cleaned and SANITIZED before further use if the settings are not removed when a CONSUMER is seated.

Chapter 5 Water, Plumbing, and Waste**5-1 WATER****5-101 Source****5-101.11 Approved System.***

DRINKING WATER shall be obtained from an APPROVED source that is:

- (A) A PUBLIC WATER SYSTEM; or
- (B) A nonPUBLIC WATER SYSTEM that is constructed, maintained, and operated according to LAW.

5-101.12 System Flushing and Disinfection.*

A DRINKING WATER system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

5-101.13 Bottled Drinking Water.*

BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled DRINKING WATER and the State of Maine Rules Relating to Bottled Water, Bulk Water and Water Vending Machines, CMR, 10-144 Chapter 231.

5-102 Quality**5-102.11 Standards.***

Except as specified under §5-102.12:

- (A) Water from a PUBLIC WATER SYSTEM shall meet 40 CFR 141 - National Primary Drinking Water Regulations and the State of Maine Rules Relating to Drinking Water, CMR, 10-144 Chapter 231 and;
- (B) Water from a nonPUBLIC WATER SYSTEM shall meet state DRINKING WATER quality standards.
- (C) State DRINKING WATER quality standards are as follows:
 - (1) Zero (0) colony forming units of Coliform bacteria per 100 milliliters of sample
 - (2) 10 ppm nitrate maximum
 - (3) 1 ppm nitrite maximum
- (D) Drinking water acquired from surface water shall be properly disinfected with chlorine, and maintain a residual of 0.5 ppm.
- (E) All new water supplies shall test for organic, inorganic, and bacteria as required by the Safe Drinking Water Act, and obtain "new well approval" from the Department of Human Services, Drinking Water Program, or, if not a regulated Public Water System, shall sample as indicated in 5-102.13.

5-102.12 Nondrinking Water.*

- (A) A nonDRINKING WATER supply shall be used only if its use is APPROVED.
- (B) NonDRINKING WATER shall be used only for nonculinary purposes such as air conditioning, nonFOOD EQUIPMENT cooling, fire protection, and irrigation.

5-102.13 Sampling.

Except when used as specified under §5-102.12, water from a nonPUBLIC WATER SYSTEM shall be sampled and tested initially at least quarterly, and after four satisfactory bacteria samples, the sampling may be reduced to annually and as required by state water quality regulations, and as indicated in sections (A) and (B) below.

Samples shall be analyzed in a laboratory recognized by the State of Maine Health and Environmental Testing Laboratory as being certified for testing for the specific parameters to be analyzed.

(A) Groundwater supplies shall test annually for coliform bacteria, nitrate and nitrite.

(B) Surface water supplies shall test annually for nitrate and nitrite and monthly for coliform bacteria and turbidity. Surface water supplies shall also sample, conduct and record the results of their own tests for chlorine daily. A copy of the chlorine records shall be kept on the premises for the last 2 years and shall be available for viewing by the state REGULATORY AUTHORITY.

5-102.14 Sample Report.

All past water sample results for the establishment shall be retained on file in the Food Establishment for review by the regulatory authority during the periodic inspections.

5-103 Quantity and Availability

5-103.11 Capacity.*

(A) The water source and system shall be of sufficient capacity to meet the peak water demands of the FOOD ESTABLISHMENT.

(B) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the FOOD ESTABLISHMENT.

5-103.12 Pressure.

Water under pressure shall be provided to all fixtures, EQUIPMENT, and nonFOOD EQUIPMENT that are required to use water *except that water supplied as specified under §§ 5-104.12(A) and (B) to a TEMPORARY FOOD ESTABLISHMENT or in response to a temporary interruption of a water supply need not be under pressure.*

5-104 Distribution, Delivery, and Retention

5-104.11 System.

Water shall be received from the source through the use of:

(A) An APPROVED public water main; or

(B) One or more of the following that shall be constructed, maintained, and operated according to LAW:

- (1) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances,
- (2) Water transport vehicles, and
- (3) Water containers.

5-104.12 Alternative Water Supply.

Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a TEMPORARY FOOD ESTABLISHMENT without a permanent water supply, and for a FOOD ESTABLISHMENT with a temporary interruption of its water supply through:

(A) A supply of containers of commercially BOTTLED DRINKING WATER;

(B) One or more closed portable water containers;

(C) An enclosed vehicular water tank;

(D) An on-PREMISES water storage tank; or

(E) Piping, tubing, or hoses connected to an adjacent APPROVED source.

5-2 PLUMBING SYSTEM

5-201 Materials

5-201.11 Approved.*

(A) A PLUMBING SYSTEM and hoses conveying water shall be constructed and repaired with APPROVED materials according to LAW.

(B) A water filter shall be made of SAFE MATERIALS.

5-202 Design, Construction, and Installation**5-202.11 Approved System and Cleanable Fixtures.***

(A) A PLUMBING SYSTEM shall be designed, constructed, and installed according to LAW.

(B) A PLUMBING FIXTURE such as a handwashing facility, toilet, or urinal shall be EASILY CLEANABLE. ^N

5-202.12 Handwashing Facility, Installation.

(A) A handwashing lavatory shall be equipped to provide water at a temperature of at least 43°C (110°F) through a mixing valve or combination faucet.

(B) A steam mixing valve may not be used at a handwashing lavatory.

(C) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(D) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

5-202.13 Backflow Prevention, Air Gap.*

An air gap between the water supply inlet and the flood level rim of the PLUMBING FIXTURE, EQUIPMENT, or nonFOOD EQUIPMENT shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).

5-202.14 Backflow Prevention Device, Design Standard.

A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

5-202.15 Conditioning Device, Design.

A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

5-203 Numbers and Capacities**5-203.11 Handwashing Facilities.***

(A) Except as specified in ¶¶ (B) and (C) of this section, at least 1 handwashing lavatory, a number of handwashing lavatories necessary for their convenient use by EMPLOYEES in areas specified under §5-204.11, and not fewer than the number of handwashing lavatories required by LAW shall be provided.

(B) *If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, automatic handwashing facilities may be substituted for handwashing lavatories in a FOOD ESTABLISHMENT that has at least one handwashing lavatory.*

(C) *If APPROVED, when FOOD exposure is limited and handwashing lavatories are not conveniently available, such as in some mobile or TEMPORARY FOOD ESTABLISHMENTS or at some VENDING MACHINE LOCATIONS, EMPLOYEES may use chemically treated towelettes for handwashing.*

5-203.12 Toilets and Urinals.*

At least 1 toilet and not fewer than the toilets required by LAW shall be provided. If authorized by LAW and urinals are substituted for toilets, the substitution shall be done as specified in LAW.

5-203.13 Service Sink.

At least 1 service sink or 1 curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

5-203.14 Backflow Prevention Device, When Required.*

A PLUMBING SYSTEM shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the FOOD ESTABLISHMENT, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by LAW, by:

- (A) Providing an air gap as specified under §5-202.13; or
- (B) Installing an APPROVED backflow prevention device as specified under §5-202.14.

5-203.15 Backflow Prevention Device, Carbonator.*

RESERVED

5-204 Location and Placement

5-204.11 Handwashing Facilities.*

A handwashing facility shall be located:

- (A) To allow convenient use by EMPLOYEES in FOOD preparation, FOOD dispensing, and WAREWASHING areas; and
- (B) In, or immediately adjacent to, toilet rooms.

5-204.12 Backflow Prevention Device, Location.

A backflow prevention device shall be located so that it may be serviced and maintained.

5-204.13 Conditioning Device, Location.

A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

5-205 Operation and Maintenance

5-205.11 Using a Handwashing Facility.

- (A) A handwashing facility shall be maintained so that it is accessible at all times for EMPLOYEE use.
- (B) A handwashing facility may not be used for purposes other than handwashing.
- (C) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.

5-205.12 Prohibiting a Cross Connection.*

(A) *Except as specified in 9 CFR 308.3(d) for firefighting*, a PERSON may not create a cross connection by connecting a pipe or conduit between the DRINKING WATER system and a nonDRINKING WATER SYSTEM or a water system of unknown quality.

(B) The piping of a nonDRINKING WATER SYSTEM shall be durably identified so that it is readily distinguishable from piping that carries DRINKING WATER. ^N

5-205.13 Scheduling Inspection and Service for a Water System Device.

A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the PERSON IN CHARGE.

5-205.14 Water Reservoir of Fogging Devices, Cleaning.*

- (A) A reservoir that is used to supply water to a device such as a produce fogger shall be:
 - (1) Maintained in accordance with manufacturer's specifications; and
 - (2) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under ¶ (B) of this section, whichever is more stringent.
- (B) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:
 - (1) Draining and complete disassembly of the water and aerosol contact parts;
 - (2) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
 - (3) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
 - (4) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution.

5-205.15 System Maintained in Good Repair.*

A PLUMBING SYSTEM shall be:

- (A) Repaired according to LAW; and
- (B) Maintained in good repair.^S

5-3 MOBILE WATER TANK AND MOBILE FOOD ESTABLISHMENT WATER TANK**5-301 Materials****5-301.11 Approved.**

Materials that are used in the construction of a mobile water tank, mobile FOOD ESTABLISHMENT water tank, and appurtenances shall be:

- (A) Safe;
- (B) Durable, CORROSION-RESISTANT, and nonabsorbent; and
- (C) Finished to have a SMOOTH, EASILY CLEANABLE surface.

5-302 Design and Construction**5-302.11 Enclosed System, Sloped to Drain.**

A mobile water tank shall be:

- (A) Enclosed from the filling inlet to the discharge outlet; and
- (B) Sloped to an outlet that allows complete drainage of the tank.

5-302.12 Inspection and Cleaning Port, Protected and Secured.

If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

- (A) Flanged upward at least 13 mm (one-half inch); and
- (B) Equipped with a port cover assembly that is:
 - (1) Provided with a gasket and a device for securing the cover in place, and
 - (2) Flanged to overlap the opening and sloped to drain.

5-302.13 "V" Type Threads, Use Limitation.

A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

5-302.14 Tank Vent, Protected.

If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

- (A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or
- (B) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

5-302.15 Inlet and Outlet, Sloped to Drain.

- (A) A water tank and its inlet and outlet shall be sloped to drain.
- (B) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

5-302.16 Hose, Construction and Identification.

A hose used for conveying DRINKING WATER from a water tank shall be:

- (A) Safe;
- (B) Durable, CORROSION-RESISTANT, and nonabsorbent;
- (C) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
- (D) Finished with a SMOOTH interior surface; and
- (E) Clearly and durably identified as to its use if not permanently attached.

5-303 Numbers and Capacities**5-303.11 Filter, Compressed Air.**

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and DRINKING WATER system when compressed air is used to pressurize the water tank system.

5-303.12 Protective Cover or Device.

A cap and keeper chain, closed cabinet, closed storage tube, or other APPROVED protective cover or device shall be provided for a water inlet, outlet, and hose.

5-303.13 Mobile Food Establishment Tank Inlet.

A mobile FOOD ESTABLISHMENT'S water tank inlet shall be:

- (A) 19.1 mm (three-fourths inch) in inner diameter or less; and
- (B) Provided with a hose connection of a size or type that will prevent its use for any other service.

5-304 Operation and Maintenance**5-304.11 System Flushing and Disinfection.***

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.

5-304.12 Using a Pump and Hoses, Backflow Prevention.

A PERSON shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

5-304.13 Protecting Inlet, Outlet, and Hose Fitting.

If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified under §5-303.12.

5-304.14 Tank, Pump, and Hoses, Dedication.

(A) Except as specified in ¶ (B) of this section, a water tank, pump, and hoses used for conveying DRINKING WATER shall be used for no other purpose.

(B) *Water tanks, pumps, and hoses APPROVED for liquid FOODS may be used for conveying DRINKING WATER if they are cleaned and SANITIZED before they are used to convey water.*

5-4 SEWAGE, OTHER LIQUID WASTE, AND RAINWATER**5-401 Mobile Holding Tank****5-401.11 Capacity and Drainage.**

A SEWAGE holding tank in a mobile FOOD ESTABLISHMENT shall be:

- (A) Sized 15 percent larger in capacity than the water supply tank; and
- (B) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

5-402 Retention, Drainage, and Delivery**5-402.10 Establishment Drainage System.**

FOOD ESTABLISHMENT drainage systems, including grease traps, that convey SEWAGE shall be designed and installed as specified under ¶ 5-202.11(A).

5-402.11 Backflow Prevention.*

(A) Except as specified in ¶¶ (B) and (C) of this section, a direct connection may not exist between the SEWAGE system and a drain originating from EQUIPMENT in which FOOD, portable EQUIPMENT, or UTENSILS are placed.

(B) *If allowed by LAW, a WAREWASHING machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.*

(C) *If allowed by LAW, a WAREWASHING or culinary sink may have a direct connection.*

5-402.12 Grease Trap.

If used, a grease trap shall be located to be easily accessible for cleaning.

5-402.13 Conveying Sewage.*

SEWAGE shall be conveyed to the point of disposal through an APPROVED sanitary SEWAGE system or other system, including use of SEWAGE transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to LAW.

5-402.14 Removing Mobile Food Establishment Wastes.

SEWAGE and other liquid wastes shall be removed from a mobile FOOD ESTABLISHMENT at an APPROVED waste SERVICING AREA or by a SEWAGE transport vehicle in such a way that a public health HAZARD or nuisance is not created.

5-402.15 Flushing a Waste Retention Tank.

A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

5-403 Disposal Facility

5-403.11 Approved Sewage Disposal System.*

SEWAGE shall be disposed through an APPROVED facility that is:

(A) A public SEWAGE treatment plant; or

(B) An individual SEWAGE disposal system that is sized, constructed, maintained, and operated according to the State of Maine Subsurface Wastewater Disposal Rules, CMR 10-144 Chapter 241.

5-403.12 Other Liquid Wastes and Rainwater.

Condensate drainage and other nonSEWAGE liquids and rainwater shall be drained from point of discharge to disposal according to LAW.

5-5 REFUSE, RECYCLABLES, AND RETURNABLES

5-501 Facilities on the Premises

5-501.10 Indoor Storage Area.

If located within the FOOD ESTABLISHMENT, a storage area for REFUSE, recyclables, and returnables shall meet the requirements specified under §§6-101.11, 6-201.11 - 6-201.18, 6-202.15, and 6-202.16.

5-501.11 Outdoor Storage Surface.

An outdoor storage surface for REFUSE, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be SMOOTH, durable, and sloped to drain.

5-501.12 Outdoor Enclosure.

If used, an outdoor enclosure for REFUSE, recyclables, and returnables shall be constructed of durable and cleanable materials.

5-501.13 Receptacles.

(A) Except as specified in ¶ (B) of this section, receptacles and waste handling units for REFUSE, recyclables, and returnables and for use with materials containing FOOD residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(B) *Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the FOOD ESTABLISHMENT, or within closed outside receptacles.*

5-501.14 Receptacles in Vending Machines.

A REFUSE receptacle may not be located within a VENDING MACHINE, *except that a receptacle for BEVERAGE bottle crown closures may be located within a VENDING MACHINE.*

5-501.15 Outside Receptacles.

(A) Receptacles and waste handling units for REFUSE, recyclables, and returnables used with materials containing FOOD residue and used outside the FOOD ESTABLISHMENT shall be designed and constructed to have tight-fitting lids, doors, or covers.

(B) Receptacles and waste handling units for REFUSE and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

5-501.16 Storage Areas, Rooms, and Receptacles, Capacity and Availability.

(A) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold REFUSE, recyclables, and returnables that accumulate.

(B) A receptacle shall be provided in each area of the FOOD ESTABLISHMENT or PREMISES where REFUSE is generated or commonly discarded, or where recyclables or returnables are placed.

(C) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

5-501.17 Toilet Room Receptacle, Covered

A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

5-501.18 Cleaning Implements and Supplies.

(A) Except as specified in ¶ (B) of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for REFUSE, recyclables, and returnables.

(B) *If APPROVED, off-PREMISES-based cleaning services may be used if on-PREMISES cleaning implements and supplies are not provided.*

5-501.19 Storage Areas, Redeeming Machines, Receptacles and Waste Handling Units, Location.

(A) An area designated for REFUSE, recyclables, returnables, and, except as specified in ¶ (B) of this section, a redeeming machine for recyclables or returnables shall be located so that it is separate from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and a public health HAZARD or nuisance is not created.

(B) *A redeeming machine may be located in the PACKAGED FOOD storage area or CONSUMER area of a FOOD ESTABLISHMENT if FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES are not subject to contamination from the machines and a public health HAZARD or nuisance is not created.*

(C) The location of receptacles and waste handling units for REFUSE, recyclables, and returnables may not create a public health HAZARD or nuisance or interfere with the cleaning of adjacent space.

5-501.110 Storing Refuse, Recyclables, and Returnables.

REFUSE, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

5-501.111 Areas, Enclosures, and Receptacles, Good Repair.

Storage areas, enclosures, and receptacles for REFUSE, recyclables, and returnables shall be maintained in good repair.

5-501.112 Outside Storage Prohibitions.

(A) Except as specified in ¶ (B) of this section, REFUSE receptacles not meeting the requirements specified under ¶ 5-501.13(A) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with FOOD residue may not be stored outside.

(B) *Cardboard or other packaging material that does not contain FOOD residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.*

5-501.113 Covering Receptacles.

Receptacles and waste handling units for REFUSE, recyclables, and returnables shall be kept covered:

- (A) Inside the FOOD ESTABLISHMENT if the receptacles and units:
- (1) Contain FOOD residue and are not in continuous use; or
 - (2) After they are filled; and
- (B) With tight-fitting lids or doors if kept outside the FOOD ESTABLISHMENT.

5-501.114 Using Drain Plugs.

Drains in receptacles and waste handling units for REFUSE, recyclables, and returnables shall have drain plugs in place.

5-501.115 Maintaining Refuse Areas and Enclosures.

A storage area and enclosure for REFUSE, recyclables, or returnables shall be maintained free of unnecessary items, as specified under §6-501.114, and clean.

5-501.116 Cleaning Receptacles.

(A) Receptacles and waste handling units for REFUSE, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, or SINGLE-SERVICE and SINGLE-USE ARTICLES, and waste water shall be disposed of as specified under §5-402.14.

(B) Soiled receptacles and waste handling units for REFUSE, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

5-502 Removal

5-502.11 Frequency.

REFUSE, recyclables, and returnables shall be removed from the PREMISES at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

5-502.12 Receptacles or Vehicles.

REFUSE, recyclables, and returnables shall be removed from the PREMISES by way of:

- (A) Portable receptacles that are constructed and maintained according to LAW; or
- (B) A transport vehicle that is constructed, maintained, and operated according to LAW.

5-503 Facilities for Disposal and Recycling

5-503.11 Community or Individual Facility.

Solid waste not disposed of through the SEWAGE system such as through grinders and pulpers shall be recycled or disposed of in an APPROVED public or private community recycling or REFUSE facility; or solid waste shall be disposed of in an individual REFUSE facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to LAW.

Chapter 6 Physical Facilities

6-1 MATERIALS FOR CONSTRUCTION AND REPAIR

6-101 Indoor Areas

6-101.11 Surface Characteristics.

(A) Except as specified in ¶ (B) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

- (1) SMOOTH, durable, and EASILY CLEANABLE for areas where FOOD ESTABLISHMENT operations are conducted;
- (2) Closely woven and EASILY CLEANABLE carpet for carpeted areas; and
- (3) Nonabsorbent for areas subject to moisture such as FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet rooms, mobile FOOD ESTABLISHMENT SERVICING AREAS, and areas subject to flushing or spray cleaning methods.

(B) In a TEMPORARY FOOD ESTABLISHMENT:

- (1) *If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable APPROVED materials that are effectively treated to control dust and mud; and*
- (2) *Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.*

6-102 Outdoor Areas**6-102.11 Surface Characteristics.**

- (A) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.
- (B) Exterior surfaces of buildings and mobile FOOD ESTABLISHMENTS shall be of weather-resistant materials and shall comply with LAW.
- (C) Outdoor storage areas for REFUSE, recyclables, or returnables shall be of materials specified under §§5-501.11 and 5-501.12.

6-2 DESIGN, CONSTRUCTION, AND INSTALLATION**6-201 Cleanability****6-201.11 Floors, Walls, and Ceilings.**

Except as specified under §6-201.14, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are SMOOTH and EASILY CLEANABLE, *except that antislip floor coverings or applications may be used for safety reasons.*

6-201.12 Floors, Walls, and Ceilings, Utility Lines.

- (A) Utility service lines and pipes may not be unnecessarily exposed.
- (B) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.
- (C) Exposed horizontal utility service lines and pipes may not be installed on the floor.

6-201.13 Floor and Wall Junctures, Coved, and Enclosed or Sealed.

- (A) In FOOD ESTABLISHMENTS in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm (one thirty-second inch).
- (B) The floors in FOOD ESTABLISHMENTS in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and SEALED.

6-201.14 Floor Carpeting, Restrictions and Installation.

- (A) A floor covering such as carpeting or similar material may not be installed as a floor covering in FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, REFUSE storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.
- (B) If carpeting is installed as a floor covering in areas other than those specified under ¶ (A) of this section, it shall be:
- (1) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
 - (2) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

6-201.15 Floor Covering, Mats and Duckboards.

Mats and duckboards shall be designed to be removable and EASILY CLEANABLE.

6-201.16 Wall and Ceiling Coverings and Coatings.

(A) Wall and ceiling covering materials shall be attached so that they are EASILY CLEANABLE.

(B) *Except in areas used only for dry storage*, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and SEALED to provide a SMOOTH, nonabsorbent, EASILY CLEANABLE surface.

6-201.17 Walls and Ceilings, Attachments.

(A) Except as specified in ¶ (B) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be EASILY CLEANABLE.

(B) *In a CONSUMER area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.*

6-201.18 Walls and Ceilings, Studs, Joists, and Rafters.

Studs, joists, and rafters may not be exposed in areas subject to moisture. *This requirement does not apply to TEMPORARY FOOD ESTABLISHMENTS.*

6-202 Functionality**6-202.11 Light Bulbs, Protective Shielding.**

(A) Except as specified in ¶ (B) of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; or unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

(B) *Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing FOOD in unopened packages, if:*

- (1) *The integrity of the packages can not be affected by broken glass falling onto them; and*
- (2) *The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.*

(C) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

6-202.12 Heating, Ventilating, Air Conditioning System Vents.

Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of FOOD, FOOD-CONTACT SURFACES, EQUIPMENT, or UTENSILS.

6-202.13 Insect Control Devices, Design and Installation.

(A) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(B) Insect control devices shall be installed so that:

- (1) The devices are not located over a FOOD preparation area; and
- (2) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

6-202.14 Toilet Rooms, Enclosed.

A toilet room located on the PREMISES shall be completely enclosed and provided with a tight-fitting and self-closing door *except that this requirement does not apply to a toilet room that is located outside a FOOD ESTABLISHMENT and does not open directly into the FOOD ESTABLISHMENT such as a toilet room that is provided by the management of a shopping mall.*

6-202.15 Outer Openings, Protected.

