

NEW YORK CITY DEPARTMENT OF SANITATION

NOTICE OF ADOPTION OF FINAL RULE RELATING TO THE PENALITIES FOR LITTERING OFFENSES

NOTICE IS HEREBY GIVEN in accordance with the requirements of Section 1043 of the New York City Charter and pursuant to the authority vested in the Commissioner of the Department of Sanitation by sections 753 and 1043(a) of the New York City Charter and section 16-118 of the New York City Administrative Code that the Department adopts the following rule relating to the penalties for littering offenses. The Department published a Notice of Opportunity to Comment on the proposed rules in the *City Record* on March 10, 2017. On April 19, 2017 the Department held a public hearing on the proposed rule.

Statement of Basis and Purpose of Rule

The New York City Department of Sanitation (“DSNY”) is creating a new chapter that will include certain provisions of its existing penalty schedule, which is currently found in Title 48 of the Rules of the City of New York, by moving those provisions into Title 16 of the Rules of the City of New York. DSNY also is establishing penalties for repeat violations of certain provisions as described in Local Law 75 of 2016.

Currently the penalties for violations of §16-118 of the New York City Administrative Code (“Administrative Code”) that pertain to certain types of littering infractions are found in 48 RCNY § 3-122. The Office of Administrative Trials and Hearings, Environmental Control Board (“OATH ECB”), is in the process of repealing all penalty schedules in its rules so they can be relocated to the rules of the enforcement agencies with primary rulemaking and policymaking jurisdiction over the laws that underlie these penalties. In conjunction with this rule, OATH ECB will remove the penalties for violations of §16-118 that pertain to littering from its schedule.

In 2003, a civil penalty of \$100 was established for violations of subdivisions (2), (3), (4), (6) and (7) of §16-118. Additionally in 2003, penalties for violations of subdivisions (3), (4) and (6) were set at \$250 for a second offense and \$350 for a third and subsequent offense within a 12 month period. Defaults for violations of these provisions are set at the maximum penalty that can be assessed. All penalties are within the monetary ranges specified in §16-118.

Local Law 75 was enacted as part of the Criminal Justice Reform Act, a package of bills passed by the City Council that aims to build stronger and safer neighborhoods by reducing arrests and incarceration. Local Law 75 of 2016 amended §16-118(1) to establish a new violation for spitting. In addition, Local Law 75 also establishes a specific penalty for violation of subdivision 6 of §16-118 by means of public urination. Local Law 75 imposes a fixed penalty of \$75 for first time violations of §16-118(1) and 16-118(6), and provides for a range of penalties for subsequent offenses of those provisions. The penalties for subsequent offenses of those provisions are fixed at the minimum amounts authorized by Local Law 75. Additionally, the default penalties for all violations found in §16-118(1) and for public urination under §16-118(6) have been set at 150 percent of the penalty imposed, not to exceed \$400.

Working with the City’s rulemaking agencies, the Law Department, OMB, and the Office of Operations conducted a retrospective rules review of the City’s existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support

small businesses, and simplify and update content to help support public understanding and compliance. This rule meets the criteria for this initiative.

DSNY's authority for these rules is found in sections 753 and 1043 of the New York City Charter, and section 16-118 of the New York City Administrative Code.

New material is underlined.
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 16 of the Rules of the City of New York is amended by adding a new Chapter 19 to read as follows:

Chapter 19

PENALTY SCHEDULE

§19-101 Definitions

Default penalty. “Default penalty” shall mean the penalty imposed by the Office of Administrative Trials and Hearings acting pursuant to section 1049-a of the Charter of the City of New York in accordance with subparagraph (d) of paragraph one of subdivision d of section 1049-a of such Charter.

§19-102 General

(a) Unless otherwise indicated, all citations are to the New York City Administrative Code.

(b) Sections marked with an asterisk (*) indicate that a repeat violation is:

(1) a violation by the same respondent of the same section of law; and

(2) a violation that occurred within 12 months of the dates of 12 or more violations issued to the same respondent; and

(3) a violation that occurred at the same place of occurrence as the previous 12 violations.

