

## New York City Department of Sanitation

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The New York City Department of Sanitation (“DSNY”) is proposing a rule that would expand organic waste source separation requirements for large commercial food retailers and food service establishments.

**When and where is the hearing?** DSNY will hold a public hearing on the proposed rule. The public hearing will take place at 9:30 A.M. to 12:00 P.M. on November 20, 2019 in the Second Floor Auditorium at 125 Worth Street, New York, NY 10013 (DSNY Headquarters).

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

- **Website.** You can submit comments to DSNY through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [nycrules@dsny.nyc.gov](mailto:nycrules@dsny.nyc.gov).
- **Mail.** You can mail comments to DSNY, Bureau of Legal Affairs, 125 Worth Street, Room 710, New York, NY 10013.
- **Fax.** You can fax comments to DSNY at 212-788-3876.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing can sign up in the hearing room before the hearing begins on November 20, 2019.

**Is there a deadline to submit comments?** Comments will be due to the Department of Sanitation by 5:00 P.M. on November 20, 2019.

**What if I need assistance to participate in the hearing?** You must tell the Office of Legal Affairs 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 (646) 885-5006. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by November 13, 2019.

This location has the following accessibility option(s) available: Wheelchair and Sign Language Interpretation.

**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 on DSNY’s website.

**What authorizes DSNY to make this rule?** Sections 1043 and 753 of the New York City Charter and section 16-306.1 of the New York City Administrative Code authorize DSNY to

make this proposed rule. This proposed rule was included in DSNY's published regulatory agenda for this Fiscal Year 2020.

**Where can I find the DSNY's rules?** DSNY's rules are in title 16 of the Rules of the City of New York.

**What laws govern the rulemaking process?** DSNY 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 of the City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

Food scraps and other organic waste make up more than one-third of all commercial waste in New York City. Diverting this material from landfills to produce soil enhancing compost, or as an energy source through aerobic and anaerobic digesters, is a key component of the City's goal of sending zero waste to landfills.

Under Local Law 146 of 2013, codified in §16-306.1 of the New York City Administrative Code, the Sanitation Commissioner must evaluate, at least annually, whether there exists sufficient regional organic waste processing capacity to require that certain food-generating businesses in the City, or a subset of them, engage in source separation of organic waste and ensure its beneficial use through composting, anaerobic digestion or other process as approved by the Commissioner.

DSNY has determined that there is currently sufficient organics processing capacity available to allow for an increase in food waste diversion and thus proposes to apply the requirement to additional large food-generating businesses in the city. These businesses would be required to separate their organic waste for collection and handling either by engaging private carters, transporting organic waste themselves, or managing the waste on-site using in-vessel composting or aerobic or anaerobic digestion systems (subject to compliance with the City's sewer discharge regulations). A designated covered establishment could also donate food to a third party (such as a charitable organization) that would otherwise be thrown away, sell or donate the food to a farmer for feedstock, or sell or donate meat by-products to a rendering company (one that converts animal fats into lard). Food disposed of through such donations or sales would not be included within the meaning of "organic waste" as defined in DSNY's existing rules (§ 1-01 of Chapter 1 of Title 16).

The proposed amendments to the existing rule provide that the following types of establishments would be "designated covered establishments" and would have to comply with the source separation, storage, labeling and set out requirements for organic waste set forth in Section 1-11 of Title 16 of the Rules of the City of New York ("Section 1-11"):

- 1) any building or premises where food service establishments having a total combined floor area of at least eight thousand square feet are located and where the owner of the building or premises, or its agent, arranges or contracts with a private carter for the removal of waste from food service establishments having at least eight thousand square feet of such building or premises;

- 2) a location at which a food preparation establishment has a floor area of at least six thousand square feet;
- 3) a catering establishment that is required to provide for the removal of waste pursuant to Administrative Code § 16-116 whenever the anticipated attendance for any particular event is greater than one hundred persons; and
- 4) sponsors of a temporary public event with an anticipated attendance of greater than five hundred persons per day, excluding activities conducted pursuant to a valid permit for filming, demonstration, parade, or block parties.

