

New York City Department of Consumer Affairs

Notice of Adoption of Rule

Notice of adoption of new rules relating to the Department's licensing and regulation of car washes.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs ("Department") by Section 2203 of the New York City Charter and sections 20-104(b), 20-108 and 20-546 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 promulgates and adopts Sections 2-431, 2-432, and 2-433 of new Subchapter HH of Chapter 2, and amends Section 1-02 of Chapter 1, of Title 6 of the Rules of the City of New York, to implement and carry out the provisions of Local Law 62 of 2015 requiring car washes in New York City to be licensed and regulated by the Department.

The rules were proposed and published on May 13, 2016. The required public hearing was held on June 20, 2016.

Statement of Basis and Purpose of Rule

The City Council enacted Local Law 62 for the Year 2015, adding Subchapter 33 to Title 20 of the New York City Administrative Code to require car washes in New York City to be licensed and regulated by the Department. Local Law 62 also amends Chapter 5 of Title 24 of the Code to add standards for car washes with regard to water and waste disposal.

These rules establish requirements to implement the Law. Specifically, these rules:

- Add a new subchapter HH to Chapter 2 of Title 6 of the Rules of the City of New York to implement the requirements for the Department's licensing and regulation of car washes.
- Amend section 1-02 of Chapter 1 of Title 6 to set October 31 of odd-numbered years as the expiration date for the biannual car wash licenses.
- Describe insurance requirements for applicants and licensees.
- Describe surety bond requirements for applicants and licensees.
- Establish record keeping requirements for complaints relating to damage of vehicles.

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

(g) Car wash licenses are valid for a two year term and shall expire October 31 of odd-numbered years.

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

SUBCHAPTER HH

CAR WASHES

§ 2-431 Insurance

(a) Liability insurance.

(1) Every licensee must secure and maintain throughout the term of the license commercial general liability (“CGL”) insurance which shall:

(i) be issued by a company that may lawfully issue the CGL policy and which has an A.M. Best rating of at least A-/VII or a Standard & Poor’s rating of at least A;

(ii) insure both the licensee and the City of New York and protect the City of New York from any claims for injury (including death) or property damage that may arise from, or allegedly arises from, the construction, operation or use of the car wash;

(iii) provide coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate; and

(iv) provide coverage at least as broad as that provided in the most recently issued edition of Insurance Services Office (“ISO”) Form CG 0001 and be “occurrence” based instead of “claims made”; and

(v) name the City of New York as an additional insured with coverage at least as broad as the most recent edition of ISO Forms CG 20 12 or CG 20 26.

(2) Each applicant shall submit proof of CGL insurance by submission of the endorsement(s) naming the City as an additional insured and either:

(i) a certificate of insurance in a form satisfactory to the Department that satisfies the requirements of this rule, identifies the insurance company that issued such insurance policy, the policy number, limit(s) of insurance, and expiration date and is accompanied by a sworn statement in a form prescribed by the Department from a licensed insurance broker or agent certifying that the certificate of insurance is accurate in all material respects; or

(ii) an original or true copy of the CGL policy as certified by an authorized representative of the issuing insurance carrier.

(b) Workers' compensation insurance.

(1) Every licensee shall maintain workers’ compensation insurance as required by law.

(2) Each applicant shall submit proof of the insurance on one of the following forms:

(i) C-105.2 - Certificate of Workers’ Compensation Insurance;

(ii) U-26.3 - State Insurance Fund Certificate of Workers’ Compensation Insurance;

(iii) equivalent or successor forms used by the New York State Workers' Compensation Board;
or

(iv) other proof of insurance in a form acceptable to the Department.

(3) This requirement shall not apply to applicants that are not required by law to maintain this coverage.

(i) Any applicant that is not required by law to maintain this coverage shall submit to the Department proof from the New York State Workers' Compensation Board on Form CE-200 – Certificate of Attestation of Exemption.

(c) *Disability benefits insurance.*

(1) Every licensee shall secure and maintain disability benefits insurance.

(2) Each applicant shall submit proof of the insurance on one of the following forms:

(i) DB-120.1 - Certificate of Insurance Coverage under the NYS Disability Benefits Law;

(ii) equivalent or successor forms used by the New York State Workers' Compensation Board; or

(iii) other proof of insurance in a form acceptable to the Department.

(3) This requirement shall not apply to applicants that are not required by law to maintain this coverage.

(i) Any applicant that is not required by law to maintain this coverage shall submit to the Department proof from the New York State Workers' Compensation Board on Form CE-200 – Certificate of Attestation of Exemption.

(d) *Unemployment insurance.*

(1) Each applicant shall provide proof of registration with the New York State Department of Labor for unemployment insurance. Such documentation shall constitute a "certificate of unemployment insurance" under section 20-541(d)(4) of the Administrative Code.

