

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

**Notice of Adoption of Amendments to Chapter 6 of Title 24 of the Rules of the City of New York
Concerning Mobile Food Vending Supervisory Licenses and Waiting Lists
for Mobile Food Vending Permits**

In accordance with Section 389(b) of the New York City Charter (“Charter”) which 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,” and Section 1043(a) of the Charter which 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,” a notice of public hearing and opportunity to comment on these proposed rules to amend Title 24 of the Rules of the City of New York was published in the City Record on May 31, 2022, and a public hearing was held on June 30, 2022. The Department received 31 public comments in total, including 12 oral comments at the hearing.

Some comments raised a concern over requiring a supervisory license-holder to be physically present and vending on mobile food vending units. This is a legislative requirement mandated by Local Law 18 of 2021 (“Local Law 18”) and the Department has no ability to change this requirement. See Administrative Code §17-307(b)(5)(a).

Some comments concerned the Department’s proposal to offer only one type of supervisory license application to each person called from the supervisory license waiting list rather than offering a choice of license type. In response to these comments, the Department has changed this requirement in Section 6-22(a) of the final rule and will create separate waiting lists – for licenses designated for citywide use and licenses designated for use only in boroughs outside of Manhattan – and allow vendors to choose which supervisory license waiting list to join.

Some comments concerned the Department’s proposal to limit the initial supervisory license waiting list to applicants in higher preference categories, i.e. continuously licensed vendors and those on a permit waiting list before Local Law 18 was effective. As described in the Statement of Basis and Purpose, the number of people in these higher preference categories -- approximately 10,000 -- substantially exceeds the number of supervisory license applications that will be available through 2032. The Department has not amended the rule in response to these comments.

The Department has made two additional changes to the final rule.

Section 6-22(i)(1) has been amended to indicate that the fee for a supervisory license will be \$438 every two years, or \$219 on an annual basis. This fee encompasses costs of regulation that are greater than the costs considered when the rule was proposed.

Moreover, Local Law 18 imposes geographic restrictions on supervisory licenses. Administrative Code §17-307(b)(5)(c) states: “In accordance with procedures to be established by rules of the commissioner, in each twelve month period, 100 of the supervisory licenses made available for application under this paragraph shall be designated for use in any borough, and the remaining 300 such supervisory licenses shall be designated for use in boroughs outside of Manhattan.” Similarly, Administrative Code §17-307.1(a)(2) provides: “A person issued a supervisory license may not vend food from any vehicle or pushcart located outside of the geographical restrictions on such person’s supervisory license unless a licensee authorized to vend alone from such vehicle or pushcart is also physically present and vending or the permit for such vehicle does not require the presence of a supervisory licensee.” The geographic restrictions imposed on supervisory licenses were clarified throughout section 6-22.

After consideration of the comments received, and to carry out the directives of Local Law 18 of 2021, the Department now adopts the following amendments.

Statement of Basis and Purpose

Background of Street Vending in New York City

New York City has a long history of street food vending. A vendor may offer food from a mobile food vending unit (“MFVU” or “unit”) if the vendor has a Department mobile food vending license and the unit has a Department permit. Presently, there is a cap of 5,100 permits for MFVUs that are allowed to operate on public streets and sidewalks broken down as follows: 2,800 to operate citywide; 200 to operate only in a specific borough (50 for each Brooklyn, Bronx, Queens, and Staten Island) (“borough specific”); 100 to be operated only by persons with disabilities or veterans; 1,000 to operate only from April 1 to October 31 (“seasonal/temporary”); and 1,000 to operate only for selling certain healthy foods (“green carts”). There is no limit on the number of food vendor licenses available, but because local law caps the number of permits, there are longstanding waiting lists for certain categories of permits, such as the citywide and borough-specific permits.

Significant Changes to Mobile Food Vending Program

Local Law 18 makes significant changes to mobile food vending licenses and permits. First, it authorizes 4,450 additional MFVU permits to be issued over ten years allowing the following additional MFVUs: 1,000 to operate citywide; 3,000 to operate in any borough outside of Manhattan; and 450 to be issued only to a person with a disability or a veteran. Next, Local Law 18 creates a new type of mobile food vending license called a “supervisory license” and requires that a person with a supervisory license be present and vending at any MFVU operating with a permit initially issued on or after July 1, 2022 and any MFVU operating after July 1, 2032. This requirement does not, however, apply to units with seasonal/temporary permits, green carts, or units authorized to vend in areas other than public streets and sidewalks. These excepted units may continue to operate without a supervisory license holder present so long as the vendor holds an active food vendor license.

