

NOTICE OF PUBLIC HEARING

Subject: Opportunity to Comment on Proposed Repeal and Recodification of Chapter 6 (Food Units) of Title 24 of the Rules of the City of New York.

Date / Time: July 19, 2012 from 10A.M. to 12P.M.

Location: New York City Department of Health and Mental Hygiene
125 Worth Street
Third Floor Boardroom
New York, NY 10013

Contact: Rena Bryant
(347) 396-6071

Proposed Rule

The Department of Health and Mental Hygiene (the “Department”) is proposing to repeal and recodify Chapter 6 (Food Units) of Title 24 of the Rules of the City of New York.

Instructions

Prior to the hearing, you may submit written comments about the proposed amendment by mail to

New York City Department of Health and Mental Hygiene
Board of Health
Office of the Secretary to the Department
Attention: Rena Bryant
Gotham Center
42-09 28th Street
14th Floor, Room 14-15
Long Island City, NY 11101

or electronically through NYC RULES at www.nyc.gov/nycrules or by email 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., on July 19, 2012.

To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by July 5, 2012.

Copies of written comments and a summary of oral comments received at the hearing will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the contact address below.

New York City Department of Health and Mental Hygiene
Office of the Secretary to the Department
Attention: Rena Bryant
Gotham Center
42-09 28th Street, Box 31
14th Floor, Room 14-15
Long Island City, NY 11101

Statement of Basis and Purpose

Statutory Authority

This repeal and reenactment of Chapter 6 of Title 24 of the Rules of the City of New York is issued according to §§556 and 1043 of the New York City Charter (the “Charter”), §17-324 of the Administrative Code of the City of New York, and Article 89 of the New York City Health Code:

- Section 556 of the Charter authorizes the Department of Health and Mental Hygiene (the “Department”) to regulate all matters affecting health in the city of New York.
- Section 1043 of the Charter gives the Department rulemaking powers.
- Section 17-324 of the Administrative Code authorizes the Commissioner to “make such rules as deemed necessary” for enforcement of Subchapter 2 (Food Vendors) of Chapter 3 (Licenses and Permits) of Title 17 of the Administrative Code.
- Article 89 (Mobile Food Vending) of the New York City Health Code refers to rules to be promulgated by the Commissioner in Chapter 6.

Background of Proposed Rules

At a meeting on December 16, 2008, the New York City Board of Health repealed and reenacted Article 89 (Mobile Food Vending) of the New York City Health Code, as part of a comprehensive review of all Health Code provisions. Article 89 was reorganized, obsolete provisions were repealed, and new provisions were adopted to reflect Department practice and the regulatory environment. The recodified Article 89 became effective on January 1, 2010. Several provisions in the recodified Article 89 reference the rules that are applicable to mobile food vending in Chapter 6 (Food Units) of Title 24 of the Rules of the City of New York. These rules are therefore being amended to conform to Article 89 and enable better implementation of this article.

Overview of Proposed Rules

Because of the significant number of changes, and in an effort to provide more clarity, the Department is proposing to repeal the entirety of Chapter 6 and replace it with a new set of renumbered and amended rules. The major changes in the proposed new provisions can be summarized as follows:

- **Classification scheme for mobile food vending units.** The proposed rules classify units according to the kinds of operations (processing or non-processing), kinds of foods served (potentially hazardous requiring temperature control for safety or not potentially hazardous), and whether or not foods are prepackaged. The classifications (A through E) will determine the kind of equipment required.
- **Commissaries.** The proposed rules would allow for and describe requirements for alternatives to commissaries for Class D and E carts (non-processing carts, such as hot dog, coffee and

fruit/vegetable carts, green carts). These storage and cleaning facilities may hold up to 4 carts, and would have to meet basic sanitary requirements. The permittee would have to get Department approval for use of a facility that is an alternative to a commissary, but the alternative facility would not have to hold its own permit.

- **Size of mobile vending units.** The proposed new rules would limit cart size to 5'x10'-- taking into account sidewalk clearance and pedestrian safety, as well as the existing stock of carts.
- **Pre-permit inspection appearance by permit holders.** The proposed new rules would compel permit holders to appear for pre-permit inspections in person: for full-term permittees this would require an appearance at least once every two years; for seasonal permittees this would require an appearance each year. This rule would implement a specific recommendation by the Department of Investigation following its review of industry practices and illegally transferred or leased permits.
- **Joint and severable liability for violations.** Though authority already exists in Article 5 and Article 89 of the Health Code for the Department to issue notices of violations (NOVs) to permit holders, the proposed new rules would clarify that licensees must accept service of NOVs on behalf of permit holders, and that the Department would perfect personal service of NOVs to permit holders by mailing permittees copies of the NOVs. In other words, personal service of NOVs, as described in the proposed rules, would meet all legal requirements.

Description of Proposed Rules

The proposed new provisions of Chapter 6, and how they differ from the current provisions of Chapter 6, are described as follows.

§6-01 Scope and applicability.

This section is substantively the same as current §6-01 (b).

§6-02 Definitions.

This section is new and defines terms used throughout the Chapter. Most notably:

- “Mobile food commissary or other facility approved by the Department” describes a facility other than a commissary where Class D and Class E mobile food vending units (see newly added section 6-03) may be cleaned and stored when not used for vending. The Department recognizes that all mobile food vending units do not need to be stored and cleaned in commissary facilities in order to satisfy public health concerns. Therefore, for Class D and Class E units, these alternate facilities are reasonable, since these units do not require the same level of servicing as do Class A, B and C units on which potentially hazardous foods are prepared and held. The facilities must provide basic sanitation, plumbing, a source of potable water, and drainage; and must not create a nuisance. However, no food would be permitted to be stored in such facilities.
- The section includes the term “processing” as defined in the State Agriculture and Markets Law §251-z-2 (4).
- The term “pre-permit inspection” is defined to include several instances that require the permittee or permit applicant to bring in the mobile food vending unit for an inspection by the Department.

§6-03 Mobile food vending unit classifications.

This section is new and classifies units as Classes A through E according to:

- The kind of operations (processing or non-processing);
- The kinds of foods served (potentially hazardous requiring temperature control for safety or not potentially hazardous), and
- Whether or not foods are prepackaged.

The new classifications would determine the kind of equipment required for each unit, as specified in Table 1 of §6-05. A summary of the new classifications is as follows:

- Class A: Prepare and process raw potentially hazardous foods, e.g., grilled or fried meats, eggs and poultry.
- Class B: Prepare and process potentially hazardous foods that are manufactured or pre-cooked, e.g., sandwiches, smoothies and soft-serve frozen desserts.
- Class C: Serve only intact, prepackaged potentially hazardous foods requiring temperature control for safety, e.g., prepackaged frozen desserts, prepackaged sandwiches and prepackaged presliced fruits and vegetables.
- Class D: Serve only non-potentially hazardous packaged or unpackaged foods that do not require temperature control for safety, e.g., brewed coffee and tea, donuts, soft pretzels, boiled frankfurters and other sausages.
- Class E: Green carts that sell only non-potentially hazardous unprocessed whole fruits and vegetables.

Permittees seeking Class A and B permits would be required to pay the \$100 annual permit fee for a processing unit as prescribed in §17-308 of the Administrative Code, or as applicable, the fee for a temporary seasonal processing permit in accordance with §17-307 of the Administrative Code and Article 5 of the Health Code.

