



Comments Received by the Department of
Consumer and Worker Protection on
Proposed Rules related to Newsstand Licenses

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

New York City Newsstand Operators Association

325 BROADWAY | STE. 501 | NEW YORK, NY 10007
212-513-1988 | NYCNOA.COM

April 29, 2024

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
Via email only: rulecomments@dcwp.nyc.gov

Re: Comments on proposed changes to sidewalk newsstand regulations

Dear Commissioner Mayuga:

I write on behalf of the New York City Newsstand Operators Association (NYCNOA), the trade association representing the interests of New York City's 300+ sidewalk newsstands. NYCNOA has advocated for the fair treatment of sidewalk newsstand operators in the halls of government since 1988.

For over a century, sidewalk newsstand operators have been critical parts of the fabric of the New York City streetscape. City law prohibits newsstand operators from owning more than two newsstands, so each is truly family-owned and operated. Most newsstand operators are recent immigrants to this country, seeking their first opportunity to own a small business. The modest income from these businesses has allowed newsstand operators to put their children through college and work their way into the middle class.

Sidewalk newsstands are particularly sensitive to the socioeconomic trends that have impacted all retail businesses since the pandemic. Yet unlike brick-and-mortar retail, sidewalk newsstands are subject to a special statutory and regulatory overlay that constrains their growth and restricts their ability to adapt their business models to satisfy modern consumer demands.

The statutory restrictions on the maximum price of goods and types of goods sold are outdated and in need of reform. We hope the Department will support efforts in the City Council to lift those restrictions. But the Department should not be using its existing statutory authority to *further* constrain sidewalk newsstands in need of help.

We are therefore disappointed the proposed rules do nothing to provide relief to the challenges facing our city's iconic sidewalk newsstands. Instead, with one laudable exception, the proposed rules go in the other direction – making it harder for sidewalk newsstand businesses to operate.

We strongly urge the Department to implement the following changes to the final rules.

1. No existing newsstand should be put out of business by the proposed pedestrian plaza provisions

Sidewalk newsstands provide an amenity for pedestrian plazas. The proposed rules treat them as a problem. As drafted, the rules threaten to put existing sidewalk newsstands out of business. The proposal threatens license non-renewal for:

- Any existing post-7/31/1991 newsstand that was constructed *after* DOT had designated the area surrounding the newsstand as a pedestrian plaza;¹
- Any existing pre-8/1/1991 newsstand that is currently within certain areas of a pedestrian plaza, *even if* DOT designated such area as a pedestrian plaza *after* the newsstand was constructed.²

This is not acceptable.

First, to state what should be obvious, the Department and DOT should not be putting existing newsstands out of business. Devising rules designed to do so is unlawful, unfair, and out-of-step with the Mayor’s stated pro-small business policy principles for this administration.

Given that the Department and DOT have all the information necessary to identify which specific existing sidewalk newsstands would be put out of business by this rule, for the sake of transparency, the Department should publicly identify those newsstands, so that the public may be on notice of which newsstands the Department and DOT have singled out to threaten.

Second, imposing new siting criteria that *retroactively* apply to existing newsstands is inconsistent with the Department’s own policy in this area. The very reason why there is a distinction in the regulations between post-7/31/1991 and pre-8/1/1991 newsstands is because in a 1991 rulemaking, the Department imposed new siting criteria for newsstands, but made clear that it only applied to newsstands constructed *after* the 7/31/1991 effective date of the rules.

It would be arbitrary and capricious for the Department to depart from that policy now. The entirety of the proposed section 2-65(b)(3) as drafted should be omitted from the final rule. The final rule must make clear that the pedestrian plaza provisions are not retroactive – they only apply to newsstands constructed *after* the effective date of the final rules.³

¹ Proposed section 2-65(b)(3)(A) provides “No license to maintain or operate a newsstand within a pedestrian plaza shall be renewed for any newsstand that was first licensed on or after August 1, 1991 if” certain factors are met. Later, the second of two proposed sections 2-65(b)(3)(B) [we think this is a typo and should be 2-65(b)(3)(C)] only exempts such newsstands from this prohibition that were installed “prior to DOT’s designation of a pedestrian plaza immediately around the newsstand,” thereby exposing those that were installed *after* DOT’s designation.

² Proposed section 2-65(b)(3)(B) has the same prohibition as 2-65(b)(3)(A), but 2-65(b)(3)(C) does not provide any exemption for pre-8/1/1991 newsstands the way it does for post-7/31/1991 newsstands.

