

ARTICLE 88

TEMPORARY FOOD SERVICE ESTABLISHMENTS

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§88.01 Scope.

A temporary food service establishment shall be constructed, maintained and operated in accordance with this article, Article 81 of this Code, Subpart 14-2 of the State Sanitary Code or successor regulations, and Chapter 23 ("Food Service Establishment Sanitary Inspection Procedures") of Title 24 of the Rules of the City of New York. Such temporary food service establishment shall not present a danger to the health or safety of patrons or to the public health with respect to the condition of the establishment, its equipment, utensils, personnel, mode of operations, surroundings, water supply, liquid and solid waste and sewage disposal, food served and appurtenances.

§88.03 Definitions.

When used in this Article:

- (a) *Event* shall mean (i) a single event or activity where food or food samples are distributed to the public, with or without charge, that operates for a period of time not to exceed fourteen (14) consecutive days, or (ii) a recurring event, that operates for a period of time not to exceed three days per week. Such event shall be scheduled to occur at a single specified location, where access is controlled by the event's sponsor, and may be held indoors or outdoors, in public or privately owned or leased premises, and shall include but not be limited to:
 - (1) A street activity, regardless of whether the event requires a permit issued in accordance with the rules of the Mayor's Office of Citywide Events Coordination and Management, or any successor office or agency;
 - (2) A business, advertising or media promotion or convention;
 - (3) A celebration; a street or other fair; or
 - (4) A sporting event, carnival, flea market, circus, public exhibition, festival, religious or fraternal organization function, parade or other similar gathering.
- (b) *Food* shall have the same definition as set forth in Article 71 of this Code.
- (c) *Operator* shall mean the permittee or person who owns, operates, manages, controls or is otherwise in charge of a temporary food service establishment providing food services at an

event, and who has been issued a permit by the Commissioner in accordance with §88.05 of this Article.

- (d) *Potentially hazardous* food shall have the same meaning as set forth in Article 81 of this Code.
- (e) *Sponsor* shall mean the person or organization that organizes, controls and manages the event at which a temporary food service establishment provides food service.
- (f) *Temporary food service establishment* shall mean an individual food service establishment, as defined in Article 81 of this Code, operating from a booth, stand, vehicle, or cart, in a fixed public or private, indoor or outdoor location, at an event, where foods are stored, prepared or held for service to the public. A temporary food service establishment shall also mean a person who vends, dispenses or distributes pre-packaged or other non-potentially hazardous foods from a container or other equipment approved by the Department, that is carried upon his or her person at an event. A temporary food service establishment shall not mean:
 - (1) A food service establishment issued a permit in accordance with Article 81 of this Code that operates a temporary food service establishment in connection with an event in a public place directly outside and adjacent to the permitted establishment, that serves food prepared within the permitted establishment or by workers employed by the permitted establishment; or
 - (2) A place where a distinct neighborhood, school, religious, fraternal or other affinity group prepares, provides, or serves foods for consumption by such group, and where the public is not invited; or
 - (3) Service of incidental refreshments, consisting of pre-packaged or other foods and beverages, that are not potentially hazardous, as defined in Article 81 of this Code, that are prepared and served to participants or attendees at a business meeting or social function, when such refreshments are prepared by the organization or group holding the meeting or social function; or
 - (4) Food, nutrition and cooking demonstrations by governmental agencies or not-for-profit organizations or their contractors, for the purpose of providing education on nutrition, healthy eating, diet quality, food selection and preparation, safe food handling, or storage practices and food resource management.

§88.05 Permit Required.

- (a) A sponsor of an event shall not rent space to, nor allow food to be prepared, stored, served or sold by, any temporary food service establishment that fails to obtain a current and valid temporary food service establishment permit for the event. All sponsors and distinct neighborhood, school, religious, fraternal or other affinity groups contracting with commercial vendors shall require all such vendors to obtain temporary food service establishment permits.
- (b) The sponsor shall submit to the Department, at least thirty (30) days prior to the first date of the event, a list of all individual food establishments and operators expected to participate in the event and, where feasible, an application for a permit from each operator of a temporary food service establishment at the event.
- (c) The operator of each temporary food service establishment at an event shall obtain a permit issued by the Commissioner; provided, however, that no additional permit shall be required if the operator holds a currently valid permit to operate a food service establishment. Such existing permit, or a copy of such permit issued pursuant to Articles 5 and 81 of this Code shall be maintained at the temporary food service establishment and made available upon request of a Department inspector or a New York Police Department officer.

- (d) The Commissioner may issue an annual permit to an operator of a temporary food service establishment who participates in multiple events during the year at the invitation of the sponsors of such events.
- (e) All operators of temporary food service establishments shall maintain permits at the establishment during all hours of operation and shall make such permits available for inspection.

§88.07 Food safety and protection.

