

**City of New York
Office of Administrative Trials and Hearings**

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings (OATH) proposes a new Chapter 7 of Title 48 of the Rules of the City of New York, concerning the community service program established by OATH pursuant to new subdivision four of New York City Charter Section 1049, which was added by Local Law 73 of 2016.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place from **10:00 a.m. through 11:30 a.m. on May 1, 2017**. The hearing will be in the OATH Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

This location has the following accessibility option(s) available: Wheelchair Accessible.

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

- **Website.** You can submit comments to OATH through the NYC rules website at <http://rules.cityofnewyork.us/>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to OATH, Attention: Simone Salloum, Assistant General Counsel, 66 John Street, 10th Floor, New York, NY 10038.
- **Fax.** You can fax written comments to OATH, Attention: Simone Salloum, Assistant General Counsel, at 212-361-1900.
- **Hearing.** You can speak 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 Elizabeth Nolan at 212-436-0708, or you can also sign up in the hearing room before the hearing begins on **May 1, 2017**. You can speak for up to three (3) minutes.

Is there a deadline to submit written comments? You may submit written comments up to **the close of business on May 1, 2017**.

What if I need assistance to participate in the Hearing? You must tell us 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 212-436-0708. You must tell us by **April 24, 2017**.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>.

A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at OATH, 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH to make this rule? Section 1049(4)(g) of the City Charter authorizes OATH to make this proposed rule. This proposed rule was included in OATH's regulatory agenda for this Fiscal Year.

Where can I find OATH's rules? OATH's rules are in Title 48 of the Rules of the City of New York.

What rules govern the rulemaking process? OATH must meet the requirements of Section 1043(b) of the City Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049(4)(g) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Office of Administrative Trials and Hearings (OATH) proposes a new Chapter 7 of Title 48 of the Rules of the City of New York, describing OATH's community service program, mandated by New York City Charter Section 1049(4).

The New York City Council passed the Criminal Justice Reform Act (CJRA) to create the opportunity for civil enforcement of low-level, non-violent offenses. This legislation became law on June 13, 2016. As part of the CJRA, Local Law 73 added new provisions to section 1049 of the NYC Charter that require OATH Hearing Officers to offer an option to perform community service in lieu of paying a monetary civil penalty for certain specified violations of the Administrative Code and certain violation of rules of the Department of Parks and Recreation (DPR).

Local Law 73 added subsection 1049(4) to the NYC Charter. This section requires that an OATH Hearing Officer offer a respondent who has been accused of committing a specified violation of the Administrative Code or of DPR's rules the option to perform community service instead of paying a monetary civil penalty. Local Law 73 defines community service broadly to include attendance at programs that are either in-person or web-based, which are designed to benefit, improve, or educate either the community or the respondent. Section 1049(4)(b) provides a list of "Specified Violations" that are eligible for community service. The Charter also provides guidelines as to the amount of community service to be performed in lieu of payment of the monetary civil penalty. Section 1049(4)(g) grants OATH the authority to promulgate rules necessary for carrying out the Charter requirements concerning community service. Specifically, OATH is required to promulgate rules that specify the correspondence between the amount of community service offered and the amount of civil penalties imposed. OATH has structured several community service program offerings, each of which has a set number of hours that correlate to the benchmark set forth in Local Law 73 of 2016.

This proposed rule describes OATH’s community service program and the procedures a respondent must follow to request and complete community service. Proposed new Chapter 7 contains the following:

- A definitions section, which defines terms such as Community Service, Community Service Provider, and Specified Violations;
- A chart of Specified Violations for which community service is an option, including the applicable monetary penalty and the corresponding number of community service hours;
- The procedures a respondent must follow to choose the community service option;
- The procedure and requirements to timely complete community service or request an extension to complete community service;
- The consequences for failure to timely complete community service; and
- The procedure for appealing a decision after a respondent has chosen the community service option.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Title 48 of the Rules of the City of New York is amended by adding a new Chapter 7 to read as follows:

§ 7-01 Definitions.

