

CHAPTER 26
ESTABLISHMENT AND MAINTENANCE OF SEPARATE BOROUGH SPECIFIC
WAITING LISTS FOR THOSE SEEKING FRESH FRUITS AND VEGETABLES
PERMITS

§26-01 Definitions.

- (a) Words and terms used in this Chapter shall have the meanings specified in §17-306 of the Administrative Code.
- (b) "Establishment", "establish", "establishing" or "established" shall refer to the initial creation of the five separate borough specific waiting lists for fresh fruits and vegetables mobile food unit permits as well as all subsequent supplementations and re-establishments of any of these lists as necessary for filling both permit vacancies and waiting list positions for these permits.

§26-02 Direction to Establish Waiting Lists.

The Department shall establish five separate waiting lists for fresh fruits and vegetables permits that are designated for use exclusively in the boroughs of Brooklyn, Bronx, Queens, Manhattan and Staten Island. The waiting lists shall take into account the four preference categories listed in §17-307(b)(4)(e) of the Administrative Code, including the additional preferences described in §17-307(b)(4)(e)(i) of such Code.

§26-03 Preferences on Waiting Lists.

Establishment of the five borough specific waiting lists in accordance with this Chapter shall be in accordance with the preference categories and any additional preferences within a preference category as listed in §17-307(b)(4)(e) of the Administrative Code. No person shall be placed on a borough specific fruits and vegetables waiting list pursuant to this Chapter in a higher position than any person who is given a greater preference pursuant to §17-307(b)(4)(e). Persons with a higher preference shall be given a higher weighted value in the selection process used to establish the borough specific fruits and vegetables waiting lists created pursuant to this Chapter. Persons who appear on any existing mobile food unit permit waiting list on the effective date of Local Law No. 9 of 2008 and who also classify themselves as disabled veterans shall receive a weighted value of 8. Persons who appear on any existing mobile food unit permit waiting list on the effective date of Local Law No. 9 of 2008 and who also classify themselves as disabled persons shall receive a weighted value of 7. Persons who appear on any existing mobile food unit permit waiting list on the effective date of Local Law No. 9 of 2008 and who also classify themselves as non-disabled veterans shall receive a weighted value of 6. Any other persons who appear on any existing mobile food unit permit waiting lists on the effective date of Local Law No. 9 of 2008 shall receive a weighted value of 5. Persons not appearing on any existing mobile food unit permit waiting lists on the effective date of Local Law No. 9 of 2008 but who classify themselves as disabled veterans shall receive a weighted value of 4. Persons not appearing on any existing mobile food unit permit waiting lists on the effective date of Local Law No. 9 of 2008 but who classify themselves as disabled persons shall receive a weighted value of 3. Persons not appearing on any existing mobile food unit permit waiting list on the effective date

of Local Law No. 9 of 2008 but who classify themselves as non-disabled veterans shall receive a weighted value 2. All other persons shall receive a weighted value of 1. Persons of the same weighted value shall be placed on borough specific fruits and vegetables waiting lists in order pursuant to the borough rankings indicated by such persons in their applications.

§26-04 Eligibility for Placement on Borough Specific Waiting Lists for Fresh Fruits and Vegetables Permits.

To be eligible for inclusion on any of the waiting lists established pursuant to this Chapter, applicants shall be natural persons holding a valid mobile food vendor license at least ten (10) days prior to the Department's establishment of the borough specific fresh fruits and vegetables permit waiting lists created pursuant to this Chapter.

§26-05 Notice of the Establishment of Borough Specific Waiting Lists for Fresh Fruits and Vegetables Permits.

Notice of the Department's intention to establish fresh fruits and vegetables borough specific waiting lists shall be made by publication in the City Record at least fourteen days prior to the establishment of such lists.

§26-06 Procedure for Requesting a Place on Waiting Lists.

- (a) The Division of Permits shall use a mail-in procedure for establishing all waiting lists. Such procedure shall allow persons requesting placement on one or more of the five waiting lists established pursuant to this Chapter to submit a Department-issued waiting list application form, which shall contain their license number, their preference category, if applicable, and their choice(s) of borough specific fresh fruits and vegetables permit(s) they seek, by mail postmarked during a period of time to be determined by the Department, as specified in the Notice published pursuant to §26-05 of this Chapter.
- (b) The Notice shall advise those persons requesting placement on one or more of these five borough specific waiting list(s) to rank the waiting list(s) they select by order of borough choice. Applicants shall be directed to apply only for waiting list(s) for boroughs in which they would be willing to vend should they obtain such borough specific permit.
- (c) Persons in the first preference category, as provided in §17-307(b)(4)(e), shall not lose their position on any pre-existing waiting list as a result of their submission of an application for a fresh fruits and vegetables permit waiting list position or any resulting placement on any such list. A person on any existing waiting list who is issued a fresh fruits and vegetables permit also need not relinquish his or her place on any previously existing waiting list. Pursuant to §17-307(b)(4)(b), however, a person shall be issued no more than one permit, whether full-term citywide, borough-specific full-term, temporary citywide or exclusively fresh fruits and vegetables.