Timing of Issuance of New Supervisory Licenses and Supervisory License-Associated Permits

The 4,450 new MFVU permits do not become available all at once. Instead, Local Law 18 requires the Department to issue 445 supervisory license applications each year for ten years and allows (but does not require) each supervisory license holder to apply for a supervisory license-associated permit at any time after obtaining the license. Therefore, in each year for ten years, the Department will issue 100 supervisory license applications designated for citywide use and associated with an option to apply for a permit to operate citywide; 300 supervisory license applications designated for use in boroughs outside of Manhattan and associated with an option to apply for a permit to operate in any borough outside of Manhattan; and 45 additional supervisory license applications to persons with a disability or veterans who, once licensed, will have an option to apply for a permit designated for such persons for use in any borough.

Local Law 18 also defines and ranks categories of people to whom the supervisory license applications will be issued from new waiting lists. First on the list are vendors who were continuously licensed for several years leading up to the enactment of Local Law 18. The Department defined these “continuously licensed vendors” in prior rulemaking for 24 RCNY Chapter 19A and repeats that definition in the final rule Section 6-22. Next in rank are people who were on a permit waiting list before the effective date of the Local Law 18 but have not been “continuously licensed.”

Establishment of Supervisory License Waiting Lists

The Department will establish two supervisory license waiting lists, one for licenses designated for citywide use and one for licenses designated for use in boroughs outside of Manhattan, which is a change made in response to the public comments as described above. The Department will open the waiting lists to “continuously licensed” vendors and people who were on a permit waiting list before the effective date of Local Law 18 who have not been “continuously licensed.” People will choose which waiting list to be added to, if any, and will be ranked by preference category as described in Local Law 18. In cases where two or more people are eligible for the same priority position on a waiting list, the Department will resolve such “ties” by assigning the higher position to the person whose food vendor license number is the lowest, as lower license numbers represent persons who have held a mobile food vending license longer. Eligible people who do not reply to the notice to apply or who submit multiple applications with inconsistent waiting list selections will be placed on the supervisory license waiting list for licenses designated for use in boroughs outside of Manhattan.

In accordance with Local Law 18, the Department will form a separate supervisory license waiting list for veterans and people with disabilities. The timing of issuance of supervisory licenses for veterans and persons with a disability will be independent of the timing of issuance of the supervisory licenses discussed in the preceding paragraph.

Waiting List for Lowest Priority Category

There is an additional preference category for supervisory license applications in Local Law 18—those who were not “continuously licensed” and were not on any waiting list as of the law’s effective date. The Department will not open the supervisory license waiting list for these individuals at this time and has not addressed this category of applicants in this rule. Assembling the supervisory license waiting list in keeping with the preference categories of Local Law 18 will result in approximately 10,000 individuals who are either “continuously licensed vendors” or were on a permit waiting list before the law’s effective date and may be offered supervisory license applications. This figure substantially exceeds the number of supervisory license applications that will be available through 2032. Once the supervisory license waiting list is exhausted to a point that warrants expanding the list, the Department will promulgate new rules as needed to govern the process for establishing a waiting list in this additional preference category.

Supervisory License and Supervisory License-Associated Permit Non-Renewal and Forfeiture

Local Law 18 requires a supervisory license holder to be present and vending on MFVUs that operate pursuant to permits issued after July 1, 2022. The Department will offer an application for a supervisory license-associated permit to each supervisory license holder. If a supervisory license holder fails to renew their supervisory license, their supervisory license will be forfeited along with any supervisory license-associated permit. Renewal of a supervisory license-associated permit is not necessary to maintain the associated supervisory license; if the supervisory license-associated permit holder fails to renew their supervisory license-associated permit, they may retain their supervisory license and may reapply for a supervisory license-associated permit in the future.

Supervisory Licenses by 2032 for Vendors with Legacy Permits

Until 2032 only those permits newly issued on or after July 1, 2022 require a vendor with a supervisory license to be present and vending. Starting July 1, 2032, however, all permits, including those that were first issued before July 1, 2022 and have been repeatedly renewed (“legacy permits”) will require a supervisory license holder to vend. The Department will issue any rules that may be needed in 2032 for vendors with legacy permits at a later date and has not included details about supervisory licenses for vendors with those permits in this rule.

New Definitions

The rule adds definitions for “active food vendor license,” “Former FTP Waiting List,” “legacy permit,” “person with a disability,” “restricted area permit,” “supervisory license,” “supervisory license-associated permit,” “veteran with a disability,” and “veteran.”

