



**SANITARY CODE  
OF  
ERIE COUNTY**

ERIE COUNTY DEPARTMENT OF HEALTH  
BUFFALO, NEW YORK

THE SANITARY CODE OF THE ERIE COUNTY HEALTH DISTRICT

ADOPTED MAY 7, 1948 - EFFECTIVE JUNE 15, 1948

By the

ERIE COUNTY BOARD OF HEALTH

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## INTRODUCTORY NOTE

New York State Public Health Law Article 3, Title 3, Section 347 provides as follows:

1. Upon the establishment of a board of health for a county or part-county health district as provided in this article, it shall exercise all the powers and perform all duties of local boards of health as provided in this chapter, and such board of health may formulate, promulgate, adopt and publish rules, regulations, orders and directions for the security of life and health in the health district which shall not be inconsistent with the provisions of this chapter and the Sanitary Code. Such rules, regulations, orders and directions shall be known as the Sanitary Code of such Health District.

- a. Every rule, regulation, order and direction adopted by a board of health or a county officer or body exercising the rule-making functions of a board of health shall state the date on which it takes effect, and a copy thereof signed by the county Health Commissioner or his deputy or such county officer or the elective or appointive chief executive office of such county body exercising the rule-making functions of a board of health shall be filed as a public record in the department, in the county or part-county Department of Health and in the office of the County Clerk and shall be published in such manner as the Board of Health or such county officer or the elective or appointive chief executive office of such county body exercising the rule-making functions of a board of health may from time to time determine. No such rule, regulation order or directions shall be effective prior to filing as a public record in the department.

- b. The county Health Commissioner or his deputy shall furnish certified copies of the Sanitary Code of the health district and its amendments for a fee of one dollar.
- c. Nothing herein contained shall be construed to restrict the power of any county, city, town or village to adopt and enforce additional ordinances or enforce existing ordinances relating to health and sanitation provided that such ordinances are not inconsistent with the provisions of this chapter or the Sanitary Code.

## ARTICLE I

### DEFINITIONS AND GENERAL PROVISIONS

#### Section 1: Title

The rules and regulations herein contained shall be known as the Sanitary Code of the Erie County Health District.

#### Section 2: Definitions.

When used herein, unless otherwise expressly stated:

- (a) "Health District" shall mean the Erie County Health District established pursuant to the provision of Article 3, Title 3, Section 340 of the Public Health Law.
- (b) "Department of Health" shall mean the Board of Health of the Erie County Health District.
- (c) "Board of Health" shall mean the Board of Health of the Erie County Health District.
- (d) "Commissioner of Health" shall mean the Commissioner of Health of the Erie County Department of Health or his/her duly authorized representative.
- (e) "Sanitary Code" shall mean and comprise the rules and regulations now or hereafter formulated, promulgated and adopted by the Board of Health of the Erie County Health District pursuant to Article 3, Title 3, Section 347 of the Public Health Law of the State of New York and Section 504 of the Charter of Erie County.
- (f) "State Sanitary Code" shall mean the sanitary code established by the Public Health Council of the State of New York.

- (g) A “person” shall mean an individual, firm, corporation, association, municipality, public service district or public benefit corporation.

Section 3: Sanitary Code. Where in Force.

The provisions of the sanitary code shall be in force throughout the Erie County Health District.

Section 4: Enforcement by Local Boards of Health.

It shall be the duty of the Commissioner of Health and of each local health officer in the Erie County Health District, existing pursuant to law, to enforce any and every regulation of the sanitary code.

Section 5: Sanitary Code. Enforcement. Civil and Criminal. Penalties. Hearings; Procedures.

- (a) Pursuant to the provisions of the Public Health Law and the Charter of Erie County, the Commissioner of Health may:
- (1) issue subpoenas which shall be regulated by the civil practice law and rules;
  - (2) compel the attendance of witnesses;
  - (3) administer oaths to witnesses and compel them to testify;
  - (4) issue warrants to any peace officer of the county or a municipality within the county to apprehend and remove any person or persons as cannot otherwise be subjected to his orders and regulations,



and to the Sheriff of Erie County to bring to his aid the power of the County whenever it shall be necessary to do so; and

- (5) prescribe and impose penalties for the violation of or failure to comply with any of his/her orders or regulations, or any of the regulations of the State Sanitary Code or any order made pursuant to such codes or to law after holding a hearing thereon. Such penalties shall not exceed five hundred dollars for a single violation or failure, to be sued for and recovered by the said Commissioner in any court of competent jurisdiction. Each day on which such violation or failure continues shall constitute a separate offense. Nothing herein contained shall be construed to exempt an offender from any other persecution or penalty provided by law.
- (b) No subpoena shall be served outside the jurisdiction of the Erie County Health District, and no witness shall be interrogated or compelled to testify upon matters not related to public health.
- (c) Every warrant issued by the Commissioner of Health shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly executed out of a court of record of the State.
- (d) Nothing contained in this section shall be construed to alter or repeal any existing provisions of law declaring such violations or any of them misdemeanors or felonies or prescribing a penalty therefore.

(e) Pursuant to the provisions of Article 3, Title 3, Section 348 of the Public Health

Law:

- (i) the provisions of the Sanitary Code of the Erie County Health District shall have the force and effect of law; and
- (ii) any non-compliance or non-conformance with any provision of the Erie County Sanitary Code or of a rule or regulation duly made thereunder shall constitute a violation punishable on conviction for a first offense by a fine of not more than two hundred fifty dollars or by imprisonment for not more than fifteen days or both such fine and imprisonment: and for a second offense or subsequent offense by a fine not exceeding five hundred dollars or by imprisonment for not exceeding fifteen days, or both.

(f) Complaints: Hearing

In case of failure by conference conciliation and persuasion, to correct or remedy any violation of the Sanitary Code or of any rule or regulation adopted thereunder, the Commissioner of Health may cause to have issued and served upon the person complained against a written notice, together with a copy of the complaint made by him or a copy of the complaint made to him, which shall specify the provisions of the code, rule or regulation of which such person is said to be in violation, and a statement of the manner in which said person is said to violate it shall require the person so complained against to answer the charges of such complaint at a public hearing before the Commissioner of Health at a time not less than 10 days after the date of notice.

(g) Complaints: Conduct of Hearing

- (i) The respondent to such complaint may file a written answer thereto and may appear at such hearing in person or by representative, with or without counsel and may submit testimony, or may do both.
  - (ii) The Commissioner of Health at the request of any respondent to a complaint made pursuant to this article shall subpoena and compel the attendance of such witnesses as the respondent may reasonably designate and the said Commissioner of Health shall require the production for examination of any book or paper relating to the matter under investigation at any such hearing.
  - (iii) The testimony at the hearing may be under oath and recorded stenographically, by note-taking or by sound and/or video recording device.
- (h) Order of Determination
- After due consideration of the written and oral statements, the testimony and arguments that shall be submitted under the provisions of Subsection (g) above, or default in appearance of the respondent on the return day which shall be specified on the notice given in Subsection (f) above, the Commissioner of Health may issue and enter such final order, or make such final determination as he/she shall deem appropriate under the circumstances, and he/she shall notify the respondent thereof in writing by certified mail.
- (i) Review
- Any final order or determination or other final action by the Commissioner of Health and the validity or reasonableness of any code, rule or regulation of the Board of

Health shall be subject to review as provided in Article Seventy-eight of the Civil Practice Law and Rules.

Section 6: Interference with Notices.

No person shall remove, mutilate or conceal any notice or placard of the Commissioner of Health posted in or on any premises or public place except by permission of the Commissioner of Health or any authorized representative thereof.

Section 7: Special Provisions

The regulations of this Code shall be supplemental to the regulations, rules and orders of the State Sanitary Code, Public Health Law, Penal Law, and other New York State Laws relating to public health and shall, as to matters to which it refers, and in the territory prescribed therefore by law, supersede all local ordinances heretofore, or hereafter enacted inconsistent therewith.

Section 8: Inspection Generally.

- (a) All premises covered by the regulations of this Sanitary Code, whether located in the County Health District or elsewhere, shall be subject to inspection by the Commissioner of Health and if any violation of the Sanitary Code exists on the premises, any permit granted by the Commissioner of Health may be suspended forthwith.

- (b) No person, firm or corporation shall refuse to allow the Commissioner of Health to fully inspect any and all premises and no person, firm or corporation shall molest or resist the Commissioner of Health in the discharge of his/her duties.

Section 9: Permits Generally.

- (a) All applications for permits or written approval herein required shall be made upon forms prescribed and furnished by the State Commissioner of Health, or the Commissioner of Health and shall be signed by the applicant who shall be the person, firm or corporation or authorized agent thereof, responsible for conformance to the conditions of the permit or approval applied for. Such application shall contain such data and information and be accompanied by such plans as may be required. A permit issued to a particular person, firm or corporation or for a designated place, purpose or vehicle shall not be valid for use by any other person, firm or corporation or for any other place, purpose or vehicles than that designated herein. Such permits or written approvals may contain general and specific conditions and every person, firm or corporation which shall have obtained a permit or written approval as herein required shall conform to the conditions prescribed in said permit or written approval and to the provisions of the Sanitary Code. Every such permit shall expire as stated on the permit and may be renewed by the Commissioner of Health, suspended for cause by the said Commissioner of Health, or revoked by the said Commissioner of Health after due notice and hearing.

- (b) (b) No permit required by this Code may be issued unless and until proof has been submitted by the applicant for such permit that the use for which such permit is issued will not violate any zoning or other landuse regulation of any city, town or village, or of Erie County, or of any regional or other land use regulatory body having jurisdiction.
- (c) The restrictions imposed by Subsection (b) of this section may be waived when the use for which a permit is to be issued is shown to be a part of a specific plan for environmental improvement, such plan having been duly adopted by the Erie County Legislature.

Passed and Effective 7/18/72.

- (d) Nothing herein shall prevent the Commissioner of Health, after reasonable collection efforts have been attempted, from revoking or suspending any permit that was previously issued by the Commissioner if the permit holder or operator owes any fines legally imposed by the Commissioner of Health for violations of this Code, the New York State Public Health Law, the New York State Sanitary Code or any local law that the Erie County Health Department is required to enforce. The Commissioner of Health shall use due diligence to notify the permit holder of an impending revocation or suspension prior to executing an order for such action. Such notice shall be delivered to the operator, either by personal service or by certified mail, at least 14 days prior to executing an order for such suspension or revocation.
- (e) Nothing herein shall prevent the Commissioner of Health, from revoking or suspending, for a period of time not to exceed Thirty (30) days, any permit that was

previously issued by the Commissioner of Health, for three (3) or more violations in a twenty-four (24) month period of the provisions of the New York State Public Health Law, this Code or any local law that the Erie County Health Department is required to enforce or earlier legal Orders of the Commissioner.

Passed and effective December 8, 2006.

#### Section 10: Issuance of Licenses.

Nothing herein contained shall be construed to restrict or abrogate the authority of any city or any village in the Health District to adopt and enforce additional ordinances or to enforce existing ordinances relating to the regulations, control and/or issuance of any license and/or renewal and/or revocation thereof, and to charge and collect a fee therefore, provided however, that whenever inspection as to health and sanitation is required, no such city or such village shall issue or renew such license without first having obtained approval from the Commissioner of Health of the compliance with the rules and regulations now or hereafter formulated, promulgated and adopted by the Board of Health pursuant to the provisions of Article 3, Title 3, Section 347 of the Public Health Law.

## ARTICLE IV GENERAL SANITATION

### Section 1. **General Provisions**

1.1 Introduction. There exist and may in the future exist, within the County of Erie, certain privately and publicly owned structures, equipment, exterior property, premises, or parts thereof, which by reason of their structure, equipment, sanitation, maintenance, or use affect or are likely to affect adversely the public health, safety, and general welfare. To correct and prevent the existence of such adverse conditions, and to achieve and maintain such levels of environmental quality as will protect and promote public health, safety, and general welfare, the establishment and enforcement of general sanitation standards are required.

1.2 Purposes. It is hereby declared that the purpose of this Article is to minimize the incidence of communicable diseases, to regulate certain privately and publicly owned structures, equipment, exterior property, premises, or parts thereof, for the purpose of maintaining adequate sanitation and public health, and to protect the safety of the people of Erie County, and to promote the general welfare by regulations which shall be applicable to certain structures, equipment, exterior property, premises, or parts thereof, now in existence or hereafter constructed.

1.3 Title. This article shall be known and may be cited as the Erie County Sanitary Code Article IV.

1.4 Application and scope.

(a) Application. The requirements of this Article shall:

(1) When adopted by the appropriate local authority, apply within Erie County.

(2) Apply to certain privately and publicly owned structures, equipment, exterior property, premises, or parts thereof, within the jurisdiction of Erie County.

(b) Erie County Commissioner of Health may direct enforcement. The Erie County Commissioner of Health may enforce the requirements of this Article in any area where a danger or hazard to the public health shall or is likely to exist because of sanitation, hygiene and/or maintenance conditions.

(c) Construction. It is intended that the application of the provisions of this Article be consistent with the provisions of applicable State and local laws, codes, rules and regulations including the Uniform Fire Prevention and Building Code (Uniform Code); provided, however, that where the provisions of this Article are more restrictive, they shall govern, and where the provisions of such applicable State or local laws, codes, rules and regulations are more restrictive, they shall govern.



(d) Variance. The Erie County Commissioner of Health may, on written application and after review, grant a variance from a specific provision of this Article in a specific case subject to appropriate conditions where such variance is in harmony with the general purpose and intent of this Article, and where there are practical difficulties or unnecessary hardship in carrying out the strict letter of its provision. The responsible person must meet all terms of an approved variance including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions specified by the Erie County Commissioner of Health.

(e) Separability. If any provisions of this Article are held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provisions.

### 1.5 Inspection and enforcement.

#### (a) Inspection.

(1) The Erie County Commissioner of Health and any person authorized by said Commissioner to do so, may without fee or hindrance, make inspections to determine the condition of all privately and publicly owned structures, equipment, exterior property, or parts thereof, and the premises on which they are located, in order to fulfill the purposes of this Article.