As used in this chapter:

“Community Service” means the performance of a service for a public entity or not-for-profit corporation in place of payment of a monetary civil penalty. Performance of a service may include attendance at a program, either in person or web-based, authorized by OATH that is designed to benefit, improve, or educate either the community or the Respondent.

“Community Service Provider” is an entity contracted by OATH to manage Community Service.

“Decision” is a decision of a Hearing Officer sustaining or dismissing a charge and containing findings of fact and conclusions of law.

“Hearing Officer” means a person designated by the Chief Administrative Law Judge of OATH, or his or her designee, to carry out the adjudicatory powers, duties and responsibilities of OATH.

“Respondent” means a person against whom charges are alleged in a summons.

“Specified Violations” are the violations specified in New York City Charter section 1049(4)(b), and set forth in § 7-02(a) below.

§ 7-02 Eligibility for Community Service.

(a) Except as provided in subdivision (c), a Respondent who admits the charge or is found responsible at a hearing for any Specified Violation can perform Community Service instead of paying a monetary civil penalty. The Specified Violations, monetary civil penalties, and corresponding Community Service hour requirements are found below:

<u>Citation in Summons</u>	<u>Description in Summons</u>	<u>Monetary Penalty</u>	<u>Community Service Hour Requirement</u>
<u>Admin. Code § 10-125</u>	<u>Public Consumption of Alcohol</u>	<u>Up to \$25</u>	<u>1</u>
<u>56 RCNY § 1-05(f) – Parks</u>	<u>Unauthorized consumption/possession of alcoholic beverage</u>	<u>\$25</u>	<u>1</u>
<u>Admin. Code § 16-118(1)(a), (b)</u>	<u>Littering, Sweep-out, throw-out, spitting</u>	<u>1st - \$75 2nd - \$250 3rd - \$350</u>	<u>1st – 1 2nd – 3 3rd – 6</u>
<u>56 RCNY § 1-04(c)(1) – Parks</u>	<u>Littering or unlawful use of park waste receptacle.</u>	<u>\$75</u>	<u>1</u>
<u>Admin. Code § 16-118(6)</u>	<u>Public Urination</u>	<u>1st - \$75 2nd - \$250 3rd - \$350</u>	<u>1st – 1 2nd – 3 3rd – 6</u>
<u>56 RCNY § 1-03(a)(3)</u>	<u>Unauthorized presence in park when closed to public</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-03(b)(6)</u>	<u>Failure to have/display/comply with required permit</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-03(c)(1), (c)(3)</u>	<u>Failure to comply with directives of police, park supervisor, lifeguard, PEP</u>	<u>\$250</u>	<u>3</u>
	<u>Failure to comply with directives of other park employees.</u>	<u>\$150</u>	<u>2</u>
<u>56 RCNY § 1-03(c)(2)</u>	<u>Failure to comply with directions/prohibitions on signs</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(a)(i)</u>	<u>Destruction or abuse of Department property</u>	<u>\$300</u>	<u>3</u>
<u>56 RCNY § 1-04(b)(1)(ii)</u>	<u>Defacing, writing on, injuring, pruning a tree without a permit.</u>	<u>\$150</u>	<u>2</u>
	<u>Defacing, writing on, mutilating, or removing plant, flower, shrub, vegetation</u>	<u>\$250</u>	<u>3</u>
<u>56 RCNY 1-04(b)(2)</u>	<u>Walking/permitting animal/child to walk on newly seeded grass</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(b)(2)</u>	<u>Trespass on planted area</u>	<u>\$50</u>	<u>1</u>

