

## **ARTICLE 89** **MOBILE FOOD VENDING**

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### **§89.01 Scope.**

In addition to Article 81, all other applicable provisions of this Code, Chapter 6 of Title 24 of the Rules of the City of New York, and Subpart 14-4 of Part 14 of the State Sanitary Code (10 NYCRR Chapter 1), or successor regulations, the provisions of this article shall apply to all mobile food vending operations, including, but not limited to, the sale of foods, and foods distributed without charge, from mobile food vending units on or in public, private and restricted spaces, both indoors and outdoors, including mobile food vendors and units that are regulated by the Administrative Code.

### **§89.03 Definitions.**

When used in this article:

- (a) Charitable organization shall mean any charitable organization required to register with the State Attorney General that distributes food free of charge.
- (b) Decal shall mean the identifying plate, insignia, seal or other identifying device that is placed on a mobile food vending unit by the Department, after the unit has been approved and inspected by the Department and authorizing use of the unit for mobile food vending.
- (c) Food shall have the same meaning as in Article 71 of this Code.

- (d) License shall mean the paper or other license document and photo identification badge issued to a mobile food vendor authorizing such person to sell food from a mobile food vending unit that has been issued a permit by the Commissioner.
- (e) Material alteration shall mean an alteration that changes or results in a change in the size of the unit, or the replacement of any part of the body structure or equipment in a mobile food vending unit including, but not limited to, any food contact surface or non-food contact surface, and plumbing equipment such as sinks, potable and waste water tanks. A tire change or repair, replacement of the axle, or straightening a dent in a panel shall not be considered a material alteration.
- (f) Mobile food commissary shall mean a food service establishment or a non-retail food service establishment, as those terms are defined in Article 81 of this Code, or other facility approved by the Department that complies with Chapter 6 of Title 24 of the Rules of the City of New York, which provides any of the following services to one or more mobile food vending units:
- (1) Storage of the unit when the unit is not being used for vending;
  - (2) Cleaning and sanitizing of the unit;
  - (3) Cleaning and sanitizing of the equipment and utensils used on a unit;
  - (4) Disposing of liquid and solid wastes and refuse generated by the operation of a unit; or
  - (5) Supplying of potable water and food, whether pre-packaged by the manufacturer, or prepared at the commissary, and furnishing of non-food supplies.
- (g) Mobile food vending shall mean setting up to sell, and preparing, storing, holding and selling food, or distributing food free of charge, to the public from a mobile food vending unit.
- (h) Mobile food vending unit shall mean a food service establishment as defined in Article 81 of this Code located in a pushcart or vehicle, self or otherwise propelled, used to store, prepare, display, serve or sell food, or distribute food free of charge to the public, for consumption in a place other than in or on the unit. Any such pushcart or vehicle shall be deemed a mobile food vending unit whether operated indoors or outdoors, on public, private or restricted space. A mobile food vending unit shall not mean a stand or a booth.
- (i) Mobile food vendor shall mean a person who sells or offers for sale food, or distributes food free of charge, from a mobile food vending unit in any public, private or restricted space.
- (j) Operate or operation of a mobile food vending unit shall mean setting up, preparing, storing, holding and selling food, or distributing food free of charge, from a mobile food vending unit.
- (k) Permit shall mean the paper or other permit document authorizing the use of a specific mobile food vending unit to sell or distribute food, and the decal affixed to the unit by the Department after such unit has passed a pre-permit inspection.
- (l) Potentially hazardous foods shall have the same meaning as provided in Article 81 of this Code.
- (m) Private space shall mean all privately owned or leased property where use of the property for commercial purposes, including mobile food vending, is restricted to persons who have the written permission of the owner or lessee of the property.
- (n) Public space shall mean all publicly owned property between the property lines on a street as such property lines are shown on City records including, but not limited to, a

park, plaza, roadway, shoulder, tree space, sidewalk or parking space between such property lines.