(A) Except as specified in ¶¶ (B), (C), and (E) and under ¶ (D) of this section, outer openings of a FOOD ESTABLISHMENT shall be protected against the entry of insects and rodents by:

- (1) Filling or closing holes and other gaps along floors, walls, and ceilings;
- (2) Closed, tight-fitting windows; and
- (3) Solid, self-closing, tight-fitting doors.

(B) *Paragraph (A) of this section does not apply if a FOOD ESTABLISHMENT opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.*

(C) *Exterior doors used as exits need not be self-closing if they are:*

- (1) *Solid and tight-fitting;*
- (2) *Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the FOOD ESTABLISHMENT; and*
- (3) *Restricted so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.*

(D) Except as specified in ¶¶ (B) and (E) of this section, if the windows or doors of a FOOD ESTABLISHMENT, or of a larger structure within which a FOOD ESTABLISHMENT is located, are kept open for ventilation or other purposes or a TEMPORARY FOOD ESTABLISHMENT is not provided with windows and doors as specified under ¶ (A) of this section, the openings shall be protected against the entry of insects and rodents by:

- (1) 16 mesh to 25.4mm (16 mesh to 1 inch) screens;
- (2) Properly designed and installed air curtains; or
- (3) Other effective means.

(E) *Paragraph (D) of this section does not apply if flying insects and other pests are absent due to the location of the ESTABLISHMENT, the weather, or other limiting condition.*

6-202.16 Exterior Walls and Roofs, Protective Barrier.

Perimeter walls and roofs of a FOOD ESTABLISHMENT shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

6-202.17 Outdoor Food Vending Areas, Overhead Protection.

If located outside, a machine used to vend FOOD shall be provided with overhead protection *except that machines vending canned BEVERAGES need not meet this requirement.*

6-202.18 Outdoor Servicing Areas, Overhead Protection.

SERVICING AREAS shall be provided with overhead protection *except that areas used only for the loading of water or the discharge of SEWAGE and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.*

6-202.19 Outdoor Walking and Driving Surfaces, Graded to Drain.

Exterior walking and driving surfaces shall be graded to drain.

6-202.110 Outdoor Refuse Areas, Curbed and Graded to Drain.

Outdoor REFUSE areas shall be constructed in accordance with LAW and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the REFUSE and from cleaning the area and waste receptacles.

6-202.111 Private Homes and Living or Sleeping Quarters, Use Prohibition.

A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting FOOD ESTABLISHMENT operations, unless approved by the Regulatory Authority.

6-202.112 Living or Sleeping Quarters, Separation.

Living or sleeping quarters located on the PREMISES of a FOOD ESTABLISHMENT such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for FOOD ESTABLISHMENT operations by complete partitioning and solid self-closing doors.

6-3 NUMBERS AND CAPACITIES**6-301 Handwashing Facilities****6-301.10 Minimum Number.**

Handwashing facilities shall be provided as specified under §5-203.11.

6-301.11 Handwashing Cleanser, Availability.

Each handwashing lavatory or group of 2 adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

6-301.12 Hand Drying Provision.

Each handwashing lavatory or group of adjacent lavatories shall be provided with:

- (A) Individual, disposable towels;
- (B) A continuous towel system that supplies the user with a clean towel; or
- (C) A heated-air hand drying device.

6-301.13 Handwashing Aids and Devices, Use Restrictions.

A sink used for FOOD preparation or UTENSIL washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing lavatory as specified under §§6-301.11 and 6-301.12 and ¶ 5-501.16(C).

6-301.14 Handwashing Signage.

A sign or poster that notifies FOOD EMPLOYEES to wash their hands shall be provided at all handwashing lavatories used by FOOD EMPLOYEES and shall be clearly visible to FOOD EMPLOYEES.

6-301.20 Disposable Towels, Waste Receptacle.

A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under ¶ 5-501.16(C).

6-302 Toilets and Urinals**6-302.10 Minimum Number.**

Toilets and urinals shall be provided as specified under §5-203.12 and as follows.

- (A) All licensed FOOD Establishments which have more than 12 seats shall provide at least one customer restroom. *Note: This includes food establishments licensed by the Department of Agriculture.*
- (B) FOOD Establishments licensed by the Department of Human Services which serve liquor shall provide facilities according to the following chart (Fixture count based on total number of persons, not number of males or number of females):

(C)

# persons	Male			Female	
	# toilets	# urinals	# lavatories	# toilets	# lavatories
1-50	1	1	1	1	1
51-150	2	1	1	2	1
151-300	3	2	2	4	2
Over 300	Add 1 for each additional 200 persons	Add 1 for each additional 150 persons	Add 1 for each additional 300 persons	Add 1 for each additional 200 persons	Add 1 for each additional 300 persons

6-302.11 Toilet Tissue, Availability.

A supply of toilet tissue shall be available at each toilet.

6-303 Lighting**6-303.11 Intensity.**

The light intensity shall be:

(A) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry FOOD storage areas and in other areas and rooms during periods of cleaning;

(B) At least 220 lux (20 foot candles):

(1) At a surface where FOOD is provided for CONSUMER self-service such as buffets and salad bars or where fresh produce or PACKAGED FOODS are sold or offered for consumption;

(2) Inside EQUIPMENT such as reach-in and under-counter refrigerators;

(3) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, WAREWASHING, and EQUIPMENT and UTENSIL storage, and in toilet rooms; and

(C) At least 540 lux (50 foot candles) at a surface where a FOOD EMPLOYEE is working with FOOD or working with UTENSILS or EQUIPMENT such as knives, slicers, grinders, or saws where EMPLOYEE safety is a factor.

6-304 Ventilation**6-304.11 Mechanical.**

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

6-305 Dressing Areas and Lockers**6-305.11 Designation.**

(A) Dressing rooms or dressing areas shall be designated if EMPLOYEES routinely change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be provided for the orderly storage of EMPLOYEES' clothing and other possessions.

6-306 Service Sinks**6-306.10 Availability.**

A service sink or curbed cleaning facility shall be provided as specified under §5-203.13.

6-4 LOCATION AND PLACEMENT**6-401 Handwashing Facilities****6-401.10 Conveniently Located.**

Handwashing facilities shall be conveniently located as specified under §5-204.11.

6-402 Toilet Rooms**6-402.11 Convenience and Accessibility.**

Toilet rooms shall be conveniently located and accessible to EMPLOYEES during all hours of operation.

6-403 Employee Accommodations**6-403.11 Designated Areas.**

(A) Areas designated for EMPLOYEES to eat, drink, and use tobacco shall be located so that FOOD, EQUIPMENT, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination.

(B) Lockers or other suitable facilities shall be located in a designated room or area where contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES can not occur.

6-404 Distressed Merchandise**6-404.11 Segregation and Location.**

Products that are held by the PERMIT HOLDER for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

6-405 Refuse, Recyclables, and Returnables

6-405.10 Receptacles, Waste Handling Units, and Designated Storage Areas.

Units, receptacles, and areas designated for storage of REFUSE and recyclable and returnable containers shall be located as specified under §5-501.19.

6-5 MAINTENANCE AND OPERATION**6-501 Premises, Structures, Attachments, and Fixtures - Methods****6-501.11 Repairing.**

The PHYSICAL FACILITIES shall be maintained in good repair.

6-501.12 Cleaning, Frequency and Restrictions.

(A) The PHYSICAL FACILITIES shall be cleaned as often as necessary to keep them clean.

(B) Cleaning shall be done during periods when the least amount of FOOD is exposed such as after closing. *This requirement does not apply to cleaning that is necessary due to a spill or other accident.*

6-501.13 Cleaning Floors, Dustless Methods.

(A) Except as specified in ¶ (B) of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(B) *Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:*

(1) *Without the use of dust-arresting compounds; and*

(2) *In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.*

6-501.14 Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.

(A) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(B) If vented to the outside, ventilation systems may not create a public health HAZARD or nuisance or unLAWful discharge.

6-501.15 Cleaning Maintenance Tools, Preventing Contamination.*

FOOD preparation sinks, handwashing lavatories, and WAREWASHING EQUIPMENT may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

6-501.16 Drying Mops.

After use, mops shall be placed in a position that allows them to air-dry without soiling walls, EQUIPMENT, or supplies.

6-501.17 Absorbent Materials on Floors, Use Limitation.

Except as specified in ¶ 6-501.13(B), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

6-501.18 Maintaining and Using Handwashing Facilities.

Handwashing facilities shall be kept clean, and maintained and used as specified under §5-205.11.

6-501.19 Closing Toilet Room Doors.

Toilet room doors as specified under §6-202.14 shall be kept closed *except during cleaning and maintenance operations.*

6-501.110 Using Dressing Rooms and Lockers.

- (A) Dressing rooms shall be used by EMPLOYEES if the EMPLOYEES regularly change their clothes in the establishment.
- (B) Lockers or other suitable facilities shall be used for the orderly storage of EMPLOYEE clothing and other possessions.

6-501.111 Controlling Pests.*

The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the PREMISES by:

- (A) Routinely inspecting incoming shipments of FOOD and supplies; ^N
- (B) Routinely inspecting the PREMISES for evidence of pests; ^N
- (C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under §§7-202.12, 7-206.12, and 7-206.13; and
- (D) Eliminating harborage conditions. ^N

6-501.112 Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests.

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the PREMISES at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

6-501.113 Storing Maintenance Tools.

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

- (A) Stored so they do not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES; and
- (B) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

6-501.114 Maintaining Premises, Unnecessary Items and Litter.

The PREMISES shall be free of:

- (A) Items that are unnecessary to the operation or maintenance of the establishment such as EQUIPMENT that is nonfunctional or no longer used; and
- (B) Litter.

6-501.115 Prohibiting Animals.*

(A) Except as specified in ¶¶ (B) and (C) of this section, live animals may not be allowed on the PREMISES of a FOOD ESTABLISHMENT.

(B) *Live animals may be allowed in the following situations if the contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES can not result:*

- (1) *Edible FISH or decorative FISH in aquariums, SHELLFISH or crustacea on ice or under refrigeration, and SHELLFISH and crustacea in display tank systems;*
- (2) *Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;*
- (3) *In areas that are not used for FOOD preparation and that are usually open for customers, such as dining and sales areas, SERVICE ANIMALS that are controlled by the disabled EMPLOYEE or PERSON, if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL;*
- (4) *Pets in the common dining areas of GROUP RESIDENCES at times other than during meals if:*
 - (a) *Effective partitioning and self-closing doors separate the common dining areas from FOOD storage or FOOD preparation areas,*
 - (b) *Condiments, EQUIPMENT, and UTENSILS are stored in enclosed cabinets or removed from the common dining areas when pets are present, and*
 - (c) *Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and*

(5) *In areas that are not used for FOOD preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.*

(C) *Live or dead FISH bait may be stored if contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES can not result.*

Chapter 7 Poisonous or Toxic Materials

7-1 LABELING AND IDENTIFICATION

7-101 Original Containers

7-101.11 Identifying Information, Prominence.*

Containers of POISONOUS OR TOXIC MATERIALS and PERSONAL CARE ITEMS shall bear a legible manufacturer's label.

7-102 Working Containers

7-102.11 Common Name.*

Working containers used for storing POISONOUS OR TOXIC MATERIALS such as cleaners and SANITIZERS taken from bulk supplies shall be clearly and individually identified with the common name of the material.

7-2 OPERATIONAL SUPPLIES AND APPLICATIONS

7-201 Storage

7-201.11 Separation.*

POISONOUS OR TOXIC MATERIALS shall be stored so they can not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(A) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning; ^S and

(B) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES. *This paragraph does not apply to EQUIPMENT and UTENSIL cleaners and SANITIZERS that are stored in WAREWASHING areas for availability and convenience if the materials are stored to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.*

7-202 Presence and Use

7-202.11 Restriction.*

(A) Only those POISONOUS OR TOXIC MATERIALS that are required for the operation and maintenance of a FOOD ESTABLISHMENT, such as for the cleaning and SANITIZING of EQUIPMENT and UTENSILS and the control of insects and rodents, shall be allowed in a FOOD ESTABLISHMENT. ^S

(B) ¶ (A) of this section does not apply to PACKAGED POISONOUS OR TOXIC MATERIALS that are for retail sale.

7-202.12 Conditions of Use.*

POISONOUS OR TOXIC MATERIALS shall be:

(A) Used according to:

- (1) LAW and this Code,
- (2) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a FOOD ESTABLISHMENT,
- (3) The conditions of certification, if certification is required, for use of the pest control materials, and
- (4) Additional conditions that may be established by the REGULATORY AUTHORITY; and

(B) Applied so that:

- (1) A HAZARD to EMPLOYEES or other PERSONS is not constituted, and
- (2) Contamination including toxic residues due to drip, drain, fog, splash or spray on FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES is prevented, and for a restricted-use pesticide, this is achieved by:
 - (a) Removing the items,
 - (b) Covering the items with impermeable covers, or
 - (c) Taking other appropriate preventive actions, and
 - (d) Cleaning and SANITIZING EQUIPMENT and UTENSILS after the application.

(C) A RESTRICTED USE PESTICIDE shall be applied only by an applicator certified as defined in 22 MRSA §1471-C or a PERSON under the direct supervision of a certified applicator.

7-203 Container Prohibitions

7-203.11 Poisonous or Toxic Material Containers.*

A container previously used to store POISONOUS OR TOXIC MATERIALS may not be used to store, transport, or dispense FOOD.

7-204 Chemicals

7-204.11 Sanitizers, Criteria.*

Chemical SANITIZERS and other chemical antimicrobials applied to FOOD-CONTACT SURFACES shall meet the requirements specified in 21 CFR 178.1010 sanitizing solutions.

7-204.12 Chemicals for Washing Fruits and Vegetables, Criteria.*

Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

7-204.13 Boiler Water Additives, Criteria.*

Chemicals used as boiler water ADDITIVES shall meet the requirements specified in 21 CFR 173.310 Boiler Water Additives.

7-204.14 Drying Agents, Criteria.*

Drying agents used in conjunction with SANITIZATION shall:

(A) Contain only components that are listed as one of the following:

- (1) Generally recognized as safe for use in FOOD as specified in 21 CFR 182 - Substances Generally Recognized as Safe, or 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe,
- (2) Generally recognized as safe for the intended use as specified in 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe,
- (3) APPROVED for use as a drying agent under a prior sanction specified in 21 CFR 181 - Prior-Sanctioned Food Ingredients,
- (4) Specifically regulated as an indirect FOOD ADDITIVE for use as a drying agent as specified in 21 CFR Parts 175-178, or
- (5) APPROVED for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles; and

(B) When SANITIZATION is with chemicals, the approval required under Subparagraph (A)(3) or (A)(5) of this section or the regulation as an indirect FOOD ADDITIVE required under Subparagraph (A)(4) of this section, shall be specifically for use with chemical SANITIZING solutions.

7-205 Lubricants

7-205.11 Incidental Food Contact, Criteria.*

Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on FOOD-CONTACT SURFACES, on bearings and gears located on or within

FOOD-CONTACT SURFACES, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

7-206 Pesticides

7-206.11 Restricted Use Pesticides, Criteria.*

RESTRICTED USE PESTICIDES specified under ¶ 7-202.12(C) shall meet the requirements specified in 40 CFR 152 Subpart I - Classification of Pesticides.

7-206.12 Rodent Bait Stations.*

Rodent bait shall be contained in a covered, tamper-resistant bait station.

7-206.13 Tracking Powders, Pest Control and Monitoring.*

(A) A tracking powder pesticide may not be used in a FOOD ESTABLISHMENT.

(B) If used, a nontoxic tracking powder such as talcum or flour may not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.^N

7-207 Medicines

7-207.11 Restriction and Storage.*

(A) Only those medicines that are necessary for the health of EMPLOYEES shall be allowed in a FOOD ESTABLISHMENT. *This section does not apply to medicines that are stored or displayed for retail sale.*

(B) Medicines that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use shall be labeled as specified under §7-101.11 and located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

7-207.12 Refrigerated Medicines, Storage.*

Medicines belonging to EMPLOYEES or to children in a day care center that require refrigeration and are stored in a FOOD refrigerator shall be:

(A) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

(B) Located so they are inaccessible to children.

7-208 First Aid Supplies

7-208.11 Storage.*

First aid supplies that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use shall be:

(A) Labeled as specified under §7-101.11;^S and

(B) Stored in a kit or a container that is located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, and LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

7-209 Other Personal Care Items

7-209.11 Storage.

Except as specified under §§7-207.12 and 7-208.11, EMPLOYEES shall store their PERSONAL CARE ITEMS in facilities as specified under ¶ 6-305.11(B).

7-3 STOCK AND RETAIL SALE

7-301 Storage and Display

7-301.11 Separation.*

POISONOUS OR TOXIC MATERIALS shall be stored and displayed for retail sale so they can not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(A) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning;^S and

(B) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES.

Chapter 8 Compliance and Enforcement

8-1 CODE APPLICABILITY

8-101 Use for Intended Purpose

8-101.10 Public Health Protection.

(A) The REGULATORY AUTHORITY shall apply this Code to promote its underlying purpose, as specified in §1-102.10, of safeguarding public health and ensuring that FOOD is safe, UNADULTERATED, and honestly presented when offered to the CONSUMER.

(B) In enforcing the provisions of this Code, the REGULATORY AUTHORITY shall assess existing facilities or EQUIPMENT that were in use before the effective date of this Code based on the following considerations:

- (1) Whether the facilities or EQUIPMENT are in good repair and capable of being maintained in a sanitary condition;
- (2) Whether FOOD-CONTACT SURFACES comply with Subpart 4-101;
- (3) Whether the capacities of cooling, heating, and holding EQUIPMENT are sufficient to comply with §4-301.11; and
- (4) The existence of a documented agreement with the PERMIT HOLDER that the facilities or EQUIPMENT will be replaced as specified under ¶ 8-304.11(G) or upgraded or replaced as specified under ¶ 8-304.11(H).

8-102 Additional Requirements

8-102.10 Preventing Health Hazards, Provision for Conditions Not Addressed.

(A) If necessary to protect against public health HAZARDS or nuisances, the REGULATORY AUTHORITY may impose specific requirements in addition to the requirements contained in this Code that are authorized by LAW.

(B) The REGULATORY AUTHORITY shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the PERMIT applicant or PERMIT HOLDER and a copy shall be maintained in the REGULATORY AUTHORITY'S file for the FOOD ESTABLISHMENT.

8-103 Variances

8-103.10 Modifications and Waivers.

The REGULATORY AUTHORITY may grant a VARIANCE by modifying or waiving the requirements of this Code if in the opinion of the REGULATORY AUTHORITY a health HAZARD or nuisance will not result from the VARIANCE. If a VARIANCE is granted, the REGULATORY AUTHORITY shall retain the information specified under §8-103.11 in its records for the FOOD ESTABLISHMENT.

8-103.11 Documentation of Proposed Variance and Justification.

Before a VARIANCE from a requirement of this Code is APPROVED, the information that shall be provided by the PERSON requesting the VARIANCE and retained in the REGULATORY AUTHORITY'S file on the FOOD ESTABLISHMENT includes:

- (A) A statement of the proposed VARIANCE of the Code requirement citing relevant Code section numbers;
- (B) An analysis of the rationale for how the potential public health HAZARDS and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal; and
- (C) A HACCP PLAN if required as specified under ¶ 8-201.13(A) that includes the information specified under §8-201.14 as it is relevant to the VARIANCE requested.

8-103.12 Conformance with Approved Procedures.*

If the REGULATORY AUTHORITY grants a VARIANCE as specified in §8-103.10, or a HACCP PLAN is otherwise required as specified under §8-201.13, the PERMIT HOLDER shall:

- (A) Comply with the HACCP PLANS and procedures that are submitted as specified under §8-201.14 and APPROVED as a basis for the modification or waiver; and
- (B) Maintain and provide to the REGULATORY AUTHORITY, upon request, records specified under ¶¶ 8-201.14(D) and (E) that demonstrate that the following are routinely employed;
 - (1) Procedures for monitoring CRITICAL CONTROL POINTS,
 - (2) Monitoring of the CRITICAL CONTROL POINTS,
 - (3) Verification of the effectiveness of an operation or process, and
 - (4) Necessary corrective actions if there is failure at a CRITICAL CONTROL POINT.

8-2 PLAN SUBMISSION AND APPROVAL

8-201 Facility and Operating Plans

8-201.11 When Plans Are Required.

A PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY properly prepared plans and specifications for review and approval before:

- (A) The construction of a FOOD ESTABLISHMENT;
- (B) The conversion of an existing structure for use as a FOOD ESTABLISHMENT; or
- (C) The remodeling of a FOOD ESTABLISHMENT or a change of type of FOOD ESTABLISHMENT or FOOD operation as specified under ¶ 8-302.14(C) if the REGULATORY AUTHORITY determines that plans and specifications are necessary to ensure compliance with this Code.

8-201.12 Contents of the Plans and Specifications.

The plans and specifications for a FOOD ESTABLISHMENT, including a FOOD ESTABLISHMENT specified under §8-201.13, shall include, as required by the REGULATORY AUTHORITY based on the type of operation, type of FOOD preparation, and FOODS prepared, the following information to demonstrate conformance with Code provisions:

- (A) Intended menu;
- (B) Anticipated volume of FOOD to be stored, prepared, and sold or served;
- (C) Proposed layout, mechanical schematics, construction materials, and finish schedules;
- (D) Proposed EQUIPMENT types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
- (E) Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed; and
- (F) Other information that may be required by the REGULATORY AUTHORITY for the proper review of the proposed construction, conversion or modification, and procedures for operating a FOOD ESTABLISHMENT.

8-201.13 When a HACCP Plan is Required.

- (A) Before engaging in an activity that requires a HACCP PLAN, a PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY for approval a properly prepared HACCP PLAN as specified under §8-201.14 and the relevant provisions of this Code if:
 - (1) Submission of a HACCP PLAN is required according to LAW;
 - (2) A VARIANCE is required as specified under §3-502.11, ¶ 4-204.110(B), or Subparagraphs 3-203.12(B)(2)(b) or 3-401.11(D)(3); or
 - (3) The REGULATORY AUTHORITY determines that a FOOD preparation or processing method requires a VARIANCE based on a plan submittal specified under §8-201.12, an inspectional finding, or a VARIANCE request.
- (B) A PERMIT applicant or PERMIT HOLDER shall have a properly prepared HACCP PLAN as specified under §3-502.12.

8-201.14 Contents of a HACCP Plan.

