

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 BOROUGHES

§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 lists 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 lists as necessary for filling both vacancies from the lists and waiting list positions for these permits.

§19-02 Direction to Establish Waiting Lists.

The Department shall establish separate waiting lists 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 lists shall 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 deemed void and of no force or effect.

§19-03 Eligibility for Place on Waiting Lists.

To be eligible for a position on any of the waiting lists 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 hold a valid mobile food vendor license at least ten days prior to the date that the Department establishes such waiting lists.

§19-04 Notice of the Establishment of Waiting Lists.

At least 45 days prior to the establishment of waiting lists notice of the Department's intention to establish such waiting lists shall be published in the City Record. Such notice shall also be mailed 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 advise that only those persons in possession of valid mobile food vendor licenses at least ten days prior to the establishment of such waiting lists shall be 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 use a mail-in procedure for establishing all waiting lists. Such procedure shall allow persons requesting a place on any of the six waiting lists 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 be specified in the Notice published pursuant to §19-04 of this chapter. A person's eligibility for inclusion on the waiting lists authorized to be created pursuant to these rules shall be 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 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 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 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 not be placed on that waiting list. The Department shall notify persons assigned a position on a waiting list by mailing a notice to the address 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 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 exceed one thousand (1000) positions. When the number of potential applicants on either the full-term or temporary permit waiting lists falls below two hundred (200), the Permits Division shall supplement such waiting lists 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 waiting list created pursuant to these rules shall be entered on each list with their address 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 be entered. 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 failure to provide change of address 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 to his or her address of record as known to the Department through mobile food vendor license records because change of address information was not provided to the Department in a timely manner shall be deemed to have abandoned his or her place on a waiting list and shall 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 notification shall constitute 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 lists selected by the applicant and no person shall be eligible to obtain more than one permit. Before the creation of any of these lists through the random selection process, the Department shall 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 list is made. For purposes of the waiting lists only, officers, members, managers and partners who represent corporations, limited liability companies and partnerships that are current mobile food unit permit holders shall not be excluded from the pool from which the randomized waiting lists are 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 waiting list, and shall be placed on any such 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 be placed on a 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 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 be deemed invalid. A person who submits more than one request for a position on any single 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, which allows a person the right to hold a waiting list position in an individual capacity shall be deemed to give 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 be notified by the Department, in waiting list order, of their eligibility to apply for a temporary mobile food unit permit and shall 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 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 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 eligible 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 not be transferable.

§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, 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 therefor. The permit application shall be postmarked 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 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, shall be deemed to have abandoned such waiting list position. A person who holds a waiting list position may withdraw his or her name at any time by providing written notice to the Division of Permits with verifying documentation satisfactory to the Division.