- (o) Pushcart shall mean a wheeled device, not required to be licensed as a vehicle, that is equipped in accordance with this Article and that is approved by the Department for use as a mobile food vending unit. Pushcart shall not mean a stand or booth.
- (p) Restricted space shall mean publicly owned property where the owner or the lessee has the right to restrict or limit commercial activity, including mobile food vending.
- (q) Service, servicing or providing services to a mobile food vending unit shall mean providing the services listed under subdivision (f) of this section, at a mobile food commissary, or other facility approved by the Department in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.
- (r) Temporary mobile food vending permit shall mean a seasonal permit issued for operating a mobile food vending unit from April 1 to October 31 in a calendar year.
- (s) Vehicle shall mean a motor vehicle or trailer, as defined in the Vehicle and Traffic Law, equipped in accordance with this Article and Chapter 6 of Title 24 of Rules of the City of New York.
- (t) Volunteers shall mean persons who provide services free of charge to charitable organizations that operate mobile food vending units distributing food free of charge.

#### **§89.05 Permits required.**

- (a) *Mobile food vending units.* No person, including a charitable organization, shall operate a mobile food vending unit in any public, private or restricted space without a permit issued by the Commissioner and a decal issued and placed on the unit by the Department after inspection by the Department.
  - (1) No mobile food vending unit permit or decal shall be issued until the Department determines, upon inspection, that the unit is of sanitary construction and design, and equipped with sanitary facilities for mobile food vending in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.
  - (2) The permittee shall provide proof satisfactory to the Department that the mobile food vending unit is supplied and serviced at a mobile food commissary permitted by the Commissioner, or other facility approved by the Department in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.
  - (3) Only a currently licensed mobile food vendor may apply for or hold a mobile food vending unit permit.
- (b) *Permit and decal.* After a mobile food vending unit passes a pre-permit inspection by the Department, as defined in Chapter 6 of Title 24 of the Rules of the City of New York, and a decal is affixed by the inspector conducting the inspection, the Commissioner shall issue a permit document to the permittee provided that the applicant has satisfied all other applicable requirements.
- (c) *Material alterations prohibited.* A mobile food vending unit shall not be materially altered after it has been inspected by the Department and the Department has attached a permit decal. Any material alteration of a mobile food vending unit after it has been inspected by the Department shall automatically void the permit issued to that unit. When an employee of the Department determines that a unit has been materially altered, such employee shall remove the decal and seize the vendor's permit and the Department may revoke or suspend such permit in accordance with §89.33.

- (d) *Ice cream trucks.* No decal shall be issued for any vehicle to be used to vend ice cream and other frozen desserts unless such vehicle is equipped with fully operational warning beepers and signage arms required by the State Vehicle and Traffic law and the rules promulgated thereunder.
- (e) *Mobile food commissaries.* No person shall maintain or operate a mobile food commissary that services City mobile food vending units unless such commissary holds a current permit issued by the Commissioner, the Department of Agriculture and Markets, or the permit issuing official of a jurisdiction outside New York State in which the commissary is located.

#### **§89.07 Licenses and badges.**

- (a) *License required.* No person shall operate a mobile food vending unit in any public, private or restricted space without having first obtained a license issued by the Commissioner. A new or renewal license shall be issued when a complete application and all documentation required by this Code and other applicable law have been submitted, and the Commissioner has determined that the applicant is eligible to hold such license.
- (b) *Food protection course.* No mobile food vendor license shall be issued to any person unless such person submits proof satisfactory to the Department that he or she has successfully completed a food protection course in accordance with Article 81 of this Code.
- (c) *Charitable organization volunteers.* Volunteers for charitable organizations operating mobile food vending units that distribute food free of charge shall not be required to hold a mobile food vendor license, but shall be required to present proof prior to vending, of satisfactory completion of a food protection course approved by the Department.
- (d) *Documentation required.* No person shall operate any mobile food vending unit unless the badge issued to such person by the Department is conspicuously displayed on his or her outer clothing, and is carrying both the original food vendor license issued to such person and the original mobile food vending unit permit documents. Such license and permit shall be exhibited upon demand to any police officer, Department employee or agent, or other authorized officer, employee or agent of the City. Until the permit document is received by the permittee, the operator of the mobile food vending unit shall have in his or her possession the original pre-permit inspection report of the Department, indicating that a permit has been approved for issuance to the permittee.