§26-07 Procedure for Establishment of Borough Specific Fresh Fruits and Vegetables Waiting Lists.

Not less than fourteen days after the Notice required by §26-05 is published in the City Record, the Department shall create five separate borough specific full-term fresh fruits and vegetables

waiting lists. Applicants holding valid mobile food vendor licenses at least ten (10) days prior to the Department's establishment of the fresh fruits and vegetables borough specific waiting lists created pursuant to this Chapter shall be included in the selection process, subject to the preferences and weighted values described in §26-03 of this Chapter. Each applicant eligible for a position on any of these borough specific fresh fruits and vegetables waiting lists shall be able to obtain only one waiting list position per list. An applicant's position on a fresh fruits and vegetables borough specific waiting list shall be determined by his or her preference category, including the additional preferences within the category specified in §17-307(b)(4)(e)(i) of the Administrative Code. Within each preference category, including the additional preferences within the category specified in §17-307(b)(4)(e)(i) of the Administrative Code, those applicants specifying a borough as a preferred choice in which to operate shall be given preference on that borough's waiting list over those identifying that borough as a lesser choice. For each borough specific waiting list, applicants in identical preference categories, including the additional preferences within the category specified in §17-307(b)(4)(e)(i) of the Administrative Code, who rank the applicable borough equally shall be placed on such borough specific waiting list in random order. The Department shall notify persons assigned a position on any of these waiting lists by mailing a notice to the address provided by the applicant on the applicant's waiting list application form.

§26-08 Number of Positions on the Waiting Lists.

The Department shall not impose a pre-set limit or maximum on the number of waiting list positions on each of the five borough specific fresh fruits and vegetables waiting lists. Those applicants eligible for a waiting list position on any of the five borough specific waiting lists during the permit waiting list application period set by the Department shall be included on the waiting lists for which they applied. When it deems it necessary, the Department in its discretion may seek to supplement any specific borough waiting list or all waiting lists with additional names, pursuant to the procedure specified in §§26-03 through 26-07 of this Chapter, except that §26-06(b) shall not apply.

§26-09 Responsibility of Those on Waiting Lists to Notify the Department of Change of Address.

- (a) The names of persons selected for a waiting list created pursuant to this rule shall be entered on each list for which they apply with their address of record as known to the Department through mobile food vendor license records, or with any updated address provided to the Department on the waiting list application form. Thereafter, it shall be the responsibility of each person placed on a waiting list to provide written notification to the Department of any change of address. The Department shall provide written confirmation of its receipt of such address change notification. The Department's written confirmation of its receipt of a change of address notification shall constitute proof that such notification was provided to the Department.
- (b) Failure to provide change of address information or, when requested, proof of the Department's confirmation of receipt of such written notification, may result in the loss of a person's waiting list position(s) and such person's eligibility to apply for a fresh fruits and vegetables permit pursuant to §17-307(b)(4) of the Administrative Code. Such person shall be deemed to have abandoned his or her place(s) on any of these borough specific

fresh fruits and vegetables waiting list(s) and shall not be eligible for a fresh fruits and vegetables permit unless such person participates in the process of list establishment pursuant to §§26-03 through 26-07 of this Chapter, except that §26-06(b) shall not apply.

§26-10 Multiple Requests for Waiting List Position on any One Borough Specific Fruits and Vegetables Waiting List Prohibited.

An applicant may apply for and obtain no more than one waiting list position on each of the borough specific waiting lists established pursuant to this Chapter and shall be eligible to obtain and possess only one permit. Before the creation of the borough specific fresh fruits and vegetables waiting lists, the Department shall attempt to ascertain that a mobile food vendor licensee is represented only once in the pool of licensees from which the selection is to be made in producing each of the five borough specific fresh fruits and vegetables lists pursuant to §26-07. Should the Department receive more than one request for a waiting list position on any one borough list from any person, requests subsequent to the first shall be deemed invalid. A person who submits more than one request for a position on any one borough specific fresh fruits and vegetables waiting list created pursuant to these rules may be disqualified and denied a position on that borough specific fresh fruits and vegetables waiting list if such multiple requests are deemed, in the sole discretion of the Department, to adversely affect the fairness or orderly establishment of that specific borough list.