<u>Citation in Summons</u>	<u>Description in Summons</u>	<u>Monetary Penalty</u>	<u>Community Service Hour Requirement</u>
<u>56 RCNY § 1-04(b)(4)</u>	<u>Unauthorized possession of gardening tool/plant</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-04(b)(5)</u>	<u>Unauthorized use of metal detector</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(c)(4)</u>	<u>Storing/leaving unattended personal belongings</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(d)</u>	<u>Possession of glass container in restricted area</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(e)(i)</u>	<u>Bringing/landing plane, balloon, other aerial device in park.</u>	<u>\$100</u>	<u>2</u>
<u>56 RCNY § 1-04(e)(ii)</u>	<u>Bringing/landing plane, balloon, other aerial device in park, endangering person or property</u>	<u>\$500</u>	<u>6</u>
<u>56 RCNY § 1-04(f)</u>	<u>Possession of a firearm/propellant/explosive etc.</u>	<u>\$500</u>	<u>6</u>
<u>56 RCNY § 1-04(g)(1)</u>	<u>Harass/kill/remove/possess animal/nest/egg, etc.</u>	<u>\$1,000</u>	<u>12</u>
<u>56 RCNY § 1-04(g)(2)</u>	<u>Unauthorized feeding of animals</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(i)</u>	<u>Uncontrolled animals in park</u>	<u>\$100</u>	<u>2</u>
<u>56 RCNY § 1-04(j)(1)</u>	<u>Failure to remove canine waste</u>	<u>\$250</u>	<u>3</u>
<u>56 RCNY § 1-04(j)(2)</u>	<u>Horse carriage without horse hamper/control for horse waste</u>	<u>\$100</u>	<u>2</u>
<u>56 RCNY § 1-04(k)</u>	<u>Unlawful urination/defecation in the park.</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(l)</u>	<u>Recklessly endangering the safety of others.</u>	<u>\$300</u>	<u>3</u>
<u>56 RCNY § 1-04(m)</u>	<u>Gambling/fortune telling</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(n)</u>	<u>Unlawful exposure</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(o)</u>	<u>Obstruction of benches, sitting areas</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(p)</u>	<u>Unlawful camping</u>	<u>\$250</u>	<u>3</u>
<u>56 RCNY § 1-04(q)</u>	<u>Spitting on park building/monument/structure</u>	<u>\$100</u>	<u>2</u>
<u>56 RCNY § 1-04(r)</u>	<u>Unhygienic use of fountain/pool/water/for personal/animal hygiene</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(s)(i)</u>	<u>Soliciting money or property without permit</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-04(s)(1)</u>	<u>Commercial Activity or Speech</u>	<u>\$100</u>	<u>2</u>
<u>56 RCNY § 1-</u>	<u>Climbing on statute or artwork in</u>	<u>\$200</u>	<u>3</u>

<u>Citation in Summons</u>	<u>Description in Summons</u>	<u>Monetary Penalty</u>	<u>Community Service Hour Requirement</u>
04(t)(1)	<u>manner that damages/could damage it</u>		
56 RCNY § 1-04(t)(2)	<u>Climbing on park property</u>	\$50	1
56 RCNY § 1-04(u)	<u>Fee Evasion</u>	\$50	1
56 RCNY § 1-04(v)	<u>Rendering a road dangerous</u>	\$250	3
56 RCNY § 1-04(w)	<u>Trespass</u>	\$250	3
56 RCNY § 1-05(a)(1)	<u>Unauthorized special event/demonstration</u>	\$250	3
56 RCNY § 1-05(a)(2)	<u>Unpermitted special event/demonstration significantly interfering with ordinary park use</u>	\$500	6
56 RCNY § 1-05(b)	<u>Structure/stand/booth etc. without permit</u>	\$250	3
	<u>Unauthorized vending</u>	\$250	3
	<u>Unauthorized vending – repeat violation</u>	\$500	6
56 RCNY 1-05(c)	<u>Unauthorized posting/display of notices/signs/banners, etc.</u>	\$50	1
56 RCNY 1-05(d)(1)	<u>Unreasonable noise</u>	\$50	1
56 RCNY § 1-05(d)(2)	<u>Operating speaker device/sound amplifier without required permit</u>	\$140	2
56 RCNY § 1-05(d)(3)	<u>Playing instrument/radio, etc. during unauthorized hours</u>	\$140	2
56 RCNY § 1-05(d)(4)	<u>Unauthorized noise for advertising/commercial purposes.</u>	\$700	9
56 RCNY § 1-05(e)	<u>Commercial cinematic production without permit</u>	\$250	3
56 RCNY 1-05(g)	<u>Failure to comply with bathing restrictions</u>	\$50	1
56 RCNY 1-05(h)	<u>Failure to comply with fishing restrictions</u>	\$50	1
56 RCNY § 1-05(i)	<u>Operating bicycle, motor vehicle, pedicab, in manner that endangers person or property</u>	\$300	3
56 RCNY 1-05(i)	<u>Failure to comply with bicycle riding restrictions</u>	\$50	1
56 RCNY 1-05(i)	<u>Failure to comply with pedicab restrictions</u>	\$50	1
56 RCNY 1-05(j)	<u>Failure to comply with boating restrictions</u>	\$50	1
56 RCNY 1-05(k)	<u>Failure to comply with ice skating restrictions</u>	\$50	1