#### **§89.09 Terms of permits and licenses.**

- (a) *Two year terms.* Mobile food vending unit permits, and mobile food vendor licenses shall be valid for two years unless suspended or revoked by the Commissioner.
- (b) *Temporary permits.* Seasonal mobile food vending unit permits shall be issued annually for operation from April 1 through October 31 of each calendar year, unless suspended or revoked by the Commissioner.
- (c) *Commissary permits.* Mobile food commissary permits shall be valid for one year unless sooner suspended or revoked by the Commissioner.
- (d) *Restricted or private space permits.* Mobile food vending units operating exclusively in restricted or private spaces shall have the same term as the term of the written agreement between the permittee and the owner or lessee of the premises, but shall not exceed the terms specified in subdivision (a) or (b) of this section.

## **§89.11 Applications for permits and licenses.**

- (a) *Fees.* All applications for a license or permit to vend in a public space shall be accompanied by payment of the fees prescribed in §17-308 of the Administrative Code, or successor law, or, if the mobile food vending unit will operate in a private or restricted space, the fee prescribed by Article 5 of this Code.
- (b) *Applications.* All applications shall be submitted in a form and contain all information and documentation required by the Department, and shall include, but not be limited to, the following information:
  - (1) The name, home and business address of the applicant;
  - (2) The name, home address and license number of every food vendor who will be authorized by the permittee to operate the mobile food vending unit;
  - (3) A description of the food to be vended and a description of the type of mobile food vending unit to be operated pursuant to the permit;
  - (4) At least one piece of current valid photo identification issued by a government agency of any jurisdiction;
  - (5) If the application is for a mobile food vending permit, proof that the applicant has obtained a certificate of authority to collect sales taxes pursuant to §1134 of the Tax Law from the New York State Department of Taxation and Finance;
  - (6) If the applicant is a partnership, limited liability company or other business entity, the name, and address of each partner, member, officer or manager, as may be applicable, of such entity; if a corporation, the names and addresses of the corporation, the names, home and business addresses of the principal stockholders, officers, directors and shareholders;
  - (7) Proof that the applicant has obtained clearance from the Environmental Control Board showing the payment of all penalties and fines pursuant to Chapter 6 of Title 24 of the Rules of the City of New York; and
  - (8) An application for a permit for a mobile food vending unit to operate in a private or restricted space shall include a copy of a written agreement with the owner of the private or restricted space indicating that the applicant has the right to operate in such space.
- (c) *Renewals.* An application for renewal of a license or permit shall be received by the Department, with the fee required by Article 5 of this Code or the Administrative Code, at least thirty days prior to the expiration date of the existing license or permit. Such application shall be accompanied by proof that all penalties and fines for sustained or defaulted notices of violation issued to the mobile food vendor licensee or permittee for violations of Title 17 of the Administrative Code, the Health Code, the Sanitary Code, and Chapter 6 of Title 24 of the Rules of the City of New York have been paid in full in accordance with such chapter.
- (d) *Duplicates.* Applications for duplicate license and permit documents, decals and badges shall be accompanied by documentation acceptable to the Department demonstrating that the original documents, decals or badges have been lost, stolen, damaged or destroyed. Such documentation shall include, but not be limited to a sworn notarized statement by the applicant attesting to the circumstances of the loss, theft or damage of the document, decal or badge and, in cases of theft, a police report for the stolen document, decal or badge

- (e) *Representatives.* An application for a new or renewal license or permit that is prepared or submitted by an authorized representative of the applicant shall contain a sworn statement indicating that the representative provided the applicant with a complete application packet provided by the Department, including a copy of all laws and regulations applicable to vending, and that all applicable laws and regulations were explained to the applicant.
- (f) *Signed by applicant.* Applications for new, renewal or duplicate documents shall be signed by the applicant, and not by a representative.
- (g) *Affirmation.* Every applicant for a new or renewal or duplicate license or permit shall affirm or swear as to whether such applicant has or has not previously had a license or permit suspended or revoked by the Commissioner.

