

**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**NOTICE OF INTENTION TO REPEAL AND RECODIFY ARTICLE 88
OF THE NEW YORK CITY HEALTH CODE**

NOTICE OF PUBLIC HEARING

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice is hereby given of intention to repeal and recodify Article 88 (Temporary Food Service Establishments) of the New York City Health Code (the “Health Code”).

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:00 A.M. TO 12:00 NOON ON FRIDAY, OCTOBER 30, 2009 IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. THURSDAY, OCTOBER 29, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL BUSINESS HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY OCTOBER 16, 2009. REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P.M. OCTOBER 30, 2009. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., FRIDAY, OCTOBER 30, 2009. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED. COMMENTS RECEIVED AFTER OCTOBER 30, 2009 WILL BE CONSIDERED TO THE EXTENT POSSIBLE.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT’S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the authority of the Commissioner and the Department of Health and Mental Hygiene (the Department) extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess the efficacy of its provisions in protecting the public health, the Department is asking the Board of Health to repeal and recodify Article 88 ("Temporary Food Establishments") of the Health Code, and retitle the Article as "Temporary Food Service Establishments." The title change better reflects practice and the regulatory environment; and as recodified, Article 88 would provide adequate legal tools to effectively address the health and safety needs of the public and harmonize its provisions with related provisions of other applicable law, including Article 81 of the Health Code and the State Sanitary Code. As part of the revision effort, particular attention has been placed on emphasizing the applicability of relevant provisions of Article 81 ("Food Preparation and Food Establishments") to the operation of temporary food service establishments.

In compliance with §1043(b) of the Charter, an initial Notice of Intention to Repeal and Recodify Article 88 (Temporary Food Service Establishments) was published in the City Record on September 22, 2008, and a public hearing was held on October 24, 2008. Since that time, however, additional changes were proposed in response to comments from agency staff, and other City agency personnel. The major change would add an additional category of temporary food service establishments, those which are part of recurring events, and do not occur only on 14 or fewer consecutive days. These events have become more common in the City. For example, weekly flea markets in Fort Greene and at the foot of the Brooklyn Bridge in Brooklyn are scheduled for every Saturday or Sunday, from Spring through the Fall, and food service becomes an important part of the event. In some cases, the food becomes as important an event as the generating activity, such as the food services provided seasonally by the Red Hook Food Vendors Committee (RHFV) every weekend during local park sports and recreational activities. The press release of the RHFV at the beginning of its 2009 season provides the times and locations of its food services and reads, in pertinent part as follows:

"(Brooklyn, New York)- The Food Vendors Committee of Red Hook Park Inc. (AKA Red Hook Food Vendors; RHFV) is thrilled to announce the kick-off of their 09 season beginning May 2nd, 2009 in Red Hook park, Brooklyn every weekend through the end of October. Extended days of operation will include long holiday weekends, including Memorial Day & Labor Day weekends.

RHFV are also pleased to announce their continued collaboration with the incredibly successful Brooklyn Flea and its new DUMBO market location. RHFV satellite stands will open for business beginning April 18th at The Flea in Fort Greene every Saturday, and at the DUMBO market every Sunday-(For more information, please visit www.brooklynflea.com)."

Article 88 of the Health Code and Subpart 14-2 (Temporary Food Service Establishments) of the State Sanitary Code §14-2.1 currently define temporary food service establishments as occurring for no more than “14 consecutive days duration” and neither the City nor the State provides for a permit for temporary establishments for periods greater than 14 consecutive days. As a result, the Department is often attempting to determine whether the food service establishments at such recurring events should be considered mobile food vending or some other kind of food service establishment. Because these food service establishments are set up at recurring events, and may or may not conform to the definitions of “mobile food vending units” in Article 89 of the Code, the Department generally attempts, in each case, to modify requirements applicable to mobile food vending, in an effort to accommodate such events, and impose additional necessary requirements for protection of public health, as appropriate. Having a category of recurring event temporary food service establishments would make it possible for these establishments to know in advance what regulations they will be required to comply with in every case, and not rely on modifications of other regulations that are not quite applicable in such cases.

Accordingly, the Notice of Intention originally published for public comment has been further modified. Changes to both the current Article 88 and to the Notice of Intention originally published are set forth below.

§88.01 Scope.