Other Permit Waiting List Rules

Four existing chapters in 24 RCNY contain rules governing waiting lists for MFVU permits. Chapter 19 relates to waiting lists for full-term and seasonal MFVU permits. Chapter 19A added continuously licensed vendors to the full-term permit waiting list established in Chapter 19. Chapter 20 governs the waiting list for MFVU permits for veterans or persons with a disability. Chapter 26 governs the waiting list for fresh fruits and vegetables MFVU permits. The creation of supervisory license waiting lists reflected in this rule does not affect the waiting lists for fresh fruits and vegetables or seasonal permits. The rules in Chapter 19 and Chapter 19A regarding full-term permits and the rules in Chapter 20 no longer apply because the waiting lists created pursuant to or expanded by those rules are replaced by new waiting lists. Accordingly, this rule repeals Chapter 20 and Chapter 19A and revises Chapter 19 to delete references to permit waiting lists that ceased to be used on July 1, 2022, since provisions throughout new Section 6-22 govern the waiting lists for supervisory licenses designated for citywide use and those designated for use in boroughs outside of Manhattan, as well as supervisory licenses for veterans and persons with disabilities. The supervisory licenses and permits authorized under Local Law 18 are distinct from and are in addition to the number of permits previously authorized under the Administrative Code.

Statutory Authority

Section 17-324 of the Administrative Code provides authority for the Department to promulgate any rules deemed necessary for the proper implementation and enforcement of Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code concerning mobile food vendors.

The adopted 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.

Section 1. Section 6-02 of Chapter 6 of Title 24 of the Rules of the City of New York is amended by adding new definitions, to read in alphabetical order as follows:

Active food vendor license means an unexpired food vendor license issued by the Department that authorizes the holder to vend food from a mobile food vending unit and which license is not in suspension nor revoked or surrendered.

Former FTP Waiting List means a full-term permit waiting list as formerly provided in Chapter 19 of Title 24 of the Rules of the City of New York, entitled “Waiting List Rules for Full-term and Temporary Mobile Food Unit Permits and Full-term Mobile Food Unit Permits Designated Exclusively for Use in Specific Boroughs,” which went into effect on January 4, 1996 and was amended on November 11, 2022 to omit references to full-term permit waiting lists.

Legacy permit means an unexpired mobile food vending permit that issued before July 1, 2022, except for the following permit types:

- (i) permits issued for green carts as defined in Section 6-02 of this Chapter and in the Administrative Code § 17-306(s);
- (ii) temporary/seasonal permits which authorize mobile food vending where allowed from April 1 through October 31;
- (iii) restricted area permits as defined in this Chapter; or
- (iv) permits issued to veterans with a disability who hold a specialized vendor license.

Person with a disability has the same meaning as “disabled person” as defined in Administrative Code § 17-306(m).

Restricted area permit means a permit that authorizes mobile food vending on “private space” or “restricted space” as those terms are defined in Section 89.03 of the New York City Health Code.

Supervisory license has the same meaning as and carries the restrictions provided in Administrative Code §§ 17-306(v) and 17-307.1, respectively.

Supervisory license-associated permit means a mobile food vending permit issued to a supervisory license holder that authorizes vending from a vehicle or pushcart only when a supervisory license holder is present and vending.

Veteran has the same meaning as provided in Administrative Code § 17-306(j).

Veteran with a disability has the same meaning as “disabled veteran” as that term is defined in Administrative Code § 17-306(k).

Section 2. Subdivision (a) of section 6-13 of Title 24 of the Rules of the City of New York is amended to read as follows:

- (a) An applicant for [such] a [restricted area] permit issued pursuant to this section may not hold any other currently valid mobile food vending unit permit, and only one such permit may be issued to any applicant.

Section 3. Chapter 6 of Title 24 of the Rules of the City of New York is amended to add a new section 6-22 to read as follows:

§6-22 Supervisory license and associated permit.

- (a) Initial establishment of supervisory license waiting lists for supervisory licenses designated for citywide use and for use in boroughs outside of Manhattan.
 - (1) Establishment of waiting lists. The Department will establish two waiting lists – one for supervisory licenses designated for citywide use and one for supervisory licenses designated for use in boroughs outside of Manhattan -- of persons eligible to receive supervisory license applications made available pursuant to Administrative Code § 17-307(b)(5)(b).

