

New York City Department of Sanitation

NOTICE OF ADOPTION OF FINAL RULE ESTABLISHING REQUIREMENTS RELATING TO INFREQUENT GENERATORS OF COMMERCIAL WASTE AND WASTE SURVEYS

NOTICE IS HEREBY GIVEN in accordance with the requirements of Section 1043 of the New York City Charter and pursuant to the authority vested in the Commissioner of the Department of Sanitation by sections 753 and 1043(a) of the New York City Charter and Titles 16 and 16-B of the New York City Administrative Code that the Department adopts the following rule establishing requirements for commercial waste customers and private carters. The Department published a Notice of Opportunity to Comment on the proposed rule in the *City Record* on December 5, 2024. On January 6, 2025, the Department held a public hearing on the proposed rules.

Statement of Basis and Purpose

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 (BIC) allowing the establishment to dispose of its own solid waste. Section 16-116(b) requires commercial establishments to post a sign noting the day and time that such establishment's trade waste is picked up or, if such establishment removes its own waste, the sign must note the registration number issued by the BIC. Section 16-116(c) exempts from these requirements any commercial establishment that generates infrequent or insignificant amount of waste and authorizes the Sanitation Commissioner to promulgate rules determining what constitutes infrequent waste or insignificant amounts of waste. Section 1-06 of Title 16 of the Rules of the City of New York currently provides that commercial establishments must generate less than 20 gallons of trade waste within a seven-day period to meet the definition of infrequent waste or insignificant amounts of waste to be exempt from the requirements of section 16-116(a) and (b).

This rule lowers the threshold of trade waste that is considered to be infrequent waste or insignificant amounts of waste from 20 gallons to 1 gallon within a seven-day period. This reduction is necessary because some commercial establishments have been setting out their trade waste at the curb for DSNY to collect or setting such material in DSNY street corner litter

baskets. This rule makes it clear that a commercial establishment must retain a private carter to collect and remove trade waste generated at such establishment for proper disposal if such establishment generates more than 1 gallon of trade waste within a seven-day period.

Commercial establishments are already required by rule to place their waste out in a bin or container. This rule also allows any commercial establishment that generates 20 gallons of waste or less over a period of seven consecutive days to share these containers with another commercial establishment, provided that both entities are customers that have agreements with the same private carter in accordance with all rules and regulations and follow all applicable rules relating to the set-out of materials for a private carter.

Private carters sometimes utilize a “flat” billing method where they charge a customer the same flat monthly fee based on an estimate of the average amount of waste the customer produces. Rules of the BIC currently address waste surveys used to determine “flat” billing amounts. However, the BIC rules will not apply to designated carters subject to the Department’s commercial waste zone rules within an implemented commercial waste zone. See 17 RCNY 5-02(h). Therefore, this rule ensures that private carters conduct waste surveys to generate an accurate estimate of the average amount of waste a customer produces when a “flat” billing method is used.

The Department received comments about the proposed rule from the public, which resulted in the following changes:

- extending the deadline to complete the initial waste survey from 30 calendar days to 90 calendar days in section 20-27(c);
- clarifying that the deadline to complete any subsequent waste surveys is 90 calendar days after a waste survey is requested in section 20-27(d);
- requiring private carters to reimburse customers for over-payments based on the results of the initial waste survey within 60 calendar days of completion of the survey in section 20-27(c);
- clarifying that carters are not permitted to retroactively seek additional payments from customers for under-payments based on the results of the initial waste survey in section 20-27(c); and
- removing the requirement that waste surveys must be performed annually in section 20-27(d).

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. Section 1-02.4 of Title 16 of the Rules of the City of New York is amended by adding a new subdivision (h), to read as follows:

(h) Notwithstanding the requirements of this section, any entity that receives curbside collection of waste by a private carter and generates twenty gallons or less of waste over a period of seven consecutive days may share a container with another such entity that generates twenty gallons or less of waste over a period of seven consecutive days, provided that both entities are customers that have an agreement with the same private carter in accordance with Chapter 20 of Title 16 of the Rules of the City of New York.

§ 2. Section 1-06 of Title 16 of the Rules of the City of New York is amended to read as follows:

§ 1-06 [Exception for] Commercial Generators of "Infrequent Waste."

(a) Any commercial establishment generating an amount of waste over a period of seven consecutive days that may be contained in [twenty] a one gallon [container] bag or any other container or containers having a volume of [twenty gallons] one gallon or less shall be considered infrequent waste or insignificant amounts of waste for purposes of [subsection] subdivision (c) of § 16-116 of the Administrative Code. Such commercial establishment need not comply with [subsections] subdivisions (a) and (b) of § 16-116 of the Administrative Code

(b) Nothing contained in this section shall affect any provision of law or other rule and regulation specifying what types of containers are authorized pursuant to any law, rules or regulations for deposit of any waste or refuse.