### **§89.13 Duties of licensees and permittees.**

- (a) *Inspections.* Permittees and licensees shall permit inspections by the Department of any mobile food vending unit subject to this Article, and any premises in which food is stored, prepared, processed distributed or served. Permittees and licensees shall present mobile food vending units for inspection at such place and time as may be designated by the Department.
- (b) *Commissary used.* Permittees and licensees shall provide to the Department upon request the names and home and business addresses of the owners of the mobile food commissaries, or other approved facility from which the permittee or licensee receives her or his food and supplies, and the address at which the food supplies are stored, where his or her mobile food vending unit is serviced and where the unit is stored when not in operation.
- (c) *Documented food source.* Permittees and licensees shall have in their possession and make available for inspection documentation satisfactory to the Department identifying the source of all foods being held, stored, offered for sale, sold or distributed free of charge from the mobile food vending unit.
- (d) *Authorized foods.* Permittees and licensees shall not use or allow others to use a mobile food vending unit to vend any foods other than those foods authorized in writing by the Commissioner to be vended by the permittee or licensee.
- (e) *Expired or suspended or revoked permits and licenses.* Permittees and licensees shall not operate a mobile food vending unit after expiration or revocation of a permit or license or during any period when a permit or license is suspended.
- (f) *Surrender of licenses and permits.* Licenses, permits, badges and decals shall be surrendered promptly to the Commissioner upon revocation, suspension, termination or expiration.
- (g) *Unlicensed vendors prohibited.* Permittees and licensees shall not allow a person who does not hold a currently valid mobile food vending license issued by the Commissioner to operate such permittees' or licensees' mobile food vending unit.
- (h) *Notice to the Department.* Permittees and licensees shall notify the Department within ten business days of any change in the information provided on an application for a license or a permit, including, but not limited to, the address and contact information for the licensee or permittee, and the names and license numbers of persons authorized to operate a permittee's mobile food vending unit. Failure to timely notify the Department of a change in address by a licensee or permittee shall result in the declaration of a default if the Department commences a proceeding for the licensee or vendor to show cause why

the Commissioner should not revoke or suspend the license or permit and mails the petition and notice of hearing to the licensee's or permittee's last known address as maintained in Department records.

- (i) *Damaged and repaired mobile food vending units.* Any mobile food vending unit that has been damaged and repaired or materially altered, as defined in this Article, shall be re-inspected by the Department prior to its re-use as a mobile food vending unit. No decal shall be transferred from any mobile food vending unit to another mobile food vending unit, except by the Department. The Department may impose a reasonable fee to cover the costs of all such inspections.
- (j) *Restricted or private area permit limitations.* Any person who operates a mobile food vending unit with a private or restricted area permit in any area other than the area specified on the permit shall be deemed to be operating without a permit.
- (k) *Permittees liable for mobile food vending unit operation.* Permittees shall be jointly and severally liable for violations of this Code, and other applicable law, that occur in the course of operating mobile food vending units. A person operating a mobile food vending unit who is not the permittee shall be deemed an agent of the permittee, and the mobile food vending unit being operated by such person shall be deemed the place of business of the permittee, for the purpose of service of any Department notice of violation, order, or petition and notice of hearing issued to the permittee. A licensee served with any notice of violation, order, or petition and notice of hearing directed to the permittee shall deliver such notice of violation, order or petition to the permittee within two business days of delivery of such document to the licensee, and the Department shall mail such notice of violation, order, or petition and notice of hearing to the permittee by any method authorized in Article 3 of the Code.

