

# **NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT**

Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding the Licensing of Pedicab Businesses and Pedicab Operators.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 20-104 (b) and Section 20-108 of Chapter 1, and Section 20-265 of Chapter 2 of Title 20 of the Administrative Code of the City of New York and in accordance with the requirements of Section 1043 of the New York City Charter that the Department intends to adopt a new rule regarding the licensing of pedicab businesses and pedicab operators.

Written comments regarding this amendment may be sent to the office of Andrew Eiler, Office of the Commissioner, Department of Consumer Affairs, 42 Broadway, 8th floor, New York, NY 10004 on or before August 3, 2007. A public hearing shall be held on August 3, 2007 at 10:00 a.m. at 125 Worth Street, 2nd Floor Auditorium, New York, NY 10013. Persons seeking to testify are requested to notify the Office of the Commissioner, Department of Consumer Affairs, 42 Broadway, 8th floor, New York, NY 10004 at the foregoing address. Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided are asked to notify the Office of the Commissioner at 42 Broadway, 8th Floor, New York, NY 10004 by July 23, 2007. Written comments and a summary of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 9:00 a.m. and 5:00 p.m. at the office of Andrew Eiler, Office of the Commissioner, Department of Consumer Affairs, 42 Broadway, 8th floor, New York, NY 10004.

All the material is underlined because the entire rule is new.

## **RULE**

Section 1. Subdivision (f) of section 1-02 of Title 6 of the Rules of the City of New York is relettered subdivision (g), and a new subdivision (f) is added, to read as follows:

(f) Pedicab business licenses and pedicab driver licenses are valid for one year. Pedicab business licenses shall expire November 1 of each year and pedicab driver licenses shall expire April 30 of each year.

§2. Chapter 2 of Title 6 of the Rules of the City New York is amended by adding new subchapter GG to read as follows:

## **SUBCHAPTER GG**

### **PEDICAB BUSINESS AND PEDICAB DRIVER**

§2-415 Definitions. Whenever used in this subchapter, the term:

(a) "Licensee" shall mean a person licensed pursuant to subchapter 9 of chapter 2 of the New

York City Administrative Code.

(b) "Applicant" shall mean any person applying for a pedicab business license or a pedicab driver license or for a renewal thereof and, unless otherwise provided by law or rule, the term shall include such person upon the issuance of such license or renewal thereof to such applicant.

(c) "Applicant pool for registration plates" or "pool" shall mean the total number of qualified applications for the assignment of pedicab registration plates from which the plates to be issued by the Commissioner pursuant to section 20-255 of the Administrative Code of the City of New York are to be selected.

(d) "Established pedicab business" shall mean a business that has been engaged in a bona fide pedicab business before April 23, 2007, the date of enactment of Local Law No. 19 for the year 2007, as verified by written documentation furnished to the Commissioner.

(e) "Pedicab identification number" or "PIN" shall mean any combination of three or more letters and numbers that are permanently inscribed or stamped into the bottom bracket shell, head tube, or other non-detachable metal component of a pedicab frame and that uniquely identify the pedicab.

(f) "Prospective licensee" shall mean an applicant to whom the Commissioner has tentatively approved to be issued a pedicab business license subject to such applicant furnishing proof of insurance as required by section 20-253 of the Administrative Code of the City of New York covering each pedicab to be registered by such applicant and for which pedicab registration plates have been selected.

(g) "Accident" shall mean any event arising from the operation of a pedicab that causes or caused human injury or damage to property.

**§2-416 Application Procedures for Persons Seeking a Pedicab Business License and**

**Pedicab Registration Plates.** (a) To be eligible for the issuance of pedicab registration plates on or before September 20, 2007, the effective date of Local Law No. 19 for the Year 2007, all applications for pedicab business licenses and for pedicab registration plates shall be governed by the following procedures:

1. The Department shall accept completed applications for pedicab business licenses on or after the Monday following the date of publication in *The City Record* of the "Notice of Adoption" of this subchapter.

2. Completed applications for such licenses must be received by the Department no later than 5:00 P.M. of the 10<sup>th</sup> calendar day following the date the Department will start accepting applications for pedicab business licenses. An application shall be deemed complete only if the applicant has furnished all the information and documentation requested on the application for such pedicab business license, and for the issuance of pedicab registration plates.