§6-04 Mobile food vending units: pre-permit construction and equipment requirements for all classes of mobile food vending units.

This section expands and provides detail for the more generally stated requirements in current §6-01, with respect to what materials and equipment will be approved for mobile food vending units. It is largely based on requirements applicable to other kinds of food service establishments, set forth in Article 81 of the Health Code and the US FDA Food Code, adapted to apply to mobile food vending. Its intent is to reduce the risk of food being contaminated by exposure to environmental contaminants, and to better protect food workers and the public.

§6-05 Mobile food vending units: equipment required for different classes of mobile vending units.

This section is new. The equipment required is related to the unit classifications, which are based on the kinds of processes and kinds of foods being processed on the unit. A chart included as Table 1 specifies the equipment required for each class of mobile food vending unit. These requirements are consistent with standards for those for temporary food service establishments set forth in Article 88 of the Health Code. Plumbing and water standards are based on those in Chapter 5 of the 2009 US FDA Food Code.

§6-06 Size of mobile food vending units.

This section is renumbered, and would amend current §6-01 (d). Administrative Code §17-307 (b)(1) authorizes the Commissioner to establish size and design standards for mobile food vending units.

The Department is proposing a maximum size limit of five feet in width and 10 feet in length for all mobile food vending units, other than those that are motor vehicles. The longer side of the unit would be required to be placed adjacent and parallel to the curb of the sidewalk. Currently, §6-01(d) limits the size of non-processing carts to four feet six inches in width (for units where the operator is within the unit) and six feet six inches in length. It does not limit the size of either processing carts or motor vehicles.

There is historical precedent for the Department's regulation of the size of mobile food vending units. In 1978, §D22-19.0 of the Administrative Code went into effect. That provision of the Administrative Code limited the size of units to 10 linear feet, measured parallel to the curb on any sidewalk. While this

limitation was repealed in the mid 1990's, it remained in §89.09 (c) of the Health Code and was in effect until January 1, 2010, when Article 89 was repealed and recodified. The size limitations were repealed and not included in the revised Article 89 because the Department intended to include all specific size, design and equipment requirements in this Chapter of the Department's rules. Also note that Administrative Code §20-465 (b) -- applicable to general merchandise sidewalk vending units -- limits these vendors to occupying no more than three feet in width (measured perpendicular to the curb) and eight feet in length (parallel to the curb).

The Department believes that limiting the size of non-motor vehicle sidewalk food units to no more than five feet in width by 10 feet in length is reasonable, and would readily enable such units to accommodate the equipment required for all mobile food vending units using public sidewalks, without unduly obstructing the public's use of the sidewalks.

§6-07 Green carts.

This section is renumbered, but is substantively the same as current §6-01 (m)-(o). Reference to a "two-year phase-in period" after which vendors must pay \$50.00 for a new or replacement umbrella for their green carts has been deleted as it was no longer applicable after June 2010.

§6-08 Facilities for servicing Class D and Class E mobile food vending units.

This section is new. The Department is authorized under Article 89 of the Health Code to adopt rules to approve facilities to service mobile food units that only vend pre-packaged non-potentially hazardous foods or whole fresh fruits and vegetables. (See, Health Code §89.03.) This new section, §6-08, would establish the rules for such facilities. Previously, all units were required to be serviced by permit-holding commissaries.

Anyone intending to use such a facility would have to certify that the facility holds any necessary permits and is in compliance with all applicable fire safety, zoning and building laws. At the Department's request, the user would be required to provide documentation to support the certification. The rule is intended to prevent nuisances at such facilities, and maintain sanitary conditions on the units and at these facilities. However, consistent with Administrative Code §17-307 (c), only a commissary holding a permit issued pursuant to Article 81 of the Health Code may provide necessary services to five or more mobile food vending units of any class or to more than one mobile food vending unit vehicle. In addition, all mobile food vending units in classes A, B or C would still be required to be serviced at a commissary.

§6-09 Manufacturer or exclusive distributor lease agreements.

This section has been renumbered, and is substantively the same as existing §6-04, except that the model lease agreement and rider are no longer included in the rule. These agreements were authorized for a very brief period of time, in accordance with §17-314.1(d)(2) of the Administrative Code. They are only applicable to those holders of multiple permits who were eligible to hold such permits in 1995. The section authorizes the Department to maintain an approved model lease agreement format on its website and to provide copies of the forms on request. Agreements that were in effect will continue to be approved, but no new agreements are allowed.

§6-10 Violations.

This section has been renumbered, and its provisions are substantively the same as provisions in existing §6-05 with respect to identifying "A" violations.

§6-11 Inspections; permit issuance and renewal.

This section is new. It includes the requirements in current §6-01(c) for reinspection of damaged and repaired materially altered mobile food vending units that became effective in 2007, and includes

additional requirements for pre-permit inspections and reinspections, as described below. The basis for those additions is also described in detail.

1. It would clarify when the Department would accept late applications for renewals of permits and/or schedule late pre-permit renewal inspections.
 - a. *Late applications:* The Department will not accept late applications unless the applicant can show, and the Department can verify, that:
 - i. The applicant received tax or penalty clearances from an issuing agency late, and that was the result of the issuing agency's delay, and
 - ii. Applications for tax and penalty clearances were submitted at least 60 days before the date of renewal of the permit.
 - b. *Late inspections:* The Department will not issue a permit unless the inspection is completed in a timely manner, unless:
 - i. The delay in inspection completion was the result of the Department's delay in scheduling the inspection.
2. It would require that applicants for new or renewal mobile food vending unit permits personally bring their mobile food vending units for pre-permit health inspections. Pre-permit inspections would take place when:
 - A permit applicant is applying for a new permit,
 - A permittee is applying for a renewal permit,
 - A permittee wants to substitute a processing unit for a non-processing unit, or a non-processing unit for a processing unit,
 - A permittee wants to obtain a replacement permit or decal for a decal or permit that is lost, stolen, or damaged, or for a unit that is damaged or materially altered, or
 - A permit has been suspended and the permit decal removed, and a new decal is to be issued.
3. At each pre-permit inspection, permittees would also be required to:
 - Have photos of themselves and photos of their units taken to enable accurate photo identification, and
 - Bring a form approved or provided by the Department that lists all of the individuals who will be allowed to vend from the unit and the permittee's legal relationship to those individuals (e.g. employee, etc.).
4. A new subdivision (e) emphasizes and repeats in these rules the provisions of Health Code §§5.13 and 89.13 (k) that holds permittees jointly and severally liable with the operators of the units for the safe and legal operation of the units.

Basis for timely applications and inspections:

There are no provisions in the Administrative Code for late submissions of applications or scheduling inspections, but the Department receives substantial numbers of delayed applications and many different excuses for delays in inspection completion. As a result, the Department proposes to clarify in which circumstances it will accept late applications for renewals of permits and or schedule late pre-permit renewal inspections, based on subsections in the Administrative Code.

