

New York City Department of Sanitation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Sanitation (“DSNY”) is proposing rules that would establish requirements for carters operating in commercial waste zones related to commercial waste generation audits, establish fees for the commercial waste zones program, and amend definitions.

When and where is the hearing? DSNY will hold a public hearing on the proposed rule. The public hearing will take place via Webex at 9:30 am on September 15, 2021 using the following link:

<https://dsnynyc.webex.com/dsnynyc/j.php?MTID=m67c642bb7208c45eb491b6e0707e7c26>

Wednesday, Sep 15, 2021 9:30 am | 1 hour 30 minutes | (UTC-04:00) Eastern Time (US & Canada)

Meeting number: 132 846 0246

Password: XPhSGmp4U88

Join by video system

Dial 1328460246@dsnynyc.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-415-655-0001 US Toll

Access code: 132 846 0246

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 website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to nycrules@dsny.nyc.gov.
- **Mail.** You can mail comments to DSNY, Bureau of Legal Affairs, 125 Worth Street, Room 710, New York, NY 10013.

- **Fax.** You can fax comments to DSNY at 212-788-3876.
- **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 cbilly@dny.nyc.gov by September 14, 2021 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? Comments will be due to the Department of Sanitation by September 15, 2021

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (646) 885-5006. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by September 8, 2021

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/>. 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 on DSNY's website.

What authorizes DSNY to make this rule? Sections 1043 and 753 of the New York City Charter and Title 16-b of the New York City Administrative Code authorize DSNY to make this proposed rule. This proposed rule was included in DSNY's published regulatory agenda for this Fiscal Year.

Where can I find the 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 of Proposed Rule

DSNY is proposing rules that would establish requirements for carters selected to operate under the commercial waste zones system to reimburse customers for the cost of a commercial waste generation audit. These proposed rules would also establish fees for the commercial waste zones program, and amend definitions.

Commercial Waste Zones Program

Typically in New York City, more than 100,000 commercial establishments generate more than 3 million tons of refuse and recyclables. Approximately 90 private carters collect this waste from commercial establishments across the City. The current system for collecting commercial waste from the City's businesses has been plagued by dangerous driving and insufficient attention to public safety, harmful environmental impacts, and poor customer service.

In some parts of the city, more than 50 carters service a single neighborhood, and an individual commercial block may see dozens of different private waste collection trucks on a given night. This has resulted in millions of excess truck miles driven every year that harm the City's air quality, increase greenhouse gas emissions, create noise pollution and negatively impact public health. Additionally, the industry has lacked strong customer service standards, and pricing has remained unclear and confusing to most customers, putting small businesses at a significant disadvantage.

In response to these documented problems in the commercial waste collection industry, the Department released a comprehensive plan for reforming the private carting industry in November 2018 ("the Plan"), available at <http://www.nyc.gov/commercialwaste>. The Plan proposed the establishment of commercial waste zones - a safe and efficient collection system to provide high quality, low cost service to New York City businesses while advancing the City's zero waste and sustainability goals. The Department developed this plan after years of extensive public outreach and engagement with a wide variety of stakeholders.

On November 20, 2019, Local Law number 199 for the year 2019 was enacted, which authorizes the Department to create a commercial waste zones system. Under Local Law 199, codified in Title 16-b of the New York City Administrative Code, the Sanitation Commissioner has divided the geographic area of New York City into 20 "commercial waste zones."

The Department will use a competitive Request for Proposals (RFP) process to select up to three private carters to service businesses within each commercial waste zone. The competitive solicitation process will also be used to select up to five carters to provide containerized commercial waste collection services citywide. This process will identify the carters that can provide high quality service at low prices. The resulting contracts will include standards for pricing, customer service, safety, environmental health, and requirements to promote the City's

commitment to recycling and sustainability. The RFP will be issued in two parts. Part 1 was issued on November 19, 2020, and responses were due on February 19, 2021. Part 2 will be issued in the coming months.

Commercial waste zones will apply to the collection of commercial refuse, recyclables, and source-separated organic waste. It will exclude specialized or intermittent waste streams, such as construction and demolition debris, medical waste, hazardous waste and other types of waste that will continue to be collected and managed under existing City and State regulations.