³ In addition, those newsstands that *are* constructed after the effective date of the final rules should also be exempted on renewal if they were not in a pedestrian plaza at the time of construction. The process by which DOT designates a pedestrian plaza appears to be completely at the discretion of DOT, lacking any specific procedure or limitations. The proposed rules suggest that applicants check DOT’s website for the latest list of pedestrian plazas.

2. The franchisee cannot have the power to put a newsstand out of business

Just as DOT must not have the power to put an existing sidewalk newsstand out of business, neither should the franchisee. Yet the proposed new section 2-65(b)(4), which would require the Department to deny a renewal application if the “site fails any necessary construction test performed by the franchisee, including but not limited to test pits,” threatens to do just that.

First, there is no reason for the franchisee to be performing construction tests and test pits in connection with *existing* newsstands. There is no construction associated with an existing newsstand other than the initial construction.

Second, the threat of being put out of business is underscored by the incredibly capacious and franchisee-deferential language this provision uses. Putting aside the fact that the franchisee has no reason to conduct tests for an existing newsstand; even if it did, this provision offers no articulable standards governing such key topics as the scope of such tests, their purpose, their frequency, the issues to be identified, and alternative solutions.

Finally, although we request that this provision be removed in its entirety in the final rules, at the very least there must be appropriate due process for the licensee before a disinterested *government* factfinder at the Office of Administrative Trials and Hearings. The franchisee – a private company – cannot be the last word. Prior to the OATH hearing, the licensee should be entitled to a copy of the test pit or other construction results, and be permitted to rebut the franchisee’s findings.

3. Clarify that NYPD-approved safety equipment does not constitute a violation of 2-66(d)

Sidewalk newsstand operators and their employees are on the frontlines of the rise in retail theft. The several high-profile instances of violent crime against sidewalk newsstands in recent months have left the industry shaken. In the “bad old days” of the 1980s, sidewalk newsstand operators owned their structures and were free to modify them as necessary to protect their staff and goods.

Today, sidewalk newsstand operators are fearful to install common-sense safety equipment to their newsstands – such as security cameras on the awning, plexiglass barriers, and improved locking mechanisms – out of concern that the Department will consider it a violation of section 2-66(d) of the rules.

We urge the Department to amend 2-66(d) to include the following provision: “Notwithstanding the foregoing, the installation of NYPD-approved equipment designed to promote the safety and security of the newsstand’s employees or inventory shall not be considered a structural alteration in the design or dimensions of the newsstand.”

A sidewalk newsstand operator cannot go through the trouble and expense of constructing a newsstand in 2024 or beyond, in an area that is not a pedestrian plaza, only to be put out of business a few years later because DOT has since designated their area a pedestrian plaza.

4. Clarify that a DOT inspection is not a requirement of approving a death or disability transfer

The Department proposes to add a provision to section 2-64(a)(12), governing transfers of newsstand licenses upon the death or disability of the licensee, that would require “a qualifying inspection by DOT.”⁴

We do not know what this means. We are concerned that this provision could be read to mean that DOT must perform an inspection of the newsstand before the Department can approve a transfer under 2-64(a)(12).

First, there would be no reason for that. The rules already provide for periodic inspections of newsstands. The tragic occurrence of a death or disability does not provide any compelling reason to perform an additional inspection.

Second, it is unclear what would be included in such a “qualifying” inspection, and what the result would be if the inspection failed. For example, suppose that upon the death of a licensee, the otherwise qualified daughter of the licensee has applied for a transfer under 2-64(a)(12), but DOT has determined that the newsstand’s “qualifying” inspection failed. What would result? The newsstand being put out of business? That would be unacceptable.

Finally, in our experience, it could take months for DOT to send an inspector. When there has been a death, it is important that the license be transferred quickly. The transfer should not be held up for months for a needless inspection to take place.

We ask that this unclear language be removed from the final rule.

5. Do not expand the current property owner permission requirements

The existing property owner permission requirements, which have historically only applied to the comparatively small category of property-line newsstands, have always resulted in a shakedown. To obtain property owner permission, newsstand operators are almost always extorted into paying ongoing “rent” to the property owner to maintain such permission.

There is no justification to extend this requirement to certain curb-line newsstands.⁵ Existing curb-line newsstands who become subject to this requirement *will* be put out of business, because they will not be able to afford to pay off the property owner – if the property owner is even willing to accept such payments.