For a FOOD ESTABLISHMENT that is required under §8-201.13 to have a HACCP PLAN, the plan and specifications shall indicate:

- (A) A categorization of the types of POTENTIALLY HAZARDOUS FOODS that are specified in the menu such as soups and sauces, salads, and bulk, solid FOODS such as MEAT roasts, or of other FOODS that are specified by the REGULATORY AUTHORITY;
- (B) A flow diagram by specific FOOD or category type identifying CRITICAL CONTROL POINTS and providing information on the following:
 - (1) Ingredients, materials, and EQUIPMENT used in the preparation of that FOOD, and
 - (2) Formulations or recipes that delineate methods and procedural control measures that address the FOOD safety concerns involved;
- (C) FOOD EMPLOYEE and supervisory training plan that addresses the FOOD safety issues of concern;
- (D) A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - (1) Each CRITICAL CONTROL POINT,
 - (2) The CRITICAL LIMITS for each CRITICAL CONTROL POINT,
 - (3) The method and frequency for monitoring and controlling each CRITICAL CONTROL POINT by the FOOD EMPLOYEE designated by the PERSON IN CHARGE,
 - (4) The method and frequency for the PERSON IN CHARGE to routinely verify that the FOOD EMPLOYEE is following standard operating procedures and monitoring CRITICAL CONTROL POINTS,
 - (5) Action to be taken by the PERSON IN CHARGE if the CRITICAL LIMITS for each CRITICAL CONTROL POINT are not met, and
 - (6) Records to be maintained by the PERSON IN CHARGE to demonstrate that the HACCP PLAN is properly operated and managed; and
- (E) Additional scientific data or other information, as required by the REGULATORY AUTHORITY, supporting the determination that FOOD safety is not compromised by the proposal.

8-202 Confidentiality**8-202.10 Trade Secrets.**

The REGULATORY AUTHORITY shall to the extent possible under 1 MRSA §402, treat as confidential in accordance with LAW, information that meets the criteria specified in LAW for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under §§8-201.12 and 8-201.14.

8-203 Construction Inspection and Approval**8-203.10 Preoperational Inspections.**

The REGULATORY AUTHORITY may conduct one or more preoperational inspections to verify that the FOOD ESTABLISHMENT is constructed and equipped in accordance with the APPROVED plans and APPROVED modifications of those plans, has established standard operating procedures as specified under ¶ 8-201.12(E), and is in compliance with LAW and this Code.

8-3 PERMIT TO OPERATE**8-301 Requirement****8-301.11 Prerequisite for Operation.**

A PERSON may not operate a FOOD ESTABLISHMENT without a valid PERMIT to operate issued by the REGULATORY AUTHORITY.

8-302 Application Procedure**8-302.11 Submission 30 Calendar Days Before Proposed Opening.**

An applicant shall submit an application for a PERMIT at least 30 calendar days before the date planned for opening a FOOD ESTABLISHMENT or the expiration date of the current PERMIT for an existing facility.

8-302.12 Form of Submission.

A PERSON desiring to operate a FOOD ESTABLISHMENT shall submit to the REGULATORY AUTHORITY a written application for a PERMIT on a form provided by the REGULATORY AUTHORITY.

8-302.13 Qualifications and Responsibilities of Applicants.

To qualify for a PERMIT, an applicant shall:

- (A) Be an owner of the FOOD ESTABLISHMENT or an officer of the legal ownership;
- (B) Comply with the requirements of this Code;
- (C) As specified under §8-402.11, agree to allow access to the FOOD ESTABLISHMENT and to provide required information; and
- (D) Pay the applicable PERMIT fees at the time the application is submitted.

(1) Permit fees for establishments licensed by the Department of Human Services are as follows:

ESTABLISHMENT TYPE	Fee
Eating Place	\$45.00 + \$3.00 per seat (\$125 max)
Eating and Lodging	\$45.00 + \$3.00 per seat + \$2.00 per room (\$125 max)
Eating place mobile	\$60.00
Vending machine	\$45.00
Eating place/Vend mach	\$45.00 + \$3.00 per seat (\$125 max)
Catering establishment	\$75.00
Temp food service establishment	\$45.00
Vending mach commissary	\$75.00
Bed & breakfast	\$45.00 + \$2.00 per room
Eating place and caterer	\$45.00 + \$3.00 per seat (\$125 max)
Bottle club	\$45.00 + \$3.00 per seat (\$125 max)
School feed satellite	\$30.00
Recreational camp	\$75.00
School feeding	\$40.00
School feed and cater	\$40.00
Vending machine location	\$5.00
Sr. citizen meal satellite	\$30.00
Eating place takeout	\$75.00
Sr. citizen meal commissary	\$40.00

The fee for establishments in Portland, South Portland, Lewiston, and Auburn is \$10.00 regardless of the number of seats or rooms. This fee shall apply only to those establishment types for which the municipality inspects for conformance with these rules or equivalent municipal rules or ordinances. All other establishments must pay the full fee as listed in the above table.

(2) Permit fees for establishments licensed by the Department of Agriculture, Food and Rural Resources are as follows:

EMPLOYEES	Fee
1-10	\$10.00
11-25	\$30.00
26 or more	\$100.00

8-302.14 Contents of the Application.

The application shall include:

- (A) The name, mailing address, telephone number, and signature of the PERSON applying for the PERMIT and the name, mailing address, and location of the FOOD ESTABLISHMENT;
- (B) Information specifying whether the FOOD ESTABLISHMENT is owned by an association, corporation, individual, partnership, or other legal entity;
- (C) A statement specifying whether the FOOD ESTABLISHMENT:
- (1) Is mobile or stationary and temporary or permanent, and
 - (2) Is an operation that includes one or more of the following:
 - (a) Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD:
 - (i) Only to order upon a CONSUMER'S request,
 - (ii) In advance in quantities based on projected CONSUMER demand and discards FOOD that is not sold or served at an APPROVED frequency, or
 - (iii) Using time as the public health control as specified under §3-501.19,
 - (b) Prepares POTENTIALLY HAZARDOUS FOOD in advance using a FOOD preparation method that involves two or more steps which may include combining POTENTIALLY HAZARDOUS ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,
 - (c) Prepares FOOD as specified under Subparagraph (C)(2)(b) of this section for delivery to and consumption at a location off the PREMISES of the FOOD ESTABLISHMENT where it is prepared,
 - (d) Prepares FOOD as specified under Subparagraph (C)(2)(b) of this section for service to a HIGHLY SUSCEPTIBLE POPULATION,
 - (e) Prepares only FOOD that is not POTENTIALLY HAZARDOUS, or
 - (f) Does not prepare, but offers for sale only PREPACKAGED FOOD that is not POTENTIALLY HAZARDOUS;
- (D) The name, title, address, and telephone number of the PERSON directly responsible for the FOOD ESTABLISHMENT;
- (E) The name, title, address, and telephone number of the PERSON who functions as the immediate supervisor of the PERSON specified under ¶ (D) of this section such as the zone, district, or regional supervisor;
- (F) The names, titles, and addresses of:
- (1) The PERSONS comprising the legal ownership as specified under ¶ (B) of this section including the owners and officers, and
 - (2) The local resident agent if one is required based on the type of legal ownership;
- (G) A statement signed by the applicant that:
- (1) Attests to the accuracy of the information provided in the application, and
 - (2) Affirms that the applicant will:
 - (a) Comply with this Code, and
 - (b) Allow the REGULATORY AUTHORITY access to the establishment as specified under §8-402.11 and to the records specified under §§3-203.12 and 5-205.13 and Subparagraph 8-201.14(D)(6); and

(H) Submission to the Regulatory Authority that the subsurface wastewater disposal system is in compliance with the State of Maine Rules Relating to Subsurface Wastewater Disposal Systems; and

(I) Other information required by the REGULATORY AUTHORITY.

8-303 Issuance

8-303.10 New, Converted, or Remodeled Establishments.

For FOOD ESTABLISHMENTS that are required to submit plans as specified under §8-201.11 the REGULATORY AUTHORITY shall issue a PERMIT to the applicant after:

(A) A properly completed application is submitted;

(B) The required fee is submitted;

(C) The required plans, specifications, and information are reviewed and APPROVED; and

(D) A preoperational inspection as specified in §8-203.10 shows that the establishment is built or remodeled in accordance with the APPROVED plans and specifications and that the establishment is in compliance with this Code.

8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership.

The REGULATORY AUTHORITY may renew a PERMIT for an existing FOOD ESTABLISHMENT or may issue a PERMIT to a new owner of an existing FOOD ESTABLISHMENT after a properly completed application is submitted, reviewed, and APPROVED, the fees are paid, and an inspection shows that the establishment is in compliance with this Code.

8-303.30 Denial of Application for Permit, Notice.

If an application for a PERMIT to operate is denied, the REGULATORY AUTHORITY shall provide the applicant with a notice that includes:

(A) The specific reasons and Code citations for the PERMIT denial;

(B) The actions, if any, that the applicant must take to qualify for a PERMIT; and

(C) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in LAW.

8-304 Conditions of Retention

8-304.10 Responsibilities of the Regulatory Authority.

(A) At the time a PERMIT is first issued, the REGULATORY AUTHORITY shall provide to the PERMIT HOLDER a copy of this Code so that the PERMIT HOLDER is notified of the compliance requirements and the conditions of retention, as specified under §8-304.11, that are applicable to the PERMIT. The regulatory authority may, as an alternative, provide a copy of this code to anyone interested in obtaining a permit.

(B) *Failure to provide the information specified in ¶ (A) of this section does not prevent the REGULATORY AUTHORITY from taking authorized action or seeking remedies if the PERMIT HOLDER fails to comply with this Code or an order, warning, or directive of the REGULATORY AUTHORITY.*

8-304.11 Responsibilities of the Permit Holder.

Upon acceptance of the PERMIT issued by the REGULATORY AUTHORITY, the PERMIT HOLDER in order to retain the PERMIT shall:

(A) Post the PERMIT in a location in the FOOD ESTABLISHMENT that is conspicuous to CONSUMERS;

(B) Comply with the provisions of this Code including the conditions of a granted VARIANCE as specified under §8-103.12, and APPROVED plans as specified under §8-201.12;

(C) If a FOOD ESTABLISHMENT is required under §8-201.13 to operate under a HACCP PLAN, comply with the plan as specified under §8-103.12;

(D) Immediately contact the REGULATORY AUTHORITY to report an illness of an EMPLOYEE as specified under §2-201.15;

(E) Immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD may exist as specified under §8-404.11;

- (F) Allow representatives of the REGULATORY AUTHORITY access to the FOOD ESTABLISHMENT as specified under §8-402.11;
- (G) Except as specified under ¶ (H) of this section, replace existing facilities and EQUIPMENT specified in §8-101.10 with facilities and EQUIPMENT that comply with this Code if:
- (1) The REGULATORY AUTHORITY directs the replacement because the facilities and EQUIPMENT constitute a public health HAZARD or nuisance or no longer comply with the criteria upon which the facilities and EQUIPMENT were accepted,
 - (2) The REGULATORY AUTHORITY directs the replacement of the facilities and EQUIPMENT because of a change of ownership, or
 - (3) The facilities and EQUIPMENT are replaced in the normal course of operation;
- (H) Upgrade or replace refrigeration EQUIPMENT as specified under ¶ 3-501.16(C), if the circumstances specified under Subparagraphs (G)(1)-(3) of this section do not occur first, and 10 years pass after the REGULATORY AUTHORITY adopts this Code;
- (I) Comply with directives of the REGULATORY AUTHORITY including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the REGULATORY AUTHORITY in regard to the PERMIT HOLDER'S FOOD ESTABLISHMENT or in response to community emergencies;
- (J) Accept notices issued and served by the REGULATORY AUTHORITY according to LAW; and
- (K) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in LAW for failure to comply with this Code or a directive of the REGULATORY AUTHORITY, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

8-304.20 Permits Not Transferable.

A PERMIT may not be transferred from one PERSON to another PERSON, from one FOOD ESTABLISHMENT to another, or from one type of operation to another if the FOOD operation changes from the type of operation specified in the application as specified under ¶ 8-302.14(C) and the change in operation is not APPROVED.

8-4 INSPECTION AND CORRECTION OF VIOLATIONS

8-401 Frequency

8-401.10 Establishing Inspection Interval.

(A) The regulatory authority shall inspect a food establishment on a regular basis. The frequency of routine inspections shall be determined by the regulatory authority based on risk factors. These risk factors include the type of food served, the preparation steps these foods require, the volume of food, the population served and previous compliance history. The REGULATORY AUTHORITY may, at its discretion, inspect at a more frequent intervals as necessary to follow-up on complaints or other problems noted on previous inspections.

(B) *The REGULATORY AUTHORITY may increase the interval between inspections if:*

- (1) *The FOOD ESTABLISHMENT is fully operating under an APPROVED and validated HACCP PLAN as specified under §8-201.14 and ¶¶ 8-103.12(A) and (B);*
- (2) *The FOOD ESTABLISHMENT is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or*
- (3) *The establishment's operation involves only coffee service and other UNPACKAGED or prePACKAGED FOOD that is not POTENTIALLY HAZARDOUS such as carbonated BEVERAGES and snack FOOD such as chips, nuts, popcorn, and pretzels.*

(C) The REGULATORY AUTHORITY shall periodically inspect throughout its PERMIT period a TEMPORARY FOOD ESTABLISHMENT that prepares, sells, or serves UNPACKAGED POTENTIALLY HAZARDOUS FOOD and that:

- (1) Has improvised rather than permanent facilities or EQUIPMENT for accomplishing functions such as handwashing, FOOD preparation and protection, FOOD temperature control, WAREWASHING, providing DRINKING WATER, waste retention and disposal, and insect and rodent control; or
- (2) Has inexperienced FOOD EMPLOYEES.

8-401.20 Performance- and Risk-Based.

Within the parameters specified in §8-401.10, the REGULATORY AUTHORITY shall prioritize, and conduct more frequent inspections based upon its assessment of a FOOD ESTABLISHMENT'S history of compliance with this Code and the establishment's potential as a vector of foodborne illness by evaluating:

- (A) Past performance, for nonconformance with Code or HACCP PLAN requirements that are critical;
- (B) Past performance, for numerous or repeat violations of Code or HACCP PLAN requirements that are noncritical;
- (C) Past performance, for complaints investigated and found to be valid;
- (D) The HAZARDS associated with the particular FOODS that are prepared, stored, or served;
- (E) The type of operation including the methods and extent of FOOD storage, preparation, and service;
- (F) The number of people served; and
- (G) Whether the population served is a HIGHLY SUSCEPTIBLE POPULATION.

8-402 Access

8-402.11 Allowed at Reasonable Times after Due Notice.

After the REGULATORY AUTHORITY presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the PERSON IN CHARGE shall allow the REGULATORY AUTHORITY to determine if the FOOD ESTABLISHMENT is in compliance with this Code by allowing access to the establishment, allowing inspection, and providing information and records specified in this Code and to which the REGULATORY AUTHORITY is entitled according to LAW, during the FOOD ESTABLISHMENT'S hours of operation and other reasonable times.

8-402.20 Refusal, Notification of Right to Access, and Final Request for Access.

If a PERSON denies access to the REGULATORY AUTHORITY, the REGULATORY AUTHORITY shall:

(A) Inform the PERSON that:

- (1) The PERMIT HOLDER is required to allow access to the REGULATORY AUTHORITY as specified under §8-402.11 of this Code,
- (2) Access is a condition of the acceptance and retention of a FOOD ESTABLISHMENT PERMIT to operate as specified under ¶ 8-304.11(F), and
- (3) If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to LAW; and

(B) Make a final request for access.

8-402.30 Refusal, Reporting.

If after the REGULATORY AUTHORITY presents credentials and provides notice as specified under §8-402.11, explains the authority upon which access is requested, and makes a final request for access as specified in §8-402.20, the PERSON IN CHARGE continues to REFUSE access, the REGULATORY AUTHORITY shall provide details of the denial of access on an inspection report form.

8-402.40 Inspection Order to Gain Access.

In addition to any other remedies the regulatory authority may have for a violation of the code, if denied access to a FOOD ESTABLISHMENT for an authorized purpose and after complying with §8-402.20, the REGULATORY AUTHORITY may seek the issuance of an inspection order to gain access as provided in LAW.

8-403 Report of Findings

8-403.10 Documenting Information and Observations.

The REGULATORY AUTHORITY shall document on an inspection report form:

(A) Administrative information about the FOOD ESTABLISHMENT'S legal identity, street and mailing addresses, type of establishment and operation as specified under ¶ 8-302.14(C), inspection date, and other information such as type of water supply and SEWAGE disposal, status of the PERMIT, and personnel certificates that may be required; and

(B) Specific factual observations of violative conditions or other deviations from this Code that require correction by the PERMIT HOLDER including:

- (1) Failure of the PERSON IN CHARGE to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Code specified under §2-102.11,
- (2) Failure of FOOD EMPLOYEES and the PERSON IN CHARGE to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under §§2-201.14 and 2-201.15,
- (3) Nonconformance with CRITICAL ITEMS of this Code,
- (4) Failure of the appropriate FOOD EMPLOYEES to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the REGULATORY AUTHORITY as specified under §8-103.12,
- (5) Failure of the PERSON IN CHARGE to provide records required by the REGULATORY AUTHORITY for determining conformance with a HACCP PLAN as specified under Subparagraph 8-201.14(D)(6), and
- (6) Nonconformance with CRITICAL LIMITS of a HACCP PLAN.

8-403.20 Specifying Time Frame for Corrections.

The REGULATORY AUTHORITY shall specify on the inspection report form the time frame for correction of the violations as specified under §§8-404.11, 8-405.11, and 8-406.11.

8-403.30 Issuing Report and Obtaining Acknowledgment of Receipt.

At the conclusion of the inspection and according to LAW, the REGULATORY AUTHORITY shall provide a copy of the completed inspection report and the notice to correct violations to the PERMIT HOLDER or to the PERSON IN CHARGE, and request a signed acknowledgment of receipt.

8-403.40 Refusal to Sign Acknowledgment.

The REGULATORY AUTHORITY shall:

(A) Inform a PERSON who declines to sign an acknowledgment of receipt of inspectional findings as specified in §8-403.30 that:

- (1) An acknowledgment of receipt is not an agreement with findings,
- (2) Refusal to sign an acknowledgment of receipt will not affect the PERMIT HOLDER'S obligation to correct the violations noted in the inspection report within the time frames specified, and
- (3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the REGULATORY AUTHORITY'S historical record for the FOOD ESTABLISHMENT; and

(B) Make a final request that the PERSON IN CHARGE sign an acknowledgment receipt of inspectional findings.

8-403.50 Public Information.

Except as specified in §8-202.10, the REGULATORY AUTHORITY shall treat the inspection report as a public document and shall make it available for disclosure to a PERSON who requests it as provided in LAW.

8-404 Imminent Health Hazard

8-404.11 Ceasing Operations and Reporting.

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, SEWAGE backup, misuse of POISONOUS OR TOXIC MATERIALS, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.

(B) *A PERMIT HOLDER need not discontinue operations in an area of an establishment that is unaffected by the IMMINENT HEALTH HAZARD.*

8-404.12 Resumption of Operations.

If operations are discontinued as specified under §8-404.11 or otherwise according to LAW, the PERMIT HOLDER shall obtain approval from the REGULATORY AUTHORITY before resuming operations.

8-405 Critical Violation**8-405.11 Timely Correction.**

(A) Except as specified in ¶ (B) of this section, a PERMIT HOLDER shall at the time of inspection correct a critical violation of this Code and implement corrective actions for a HACCP PLAN provision that is not in compliance with its CRITICAL LIMIT.

(B) *Considering the nature of the potential HAZARD involved and the complexity of the corrective action needed, the REGULATORY AUTHORITY may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the PERMIT HOLDER to correct critical Code violations or HACCP PLAN deviations.*

8-405.20 Verification and Documentation of Correction.

(A) After observing at the time of inspection a correction of a critical violation or deviation, the REGULATORY AUTHORITY shall enter the violation and information about the corrective action on the inspection report.

(B) As specified under ¶ 8-405.11(B), after receiving notification that the PERMIT HOLDER has corrected a critical violation or HACCP PLAN deviation, or at the end of the specified period of time, the REGULATORY AUTHORITY shall verify correction of the violation, document the information on an inspection report, and enter the report in the REGULATORY AUTHORITY'S records.

8-406 Noncritical Violation**8-406.11 Time Frame for Correction.**

(A) Except as specified in ¶ (B) of this section, the PERMIT HOLDER shall correct noncritical violations by a date and time agreed to or specified by the REGULATORY AUTHORITY but no later than 90 calendar days after the inspection.

(B) *The REGULATORY AUTHORITY may approve a compliance schedule that extends beyond the time limits specified under ¶ (A) of this section if a written schedule of compliance is submitted by the PERMIT HOLDER and no health HAZARD exists or will result from allowing an extended schedule for compliance.*

8-5 PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES**8-501 Investigation and Control****8-501.10 Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis.**

The proper REGULATORY AUTHORITY shall act when it has reasonable cause to believe that a FOOD EMPLOYEE has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through FOOD; may be a carrier of infectious agents that cause a disease that is transmissible through FOOD; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(A) Securing a confidential medical history of the EMPLOYEE suspected of transmitting disease or making other investigations as deemed appropriate; and

(D) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected EMPLOYEE and other EMPLOYEES.

8-501.20 Restriction or Exclusion of Food Employee, Closure or Suspension of Permit.

Based on the findings of an investigation related to a FOOD EMPLOYEE who is suspected of being infected or diseased, the proper REGULATORY AUTHORITY may require the PERMIT HOLDER instituting one or more of the following control measures:

- (A) Restricting the FOOD EMPLOYEE'S services to specific areas and tasks in a FOOD ESTABLISHMENT that present no risk of transmitting the disease; or
- (B) Excluding the FOOD EMPLOYEE from a FOOD ESTABLISHMENT; or
- (C) Requesting that the food establishment close to minimize the risk of transmitting the disease; or
- (D) Seeking suspension of the permit through the court system.

8-501.30 Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

Based on the findings of the investigation as specified in §8-501.10 and to control disease transmission, the proper REGULATORY AUTHORITY may require the restriction or exclusion of a suspected FOOD EMPLOYEE by the PERMIT HOLDER without prior warning, notice of a hearing, or a hearing if the Regulatory Authority:

- (A) States the reasons for the restriction or exclusion that is required;
- (B) States the evidence that the FOOD EMPLOYEE or PERMIT HOLDER shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
- (C) States that the PERMIT HOLDER may request an appeal hearing by submitting a timely request as provided in LAW; and
- (D) Provides the name and address of the REGULATORY AUTHORITY representative to whom a request for an appeal hearing may be made.

8-501.40 Release of Food Employee from Restriction or Exclusion.

The proper REGULATORY AUTHORITY shall release a FOOD EMPLOYEE from restriction or exclusion according to LAW and the following conditions:

- (A) A FOOD EMPLOYEE who was infected with *Salmonella Typhi* if the FOOD EMPLOYEE'S stools are negative for *S. Typhi* based on testing of at least 3 consecutive stool specimen cultures that are taken:
 - (1) Not earlier than 1 month after onset,
 - (2) At least 48 hours after discontinuance of antibiotics, and
 - (3) At least 24 hours apart; and
- (B) If one of the cultures taken as specified in ¶ (A) of this section is positive, repeat cultures are taken at intervals of 1 month until at least 3 consecutive negative stool specimen cultures are obtained.
- (C) A FOOD EMPLOYEE who was infected with *Shigella* spp. or *Escherichia coli* O157:H7 if the EMPLOYEE'S stools are negative for *Shigella* spp. or *E. coli* O157:H7 based on testing of 2 consecutive stool specimen cultures that are taken:
 - (1) Not earlier than 48 hours after discontinuance of antibiotics; and
 - (2) At least 24 hours apart.
- (D) A FOOD EMPLOYEE who was infected with hepatitis A virus if:
 - (1) Symptoms cease; or
 - (2) At least 2 blood tests show falling liver enzymes.