<u>Citation in Summons</u>	<u>Description in Summons</u>	<u>Monetary Penalty</u>	<u>Community Service Hour Requirement</u>
<u>56 RCNY 1-05(l)</u>	<u>Planting tree/flower/shrubbery/other vegetation without written approval</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-05(m)(1)</u>	<u>Failure to comply with fire restrictions</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-05(m)(2)</u>	<u>Unlawful disposal of flammable materials</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-05(n)</u>	<u>Unauthorized driving/parking/automotive work</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-05(q)</u>	<u>Failure to comply with horseback riding restrictions</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-05(r)(1)</u>	<u>Sports in unauthorized area</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY § 1-05(r)(2)</u>	<u>Unauthorized toy/model aviation, boating, automobiling</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-05(r)(3)(i)</u>	<u>Unauthorized skating/skiing/skateboarding/sled ding/coasting</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-05(r)(3)(ii)</u>	<u>Unauthorized skating/skiing/skateboarding/sled ding/coasting, endangering person or property</u>	<u>\$200</u>	<u>3</u>
<u>56 RCNY § 1-05(s)(1)</u>	<u>Failure to comply with exclusive children playground restriction</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-05(s)(2)-(3)</u>	<u>Failure to comply with exclusive senior citizen area/dog run restrictions</u>	<u>\$50</u>	<u>1</u>
<u>56 RCNY 1-05(t)</u>	<u>Unauthorized distribution or demonstration of products</u>	<u>\$100</u>	<u>2</u>
<u>56 RCNY 1-05(u)</u>	<u>Failure to comply with skating restrictions</u>	<u>\$50</u>	<u>1</u>
<u>Admin. Code § 24-218(a)</u>	<u>Causing or permitting unreasonable noise (7AM to 10PM)</u>	<u>1st - \$75</u> <u>2nd - \$150</u> <u>3rd - \$350</u>	<u>1st - 1</u> <u>2nd - 2</u> <u>3rd - 6</u>
	<u>Causing or permitting unreasonable noise (10PM to 7AM)</u>	<u>1st - \$75</u> <u>2nd - \$150</u> <u>3rd - \$350</u>	<u>1st - 1</u> <u>2nd - 2</u> <u>3rd - 6</u>

(b) A Respondent is eligible for Community Service if the Respondent appears in person before a Hearing Officer and admits to a Specified Violation alleged in a summons, or if the Specified Violation is sustained at a hearing.

(c) A Respondent is not eligible for Community Service if the Specified Violation arose during the conduct of commercial activity or activity carried out for a commercial purpose, except when the commercial activity alleged is a violation of Administrative Code section 18-146(c)(15).

§ 7-03 Choosing Community Service.

(a) Except as provided in 48 RCNY § 7-07, a Respondent eligible for Community Service as set forth in § 7-02 must appear before a Hearing Officer who will offer the Community Service option, either on the hearing date specified in the summons or prior to the hearing date. Respondent must make the choice of Community Service in person and cannot do so by remote method of adjudication such as mail, online or by phone.