The Administrative Code requirements are as follows: Administrative Code §17-310 (a) requires the applicant to submit a completed permit renewal application with sales tax payment clearances from the Department of Finance no later than 30 days before the existing permit expires; Administrative Code §17-317 (b) and §6-10 of these Rules also require payment of outstanding fines and penalties;

Administrative Code §17-307 (b)(2)(d) requires the permittee to have a pre-permit inspection by the Department no later than three months after an application is certified or accepted by the Department; it also requires that the mobile food vending unit must pass the inspection no later than six months after the permit renewal applicant has submitted a completed application.

Basis for pre-permit inspections:

City Charter §556 authorizes the Department to “supervise and regulate the food and drug supply of the city... and ensure that such businesses and activities are conducted in a manner consistent with the public interest and by persons with good character, honesty and integrity.” Recent investigations by the City’s Department of Investigation have disclosed fraud in a number of practices in the mobile food vending industry, including transfers of permits by deceased permittees, and the presentation of a single cart at multiple pre-permit inspections, followed by subsequent decal transfer. Requiring the appearance of the permit holder, as well as photographing the permittee and the unit at each pre-permit inspection, will help the Department determine whether the permit holder is aware of the condition of a mobile food vending unit, and is responsibly operating the unit or supervising its operation by employees.

Basis for list of approved individuals

Currently, when Department inspectors issue violations to a mobile food vending unit operator who is not the permittee, the Department also notifies the permittee in writing of such violations. Health Code §89.13(k) authorizes the Department to issue notices of violation directly to the permittee; the Code also identifies the “operator of a unit” as the agent of the permittee, and the “unit” as the place of business of the permittee. Since more responsibility is expected of permittees than of their agents with respect to safe operation of their mobile food units, it is reasonable to expect permittees to be available for pre-permit inspections and to be able to identify people selling or distributing food from their units. This provision implements §17-309(b)(1) of the Administrative Code.

Basis for joint and several liability

Health Code §5.13 makes any Department permittee responsible when agents or employees of the permittee commit any violations of the Health Code. Permittees who evade responsibility for operation of their mobile food vending units do not benefit the public health, and have no incentive to make sure their mobile food vending units are operated in compliance with the Health Code, the Administrative Code and these rules.

The Department believes that all of these provisions will further promote food safety because they will enforce Administrative Code requirements that permittees know who is vending food from their units, and will urge them to take steps to more closely supervise those individuals. Including joint and several liability in the rules gives extra notice to permittees of their responsibilities for notices of violation issued for unsafe or illegal operation of their mobile food vending units.

§6-12 Records of commissaries and other approved facilities.

This section is new. It would require commissaries to maintain records of mobile food vending units serviced at the commissary and would enable the Department to determine if commissary services are being regularly provided. It, too, implements a recommendation of the Department of Investigation intended to address fraudulent practices.

In some cases, the Department of Investigation has reported, permittees purchase letters from commissaries and present them at Department pre-permit inspections to show that a specific mobile food vending unit cart or vehicle receives what are in fact non-existent services at a specific commissary. It is in the public’s interest that mobile food vending units, particularly those that prepare and sell potentially hazardous foods, are properly serviced at least daily at a commissary. Article 89 of the Health Code and

Subpart 14-5 of the State Sanitary Code require that certain services be provided at commissaries, including, most importantly, daily cleaning of the unit and its utensils; provision and preparation of food obtained from approved sources; and safe disposal of liquid and solid wastes.

§6-13 Disabled veterans mobile food unit vending permits.

This section is new. It would establish procedures for issuing permits to disabled veterans for mobile food vending on sidewalks surrounding Department of Parks and Recreation property, in accordance with applicable provisions of General Business Law §35-a.

§6-14 Government agency and charitable organization exemptions.

This section is renumbered and retitled, but is substantively the same as former §6-03 (Exemption of governmental agencies from limitation on number of mobile food vending unit permits).

§6-15 Modification.

This section is renumbered, but it is substantively the same as current §6-01(n). It authorizes the Commissioner or a designee to exercise discretion in modifying requirements of the Chapter in cases where compliance would result in practical difficulty or unusual or unreasonable hardship. It also allows the Commissioner to impose conditions upon granting such modifications so that public health is not compromised.

New text is underlined; deleted material is in [brackets].

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

* * *

§1. It is hereby proposed that Chapter 6 (Food Units) of Title 24 of the Rules of the City of New York, be repealed and recodified, to read as follows:

Chapter 6

Mobile Food Vending

§6-01 Scope and applicability.

§6-02 Definitions.

§6-03 Mobile food vending unit classifications.

§6-04 Mobile food vending units: pre-permit construction and equipment requirements for all classes of mobile food vending units.

§6-05 Mobile food vending units: equipment required for different classes of mobile vending units.

§6-06 Size of mobile food vending units.

§6-07 Green carts.

§6-08 Facilities for servicing Class D and Class E mobile food vending units.

§6-09 Manufacturer or exclusive distributor lease agreements.

§6-10 Violations.

§6-11 Inspections; permit issuance and renewal.

§6-12 Records of commissaries and other approved facilities.

§6-13 Disabled veterans mobile food unit vending permits.

§6-14 Government agency and charitable organization exemptions.

§6-15 Modification.

§6-01 Scope and applicability. All mobile food vendors and the mobile food vending units operated in the City of New York are subject to and must comply with all applicable provisions of Articles 5, 71, 81, 89 and all other applicable provisions of the New York City Health Code (the “Health Code”); Title 17 of the Administrative Code of the City of New York (the “Administrative Code”); Part 14 of the New York State Sanitary Code (the “Sanitary Code”); and the rules of the Department set forth in this Chapter and Chapters 20, 26 and other applicable provisions of Title 24 of the Rules of the City of New York.

§6-02 Definitions. Words and terms used in this Chapter have the following meanings:

- (a) Acceptable to the Department means acceptable under conditions of use and being used in conformance with applicable regulatory, industrial or other safety standards.
- (b) Contaminated has the meaning set forth in Article 81 of the Health Code.
- (c) Detergent sanitizer means a solution used to wash and/or sanitize utensils and equipment.
- (d) Food has the meaning set forth in Article 71 of the Health Code.
- (e) Food grade material means material certified as meeting the standards of the National Sanitation Foundation (NSF) or other organization utilizing a process approved by the American National Standards Institute (ANSI), or that is otherwise acceptable to the Department in compliance with §81.17 of the Health Code or successor provision. During use with food products such material shall not react with such food products or food contact surfaces; and shall not contaminate or impart any odor, color or taste to such food products. No food additive, food equipment, lubricant or other similar substance used in food processing, preparation, storage or service shall expose food to physical debris, toxic chemicals, harmful substances or other contaminants.
- (f) Green cart has the meaning set forth in §17-306(s) of the Administrative Code or successor provision.
- (g) Mobile food commissary or other facility approved by the Department means either

 - (1) A commissary that complies with the requirements of Articles 81 and §89.27 of the Health Code, or

(2) Another facility providing storage and/or cleaning of no more than four Class D or Class E mobile food vending units, nor more than one motor vehicle food vending unit, in accordance with §6-08 of this Chapter.

(h) Mobile food vending unit means a food service establishment as defined in Article 81 of the Health Code located in a pushcart or motor 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 motor vehicle is deemed a mobile food vending unit whether operated indoors or outdoors, on public, private or restricted space. A mobile food vending unit does not mean a stand or a booth.

