

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

NOTICE OF ADOPTION OF CHAPTER 19A
IN TITLE 24 OF THE RULES OF THE CITY OF NEW YORK
CONCERNING EXPANSION OF THE FULL-TERM
MOBILE FOOD VENDOR PERMIT WAITING LIST

A Notice of Public Hearing and Opportunity to Comment on a proposal by the Department of Health and Mental Hygiene (“Department”) to create a new Chapter 19A in Title 24 of the Rules of the City of New York concerning the expansion of the current waiting list for full-term mobile food vending permits to include “continuously licensed vendors” as required by section 33 of Local Law 18 of 2021 was published in the City Record on August 27, 2021. A virtual public hearing was held on September 27, 2021. Ten persons testified at the hearing and 78 written comments were received. The vast majority of written comments and testimony did not actually concern the proposal, but rather were statements from mobile food vendors expressing their difficulties in obtaining their own mobile food vending permits and requesting that additional permits be made available. Comments from the Street Vendor Project at the Urban Justice Center are supportive of the proposal, however they request that additional clarification be added to the rules concerning Department notifications and communications with vendors. The NYS Association of Grocery Stores opposes the proposal, viewing mobile food vendors as an encroachment on their business. The Department has not made any substantive changes to the proposed rules in response to either the testimony or the comments.

Statement of Basis and Purpose

These rules provide for the expansion of the current mobile food vending full-term permit waiting list as required by section 33 of Local Law 18 of 2021 (“Local Law 18”). Local Law 18 expands mobile food vending. It requires the issuance of up to 445 food vending permits each year for 10 years beginning on July 1, 2022. It also creates a new “supervisory license” and mandates that food vending carts and trucks (“vending units”) that are newly permitted as of July 1, 2022 operate only when the person vending has a supervisory license. The Department plans to propose additional rules in separate rulemakings that will govern other aspects of supervisory license issuance and to implement other parts of Local Law 18.

Local Law 18 sets out a system to prioritize recipients of 445 supervisory licenses each year. That system incorporates the Department’s current mobile food vending full term permit waiting list and requires the Department to add to that list those who have “held a food vendor license continuously” since March 1, 2017 by January 1, 2022.

Defining Who May Be Added to the Waiting List

The waiting list for full-term permits is currently closed. Local Law 18 requires that this waiting list be opened to add “persons who have held a food vendor license continuously since on or before March 1, 2017”. The mechanics of the Department’s operations are structured such that in rare cases, a license renewal may be granted after the validity of the license for which the licensee timely applied for renewal has technically expired. The Department is thus proposing that a person be added to the waiting list (described hereinafter as “continuously licensed”) if, as of March 1, 2017 and February 28, 2021 — the Local Law 18 enactment date — the licensee either held a food vendor license or had timely filed a pending renewal application for such license and had otherwise fulfilled all requirements to renew. This definition would achieve what the Department believes is the legislative intent for inclusion on the waiting list and avoid excluding people who technically may not have “held a food vendor license” on one of the relevant dates but had completed their part in the process to renew it. Furthermore, because a person may hold only one full-term permit, vendors who already hold a valid full-term

mobile food vending permit as of January 1, 2022 will not be among the continuously licensed vendors added to the waiting list.

Continuously licensed vendors will be added to the current waiting list in ascending order of their license numbers. The Department determined that this mechanism best reflects the order in which the vendors applied for their licenses. The Department will not contact continuously licensed vendors before placing them on the waiting list. Doing so would be highly impractical in light of the volume of continuously licensed vendors with whom communication would be required and given the time allotted to the Department to implement by Local Law 18. However, these continuously licensed vendors once added will be able to determine their place on the waiting list and may notify the Department if they would like to be removed.

Other Agency Rules Are Inapplicable

Three chapters in Title 24 of the Rules of the City of New York contain rules governing waiting lists for mobile food vending permits. Chapter 20 governs the waiting list for permits for veterans or disabled persons. Chapter 26 governs the waiting list for fresh fruits and vegetables permits. The waiting list expansion contemplated by these rules do not pertain to either of these types of waiting lists. Chapter 19 relates to waiting lists for full-term and temporary mobile food vending permits. However, only a subset of the waiting lists governed by Chapter 19—full-term permits not designated for use in specific boroughs—is affected by this rulemaking. The Department determined that placing rules to govern this limited process in a new Chapter 19A is the clearest approach to notify this regulated community which rules apply to them.