8-6 NOTICES**8-601 Service of Notice****8-601.10 Proper Methods.**

A notice issued in accordance with this Code shall be considered to be properly served if it is served by one of the following methods:

- (A) The notice is personally served by the REGULATORY AUTHORITY, a LAW enforcement officer, or a PERSON authorized to serve a civil process to the PERMIT HOLDER, the PERSON IN CHARGE, or PERSON operating a FOOD ESTABLISHMENT without a PERMIT;
- (B) The notice is sent by the REGULATORY AUTHORITY to the last known address of the PERMIT HOLDER or the PERSON operating a FOOD ESTABLISHMENT without a PERMIT, by registered or certified mail or by other public means so that a written acknowledgement of receipt may be acquired; or
- (C) **In the event that (A) or (B) is not possible**, the notice is provided by the REGULATORY AUTHORITY **by regular mail or** in accordance with another manner of service authorized in LAW.

8-601.20 Restriction or Exclusion Order, Hold Order.

An employee restriction or exclusion, an order to hold and not distribute food, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order shall be:

- (A) Served as specified in ¶ 8-701.10(A)

8-7 REMEDIES

8-701 Criteria for Seeking Remedies

8-701.10 Conditions Warranting Remedy.

The REGULATORY AUTHORITY may seek an administrative or judicial remedy to achieve compliance with the provisions of this Code if a PERSON operating a FOOD ESTABLISHMENT or EMPLOYEE:

- (A) Fails to have a valid PERMIT to operate a FOOD ESTABLISHMENT as specified under §8-301.11;
- (B) Violates any term or condition of a PERMIT as specified under §8-304.11;
- (C) Allows serious or repeated code violations to remain uncorrected beyond time frames for correction APPROVED, directed, or ordered by the REGULATORY AUTHORITY under ¶¶ 8-405.11(A) and (B), and ¶¶ 8-406.11(A) and (B);
- (D) Fails to comply with a REGULATORY AUTHORITY order issued as specified in §8-501.20 concerning an EMPLOYEE suspected of having a disease transmissible through FOOD by infected PERSONS;
- (E) Fails to comply with a hold order as specified in §§8-701.20 and 8-803.10;

8-702 Holding, Examination, and Destruction of Food

8-702.10 Hold Order, Justifying Conditions and Removal of Food.

(Note: Adoption of this section provides the basis for ¶ 3-202.18(B) and would be cited there.)

- (A) In accordance with the procedures and requirements of 22 MRSA §2159, the REGULATORY AUTHORITY may place a hold order on a FOOD that it has reason to believe is adulterated, or is misbranded as to be dangerous or fraudulent within the meaning of 22 MRSA chapter 551.
- (B) If the REGULATORY AUTHORITY has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the REGULATORY AUTHORITY may remove the FOOD that is subject to the order to a place of safekeeping.

8-702.20 Hold Order, Contents.

The hold order notice shall:

- (A) State that FOOD subject to the order may not be used, sold, moved from the FOOD ESTABLISHMENT, or destroyed without a written release of the order from the REGULATORY AUTHORITY;
- (B) State the specific reasons for placing the FOOD under the hold order with reference to the applicable provisions of this Code and the HAZARD or adverse effect created by the observed condition;
- (C) Completely identify the FOOD subject to the hold order by the common name, the label information, a container description, the quantity, REGULATORY AUTHORITY'S tag or identification information, and location;

8-702.30 Hold Order, Official Tagging of Food.

(A) The REGULATORY AUTHORITY shall securely place an official tag or label on the FOOD or containers or otherwise conspicuously identify FOOD subject to the hold order.

(B) The tag or other method used to identify a FOOD that is the subject of a hold order shall include a summary of the provisions specified in §8-803.10 and shall be signed and dated by the REGULATORY AUTHORITY.

8-702.40 Hold Order, Food May Not Be Used or Moved.

(A) Except as specified in ¶ (B) of this section, a FOOD placed under a hold order may not be used, sold, served, or moved from the establishment by any PERSON.

(B) *The REGULATORY AUTHORITY may allow the PERMIT HOLDER the opportunity to store the FOOD in an area of the FOOD ESTABLISHMENT if the FOOD is protected from subsequent deterioration and the storage does not restrict operations of the establishment.*

8-702.50 Examining, Sampling, and Testing Food.

The REGULATORY AUTHORITY may examine, sample, and test FOOD in order to determine its compliance with this Code.

8-702.60 Hold Order, Removing the Official Tag.

Only the REGULATORY AUTHORITY may remove hold order tags, labels, or other identification from FOOD subject to a hold order.

8-702.70 Destroying or Denaturing Food.

Food shall be destroyed, or otherwise rendered unsalable, in accordance with the provisions of 22 MRSA §2159.

8-702.80 Releasing Food from Hold Order.

The REGULATORY AUTHORITY shall issue a notice of release from a hold order and shall remove hold tags, labels, or other identification from the FOOD if the hold order is vacated.

8-703 Hearing Administration**8-703.10 Request for Hearing, Basis and Time Frame.**

A person aggrieved by a licensing decision or action taken by the state Regulatory Authority may request an administrative hearing in accordance with the provisions of the Administrative Procedure Act (5 M.R.S.A. Chapter 375). The hearing request must be submitted to the state Regulatory Authority within 10 calendar days of receipt of the notice of the state Regulatory Authority's decision or action and must specify the reason(s) for the appeal. All hearings shall be conducted in accordance with the Maine Administrative Procedure Act or rules adopted under the Administrative Procedure Act.

8-704 Civil Proceedings**8-704.10 Petitions, Penalties, and Continuing Violations.**

(A) The regulatory authority may petition a court of competent jurisdiction to enforce the provisions of this Code or its administrative orders and according to law collect penalties and fees for violations.

(B) A person who violates a provision of this Code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this Code, or to any term, condition, or limitation of a permit issued as specified in §§8-303.10 and 8-303.20 is subject to a civil penalty.

(C) In addition, fines may be assessed by the REGULATORY AUTHORITY in accordance with 22 MRSA §2498.

(D) Each day on which a violation occurs is a separate violation under this section.

9-1 STATUTORY AUTHORITY: Department of Agriculture, Food & Rural Resources
10 M.R.S.A. §§2625 – 2629, 22 M.R.S.A. §§2153, 2154, and 2167 – 2169,
 Department of Human Services **22 M.R.S.A. §§2496**

10-1 EFFECTIVE DATE: 5/1/01

EFFECTIVE DATE:

May 1, 2001

NON-SUBSTANTIVE CORRECTIONS:

May 15, 2001 - restoration of 5-501.17, minor formatting

10-144
DEPARTMENT OF HUMAN SERVICES
BUREAU OF HEALTH
DIVISION OF HEALTH ENGINEERING

Chapter 206

RULES RELATING TO LODGING ESTABLISHMENTS

EATING AND LODGING PROGRAM
11 STATE HOUSE STATION
AUGUSTA ME 04333

As adopted by:
Maine Department of Human Services

January 1, 2003

Table of Contents

Chapter 1	Purpose and Definitions	1
1-A	Rules Relating to Lodging	1
1-B	Applicability and Terms Defined	1
Chapter 2	Rooms.....	3
2-A	Guest Rooms.....	3
2-B	Common Areas associated with sleeping rooms	3
2-C	Toilet and Bath Rooms	3
2-D	Employee Toilet Facilities	4
2-E	Guest Toilet/Bath Facilities	4
Chapter 3	Gas Appliances.....	4
3-A	Gas Appliances in sleeping rooms	4
Chapter 4	Life Safety Codes.....	4
4-A	Life Safety Code Requirements	4
4-B	Application.....	5
Chapter 5	Ice	5
5-A	Ice for consumer use	5
Chapter 6	Water	5
6-A	Water Supply.....	5
Chapter 7	Wastewater	6
7-A	Sewage Disposal	6
Chapter 8	Rubbish	6
8-A	Garbage and Trash	6
Chapter 9	Laundry and Storage Facilities.....	7
9-A	Storage	7
Chapter 10	Records.....	7
10-A	Register	7
10-B	License.....	8
10-C	Posting of License.....	8
10-D	Issuance of Licenses	8
Chapter 11	Vermin and Animal Control.....	9
11-A	Insect and Rodent Control	9
11-B	Animal Control.....	9
Chapter 12	Plumbing.....	9
12-A	Potable water	9
12-B	Non-Potable water	9
12-C	Backflow.....	9
12-D	Plumbing.....	9
12-E	Water Recreation Facilities.....	10
Chapter 13	Inspections	10
13-A	Establishment Inspection Interval.....	10
13-B	Performance	10
13-C	Right of Entry and Inspection	10

13-D	Refusal, Notification of Right to Access and Final Request for Access	10
13-E	Ceasing Operations and Reporting	11
13-F	Resumption of Operations	11
13-G	Timely Correction	11
13-H	Verification and Documentation of Correction	11
13-I	Time Frame for Correction.....	11

Chapter 1: Purpose and Definitions

1-A Rules Relating to Lodging

These provisions shall be known as the Rules Relating To Lodging, hereinafter referred to as "Lodging Rules." These rules shall be liberally interpreted and applied to promote their underlying purpose of protecting the public health.

1-B Applicability and Terms Defined

- 1) APPROVED means acceptable to the Department, based on its determination as to conformance with appropriate standards and good public health practice.
- 2) BED AND BREAKFAST see LODGING PLACES
- 3) BUNKHOUSE see LODGING PLACES
- 4) COMMON AREAS are parts of an establishment which are open to all guests. The term includes, but not by way of limitation, hallways, stairways, and vending areas.
- 5) COMMON DRINKING CUPS are cups that are shared by two or more individuals or by all members of a group.
- 6) COMMON TOWELS are towels that are shared by two or more individuals or by all members of a group.
- 7) CORROSION-RESISTANT MATERIALS means those materials that maintain their original surface characteristics under prolonged normal use of cleaning compounds, bactericidal solutions, and other normal uses.
- 8) COTTAGE see LODGING PLACES
- 9) CRITICAL VIOLATION means a violation of these rules which is more likely than other rule violations to present a clear risk of contamination, illness, or environmental health hazard.
- 10) DEPARTMENT means the Department of Human Services.
- 11) DORMITORY see LODGING PLACES
- 12) EASILY CLEANABLE means that surfaces which are readily accessible and made of such materials and finish, or so fabricated, that materials may be effectively removed by normal cleaning methods.

- 13) EATING AND LODGING PLACE see LODGING PLACES
- 14) EMPLOYER means the license holder or individual having supervisory or managerial duties at the licensed establishment.
- 15) FOOT CANDLE is a standard unit, established as a point of reference, which is used when measuring quantity of light. One Foot Candle equals the total intensity of light which falls upon a one square foot surface placed 1 foot away from a point source of light that equals 1 candle power.
- 16) GUEST HOME see LODGING PLACES
- 17) HOTEL see LODGING PLACES
- 18) LODGING PLACES means every building or structure, or any part thereof, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for business purposes. The term includes, but not by way of limitation, hotels, motels, guest homes and cottages. A Lodging License is required for any person or entity which rents out four or more rooms or cottages. For exceptions to this definition, please refer to 22 M.R.S.A. §2501.

The term LODGING PLACES include:

- a) BED AND BREAKFAST is a unique eating and lodging establishment where the general public can stay overnight, and are provided with a "limited menu," serving only a breakfast meal. This meal can be either a full breakfast or a continental breakfast. Unlike other food establishments, the meal is prepared in the private home. A lodging license is required regardless of the number of rooms;
- b) BUNKHOUSE means and includes a rough simple building providing sleeping quarters, with or without bedding; or any other similar rustic dwelling which provides lodging. Bunkhouses that are part of a licensed campground or recreational camp are not lodging places;
- c) COTTAGE means a single structure where sleeping accommodations are furnished to the public as a business for day, week, or month, but not for more than the entire summer season;
- d) DORMITORY means a room in any establishment used for sleeping purposes by four (4) or more unrelated persons;

- e) EATING AND LODGING PLACE or LODGING PLACE means every building or structure or any part thereof kept, used as, maintained as, advertised as or held out to the public to be a place where eating and sleeping or sleeping accommodations are furnished to the public as a business, such as hotels, motels, guest homes and cottages;
 - f) GUEST HOMES, HOTELS, and MOTELS are business establishments where sleeping accommodations are furnished to the public; and,
 - g) RECREATIONAL CAMP means and includes day camps, boys' and girls', family, hunting, fishing and similar camps.(Day camps and boys and girls camps, as defined in the Rules Relating to Boy's, Girl's, Boy's and Girl's, Day Camps, and Primitive and Trip Camping 10-144 CMR Chapter 208, are not lodging places subject to these rules.)
- 19) MOTEL see LODGING PLACES
- 20) PLUMBING FIXTURE means a receptacle or device that (1) is permanently or temporarily connected to the water distribution system of the premises and which requires a water supply from the system or (2) which discharges used water, waste materials, or sewage directly or indirectly into the drainage system of the premises.
- 21) PLUMBING SYSTEM means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.
- 22) PRIVATE FACILITY is a facility funded by an individual, partnership or corporation, and which is not a public facility.
- 23) PROPRIETOR means any person 18 years or older, corporation, partnership, firm, organization or municipality which operates or is responsible for the operation of a lodging establishment or eating and lodging establishment.
- 24) PUBLIC FACILITY is any facility funded in whole or part by municipal, state or federal funds. These facilities shall include but not be limited to public schools, state controlled universities, mental and correctional facilities, etc.
- 25) RECREATIONAL CAMP see LODGING PLACES

- 26) **SANITARIAN** means a person whose education and experience in the biological and sanitary sciences qualify him to engage in the promotion and protection of the public health. He applies technical knowledge to solve problems of a sanitary nature and develops methods and carries out procedures for the control of those factors of man's environment which affect health, safety and well-being.
- 27) **SANITIZATION** means effective bactericidal treatment by a process that provides enough accumulative heat or concentrations of chemicals for a time sufficient to reduce the bacterial count, including pathogens, to a safe level on surfaces of utensils and equipment.
- 28) **SERVICE ANIMAL** means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.
- 29) **SHALL** means that which is required; or the only acceptable method under these rules.
- 30) **SHOULD** means the most preferable procedure or alternative under these rules.
- 31) **SINGLE-SERVICE ARTICLES** shall mean cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, wrapping materials, toothpicks and similar articles which are constructed wholly or in part from paper, paper board, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are designed by the manufacturers and used by the public as for one-time, one-person use and then discarded.
- 32) **TABLEWARE** shall mean all multi-use eating and drinking utensils, including flatware (knives, forks, spoons, dishware), and ice containers.

2 § 2501. Exceptions

Private homes shall not be deemed or considered lodging places and subject to a license where not more than 3 rooms are let. A license shall not be required from dormitories of charitable, educational or philanthropic institutions, fraternity and sorority houses affiliated with educational institutions, or from private homes used in emergencies for the accommodation of persons attending conventions, fairs or similar public gatherings, nor from temporary eating and lodging places for the same, nor from railroad dining or buffet cars, nor from construction camps, nor from boarding houses and camps conducted in connection with wood cutting and logging operations, nor from any boarding care facilities or

children's homes which are licensed under section 7801. [1977, c. 78, §148 (amd).]

Chapter 2: Rooms

2-A Guest Rooms

- 1) Sleeping rooms and bathrooms shall provide adequate lighting and ventilation.
- 2) Windows and glass doors shall be kept clean and properly maintained.
- 3) Where natural ventilation only is provided, outside openings shall be adequately screened.
- 4) In the absence of windows, air conditioning and artificial lighting constitutes satisfactory compliance.
- 5) Where it is impossible to provide ventilation by means of a window in an external wall or where storm windows are installed incapable of being opened, some artificial or mechanical means of ventilation capable of recirculating the air in the room at least six times per hour shall be provided.
- 6) Window coverings shall be kept clean and properly maintained.
- 7) Sheets and pillow cases, when provided, shall be clean. In no case shall sheets or pillow cases, after once being used by any guest, be used for or by another guest without having been thoroughly cleaned. **(Critical Violation)**
- 8) Any torn and/or soiled bedding, mattresses, sheets or pillow cases shall not be used.
- 9) The floors, walls, and ceilings of bedrooms, closets, and storage areas shall be kept clean and properly maintained.
- 10) Furniture, fixtures, carpets and other accessories shall be kept clean and properly maintained.
- 11) All lodging establishments shall be kept free of roaches, flies, vermin, and other pests.
- 12) If cooking and multi-use eating and drinking tableware are provided for use by guests, the lodging establishment shall wash, rinse and sanitize the

cooking and multi-use eating and drinking tableware, prior to use by succeeding guests. **(Critical Violation)**

- 13) All drinking glasses furnished and used by guests shall be washed and sanitized after each day of occupancy. Clean glasses, not otherwise protected, shall be inverted on a clean surface. **(Critical Violation)**
- 14) Any and all appliances provided shall be properly maintained and cleaned.

2-B Common Areas Associated with Sleeping Rooms

- 1) Floors, walls, ceilings, windows and ventilation shall be kept clean and properly maintained.
- 2) Furniture, fixtures, draperies, and other accessories shall be clean and properly maintained
- 3) Exterior common areas shall be kept clean and free of litter.

2-C: Toilet and Bath Rooms

- 1) Floors, walls, ceilings, and all fixtures shall be smooth, durable and easily cleanable.
- 2) Carpeting is prohibited in all bath and toilet facilities.
- 3) An adequate supply of hand soap or detergent shall be available at each lavatory.
- 4) Lavatory facilities shall be located within or immediately adjacent to all toilet rooms or vestibules.
- 5) An adequate supply of sanitary paper or cloth towels, or an approved hand drying device, shall be available and conveniently located near the lavatory.
- 6) Common towels and common drinking cups are prohibited.
- 7) Toilet facilities, including the toilet room and fixtures, shall be kept clean and properly maintained, free of objectionable odors and shall be adequately vented.
- 8) A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Such receptacles

shall be emptied at least once a day, and more frequently when necessary, to prevent excessive accumulation of waste material.

- 9) Signs requiring employees to wash their hands after using the toilet shall be posted in all toilet rooms open to the public and employees.
- 10) Toilets and associated plumbing shall be installed in accordance with applicable state and local laws, ordinances, and regulations.

2-D Employee Toilet Facilities

- 1) Toilet facilities shall be adequate and conveniently located, and shall be accessible to the employees at all times.
- 2) Signs requiring employees to wash their hands after using the toilet shall be posted in all employee toilet rooms.

2-E Guest Toilet/Bath Facilities

- 1) Baths, lavatories, and toilets shall be provided and conveniently located for each room or unit.
- 2) Fixtures shall be cleaned and disinfected after each check-out.
- 3) Rooms equipped with showers shall be provided with hot and cold water under pressure.
- 4) During same stay occupancy, fixtures should be cleaned daily and disinfected at least every three days.

Chapter 3: Gas Appliances

3-A Gas Appliances in Sleeping Rooms

- 1) All gas appliances, such as hot water heaters, space heaters, domestic clothes dryers, floor furnaces or similar appliances, shall not be installed or used in sleeping rooms, or in a room generally kept closed, unless vented to an effective flue or vent and equipped with an automatic pilot and an automatic control valve. **(Critical Violation)**
- 2) All gas refrigerators, ranges, and hot plates are hereby prohibited in sleeping rooms. **(Critical Violation)**

Chapter 4: Life Safety Codes

4-A Life Safety Code Requirements

- 1) In order to have a license for an eating and lodging, or lodging establishment, the establishment shall be in compliance with the appropriate chapter(s) of the NFPA 101 Life Safety Code. The applicant may be required to submit verification from the State Fire Marshal's office confirming the applicant is in compliance with the appropriate chapter of the NFPA 101 Life Safety Code. **(Critical Violation)**
- 2) All new construction or extensively renovated establishments should comply with the current edition of the "Life Safety Code." (NFPA 101 Life Safety Code)

4-B Application

The following codes should be complied with in new construction and extensive renovation of lodging places.

- 1) The electrical system or electrical equipment shall comply with applicable state standards and regulations. (Title 32 M.R.S.A. Chapter 17)
- 2) Installation of oil burning equipment, tanks, and centralized fuel supply systems shall comply with the applicable state standards and regulations. (Title 32 M.R.S.A. Chapter 33)
- 3) All installation of gas appliances and gas piping shall comply with the most recent edition of National Fire Protection Association standard adopted by the State of Maine.

Chapter 5: Ice

5-A Ice for Consumer Use

- 1) Ice shall be made from potable water whose source meets the Primary Drinking Water Standards. The ice making machine shall be located, installed, operated and maintained so as to prevent contamination of the ice. To minimize human contact, ice machines should be self dispensing.
- 2) Ice shall be handled, transported, and stored in such a manner as to be protected against contamination.
- 3) If ice crushers are used, they shall be maintained in a sanitary condition.

- 4) Utensils shall be provided for storing and serving ice in a sanitary manner. Ice containers, other containers, and scoops, unless they are of the single-service type, shall be of a smooth, impervious material and designed to facilitate cleaning.
- 5) Ice scoops shall be kept in a stainless steel, impervious plastic, or fiberglass container in an area which is free from contamination. The container and ice scoop shall be washed and sanitized daily, or mounted inside the machine so that the handle will not come in contact with ice.
- 6) Ice containers provided in lodging rooms shall be cleaned and sanitized between each check-in.
- 7) If plastic bags are used as liners, they shall be of food grade quality.
- 8) Ice not made on the premises shall be obtained from a source approved by the Department.
- 9) If ice is packaged on the premises to be sold to the public, a license from the Department of Agriculture is required.

Chapter 6: Water

6-A Water Supply

- 1) Water from a public water system, as defined under Maine law, shall meet the federal water standards established under the National Primary Drinking Water Rules, 40 CFR Part 141, and the Department of Human Services Rules Relating to Drinking Water, 10-144 CMR, Chapter 231 **(Critical Violation)**
- 2) Water from a licensed establishment that does not meet the definition of a regulated public water system shall meet state drinking water quality standards. **(Critical Violation)**
- 3) Drinking water acquired from a surface water source shall be adequate, of a safe, sanitary quality, approved by the Department, and properly disinfected with chlorine. **(Critical Violation)**
 - a) Ground water sources required to be chlorinated and surface water sources shall maintain a chlorine residual, after 30 minutes contact time, of 0.25 ppm free chlorine or 1.0 ppm total chlorine.
 - b) A written daily record of chlorine residuals shall be maintained and available to the Department upon request. A bacteriological

analysis and test for turbidity shall be conducted monthly when the establishment is in operation.

