



Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

RE: Comments on Proposed Rules Governing Newsstands

Volunteers of Legal Service (“VOLS”) writes to provide comments on the proposed rules issued by the New York City Department of Consumer and Worker Protection (“DCWP”) to implement Local Law 128 of 2021 and to amend sections of the Rules of the City of New York applicable to newsstands. We appreciate the opportunity to provide feedback on these proposed rules.

Who we are

VOLS is a legal services nonprofit with a mission to bridge the justice gap in underserved communities through increased pro bono legal services. For over 20 years, the VOLS Microenterprise Project has helped existing and aspiring small business owners and entrepreneurs access high-quality free transactional legal services from our dedicated staff and our network of pro bono attorneys. VOLS offers support with entity formation, drafting and reviewing contracts, and understanding industry-specific regulations.

Our perspective

VOLS recognizes that operating a newsstand is a form of entrepreneurship that provides many New Yorkers, particularly immigrants, minorities, and veterans, with crucial economic opportunities. Newsstand operators foster connection within our communities and serve as our eyes on the street.

We believe the proposed rules, to prohibit newsstand licensees from renting the newsstands and to require licensees to derive most of their income, excluding investment income, from the operation of up to two newsstands would benefit small entrepreneurs and the community. We also believe that the proposed rules, to allow business entities to hold newsstand licenses, enables newsstand operators to benefit from the limited liability protection and other advantages of having a business structure.

In our experience, individuals operating newsstands often aren't the same individuals holding the newsstand licenses. There exist informal arrangements in the newsstand system whereby individuals pay “rent” to newsstand licensees for the right to operate the newsstand as sub-licensees. The licensees may serve as the name on the license, but they do nothing more to operate the newsstand. The sub-licensees are the ones who control the purchasing and pricing decisions of the newsstand and assume business risk by paying for the newsstand products themselves. They may also pay the licensees' license renewal costs (not just for the newsstand, but also other related licenses, such as tobacco and electronic cigarette retail dealer licenses) and even any fines incurred by the licensee. Further, in some cases, the sub-licensees have secured their positions in these arrangements by paying significant amounts, essentially constituting key money, to prior sub-licensees. While far from the system envisioned by the city, it is the reality for many newsstand operators. These sub-licensees should have a pathway to assuming the newsstand license in the event of vacancy or abandonment by the license holder.

To that end, we encourage DCWP to consider the following amendments to the proposed rules, to provide a pathway for those who have long operated and worked in newsstands to formally become licensees.

Recommendation 1: The categories of eligible applicants who may apply to operate an existing newsstand upon the death or permanent disability of a newsstand licensee should be expanded to include an individual who was the principal person operating and working in such newsstand up until the time of the licensee's death or disability.

Upon the death or permanent disability of a newsstand licensee, the existing and proposed rules allow someone who was a “one-time employee” of such licensee or someone who “bears another pre-existing, established relationship to such former licensee that included financial dependence on such licensee” to apply for a license to operate the newsstand of such licensee. We recommend clarifying in the proposed rules that someone considered “financially dependent on a licensee” shall include the individual working in such newsstand, overseeing its daily operations, and relying on it as his or her main source of income and livelihood.

Proposed amendment:

§ 2-64(a)(12) – Death or disability of licensee. At the discretion of the Commissioner or his or her designee, upon the death or permanent disability of the [person] individual or sole proprietor who was licensed to operate a newsstand at a location, [DCA] DCWP may accept an application for a license to operate such existing newsstand where:

(A) the applicant provides documentation sufficient to show that the applicant is a dependent spouse, dependent domestic partner, dependent child or one-time employee of the former licensee, or bears another pre-existing, established relationship to such former licensee that included financial dependence on such licensee **or involved the applicant being the principal person operating and working in such newsstand in the twenty-four months preceding the date of such application;**

Recommendation 2: The categories of eligible applicants who may apply to operate an existing vacant newsstand should be expanded to include an individual who was the principal person operating and working in such newsstand prior to the vacancy.