- (2) Eligibility for waiting lists. Persons listed on a Former FTP Waiting List are eligible for inclusion on a supervisory license waiting list established pursuant to this subdivision, except for persons whose full-term or temporary permit was revoked or suspended and persons who the Department determines are not fit to operate a mobile food vending business.
- (3) No limitation on number of positions on waiting lists. There is no limitation on the number of positions on the waiting lists established pursuant to this subdivision.
- (4) One supervisory license waiting list position per person. For the establishment of the initial waiting lists, eligible waiting list applicants must choose to join one or neither waiting list. A person who applies for waiting lists for both supervisory licenses, or who fails to respond to the application notice, will be added only to the waiting list for licenses designated for use in boroughs outside of Manhattan. A person who indicates on the application form that they do not wish to join either waiting list will be considered to have forfeited their application.
- (5) Notice of establishment of waiting list. At least thirty (30) days prior to the establishment of a waiting list pursuant to this subdivision, notice of the opportunity to apply to be on a waiting list will be given by mail or, for individuals who have opted into electronic notifications, by electronic means, to all eligible persons as described in this subdivision.
- (6) Application for waiting list position. The Department will make available mail-in procedures to allow persons to apply for a place on a waiting list or to decline to be placed on a waiting list established pursuant to this subdivision. The application must be postmarked by the date specified in the notice published pursuant to paragraph 5 of this subdivision. The Department will notify persons assigned a position on the list in writing sent either to the mailing address or, for persons who opted into receiving electronic notifications, to the electronic contact information provided in their waiting list applications.
- (7) Order in waiting lists.
- (A) The Department will order all persons on the waiting lists in accordance with the preference categories set forth in Administrative Code § 17-307(b)(5)(d), defining “continuously licensed vendors” as persons who the Department determined did 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.
- (B) Within each preference category, the Department will order persons by their position on the waiting list in ascending order of waiting list number on a Former FTP Waiting List, and by ascending order of mobile food vendor license number in the case of ties that result from persons with the same on different Former FTP Waiting Lists.
- (C) If a person holds more than one position on Former FTP Waiting Lists, the Department will assign to that person the single highest position held.

(b) Supervisory license waiting list for veterans and persons with a disability.

- (1) Establishment of waiting list. The Department will establish one supervisory license waiting list that contains the three preference categories established by Administrative Code § 17-307(b)(3)(b) -- veterans with a disability, persons with a disability, and veterans.
- (2) Limitation on number of positions on waiting list and within each category. The waiting list created pursuant to paragraph 1 of this subdivision will be limited to one hundred (100) positions per preference category described in such paragraph for a total of three hundred (300) positions. A person who applies for or qualifies to be included in more than one category will be eligible for only one position on the list and will be assigned the highest priority for which they are eligible.
- (3) Notice of establishment of waiting list. At least forty-five (45) days prior to the establishment of the waiting list created pursuant to this subdivision, notice of the opportunity to apply to be on such waiting list will be made by publication in the City Record, and by mail or, for individuals who have opted into electronic notifications, by electronic means, to all persons holding mobile food vendor licenses. The maximum number of positions on such waiting list will be indicated in the notice.
- (4) Application for waiting list position. The Department will make available mail-in and electronic communication procedures to allow persons to apply for a place on the waiting list established pursuant to this subdivision. Persons requesting a place on such waiting list must submit an application that contains the applicant's license number and applicable preference category. The application must be submitted by mail or electronic means by the time specified in the notice published pursuant to paragraph 3 of this subdivision.
- (5) Order in waiting list. Applicants who meet the eligibility criteria, including but not limited to licensure and inclusion in a preference category described in paragraph 1 of this subdivision, will be included in a random selection and ordering that results in the addition to the waiting list established by such paragraph of up to as many applicants as spaces available. The Department will notify persons added to such list of their position in writing sent to the mailing address or, for persons who opted into receiving electronic notifications, the electronic contact information provided in their waiting list applications. Order among preference categories is as provided by law.

(c) Notification of change of contact information. Each person on a supervisory license waiting list must notify the Department of any change of address or, for persons who opted into receiving electronic notifications, change of electronic contact information within ten days of such change. Failure to provide change of address or electronic contact information may result in the loss of a person's supervisory license waiting list position. Any person who fails to timely provide the Department with a change of address or electronic contact information, as applicable, and consequently does not respond to a notice from the Department sent to their address electronic contact information of record as known to the Department through mobile food vendor license records will be deemed to have abandoned their place on the supervisory license waiting list.

(d) Eligibility for supervisory license.