(i) Potable water means drinking water that meets the drinking water requirements of subpart 5-1 of the State Sanitary Code and is thereby suitable for human consumption or use directly or indirectly in connection with the preparation of food for human consumption, including ice making and cleaning of utensils and equipment.

(j) Potentially hazardous food has the meaning set forth in Article 81 of the Health Code.

(k) Pre-permit inspection by the Department means the inspection of a mobile food vending unit in which the Department determines that the unit has been constructed and equipped in accordance with this Chapter. A pre-permit inspection by the Department is required:

- (1) Before the issuance of a new or renewed mobile food vending permit and decal;
- (2) When a permittee seeks to replace a mobile food vending unit with another unit;
- (3) When a permittee seeks to amend a permit classification from non-processing to processing or processing to non-processing;
- (4) When a mobile food vending unit has sustained a material alteration, as defined in §89.03 (e) of the Health Code; or
- (5) When any permit decal has been removed.

(l) Processing means transforming food into the form in which it is to be served to the mobile food vending unit patron, including, but not limited to, by means of slicing, dicing, grating, portioning, blending, mixing, combining, cooking and reheating, or otherwise treating food in such a way as to create a risk that it may become adulterated if improperly handled. Portioning by butchering is not allowed; food may be processed on a mobile food vending unit only in accordance with Article 89 of the Health Code. A person who processes food on a mobile food vending unit is not a manufacturer, as that term is defined in Administrative Code §17-306 (p), or successor provision of law.

(m) Sanitization means effective treatment by heat or chemical means that destroys pathogens on surfaces treated and is acceptable to the Department, as defined in § 81.03 (ii) of the Health Code, or successor provision.

(n) *Vehicle* means a motor vehicle or trailer as defined in the Vehicle and Traffic Law.

(o) *Ware washing or multi-compartment sink* means a sink, other than a hand wash, dedicated to washing cookware, kitchenware and utensils.

§6-03 Mobile food vending unit classifications. Mobile food vending units shall be classified based on the foods, processing and packaging of foods served. Class A and Class B units are processing units and Class C, Class D and Class E units are non-processing units for the purpose of payment of the permit fees set forth in §17-308 (c) of the Administrative Code, or successor provision, and Article 5 of the Health Code.

(a) *Class A* mobile food vending unit means a processing unit on which raw, pre-cooked and/or manufactured potentially hazardous foods requiring temperature control as specified in Health Code §81.09 are stored, prepared and provided for individual service. Such foods include, but are not limited to, grilled or fried meats, sausages, poultry, shish kebab, hamburgers, eggs and gyros.

(b) *Class B* mobile food vending unit means a processing unit in or on which pre-cooked and/or manufactured potentially hazardous foods requiring temperature control as specified in §81.09 of the Health Code are stored, prepared and provided for individual service. Such foods include, but are not limited to, sandwiches prepared on the unit, breads, bagels and rolls buttered or topped with cream cheese on the unit, smoothies and soft serve ice cream.

(c) *Class C* mobile food vending unit means a non-processing unit in or on which only intact, prepackaged potentially hazardous foods requiring temperature control as specified in Health Code §81.09 are provided for individual service. Such foods include, but are not be limited to, prepackaged frozen desserts, prepackaged sandwiches, and prepackaged and presliced fruits and vegetables.

(d) *Class D* mobile food vending unit means a non-processing unit in or on which only non-potentially hazardous packaged or unpackaged foods not requiring temperature control for safety are provided or served. Such foods include, but are not limited to, brewed coffee and tea, donuts, pastries, rolls and bagels buttered or topped with cream cheese at a commissary, popcorn, cotton candy, nuts, candied nuts, soft pretzels, and chestnuts, regardless of whether such foods are heated for aesthetic purposes. Mobile food vending units that prepare and serve pre-cooked or manufactured knishes, and boiled frankfurters and sausages are Class D mobile food units.

(e) *Class E* mobile food vending unit means a green cart or other non-processing mobile food vending unit in or on which only non-potentially hazardous uncut fruits and vegetables are sold or held for sale or service.

(f) *Only food to be served or sold.* A permit to distribute or sell food from a mobile food vending unit does not authorize the sale of any other product or merchandise from such unit.

§6-04 Mobile food vending units: pre-permit construction and equipment requirements for all classes of mobile food vending units. Mobile food vending units must be constructed and equipped so that they may be maintained and operated in a clean and sanitary manner, in accordance with all applicable law, so as to protect foods from contamination by dust, dirt and toxic and other substances, and the public from risk of injury, and must be equipped in accordance with the requirements set forth in Table 1 in §6-05 of this Chapter. Units and equipment must be manufactured from easily cleanable, durable, hard, smooth, non-porous, non-absorbent, non-reactive and non-toxic materials. All equipment must be fastened securely to the mobile food vending unit.

(a) Food contact surfaces. Food contact surfaces, as defined in Health Code §81.03 (p) or successor provision, shall be constructed of easily cleanable, non-toxic commercial food grade materials; kept free of cracks, chips, holes, pits and sharp edges; and maintained in a clean and sanitary condition. Upon request of the Department, a permittee shall provide proof acceptable to the Department that a material used in construction or equipping of a mobile food unit is certified as food grade.

(1) Lubricants. Equipment for processing foods that contain bearings and gears maintained and operated with non-food grade lubricants must be designed and constructed so that lubricants can not leak, drip, or contaminate food or food contact surfaces.

(2) Cooking surfaces. Cooking surfaces within a mobile food vending unit shall be placed and configured so as to minimize the risks of food contamination and injury to patrons, vendors, and public.

(b) Non-food contact surfaces. All non-food contact surfaces must be smooth, easily cleanable, maintained in good repair and kept clean. If solder is used in construction or repairs, it shall be made of non-toxic materials, corrosion resistant, and contain less than 0.2% lead.

(1) Interior non-food contact surfaces. Interiors of mobile food vending units, including floors, walls and ceilings of vehicles, and non-food contact surfaces of equipment that are exposed to food splash or debris, or that otherwise require frequent cleaning shall be designed and constructed of smooth, non-toxic and washable materials, free of unnecessary ledges, projections, or crevices, readily accessible for cleaning and sanitizing and maintained in a clean and sanitary condition.

(2) Exterior non-food contact surfaces. Exterior non-food contact surfaces shall be constructed of smooth, durable, non-porous, non-toxic materials, without any open seams and joints.

(3) Permit decal to be visible and unobstructed. No ornamentation, advertisement, menu, price list, other display, sign or printed matter may cover or obscure the permit decal. A six (6) inch space shall be left clear on all sides of the decal.

(4) Doors and windows. In a mobile food vending unit vehicle, a partition or a partition with a self-closing door shall be installed between the driver's seat and the food processing and service area. To protect foods from potential contamination in all units, no service window may be installed over or behind cooking or food preparation equipment.

(c) Lighting. A mobile food vending unit shall be equipped with artificial lighting fixtures providing a minimum of 540 lux (50 foot candles) of light at all food contact surfaces and ware washing sinks whenever natural lighting conditions do not meet that standard. When artificial lighting is used, shatter-proof or shatter-guarded lighting shall be installed. Lighting fixtures located over or near food storage, preparation and service equipment shall be shielded to prevent broken glass from falling into food or onto food contact surfaces.