- (a) *Food protection certificate required.* The operator or supervisor of food services at each temporary food service establishment shall hold a food protection certificate issued by the Department, or a certificate issued by another jurisdiction that is acceptable to the Department.
- (b) *Food sources.* Food shall be obtained from approved sources, as defined in Article 81, operating pursuant to licenses or permits issued by federal, state or local regulatory agencies.
- (c) *Utensils for service of food.* Between uses, food dispensing utensils shall be stored in food with the handle extended out of the food, or kept clean and dry and protected from contamination.
- (d) *Ice.* Ice that is consumed or that touches food and food contact surfaces or utensils shall be made from potable water from approved sources in a manner that protects it from contamination. Ice shall be obtained only in chipped, crushed or cubed form and in single-use food grade plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice shall be held until dispensed, in the manufacturer's bags, in a manner that protects it from contamination.
- (e) *Cold storage on ice.* Packaged food may be stored in direct contact with ice or water if the food's packaging, wrapping, container or position in the ice prevents ice or water from direct contact with food or entering the package or container upon opening. Areas of packaging intended for use as eating or drinking surfaces shall not be in contact with ice or water at any time.
- (f) *Prohibitions on processing, or service of specific foods.*
 - (1) No raw fish or shellfish shall be sold at a temporary food service establishment.
 - (2) The Commissioner may prohibit the sale or service of any other specific potentially hazardous foods or types of foods by temporary food service establishments.
 - (3) Whole animals shall not be butchered, de-boned, dressed, or cut into portion size at a temporary food service establishment.
 - (4) At the end of each day's service, leftover potentially hazardous foods shall be discarded if not sold.
- (g) Persons who are not employed at a temporary food service establishment shall not be allowed to enter the establishment at any time.
- (h) No person who is sick, or has any signs of illness or infection, as described in Article 81 of this Code, shall work in any temporary food service establishment.

§88.09 Construction, facilities, equipment, and utensils.

- (a) *Equipment requirements.* Equipment and utensils shall be provided to prevent contamination and maintain temperatures of potentially hazardous and other foods, and to prevent nuisances, in accordance with Table 1 of this section.
- (b) *Food contact surfaces.*

- (1) Food contact surfaces, equipment and utensils shall be designed and constructed of materials that facilitate cleaning and inspection of all parts and shall be smooth and free from cracks or pits.
 - (2) All food contact surfaces, equipment and utensils shall be kept clean and shall be sanitized prior to use and as needed to prevent food contamination.
 - (3) Operators shall not use utensils, pots or containers that are chipped, cracked, rusted, corroded, badly worn or otherwise not easily cleaned and sanitized.
 - (4) Cloths used for wiping food spills from food contact surfaces must be kept clean and in a sanitary condition in accordance with Article 81 of this Code.
- (c) Reserved.
- (d) *Lighting*. When the temporary food service establishment uses artificial lighting, shatter-proof or shatter guarded lighting shall be installed to adequately light all food contact and food preparation surfaces. Lighting fixtures located over or near food storage, preparation and service facilities shall be shielded to prevent broken glass from falling into food or onto food-contact surfaces.
 - (e) *Ventilation*. When required by Table 1 of this section, temporary food service establishments shall be ventilated so as to prevent nuisances resulting from excessive heat, steam, condensation, vapors, odors, smoke and fumes.
 - (f) *Culinary sinks*. When required by Table 1 of this section, a one compartment sink shall be provided and used only for washing raw foods. Such sink shall be sanitized between uses to prevent cross-contamination, and shall not be used for hand washing.
 - (g) *Sanitization and ware washing sinks*. When required by Table 1 of this section, sinks shall be provided for sanitizing of utensils and equipment. The number of compartments necessary in each such sink shall depend upon the method of sanitizing used and the instructions provided by the manufacturer of the sanitizing solution being used.
 - (h) *Hand washing facilities*. No person operating or working at a temporary food service establishment shall have bare hand contact with any ready to eat unpackaged foods. When required by Table 1 of this section, hand washing sinks dispensing hot and cold potable running water, equipped with soap dispensers, and drying devices or paper towels, shall be provided in or adjacent to each temporary food service establishment and in or adjacent to all toilet facilities at an event, and hand washing facilities may be shared provided they are conveniently located to the establishments vending at an event. When the operator of an establishment or the event sponsor cannot meet the hand washing requirements of Article 81 or this Article, the operator or event sponsor shall, in advance of the event, obtain prior Department approval for alternate hand washing arrangements.
 - (i) *Overhead structure*. When required by Table 1 of this section, and except where all foods are dispensed from closed containers, an overhead device, structure or awning shall be installed to protect food from dust, birds, dirt, rodents, insects and other pests, foreign material and other forms of contamination, in accordance with Article 81 of this Code.
 - (j) *Thermometers*. When required by Table 1 of this section, metal stem-type, numerically scaled, indicating thermometers, thermocouples, or thermistors, accurate to plus or minus two degrees Fahrenheit (one degree Celsius) shall be provided and used to determine whether required internal cooking, holding or refrigeration temperatures of all potentially hazardous foods are obtained and maintained in accordance with Article 81.
 - (k) *Hot and cold holding*. When required by Table 1 of this section, sufficient equipment and storage shall be provided and used to maintain potentially hazardous foods at temperatures required by Article 81 of this Code.
 - (l) *Storage facilities*. When temporary food service establishments are operating as part of a recurring event, such establishments may be stored at the event site or in another approved

location, provided that any place in which an establishment is stored is constructed of materials whose surfaces are easily cleanable, non-toxic, non-absorbent and smooth and enclosed to afford protection from environmental contamination.