(2) For the purpose of making such inspections, the inspector is hereby authorized to enter, examine and survey certain structures, equipment, exterior property, premises, or parts thereof. Except for emergencies, or where authorized by other law, or for the convenience of the occupant or owner, such inspections shall be made between the hours of 7 am and 9 pm.

(3) The owner, the agent thereof, the operator, and the occupant shall give the inspector free access to the structures, equipment, exterior property, premises, or parts thereof, for the purpose of such an inspection.

#### (b) Enforcement.

(1) Evidence of a violation of this Article discovered during such inspection shall not be used against the violator in either a criminal or civil proceeding except under the following conditions:

(i) Written notice of said violation shall be left with or mailed to the person responsible for correction of such violation or in the alternative such notice shall be posted in a conspicuous place upon the structures,

equipment, exterior property, or premises, where the violation is discovered.

(ii) Said written notice states a specific and reasonable time within which such violation shall be eliminated; and

(iii) At the end of such time the violation has not been eliminated.

(2) Evidence of a violation of Sec 2 of this Article, Imminent Health and Safety Risk of Sewage Exposure, shall result in issuance of an immediate Cease and Desist Order.

(i) Written notice of cease and desist order shall be left with or mailed to the person responsible for correction of the imminent health and safety risk or in the alternative, such notice shall be posted in a conspicuous place upon the structures, equipment, exterior property, premises, or parts thereof, where the imminent health and safety risk is discovered.

(ii) Activity shall not continue until such time as the imminent health and safety risk is addressed and approval to resume activity is granted by the Erie County Commissioner of Health.

(3) Noncompliance or nonconformance; penalties. Noncompliance or nonconformance with any provision of this Article constitutes a violation punishable on conviction pursuant to the provisions of Article I of the Erie County Sanitary Code.

#### 1.6 Definitions.

(a) ADEQUATE shall mean sufficient to accomplish the purpose for which something is intended and to such a degree that no unreasonable risk to health or safety is presented. An item installed, maintained, designed and assembled, an activity conducted, or act performed, in accordance with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession, is adequate within the meaning of the Article.

(b) APPROVED shall mean written approval by the Erie County Commissioner of Health.

(c) COMMON USE shall mean use by more than one person without effective disinfection.

(d) DWELLING UNIT shall mean a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(e) ERIE COUNTY COMMISSIONER OF HEALTH shall mean the Health Commissioner of Erie County, New York or his/her duly authorized representative or designee.

(f) EQUIPMENT shall mean any equipment, apparatus or device, system, or other contrivance and auxiliary components thereof, including but not limited to septic tanks, treatment facilities, piping and pump stations, related to or used in the conveyance of sewage and used in the process of adequate, approved sewage disposal.

(g) EXERCISE EQUIPMENT shall mean built-in and movable equipment for the preservation, maintenance, encouragement or development of physical fitness or well-being, including but not limited to, cardiovascular and weight training machinery.

(h) EXTERIOR PROPERTY shall mean the open space on the premises and on adjoining property under the control of owners or operators of such premises.

(i) GARBAGE shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, serving and consumption of food.

(j) GYM, HEALTH OR FITNESS FACILITY shall mean an indoor fitness center, gymnasium, health or athletic club that offers training or assistance or facilities for the preservation, maintenance and development of physical fitness or well-being.

(k) INDIVIDUAL SEWERAGE SYSTEM shall mean a system or piping, tanks or other facilities disposing of sewage or other liquid wastes into the soil.

(l) OFFENSIVE MATERIAL shall mean any litter, garbage, refuse, rubbish, sewage, fecal matter, manure, offal, dead animals, meat waste, blood, tankage, brine, urine, or any putrescible organic matter, or the contents of privies, cesspools, septic tanks, or chemical toilets, either in liquid, solid, or gaseous state, or other liquid, solid, or gaseous material, whether waste material or not, hazardous, or flammable wastes, petroleum products, or waste tires, or any other material or condition which are hereby deemed to be a nuisance or to be prejudicial to health by the Erie County Commissioner of Health.

(m) OWNER shall mean any person, agent, operator, firm or corporation having legal or equitable interest in the property; or recorded in the official records of the state, County or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

(n) PERSON shall mean an individual, group of individuals, partnership, firm, corporation, association, political subdivision, government agency, municipality, estate or any other legal entity.

(o) PLUMBING shall mean and include all of the following supplied facilities and equipment; gas pipes, gas burning equipment, water pipes, garbage disposal units, waste pipes, water closets, toilet rooms, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.

(p) POTABLE WATER shall mean water that meets the requirements of New York State Sanitary Code Subpart 5.1 that is provided or used for human consumption, food preparation, or for lavatory, culinary, bathing or laundry purposes.

(q) PREMISES shall mean a lot, plot or parcel of land, an easement or public way, including any structure thereon.

(r) PRIVY shall mean a non-portable temporary toilet provided for the storage or deposit of human excreta without water carriage or connection to a sewerage system.

(s) PUBLIC HEALTH HAZARD shall mean any existing or imminent condition, which can be responsible for or cause illness, physical injury or death.

(t) REALTY SUBDIVISION shall have the meaning ascribed to it in Article 11, Title II of the New York State Public Health Law, and Article 17 Title 15 of the New York State Environmental Conservation Law.

(u) REFUSE shall mean all putrescible and non-putrescible solid wastes, including garbage, rubbish, ashes, incinerator residue, street cleanup, dead animals, offal and solid commercial waste.

(v) SAFETY shall mean the condition of being reasonably free from danger and hazards which may cause accidents or disease.

(w) SEWAGE shall mean excreta and the waste from a flush toilet, bath, sink, lavatory, dish washing or laundry machine, or the water-carried waste from any other fixture or equipment or machine.

(x) SEWERAGE SYSTEM shall mean pipe lines or conduits, pumping stations and force mains, and all other constructions, devices and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(y) STRUCTURE shall mean that which is built or constructed or a portion thereof.

(z) SUPPLIED shall mean paid for, furnished, provided by, or under the control of the owner or operator.

(aa) TEMPERED WATER shall mean potable water that is between 80 and 100 degrees Fahrenheit.

(bb) TEMPORARY TOILET shall mean a self-contained toilet facility without water carriage that is not designed or intended for connection to a sewerage system.

(cc) TOILET FACILITY shall mean a fixed or portable facility provided for individual convenience in the sanitary disposal of body wastes and the structures for their installation and maintenance. Toilet facilities include biological, chemical, flush and combustion toilets and sanitary privies.

## **Section 2. Exposure of Sewage.**

2.1 Imminent Health and Safety Risk of Exposure of Sewage. No person either as owner, the agent thereof, operator, or occupant of any property, dwelling, building or place, shall construct or maintain and/or operate any temporary toilet facility, sewage disposal system, pipe or drain so as to:

(a) Expose or discharge the sewage contents or other offensive material or matter there from to the atmosphere, or on the surface of the ground;

(b) Expose or discharge sewage contents or other offensive material or matter there from so as to endanger any source of supply of drinking water;

(c) Allow sewage contents or other offensive material or matter there from to discharge into a water course or body of water unless a permit for such discharge shall have been issued therefore by the appropriate State officer or his duly authorized designee and such discharge shall be made in accordance with the requirements thereof.

2.2 No facilities for the private disposal of sewage shall be constructed under or within any building or structure and no building or structure shall be erected on an area within which private sewage disposal facilities are in use unless special written permission has been obtained therefore from the Erie County Commissioner of Health.

2.3 No person shall permit the disposal of any substance into any plumbing line, sewer, privy, or separate sewage disposal system other than that which said facility is designed or is intended to receive.

### **Section 3. Sewer Connections Required.**

(transferred to County Department of Environmental Quality Codes).

### **Section 4. Temporary Toilet Facilities.**

4.1 Temporary Toilet Facilities: Use on Construction. Any person employing workers on the construction of any highway, building or structure, shall provide or cause to be provided satisfactory temporary toilet facilities for said workers.

(a) Toilet facilities shall be at a convenient place upon the premises, or readily accessible thereto.

(b) Toilet facilities shall be properly enclosed and have tight-fitting doors.

(1) The facilities shall be lighted properly and adequately ventilated, either by natural or mechanical means.

(c) Toilet facilities shall be of such construction as to be easily cleaned and shall be kept in good repair and shall be maintained at all times in a clean and sanitary condition.

(d) Toilet facilities shall be provided with adequate water-tight vaults or receptacles, and the contents thereof shall be-effectively treated.

(1) Receptacles shall be emptied and thoroughly cleaned as needed or at least once weekly.

(e) Where possible, handwashing facilities with running water and soap or detergent with a sanitary storage receptacle should be included with or adjacent to toilet facilities.

(1) If handwashing facilities cannot be provided, a hand sanitizing station must be provided.

(f) A supply of toilet tissue is to be provided at all times at each toilet facility.

#### 4.2 Temporary Toilet Facilities: Rest Stops and Comfort Stations

(a) Where a public sanitary sewer, a municipal or private water supply is not readily available or accessible and temporary facilities are provided for the public comfort, those facilities shall be maintained in a clean and sanitary condition and comply with Sec 4.1 (b) through 4.1 (f) of this Article.

#### 4.3 Temporary Toilet Facilities: Seasonal use of Privies.

(a) Where a public sanitary sewer, a municipal or private water supply is available and accessible, the Erie County Commissioner of Health may issue an order, effective within not less than thirty (30) days, upon the owner of any property whereon a privy is located requiring said owner to abandon the use of and to remove said privy.

(b) No person shall permit the existence on any property, place, or premises of any privy, the use of which is abandoned or no longer necessary for the occupancy of the property or which is improperly maintained so as to expose the contents thereof.

(c) No privy shall be constructed for use on any property that is intended for continuous human occupancy.

(d) No privy shall be constructed under or within any building or structure intended or used for human occupancy.

(e) All privies shall be properly enclosed and screened, ventilated, lighted, kept in repair and shall be maintained at all times in a clean and sanitary condition.

(1) All privies shall be provided with adequate water-tight vaults or receptacles, the contents of which shall be removed and disposed of in a sanitary manner.

(f) No privy shall be within one hundred (100) feet of any place where food is prepared or served.

(g) No privy shall be within fifty (50) feet of any lake, reservoir or stream.

(h) No privy shall be located in the direct line of drainage to not less than one Hundred (100) feet in a horizontal direction from any water supply, intake pipe, well, or spring used as a source of water supply.

4.4 Privies and portable temporary toilet facilities shall be located, constructed and maintained so that no contamination of a water supply, surface water, or adjacent ground surface will occur. The contents shall be emptied and/or adequately treated to prevent discharge to the surface of the ground or to any area readily accessible to the public.

## **Section 5. Cleanliness of Public Toilets, Bathhouses, Showers and Locker Rooms**

Any person who provides toilet, bathhouse, shower or locker room facilities, for the use of employees, patrons or members or available to the public, shall maintain such facilities at all times in a clean, well-lighted, ventilated and sanitary condition in accordance with this section.

### 5.1 Water supply

(a) The water supply serving all plumbing fixtures, including drinking fountains, lavatories, toilets and showers, shall meet the applicable requirements of the New York State Sanitary Code, subpart 5-1.

(b) An adequate supply of hot and cold water from a municipal or satisfactory private source shall be provided for service for customers, cleanliness of employees, and for washing floors, walls, ceiling and equipment.

### 5.2 Plumbing fixtures

(a) Plumbing fixtures shall be of impervious material and of a type which is readily cleanable. They shall be free from cracks and from parts which are not readily accessible for cleaning. They shall be of a type which does not constitute a hazard to a public water supply through back siphonage. Plumbing fixtures and installation shall be in accordance with the NYS Uniform Code.

### 5.3 Sewage disposal system

(a) All waste water from a public toilet, public shower or lavatory sink shall be discharged to a public sewer system or other approved disposal system.

### 5.4 Garbage; refuse

(a) Garbage and refuse shall be collected, handled, stored and disposed of in a sanitary manner.

### 5.5 Lighting and Ventilation

(a) Lighting fixtures shall be in sufficient number and properly placed so as to provide adequate illumination.



(b) Toilet facilities, bathhouse, showers and locker rooms shall be properly and adequately ventilated, either by natural or mechanical means.

#### 5.6 Toilet facilities provided for the use of employees, patrons or members, or available to the public

(a) Toilet fixtures are to be of sanitary design and readily cleanable.

(b) The floor, walls and partitions of the toilet facility, which shall afford privacy to a person within said facility, shall be constructed of smooth-finished material impervious to moisture and easily cleanable. Floors shall be properly drained.

(c) Toilet facilities are to be kept clean, in good repair and free from objectionable odors.

(d) A supply of toilet tissue is to be provided at all times at each toilet.

(e) Easily cleanable covered receptacles for waste paper and other refuse are to be provided.

#### 5.7 Handwashing facilities

(a) Adequate handwashing facilities are to be provided and maintained in or adjacent to toilet facilities

(b) Each handwashing facility is to be provided with running hot and cold or tempered potable water.

(c) Each handwashing facility is to be provided with hand-cleaning soap or detergent with a sanitary storage receptacle.

(d) Individual single-service towels or warm air blowers are to be provided.

(1) Conveniently located waste receptacles are to be provided if disposable towels are used.

(e) Common use items, such as towels, are prohibited.

(f) Handwashing facilities, soap or detergent receptacles, handwashing devices and related facilities are to be kept clean and in good repair.

#### 5.8 Bathhouse, Showers and Locker Rooms

(a) Walls and floors of the bathhouse, shower or locker room shall be kept clean and free from cracks or open joints. Floors shall be of such construction as to be easily cleaned and shall be kept clean and in good repair. The floors shall be impervious to moisture and properly drained.

(b) All fixtures within the bathhouse shall be maintained in a clean and sanitary condition at all times.

(c) All locker rooms and dressing areas shall be properly lighted, ventilated and maintained.

(d) Showers, when provided, shall be supplied with tempered water and shall be kept in good working condition to prevent scalding of users.

(1) Shower curtains shall be kept clean and in good repair.

(2) When provided, soap or detergent shall be dispensed and stored in a sanitary storage receptacle.

(e) Care of towels. All towels furnished or rented shall be washed with a detergent in hot water, rinsed and thoroughly dried after each use.

