

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

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The NYC Department of Health and Mental Hygiene (“Department”) is proposing rules governing the addition of individuals to the current waiting list for full-term mobile food vending permits as required by section 33 of Local Law 18 of 2021.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00AM to 12:00PM on Monday, September 27, 2021. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL:
<https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m221f24d86b2957939d0842b33ecb0a96>
If prompted to provide an event number or password, please enter the following:
Event number: **179 097 1549**, Password: **Health** (432584 from phones)
- **Phone:** For access, dial: **(408) 418-9388**; then please enter the following
Access code: **179 097 1549**

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

- **Website:** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail:** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN30
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396- 6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 10AM on September 27, 2021. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on September 27, 2021.

What if I need assistance to participate in the hearing? You must tell the Department’s Office of General Counsel if you need a reasonable accommodation of a disability at the hearing, including whether you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by September 13, 2021.

Can I review the comments made regarding the proposed rules? You may review the online comments made on the proposed rules at <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a

summary of the oral comments received by the Department will be made available to the public within a reasonable period of time after the hearing by the Department’s Office of General Counsel.

What authorizes the Department to make this rule? Section 389(b) of the New York City Charter (“Charter”) provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.” Section 1043(a) of the Charter similarly provides that each “agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.” Section 33 of Local Law 18 of 2021 requires the Department to open the waiting list for full-term permits operated pursuant to subparagraph (e) of paragraph 2 of subdivision b of section 17-307 of the administrative code of the city of New York as soon as practicable, but no later than six months prior to the first issuance of supervisory licenses pursuant to subparagraph (b) of paragraph 5 of subdivision b of section 17-307 of the administrative code of the city of New York.

Where can I find the Department’s rules and the Health Code? The Department’s rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

Statement of Basis and Purpose of Proposed Rule

Introduction

Local Law 18 of 2021 (“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.

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.

These proposed rules would govern the expansion of the current mobile food vending full-term permit waiting list as required by Local Law 18. 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.

Defining Who May Be Added to the Waiting List

The waiting list for full-term permits is currently closed. Local Law 18 requires that the 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 proposed 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 permit waiting list to add continuously licensed vendors 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. These proposed rules were not included in the Department’s regulatory agenda as they respond to legislation that post-dated such agenda.

The proposed rules are as follows.

Deleted material appears in [brackets]. New material is underlined. The terms “shall” and “must” may be used interchangeably and denote mandatory requirements unless the context clearly indicates otherwise.

Chapter 19A

§ 19A-01. Definitions.

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

(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 and 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 that license was pending as of March 1, 2017 and the vendor had otherwise fulfilled all requirements to renew the license, and which license 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 shall 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 shall 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 shall not be required. Continuously Licensed Vendors shall 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 shall notify Continuously Licensed Vendors that they have been added to the Waiting List pursuant to section 33 of Local Law 18. Notification shall 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 shall 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 shall 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 shall 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.

**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: Amendment of Food Vendor Licensing Rules

REFERENCE NUMBER: 2021 RG 032

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: July 23, 2021

**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: Amendment of Food Vendor Licensing Rules

REFERENCE NUMBER: DOHMH-115

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/ Francisco X. Navarro
Mayor's Office of Operations

July 27, 2021
Date