Under the new commercial waste zones system, instead of dozens of different carters operating in a City neighborhood on a given night, only a few carters will operate in each area. With fewer trucks on the streets and shorter routes, zoned collection will also mean improved traffic and air quality and less unsafe driving behavior and worker fatigue. Citywide, the adoption of the commercial waste zones system will dramatically reduce truck traffic associated with this industry by more than 50 percent. This system will improve the quality of life of all New Yorkers, serve the needs of the City's local businesses, and support the City's short and long-term goals for a cleaner, safer, and more sustainable city.

Related DSNY Commercial Waste Zones Rulemakings

On February 14, 2020, the Department published the final rules creating the 20 commercial waste zones. Per Administrative Code Section 16-1002(e)(3), the Department will set the implementation schedule for when the commercial waste zone system will take effect in each zone in a future rulemaking.

On December 18, 2020, DSNY published proposed rules addressing customer service requirements, requirements for collecting recyclable materials and source separated organics, and operations requirements for commercial waste carters, and held a hearing on those proposed rules on January 26, 2021. The comment period for those proposed rules closed on February 9, 2021. On March 12, 2021, DSNY published proposed rules addressing public safety. DSNY held a joint hearing with the Business Integrity Commission (BIC) on the safety rules on April 13, 2021. DSNY is currently considering comments received on both sets of rules and formulating final rules.

Commercial Waste Generation Audits

In this rulemaking, the Department is proposing to establish requirements for carters selected to operate under the commercial waste zones system to reimburse customers for the cost of a commercial waste generation audit. The purpose of such an audit is to determine the amount of commercial waste that the commercial establishment is generating, broken down by waste stream: refuse, designated recyclable materials, and source separated organic waste.

A commercial waste generation audit provides a concrete picture of the types and amount of waste that a commercial establishment is generating. The commercial establishment can then

use the audit to negotiate a fair price with their commercial waste zone carter. The audit will also provide the commercial establishment with information about the level of contamination for each waste stream, recommendations for waste reduction by waste stream, and recommendations about how to divert more waste from refuse to designated recyclable materials and source separated organic waste. This will assist the commercial establishment in complying with the City's recycling requirements and help further the City's zero waste goals.

Under these proposed rules, a commercial establishment must be a current customer with a written service agreement in order to seek reimbursement from a commercial waste carter for an audit, although the commercial establishment does not need to have been a customer of the carter at the time the audit is performed. Customers have up to one year to seek reimbursement for an audit conducted pursuant to this section. However, audits that are conducted more than 60 days prior to the implementation start date for the commercial waste zone where the customer is located are not eligible for reimbursement. The commercial waste carter is only required to reimburse each customer for up to one audit under these proposed rules, but is not required to provide reimbursement if the customer has already been reimbursed by a prior carter.

These proposed rules set requirements for how the audits must be conducted in order to be eligible for reimbursement. The auditor must be registered with BIC as a trade waste broker.

The proposed rules also describe a procedure to resolve disputes between carters and customers regarding a waste generation audit and provides the option of bringing unresolved disputes to DSNY for review.

These proposed rules also establish a definition of "bicycle," which is relevant to the program definition of microhauler and to the number of designated carters that an awardee may subcontract with under the program. Local Law 199 provides that there is no limitation on the number of designated carters hauling waste exclusively by bicycle. The definition of bicycle takes into account the definition of "bicycle" in Local Law 199 as well as recent changes in state and local laws relating to e-bikes.

Finally, these rules establish an annual fee for awardees.

These new DSNY proposed rule requirements will take effect in each zone when the commercial waste zones system is introduced in that particular zone, according to the implementation schedule that the Department will publish in a future rulemaking.

DSNY's authority to promulgate these rules is found in New York City Charter §§ 753 and 1043, and Title 16-b of the Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“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 b of section 20-01 of title 16 of the rules of the city of New York is amended by adding a new definition of “bicycle” before the term “container” as follows:

Bicycle. The term "bicycle" means: (i) a two or three wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears; (ii) a "pedal-assist bicycle" as defined in section 4-01 of title 34 of the rules of the city of New York or as otherwise defined by the department of transportation; (iii) any electric scooter as defined in section 114-e of the vehicle and traffic law; or (iv) any bicycle with electric assist as defined in section 102-c of the vehicle and traffic law.

