

**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 New York City Department of Health and Mental Hygiene (“Department”) is proposing procedures to govern supervisory licenses and associated mobile food vending permits as authorized by Local Law 18 of 2021, as well as amend waiting list rules for mobile food vending permits.

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on Thursday, June 30, 2022.

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=m54e9cc4798f3acfe56b901566a0d2f47>
If prompted to provide an event number or password, please enter the following:
Event number: 2334 250 9621
Password: EbnCJV8nc87 (32625886 from phones)

Phone: For access, dial: (408) 418-9388; (646) 992-2010 (New York City)
then please enter the following: Access code: 233 425 09621, Password: 32625886

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
Office of General Counsel
14th Floor, CN 30
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 should 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 June 30, 2022. 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 June 30, 2022.

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 June 16, 2022.

Can I review the comments made regarding the proposed rules? You may review the online comments submitted 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." New York City Administrative Code sections 17-307 and 17-307.1 authorize the Department to establish procedures regarding supervisory licenses and mobile food vending permit waiting lists. Local Law 18 of 2021 requires the Department to offer 445 supervisory license applications to eligible individuals each year for 10 years beginning July 1, 2022.

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 ("24 RCNY").

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. The proposed rule was not included in the agency regulatory agenda.

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 of 2021 ("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 associated with an option to apply for a citywide permit; 300 supervisory license applications associated with an option to apply for a permit to operate in a 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 citywide permit designated for such persons.

Local Law 18 also defines and ranks categories of people to whom the supervisory license applications will be issued from a new waiting list. First on the new 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 proposed rule 6-22. Next are people who were on a permit waiting list before the effective date of the Local Law but have not been “continuously licensed”.

Creation of Supervisory License Waiting List

Though Local Law 18 assigned supervisory license application priority to people on a previously existing list for a full-term permit, it did not differentiate among the multiple existing full-term waiting lists – one citywide and four borough-specific lists.

The Department proposes to merge the longstanding citywide and borough-specific permit waiting lists into one supervisory license waiting list, ordered by previously assigned permit waiting list number, rather than continue to maintain five lists. This approach aligns with the change in Local Law 18 from borough-specific permits to borough outside of Manhattan permits and facilitates administration of this complex program. The Department believes this approach is consistent with the legislative intent. If merging these lists results in persons holding more than one place on the supervisory license waiting list, the Department proposes to assign to such persons only the highest position on the waiting list. In cases where two or more people are eligible for the same priority position on the waiting list, the Department proposes to 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.

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 proposes not to open the supervisory license waiting list for these individuals at this time and has not addressed this category of applicants in this proposed 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.

Persons on Waiting Lists Do Not Choose Supervisory License Type

As described above, the Department will form a single supervisory license waiting list using names from the full-term permit waiting lists and in accordance with preference categories prescribed in Local Law 18. The Department will offer two types of supervisory licenses, citywide and borough outside of Manhattan, from this one list such that in each twelve-month cycle beginning on July 1 of a given year, the first 100 people (or more, depending on when and how many citywide legacy permits are surrendered or otherwise retired) on the waiting list will be offered citywide supervisory license applications and the next 300 people (or more, depending on when and how many borough-specific legacy permits are

surrendered or otherwise retired) will be offered borough outside of Manhattan supervisory license applications. The Department will offer only one type of supervisory license application to each person on the waiting list; people on the waiting list will not have a choice as to license type.

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 citywide and borough outside of Manhattan supervisory licenses discussed in the preceding paragraph.

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 additional 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 these proposed rules.

New Definitions

The proposed rules also add 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 a supervisory license waiting list reflected in these proposed rules 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, the proposed rules repeal Chapter 20 and Chapter 19A and revise Chapter 19 to delete references to permit waiting lists that will cease to be used on July 1, 2022, and provisions throughout new section 6-22 govern the waiting lists for supervisory licenses associated with citywide and borough outside of Manhattan permits 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 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.

Section 1. Section 6-02 of Chapter 6 of Title 24 of the Rules of the City of New York is amended to add 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 by 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 [the effective date of this rulemaking] 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 these rules and in the Administrative Code § 17-306(s);
- (ii) temporary/seasonal permits which authorize mobile food vending where allowed from April 1 to 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 that term is 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 that authorizes vending from a vehicle or pushcart only when the holder of a supervisory license is present and vending.

Veteran has the meaning defined 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 proposed to be amended to add a new section 6-22 to read as follows:

§6-22 Supervisory license and associated permit.

- (a) *Supervisory license waiting list for citywide and borough outside of Manhattan permits.*

- (1) *Creation of waiting list.* The Department will create a single waiting list of persons to receive supervisory license applications made available pursuant to Administrative Code § 17-307(b)(5)(b) by merging all names from the Former FTP Waiting Lists except that persons who have had a legacy permit or temporary permit revoked or suspended at any time before the Department creates the supervisory license waiting list or who the Department determines are not fit to operate a mobile food vending business will be excluded from the supervisory license waiting list.
- (2) *Order in waiting list.*
- (i) The Department will order all persons on the waiting list 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.
- (ii) 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 the merging of waiting lists described in paragraph (1) of this subsection.
- (3) *One position per person.* If, as a result of merging the Former FTP Waiting Lists, a person holds more than one position on the supervisory license waiting list, the Department will assign to that person the single highest position held.