(1) Cabinets shall be provided for storage of clean towels. They shall have tight fitting doors that shall be kept closed to protect the towels from dust and dirt.

#### 5.9 Drinking Fountains

(a) Drinking fountains, if provided, must be in good repair and maintained in a clean and sanitary condition.

(b) Drinking fountains may not be installed inside public bathrooms.

### **Section 6. Sewage Disposal System; Permit Fee, Construction Standards, Locations, Abandonment of Septic Tanks**

6.1 Permit Required. No person either as owner, the agent thereof, or operator or occupant, shall undertake to construct or provide a system or facilities for the separate disposal of waterborne sewage, domestic or trade wastes to serve any privately or publicly owned structure or premises in or from which such wastes may be discharged, unless such construction conforms to standards approved by the Erie County Commissioner of Health.

(a) Such approval by the Erie County Commissioner of Health shall not be required when a permit therefore has been issued by the State Commissioner of Health.

6.2. Permit Fee. No permit required by subsection 6.1 of this section shall be issued until and unless the applicant shall have paid to the Erie County Commissioner of Health a permit fee per the approved fee schedule.

6.3. Construction Standards. No person, firm or corporation shall construct or place an individual sewerage system on any premises or part thereof except as permitted by the Erie County Commissioner of Health per subsection 6.1 of this section.

(a) The Commissioner shall regulate and control the construction of individual sewerage systems in permissible locations in Erie County.

(b) The construction of individual sewerage systems must meet the requirements of the specifications and standards as set out in the New York State Sanitary Code Appendix 75-A, applicable design manuals as established by the New York State Department of Health, the specifications, standards and design manuals as established by the New York State Department of Environmental Conservation.

(c) The Commissioner may establish separate classes of construction specifications and performance standards for individual sewerage systems for different types of realty developments and land uses.

(1) These may include, but need not be limited to, separate classifications for single family dwellings, multiple dwellings, commercial or industrial uses, realty subdivisions, and for systems within cities or villages.

6.4. Non-Permissible Locations. No person, firm or corporation shall construct or place on any premises any individual sewerage system, or part of such system in any of the following locations:

(a) Within the limits of any sewer district in Erie County where public sanitary sewer collection lines and municipal or private water supply are available and accessible;

6.5. The Erie County Commissioner of Health may permit the construction of individual sewerage systems in permissible locations in Erie County subject to the following limitations:

(a) Within cities or villages. Systems to serve buildings or structures within the corporation limits of a city or village may be permitted by the Commissioner if:

(1) The governing body of the affected city or village, or the mayor's delegate, approves construction of the proposed individual sewerage systems; and

(2) The site and soil conditions are adequate to permit the proposed systems to satisfy performance standards established by said Commissioner for individual sewerage systems within cities or villages.

(b) Outside cities or villages, but within a sewer district. Systems to serve buildings or structures which are located outside a city or village, but which are within a sewer district, may be permitted by the Commissioner if:

- (1) The Commissioner finds that public sanitary sewers will be available to the buildings or structures within ten (10) years of the date of the application and all necessary state and federal approvals have been obtained for such sewers; and
- (2) The site is adequate to meet the construction specifications and satisfy the performance standards established by said Commissioner for systems to serve the type of development proposed for the site.

(c) Outside cities or villages and not within a sewer district, or in a location not to be served by public sanitary sewers. Systems to serve buildings or structures which are not within a sewer district, or which are in a location which the Commissioner finds will not be served by public sanitary sewers within ten (10) years of the date of application, may be permitted by the Commissioner if:

- (1) The site is adequate to meet the construction specifications and performance standards established by the Commissioner for systems to serve the type of development proposed for the site; and
- (2) In cases where a conventional septic tank system is permitted, the site will provide adequate unimproved space to allow construction of a complete replacement system in the event the first system fails; and
- (3) In cases where a conventional septic tank system can not be installed and requires the installation of an alternative system or a system that does not use in-situ soils, the site provides a minimum of  $\frac{3}{4}$  acre (32, 670 square feet) for each building or dwelling unit. The  $\frac{3}{4}$  acre must be buildable land and can not include such areas as road ways, right of ways, easements, wetlands, water bodies or other non-buildable areas as determined by the Commissioner.

6.6. Abandonment of Septic Tanks. For safety purposes, all abandoned or decommissioned septic tanks shall be crushed, removed, or filled with stone, earth or sand.

6.7. No permit issued under this Section shall be deemed to authorize any action prohibited by or under the New York Public Health Law or New York Environmental Conservation Law.

**Section 7.** (Deleted)

**Section 8.** (Deleted)

**Section 9.** (Deleted)

**Section 10.** (Deleted)

**Section 11. Water & Sewage Service for Multiunit Complexes**  
(Transferred to County Dept. of Environmental Quality Codes).

**Section 12. Transfer of Title to Property; Certification by Commissioner of Health;  
Certification Fee.**

12.1 Transfer of Title to Property. No person shall transfer to any other person, nor accept from any other person, the transfer of the title to any structure or parcel of land on which a structure is located, provided such structure is to be used for human occupancy, unless and until the Erie County Commissioner of Health shall have inspected the water supply and sewage disposal system serving such structure and issued a certificate that the water supply conforms to the standards New York State Sanitary Code, Subpart 5-1, New York State Sanitary Code Subpart 5-1, Appendix 5B, and applicable standards of the State Commissioner of Health, and that the sewage disposal system is in conformity with Section 2 of this Article.

(a) The operation of this section shall not be applicable to the following: transfers in a foreclosure action; transfers without consideration and other than in connection with a sale, including transfers conveying realty as bona fide gifts; transfers in connection with a partition; transfers pursuant to the Federal Bankruptcy Act; transfers for which the consideration is \$100 or less.

(b) No such certification of the water supply need be applied for or made if the water supply serving the structure is an approved public water supply as defined in the New York State Sanitary Code Subpart 5-1.

(c) No such certification of the sewage disposal system need be applied for or made if the sewage originating in the structure discharged only to a public sewer owned and operated by a public sewer or other special service district.

12.2 Certification by Erie County Commissioner of Health. Certification pursuant to the provisions of this section shall not be construed as a guarantee by the Erie County Commissioner of Health or by his designees that the sewage disposal system will continue to function satisfactorily, nor shall it in any way restrict the action of the Erie County Commissioner of Health or his designee in the enforcement of any law or regulation.

12.3 The Erie County Commissioner of Health may approve a variance from the requirement of certification as a prerequisite to transfer of title as herein before specified provided that the prospective purchaser shall have filed with said Commissioner a written guarantee to allow for inspection of the water supply and sewage disposal system and to correct any deficiencies of the water supply and sewage disposal system as noted by inspection within a period of time to be specified by said Commissioner.

(a) Failure of the purchaser to allow for inspection of the water supply and sewage disposal system within a period of time to be specified by said Commissioner is considered a violation of this section and could be issued a penalty of up to \$500.00 per day of violation.

(b) Failure of the purchaser to correct any deficiencies of the water supply and sewage disposal system noted by inspection and provided in written notification is considered a violation of this section and could be issued a penalty of up to \$500.00 per day of violation.

12.4 Certification Fee. No certification as specified in subsection 12.1 of this section, nor no variance as specified in subsection 12.3 of this section shall be issued until and unless there have been paid to the Erie County Commissioner of Health a certification fee as listed in the approved fee schedule.

**Section 13.** (Reserved).

#### **Section 14. Use of Septic Tanks in Subdivisions**

14.1 The Erie County Commissioner of Health may approve realty subdivision submitted after the effective date of this section if:

(a) The subdivision will be served by adequate public sanitary sewers prior to the occupancy of any residential unit within the subdivision; or

(b) The subdivision will contain forty-nine or less lots, is within a sewer district, said Commissioner finds that adequate public sanitary sewers will be available and accessible within five years of the date of the application,

(1) All necessary state and federal approvals have been obtained for said public sanitary sewers; or

(c) The subdivision is outside a sewer district, will contain forty-nine or less lots, the percolation rate for the soil in the subdivision is at least one inch in sixty minutes, and adequate public sanitary sewers are not available and accessible.

## **Section 15. Gyms, Health or Fitness Facilities**

15.1 Application. These sections shall apply to gyms and health or fitness facilities operated in Erie County, New York.

15.2 Permits to operate a gym, health or fitness facility in Erie County required; application, issuance, revocation, posting, inspection, access.

(a) No person shall operate a gym, health or fitness facility in Erie County or cause or allow the same to be operated, without a permit from the Erie County Commissioner of Health.

(b) Application for a permit shall be made on a form specified by the Erie County Department of Health, by the operator to the Commissioner beginning 4/1/2023 and thereafter at least 60 days before operation or the expiration of an existing permit or a change in name, owner or operator. For new construction, such application shall include a copy of the certificate of occupancy issued by the local code enforcement official.

(c) The Commissioner shall issue a permit if the gym, health or fitness facility conforms or will conform at the time of operation to the requirements of this section, any other applicable laws, and will not present a danger to the health and safety of the patrons/members and the general public. An applicant's past history of compliance or non-compliance will be a consideration in evaluating the previously mentioned criteria.

(d) A permit may be denied, revoked or suspended by the Erie County Commissioner of Health or the State Commissioner of Health if the gym, health or fitness facility is maintained, operated or utilized in violation of the Public Health Law, local laws, duly issued emergency orders or other applicable provisions of the Uniform Code. Before denial, suspension or revocation of a permit, or after receipt of a notice of violation, the operator shall have the right to appeal to the Erie County Commissioner of Health, except that when a public health hazard exists, a permit may be temporarily suspended pending a hearing. A permit will also be revoked upon request of the operator or upon abandonment of the gym, health or fitness facility operation. Following the revocation, an application shall be filed for a new permit before resumption of operation.

(e) A permit for a gym, health or fitness facility shall be issued for a period of not more than three years from the date of issue. A permit shall not be transferable or assignable and shall expire upon a change of the name, owner, or operator of the gym, health or fitness facility or upon the date specified by the Commissioner.

(f) The Erie County Commissioner of Health and any person authorized by said Commissioner to do so shall be allowed entry for the purposes of inspection to any property operated as a gym, health or fitness facility as defined by this Article.

(1) For the purpose of making such inspections, the inspector is hereby authorized to enter, examine and survey the facilities and operation of the gym, health or fitness facility. Except for emergencies, or where authorized by other law, or for the convenience of the operator or owner, such inspections shall be made during the gym, health or fitness facility regular hours of operation or between the hours of 7 am and 9 pm.

(g) A permit issued for the operation of a gym, health or fitness facility shall be posted in a conspicuous place on the premises.

(h) A separate permit shall be required to operate a swimming pool, as defined by the New York State Sanitary Code Subpart 6-1, or a food service establishment, as defined by the New York State Sanitary Code Subpart 14-1, operated as part of a gym, health or fitness facility.

### 15.3 General Design and Structure

#### (a) Water supply

(1) The water supply serving all plumbing fixtures, including drinking fountains, handwashing facilities, toilets and showers, shall meet the applicable requirements of the New York State Sanitary Code Subpart 5-1.

(2) An adequate supply of hot and cold water from a municipal or satisfactory private source shall be provided for service for customers, cleanliness of employees, and for washing floors, walls, ceiling and equipment.

(b) Plumbing fixtures. Plumbing fixtures shall be of impervious material and of a type which is readily cleanable. They shall be free from cracks and from parts which are not readily accessible for cleaning. They shall be of a type which does not constitute a hazard to a public water supply through back siphonage. Plumbing fixtures and installation shall be in accordance with the NYS Uniform Code.

(c) Sewage disposal system. All waste water from a public toilet, public shower or lavatory sink shall be discharged to a public sewer system or other approved disposal system.

(d) Garbage; refuse. Garbage and refuse shall be collected, handled, stored and disposed of in a sanitary manner.

(1) Receptacles for interior refuse and recyclables shall be provided in sufficient quantity and size to meet the needs of the facility and shall be kept covered and clean.



(2 Exterior garbage, refuse and recyclable containers shall be rodent-proof, insect-proof, and watertight and stored in an area that will not create a nuisance and be kept clean and free of odors at all times.

(e) Walls and floors shall be kept clean and free from cracks or open joints. Floors shall be of such construction as to be easily cleaned and shall be kept clean and in good repair. The walls and ceiling shall be kept clean and in good repair.

(f) Lighting and Ventilation.

(1) Lighting fixtures shall be in sufficient number and properly placed so as to provide adequate illumination.

(2) Exercise areas, toilet facilities, showers, locker rooms and dressing areas shall be properly and adequately ventilated, either by natural or mechanical means.

#### 15.4 Exercise Equipment.

(a) The layout of the facilities and equipment shall provide enough spacing to ensure that all exercise equipment can be used safely at all stations.

(b) Exercise equipment shall be well maintained and easy to clean.

(1) Operators shall regularly inspect exercise equipment for health and safety hazards, including, but not limited to; worn and frayed cables, exposed wiring, damaged walking surfaces, loose bolts, torn or ripped upholstery, etc.

(i) Damaged exercise equipment should be tagged "Do Not Use" or removed.

(c) Cleaning and disinfection of exercise equipment.

(1) All exercise equipment and tools shall be cleaned and disinfected between users.

(2) Sufficient cleaning and disinfection supplies shall be supplied and available to adequately clean and disinfect all exercise equipment.

(i) Spray bottles filled with disinfecting solution and disposable towels, or disinfecting wipes shall be supplied and available for use throughout the gym, health or fitness facility for each location/station/piece of exercise equipment.

(3) Signs should be posted to remind staff and users to clean and disinfect exercise equipment after each use.

(1) Fitness center patrons/members should be encouraged to clean exercise equipment before and after use.

(2) If fitness center patrons/members fail to clean and disinfect exercise equipment after each use, sufficient staff must be available to clean and disinfect exercise equipment between users.

#### 15.5 Maintenance and Operation

(a) Each gym, health or fitness facility must create and have on file an approved Standard Operational Procedure (SOP) for the proper cleaning and hygiene procedures that are used to maintain cleanliness of the facility and must include the plan for:

(1) Inspecting and cleaning equipment and locker rooms immediately before and after prime-time traffic periods or at least twice daily.