Additionally, the proposed rule would change the criteria regarding certain covered establishments previously designated under Section 1-11 as follows:

- 1) a food service establishment located in a hotel having at least one hundred sleeping rooms, which would be lowered from the current requirement of one hundred fifty sleeping rooms, in addition to removing the requirement that such food service establishment operate under common ownership or control of such hotel and receive waste collection from the same private carter that services the hotel;
- 2) a food service establishment that has a floor area space of at least seven thousand square feet, which would be lowered from the current requirement of fifteen thousand feet;
- 3) a food service establishment that is part of a chain of two or more locations in New York City, which have a combined floor area of at least eight thousand square feet and that (i) operate under common ownership or control; (ii) are individually franchised outlets of a parent business; or (iii) do business under the same corporate name, which would be lowered from the current requirement of a chain of one hundred or more locations in the City; and
- 4) a retail food store that has a floor area space of at least ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet, which would be lowered from the current requirement of twenty-five thousand square feet, and that operate under common ownership or control and receive waste collection from the same private carter.

DSNY's authority to promulgate these rules is found in New York City Charter §§ 753 and 1043, and Administrative Code § 6-306.1.

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 (a) of Section 1-11 of Chapter 1 of Title 16 of the Rules of the City of New York, relating to the handling of organic waste generated by certain commercial establishments, is amended to read as follows:

**§ 1-11 Organic Waste Generated by Commercial Establishments.**

(a) *Designated covered establishments.* Pursuant to § 16-306.1(b) of the New York City Administrative Code, the following commercial establishments are "designated covered establishments" for purposes of this section and shall comply with the requirements set forth in this section:

(1) an arena or stadium having a seating capacity of at least fifteen thousand persons;

(2) a food service establishment that [(i)] is located within a hotel having at least one hundred [fifty] sleeping rooms [, (ii) operates under common ownership or control of such hotel, and (iii) receives waste collection from the same private carter as such hotel];

(3) a food manufacturer that has a floor area of at least twenty-five thousand square feet;

(4) a food wholesaler that has a floor area of at least twenty thousand square feet;

(5) a food service establishment that has a floor area of at least [fifteen] seven thousand square feet;

(6) (i) a food service establishment that is part of a chain of [one hundred] two or more locations in the City of New York, have a combined floor area of at least eight thousand square feet and that [(i)] (A) operate under common ownership or control; [(ii)] (B) are individually franchised outlets of a parent business; or [(iii)] (C) do business under the same corporate name.

(ii) Any person who owns or operates two or fewer food service establishments may request a waiver from the [sanitation] commissioner of the requirements of this section if no single food service establishment has a floor area of at least seven thousand square feet, the food service establishment or establishments are individually franchised outlets of a parent

business covered by this subparagraph, and the owner or operator establishes that the food service establishment or establishments do not receive private carting services through a general carting agreement between a parent business and private carter; and

(7) a retail food store that has a floor area of at least [twenty-five thousand] ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet and that operate under common ownership or control and receive waste collection from the same private carter;

(8) any building or premises where food service establishments having a total combined floor area of at least eight thousand square feet are located and where the owner of the building or premises, or its agent, arranges or contracts with a private carter for the removal of waste from food service establishments having at least eight thousand square feet of such building or premises;

(9) a location at which a food preparation establishment has a floor area of at least six thousand square feet;

(10) a catering establishment that is required to provide for the removal of waste pursuant to section 16-116 of the administrative code of the city of New York whenever the anticipated attendance for any particular event is greater than one hundred persons; and

(11) sponsors of a temporary public event with an anticipated attendance of greater than five hundred persons per day, excluding activities conducted pursuant to a valid permit for filming, demonstration, parade, or block parties.

For purposes of this section, the “floor area” of an establishment has the same meaning as defined under Section 12-10 of Chapter 2 of Article 1 of the Zoning Resolution.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**

**253 BROADWAY, 10<sup>th</sup> FLOOR**

**NEW YORK, NY 10007**

**212-788-1400**

**CERTIFICATION / ANALYSIS**

**PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Expansion of Organic Waste Source Separation Program**

**REFERENCE NUMBER: DSNY-19**

**RULEMAKING AGENCY: Department of Sanitation**

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) No cure period is provided but DSNY will not enforce the rule for a period of six months from the effective date of the rule, in accordance with Local Law 146 of 2013, in order to provide outreach and education to affected businesses.

/s/ Francisco X. Navarro

Mayor's Office of Operations

September 25, 2019

Date

**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:** Expansion of Organic Waste Source Separation Program

**REFERENCE NUMBER:** 2019 RG 074

**RULEMAKING AGENCY:** Department of Sanitation

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 L. GOULDEN

Date: September 25, 2019

Acting Corporation Counsel