3. The Commissioner shall identify two pools from the applicant pool for registration plates. The first such pool shall be established as the established business applicant pool for registration plates by including all applicants qualified as described in subdivision b of this section. The second such pool shall be established as the new business applicant pool for registration plates by including all qualified applicants as described in paragraph one of subdivision c of this section.

4. Applicants for pedicab businesses licenses shall be notified whether the Commissioner has approved or denied their application for a pedicab business license. Such notification shall be made not later than five business days after the final date for receipt of applications, as provided by paragraph two of subdivision a of this section. Approved applicants shall be deemed prospective licensees until the assignment of pedicab registrations plates is completed and the

licenses are issued.

b. To qualify for inclusion in the established business applicant pool for registration plates, an applicant requesting a pedicab registration plate shall satisfy the following requirements:

1. Request to be included in such pool in the pedicab business license application;

2. Specify the number of pedicabs for which an applicant requests registration plates, up to 30, which is the maximum authorized by subdivision b of section 20-251 of the Administrative Code of the City of New York, for each licensee; and

3. Submit with its license application any of the below described qualifying documentation to verify the applicant was engaged in the pedicab business before April 23, 2007:

(i) a certificate of incorporation or a “doing business as” registration issued by a government agency in the name of the applicant for the pedicab business license that either on its face pertained to a pedicab business or can otherwise be shown to have pertained to such a business;

(ii) any other documentation issued by a governmental agency that authenticates that the person applying for a pedicab business license had, in fact, been engaged in such business;

(iii) certificates of insurance showing a policy for liability insurance was issued by an insurer authorized to do business in this state in the name of the person applying for a pedicab business license which was in force for an entire policy period commencing before April 23, 2007; or

(iv) an accurate and sworn statement affirming that the applicant has been engaged in the pedicab business as a sole-proprietor pedicab business or as a pedicab operator for at least one year prior to April 23, 2007, provided however that such person shall be eligible to request and to be issued only one pedicab registration plate out of the established business applicant pool for registration plates.

4. Applicants for the established business applicant pool for registration plates shall be included in such pool upon determination by the Commissioner that such applicants are qualified to be issued pedicab business licenses and have submitted the documentation required verifying that they were engaged in the pedicab business before April 23, 2007.

c. Applicants for pedicab registration plates shall be included in the new business applicant pool for registration plates and the assignment of pedicab registration plates from such pool shall be governed by the following procedures:

1. Any applicant for a pedicab business license who does not request to be included in the established business applicant pool for registration plates or who requests to be included in such pool but who fails to submit the documentation required to verify it was engaged in the pedicab business before April 23, 2007, shall be included in the new business application pool for registration plates.

2. The number of pedicab registration plates available for applicants in the new business applicant pool for registration plates, up to the maximum authorized by subdivision b of section 20-251 of the Administrative Code of the City of New York., shall be the difference, if any, between three hundred twenty-five, as provided by subdivision a of section 20-251 of the Administrative Code of the City of New York, and the number of registration plates issued to the applicants in the established business applicant pool.

d. Pedicab registration plates shall be selected from the established business applicant pool and the new business applicant pool according to the following procedure:

1. Pedicab registration plates shall first be assigned to applicants in the established business applicant pool until the maximum of three hundred twenty-five registration plates authorized by law to be issued are exhausted or until all requests for registration plates from applicants in the established business applicant pool, up to thirty plates for any pedicab business, are satisfied,

whichever occurs first. If applicants in the established business applicant pool request fewer than three hundred twenty-five pedicab registration plates, the remaining number of pedicab registration plates shall be assigned to the new business applicant pool.

2. Pedicab registration plates shall be selected for assignment to applicants in the established business applicant pool and the new business applicant pool in rounds. Each round shall consist of all qualified applicants in the respective pool who have outstanding requests for the assignment of registration plates at the start of each selection round. The following procedure shall be used to assign plates during each round:

(i) If the number of applicants with outstanding requests at the beginning of the round is less than or equal to the number of registration plates available to be issued, then each applicant shall be assigned one registration plate, and the selection procedure shall move to the next round until the number of applicants with outstanding requests exceeds the number of registration plates available to be assigned.

(ii) If the number of applicants with outstanding requests at the beginning of the round is more than the number of registration plates available to be issued, then the remaining applicants shall be assigned a coded identifier that will be the basis for randomly selecting the number of applicants equal to the number of registration plates available for that last round. Each of such randomly selected applicants shall be assigned one of the remaining registration plates.

