



NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Health and Mental Hygiene (“DOHMH” or “Department”) proposes to amend Section 6-13 of the Rules of the City of New York governing the licensing requirements for mobile food vending units by disabled veterans, to remove the requirement that an applicant hold a general vendor license from the New York City Department of Consumer Affairs (“DCA”).

When and where is the hearing? The public hearing on the proposed rule originally scheduled for Thursday, March 19, 2020, **has been rescheduled online**. No in-person hearing will occur. The public hearing will take place from 10AM to 12PM on June 3, 2020.

- To participate in the public hearing, enter the Webex URL:
https://nycdohmh.webex.com/nycdohmh/onstage/g.php?d=718843835&t=a&EA=sburdeyn%40health.nyc.gov&ET=SDJTSwAAAAQ1-nsXCP5tU6IPez_81_y51LXoAQEZvTdtYkfdlkm_t_g2&ETR=SDJTSwAAAATPHW7tYCg8ZJ-EhDqeunnLkARcKWvqUih2lae6ca6HLg2&RT=MIMxMQ==&p

Then click "Join Now". If prompted to provide a password or number, please enter the following:

Meeting Number: 718 843 835; Password: Health

- You may also join the meeting to dial-in via phone.
To dial-in via phone, please use the following dial-in phone number and participant code:
Phone: (408) 418-9388; Access code: 718 843 835
Password (if requested): Health from phones and video systems.
If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

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

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to resolutioncomments@health.nyc.gov.
- **Mail.** You can mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 30
Long Island City, New York 11101-4132
- **Fax.** You can fax comments to the Department at 347-396-6087.
- **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 Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov by June 2, 2020 at 5:00 P.M. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? Written comments must be received on or before June 3, 2020 at 5:00PM.

What if I need assistance to participate in the hearing? You must tell the Department's Office of General Counsel 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 e-mail or by mail at the address given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by May 28, 2020.

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 website 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 for review by the public at the Department's Office of the Secretary.

What authorizes the Department to make this rule? Section 389(b) of the New York City Charter ("Charter") provides that "heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law." Charter Section 1043(a) provides that each "agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law." Section 17-325.3 of the Administrative Code of the City of New York ("Administrative Code") requires the Department to "establish and implement a system for grading and classifying inspection results for each vending vehicle or pushcart using letters to identify and represent a vending vehicle or pushcart's degree of compliance with laws and rules that require such vending vehicle and pushcart to operate in a sanitary matter to protect public health."

Where can I find the Department rules and the Health Code? The Department's rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter. These changes were not included in the Department's legislative agenda because they were not contemplated at that time.

Statement of Basis and Purpose of Proposed Rule

Introduction

In 1998, New York State enacted a law that allowed cities having a population of one million or more to issue specialized vending licenses to honorably discharged members of the armed forces of the United States who were physically disabled as a result of injuries received while in service of the armed forces. Such specialized vending licenses authorized holders to hawk or peddle within the city issuing the license in accordance with the provisions of New York General Business Law section 35-a.

In 2013, the City of New York adopted section 6-13 of the Rules of the City of New York. Section 6-13 provides the requirements for disabled veterans with specialized vending licenses to obtain disabled veterans mobile food unit vending permits. These permits allow the operation of mobile food vending units on sidewalks surrounding parks under the jurisdiction of the New York City Department of Parks and Recreation.

Proposed Amendments

The proposed amendment seeks to remove subdivision (ii) of section 6-13, which requires any applicant for a disabled veterans mobile food unit vending permit to hold a currently valid general vendor license from DCA. This subdivision is being removed to conform the permit requirements applicable to disabled veterans to such requirements applicable to food vendors generally, which are not required to hold a general vendor license to sell food from a mobile unit.

Statutory Authority

The Department's authority to adopt this proposed amendment is found in section 1043 of the Charter and section 17-325.3 of the Administrative Code.

* * *

The proposal is as follows. Deleted material appears in [brackets]. New material is underlined. The terms "shall" and "must" appear interchangeably and are mandatory.

Section 1. Section 6-13 of Chapter 6 of Title 24 of the Rules of the City of New York is amended to read as follows:

§ 6-13. Disabled veterans mobile food unit vending permits.

Disabled veterans who hold currently valid [(i)] specialized vendor licenses issued pursuant to General Business Law § 35-a[, (ii) general vendor licenses issued by the Department of Consumer Affairs] and [(iii)] mobile food vending licenses issued by the Commissioner[,] may apply for and be issued permits to operate mobile food vending units on sidewalks surrounding parks within the jurisdiction of the New York City Department of Parks and Recreation, or successor City agency, in accordance with the following conditions:

- (a) An applicant for such a restricted area permit may not hold any other currently valid mobile food vending permit, and only one such permit may be issued to any applicant.
- (b) In accordance with General Business Law § 35-a, such permit authorizes vending only on sidewalks surrounding park lands.
- (c) Operation of the mobile vending unit is subject to all provisions of General Business Law § 35-a.
- (d) During all times that a mobile food vending unit issued a permit under this section is in operation, as the term "operation" is defined in Health Code § 89.03 (j) or successor provision, a disabled veteran shall be present, but may be assisted by an employee who is a licensed mobile food vendor. Department inspection reports which note the absence of a disabled veteran licensee are deemed proof that a disabled veteran is not operating the unit, in violation of General Business Law § 35-a.

**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: Amendment of Mobile Food Vending Rules

REFERENCE NUMBER: DOHMH-104

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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

January 15, 2020
Date

**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: Amendment of Mobile Food Vending Rules

REFERENCE NUMBER: 2019 RG 063

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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: January 15, 2020