

**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 to repeal in their entirety the following penalty schedules: the Recycling – Sanitation Collection Rules Penalty Schedule, the Sanitation Asbestos Rules Penalty Schedule, the Sanitation Penalty Schedule, and the Vehicle and Traffic Law Penalty Schedule, which contain penalties for summonses issued by the New York City Department of Sanitation (DSNY). OATH also proposes to repeal certain provisions of its Environmental Conservation Law Penalty Schedule and its Public Safety Graffiti Penalty Schedule, which are also enforced by DSNY.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place **from 2:00 p.m. through 3:00 p.m. on September 20, 2021**. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, visit:
<https://nyc-oath.webex.com/nyc-oath/j.php?MTID=m1051c02705706f91aace29674de98a40>

When prompted, enter Meeting ID: **179 441 3494**
Password: **7mBzdPXDj76**

- **Phone.** For access, dial: **1-646-992-2010**
When prompted, enter Meeting ID: **179 441 3494##**

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: Joy Thompson, Assistant General Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Joy Thompson, Assistant General Counsel, at 212-361-1900.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing may speak for up to three minutes. Please access the public hearing by internet video and audio or by telephone using the instructions above.

Is there a deadline to submit written comments? You may submit written comments until **5:00 p.m. on September 20, 2021.**

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 may contact us by email at enolan@oath.nyc.gov or by telephone at (212) 436-0708 to request a reasonable accommodation. Please tell us by **September 17, 2021.**

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/>. Shortly after the public hearing, a summary of oral comments and copies of all written comments will be available to the public on OATH's website, at <https://www1.nyc.gov/site/oath/about/legal-resources-and-rule-making.page>.

What authorizes OATH to make this rule? Sections 1043, 1049, and 1049-a of the New York City Charter. This proposed rule is included in OATH's regulatory agenda for this Fiscal Year.

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

What laws govern the rulemaking process? This notice is made according to the requirements of Section 1043 of the New York City Charter.

Statement of Basis and Purpose of Proposed Rule

Pursuant to the authority set forth in sections 1043, 1049, and 1049-a of the New York City Charter, OATH proposes to repeal in their entirety the following penalty schedules: the Recycling – Sanitation Collection Rules Penalty Schedule, the Sanitation Asbestos Rules Penalty Schedule, the Sanitation Penalty Schedule, and the Vehicle and Traffic Law Penalty Schedule. These schedules are currently codified in sections 3-120, 3-121, 3-122, and 3-125 of title 48 of the Rules of the City of New York, and contain penalties for summonses issued by the New York City Department of Sanitation (DSNY). OATH also proposes to repeal certain provisions of its Environmental Conservation Law Penalty Schedule, codified in section 3-105 of title 48 of the Rules of the City of New York, and its Public Safety Graffiti Penalty Schedule, codified in section 3-119 of title 48 of the Rules of the City of New York, which are also enforced by DSNY.

Sections 1 and 2. OATH proposes to repeal from the Environmental Conservation Law Penalty Schedule, codified in section 3-105 of title 48 of the Rules of the City of New York, a violation of subdivision (3) of section 27-1701 of the New York State Environmental Conservation Law for improper disposal of a lead acid battery. OATH also proposes to repeal from the Public Safety Graffiti Penalty Schedule, codified in section 3-119 of title 48 of the Rules of the City of New York, a violation of subdivision (b) of section 10-117.3 of the City's Administrative Code for failure to remove graffiti.

Sections 3 through 6: OATH proposes to repeal in their entirety the following penalty schedules:

- Recycling – Sanitation Collection Rules Penalty Schedule, codified in section 3-120 of title 48 of the Rules of the City of New York. This penalty schedule contains recycling violations of sections 1-08, 1-09, and 1-10 of title 16 of the Rules of the City of New York applicable to residential premises, city agencies and institutions, and private carter-collected waste. This penalty schedule also contains a violation of subdivision (a) of section 16-324 of the Administrative Code concerning repeat recycling violations.
- Sanitation Asbestos Rules Penalty Schedule, codified in section 3-121 of title 48 of the Rules of the City of New York. This penalty schedule contains violations of chapter 8 of title 16 of the Rules of the City of New York relating to the storage, transportation, and disposal of waste containing asbestos.
- Sanitation Penalty Schedule, codified in section 3-122 of title 48 of the Rules of the City of New York. This penalty schedule contains violations of titles 10 and 16 of the Administrative Code; chapters 1, 3, 4, 5, 11, and 17 of title 16 of the Rules of the City of New York; and section 397-a of the New York State General Business Law.
- Vehicle and Traffic Law Penalty Schedule, codified in section 3-125 of title 48 of the Rules of the City of New York. This penalty schedule contains violations of New York State Vehicle and Traffic Law, relating to abandoning a vehicle and the illegal placement of handbills on windshields or under windshield wipers of motor vehicles.

This rule change is one step in a larger effort to repeal all penalty schedules in OATH's rules codified in subchapter G of chapter 3 of title 48 of the RCNY, so that these provisions can be incorporated into the rules of the agencies having rulemaking and policymaking authority over the laws underlying the violations. Such repeals will also serve OATH's core function of adjudication and help alleviate the false public perception that OATH is an enforcement agency, rather than a neutral tribunal.

Earlier this year, DSNY proposed a related rule amendment featuring a penalty schedule that would incorporate the violations from the above-referenced penalty schedules.

Although OATH is empowered to impose penalties under the New York City Charter and has until recent years promulgated penalty schedules, the regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violation of the rules and of the laws within their jurisdiction based on the severity of each violation and its effect on City residents. Moving the penalty schedule to the enforcement agencies' rules will also make it easier for the public to find the penalties, which will be located within the same chapter as the rules setting forth the violations alleged in many summonses. Finally, the proposed rule repeals will speed up the rulemaking process by eliminating the need for the Environmental Control Board's approval of proposed or amended penalties for violations that have already been established by the legislature or that have already been established through the City

Administrative Procedure Act process by the enforcement agency. The public will still have the opportunity to comment on proposed penalties during that process.

Deleted material is in [brackets].

New material is underlined.

Section 1. The row beginning NYS Env. Cons. Law 27-1701(3) in the table in section 3-105 of the Rules of the City of New York is amended to read as follows:

Section/Rule	Description	Penalty	Default
[NYS Env. Cons. Law 27-1701(3)]	[Improper disposal of lead acid battery]	[50]	[50]

§ 2. The row beginning A.C. 10-117.3(b) in the table in section 3-119 of title 48 of the Rules of the City of New York is amended to read as follows:

Section/Rule	Description	Penalty	Default
[A.C. 10-117.3(b)]	[Failure to remove graffiti]	[150]	[300]

§ 3. Section 3-120 of title 48 of the Rules of the City of New York, relating to a recycling - sanitation collection rules penalty schedule, is REPEALED.

§ 4. Section 3-121 title 48 of the Rules of the City of New York, relating to a sanitation asbestos rules penalty schedule, is REPEALED.

§ 5. Section 3-122 of title 48 of the Rules of the City of New York, relating to a sanitation penalty schedule, is REPEALED.

§ 6. Section 3-125 of title 48 of the Rules of the City of New York, relating to a vehicle and traffic law penalty schedule, is REPEALED.

**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: Repeal of Certain Sanitation Penalty Schedules

REFERENCE NUMBER: 2019 RG 026

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: August 12, 2021

**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: Repeal of Certain Sanitation Penalty Schedules

REFERENCE NUMBER: OATH-ECB-106

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

August 12, 2021
Date