(e) If any insurance required by this rule expires, is cancelled or otherwise terminates without being simultaneously replaced with new or renewed insurance satisfying the requirements of this rule, the licensee shall immediately notify the Department of such fact. Such notification may be made on behalf of the licensee by its insurance company, agent or broker.

(f) Every licensee shall furnish proof of continued coverage and a copy of any required policy upon request by the Department or by the New York City Law Department.

(g) Failure to maintain any insurance required by this subdivision at all times shall be considered grounds for the suspension or revocation of a license issued pursuant to Subchapter 33 of Chapter 2 of Title 20 of the Administrative Code.

§2-432 Surety Bonds

(a) An applicant for the issuance or renewal of a license must furnish a bond consistent with the requirements set forth in section 20-542 of the Administrative Code.

(b) An applicant seeking to furnish a bond in the sum of thirty thousand dollars must:

(1) submit a collective bargaining agreement to the Department and certify that such agreement satisfies the requirements set forth in section 20-542(b)(1) of the Administrative Code; or

(2) submit an active monitoring agreement to the Department and identify the provisions in the monitoring agreement that satisfy the requirements set forth in section 20-542(b)(2) of the Administrative Code.

(c) If a collective bargaining agreement submitted pursuant to paragraph 1 of subdivision b of this section is modified or amended, expires or otherwise terminates during the term of the license, the licensee must:

(1) submit a current collective bargaining agreement to the Department and certify that such agreement satisfies the requirements set forth in section 20-542(b)(1) of the Administrative Code within 15 days of such modification, amendment, expiration or termination; or

(2) furnish a bond in the sum of one hundred fifty thousand dollars consistent with the requirements set forth in section 20-542 of the Administrative Code.

(d) If an active monitoring agreement submitted pursuant to paragraph 2 of subdivision b of this section is modified or amended, expires or otherwise terminates during the term of the license, the licensee must:

(1) submit a current active monitoring agreement to the Department and identify the provisions in the monitoring agreement that satisfy the requirements set forth in section 20-542(b)(2) of the Administrative Code within 10 days of such modification, amendment, expiration or termination;

or

(2) furnish a bond in the sum of one hundred fifty thousand dollars consistent with the requirements set forth in section 20-542 of the Administrative Code.

(e) Every licensee shall maintain the surety bond in the amount required by section 20-542 throughout the term of the license.

(f) Licensees shall immediately notify the Department in the event of the termination of, or other material change in, the surety bond required by section 20-542 of the Administrative Code.

(g) Licensees shall furnish a surety bond to the Department upon request of the Department.

(h) Failure to maintain a surety bond as required by section 20-542 of the Administrative Code shall be grounds for the suspension or revocation of a license issued pursuant to section 20-541 of such Code.

§ 2-433 Damage Complaint Records

(a) *Chronological complaint log.* Each licensee must maintain a chronological log in an electronic format documenting complaints of damage to vehicles. The log must contain the following information where applicable:

(1) Date of complaint;

(2) Date licensee received complaint;

(3) Name, address, phone number and email address of individual or entity making the complaint;

(4) Make and model number of vehicle;

(5) Date licensee washed vehicle;

(6) Description of complaint;

(7) Whether individual or entity making complaint provided photos or other documents;

(8) Resolution of complaint, including amount of compensation and method of payment;

(9) Name and address of insurance company or third party involved in resolution, if any, and claim number;

(10) Date of resolution; and

(11) Employee or manager who handled the complaint.

(b) Photographs and other documents. The licensee must maintain copies of all documents, relating to the complaint, including photographs, provided by the individual or entity making the complaint, third parties or the licensee.

(c) Method of electronic recordkeeping. The licensee must make an electronic record of the log by one of the following methods:

(1) Within twenty-four hours after the complaint is received, entering the information in English on an electronic Excel spreadsheet provided by the Department and made accessible at an Internet address provided by the Department, or

(2) Within twenty-four hours after the complaint is received, entering the information in English on a spreadsheet, local application or web-based system that:

(i) has all fields named, ordered and in all respects identical to the fields in the Excel file provided by the Department and;

(ii) is in an Excel-readable format.

(3) If the complaint is not resolved the same day as it is received, the resolution information required by paragraph (8) of subdivision (a) must be entered within twenty-four hours after the complaint is resolved.

(d) Format, Preservation and Production of Records.

(1) Electronic records must be maintained in a manner designed to ensure their security and preservation, including by creation of back-up copies.

(2) Upon request by the Department, a licensee must produce electronic records to the Department in the format in which the licensee maintains the electronic files.

(3) Upon request by the Department, a licensee must produce all documents and photographs required to be maintained to the Department.

(4) The licensee shall produce the electronic records, documents and photographs to the Department with its renewal application.