- (1) Garbage and waste materials shall not be permitted to accumulate, create harborage conditions, or become a nuisance, but shall be stored, handled and disposed of in a sanitary manner that shall not create a nuisance.
- (2) No cleaning shall be done on public streets or sidewalks.
- (3) No live animals shall be kept in any storage facility.
- (4) No food shall be kept in any storage facility.

Table 1
Equipment Required for Temporary Food Service Establishments

Type of equipment required	Potentially hazardous raw foods	Potentially hazardous prepared foods	Potentially hazardous prepackaged foods	Non-potentially hazardous unpackaged foods	Non-potentially hazardous prepackaged foods
Culinary sink	X	X	—	—	—
Sanitizing/ware washing sink	X	X	—	X	—
Hand wash sink	X	X	—	X	—
Waste water tank	X	X	—	X	—
Overhead structure	X	X	—	X	—
Ventilation	X	X	—	X	—
Cold holding	X	X	X	—	—
Hot holding	X	X	X	—	—
Thermometers	X	X	X	—	—

§88.11 Cooking and heating equipment.

- (a) *Hazards.* Cooking and heating equipment shall be constructed, located and used so as not to create a hazardous condition.
- (b) *Flammable materials.* Storage and use of flammable material and fuel shall comply with all applicable law, rules, and standards, including those of the Fire Department.

§88.13 Water; potable water supply; disposal of waste water.

- (a) *Potable hot and cold water.* Each temporary food service establishment shall be provided with sufficient potable hot and cold water from sources approved by the Department for food preparation, cleaning equipment and hand washing.
- (b) *Bottled and packaged water.* Bottled and packaged potable water shall be obtained from a source approved by the State Commissioner of Health and handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.
- (c) *Water tanks.*
 - (1) Potable water storage tanks in temporary food service establishments shall be constructed from food-grade materials, in accordance with Article 81 of this Code.
 - (2) Water storage tanks shall be sanitized, emptied and rinsed with potable water before use and between temporary food service events.
 - (3) Water shall not be transported from one event to another event.
- (d) *Waste water storage and disposal.*
 - (1) The sponsor shall arrange for daily storage and disposal of waste water generated by each temporary food service establishment at an event in a manner that does not create a nuisance. Waste water storage containers shall be enclosed and leak-proof.
 - (2) When required by Table 1 of §88.09, temporary food service establishments shall maintain waste water storage tanks and pipes designed in manner that does not result in leaks or spills on sidewalks or public streets. Drains for waste water from sinks, refrigeration, other holding units, and cooking equipment shall be designed and installed so as to prevent backflow from waste water storage tanks into potable water supplies.

§88.15 Toilets and hand wash sinks required.

Where sufficient fixed or permanent plumbing facilities are not available, the sponsor of an event shall provide and maintain portable chemical toilets, hand washing sinks equipped with hot and cold potable running water and drying facilities for use by temporary food service establishment food workers and patrons.

§88.17 Single service articles.

Only single use articles as defined and described in Article 81 of this Code shall be provided for patrons' use, and shall be discarded after use.

§88.19 Refuse and trash.

- (a) *Containers.* Where an event is not subject to the rules of the Mayor's Office of Citywide Events Coordination and Management Street Activity Permit Office (Chapter 1 of Title 50 of the Rules of the City of New York), or successor office or agency, the sponsor shall provide or arrange for an adequate number of receptacles and containers, constructed in compliance with Article 151 of this Code, for the storage and disposal of refuse, garbage and recyclables.
- (b) *Cleaning and maintenance.* The sponsor shall maintain or arrange for maintenance of the event area and for the collection and removal of accumulated refuse and garbage at regularly scheduled intervals during and after the event.

§88.21 Enforcement.

- (a) *Imminent health hazards.* When, in the opinion of the Department, any food, equipment, or temporary food service establishment at an event presents an imminent health hazard as

defined in Article 81 of this Code, or is in an unclean condition, or is in disrepair or damaged to such an extent so as to render it unsafe, such food, equipment, establishment or any part thereof may be ordered sealed and its use or operation immediately discontinued upon the order of the Commissioner or designee. Upon such sealing, the Department shall affix thereto labels or conspicuous signs stating that the establishment has been closed because of an imminent health hazard. The operator may request an immediate opportunity to be heard by the Department, and an opportunity to reopen upon curing the imminent health hazard. Labels or signs affixed by the Department shall not be removed except as authorized by the Department.

- (b) *Closure.* A temporary food service establishment found operating without a valid permit in violation of this Article shall be ordered closed and the operator ordered to cease all food operations and to remain closed until the operator obtains a currently valid permit for the temporary food service establishment.
- (c) *Access required.* Department inspectors shall be permitted access for purposes of inspection at all times that a temporary food service establishment is operation, regardless of whether it is open to the public for service of food. Refusal of access or admittance of an inspector shall be cause for revocation of a permit and issuance of an order to close.

§88.23 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose of this Article and upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.