

**CITYWIDE ADMINISTRATIVE PROCEDURE ACT
REGULATORY AGENDA FY 2021
NEW YORK CITY DEPARTMENT OF SANITATION**

PURSUANT TO SECTION 1042 OF THE NEW YORK CITY CHARTER, THE NEW YORK CITY DEPARTMENT OF SANITATION SETS FORTH BELOW ITS REGULATORY AGENDA FOR THE CITY'S FISCAL YEAR OF 2021 COMMENCING JULY 1, 2020 THROUGH JUNE 30, 2021:

SUBJECT AREA: RULES GOVERNING REQUIREMENTS RELATING TO THE PROVISION OF WASTE COLLECTION SERVICE BY CERTAIN PRIVATE HAULING COMPANIES TO BUSINESS ESTABLISHMENTS WITHIN COMMERCIAL WASTE ZONES

REASONS FOR RULE: In November 2019 comprehensive waste reform legislation to reform the private carting industry in New York City was signed into law. Local Law 199 of 2019 authorizes the Department to create a commercial waste zone system in New York City for the collection and removal of solid waste and recyclable materials generated by businesses in such newly-created waste collection zones throughout the City. The Department may promulgate new rules that are consistent with the anticipated new local law as may be necessary.

SUMMARY OF ANTICIPATED CONTENT: Pursuant to Local Law 199, the Department may promulgate rules under Title 16 of the Rules of the City of New York to carry out the mandates of Local Law 199, including rules governing customer service for commercial establishments, operational requirements for private carting companies, health and safety protective measures for private carting employees, and recycling and organics requirements, following its creation of 20 designated commercial waste zones across New York City in the first half of 2020.

SUMMARY OF OBJECTIVES: The Department may promulgate rules governing private carter and business customer practices consistent with the implementation plan for comprehensive reform of the commercial waste industry. The rules will improve and enhance the City's regulatory practices pertaining to commercial waste collection, transport and disposal in the City.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Private waste hauling carters and generators of commercial waste who receive private carting collection service.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Title 16 of the Rules of the City of New York; and
- (b) City Administrative Procedure Act: New York City Charter Section 1043.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

AGENCY CONTACT: New York City Department of Sanitation
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Robert Orlin, Deputy Commissioner
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SUBJECT AREA: RULES GOVERNING REQUIREMENTS FOR CERTAIN LARGE RESIDENTIAL BUILDINGS TO INSTALL A WASTE CONTAINERIZATION SYSTEM

REASONS FOR RULE: Pursuant to Section 753 of the New York City Charter, the Sanitation Commissioner may adopt rules governing the manner under which refuse shall be sorted, stored and collected.

SUMMARY OF ANTICIPATED CONTENT: Across New York City the construction of large, high-rise apartment buildings containing hundreds of new dwelling units continues to flourish. As a result, the Department continually adjusts its collection routes to add such new buildings into the City's refuse collection system. When the buildings are designed there is no mandatory requirement that such buildings consider waste management planning and incorporate measures for managing the substantial amount of refuse and recyclables generated by residents of such buildings. There are negative impacts associated with the placement of piled bags of refuse generated at such buildings that become placed at the curb awaiting Department collection.

SUMMARY OF OBJECTIVES: The Department may promulgate rules requiring owners and/or managing agents of certain new or altered residential multiple dwellings to install a waste containerization system for the management of waste generated at such building unless the Department determines that collection service through this system is not feasible.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Owners and managing agents of large multiple dwellings, and generators of residential waste.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Subchapter B of Chapter 9 of Title 16 of the Rules of the City of New York;
- (b) Chapter 1 of Title 16 of the Rules of the City of New York; and
- (c) City Administrative Procedure Act: New York City Charter Section 1043.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

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SUBJECT AREA: RULES GOVERNING REQUIREMENTS FOR CERTAIN LARGE RESIDENTIAL BUILDINGS TO SUBMIT A BUILDING WASTE MANAGEMENT PLAN FOR DEPARTMENT APPROVAL

REASONS FOR RULE: Pursuant to Section 753 of the New York City Charter, the Sanitation Commissioner may adopt rules governing the manner under which refuse shall be sorted, stored and collected.

SUMMARY OF ANTICIPATED CONTENT: Across New York City the construction of large, high-rise apartment buildings containing hundreds of new dwelling units continues to flourish. As a result, the Department continually adjusts its collection routes to add such new buildings into the City's refuse collection system. When the buildings are designed there is no mandatory requirement that such buildings consider waste management planning and incorporate measures for managing the substantial amount of refuse and recyclables generated by residents of such buildings. There are negative impacts associated with the placement of piled bags of refuse generated at such buildings that become placed at the curb awaiting Department collection.