- (1) Eligibility to receive application. Only persons who are on a supervisory license waiting list are eligible to receive a supervisory license application.
 - (2) Eligibility to receive license. Only persons who hold an active food vendor license are eligible for a supervisory license.
 - (3) Conversion or forfeiture of certain permits required. Any person who holds a mobile food vending permit, other than a restricted area permit, must convert such permit to a supervisory license-associated permit no more than two hundred seventy (270) days after obtaining a supervisory license or on the expiration date of such previously-held permit, whichever is sooner, or forfeit such previously-held permit.
- (e) Number of supervisory license applications.
- (1) Citywide. In each 12-month period for ten consecutive years beginning July 1, 2022, the Department will make available 100 applications for a supervisory license designated for citywide use, which license allows the holder to apply for a supervisory license-associated permit designated for use in any borough.
 - (2) Borough outside of Manhattan. In each 12-month period for ten consecutive years beginning July 1, 2022, the Department will make available 300 applications for a supervisory license designated for use in boroughs outside of Manhattan, which license allows the holder to apply for a supervisory license-associated permit designated for use in boroughs outside of Manhattan.
 - (3) Supervisory licenses for persons with a disability or veterans. In each 12-month period for 10 consecutive years beginning July 1, 2022, the Department will make available to veterans with a disability, persons with a disability or veterans 45 applications for a supervisory license that allows the holder to apply for a supervisory license-associated permit designated for use in any borough.
 - (4) Additional licenses available due to expired, surrendered or revoked legacy permits. The Department may issue additional supervisory license applications in an amount equal to the number of legacy permits that have expired or are surrendered or revoked. Citywide legacy permits and borough-specific legacy permits will correspond to supervisory licenses designated for citywide use and for use in boroughs outside of Manhattan, respectively.
- (f) Applying for and maintaining supervisory license.
- (1) Applications. The Department will mail or, for persons who opted into receiving electronic notifications, send by electronic means, to each person whose waiting list number is reached, a notice of eligibility to apply and a supervisory license application form.
 - (2) Complete and timely application required. Within ninety (90) days of the postmark date or, for persons who opted into receiving electronic notifications, the electronic transmission date of the Department's notice and application form for a supervisory license, the notified person must mail or transmit by electronic means a completed application with payment of applicable fees in order to remain eligible for the license. An

application must be postmarked or electronically transmitted within such time period to be considered timely.

- (3) *Abandonment of application.* The failure of an eligible applicant to timely complete the supervisory license application process, including for failure to maintain with the Department their current mailing address or, for those who opted into receiving electronic notifications, electronic contact information, will be deemed an abandonment of the application and result in the forfeiture of the person's supervisory license waiting list position.
- (4) *Term.* Unless it is suspended or revoked by the Commissioner, a supervisory license is valid for two years from the date of its issuance or renewal, except that the first issuance of a supervisory license to a licensed vendor is valid for the remaining term of such vendor's food vendor license.
- (5) *Abandoned unless timely renewed.* The failure of a supervisory license holder to renew such license before its expiration, including due to failure to maintain with the Department their current mailing address or, for those who opted into receiving electronic notifications, electronic contact information, will be deemed an abandonment and forfeiture of the supervisory license. Abandonment and forfeiture of the supervisory license will automatically void the supervisory license holder's supervisory license-associated permit if they hold one. A person who fails to timely renew their supervisory license may apply for or renew their non-supervisory food vendor license at any time.

(g) *Supervisory license-associated permits; term; renewal; notification.*

- (1) *Supervisory license required.* Beginning July 1, 2022, only the holder of a supervisory license may apply for a new mobile food vending permit, except that a supervisory license is not required to apply for the following permit types: (i) green carts; (ii) temporary/seasonal permits; (iii) restricted area permits; or (iv) permits issued to veterans with a disability with a specialized vendor license. Beginning July 1, 2032, all mobile food vending permits must be associated with a supervisory license except for the permit types listed above in this paragraph.
- (2) *Applications.* The Department will mail to each supervisory license holder a supervisory license-associated permit application form to the mailing address maintained in the Department's mobile food vendor license records.
- (3) *Term.* A supervisory license-associated permit is valid for two years from the date of its issuance unless suspended or revoked by the Commissioner. In the event the supervisory license-associated permit expires or is voluntarily surrendered to the Department, the holder may retain the supervisory license and may re-apply for a supervisory license-associated permit at a later time.
- (4) *No vending without supervisory license holder.* At least one supervisory license holder authorized to vend in the geographic area where the mobile food vending unit is operating must be present and vending on the unit.
- (5) *When to apply.* A supervisory license holder may apply for a supervisory license-associated permit at any time while their supervisory license is unexpired and not suspended.

(h) Effect of license or permit revocation or suspension.

- (1) Revocation of supervisory license. The revocation of a supervisory license will by operation of law void any supervisory license-associated permit held by the supervisory license holder.
- (2) Revocation of permit. The revocation of a supervisory license-associated permit will by operation of law void the supervisory license associated with such revoked permit.
- (3) Suspension of license or permit. The suspension of a supervisory license or a supervisory license-associated permit will suspend the other for the same duration and may be subject to the same terms and conditions for lifting of the suspension.

(i) Fees.

- (1) Supervisory license. The biennial fee for a supervisory license is \$438.
- (2) Fee waiver for veterans. Veterans are exempt from the supervisory license fee.
- (3) Supervisory license-associated permit. The fee for a supervisory license-associated permit to maintain or operate a processing or non-processing mobile food vending unit will be the same as the fee set forth in section 5.07 of Article 5 of the New York City Health Code.