(d) Ventilation. Cooking equipment shall be mechanically ventilated to prevent a nuisance from heat, smoke, odors or fumes. Mechanical ventilation hoods and equipment shall be installed and used to prevent grease, steam, smoke, and odors from collecting on interior surfaces, contaminating food and creating a nuisance. If filters and other grease extracting equipment are not designed to be cleaned in place, they must be readily removable for cleaning and replacement, and must be removed and cleaned to prevent accumulations of grease. Power generators shall be used and vented in accordance with manufacturers' specifications.

(e) Insect and rodent control. Mobile food vending units shall be maintained so as to be free of insects, rodents, and conditions promoting harborage, as defined in Article 151 of the Health Code, and breeding of insects and rodents.

(f) Potable water supply. Mobile food vending units that are required to maintain a potable water supply in accordance with Table 1 of §6-05 shall be equipped with plumbing and plumbing fixtures that provide adequate supplies of potable hot and cold water during all times of operation. Individuals operating mobile food vending units shall maintain sufficient supplies of potable water to allow for hand, ware and food washing and food preparation. Plumbing and fixtures shall be properly connected, vented and drained to prevent contamination of the City water supply or any other potable water supply. Water supply outlets and connections to water supply fixtures or equipment shall be designed and constructed to prevent back-flow into the water supply. Bottled and packaged potable water certified by the New York State Department of Health for sale in New York State may be used to supplement the potable water supply, if handled and stored in a way that protects it from contamination. If used, bottled and packaged potable water shall only be poured into tanks from the original containers. Failure to provide and maintain potable water supplies required by this Chapter is an imminent health hazard requiring immediate cessation of operation of any mobile food vending unit.

(1) Tank capacity. Beginning January 1, 2013, when a potable water supply is required by Table 1 of §6-05 of this Chapter, a motor vehicle used as a mobile food vending unit shall be equipped with a tank or tanks with a total capacity of no less than 40 gallons; other mobile food vending units shall be equipped with a tank or tanks with a total capacity of no less than 25 gallons. All tanks shall be filled to capacity prior to beginning operation or operating, as defined in Health Code §89.03 (j).

(2) Water tanks and inlet pipes. Water tanks shall be constructed of food grade materials that are corrosion resistant, durable and non-absorbent. Water inlet pipes shall be made of flexible, food-grade material. The fitting for hose connections shall be capped except when tanks are being filled.

(g) Plumbing. Plumbing fixtures shall be constructed of food grade material; piping and distribution piping shall be installed and maintained to protect the water from contamination. All piping shall be easily accessible for inspection and repair.

(1) Tank drainage. Potable water tanks shall be fitted with a faucet or valve and tilted to allow complete drainage. The entire system shall be constructed to be drained by gravity or other means acceptable to the Department.

(A) Potable and waste water connections on a mobile food vending unit shall be designed and constructed so as to prevent backflow and/or cross-connection with the water supply.

(B) Equipment and fixtures used for storage, preparation, or processing of food that are drained into the waste water tanks shall be equipped with a readily accessible vented check valve on the waste line.

(C) No equipment may be directly attached to the potable water supply unless an approved backflow device is installed.

(2) Pressure. Potable water, when required by Table of §6-05 of this Chapter, shall be dispensed at a minimum pressure of seven (7) pounds per square inch (psi).

(h) Waste water system. Waste water shall be stored and disposed of in accordance with §89.25 of the Health Code.

(1) Waste water storage tanks and pipes shall be designed and maintained so as not to leak or spill on sidewalks or public streets.

(2) When required by Table 1 of §6-05 of this Chapter, waste water tanks shall have a minimum capacity that is at least 15% greater than the potable water supply capacity and be clearly and permanently labeled “waste water.”

(3) Mobile food vending units creating liquid waste, including but not limited to units serving beverages such as coffee or tea or boiling frankfurters or holding melting ice, shall be equipped

with a waste water tank with a minimum capacity that is at least 15% greater than the amount of water used for brewing coffee, processing food or for other liquid waste.

(4) Mechanically refrigerated equipment and containers where ice is used must be equipped with an indirect waste connection, in accordance with Health Code §81.20, that drains into the waste tank.

(i) Hand wash sinks. When required by Table 1 of §6-05 of this Chapter, mobile food vending units shall be equipped with a hand wash sink that dispenses hot and cold potable running water, have a dispenser valve or faucet which provides a constant flow of water when opened, and be supplied by a potable water storage tank constructed of food grade material that holds at least five (5) gallons of water. Hand wash sinks may not be used for ware washing or washing foods.

(1) Equipment for hand wash sinks. Hand wash sinks shall be equipped with supplies of soap and paper towels or other single-use hand drying device.

(2) Location. Sinks shall be installed as part of or adjacent to food preparation areas, accessible for immediate use and at convenient heights, and may not be obstructed by other equipment.

(j) Culinary sinks. When required by Table 1 of §6-05, a dedicated single compartment sink shall be provided and used only for washing fruits, vegetables, meats and aquatic animal foods prior to other preparation. However, where no culinary sink is provided, foods may be washed in (i) a food grade container or colander or (ii) in one compartment of a multi-compartment sink. No sink used for washing foods shall be used as a slop, utility, or hand washing sink. All sinks used for washing food shall be indirectly drained as defined in §81.03(z) of the Health Code or successor provision, and cleaned and sanitized before washing food, and between washing raw meats and other foods.

(k) Sanitization and ware washing sinks. When required by Table 1 of §6-05, sinks shall be provided for sanitizing of utensils and equipment. The number of compartments necessary in each such sink depends on the method of sanitizing used and the instructions provided by the manufacturer of the sanitizing solution being used.

(1) At a minimum, a two-compartment sink with a swivel faucet must be provided, unless the Department approves use of a one-compartment sink. One compartment must be used for removal of food, debris, and other visible contaminants, and the second compartment must be used for sanitizing.

(2) A one-compartment sink may be approved by the Department only if the permittee stores in use utensils in a container of water heated to and maintained at 135 degrees Fahrenheit (57 degrees Celsius) or higher, and if such container is cleaned and sanitized at least once every 24 hours at the permittee's commissary. The container must be large enough to allow immersion of the largest sized utensils.

(l) Hot and cold storage. When required by Table 1 of §6-05 of this Chapter, equipment shall be provided and used to hold potentially hazardous hot foods at or above 140 degrees Fahrenheit (60 degrees Celsius) and cold foods at or below 41 degrees Fahrenheit (five degrees Celsius).

(1) Thermometers. Each hot and cold storage unit shall be equipped with a numerically scaled or other indicating thermometer, accurate to plus or minus two degrees Fahrenheit (one degree Celsius).

(2) Placement of thermometers. Thermometers in cold holding equipment shall be placed in such equipment or cold holding containers to measure air temperature in the warmest part of the unit. Thermometers used to measure the temperature of food in hot holding equipment shall be placed so that they measure the air temperature in the coldest part of such equipment.