(i) Identifying, cleaning and disinfecting frequently touched surfaces.

(2) Cleaning and disinfecting all exercise equipment and tools between users as required in Section 15.4 (c).

(3) Cleaning and disinfection records must be provided for the entire gym, health or fitness facility, including the offices and toilets, and be maintained for twelve months.

(4) All cleaning products and equipment must be stored in a separate designated room and should be well ventilated and properly maintained.

(1) A list of the cleaning and disinfection products used in the facility should be kept and updated periodically.

(2) Use of products that are EPA registered at concentrations as recommended by CDC for proper disinfection.

#### 15.6 Safety Requirements

(a) Emergency contact numbers shall be displayed conspicuously to enable prompt action in case of an emergency.

(b) The gym, health or fitness facility shall have approved first-aid equipment on site.

(1) Required first-aid equipment shall be readily accessible to all public areas of the fitness center and in good repair. Minimum equipment shall include:

(1) A first aid kit, which may be any commercially prepared 24 unit kit or a supply of band aids, bandage compresses and self-adhering gauze bandages.

(2) All first-aid kits must be replenished and updated on a regular basis.

(c) Repair work or any maintenance work in the gym, health or fitness facility that would cause a nuisance, poor air quality or any potential health hazards, such as sanding, spray painting, dry sweeping, etc. shall not be done during operating hours. When this type of work is performed, all conditions that would contribute to a potential nuisance or health hazard must be eliminated prior to re-opening.

#### 15.7 Toilet Facilities, Showers and Locker Rooms

(a) Toilet, shower, locker room and dressing areas shall not open directly to the exercise area.

(b) Toilet Facilities.

(1) Toilet fixtures are to be of sanitary design and readily cleanable.

(2) The floor, walls and partitions of the toilet facility, which shall afford privacy to a person within said facility, shall be constructed of smooth-finished material impervious to moisture and easily cleanable. Floors shall be properly drained.

(3) Toilet facilities are to be kept clean, in good repair and free from objectionable odors.

(4) A supply of toilet tissue is to be provided at all times at each toilet.

(5) Easily cleanable covered receptacles for waste paper and other refuse are to be provided.

(c) Handwashing facilities

(1) Adequate handwashing facilities are to be provided and maintained in or adjacent to toilet facilities.

(2) Each handwashing facility is to be provided with running hot and cold or tempered potable water.

(3) Each handwashing facility is to be provided with hand-cleaning soap or detergent with a sanitary storage receptacle.

(4) Individual single-service towels or warm air blowers are to be provided.

(i) Conveniently located waste receptacles are to be provided if disposable towels are used.

(5) Common use items, such as towels, are prohibited.

(6) Handwashing facilities, soap or detergent receptacles, handwashing devices and related facilities are to be kept clean and in good repair.

(d) Showers and Locker Rooms

(1) The floors of showers and locker rooms shall be impervious to moisture and properly drained.

(2) All locker rooms and dressing areas shall be properly lighted, ventilated and maintained.

(3) Showers, when provided, shall be supplied with tempered water and shall be kept in good working condition to prevent scalding of users.

(i) Shower curtains shall be kept clean and in good repair.

(ii) When provided, soap or detergent shall be dispensed and stored in a sanitary storage receptacle.

(4) Care of towels. All towels furnished or rented shall be washed with a detergent in hot water, rinsed and thoroughly dried after each use.

(i) Cabinets shall be provided for storage of clean towels. They shall have tight fitting doors that shall be kept closed to protect the towels from dust and dirt.

(e) Drinking Fountains. Drinking fountains, if provided, must be in good repair and maintained in a clean and sanitary condition.

ARTICLE IV-B

REGULATION OF INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

Passed December 19, 1973

Incorporated into Article IV Section 6 (DATE OF ADOPTION)

ARTICLE IV-A  
SEWER USE REGULATIONS

(Transferred to County Dept. of Environmental Quality Codes)

## **ARTICLE IX**

### **HOUSING HYGIENE AND PROPERTY MAINTENANCE**

#### **Section**

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- 1.2 Purposes
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## GENERAL PROVISIONS

### Section

**1.1 Introduction.** There exist and may in the future exist, within the County of Erie, structures, equipment, exterior property, premises, dwellings, dwelling units, rooming houses, rooming units, bed and breakfasts or parts thereof, which by reason of their structure, equipment, sanitation, maintenance, use, or occupancy affect or are likely to affect adversely the public health (including the physical, mental and social well-being of persons and families), safety, and general welfare. To correct and prevent the existence of such adverse conditions, and to achieve and maintain such levels of residential environmental quality as will protect and promote public health, safety, and general welfare, the establishment and enforcement of minimum housing, hygiene and property maintenance standards are required.

**1.2 Purposes.** It is hereby declared that the purpose of this Article is to protect, preserve, and promote the physical and mental health and social well-being of the people, to minimize the incidence of communicable diseases, to regulate privately and publicly owned structures, equipment, exterior property, premises, dwellings, dwelling units, bed and breakfasts, rooming units, or parts thereof for the purpose of maintaining adequate sanitation and public health, and to protect the safety of the people and to promote the general welfare by regulations which shall be applicable to all structures, equipment, exterior property, premises, bed and breakfasts, dwellings, dwelling units, rooming units, or parts thereof now in existence or

hereafter constructed. It is hereby further declared that the purpose of this Article is to insure that the quality of housing and other properties is adequate for protection of public health, safety and standards for basic equipment and facilities for healthful living, such as adequate water, waste disposal, bathroom facilities, light, ventilation, heating and cooling, for safety from lead poisoning, fire and accidents, and for an adequate level of maintenance, setting forth the responsibilities of owners, operators and occupants of dwellings; and establishing the necessary provisions for administration and enforcement.

**1.3 Title.** This article shall be known and may be cited as the Erie County Sanitary Code Article IX.

**1.4 Application and scope.**

(a) **Application.** The requirements of this Article shall:

(1) When adopted by the appropriate local authority, apply within Erie County.

(2) Apply to all structures, equipment, exterior property, premises, rooming houses, bed and breakfasts, dwellings, dwelling units, rooming units, or parts thereof within the jurisdiction of Erie County, except those regulated under Parts 7 and 15 of the New York State Sanitary Code.

(b) Erie County Commissioner of Health may direct enforcement. Notwithstanding the limits of application and administration set forth in the preceding subdivision, the Erie County Commissioner of Health may enforce the requirements of this

Article in any area where a danger or hazard to the public health shall or is likely to exist because of housing, hygiene and/or property maintenance conditions.

(c) Construction. It is intended that the application of the provisions of this Article be consistent with the provisions of applicable State and local laws, codes, rules and regulations; provided, however, that where the provisions of this Article are more restrictive, they shall govern, and where the provisions of such applicable State or local laws, codes, rules and regulations are more restrictive, they shall govern.

(d) Variance. The Erie County Commissioner of Health may, on written application and after review, grant a variance from a specific provision of this Article in a specific case subject to appropriate conditions where such variance is in harmony with the general purpose and intent of this Article, and where there are practical difficulties or unnecessary hardship in carrying out the strict letter of its provision.

(e) Separability. If any provisions of this Article are held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provisions.

**1.5 Dwelling unfit for human habitation.** Whenever the Erie County Board of Health or Erie County Commissioner of Health finds that any structure, equipment, exterior property, premises, rooming house, bed and breakfast, dwelling, dwelling unit, rooming unit constitutes a serious hazard to the health and/or safety of the occupant or to the public because it is dilapidated, unsanitary, vermin-infested or lacking in the

facilities required by this Article, he/she may designate such dwelling unfit for human habitation, order the dwelling vacated, and may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "Use of this building for human habitation is prohibited and unlawful." If the owner fails to comply with an order issued by the Erie County Board of Health or Erie County Commissioner of Health, such board of health or Commissioner of Health may order such dwelling to be removed or demolished as provided for by applicable County law and laws and regulations of the town, village or city having jurisdiction. The provisions of this section are applicable also to unoccupied dwellings and the owners thereof shall be chargeable with compliance.

#### **1.6 Inspection and enforcement.**

##### **(a) Inspection.**

- (1) The Erie County Commissioner of Health and any person authorized by him/her to do so, may without fee or hindrance, make inspections to determine the condition of structures, equipment, exterior property, premises, rooming houses, bed and breakfasts, dwellings, dwelling units, rooming units, or parts thereof and the premises on which they are located, in order to fulfill the purposes of this Article.
  
- (2) For the purpose of making such inspections, the inspector is hereby authorized to enter, examine and survey all structures, equipment, exterior property, premises, rooming houses, bed and breakfast, dwellings, dwelling units, rooming units, or parts thereof. Except for emergencies, or where

authorized by other law, or for the convenience of the occupant or owner, such inspections shall be made between the hours of 7 am and 9 pm.

(3) The owner, the operator and the occupant shall give the inspector free access to the structures, equipment, exterior property, premises, rooming houses, bed and breakfast, dwellings, dwelling units, rooming units, or parts thereof for the purpose of such an inspection.

**(b) Enforcement.**

(1) Evidence of a violation of this Article discovered during such inspection shall not be used against the violator in either a criminal or civil proceeding except under the following conditions:

(i) Written notice of said violation shall be left with or mailed to the person responsible for correction of such violation or in the alternative such notice shall be posted in a conspicuous place upon the structures, equipment, exterior property, premises, rooming house, bed and breakfast, dwellings, dwelling units, rooming units, or parts thereof where the violation is discovered.

(ii) Said written notice states a specific and reasonable time within which such violation shall be eliminated; and

(iii) At the end of such time the violation has not been eliminated.

(2) Evidence of a violation of Sec 1.22 (i)(5) of this Article, Imminent Health and Safety Risk of Lead Poisoning, shall result in issuance of an immediate Stop Work Order.

(i) Written notice of stop work order shall be left with or mailed to the person responsible for correction of the imminent health and safety risk or in the alternative such notice shall be posted in a conspicuous place upon the structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof where the imminent health and safety risk is discovered.

(ii) Work shall not continue until such time as the imminent health and safety risk is addressed and approval to resume work is granted by the Erie County Commissioner of Health.

(3) Noncompliance or nonconformance; penalties. Noncompliance or nonconformance with any provision of this Article constitutes a violation punishable on conviction pursuant to the provisions of Article I of the Erie County Sanitary Code.

### **1.7 Definitions.**

(a) ACCESSORY STRUCTURE shall mean a structure not more than three stories high with separate means of egress, a building, the use of which is incidental to that of the main building and which is located on the same lot.

(b) APPROVED shall mean approved by the Erie County Commissioner of Health.

(c) BED AND BREAKFAST shall mean an owner occupied residence resulting from a conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than ten (10) transient lodgers, and containing not more than five bedrooms for such lodgers.

(d) CENTRAL HEATING SYSTEM shall mean a single system supplying heat to one or more dwelling unit(s) or more than one rooming unit(s).

(e) CONDITION CONDUCIVE TO LEAD POISONING shall exist when at least one of the following conditions exists:

- (1) Most dwellings in a designated area were constructed before 1960.
- (2) More than 20 percent of the dwellings in a designated area are dilapidated or deteriorating.
- (3) Lead hazards or children with elevated blood lead levels have been previously identified in the same building or the same area.
- (4) Paint or other similar surface-coating material containing lead in a condition accessible for ingestion or inhalation or where deterioration of the paint or other similar surface-coating material occurs or is likely to occur.
- (5) Other environmental conditions which may result in significant lead exposure.

(f) CONTAINMENT shall mean a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during a hazard reduction. Containment includes the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the work area.

(g) DETERIORATED PAINT shall mean any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(h) DWELLING shall mean any building or structure that contain one or more dwelling unit(s), rooming units, or bed and breakfast units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

(i) DWELLING UNIT shall mean a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(j) EGRESS, MEANS OF shall mean a continuous and unobstructed path of vertical and horizontal egress travel from any point in a building or structure to a public way. A means of egress consists of three separate and distinct parts: the exit access, the exit and the exit discharge.

(k) ERIE COUNTY COMMISSIONER OF HEALTH shall mean the Health Commissioner of Erie County, New York or his/her duly authorized representative or designee.



(l) EXIT ACCESS shall mean that portion of a means of egress system that leads from any occupied point in a building or structure to an exit.

(m) EXIT shall mean that portion of a means of egress system which is separated from other interior spaces of a building or structure by fire-resistance-rated construction and opening protectives as required to provide a protected path of egress travel between exit access and the exit discharge. Exits include exterior exit doors at ground level, exit enclosures, exit passageways, exterior exit stairs, exterior exit ramps and horizontal exits.

(n) EXIT DISCHARGE shall mean that portion of a means of egress system between the termination of an exit and the public way.

(o) EXIT, HORIZONTAL shall mean a path of egress travel from one building to an area in another building on approximately the same level, or a path of egress travel through or around a wall or partition to an area on approximately the same level in the same building, which affords safety from fire and smoke from the area of incidence and areas communicating therewith.

(p) EXTERIOR PROPERTY shall mean the open space on the premises and on adjoining property under the control of owners or operators of such premises.

(q) EXTERMINATION shall mean the control and elimination of insects, rodents, or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by application of pesticide(s), trapping or by another recognized and legal pest elimination methods approved by the local or State authority having such administrative authority.

(r) FAMILY shall mean one adult person plus one or more persons who are legally related to said person and residing in the same dwelling unit with said person.

(s) FRICTION SURFACE shall mean an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(t) GARBAGE shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, serving and consumption of food.

(u) GUEST shall mean any person who shares a dwelling unit in a nonpermanent status for not more than 30 days.

(v) HABITABLE SPACE shall mean a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

(w) HEATED WATER shall mean water supplied to a fixture at a temperature of not less than 120°F.

(x) HEPA VACUUM shall mean a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

(y) HOUSEHOLD shall mean a family and/or one or more unrelated persons, who share the same dwelling and use some or all of its cooking and eating facilities. It shall include servants and not more than two boarders.

(z) IMPACT SURFACE shall mean an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of window and door frames.

(aa) INDIVIDUAL SEWERAGE SYSTEM shall mean a system or piping, tanks or other facilities disposing of sewage or other liquid wastes into the soil.

