

**New York City Department of Consumer Affairs**

**Notice of Adoption**

Notice of Adoption of amendments to Chapter 6 of Title 6 of the Rules of the City of New York in relation to curable signage violations and fixed penalties.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the New York City Charter, Section 16 of Local Law 153 for the year 2013, Sections 20-104(e), 20-224(b), 20-545(a)(1), 20-545(c), 20-546, 20-703(a), 20-708.1(f)(2)(a), and 20-708.1(f)(2)(b) of the Administrative Code of the City of New York, and Sections 2-431(g) and 2-432(h) of Title 6 of the Rules of the City of New York, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Sections 6-03, 6-15, 6-47, 6-48, 6-57, and 6-67 of Title 6 of the Rules of the City of New York (“Rules”).

This rule was proposed and published on February 27, 2018. The required public hearing was held on March 29, 2018.

### **Statement of Basis and Purpose of Rules**

Local Law 153 of 2013 provides an opportunity to cure first-time violations of certain rules regarding signage. Pursuant to Local Law 153, curing a violation means that a business must admit to the violation, but will not have to pay a penalty if the violation is corrected and proof of the correction (i.e., cure) is submitted to the Department within 30 days of the issuance of the notice of violation (e.g., summons) and before the violation is adjudicated. Consistent with these requirements, the Department amends Section 6-03(b)(5) of Subchapter A, Chapter 6, of Title 6 of the Rules of the City of New York (RCNY or Rules) to make violations of the following rules curable, specifically:

- 6 RCNY Section 5-265, which requires the posting of signs about tenant screening reports pursuant to Section 20-809 of the NYC Administrative Code (Code).
- 6 RCNY Section 2-57(i), which requires sidewalk cafés to post the sign described in 6 RCNY Section 1-03. The addition of 6 RCNY Section 2-57(i) also results from the retrospective rules review conducted by the Law Department, the Mayor’s Office of Operations, and the Mayor’s Office of Management and Budget, in partnership with the City’s rulemaking agencies. The review considered the City’s existing rules and identified those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and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.

DCA also amends Subchapter B (Penalties), Chapter 6, of Title 6 of the Rules as follows:

- Consistent with the amendment discussed above: 1) amend Section 6-15, Sidewalk Café Penalty Schedule, to make first violations of 6 RCNY Section 2-57(i) curable; and 2) amend Section 6-57, Tenant Screening Report Disclosure Penalty Schedule, to make first violations of 6 RCNY Section 5-265 curable.
- Consistent with the requirements of Local Law 5 of 2017, amend Section 6-48, Truth in Pricing Law: 1) to make first violations of Code Section 20-708.1(b) curable; and 2) to amend the applicable period related to second and subsequent violations of Code Section 20-708.1(b) and Section 20-708.1(e).
- Provide additional guidance to respondents who want to settle violations before appearing at OATH by: 1) amending Section 6-47, Consumer Protection Law Penalty Schedule, to add fixed penalties for violations of 6 RCNY Section 5-41, which prohibits the collection of sales tax on certain goods and services; and 2) adding Section 6-67 to provide fixed penalties for violations of the laws and rules related to car washes.

New text is underlined; deleted material is in [brackets].

## Rules

Section 1. Subdivisions (xxv) and (xxvi) of Section 6-03(b)(5) of Subchapter A of Chapter 6 of Title 6 of the Rules of the City of New York are amended, and subdivisions (xxvii) and (xxviii) are added, to read as follows:

- (xxv) Section 5-66(c), requiring that tax preparers post a sign:
- (a) stating his or her name, address, telephone number and qualifications;
  - (b) stating that the preparer and taxpayer must sign every tax return;
  - (c) stating how his or her fees are calculated;
  - (d) stating that he or she or his or her agency will not represent the taxpayer in an audit, if true; and
  - (e) stating that he or she is not licensed by the state board of public accounting or the New York state bar, or both, if true;[ and]
- (xxvi) Section 5-195, requiring signage at businesses that sell beverages for off-premises consumption in beverage containers that are covered by title ten of article twenty-seven of the Environmental Conservation Law of the State of New York to be placed within a certain distance of cash registers or to be visible to consumers from any specific vantage point;
- (xxvii) Section 5-265, requiring the posting of signs about tenant screening reports pursuant to Section 20-809 of the Administrative Code of the City of New York; and
- (xxviii) Section 2-57(i), requiring sidewalk cafés to post the DCA sidewalk café sign, as described in Section 1-03 of this title.