#### **§89.15 Prohibition against transfer of foods.**

Except for charitable organizations, it shall be unlawful for any person to sell food or distribute food free of charge to any other mobile food vendor for resale or distribution if such vendor does not have a valid permit and license for mobile food vending.

#### **§89.17 Prohibition against transfer of a license or permit.**

- (a) *Transfers prohibited.* No person holding a permit for a mobile food vending unit or a license to operate a mobile food vending unit shall sell, lend, lease or in any manner transfer his or her license, permit, badge or decal, except in accordance with applicable law.
- (b) *Unauthorized transfer voids permit and license.* Any unauthorized transfer or attempt to transfer a license, permit, badge or decal shall automatically void such license, permit, badge and identification insignia.
- (c) *Notice to the Department.* The Department shall be notified in writing at least ten business days in advance of any transfer of a license or permit authorized by applicable law.

#### **§89.19 Food protection and safety.**

- (a) *Food sources.* Food shall be obtained from approved sources operating pursuant to licenses or permits issued by federal, state or local regulatory agencies. All potentially hazardous foods shall be cooked, processed, packaged, and labeled at a licensed mobile food commissary or other approved facility.

- (b) *Thermometers required.* Metal stem-type, numerically scaled, indicating thermometers, thermocouples, or thermistors, accurate to plus or minus two degrees Fahrenheit (one degree Celsius), shall be used to determine that required internal cooking, holding or refrigeration temperatures of all potentially hazardous foods are obtained and maintained in accordance with Article 81.
- (c) *Hot and cold holding.* Sufficient hot and cold storage facilities shall be provided and used to maintain potentially hazardous foods, as defined in Article 81 of this Code, at required temperatures.
- (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 sale or service of specific foods.* The Commissioner may by rule prohibit the sale or service of specific potentially hazardous foods or types of foods by mobile food vending units.
- (1) *Meat.* All meat shall be processed and prepared for cooking at a mobile food commissary. No raw meat shall be sold, butchered, de-boned, dressed, or cut into portion size in or on a mobile food vending unit.
  - (2) *Fish and other aquatic animals.* No raw fish, raw shellfish, or any other raw food products consisting of or made with an aquatic animal, as defined in Article 81, shall be held for service or sold from a mobile food vending unit. No raw fish, raw shellfish, or any other raw food products consisting of or made with an aquatic animal shall be cleaned, de-boned, dressed, scaled, eviscerated, or cut into portion sizes in or on a mobile food vending unit. Such food products may be cooked or reheated on a mobile food vending unit, provided that the food products have been commercially manufactured, or processed and prepared for cooking at a mobile food commissary or at another duly licensed and approved facility.
  - (3) *Processed fruits and vegetables.* Mobile food vending units in which sliced, peeled or processed fruits and vegetables are prepared, stored, held for service or sold shall have adequate refrigeration at all times, and shall during a pre-permit inspection. Mobile food vending units only authorized to sell whole fresh pre-packaged fruits and vegetable may not sell or hold for service sliced, peeled or processed fruits and vegetables and as such refrigeration for such units is not required.
- (g) *Displayed foods.* Food placed on display on the mobile food vending unit shall be protected from contamination, in accordance with Article 81 of this Code. Foods, including but not limited to, pretzels and nuts, shall be displayed only in protective containers approved by the Department.
- (h) *Condiments.* Individual single-service containers, sealed by the manufacturer, shall be provided for condiments such as sugar, mustard, ketchup, salt, pepper and relish, unless

dispensed directly by the food vendor from a shaker or container with a pump, made of a food grade material.

- (i) *Mobile food vendor hygiene.* At all times while operating a mobile food vending unit, persons shall maintain personal hygiene in accordance with Article 81, shall not smoke, shall be fully clothed (no sleeveless shirts or bare midriffs) in clean outer garments, and shall wash hands after using toilets.
- (j) *Contamination.* All foods on a mobile food vending unit shall be protected against contamination in accordance with Article 81 of this Code. Water in which food is boiled, heated, or otherwise processed shall not be used to heat containers of other foods.
- (k) *Toxic materials.* No poisonous or toxic materials, including, but not limited to, pesticides and cleaning compounds, shall be kept on or in a mobile food vending unit. In a vehicle used as a mobile food vending unit, vehicle maintenance materials shall not be stored in parts of the vehicle where food is stored, prepared or served.
- (l) *Servicing frequency.* All mobile food vending units shall be cleaned and serviced at least daily at a mobile food commissary or other facility approved by the Department.