SUMMARY OF OBJECTIVES: The Department may promulgate rules requiring owners and/or managing agents of certain new or altered residential multiple dwellings to submit a building waste management plan for approval by the Department.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Owners and managing agents of large multiple dwellings, and generators of residential waste.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Section 16-120 of the Administrative Code of the City of New York;
- (b) Chapter 1 of Title 16 of the Rules of the City of New York; and
- (c) City Administrative Procedure Act: New York City Charter Section 1043.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

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SUBJECT AREA: RULES GOVERNING THE ESTABLISHMENT OF A PENALTY MITIGATION PROGRAM FOR CERTAIN FOOD SERVICE ESTABLISHMENTS WHICH DONATE EXCESS FOOD

REASONS FOR RULE: Local Law 74 of 2018 requires the Sanitation Commissioner to review violations enforced by the Department against certain small businesses to establish a penalty waiver program.

SUMMARY OF ANTICIPATED CONTENT: Local Law 74 of 2018 was enacted as part of efforts by the Administration and the City Council to improve the local regulatory climate for small businesses. Specifically, Local Law 74 requires the Sanitation Commissioner to review violations enforced by the Department and study the feasibility of establishing a program for which civil penalties imposed by notices of violation issued to food service establishments and retail establishments may be waived through a penalty mitigation program. Such penalty mitigation program would allow the waiver of payment of civil penalties for a food service establishment that donates its excess food to a non-profit organization, and a retailer that provides public access to its bathrooms.

The Department reviewed all violations it currently enforces and determined one such infraction that would be feasible for penalty mitigation relating to sign requirements for employees instructing them how to source separate food waste material in large food service establishments in the City's commercial organics program.

SUMMARY OF OBJECTIVES: The Department may promulgate a rule allowing certain food generator businesses covered by the city's commercial organics program to waive into the penalty mitigation program contemplated under Local Law 74 by donating its excess food to a non-profit entity. This is consistent with the Department's goal to facilitate food recovery for food-challenged New Yorkers, reduces the environmental impact on the City's food system, and is an appropriate link between the violation infraction and penalty waiver activity.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Commercial food waste generators and private carters that furnish collection service to them.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Section 1-10 of Title 16 of the Rules of the City of New York governing commercial organics recycling requirements;
- (b) Section 16-306 (c)(1)(iv) of the New York City Administrative Code; and
- (c) City Administrative Procedure Act: New York City Charter Section 1043.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

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SUBJECT AREA: REFUSE AND RECYCLING COLLECTION FROM RESIDENTIAL PROPERTIES ON PRIVATELY OWNED STREETS AND ALLEYS

REASONS FOR RULE: Pursuant to Section 753 of the New York City Charter, the Commissioner may adopt rules governing the manner under which such refuse shall be arranged or sorted, the time when it will be collected and the place at which it shall be deposited for collection.

SUMMARY OF ANTICIPATED CONTENT: The Department currently enters privately owned property, such as private streets, alleys and parking lots, to provide refuse and recycling collection services from residential properties, provided that the Department has first obtained a signed written agreement that indemnifies the City together with insurance. The agreement only covers the collection and removal of refuse and recyclable materials and does not obligate the Department to provide snow removal services to these privately-owned areas. Failure to sign an indemnity agreement and provide the requisite insurance for potentially hazardous conditions that can impact worker safety and equipment results in the Department requiring that residents of these private areas set out all their refuse and recyclable materials in an accessible public area for collection.

SUMMARY OF OBJECTIVES: The Department may amend section 1-02 to Title 16 of the Rules of the City of New York to incorporate this practice regarding the provision of collection service in these areas.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Title 16 of the Rules of the City of New York;
- (b) Section 753 of the New York City Charter; and
- (c) City Administrative Procedure Act: Section 1043 of the New York City Charter.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Owners and/or managing agents of residential properties that currently or might request that the Department provide collection service on privately owned property.

SCHEDULE FOR ADOPTION: Fiscal Year 2020.

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SUBJECT AREA: COMMERCIAL WASTE REMOVAL -- RULES RELATING TO COMMERCIAL GENERATORS OF "INFREQUENT" OR "INSIGNIFICANT AMOUNTS" OF WASTE PURSUANT TO SECTION 16-116(c) OF THE NEW YORK CITY ADMINISTRATIVE CODE:

REASONS FOR RULE: Section 16-116(a) of the New York City Administrative Code requires commercial establishments in New York City to arrange for the removal of solid waste by a licensed private carter or by obtaining a trade waste permit from the New York City Business Integrity Commission allowing the establishment to dispose of its own solid waste. Section 16-116(c) authorizes the Sanitation Commissioner to promulgate rules exempting from this requirement any commercial establishment that generates infrequent or insignificant amount of waste. Section 1-06 of Title 16 of the Rules of the City of New York currently allows commercial establishments generating less than 20 gallons of trade waste within a seven day period to be exempt from the requirements outlined in Section 16-116(a) and (b) of the New York City Administrative Code. This has resulted in some commercial establishments improperly placing out their trade waste material at the curb for the Department to collect, or improperly placing such material in Department corner litter baskets.