(c) Nothing contained in this section shall obligate or be considered as requiring the Department [of Sanitation] to provide collection service to any commercial establishment. Collection service shall be provided in accordance with the rules and regulations of the Department [of Sanitation] as promulgated pursuant to [Section] section 753 of the Charter.

§3. Section 20-20 of Title 16 of the Rules of the City of New York is amended to read as follows:

§ 20-20 Service to Customers in a Commercial Waste Zone.

(a) (1) Each commercial establishment must enter into a written service agreement with a zone awardee selected by the Department for the zone in which the commercial establishment is located, and/or a containerized commercial waste awardee in accordance with subdivision [(c)] (d) of this section, to provide all commercial waste collection, removal and disposal services for the commercial establishment. All such written service agreements must meet the requirements of [16 RCNY §] section 20-26 of this chapter and must be entered into no later than the final implementation date for the zone in which the commercial establishment is located, as set forth in the rules of the Department.

(2) This subdivision does not apply to a commercial establishment registered by the Business Integrity Commission to haul its own commercial waste pursuant to subdivision (b) of § 16-505 of the Administrative Code operating pursuant to the terms of such registration.

(b) A commercial establishment must not enter into an agreement for the collection, removal or disposal of commercial waste with more than one zone awardee selected for the zone in which the commercial establishment is located at the same time under any circumstances.

(c) Commercial establishments that generate twenty gallons of waste or less over a period of seven consecutive days may share containers, provided that all such commercial establishments have an agreement with the same awardee in accordance with this chapter.

(d) In lieu of or in addition to a contract with a zone awardee, a commercial establishment may contract with a containerized commercial waste awardee for the removal of containerized commercial waste, provided that the other requirements of this section have been met. If a commercial establishment's contract with a containerized commercial waste awardee does not cover the entirety of the commercial establishment's commercial waste, the commercial establishment must enter into an agreement with a zone awardee for collection, removal and disposal of the remainder of the commercial establishment's commercial waste, except that such establishment may not contract with more than one zone awardee, as provided in subdivision (b) of this section.

Example 1: Bob's Restaurant is located in the zone Bronx East. Bob's Restaurant selects Containerized Carting to perform containerized commercial waste collection services. Containerized Carting receives an award to collect containerized commercial waste citywide and is also selected as a zone awardee for zone Bronx East. If Bob's restaurant uses Containerized Carting for containerized collection services, Bob's restaurant is prohibited from selecting a

different Bronx East zone awardee to collect non-containerized commercial waste because Containerized Carting is a zone awardee for zone Bronx East.

Example 2: Molly's Restaurant is located in the zone Queens Central. Molly's Restaurant is looking for containerized commercial waste collection services for refuse. None of the zone awardees in zone Queens Central were selected to collect containerized commercial waste citywide. Molly's Restaurant can hire Containerized Carting to provide containerized commercial waste collection service and may choose to select a Queens Central zone carter to provide non-containerized refuse and organics collection.

[(d)] (e) If an awardee is authorized to operate as a containerized commercial waste awardee and a zone awardee in a given zone, such awardee must follow all requirements applicable to zone awardees set forth in Title 16-B of the Administrative Code and this title with respect to all customers in such zone.

[(e)] (f) If a commercial establishment fails to enter into a written agreement with a zone awardee selected for the zone in which such commercial establishment is located or a containerized commercial waste awardee in accordance with the requirements of this section by the final implementation date for such zone, the Department will assign a zone carter to such commercial establishment and the processes and terms of service set forth in subdivision (e) of 16 RCNY § 20-26 shall apply. The assignment of a particular awardee to a commercial establishment is at the Department's discretion, and factors that the Department will consider include, but are not limited to, effect on route efficiency, language access needs, awardee capacity, maximum rate, number of customers already served in the zone, and other factors deemed relevant by the Department.

§ 4. Section 20-27 of Title 16 of the Rules of the City of New York is amended to read as follows:

§ 20-27 Billing and payment.