(b) Where a Respondent has chosen the option of Community Service pursuant to subdivision (a), a Hearing Officer will issue a Decision that orders completion of the Community Service by a specified date and orders that the applicable monetary civil penalty be reinstated if Respondent fails to complete the Community Service by the specified date. The monetary civil penalty will be due and owing thirty (30) days from the date of the Decision or thirty-five (35) days if the Decision is mailed.

§ 7-04 Amount of Community Service in Place of a Monetary Civil Penalty.

The number of hours of Community Service imposed will correspond to the amount of the monetary civil penalty imposed for a Specified Violation, consistent with New York City Charter section 1049(4)(e). The number of hours of Community Service for each Specified Violation is in the chart set forth in § 7-02(a).

§ 7-05 Completion of Community Service.

(a) A Respondent must complete the Community Service assigned by the Community Service Provider.

(b) A Respondent must complete the Community Service by the date specified in the Decision, unless otherwise specified in a notice granting an extension, or an order issued pursuant to § 7-07.

(c) A Respondent may request an extension of time to complete the Community Service through the Community Service Provider up to one day prior to the deadline to complete the Community Service specified in the Decision.

(1) The Community Service Provider may grant a request for an extension for good cause shown. In determining whether there is good cause for an extension, the Community Service Provider will consider factors such as the following:

(A) The length of extension requested;

(B) The number of hours of Community Service to be completed and the amount of the monetary civil penalty that would be due;

- (C) The number of prior extensions requested;
- (D) Whether the need for the extension is due to factors beyond Respondent's control or due to extraordinary circumstances; and
- (E) Whether a portion of the Community Service has been completed.

(2) A denial of a request for an extension is not subject to appeal.

(3) A request for extension of time to complete Community Service will not extend the date by which a Respondent must pay the monetary civil penalty. If a request for an extension is denied, the Respondent must either complete the Community Service by the date specified in the Decision, or pay the applicable monetary civil penalty thirty (30) days from the date of the Decision or thirty-five (35) days if the Decision is mailed.

(d) Within two (2) days after the specified date of completion in a Decision, a notice granting an extension, or an order issued pursuant to § 7-07, the Community Service Provider must provide to Respondent either:

(A) a Certificate of Completion indicating that the Community Service was completed by the specified date; or

(B) a Certificate of Non-Completion indicating that the Community Service was not completed by the specified date.

(e) If a Respondent who receives a Certificate of Non-Completion believes that he or she has timely completed Community Service, he or she may contact OATH's Clerk's Office. The Clerk's Office will review any information or documentation submitted in support of Respondent's claim that Community Service was completed on time. If the Clerk's Office finds that Community Service was completed on time, Respondent will not have to pay the monetary civil penalty.

§ 7-06 Respondent Appeal of a Decision After Requesting Community Service

(a) If a Respondent who has chosen to perform Community Service instead of paying a monetary civil penalty timely appeals the Decision sustaining the Specified Violation, pursuant to § 6-19 of this Title, the part of the Decision ordering completion of Community Service will be stayed until a decision on the appeal is issued. A Respondent will not be required to complete the Community Service or pay the applicable monetary civil penalty in order to file an appeal.

(b) If a Respondent's appeal is denied, the Respondent must either complete the Community Service within twenty (20) days of the date of the appeal decision, or pay the monetary civil penalty, unless otherwise specified in a notice granting an extension.

§ 7-07 Choosing Community Service After a Specified Violation is Sustained on Agency's Appeal.

- (a) If a decision on an appeal sustains a Specified Violation, reversing a Hearing Officer's Decision to dismiss that violation, a Respondent may choose to perform Community Service instead of paying the monetary civil penalty. Within ten (10) days of the date of the appeal decision, the Respondent must inform OATH of his or her decision to perform Community Service by filing a request, on a form provided by OATH, with the Clerk's Office. If the Respondent fails to do so within ten (10) days of the date of the decision on the appeal, the monetary civil penalty will be due and owing immediately.
- (b) If the Respondent chooses to perform community service, Respondent will receive an order granting a timely request and imposing a deadline to complete the Community Service. The monetary civil penalty will be due and owing if the Respondent fails to perform the Community Service by the deadline in the order.