

# New York City Department of Consumer and Worker Protection

## Notice of Adoption

Notice of Adoption to amend Department of Consumer and Worker Protection (“DCWP” or “Department”) rules related to general vendors in order to clarify which licensees may apply for a specialized vending license.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection by sections 1043 and 2203(f) of the New York City Charter and sections 20-104(e) and 20-471 of the New York City Administrative Code, and in accordance with the requirements of such section 1043, that the Department amends chapter 2 of Title 6 of the Rules of the City of New York.

This rule was proposed and published on October 22, 2024. A public hearing was held on November 21, 2024 and comments regarding the rule were received.

## Statement of Basis and Purpose of Rule

DCWP amends rules governing general vendors to clarify that veterans with service-related disabilities who have a valid DCWP general vendor’s license or a valid Department of Health and Mental Hygiene (“DOHMH”) mobile food vendor’s license may apply for a DCWP specialized vending license, allowing them to vend in certain restricted areas of New York City. The Department’s previous rules required an applicant for a specialized vending license to have a valid general vendor’s license. However, this rule clarifies that qualifying holders of a mobile food vendor license issued by DOHMH are also eligible to apply for a specialized vending license. These amendments will ease the burden for mobile food vendors by reducing the permit requirements.

The Department received comments about the rule from the public. Some comments misunderstood the changes made by this rulemaking and the application of Article 4 of the New York State General Business Law (“GBL”), which governs vendors. Specifically, these comments erroneously claim that this rule change conflicts with GBL section 35-a by merging the general vendor and mobile food vendor license regimes and eliminating the required priority system. However, this rule change is consistent with the GBL by allowing mobile food vendors to hold a specialized vending license while maintaining the priority system mandated by the GBL. DCWP also received comments on general vending issues unrelated to the changes made in this rulemaking. No changes were made to the proposed rule.

Sections 1043 and 2203(f) of the New York City Charter and sections 20-104(e) and 20-471 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make this rule.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the Department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 2-315 of subchapter AA of chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

### **§ 2-315 Application Procedures for Honorably Discharged Members of the Armed Forces who are Eligible for Specialized Vending Licenses Pursuant to § 35-a of the General Business Law.**

(a) As used in this section, the following terms [shall] have the following meanings:

(1) *Block face*. "Block face" means the area of sidewalk spanning from one intersection to the next;

(2) *City-specialized vending license*. "City-specialized vending license" means a specialized vending license for a block face in the city of New York that is located outside the following areas:

- (i) the midtown core,
- (ii) Broadway between Murray street and Battery Place,
- (iii) Park Row between Ann street and Spruce street; and
- (iv) the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty street, on the west by the westerly side of West street, and on the north by the northerly side of Vesey street

(3) *Midtown core*. "Midtown core" means the borough of Manhattan in the City of New York in the area bounded on the east by Second avenue, on the south by Thirtieth street, on the west by Ninth avenue and Columbus avenue and on the north by Sixty-fifth street; provided, however, that the "midtown core" shall not include (and vending is prohibited on) Second avenue, Third avenue, Lexington avenue, Park avenue, Vanderbilt avenue, Madison avenue, Fifth avenue, Sixth avenue, Seventh avenue, Broadway, Eighth avenue, Amsterdam avenue, Ninth avenue, Columbus avenue, Thirty-fourth street between Lexington avenue and Seventh avenue, Forty-second street between Lexington avenue and Eighth avenue, Forty-ninth street between Lexington avenue and Seventh avenue, Fiftieth street between Lexington avenue and Seventh avenue and Fifty-seventh street between Lexington avenue and Seventh avenue;

(4) *Midtown-specialized vending license*. "Midtown-specialized vending license" means a specialized vending license for a block face located in the midtown core;

(5) *Specialized vending license*. "Specialized vending license" means a license issued pursuant to § 35-a of the General Business Law; [and]

(6) *General vendor's license*. "General vendor's license" means a license issued by the Commissioner pursuant to Subchapter 27 of Chapter 2 of Title 20 of the New York City Administrative Code[.]; and

(7) *Mobile food vending license*. "Mobile food vending license" means a license issued by the Department of Health and Mental Hygiene pursuant to Subchapter 2 of Chapter 3 of Title 17 of the New York City Administrative Code and Chapter 6 of Title 24 of the Rules of the City of New York.