Section 4. Appendix 6-C-3 of Chapter 6 of Title 24 of the Rules of the City of New York is amended to add two new violations, to read as follows:

**APPENDIX 6-C-3 MOBILE FOOD VENDING UNIT (MFVU) PENALTY SCHEDULE
VIOLATIONS ADMINISTRATIVE CODE AND MULTIPLE OFFENSE SCHEDULE (MOS)**

CITATION	VIOLATION DESCRIPTION	PENALTY*
<u>Admin. Code 17-307.1(a)(1)</u>	<u>Vending without supervisory license holder</u>	<u>\$1,000</u>
<u>Admin. Code 17-307.1(a)(2)</u>	<u>Vending outside geographical restrictions of supervisory license</u>	<u>\$1,000</u>

Section 5. Chapter 19 of Title 24 of the Rules of the City of New York is amended to read as follows:

**CHAPTER 19
WAITING LIST RULES FOR [FULL-TERM AND]
TEMPORARY MOBILE FOOD UNIT PERMITS [AND
FULL-TERM MOBILE FOOD UNIT PERMITS
DESIGNATED EXCLUSIVELY FOR USE IN
SPECIFIC BOROUGHs]**

§19-01 Definitions.

- (a) Words and terms used in these rules [shall] have the meanings specified in Section 17-306 of the Administrative Code.
- (b) **"Establishment", "establish" or "established"** [shall refer] refers to the initial creation of the waiting [lists]list for [full-term and] temporary mobile food unit permits [and the four additional separate waiting lists for full-term borough specific permits] as well as all subsequent supplementations and re-establishments of any [of these]such [lists]list as necessary for filling both vacancies from the lists and waiting list positions for these permits.

§19-02 Direction to Establish Waiting List[s].

The Department [shall]will establish [separate]a waiting [lists]list for [full-term and] temporary mobile food unit permits [as well as four additional separate waiting lists for full-term permits that are designated exclusively for use in the boroughs of the Bronx, Brooklyn, Queens and Staten Island]. The waiting [lists]list [shall]will consist of the names of natural persons, corporations, partnerships or limited liability companies authorized to hold a permit, who are selected for placement on these waiting lists in accordance with these rules. Any listing purporting to be a waiting list for mobile food unit permits, except for a listing authorized by Local Law 34 of 1993, in existence prior to the effective date of this rule [shall be] is deemed void and of no force or effect.

§19-03 Eligibility for Place on Waiting List[s].

To be eligible for a position on [any of]the waiting [lists]list established pursuant to these rules, a person (or in the case of a corporation, partnership or limited liability company, an officer, member, manager or partner thereof authorized to act for such person) [shall]must hold a valid mobile food vendor license at least ten days prior to the date that the Department establishes such waiting [lists]list.

§19-04 Notice of the Establishment of Waiting List[s].

At least 45 days prior to the establishment of a waiting [lists]list, notice of [the Department's intention to establish such waiting lists shall]the opportunity to apply to be on the waiting list will be published in the City Record. Such notice [shall]will also be mailed or, for persons who have opted into receiving notices by electronic means, sent by electronic means to persons holding mobile food vendor licenses at the time of such publication[, as well as to other interested parties known to the Department]. Such Notice [shall] will advise that only those persons in possession of valid mobile food vendor licenses at least ten days prior to the establishment of such waiting [lists shall be]list are eligible for inclusion on [any]such waiting list.

§19-05 Procedure for Requesting a Place on Any of the Waiting Lists.

The Division of Permits [shall]will use a mail-in or electronic communications procedure for establishing all waiting lists. Such procedure [shall]will allow persons requesting a place on [any of]the [six]waiting [lists]list to submit a waiting list application, which shall contain their license number[and the type of permit they seek], by mail postmarked during a period of time to be determined by the Division of Permits, which [shall]will be specified in the Notice published pursuant to §19-04 of this chapter. A person's eligibility for inclusion on the waiting [lists]list authorized to be created pursuant to these rules [shall be] is limited. [Persons shall be eligible for inclusion on the full-term waiting list, the temporary permit waiting list and one borough-specific full-term permit waiting list of the applicant's choice at any one time.] Pursuant to §17-307(b)(2)(c) a person [shall]will be issued no more than one permit[, whether full-term, borough-specific full-term, or temporary].

§19-06 Procedure for Establishment of Permit Waiting Lists.

Not less than 45 days after the Notice required by §19-04 is published in the City Record, the Department [shall]will create a [full-term permit waiting list, a]temporary permit waiting list [and four separate borough-specific full-term permit waiting lists]pursuant to a random selection procedure. Persons

holding valid mobile food vendor licenses, or in the case of a corporation, limited liability company or partnership, persons on whose behalf such licenses are held on the date such lists are created and who have mailed in an application pursuant to §19-05 of these rules [shall]will be included in this random selection. Persons who, as a result of this random selection procedure, hold position numbers greater than the maximum number specified in §19-07 for the [particular] list, [shall]are not [be placed]eligible for a place on [that]the waiting list. The Department [shall]will notify persons assigned a position on [a] the waiting list by mailing or, for persons who have opted into receiving notices by electronic means, sending by electronic means a notice to the address or electronic contact information provided by the applicant in such applicant's waiting list application.

