

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Consumer Affairs ("DCA") is proposing a new rule that will set forth the process for creating a waiting list for general vendor licenses, including notification of availability of the list, assignment of positions on the list and notification of eligibility to submit a license application.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on Wednesday, May 18th, 2016. The hearing will be in the Department of Consumer Affairs hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail written comments to Casey Adams, New York City Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the public rule at the public hearing must sign up to speak. You can sign up by calling (212) 436-0095. You can also sign up in the hearing before the hearing begins on May 18th, 2016. You can speak up for up to three minutes.

Is there a deadline to submit written comments? Yes. You must submit any written comments to the proposed rule on or before May 18th, 2016.

Do you need assistance to participate in the Hearing? You must tell the Office of Legislative Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0392. You must tell us by May 16th, 2016.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the Web site at <http://rules.cityofnewyork.us/>. A

few days after a hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes the Department of Consumer Affairs to make this rule? Sections 1043 and 2203(f) of the City Charter and Sections 20-104 of Chapter 1, and 20-471 of Chapter 2, of Title 20 of the Administrative Code of the City of New York authorize the Commissioner of the Department of Consumer Affairs (the "Commissioner") to make this proposed rule. The proposed rule was not included in regulatory agenda of the Department of Consumer Affairs for the Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the rules of the Department of Consumer Affairs? The Department of Consumer Affairs' rules are located in Title 6 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Section 20-104(a) of the New York City Administrative Code ("Admin. Code") gives the Commissioner authority over all licenses issued under Chapter Two of Title 20 of the Admin. Code, including the general vendor licenses issued pursuant to New York City's General Vendor Law (the "GVL"), as codified in Subchapter 27 of Chapter 2 of Title 20 of the Admin. Code. The GVL regulates the sale or offering for sale of non-food goods and services on New York City streets. With some exceptions, it is unlawful for an individual to sell or offer to sell goods or services on City streets without first obtaining a general vendor license from the New York City Department of Consumer Affairs ("DCA").

The requirement to be licensed does not apply to honorably discharged veterans who, under State law, are allowed to vend free from the interference of local government. *See* NYS General Business Law § 32. The licensing requirement also does not apply to vendors who exclusively sell newspapers, periodicals, books, pamphlets and other similar written matter. In addition, the City has agreed not to enforce its licensing requirement against individuals who sell paintings, photographs, prints and/or sculptures.

Administrative Code § 20-459(a) limits the number of general vendor licenses that DCA may issue to 853. DCA proposes developing and maintaining a waiting list of prospective applicants over and above the 853 cap. The waiting list will be open to prospective applicants for 30 days, during which time DCA will accept as many prospective applicants as requests a position on the list. After 30 days, the list will close, and there will not be another opportunity for individuals to become prospective applicants until the Department determines that the waiting contains fewer than 300 names.

The proposed rule adds Section 2-319 to the rules applicable to DCA's licensing of general vendors.

The proposed rule would:

- establish a waiting list for general vendor licenses for individuals not exempt from the licensing requirement;
- specify the procedure for DCA to notify individuals of the existence of the waiting list and the manner in which a position on the list may be requested;
- specify the system by which prospective applicants will be assigned ranks on the waiting list; and
- specify the procedures pursuant to which DCA will notify prospective applicants of their eligibility to submit general vendor applications.

“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.

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

Subchapter AA of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new Section 2-319, to read as follows:

§ 2-319 Waiting List for General Vendor Licenses

(a) The Department shall establish and maintain a waiting list of prospective applicants for general vendor licenses that become available to individuals who are not veterans that are automatically granted a general vendor license under article four of the general business law or section 20-455.1 of the Administrative Code.

(b) Publication and Notice. The Department shall publish in the City Record and on the Department's website a notice inviting individuals to submit requests to be included on the waiting list. This notice shall be republished whenever the Department determines that the number of prospective applicants on the waiting list has fallen below 300. The notice shall be published no later than 60 days after the Department makes this determination and at least 45 days before the Department accepts requests to be included on the waiting list.

(c) Content of Notice. The notice shall specify: (1) the date on which the Department will begin accepting requests; (2) that requests will be accepted for the next 30 days; (3) that on the 31st day, the waiting list will close and will not be open again until the Department determines that the number of prospective applicants have fallen below 300; (4) that requests may be submitted in person at any of the Department's Licensing Centers, on-line via the Department's website or by regular mail via an envelope postmarked within the 30 day acceptance period; (5)

that all requests must include the prospective applicants full name and contact address; (6) that prospective applicants must provide written notification to the Department's Licensing Division of any change of address and that failure to so provide may result in the loss of the waiting list position; (7) that prospective applicants may not occupy more than one position on the waiting list; (8) that positions on the waiting list are not transferrable; and (9) the street and web addresses where requests and changes of address could be sent to the Department.

(d) Assignment to the New Waiting List. Prospective applicants will be assigned positions on the waiting list pursuant to the following procedure:

(1) Within 60 days after the close of the waiting list, each prospective applicant will be assigned a number using a computer-generated random number selection program.

(2) The Department will then assign waiting list positions to prospective applicants in ascending order using the numbers assigned by the selection program ("prospective applicant rank").

(3) The Department will notify perspective applicants of their number on the waiting list in writing to the address provided in the request.

(e) Withdrawal from that waiting list. A prospective applicant may withdraw from the waiting list by providing written notice to the Department's Licensing Division in person or by.

(f) Offer of Available General Vendor Licenses to Waiting List Applicants. The Department shall offer the opportunity to apply for available general vendor licenses to prospective applicants on the waiting list in the order of their prospective applicant rank. The Department shall provide written notice of the offer at the address provided in the prospective applicant's request or in the change of address. Such notice shall specify that:

(1) Prospective applicant must submit a completed general vendor application, together with required fees, within 60 days of the date of the offer; and

(2) If the Department does not receive the completed application and fees within the specified time period, the offer will be deemed refused and the waiting list position surrendered.

(g) Issuance of General Vendor License. General vendor licenses will be issued to those prospective applicants who successfully complete the general vendor application, pay all related fees and satisfy all other eligibility criteria set forth in the relevant laws and rules.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Waiting List Procedure for General Vendor's License Applicants

REFERENCE NUMBER: 2015 RG 141

RULEMAKING AGENCY: Department of Consumer Affairs

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: March 24, 2016

**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: : Waiting List Procedure for General Vendor's License Applicants

REFERENCE NUMBER: DCA-46

RULEMAKING AGENCY: Department of Consumer Affairs

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/ Francisco X. Navarro
Mayor's Office of Operations

March 24, 2016
Date