

Buffalo's Food System

An assessment of current municipal,
county, and state policies that regulate
Buffalo's food system





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Local, regional, and state **policies** and **plans** influence the state of a community's food system. They can support or inhibit the **production, processing, retail/consumption, and disposal** of healthy and affordable foods. This policy brief assesses the municipal, county, and state policies and plans that have a bearing upon **Buffalo's food system**.

In general, few plans and policies in Buffalo explicitly support the creation of a sustainable, healthy, food system. The city's comprehensive plan, for example, makes no reference to the food system – even though the plan significantly influences the working of the food system. Buffalo's outdated municipal zoning code is similarly silent about food: for example, the code makes no references to urban agriculture as a permitted land use. Other municipal, county, and state ordinances and laws regulate the food system – such as through licensing and fees for food-related activities - but offer limited to no support for a healthy and sustainable food system. Moreover, the complex layers and multi-departmental control of regulatory mechanisms of the food system makes it difficult, if not impossible, for Buffalonians to engage in activities related to the food system for sustenance or for entrepreneurship.

There is considerable opportunity for transforming public policy to promote a healthier food system in the city of Buffalo. The launch of the Green Code process, a once-in-decades effort to update the city's land use plan and zoning effort, as well as the recently launched effort to update the County's Farmland Preservation Plan offers significant opportunity for Buffalo to emerge as a national leader in food systems policy and planning reform. Key ideas for improving Buffalo's food system through policy are:

- + Establish a city-county food policy council to ensure a well-functioning food system in the city and surrounding county [Buffalo, Erie County]
- + Recognize food production as a permitted use within all zoning districts in Buffalo's Green Code [Buffalo]
- + Establish long-term tenure, and wherever appropriate, permanent sites for community gardens on public land [Buffalo]
- + Establish a "healthy corner store" network program in the city to simultaneously foster economic development and public health in Buffalo [Buffalo, Erie County]
- + Identify strategies to connect local consumers with local farmers in the county's new Farmland Preservation Plan [Buffalo, Erie County]
- + Establish a streamlined website that provides residents with information on public land available for food production, and about licensing, fees, and other regulatory requirements for engaging in food system activities in the city and the county [Buffalo, Erie County]

FOOD PRODUCTION IN THE CITY OF BUFFALO

Food production in Buffalo, which includes the raising of plants and animals, occurs within the constraints of numerous municipal, county, and state policies, plans, and regulations. Current municipal plans are largely silent on the issue of urban food production and offer no explicit support for urban food production. Nonetheless because these plans guide future land use, public investments, and development patterns, they impact food production in Buffalo. County and state policies also regulate food production and agriculture in the Buffalo Niagara metropolitan area but do not explicitly support the production of healthy, affordable, and sustainably raised foods in the city. Below we review municipal, county, and state policies that influence food production within the city of Buffalo.

Buffalo Municipal Policies

Municipal Plans

The city's "Queen City in the 21st Century: Buffalo's Comprehensive Plan," adopted by the Common Council in February of 2006, provides "a strategic framework to guide public and private investment in the city" until year 2025. Although the plan includes a wide range of topics affecting quality of life such as housing, open space, and economic development, the comprehensive plan makes marginal reference to food production in the city by including community gardens as part of a larger effort to green the city. Specifically, the plan calls for "a range of parks, from tot-lots and village greens to ball fields and community gardens" within each neighborhood district of Buffalo. The plan also encourages residents to create neighborhood plans that include a broad range of functions and activities such as gardens as well as consider possible "appropriate re-use" of city-owned vacant land. The plan does not define "appropriate reuse" allowing the possibility of urban farms or community gardens as a potential option of reuse of vacant land. [1]

The comprehensive plan also includes a call to preserve farmland in the surrounding rural regions, relieve pressure for growth in agricultural areas, and revitalize agriculture as an economic sector. These calls are specifically directed toward the region's rural areas. [1]

Municipal Regulations

Although a few recent legislations and the resulting regulations, including the passage of an ordinance that removes restrictions against raising chickens in the city, are promising steps toward facilitating urban food production in Buffalo, the many layers of municipal regulations – described below – make it difficult, if not impossible, for Buffalonians to engage in urban food production for sustenance or entrepreneurship.

Permits and Licenses - Animals

Buffalonians may keep chickens or cows in the city of Buffalo. Residents can obtain a permit to keep one cow (from the Department of Health) and/or a license to keep up to five chickens (from the City Clerk) per property for personal use. To obtain a permit for keeping a cow, the city ordinance requires "conformity with the City Code and with the rules and regulations adopted by the Department of Health in the interest of public health." Determining which rules and regulations apply and where to find information on them is a daunting exercise for residents. [2] To obtain a license for chickens, residents must follow a complicated license application which includes, among other things, "a signed statement from any resident residing on a property adjacent to the applicant's property consenting to the applicant's keeping of chicken hens on the premises" as well as "the addresses of all properties within a fifty-foot radius of the subject property." The annual licensing fee is \$25.00. All eggs, meat, etc. from the chickens may only be used for personal use. No sale is allowed, eliminating any income generation possibilities associated with this activity. [3]

Design and Setback Regulations - Animals

Raising animals in the city require compliance with design and setback regulations. For example, chicken coops must be located in the rear yard, be at least five feet from the side lot line and 18 inches from the rear lot line, and be at least 20 feet from any neighbor's doors or windows. Chickens must stay within the coop or enclosed area at all times unless monitored by an adult. The coops must be covered, predator resistant, ventilated, and provide a minimum of two square feet per chicken. The coops must be maintained in a sanitary condition and cannot exceed 32 square feet in area or 7 feet in height. Compliance with these regulations are monitored through an inspection by an animal control officer. [3]

Public Health/Sanitation Regulations - Animals

Many regulations governing the food system occur within a public health and sanitation framework. The City Charter and Code requires all animals (including cows and chickens) to be slaughtered and displayed within an enclosed structure; they may not be slaughtered and/or displayed within view of the public. [2,3] Additionally, all domesticated animals in the city must be fed in a container to prevent food from scattering on the ground which could attract rats. [4]

Zoning

The city's dated zoning code has limited language relating to food production. The code allows cows in all zoning districts and chickens in all residential zoning districts providing the previously discussed regulations are followed. [2, 3] The omission of any language supporting agricultural production is a serious oversight which should be remedied as the city embarks on creating a new code.

Municipal Resolutions

In June, 2008 Buffalo's Common Council adopted a resolution pertaining to community gardens. Resolution number 137 discusses the vital importance of the reuse of vacant land and acknowledges community gardens as an ideal reuse. The resolution created the Community Garden Task Force to study and recommend policies and procedures to "ensure that current and future Community Gardens are encouraged, valued, and protected as a valuable asset." [5] The city-appointed Community Garden Task Force commissioned University at Buffalo students to create a community gardens plan for Buffalo. The goal of the resulting plan, "Queen City Gardens Plan: Planning for Community Gardens in the City of Buffalo" is "to foster and protect sustainable community-based

garden projects throughout the city." Recommendations include establishing a Food Policy Council, facilitating the sale of publically-owned vacant land for community gardens, creating longer and more favorable land lease agreements, and including community gardens in the City's Charter, Comprehensive Plan, and Zoning Code. [6]

The plan was accepted by the Community Garden Task Force and, subsequently, in March, 2010 the Common Council adopted resolution number 00083, the Community Garden Task Force Update. This resolution extended the existence of the task force for another year. It acknowledged the creation of the "Queen City Gardens Plan: Planning for Community Gardens in the City of Buffalo" by the University at Buffalo and the ultimate acceptance of the plan by the task force. It also assured the Common Council will work towards implementing the recommendations of the Queen City Gardens Report including exploring the establishment of a Food Policy Council, recognizing and adding urban agriculture to the zoning code, creating a "Diggable Cities Database,"¹ creating a streamlined process to get city-owned vacant land available for community gardening, and drafting a "performance based lease"² to protect community gardens on city-owned vacant land. [7] The city continues to work with community groups to facilitate community gardening on public land although in a somewhat ad hoc manner.

