

**City of New York
Office of Administrative Trials and Hearings
Environmental Control Board**

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) in accordance with Sections 1049-a and 1043 of the New York City Charter and Section 28-202.1 of the New York City Administrative Code. OATH ECB repeals all violations of NYC Administrative Code Section 16-118 from the Sanitation Penalty Schedule, found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY), which contains penalties for summonses issued by the New York City Department of Sanitation (DSNY). DSNY promulgated a rule adding these violations of NYC Administrative Code Section 16-118 to its rules.

The proposed rule was published in The City Record on March 8, 2017, and a public hearing was held on April 10, 2017. No members of the public attended the public hearing. OATH ECB did not receive any written comments concerning this rule.

Statement of Basis and Purpose of Rule

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) repeals all violations of NYC Administrative Code Section 16-118 from the Sanitation Penalty Schedule found in Title 48 of the Rules of the City of New York Section 3-122. Local Law 75 of 2016, which took effect on August 12, 2016, amended the penalty amounts for violations of Administrative Code Section 16-118(1). As a result, OATH ECB repealed the penalty provisions for violations of Section 16-118(1) from its Sanitation Penalty Schedule, effective November 6, 2016. OATH ECB now repeals the remaining violations of Section 16-118 from the Sanitation Penalty Schedule. At the same time, DSNY has added a new Chapter 19 to Title 16 of the Rules of the City of New York that contains the penalties for violations of Administrative Code Section 16-118.

OATH ECB is in the process of repealing all penalty schedules in its rules at Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York so that they can be relocated to the rules of the agencies with rulemaking and policymaking jurisdiction over the laws underlying the violations. Although OATH ECB is empowered to impose penalties under the New York City Charter and has promulgated penalty schedules, the regulatory and enforcement agencies have the regulatory authority and necessary expertise to determine appropriate penalties to address violation of the rules and of the laws within their jurisdiction. In addition, moving the penalty schedule makes it easier for the public to find the penalties, which will be located within the same chapter as the rules that contain the substantive violations alleged in the summonses. Finally, the rule repeal speeds up the rulemaking process by eliminating the need for board approval of penalties that have already been established by the legislature and/or that have already undergone the City Administrative Procedure Act

(CAPA) process by the enforcement agency. The public will still have the opportunity to comment on proposed penalties during that process.

Working with the City's rulemaking agencies, the Law Department, the Mayor's Office of Management and Budget, and the Mayor's 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 rule repeal was identified as meeting the criteria for this initiative.

New material is underlined.

[Deleted material is in brackets.]

Section 1. OATH ECB amends its Sanitation Penalty Schedule, found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, by amending the introductory headnote as follows:

Unless otherwise indicated, all citations are to the New York City Administrative Code.

Repeat Violations

[*For sections 16-118(2) and 16-122(b), a repeat violation is:

- a violation by the same respondent
- of either section 16-118(2) and/or section 16-122(b)
- with a date of occurrence within 12 months of the dates of occurrence of 12 violations issued before the violation being decided at the same place of occurrence as those 12 previous violations]

**For sections:

[§ 16-118(1), (3), (4), (6)]
16-120(a), (b), (c), (d), (e)
16-123

a second or third violation is:

- a violation by the same respondent
- of the same section of law as the previous violation(s)
- with a date of occurrence within 12 months of the date of occurrence of the previous violations

*** For sections:

10-119 and 10-120

16-308(e) and 16-308(f)
16-404
16-405(a) and 16-405(b)

a repeat violation is:

- a violation by the same respondent
- of the same section of law as the previous violation
- with a date of occurrence within 12 months of the date of occurrence of the previous violations

****For sections 16-119 and 10-169, a repeat violation is:

- a violation by the same respondent
- of the same section of law as the previous violation
- with a date of occurrence within 18 months of the date of occurrence of the previous violation

*****For these transfer-station related sections, a repeat violation is:

- a violation by the same respondent
- of the same subdivision of a section of law or rule as the previous violation
- with a date of occurrence within 3 years of the date of occurrence of the previous violation

*****For these medical-waste related sections, a repeat violation is:

- a violation by the same respondent
- with a date of occurrence within 18 months of the date of occurrence of the previous violation

***** Daily penalties start on the date of the occurrence stated on the Notice of Violation. Daily penalties continue to be added until:

- the respondent proves that the violation was corrected on a certain date before the first scheduled hearing date or
- the first scheduled hearing date.

The first scheduled hearing date will be sixty days from the date of occurrence. For each Notice of Violation, no more than sixty days of daily penalties will be charged.

