

New York City Department of Sanitation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? As part of the City's commitment to cleaning up New York City streets and reducing food sources for rats, DSNY is proposing to amend its rule governing the time for placing solid waste and recyclable materials out at the curb for collection.

When and where is the hearing? DSNY will hold a public hearing on the proposed rule. The public hearing will take place on November 18, 2022, via Webex at 9:30 a.m. using the following link:

<https://departmentofsanitationnewyork.my.webex.com/departmentofsanitationnewyork.my/j.php?MTID=m9f4276d56e81d2728812d66c46adfd12>

Friday, Nov 18, 2022 9:30 am

Meeting number: 2633 801 7914

Password: TubpXV6ny27 (88279866 from phones and video systems)

Join by video system

Dial 26338017914@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-408-418-9388 United States Toll

Access code: 263 380 17914

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 Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dsny.nyc.gov.
- **Mail.** You can mail written comments to DSNY, 125 Worth Street, Room 710, New York, NY 10013.
- **By speaking 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 emailing mliquori@dsny.nyc.gov by November 17, 2022, at 5:00 p.m. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline for submitting written comments is November 18, 2022.

What if I need assistance to participate in the hearing? To request a reasonable accommodation related to a disability, including a sign language interpreter, you must contact the Department by email to eluna@dsny.nyc.gov, or by telephone at 646-885-4996 by November 10, 2022. Advance notice is required to allow sufficient time to arrange the accommodation.

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 at 125 Worth Street, Room 710, New York, NY 10013 and on DSNY's website.

What authorizes DSNY to make this rule? Sections 753 and 1043(a) of the New York City Charter and section 16-120 of the New York City Administrative Code Section 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 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

New York City became noticeably dirtier during the pandemic. While some of this was due to behavioral change and budget cuts, it also highlighted a need to update the Department's rules associated with waste setout for the first time in decades.

Department rules currently allow the placement of waste at the curb in plastic bags beginning at 4:00 p.m. for residential properties and one hour before closing for commercial properties – creating unsanitary conditions, attracting rats and other pests and impeding pedestrian flow. This has a substantial impact on quality of life in all five boroughs of New York City and directly counteracts the City's efforts to create cleaner, more vibrant neighborhoods. The current 4pm setout time for residential waste is the earliest of any major American city, and leaves trash on the street for 14+ hours in a given 24-hour period.

A 2020 audit on NYC cleanliness by the Office of the New York State Comptroller found that 70 percent of surveyed streets and 59 percent of sidewalks were dirty, based on the City's own street cleanliness scorecard criteria. In addition, rodent complaints have increased from pre-pandemic lows to record highs in 2022. Trash bags placed out on the street for 14+ hours at a time contribute to these and other issues that affect public health, public safety, and quality of life for all New Yorkers.

Section 16-120 of the New York City Administrative Code requires that all solid waste and recyclables be kept inside a building or at the rear of a building prior to collection time by the Department of Sanitation (DSNY) or a private carter.

Residential Waste:

New York City currently has the earliest setout time for residential waste of any major city in the United States and is one of only a few that does not require trash to be set out in receptacles. Boston, Chicago, Los Angeles and San Francisco are among the vast majority of cities that require waste be set out for collection in lidded receptacles. Philadelphia is the only major U.S. city that allows waste be set out for collection in bags, but it requires that waste be setout as late as 8:00 p.m. in the central business district and 7:00 p.m. in other parts of the city.

This rule will amend the applicable set-out times, based on the number of dwelling units, for solid waste and recyclables for DSNY collection from the current 4:00 p.m. time to a later time based on how the materials are placed out at the curb for collection.

For those using receptacles with tight-fitting lids, such receptacles containing solid waste and recyclables may be placed at the curb for collection by DSNY no earlier than 6:00 p.m. on the day before their scheduled collection. Those using bags may place out their materials at the curb for collection by DSNY no earlier than 8:00 p.m. on the day before their scheduled collection. In both cases, solid waste and recyclables must be set out before midnight to allow for Department collection beginning at 12:01 a.m. on the scheduled collection day.

The rule also restates the requirements in Section 16-120(c) of the New York City Administrative Code regarding the removal of receptacles from the curb following collection. This is included for the purposes of clarity and to consolidate all requirements related to the setout and removal of receptacles in one rule.

DSNY also proposes to create an enrollment-based Multiunit Building Collection Program for multiple dwellings that contain nine or more dwelling units. This program will allow approved buildings with on-site maintenance or janitorial staff, to opt to set out waste for collection between 4:00 a.m. and 7:00 a.m. on the day of collection rather than after 6:00 p.m. (if in a container with a lid) or 8:00 p.m. the night before collection. This will provide flexibility to building staff in terms of changes to scheduled shifts necessary to implement this rule change.