Erie County Policies

County Plans

The County's central plan guiding food production within the county of Erie and the city of Buffalo is its agriculture preservation plan. The current plan, "Erie County Farms for the Future," was published in 1996. The 1996 plan includes a five point strategy to protect and preserve agriculture and farmland, and recommendations in seven overarching areas: policy, land conservation and stewardship, education and public relations, land use planning and implementation, taxation and compensation, economic development of agriculture, and business, retirement, and estate planning. A new "Agricultural and Farmland Protection Plan" is currently under preparation by the county's Department of Environment and Planning

¹ A Diggable Cities Database is a publicly available database maintained by the city, identifying suitable vacant land for siting community gardens [6]

² In a performance based lease, community gardens are assessed based on performance indicators such as community involvement, design, function, structure, environmental sustainability, and longevity of gardens. The higher the assessed score of the community garden, the greater protection afforded to it from early termination

Production

and The American Farmland Trust under advisement of the County Agricultural and Farmland Protection Board and community members. The new plan offers an opportunity to support agriculture in the county and strengthen the local food system. [8]

Municipal Regulations

County Laws

Erie County adopted the “Erie County Right to Farm Law” in 1999. It aims to reduce the loss of agricultural resources by limiting opportunities for land use conflict and allowing “agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction ... at all such times and all such locations as are reasonably necessary.” The law does not clarify which locations are “reasonable” (and therefore protected), which generates uncertainty of whether or not urban farms qualify for protection. [9]

County Sanitary Codes

The county defers most sanitary code regulations to the New York State Sanitary Code. Even so, the Erie County Department of Health (not the State Department of Health) ensures these codes are implemented. The Sanitary Code for Erie County contains one regulation which indirectly affects food production. Domestic and wild animals must be fed in a container which prevents food from scattering on the ground potentially attracting rats or insects. [10]

New York State Policies

State Regulations

Permits and Licenses

New York State law requires permits for a limited number of food production activities. A permit must be obtained from the state commissioner of the Department of Agriculture and Markets to engage in the production of milk/milk products (no fee). The permit is contingent on a satisfactory sanitary inspection report. [11] A \$50.00 biennial permit must also be obtained from the state commissioner of agriculture and markets to purchase, deal in, or sell livestock (cattle, swine, horses, deer, sheep, goats, or poultry). [12]

Public Health/Sanitation

In the interest of public health and sanitation, cows and any product therefrom must be kept in healthy and sanitary conditions. People with a communicable

infectious disease may not work with cows. The cows must be fed healthy food and barns/stables must follow sanitation regulations. All machines, utensils, etc. used in the production of milk/milk products must be sanitary and are subject to inspection by agents of the State Department of Agriculture and Markets. [13]

Other State Policies

The state has several related laws and regulations which directly impact food production. The state formed the “Office of Community Gardens” which aids organizations in creating gardens through identification of available properties, liaison with government agencies, liaison with other gardens and gardeners, and provision of funds and grants. New York State law also specifically declares that state-owned vacant land may be used for community gardens. [14]

The state encourages and gives the right to counties to create county agricultural and farmland protection boards as well as agricultural districts which can be used to reduce taxes for farmers located within the districts. The law also includes a “right to farm clause”. [15] Due to the success of the county agricultural and farmland protection boards, the state prepared another law to form a state agricultural and farmland protection program to provide financial and technical assistance to entities for their agricultural and farmland protection efforts. [16]



Food Production

Buffalo

Plans

Comprehensive Plan

Adopted in 2006 by the Common Council

“Queen City in the 21st Century - Buffalo’s Comprehensive Plan” recommends:

- + Distributing a range of parks (including community gardens) within each neighborhood district
- + Redeveloping vacant land with “appropriate uses”
- + Revitalizing agriculture as an economic sector
- + Preserving farmland

Community Gardens

Accepted in 2008 by the Community Garden Task Force

Buffalo’s “Queen City Gardens” Plan goals are “to foster and protect sustainable community-based garden projects throughout the city.” The plan recommends that the city:

- + Establish a Food Policy Council
- + Facilitate sale of publically-owned vacant land for community gardens
- + Adopt longer and more favorable land lease agreements
- + Include community gardens in the City’s Charter, Comprehensive Plan, and Zoning Code

City Charter and Code

Permits and Licenses

- + Requires a permit to possess a cow; one milk cow per premise or per acre is allowed (78-2)
- + Requires a license to possess chicken hens in residential district (\$25 per year); written consent must be obtained from all neighbors - no more than 5 chickens and no roosters are allowed (341-11.1-2)
- + Permits and licenses can be revoked if regulations are not followed (78-4A, 341-11.4B)
- + Permits and licenses must be renewed yearly (78-4B, 341-11.4B)

Public Health/Sanitation

- + To keep a cow city code and Department of Health public health regulations must be followed (78-2)
- + Slaughtering and display of cows and chickens must occur within an enclosed structure (78-3.1 and 341-11.3D)
- + Domesticated animals must be fed in a container which prevents food from scattering on the ground which could attract rats (356-6)

Food Production

City Charter and Code (cont.)

Other Regulations

- + To keep chickens strict chicken coop setbacks and design guidelines must be followed (341-11.3)
- + Eggs, meat, etc. from chickens may only be used for personal consumption (341-11.1F)
- + Chicken coops and cages must pass inspection by an animal control officer (341-11.1)

Zoning

- + Agriculture is not mentioned in any zones
- + Cows allowed in all zoning districts with conditions (78-2)
- + Chicken hens allowed in residential zoning districts with conditions (341-11.1)
- + The city has embarked on an overhaul of its land use plan and zoning code to prepare a new Green Code

Municipal Resolutions

Resolution #137: Community Gardens

Adopted in 2008 by the Common Council

Resolution notes that:

- + The reuse of vacant land is vitally important and Community Gardens on these properties are an ideal use
- + The Community Garden Task Force is created to study and recommend policies and procedures to “ensure that current and future Community Gardens are encouraged, valued, and protected as a valuable asset”
- + The Community Gardens Task Force commissioned the University at Buffalo to create a community garden plan which the school entitled “Queen City Gardens Plan: Planning for Community Gardens in the City of Buffalo”

Resolution #00083: Community Gardens Task Force Update

Adopted in 2010 by the Common Council

Resolution notes that:

- + The Common Council will work towards implementing the recommendations of the “Queen City Gardens Report” including exploring the establishment of a Food Policy Council, recognizing and adding urban agriculture to the zoning code, creating a “Diggable Cities Database,” creating a streamlined process to get city-owned vacant land available for community gardening, and drafting a “performance based lease” to protect community gardens on city-owned vacant land

Food Production

Erie County

Plan

Farmland Protection

Prepared in 1996 by the Erie County Dept. of Environment and Planning

- + “Erie County Farms for the Future” establishes policy, land conservation and stewardship, education and public relations, land use planning and implementation, taxation and compensation, economic development of agriculture, and business, retirement, and estate planning recommendations to protect and preserve agriculture and farmland
- + The county has embarked on a planning process to develop a new farmland protection plan. The county’s Department of Environment and Planning has also requested the University at Buffalo to conduct a food systems assessment to inform the process

Local Law

Right to Farm No. 1-1999

Recommends:

- + Reduction of the loss of agricultural resources by limiting land use conflicts
- + Allows agricultural practices to proceed “free of unreasonable and unwarranted interference or restriction”
- + Requires domestic and wild animals to be fed in a container to prevent food from scattering on the ground which could attract rats or insects (9-1.15.d)

NY State

NY State Law

Permits and Licenses

- + Requires a permit to engage in the production of milk/milk products (no fee) (AGM 4-B.71-N)
- + Requires a permit to purchase, deal in, or sell livestock (\$50 biennially) (AGM 5.90-C to 90-F)

Public/Health Sanitation

- + Cows and resulting products must be kept in healthy and sanitary conditions (AGM 4.47)
- + Premises, machines, utensils, and milk itself are subject to inspection by agents of the State Department of Agriculture and Markets (AGM 4.46 to 4.71)

Food Production

NY State Law (cont.)

Other Regulations

- + Created of the “Office of Community Gardens” which aids organizations in creating community gardens through identification, liaison with government agencies, liaison with other gardens, and provides funds/grants. Declares state owned vacant public land can be used for community gardens (AGM 2-C.31-G to 31-I)
- + State encourages counties to create county agricultural and farmland protection boards to “provide a locally-initiated mechanism for the protection and enhancement of New York State’s agricultural land.” Gives these boards the right to create specific agricultural districts which can be used to reduce taxes for the farmers within these districts and contains a Right to Farm clause (AGM 25AA.300 to 310)
- + Created of a state agricultural and farmland protection program to provide financial and technical assistance to entities for their agricultural and farmland protection efforts (AGM 25AAA.321 to 326)



FOOD PROCESSING & WHOLESALE IN THE CITY OF BUFFALO

Food processing and wholesale within the city of Buffalo are also affected by multiple municipal, county, and state plans, ordinances, laws, and codes. The city's comprehensive plan recognizes the importance of and recommends maintaining, supporting, and promoting manufacturing and warehousing. The City Charter and Code contains strict sanitation requirements and expensive licensing fees for many types of food processing businesses, reducing the feasibility of small scale food processing. The zoning code severely limits food processing as a primary use to the general commercial district (CM) and industrial districts (M1, M2, and M3). The county's sanitary code requires inspection of all premises. Like the city, the state limits the feasibility of small scale food processing with expensive license fees and strict sanitation requirements.