***** For sections 16-130 (b) and 16 RCNY 4-44, a repeat violation is:

- a violation by an owner or any person
- using or operating a premises, equipment, vehicle(s) or other personal property
- with a date of occurrence within 3 years of the date of occurrence of the previous violation
- in the business of such owner or otherwise
- with the express or implied permission of such owner

*****Except as otherwise provided in this head note, for violations of sections 16-461(a)(1), 16-461(b), and 16-461(c), a second or subsequent offense is:

- a violation by the same respondent
- of the same paragraph or subdivision, as applicable, of a section of law
- with a different date of occurrence within 18 months of the date of occurrence of the previous violation

For violations issued to owners of motor vehicles used to violate subdivision a or b of section 16-461, a second or subsequent offense is:

- a violation by same respondent
- of either subdivision a or b of section 16-461
- with a date of occurrence within 18 months of the date of occurrence of a previous violation of either subdivision a or b of section 16-461
- regardless of whether the same vehicle was used in the subsequent offense

For violations issued to owners of motor vehicles used to violate section 16-461(c), a subsequent offense is:

- a violation by same respondent
- of section 16-461(c)
- with a date of occurrence within 18 months of the date of occurrence of a previous violation of section 16-461(c)
- regardless of whether the same vehicle was used in the subsequent offense

For violations of sections 16-463(b), 16-463(c), and 16-463(d), a subsequent offense is:

- a violation by the same respondent
- of the same subdivision of a section of law
- within 18 months of the date of occurrence of the previous violation

“Owner” defined

For sections 16-130(b) and 16 RCNY 4-44 repeat violations, “owner” means:

- a person who is entitled to use or keep
 - a premises
 - equipment
 - vehicle(s) or
 - other personal property or
 - a person who leases property (called a lessee) or
 - a person who is holding the property, equipment, vehicles or other personal property of another and is the only person allowed to use it (called a bailee)

A person is an “owner” even if another person has a security interest in the premises, equipment, vehicles or other personal property. A security interest is an interest in property. It allows the person with the security interest to take property if the owner does not meet an obligation such as payment on a debt. The term “owner” in this section does not include a person who holds a security interest.

Default

A respondent who does not appear or pay the Notice of Violation by mail before the scheduled hearing date is in default. For all charges in this penalty schedule, except for the charges listed under "Exceptions" below, the person or business charged on the Notice of Violation will have thirty days from the mailing date of the default order to pay the mail-in penalty indicated on the notice of violation penalty plus a late admit fee. The late admit fee is \$30.00. At the end of thirty days, the full default penalty will be charged. For the charges listed under “Exceptions,” the full amount of the default penalty will be imposed immediately upon default.

Exceptions:

- Any charge that has a mail-in penalty equal to the maximum penalty allowed by law
- 16-119
- All charges of section 16-120.1 except
 - 16-120.1 (d), "Improper disposal of regulated household waste"
 - 16-120.1(e) or (f), "Late filing of medical waste plans or reports within 30 days as per 16-120.1(i)(6)"
- 16-117.1
- 16-130(b)
- 16 RCNY 4-04 et seq.
- 16 RCNY 4-11 et seq.
- 16 RCNY 3-02 et, seq.
- 16 RCNY 4-32,33,34
- 16 RCNY 4-44
- All charges of section 16 RCNY 11-02 except
 - 16 RCNY 11-02(a)(b), "Late filing of medical waste plans or reports within 30 days as per 16 RCNY 11-02(c)"

(Mitigation: 0¹) For a first-time violator, such penalty to be mitigated to \$0 if proof is submitted that such condition has been cured prior to initial return date of the notice of violation.

Section 2. OATH ECB amends its Sanitation Penalty Schedule, found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, by deleting the following entries:

Section/Rule	Description	Offense	Penalty	Default
[16-118(2) *	Failure to sweep 18" from curb		100	300]
[16-118(2)(a) *	Dirty sidewalk		100	300]
[16-118(2)(a) *	Dirty Area		100	300]
[16-118(2)(a) *	Failure to Clean 18" Into Street		100	300]
[16-118(2)(a) *	Sidewalk obstruction		100	300]
[16-118(2)(b) *	Dirty Sidewalk (Vacant Lot) *		100	300]
[16-118(2)(b) *	Dirty Area (Vacant Lot) *		100	300]
[16-118(2)(b) *	Sidewalk Obstruction (Vacant Lot) *		100	300]
[16-118(2)(b) *	Failure to Clean 18" Into Street (Vacant Lot) *		100	300]
[16-118(2)*	Repeat Violation		250	300]
[16-118(3) **	Dust or substances flying	1st	100	450
		2nd	250	450
		3rd	350	450]
[16-118(4) **	Spilling from truck or receptacle	1st	100	450
		2nd	250	450
		3rd	350	450]
[16-118(6) **	Noxious liquids	1st	100	450
		2nd	250	450
		3rd	350	450]
[16-118(7)	Preventing or otherwise interfering with work of DSNY employee		100	300]