

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement new legislation regarding third-party food delivery services and third-party courier services.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on Thursday, December 23. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial (646) 558-8656
 - Meeting ID: 865 6056 6556
 - Passcode: 769207
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/86560566556?pwd=M0dXeHVpNkxaNi83akN4a1pSdXI2QT09>
 - Meeting ID: 865 6056 6556
 - Passcode: 769207

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

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **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) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on Thursday, December 23. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 11:59pm on Thursday, December 23.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by December 21, 2021.

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, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in DCWP’s regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find DCWP’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP 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 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to implement Local Law 100 of 2021, Local Law 110 of 2021, and Local Law 115 of 2021, regarding third-party food delivery services and third-party courier services.

Specifically, these proposed new rules would:

- Set the expiration date for third-party food delivery service licenses;
- Require third-party food delivery services to maintain certain records;
- Establish procedures for complying with requests for records and information;
- Clarify the location of a required disclosure about gratuities for food delivery workers;
- Clarify the location of a required disclosure about third-party telephone number listings;
- Require third-party delivery services to provide a disclosure and the ability for customers to opt out of certain data sharing;
- Create a penalty schedule for violations related to third-party food delivery services; and
- Clarify requirements for responding to certain requests for data from the Department.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

New material 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.

Proposed Rule Amendments

Section 1. Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter KK to read as follows:

Subchapter KK: Third-Party Food Delivery Services

§ 2-461 License Application Requirements.

(a) Third-party food delivery service licenses expire on August 31st in odd numbered years.

(b) An application for a third-party food delivery service license must include the Department’s basic license application, the third-party food delivery service license application supplement, and any other documents and information requested by the Department.

(c) Pursuant to section 20-113 of the Administrative Code, a separate third-party food delivery service license is required for each trade name that a person uses to conduct the business of a third-party food delivery service. A third-party food delivery service license applicant must submit a separate license application for each trade name it will use to conduct the business of a third-party food delivery service.

(d) A licensee or applicant must notify the Department in writing of any change to the websites, mobile applications, third-party food delivery platforms, uniform resource locators, or operating systems contained in the licensee’s or applicant’s basic license application or third-party food delivery service license application supplement within 10 days of the change.

§ 2-462 Records.

(a) (1) Pursuant to subdivision (a)(4) of section 20-563.8 of the Administrative Code, every third-party food delivery service must maintain records sufficient to document the full ownership of such third-party food delivery service. Such records must be maintained in an electronic format for a period of at least 3 years.

(2) Every third-party food delivery service must maintain records sufficient to demonstrate compliance with the requirements set forth in subdivision (b) of section 20-563.2 of the Administrative Code. Such records must be maintained in an electronic format for a period of at least 3 years.

(3) Every third-party food delivery service must maintain records sufficient to document all customer requests not to share the customer's data with a food service establishment pursuant to subdivision (b) of section 20-563.7 of the Administrative Code. Such records must be maintained in an electronic format for a period of at least 3 years.

(b) (1) A request or subpoena for information or records from the Department must be served on a third-party food delivery service in writing in person, via mail, or via email. A third-party delivery service must respond to a written request or subpoena for information or records from the Department by providing to the Department true, accurate, and contemporaneously made electronic records or information within 30 days of the date that the request is received and in the formats and layouts prescribed by the Department in such request or subpoena.

(2) Notwithstanding subdivision (b)(1) of this section, the Department can provide for a deadline of fewer than 30 days if agreed to by the parties or if the Department has reason to believe that the third-party food delivery service will: destroy or falsify records; or close, sell, or transfer its business, dispose of assets, or imminently declare for bankruptcy.

(3) A deadline of more than 30 days may be agreed to on consent by the Department and the third-party food delivery service.

(4) The Department may issue a summons to a third-party food delivery service who fails to provide true and accurate electronic records or information by the deadline provided in the written request or subpoena or the deadline agreed to by the parties.

(c) A third-party delivery service's failure to maintain, retain, or produce a record that is required by law or rule to be maintained that is relevant to a material fact alleged by the Department in a summons, petition, or other notice of hearing creates a reasonable inference that such fact is true.