§ 2. The Sidewalk Cafes Penalty Schedule contained in section 6-15 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new penalty after the penalty for violation of 6 RCNY § 2-57(h), to read as follows:

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third Violation	Third Default	Fourth and Subsequent Violation	Fourth and Subsequent Default
<u>6 RCNY § 2-57(i)</u>	<u>Failure to post sign required by 6 RCNY § 1-03</u>	<u>\$750*</u>	<u>\$1,000*</u>	<u>\$1,500</u>	<u>\$2,000</u>	<u>\$4,000 (plus 0 to 30 day suspension)**</u>	<u>\$4,000 (plus 30 day suspension)</u>	<u>\$4,000 (plus 0 to 30 day suspension and 0 to 5 day sealing)**</u>	<u>\$4,000 (plus 30 day suspension and 5 day sealing)</u>

§ 3. The Consumer Protection Law Penalty Schedule contained in section 6-47 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new penalty between the penalties for violations of 6 RCNY § 5-40(e) and 6 RCNY § 5-46, to read as follows:

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
<u>6 RCNY § 5-41</u>	<u>Collected sales tax on sale of good or service not subject to such tax under Article 28 of the NYS Tax Law or rule and regulations promulgated thereunder</u>	<u>\$260</u>	<u>\$350</u>	<u>\$315</u>	<u>\$350</u>	<u>\$350</u>	<u>\$350</u>

§ 4. Section 6-48 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

**§ 6-48. Truth in Pricing Law**

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty pursuant to Local Law 5 of 2017.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-708	Failure to display total selling price by tag or sign	\$185	\$250	\$225	\$250	\$250	\$250
Admin Code § 20-708.1(b)	Improper item pricing	\$18 (for each of <u>the</u> first 20 violations)*	\$500*	\$45 (for each of <u>the</u> first 20 violations within [a two-week period] <u>60 days</u> )	\$1,000 (within [a two-week period] <u>60 days</u> )	\$50 (for each of <u>the</u> first 20 violations within [a two-week period] <u>60 days</u> )	\$1,000 (within [a two-week period] <u>60 days</u> )
Admin Code § 20-708.1(d)	Improper scanner accuracy	\$260	\$350	\$500	\$500	\$500	\$500
Admin Code § 20-708.1(e)	Improper price accuracy	\$18 (for each of <u>the</u> first 20 violations)	\$500	\$45 (for each of <u>the</u> first 20 violations within [a two-week period] <u>60 days</u> )	\$1,000 (within [a two-week period] <u>60 days</u> )	\$50 (for each of <u>the</u> first 20 violations within [a two-week period] <u>60 days</u> )	\$1,000 (within [a two-week period] <u>60 days</u> )

Admin Code § 20-709	Failure to display price per measure	\$185	\$250	\$225	\$250	\$250	\$250
6 RCNY § 5-113	Failure to meet the requirements of calculation and display price per measure	\$185	\$250	\$225	\$250	\$250	\$250
6 RCNY § 5-115	Failure to meet guidelines on multiple pricing	\$185	\$250	\$225	\$250	\$250	\$250

§ 5. Section 6-57 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

**§ 6-57 Tenant Screening Report Disclosure Penalty Schedule.**

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty pursuant to Local Law 153 of 2013.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-809	Failure to post sign or improper sign	\$375*	\$500*	\$450	\$500	\$500	\$500
6 RCNY § 5-265	Failure to comply with the requirements for posting signs about tenant screening reports	\$375_	\$500	\$450	\$500	\$500	\$500

§ 6. Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding a new section 6-67, to read as follows:

**§ 6-67. Car Washes Penalty Schedule**

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

The parties shall be authorized to present evidence to mitigate the license revocation or suspension period within the date range marked by two asterisks (\*\*).