- 4) All water, not piped into the lodging establishment directly from the source, shall be transported, handled, stored and dispensed in a sanitary manner. **(Critical Violation)**
- 5) Bottled and packaged potable water shall be obtained from a source that complies with all laws and meets the State of Maine Rules Relating to Bottling Water and the Primary Drinking Water Standards. Such bottled and packaged water shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container. **(Critical Violation)**
- 6) Hot and cold water under pressure shall be provided at all sinks, lavatories, and/or dishwashers during the hours of operation in all lodging places and in locations where equipment and tableware are washed. An applicant may be relieved of this requirement upon a demonstration of good cause, approved by the Department.
- 7) All private water supplies shall be subject to inspection by the Department at all times. Water from such sources shall not be used or supplied to the public unless samples therefrom have been tested and approved within the preceding twelve (12) month period by the Department, or other certified laboratories approved by the Department. Establishments which operate seasonally shall obtain a sample prior to the start of the season. Additional tests may be required by the Drinking Water Program. A copy of the water analysis, and other supporting documentation, shall be available for inspection by the Department at all times. **(Critical Violation)**

Chapter 7: Wastewater

7-A Sewage Disposal

- 1) Water-Carried Sewage: All water-carried sewage shall be disposed of by means of:
 - a) Public sewage system; or
 - b) An approved sewage disposal system that is designed, constructed, and operated in conformance with the State of Maine Subsurface Wastewater Disposal Rules, CMR 10-144 Chapter 241; **(Critical Violation)**; or

- c) A wastewater discharge system licensed by the Department of Environmental Protection under Title 38 M.R.S.A. §413 & §414-A as amended.
- 2) Non-Water Carried Sewage: Non-water carried sewage disposal facilities shall not be used, except where water carried disposal methods have been determined by the Department to be impractical. Under such conditions, only facilities that have been approved by the Department shall be used, and operation of these facilities shall be in conformance with applicable State and local laws, ordinances and regulations. **(Critical Violation)**

Chapter 8: Rubbish

8-A Garbage and Trash

- 1) All garbage and trash shall be collected and stored in covered containers in such a manner as not to create a nuisance. Garbage and trash storage containers shall be kept clean, safe and properly maintained. **(Critical Violation)**
- 2) There shall be no fly or mosquito breeding places, rodent harborages, or undrained areas on the premises. The premises shall be kept neat and clean. Rubbish, litter and other items not used in the operation of the establishment shall not be permitted to accumulate on the premises, except when deemed impractical by the Department.
- 3) Facilities shall be provided for the washing and storage of garbage and trash containers, mops, mop buckets, mop wringers, and any other equipment used in the cleaning of the lodging establishment. Cleaning facilities shall include combination faucet, hot and cold water under pressure, hose bib with a backflow prevention device and curbed impervious pad sloped to drain or other equivalent facilities or methods, except when deemed impractical by the Department.
- 4) Garbage containers outside the establishment shall be stored either on an easily cleaned concrete slab, dense sealed bituminous surface, or a rack which is at least 12 inches above the ground.

Chapter 9: Laundry & Storage Facilities

9-A Storage

- 1) Storage rooms or cabinets shall be provided for all supplies, linens, and equipment.
- 2) Clean linen and supplies shall be stored in cabinets, or on shelves at least six inches off the floor in linen and supply storage rooms. Cabinets, shelves, and storage rooms shall be constructed to facilitate cleaning, and be kept clean.
- 3) Soiled linen shall be so handled and stored as not to come in contact with clean linen.
- 4) A separate storage area shall be provided for building and ground maintenance equipment and supplies.
- 5) Items on housekeeping carts shall be arranged in a manner to prevent cross-contamination between soiled and cleaned items. Housekeeping carts shall be kept clean and stored in a clean area.
- 6) Cleaning/disinfecting compounds shall have a Material Safety Data Sheet available on the premises for inspection by the Department.
- 7) Toxic materials shall be properly labeled and stored. **(Critical Violation)**
- 8) Lights shall be shielded in the laundry areas and the linen storage facilities.

Chapter 10: Records

10-A Register

- 1) In accordance with the provisions of 30-A M.R.S.A. §3821 the proprietor of any lodging place shall keep and maintain on premises, or cause to be kept and maintained on premises, a register containing the true names of each guest who has rented, or is renting a room(s), camp(s), and or cottage(s).
 - a) Every person operating any hotel or lodging house shall have a register kept and maintained in the hotel or lodging house at all times. The name of every guest or person renting or occupying a room or rooms in the hotel or lodging house shall be written in the

register. The person renting the room or rooms, or someone under that person's direction shall sign the register. The proprietor of the hotel or lodging house, or the proprietor's agent shall then write the number of each room assigned to and occupied by each guest, together with the date that room is rented, opposite the name or names so registered.

- b) The proprietor or the proprietor's agent shall keep and maintain a record showing the date when the occupant of each room surrenders the room. This record may be made a part of the register.
 - c) Both the register and the record must be kept for 2 years and be available at all reasonable times to the inspection of any lawful agent of the licensing authority or any full-time law enforcement officer as defined in Title 25, section 2805. The guest register may be "kept," within the meaning of this section, when reproduced on any photographic, microfilm or other process that reproduces the original record.
- 2) Any person who intentionally or knowingly violates this section is guilty of a Class E crime and shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 90 days for each offense, or both.

10-B License

- 1) No person, corporation, firm or co-partnership may conduct, control, manage or operate, for compensation, directly or indirectly, any lodging place unless the same shall be licensed by the Department.
- 2) Any person, corporation, firm or co-partnership desiring a license shall submit satisfactory evidence of his, her, or its ability to comply with the minimum standards of these rules which include documenting the adequacy of any private wastewater disposal system and/or the quality of the drinking water.
- 3) Each new application for, or renewal of, an annual license to operate a lodging place, shall be submitted to the Department no sooner than 45 days from the renewal date or opening date. Such application shall be accompanied by:
 - a) a non-refundable fee, appropriate to the size of the establishment, and
 - b) the date and serial number of the last water analysis, if applicable. No license may be assignable or transferable.

- 4) Pursuant to State Law, the fee for eating establishments in South Portland, Lewiston, and Auburn is \$10.00, regardless of the number of seats. This fee shall apply only to those eating establishment which the municipality inspects for conformance with these rules or equivalent municipal rules or ordinances. All other establishments must pay the full fee as determined by the rules administered by the Department.

10-C Posting of License

Licenses issued shall be displayed in a place readily visible to customers or other persons using the licensed establishment at all times.

10-D Issuance of licenses

- 1) New licenses: When any applicant is found, based upon an inspection by the Department or by municipal inspection, to not be in compliance with the requirements of Departmental regulations the Department may refuse issuance of the initial license, but shall issue a conditional license for up to 90 days, except when conditions are found which present a serious danger to the health and safety of the public. Failure by the conditional licensee to meet the conditions specified by the Department shall permit the Department to void the license. If conditional licenses are revoked, all fees shall be retained by the Department.
- 2) Within thirty days of submission of an application therefore, and upon payment of the prescribed fee and receipt of required water test results, and subject to the applicant's compliance with these rules, the Department shall issue a renewal license to operate an eating and lodging place or lodging place.
- 3) The issuance of the license does not provide exemption from other state or local laws, ordinances or regulations, notwithstanding any other provision of law.
- 4) Licenses erroneously issued by the Department are void and shall be returned to the Department on demand, in a notice delivered by hand or by certified mail to the licensee. Pursuant to the provisions of Title 22, Chapter 562 of the Maine Revised Statutes, the Department may either file a complaint seeking suspension or revocation of a license it has issued pursuant to these rules or, if conditions are found which may endanger the life, health or safety of persons living in or attending the licensed establishment, the Department may request an emergency suspension of license in the District Court.

Chapter 11: Vermin & Animal Control

11-A Insect And Rodent Control

- 1) Effective control measures shall be utilized to eliminate the presence of rodents, flies, cockroaches and other vermin on the premises. **(Critical Violation)**
- 2) Screening material shall be not less than 16 mesh to the inch or equivalent.
- 3) Screen doors to the outer air shall be self-closing; and screens for windows, doors, skylights, transoms, and other openings to the outer air shall be tight-fitting and free of breaks.
- 4) All openings to the outside shall be effectively protected against the entrance of rodents. **(Critical Violation)**
- 5) The premises shall be kept in such condition as to prevent the harborage or feeding of vermin. **(Critical Violation)**
- 6) Any application(s) of insecticides, pesticides, or rodenticides must be in compliance with rules of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control.

11-B Animal Control

- 1) Live animals shall be under the animal owner's control at all times and may be allowed in all areas of the establishment except those where food is handled and bedding is stored. **(Critical Violation)**
- 2) Only service animals are allowed in all areas of the business. **(Critical Violation)**

Chapter 12: Plumbing

12-A Potable Water.

The potable water supply piping shall not be directly connected with any non-potable water supply system, whereby the non-potable water can be drawn or discharged into the potable water supply system. **(Critical Violation)**

12-B Non-Potable Water

A non-potable water system is permitted for air conditioning, equipment cooling, and fire protection, and shall be installed according to law. The piping of any non-potable water system shall be durably identified, so that it is readily distinguishable from piping that carries potable water.

12-C Backflow

The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment, where an air gap at least twice the diameter of the water system inlet is not provided between the water supply inlet and the fixture's flood level rim. No hose shall be attached to a faucet that is not equipped with a backflow prevention device. **(Critical Violation)**

12-D Plumbing.

All plumbing shall be installed, maintained and comply with applicable state, and local laws, ordinances and regulations.

12-E Water Recreation Facilities

All water recreation facilities shall be maintained and comply with applicable State Rules relating to Public Swimming Pools and Spas.

Chapter 13: Inspections**13-A Establishing Inspection Interval**

- 1) The Department shall inspect lodging establishments upon a regular basis. The frequency of departmental inspections shall be based upon risk factors. At all times, the frequency of departmental inspections shall be in the sole discretion of the Department.
- 2) The Department may, at its discretion, inspect at more frequent intervals as necessary to follow-up on complaints or other problems noted on previous inspections.
- 3) Each violation of these rules shall be denominated either a critical or non-critical violation. A non-critical violation is any violation other than a critical violation.
- 4) Violations are assigned on a room by room and equipment by equipment basis.

- 5) A critical violation is considered the most serious violation.
- 6) All critical violations shall be corrected as soon as possible, but in any event, no later than 10 days.
- 7) Non-critical violations shall be corrected before the next routine inspection.
- 8) Establishments which receive multiple critical violations and/or excessive numbers of non-critical violations may be subject to a follow-up inspection within 30 days. Failure to correct these violations before the follow-up inspection may result in any or all of the following action by the Department:
 - a) Release of information on the results of the inspection to the news media;
 - b) Initiation of a complaint in the District Court seeking either suspension or revocation of license;
 - c) Refusal to renew the license; and,
 - d) Imposition of fines of up to \$100 per violation per day in accordance with the provisions of 22 M.R.S.A. §2498 and the Maine Administrative Procedure Act.

13-B Performance

Based solely upon its discretion, the Department may determine to conduct more frequent inspections of an establishment subject to these rules based upon risk factors including, but not by way of limitation, (1) prior rules violations; (2) frequency of prior rules violations and (3) substantiated complaints which did not result in adjudicated rules violations.

13-C Right of Entry and Inspection

Upon demonstration by the Department, or its authorized representative, of its inspection authority and intent to conduct a compliance inspection, the operator of a lodging establishment shall allow an inspection of the licensed premises, conducted at reasonable times, to assure compliance with these rules. The operator shall allow the Department, or its authorized representative, access to any records or documents required to be maintained by these rules.

13-D Refusal, Notification of Right to Access, and Final Request for Access

In the event a licensee or its agent denies access onto the licensed premises for the purpose of conducting a compliance inspection, the licensee shall be advised of its responsibility under 22 M.R.S.A. §2497 to allow the Department access for the purpose of conducting such an inspection and the options available to the Department to secure access for the purpose of conducting such investigation. In the event the licensee persists in denying access, or prevents the Department from conducting a compliance inspection, the Department may either issue an inspection order, and conduct a compliance inspection during reasonable hours or seek other legal redress including, but not by way of limitation, seeking an administrative warrant to inspect the premises, license suspension or revocation, imposition of a fine, or any other remedies available under law to the Department.

13-E Ceasing Operations and Reporting

- 1) A license holder shall immediately discontinue operations and notify the Department if an imminent health hazard may exist, including circumstances that may endanger public health.
- 2) A license holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.
- 3) The Department may, should conditions warrant, demand that an establishment close if conditions exist that constitute conditions that may endanger public health.

13-F Resumption of Operations

If operations are discontinued as specified under 13-E or otherwise according to law, the license holder shall obtain approval from the Department before resuming operations.

13-G Timely Correction

Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department may agree to or specify a longer time frame for corrective action, not to exceed 14 calendar days after the inspection.

13-H Verification and Documentation of Correction

- 1) If a critical violation is corrected at the time of inspection, the Department shall record the violation and corrective action on the inspection report.
- 2) After receiving notification that the license holder has corrected a critical violation, the Department shall verify correction of the violation,

document the information on an inspection report, and enter the report in the Department's records.

13-I Time Frame for Correction

- 1) Except as specified in (2) of this section, the license holder shall correct noncritical violations by a date and time agreed to or specified by the Department.
- 2) The Department may approve a compliance schedule that extends beyond the time limits specified under (1) of this section, if a written schedule of compliance is submitted by the license holder and no health hazard exists or will result from allowing an extended schedule for compliance.

STATUTORY AUTHORITY: 22 M.R.S.A. §§ 2491 - 2501

EFFECTIVE DATE:

January 1, 2003 - filing 2002-398

NON-SUBSTANTIVE CORRECTION:

March 5, 2003 - removed the "Non-Discrimination Notice" because it was not in the paper filing

10-144 CMR

CHAPTER 201

STATE OF MAINE

**RULES RELATING TO THE ADMINISTRATION AND ENFORCEMENT
OF ESTABLISHMENTS REGULATED BY THE
HEALTH INSPECTION PROGRAM**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES
MAINE CENTER FOR DISEASE CONTROL AND PREVENTION
DIVISION OF ENVIRONMENTAL HEALTH
HEALTH INSPECTION PROGRAM
11 STATE HOUSE STATION
AUGUSTA, ME 04333-0011**

LAST AMENDED: OCTOBER 7, 2012

10-144
CODE OF MAINE REGULATIONS
CHAPTER 201

Health Inspection Program
Division of Environmental Health
Maine Center for Disease Control & Prevention
Department of Health and Human Services

STATE OF MAINE
RULES RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF
ESTABLISHMENTS REGULATED BY THE HEALTH INSPECTION PROGRAM

SUMMARY STATEMENT:

These rules contain the requirements which must be met by eating and lodging establishments, campgrounds, sporting camps, and youth camps licensed or regulated in the State of Maine by the Department of Health and Human Services. These rules and regulations define relevant terms, describe the inspection process, provide specific standards for licensure, as well as compliance, enforcement and appeal protocols, when eating and lodging establishments fail to meet the requirements within these Rules.

BASIS STATEMENT:

These rules are established to protect public health, by providing specific compliance and enforcement requirements for the eating and lodging establishments, campgrounds, sporting/recreational camps and youth camps licensed or regulated by the Health Inspection Program in the Division of Environmental Health, Department of Health and Human Services.

AUTHORITY:

22 M.R.S. §2496; 32 M.R.S. §§ 4251-4252; 32 M.R.S. §§ 4325 – 26;
22 M.R.S. §§ 1601-1607; 32 M.R.S. §§ 4312-4314; 22 M.R.S. §§ 2661 – 2669, and 22 M.R.S. §§ 1551-A

LAST AMENDED:

These regulations were last amended October 7, 2012.

Nondiscrimination Notice

In accordance with Title VI of the Civil Rights Act of 1964, as amended by the Civil Rights Restoration Act of 1991 (42 U.S.C. 1981, 2000e *et seq.*), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and Title IX of the Education Amendments of 1972, the Maine Department of Health and Human Services does not discriminate on the basis of sex, color, national origin, disability or age in admission or access to or treatment or employment in its programs and activities.

TABLE OF CONTENTS

SECTION	PAGE
SECTION 1: GENERAL PROVISIONS	
A. Purpose	1
B. Definitions	1
SECTION 2: CERTIFICATION OF PERSONNEL	
A. Certified Food Protection Managers	11
SECTION 3: DELEGATION OF INSPECTION DUTIES TO MUNICIPALITIES	
A. Statutory Authority to Delegate Inspection Duties	13
B. Department's Licensing Authority for Delegated Inspections	13
C. Conditions for Delegation	13
D. Food Outbreak Protocols	14
SECTION 4: LICENSING PROCEDURES	
A. Licenses Required	15
B. Issuance of Licenses	15
SECTION 5: FEE SCHEDULE	17
SECTION 6: INSPECTIONS	
A. Right of Entry	21
B. Frequency	21
C. Inspectors' Findings	22
D. Inspection Failure	22
E. Alternative Determination for Compliance for Youth Camps	23
F. Imminent Health Hazards	23
SECTION 7: ENFORCEMENT PROTOCOLS	
A. Intent	26
B. Authorization	26
C. Referral for Enforcement Action	26
D. Initial Letter of Enforcement	26
E. Menu Labeling Compliance/Enforcement	26
SECTION 8: ADMINISTRATIVE PENALTIES	
A. Scope of Administrative Penalties	26
B. Process	26
C. Risk Assessment and Analysis	26
D. Authority	26
E. Penalty Schedule for Violations (Except Operating Without a License)	28
F. Penalty Schedule for Operating Without a License Violations	29
G. Attorney General Injunctions	30
SECTION 9: SUSPENSION OR REVOCATION OF LICENSES	
A. Department Filing of Complaint for Suspension/Revocation	31
B. Emergency Suspension/Revocation	31
C. Expedited Hearing	31
SECTION 10: APPEALS	
A. Right to Appeal	32
B. Collection of Fines Prior to Department Renewal	32
SECTION 11 VARIANCES	
A. Variances and Waivers	33
B. Documentation of Proposed Variance and Justification	33
C. Conformance with Approved Procedures	33

10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES**Chapter 201: RULES RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF ESTABLISHMENTS REGULATED BY THE HEALTH INSPECTION PROGRAM**

SUMMARY: These rules contain the requirements which must be met by eating and lodging establishments, campgrounds, sporting camps, and youth camps licensed or regulated in the State of Maine by the Health and Human Services. These rules and regulations define relevant terms, describe the inspection process, provide specific standards for licensure, as well as compliance, enforcement and appeal protocols, when eating and lodging establishments fail to meet the requirements within these Rules.

SECTION 1. GENERAL PROVISIONS**A. Purpose**

These rules shall be liberally construed and applied to promote their underlying purpose of protecting the public health.

B. Definitions

1. **Accredited Program** means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals. "Accredited Program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration. "Accredited Program" does not refer to training functions or educational programs.
2. **Approved** means acceptable to the Department, based on its determination as to conformance with appropriate standards and good public health practice.
3. **Bed and Breakfast** is a unique eating establishment, where the general public can stay overnight and be provided with a "limited menu," serving only a breakfast meal. This meal can be either a full or continental breakfast. Unlike other eating establishments, the meal is prepared in the private home. Notwithstanding 22 M.R.S.A. §2501, all bed and breakfasts, regardless of the number of rooms rented, are subject to Departmental licensing requirements by these rules.
4. **Business Enterprise Program** is a program within the Maine Department of Labor, that seeks to broaden economic opportunities for blind residents of Maine,

- by creating snack bars, cafeterias, and vending machine facilities located upon state, federal, and municipal properties.
5. **Catering** means preparing food for pre-arranged events, and a license is required. Events are contracted for a flat rate of pay and not charged per customer.
 6. **Catering Establishment** means any kitchen, commissary or similar place in which food or drink is prepared for sale or service elsewhere, or for food service on the premises during special catered events. For clarification, catering establishments are licensed to prepare food at a specific location, yet the food is prepared for a pre-arranged event at another location and the food may be served anywhere the event is held.
 7. **Campground** means a parcel of land where camping takes place and contains 5 or more sites in any combination. Specific requirements are contained in Rules Relating to Campgrounds (10-144 CMR 205). At any such campground, the sites are intended for temporary occupancy for recreational purposes only, and not for permanent residency.
 8. **Certified Food Protection Manager** means a person who is employed or engaged by the management of an eating establishment, who has the authority to implement food protection measures at that establishment, and who meets the certification requirements of section 2(A).
 9. **Chain Restaurant** means an eating establishment that does business under the same trade name in 20 or more locations, at least one of which is located in the State that offers predominantly the same type of meals, food, beverages, or menus, regardless of the type of ownership of an individual location. "Chain restaurant" does not include a grocery store. "Chain restaurant" does not include a hotel or motel that provides a separately owned eating establishment, but does include the separately owned eating establishment, if the eating establishment meets the criteria of this subsection. "Chain restaurant" does not include a movie theater.
 10. **Commissary** means a kitchen that receives, stores, and prepares food for delivery to other meal sites or vending locations, and does not qualify for any other Department license. Examples of commissaries include, but are not limited to, vending company production kitchens that prepare food for use in vending machines; senior citizen meals production kitchens that deliver either frozen or ready-to-eat meals; kitchens that prepare food for small boat day trips; kitchens located at an event hall or convention hall used by multiple caterers as part of specific events, or a commercial kitchen used by multiple food vendors.
 11. **Commissioner** means the Commissioner of the Department of Health and Human Services.
 12. **Complete License Application** means an application that includes all relevant establishment information, proper license category checked, proper license type checked, business owner information completed, including proper mailing

address and physical location of establishment, previous owner's information, applicant's name signed and printed, date of application, and planned opening date. If the establishment is an eating establishment, a menu or draft menu must be provided, along with completion of the business plan table within the license application. The completed application must also include the following: (a) a floor plan for review of newly constructed or extensively renovated establishments; (b) a site plan for review of newly constructed or expanded campground operations; and (c) written approval statements relative to plumbing, water supply, waste disposal, and compliance with state and/or municipal codes.