### **§89.21 Water supply.**

- (a) *Potable water.* All water, including City tap water, supplied to a mobile food vending unit shall be potable water and obtained from a supply complying with the requirements of Article 81 of this Code and the State Sanitary Code.
- (b) *Water storage tanks.* Water storage tanks, fill piping and distribution piping shall be constructed from food-grade materials; installed and maintained to protect water from contamination; designed to be drained by gravity; and sanitized, emptied and rinsed daily with potable water before use.

### **§89.23 Equipment and hand wash sinks.**

- (a) *Compliance with Article 81 and rules.* A mobile food vending unit shall be designed and equipped to hold, prepare, store and serve food in accordance with Chapter 6 of Title 24 of the Rules of the City of New York and Article 81 of this Code.
- (b) *Operations exclusively on the mobile food vending unit.* The sale, storage, holding, distribution, or display of food from boxes or from any place other than a mobile food vending unit is prohibited.
- (c) *Single-service articles.* Consumers shall be provided with single service articles, such as plastic forks and paper plates. Mobile food vendors shall not re-use single service articles and shall provide a container for their disposal. All waste containers shall be emptied and cleaned at the commissary servicing the mobile food vending unit, in accordance with §89.25 of this Article.
- (d) *Equipment placement.* Equipment shall be located and installed in a way that prevents food contamination and facilitates cleaning the unit, in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.
- (e) *Unobstructed work areas.* Unobstructed working spaces are to be provided sufficient to permit persons operating a mobile food vending unit to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.
- (f) *Hand washing facilities required.* Hand wash sinks shall be provided in accordance with Chapter 6 of Title 24 of the Rules of the City of New York.

## **§89.25 Garbage, refuse and liquid wastes.**

Garbage, refuse and other solid and liquid wastes shall be collected and stored at the mobile food vending unit while the unit is in use and removed from the unit and disposed of so as to prevent a nuisance.

- (a) *Collection and disposal.* Mobile food vending permittees and licensees shall collect garbage, refuse and other solid and liquid wastes at the vending site in a vermin-proof receptacle and remove and dispose of the receptacle at the mobile vending unit's commissary or other facility authorized by the Department. Solid and liquid waste shall not be discarded on public streets or sidewalks or in a public litter basket placed on the streets by the Department of Sanitation, or any other person or entity.
- (b) *Liquid wastes and sewage holding and disposal.* Sewage and liquid wastes shall be stored in a permanently installed holding tank that has at least 15 percent greater capacity than the water supply tank in a manner that protects the vending location, personnel and contents within the mobile food vending unit from contamination. All plumbing shall be constructed and maintained so as to prevent contamination of or contact with the potable water supply, food, equipment, utensils, food contact surfaces and non-food contact surfaces, employees and patrons. All sewage and liquid waste shall be disposed of at the mobile food commissary or a sewage disposal system constructed and operated in a manner acceptable to the Department.
- (c) *Debris and consumer litter.* The operator of a mobile food vending unit is responsible for and shall remove and clean solid and liquid wastes, debris and food spillage caused by the operation of the unit and consumer littering adjacent to the mobile vending food vending unit.
- (d) *Enforcement.* In addition to authorized officers, employees and agents of the Department, authorized officers, employees and agents of the City Department of Sanitation, may order cleanup of wastes and issue summonses and notices of violations for violations of subdivisions (a) and (c) of this section.