3. Prospective licensees with outstanding requests for the assignment of pedicab registration plates after all registration plates authorized by law are assigned to be issued shall be included in a waiting list for pedicab registration plate applications to be created and administered by the Commissioner as provided in section 2-419 of this subchapter for the issuance of such registration plates that become available at any time.

e. Pedicab registration plates selected for assignment to prospective licensees shall be issued upon an applicant's compliance with the following requirements:

1. Prospective licensees who are selected to be assigned pedicab registration plates from an applicant pool for registration plates shall be issued a registration plate only upon completing the initial registration process by the 45<sup>th</sup> calendar day after the date on which the Commissioner mailed notification to the applicant of the offer to assign such pedicab registration plate. However, for good cause shown, the Commissioner may extend the time period for no more than 45 additional calendar days.

2. A prospective licensee must satisfy the following requirements to complete the initial registration process to be eligible to be issued a pedicab registration plate:

(i) Submit payment to the Department of the \$60 registration fee for each additional pedicab registration plate to be assigned in excess of the one pedicab included in the annual pedicab business license fee;

(ii) Furnish a list identifying the make, model and PIN for each pedicab to be inspected for issuance of an assigned pedicab registration plate;

(iii) Submit proof of the insurance coverage pedicab business licensees are required to possess pursuant to section 20-253 of the Administrative Code of the City of New York; and

(iv) Present for inspection at the location(s) designated by the Department each pedicab for which a pedicab registration plate has been assigned to be issued.

3. Prospective licensees who present for inspection a pedicab for which a pedicab registration plate has been assigned within the time allowed for completing the initial registration process may present such pedicab for re-inspection within no later than 14 days after the last date for completing the initial registration process.

4. A prospective licensee shall not be issued a pedicab business license until it has been issued at least one pedicab registration plate.

f. An offer to issue a pedicab registration plate to a prospective licensee selected from a pool shall be revoked if:

(1) A prospective licensee fails to complete all the requirements of the initial registration process with respect to any pedicab registration plate which has been assigned to be issued to such licensee. The offer of assignment of such plate shall be revoked as of the day after the last day for completing the initial registration process.

(2) A pedicab to which a registration plate had been selected to be issued fails to pass re-inspection within the time allowed as specified in paragraph three of subdivision e of this section.

g. Any pedicab registration plate that is revoked as provided in subdivision f of this section shall be made available for assignment to applicants for pedicab registration plates on the waiting list.

h. A prospective licensee shall be issued a pedicab business license upon the Commissioner determining the applicant meets all the requirements of sections 20-250, 20-252 and 20-253 of the Administrative Code of the City of New York and the requirements of this subchapter.

**§2-417 Proof of Insurance.** An applicant for a pedicab business license or a renewal thereof shall submit a certificate of insurance establishing that it maintains a policy of liability insurance for the amounts specified in section 20-253 of the Administrative Code of the City of New York issued by an insurer authorized in this state to write such coverage, or procured by an excess line broker pursuant to section 2118 of the New York State Insurance Law.

**§2-418 Termination of License upon Change of Beneficial Ownership.** a. A pedicab business license shall be voided upon the change of ten percent or more in the beneficial ownership in the business entity to which the license is issued unless prior written approval from the Commissioner is obtained to authorize such change to a member of the immediate family or dependents of a natural person holding such interest in such entity upon the death or permanent disability of such person.

b. The voiding of a pedicab business license because of a change in the beneficial ownership also invalidates all pedicab registration plates issued to such licensee, and such licensees shall, within 5 business days of the voiding of the pedicab business license, surrender each such registration plate to the Commissioner.

**§2-419 Creation and Administration of Waiting List for Pending Pedicab Registration Plate Applications.** a. The Commissioner shall establish a waiting list for pending pedicab registration plate applications in accordance with the following provisions.

b. All applicants remaining in the established pedicab business applicant pool or the new business applicant pool after the three hundred and twenty-five pedicab registration plates have been assigned to be issued, and all persons who seek to apply for a pedicab business license and a pedicab registration plate after the last date for filing an application for being eligible to be included in the established business applicant pool or the new business applicant pool and before the waiting list is created, shall be included on the waiting list on the date it is created in accordance with the following procedures

1. Each applicant to be included on the waiting list at the time of its creation shall be assigned a coded identifier that will be the basis for randomly selecting the order in which each applicant will appear on the waiting list for the assignment of a pedicab registration plate as it becomes available.