(b) Applications for specialized vending licenses and the reissuance of specialized vending licenses issued prior to March 1, 2003 [shall be] are governed by the following procedures:

(1) All persons who hold current specialized vending licenses that were issued pursuant to the provisions of § 35-a of the General Business Law prior to March 1, 2003, [shall] must apply for the reissuance of such specialized vending licenses with new priority ranks [that shall] to be accorded and assigned in accordance with subdivision (c) of this section.

(2) Applications for the reissuance of such currently valid specialized vending licenses issued prior to March 1, 2003, [shall be made so they are] must be received by the department during the period commencing on August 23, 2004 and ending no later than 5 p.m. on September 22, 2004.

(3) Such applications [shall] must include the following information and documentation:

- (i) The applicant's name, home address and home telephone number; and

(ii) Whether the applicant is seeking a midtown- or a city-specialized vending license as [his or her] their first choice. An applicant who fails to indicate whether [he or she seeks] they seek a midtown- or a city-specialized vending license shall be deemed to have [elected] chosen a midtown-specialized vending license; and

(iii) Proof that the applicant holds a currently valid general vendor's license and a currently valid specialized vending license issued prior to March 1, 2003; and

(iv) [In the case of] If a licensee [who] exchanged a midtown-specialized vending license for a city-specialized vending license, or vice versa, and [who] has continuously held a specialized vending license since the date on which the first such license was issued, [a description of the specialized vending license with such earlier date of issuance] an indication of which license was received first.

(c) Each eligible applicant for the reissuance of specialized vending licenses issued before March 1, 2003, shall be reissued such license with a new priority rank, which shall be determined and assigned in accordance with this subdivision.

(1) All eligible applications for the reissuance of such specialized vending licenses that are received on or before 5 p.m. of September 22, 2004 shall be sequentially assigned a priority rank based on the earlier of (A) the date of issuance of the applicant's currently valid specialized vending license that was issued prior to March 1, 2003, or, (B) in the case of a licensee who exchanged, prior to March 1, 2003, a midtown-specialized vending license for a city-specialized vending license, or vice versa, and who has continuously held a specialized vending license since the date on which the first such license was issued, the date of issuance of such first license. Number one shall be the rank assigned to the applicant whose specialized vending license has the earliest date of issuance, determined in accordance this paragraph, and who is therefore entitled to the highest priority rank.

(2) Any specialized vending license issued prior to March 1, 2003, shall be deemed to have been surrendered as of 5 p.m. on September 22, 2004 unless such application for the reissuance of such license is received by the Department on or before such date and time.

(3) If more than one qualified applicant holds a specialized vending license with the same date of issuance determined in accordance with paragraph one of this subdivision, all such applicants shall be ranked sequentially in reverse order according to the number of their general vendor's licenses, with the highest priority ranking being assigned to the applicant within such group who holds the lowest numbered general vendor's license.

(d) [Midtown specialized] Midtown-specialized vending licenses shall first be issued to the holders of specialized vending licenses who have filed applications in accordance with subdivision (b) of this section and who hold currently valid midtown-specialized vendor's licenses issued prior to March 1, 2003. Such licenses shall be issued with a priority rank assigned to such [midtown specialized] midtown-specialized vending licenses, which shall be in the order in which such applicants are ranked pursuant to subdivision (c) of this section.

(1) If not all of the 60 holders of midtown-specialized vending licenses that are issued and outstanding as of March 1, 2003, have filed applications that request the reissuance of, or are deemed to request the reissuance of, a midtown-specialized vending license in accordance with such subdivision (b), the remaining

midtown-specialized vending licenses shall be issued to eligible applicants who request the issuance of, or who are deemed to request the issuance of midtown-specialized vending licenses and who have been assigned the highest priority ranks established in accordance with such subdivision (c).

