

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Consumer Affairs (Department) is proposing to amend Chapter 6 of Title 6 of the Rules of the City of New York by:

- making additional violations of signage rules curable pursuant to Local Law 153 of 2013;
- amending the fixed penalties for violations of the truth in pricing law, consistent with the requirements of Local Law 5 of 2017;
- amending the fixed penalties for violations of the consumer protection laws and rules; and
- establishing fixed penalties for violations of the laws and rules related to car washes.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Thursday, March 29, 2018. The hearing will be in the Department's hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax comments to Casey Adams, Director of City Legislative Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Thursday, March 29, 2018. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes. You must submit any written comments to the proposed rule by 5:00 PM on Thursday, March 29, 2018.

What if I need assistance to participate in the hearing? You must tell the Department's External Affairs Division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0095 or by email to cadams@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Tuesday, March 27, 2018.

This location has the following accessibility option(s) available: wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Department's External Affairs Division.

What authorizes the Department of Consumer Affairs to make this rule? Sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the 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, Sections 2-431(g) and 2-432(h) of Title 6 of the Rules of the City of New York authorize the Commissioner of the Department to make this proposed rule. This proposed rule was not included in the Department's regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the Department's rules? The Department's rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed 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 proposes to amend 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 proposed 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 seeks to amend Subchapter B (Penalties), Chapter 6, of Title 6 of the Rules as follows:

- Consistent with the proposed 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].

Proposed 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
6 RCNY § 5-41	<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>
Admin Code § 20-541(a)	Operating as a car wash without a license	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day
Admin Code § 20-542	Failure to comply with requirements pertaining to surety bonds	\$375	\$500	\$450	\$500	\$500	\$500
Admin Code § 20-544	Failure to comply with requirements pertaining to records, or make records available for inspection	\$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)
Admin Code § 20-545(c)	Knowingly submits false information as part of license application or in response to other request for information	\$750 (plus 0 to 15 day suspension) **	\$1,000 (plus 15 day suspension)	\$900 (plus 0 to 30 day suspension) **	\$1,000 (plus 30 day suspension)	\$1,000 (plus revocation)	\$1,000 (plus revocation)
6 RCNY § 2-431(a)	Failure to comply with requirements pertaining to liability 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(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

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Consumer Affairs Penalty Schedule

REFERENCE NUMBER: 2017 RG 094

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 02/14/2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Consumer Affairs Penalty Schedule

REFERENCE NUMBER: DCA-63

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Provides a cure period for a discrete set of violations, including previously existing, newly amended and newly established violations.

/s/ Norma Ponce
Mayor's Office of Operations

Date: February 16, 2018