(bb) INFESTATION shall mean the presence within or contiguous to a structure or premises of insects, rats, vermin or other pests.

(cc) KITCHEN shall mean any room used primarily for cooking or preparation of food and containing any or all of the following equipment; sink and/or other device for dishwashing, stove or other device for cooking, refrigerator or other device for cool storage of food. Where a room is used for cooking and preparation of food, but not primarily so used, kitchen shall mean that portion of such room which contains the above equipment and an area within three feet of such equipment.

(dd) LEAD HAZARD or LEAD BASED PAINT HAZARD shall mean any condition identified by approved lead testing that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects when ingested or inhaled.

(ee) LEAD SAFE WORK PRACTICES shall mean the method by which all lead hazard control activities are performed. This includes, but is not limited to, implementing those dust control and clean-up methods discussed in the EPA Renovation, Repair and Painting Rule or as approved by the Erie County Commissioner of Health. These work methods are intended to limit the exposure of workers and occupants to lead dust and debris during correction and control of lead hazards and during regular maintenance, painting or renovation performed in housing constructed prior to January 1, 1978. These methods include, but are not limited to:

(1) Interior Containment:

- (i) Removing all objects in the work area or covering all objects in the work area with plastic sheeting or other disposable impermeable material.
- (ii) Closing and covering all forced air HVAC ducts in the work area with plastic sheeting or other disposable impermeable material.
- (iii) Closing all windows in the work area.
- (iv) Covering the floor surface, including installed carpet, in the work area with taped-down plastic sheeting or other disposable impermeable material.

(2) Exterior Containment:

- (i) Covering the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.
- (ii) Closing all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.
- (iii) Taking additional precautions in containing the designated work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties, as needed.
- (iv) Avoiding working in high winds whenever possible to keep dust and debris from migrating from designated work area to adjacent properties.

(3) General Minimization of Exposure to Lead Dust and Debris:

- (i) Closing and sealing all doors in the work area. Doors within the work area that must be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through, while confining dust and debris to the work area.
- (ii) Wet scraping of deteriorated painted surfaces.
- (iii) Thorough cleaning, including HEPA vacuuming and wet cleaning of work area, to remove any dust residue.
- (iv) All personnel, tools, and other items, including the exterior of containers of waste, must be free of dust and debris when leaving the work area.

(ff) LET FOR OCCUPANCY OR LET shall mean to permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming house, rooming unit, bed and breakfast, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

(gg) MEANING OF CERTAIN WORDS. Whenever the words "Dwelling", "dwelling unit", "bed and breakfast", "rooming house", "rooming unit", "premises", "structure" are used in this Article, they shall be construed as though they were followed by the words

“or any part thereof.” Words used in the singular include the plural, and the plural the singular, the masculine gender includes the feminine and the feminine the masculine.

(hh) MULTIPLE DWELLING shall mean any dwelling containing more than two dwelling units or more than four roomers.

(ii) NOXIOUS WEED(S) shall mean any living stage, such as seeds and reproductive parts, of any parasitic or other plant of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation, or the fish or wildlife resources of the United States or the public health.

(jj) NUISANCE (a.k.a. PUBLIC NUISANCE, PUBLIC HEALTH NUISANCE) shall mean whatever is dangerous to human life or detrimental to health.

(kk) OCCUPANCY shall mean the purpose for which a building or portion thereof is utilized or occupied.

(ll) OCCUPANT shall mean any individual living or sleeping in a building, or having possession of a space within a building; except that in dwelling units a guest will not be considered an occupant.

(mm) OPERATOR shall mean any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

(nn) OWNER shall mean any person, agent, operator, firm or corporation having legal or equitable interest in the property; or recorded in the official records of the state, County or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

(oo) PERSON shall mean an individual, heirs, executors, administrators or assigns, and also includes firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

(pp) PLUMBING shall mean and include all of the following supplied facilities and equipment; gas pipes, gas burning equipment, water pipes, garbage disposal units, waste pipes, water closets, toilet rooms, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.

(qq) PRIVACY shall mean the ability of a person or persons to carry out an activity without interruption or interference, either by sight or sound, by persons outside of the household.

(rr) PREMISES shall mean a lot, plot or parcel of land, an easement or public way, including any structure thereon.

(ss) PUBLIC WAY shall mean a street, alley or other parcel of land open to the outside air leading to a street, that has been deeded, dedicated or otherwise permanently appropriated to the public for public use and which has a clear width and height of not less than 10 feet.

(tt) RODENT HARBORAGE shall mean any place where rodents can live, nest, hide or seek shelter.

(uu) RAT PROOFING shall mean a form of construction which will prevent the ingress or egress of rats to or from a given space or building, or gaining access to food, water or harborage. It consists of the closing and keeping closed of every opening in foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs, sidewalk gratings, sidewalk openings and other places that may be reached and entered by rat climbing, burrowing or other methods, by the use of materials impervious to rat gnawing or by other methods approved by the Erie County Commissioner of Health.

(vv) REFUSE shall mean all putrescible and nonputrescible solids (except body wastes) including garbage, rubbish, ashes and dead animals.

(ww) REFUSE CONTAINER shall mean a watertight container that is constructed of metal, or other durable material impervious to rodents, that is capable of being serviced without creating unsanitary conditions, or such other containers approved by the Erie County Commissioner of Health. Openings into the container such as covers and doors shall be tight fitting.

(xx) RENOVATION shall mean the modification of any existing structure, or portion thereof, which results in the disturbance of painted surfaces. The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, window replacement, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces.

(yy) ROOMING UNIT shall mean any room or group of rooms forming a single habitable unit occupied or intended to be occupied or living and sleeping, but not for cooking or eating purposes.

(zz) ROOMING HOUSE shall mean a building, other than a hotel or motel, arranged or occupied for lodging in rooming units, with or without meals, for compensation and not occupied as a one - or two-family dwelling.

(aaa) RUBBISH shall mean combustible and non-combustible waste materials, except garbage; the term shall include the residue from burning wood, coal, coke and other combustible materials, paper rags, cartons, boxes, wood, excelsior, rubber, mineral matter, glass, crockery, and dust and other similar materials; this term shall also include discarded, abandoned or stored refrigerators.

(bbb) SAFETY shall mean the condition of being reasonably free from danger and hazards which may cause accidents or disease.

(ccc) SEWERAGE SYSTEM shall mean pipe lines or conduits, pumping stations and force mains, and all other constructions, devices and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(ddd) STRUCTURE shall mean that which is built or constructed or a portion thereof.

(eee) SUPPLIED shall mean paid for, furnished, provided by, or under the control of the owner or operator.

(fff) TENANT shall mean a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

(ggg) TOILET ROOM shall mean a room containing a water closet or urinal but not a bathtub or shower.

(hhh) WASTE shall mean the discharge from any fixture, appliance, area or appurtenance that does not contain fecal matter.

(iii) WET SCRAPING or WET SANDING shall mean a process of removing loose paint in which the painted surface to be scraped or sanded is kept wet by misting the surface with water to minimize the dispersal of paint chips and airborne dust.

(jjj) WORK AREA shall mean the designated area that is established to contain the dust and debris generated by correction of lead hazards or by routine maintenance, painting or renovation in housing constructed prior to January 1, 1978.

(kkk) WORK PLAN or LEAD-BASED PAINT HAZARD REDUCTION PLAN shall mean the specific methods, including interim controls and component replacement, proposed

to reduce or eliminate human exposure to lead-based paint hazards identified at a dwelling and to prevent exposure to the dust and debris generated by routine maintenance, painting or renovation in housing constructed prior to January 1, 1978.

## **RESPONSIBILITIES OF OWNERS AND OCCUPANTS**

**1.8 Occupancy and letting.** No owner or other person shall occupy or let to another person occupy any vacant structure, rooming house, rooming unit, bed and breakfast unit, dwelling or dwelling unit unless it and the premises are clean, sanitary, fit for human occupancy, and comply with the requirements of this Article and all applicable laws.

**1.9 Owner to maintain in a clean and sanitary condition.** Every owner of a rooming house, bed and breakfast or a dwelling containing two or more dwelling units shall maintain in a clean and sanitary condition the shared or public areas of the rooming house, bed and breakfast or dwelling and premises thereof. Owner shall secure vacant buildings and/or structures by boarding, blocking, locking or otherwise protecting to prevent entry by unauthorized individuals.

**1.10 Occupant to maintain in a clean and sanitary condition.** Every occupant of a premises, structure, rooming unit, dwelling or dwelling unit shall maintain in a clean and sanitary condition those parts of the rooming house, rooming unit, bed and breakfast, dwelling, dwelling unit and premises thereof that he occupies and controls.

**1.11 Occupant to dispose of rubbish.** Every occupant of a structure, building, bed and breakfast, rooming house, rooming unit, dwelling or dwelling unit shall store and dispose of all his rubbish in a clean, sanitary and safe manner.

**1.12 Occupant to dispose of garbage.** Every occupant of a structure, building, bed and breakfast, rooming house, rooming unit, dwelling or dwelling unit shall dispose of and store all his garbage or any other organic waste which might provide food for insects, rodents or any other pest, in a clean, sanitary and safe manner. Garbage shall not be allowed to accumulate. Rodent-proof, insect-proof, watertight refuse containers shall be used for storage pending collection. The lid of the refuse container shall be on the container at all times, including when at curb pending collection.

**1.13 Refuse Containers to be provided for rubbish and garbage.** Every owner of a premises, structure, building, rooming house, bed and breakfast, or dwelling shall supply adequate facilities or refuse containers for the sanitary and safe storage and/or disposal of rubbish and garbage, unless otherwise agreed to in writing by the lessee. Such containers shall be in proper working condition, undamaged and rodent-proof. The maintenance and upkeep of the container shall be the owners and/or occupants responsibility.



**1.14 Responsibility for extermination.** Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises. Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonable insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in the rooming house, bed and breakfast, or two or more of the dwelling units in any dwelling, or in the shared or public parts of any rooming house, bed and breakfast or dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

**1.15 Rodent control**

(a) Every owner and/or occupant of a premises, structure, building, bed and breakfast, rooming house, rooming unit, dwelling or dwelling unit shall store and dispose of accumulated rubbish, boxes, lumber, scrap metal, or any other materials in such a manner as to prevent rodent harborage in or about any premises, structure, building, bed and breakfast, rooming house, rooming unit, dwelling or dwelling unit. Materials shall be stacked neatly in piles elevated to a level high enough to permit effective cleaning.

(b) All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After

extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

(c) Every owner or occupant of a dwelling or dwelling unit shall not store, place, or allow to accumulate any materials that may serve as food or harborage for rodents in a site accessible to rodents.

(d) No person shall feed in the open any domestic or wild fowl, birds or animals other than in a suitable container and in such a manner so as to prevent scattering of food upon the ground or ground level which can or will provide food for rodents, insects, vermin or other pests. If an area is deemed infested with rodents, insects, vermin or other pests by the Erie County Commissioner of Health, all bird feeding shall be ceased until the area is no longer deemed infested with rodents, insects, vermin or other pests.

(e) If an area is deemed infested with rodents, insects, vermin or other pests by the Erie County Commissioner of Health, all such premises and immediate exterior property shall be maintained free from weeds or plant growth in excess of 10 inches, so as to prevent rodent harborage. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however this term shall not include cultivated flowers or gardens.

(f) Property Demolition. If a structure is scheduled for demolition, proper extermination should be performed prior to the demolition of the structure. The

structure must be inspected post extermination and be deemed rodent free by the Erie County Commissioner of Health or his/her designee prior to the demolition.

**1.16 Occupant's responsibility as to supplied fixtures and facilities.** Every occupant of a dwelling unit or rooming unit shall keep all supplied fixtures and facilities therein in a clean, sanitary and operable condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.

**1.17 Owner to maintain property free of standing water,** Every owner of any premises, structure, building or dwelling shall keep the premises graded and maintained to prevent the accumulation of standing water, or within any structure, such as swimming pools, ornamental ponds or similar located thereon.

(a) Any structure designed to hold water, such as a swimming pool, ornamental pond or similar must be designed, constructed, operated and maintained to prevent the breeding of insects.

**1.18 Nuisances.** All complaints regarding what is dangerous to human life or detrimental to health shall be received and investigated. The Erie County Commissioner of Health or his/her designee may enter upon or within any place or premises where nuisances or conditions dangerous to life and health or which are the cause of nuisances existing elsewhere are known or believed to exist.

## MINIMUM STANDARDS FOR BASIC EQUIPMENT AND FACILITIES

1.19 **Basic equipment and facilities required for dwelling or dwelling unit occupied or let for living, sleeping, cooking or eating.** No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, rooming house, rooming unit, bed and breakfast, for the purposes of living, sleeping, cooking or eating therein, which does not comply with the following requirements:

(a) **Kitchen requirements.** Every dwelling unit shall have a room or portion of a room in which food may be prepared and/or cooked and which room shall have adequate floor area available for occupant use and be equipped with the following.

(1) A kitchen sink in good working condition and properly connected to a water supply system which is approved by the Erie County Commissioner of Health and which provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to a sewerage system or individual sewerage system approved by the Erie County Commissioner of Health.

(b) **Water closet requirements.** Within every dwelling unit there shall be a non-habitable room which affords privacy to a person within said room and which is equipped with a flush water closet in good working condition. Said flush water

closet shall be connected to a water system that at all times provides an adequate amount of running water under pressure to cause the water closet to be operated properly and shall be connected to a sewerage system or individual sewerage system which is approved by the Erie County Commissioner of Health.

- (c) **Lavatory sink requirements.** Within every dwelling unit there shall be a room which affords privacy to a person within said room which is equipped with a lavatory sink. Said lavatory sink may be in the same room as the flush water closet or in another room; provided that, if located in a room other than the one containing the flush water closet, the water closet shall be located in close proximity to the door leading directly into the room in which said lavatory sink is located. The lavatory sink shall be in good working condition and properly connected to a water supply system which is approved by the Erie County Commissioner of Health and which provides at all times an adequate amount of heated and unheated, running water under pressure, and which is connected to a sewerage system or individual sewerage system approved by the Erie County Commissioner of Health.
- (d) **Bathtub or shower requirements.** Within every dwelling unit there shall be a room which affords privacy to a person within said room and which is equipped with a bathtub or shower in good working condition. Said bathtub or shower may be in the same room as the flush water closet or in another room and shall

be properly connected to a water supply system which is approved by the Erie County Commissioner of Health and which provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to a sewerage system or individual sewerage system approved by the Erie County Commissioner of Health.