Buffalo Municipal Policies

Municipal Plans

"Queen City in the 21st Century: Buffalo's Comprehensive Plan" interweaves recommendations about different aspects of food processing and wholesale throughout the plan. The plan notes that Buffalo's economy is more reliant on manufacturing than either New York State or the nation as a whole. This fact is bolstered when considering the greatest gains in the city's economy in the 90s were in businesses such as food processing and the highest levels of employment in 1999 were in food processing. The plan recommends maintaining, supporting, and promoting overall manufacturing and warehousing – although explicit guidance on food processing and wholesale is not provided. [1]

Municipal Regulations

Permits and Licenses

The City Charter and Code requires a license for several different types of food processing. Although the licensing fees seem minimal to large-scale food processing firms, these fees reduce the feasibility of small-scale food processing. The city economy relies heavily on grain for different food products. Drying grain requires an annual license (from the city's Director of Licenses and Permits) which costs \$52.50. Interestingly, the malting of grain for the manufacture of ale or beer does not require a license. [17] To keep or maintain a slaughterhouse one must obtain an annual license for \$157.50. The licensing process is difficult: the license must be obtained from "the Commissioner of Economic Development, Permit and Inspection Services, upon the recommendation of the Erie County Health Department and the approval of the Common Council". [18] A license must be also obtained (from the Commissioner of Permit and Inspection Services) to engage in wholesale dealing of fruits and vegetables from a stationed or traveling vehicle (such as a mobile market). Farmers or producers of fruits or vegetables raised within the state are not required to obtain this license. The annual licensing fee is \$157.50 per vehicle. [19]

Sanitation and Public Health

Buffalo's code is explicitly concerned with sanitation as a public health concern. For example, city regulations require that fruits and vegetables be protected from contamination during itinerant (mobile) wholesale dealing. [19, 20] No person with a communicable infectious disease may work with food. [18, 20]

Processing & Wholesale

The city also has extensive regulations related to slaughterhouses to ensure the public's health. For example, animals must be inspected both pre and post-mortem to ensure they are fit for human consumption (even if the meat is intended to be canned). If the animal or slaughtered meat is found unfit, it is destroyed and removed immediately. [21] The slaughterhouse must be kept sanitary and is subject to inspection at all times by agents of the County Department of Health. [18] Any meat imported into the city must have been slaughtered and inspected with similar requirements (unless it is canned or poultry). [21] Slaughtering is limited to certain hours during the day: no slaughtering may occur "between the hours of 5:00 p.m. and 7:00 a.m. or between the hours of 12:00 noon Saturday and 7:00 a.m. Monday." Slaughterhouses must have refrigeration and all slaughter rooms must be watertight. All fumes and offensive odors from grain processing must be contained. [17, 18]

Zoning

Food processing and wholesale activities are recognized in the city's zoning code. Food processing (depending on type of food) as a primary use is limited to the general commercial district (CM) and industrial districts (M1, M2, and M3) whereas food processing (depending on type of food) as an accessory use is allowed in the central business district (C3) assuming the accessory use does not dominate the business. [22-27]

The most restricted food processing uses are fish curing, smoking, or packing, and the manufacture of alcohol which are all limited to the Heavy Industrial District (M3). [22-27]

The second most restricted food processing uses are the brewing of beer or ale, grain elevators, flour mills, or cereal manufacture, manufacture or processing of meat products, and the manufacture of pickles, sauerkraut, vinegar, yeast, soda or soda compounds which are limited to the General Industrial District (M2). Wholesale is permitted as a primary use in the commercial districts (C2, C3, and CM) and the industrial districts (M1, M2, and M3). [22-27]

The II Institutional - Light Industrial District allows wholesale as a primary use and the manufacturing of candy and food products as an accessory use. [28] See the zoning section in the Food Processing and Wholesale table for a complete list of primary and accessory uses.

Erie County Policies

County Regulations

County Sanitary Codes

The Sanitary Code for Erie County states all premises are subject to inspection by the county's Commissioner of Health. If any violations of either the county's or state's sanitary code are found during inspection, permits granted by the Commissioner of Health may be suspended for that premises. [29]

New York State Policies

New York State Laws

Permits and Licenses

New York State agriculture and market laws require licensing fees for food processing and wholesale. For example, a permit (no fee) must be obtained to process or manufacture milk products and a \$100 to \$7,500 yearly license (depending on the total quantity of milk) is required to deal milk products. [11, 30] The manufacture and wholesale of frozen desserts requires a biennial license of \$50 to \$300 (depending on volume of product). [31]

Slaughterhouses are required to obtain a \$200 biennial license while general food processing plants are required to obtain a \$400 to \$900 quarterly license (depending on volume of products being produced). [32, 33]

All licenses must be obtained from the state commissioner of the Department of Agriculture and Markets.

Public Health/Sanitation

Many state agriculture and market laws concern the public health/sanitation of milk processing and slaughtering of animals. For example, there are several strict sanitation and pasteurization standards for milk and milk products. Compliance with these regulations is monitored by state commissioner appointed milk control specialists and bacteriologists within the Department of Agriculture and Markets, Division of Milk Control and Dairy Services. [34] Additionally, many regulations are related to control and suppression of infectious or communicable disease affecting domestic animals including reporting, sale, sanitation, quarantine, veterinarian examination, estruction of diseased animals, and financial restitution. [35] State law requires the sanitary inspection of all slaughterhouses by agents of the Department of Agriculture and Markets. [32]

Other Regulations

The state commissioner of the Department of Agriculture and Markets is charged with creating rules, regulations, methods, and procedures to determine the percentage of components such as non-fat solids, milk fat, protein, lactose, and total solids within milk and milk products.

Several regulations relate to the labeling and branding of milk and milk products. [34] The state commissioner of agriculture and markets is charged with creating official standards of quality for grading, classifying, packing, and delivering apples, eggs, grapes, lettuce, maple syrup, and sugar. [36-40]

Processing & Wholesale

Buffalo

Plan

Comprehensive Plan

- + “Queen City in the 21st Century: Buffalo’s Comprehensive Plan” recommends: Maintaining, supporting, and promoting manufacturing and warehousing

Adopted in 2006 by the Common Council

City Charter and Code

Permits and Licenses

- + A license is required to dry grain (\$52.50 per year) [does not apply to the malting of grain or the manufacture of ale or beer] (226-1)
- + A license is required to keep or maintain a slaughterhouse (\$157.50 per year) (391-2)
- + A license is required for wholesale dealing of fruits and vegetables from a stationed or traveling vehicle (\$157.50 per vehicle per year) [does not apply to farmers or producers of fruits or vegetables raised within the state] (199-8)
- + Licenses can be revoked and must be renewed yearly (199-11, 226-1, 391-4)

Public Health/ Sanitation

- + Fruits and vegetables must be protected from contamination and the sale of unwholesome food is prohibited (199-13 to 14)
- + Cattle, sheep, swine, and goats will be inspected to ensure they are healthy before they are slaughtered. If found unfit they will be destroyed and removed immediately (193-17)
- + Meat will be re-inspected after slaughtering even if it is intended to be canned (193-18)
- + Meat imported into the city must have been slaughtered and inspected with similar requirements (unless it is canned or poultry) (193-20)
- + Every part of the slaughterhouse is subject to inspection at all times (391-5)
- + The slaughterhouse will be kept sanitary (391-9) No person with a communicable infectious disease may work with food (199-11, 391-10)
- + Slaughterhouses have restricted hours for slaughtering, slaughterhouses must have refrigeration, and all slaughter rooms must be watertight (391-6 to 8)

Other Regulations

- + All fumes and offensive odors from grain processing and slaughtering must be contained (226-2, 391-9)

Processing & Wholesale

City Charter and Code (cont.)			
Zoning	District	Permitted	Accessory Use
C2	+ Community Business District (511-32)	+ Wholesale store	
C3	+ Central Business District (511-36)	+ Any use listed above + Warehouse for dry goods and packaged foods	+ Bottling of nonalcoholic beverages + Manufacturing of candy and food products
CM	+ General Commercial District (511-40)	+ Any use listed above + Bottling works for nonalcoholic beverages + Manufacture, compounding, processing and packaging of candy and food products neither first permitted nor prohibited in the M1 District + Small scale manufacture of sausage and similar products and smoking of meats	+ Poultry or rabbit live storage, killing and dressing
MI	+ Light Industrial District (511-44)	+ Any use listed above + Creamery or milk bottling plant + Cold storage plant serving commercial or industrial establishments + Freight and truck terminal with prior written approval	
M2	+ General Industrial District (511-48)	+ Any use listed above + Brewing and distilling of beer, ale, or liquors + Grain elevator, flour mill, or cereal manufacture + Manufacture or processing of meat products (not including rendering) Manufacture of pickles, sauerkraut, vinegar, yeast, soda or soda compounds	

Processing & Wholesale

City Charter and Code (cont.)			
Zoning (cont.)	District	Permitted	Accessory Use
M3	+ Heavy Industrial District (511-52)	+ Any use listed above + Fish curing, smoking or packing, fish oil manufacture or refining + Manufacture of alcohol + Stockyards	
II	+ Institutional - Light Industrial District (511-73)	+ Wholesale store + Warehouse for dry goods and packaged foods + Regional commercial facilities + Downtown light industrial	+ Bottling of nonalcoholic beverages + Manufacturing of candy and food products

Erie County

Local Law

Sanitary Code	+ All premises are subject to inspection by the County Commissioner of Health (1-8) + Any violation of the sanitary code could result in the suspension of the premises' permit (1-8)
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New York State

New York State Law

Permits and Licenses	+ A permit is required to process or manufacture milk products (no fee) (AGM 4-B.71N) + Milk dealers must obtain a license (\$100 to \$7,500 yearly depending on total quantity) (AGM 21.258A) + A license to operate a slaughterhouse (\$200 biennially) (AGM 5-A.96A to 96F) + A permit is required to operate a food processing establishment (\$400 to \$900 four times a year) (AGM 20-C.251-Z-1 to 251-Z-13) + A permit is required to manufacture and sell at wholesale frozen desserts (\$50 to \$300 biennially depending on total quantity) (AGM 4-A.71C) + Licenses can be revoked and must be renewed (AGM 4.46 to 71, 5-A.96A to 96, 20-C.251-Z-1 to 251-Z-13)
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Processing & Wholesale

New York State Law (cont.)