This section is new. It reinforces the DOHMH policy of considering temporary food service establishments as a type of food service establishment subject to Article 81 and other pertinent provisions of the Code, to the New York State Sanitary Code (10 NYCRR Chapter 2), and all rules and regulations governing the use of public streets.

§88.03 Definitions.

Definitions in former §88.01 appear in a new § 88.03, and the new section is expanded from two to five definitions. The term “temporary food service establishment” is redefined because these establishments may be found in many public and private, indoor and outdoor settings, and in connection with many different kinds of events and promotions.

In response to comments received, further exceptions to this definition have been made. One is for places where food is prepared by and served exclusively to group members and where the public is not invited, such as a school bake sale operated by a parent-teacher association. This is consistent with the State Sanitary Code §14-1.20, which excludes from the definition of a food service establishment those “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.” Further exceptions added are for nutrition education programs and cooking demonstrations, and service of non-potentially hazardous foods and beverages to participants or attendees at meetings or social functions when such “incidental refreshments” are prepared by the organization holding the meeting or function. A note to this section clarifies that when food is served to the public under other circumstances, authorization or a permit from the Department is required. The section defines other terms used in Article 88, including “event,” “food,” “sponsor,” and “operator.” The definition of “temporary food processing establishment” was deleted as obsolete. In addition, as noted above, the definition of temporary food service establishment now includes food services that are provided at events that recur at intervals that exceed 14 consecutive days.

§88.05 Permit required.

This section amends former §88.03 (“Permit, registration”) in several ways. First, the exemption from permit requirements for events that take one day or less or occupy one or more

blocks has been eliminated. The provision has been amended to clarify that permits must be obtained whenever food is being served or distributed to the public, including food provided by all commercial vendors, contracting with neighborhood, school, religious, fraternal or other affinity groups sponsoring such events. Second, the distinction between temporary food processing and non-food processing establishments has been eliminated and all are defined as temporary food service establishments. Finally, all operators of food service establishments are required to obtain a permit at least 30 days prior to any event in which they participate. This section also incorporates provisions of former §88.21 ("Responsibility of sponsor").

§88.07 Food safety and protection.

This section replaces former §§ 88.05 and 88.09. It requires all permittees operating temporary food service establishments to hold a food protection certificate (required in former §88.19) issued by the Department or a certificate issued by another jurisdiction that is acceptable to the Department. New requirements are added for thermometers to be provided and used to confirm that the establishment is holding potentially hazardous foods at required temperatures, and for using ice safely when holding potentially hazardous foods. However, prohibitions on service of specific potentially hazardous foods without the approval of the Department are eliminated. The Department has concluded that the new requirement that every operator or supervisor of food services at a temporary food service establishment hold a food protection certificate will result in increased food safety. Operators and supervisors will be better educated and more aware of the dangers of serving some potentially hazardous foods in event settings where environmental conditions may be difficult or impossible to control.

Subdivision (f) retains the Commissioner's authority to prohibit sales or service of specific potentially hazardous foods or types of foods.

Certain provisions originally proposed for inclusion in this section regarding hot and cold holding equipment and thermometers were deleted from this section and have been added to §88.09.

§88.09 Construction, facilities, equipment and utensils.

This section incorporates provisions from former §§88.07 and 88.15, as well as provisions from Article 81 regarding maintenance of food contact surfaces; sanitizing of utensils and equipment; provision of adequate shielded lighting; and the ventilation of steam, condensation, odors and fumes to prevent a nuisance.

Subdivision (h) requires that adequate hand washing facilities be provided, in accordance with Article 81. However, because the Department recognizes that there may be substantial variability in the plumbing facilities available at events and at participating temporary food service establishments, this provision will allow the Department to approve alternative arrangements for hand washing where strict compliance with this Code requirement is not feasible.

A chart has been added to this section (Table 1) to enable a temporary food service establishment operator to determine the minimum equipment required, depending upon the food processes used, and whether food being prepared is potentially hazardous or prepackaged. Various subdivisions describe the general requirements for all equipment.

§88.11 Cooking and heating equipment.

This section retains requirements that equipment not create a hazard, and that flammable materials be maintained in accordance with Fire Department regulations and specifications.

§88.13 Water supply.