<u>Citation</u>	<u>Violation Description</u>	<u>First Violation</u>	<u>First Default</u>	<u>Second Violation</u>	<u>Second Default</u>	<u>Third and Subsequent Violation</u>	<u>Third and Subsequent Default</u>
<u>Admin Code § 20-541(a)</u>	<u>Operating as a car wash without a license</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>
<u>Admin Code § 20-542</u>	<u>Failure to comply with requirements pertaining to surety bonds</u>	<u>\$375</u>	<u>\$500</u>	<u>\$450</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>
<u>Admin Code § 20-544</u>	<u>Failure to comply with requirements pertaining to records, or make records available for inspection</u>	<u>\$375 (plus 0 to 15 day suspension) **</u>	<u>\$500 (plus 15 day suspension)</u>	<u>\$450 (plus 0 to 30 day suspension) **</u>	<u>\$500 (plus 30 day suspension)</u>	<u>\$500 (plus revocation) **</u>	<u>\$500 (plus revocation)</u>
<u>Admin Code § 20-545(c)</u>	<u>Knowingly submits false information as part of license application or in response to other request for information</u>	<u>\$750 (plus 0 to 15 day suspension) **</u>	<u>\$1,000 (plus 15 day suspension)</u>	<u>\$900 (plus 0 to 30 day suspension) **</u>	<u>\$1,000 (plus 30 day suspension)</u>	<u>\$1,000 (plus revocation)</u>	<u>\$1,000 (plus revocation)</u>
<u>6 RCNY § 2-431(a)</u>	<u>Failure to comply with requirements pertaining to liability insurance</u>	<u>\$375 (plus 0 to 15 day suspension) **</u>	<u>\$500 (plus 15 day suspension)</u>	<u>\$450 (plus 0 to 30 day suspension) **</u>	<u>\$500 (plus 30 day suspension)</u>	<u>\$500 (plus revocation) **</u>	<u>\$500 (plus revocation)</u>

6 RCNY § 2-431(b)	Failure to comply with requirements pertaining to workers' compensation insurance	\$375 (plus 0 to 15 day suspension) **	\$500 (plus 15 day suspension)	\$450 (plus 0 to 30 day suspension) **	\$500 (plus 30 day suspension)	\$500 (plus revocation) **	\$500 (plus revocation)
6 RCNY § 2-431(c)	Failure to comply with requirements pertaining to disability benefits insurance	\$375 (plus 0 to 15 day suspension) **	\$500 (plus 15 day suspension)	\$450 (plus 0 to 30 day suspension) **	\$500 (plus 30 day suspension)	\$500 (plus revocation) **	\$500 (plus revocation)
6 RCNY § 2-431(d)	Failure to comply with requirements pertaining to unemployment insurance.	\$375 (plus 0 to 15 day suspension) **	\$500 (plus 15 day suspension)	\$450 (plus 0 to 30 day suspension) **	\$500 (plus 30 day suspension)	\$500 (plus revocation) **	\$500 (plus revocation)
6 RCNY § 2-431(e)	Failure to notify DCA of insurance cancellation or termination	\$375 (plus 0 to 15 day suspension) **	\$500 (plus 15 day suspension)	\$450 (plus 0 to 30 day suspension) **	\$500 (plus 30 day suspension)	\$500 (plus revocation) **	\$500 (plus revocation)
6 RCNY § 2-431(f)	Failure to furnish proof of continued coverage and/or copy of required policy upon request	\$375 (plus 0 to 15 day suspension) **	\$500 (plus 15 day suspension)	\$450 (plus 0 to 30 day suspension) **	\$500 (plus 30 day suspension)	\$500 (plus revocation) **	\$500 (plus revocation)
6 RCNY § 2-432, except for 6 RCNY § 2-432(e)	Failure to comply with requirements pertaining to surety bonds	\$375 (plus 0 to 15 day suspension) **	\$500 (plus 15 day suspension)	\$450 (plus 0 to 30 day suspension) **	\$500 (plus 30 day suspension)	\$500 (plus revocation) **	\$500 (plus revocation)
6 RCNY § 2-432(e)	Failure to maintain surety bond in amount required throughout license term	\$375 (plus 0 to 15 day suspension) **	\$500 (plus 15 day suspension)	\$450 (plus 0 to 30 day suspension) **	\$500 (plus 30 day suspension)	\$500 (plus revocation) **	\$500 (plus revocation)
6 RCNY § 2-433	Failure to comply with requirements pertaining to damage complaint records	\$375	\$500	\$450	\$500	\$500	\$500