Public Health/ Sanitation

- + Sanitation and pasteurization standards for dairy products are to be monitored by Division of Milk Control and Dairy Services (AGM 4.46 to 71)
- + Provides regulations related to control and suppression of infectious or communicable disease affecting domestic animals including reporting, sale, sanitation, quarantine, veterinarian examination, destruction of diseased animals, and financial restitution (AGM 5.72 to 96)
- + Slaughterhouse inspections are required (AGM 5-A.96A to 96F)

Other Regulations

- + Determines the dairy products' fat content, labeling of dairy products, etc. (AGM 4.46 to 71)
- + Defines official standards of quality for grading, classifying, packing, and delivering apples, eggs, grapes, lettuce, maple syrup, and sugar (AGM 13.157 to 13-D.160U)



FOOD RETAIL IN THE CITY OF BUFFALO

Of all aspects of the food system, food retail within the city of Buffalo is most visibly affected by municipal, county, and state plans, ordinances, laws, and codes. The city's comprehensive plan stresses the importance of restaurants and retail to the city's economy and recommends creating neighborhood plans which focus on daily functions and amenities such as neighborhood shopping. The City Charter and Code contains strict sanitation requirements and expensive licensing fees for many types of food retail businesses, reducing the feasibility of small scale healthy food retail. The county and state sanitary codes regulate food service establishments, while the State Department of Agriculture and Markets regulates retail food stores and food warehouses.³ The State Department of Agriculture

³ *New York State Sanitary Code* defines four types of food service establishments:

A permanent "food service establishment is a place where food is prepared and intended for individual portion service and includes the site at which the individual portions are provided, whether consumption occurs on or off the premises. The term excludes food processing establishments, retail food stores, private homes where food is prepared or served for family consumption, and food service operations where a distinct group mutually provides, prepares, serves and consumes the food such as a "covered-dish supper" limited to a congregation, club or fraternal organization."

A "temporary food service establishment means a place where food is prepared or handled and served to the public, with or without charge, and which operates at a fixed location in conjunction with a single event or celebration of not more than 14 consecutive days duration."

A "mobile food service establishment is a self-contained food service operation, located in a vehicle or a movable stand, self- or otherwise propelled, used to store, prepare, display or serve food intended for individual portion service."

A "food vending operation is the place where food vending machines are located and includes the food vending machines, machine servicing equipment, utensils, personnel, single-service articles, tables, chairs, that part of the premises used in connection with the food vending operation and all other appurtenances required and used to operate and maintain the food vending machines."

New York State Department of Agriculture and Markets defines:

A retail food store is "any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption."

A food warehouse is "any food establishment in which food is held for commercial distribution."

and Markets also has stringent laws concerning branding, labeling, and packaging of food.

Buffalo Municipal policies

City Plans

The city's "Queen City in the 21st Century: Buffalo's Comprehensive Plan" addresses food retail throughout the plan. The plan stresses the importance of restaurants and general retail to the city's economy. The plan notes that the city has "a greater proportion of regional employment in retail trade than the United States overall." The city acts as the region's center for restaurants and retail. As such, there are many recent and pending investments in the city's restaurant and retail sectors. Neighborhood business districts are noted as key assets as they promote the vitality of the urban core. The plan stresses that daily activities such as shopping should occur within walking distance allowing independence to those who do not drive. Finally, the plan encourages residents to create neighborhood plans which focus on a broad range of functions and amenities, including neighborhood shopping. [1] Yet there is no discussion of how food retail can be made accessible to residents.

City Charter and Code Ordinances

Permits and Licenses

Food retail is the most heavily regulated aspect of the food system. Every business within the city must obtain a certificate of operation from the Office of Licenses and post a sign identifying the nature of the business. [41, 42] Almost all forms of food retail require a permit/license from the city. [43-53] [Table 1](#) details the permit requirements.

Of particular interest relating specifically to vending machines, outdoor milk vending machines have the highest fee (\$68.25) more than twice as expensive as a cigarette vending machine (\$31.50). [53]

Table 1: Food Retail Licensing Fees

Retail Type	Fee
Food Store	New \$115.00; renewal \$100.00 annual [43]
Bakery	\$63.00 to \$525.00 biennial depending on number of employees [44]
Sale of Meat	\$150.00 biennial (does not apply to the sale of canned meat [45])
Sale / Delivery of Milk	No fee, must be renewed annually [46]
Outdoor Market	\$52.50 annual (to sell fresh fruit and vegetables) [47]
Railroad Cars	No fee (to sell fresh fruits and vegetables from railroad cars) [49]
Peddling ¹	Person \$26.25 - \$420 annual depending on product; vehicle \$26.25 - \$63 annual [48]
Street Vending	Annual \$315.00; temporary \$52.50 per 14 days, Daily \$10.50 [50]
Restaurant	\$31.50 to \$115.50 annual depending on seating capacity [51]
Sidewalk Cafe ²	Annual \$1.30 to \$750.00 depending on size; temporary \$50.00 per day [52]
Vending Machine	\$15.75 to \$68.25 annual per machine depending on product (see below) [53]
Coffee Machine	\$21.00 per machine
Indoor Milk Machine	\$15.75 per machine
Outdoor Milk Machine	\$68.25 per machine
Soft Drink Machine	\$15.75 per machine
Candy Machine	\$15.75 per machine
Ice Cream Machine	\$15.75 per machine
Sandwich Machine	\$15.75 per machine
Food, Fruit, & Nut Machine	\$15.75 per machine
Cigarette Machine	\$31.50 per machine

1 Native Americans living on a reservation within New York State and selling goods made on that reservation are not required to obtain a license. The Commissioner of Permit and Inspection Services has the power to issue a license free of charge. Minors may not be issued a license unless there is a declared war emergency. Vehicles used by food related businesses solely for delivery purposes do not need to be licensed [48]

2 Restaurant owners wishing to extend services onto the sidewalk (sidewalk cafe) must apply for approval. The sidewalk cafe can be no more than 12 ft. wide and must provide at least 4 ft. of sidewalk for pedestrian use [52]

Public Health/Sanitation

Many municipal public health and sanitation regulations are related to food retail. Every business must pass a building inspection, be well-maintained, and follow all laws and safety regulations. [42] City government regulates the quality of food permitted for sale – but the regulations are largely focused on sanitation rather than nutrition. Unwholesome food is not allowed in the city. Businesses cannot sell wilted, stale, decayed, rotten fermented or unwholesome produce. They also cannot add sub-quality substitutes to food. [20]

Food stores must follow all zoning, building, and fire codes. [43] Food store premises may not have a commercial kitchen or on-site food consumption. [43] Store owners may display goods outside on the sidewalk

within 4 feet of the store provided there is a 10 foot width of sidewalk left for pedestrian travel. [52]

Restaurant premises must meet health, sanitation, building, and fire codes and are subject to inspection. Restaurant buildings, equipment, utensils, etc. must be maintained and sanitary and employees must be clean and wash their hand. Restaurants are required to have restrooms, a water supply, and post occupancy limits sign. [51]

All food must be protected from contamination, all utensils must be properly washed, and toilet facilities must be available for workers. People with a communicable infectious disease may not work with food. No person dealing with any material used for human food may refuse health inspection of the food. Meat must be protected

from contamination and refrigerated. [20] Milk and milk products must meet certified-pasteurization standards to be sold or delivered and milk delivery vehicles must have the name of the dealer visible on the vehicle, must contain refrigeration, and must be kept sanitary. [46]

Outdoor markets must be maintained and sanitary, toilet facilities must be available for workers, and running water must be available for cleaning and washing produce. [47] Consent is required by the private market owner, lessee, or operator for people or organizations (like Boy Scouts or Girl Scouts) to sell food on the premises. Additionally, the private market owner, lessee, or operator has the right to warn people not to enter the premise or outright direct people to leave the premise. [54]

Street vending is also regulated in Buffalo. Locations to sell, peddle, hawk, or vend goods are restricted. [48] Furthermore, street vending hours are restricted: “no licensee, other than one who peddles popcorn, peanuts, waffles, confections or baker’s products, shall peddle on the public grounds of the City before 7:00 a.m. nor after 7:00 p.m. nor at any time on Sunday.” [48]

Stands for the sale of any food or drink are not allowed in certain areas of downtown. [52] Due to the unique character of Buffalo’s downtown, a Special Downtown Vending District was created to regulate street vending. A list published annually by the Commissioner of Permit and Inspection Services restricts the number of vendors allowed, the type of products allowed to be sold, and the days and times for selling within the District. [50]

Zoning

The city’s zoning code is extremely complicated when dealing with food retail. The “Food Retail Table” (see page 25-37) provides a complete list of permitted and restricted uses by zoning district in the city of Buffalo. In general, the zoning code permits food retail and restaurants in all commercial and industrial districts. Restaurants are also permitted in R5 Apartment/Hotel districts provided the entrance into the restaurant is located within a hotel or apartment complex. [22-28, 55-73]

Erie County policies

County Sanitary Codes

County Sanitary Codes

The Sanitary Code for Erie County regulations relating to food service establishments are based on the New York State Sanitary Code; however, the Erie County Department of Health is charged with insuring compliance with all of

these regulations. First, food service establishments are required to obtain permits from the county’s Department of Health. The permit fee for a food service establishment with no on-site food preparation (e.g., tavern) is \$79.00. Permanent food service establishments with a seating capacity less than 50 people require a \$147.00 permit. This fee increases to \$282.00 if the seating capacity exceeds 50 people. Permit fees for temporary food service establishments range from \$106.00 to \$190.00 depending on the duration of the event and the date the application is received. Mobile food service establishments must pay \$147.00 for a permit. The permit fee for caterers is \$282.00. Food commissaries with food preparation and storage require a \$282.00 permit while food commissaries with food storage only require a \$79.00 permit.⁴ If any of the above mentioned food service establishments sell frozen desserts an additional \$25.00 permit must be obtained. A plan review fee of \$147.00 may be required for food service establishments prior to constructing, major renovation, or commencing operation. [74]

Second, all premises are subject to inspection by the county Commissioner of Health. If any violations of either the county’s or state’s sanitary code are found during inspection, permits granted by the Commissioner of Health may be suspended for that premises. [29]

Although most sanitary codes relating to food service establishments can be found in the New York State Sanitary Code, the county does have a few additional sanitary regulations. No privy⁵ may be placed within 100 feet of any place where food is prepared or served. [75] Public toilets will be kept sanitary and well maintained and contain facilities for washing and drying hands, including soap. [76] Finally, dwelling units must have a room or portion of a room to prepare and/or cook food. The room must include a working kitchen sink with an adequate amount of heated water under pressure. [77] Interestingly, school buildings – where children spend their time and eat mostly pre-prepared meals - are not required to have a kitchen.