To enroll in this program, an owner, or his or her agent, of a multiunit building would be required to submit an application to DSNY during the annual program application period (January 2 – January 31). DSNY will review these applications and either approve or deny them in writing by the following March 1, and enrollment will be effective April 1. Buildings will have their enrollment automatically renewed each year unless they opt out during the annual program application period. DSNY may terminate a building's enrollment in this program at any time with 30 days notice if the building's participation in the program constitutes a public nuisance or if the building fails to comply with the requirements.

Commercial Waste

Currently, DSNY rules allow commercial establishments to set out trash and recycling one hour before closing or two hours before a scheduled collection. Because these rules are difficult to enforce, there is a large amount of non-compliance. As a result, there is a significant amount of commercial trash and recycling bags at the curb during daytime hours.

The proposed rule also amends the applicable set-out times for solid waste and receptacles that are collected by private carters based on how materials are placed out at the curb for collection.

Under the proposed rules, waste may be placed out for collection within one hour of closing, provided that the scheduled collection occurs before the establishment next reopens for business and only if such materials are placed out for collection in receptacles with tight-fitting lids.

Those establishments that place materials out for collection in bags, regardless of the time they close, may place such materials at the curb no earlier than 8:00 p.m..

The proposed rules would not affect containerized or off-street collection, including collection that takes place in a loading dock.

These proposed rules establish a uniform 8:00 p.m. time that bags can be set out by either residential or commercial properties. These changes will improve quality of life for New Yorkers, clarify enforcement practices, and reduce food sources for rats on our streets.

DSNY's authority for this rule is found in sections 753 and 1043(a) of the New York City Charter and section 16-120 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

"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 1-02 of Chapter 1 of Title 16 of the rules of the city of New York is amended to read as follows:

(a) Subject to the conditions and fees set forth in sections 1-02.2, 1-02.3, and 1-03 of this Chapter, the Department will provide collection service for ashes and solid waste generated by occupants of residential buildings, public buildings and special use buildings, excluding, however, all commercial occupants of said residential buildings unless such service is otherwise authorized by section 1-03 of this Chapter.

§ 2. Subdivisions (a) and (b) of section 1-02.1 of Title 16 of the rules of the city of New York are amended to read as follows:

(a) [Occupants] Except as otherwise authorized in section 1-02.3 of this chapter, occupants of residential buildings, public buildings, and special use buildings, except commercial occupants of residential buildings where Department collection service is not otherwise authorized by section 1-03 of this chapter, shall [not place receptacles or bags containing solid waste or recyclables out at the curb for collection by the Department earlier than 4:00 p.m. on the day before scheduled collection. Receptacles containing solid waste that are set out at the curb for collection by the Department must not exceed fifty-five gallons in size.] place their receptacles or bags containing solid waste or recyclables out at the curb for collection by the Department as follows:

1. Except as provided in paragraph (2) of this subdivision, materials must be placed out at the curb no earlier than 8:00 p.m. on the day before scheduled collection and no later than 12:00 a.m. on the scheduled collection day;

2. Materials placed out for collection in receptacles with a tight-fitting lid must be placed out at the curb no earlier than 6:00 p.m. on the day before scheduled collection and no later than 12:00 a.m. on the scheduled collection day;

3. Receptacles containing solid waste that are set out at the curb must not exceed fifty-five gallons in size;

4. Receptacles containing designated recyclable materials that are set out at the curb must comply with the container specifications found in section 1-08 of title 16 of the rules of the city of New York; and

5. All receptacles shall be removed before 9:00 p.m. on the day of collection, or if such collection occurs after 4:00 p.m., then before 9:00 a.m. on the day following collection.

(b) A commercial establishment that receives collection from a private carter [while the establishment is closed may place receptacles or bags containing solid waste or recyclables out at the curb for collection within one hour of closing, provided that the scheduled collection occurs before the establishment next reopens for business. If collection is performed while an establishment is open, receptacles or bags containing solid waste or recyclables may be placed out at the curb for collection no earlier than two hours before the scheduled collection time.] shall place receptacles or bags containing solid waste or recyclables out at the curb for private carter collection as follows:

1. Except as provided in paragraph (2) of this subdivision, materials must be placed out at the curb no earlier than 8:00 p.m. prior to scheduled collection provided that such collection takes place later that same day or on the day immediately following;

2. Materials placed out for collection in receptacles with a tight-fitting lid may be placed out for collection at the curb no earlier than one hour before closing, provided that the scheduled collection occurs before the establishment next reopens for business;

3. Any receptacle placed out for collection must be removed from the curb no later than the time the commercial establishment next reopens for business; and

4. The requirements of this subdivision do not apply to commercial establishments that receive off-street collection, including collection from inside a loading dock.

§ 3. Chapter 1 of Title 16 of the rules of the city of New York is amended by adding a new Section 1-02.3, to read as follows:

§ 1-02.3 Multiunit Building Collection Program

(a) *Definitions.* For the purposes of this section:

1. A “multiunit building” means a multiple dwelling that receives Department collection service and has nine or more dwelling units; and

2. The “program application period” means the period of time beginning January 2 and ending January 31 of each calendar year.