⁴ See proposed section 2-64(a)(12)(E) (“The Commissioner may grant a license to such applicant” if “the newsstand meets all other applicable requirements of this Part including but not limited to a qualifying inspection by DOT.”

⁵ See section 2-63(a)(4) of the proposed rules.

6. Keep the process for existing vacant newsstands in the final rules

It is not lost on us that a significant portion of the proposed rules are devoted to making it exceedingly difficult for new newsstands to be constructed in New York City.

While we do not support the Department and DOT's apparent policy of limiting new newsstand construction, we are willing to tolerate it only in light of (1) the benefits of Local Law 128 of 2021 that has allowed new entrants into the industry to become partners with existing licensees and thus reduce the demand for new newsstand construction; and (2) the informal process that the Department has developed in recent years allowing certain applicants to obtain a license for an existing vacant newsstand.

We therefore applaud the Department's proposal to add a new section 2-64(a)(13) that would formalize the existing informal vacant newsstand application procedure, as well as expand it into new contexts. This will build on the success of Local Law 128 of 2021 in further reducing the number of applications for new sidewalk newsstands at new locations. We encourage the Department to keep this proposal in the final rules.

* * *

In the current environment, it is hard enough to operate a sidewalk newsstand. Helpful reform requires the loosening of restrictions, not the imposition of new restrictions. We urge the Department to carefully consider the industry's feedback on the proposed sidewalk newsstand regulations, and implement this feedback in the final rules.

Thank you for your consideration.

Very truly yours,



Max Bookman, Esq.
Counsel

Online comments: 4

- **Andrea Tan**

Please find attached comment on behalf of Volunteers of Legal Service.

[Comment attachment](#)

VOLS-Comments-on-Proposed-Rules-Governing-Newsstands.pdf

Comment added April 26, 2024 11:46am



Department of Consumer and Worker Protection
City of New York
42 Broadway
New York, NY 10004

RE: Comments on Proposed Rules Governing Newsstands

Volunteers of Legal Service (“VOLS”) writes to provide comments on the proposed rules issued by the New York City Department of Consumer and Worker Protection (“DCWP”) to implement Local Law 128 of 2021 and to amend sections of the Rules of the City of New York applicable to newsstands. We appreciate the opportunity to provide feedback on these proposed rules.

Who we are

VOLS is a legal services nonprofit with a mission to bridge the justice gap in underserved communities through increased pro bono legal services. For over 20 years, the VOLS Microenterprise Project has helped existing and aspiring small business owners and entrepreneurs access high-quality free transactional legal services from our dedicated staff and our network of pro bono attorneys. VOLS offers support with entity formation, drafting and reviewing contracts, and understanding industry-specific regulations.

Our perspective

VOLS recognizes that operating a newsstand is a form of entrepreneurship that provides many New Yorkers, particularly immigrants, minorities, and veterans, with crucial economic opportunities. Newsstand operators foster connection within our communities and serve as our eyes on the street.

We believe the proposed rules, to prohibit newsstand licensees from renting the newsstands and to require licensees to derive most of their income, excluding investment income, from the operation of up to two newsstands would benefit small entrepreneurs and the community. We also believe that the proposed rules, to allow business entities to hold newsstand licenses, enables newsstand operators to benefit from the limited liability protection and other advantages of having a business structure.

In our experience, individuals operating newsstands often aren't the same individuals holding the newsstand licenses. There exist informal arrangements in the newsstand system whereby individuals pay “rent” to newsstand licensees for the right to operate the newsstand as sub-licensees. The licensees may serve as the name on the license, but they do nothing more to operate the newsstand. The sub-licensees are the ones who control the purchasing and pricing decisions of the newsstand and assume business risk by paying for the newsstand products themselves. They may also pay the licensees' license renewal costs (not just for the newsstand, but also other related licenses, such as tobacco and electronic cigarette retail dealer licenses) and even any fines incurred by the licensee. Further, in some cases, the sub-licensees have secured their positions in these arrangements by paying significant amounts, essentially constituting key money, to prior sub-licensees. While far from the system envisioned by the city, it is the reality for many newsstand operators. These sub-licensees should have a pathway to assuming the newsstand license in the event of vacancy or abandonment by the license holder.

To that end, we encourage DCWP to consider the following amendments to the proposed rules, to provide a pathway for those who have long operated and worked in newsstands to formally become licensees.

Recommendation 1: The categories of eligible applicants who may apply to operate an existing newsstand upon the death or permanent disability of a newsstand licensee should be expanded to include an individual who was the principal person operating and working in such newsstand up until the time of the licensee's death or disability.