(2) Any qualified applicants for the issuance of midtown-specialized vending licenses remaining after the maximum of 60 authorized for issuance pursuant to § 35-a of the General Business Law as of March 5, 2004, have been issued shall be included on the waiting list maintained pursuant to subdivision (e) of this section for midtown-specialized vending licenses that become available at any time.

(e) The Department shall maintain a waiting list of applicants for midtown-specialized vending licenses that become available.

(1) The applicants placed on the waiting list for midtown-specialized vending licenses pursuant to paragraph two of subdivision (d) of this section shall be ranked in the order of the priority rank assigned pursuant to subdivision (c) of this section.

(2) Any other city-specialized vending licensee may request the Department to add [his or her] their name to such waiting list by filing an application with the Department. The names of applicants shall be entered on such waiting list in the order that such applications are received[, except that the names of applicants whose applications are received on the same day shall be included on such waiting list according to the priority rank that has been assigned to such applicants for their specialized vending license in accordance with paragraph four of subdivision (i) or paragraph four of subdivision (j), as applicable].

(3) Any midtown-specialized vending licenses that become available after March 5, 2004, shall be offered by the Commissioner to persons included on such waiting list in the order in which they are ranked on such list. Any applicant on such list who fails to notify the Commissioner within the time provided in the Commissioner's offer that such applicant requests that such license be issued to [him or her] them shall be deemed to have refused such license and to have surrendered [his or her] their place on such waiting list as of 5 p.m. on the last date by which the applicant was required to so notify the Commissioner.

(f) No more than 105 midtown-specialized vending licenses shall be issued at any single time on or after January 31, 2007. Such licenses shall be issued according to the following schedule:

(1) A maximum of [sixty] 60 such licenses on or after March 5, 2004.

(2) A maximum of an additional 15 such licenses commencing June 7, 2004.

(3) A maximum of an additional [ten] 10 such licenses in each of the succeeding three years commencing on January 31 of 2005, 2006 and 2007.

(4) Only holders of city-specialized vending licenses that are in effect at the time such additional midtown-specialized vending license become available are eligible to be issued such additional midtown-specialized vending licenses.

(g) The Department shall publish a notice in the City Record requesting applications for midtown-specialized vending licenses whenever the Department ascertains that a midtown-specialized vending license is available for issuance and there are no applicants on the waiting list maintained by the Department in accordance with subdivision (e).

(1) Applicants shall have 14 days from the date of publication of such notice to submit an application containing the information and documentation specified in such notice.

(2) Applicants responding to the notice for the issuance of available midtown-specialized vending licenses shall include the following information and [docu- mentation] documentation:

(i) the applicant's name, home address and home telephone number;

(ii) proof that the applicant holds a currently valid general vendor's license or a currently valid mobile food vending license; and

(iii) proof that the applicant holds a currently valid city-specialized vending license issued after August 23, 2004.

(3) Midtown-specialized vending licenses shall be issued sequentially to qualified applicants in the order of the priority ranks assigned to their currently held valid specialized vending licenses until the number of midtown-specialized vending licenses that are then available as specified in such notice have been issued.

(4) Any applicant who is issued such additional midtown-specialized vending license [shall be required to] must surrender [his or her] their city-specialized vending license upon the issuance of the midtown-specialized vending license, and such midtown-specialized vending license shall be assigned the same priority rank as had been assigned to the surrendered city-specialized vending license.

(h) Any applicant who, pursuant to subdivision (b) of this section, makes a timely application for the issuance of a midtown-specialized vending license but who is not issued such license shall be reissued such city-specialized vending license with the priority rank as provided in subdivision (c) of this section.

