

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 to create a new chapter that will include certain provisions of its existing penalty schedule, which is currently found in the rules of the Office of Administrative Trials and Hearings (OATH), in Title 48 of the Rules of the City of New York, and move those provisions into Title 16 of the Rules of the City of New York. DSNY also proposes to establish penalties for repeat violations of certain provisions as described in Local Law 75 of 2016. OATH is proposing a companion rule that repeals the DSNY Penalty Schedule from Title 48.

When and where is the hearing? DSNY will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 A.M. from 11:30 A.M. on April 19, 2017. The hearing will be in Room 819 at 125 Worth Street, New York, NY 10013 (DSNY Headquarters).

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

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.
- **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 April 19, 2017.

Is there a deadline to submit comments? Comments will be due to the Department of Sanitation by 5:00 P.M. on April 19, 2017.

Do you 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. You must tell us by April 12, 2017.

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 16-118 of the New York City Administrative Code authorize DSNY to make this proposed rule. This proposed rule was not included in DSNY's regulatory agenda for this Fiscal Year because it was not contemplated when DSNY published the agenda.

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 rules 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

The New York City Department of Sanitation ("DSNY") is proposing to create 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 proposes to establish 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 rule.

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 of 2016 amended §16-118(1) to establish a new violation for spitting. In addition, Local Law 75 also establishes a specific penalty for public urination. Local Law 75 was passed 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 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 proposed 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>

**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: Promulgation of Sanitation Penalty Schedule

REFERENCE NUMBER: 2017 RG 002

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 GOULDEN
Acting Corporation Counsel

Date: February 28, 2017

**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: Promulgation of Sanitation Penalty Schedule

REFERENCE NUMBER: DSNY-16

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) Does not provide a cure period because a cure period is not practicable under the circumstances.

/s/ Najma Ali
Mayor's Office of Operations

March 1, 2017
Date