Upon the death or permanent disability of a newsstand licensee, the existing and proposed rules allow someone who was a “one-time employee” of such licensee or someone who “bears another pre-existing, established relationship to such former licensee that included financial dependence on such licensee” to apply for a license to operate the newsstand of such licensee. We recommend clarifying in the proposed rules that someone considered “financially dependent on a licensee” shall include the individual working in such newsstand, overseeing its daily operations, and relying on it as his or her main source of income and livelihood.

Proposed amendment:

§ 2-64(a)(12) – Death or disability of licensee. At the discretion of the Commissioner or his or her designee, upon the death or permanent disability of the [person] individual or sole proprietor who was licensed to operate a newsstand at a location, [DCA] DCWP may accept an application for a license to operate such existing newsstand where:

(A) the applicant provides documentation sufficient to show that the applicant is a dependent spouse, dependent domestic partner, dependent child or one-time employee of the former licensee, or bears another pre-existing, established relationship to such former licensee that included financial dependence on such licensee **or involved the applicant being the principal person operating and working in such newsstand in the twenty-four months preceding the date of such application;**

Recommendation 2: The categories of eligible applicants who may apply to operate an existing vacant newsstand should be expanded to include an individual who was the principal person operating and working in such newsstand prior to the vacancy.

As described above, an individual other than the licensee who works at a newsstand overseeing its daily operations and relying on it as their main source of income and livelihood, should have a pathway to become a licensee of such newsstand, particularly if the newsstand becomes vacant. Under the existing and proposed rules, if a licensee voluntarily abandons their license or has it revoked by DCWP, causing the newsstand to become vacant, the individual who worked at the newsstand and depended on it as their primary source of income would lose their livelihood. Additionally, they would not have priority to obtain a license for the newsstand over someone without any prior connection.

Proposed amendment:

§ 2-64(a)(13) – Application for an Existing Vacant Newsstand.

(A) The Commissioner may accept an application for a license to operate an existing vacant newsstand where:

(i) an applicant is being required to relocate pursuant to subdivision d of section 2-68 of this Part; or

(ii) an applicant has proposed a location that has been approved, but construction of a new newsstand at such approved location has not begun within 150 days from the date that such applicant completed the required paperwork and made the required payment to the franchisee for the newsstand; or

(iii) an applicant, other than the former licensee, was the principal person operating and working in such newsstand in the [twenty-four] months preceding the date of vacancy and was not the former licensee; or

(iv) the Commissioner has determined that such existing vacant newsstand is not necessary to reserve for any other purpose, including but not limited to ensuring availability of newsstands for applicants permitted to apply for a license to operate an existing newsstand under (i), (ii) and (iii) of this subparagraph.

Recommendation 3: DCWP's ability to waive certain license application requirements for a license application to operate an existing vacant newsstand should also apply to a license application to operate an existing newsstand upon the death or permanent disability of the former licensee.

The proposed § 2-63(c) permits DCWP to waive certain license application requirements where an application is being submitted to maintain and operate an existing franchise newsstand. However, as drafted, the proposed rule only permits such a waiver where an application is being submitted for an existing vacant newsstand pursuant to § 2-64(a)(13). While we believe granting DCWP discretion to waive requirements in these circumstances would benefit applicants, we believe that DCWP should also have discretion to waive requirements for applications submitted to obtain a license to operate a newsstand upon the death or permanent disability of its newsstand licensee under § 2-64(a)(12).

Proposed amendment:

§ 2-63 Application Procedures.

[...]

(c) DCWP may waive the requirements of subdivisions a and b of this section where an application is submitted pursuant to paragraph 12 or 13 of subdivision a of section 2-64 of this Part for a license to maintain and operate an existing franchise newsstand.

Recommendation 4: Section 2-64(c)(1) that grants DCWP permission to revoke, or refuse to renew a license for failure to operate a newsstand for two consecutive months should be revised to include an exception for licensees complying with any suspension of their license.

Under the existing and proposed rules, the Commissioner may revoke or refuse to renew a newsstand license upon a finding that the location listed in the license was not utilized for a period of two consecutive months. However, when a newsstand license is suspended, it may take longer than two months for a licensee to either exercise all available options to challenge the reason for suspension or meet the criteria required to lift the suspension. This puts licensees



in a bind that undermines the opportunity they would otherwise have to be heard and to reinstate their license. We propose adding an exception to § 2-64(c)(1) where licensees are merely complying with the suspension of a license.