§ 2. Subchapter A of chapter 20 of title 16 of the rules of the city of New York is amended by adding a new section 20-03 to read as follows:

§ 20-03 Fees

The annual fee that each awardee must pay pursuant to section 16-1013 of the Administrative Code shall be:

- a. \$107,148.73 per zone award, and
- b. \$107,148.73 per zone per citywide containerized commercial waste award.

§ 3. Subchapter B of chapter 20 of title 16 of the rules of the city of New York is amended by adding new sections 20-29 and 20-29.1 to read as follows:

§ 20-29 Commercial Waste Generation Audits

- (a) Amount of commercial waste generated. (1) For purposes of determining the pricing for commercial waste based on the amount of waste generated in accordance with paragraph (1) of subdivision (c) of section 20-21, the awardee shall use the amount of waste described in a commercial waste generation audit obtained and presented by the customer that meets the requirements of subdivision (b) of this section, or shall use such amount as otherwise agreed upon by the awardee and the customer. Where the customer and the awardee cannot agree on the amount of commercial waste generated by the customer, and an audit that meets the requirements of subdivision (b) of this section has been performed, the procedures described in section 20-29.1 shall apply.

(2) Each commercial establishment is entitled to reimbursement by an awardee for one commercial waste generation audit assessing the amount, types and contamination levels of the commercial establishment's commercial waste, provided that the requirements of this section are met.

(b) *Audit requirements.* (1) The commercial waste generation audit must be performed by a person registered by the business integrity commission as a trade waste broker.

(2) The audit must separately assess the commercial waste generated by each premises for which the awardee provides or will provide commercial waste collection services for the customer, disaggregated by waste stream as follows:

- i. *Refuse:* Total amount of refuse at each premises;
- ii. *Designated recyclable materials:* (1) Total amount of designated recyclable paper at each premises; and (2) total amount of designated recyclable metal, glass, and plastic at each premises; and
- iii. *Source separated organics:* If the customer is a designated covered establishment, total amount of source separated organics at each premises.
- iv. *Other:* (A) Total amount of textiles, if the customer's solid waste during any monthly period is comprised of at least 10% textiles; and (B) total amount of yard waste if the customer's solid waste during any monthly period is comprised of at least 10% yard waste.

(3) The audit must weigh the amount of each waste stream described in paragraph (2) of this subdivision as follows:

- i. The audit must measure the amount of each waste stream produced within a 24-hour period of a typical day of operations, with a minimum weight measurement of each stream by volume as follows:
 - A. 100% of each waste stream by volume for customers whose premises have a total square footage of less than 5,000 sq. ft;
 - B. 50% of each waste stream by volume for customers whose premises have a total square footage between 5,000 and 15,000 sq. ft; and
 - C. 25% of each waste stream by volume for businesses whose premises have a total square footage greater than 15,000 sq. ft;
- ii. Containerized waste weights may be estimated using standard volume to weight conversions; and
- iii. Weight measurements must be performed on site using floor scales sensitive at least to the nearest half pound. The use of fish scales (hand-held scales with hooks) is prohibited.

iv. Where weight measurement of less than 100 percent of each waste stream by volume is required, the audit must use best practices to ensure that the samples weighed are representative of the entire set-out of the waste stream for the day.

(4) The audit must assess the level of contamination of each waste stream described in paragraph (2) of this subdivision and must take photos documenting contaminated bags or containers.

(5) The audit results delivered to the customer and awardee must include:

- i. The actual weight measurements and quantity counts of all waste streams assessed, as recorded on-site;
- ii. Estimates of the amount of each waste stream generated on a monthly basis;
- iii. Contamination levels for each waste stream assessed;
- iv. Recommendations for waste reduction by waste stream and diversion from refuse to designated recyclable materials and source separated organic waste; and
- v. Photos of the waste set-out used during the audit.

(6) The waste auditor must directly report the information contained in subparagraphs (i) through (iii) of paragraph (5) of this subdivision to the Department within 30 days of completing the audit.

(7) The waste auditor must provide the customer with proof of payment in a form and format approved by the Department.