(i) Applicants who apply on or after August 23, 2004 for the issuance of [city specialized] city-specialized vending licenses, [shall] must provide the following information in, and attach the following documentation to, the application for such license:

(1) The applicant's name, home address and home telephone number; and

(2) Proof that the applicant:

(i) has been honorably discharged from the armed forces of the United States;

(ii) has sustained a service-related physical disability that is verified in a letter to the veteran/applicant on original letterhead with an original signature from the United States Department of Veterans Affairs or the United States Veterans Administration; and

(iii) holds a currently valid general vendor's license or a currently valid mobile food vending license.

(3) Notwithstanding subparagraph (ii) of paragraph two of this subdivision, an applicant whose currently valid general vendor's license designates such applicant as a disabled veteran is not required to submit with [his or her] their application for a city-specialized vending license a letter from the United States Department of

Veterans Affairs or the United States Veterans Administration verifying that such veteran/applicant has sustained a service-related physical disability.

(4) Such applications for a specialized vending license shall be assigned priority ranks in the order in which the applications are received[, provided, however, that if more than one application for a city specialized vending license is received on the same day, the priority rank for such licenses shall be assigned first in reverse order of the applicants' general vendor's license numbers, with the applicant holding the lowest numbered general vendor's license being assigned the highest priority rank among the applicants within such group].

(j) (1) All persons who hold current specialized vending licenses that were issued pursuant to the provisions of § 35-a of the General Business Law after February 28, 2003, and before August 23, 2004, shall apply for the reissuance of such specialized vending licenses with a new priority rank that shall be accorded and assigned in accordance with paragraph four of this subdivision.

(2) Such applications [shall] must include the following information and documentation:

(i) The applicant's name, home address and home telephone number; and

(ii) Proof that the applicant holds a currently valid general vendor's license and a currently valid specialized vending license issued after February 28, 2003.

(3) Individuals holding city-specialized vending licenses issued after February 28, 2003, and before August 23, 2004 who do not apply by September 22, 2004 shall be deemed to have surrendered such license as of 5 p.m. on September 22, 2004 unless such application for the reissuance of such license is received by the Department on or before such date and time.

(4) Such applications for a specialized vending license shall be assigned the priority ranks based on the date of issuance of the applicant's currently valid specialized vending license. If more than one such qualified applicant holds a specialized vending license with the same date of issuance, all such applicants shall be ranked sequentially in reverse order according to the number of their general vendor's licenses, with the highest priority ranking being assigned to the applicant within such group who holds the lowest numbered general vendor's license.

(k) No disabled veteran vendor may hold more than one specialized vending license issued by the Department, whether a midtown-specialized vending license or a city-specialized vending license. A specialized vending license shall not have a term and shall be valid until the date on which such specialized vending license is surrendered to the Department, or until the specialized vending licensee ceases to hold a currently valid general vendor's license or currently valid mobile food vending license, or until otherwise provided by law.

(l) Any eligible disabled veteran may apply to exchange [his or her] their specialized vending license for a different type of specialized vending license issued by the Department by making an application for the type of license he or she seeks in accordance with the application procedures specified in this section.

(m) [City specialized] City-specialized vending licenses shall be yellow and [midtown specialized] midtown-specialized vending licenses shall be blue and shall be clearly differentiated from such licenses issued prior to March 1, 2003. Each such specialized vending license also shall contain a photograph of the disabled veteran

to whom such license is assigned as well as [his or her] their name, home address, specialized vending license number, and such licensee's assigned priority rank.

(n) Upon the death of a holder of a specialized vending license, the surviving spouse or, if there is no surviving spouse or the surviving spouse elects not to use such license, the guardian of a minor child or children of such holder, to whom such license is transferred by operation of law in accordance with § 35-a of the General Business Law, [shall] must notify the Department of the death of such holder and, upon submitting proof of the conditions upon which such transfer is based, shall be issued a license in [his or her] their name with the same priority rank as that assigned to such holder.

(o) A holder who becomes totally or permanently disabled and wishes to transfer [his or her] their specialized vending license to [his or her] their spouse or to an adult child who assumes the duty to support such holder [shall] must notify the Department. Such license shall be issued in [his or her] their name, upon [his or her] their submitting proof of the conditions upon which such transfer is based, with the same priority rank as that assigned to such holder.