Proposed amendment:

§ 2-64(c) – Changes in license status. In addition to any other basis for revoking a license, the Commissioner of [DCA] DCWP may revoke [, cancel,] or refuse to renew a license to maintain and operate a newsstand for any of the following reasons: [...]

(1) upon a finding by the Commissioner of [DCA] DCWP that the location listed in the license was not utilized for a period of two consecutive months or more, **except where the location was not utilized to comply with a suspension of the license; [...]**

* * *

We appreciate DCWP's attention to the needs of New York City's newsstand operators, who are among New York City's smallest businesses and yet form an essential part of our communities. Thank you again for the opportunity to provide comments on the proposed rules governing newsstands.

Andrea Tan, Esq.

Microenterprise Project Director

Volunteers of Legal Service

- **BALVANT PATEL**

THIS RULE PUT 65% NEWSSTAND OUT OF BUSINESS, BECAUSE THERE IS NO OTHER PLACE TO PUT NEWSSTAND AND BUSINESS CANNOT SURVIVE. ME AND WIFE HAVE BEEN DOING THIS BUSINESS FOR 35 YEARS. SOME YEARS AGO CUMUSA COMPANY MAKE A NEWSSTAND ACCORDING TO THE DOT GUIDELINE. After the guidelines DOT put what objects like fire hydrant, tree, bus stop etc.. which caused business to suffer. Building people put benches and other stuff. That why we cannot comply in this new guideline. That's why we are going out of business. Please don't impose the new guideline.

Comment added April 28, 2024 10:36pm

- **Maleeka Zainab**

Please find attached public comments on behalf of the Times Square Alliance.

[Comment attachment](#)

Newsstand-Hearing-Public-Comment.pdf

Comment added April 29, 2024 10:20am



April 25, 2024

New York City Department of Consumer and
Worker Protection,
42 Broadway #4,
New York, NY 10004

To Whom It May Concern:



My name is Tom Harris, and I am President of the Times Square Alliance, the business improvement district that works to improve and promote Times Square. I wanted to take this opportunity to offer comments related to the proposed new rules for the ownership and siting of newsstands, with particular attention to how this may impact Times Square, the world's most iconic neighborhood and an always bustling gathering place for hundreds of thousands of New Yorkers and visitors alike.

Under an agreement with DOT, the Times Square Alliance manages and maintains the Broadway Pedestrian Plazas between 41st Street and 47th Street. Created in 2009, these plazas were the first, and most ambitious, of the city's now citywide public pedestrian plazas. Broadway's ambitious pedestrianization manifested largely in response to dangerously overcrowded streets and sidewalks. To illustrate, pedestrian counts in the district have reached a high of over 460,000 persons in a single day. Beyond these safety considerations, Times Square – one of the world's great attractions – lacked anywhere near sufficient public space where visitors could enjoy this remarkable place.

City agencies, including DOT, DDC, and the NYPD, along with the Alliance, collaborated to ensure that the permanent design of the plazas both prioritized pedestrian safety and mobility, and resulted in a great public space. One of the key tenets of our design process was flexibility – plazas needed to be as uncluttered as possible to allow for to safe and comfortable pedestrian flow and maximize open areas available for diverse public programming. In order to achieve these objectives, we purposefully minimized permanent, unmovable infrastructure.

We are concerned, therefore, about the possible placement of additional newsstands in pedestrian plazas, as described in the new proposed siting rules. When the plazas were deemed permanent in 2011, DOT assured us that newsstands and other non-critical infrastructure would not be allowed in pedestrian plazas (though, due to legal constraints, four existing newsstands were allowed to remain in their locations after construction on a grandfathered basis.) We strongly believe allowing new newsstands in Times Square would increase crowding, and permanently occupy space much needed for flexible public programming. It is our hope that siting rules regarding level of service and preservation of public programming areas will hinder the placement of additional newsstands in our public

plazas. However, we would urge you to consider prohibiting newsstands in all DOT pedestrian plazas to eliminate any ambiguity going forward.

Thank you for your consideration.

Respectfully,

Tom Harris
President
Times Square Alliance

- **Patel**

The comments offered on the virtual meeting today by Mr. Max Bookman, summarize my and many many other owners of newsstand. We encourage DCWP to consider point by point, his full written testimony and provide a public reply to each. Thank you.

Comment added April 29, 2024 11:47am