13. **Compressed Air** means a license required for a supplier either to fill or to supply any breathing apparatus with life supporting gases.
14. **Corrosion-Resistant Materials** means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other normal uses.
15. **Cottage** means a single structure where sleeping accommodations are furnished to the public as a business for day, week or month, but not for more than the entire summer season.
16. **Critical Violation** means regulatory noncompliance that is more likely than other regulatory violations to pose a risk of contamination, illness, or an imminent health hazard. Critical violations relate directly to factors which lead to illness and must receive immediate attention and be corrected as soon as possible, but, in any event, within 10 days. Operators of establishments with critical violations shall notify the Department when corrections have been made. Critical violations may include, but are not limited to, the following:
 - (a) Food from an unapproved or unknown source, or food which is or may be adulterated, contaminated, or otherwise unfit for human consumption is found in an eating establishment;
 - (b) Potentially hazardous food that is held longer than necessary for preparation or service at a temperature between 41°F and 140°F;
 - (c) Insufficient facilities to maintain product temperature;
 - (d) Re-service of potentially hazardous food or unwrapped food that has been previously served to customers;
 - (e) A person infected with a communicable disease that can be transmitted by food is working as a food handler in a food service establishment;

- (f) A person not practicing strict standards of cleanliness and personal hygiene which may result in the transmission of illness through food, is employed in a food service establishment;
 - (g) Equipment, utensils and, food-contact surfaces are not cleaned and sanitized effectively and may contaminate food during preparation, storage or service;
 - (h) Sewage or liquid waste is not disposed of in an approved and sanitary manner, or the sewage or liquid waste may contaminate any food, areas used to store or prepare food, or any areas frequented by customers or employees [Regulated under the Maine Subsurface Wastewater Disposal Rules, 10-144 CMR 241, or the Maine Internal Plumbing Code, 10-144 CMR 238];
 - (i) Toilets and facilities for washing hands are not provided, properly installed or designed, accessible or convenient;
 - (j) The supply of water is not from an approved source or is not under pressure and the food service establishment does not use single service articles and/or bottled water from an approved source [Regulated under Rules Relating to Drinking Water, 10-144 CMR 231];
 - (k) A defect exists in the system supplying potable water that may result in the contamination of the water;
 - (l) Plumbing not installed by a licensed master plumber, and/or without the proper permits and/or not inspected by the Local Plumbing Inspector shall be considered defective.
 - (m) Insects, rodents or other animals are present on the premises in such numbers as to increase the risk of communicable disease being transmitted to the public.
 - (n) Toxic items are improperly labeled, stored or used; or
 - (o) Any other violation of these regulations which has the potential to seriously affect the public health.
17. **Delegated Community** means a municipality in Maine that has applied for, and received authorization from, the Department to conduct inspections pursuant to 22 M.R.S.A. §2499.
18. **Department** means the Department of Health and Human Services Health Inspection Program.
19. **Dormitory** means a room in any establishment used for sleeping purposes by 4 or more unrelated persons.

20. **Easily Cleanable** means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.
21. **Eating Establishment or Eating Place** means any place where food or drink is prepared and served, or served to the public for consumption on the premises, or catering establishments or establishments dispensing food from vending machines, or establishment preparing foods for vending machines dispensing foods other than in original sealed packages, such as hotels, motels, boarding homes, restaurants, mobile eating places, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, bars, cocktail lounges, night clubs, roadside stands, industrial feeding establishments, private or public institutions routinely serving foods, retail frozen dairy product establishments, airports, parks, theaters, take-outs, or any other catering or nonalcoholic drinking establishments or operations where food is prepared and served or served for consumption on the premises, or catering establishments where food is prepared, or where foods are prepared for vending machines dispensing food other than in original sealed packages.
22. **Eating Place – Limited Menu** means an establishment which contains only a bar where food is served but has no kitchen. This type of establishment may contain fewer sinks than are required by the Maine Food Code and serves only pre-packaged food that does not require preparation, handling, or the use of reusable utensils to serve it. This type of establishment license does not permit use as a commercial kitchen for catering operations.
23. **Eating Place-Mobile** means a Mobile Eating Place. See definition for Mobile Eating Place.
24. **Eating Place-Temporary** means a Temporary Eating Place. See definition for Temporary Eating Place.
25. **Eating Place – School** means a school kitchen facility whose primary function is to provide meals to students in grades 12 or less. Career Technical Education classes or Culinary Arts Programs may carry this license type if they do not sell food to the public.
26. **Eating Place – School Satellite** means a school facility that receives food items prepared at a separate location for final assembly, rethermalization (reheating) and service.
27. **Employee** means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, Person performing work under contractual agreement, or other person working in an eating establishment. Volunteers providing services in an eating establishment are subject to the same standards as other employees.

28. **Employer** means the license holder or individual(s) having supervisory or management duties.
29. **Equipment** means stoves, ovens, ranges, hoods, slicers, meat blocks, tables, counters, mixers, refrigerators, sinks, dishwashing machines, steam tables, and similar items, other than utensils, used in the operation of an establishment licensed by the Department under these rules.
30. **Food** means any raw, cooked or processed edible substance, ice, beverage, alcoholic beverage or ingredient used, or intended for use, or for sale, in whole, or in part, for human consumption.
31. **Foodborne Disease Outbreak** means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a common food.
32. **Food Contact Surface** means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.
33. **Food Employee** means any individual employed or working in an eating establishment who handles food and/or drink during preparation or serving, or who comes in contact with any eating, drinking or cooking utensils, or who works in a room or rooms in which food or drink is prepared, served, or stored.
34. **Hazard Analysis Critical Control Point (HACCP)** means a systematic evaluation of food preparation procedures to identify opportunities for bacterial contamination and growth. From this perspective, a public health inspector may then determine those circumstances which could result in the development of food-borne diseases.
35. **HACCP Plan** means a written document that delineates the formal procedures for following the HACCP principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
36. **Health Inspector** means a person whose education and experience in the biological and sanitary sciences qualify him/her to engage in the promotion and protection of the public health. A health inspector applies technical knowledge to solve problems of a sanitary nature and develops methods and carries out procedures for those factors of man's environment which affect health, safety and the well-being of others.
37. **Hermetically Sealed Container** means a container designed, and intended, to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.
38. **Imminent Health Hazard** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on: (a) the number of

potential injuries and (b) the nature, severity and duration of the anticipated injury. Imminent Health Hazard includes, but is not limited to, the following:

- (1) an extended loss of water supply,
- (2) an extended power outage,
- (3) flood water or sewer back-up into the establishment,
- (4) fire, or
- (5) any other violation(s) that has/have the potential to pose an imminent threat to public health.

Failure to include other violations in this definition shall not be construed as a determination that other violations may not, in light of the circumstances, be found to pose an imminent health hazard.

39. **Inspection** means an on-site regulatory review of an establishment licensed by the Department's Health Inspection Program and conducted by an authorized health inspector. The types of inspections include: 1) Pre-operational, 2) Routine Compliance, 3) Follow-up, and 4) Complaint.
40. **Kitchenware** means food preparation and storage utensils.
41. **Law** includes Federal, State, and local statutes, ordinances, and regulations.
42. **Lodging Place** means every building or structure, or any part thereof, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for business purposes in an establishment where 4 or more rooms or cottages are available for rental to the public. The term includes, but not by way of limitation, hotels, motels, guest homes or cottages wherein the owner customarily maintains the sleeping accommodations, and condominium associations that rent units to the public. For purposes of these rules, Lodging Place does not include dormitories of charitable, educational, philanthropic institutions, fraternity and sorority houses affiliated with educational institutions, permanent residences, rooming houses or tenancies-at-will, or rental properties with a tenant-landlord relationship.
43. **Manager** means any person, 18 years or older, who operates, or is responsible for, operating an establishment.
44. **Mass Gatherings** means any gatherings held outdoors at temporary facilities, with the intent to attract the continued attendance of at least 2,000 persons for 12 or more hours.
45. **Mobile Eating Place** means a mobile vehicle designed and constructed to transport, prepare, sell or serve food at a number of sites and is capable of being moved from its serving site at any time.
46. **Packaged** means bottled, canned, cartoned, or securely wrapped.

47. **Person** includes any individual, partnership, corporation, association, or other legal entity.
48. **Person in Charge** means the individual present in an eating establishment who is the apparent supervisor of the establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.
49. **Portion Controlled** means commercially pre-packaged individual items or food portioned by the Person in Charge from bulk containers, and presented individually to the consumer.
50. **Public Pool** means any constructed or prefabricated pool, other than a residential pool, or medical facility pool that is intended to be used for swimming, recreational bathing, or wading and is operated by an owner, lessee, tenant, or concessionaire or by a person licensed by the Department, regardless of whether a fee is charged for use. A pool on the premises of a child care facility that is licensed or required to be licensed under 22 M.R.S.A. §8301-A, is a public pool.
51. **Public Spa** means any constructed spa, other than a residential spa or medical facility spa.
52. **Potentially Hazardous Foods** means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or their ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.
53. **Proprietor** means any person, 18 years or older, corporation, firm, organization, municipality or partnership who operates, or is responsible for, operating an eating establishment or eating and lodging place.
54. **Recreational Vehicle (RV) Park** means a campground that permits the use of RVs where an RV consists of a travel RV, pick-up coach, motor home, camping trailer, dependent RV or self-contained independent RV, as defined in the Rules Relating to Campgrounds (10-144 CMR 205). An RV park is designed for seasonal sites or temporary occupancy and not for permanent residency.
55. **Reconstituted** means dehydrated food products recombined with water or other liquids.
56. **Regulated Establishment** means an establishment that is required to be licensed and/or inspected for compliance by the Department. Regulated establishments shall display the license at their place of sale or service.
57. **Repeat Violation** means a violation determined and recorded during a previous inspection.
58. **Safe Temperatures**, as applied to potentially hazardous food, means temperatures of 41° F or below (for cold food) and 135° F or above (for hot

food) unless otherwise specified in these regulations, and 0°F or below for frozen foods.

59. **Salad Bar Operation** means an area or areas where cold salads and/or salad ingredients are prepared, stored and displayed for consumer self-service.
60. **Salad Bar Unit** means a refrigerated unit or properly drained ice-filled unit where food is displayed for consumer self-service.
61. **Sanitization** means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to 99.999% reduction of representative disease microorganisms of public health importance.
62. **Sealed** means free of cracks or other openings, which permit the entry or passage of moisture and bacterial, viral, or chemical contaminants.
63. **Senior Citizen Meals** means any kitchen or eating place/ establishment that prepares or serves potentially hazardous food to a predominantly senior citizen population.
64. **Servicing Area** means an operating base location, to which a mobile Eating Establishment or transportation vehicle returns to regularly, for services like vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and storing food.
65. **Single-Service Articles** means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, wrapping materials, toothpicks and similar articles which are constructed wholly or in part from paper, paper board, molded pulp, foil, wood, plastic, synthetic, or other readily destructible materials, and which are designed by the manufacturers and generally used by the public as for one-time, one-person use and then discarded.
66. **Sporting/Recreational Camp** means a building or group of buildings devoted primarily to the offering of eating and primitive lodging facilities to guests only, and not to the general public, primarily in pursuit of primitive recreation, hunting, fishing, snowmobiling or similar activities. Sporting/ recreational camps generally do not include summer sports programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings.
67. **Tableware** means all multi-use eating and drinking utensils, including flatware (knives, forks, spoons, dishware).
68. **Temporary Eating Place/ Temporary Eating Establishment** means an eating place or establishment that operates at a fixed location for a period of time of not more than 14 consecutive days, in conjunction with a single event or celebration.

69. **Utensil** means any tableware and kitchenware used in the storage, preparation, conveying, or serving of food.
70. **Vending Machine** means any self-service device offered for public use, which, upon insertion of money, or by other similar means, dispenses unit servings of food other than in original sealed packages without the necessity of replenishing the device between vending operations.
71. **Vending Machine Company** means a company that places vending machines at any site.
72. **Violation** means a critical, or non-critical regulatory non-compliance with these Rules.
73. **Wilderness Recreational Park** means a recreational park containing only primitive sites and adhering to the Rules Relating to Campgrounds (10-144 CMR 205).
74. **Youth Camp** means a combination of program and facilities established for the primary purpose of providing an outdoor group living experience for children with social, recreational, spiritual, and educational objectives and operated and used for 5 or more consecutive days during 1 or more seasons of the year. Youth camps include day camps, residential camps and trip and travel camps. See Rules Relating to Youth Camps (10-144 CMR 208). Youth camps do not include summer sports programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings.

SECTION 2. CERTIFICATION OF PERSONNEL

A. Certified Food Protection Managers

1. Unless otherwise provided in these Rules, an eating establishment must have at least one employee granted supervisory and management responsibility designated a Certified Food Protection Manager (CFPM). The CFPM must have demonstrated appropriate proficiency and skills regarding food safety by successfully passing a CFPM exam included in an Accredited Program. The Department may approve a Food Consultant to serve as CFPM, if necessary to assure food safety, when cultural, language, and literacy barriers prevent any of the establishment's employees from passing the CFPM exam.
2. In the event that during an inspection by the Department, the person in charge is not able to make the demonstration required by Section 2-102.11 of the Maine Food Code, or there are multiple critical violations present during such inspection, the Department or its designee may thereafter require every person in charge for such eating establishment to be a certified food protection manager.
3. In the State of Maine, the following will be accepted as meeting the requirements for certification:
 - (a) Having written proof of completion of specialized training in the preparation and serving of safe food, such as ServSafe[®] Food Protection Manager Certification from the National Restaurant Association Solutions, LLC, the National Registry of Food Safety Professionals, and Prometric (formerly Experior Assessments), or equivalent; and
 - (b) Receiving a passing grade on a competency test, approved by the National Conference for Food Protection (CFP). Certified food protection manager certification shall be renewed through re-training and re-testing every 5 years, or as required by standards adopted by the Department.
 - (c) The following establishments are exempt from the certified food protection manager requirement:
 - Bed and breakfast establishments with 5 rooms or less;
 - Bed and breakfast and lodging establishments that serve a continental breakfast consisting of non-potentially hazardous baked goods, whole fruit or fruit sliced for same-day service, cereal, milk, juice, portion controlled cream cheese, portioned controlled peanut butter, and portion controlled jam or jelly.
 - Temporary eating establishments that operate fewer than 14 days;

- Establishments that serve or sell non-potentially hazardous pre-packaged foods (non-time/temperature control for safety (TCS) foods);
 - Establishments that prepare only non-potentially hazardous foods (non-TCS foods);
 - Establishments that heat only commercially processed, potentially hazardous foods (TCS foods) for hot holding. No cooling of potentially hazardous foods (TCS foods);
 - Sporting/ Recreational Camps operating 90 days or less and serving only their own residential guests; and
 - Eating establishments which pose minimal risk of causing, or contributing to, foodborne illness, based on the nature of the operation and the extent of food preparation.
- (d) A certified food protection manager must be hired within 90 days of a new eating establishment opening or when a certified food protection manager leaves employment.
- (e) Establishments requiring two repeat inspections, due to multiple critical violations, or repeated failure to successfully complete demonstration of knowledge required by 2-102.11 of the Maine Food Code, 10-144 CMR 200, or being involved in a food-borne illness outbreak, must employ a certified food protection manager, if not previously required to do so. If the above issues exist, the Establishment may be required to employ additional certified food protection managers, at the discretion of the Department.
4. Nothing in these rules precludes the Department from requiring an eating establishment, as part of a compliance action, to hire, on a less than full-time basis, an outside, or third-party, consultant who would provide recommendations as a food safety consultant.
5. Eating establishments must post in a conspicuous area the certification of the certified food protection manager(s), and the certificate must be made available to the Department, upon request.

SECTION 3. DELEGATION OF INSPECTION DUTIES TO MUNICIPALITIES

- A. Pursuant to 22 M.R.S. §2499, the Department may delegate licensing inspection duties to municipalities.
- B. In delegated municipalities, the Department continues to be the licensing authority, and may issue a license to establishments on the basis of an inspection performed by an inspector who works for, and is compensated by, the municipality in which such establishment is located.
- C. The following conditions must be met:
1. The municipality holding, or requesting to hold, such delegation must adopt an ordinance that incorporates the Department's Rules.
 2. No municipally employed health inspectors are authorized to perform inspections under the provisions of these Rules, unless certified as qualified by the Commissioner. Such certification will be determined through formal and informal training and education, and other such criteria, as the Department may determine.
 3. For quality control purposes, the Department may, from time to time, inspect such municipally inspected establishments, to ascertain that these Rules are being followed.
 4. A municipality must furnish electronic copies of its inspection reports in a format, and on a schedule, determined by the Department.
 5. The municipalities are responsible to ensure that all establishments within their jurisdiction apply for a State license. Failure of an establishment to operate without the necessary State license will result in the establishment being assessed an administrative fine as specified in these rules. Pursuant to 22 M.R.S. §2498, the Department retains its right to pursue other sanctions against non-licensed establishments, including seeking injunctive relief to enjoin further violations.
 6. In lieu of the prescribed fee, the licensee shall pay a fee to the Department for delegated municipalities, (as outlined in Table 1, Fee Schedule).
 7. Licenses issued by the Department under 22 M.R.S. §2499, must be displayed, renewed and, in every other way, treated the same as licenses issued under these Rules, on the basis of inspection by the Department. The inspection reports must be made available to the Department, upon request.
 8. Pursuant to 22 M.R.S. §2499, the certification of municipally employed health inspectors must be in accordance with standards set by the Department and for a period of 3 years.

9. The establishment inspection delegation will be reviewed by the Department every 3 years for staff competency, enforcement/compliance status, inspection practices, and routine reporting to the Department.
 10. According to 22 M.R.S. §2499 (5), the municipalities may not charge the Department for performing such inspections.
- D. **Food Outbreak Protocols.** In the event of food borne disease outbreaks, upon learning of same, the delegated municipalities shall immediately contact the Department's Health Inspection Program. Authority for this requirement is contained in Rules for the Control of Notifiable Conditions, 10-144 CMR 258, which governs the reporting of certain diseases, clusters of unusual cases of a disease or outbreaks of a disease, epidemics, and extreme public health emergencies.

SECTION 4. LICENSING PROCEDURES

A. Licenses Required

1. No person, corporation, firm or co-partnership may conduct, control, manage or operate, for compensation, directly or indirectly, any eating establishment, eating and lodging place, lodging place, sporting/ recreational camp, youth camp, campground, or recreational vehicle park, unless the establishment is licensed by the Department. Licenses issued must be displayed in a place readily visible to customers or other persons using a licensed establishment.
2. Cottages are intended for temporary occupancy for recreational purposes only, and are not for permanent residency. Licenses are required for any individual, establishment or corporation that rents out structures.
3. Youth camps do not include summer sports programs overseen by employees or volunteers of municipalities and educational institutions, when the activities generally take place at the municipal or institution property and buildings.
4. Each application for either a license or license renewal, to operate an eating establishment, eating and lodging place, lodging place, youth camp, campground, or sporting/ recreational camp, must be accompanied by a fee, in accordance with the fee schedule established in Tables 1A-1C, listed in this Section.
 - (a) Application submittal. A complete application must be submitted with the proper fee. The Department shall take action upon any completed application within 30 days, pursuant to 22 M.R.S.A. §2495.
 - (b) No such fee may be refunded. Should the applicant make an overpayment, the excess payment shall be applied to the next year's license fee.
 - (c) License fees established herein provide for one licensure inspection and one follow-up inspection, in accordance with 22 M.R.S.A § 2494. When additional inspections are necessary, the Department is authorized to charge an additional \$100 fee for each additional inspection or visit.
5. The fee for each establishment in municipalities that have received inspection delegation authority, is a flat fee of \$60.00.
6. No fee is assessed for non-profit establishments that conduct 12 or fewer events and meals per year.

B. Issuance of Licenses

1. New licenses: Except as otherwise provided for herein, the Department, upon review, will issue an annual license to operate an establishment within 30 days following receipt of a complete application and the prescribed fee. When any

applicant is found, based upon an inspection by the Department or by municipal inspection, not in compliance with the requirements of departmental regulations, the Department may refuse issuance of the initial (first-time) license but will issue a conditional license for up to 90 days, except when conditions are found which present a serious danger to the health and safety of the public. Failure by the conditional licensee to meet the conditions specified by the Department permits the Department to void the license, requiring the establishment to cease operation. Should the establishment continue to operate without a valid license, the penalties set forth in Section 6 (Penalties) shall be administered. The Department may assign multiple licenses for establishments with multiple functions, such as a hotel and a restaurant within the hotel.

2. Renewal of licenses: The Department will notify license applicants of an upcoming license renewal at least 30 days prior to the current license. The applicant must provide evidence of compliance with the Maine Drinking Water Program's Rules Relating to Drinking Water (10-144 CMR 231). If any such establishment is not in compliance with relevant regulations, the Department may apply conditions to such renewal.
 - (a) All establishment licenses are renewed annually, upon payment of a fee, and compliance with Maine statutes, rules and/or regulations.
 - (b) It is the responsibility of the License Applicant to renew licenses prior to the expiration date.
3. No license granted by the Department will be transferable or assignable.
4. The issuance of the license does not provide exemption from other state or local laws, ordinances or regulations, notwithstanding any other provision of law.
5. Licenses erroneously issued by the Department are deemed to have been issued in error and are void and must be returned to the Department.
6. **Denial of Application for License, Notice.** If an application for a license to operate is denied, the Department shall provide the applicant with a notice that includes:
 - (a) The specific reasons and relevant rule citations for the license denial;
 - (b) The actions, if any, that the applicant must take to qualify for a license; and
 - (c) Notice of the applicant's right of appeal and the process and time frames for appeal that are provided in Law.