2. Any pedicab business licensee or any person applying for a pedicab business license who

requests to be assigned a pedicab registration plate after the waiting list has been created shall be added to the bottom of the waiting list of applicants for pedicab registration plates in the order that the applications are received. Whenever more than one application is received on the same day, such businesses shall be added in the order that each business is randomly selected from the applications received that day.

c. Whenever a pedicab registration plate becomes available to be issued, such plate shall be offered for assignment to the first applicant on the waiting list. Upon the mailing of the offer to issue the requested pedicab registration plate to such applicant to the address provided by such applicant, the applicant's name shall be removed from the waiting list.

d. Any pedicab business licensee shall, within 45 days after the Commissioner offers to assign a pedicab registration plate to such licensee, present the pedicab to be issued the assigned registration plate for inspection and registration, at the location specified by the Commissioner, and provide proof of an insurance policy that meets the requirements of section 20-253 of the Administrative Code of the City of New York and that is issued by an insurer authorized in this state to write such coverage, or procured by an excess line broker pursuant to section 2118 of the New York State Insurance Law. The offer to assign a registration plate shall be void if a pedicab business licensee or a prospective licensee fails to present the pedicab for inspection with the required proof of insurance within the time specified in this subdivision.

e. Any person on the waiting list who is not a licensee and who is offered the issuance of a pedicab registration plate shall file a completed application for a pedicab business license within 15 days of the date the offer to assign such registration plate was mailed. Unless such applicant is qualified to be issued such pedicab business license and presents the pedicab to be issued the registration plate for inspection and registration within 45 days thereafter, at the location specified by the Commissioner, and provides proof of an insurance policy that meets the requirements of section 20-253 of the Administrative Code of the City of New York and that is issued by an insurer authorized in this state to write such coverage, or procured by an excess line broker pursuant to section 2118 of the New York State Insurance Law, the offer to assign such pedicab registration plate shall be void.

f. A pedicab business licensee or prospective licensee who presents a pedicab for inspection and registration within the time specified by this section shall be able to present such pedicab for re-inspection within no more than 14 days after the date it initially failed inspection. If such pedicab fails to pass inspection within that period, the offer to assign the pedicab registration plate to such pedicab business licensee or prospective licensee shall be void.

**§2-420 Notification of accidents relating to the operation of pedicabs.** a. Every pedicab business licensee and pedicab driver shall submit to the Department, on a form provided for such purpose by the Department, a written report of every accident relating to a pedicab within 24 hours after the occurrence of such accident. Such completed form shall be signed by the pedicab business owner or his or her agent and by the pedicab driver involved in the accident.

b. Every pedicab business licensee and pedicab driver shall file with the Police Department of the City of New York a report of any accident as required by the Police Department, and shall furnish a copy of such report to the Department within five business days after it is required to be filed with the Police Department of the City of New York.

c. Whenever any person sustains an injury requiring medical treatment or dies in an accident related to a pedicab, the pedicab business owner to whom is issued a pedicab business license shall immediately notify the Department by telephone and by facsimile transmission to the telephone numbers prescribed by the Department, and furnish such information as is sufficient to identify the time and location of the accident

and the nature of the injuries sustained by any person.

**§2-421 Voiding of Pedicab Registration Plates upon the Voiding, Suspension or Revocation of a Pedicab Business License.**

a. Whenever a pedicab business license is suspended or revoked, has been voided as provided in subchapter 9 of Chapter 2 of Title 20 of the Administrative Code of the City of New York , or is not renewed within the time period provided for renewal, all pedicab registration plates issued to such licensee shall be voided as of the date of the occurrence of such event unless the Commissioner for good cause shown, within five days thereafter, issues a written finding staying the voiding of such registration plates for a period not to exceed 30 days thereafter, provided such licensee establishes to the Commissioner's satisfaction that it will be able to comply with the requirements that were the basis for the voiding of such pedicab registration plates by the end of such stayed period.

b. Whenever a registration plate is not renewed within 60 days after it has expired, such plate shall be void.