(e) **Smoke Alarms.** Single- and multiple-station smoke alarms shall be installed in the following locations:

- (1) In each sleeping room or rooming unit
- (2) Outside of each separate sleeping area in the immediate vicinity of the bedrooms or rooming units.
- (3) On each additional story of the dwelling, including basements and cellars but not including crawl spaces and uninhabitable attics.

All smoke alarms shall be listed and installed in accordance with manufacturer's specifications and any applicable laws or codes. Maintenance of power source shall be the property owner's responsibility. Required smoke alarms shall not be removed or disabled, except for replacement, service or repair purposes.

#### **MINIMUM STANDARDS FOR LIGHT AND VENTILATION**

**1.20 Light and ventilation required for rooming house, rooming unit, bed and breakfast, dwelling or dwelling unit occupied or let for living purposes. No**

person shall occupy as owner, occupant or let to another for occupancy any rooming house, rooming unit, bed and breakfast, dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

**(a) Light and Ventilation.**

**(1) Light.**

- (i) Every habitable space shall have at least one window facing directly to the outdoors or to a court.
- (ii) Every public hall and stairway in a rooming house or multiple dwelling shall be adequately lighted by natural or electric light at all times. Every public hall and stairway in structures containing not more than two dwelling units shall be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting.
- (iii) All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe occupancy of the space and utilization of the appliances, equipment and fixtures.

**(2) Ventilation**

- (i) Every habitable space shall have at least one openable window.
- (ii) Screening. During that portion of the year when there is a need for protection against mosquitoes, flies and other flying insects, every

window opening directly from a rooming unit, bed and breakfast unit, or dwelling unit to outside space shall have supplied properly fitting screens.

(b) **Electric facilities.** Every occupied building shall be provided with an electrical system. All equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

(1) **Receptacles.** Every habitable space in a rooming house, bed and breakfast unit, or dwelling shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter. Every lavatory or bathroom shall contain at least one receptacle. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection.

(2) Every water closet compartment, toilet room, bathroom, laundry room, furnace room, boiler room and public hall shall contain at least one ceiling or wall type electric lighting fixture.

## **MINIMUM THERMAL STANDARDS (HEATING AND COOLING)**

1.21 **Thermal requirements for occupying or letting, for living purposes.** No person shall occupy as owner, occupant or let to another for occupancy any rooming house,



rooming unit, bed and breakfast, dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

(a) **Heating Facilities.** Every rooming house, bed and breakfast, or dwelling shall have heating facilities which are properly installed, and are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable spaces, bathrooms, toilet rooms and water closet compartments in every dwelling unit to maintain 68 degrees Fahrenheit as noted in (b) below.

(b) **Minimum temperature.** The owner is responsible for furnishing the heat unless the rental agreement provides otherwise. Between September 15<sup>th</sup> and May 31<sup>st</sup>, where the owner furnishes the heat, the temperature shall be maintained at not less than 68 degrees Fahrenheit at a distance of 18 inches above floor level and three feet from an outside wall in all habitable spaces, bathrooms, toilet rooms and water closet compartments.

(c) **Space and water heaters.**

(1) Unvented flame space heaters and space heaters without back-draft diverters and automatic controls are prohibited; portable electric heaters, approved under the appropriate local or State electrical and/or fire prevention code are acceptable (where they meet the provisions of subdivision (a) of this section). Where there is no such local or State code, portable electric heaters meeting the standards of the National Electrical Code, as approved by the Underwriter Laboratories, Inc. and the Erie County Commissioner of Health are acceptable. Gas-fueled space or water heaters and accessories or controls shall be properly installed and be of an approved type.

Exception: Unvented flame space heaters shall be permitted if they are installed and maintained properly, used as a secondary source of heat, a carbon monoxide detector is installed in the same room as the unvented flame space heater, and additional carbon monoxide detector(s) is/are installed in close proximity to all sleeping rooms. Maintenance of power source shall be the property owner's responsibility. Required carbon monoxide alarms shall not be removed or disabled, except for replacement, service or repair purposes.

(2) No fuel burning device shall be located in any water closet compartment, toilet room, bathroom or sleeping room.

## **GENERAL REQUIREMENTS RELATING TO SAFE AND SANITARY PROPERTY MAINTENANCE**

**1.22 Maintenance and installation requirements for rooming house, rooming unit, bed and breakfast, dwelling and dwelling unit occupied or let for living purposes.** No person shall occupy as owner, occupant or let to another for occupancy any rooming house, rooming unit, bed and breakfast, dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

(a) **General.** Every foundation, roof and exterior wall, door, skylight and window shall be reasonably weather-tight, watertight, and damp-free and shall be kept in sound condition and good repair. Floors, interior walls, doors and ceilings shall be sound and in good repair. All exterior wood surfaces other than decay resistant woods shall be protected from the elements and decay by paint or other protective covering or treatment. Lead based and other toxic paints and materials shall not be used on any surface. Walls shall be capable of affording privacy for the occupants. Every premise shall be maintained in a clean, sanitary and safe condition. The presence of noxious weeds shall be prohibited.

(1) Maintenance in housing constructed prior to January 1, 1978. Whenever routine maintenance, painting or renovation is performed in housing constructed prior to January 1, 1978, lead safe work practices approved by the Erie County Commissioner of Health shall be followed. Lead safe work practices include (but are not limited to):

(i) Interior Containment of dust and debris in designated work area. Dust and debris shall not migrate outside of designated work area or contaminate other areas of the dwelling.

(ii) Exterior containment of dust and debris in designated work area. Dust and debris shall not migrate outside the designated work area or contaminate adjacent property.

(iii) General Minimization of Exposure to Lead Dust and Debris:

(a) Wet scraping of deteriorated painted surfaces.

(b) Thorough cleaning, including HEPA vacuuming and wet cleaning of designated work area, to remove any dust residue.

(b) **Windows, doors and hatchways.** Every window, exterior door and basement hatchway or similar devices, shall be kept rodent-proof and reasonably watertight and weather-tight, and shall be kept in sound working condition and good repair. All exterior doors shall have properly functioning locking devices that shall be operable from the interior side of the door. All deadbolt type locking mechanisms shall be of the thumb latch style or equivalent on the inside of the exterior door(s), a key operated style on both sides is not acceptable.

(1) Maintenance of friction and impact surfaces in housing constructed prior to January 1, 1978. Whenever routine maintenance, painting, renovation, repair or replacement of friction and impact surfaces, including but not limited to certain window and door components, is performed in housing constructed prior to January 1, 1978, lead safe work practices, as approved by the Erie County Commissioner of Health, shall be followed. These work methods are intended to limit the exposure of workers and occupants to lead dust and debris.

(c) **Prevent entrance of rodents.** Every window located at or near ground level used or intended to be used for ventilation, and every other opening located at or near ground level which might provide an entry for rodents, shall be supplied with adequate gauge screen or such other devices as will effectively prevent their entrance.

(d) **Safety.**

(1) Stairways, decks, porches and balconies. Every stairway, deck, porch and balcony, and all appurtenances attached there to, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads

(i) Handrails required. Handrails shall be provided on at least one side of each stairway with three or more risers at an approved height.

(ii) Guards required. Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guards not less than 36 inches in height. Open sides of stairs with a total rise of more than 30 inches above the floor or grade below or more than four risers shall have guards.

(iii) Maintenance of friction and impact surfaces in housing constructed prior to January 1, 1978. Whenever routine maintenance, painting, renovation, repair or replacement of friction and impact surfaces, including but not limited to porch floors, stair treads and stair risers, is performed in housing constructed prior to January 1, 1978, lead safe work practices, as approved by the Erie County Commissioner of Health, shall be followed. These work methods are intended to limit the exposure of workers and occupants to lead dust and debris.

(e) **Plumbing fixtures and water and waste pipes.** Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition.

**(f) Floors for toilet rooms, water closet compartments, bathrooms and**

**kitchens.** Every toilet room, water closet compartment, bathroom and kitchen floor surface and baseboard shall be constructed and maintained so as to be reasonably impervious to water so as to permit such floor to be easily kept in a clean and sanitary condition.

**(g) Construction, installation and maintenance.** Every plumbing fixture, pipe, chimney, flue and smoke pipe and every other facility, piece of equipment, or utility which is present in a rooming house, rooming unit, bed and breakfast, dwelling or dwelling unit, or which is required under this Article, shall be constructed and installed in conformance with the applicable local, State or national codes and shall be maintained in satisfactory working condition.

**(h) Egress.** A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way.

**(i) Lead in Housing.**

**(1) Presumption**

For all residential properties, pre-school facilities or child care facilities constructed prior to January 1, 1978, it is presumed that the paint on any structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof is lead based paint.

(i) The existence of conditions conducive to lead poisoning on any structures, equipment, exterior property, premises, dwellings,

dwelling units, or parts thereof is hereby declared to constitute a Nuisance.

(2) Owner's Opportunity to Rebut Presumption

The owner of any structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof constructed prior to January 1, 1978, may apply to the department to have such structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof exempted from the presumption contained in section 1.22 (i) (1) when lead based paint testing results demonstrate that no lead paint is present on any structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof.

(i) Lead based paint testing must be performed by an EPA certified lead-based paint risk assessor or lead-based paint inspector and the testing methodology must be approved by the Erie County Commissioner of Health.

(3) Owner's Duty to Correct

(i) The owner of any structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof shall take action to prevent the occurrence of conditions conducive to lead poisoning and shall expeditiously correct an identified or presumed lead hazard using Lead Safe Work Practices, as approved by the Erie County Commissioner of Health. These work methods are intended to limit the exposure of

workers and occupants to lead dust and debris during correction and control of lead hazards and during regular maintenance, painting or renovation performed in housing constructed prior to January 1, 1978.

(a) All correction and control of lead hazards and regular maintenance, painting or renovation performed in housing constructed prior to January 1, 1978 must be performed by an individual certified by the EPA or who possesses other lead safe certification as approved by the Erie County Commissioner of Health.

(ii) Structures, equipment, exterior property, premises, dwellings, dwelling units under Notice by the Erie County Department of Health for Correction of Conditions Conducive to Lead Poisoning.

(a) A work plan or lead-based paint hazard reduction plan must be submitted and approved by the Erie County Commissioner of Health prior to commencement of any work.

(b) Proof of EPA or other approved lead safe certification for the individual performing the corrections must be provided to the Erie County Commissioner of Health prior to the commencement of any work and shall be included as part of the work plan or lead-based paint hazard reduction plan.

(c) All identified or presumed lead hazards shall be corrected within 45 days of receiving Notice or as agreed upon with the Erie County Commissioner of Health.



(d) Post remediation dust sampling, as approved by the Erie County Commissioner of Health shall be performed when corrections are complete. The post remediation dust sampling report shall be submitted to the Erie County Department of Health within ten business days of its completion.

(iii) If conditions conducive to lead poisoning are caused in whole or in part by an underlying defect, the owner of the structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof shall correct the underlying defect to prevent a further lead hazard.

(4) Prohibited paint removal methods:

(i) Open flame burning or torching.

(ii) Machine sanding, grinding, needle gunning or blasting with power tools and equipment not equipped with a shroud and high efficiency particulate air exhaust control (HEPA) vacuum attachment.

(iii) Abrasive blasting or sandblasting without HEPA local exhaust control.

(iv) Heat guns operating above 1,100 degrees Fahrenheit, or those that operate high enough to char the paint.

(v) Dry sanding or dry scraping.

**Note:** Four exceptions to this prohibition are:

(1) Dry scraping in conjunction with heat guns;

(2) Dry scraping within 1.0 ft (0.20 m.) of electrical outlets;

(3) Treating deteriorated paint spots that total no more than 2 ft.<sup>2</sup>

(0.2 m<sup>2</sup>) in any one interior room or space; or

(4) Treating deteriorated paint spots that total no more than 20 ft.<sup>2</sup>  
(2.0 m<sup>2</sup>) on exterior surfaces.

- (vi) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at *16 CFR 1500.3*, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration at *29 CFR 1010.1200* or *1926.59*, as applicable to the work.
- (vii) Power washing, unless approved by the Erie County Commissioner of Health.

(5) Imminent Health and Safety Risk of Lead Poisoning. No person shall perform regular maintenance, painting, renovation or repair in housing constructed prior to January 1, 1978, or on any structures, equipment, exterior property, premises, dwellings, dwelling units, or parts thereof where lead testing has confirmed lead based paint hazards, in such a manner as to create or exacerbate a lead hazard or condition conducive to lead poisoning.

- (i) Stop Work Order. Upon Notice by the Erie County Department of Health, any and all such work shall immediately cease and desist. Work shall not continue until such time as the imminent health and safety risk is addressed and approval to resume work is granted by the Erie County Commissioner of Health.

**1.23 Discontinuance of services, facilities, equipment or utilities.** No owner, operator or occupant shall cause or be responsible for causing any service, facility, equipment or utility which is required under this Part to be removed from or shut off from or discontinued for any occupied rooming house, rooming unit, bed and breakfast, dwelling or dwelling unit let or occupied by him; except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is either not reasonably avoidable or is approved by the Erie County Commissioner of Health.

#### **MAXIMUM DENSITY, MINIMUM SPACE, USE AND LOCATION REQUIREMENTS**

**1.24 Specification of requirements.** No person shall occupy or let to be occupied any rooming house, rooming unit, bed and breakfast, dwelling or dwelling unit, for the purpose of living therein, unless there is compliance with the applicable State and Local Codes:

- (a) **Habitable space below grade.** No space located partially or totally below grade shall be used as a habitable room unless:
- (1) The floor and those portions of the walls below grade are of water-proof and damp-proof construction.
  - (2) The minimum window area is equal to at least 10% of the total floor area of the habitable room, with at least 40% of the window space being

openable to allow for egress. and is located entirely above the grade of the ground adjoining such window area, or, if windows are located wholly or partly below grade, there be constructed a properly drained window well the ground area of which is equal to or greater than the area of the masonry opening for the window, the bottom of which is below the top of the impervious masonry construction under this window, with the minimum, horizontal distance at a right angle from any point of the window wall being equal to or greater than the vertical depth of the window well, as measured from the bottom of the masonry opening for the window well, as measured from the bottom of the masonry opening for the window.