(b) *Program Requirements.* An owner, or his or her agent, of a multiunit building may apply to the Department for enrollment in the multiunit building collection program to allow approved multiunit buildings to place their receptacles or bags containing solid waste or recyclables out at the curb for collection by the Department as follows:

1. Materials must be placed out at the curb no earlier than 4:00 a.m. on the day of collection and no later than 7:00 a.m. on the day of collection.

2. Receptacles containing solid waste that are set out at the curb must not exceed fifty-five gallons in size;

3. Receptacles containing designated recyclable materials that are set out at the curb must comply with the container specifications found in section 1-08 of title 16 of the rules of the city of New York; and

4. All receptacles shall be removed before 9:00 p.m. on the day of collection, or if such collection occurs after 4:00 p.m., then before 9:00 a.m. on the day following collection.

(c) *Application and Enrollment Process.* The multiunit building program shall be an ongoing program providing an annual application period for new enrollees and an automatic annual renewal for multiunit buildings already enrolled in the program in compliance with program requirements. The multiunit building program enrollment and approval process is as follows:

1. An owner, or his or her agent, of a multiunit building may submit a new application to the Department to enroll in the multiunit building collection program during the program application period in accordance with the requirements of subdivision (d) of this section.

2. The Department shall have until March 1 to review any new multiunit building applications submitted during the program application period. The Department may deny an application for the multiunit building collection program if participation by a multiunit building in such program would constitute a public nuisance, or if such building has failed to comply with the requirements of this program during a prior enrollment in the three years preceding an application.

3. Applicants denied by the Department for enrollment in the multiunit building collection program shall be notified in writing no later than March 1 of the calendar year in which the application is submitted. Buildings denied by the Department shall set out materials for collection pursuant to the requirements in section 1-02.1. If an application or renewal is denied by the Department, the applicant will have 30 days to submit an appeal in writing to the Commissioner. The Commissioner shall respond to this appeal in a reasonable time, and such decision will be deemed a final determination. Those buildings that are currently enrolled in the multiunit building collection program shall be allowed to continue participation in such program pending a final determination by the Department.

4. Applicants approved by the Department for enrollment in the multiunit building collection program shall be notified in writing no later than March 1 of the calendar year in which the application is submitted. Such approved multiunit buildings shall comply with the requirements set forth in subdivision (b) of this section beginning on April 1 of the calendar year in which the application is submitted.

5. Approved enrollment in the multiunit building collection program shall renew automatically each subsequent year, unless terminated by an owner, or his or her agent, or by the Department pursuant to subdivision (e) of this section. If a renewal is denied by the Department, the applicant will have 30 days to submit an appeal in writing to the Commissioner. The Commissioner shall respond to this appeal in a reasonable time, and such decision will be deemed a final determination. Those buildings that are currently enrolled in the multiunit building collection program shall be allowed to continue participation in such program pending a final determination by the Department.

(d) *Application Requirements.* New applications to enroll in the multiunit building collection program must be submitted by the owner, or his or her agent, of a multiunit building to the Department in a form and format determined by the Department during the program application period. There is no fee to enroll. Such application shall include:

1. the name and contact information of the owner of such building, and his or her agent, if applicable;
2. the number of dwelling units in such building;
3. an attestation that the owner of such building, or his or her agent, agrees to place receptacles or bags containing solid waste or recyclables at the curb consistent with subdivision (b) of this section; and
4. any additional information deemed necessary by the Department.

(e) *Termination of enrollment.*

1. At any point, upon 30 days written notice to an owner, or his or her agent, the Department may terminate the participation in the multiunit building collection program of any building that causes a public nuisance or who fails to comply with the requirements of this program.
2. An owner, or his or her agent, of a building enrolled in the multiunit building collection program may opt to terminate participation in this program only during the program application period. Such termination shall be effective beginning April 1 thereafter.
3. When a building enrolled in the multiunit building collection program has a change in ownership, the owner that enrolled the building in the program shall notify the Department in writing to cancel enrollment in the program thirty days prior to the closing of the sale of the building. Cancellation of enrollment in the program shall be effective upon receipt of the notice. The enrollment cancellation notice to the Department shall include the name and contact information of the new building ownership.

(f) Annual notification. The Department shall notify, in writing, the owners, or their agents, of multiunit buildings enrolled in this program of their obligations under this program no later than December 31 each year that they are enrolled.

**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: Permissible Times for Placement of Refuse and Recyclable Materials on Curb for Pickup

REFERENCE NUMBER: 2022 RG 062

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: October 3, 2022

**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: Permissible Times for Placement of Refuse and Recyclable Materials on Curb
for Pickup**

REFERENCE NUMBER: DSNY-30

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 the violations pose significant risks to public health and safety, environmental hazards, and/or arise from consequences of immediate events, which make a cure period impracticable under the circumstances.

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

October 3, 2022
Date