§19-07 Number of Positions on the Waiting Lists.

[The maximum number of positions on the full-term permit waiting list shall be determined by the Department's Permits Division so as to provide a reasonable number of potential applicants to fill vacancies as they arise, but in no event shall such list exceed two thousand five hundred (2,500) positions.]The maximum number of positions on the temporary permit waiting list [shall]will be determined by the Department's Permits Division so as to provide a reasonable number of potential applicants to fill vacancies as they arise, but [in no event shall such waiting list] such number will not exceed one thousand (1000) positions. When the number of potential applicants on [either]the [full-term or]temporary permit waiting [lists]list falls below two hundred (200), the Permits Division [shall]will supplement such waiting [lists]list with additional names pursuant to the procedure specified in §§19-03 through 19-05 of these rules. [The maximum number of positions on each of the four waiting lists for full-term permits to be used exclusively for vending in the specified boroughs of the Bronx, Brooklyn, Queens and Staten Island shall also be determined by the Department's Permits Division so as to provide a reasonable number of potential applicants to fill future vacancies as they arise. In no event shall any of these borough-specific permit waiting lists exceed one hundred (100) positions or four hundred (400) for all borough-specific list positions combined. When the number of potential applicants on any of the borough-specific permit waiting lists falls below twenty-five (25), the Permits Division shall seek to supplement such waiting list with additional names pursuant to the procedure specified in §19-03 through §19-05 of these rules.]

§19-08 Responsibility of Those on Waiting Lists to Notify the Department of Change of Address.

The names of persons selected for [a]the waiting list created pursuant to these rules [shall]will be entered on [each]such list with their address and, if a person chooses to be contacted by electronic means, electronic contact information, of record as known to the Department through mobile food vendor license records, in the case of a corporation, partnership or limited liability company, the address of such corporation, partnership or limited liability company and the residence and business address of the officer, partner, manager, or member holding a mobile food vendor license who is authorized to act on behalf of such corporation, partnership, or limited liability company [shall]will be entered. Thereafter,[it shall be the responsibility of] each person placed on [a]the waiting list[to] must provide written notification to the Department of any change of address or, for persons who have opted into receiving notices by electronic means, electronic contact information. The Department [shall]will provide written confirmation of its receipt of such address or electronic contact information change notification. The failure to provide change of address or electronic contact information may result in the loss of a person's waiting list [position(s)]position. Any person who does not respond to any notice of the Department mailed or sent by electronic means to his or her address or electronic contact information of record as known to the Department through mobile food vendor license records because change of address or electronic contact information was not provided to the Department in a timely manner [shall be]is deemed to have abandoned his or her place on a waiting list and [shall]will not be reinstated to any list unless such person participates in a process of list establishment pursuant to §§19-03 through 19-06. The Department's written confirmation of its receipt of a change of address or electronic contact information notification [shall constitute]constitutes proof that such notification was provided to the Department.

§19-09 Multiple Waiting List Positions on Any Single List Prohibited.

[A person may submit waiting list applications for positions on the following specific lists: the full-term permit waiting list, the temporary permit waiting list and one of the four borough-specific permit waiting lists that are to be created pursuant to these rules.]A person may not, under any circumstances, occupy more than one waiting list position on [any of]the[three] waiting [lists selected by the applicant]list and no person[shall be] is eligible to obtain more than one permit. Before the creation of [any of these]the [lists]list through the random selection process, the Department [shall]will ensure that a mobile food vendor licensee is represented only once in the pool of licensees from which the random listing or selection to [each]the list is made. For purposes of the waiting [lists]list only, officers, members, managers and partners who represent corporations, limited liability companies and partnerships that are current mobile food unit permit holders [shall]will not be excluded from the pool from which the randomized waiting [lists are]list is to be created solely on the basis that such officer, member, manager or partner is a licensee acting on behalf of a corporation, limited liability company or partnership, provided each such individual possesses a valid mobile food vendor license in accordance with these rules. Such officers, members, managers and partners, will be deemed to be representing themselves as individuals, and not the corporation, limited liability company or partnership with which they are associated, when placed on [any] the waiting list, and [shall]will be placed on [any such]the waiting list in their individual capacities. Where such individual is acting on behalf of a corporation, limited liability company or partnership, the name of the corporation, limited liability company or partnership [shall]will be placed on [a]the waiting list with the name of the individual who is acting on its behalf. No partner, member or manager of a limited liability company or director, shareholder or officer of a corporation [shall]may appear on the same waiting list as the partnership, limited liability company or corporation which he or she represents and/or has an interest in unless he or she holds the waiting list position in his or her individual capacity. Should the Department receive more than one request for a waiting list position from any person, requests subsequent to the first [shall]will be deemed invalid. A person who submits more than one request for a position on [any single]the waiting list will be disqualified and denied a position on the list if such multiple requests are deemed, in the sole discretion of the Department, to adversely affect the fairness or orderly establishment of a list. Nothing [herein]in this chapter, which allows a person the right to hold a waiting list position in an individual capacity, [shall be deemed to give]gives such person the right to obtain a mobile food unit permit in violation of §17-307(b), (f) and (g) of the New York City Administrative Code.