## **§89.27 Mobile food commissaries.**

- (a) *Compliance with applicable law.* A mobile food commissary 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 of Title 24 of the Rules of the City of New York, and shall not create or maintain a nuisance with respect to the health or safety of any consumer or the public because of the condition of the mobile food vending unit, its equipment, utensils, personnel, mode of operations, vending location, water supply, liquid and solid waste and sewage disposal, food and appurtenances.
- (b) *Records of food vending units to be maintained.* Mobile food commissaries and other facilities approved by the Department shall maintain a list of the mobile vending units serviced by such facilities and make the list available for inspection by the Department on request.
- (c) *Cleaning.* Such commissaries or facilities shall provide a cleaning area for cleaning and servicing mobile food vending units that shall be:
  - (1) Large enough to accommodate the largest size mobile food vending unit utilizing the facility.

- (2) Physically separated from all food operations to avoid contamination of food, equipment and food contact surfaces.
- (3) Provided with potable water, plumbing fixtures and facilities for the drainage and disposal of liquid wastes and the storage of solid wastes in accordance with Article 81 of this Code.
- (d) *Street and sidewalk cleaning prohibited.* Mobile food vending units shall not be cleaned or serviced on public streets and sidewalks, including those adjacent to commissaries.
- (e) *Garbage and waste disposal.* Commissaries shall collect and remove garbage, refuse and liquid wastes in accordance with Article 81 of this Code and other applicable law.
- (f) *Enforcement.* In addition to authorized officers, employees and agents of the Department, authorized officers and employees of the Department of Sanitation, or successor agency, may issue notices of violation or orders to remediate any nuisances created by vendors in violation of this section.

### **§89.29 Imminent health hazards.**

- (a) Cessation of operations of a mobile food vending unit for imminent health hazards. The Department may order any person operating a mobile food vending unit to immediately cease operations and serving food if the continued operation of the unit presents an imminent hazard to public health, as defined in Article 81 of this Code and Part 14 of the State Sanitary Code. Any person ordered to cease operations and service of food pursuant to this section shall comply with such order immediately.
- (b) Seizure of permit and license(s) authorized. When the Department determines that a vending unit is operating with imminent health hazards and has ordered the vendor to cease operation, the Department may seize the permit document, and the operator's license document and badge, and may apply a seal or sign to cover the mobile food vending unit's decal, or remove the decal, thereby suspending the license and/or permit.
- (c) Suspension of the vendor's license and permit. In the event a license or permit has been seized, the licensee or permittee shall, within 10 calendar days thereafter, be provided with a hearing as to why the cessation order should be rescinded and as to why the mobile food vendor's license and the permit for the unit should not be further suspended or revoked.
- (d) Restoration of the vendor's license or permit. If the Department determines within 10 calendar days after issuing the cessation order that the imminent hazard resulting in the order has been corrected, and that public health will not be adversely affected by the resumed operation of the vending unit, the Department may return or reissue any license and/or permit that it has seized pursuant to this section. The Department may condition such return on the licensee and/or permittee agreeing to take any steps necessary so that the hazard does not recur.
- (e) Operation prohibited until after hearing. Unless otherwise provided in this section, no person shall operate the unit until there has been a hearing at OATH followed by expeditious adoption by the Commissioner of the report and recommendation of an OATH administrative law judge, setting forth a finding that continued operation of the unit by or on behalf of the permittee does not present a continuing hazard to the public health. If the administrative law judge finds that continued operation of the mobile food vending unit by the permittee and the licensee presents a continuing hazard to the public health, the permittee and licensee may request that the Commissioner provide them with

an opportunity to correct the violations and to demonstrate that they are willing and able to operate the mobile food vending unit in compliance with all applicable law. If such request is not received the Commissioner shall issue an order suspending or revoking the permittee's mobile food vending unit permit and license and the operator's mobile food vending license.

- (f) Service of cessation order. If the operator of the mobile food vending unit is not the permit holder, the order issued pursuant to this section shall be served upon the permittee by delivery to the person operating the mobile food vending unit, and by mailing the order to the permittee's address, as maintained in Department records, pursuant to §3.05 (b) of this Code.
- (g) Cessation signs not to be removed. Cessation signs or seals affixed by the Department shall not be removed except by order of the Commissioner or designee.