(c) Sections marked with two asterisks (**) indicate that a second or third violation is:

(1) a violation by the same respondent of the same section of law as the previous violation(s); and

(2) _____ a violation that occurred within 12 months of the date of the last violation issued to the same respondent.

§19-103 Sanitation Penalty Schedule

<u>Section of Law</u>	<u>Description</u>	<u>Offense</u>	<u>Penalty</u>	<u>Default Penalty</u>
<u>16-118(1)(a)**</u>	<u>Littering</u>	<u>1st</u>	<u>75</u>	<u>112</u>
		<u>2nd</u>	<u>250</u>	<u>375</u>
		<u>3rd</u>	<u>350</u>	<u>400</u>
<u>16-118(1)(a)**</u>	<u>Sweep-out</u>	<u>1st</u>	<u>75</u>	<u>112</u>
		<u>2nd</u>	<u>250</u>	<u>375</u>
		<u>3rd</u>	<u>350</u>	<u>400</u>
<u>16-118(1)(a)**</u>	<u>Throw-out</u>	<u>1st</u>	<u>75</u>	<u>112</u>
		<u>2nd</u>	<u>250</u>	<u>375</u>
		<u>3rd</u>	<u>350</u>	<u>400</u>
<u>16-118(1)(b)**</u>	<u>Spitting</u>	<u>1st</u>	<u>75</u>	<u>112</u>
		<u>2nd</u>	<u>250</u>	<u>375</u>
		<u>3rd</u>	<u>350</u>	<u>400</u>
<u>16-118(2)(a) *</u>	<u>Dirty sidewalk</u>		<u>100</u>	<u>300</u>
<u>16-118(2)(a) *</u>	<u>Dirty Area</u>		<u>100</u>	<u>300</u>
<u>16-118(2)(a) *</u>	<u>Failure to Clean 18" Into Street</u>		<u>100</u>	<u>300</u>
<u>16-118(2)(a) *</u>	<u>Sidewalk obstruction</u>		<u>100</u>	<u>300</u>
<u>16-118(2)(b) *</u>	<u>Dirty Sidewalk (Vacant Lot) *</u>		<u>100</u>	<u>300</u>
<u>16-118(2)(b) *</u>	<u>Dirty Area (Vacant Lot) *</u>		<u>100</u>	<u>300</u>
<u>16-118(2)(b) *</u>	<u>Sidewalk Obstruction (Vacant Lot) *</u>		<u>100</u>	<u>300</u>
<u>16-118(2)(b) *</u>	<u>Failure to Clean 18" Into Street (Vacant Lot) *</u>		<u>100</u>	<u>300</u>
<u>16-118(2)*</u>	<u>Repeat Violation</u>		<u>250</u>	<u>300</u>
<u>16-118(3) **</u>	<u>Dust or substances flying</u>	<u>1st</u>	<u>100</u>	<u>450</u>
		<u>2nd</u>	<u>250</u>	<u>450</u>
		<u>3rd</u>	<u>350</u>	<u>450</u>
<u>16-118(4) **</u>	<u>Spilling from truck or receptacle</u>	<u>1st</u>	<u>100</u>	<u>450</u>
		<u>2nd</u>	<u>250</u>	<u>450</u>
		<u>3rd</u>	<u>350</u>	<u>450</u>
<u>16-118(6) **</u>	<u>Noxious liquids</u>	<u>1st</u>	<u>100</u>	<u>450</u>
		<u>2nd</u>	<u>250</u>	<u>450</u>
		<u>3rd</u>	<u>350</u>	<u>450</u>

<u>16-118(6)**</u>	<u>Public Urination</u>	<u>1st</u>	<u>75</u>	<u>112</u>
		<u>2nd</u>	<u>250</u>	<u>375</u>
		<u>3rd</u>	<u>350</u>	<u>400</u>
<u>16-118(7)</u>	<u>Preventing or otherwise interfering with work of DSNY employee</u>		<u>100</u>	<u>300</u>