⁴ New York State Sanitary Code defines a “commissary” as an “establishment operated under license or permit of an appropriate regulatory authority where food is manufactured, stored, prepared, portioned or packaged, or any combination of these, where such food is intended for consumption at another establishment or place. It is also the place which is used as the base of operations for one or more mobile food service establishments or pushcarts, where such unit or units are serviced, cleaned, supplied, maintained, and where the equipment, utensils and facilities are serviced, cleaned and sanitized.” [90].

⁵ The Sanitary Code for Erie County defines a privy as “any facility or structure provided for the storage or structure provided for the storage or deposit of human excreta without water carriage.”

New York State Policies

New York State Laws

Permits and Licenses

Like the city, the state regulates food retail heavily compared to other aspects of the food system. To operate a retail food store (including retail stores which sell prepared food like gas stations and convenience stores), or a food warehouse one must obtain a biennial license from the state commissioner of the Department of Agriculture and Markets (\$250 for food store, \$400 for food warehouse). [78] Retail food stores and warehouses must obtain an additional biennial license to sell frozen desserts (\$20.00). [31] Honorably discharged members of the armed forces of the US who are either veterans of war or served overseas as well as their spouses have the inherent right to hawk, peddle, vend, and sell goods upon the streets once obtaining a license. [79]

Public Health / Sanitation

The state has several laws regulating the public health and sanitation of food retail. First, businesses may only sell meat and poultry which have an official inspection mark affixed after passing a federal inspection. [80, 81] Food stores will be inspected by an agent of the Department of Agriculture and Markets a minimum of one time a year and must post results of its most recent sanitary inspection near the public entrance. [78] Any place engaged in the preparation, sale, or service of food for and to the general public is subject to inspection and all utensils, containers, etc. used in the preparation, sale, or service of food must be sanitary. In retail food stores which sell prepared food, preparers and servers of food may not come into direct contact with the food. [82]

Retail food stores with more than three full time employees or annual gross sales in excess of \$3 million should at all times have at least one individual employed who has been trained and certified in the safe and proper handling, preparation, cooking, storage, serving, delivery, removal, and disposal of food. [33]

Other Regulations

Many regulations concern the branding, labeling, and packaging of food. For example, farm products may not be sold if they have false or misleading labeling (e.g., apples, eggs, grapes, and lettuce) or if they are packed in a way that the face or surface shall not be an average of the contents of the package (e.g., apples and grapes). Some products must also include the grade of the product as defined by the state commissioner of the Department of Agriculture and Markets (e.g., apples, eggs, lettuce,

maple syrup, and sugar). [36-40] Itinerant vendors may not sell food manufactured and packaged for sale for consumption by a child under the age of two years [83].

Several other regulations address a wide range of topics. First, it is illegal to sell any parts of domesticated dogs or cats for human consumption. [80] Second, the state will encourage farmers markets by providing state assistance to municipalities and public and private agencies interested in developing new or expanding existing markets. The state will provide technical assistance, grants (up to \$50,000), compile and publish economic data, create cooperative relationships, and create a list of funding sources. [84] And finally, "a good-faith donor of any canned or perishable food, farm product, game or wild game, apparently fit for human consumption, to a bona fide charitable or nonprofit organization, for free distribution, shall not be subject to criminal penalty or civil damages arising from the condition of the food". [85]

New York Codes, Rules and Regulations, Title 10 (Sanitary Code)

The New York State Sanitary Code officially titled "New York Codes, Rules and Regulations, Title 10" contains an entire part (Part 14) devoted to food service establishments. Part 14 has four sections, one each for permanent, temporary, and mobile food service establishments and food vending operations. [86]

Permit, Inspection, and Closure

Food service establishments and vending operations are required to obtain permits. [86] Because Erie County has its own Department of Health, permit fees are paid to the county and not the state (see the fee schedule in the previous section entitled "County Sanitary Codes that affect Food Retail.").

Food service establishments and vending operations are subject to sanitary inspection at any time while in operation. [87] Permanent, mobile, or vending establishments will be ordered to cease operation immediately if during inspection the permit-issuing official finds: food from an unapproved or unknown source, potentially hazardous food⁶ stored at inappropriate temperatures, re-service of potentially hazardous food, improperly labeled, stored, or used toxic items, persons with a communicable infectious disease working with the food, the potable water supply

⁶ New York State Sanitary Code defines "potentially hazardous food" as "any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, cooked potato, cooked rice or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious, or toxigenic microorganisms; or the slower growth of *C. botulinum*." [92].

does not meet sanitary code requirements, any cross connection or other fault in the potable water system, or the sewage is not disposed of in a sanitary manner. [88]

Food Safety

The state sanitary code places many regulations on food itself. Food must be free from adulteration, spoilage, filth, or contamination and may only be obtained from approved sources. [89] Mobile food service establishments, pushcarts, and food vending operations are to be serviced and obtain food only at a commissary operated under a valid permit. [90, 91]

All food must be protected from contamination during storage, preparation, display, service, and transportation and potentially hazardous food must be kept at appropriate temperatures (< 45°F or > 140°F) “except during necessary times of preparation or during a limited period of time while being held for service which may not exceed two hours”. [92, 93] Additionally, potentially hazardous foods must be cooked to specific temperature requirements. [94] Specific requirements for reheating and thawing food must be followed. [95] Food is to be prepared and served with no bare hand contact and re-service of unused or unprotected food is prohibited. [96] Temporary and mobile food service establishments and pushcarts may only serve food which requires limited preparation requiring only seasoning and cooking. [97] Finally, vending machines must dispense potentially hazardous food in the individual, original container or wrapper. All food (except fresh fruit) dispensed from a vending machine is to be stored or packaged in clean protective containers. [98]

Equipment

The state sanitary code requires tableware, food and non-food contact surfaces, and equipment and utensils used for the preparation of food to be washed, rinsed, and sanitized. [99] Due to limited washing facilities, mobile food service establishments and pushcarts must provide single-service tableware. [100] Permanent and mobile food service establishments must have an adequate amount of cold and hot food storage facilities. [101] Vending machines are to be constructed to protect food within the machine and during dispensing from condensation, dust, insects, rodents, etc. [102] Vending machines are to be constructed and installed so that they resist tipping and those requiring electrical power must be grounded or double-insulated. [103]

Employees

Employees are to maintain a high degree of personal cleanliness, wash hands regularly, only consume food

in designated dining areas, refrain from using tobacco while engaging in food preparation or service, and wear hair nets. [104] Most importantly, no person with a communicable disease may work in a permanent, temporary, or mobile food service establishment or a food vending operation. [105]

Bathroom and Washing Facilities

Several sanitary code regulations relate to bathroom and washing facilities in and near food establishments. Permanent and temporary food service establishments and food vending operations must provide a well maintained and sanitary toilet and handwashing facility for employees. This requirement is extended to patrons of permanent food service establishments and food vending operations if the seating capacity exceeds 20 people. [102] Temporary food service establishments and food vending operations must provide enough potable water from an approved source for food preparation, cleaning and sanitizing, and handwashing. Hot water must be available. [107] Mobile food service food establishments must have adequate handwashing facilities including hot and cold water, soap, and single-service towels unless all food served is prepackaged and pre-wrapped. [108] Mobile food service establishments must have a water system with a storage tank of at least 40 gallons unless all food served is prepackaged and wrapped, or the permit-issuing official requires a lesser or greater amount. Liquid waste must be stored in a permanently installed holding tank. [109]

Additional Regulations

New York State Sanitary Code contains several other regulations relating to food retail. First, if someone on any farm or dairy has a communicable infectious disease, products from that farm or dairy may not be sold or delivered, except to a processing plant which pasteurizes the product, makes the product into another product that requires a heating equivalent to pasteurization, or makes the product into cheese which cures for at least 60 days. [110] Another code is that migrant farmworker housing must provide adequate cooking and dining facilities. This entails properly installed cook stoves with a minimum of two burners per 5 occupants, an adequate amount of food and utensil storage shelves and counter space, a refrigerator, tables and chairs, and a dishwash sink with hot and cold running water. [111]

Food Retail

Buffalo

Plans

Comprehensive Plan

Adopted in 2006 by the Common Council

“Queen City in the 21st Century: Buffalo’s Comprehensive Plan” notes that:

- + Buffalo, specifically downtown Buffalo, is Western NY’s restaurant and niche retail center
- + Residents are encouraged to create neighborhood plans which focus on a broad range of functions and amenities, including neighborhood shopping, and gardens
- + Daily living activities should occur within walking distance allowing independence to those who do not drive.