- (b) **Access to bathrooms, toilet rooms, water closet compartments and sleeping rooms.** No dwelling or dwelling unit containing two or more sleeping rooms shall have such room arrangements that access to a bathroom, toilet room or water closet compartment intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room; nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or a bathroom or water closet compartment.

## **ROOMING HOUSES and BED AND BREAKFASTS**

1.25 **General.** No person shall operate a rooming house, or shall occupy or let to another for occupancy any rooming unit or sleeping room in any rooming house or bed and breakfast, except in compliance with the provisions of this Article. No owner or other person shall occupy or let to another person any vacant rooming unit or sleeping unit unless it is clean, sanitary, and fit for human occupancy, and complies with all applicable legal requirements.

### 1.26 **Permit.**

(a) Permit required.

(1) No person shall operate any rooming house or bed and breakfast or cause or allow the same to be occupied without a permit to do so from the Erie County Commissioner of Health.

(2) Application for a permit to operate a rooming house or bed and breakfast shall be made to the Erie County Commissioner of Health, on a form prescribed by the Erie County Commissioner of Health, by the person who will operate the rooming house or bed and breakfast. Application for a permit to operate a rooming house or bed and breakfast shall be made at least 30 days before the first day of proposed operation of such rooming house subsequent to its construction or conversion or prior to the expiration of an existing permit. An application shall be filed for a new permit, following the revocation of a permit, 30 days before the proposed resumption of operation

of the rooming house or bed and breakfast. In the event of a change of operator of a rooming house or bed and breakfast, the new operator shall apply for a permit before the change is affected. An application for a permit shall be filed before a change in the name of a rooming house or bed and breakfast is made.

(3) The Erie County Commissioner of Health shall issue a permit for the operation of a rooming house or bed and breakfast if he/she finds that the rooming house or bed and breakfast will not be a potential source of danger to the general public's health and safety or to the health or safety of the occupants of the rooming house or bed and breakfast, and if he/she finds that the rooming house's or bed and breakfast's proposed operation thereof conforms or will conform to the requirements of this Article. The permit issued for the operation of the rooming house or bed and breakfast shall expire upon a change of the operator of the rooming house or bed and breakfast, upon the date stipulated by the Erie County Commissioner of Health or upon the revocation of the permit. Permits for a rooming house or bed and breakfast shall be issued for a period of not more than two years from the date of issue.

(4) The permit shall not be transferable or assignable.

(5) The permit may be revoked by the Erie County Commissioner of Health if he/she finds that the rooming house or bed and breakfast for which the permit

was issued is maintained, operated or occupied in violation of law or this Article. A permit may also be revoked upon the request of the permittee or upon abandonment of operation.

(6) The permit for operation of a rooming house or bed and breakfast shall be posted in a conspicuous place on the premises.

(7) The Erie County Commissioner of Health may establish procedures for the exchange of information with other State or local governmental agencies having responsibility for making health and safety inspections of buildings, including rooming houses and bed and breakfasts, and may utilize the information provided by any such agency in making a determination regarding the issuance of a permit required by this Article.

(b) **Right to a hearing.** Before a permit may be modified, suspended or revoked, the permittee shall have the opportunity to be heard, except that a permit may be temporarily suspended pending a hearing.

**1.27 Requirements for toilet room, water closet, lavatory and bathtub or shower in a rooming house and bed and breakfast.**

(a) **Rooming House.** At least one flush water closet, lavatory basin and bathtub or shower, properly connected to a water and sewerage system approved by the

Erie County Commissioner of Health and in good working condition, shall be supplied for each eight persons or fraction thereof residing within a rooming house, including members of the operator's family wherever they share the use of the said facilities, except that in a rooming house where rooms are let only to males, flush urinals may be substituted for not more than one half of the required number of water closets greater than one.

(1) Accessibility. All such facilities shall be located within the dwellings as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities.

(2) Hot and cold water. Every lavatory basin and bathtub or shower shall be supplied with heated and unheated water at all times.

(3) Facilities in basements. No such facilities shall be located in a basement, except by written approval of the Erie County Commissioner of Health.

(b) **Bed and breakfast.** At least one flush water closet, lavatory basin and bathtub or shower, properly connected to a water and sewerage system or individual sewerage system approved by the Erie County Commissioner of Health and in good working condition, shall be supplied for each eight transient lodgers capable of accommodating the facility.

(1) Accessibility. All such facilities shall be located within the dwellings as to be reasonably accessible from a common hall or passageway to all persons



sharing such facilities.

(2) Hot and cold water. Every lavatory basin and bathtub or shower shall be supplied with heated and unheated water at all times.

(3) Facilities in basements. No such facilities shall be located in a basement, except by written approval of the Erie County Commissioner of Health.

### 1.28 **Cooking and dining.**

(a) Cooking. Cooking shall be defined as the act of preparing food for eating by the application of heat. Cooking in a rooming unit or sleeping room shall be prohibited.

(b) No communal cooking and dining.

(1) Communal cooking and dining facilities in a rooming house shall be prohibited, except as approved by the Erie County Commissioner of Health in writing.

(2) Dining facilities in a bed and breakfast are allowed, communal cooking shall be prohibited, all cooking must be performed by the operator of the bed and breakfast or a licensed caterer in approved kitchen facilities.

Breakfast only may be served.

(i) If other meals are offered or provided, then New York State Sanitary Code Part 14-1 will apply in full and a permit to operate a food service establishment shall be required.

1.29 **Locks for doors.** Rooming unit and bed and breakfast doors shall have operating locks to insure privacy. All locking devices shall be operable from the interior side of

the door. All deadbolt type locking mechanisms shall be of the thumb latch style or equivalent on the inside of the door, a key operated style on both sides is not acceptable.

1.30 **Bed linen and towels.** The operator of every rooming house and bed and breakfast shall provide clean bed linen and towels therein at least once each week, prior to the letting of any room to any occupant and upon change in occupancy of a room. The operator shall be responsible for the maintenance of all supplied bedding, bed linens and towels in a clean and sanitary manner.

1.31 **Floor space for sleeping rooms.** Every room occupied for sleeping purposes by one person shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of floor space for each occupant thereof.

1.32 **Egress.**

(a) Every rooming unit shall have two or more safe, unobstructed means of egress leading to safe and open space at ground level, as required by law. A sprinkler system satisfactory to the Erie County Commissioner of Health may be substituted in lieu of one means of egress.

(b) Every bed and breakfast dwelling unit shall have a means of egress in accordance with the Fire Code of New York State.

ARTICLE X  
MEDICAL SERVICES

Section 1: Abortions

- (a) Abortions on patients with a gestation up to and including twelve weeks as determined by a qualified physician may be performed on an ambulatory basis if the patient's medical condition permits.
- (b) The following patients shall be treated on an inpatient basis for the abortion:
  - (1) Patients pregnant more than twelve weeks as determined by a qualified physician.
  - (2) Patients having such medical, surgical, gynecological or psychiatric conditions or complications as specified in the rules of the chief of staff of the abortion service and filed with the New York State Department of Health and the Erie County Regional Office thereof.

ARTICLE XIV

CODE FOR ERIE COUNTY AIR POLLUTION CONTROL

(Transferred to County Department of Environmental Quality Codes)

## ARTICLE XV

### VALIDITY

#### Section 1: Unconstitutionality Clause.

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

## ARTICLE XVI

### EFFECTIVE DATE

#### Section 1: When to Take Effect.

Every regulation of the Sanitary Code, unless otherwise specifically stated, shall take effect on the 15<sup>th</sup> day of June, 1948.

## ARTICLE XVII

### COIN-OPERATED DRY CLEANING MACHINE INSTALLATIONS

(Adopted on December 4, 1962, Effective January 1, 1963)

#### Section 1: Prior Approvals

##### (a) Plan Filing

No persons, firms, partnership or corporation shall install or operate a coin-operated dry cleaning machine or machines, or make changes in any existing installations if such changes may affect health until plans and specifications in triplicate therefore shall first have been submitted to and received the approval of the Commissioner of Health.

##### (b) Instructions for Preparing Installation Plans

Plans shall show:

- (1) An outline of that portion of the building in which the coin-operated dry cleaning machines are to be installed.
- (2) Location of the dry cleaning machines.
- (3) Manufacturer and model number.
- (4) Layout in plan and elevation view of exhaust duct work. This should be drawn to scale and should show the ducts by double lines, supports, and the point of discharge out-of-doors.
- (5) Location and specifications of all general ventilating equipment including window or roof exhaust fans, supply fans, and local exhaust fans. Fan specifications must include manufacturer, type, design, size, capacity, static pressure, speed and motor horsepower. Means by which make-up air enters the building must also be shown.

The Erie County Sanitary Code is hereby amended by adding a new Article XXII thereto to read as follows:

## ARTICLE XXII-REGULATIONS OF TATTOO ARTISTS AND ESTABLISHMENTS

The following Article includes the amendments of 2005

### Purpose:

The act of tattooing is an invasive procedure which punctures the skin and injects a dye into the tissue just below the skin. The skin is the body's primary barrier to infectious agents and any procedure which compromises the integrity of this barrier increases the possibility of infection. In this age, with some diseases causing serious health problems, it is imperative to regulate both the person applying the tattoo and the facility and equipment used in this procedure. The art of tattooing has been in practice since early human history and it appears that if properly applied, this practice has minimal medical significance. Therefore, the purpose of this Article is to ensure that the conditions in the tattoo facility provide a safe and sanitary environment and that the person applying the tattoo has a basic knowledge of aseptic techniques.

### Section 1: Definitions

For the purpose of this Article, the following words and phrases when used herein shall be construed as follows:

- (a) Tattoo – The word "tattoo" shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.



- (b) Tattoo Establishment – The words “tattoo establishment” shall mean any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.
- (c) Tattoo Operator – The words “tattoo operator” shall mean any person who controls, operates, conducts or manages any tattoo establishment, whether actually performing the work of tattooing or not.
- (d) Tattoo Artist – The words “tattoo artist” shall mean any person who actually performs the work of tattooing.
- (e) Permanent makeup - The words “permanent makeup” shall mean to mark or color the skin by pricking in coloring matter so as to form indelible marks. For the purpose of this Article, whenever the word tattoo is used, it shall also apply to permanent makeup.
- (f) Permanent Makeup Establishment – The words “permanent makeup establishment” shall mean any room or space where permanent makeup is applied or any part thereof. For the purpose of this Article, whenever the words tattoo establishment are used, it shall also apply to permanent makeup establishment.
- (g) Permanent Makeup Operator – The words “permanent makeup operator” shall mean any person who controls, operates, conducts or manages any establishment where permanent makeup is applied, whether actually applying the permanent makeup or not. For the purpose of this Article, whenever the words tattoo operator are used, it shall also apply to permanent makeup operator.

- (h) Permanent Makeup Cosmetologist – The words “permanent makeup cosmetologist” shall mean any person who actually performs the work of applying permanent makeup. For the purpose of this Article, whenever the words tattoo artist are used, it shall also apply to permanent makeup cosmetologist.
- (i) Health Officer – The words “health officer” shall mean the Commissioner of the Erie County Health Department or a duly authorized representative.
- (j) Minor – the word “minor” shall mean any male under the age of eighteen (18) years and any female under the age of eighteen (18) years.
- (k) Health Hazard – The words “health hazard” shall mean a violation, combination of violations, condition or a combination of conditions identified by the health officer that can injure the person receiving a tattoo or the general public.

## Section 2: Artist Certification

- (a) No person except a duly licensed physician shall engage in the practice of tattooing or act as a tattoo artist unless he or she has a certificate issued by the health officer.
- (b) No operator of any tattoo establishment shall allow a tattoo artist to perform in the facility unless the tattoo artist is the holder of a valid certificate issued under this Article.
- (c) Any person desiring to engage in tattooing or act as a tattoo artist shall submit an application for certification to the health officer in the form prescribed by the

health officer, which will include a statement that the applicant has received a copy of this Article and has a working knowledge of its content.

- (d) The certificate holder shall be required to show evidence of knowledge of the provisions of this Article including an adequate knowledge of bacteriology and aseptic technique to assure that infection and contagious disease shall not be spread by tattooing practices. The health officer may require a written and/or verbal test to assure that the applicant meets minimum standards as determined by the health officer.
- (e) Certificates will expire on December 31 of each year. The Certification shall be renewed annually.
- (f) An annual fee as per the Erie County Fee Schedule shall be assessed on the recipient of a Certification. The certificate owner must be an employee of a certified tattoo facility prior to the issuance of a tattoo artist certificate. The certificate will indicate the certified facility to which the artist is assigned. The certified artist may apply tattoos only at the certified tattoo facility providing the artist has a certificate that indicates the artist is assigned to that facility. Should the artist wish to work in another certified tattoo facility, the artist must submit a new application to the health officer indicating his or her intentions to work in a different certified tattoo facility. The application must be received by the health officer at least twenty one (21) days prior to the move. The tattoo artist shall be assessed an administrative fee as per the Erie County Fee Schedule for every change. The tattoo artist may not apply tattoos at the new location until he or she has received a new certificate indicating the change in assignment. The tattoo

- artist may work in more than one certified facility as long as the artist has a valid certificate for each facility.
- (g) The registration certificate of the artist must be prominently posted in the public area of the facility where the artist is working.