(m) Compliance with fire safety requirements. In addition to the other requirements of this section, all mobile food vending units and commissaries shall comply with the New York City Fire Code (Title 29 of the Administrative Code) and rules of the Fire Department found in Chapter 38 of Title 3 of the Rules of the City of New York, or successor provisions, regulating the use of any flammable gas, and governing the storage, handling and use of propane and other liquefied petroleum gases (“LPG”). As set forth in Chapter 38 of the Fire Code and Chapter 38 of the Fire Department rules, such provisions prohibit the use of any flammable gas other than LPG for cooking and heating on a mobile food vending unit. The provisions also prohibit the placement of any unit with propane or other LPGs on a subway grate, and among other things regulate:

(1) the design of the cooking grills and other heating equipment;

(2) the size, number, location and securing of the LPG containers;

(3) the securing of container valves;

(4) the size, type, location and mounting of required portable fire extinguishers.

(n) Ice cream trucks. No decal may 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 arm as required by the State Vehicle and Traffic law and the rules promulgated under such law.

(o) Overhead structure. Overhead structures shall be provided to protect food and equipment from contamination in accordance with Table 1 of §6-05 of this Chapter.

(p) Food security. All mobile food vending units shall be equipped with appropriate food grade coverings, tamper-proof locks or other mechanisms. Vendors shall secure such units when it is necessary to leave mobile food vending units unattended on a street for no more than one-half hour. Units left unattended for periods longer than one-half hour shall be deemed abandoned and an imminent health hazard, in accordance with Health Code §89.31(c).

§6-05 Mobile food vending units: supplies and equipment required for different classes of mobile food vending units.

(a) In addition to the general requirements for construction and design of mobile food vending units and their equipment in §6-04 of this Chapter, each class of vending units shall be supplied and equipped in accordance with Table 1 of this section. The minimum equipment required is determined by the class of the unit and the foods that are processed and/or sold on the unit.

(b) *Permit subject to revocation; mobile food vending units subject to seizure.* Persons who prepare, process or serve foods from a mobile food vending unit that is not equipped in accordance with the requirements specified for the unit’s permit classification as set forth in this section will be deemed to be vending without a permit. Such units and their contents are subject to seizure, removal of the permit decal or insignia, and any other sanctions prescribed by applicable law, including but not limited to, provisions of Article 89 of the Health Code.

§6-05. TABLE 1. SUPPLY AND EQUIPMENT REQUIREMENTS FOR MOBILE FOOD VENDING UNITS (“X” = REQUIRED)

| <u>Type of supplies and equipment</u> | <u>Class A: Potentially hazardous raw foods</u> | <u>Class B: Potentially hazardous prepared foods</u> | <u>Class C: Potentially hazardous prepackaged foods</u> | <u>Class D: Non-potentially hazardous unpackaged or packaged foods (boiled frankfurters, sausages; coffee carts)</u> | <u>Class E: Non-potentially hazardous uncut fruit and vegetables (green carts)</u> |
|--|--|---|--|---|---|
| <u>Potable water</u> | <u>X</u> | <u>X</u> | <u>==</u> | <u>X(1)</u> | <u>==</u> |
| <u>Culinary sink</u> | <u>X (2)</u> | <u>X (2)</u> | <u>==</u> | <u>==</u> | <u>==</u> |
| <u>Sanitizing/ware washing sink</u> | <u>X</u> | <u>X</u> | <u>==</u> | <u>==</u> | <u>==</u> |
| <u>Hand wash Sink</u> | <u>X</u> | <u>X</u> | <u>==</u> | <u>==</u> | <u>==</u> |
| <u>Waste water tank</u> | <u>X</u> | <u>X</u> | <u>X(3)</u> | <u>X(3)</u> | <u>X(3)</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> |

| | | | | | |
|---------------------|----------|----------|----------|----|----|
| Hot holding | <u>X</u> | <u>X</u> | <u>X</u> | -- | -- |
| Thermometers | <u>X</u> | <u>X</u> | <u>X</u> | -- | -- |

Notes:

(1) Supplies of potable water are required for preparing coffee, tea and other beverages and heating, cooking or boiling frankfurters and sausages. See, Health Code §89.21.

(2) Where no culinary sink is provided, foods may be washed in (i) a food grade container or colander or (ii) in one compartment of a multi-compartment sink. See, §6-04 (j).

(3) Waste water tanks are required when generating liquid waste from brewing coffee or tea, boiling frankfurters, or serving or using ice. See, §6-04(h) (3).

§6-06. Size of mobile food vending units.

(a) Non-motor vehicles. A mobile food vending unit that is not a motor vehicle shall not exceed ten (10) feet in length and five (5) feet in width, including wheels, axles and other appurtenances to such wheels. When vending on a sidewalk, the operator must place the unit so that the longer side is adjacent and parallel to the curb abutting the sidewalk.

(b) Motor vehicles. These size restrictions do not apply to mobile food vending units that are motor vehicles.

§6-07 Green carts.

(a) The Department will permanently affix on two sides of each green cart, as that term is defined in §17-306 (s) of the Administrative Code, either identical permit plates or identical permit decals that are easily identifiable and distinguishable from other all other plates or decals on the green cart. Such plates or decals shall contain the fresh fruits and vegetables permit number issued to the owner of each such green cart and the borough and police precincts in which the green cart is authorized to operate. Permit decals may not be removed or transferred to any other mobile food vending unit.

(b) At the time an initial green cart permit is issued, the Department will provide a distinctive and readily recognizable “green cart” umbrella to each green cart permittee. The umbrella must be safely secured to the green cart and maintained in good condition and repair at all times by the permit holder, and must be displayed in an open position above the green cart whenever the green cart is being used to vend. For any replacement umbrella, the green cart permittee must pay a fee of fifty dollars (\$50.00) reimbursing the Department for the cost of the umbrella. In addition to the above requirements specific to green carts, green carts must comply with all other applicable requirements pertaining to Class E mobile food vending units.

(c) Exemption of police precincts where green carts may vend. Notwithstanding any provision in §17-307(b)(4)(b) of the Administrative Code, no fresh fruits and vegetables permit may be designated for use within either the 45th or 72nd police precincts of the City of New York.

§6-08 Facilities for servicing Class D and Class E mobile food vending units.

(a) Use of a facility that services four or fewer Class D and/or Class E mobile food vending units that are not vehicles, or one Class D or Class E vehicle, may be approved by the Department at or prior to the pre-permit inspection of such Class D and/or Class E units.

(b) A person holding a permit for a Class D or Class E mobile food vending unit who requests approval from the Department for use of a facility other than a commissary shall identify the location of such facility, provide the Department with the individual or business name, address, telephone number(s), and e-mail contact information, if available, for the owner of the facility, and certify to the Department that the facility complies with all of the following conditions:

(1) The facility is not used to store or discard food.

(2) The facility is constructed of materials whose surfaces are easily cleanable, non-toxic, non-absorbent and smooth and designed to protect the mobile food vending unit at all times from environmental contamination.

(3) The facility is adequately lighted; equipped with potable hot and cold running water and drainage for liquid wastes; provides adequate space and facilities for cleaning and storing the unit; and is located entirely on private property.

(4) The facility has been issued all required permits and its use complies with all applicable fire safety, zoning and building laws. At the request of the Department, the user shall provide copies of such permits.

(5) No more than four Class D and/or Class E mobile food vending units are serviced at the facility.

(6) The mobile food vending unit being stored in the facility and the facility must be kept in a sanitary condition.

(7) No units may be cleaned on public streets or sidewalks.

