

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the proposed amendments to the rule governing the impoundment of motor vehicles by the department.

Date / Time: November 8, 2013
9:30 A.M. to 10:30 A.M

Location: 125 Worth Street, Room 819,
New York, New York

Contact: Ellen Cooper, Associate Counsel
Bureau of Legal Affairs
New York City Department of Sanitation
125 Worth Street, Room 710
New York, New York 10013
ecooper@dsny.nyc.gov

Proposed Rule Amendment

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 section 753(a) and (b) of the New York City Charter, the Department proposes to adopt the following rule governing the impoundment of motor vehicles by the department. This rule amends Section 5-08 of Chapter 5 of Title 16 of the Rules of the City of New York.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to the office of the Deputy Commissioner for Legal Affairs, New York City Department of Sanitation, 125 Worth Street, Room 710, New York, New York 10013 by mail or electronically through NYCRULES at www.nyc.gov/nycrules by November 8, 2013.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Edna Luna by November 1, 2013 by fax at (212) 788-3876 or by mail at 125 Worth Street, Room 710, New York, New York 10013.
- Written comments and a summary of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between 9:00 a.m. and 5:00 p.m., at the office of the Deputy Commissioner.

STATEMENT OF BASIS AND PURPOSE

The Commissioner of the New York City Department of Sanitation is authorized to adopt rules relating to the cleanliness of the streets and the disposal of waste pursuant to section 753 of the New York City Charter. Pursuant to §§ 16-119 (e) and (g) of the New York City Administrative Code, the Commissioner is authorized to promulgate rules governing the impoundment and release of vehicles.

The purpose of the proposed rule amendment is to expand the Department's existing rules governing impoundment procedures to cover other applicable violations under Title 16 of the New York Administrative Code beyond impoundments performed pursuant to § 16-119 of the Code. Since the initial rules regarding the impoundment of vehicles for violations of the illegal dumping law were originally promulgated, the number of laws that authorize the Department to impound vehicles has increased. This rule amendment will update the Department's rules to address additional circumstances in which the Department is authorized to impound vehicles.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise.

Deleted material is in [brackets]. New matter is underlined.

Section 1. Subdivision (b) of section 5-08 of Chapter 5 of title 16 of the rules of the city of New York is amended to read as follows:

(b) Redemption Procedure:

(1) Upon impoundment of any vehicle [as provided for by §16-119(e) of the Administrative Code] by the Department, the Commissioner shall notify the owner of such vehicle by certified mail that such vehicle is being held by the Commissioner. Such notification shall contain a brief description of the vehicle, the office at which an application to redeem the vehicle may be made, and a statement as to the applicable charges, fees, and penalties due.

(2) [Whenever] Except as specifically provided otherwise by law, whenever the Department impounds any vehicle [as provided for by §16-119(e) of the Administrative Code], such vehicle shall not be released until the vehicle owner has complied with the following:

(i) submitted proof to the Commissioner, including but not limited to the registration for such vehicle issued by the appropriate agency, establishing to the Commissioner's satisfaction his or her identity as owner of the vehicle;

(ii) paid the prevailing removal charge and storage charge as specified in the notification set forth in paragraph (1) of this subdivision for each day or fraction thereof of the impoundment of such vehicle. The storage charge shall be fifteen dollars (\$15.00) for each of the first two days, and ten dollars (\$10.00) for each additional day thereafter;