**§2-422 Transfer of a pedicab registration plate.** A licensee may transfer a registration issued to a pedicab identified on the list it has provided the Department from such pedicab to another pedicab of such licensee only if:

1. Such licensee requests the transfer in writing and identifies the pedicab that had been issued the registration plate, by the PIN listed with the Department, and the pedicab registration plate that is to be transferred and describes the pedicab, by its PIN, to which such pedicab registration plate is to be transferred.

2. Such licensee presents:

i. the pedicab to which the pedicab registration plate is to be transferred for inspection by the Department; and

ii. either presents the pedicab registration plate that was removed from the pedicab to which it was issued or presents the pedicab from which the pedicab registration plate is to be removed for transfer to such other pedicab.

3. The pedicab passes inspection and the Department affixes to it a pedicab registration plate that replaces the plate that had been issued to the pedicab from which it was transferred.

**Statement of Basis and Purpose:** Section 20-104 (b) of the Administrative Code of the City of New York authorizes the Commissioner to promulgate and amend all rules he or she deems necessary to carry out the powers and duties of the Department. Section 20-108 of such Code authorizes the Commissioner to set the expiration dates of licenses issued pursuant to Chapter 2 of Title 20 of such Code. Subchapter 9, which was added to Title 20 by Local Law 19 for the Year 2007, authorizes the Commissioner, in section 20-265, to adopt such rules as necessary to carry out the provisions of Subchapter 9, which regulates pedicabs. Further, section 20-251(c) authorizes the Commissioner to prescribe by rule the process by which the number of pedicabs that each pedicab business can register, including the initial application and issuance of pedicab business licenses, and provides that the selection process may consider whether the applicant has, prior to the enactment of the subchapter, owned or operated a pedicab business and give priority to applicants who can provide proof of such previous ownership or operation of a pedicab. Additionally, Section 5 of such Local Law authorizes the Commissioner to take actions that are necessary to implement such local law prior to its effective date of September 20, 2007, including the promulgation of rules and the processing of applications for licenses required to be issued pursuant to such law.

Local Law 19 requires that pedicab businesses and pedicab drivers be licensed by the Department. It authorizes the Department to inspect pedicabs to determine whether they meet specified standards and to issue a maximum of 325 registration plates for pedicabs.

The proposed rule would amend section 1-02 of Chapter 1 and add a new subchapter GG to Chapter 2 of Title 6 of the Rules of the City of New York to implement the requirements for the licensing and regulation of pedicab businesses and pedicab drivers and the registration of pedicabs.

The amendment of section 1-02 of Chapter 1 of Title 6 of such rules sets November 1 of each year as the expiration date for the annual pedicab business licenses, with the exception that licenses issued before November 1 of 2007 shall be valid until November 1, 2008. The amendment of section 1-02 of Chapter 1 sets April 30 of each year as the expiration date for the annual pedicab driver licenses. These expiration dates were selected to minimize the impact on the monthly workload of the Department's Licensing Division since it is during these months that the fewest number of licenses are subject to renewal.

The provisions of the proposed new subchapter GG establish the procedures and requirements that apply to the issuance of the pedicab business licenses and pedicab driver licenses when Local Law No. 19 becomes effective. The proposed new subchapter also specifies the procedures to be followed to process applications for and the issuing of pedicab registration plates up to the maximum of 325 authorized to be issued citywide, and up to the maximum of 30 to be issued to any person. The proposed subchapter creates the waiting list for applicants requesting pedicab registration plates beyond those issued initially; prescribes how applicants are included in, ranked on and added to the waiting list; details the procedure for assigning to applicants on the waiting list any pedicab registration plates that become available; and specifies the maintenance of the waiting list.

The proposed subchapter gives pedicab businesses that were established prior to the enactment of Local Law 19 a priority in the assignment of available registrations for pedicabs and specifies the proof required to establish that a license applicant is an established business for purposes of initial pedicab plate assignment. The proposed rules specify the insurance that is required to be carried by a pedicab business and the evidence that is required to be furnished to show that the coverage mandated by the law is in force.

Finally, the proposed subchapter specifies the prohibition of transfer of beneficial ownership in a license, prescribes the notifications to be made relating to accidents involving pedicabs, and prescribes the circumstances under which pedicab registrations are voided because of the revocation or suspension of pedicab businesses licensees or pedicab registration plates.

The proposed rule is necessary for the proper implementation and effectuation of the requirements for licensing and regulating the pedicab industry as required Local Law Number 19 for the Year 2007.