As described above, an individual other than the licensee who works at a newsstand overseeing its daily operations and relying on it as their main source of income and livelihood, should have a pathway to become a licensee of such newsstand, particularly if the newsstand becomes vacant. Under the existing and proposed rules, if a licensee voluntarily abandons their license or has it revoked by DCWP, causing the newsstand to become vacant, the individual who worked at the newsstand and depended on it as their primary source of income would lose their livelihood. Additionally, they would not have priority to obtain a license for the newsstand over someone without any prior connection.

Proposed amendment:

§ 2-64(a)(13) – Application for an Existing Vacant Newsstand.

(A) The Commissioner may accept an application for a license to operate an existing vacant newsstand where:

(i) an applicant is being required to relocate pursuant to subdivision d of section 2-68 of this Part; or

(ii) an applicant has proposed a location that has been approved, but construction of a new newsstand at such approved location has not begun within 150 days from the date that such applicant completed the required paperwork and made the required payment to the franchisee for the newsstand; or

(iii) an applicant, other than the former licensee, was the principal person operating and working in such newsstand in the [twenty-four] months preceding the date of vacancy and was not the former licensee; or

(iv) the Commissioner has determined that such existing vacant newsstand is not necessary to reserve for any other purpose, including but not limited to ensuring availability of newsstands for applicants permitted to apply for a license to operate an existing newsstand under (i), (ii) and (iii) of this subparagraph.

Recommendation 3: DCWP's ability to waive certain license application requirements for a license application to operate an existing vacant newsstand should also apply to a license application to operate an existing newsstand upon the death or permanent disability of the former licensee.

The proposed § 2-63(c) permits DCWP to waive certain license application requirements where an application is being submitted to maintain and operate an existing franchise newsstand. However, as drafted, the proposed rule only permits such a waiver where an application is being submitted for an existing vacant newsstand pursuant to § 2-64(a)(13). While we believe granting DCWP discretion to waive requirements in these circumstances would benefit applicants, we believe that DCWP should also have discretion to waive requirements for applications submitted to obtain a license to operate a newsstand upon the death or permanent disability of its newsstand licensee under § 2-64(a)(12).

Proposed amendment:

§ 2-63 Application Procedures.

[...]

(c) DCWP may waive the requirements of subdivisions a and b of this section where an application is submitted pursuant to paragraph 12 or 13 of subdivision a of section 2-64 of this Part for a license to maintain and operate an existing franchise newsstand.

Recommendation 4: Section 2-64(c)(1) that grants DCWP permission to revoke, or refuse to renew a license for failure to operate a newsstand for two consecutive months should be revised to include an exception for licensees complying with any suspension of their license.

Under the existing and proposed rules, the Commissioner may revoke or refuse to renew a newsstand license upon a finding that the location listed in the license was not utilized for a period of two consecutive months. However, when a newsstand license is suspended, it may take longer than two months for a licensee to either exercise all available options to challenge the reason for suspension or meet the criteria required to lift the suspension. This puts licensees



in a bind that undermines the opportunity they would otherwise have to be heard and to reinstate their license. We propose adding an exception to § 2-64(c)(1) where licensees are merely complying with the suspension of a license.

Proposed amendment:

§ 2-64(c) – Changes in license status. In addition to any other basis for revoking a license, the Commissioner of [DCA] DCWP may revoke [, cancel,] or refuse to renew a license to maintain and operate a newsstand for any of the following reasons: [...]

(1) upon a finding by the Commissioner of [DCA] DCWP that the location listed in the license was not utilized for a period of two consecutive months or more, **except where the location was not utilized to comply with a suspension of the license; [...]**

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We appreciate DCWP's attention to the needs of New York City's newsstand operators, who are among New York City's smallest businesses and yet form an essential part of our communities. Thank you again for the opportunity to provide comments on the proposed rules governing newsstands.

Andrea Tan, Esq.

Microenterprise Project Director

Volunteers of Legal Service