City Charter and Code

Permits and Licenses

- + Business Identification - Every business premises is required to post a sign which is visible and legible from the street identifying the nature of the business. Any business not specifically required by the City’s Code to obtain a license or permit must provide a brief description of activities to the Commissioner of Inspections and Licenses (122-1 to 122-3)
- + Every business must obtain a certificate of operation (131-3)
- + Food stores need a license to operate a food store (New \$115.00, Renewal \$100.00 yearly) (194-2)
- + Bakers and confectioners must obtain a permit and license (\$63.00 to \$525.00 biennial depending on the number of employees) (88-2)
- + A license is required to sell any fresh, frozen, salt, smoked, cooked or uncooked meat, poultry, fish or sausage [does not apply to the sale of canned meat, poultry, fish, or seafood or the sale of live poultry] (\$150.00 biennially) (193-22)
- + Commissioner of Permit and Inspection Services may issue a license free of charge to sell fresh fish from any vehicle when it will promote the public welfare (316-38)
- + A permit is required to sell or deliver milk or milk products (yearly) (193-30)

Food Retail

City Charter and Code (cont.)

<p>Permits and Licenses (cont.)</p>	<ul style="list-style-type: none"> + A license is required to sell fresh fruits and vegetables at an outdoor shop, stand, or market (\$52.50 yearly) (199-2) + A license is required to sell fresh fruits and vegetables from railroad cars (316-39) + A license is required to sell, peddle, hawk, or vend any goods (Person, \$26.25 to \$420.00 depending on product sold per year; Vehicle, \$26.25 to \$63.00 per vehicle per year). [Native Americans living on a reservation within NYS and selling goods made on that reservation are EXEMPT]. Commissioner of Permit and Inspection Services may issue a license free of charge. No license issued to minors unless there is a declared war emergency (316-1 to 316-10) + A license is required to vend in the Special Downtown Vending District (Annual site, \$315.00 per year; Temporary site, \$52.50 per 14 days; Daily site, \$10.50 per day) (316-41 to 316-50) + Vehicles used by food related businesses solely for delivery purposes do not need to be licensed (316-10) + A license is required to conduct a restaurant (\$31.50 to \$115.50 per year) (370-2) + Restaurant owners wishing to extend services onto the sidewalk (sidewalk cafe) must apply for approval. They can be no more than 12 ft. wide and must provide at least 4 ft. of sidewalk for pedestrian use. (Annual, \$1.30 to \$750; Temporary, \$50 per day, \$250 per year) (413-59) + A license is required to keep for public use a vending machine (\$15.75 to \$68.25 per machine per year depending on products being sold) (483-2)
<p>Public Health/Sanitation</p>	<ul style="list-style-type: none"> + Every business premises must pass inspection, be maintained, and follow all laws and safety regulations (131-1 to 131-11) + Food store premises must pass inspection and follow all zoning, building, and fire codes (194-3) + All food shall be protected from contamination (193-8) + All utensils must be properly washed and toilet facilities must be available for workers (193-9 to 193-10)

Food Retail

City Charter and Code (cont.)

Public Health/Sanitation (cont.)	<ul style="list-style-type: none"> + No person with a communicable infectious disease may work with food (193-11) + No person dealing with any material used for human food may refuse health inspection of the food (193-12) + Meat must be protected from contamination and refrigerated (193-16) + Milk and milk products must meet certified-pasteurization standards to be sold or delivered (193-31) + Milk delivery vehicles must have the name of the dealer, refrigeration, and be kept sanitary (193-33 to 193-34) + Outdoor markets must be maintained and sanitary, toilet facilities must be available for workers, and running water must be available for cleaning and washing the produce (199-4 to 199-6) + Restaurant premise must meet health, sanitation, and fire codes and is subject to inspection. Building, equipment, utensils, etc. must be maintained and sanitary. Employees must be clean and wash their hands (370-6 to 370-18)
Other Regulations	<ul style="list-style-type: none"> + Unwholesome food not allowed in the city (193-5) + Sale of wilted, stale, decayed, rotten fermented or unwholesome produce is prohibited(193-14) + Cannot add subquality substitutes to food (193-6) + No meat may be bought, held, or sold from a calf less than one month old when killed (193-7) + It is unlawful for any person, other than the owner or workers, to handle food until sold to them (193-8) + A commercial kitchen and on-site food consumption in food store premises is prohibited (194-4) + Consent is required by the private market owner, lessee, or operator to sell food on the premises. Private market owner, lessee, or operator has the right to warn people not to enter or direct to leave (275-1 to 275-2)

Food Retail

City Charter and Code (cont.)

Other Regulations (cont.)

- + Hours and areas where allowed to sell, peddle, hawk, or vend are restricted (316-6, 316-8)
- + Special Downtown Vending District created which restricts the number of vendors allowed, type of products, restrictions as to days or times, etc. (316-41 to 316-50)
- + Restaurants must have restrooms, a water supply, and post occupancy limits sign (370-5, 370-15 to 370-17)
- + Stands for the sale of any food or drink are not allowed in certain areas of downtown (413-54)
- + Goods may be displayed outside on the sidewalk within 4 ft. of store providing there is a 10 ft. width of sidewalk for pedestrians left (413-55)

Zoning	District	Permitted Use	Restricted Use
R5	+ Apartment-Hotel District (511-24)	+ Restaurants (provided the entrance to the restaurant is within the apartment or hotel)	
C1, C2, C3, CM	+ Commercial Districts (511-28, 32, 36, 40)	+ Retail and restaurants	
M1, M2, M3	+ Industrial Districts (511-44, 48, 52)	+ Retail and restaurants	
SD	+ Elmwood Avenue Business District (511-56)	+ Retail	+ Eating and drinking places, takeout service, and prepared food
SD	+ Allen Street District (511-57)	+ Retail	+ Eating and drinking places (excluding drive-in restaurants)

Food Retail

City Charter and Code (cont.)			
Zoning	District	Permitted Use	Restricted Use
SD	Special Delaware Review District (511-58)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Eating and drinking places, takeout service, and prepared food
SD	Hertel Avenue District (511-59)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Bars, eating and drinking places, restaurants, takeout food places, and taverns
SD	Porter-Busti District (511-62)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Cafes, restaurants including takeout establishments, retail businesses or services such as grocery stores and drug stores
SD	Seneca Street District (511-64)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Bars, eating and drinking places, and takeout food places
SD	Kensington - Bailey Business District (511-65)	+ Retail	+ Eating and drinking places, takeout service, prepared food, and wholesale stores
SD	Buffalo Coastal Special Review District (511-67)		+ All uses formally permitted
SD	Niagara River Coastal Special Review District (511-68)		+ All uses formally permitted
SD	Hamlin Park Overlay Review District (511-68.1)		+ All uses formally permitted
SD	South Park Special Zoning District (511-68.2)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Bars, eating and drinking places, and takeout food places

Food Retail

City Charter and Code (cont.)			
Zoning	District	Permitted Use	Restricted Use
SD	Abbott/ McKinley Special Zoning District (511-68.3)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Bars, eating and drinking places, and takeout food places
SD	Clinton Street Special Zoning District (511-68.4)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Bars, eating and drinking places, and takeout food places
SD	Lovejoy Street Special Zoning District (511-68.5)	+ All uses presently permitted within the parcels zoning district except uses restricted	+ Bars, eating and drinking places, and takeout food places
DO	Downtown Opportunity District (511-71)	+ Retail (2,000 SF per lot maximum), eating and drinking places	
RR	Residential Restricted District (511-72)	+ Ground floor retail, eating, and drinking establishments	
II	Institutional - Light Industrial District (511-73)	+ Downtown light-industrial, retail and service uses provided that such uses are accessory to regional facilities and uses not first listed in a CM or M District	
TD	Transit Station Area District (511-79)	+ All uses presently permitted within the parcels zoning district except uses first permitted in the CM or M Districts, warehouses, and uses restricted	+ Bars, eating and drinking places

Food Retail

Erie County

Local Law

Sanitary Code

- + All food service establishments must obtain a permit from Erie County Department of Health. The cost of permits are as follows:
 - + Permanent: no food prep = \$79; seating capacity \leq 50 = \$147; seating capacity $>$ 50 = \$282
 - + Temporary: application received 5+ days prior to event: 1-3 days = \$106; 4-7 days = \$120; 7+ days = \$150 Application received $<$ 5 days prior to event: 1-3 days = \$146; 4-7 days = \$160; 7+ days = \$190
 - + Mobile: \$147
 - + Caterers: \$282
 - + Commissaries: food prep and storage = \$282; food storage only = \$79
 - + Frozen Dessert: = \$25 (county fee schedule)
- + Prior to constructing, major renovation, or commencing operation of a food service establishment, the permit-issuing official may require plans showing the floor layout, equipment, plumbing, etc. Plan review fee is \$147 (county fee schedule)
- + All premises are subject to inspection by the County Commissioner of Health (1-8)
- + Any violation of the sanitary code could result in the suspension of the premises' permit (1-8)
- + No privy may be placed within 100 feet of any place where food is prepared or served (4-1.e.1)
- + Public toilets will be kept sanitary and well maintained. Facilities for washing and drying hands will always be available, including soap (4-5)
- + Dwelling units must have a room or portion of a room to prepare and/or cook food. The room must include a working kitchen sink with an adequate amount of heated water under pressure. Dwelling units must also have a flush toilet and lavatory sink in good working condition (9-1.19)