(iii) where the vehicle is impounded pursuant to §16-119(e) of the Administrative Code, paid a fee of two hundred dollars, or posted a bond or letter of credit in such amount, as payment or partial payment of cleaning costs for the illegally dumped material. If the Department estimates that its cleaning costs will be more than two hundred dollars, the Department may require as a condition of releasing the vehicle that such estimated costs be paid, or that a bond or letter of

credit in the amount of such estimated costs be posted, as a condition of releasing the vehicle, provided the owner of the vehicle is notified of the estimated cleaning costs and the basis for such costs in the notification set forth in paragraph (1) of this subdivision. If the Department incurs no cleaning costs, or its actual costs are less than the amount collected by the Department pursuant to this subparagraph, the Department shall reimburse the owner and/or operator any amount collected in excess of the Department's actual costs. If the Department's actual cleaning costs are more than the amount paid pursuant to this subparagraph, the owner and/or operator shall be liable for such additional costs as provided for in §16-119(e) of the Administrative Code. Such cleaning costs shall be determined by the total of the following charges: (A) hourly wages paid to those employees of the Department, including supervisory personnel, for the time actually expended in cleaning, and removing and disposing of the illegally dumped material from the property; (B) costs for the disposal of the illegally dumped material actually removed from the property by Department employees and that is delivered to and received at a Department disposal facility, or another facility that accepts solid waste for the purpose of subsequent transfer to another location for disposal, including the cost incurred by the Department to export the illegally dumped material for disposal out of the City at the time such material was removed from the property, as such cost is fixed contractually between the Department and a vendor providing export services to the Department; and (C) vehicle and equipment charge for any Department vehicle and equipment used to clean and remove the illegally dumped material determined by the fair market rental value of a comparable vehicle or equipment.

(iv) exhibited proof to the Commissioner that the ECB proceedings against the owner and operator, if the operator does not also own the vehicle, have been disposed of and that applicable penalties, if any, have been paid, or that a bond in the amount of Seven Thousand Five Hundred

Dollars (\$7,500) has been deposited with the ECB as security for the payment of any penalty prior to the final disposition of the ECB proceedings.

(v) Notwithstanding the provisions of this paragraph, the Commissioner may, in his or her discretion, waive requirements for payment of the removal charge, storage fee and/or cleaning costs prior to release of the vehicle where such vehicle is owned by a rental or leasing company and no violation was issued to such company [pursuant to §16-119 of the Administrative Code] or, if a violation was issued, the company has submitted proof that the violation was disposed of in the company's favor.

(3) Upon compliance with all of the provisions of paragraph (2) of this subdivision, the Commissioner shall issue a redemption form authorizing the person in whose name it has been issued to redeem his or her vehicle.

(4) *Procedure for Refund of Charges and Fees.* In the event that [an owner and operator have been found not guilty of violating §16-119 of the Administrative Code] any underlying notices of violation issued to the owner or operator leading to the impoundment of the vehicle are dismissed by the ECB, then such owner shall be entitled to a refund of any [money] fees paid to the Department or any agent of the Department under these rules upon written demand to the Department or agent of the Department, setting forth the amount claimed, the dates upon which such amounts were paid and furnishing a copy of the ECB decision[. In], provided however, that in the event that the owner has been found not [guilty of violating §16-119 of the Administrative Code] liable for the underlying violation leading to the impoundment of the vehicle but the operator has been found [guilty of violating such section] liable for such violation, the owner shall not be entitled to a refund of such [money] fees.

(5) *Failure to Redeem Impounded Vehicles.* Any vehicle (other than a vehicle for which a forfeiture proceeding has been commenced pursuant to paragraph (2) of subdivision (e) of §16-119 or paragraph (4) of subdivision (d) of § 16-464 of the Administrative Code) which is not redeemed and removed from City property pursuant to paragraphs (1), (2) and (3) of this subdivision within 10 days following the making of a request by the Commissioner's representative to remove it shall be deemed to be an abandoned vehicle pursuant to §1224 of the Vehicle and Traffic Law and shall be disposed of by the Commissioner pursuant to such Law. Such request shall be sent by certified or registered mail, return receipt requested, to the registered owner of the vehicle, at the address contained on the registration of such vehicle.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Impoundment of Vehicles

REFERENCE NUMBER: 2013 RG 074

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: September 27, 2013

**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: Impoundment of Vehicles

REFERENCE NUMBER: DSNY-4

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/ Ruby B. Choi
Mayor's Office of Operations

September 27, 2013
Date