SECTION 5 - FEE SCHEDULE**TABLE 1 (A) – FISCAL YEAR 2013: July 1, 2012 – June 30, 2013**

EATING LICENSE TYPES	FEES FOR FISCAL YEAR 2013
Business Enterprise PR	No Charge
Catering	\$175.00
Correctional Facility	\$175.00
Eating Place - Mobile	\$175.00
Eating Place, 0-29 seats	\$150.00
Eating Place, 30-75 seats	\$185.00
Eating Place, >75 seats	\$220.00
Eating Place-Temporary 1-4 Days	\$95.00
Eating Place, Temporary 5-14 Days	\$150.00
Eating Place - Limited Menu	\$150.00
Eating Place - School	\$100.00
Eating Place - School Catering	\$100.00
Eating Place - School Satellite	\$100.00
Commissary	\$250.00
Vending Company	\$75.00
Senior Citizen Meals	\$30.00
LODGING LICENSE TYPES	
Bed and Breakfast - 6 Rooms or More	\$150.00
Bed and Breakfast - 5 Rooms or Less	\$100.00
Lodging 4 - 15 Rooms	\$150.00
Lodging 16 - 75 Rooms	\$175.00
Lodging >75 Rooms	\$200.00
COMBINATION LICENSE TYPES	
Eating and Catering	\$275.00
Eating and Lodging	\$275.00
Eating and Campground	\$275.00
CAMP LICENSE TYPES	
Sporting-Recreational Camp	\$175.00
Campground - Agricultural Fair	\$200.00
Campground 5-24 Sites	\$150.00
Campground 25-124 Sites	\$175.00
Campground >124 Sites	\$200.00
Campground - Temporary	\$200.00
Youth Camp - Day	\$95.00
Youth Camp - Resident <100 Campers	\$185.00
Youth Camp - Resident 100 - 200 Campers & Property Tax - Exempt >200 Campers	\$215.00
Youth Camp-Resident >200 Campers	\$275.00
Youth Camp - Trip And Travel	\$95.00
Compressed Air	\$10.00
BODY ARTIST LICENSE TYPES	
Tattooing Practitioner	\$225.00
Tattooing Show	\$75.00
Body Piercing Practitioner	\$200.00
Tattoo - Body Piercing Practitioner	\$275.00
Electrologist Practitioner	\$125.00
Micropigmentation Practitioner	\$150.00
MISCELLANEOUS FEES	FEES FOR FISCAL YEAR 2013

Reprint License	\$25.00
MISCELLANEOUS FEES	FEES FOR FISCAL YEAR 2013
Late Renewal within 30 days of license expiration date	\$25.00
Additional Inspection	\$100.00
Late Renewal more than 30 days after expiration date	\$100.00 for 1 st offense / \$200.00 for 2 nd offense
Insufficient Funds	\$25.00

TABLE 1 (B) FISCAL YEAR 2014: July 1, 2013 – June 30, 2014

EATING LICENSE TYPES	FEES FOR FISCAL YEAR 2014
Business Enterprise PR	No Charge
Catering	\$200.00
Correctional Facility	\$200.00
Eating Place-Mobile	\$200.00
Eating Place, 0-29 seats	\$160.00
Eating Place, 30-75 seats	\$195.00
Eating Place, >75 seats	\$230.00
Eating Place - Temporary 1-4 Days	\$95.00
Eating Place - Temporary 5-14 Days	\$150.00
Eating Place - Limited Menu	\$150.00
Eating Place - School	\$100.00
Eating Place - School Catering	\$100.00
Eating Place - School Satellite	\$100.00
Commissary	\$250.00
Vending Company	\$75.00
Senior Citizen Meals	\$30.00
LODGING LICENSE TYPES	
Bed and Breakfast - 6 Rooms or More	\$150.00
Bed and Breakfast - 5 Rooms or Less	\$100.00
Lodging 4-15 Rooms	\$150.00
Lodging 16-75 Rooms	\$175.00
Lodging >75 Rooms	\$200.00
COMBINATION LICENSE TYPES	
Eating and Catering	\$275.00
Eating and Lodging	\$275.00
Eating and Campground	\$275.00
CAMP LICENSE TYPES	
Sporting-Recreational Camp	\$175.00
Campground - Agricultural Fair	\$200.00
Campground 5-24 Sites	\$150.00
Campground 25-124 Sites	\$175.00
Campground >124 Sites	\$200.00
CAMP LICENSE TYPES	
Campground-Temporary	\$200.00
Youth Camp-Day	\$100.00
Youth Camp-Resident <100 Campers	\$190.00
Youth Camp-Resident 100-200 Campers & Property Tax-Exempt >200 Campers	\$225.00
Youth Camp-Resident >200 Campers	\$285.00
Youth Camp-Trip And Travel	\$100.00
Compressed Air	\$10.00
Mass Gatherings	Application Review: \$100/Permit: \$400 - \$750

BODY ARTIST LICENSE TYPES	FEES FOR FISCAL YEAR 2014
Tattooing Practitioner	\$225.00
Tattooing Show	\$75.00
Body Piercing Practitioner	\$200.00
Tattoo - Body Piercing Practitioner	\$275.00
Electrologist Practitioner	\$125.00
Micropigmentation Practitioner	\$150.00
MISCELLANEOUS FEES	
Reprint License	\$25.00
Late Renewal within 30 days of license expiration date	\$25.00
Late Renewal more than 30 days after expiration date	\$100.00 for 1 st offense \$200.00 for 2 nd offense
Additional Inspection	\$100.00
Insufficient Funds	\$25.00

TABLE 1 (C) MUNICIPAL LICENSES
FISCAL YEARS 2011 – 2014: July 1, 2010 – June 30, 2014

MUNICIPAL EATING LICENSES	FEE – FISCAL YEARS 2011 - 2014
Catering	\$60.00
Eating Place - Mobile	\$60.00
Eating Place	\$60.00
Eating Place - Temporary	\$60.00
Eating Place - Limited Menu	\$60.00
Eating Place - School	\$60.00
Eating Place - School Catering	\$60.00
Eating Place - School Satellite	\$60.00
Eating Place - Commissary	\$60.00
MUNICIPAL LODGING LICENSES	
Bed and Breakfast	\$60.00
Lodging	\$60.00
MUNICIPAL COMBINATION LICENSES	
Eating & Catering	\$60.00
Eating & Lodging	\$60.00

TABLE 2 – RETAIL TOBACCO LICENSE FEES*

License Type	April 1 – June 30	July 1 – September 30	October 1 – December 31	January 1 – March 31
Retail Tobacco I License: < 30 % annual gross revenue from total cigarette tobacco sales	\$100	\$75	\$50	\$25
Retail Tobacco II License: > or = 30 – 50% of annual gross revenue from total cigarette tobacco sales	\$125	\$94	\$63	\$32
Retail Tobacco III License: > 50% of annual gross revenue from total cigarette tobacco sales	\$150	\$113	\$75	\$38
Seasonal Mobile Fair Tobacco Vendor License	\$50 for first fair location and \$10 for each additional fair location	\$50 for the first fair location and \$10 for each additional fair location	\$50 for the first fair location and \$10 for each additional fair location	\$50 for the first fair location and \$10 for each additional fair location
Tobacco Vending Machine License	\$50	\$38	\$25	\$25

- Fees in Table 2 are also found in the Rules Relating to the Sale and Delivery of Tobacco Products in Maine (10-144 CMR 203).

SECTION 6. INSPECTIONS

A. Right of Entry:

1. The Department and any duly designated officer or employee of the Department shall have the right, without an administrative inspection warrant, to enter upon and into the premises of any establishment licensed at any reasonable time, in order to determine the state of compliance with any rules in force, in accordance with 22 M.R.S. § 2497.
2. Such right of entry and inspection shall extend to any premises which the Department has reason to believe is being operated or maintained without a license.
3. No such entry and inspection of any premises may be made without the permission of the owner or person in charge, unless a search warrant is obtained authorizing entry and inspection.
4. In the event that a Person denies access to the Department, the Department may secure access through an administrative search warrant or pursuant to such process as provided by law.

B. Frequency:

1. In accordance with 22 M.R.S. §2497, the Department will either inspect or otherwise determine whether an establishment is in regulatory compliance in accordance with the provisions of these Rules.
2. The Department may, at its discretion, inspect, or determine whether an establishment is in regulatory compliance at more frequent intervals as necessary to follow-up on complaints or other problems noted on previous inspections. Factors considered by the Department include the following:
 - (a) Whether the eating establishment is fully operating under an approved and validated HACCP Plan as specified under the Maine Food Code, §8-201.14 and ¶¶ 8-103.12(A) and (B);
 - (b) Whether the eating establishment should be assigned a less frequent inspection frequency based on a written risk-based inspection schedule uniformly applied throughout the jurisdiction; or
 - (c) The eating establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not Potentially Hazardous (Time/Temperature Control For Safety Food) such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.

C. Inspector's Findings

1. (Identification of Violations): The health inspector's findings may refer to the compliance history of an establishment, including any prior violations and corrective action. The findings shall identify violations by the following means:
 - (a) Site Inspection or Investigation;
 - (b) Internal Review of Laboratory Analyses or Inspection Reports; and/or
 - (c) Complaints or Referrals from the public or other agencies.
2. The inspector must note any violations of applicable rules on the inspection report and leave a copy of the report at the establishment.
 - (a) Should the establishment fail the inspection, the inspector must inform the person in charge of the administrative remedies stated within these rules, and leave a copy of such information with the report.
 - (b) A copy of the most recent inspection report must be maintained at the establishment and be made available to the public upon request.
 - (c) The inspector must document details of any denial of access to perform an inspection.
3. When a Person in Charge declines to sign an acknowledgement of receipt of inspectional findings, the Department will state the following items:
 - (a) An acknowledgment of receipt does not constitute an agreement with the Investigation Report findings;
 - (b) Refusal to sign an acknowledgment of receipt will not affect the Permit Holder's obligation to correct the violations noted in the inspection report within the time frames specified;
 - (c) Refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Department's historical record for the Establishment; and
 - (d) Statement of a final request for the Person in Charge to sign an acknowledgment receipt of inspectional findings. Should the Person in Charge continue to refuse to sign, the inspector shall document the refusal upon the inspection report.

D. Inspection Failure

1. A failed inspection occurs when an establishment:

- (a) Receives more than 3 critical violations; or
 - (b) Receives more than 10 non-critical item violations.
2. Critical Violations should be corrected on site, but, in any event, within 10 days. The licensee must contact the Department when the critical violation has been addressed.
3. Non-critical violations must be corrected no later than 90 calendar days after the inspection. The Department may approve a compliance schedule that extends beyond the time limits specified in this section, if a written schedule of compliance is submitted by the Permit Holder and no health hazard exists or will result from allowing an extended schedule for compliance.
4. Failure to correct these violations satisfactorily within the time periods set in paragraphs (2) and (3) above may result in enforcement proceedings by the Department, which are outlined in Sections 6, 7, 8 and 9 of these Rules.
5. Any failed inspection requires the health inspector to follow up with a later inspection, to assure that all corrections were completed and remain corrected.

E. Alternative Determination of Compliance for Youth Camps

This section delineates alternative methods of determination of compliance which the Department, in its discretion, may apply in the consideration of renewal of a youth camp license, in lieu of an on-site compliance inspection.

1. Accreditation by a Nationally Recognized Accreditation Organization

(a) **Requirements for Re-Licensure.** A youth camp applying for license renewal by means of accreditation by a nationally recognized accreditation organization must demonstrate the following:

(i) On or before March 1st of each year, the youth camp has submitted a request for determination of compliance on the basis of accreditation by a nationally recognized accreditation organization;

(ii) The youth camp in all material respects complies with the regulatory requirements established by the Department's 10-144 CMR 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping*;

(iii) The youth camp is presently fully accredited by a nationally recognized accreditation organization and demonstrates that its accreditation process was at least as protective of public health as the Department's process for licensing inspections of youth camps;

(iv) Since its most recent licensure, the youth camp has not undergone extensive renovations or expansions of any youth camp buildings, as defined in 10-144 CMR 208, Section 1(H); and

(v) Since its most recent licensure, the youth camp has not undergone a change of camp ownership, a change of camp director, or both.

- (b) **Substantive Review of Department Rules.** In the event of a significant revision of the Department's 10-144 CMR 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping* since the issuance of the most recent license to the youth camp, the Department reserves the right to require a full licensing inspection of the premises.

2. Determination of Compliance by Certification of Regulatory Compliance

- (a) **Requirements for Re-Licensure.** A youth camp applying for license renewal by means of certification of regulatory compliance must demonstrate that:

- (i) On or before March 1st of each year, it has submitted a request for determination of regulatory compliance without inspection on the basis of a certification statement, executed by its Camp Director, which states:

"I, _____, certify that Camp _____, during its period of licensure will be in substantial compliance with the Department's 10-144 C.M.R. Ch. 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping*. In making this certification, I have reviewed the Department's rules, the camp facilities, the camp operating procedures and the required documentation. I further certify that the documents required, pursuant to 10-144 C.M.R. Chapters 200, 201 and 208, are on file at the camp and available for Department review".

- (ii) The youth camp has successfully passed its most recent two licensing inspections by the Department;

- (iii) Since its most recent licensing inspection, the youth camp has not extensively renovated or expanded youth camp buildings, as defined in 10-144 C.M.R. Ch. 208(1)(H).

- (iv) Since its most recent licensure, the youth camp has not undergone a change of camp ownership, a change of camp director, or both.

- (b) **Substantial Review of Department's Rules.** In the event of a significant revision of the Department's 10-144 C.M.R. Ch. 208 *Rules Relating to Boys, Girls, Boys and Girls, Day Camps, Primitive and Trip Camping* since the issuance of the most recent license to the youth camp, the Department reserves the right to require a full licensing inspection of the premises.

3. General Licensing Requirements

- (a) Applicants for youth camp re-licensure shall submit applications on Departmental approved forms.
- (b) No later than May 15th, the Department will notify youth camp applicants whether they qualify for re-licensure on the basis of alternate determination of compliance.
- (c) The Department reserves the right to inspect a youth camp, notwithstanding the issuance of a renewal license under this Section, in order to investigate a licensing complaint or upon reasonable cause that a condition exists at the youth camp which is not protective of public health.
- (d) Except as otherwise provided in this Section, the Department reserves the right to conduct an inspection of a youth camp, in order to determine compliance with these rules, the Maine Food Code (10-144 CMR 200), or the Public Pool/Public Spa Rules (10-144 CMR 202).

F. Imminent Health Hazards

1. **Ceasing Operations and Reporting.** A Permit Holder shall immediately discontinue operations and notify the Department if an Imminent Health Hazard may exist because of an emergency, such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of Poisonous or Toxic Materials, onset of an apparent food-borne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.
2. If operations are discontinued, the Permit Holder must obtain approval from the Department before resuming operations.
3. For those establishments which pose an Imminent Health Hazard not corrected within the time period set by the Department, the Department will require suspension of a license, in accordance with the requirements of the Maine Administrative Procedure Act at 5 M.R.S.A. §§ 10003 & 10004.

SECTION 7. ENFORCEMENT PROTOCOLS

- A. **Intent:** This enforcement protocol is to establish an effective system for initiating enforcement against violators to protect the public health and promote the public welfare by regulating the safety and sanitation of all licensed eating and lodging establishments, sporting/recreational camps, youth camps, and campgrounds.
- B. **Authorization:** Pursuant to 22 M.R.S. §2498, the Department is authorized to impose one or more of the following sanctions when a violation of these Rules occurs, and the Department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules, or to protect the public health.
- C. **Referral for Enforcement Action:** The health inspector will refer an establishment to enforcement staff when the establishment fails to meet the compliance deadline within the inspection report.
- D. **Initial Letter of Enforcement:** The Department will issue an initial letter of enforcement, describing the noncompliance, outlining the actions to resolve the violations and setting a new deadline to correct the violations.
- E. **Menu Labeling Compliance/Enforcement:** Unless preempted by Section 4205 of the Patient Protection and Affordable Care Act of 2010, the Department or an agent authorized to inspect an eating establishment under 22 M.R.S. §2499 must ensure compliance with the provisions of 22 M.R.S. §2500-A, but is not required to verify the accuracy of the caloric information required by Section 2500-A.

Upon request, a chain restaurant must provide to the Department documentation of the accuracy of the information required by 22 M.R.S. §2500-A (1).

SECTION 8. ADMINISTRATIVE PENALTIES

- A. **Scope of Administrative Penalties:** An administrative penalty may only be assessed for a violation or a failure to comply that, at the time it occurred, constituted noncompliance with statutes or regulations under the jurisdiction of the Department's Health Inspection Program: (i) which were then in effect; and (ii) to which the person was then subject; and (iii) to which these rules apply.
1. Any person who commits an act prohibited by an applicable statute or rule is subject to the imposition of the Administrative Penalty.
- B. **Process:** A Letter of Enforcement (described in Section 7(D) above) must be issued, prior to imposing an Administrative Penalty.
1. An Administrative Penalty is assessed via a Notice of Penalty Assessment.
 2. A Notice of Penalty Assessment may be imposed once an establishment fails to pursue corrective action required by the Department described in the Letter of Enforcement.
 3. Imposing an Administrative Penalty is not deemed, in any way, to extend any deadline for compliance.
 4. Licensees are required to pay the Department the amount of the penalties. If a licensee has not paid any collectible fines by the time of its license renewal, the Department may collect such penalty assessments by requiring their payment, prior to the processing of any license renewal application.
- C. **Risk Assessment and Analysis:** In order to determine the amount of a penalty assessment, the following factors are considered in the determination of penalty amounts:
1. Degree of Risk (Critical and Non-Critical Violations)- The seriousness of the violation shall be determined in prioritizing enforcement actions by the actual risk to health that the violation poses. Therefore, critical violations will incur larger penalty amounts than non-critical violations, due to the greater threat to public health.
 2. Duration of the Violation- The duration that a violation persists without corrective action will be factored, in determining appropriate action and priority for enforcement.
 3. Repeat Violations: If the same violations were committed by the establishment in the past, then the Department will assess a larger administrative penalty, due to the reoccurrence of violations.
- D. The Department may direct any of its licensed establishments to correct any violations in a manner, and within a time frame, that the Department determines is appropriate to

ensure compliance with state rules or to protect the public health. Failure to correct violations within the time frames constitutes a separate fineable violation.

- E. **Penalty Schedule for Violations (Except Operating Without a License):** Pursuant to 22 M.R.S. §2498 (2), the Department shall establish a schedule of penalties and impose penalty assessments, according to the nature and duration of the violation. The following schedule shall apply to establishments that fail to comply with the Department's initial enforcement deadline, referred to in Section 7(D):
1. For any establishment with a critical violation (other than operating without a license), the base penalty amount is \$50.00 per critical violation. If an establishment incurs a critical violation that is a repeat violation, then the base penalty amount is \$100.00 per critical violation.
 2. For any establishment with a non-critical violation, the base penalty amount is \$25.00 per non-critical violation. If an establishment incurs a non-critical violation that is a repeat violation, then the base penalty amount is \$50.00 per non-critical violation.
 3. The base penalty amount(s) determined from Section 8(E)(1) and (2) above must be multiplied by the number of violations incurred by that establishment, at the time of the Notice of Penalty Assessment.
 4. For establishments with both critical and non-critical violations, the Department will add the results of both critical and non-critical formulas from paragraphs 8(E)(1) through (3) above, to determine the penalty owed.
 5. The Department will assess an additional penalty amount for violations (other than operating without a license) that exist for a particular duration of time. The following amounts will be added to the amounts determined by the Department in paragraphs 8(E)(1) through (3) above:
 - (a) If any of the establishment's violations remain unresolved for more than 30 days and less than 60 days from the deadline set by the initial enforcement letter deadline, then the Department will add \$250 to the penalty amount determined from the formulas within Section 8(E)(1)-(4);
 - (b) If any of the establishment's violations remain unresolved for more than 60 days and less than 90 days from the deadline of the initial enforcement letter, then the Department will add \$500 to the penalty amount determined from the formulas within 8(E)(1)-(4); and
 - (c) If any establishment's violations remain unresolved for more than 90 days from the deadline set in the initial enforcement letter, then the Department will add \$750 to the penalty amount determined from the formulas within 8(E)(1)-(4).

6. The Penalty Formula for violations, other than operating without a license, consists of the following:

[Base penalty for critical violations] multiplied by [number of critical violations]

+ [Base penalty for non-critical violations] multiplied by [number of non-critical violations]

+ Duration Amount determined from Section 8 (E)(5)

= Total Penalty Assessment for Violations other than Operating Without a License

- F. **Penalty Schedule for Operating Without a License Violations:** According to 22 M.R.S. §2498 (1)(C), “any person, corporation, firm or copartnership that operates any eating establishment, eating and lodging place, lodging place, youth camp, sporting camp, or camping area, without first obtaining a license, as required by these rules, must be punished, upon adjudication of unlicensed operation, by a fine of not less than \$ 25, nor more than \$200, and upon a 2nd or subsequent adjudication of unlicensed operation must be punished by a fine of not less than \$200 nor more than \$500. Each day any such person, corporation, firm or copartnership operates without obtaining a license constitutes a separate offense.”
1. It is the responsibility of the establishment to be licensed at all times of operation and to notify the Department if there are any questions or concerns, regarding proper licensure.
 2. If an establishment operates without a license, the Department may assess the following penalty amounts, according to the following time periods:
 - (a) Unlicensed for more than 30 days but fewer than 90 days: \$200.
 - (b) Unlicensed for 90 days to 120 days: \$500.
 - (c) Unlicensed for more than 120 days: \$1,000.
 3. For each year that the establishment has operated without such license, the base amount of \$1,000 shall be multiplied by the number of years unlicensed.
 4. The penalty amounts assessed by the Department for operating without a license are in addition to, not in place of, the license fees owed for the current year that the establishment should have been licensed.
 5. Upon the Department’s second finding of an Establishment operating without a license, the Department will assess an additional administrative penalty of \$500.
 6. The penalty formula for operating without a license consists of the following:

[Base Penalty of \$200, \$500 or \$1,000 (depending on the length of time unlicensed; see Section 8(F)(2) above), if first offense]

+ \$1,000 for each year that the establishment operated without a license.

+ [Repeat penalty of \$500, if repeat operating without a license violation]

= Total Penalty Assessment for Operating Without a License Violations.

- G. In the event of any violation of this section or any rule pursuant to these rules, the Attorney General may seek to enjoin any further violation, in addition to any other remedy.

SECTION 9. SUSPENSION OR REVOCATION OF LICENSES

- A. Department Filing of Complaint for Suspension/Revocation: When the Department believes a license should be suspended or revoked, it shall file a complaint with the District Court, in conformity with the Maine Administrative Procedure Act. A person aggrieved by the refusal of the Department to issue a license may request a hearing in conformity with the Maine Administrative Procedure Act.
- B. Emergency Suspension/Revocation: Whenever, upon inspection, conditions are found, which violate these rules, or which may be an immediate threat to the public health, safety or welfare, or endanger the life, health or safety of persons living in or attending any regulated establishment, the Department may request an emergency suspension of license by the District Court pursuant to 4 M.R.S. §184, and the court may grant suspension subject to reinstatement following a hearing, before the court, if cause is not shown.
- C. Expedited Hearing: Upon issuance of an order revoking or suspending a license under this section, the Department shall promptly request District Court to schedule an expedited hearing on an agency's complaint. Any order temporarily suspending or revoking a license expires within 30 days of issuance, unless renewed by the court after such hearing as it may determine necessary.

SECTION 10. APPEALS

- A. **Right to Appeal:** The Department may impose any fine in conformity with the Maine Administrative Procedure Act, 5 M.R.S., Chapter 375, Subchapter IV, providing the licensee the opportunity for an administrative hearing.
- B. **Collection of Fines Prior to Department Renewal:** Licensees that are fined pursuant to these rules are required to pay the Department the amount of the penalties. If a licensee has not paid any collectible fines by the time of its license renewal, the Department will collect such fines by requiring their payment prior to the processing of any license renewal application. An appeal of the Department's decision to fine a licensee stays the collection of any fine. Interest must accrue on fines at a rate described in 14 M.R.S. §1602, prior to the completion of any appeal. After the completion of any appeal process, or after any appeal period has passed, interest must accrue, pursuant to 14 M.R.S. §1602-A.

SECTION 11. VARIANCES

- A. Variances and Waivers.** The Department may grant a variance by modifying or waiving the requirements of relevant Department rules if the Department determines that a health hazard will not result from the variance. If a variance is granted, the Department will retain the information specified under such rules, in its records for the establishment.
- B. Documentation of Proposed Variance and Justification.** A person seeking a variance or waiver of any provision of these Rules is required to submit the following information, in support of the request:
- (1) A statement of the proposed variance of the relevant rules requirement, citing relevant section numbers;
 - (2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal; and
 - (3) A HACCP Plan, if required, as specified under the relevant rules, that includes the information specified under these Rules, as it is relevant to the variance requested.
- C. Conformance with Approved Procedures.** If the Department grants a variance as specified in the relevant rules, the permit holder will:
- (1) For eating establishments:
 - (a) Comply with the HACCP Plans and procedures that are submitted as specified under Maine Food Code, §8-201.14 and approved as a basis for the modification or waiver; and
 - (b) Maintain and provide to the Department, upon request, records specified under Maine Food Code, §§ 8-201.14(D) and (E) that demonstrate that the following are routinely employed:
 - (i) Procedures for monitoring critical control points;
 - (ii) Monitoring of the critical control points;
 - (iii) Verification of the effectiveness of an operation or process; and
 - (iv) Necessary corrective actions, if there is failure at a critical control point.
 - (2) For all other establishments, meet the terms and conditions of the variance.
-

STATUTORY AUTHORITY: 22 M.R.S. § 2496; 32 M.R.S. §§ 4251-4252; 32 M.R.S. §§ 4325-26; 22 M.R.S. §§ 1601-1607; 32 M.R.S. §§ 4312-4314; 22 M.R.S. §§ 2661-2669, and 22 M.R.S. § 1551-A.