§ 2-463 Gratuities for Food Delivery Workers

The disclosure required by subdivision (b) of section 20-563.2 of the Administrative Code must be made:

(a) directly adjacent to the gratuity solicitation; or

(b) accessible via a link placed directly adjacent to the gratuity solicitation if such link is labeled with plain language to describe its contents.

§ 2-464 Telephone Number Listings.

A listing or link for a third-party telephone number permitted by subdivision (a) of section 20-563.5 of the Administrative Code and the disclosures required by such subdivision for a third-party telephone number must appear directly adjacent to the direct telephone number for the food service establishment.

§ 2-465 Sharing Customer Data.

(a) To comply with subdivision (b) of section 20-563.7 of the Administrative Code, every third-party food delivery service must, for every prospective order, provide the following disclosure in a clear and conspicuous manner: “To process orders, (name of third-party food delivery service) collects customer data, which includes your name, telephone number, email address, delivery address, and what you ordered from the restaurant. If the restaurant requests it, (name of third-party food delivery service) will share your customer data concerning this order with the restaurant unless you opt out of sharing your data. You can click here to opt out of sharing this data (hyperlink to an electronic form allowing customer to opt out).”

(b) Every third-party food delivery service must provide for what is required by this section prior to the customer completing a prospective order and on the same page of its website, mobile application, or other platform where the customer is completing such prospective order.

§ 2. Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new Section 6-79 to read as follows:

§ 6-79 Third-Party Food Delivery Services Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Unless otherwise specified by law, a second, or third and subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Violations by third-party food delivery services accrue on a daily basis for each day and for each food service establishment with respect to which a violation is committed.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-563.1	Operating without a third-party food delivery service license	\$500	\$500	\$500	\$500	\$500	\$500
Admin Code § 20-563.2	Failure to comply with requirements for the issuance of a license	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-563.3	Failure to comply with the caps on fees	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin Code § 20-563.4	Failure to comply with requirements for telephone orders	\$375	\$500	\$450	\$500	\$500	\$500

Admin Code § 20-563.5	Failure to comply with requirements for listing telephone numbers	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-563.6	Failure to comply with requirements on unauthorized listings or requirements on the availability of toilet facilities	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-563.7	Failure to comply with requirements on customer data	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-563.8	Failure to comply with records requirements	\$375	\$500	\$450	\$500	\$500	\$500
6 RCNY § 2-461	Failure to comply with license application requirements	\$375	\$500	\$450	\$500	\$500	\$500
6 RCNY § 2-462	Failure to comply with records requirements	\$375	\$500	\$450	\$500	\$500	\$500
6 RCNY § 2-463	Failure to comply with requirements for gratuities for food delivery workers	\$375	\$500	\$450	\$500	\$500	\$500
6 RCNY § 2-464	Failure to comply with requirements for telephone number listings	\$375	\$500	\$450	\$500	\$500	\$500
6 RCNY § 2-465	Failure to comply with requirements for sharing customer data	\$375	\$500	\$450	\$500	\$500	\$500

Section 3. Chapter 7 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter H to read as follows:

Subchapter H: Third-Party Service Workers

§§ 7-801 through 7-809

[Reserved]

§ 7-810 Minimum Pay Study Recordkeeping and Data Requests.

- (a) When the department issues a written request or subpoena for data, information or documents under Section 20-1522(a)(2) of the administrative code, a third-party food delivery service or third-party courier service must provide all responsive data, information or documents to the department within 30 days of receiving such request or subpoena and, if so requested, in the comma-delimited formats and layouts prescribed by the department in such request or subpoena.

**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: Proposed Rules Governing Third Party Food Delivery Services

REFERENCE NUMBER: 2021 RG 083

RULEMAKING AGENCY: New York City Department of Consumer and Worker Protection

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: November 17, 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: Proposed Rules Governing Third Party Food Delivery Services

REFERENCE NUMBER: DCWP-10

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

November 17, 2021
Date