SUMMARY OF ANTICIPATED CONTENT: A proposed rule would require that all commercial establishments, regardless of the quantity of waste or recyclable material generated, must retain a private carter to collect and remove trade waste generated at such establishment for proper disposal.

SUMMARY OF OBJECTIVES: The Department may amend section 1-06 of Title 16 of the Rules of the City of New York to clarify that all commercial establishments, regardless of the amount of waste generated, must arrange with a private carter for removal of such waste and recyclable material.

RELEVANT FEDERAL, STATE AND LOCAL LAWS OR RULES APPLICABLE TO THIS PROPOSED RULE:

- (a) Section 1-06 of Title 16 of the Rules of the City of New York;
- (b) Section 16-116 of the Administrative Code of the City of New York;
- (c) Section 753(a) of the New York City Charter relating to the Commissioner's authority to promulgate rules governing the removal of solid waste;
- (d) City Administrative Procedure Act: New York City Charter Section 1043.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE:
Owners, lessees and/or persons in control of any commercial establishment.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

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SUBJECT AREA: RULES RELATING TO ESTABLISHING PROCEDURES ALLOWING THE PUBLIC TO SUBMIT PETITIONS FOR PROPOSED RULEMAKING BY AGENCIES

REASONS FOR RULE: The Citywide Administrative Procedure Act pursuant to § 1043(g) of the New York City Charter provides that every agency's rules include a procedure by which citizens may submit proposals for rulemaking by various agencies. Accordingly, the Department may amend its rules by outlining the procedures for the public to submit to the Department an agency petition for rulemaking and the procedures for agency consideration and disposition of such Petitions.

SUMMARY OF ANTICIPATED CONTENT: The Department may amend its rules by adding a section that will allow citizens to submit proposals for rulemaking to the Department for consideration. Should the Department choose to adopt any such proposal, the Department would alert the person submitting the petition, together with a timeline for adoption of a proposed rule. If the Department chooses to deny such a proposal, the Department would notify the person making the petition and a reason for its denial.

SUMMARY OF OBJECTIVES: This rule will allow members of the public to submit proposals for rulemaking to the Department as provided by the Citywide Administrative Procedure Act.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Title 16 of the Rules of the City of New York; and
- (b) City Administrative Procedure Act: New York City Charter Section 1043.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Individuals and businesses.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

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SUBJECT AREA: ENFORCEMENT—PENALTY SCHEDULE FOR VIOLATIONS RETURNABLE TO THE OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS, ENVIRONMENTAL CONTROL BOARD

REASONS FOR RULE: 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.

SUMMARY OF ANTICIPATED CONTENT: The Department will amend its rule to 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. In conjunction with this rule, OATH ECB will remove the existing agency penalty schedule from its rule.

SUMMARY OF OBJECTIVES: 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.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Title 16 of the Administrative Code of the City of New York;
- (b) Title 16 of the Rules of the City of New York;
- (c) Section 753 of the New York City Charter; and
- (d) City Administrative Procedure Act: New York City Charter Section 1043.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Individuals and businesses.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

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SUBJECT AREA: VARIOUS PLAIN LANGUAGE AMENDMENTS

REASONS FOR RULE:

Working with the City’s rulemaking agencies, the Law Department, OMB, and the Office of Operations conducted a review of the City’s existing rules, identifying those rules that should 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.

SUMMARY OF ANTICIPATED CONTENT:

The Department will modify its rules to incorporate plain language changes that were identified during the retrospective rules review conducted by the City.

SUMMARY OF OBJECTIVES: Modification of such rules will help to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance.

RELEVANT FEDERAL, STATE AND LOCAL LAWS AND RULES APPLICABLE TO PROPOSED RULE:

- (a) Title 16 of the Administrative Code of the City of New York;
- (b) Title 16 of the Rules of the City of New York;
- (c) Section 753 of the New York City Charter; and
- (d) City Administrative Procedure Act: New York City Charter Section 1043.

INDIVIDUALS AND ENTITIES LIKELY TO BE AFFECTED BY PROPOSED RULE: Individuals and businesses.

SCHEDULE FOR ADOPTION: Fiscal Year 2021.

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