(8) No live animals shall be kept or allowed within any storage or cleaning facility.

(9) 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 at a commissary or other approved facility so as not to create a nuisance in accordance with Health Code §89.25.

§6-09 Manufacturer or exclusive distributor lease agreements.

(a) "Lease" or "Lease agreement" submitted for Department approval pursuant to Administrative Code §17-314.1(d)(2), as used in this section, means a written agreement between an exclusive distributor or a manufacturer (lessor) holding more than one temporary mobile food unit permit and a mobile food vendor licensee (lessee). The agreement is for the transfer, for a stated period of time and for a fixed amount as set forth in such written agreement, the possession of a mobile food unit owned by such exclusive distributor or manufacturer with such exclusive distributor's or manufacturer's temporary mobile food unit permit attached to the mobile food unit.

(b) All lease agreements involving the leasing of multiple temporary mobile food unit pushcarts and vehicles by manufacturers and exclusive distributors and licensed mobile food vendors that are submitted to the Department for review and approval pursuant to §17-314.1(d) (2) of the Administrative Code must contain a rider to such lease agreements, in a form provided or approved by the Department, that is dated and signed by both parties. The department will maintain copies of an approved lease agreement form on its website and make copies available to any person on request.

(c) The provisions of §17-314.1(d)(2) of the Administrative Code and this section apply to only the manufacturers and exclusive distributors of food products who held multiple temporary or seasonal permits prior to 1995, were authorized to renew up to 60 of those multiple temporary permits, and were exempted from application of Administrative Code §17-307(b)(2)(f), that provides that a person (an individual or any other entity) may renew or obtain only one permit.

§6-10 Violations.

(a) "A" violations defined. For the purposes of mobile vending permit or license renewal, or issuance of a new license or permit, "A" violations are all violations of the Health Code, the State Sanitary Code, these rules and the violations of the Administrative Code listed in subdivision (d) of this section where the licensee, permittee or applicant is found in violation as a result of a hearing on the merits or by default.

(b) "A" violation penalties to be paid. Every person renewing a mobile food vending license or a mobile food unit permit, or applying for a new mobile food vending license or mobile food unit permit shall pay all fines and penalties for all "A" violations as defined by subdivision (b) of this section that have been adjudicated, or for which the licensee, permittee or applicant for a license or permit has been found in default. Proof of payment of all such fines and penalties must be submitted prior to issuance of a new or renewal license or permit, notwithstanding the provisions of New York City Charter §1049-a (d)(1)(i).

(c) Basis for revocation, suspension, or denial of new or renewal permit or license. The Commissioner may refuse to issue a mobile food vending license or a mobile food unit permit and may, after due notice

and an opportunity to be heard, in addition to any other penalties, refuse to renew, suspend or revoke such a license or permit. Such action may be taken when the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees (i) have been found to be in violation of four or more of the provisions of subchapter 2 of chapter 3 of title 17 of the Administrative Code that are classified as “A” violations in subdivision (d) of this section within a two-year period, (ii) have been found to be in violation of any of the provisions of part fourteen of the State Sanitary Code or of the Health Code, or (iii) the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have pending any unanswered summonses for a violation of a provision of subchapter 2 of chapter 3 of title 17 of the Administrative Code that is classified as an “A” violation in subdivision (d) of this section.

(d) Administrative Code “A” violations. For the purposes of revocation or suspension of mobile food vending permits or licenses, or of determining whether such permits or licenses may be renewed or new licenses and permits issued, “A” violations mean violations of the following provisions of subchapter 2 (“Food Vendors”) of chapter 3 (“Licenses and Permits”) of title 17 of the Administrative Code or successor provisions , as listed below in Table 2 of §6-11, where the licensee, permittee or applicant is found in violation as a result of a hearing on the merits or by default:

§6-10 Table 2. Administrative Code “A” Violations

| <u>Section</u> | <u>Description</u> |
|-----------------------|---|
| <u>§17-307(a)</u> | <u>Unlicensed mobile food vendor.</u> |
| <u>§17-307(b)</u> | <u>Unpermitted mobile food unit.</u> |
| <u>§17-307(d)</u> | <u>Vending unapproved items.</u> |
| <u>§17-311</u> | <u>Failure to display mobile food vending license, mobile food vending unit permit, or mobile food vending unit decal, plate or insignia.</u> |
| <u>§17-314(a)</u> | <u>Failure to permit regular inspections.</u> |
| <u>§17-314(b)</u> | <u>Failure to give supplier/depot/commissary information.</u> |
| <u>§17-314(c)</u> | <u>Sale of unauthorized foods without written approval.</u> |
| <u>§17-314.1</u> | <u>Sale, loan, lease or transfer of license, permit or decal, plate or insignia.</u> |
| <u>§17-315(a)</u> | <u>Vendor on sidewalk that allows less than 12 feet as pedestrian path; or unit not at, or abutting curb.</u> |
| <u>§17-315(e)</u> | <u>Vendor within bus stop, within 10 feet of any driveway, any subway entrance or exit, or any crosswalk at any intersection.</u> |

(e) Permittees liable for mobile food vending unit operation; service of notices of violation. In accordance with Health Code §§5.13 and 89.13, permittees are jointly and severally liable for violations of the Health Code, the State Sanitary Code, the Administrative Code and any other applicable law that occur in the course of operation of mobile food vending units bearing their permits. 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 notice of violation issued to the permittee by the Department. The notice of violation may also be issued by any other agency of the City authorized to issue notices of violation in the course of enforcement of any law applicable to mobile food vending. If, in the course of operation of a mobile food vending unit, a person other than the permittee is served with such notice of violation or order issued to the permittee, the person other than the permittee shall deliver the notice of violation or order to the permittee within two business days of receiving such notice of violation, and the Department or other agency issuing the notice of violation shall mail such notice of violation to the permittee by first class mail, maintaining and submitting a record of the mailing to the Environmental Control Board as proof of service.

§6-11 Inspections; permit issuance and renewal. No unit shall be approved for use unless such unit has passed a pre-permit inspection by the Department and found to be constructed and equipped in compliance with this Chapter and Article 81 and Article 89 of the Health Code.

(a) Renewal applications to be submitted timely. An application for renewal of any permit shall not be accepted unless the applicant submits a complete renewal application, the tax clearance certificates required by §17-310 of the Administrative Code, and proof of payment of all fines and penalties owing for notices of violation as required by §17-317 (b) and §6-10 of this Chapter, no later than thirty (30) days before the date of expiration of the permit. The Department may accept a late renewal application only if the applicant submits proof that may be verified by the Department that the delay in submission of the completed application and clearances resulted because of delays in issuing the clearances. In such cases, the permittee must show that applications for tax and penalty clearances were submitted at least sixty (60) days before the date of renewal of the permit.

(b) Inspections to be scheduled timely. In accordance with §17-307 (e) of the Administrative Code, a new or renewal permit shall not be issued if the applicant's mobile food vending unit fails to pass a pre-permit inspection by the Department within six (6) months after the permit application has been certified or accepted by the Department. The Department may conduct such an inspection more than six (6) months

after the application has been submitted only if Department records indicate that the Department caused the delay in scheduling the inspection.