Statutory Authority

Section 33 of Local Law 18 requires the Department to open the current full term mobile food vendor permit waiting list to add continuously licensed vendors to such list, notwithstanding the 2,500-position cap on the waiting list for full-term permits under section 19-07 in Chapter 19 of Title 24 of the Rules of the City of New York.

The adopted rules are as follows.

The terms “shall” and “must” may be used interchangeably and denote mandatory requirements unless the context clearly indicates otherwise.

Chapter 19A

Expansion of the Full-Term Mobile Food Vendor Permit Waiting List

§ 19A-01 Definitions.

(a) Words and terms used in this Chapter have the meanings specified in Section 17-306 of the Administrative Code of the City of New York.

(b) “Chapter 19” means Chapter 19 of Title 24 of the Rules of the City of New York.

(c) “Continuously Licensed Vendors” means persons who the Department determines do not hold a valid full-term mobile food vending permit as of January 1, 2022 and who: (i) held a valid food vendor license on or before March 1, 2017, which license was still valid on February 28, 2021; or (ii) held a valid food vendor license before March 1, 2017 and whose renewal application for such license was pending as of March 1, 2017 and who had otherwise fulfilled all requirements to renew such license, which was still valid on February 28, 2021.

(d) “Local Law 18” means Local Law 18 of 2021 enacted by the New York City Council on February 28, 2021.

(e) “Waiting List” means the list that was established and maintained by the Department pursuant to Chapter 19 to identify persons who are waiting to apply for a full-term mobile food vending permit.

§ 19A-02 Applicability.

Unless otherwise expressly provided or required by law, this Chapter solely applies to the implementation of section 33 of Local Law 18. No provision in Chapters 19, 20 or 26 of this title, and no provisions in other rules,

shall apply to the opening of the Waiting List or addition of Continuously Licensed Vendors to the Waiting List as provided in this Chapter.

§ 19A-03 Opening of the Waiting List.

On or before January 1, 2022, the Department will open the Waiting List for the purpose of adding persons who the Department determines are Continuously Licensed Vendors under section 33 of Local Law 18.

§ 19A-04 Addition of Continuously Licensed Vendors to the Waiting List.

On or before January 1, 2022, the Department will automatically add to the Waiting List all Continuously Licensed Vendors. Request by or consent from Continuously Licensed Vendors to be added to the Waiting List will not be required. Continuously Licensed Vendors will be added to the Waiting List starting at the end of such list in numerical order of their license numbers starting with the lowest number. A person who is not added to the Waiting List may not appeal such exclusion.

§ 19A-05 Notice of Addition to the Waiting List.

The Department will notify Continuously Licensed Vendors that they have been added to the Waiting List pursuant to section 33 of Local Law 18. Notification will be by any lawful means, including but not limited to, mailing or posting information on the Department's website or through another electronic medium in accordance with applicable laws or regulations.

§ 19A-06 Number of Positions on the Waiting List.

Notwithstanding anything to the contrary in Chapter 19, after adding Continuously Licensed Vendors to the Waiting List, the number of positions on the Waiting List will not be limited and may exceed 2,500.

§ 19A-07 Responsibility of Those on the Waiting List to Notify the Department of Change of Address.

The names of Continuously Licensed Vendors added to the Waiting List pursuant to this Chapter will be entered on the list based on their address of record as known to the Department through mobile food vendor license records. It shall be the responsibility of each such person to provide written notification to the Department of any change of address. The failure to provide change of address information may result in the loss of a person's Waiting List position. Any person who fails to provide the Department with a change of address within ten days of such change and consequently does not respond to a notice from the Department mailed to their address of record as known to the Department through mobile food vendor license records will be deemed to have abandoned their place on the Waiting List..

§ 19A-08 Multiple Positions on the Waiting List Prohibited.

A person may not hold more than one place on the Waiting List.