This section incorporates more rigorous requirements governing the provision and use of potable water for food preparation, and for hand washing and cleaning equipment, to protect food from contamination from untreated water, in accordance with the State Sanitary Code.

§88.15 Toilets and hand wash sinks.

This section is new and requires that sponsors of events provide adequate portable toilets and adjacent hand washing, soap and drying facilities for use of workers and patrons of temporary food service establishments where fixed plumbing facilities are not adequate or available.

§88.17 Single service articles.

This section retains a requirement for use of single service articles, as defined in Article 81.

§88.19 Refuse and trash.

This section is amended to clarify that its provisions for clean up do not apply to events regulated by the Mayor’s Community Assistance Unit (CAU) Street Activity Permit Office. The CAU rules set forth in Chapter 1 of Title 50 of the Rules of the City of New York now regulate all City street and sidewalk events, and require event sponsors to arrange with the New York City Department of Sanitation for the cleaning of streets and sidewalks and the appropriate disposal of wastes generated at such events. For other events, this section requires cleaning and maintenance. At the request of the Department of Sanitation, a provision related to disposal of recyclable materials has been added.

§88.21 Enforcement.

A provision authorizing the closure of a temporary food service establishment, formerly in §88.23, has been added to subdivision (b) of the revised §88.21. A new subdivision (a) (“Imminent health hazards”) will allow the Department to dispose of food or order the disposal or sealing of unsafe, unclean, damaged or otherwise unsafe equipment that it identifies as an imminent health hazard, as defined in Article 81. Subdivision (c) incorporates a requirement of State Sanitary Code §14-2.17 (d) that access be provided to the Department’s inspectors.

§88.23 Modification .

This section retains the authority of the Commissioner to modify requirements when strict compliance with a provision presents practical difficulties or unusual or unreasonable hardship.

The Proposal is as follows:

Matter underlined is new

RESOLVED, that Article 88 and the list of section headings for Article 88 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby are repealed and recodified, to be printed together with introductory notes to read as follows:

ARTICLE 88

TEMPORARY FOOD SERVICE ESTABLISHMENTS

§88.01 Scope.

§88.03 Definitions.

§88.05 Permit required.

§88.07 Food safety and protection.

§88.09 Construction, facilities, equipment, and utensils.

§88.11 Cooking and heating equipment.

§88.13 Potable water supply.

§88.15 Toilets and hand wash sinks.

§88.17 Single service articles.

§88.19 Refuse and trash.

§88.21 Enforcement.

§88.23 Modification

Introductory Notes:

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, Article 88, "Temporary Food Service Establishments," was repealed and reenacted by resolution of the Board of Health on XXXX, to better reflect current practice and the regulatory environment, to provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize its provisions with related provisions of the State Sanitary Code. As part of the revision effort, particular attention has been focused on the applicability of Article 81 ("Food Preparation and Food Establishments") to the operation of temporary food service establishments. A temporary food service establishment has been redefined to include not only food service establishments operating at events that is scheduled for 14 or fewer days, but also those at recurring events throughout the year, provided that each such event is scheduled for no more than three days per week.

§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 New York City Community Assistance Unit, or any successor 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 means 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.

Notes:

With respect to applicability of paragraph (2) of subdivision (f), distinct neighborhood, school, religious, fraternal or other affinity groups that invite the public to purchase foods are deemed to be operating either a temporary food service establishment or a food service establishment as defined in §81.05 of this Code. Such groups are required to notify the Department and obtain either the Department's authorization or a permit for operation of a temporary or other food service establishment. Similarly, with respect to the enforcement of paragraph (3) of subdivision (f), food service establishments or caterers providing any food and beverages at meetings or social functions are required to hold a permit issued in accordance with Article 81, regardless of whether refreshments are incidental.

§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.

§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 cooked or 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 in 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.

(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.

§88.09. TABLE 1. EQUIPMENT REQUIRED FOR TEMPORARY FOOD SERVICE ESTABLISHMENTS

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

§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, including the rules, regulations and standards 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 Chapter 1 of Title 50 of the Rules of the City of New York ("Application, Fees and Charges for Street Activity Permits") of the rules of the Community Assistance Unit, or any successor 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. The Commissioner may modify requirements of this Article, when compliance presents practical difficulties or unusual or unreasonable hardships in a specific instance consistent with the purpose and intent of this Article and this Code.