### Section 3: Tattoo Establishment Registration

- (a) No person shall operate a tattoo establishment unless such person has registered such shop with the health officer and has received a registration certificate from the health officer.
- (b) No registration certificate shall be issued or renewed unless the shop has been inspected and found to be in compliance with the provisions of these Rules and Regulations.
- (c) The registration certificate must be prominently posted in the public area of the facility.
- (d) The registration certificate shall expire on December 31 of each year. The certificate shall be renewed annually.
- (e) An annual fee as per the Erie County Fee Schedule shall be assessed on the operator of the establishment.
- (f) Plans for new tattoo facilities or existing tattoo facilities that are to be extensively remodeled shall be submitted to the health officer. No constructions or remodeling shall take place until the health officer approves the plans.
- (g) Such plans and specifications shall include, at a minimum, the work room and areas, sinks, counters, storage areas, toilet facilities, sterilizing equipment area and the waiting room.

- (h) An application on a form approved by the health officer and a plan review fee as per the Erie County Fee Schedule shall be submitted along with the plans.

#### Section 4: General Physical Environment

- (a) The tattoo establishment must have adequate light and ventilation and all walls and ceilings shall be kept cleaned. Walls and ceilings are to be painted a light color.
- (b) The floor of the tattoo establishment shall be of impervious material. The floor shall be swept and wet mopped daily. Floors, walls or ceilings shall not be swept or cleaned while tattooing is in operation.
- (c) There shall be sufficient toilet, urinal, and hand washing facilities accessible to customers.
- (d) There shall be provisions for the proper and safe disposal of all types of waste products. Any material contaminated with blood must be stored in a puncture and leak proof container and disposed of in accordance with Federal, State and Local Laws and acceptable to the health officer.
- (e) The building and equipment shall be maintained in a state of good repair at all times. All parts of the establishment and its premises shall be kept clean, neat and free of litter, rubbish and materials not necessary to the operation of the facility.
- (f) Each tattoo establishment shall have a work room that may contain one or more tattoo stations where tattoos are applied. The work room must be separate and apart from the waiting room. Said work room shall be constructed so as to prevent contamination of the work room by activities

- or people in the waiting area. The construction could include a wall or partition or other construction acceptable to the health officer. This room shall not be used as a corridor for access to other rooms. Patrons or customers shall be tattooed only at a tattoo station in said work room.
- (g) Each tattoo station shall have a hand wash facility equipped with hot and cold running water, together with such sinks and basins as may be necessary.
  - (h) Each hand washing facility is to be provided with hand cleaning soap or detergent. Individual single service towels, warm air blowers or clean individual sections of continuous cloth are to be provided. Common towels are prohibited. Conveniently located waste receptacles are to be provided.
  - (i) Hand washing facilities, hand washing devices and related equipment are to be kept clean and in good repair.
  - (j) Adequate cabinets for the storage of instruments, dyes, pigments, carbon and stencils shall be provided for each artist and shall be maintained in a sanitary manner.
  - (k) An adequate number of work tables shall be provided for each tattoo artist. The surface of all work tables shall be constructed of a material which is smooth, light colored, non-absorbent, corrosive-resistant, and easily cleaned and sanitized.
  - (l) Live animals, with the exception of fish in aquariums and guide dogs accompanying blind persons, are prohibited from all areas of the tattoo facility.

#### Section 5: Records and Reporting Requirements.

- (a) There shall be proper records maintained by the operator of a tattoo establishment for each person receiving a tattoo.

- (b) A record of each patron shall be prepared prior to any procedure being performed and shall include the date on which the tattoo was applied, the name and signature, address and age of the patron, the design of the tattoo and its location on the body and the name of the tattoo artist who applied the tattoo.
- (c) The records shall be entered in ink or indelible pencil in a book kept solely for this purpose. This book shall be available at a reasonable time for examination by the health officer and records for each patron shall be preserved for at least three (3) years from the date of the tattoo. The signature of the patron shall be in the book.
- (d) The tattoo facility operator is required to keep a record of any complaint or unexpected complication associated with a tattoo applied in the operator's tattoo facility. Information concerning the complaint is to be kept as part of the required record for each person who received a tattoo.
- (e) Any tattoo facility operator having actual or constructive knowledge of the occurrence of a complication of a tattoo that resulted in the treatment by a physician or medical facility must be reported to the health officer within 24 hours. The report can be made in person or by telephone.

#### Section 6: Consent

- (a) It is unlawful to apply a tattoo to a minor.
- (b) It shall be the responsibility of the person applying the tattoo to assure that the person receiving the tattoo is not a minor.
- (c) Identification must be submitted for each person receiving a tattoo. Acceptable identification shall include any current and valid government issued identification

card that contains a picture and a date of birth of the person requesting a tattoo. Other forms of identification may be acceptable if specifically approved by the health officer.

- (d) A photocopy of the identification presented must be kept as part of the required record kept for each patron that is being tattooed.
- (e) It shall be unlawful for any tattoo artist to perform any tattooing on an individual who appears to be under the influence of drugs or intoxicating liquor.

#### Section 7: Procedures to be Followed in Tattooing.

- (a) There shall be printed or mimeographed instructions approved by the health officer given to each patron or customer on the risks involved in the tattoo requested and possible complications. It must also include the care of the skin after tattooing as a precaution to prevent infection.
- (b) A copy of these instructions shall also be posted in a conspicuous place in the tattoo shop, clearly visible to the person being tattooed.
- (c) Each tattoo artist must wear a clean outer garment.
- (d) No person with any disease in a communicable form or suspected of having such a disease shall engage in tattooing. Such diseases may include but shall not be limited to the acute illness phases of the common cold, influenza, tuberculosis, scabies, impetigo, syphilis, chicken pox, mumps, hepatitis, infection on hands or arms, sore throat or jaundice of the skin.
- (e) The health officer may require a certificate signed by a duly licensed physician stating that the person is free from communicable diseases before permission to resume tattooing is granted.



- (f) Before working on each patron, a tattoo artist shall clean his or her fingernails with an individual nail file and shall thoroughly wash and scrub his or her hands with warm running water, an approved soap, and an individual hand brush.
- (g) The artist shall not allow his or her hands to dry without the use of towel or other mechanical means.
- (h) That portion of the patron's skin to be tattooed shall be prepared by washing with warm water and an approved soap.
- (i) When it is necessary to shave the area to be tattooed, a new disposable razor shall be used. Once used on a patron, the razor must be disposed of. That portion of the patron's skin to be tattooed shall be washed again with warm water and an approved soap after the area was shaved.
- (j) Following the cleaning and/or shaving of the patron's skin, the tattoo artist shall again wash and scrub his or her hands as described in item (f) above.
- (k) The tattoo artist shall wear single service, disposable gloves when applying a tattoo. The gloves must be properly disposed of once they are used for a patron.
- (l) Before placing the design on the patron's skin, the tattoo artist shall treat the skin area with an approved germicidal solution which shall be applied with sterile cotton or sterile gauze. When petroleum jelly (petrolatum) is used, it must be listed in the United States Pharmacopeia or National Formulary, and shall be applied to the area to be tattooed and it shall be in a collapsible metal or plastic tube. The application may be spread by the use of sterile gauze but not directly with the fingers.

- (m) The stencil used by a tattoo artist for transferring the design to the skin shall be thoroughly cleaned and rinsed in an EPA-approved or hospital-grade germicidal solution for at least twenty (20) minutes and then it shall be dried with sterile gauze or in the air before use.
- (n) A media, such as deodorant or similar product, used to transfer a design from a stencil, paper or any other material, must be properly prepared prior to applying on the customer receiving a tattoo. This preparation could include rubbing the surface of the media with a clean cloth that has been soaked in a sanitizing solution, scraping off the surface of the media with a sanitized cutting instrument or any other method approved by the health officer.

#### Section 8: Dyes or Pigments

- (a) In preparing dyes or pigments to be used by a tattoo artist, only nontoxic and sterile material shall be used. Single-service or individual portions of dyes or pigments in clean, sterilized, individual containers or single-service containers must be used for each person.
- (b) After tattooing, the remaining unused dye or pigment in the single-service or individual containers must be discarded.
- (c) All dyes or pigments used in tattooing shall be made for tattooing purposes only or from batches certified under the provisions of Parts 70 and 71, Food, Drug, Cosmetics Act. (21 USC 301 et seq). Tattooing with any other product is a violation of this Code.

#### Section 9: Sterilization

- (a) A set of individual, single-service, sterilized needles and sterilized tubes and bars shall be used by a tattoo artist for each new patron.
- (b) Tubes and bars may be reused only if they are manufactured to be reused, free of any imperfections, have been properly cleaned in a germicidal solution, and sterilized as required in this Code.
- (c) A sufficient number of sterilized needles, tubes and bars must be on hand to meet the needs for the entire day or night operation.
- (d) Sterilization at a permitted facility shall be accomplished by holding in an approved autoclave for twenty (20) minutes, at fifteen (15) pounds pressure, at a temperature of two hundred fifty (250) degrees F (121 degrees C.). Acceptable gauges, thermometers, or indicators shall be used to show that the proper temperature and pressure has been reached in the autoclave.
- (e) No rusty or faulty needles shall be used for tattooing. All needles and instruments after sterilization shall be handled and stored in a cabinet in such a manner as to prevent being contaminated.
- (f) The complete needle, needle bar and tube of the tattoo machine shall be cleaned, properly packaged and sterilized in an autoclave before each use. The package containing the sterilized equipment must have the date of sterilization. The person who operated the autoclave must initial each package. Instruments not used within fourteen (14) days of sterilization must be repackaged and sterilized prior to use.
- (g) The autoclave shall be operated, cleaned, and maintained according to

- manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the health officer.
- (h) The operator of each tattoo facility shall demonstrate, prior to use, that each autoclave used in the facility is capable of proper sterilization. Testing shall be performed in each calendar quarter during which the establishment operates. Biological indicators such as spore strips or spore solutions shall be used and verified through an independent laboratory. The name and serial number of the autoclave must appear on the results of each test. The testing laboratory's written guidelines for the proper handling and placement of the biological indicator shall be readily available for inspection by the health officer. Results of the spore test records shall be retained for a period of three (3) years for every autoclave tested and shall be available to the health officer upon request.
  - (i) Autoclaves that failed testing shall immediately be taken out of service. Any unused equipment that went through a sterilization process in an autoclave that failed testing must be repackaged and sterilized in an approved autoclave.
  - (j) Pre-sterilized, single service equipment will be accepted if there is assurances from the supplier that the equipment has been sterilized following generally accepted and verifiable methods acceptable to the health officer. Any reuse of items intended to be single service is prohibited.

#### Section 10: After Care of Tattoo

- (a) The completed tattoo shall be washed with a piece of sterile gauze or sterile cotton saturated with an approved germicidal solution. It shall be allowed to dry.

- (b) After drying, an anti-bacterial ointment shall be applied from a collapsible metal or plastic tube. The entire area may be covered with a piece of sterile dressing, which may, in turn, be covered with a piece of tissue and fastened to the site with an approved type of adhesive.

#### Section 11: Severability

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision or application and to this end the provisions of these Regulations are declared to be severable.

#### Section 12: Certificates and Inspections

- (a) Access – The permit issuing official or his designated representative is to be permitted access for purposes of inspection at all times while the tattoo establishment is in operation whether open to the public or not. Refusal of admittance, after proper identification, is cause for action to obtain certification revocation and an order to close.
- (b) Certificates are non-transferable from one owner or operator to another, or from one establishment location to another, or from one tattoo artist to another. The tattoo artist must be able to produce a valid certificate when engaging in the act of tattooing.
- (c) Inspection – The permit issuing official or his designated representative is to make inspections of each tattoo establishment within Erie County from time to

- time and not less than once during the term of each certificate. During each inspection, violations of this Article are to be recorded on an inspection report form acceptable to the health officer. A copy of the inspection report is to be delivered to the person in charge at the completion of the inspection.
- (d) The person in charge is the individual present in a tattoo establishment who is the apparent supervisor of the establishment at the time. If no individual is the apparent supervisor, then any employee present is the person in charge.

### Section 13: Enforcement

- (a) Operation of a tattoo establishment without a valid certificate is a violation of this Article. The health officer or his designated representative may order any tattoo establishment or operation in his jurisdiction operating without a valid certificate to close and cease all tattoo operations immediately and to remain closed until the establishment or operation has obtained and displays a valid certificate.
- (b) For serious, repeated or persistent violations of any of the requirements of this Article or for interference with the health officer or his designated representative in the performance of his duties, the certificate may be revoked after notice and an opportunity for a hearing has been provided by the health officer.
- (c) The health officer may suspend a certificate and order the immediate cessation of tattoo operations within his jurisdiction when, in the opinion of the health officer, continued operation is an imminent health hazard to public health. Any person so ordered is to comply immediately and within 15 days is to be provided with an opportunity to be heard and to present proof that continued operation does not constitute a danger to the public health.

- (d) A person applying a tattoo without a valid certificate issued by the health officer is in violation of this Article. The tattoo establishment operator who allows a person to apply a tattoo without a valid certificate will be subject to enforcement as described in subsection (a) of this section.
- (e) Suspension of certificates – Certificates may be suspended temporarily by the health officer, after notice and an opportunity to be heard, for failure of the certificate holder to comply with the requirements of this Article, or with any lawful notice or order issued by the health officer or his designated representative.
- (f) Closure – When action is taken to order closure and cessation of operations, the health officer or his designated representative is to:
  - (1) Conspicuously post a notice or placard at each entrance of the establishment stating the existence of such order and the authority for such order. This order is not to be concealed, mutilated or altered by any person or removed without permission of the health officer.
  - (2) Publish notice of the order with the reasons for the order in one or more newspapers in the County or City in which the tattoo establishment is located.
- (g) Hearings – The hearings provided for in this section are to be conducted by the health officer or his designated hearing officer and shall be conducted following the procedures used to adjudicate other violations of the Erie County Sanitary Code, New York State Sanitary Code and the New York State Public Health Law.
- (h) Should a tattoo facility that is ordered closed contain more than just the tattoo facility, the operator may either close the entire facility or remove all materials

and equipment used for tattooing from the premises while the close order or suspension of the certificate is in effect.

#### Section 14: Penalty for Violation

Every person, firm, organization or corporation violating any of the provisions of this Article, or any of the orders, rules and regulations made and promulgated in pursuance hereof, after conviction thereof, shall be punished by a fine of not more than Five Hundred (\$500.00) Dollars for each violation.

The changes to this Article of the Erie County Sanitary Code including the amendments of 2005 become effective July 1, 2006.