### **§89.31 Enforcement.**

- (a) *Operation without permit.* Any mobile food vending unit being operated without a currently valid mobile food vending unit permit issued by the Commissioner shall be deemed an imminent health hazard and may be seized by the Department and all the food therein denatured or otherwise disposed of.
- (b) *Denial of license or permit.* The Commissioner may refuse to issue or renew, or may suspend or revoke a license or permit in accordance with provisions of this Code, or other applicable law.
- (c) *Unattended units prohibited.* No mobile food vending unit shall be parked on the street overnight, or left unattended at any time food is kept in the mobile food vending unit.
  - (1) Any mobile food vending unit which is found to be unattended or which a vendor has abandoned shall be considered an imminent health hazard subject to the provisions of §89.29 of this Article.
  - (2) Any cessation order issued for abandoning a mobile food vending unit or leaving such unit unattended shall, in the absence of the operator of such unit, be served by posting or affixing notice of such cessation order on such unit. Notice of the cessation order shall thereafter be mailed to the permittee's address, as maintained in the Department's records, pursuant to Article 3 of this Code.
- (d) *Authorized enforcement officers.* Public health sanitarians or other authorized officers of employees of the Department and other City departments or agencies having jurisdiction over matters applicable to the operations of mobile food vendors and mobile food vending units, including, but not limited to, officers of the Police Department, shall have the power to enforce all laws, rules and regulations relating to mobile food vendors and mobile food vending units, including the provisions of this Article. This Article shall not be construed as restricting in any way any other power granted by law to any officer or employee of the City. Any such officer or employee may seize any food or mobile food vending unit which does not have a permit or which is being used by an unlicensed mobile food vendor. Such mobile food vending unit and food shall be subject to forfeiture and disposal or sale in accordance with applicable law.
- (e) *Removal costs.* A mobile food vending unit and its contents that are seized pursuant to subdivision (d) of this section, or other applicable law may be removed to any garage, automobile pound or other place of safety, and the owner, or other person lawfully entitled to the possession of such vehicle or pushcart may be charged with reasonable

costs for such removal and storage, payable prior to the release of the mobile food vending unit.

### **§89.33 Suspension and revocation of license or permit.**

A license or permit issued pursuant to the provisions of this Article may be suspended or revoked by the Commissioner upon notice and hearing for any of the following causes:

- (a) Fraud, misrepresentation or false statements contained in the application for the license or permit;
- (b) Fraud, misrepresentation or false statements made in connection with the selling of any item of food;
- (c) Having been found in violation four or more times of the provisions of Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code within a two-year period, or a violation of the provisions of Part 14 of Chapter 1 of the State Sanitary Code or of this Code, or of Chapter 6 of Title 24 of the Rules of the City of New York within a two-year period;
- (d) Failure to answer a summons or notice of violation, or failure to appear at a hearing for violation of Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code, or of Chapter 6 of Title 24 of the Rules of the City of New York, or of this Code or the State Sanitary Code, or failure to pay a fine or penalty imposed by the Commissioner, Department or court for any such violation.
- (e) A license or permit that has been issued to a person who is not eligible pursuant to Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code or this Code to hold such license or permit shall be deemed automatically invalid, and issued in error. Notice of such determination shall be made by first class mail to the last known address of the licensee or permittee, as maintained in Department records, and shall be a final agency determination.
- (f) It shall not be a defense in any proceeding to revoke a license or permit that the licensee or permittee changed his or her address without providing notice to the Department.
- (g) *Notice; hearings.* Notice and hearing upon denial of an application, refusal to issue or renew, or where the Commissioner seeks to suspend or revoke a license or permit shall be provided in accordance with this Code, Chapter 7 of Title 24 of the Rules of the City of New York, and §17-317 of the Administrative Code.

### **§89.35 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.