Food Retail

New York State

New York State Laws

Permits and Licenses

- + A license is required from the state commissioner of agriculture and markets to operate a retail food store (\$250 biennial) or food warehouse (\$400 biennial) (AGM 28.500)
- + A license is required to sell frozen desserts in a retail food store (\$20 biennial) (AGM 4-A.71-B to 71-E)
- + Honorably discharged members of the armed forces of the US who are either veterans of war or served overseas as well as their spouses have the right to hawk, peddle, vend, and sell goods upon the streets once obtaining a license (GBS 4.32 to 35A)

Public Health/Sanitation

- + Meat may only be sold with an inspection legend or meat label affixed after a federal inspection (AGM 5-B.96-G to 96-W)
- + Poultry may only be sold with an official inspection mark affixed after a federal inspection (AGM 5-D.96-Z-21 to 96-Z-36)
- + Food stores will be inspected a minimum of one time a year and must post results of its most recent sanitary inspection near the public entrance (AGM 28.500)
- + Any place engaged in the preparation, sale, or service of food for and to the general public is subject to inspection (PBH 8.1350 to 1355)
- + All utensils, containers, etc. used in the preparation, sale, or service of food must be sanitary (PBH 8.1350 to 1355)
- + In retail food stores which sell prepared food, preparers and servers of food may not come into direct contact with the food (PBH 8.1350 to 1355)
- + Many retail food stores should at all times have at least one individual employed who has been trained and certified in the safe and proper handling, preparation, cooking, storage, serving, delivery, removal, and disposal of food (AGM 20-C.251-Z-1 to 251-Z-13)

New York State Laws (cont.)

Other Regulations

- + “A good-faith donor of any canned or perishable food, farm product, game or wild game, apparently fit for human consumption, to a bona fide charitable or nonprofit organization, for free distribution, shall not be subject to criminal penalty or civil damages arising from the condition of the food” (AGM 4-D.71-Y to 71-Z)
- + Any parts of domesticated dogs or cats may not be sold for human consumption (AGM 5-B.96-H)
- + Farm products may not be sold if they have false or misleading labeling or if they are packed in a way that the face or surface shall not be an average of the contents of the package (AGM 12-A.156-C to 156-I)
- + Apples may not be sold if they have false or misleading labeling, if they are packed in a way that the face or surface shall not be an average of the contents of the package, or if they are not marked with the grade (AGM 13.157 to 160)
- + Eggs may not be sold if they have false or misleading labeling or if they are not marked with the grade (AGM 13-A.160-A to 160-E)
- + Grapes may not be sold if they have false or misleading labeling or if they are packed in a way that that the face or surface shall not be an average of the contents of the package (AGM 13-B.160-H to 160-K)
- + Lettuce may not be sold if it is not branded or if it has false or misleading labeling. Lettuce sold in closed cardboard containers must be vacuum cooled (AGM 13-C.160-P to 160-T)
- + Maple syrup or sugar may not be sold unless the grade is plainly marked (AGM 13-D.160-U)
- + The state will encourage farmers markets by providing state assistance to municipalities and public and private agencies interested in developing new or expanding existing markets. The state will provide technical assistance, grants (up to \$50,000), compile and publish economic data, create cooperative relationships, and create a list of funding sources (AGM 22.259 to 263)
- + No itinerant vendor may sell food manufactured and packaged for sale for consumption by a child under the age of two years (GBS 4-A.37 to 39)

Food Retail

New York State Codes, Rules and Regulations, Title 10 (Sanitary Code)

<p>Permit, Inspection, and Closure</p>	<ul style="list-style-type: none"> + All permanent, temporary, and mobile food service establishments and food vending operations must obtain a permit from Erie County Department of Health (14-1.190, 14-2.2, 14-2.17, 14-4.190, 14-5.180, 40-4.1) + Permanent, temporary, and mobile food service establishments and food vending operations that serve retail frozen desserts must get an additional permit (\$25.00) (14-1.190, 14-2.2, 14-4.190, 14-5.180) + Permanent, temporary, and mobile food service establishments and food vending operations may be inspected at any time while in operation (14-1.195, 14-2.17, 14-4.195, 14-5.185) + A permanent or mobile food service establishment or a food vending operation will be ordered to cease operation immediately if the permit-issuing official finds: food from an unapproved or unknown source, potentially hazardous food stored at inappropriate temperatures, re-service of potentially hazardous food, improperly labeled, stored, or used toxic items, persons with a communicable infectious disease working with the food, the potable water supply does not meet sanitary code requirements, any cross connection or other fault in the potable water system, or the sewage is not disposed in a sanitary manner (14-1.10, 14-4.20, 14-5.10)
<p>Food safety</p>	<ul style="list-style-type: none"> + Food must be free from adulteration, spoilage, filth, or contamination and may only be obtained from approved sources (14-1.31, 14-2.3, 14-4.41, 14-5.31) + Mobile food service establishments, pushcarts, and food vending operations are to be serviced and obtain food only at a commissary operated under a valid permit (14-4.95, 14-5.31) + Food must be protected from contamination during storage, preparation, display, service, and transportation and potentially hazardous food must be kept at appropriate temperatures (< 45°F or > 140°F) (14-1.40, 14-2.3, 14-4.50, 14-5.40) + Potentially hazardous foods must be cooked to specific temperature requirements (14.1-82, 14.2-3, 14-4.50) + Specific requirements for reheating and thawing food (14.1-83, 14-1.86, 14-4.92) + Re-service of unused or unprotected food is prohibited (14-1.41) + Food is to be prepared and served with no bare hand contact (14-1.80, 14-2.3, 14-4.90) Re-service of unused or unprotected food is prohibited (14-1.41)

Food Retail

New York State Codes, Rules and Regulations, Title 10 (Sanitary Code) (cont.)

Food safety (cont.)	<ul style="list-style-type: none"> + Temporary and mobile food service establishments and pushcarts may only serve food which requires limited preparation requiring only seasoning and cooking (14-2.3, 14-4.41) + Vending machines must dispense potentially hazardous food in the individual, original container or wrapper. All food (except fresh fruit) dispensed from a vending machine is to be stored or packaged in clean protective containers (14-5.41, 14-5.44)
Employees	<ul style="list-style-type: none"> + No person with a communicable disease may work in a permanent, temporary, or mobile food service establishment or a food vending operation (14.1-70, 14-2.16, 14-4.80, 14-5.70, 2.50) + Employees are to maintain a high degree of personal cleanliness, wash hands regularly, only consume food in designated dining areas, refrain from using tobacco while engaging in food preparation or service, and wear hair nets (14-1.71, 14-1.72, 14-2.16, 14-4.80, 14-5.71)
Equipment	<ul style="list-style-type: none"> + Tableware, food and non-food contact surfaces, and equipment and utensils used for the preparation of food must be washed, rinsed, and sanitized (14-1.110, 14-2.6, 14-4.110, 14-5.110) + Mobile food service establishments and pushcarts must provide single-service tableware (14-4.104) + Permanent and mobile food service establishments must have an adequate amount of cold and hot food storage facilities (14-1.44, 14-1.45, 14-4.51, 14-4.52) + Vending machines are to be constructed to protect food within the machine and during dispensing from condensation, dust, insects, rodents, etc. (14-5.87 to 14.5-93) + Vending machines requiring electrical power must be grounded or double-insulated (14-5.96) + Vending machines are to be constructed and installed so that they resist tipping (14-5.96)
Bathroom and Washing Facilities	<ul style="list-style-type: none"> + Temporary food service establishments and food vending operations must provide enough potable water from an approved source for food preparation, cleaning and sanitizing, and wandwashing. Hot water must be available (14-2.9, 14-5.120) + Mobile food service establishments must have a water system with a storage tank of at least 40 gallons unless all food served is prepackaged and wrapped, or the permit-issuing official requires a lesser or greater amount. Liquid waste must be stored in a permanently installed holding tank (14-4.120, 14-4.130)

Food Retail

New York State Codes, Rules and Regulations, Title 10 (Sanitary Code) (cont.)

Bathroom and Washing Facilities (cont.)	<ul style="list-style-type: none"> + Permanent and temporary food service establishments and food vending operations must provide well maintained and sanitary toilet and handwashing facilities for employees. This requirement is extended to patrons of permanent food service establishments and food vending operations if the seating capacity is greater than 20 people (14-1.142, 14-1.143, 14-2.12, 14-5.100, 14-5.142, 14-5.143) + Mobile food service food establishments must have adequate handwashing facilities including hot and cold water, soap, and single-service towels unless all food served is prepackaged and prewrapped (14-4.140, 14-4.142)
Other Regulations	<ul style="list-style-type: none"> + If someone on any farm or dairy has a communicable infectious disease, products from that farm or dairy may not be sold or delivered, except to a processing plant which pasteurizes the product, makes the product into another product that requires a heating equivalent to pasteurization, or makes the product into cheese which cures for at least 60 days (2.52) + Migrant farmworker housing must provide adequate cooking and dining facilities. This entails properly installed cook stoves with a minimum of two burners per 5 occupants, an adequate amount of food and utensil storage shelves and counter space, a refrigerator, tables and chairs, and a dishwash sink with hot and cold running water (15.10)



FOOD DISPOSAL IN THE CITY OF BUFFALO

Food disposal within the city of Buffalo is the least addressed by municipal, county, and state plans, ordinances, laws, and codes. The city's comprehensive plan has one recommendation indirectly relating to food disposal: minimize the waste of materials. The community gardens plan stresses the importance of composting to reduce waste and improve soil quality. The City Charter and Code requires expensive licenses for different aspects of solid waste disposal and has many other regulations relating to garbage receptacles, recycling, and composting. The zoning code does not contain any language relating to food disposal, however, the city's Charter and Code does contain an ordinance which restricts landfill placement. The Sanitary Code for Erie County places regulations on garbage accumulation and refuse containers. State laws regulate the dumping of agricultural products. The state sanitary code regulates food disposal at permanent, temporary, and mobile food establishments and food vending operations.

