

GENERAL VENDOR LICENSE TRANSFER RULE

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? A new rule setting forth the standards for the transfer of a general vending license to the spouse, children or guardian of minor children of the general vendor upon his or her death or disability.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on November 3, 2015. The hearing will be in the Department of Consumer Affairs hearing room at 66 John Street, 11th Floor, New York, NY 10038.

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

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Mary Cooley, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax comments to the Department of Consumer Affairs, (646) 500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0392. You can also sign up in the hearing room before the hearing begins on November 3, 2015. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit comments to the proposed rule on or before November 3, 2015.

Do you need assistance to participate in the Hearing? You must tell the Office of Legislative Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0155. You must tell us by October 30, 2015.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the Web site at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes the Department of Consumer Affairs to make this rule? Sections 1403 and 2203(c) of the City Charter and Section 20-104 of Chapter 1 of Title 20 of the New York City Administrative Code authorize the Commissioner of the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the rules of the Department of Consumer Affairs? The rules of the Department of Consumer Affairs are in Title 6 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Section 20-464(d) of Subchapter 27 of Chapter 2 of Title 20 of the New York City Administrative Code prohibits a general vendor from selling, lending, leasing or transferring his or her general vendor license or interest in the license unless authorized by the Commissioner of the Department of Consumer Affairs. Currently, the laws and rules applicable to general vendors do not specify the circumstances under which the Commissioner may authorize the transfer of a vending license. Section 35-a of Article 4 of Chapter 20 of the New York State General Business Law requires the transfer of a specialized vending license held by a disabled veteran to the spouse, children or guardian of surviving minor children of the vendor in certain circumstances upon the death or disability of the licensee. The proposed rule would provide that transfer of general vending licenses is subject to the same set of standards as the transfer of specialized vending licenses, which currently apply only to disabled veterans .

New material is underlined.

[Deleted material is in brackets.]

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

Proposed Rule

Subchapter AA of chapter 2 of title 6 of the Rules of the City of New York is amended by adding a new section 2-317 to read as follows:

§2-317 Transfer of General Vending Licenses.

(a) Upon the death of a licensed general vendor, the Department shall transfer the license to the surviving spouse, if any, of the general vendor if the spouse informs the Department he or she desires to use the license. If there is no surviving spouse or the surviving spouse elects not to use the license, the Department

shall transfer the license to the guardian of a surviving minor child or children of the general vendor, provided the guardian intends to use the license for the support of the minor child or children. The Department shall issue a general vending license to the applicable party in his or her name upon submission to the Department of proof of the conditions upon which the transfer is based. The license shall revert to the Department for reassignment upon the death of the surviving spouse or when:

(1) the surviving spouse remarries;

(2) the youngest minor child of the surviving spouse reaches the age of eighteen; or

(3) the surviving spouse, or the guardian of the minor child or children to whom the license has been transferred, elects not to use the license to vend in the city of New York or abandons the use of the license.

Temporary periods when the surviving spouse or guardian do not vend shall not cause the license to revert to the Department in the absence of other evidence of an intent to abandon the use of the license; however, a period of six months or more in which the holder of the license does not vend shall create a rebuttable presumption that the spouse or guardian has abandoned the use of the license.

(b) If a licensed general vendor becomes totally and permanently disabled, he or she may transfer the license to his or her spouse or, if the licensee has no spouse, to an adult child if the child assumes the duty to support the licensee. The Department shall issue a general vending license to the applicable party in his or her name upon submission to the Department of proof of the conditions upon which such transfer is based. The license shall revert to Department when:

(1) the general vendor who held the license immediately before the transfer dies;

(2) the spouse to whom the license has been transferred dies or divorces the general vendor who held the license immediately before the transfer; or

(3) the child to whom the license has been transferred dies or renounces the obligation to support the general vendor who held the license immediately before the transfer.

(c) For purposes of this section, "spouse" includes a domestic partner.

(d) Except as provided for in this section, no general vending license, and no interest in any general vending license, may be sold, lent, leased or transferred.

**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: Standards for Transfer of General Vending Licenses

REFERENCE NUMBER: 2015 RG 056

RULEMAKING AGENCY: Department of Consumer Affairs

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: September 30, 2015

**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: Standards for Transfer of General Vending Licenses

REFERENCE NUMBER: DCA-27

RULEMAKING AGENCY: DCA

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

September 30, 2015
Date