(c) *Reimbursement requirements.* (1) In order to seek reimbursement from an awardee for an audit conducted pursuant to this section, a commercial establishment must be a current customer with a written service agreement. The commercial establishment does not need to have been a customer of the awardee at the time of the audit in order to seek reimbursement.

(2) Customers have up to one year to seek reimbursement for an audit conducted pursuant to this section. However, audits that are conducted more than 60 days prior to the implementation start date for the commercial waste zone where the customer is located are not eligible for reimbursement.

(3) The awardee will not be required to reimburse the commercial establishment for such an audit if the commercial establishment has already received

reimbursement for a commercial waste generation audit from another awardee pursuant to this section.

(4) Reimbursement for the commercial waste generation audit may be capped at the following rates, based on the total square footage of all premises for which the awardee provides or will provide commercial waste collection services for the customer:

<u>Total square footage</u>	<u>Reimbursement cap</u>
<u>Less than 5,000 sq. ft.</u>	<u>\$500</u>
<u>5,000-15,000 sq. ft.</u>	<u>\$800</u>
<u>Greater than 15,000 sq. ft.</u>	<u>\$2,000</u>

(5) The awardee must reimburse a customer eligible for audit reimbursement pursuant to this section no later than six months after the customer presents the awardee with the proof of payment provided by the auditor pursuant to paragraph (7) of subdivision (b) of this section. If the awardee so chooses, the awardee may provide such reimbursement in installments or in the form of a deduction off the customer's monthly bill for commercial waste collection services, as long as the full reimbursement amount applicable pursuant to paragraph (4) of this subdivision is provided no later than six months after such proof of payment is presented.

(6) An awardee must notify the Department each time it reimburses a customer pursuant to this section.

§ 20-29.1 Dispute Resolution

- (a) In any dispute between an awardee and a customer regarding whether a commercial waste generation audit presented by a customer correctly reflects the amount of commercial waste generated by the customer, there shall be a rebuttable presumption that the customer is generating the amount of waste described in such audit, if the audit meets the requirements of subdivision (b) of section 20-29. The awardee may rebut this presumption by presenting the customer with documentation demonstrating that the customer is generating a different amount of waste than that indicated in such audit, or that such audit was not performed in accordance with such requirements.
- (b) (1) If, after seeking to resolve a dispute regarding a commercial waste generation audit pursuant to subdivision (a), an awardee and a customer cannot reach an agreement regarding whether a commercial waste generation audit correctly reflects the amount of commercial waste generated by the customer, either party

may request Department review of the dispute in writing, along with a copy of a waste generation audit that meets the requirements of subdivision (b) of section 20-29, and any additional evidence the requesting party deems relevant. The requesting party must serve the other party with a copy of the request and any evidence submitted to the Department. The other party shall have 30 days from notice of such request to submit alternative evidence to the Department.

(2) In the Department's sole discretion, the Department may request additional information from either party necessary to make a determination. The Department shall issue a final written determination based on the documentation provided by the parties within 60 days of receipt of such request, or, in a case where additional information is request by the Department, within a reasonable period of time.

§ 4. Subchapter C of chapter 20 of title 16 of the rules of the city of New York is amended by adding a new section 20-44 to read as follows:

§ 20-44 Vehicle maintenance and condition.

a. The awardee must keep its commercial waste vehicles and equipment in good repair and condition so as to prevent leaks from oil and hydraulic systems, as well as to ensure waterproofing of all seals and enclosures. All commercial waste vehicles must be labeled with the name of the awardee or designated carter.

b. The awardee must ensure that the engine particulate filter and emissions control technology required pursuant to section 24-163.11 of the Administrative Code are working properly on each commercial waste vehicle.

§ 5. This rule shall take effect in each commercial waste zone on the implementation start date for such zone set by rule of the department of sanitation pursuant to paragraph 3 of subdivision e of section 16-1002 of the Administrative Code.

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: Amendment of Commercial Waste Zone Rules

REFERENCE NUMBER: 2021 RG 045

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

Date: August 3, 2021

Acting Corporation Counsel

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: Amendment of Commercial Waste Zone Rules

REFERENCE NUMBER: DSNY-27

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 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 3, 2021

Date