§26-11 Selection of Applicants From a Waiting List.

When the number of fresh fruits and vegetables permits outstanding for a particular borough falls below the statutory maximum for that borough and at such time as the Department in its discretion may determine based upon a consideration of the number of permit vacancies, a number of persons on such waiting list sufficient to fill the number of permit vacancies shall be notified by the Department, by waiting list order, of their eligibility to apply for a fresh fruits and vegetables permit to be used exclusively in a specific borough and shall form a pool of prospective applicants. Only one permit shall be issued for each eligible waiting list position or applicant.

§26-12 Eligibility to Apply for a Fresh Fruits and Vegetables Permit.

Only those persons who have been notified that their waiting list number has been reached shall be eligible to submit an application for a fresh fruits and vegetables borough specific permit. A person whose waiting list number is reached and who holds another mobile food unit permit issued by the Department to vend on public space, shall not be eligible for a fresh fruits and vegetables permit pursuant to this rule unless such previously held permit is surrendered or expires before a permit with respect to such fresh fruits and vegetables waiting list is issued. Positions on a waiting list shall not be transferable.

§26-13 Notification of Eligibility to Apply For Permit.

Within thirty (30) days of mailing notification of eligibility to apply for a fresh fruits and vegetables permit issued pursuant to §17-307(b)(4) of the Administrative Code, a person desiring to obtain such permit shall submit an application, completed in accordance with §5.05 of the

New York City Health Code, together with the requisite fees and requested supporting documentation therefore. The permit application shall be submitted on or before the thirtieth day.

§26-14 Failure to Make Application for Permit or Complete Inspection Process, Declination of Permit.

- (a) A person on a borough specific fresh fruits and vegetables waiting list who is notified of his or her eligibility to apply for a permit and who fails to submit a completed permit application to the Department within thirty (30) days of being notified by the Department, or who otherwise communicates to the Department his or her lack of interest in the permit offered, shall result in the forfeiture of such person's waiting list position and the permit shall be offered to the next person on that borough specific fresh fruits and vegetables waiting list.
- (b) A person notified of his or her eligibility to apply for a fresh fruits and vegetables permit to vend in a borough not his or her first choice, as that choice was specified on that person's waiting list application, who applies for a permit for such borough and who presents documentation supporting his or her claim of eligibility in one of the preference categories listed in §17-307(b)(4)(e) of the Administrative Code, if applicable, and whose mobile food unit passes the Department's required inspection pursuant to §17-307(b)(2)(d) of the Administrative Code, shall not lose his or her waiting list position(s) on any other borough specific fresh fruits and vegetables waiting lists of higher choice, as stated on the same waiting list application form. Such fresh fruits and vegetables permittee, however, shall forfeit his or her position(s) on existing borough specific fresh fruits and vegetables waiting lists of lesser choice as stated on his or her waiting list application form.
- (c) Any person notified that their waiting list number on a selected borough specific fresh fruits and vegetables waiting list has been reached and who is eligible to apply for this permit but who declines such borough specific permit offer shall be required to forfeit all waiting list positions on any other existing fresh fruits and vegetables waiting lists.
- (d) Any person who fails to submit documentation satisfactory to the Department demonstrating that such person belongs to a preference category listed in §17-307(b)(4)(e) or whose mobile food unit does not pass the Department's required inspection, in accordance with §17-307(b)(2)(d) of the Administrative Code, shall be required to forfeit all such person's waiting list positions on all existing borough specific fresh fruits and vegetables waiting lists.
- (e) The failure of any person to timely apply for a permit offered as specified in this section, complete the Department's inspection process or a person's declination of a specific borough permit offered pursuant to this Chapter, shall not affect that person's standing on any non-fresh fruits and vegetables mobile food unit permit waiting list.

§26-15 Abandonment of Waiting List Position.

- (a) A person who does not respond within thirty (30) 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, shall be deemed to have abandoned such waiting list position. That person shall also be deemed to have abandoned or forfeited his or her

standing on any other existing fresh fruits and vegetables waiting list on which he or she may appear.

- (b) A person who holds a waiting list position may withdraw his or her name at any time by providing written notice to the Department with verifying documentation satisfactory to the Department.