EFFECTIVE DATE:

March 1, 1979

AMENDED:

November 4, 1981
October 1, 1982 - Section 14 (added)
May 15, 1983 - Section 2 and Section 4
October 17, 1983 - Section 7
June 27, 1984 - Section 12 (J)
January 1, 1985 - Section 14
October 28, 1985 - Section 14
January 1, 1987
January 1, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

August 1, 2004 – filing 2004-252
January 18, 2011 – filing 2011-5
October 7, 2012

Tizz E. H. Crowley, Ward One
Robert Hayes, Ward Two
Mary Lafontaine, Ward Three
David Young, Ward Four



Leroy Walker, Ward Five
Belinda Gerry, At Large
Joshua Shea, At Large

Jonathan LaBonte, Mayor

IN CITY COUNCIL

ORDINANCE 07-12172012

ORDERED, that the Code of Ordinances be and hereby is amended as follows:

Chapter 24 Article II. Licenses

Sec. 24-36. Compliance with Rules and Regulations Required; Approval, Disapproval by City Officials, Council

- a. All licensees and applicants for licenses are required to comply with State statutes and Rules, City Ordinances and rules and regulations of City Departments which pertain to the business or activity for which a license is desired. State of Maine Rules include and are not limited to:
 1. State of Maine Food Code 2001 as adopted by the Maine Department of Human Services 10-144 CMR 200 and the Maine Department of Agriculture, Food and Rural Resources 01-001 CMR 331 May 1, 2001
 2. Rules Relating to Lodging Establishments, Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental Health 10-144 CMR 206 January 1, 2003.
 3. Rules relating to the Administrative and Enforcement of establishments Licensed by the Health Inspection Program, Department of Health and Human Services, Maine Center for Disease Control Prevention, Division of Environmental Health Inspection Program 10-144 CMR Chapter 201 Last Amended on October 7, 2012
- b. In any case where the City requires the approval of the Building Inspector, Code Enforcement Officer, Police Chief, Fire Chief or any other City Official prior to issuance of the license, it shall be the duty of the City Clerk or designee to notify in writing the officials whose approvals are required. The officials so notified, or their duly delegated representatives, shall approve or disapprove the application without delay and shall note their approval or disapproval thereon, stating the reasons for any disapproval. When required by the City Council, a hearing will be held at which time the Council shall decide whether to approve or disapprove any application for a license or permit. It shall be the duty of the City Clerk or designee to notify the applicant of the time and place of the hearing. Such notice shall be mailed by the City Clerk, postage prepaid, to the applicant at his last known address at least 48 hours prior to the date set for such hearing. The decision and order of the Council on such hearing shall be final and conclusive. Except as set forth in subsection (c) below, a license under this chapter shall be denied if the council makes a finding that:



City Council Agenda Information Sheet

City of Auburn

Council Meeting Date: January 7, 2013

Order: 03-01072013

Author: Sue Clements-Dallaire, City Clerk

Subject: Request from The Androscoggin Historical Society to take over maintaining and exhibiting the collections and public showings of the Knight House and Downing Shoe Shop, previously maintained by Auburn Heritage, Inc.

Information: The Androscoggin Historical Society and Auburn Heritage Inc. have a tentative agreement for AHS to absorb Auburn Heritage. Because the City took ownership of the buildings in 2009, this would mean that the AHS would require the City's approval to carry on Auburn Heritage Inc.'s maintenance of the exhibits and the public showings of the buildings.

Action Requested at this Meeting: Passage

Previous Meetings and History: March 19, 2012 and December 17, 2012 workshops.

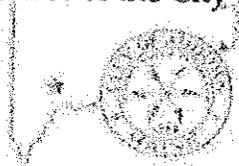
Attachments:

- Copy of Memo re: the Knight House proposal, dated 10/29/2009
- A copy of the information sheet from the 11/16/2009 City Council meeting.
- A document from Auburn Heritage, Inc. regarding the transfer of ownership of the Knight House and Downing Shoe Shop from the Auburn Heritage, Inc. to the City of Auburn.
- Copy of the Resolve
- Copy of the Bill of Sale

City of Auburn, Maine

"Maine's City of Opportunity"

Office of the City Manager

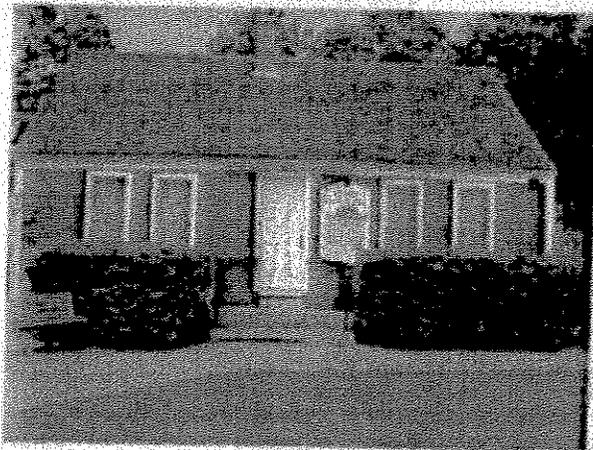


Memorandum

To: Glenn E. Aho, City Manager
Fr: Laurle Smith, Assistant City Manager
Re: Knight House Proposal
Dt: October 29, 2009

On October 14th, 1968 the Auburn Heritage, Inc. was organized as a corporation for the purposes of owning, leasing, purchasing, taking-down, assembling, deeding or gifting buildings, structures and real-estate of historic value or interest. The organization was also entrusted to promote the educational, cultural, economic and general welfare through the preservation and maintenance of historic structures. It was noted that one of the special purposes of this association was the purchase and preservation and repair and restoration of the Knight House – so called - it being the oldest frame house in the Goff's corner section of the City in connection with the Centenary of the incorporation of the City of Auburn.

Although Auburn Heritage, Inc was created as a separate legal entity, there were close ties to the City of Auburn from the beginning. The articles of corporation specifically note:



1. "...request the assistance, cooperation and experience of the officials and members of the planning Boards and City Officials of Auburn, City Manager..."
2. In the event of the dissolution of the association or corporation, then all the assets and property, contracts and agreements and papers pertaining hereto shall be transferred, to the City of Auburn, Maine..." and

3. "The annual meeting of the Corporation shall be the third Monday of January of each year at the office of the City Manager, City Building, Auburn, Maine. "

Maintaining this joint relationship the Auburn City Council voted on November 16, 1970 to cover the expenses of light, heat and routine maintenance incurred by Auburn Heritage in preserving and maintain the Knight House up to a total of \$500. Over the past several decades the City of Auburn has continued to fund a portion of the Knight House and Downing Shoe Shop budget usually dedicating between \$500 and \$1000 per year. In addition to the city funds, Auburn Heritage, Inc. has collected donations to continue the maintenance and promotion of the building and its historic collection.

During the past budget cycle when it became apparent that the needs of the building were surpassing the fiscal abilities of Auburn Heritage, Councilor Berube suggested that the City and board discuss a transfer of ownership. These discussions lead both city staff and the Auburn Heritage board to the following conclusions:

1. The City of Auburn has additional resources available to maintain the two structures.
2. Auburn Heritage, Inc. is better prepared to deal with the collection, promotion and tours of the facility.
3. City of Auburn annual contributions could be more fully utilized internally than by giving it to a third party (i.e. insurance costs.)

For these reasons it is my recommendation that the City of Auburn accept the donation of the two buildings from the Auburn Heritage Inc. and use the budgetary allocation to repair the buildings. Auburn Heritage, Inc. can still maintain a vibrant existence, focusing on their specialties – the collection, promotion, and historical significance of the artifacts. In order for both entities to bring conclusion to this matter it would require that Auburn Heritage transfer ownership of the buildings to the City of Auburn. Auburn Heritage has agreed to sign a bill of sale to the City, the question is whether the City Council would like to accept responsibility for the two structures.

City Council

Agenda Information Sheet

Council Meeting Date: 11/16/2009 Agenda Item No. 4

SUBJECT:

**RESOLVE – ACCEPTANCE OF THE TWO (2) WOOD FRAME BUILDINGS
KNOWN AS “THE KNIGHT HOUSE” AND THE “DOWNING SHOE
SHOP” FROM AUBURN HERITAGE INC.**

INFORMATION:

During the past budget cycle when it became apparent that the needs of the Knight House building were surpassing the fiscal abilities of Auburn Heritage, Councilor Berube suggested that the City and board discuss a transfer of ownership. These discussions lead both city staff and the Auburn Heritage board to the following conclusions:

1. The City of Auburn has additional resources available to maintain the structures.
2. Auburn Heritage, Inc. is better prepared to deal with the collection, promotion and tours of the facility.
3. City of Auburn annual contributions could be more fully utilized internally than by giving it to a third party (i.e. insurance costs.)

Staff recommends that the City Council accept the donation of the two buildings (Knight House and Downing Shoe Shop) from the Auburn Heritage Inc. and use the budgetary allocation to repair the buildings. Auburn Heritage, Inc. can still maintain a vibrant existence, focusing on their specialties – the collection, promotion, and historical significance of the artifacts.

Workshop November 2, 2009

STAFF COMMENTS/RECOMMENDATION:

City Manager recommends approval of this resolve.

REQUESTED ACTION:

Motion for passage of the resolve.

VOTE:

1796
The KNIGHT HOUSE



"DEDICATED TO HISTORIC PRESERVATION"

On November 2, 2009 a poll was taken of the members of the Auburn Heritage, Inc. It was unanimously voted to accept the Bill of Sale drafted by Attorney Richard Trafton to transfer ownership of the Knight House and Downing Shoe Shop from the Auburn Heritage, Inc. to the City of Auburn.

Marilyn R. Wilkinson
Marilyn R. Wilkinson, President

Dorothy A. Bowyer
Dorothy A. Bowyer,
Secretary/Treasurer

Members of Auburn Heritage, Inc.

Marilyn R. Wilkinson
Barbara Randall
Robert Purrington
Edwina Pontbriand
Michael Lord
Gordon Windle
Dorothy A. Bowyer

City of Auburn

City Council, Auburn, Maine

Date: November 16, 2009

TITLE: RESOLVE – ACCEPTANCE OF THE TWO (2) WOOD FRAME BUILDINGS KNOWN AS “THE KNIGHT HOUSE” AND THE “DOWNING SHOE SHOP” FROM AUBURN HERITAGE, INC.

Be It Resolved that the Auburn City Council accepts the two (2) wood frame buildings known as “the Knight House” and the “Downing Shoe Shop” from Auburn Heritage, Inc. A copy of the bill of sale is attached to and hereby made a part of this resolve.

Motion for acceptance: Michael Farrell

Seconded by: Raymond Berube

Vote: 6 Yeas, No Nays

Action by the City Council: Passed

Date: September 21, 2009

Attest:

City Clerk

BILL OF SALE
Personal Property

KNOW ALL MEN BY THESE PRESENTS, that **AUBURN HERITAGE, INC.**, a Maine nonprofit corporation with a principal place of business in Auburn, Maine, in consideration of One Dollars (\$1.00) and other valuable consideration paid by the **CITY OF AUBURN**, a Maine municipal corporation, the receipt whereof is hereby acknowledged, does hereby **grant, sell, transfer and deliver** to the said **CITY OF AUBURN** the following goods and chattels, namely:

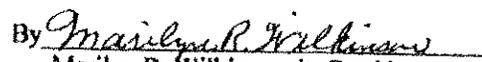
Two (2) wood frame buildings currently situated in the northeast corner of Great Falls Plaza in the City of Auburn, County of Androscoggin, State of Maine, which buildings are known as and referred to as "The Knight House" and "The Downing Shoe Shop".

To have and to hold, all and singular the said goods and chattels to the said **CITY OF AUBURN**, its successors and assigns, to its own use forever.

And **AUBURN HERITAGE, INC.**, does hereby covenant with the said **CITY OF AUBURN** that it is the lawful owner of said goods and chattels; that they are free from all encumbrances and that it has good right to transfer the same as aforesaid; and that it will warrant and defend the same to the said **CITY OF AUBURN**, its successors or assigns against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, **AUBURN HERITAGE, INC.** has caused this instrument to be sealed with its corporate seal and signed in its corporate name by Marilyn R. Wilkinson, its President, thereunto duly authorized, as of this ____ day of November, 2009.


Witness

AUBURN HERITAGE, INC.
By 
Marilyn R. Wilkinson, its President

AGREEMENT

THIS AGREEMENT made as of this 7th day of January, 2013, by and between **CITY OF AUBURN**, a municipal corporation located in the County of Androscoggin, State of Maine (“Lessor”) and **ANDROSCOGGIN HISTORICAL SOCIETY**, a Maine nonprofit corporation with a principal location in Auburn, County of Androscoggin, State of Maine, (“Lessee”), **WITNESSETH THAT**, in consideration of the mutual promises and undertakings herein, Lessor and Lessee agree as follows:

1. **PREMISES:** Lessor leases to Lessee, and Lessee leases from Lessor two (2) wood frame buildings currently situated in the northeast corner of Great Falls Plaza in the City of Auburn, County of Androscoggin, State of Maine, which buildings are known as and referred to as “The Knight House” and “The Downing Shoe Shop” (also referred to as the “leased premises”).

2. **TERM:** The term of this Agreement is from January 7, 2013 through August 31, 2017, for a period of five (5) years. Lessee shall have two (2) separate options to renew the term of this Agreement each for a term of five (5) years, which option Lessee shall, if at all, exercise by written notice to Lessor at least thirty (30) days prior to expiration of the then current term.

3. **RENTAL:** The Lessee shall pay the Lessor a total rent of **ONE DOLLAR (\$1.00)** payable annually on or before October 1 of each year of the term..

4. **ALTERATIONS, ADDITIONS AND IMPROVEMENTS:** Lessee may make such alterations, additions or improvement to the leased premises as it may desire, at its own expense, provided, however, that no structural alterations or additions may be made without first obtaining the written consent of the Lessor.

All repairs, alterations or additions, whether made by the Lessor or the Lessee, shall be done in a good and workmanlike manner, in full compliance with all federal, state and municipal laws, ordinances, rules and regulations.

Lessor shall not be responsible for costs of construction arising from repairs or the erection of any improvements to be done by Lessee, nor for any lien or other obligation involved in any such repair or construction. Lessee agrees to indemnify and hold the Lessor harmless from and against any lien or claim of the Lessee’s creditors on account of said repairs or improvements.

5. **LESSOR’S MAINTENANCE:** Lessor agrees to perform all maintenance and make any and all repairs required, and Lessor and Lessee agree to meet at least annually to discuss what repairs and

maintenance is required for the leased premises, attempting to determine the total costs for repairs and maintenance. Lessee agrees to attend Lessor's budget meetings to explain and discuss such costs.

6. **INSURANCE:** Lessor shall insure the leased premises with both casualty and personal injury insurance.

7. **LESSOR'S ACCESS:** Lessor shall have the right to enter the leased premises at all reasonable times for the purpose of making repairs required of it hereunder and for inspections at reasonable times during normal business hours.

8. **ASSIGNMENT AND SUBLETTING:** Lessee may not assign the Lease or sublet the whole of the leased premises without the prior written consent of the Lessor, which said written consent shall not be unreasonably withheld, provided that no such assignment or subletting shall in any way relieve or release the Lessee from liability hereunder.

9. **ARTIFACTS:** Lessor acknowledges that Lessee is owner of the contents and artifacts contained in the leased premises, and Lessee agrees to be solely responsible for their care, preservation, insurance and exhibition, providing Lessor with written notice of such exhibitions which shall be open to the public. Lessor and Lessee agree to cooperate to promote security of both the artifacts and leased premises.

10. **NOTICES:** Any and all notice or demands herein required, shall be sent in writing by United States certified Mail, postage prepaid, addressed to the respective parties as follows:

**City of Auburn
Auburn Hall
Court Street
Auburn, ME 04210**

**Androscoggin Historical Society
2 Turner Street, ox 8
Auburn, ME 04210**

The above addresses may be changed at any time hereafter by the giving of written notice as hereinabove provided.

11. **TOTAL AGREEMENT:** All covenants, promises and agreements herein contained shall be binding upon and shall inure to the benefit of the respective successors or assigns of the parties hereto. This instrument embodies all of the agreements of the parties hereto with respect to the subject matter hereof and all agreements, if any, whether oral or written, heretofore made by the parties hereto relative to the subject matter hereof shall be superseded by the terms and provisions of this Lease. No modification or amplification,

oral or written, with respect to the covenants, conditions and terms herein contained shall be binding upon either party until confirmed in writing. Modification or amplification or invalidity of any of the provisions hereof shall not affect any of the remaining provisions hereof.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the day and year first above written.

LESSOR
CITY OF AUBURN

WITNESS

BY: _____
Jonathan LaBonte, its Mayor

LESSEE
ANDROSCOGGIN HISTORICAL SOCIETY

WITNESS

by: David C. Young, its President

Tizz E. H. Crowley, Ward One
Robert Hayes, Ward Two
Mary Lafontaine, Ward Three
David Young, Ward Four



Leroy Walker, Ward Five
Belinda Gerry, At Large
Joshua Shea, At Large

Jonathan LaBonte, Mayor

IN CITY COUNCIL

ORDER 03-01072013

ORDERED, that the City Council hereby agrees to lease two historical buildings referred to as the Knight House and the Downing Shoe Shop to the Androscoggin Historical Society as described in the agreement below.

AGREEMENT

THIS AGREEMENT made as of this 7th day of January, 2013, by and between **CITY OF AUBURN**, a municipal corporation located in the County of Androscoggin, State of Maine ("Lessor") and **ANDROSCOGGIN HISTORICAL SOCIETY**, a Maine nonprofit corporation with a principal location in Auburn, County of Androscoggin, State of Maine, ("Lessee"), **WITNESSETH THAT**, in consideration of the mutual promises and undertakings herein, Lessor and Lessee agree as follows:

1. **PREMISES:** Lessor leases to Lessee, and Lessee leases from Lessor two (2) wood frame buildings currently situated in the northeast corner of Great Falls Plaza in the City of Auburn, County of Androscoggin, State of Maine, which buildings are known as and referred to as "The Knight House" and "The Downing Shoe Shop" (also referred to as the "leased premises").

2. **TERM:** The term of this Agreement is from January 7, 2013 through August 31, 2017, for a period of five (5) years. Lessee shall have two (2) separate options to renew the term of this Agreement each for a term of five (5) years, which option Lessee shall, if at all, exercise by written notice to Lessor at least thirty (30) days prior to expiration of the then current term.

3. **RENTAL:** The Lessee shall pay the Lessor a total rent of **ONE DOLLAR (\$1.00)** payable annually on or before October 1 of each year of the term..

4. **ALTERATIONS, ADDITIONS AND IMPROVEMENTS:** Lessee may make such alterations, additions or improvement to the leased premises as it may desire, at its own expense, provided, however, that no structural alterations or additions may be made without first obtaining the written consent of the Lessor.

All repairs, alterations or additions, whether made by the Lessor or the Lessee, shall be done in a good and workmanlike manner, in full compliance with all federal, state and municipal laws, ordinances, rules and regulations.

Lessor shall not be responsible for costs of construction arising from repairs or the erection of any improvements to be done by Lessee, nor for any lien or other obligation involved in any such repair or construction. Lessee agrees to indemnify and hold the Lessor harmless from and against any lien or claim of the Lessee's creditors on account of said repairs or improvements.

5. **LESSOR'S MAINTENANCE:** Lessor agrees to perform all maintenance and make any and all repairs required, and Lessor and Lessee agree to meet at least annually to discuss what repairs and maintenance is required for the leased premises, attempting to determine the total costs for repairs and maintenance. Lessee agrees to attend Lessor's budget meetings to explain and discuss such costs.

6. **INSURANCE:** Lessor shall insure the leased premises with both casualty and personal injury insurance.

7. **LESSOR'S ACCESS:** Lessor shall have the right to enter the leased premises at all reasonable times for the purpose of making repairs required of it hereunder and for inspections at reasonable times during normal business hours.

8. **ASSIGNMENT AND SUBLETTING:** Lessee may not assign the Lease or sublet the whole of the leased premises without the prior written consent of the Lessor, which said written consent shall not be unreasonably withheld, provided that no such assignment or subletting shall in any way relieve or release the Lessee from liability hereunder.

9. **ARTIFACTS:** Lessor acknowledges that Lessee is owner of the contents and artifacts contained in the leased premises, and Lessee agrees to be solely responsible for their care, preservation, insurance and exhibition, providing Lessor with written notice of such exhibitions which shall be open to the public. Lessor and Lessee agree to cooperate to promote security of both the artifacts and leased premises.

10. **NOTICES:** Any and all notice or demands herein required, shall be sent in writing by United States certified Mail, postage prepaid, addressed to the respective parties as follows:

City of Auburn
Auburn Hall
Court Street
Auburn, ME 04210

Androscoggin Historical Society
2 Turner Street, ox 8
Auburn, ME 04210

The above addresses may be changed at any time hereafter by the giving of written notice as hereinabove provided.

11. **TOTAL AGREEMENT:** All covenants, promises and agreements herein contained shall be binding upon and shall inure to the benefit of the respective successors or assigns of the parties hereto. This instrument embodies all of the agreements of the parties hereto with respect to the subject matter hereof and all agreements, if any, whether oral or written, heretofore made by the parties hereto relative to the subject matter hereof shall be superseded by the terms and provisions of this Lease. No modification or amplification, oral or written, with respect to the covenants, conditions and terms herein contained shall be binding upon either party until confirmed in writing. Modification or amplification or invalidity of any of the provisions hereof shall not affect any of the remaining provisions hereof.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the day and year first above written.

LESSOR
CITY OF AUBURN

WITNESS

BY: _____
Jonathan LaBonte, its Mayor

LESSEE
ANDROSCOGGIN HISTORICAL
SOCIETY

WITNESS

by: David C. Young, its President



City Council Information Sheet

City of Auburn

Council Meeting Date: January 7, 2013

Subject: Executive Session

Information: Discussion of a personnel issue (the City Manager's evaluation) with possible action to follow, pursuant to 1 M.R.S.A. §405(6)(A).

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405(6). Those applicable to municipal government are:

- A. Discussion of personnel issues
 - B. Discussion or consideration by a school board of suspension or expulsion
 - C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency
 - D. Labor contracts
 - E. Contemplated litigation
 - F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;
 - G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and
 - H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.
-



City Council Information Sheet

City of Auburn

Council Meeting Date: January 7, 2013

Subject: Executive Session

Information: Discussion regarding labor contracts with possible action to follow, pursuant to 1 M.R.S.A. §405(6)(D).

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405(6). Those applicable to municipal government are:

- A. Discussion of personnel issues
 - B. Discussion or consideration by a school board of suspension or expulsion
 - C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency
 - D. Labor contracts
 - E. Contemplated litigation
 - F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;
 - G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and
 - H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.
-