

GENERAL VENDOR HELPER RULE

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? A new rule providing that general vendors with disabilities that impair their ability to operate a general vending business may use helpers as long as they obtain authorization from the Department.

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 10:00AM on April 6th 2016. The hearing will be in the Department of Consumer Affairs' hearing room at 66 John Street, 11th Floor, New York, NY 10038.

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 Steven Ettannani, 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 proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-5962. You can also sign up in the hearing room before the hearing begins on April 6th 2016. You can speak 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 April 6th 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 us 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) 436-0155. You must tell us by March 31st 2016.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after

the 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 1403 and 2203(f) of the City Charter and Sections 20-104 and 20-471 of Chapter 2 of Title 20 of the New York City Administrative Code authorize the Commissioner of the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the regulatory agenda of the Department of Consumer Affairs for this 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 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 20-453 of Chapter 2 of Title 20 of the New York City Administrative Code provides that it “shall be unlawful for any individual to act as a general vendor without having first obtained a license.” A number of individuals licensed as general vendors by the Department of Consumer Affairs have physical or mental disabilities that render them unable to operate their businesses without the assistance of a helper. Many of these licensees are veterans.

The proposed rule clarifies that Section 20-453’s license requirement will not apply to helpers used by licensed general vendors with disabilities that impair their ability to operate a general vending business as long as the licensee obtains authorization from the Department to use a helper and adheres to requirements with regard to the use of helpers.

The rule would:

- define the types of disabilities that would make general vendors eligible to use helpers;
- establish procedures for requesting authorization to use helpers;
- provide for a special designation on the general vendor’s license indicating that he or she is authorized to use helpers;
- provide for certain restrictions on the activities of helpers;
- require the general vendor to be present at all times;
- require the general vendor to maintain records regarding the use of his or her helpers;
- make the general vendor responsible for ensuring that helpers comply with all applicable laws and regulations; and
- establish procedures for the revocation of authorization in the event the general vendor or his or her helpers fail to comply with applicable law.

“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.

Proposed Rule

Subchapter AA of chapter 2 of title 6 of the Rules of the City of New York is amended by adding a new section 2-318 to read as follows:

§ 2-318 General Vendor Helpers

(a) Definitions. As used in this chapter, the following terms have the following meanings:

“Disability” means a physical or mental impairment that substantially limits one or more major life activities or major bodily functions and that permanently or temporarily impairs an individual’s ability to operate a general vending business.

“Major bodily functions” include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

(b) Request for Authorization.

(1) Subject to the restrictions set forth in this rule, a general vendor holding a current General Vendor’s license with a disability may use individuals as helpers in the operation of his or her general vending business, even if such individuals do not have general vending licenses.

(2) A general vendor must request authorization to use helpers on forms prescribed by the Department, including a certification form to be completed by an appropriate licensed health care professional who has examined the general vendor. The licensed health care professional must: (i) attest to the existence of a disability; (ii) describe with specificity how the disability impairs the vendor’s ability to operate a general vending business; and (iii) state whether the disability is permanent or temporary, and in the case of a temporary disability, the likely duration of the disability. The Department may require applicants to submit supplemental medical reports or certifications to verify the continued existence of a temporary disability.

(3) The Department shall maintain the confidentiality of all medical records and information submitted by the general vendor seeking authorization to use helpers unless required to be produced pursuant to law.

(4) The Department shall make a determination as soon as is practicable after receiving all requested documents and information. The Department shall then inform the party seeking authorization in writing whether the request has been approved or denied.

(5) If the request is approved, the Department shall provide the vendor with an amended license, with an endorsement on the front or back of the license that the licensee is authorized to use helpers. The endorsement shall specify the period during which the licensee is authorized to use helpers.

(6) The licensee shall surrender his or her current license to the Department upon receipt of the amended license.

(c) Use of Helpers.

(1) The licensee must be physically present at the vending display at all times that his or her general vending business is being operated. Helpers may not engage in the operation of the general vending business unless the licensee is physically present. In the event that the licensee is temporarily absent from the vending display and the helper remains at the vending display, the vending display must be covered so as to alert potential purchasers that the display is closed for business. The presence of a helper at an uncovered vending display, without a licensee present, shall constitute unlicensed vending activity.

(2) The licensee may use the services of only one helper at any given time. Use of more than one helper at a time shall constitute unlicensed vending activity.

(3) The licensee shall maintain a chronological log of his or her use of helpers, on a form prescribed by the Department, which shall indicate the date and time of all helper use, and the name, address and phone number of each helper used. The log shall be available for inspection at all times during which the licensee's general vending business is operating, and may be inspected by an inspector of the Department or by a police officer.

(4) The licensee will be responsible for ensuring that helpers comply with all applicable laws, rules and regulations at all times that the helpers are assisting with the general vending business, and the licensee shall be deemed liable for any breach caused by any act or omission of a helper.

(5) The licensee will be responsible for ensuring that helpers are in possession of photo identification at all times such helper is assisting with the general vending business.

(5) The Department may revoke authorization to use helpers, or revoke authorization for a particular helper, in the event that either the licensee or any of his or her helpers has failed to comply with applicable laws, rules or regulations, or if the Department determines that the licensee is not, or does not continue to be, a general vendor with a disability.

(6) The Department will provide the licensee with notice and a reasonable opportunity to cure non-compliance with applicable laws, rules or regulations prior to revoking authorization to use helpers or a particular helper.

(7) The Department will not revoke authorization to use helpers without giving the licensee notice and an opportunity to appear and rebut any claim that the licensee (i) has violated applicable laws, rules or regulations, and has failed to cure any violation, or (ii) is not, or does not continue to be, a general vendor with a disability.

(d) Termination of Authorization for the Use of Helpers

(1) For disabilities deemed permanent by a licensed health care professional pursuant to subdivision (b)(2)(iii) of this section, authorizations to use helpers will terminate on the license expiration date of the then active license. Upon renewal of the license, the renewal license will carry the helper endorsement or other indication of authorization, which will terminate on the license expiration date of the renewal license.

(2) For disabilities deemed temporary by a licensed health care professional pursuant to subdivision (b)(2)(iii) of this section, authorizations to use helpers will terminate at the end of the endorsement period indicated on the license or on the license expiration date, whichever is sooner. If a temporary authorization is needed beyond the license expiration date, the renewal license will carry the temporary helper endorsement, which will terminate at the end of the endorsement period or on the expiration date of the renewal license, whichever is sooner.

**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: Use of Helpers by General Vendors

REFERENCE NUMBER: DCA-42

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.

Norma Ponce
Mayor's Office of Operations

2/25/2016
Date

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: Use of Helpers by General Vendors

REFERENCE NUMBER: 2015 RG 121

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

Date: February 24, 2016

Acting Corporation Counsel