Buffalo Municipal Policies

City Plans

The minimization of the waste of materials is recommended several times in the city's Comprehensive Plan to help achieve one of the plan's major goals: sustainability. [1] The "Queen City Gardens Plan: Planning for Community Gardens in the City of Buffalo" (accepted by the Community Garden Task Force and supported by the Common Council in 2008) provides ways to minimize waste. Composting can reduce waste up to 15%. Combined with the fact that composting improves the quality of the soil, the plan recommends the city provide gardeners with access to compost. [6]

City Charter and Code Ordinances that affect Food Disposal

Permits and Licenses

The City Charter and Code contains many ordinances relating to waste disposal; however, food disposal is never specifically mentioned. Licenses are required for different aspect of waste disposal. Solid waste collectors must obtain a \$1,050 annual license from the Common Council and the Commissioner of Permits and Inspection Services whereas landfill and transfer stations must obtain a \$26.50 annual license from the Commissioner of Public Works, Parks and Streets. [112-114]

Public Health / Sanitation

Several public health and sanitation regulations indirectly relate to food disposal. Most of these regulations concern the garbage receptacle. Commercial users who sell food for off-premises consumption must provide waste receptacles immediately outside the premises. The receptacles must be visible, accessible, and maintained in a clean and sanitary state. [115] All garbage must be placed in pest proof receptacles with tight covers and garbage receptacles must prevent the escape of offensive odors or vapors. [112,116] All manure must be placed in tight receptacles until it is permanently removed. [117] Dumping solid waste that is "capable of putrefaction or becoming filthy, noxious or unhealthy," combustible, or regulated is prohibited. [114] Finally, multi-residential complexes must provide neat and sanitary recycling collection areas for its residents. [118]

Other Regulations

Some ordinances regulate the appropriate time and location for garbage receptacles. Within residential

districts, garbage receptacles must be kept in rear yards, or side yards if the receptacle is stored at least 10 feet from the front of the house. Garbage receptacles may be placed on the curb line no earlier than 7:00 pm on the evening prior to collection and must be moved no later than 8:00 pm on the day of collection. [119] Other ordinances relate to recycling. Recyclable material may be placed by residents on the curb line for collection. Commercial users are required to source separate recyclables. There is an ordinance relating to compost: vegetative waste may be used for compost or mulch assuming it is stored in a receptacle which protects it from wind, precipitation, and animals. Otherwise it can be placed on the curblin for collection. [118] Dumping/littering is strictly prohibited. A violation of any of the above regulations is subject to penalty and rewards are available for information leading to the apprehension and conviction of violators. [114, 120]

Zoning

Although the city's dated zoning code does not contain any language relating to food disposal (including, composting), the city's Charter and Code does contain an ordinance which restricts landfill placement. No new landfills may be built directly adjacent to a residential area, marsh, or wetland. [121]

Erie County Policies

County Sanitary Codes that affect Food Disposal

The Sanitary Code for Erie County requires that garbage and organic waste are not allowed to accumulate. Instead, it must be placed in rodent-proof, insect-proof, watertight refuse containers. [122]

New York State Policies

New York State Laws that affect Food Disposal

New York State declares that it is illegal to dump any agricultural product produced outside of the state if it does not meet the official New York State standard or grade of quality for such product. [123]

New York Codes, Rules and Regulations, Title 10 (Sanitary Code) that affect Food Disposal

New York State's Sanitary Code (NYCRR Title 10) regulates food disposal at permanent, temporary, and mobile food establishments and food vending operations.

Permanent food service establishments must keep garbage and refuse in durable, easily cleanable, insect-proof and rodent-proof containers. [124] Temporary and mobile food service establishments, food vending operations, and the immediate vicinity are to be kept clean and free from litter: they must provide trash and rubbish containers with plastic bag liners for garbage and refuse disposal. [125]



Food Disposal

Buffalo

Plans

<p>Comprehensive Plan Adopted in 2006 by the Common Council</p>	<p>“Queen City in the 21st Century: Buffalo’s Comprehensive Plan” recommends: “Initiatives to be undertaken in the name of sustainability must work to ... minimize the waste of materials.”</p>
<p>Community Gardens Accepted in 2008 by the Community Garden Task Force</p>	<p>Buffalo’s “Queen City Gardens Plan” recommends that the city provide gardeners with access to compost</p> <ul style="list-style-type: none"> + Composting can reduce waste up to 15% + “If compost material is not produced on-site, gardeners should budget and plan for compost delivery or pick up” to improve the quality of the soil

City Charter and Code

<p>Permits and Licenses</p>	<ul style="list-style-type: none"> + Solid waste collectors must obtain a license (\$1,050 annually) (216-3) + A license is required to conduct, operate, maintain, or use any real estate for either temporary storage or final disposal of solid municipal waste (\$26.50 annually) (263-27)
<p>Public Health/Sanitation</p>	<ul style="list-style-type: none"> + Commercial users who sell food for off-premises consumption must provide waste receptacles immediately outside the premises. The receptacles must be visible, accessible, and maintained in a clean and sanitary state (216-5) + All garbage must be placed in pest-proof receptacles with tight covers (216-8) + Garbage receptacles must prevent the escape of offensive odors or vapors (216-4) + All manure must be placed in tight receptacles until permanently removed (216-13) + Dumping solid waste that is “capable of putrefaction or becoming filthy, noxious or unhealthy,” combustible, or regulated is prohibited (263-35) + Multiresidential complexes must provide neat and sanitary recycling collection areas (216-43)

Food Disposal

City Charter and Code (cont.)

Other Regulations	<ul style="list-style-type: none"> + Within residential districts, garbage receptacles must be kept in rear yards, or side yards if stores at least 10 feet from the front of the house (216-14) + Garbage receptacles may be placed on the curblin no earlier than 7:00 pm on the evening prior to collection and must be moved no later than 8:00 pm on the day of collection (216-14) + Recyclable material may be placed by residents on the curblin for collection (216-40) + Commercial users are required to source separate recyclables (216-43) + Vegetative waste may be used for compost or mulch assuming it is stored in a receptacle which protects it from wind and precipitation. Otherwise it can be placed on the curblin for collection (216-44) + No new landfills directly adjacent to a residential area, marsh, or wetland (216-18) + Dumping/littering prohibited (216-9) + A violation of any of the above rules is subject to penalty; rewards for information leading to the apprehension and conviction of violators (263-36)
Zoning	<ul style="list-style-type: none"> + No mention whatsoever of zones which do or do not permit disposal/composting/recycling within the zoning code. (Limitations on new landfill placement discussed in a different section of the City Charter and Code. See above 216-18)

Erie County

Local Laws

Sanitary Code	<ul style="list-style-type: none"> + Garbage and organic waste shall not be allowed to accumulate. It must be placed in rodent-proof, insect-proof, watertight refuse containers (9-1.12)
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New York State

New York State Law

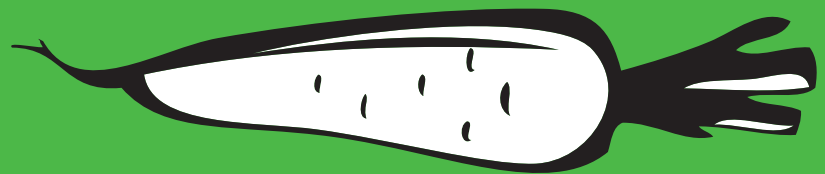
Other Regulations	<ul style="list-style-type: none"> + Nobody may “dump, or otherwise discard in a manner reasonably and causally connected to the contamination of food, any cull or waste pile consisting of any agricultural product not produced in this state, including, but not limited to, vegetables, fruits and other like produce falling below the official standard or grade of quality for such product.” (AGM 13-E.160-V)
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Food Disposal

New York State Codes, Rules and Regulations, Title 10 (Sanitary Code)

Sanitary Code

- + Permanent food service establishments must keep garbage and refuse in durable, easily cleanable, insect-proof and rodent-proof containers (14-1.150)
- + Temporary and mobile food service establishments and food vending operations must provide trash and rubbish containers with plastic bag liners for garbage and refuse disposal (14-2.12, 14-4.150, 14-5.150)
- + Temporary and mobile food service establishments, food vending operations, and the immediate vicinity are to be kept clean and free from litter (14-2.11, 14-4.152, 14-4.180, 14-5.150, 14-5.170)



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124. New York State Department of Health, 14-1.150, in New York Codes, Rules and Regulations, Title 10 (Sanitary Code).
125. New York State Department of Health, 14-2.11, 14-2.12, 14-4.150, 14-4.152, 14-4.180, 14-5.150, 14-5.170, in New York Codes, Rules and Regulations, Title 10 (Sanitary Code).

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