(a) An awardee must provide a consolidated bill, statement, or invoice at least once every month to every customer. Such bill, statement or invoice may be provided electronically, unless the customer requests a paper version. Such bill, statement or invoice must include all costs for services provided, including if an awardee uses one or more subcontractors to provide services to the customer. Such bill, statement, or invoice must conspicuously contain all of the following:

- (1) The awardee's name, address, telephone number, and Business Integrity Commission license number;
- (2) The customer's name and complete address;

(3) The maximum rates the awardee is authorized to charge such customer pursuant to the awardee's agreement with the Department entered into pursuant to § 16-1002 of the Administrative Code with a statement indicating that the rates so identified are maximum legal rates and that lower rates may be lawfully charged;

(4) The negotiated rate on which the bill, statement, or invoice is based, broken down into the component parts of such rate, including the rates based on frequency of collection of refuse, designated recyclable materials and source separated organic waste, if applicable, and the rates based on volume or weight of refuse, designated recyclable materials and source separated organic waste collected, if applicable;

(5) A notice to customers as follows: "NOTICE TO CUSTOMERS – The maximum rates that may be charged by your commercial waste removal business are regulated by the New York City Department of Sanitation. If you should have a question or a complaint concerning commercial waste removal, contact the New York City Department of Sanitation";

(6) An itemized list of actual charges being imposed detailing:

(i) The number of weekly pick-ups of each waste stream;

(ii) The weight or volume of refuse, designated recyclable materials and source separated organic waste, if any, removed, and the charge for such weight or volume of such waste, broken down by waste stream, or, where the customer is being charged on a "flat" or "average" billing rate, the estimated volume or weight of refuse, designated recyclable materials and source separated organic waste, if any, removed, and the charge for such estimated weight or volume of such waste, broken down by waste stream, along with a statement as to the method by which the estimated volume or weight was determined, and the date the most recent waste survey was completed; [and]

(iii) Any additional charges or fees imposed; and

(7) a separate statement of sales tax collected.

(b) Such bill, statement or invoice must be on a form approved by the Department.

(c) If an awardee utilizes a "flat" billing method for a customer, whether based on weight or on volume, the awardee must provide a waste survey for such customer no later than 90 calendar days after the date of the first invoice that utilizes a "flat" billing method. The waste survey may be conducted by the awardee or a trade waste broker or other third party. All future invoices must be based on the most recently completed waste survey, and any overpayments by a customer prior to the completion of the initial waste survey according to the results of the waste survey must be reimbursed by the awardee to the customer within 60 calendar days of the completion of the waste survey. Awardees are not required to provide reimbursements based on subsequent waste

surveys following the initial waste survey and are not permitted to retroactively seek additional payments from customers based on the results of the waste survey. Prior to the start of a waste survey, an awardee must inform the customer in writing when the survey will be conducted, and of the customer's right to participate in the survey by independently monitoring the waste collected during the survey period. The waste survey must:

(1) measure the average amount of waste collected from a customer, either in volume or by weight, broken out by waste stream;

(2) be conducted over a period of 30 calendar days, or four consecutive collections of each waste stream, whichever period is longer, unless a period of 30 calendar days would result in surveying each waste stream more than eight times. In that case, the waste survey will be conducted over calendar 30 days, on varying days of the week, during each week of the 30 calendar-day period, with the result that each waste stream is measured no more than eight times;

(3) be provided at no cost to the customer;

(4) be conducted according to a form prescribed by the Department;

(5) be recorded and sent to the customer within 10 days after the waste survey is completed, and a copy must be retained by the awardee for five years.

(d) An awardee must perform an additional waste survey pursuant to this section if a customer requests an additional waste survey within 90 calendar days of such request, however, an awardee is not obligated to provide more than two waste surveys at no cost to the customer within any 12-month period.

(e) An awardee must not submit a false or misleading waste survey to a customer or prospective customer.

(f) If an awardee plans to utilize a "flat" billing method based on weight, or charge customers based on the actual weight of a customer's waste, the awardee must use weighing devices, whether owned, rented or borrowed by the awardee, that are accurate to within five percent. Awardees who use the services of a person or entity to weigh a customer's waste have the responsibility of insuring that the weighing devices used by such person or entity are accurate to within five percent. The weight of a customer's waste shall be determined net of the weight of the can, container, dumpster or other rigid container in which it is placed by the customer.

(g) (1) An awardee may only accept cash payments from a customer for the collection, removal, or disposal of commercial waste:

(i) At the awardee's primary office location or primary garage for storing commercial waste vehicles; or

(ii) At a customer service location that has been approved by the Department.

(2) Under no circumstances may an awardee accept cash payments for such services at the customer's business location.

(3) An awardee must provide a receipt to the customer for all cash payments.

(4) An awardee may not charge a customer any additional fees or charges for processing or accepting non-cash payments for commercial waste collection, removal or disposal services, except as authorized pursuant to subparagraph (xiii) of paragraph (2) of subdivision (c) of [16 RCNY §] section 20-21 of this chapter.

[(d)] (h) An awardee may not charge new or existing customers for payments not collected from other customers.

[(e)] (i) The awardee shall not assess new customers for payments owed from a previous customer. The awardee shall not charge existing customers in full or in part for payments owed from other customers.