§19-10 Selection of Applicants From a Waiting List.

[When the number of outstanding full-term mobile food unit permits falls below two thousand eight hundred (2,800), the statutory maximum of three thousand (3000) imposed by §17-307(b)(2)(a) of the New York City Administrative Code less the two hundred (200) designated exclusively for use in specified boroughs by §17-307(b)(2)(b)(i), and at such time as the Department in its discretion may determine based upon a consideration of the number of vacancies, a number of persons on the waiting list equal to the number of vacancies shall be notified by the Department, in waiting list order, of their eligibility to apply for a full-term mobile food unit permit and shall form a pool of prospective applicants.] When the number of temporary mobile food unit permits outstanding falls below the statutory maximum of one thousand (1,000) imposed by §17-307(f)(3)(a) of the Administrative Code, and at such time as the Department in its discretion may determine based upon a consideration of the number of vacancies, a sufficient number of persons on the waiting list equal to the number of vacancies [shall]will be notified by the Department, in waiting list order, of their eligibility to apply for a temporary mobile food unit permit and [shall]will form a pool of prospective applicants. [When the number of borough-specific full-term mobile food unit permits outstanding for a particular borough falls below the statutory maximum of fifty (50) imposed by §17-307(b)(2)(b)(i) of the Administrative Code and at such time as the Department in its discretion may determine based upon a consideration of the number of vacancies, a sufficient number of persons on the waiting list for that borough equal to the number of vacancies shall be

notified in waiting list order of their eligibility to apply for a permit to be used exclusively in the specific borough and shall form a pool of prospective applicants.] Only one permit [shall]will be issued for each eligible waiting list position or applicant.

§19-11 Eligibility to Apply for a Mobile Food Vending Unit Permit.

Only those persons who have been notified that their waiting list number has been reached [shall be]are eligible to submit an application for a mobile food unit permit. A person whose waiting list number is reached and who holds a full-term, temporary or full-term borough-specific mobile food unit permit including a person who is deemed to hold such a permit pursuant to subdivision g of §17-307 of the Administrative Code, [shall not be]is ~~[eligible]~~ineligible for a permit with respect to such waiting list position unless such [previously held]~~previously-held~~ permit is surrendered or expires before a permit with respect to such waiting list position is issued. Positions on a waiting list [shall]may not be [transferable] transferred.

§19-12 Notification of Eligibility to Apply for Permit.

Within ninety (90) days of the date that notification of eligibility to apply for a permit authorized to be issued by §17-307 of the Administrative Code is mailed or, for persons who have opted into receiving notices by electronic means, transmitted by electronic means, a person desiring to obtain such permit [shall] must submit an application, completed in accordance with §5.05 of the New York City Health Code, together with the requisite fees therefor. The permit application [shall]must be postmarked or received by electronic means on or before the ninetieth day.

§19-13 Failure to Make Application for Permit.

The failure of any person on a waiting list who is notified of eligibility to apply for a permit, to complete the permit application process within ninety (90) days of being so notified, [shall] will result in the forfeiture of such person's waiting list position.

§19-14 Abandonment of Waiting List Position.

A person who does not respond within ninety (90) days to a Departmental inquiry concerning a waiting list position held by such person, mailed by ordinary mail to the address provided by such person or, for persons who have opted into receiving notices by electronic means, sent by electronic means to the electronic contact information of record, [shall be]is deemed to have abandoned such waiting list position. A person who holds a waiting list position may withdraw [his or her]their name at any time by providing written notice to the Division of Permits with verifying documentation satisfactory to the Division.

Section 6. Chapter 19A of Title 24 of the Rules of the City of New York, relating to expansion of the full-term mobile food vendor permit waiting list, is REPEALED.

Section 7. Chapter 20 of Title 24 of the Rules of the City of New York, relating to preference and/or waiting lists for full-term mobile food unit permits issued to veterans and persons with a disability, is REPEALED.