(c) Permit holder photographs. All individual applicants for a new or renewed permit, and persons who require a replacement or substitute permit or decal for a mobile food vending unit, shall personally appear at a location designated by the Department so that a current identifying photograph may be taken.

(d) Pre permit inspections and reinspections. Permit applicants or permittees must bring the mobile food vending unit in for inspection, at a place designated by the Department, and present (i) a currently valid mobile food vendor's license, and (ii) another government issued photo identification acceptable to the Department in the following circumstances:

(1) Before the issuance of a new or renewed mobile food vending permit and decal;

(2) When a permittee seeks to replace a mobile food vending unit with another unit;

(3) When a permittee seeks to amend a permit classification from non-processing to processing or processing to non-processing;

(4) When a mobile food vending unit has sustained a material alteration, as defined in §89.03 (e) of the Health Code; or

(5) When any permit decal has been removed.

(e) Applicants other than natural persons. If an entity other than a natural person is an applicant or permittee, such as a corporation or limited liability company, the person who brings a mobile food vending unit in for inspection on behalf of such entity must be a person authorized by law to accept service of process on behalf of such entity pursuant to Article 3 of the New York CPLR. Such persons may include an officer, director or managing agent of a corporation; a partner of a partnership or limited partnership; or a member of a limited liability company. No other person may bring any mobile food vending unit to the Department for the non-operational inspections required by this section.

(f) Identifying operators of mobile food vending units. The applicant for a new or renewal permit must (1) complete a form provided by the Department listing the name(s), address(es), telephone number(s) and the currently valid mobile food vending unit license number(s) of each person who will be operating the mobile food vending unit, and (2) provide a statement describing the legal relationship of such person to the permit holder, in accordance with §17-309 (b)(1) of the Administrative Code. The completed form shall be signed and notarized by the permit applicant.

(g) Service contract or agreement from a commissary or other approved facility. At the pre-permit inspection, the permittee or permit applicant must provide an original agreement or contract signed by a commissary operator, or a person in charge of a facility other than a commissary that provides services to no more than four Class D or Class E units that are not motor vehicles, or one Class D or Class E vehicle, indicating the specific goods and services provided for the permittee's mobile food vending unit. The

permittee must maintain a copy of such agreement on the mobile food vending unit at all times of operation and make it available for inspection by the Department. Such goods and services include, but are not be limited to:

- (1) Storage of the unit and foods.
- (2) Cleaning and sanitizing of the unit, equipment and utensils.
- (3) Disposing of liquid and solid waste and refuse generated by operation of a unit.
- (4) Amount of potable water supplied.
- (5) Foods provided, including those prepared at the commissary and prepackaged; and name of person preparing foods.
- (6) Non-food supplies provided by the commissary.

(h) Reinspection of damaged, repaired or materially altered mobile food vending units. Any mobile food vending unit that has been damaged and repaired, or materially altered so as to change or result in a change in the size of the unit, or has undergone replacement of any part of the body structure or equipment of the unit shall be brought to the Department for reinspection prior to reuse or continued use of the unit. Repair or replacement of a tire or an axle, and straightening a dent in a panel are not considered material alterations.

(i) Decals. No decal may be placed on any mobile food vending unit unless a Department inspector has determined at a pre-permit inspection that the unit is constructed and equipped in accordance with this Chapter, and that the person renewing or applying for a permit has completed and submitted all forms required by this section.

(j) Units to be photographed. The Department may take photographs of mobile food units at any time, so that the Department may verify that the unit has passed a pre-permit inspection.

(k) Notification of changes in operations. Permittees must notify the Department, in writing, on forms approved or provided by the Department, no later than ten business days after any there has been a change in:

- (1) Persons operating each unit as indicated on the form described in Section 6-12(c) of these Rules, or
- (2) Commissary used. Permittees must provide a copy of an agreement from the new commissary with such notice.

(l) Enforcement. A new or renewal decal and permit may be denied for:

- (1) Failing to allow photographs of the permittee or the unit.
- (2) Failing to appear in person for pre-permit inspections of a mobile food vending unit.
- (3) Failing to provide information about the operators of the units or foods sold on the unit, or
- (4) Failing to maintain and submit an agreement with a commissary.

§6-12 Records of commissaries and other approved facilities. Commissaries and other approved facilities providing services to four or fewer Class D or Class E units that are not vehicles, or one Class D or Class E vehicle, shall keep records in a daily log, in a form provided or approved by the Department, documenting the daily use of commissary services and facilities by mobile food vendors in accordance with §89.27 (b) of the Health Code. The log must indicate the date and time of day each unit is brought in and leaves the commissary.

§6-13 Disabled veterans mobile food unit vending permits. Disabled veterans who hold currently valid (i) specialized vendor licenses issued pursuant to General Business Law §35-a, (ii) general vendor licenses issued by the Department of Consumer Affairs and (iii) mobile food vending licenses issued by the Commissioner, may apply for and be issued permits to operate mobile food vending units on sidewalks surrounding parks within the jurisdiction of the New York City Department of Parks and Recreation, or successor City agency, in accordance with the following conditions:

(a) An applicant for such a restricted area permit may not hold any other currently valid mobile food vending unit permit, and only one such permit may be issued to any applicant.

(b) In accordance with General Business Law §35-a, such permit authorizes vending only on sidewalks surrounding park lands.

(c) Operation of the mobile vending unit is subject to all provisions of General Business Law §35-a.

(d) During all times that a mobile food vending unit issued a permit under this section is in operation, as the term “operation” is defined in Health Code §89.03 (j) or successor provision, a disabled veteran shall be present, but may be assisted by an employee who is a licensed mobile food vendor. Department inspection reports which note the absence of a disabled veteran licensee are deemed proof that a disabled veteran is not operating the unit, in violation of General Business Law §35-a.

§6-14 Government agency and charitable organization exemptions.

In accordance with §17-320 (a) of the Administrative Code, the Commissioner may exempt any area within the control of a government agency or charitable organization from provisions of Title 17 of the Administrative Code that limit the total number of full-term or temporary mobile food vending permits that may be issued, or the number of permits that may be issued to any one person. The Commissioner may make this exemption provided that (i) the request for issuance is made in writing by the agency or organization and (ii) permittees comply with all other applicable provisions, limitations and conditions imposed by the New York City Administrative Code, the Health Code, the State Sanitary Code and these rules.

§6-15 Modification. When the strict applicability of any provision of this Chapter presents practical difficulties or unusual or unreasonable hardships, the Department, in a specific instance, may modify the application of such provision consistent with the general purpose of this Chapter and upon such conditions as are deemed necessary.

§2. It is hereby proposed that the list of Chapter headings in Title 24 of the Rules of the City of New York, be amended, to read as follows:

TITLE 24
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

| | | |
|----------------|----------|---|
| Chapter | 1 | Posting Regulations for Vendors of Alcoholic Beverages |
| | * | * * * |
| | 5 | Inhalation Therapy Service |
| | 6 | <u>Mobile Food Vending</u> [Units] |
| | * | * * * |

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Mobile Food Vending Units (Chapter 6)

REFERENCE NUMBER: 2012 RG 033

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 1, 2012

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Mobile Food Vending Units (Chapter 6)

REFERENCE NUMBER: DOHMH-16

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Rachel Squire
Mayor's Office of Operations

06/01/2012
Date