- (b) *Supervisory license waiting list for veterans or persons with disability.*

- (1) Creation of waiting list. The Department will create one supervisory license waiting list that contains three preference categories established by §17-307(b)(3)(b) of the Administrative Code -- veterans with a disability, persons with a disability, and veterans - - comprised exclusively of natural persons who successfully apply for a place on the waiting list.
 - (2) Limitation on number of positions on waiting list and within each category. The supervisory license waiting list created pursuant to paragraph (1) of this subdivision will be limited to one hundred (100) positions per preference category 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. A person who applies for more than one position on the supervisory license waiting list that affects the fairness or orderly establishment of the list may be disqualified and denied a position on the list.
 - (3) Notice of establishment of waiting list. At least forty-five (45) days prior to the creation or supplementation of the waiting list, notice of the opportunity to apply to be on the 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 eligible persons holding mobile food vendor licenses. The maximum number of positions on a 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. Persons requesting a place on the 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. Applicants who meet the criteria, including but not limited to licensure and qualifying for a preference category, will be included in a random selection that results in the addition to the waiting list of up to as many applicants as spaces are available on the list. The Department will notify persons assigned a position on the list in writing to the mailing address or, for persons who opted into receiving electronic notifications, electronic contact information provided in their waiting list applications.
 - (5) Order in waiting list. Order within the preference categories will be determined by the random selection procedure described in paragraph 4 of this subdivision. Those belonging to a higher preference category will be offered a supervisory license application before those in a lower preference category.
- (c) Notification of change of contact information. Each person on a supervisory license waiting list must provide written notification to 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 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, for persons who opted into receiving electronic notifications, electronic contact information and consequently does not respond to a notice from the Department mailed to their address or transmitted to their 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) When supervisory license required.

- (1) Supervisory license required for permit issuance. Notwithstanding any rule to the contrary, a mobile food vending unit permit initially issued on or after July 1, 2022 will be issued only to the holder of a supervisory license, except for the following permit types: temporary (seasonal), fresh fruits and vegetables (green cart), restricted area, or permits held by veterans with a disability who also hold a specialized vendor license.
- (2) No vending without supervisory license beginning July 1, 2032. On or after July 1, 2032, all mobile food vending permits must be associated with a supervisory license except for the following permit types: temporary (seasonal), fresh fruits and vegetables (green cart), restricted area, or permits held by veterans with a disability who also hold a specialized vendor license.

(e) Eligibility for supervisory license.

- (1) Eligibility to receive application. Only those persons who are on a supervisory license waiting list are eligible to receive a supervisory license application.
- (2) Active food vendor license required. 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.

(f) Distribution of supervisory license applications.

- (1) Number of available applications.
 - (i) Citywide. In each 12-month period for ten consecutive years beginning July 1, 2022, the Department will make available 100 applications for a citywide supervisory license that allows the holder to apply for a supervisory license-associated permit designated for use in any borough.
 - (ii) 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 borough outside of Manhattan supervisory license that allows the holder to apply for a supervisory license-associated permit designated for use in any borough outside of Manhattan.
 - (iii) 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.

- (iv) 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 citywide supervisory licenses and borough outside of Manhattan supervisory licenses, respectively.
- (2) Order of distribution of applications. In each 12-month period for ten consecutive years, the Department will distribute applications for citywide supervisory licenses before distributing applications for supervisory licenses designated for use only outside of Manhattan.
- (g) 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, 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 ninety days of the postmark or electronic transmission date on the notification 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. Abandonment and forfeiture of the application may not be appealed.
- (4) Term of license. 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. Abandonment and forfeiture of a supervisory license or voiding of any associated permit may not be appealed.
- (h) 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 such requirement will not apply to 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. Failure to renew a supervisory license will automatically void the supervisory license-associated permit.
 - (2) Applications. The Department will mail eligible persons 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 must be present and vending at any mobile food vending unit operating with a supervisory license-associated permit.
 - (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.
- (i) 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 may suspend the other for the same duration and may be subject to the same terms and conditions for lifting of the suspension.
- (j) Fees.
- (1) Supervisory license. The biennial fee for a supervisory license is \$230.
 - (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 proposed to be amended to add a new violation and shall 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*
Admin. Code 17-307.1(a)(1)	Vending without supervisory license holder physically present and vending	\$1,000

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 BOROUGH(S)]**

§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 to the initial creation of the waiting list[s] 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 list[s] 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 list[s] 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 list[s] [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 list[s] 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 list[s].

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

At least 45 days prior to the establishment of a waiting list[s], 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 list[s shall be] 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 list[s] 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 list[s] 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] eligible for a place[d] 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 list[s] falls below two hundred (200), the Permits Division [shall]will supplement such waiting list[s] 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)]. 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] 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 list[s selected by the applicant] and no person[shall be] is eligible to obtain more than one permit. Before the creation of [any of these] the list[s] 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 list[s] 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 list[s are] 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]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 ineligible for a permit with respect to such waiting list position unless such 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 is REPEALED.

Section 7. Chapter 20 of Title 24 of the Rules of the City of New York is REPEALED.

**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 Rules Governing Mobile Food Vending Licenses

REFERENCE NUMBER: DOHMH-117

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

May 20, 2022
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: Amendment of Rules Governing Mobile Food Vending Licenses

REFERENCE NUMBER: 2022 RG 005

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: May 20, 2022