



**Report on the Feasibility of Establishing a Penalty
Mitigation Program for Food Service and Retail
Establishments**

Issued Pursuant to Local Law 74 of 2018

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New York City Department of Sanitation**

Introduction

The Department of Sanitation (“Department” or “DSNY”) keeps New York City healthy, safe and clean by collecting, recycling and disposing of waste, cleaning streets and public spaces, and clearing snow and ice.

Local Law 74 of 2018 (“Local Law 74” or “LL74”) was enacted as part of efforts by this Administration and the City Council to improve the local regulatory climate for small businesses. Specifically, Local Law 74 requires the Commissioners of Sanitation, and Consumer Affairs, to review violations enforced by their respective agencies and study the feasibility of establishing a program for which civil penalties imposed by notices of violation issued to food service establishments and retail establishments may be waived through a penalty mitigation program. Such penalty mitigation program would allow the waiver of payment of civil penalties for a food service establishment that donates its excess food to a non-profit organization, and a retailer that provides public access to its bathrooms.

Under Local Law 74, food service establishments include full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts and cafeterias that provide food directly to consumers whether it is provided free of charge or sold. A retail establishment includes an establishment, other than a food service establishment, that sells products and has a restroom.

Local Law 74 requires each agency to submit to the Mayor and the City Council Speaker a report on such study with recommendations for implementing a penalty mitigation program. The Department reviewed the applicable violations under Title 16 of the New York City Administrative Code and this report reflects the Department’s findings and conclusion relating to its enforcement of such violations, the important public policy goals of keeping New York City healthy, safe and clean, and the establishment of a penalty mitigation program.

The full text of Local Law 74 is attached as Appendix A.

New York City Food Waste Policy

Food plays a critical role in promoting a more sustainable and more equitable city. Working with Mayor de Blasio and this Administration, the Department has an important role to play as a leader in building a better food system for New York City where everyone has access to nutritious food and where we limit the impact the food has on the environment.

Food loss and food waste happen across the broad food supply chain, in food manufacturing, at distribution facilities and supermarkets, during transportation, and in preparation at homes and in commercial food establishments. While our primary goal must be to prevent food waste from occurring in the first place, donating surplus wholesome and nutritious food for human consumption diverts food waste from landfills and puts food on the table for individuals and families in need. The Department’s goal is to maximize the capture of excess food that would otherwise be discarded by restaurants, caterers, stadiums, corporate dining rooms, hotels, and other such sources of excess food from the City’s food service establishments. The Department supports creative solutions to address food waste and recovery, and the effort of our partners to recover edible food from businesses across the city is a crucial component of the food supply for the city’s food pantries and community kitchens.

OneNYC made ambitious commitments to create a more equitable and sustainable city. Our goal to send zero waste to landfills by 2030 is an essential piece of this. Diverting organic material from landfills is essential to cut greenhouse gas emissions from the waste sector. To date, the Department, in partnership with others, is already making progress on reducing food waste by the commercial sector in New York City.

Households and businesses in New York City discard approximately 1.5 million tons of food waste each year, equating to roughly a quarter of the City's waste stream. Approximately 815,000 tons of this is commercial food waste. In 2013, the City enacted Local Law 146, which requires large commercial generators of food waste to source-separate their organic waste for collection and beneficial reuse through composting or anaerobic digestion. Since then, DSNY has regularly expanded the types and number of establishments covered by those requirements as a result of annual capacity evaluations called for by LL146.

Today, 2,500 businesses are covered under the City's commercial organics regulations, and DSNY just last week promulgated final rules to extend these requirements to an additional 8,000 establishments. Those regulations take effect on July 31, 2020, with a one-year warning period. In the coming months the Department will significantly expand its outreach and education to encourage compliance and participation by large commercial food generators covered by this program.

We are also focused on giving businesses the tools they need to reduce food waste and save money. Pursuant to Local Law 176 of 2017, in March 2019 the Department launched the donateNYC online food donation tool to connect businesses interested in donating food to local organizations that feed hungry people. The donateNYC portal is an innovative and expanded food rescue effort that streamlines and improves connections between potential donors such as restaurants, grocers and produce markets, and potential recipients such as food rescue organizations and pantries, shelters, community kitchens and other emergency food programs that best meet their respective logistical needs.

Other ongoing efforts by the Department to encourage businesses to donate excess food include:

- Donation outreach which is a part of our business training around organics diversion;
- Providing businesses with donateNYC brochures in our recycling outreach site visits;
- Providing resources on how to donate through our donateNYC website and other resources online to promote food donations; and
- Working with the Department of Small Business Services to educate businesses on the donateNYC program.

Department Review and Conclusion

Mayor de Blasio in his 2020 State of the City address announced additional strategies to reduce the impacts of common fines on small business owners, and we look forward to working with our sister agencies and the Council to implement those strategies. DSNY supports these efforts, but also recognizes the value of enforcement as one of many tools we have to keep New York City healthy, safe and clean.

The Department has reviewed the infractions it currently enforces. Based on this review, and our longstanding enforcement experience, the Department has identified one category of violations that would be most appropriate for a penalty mitigation program. In general, DSNY

believes that linking civil penalty forgiveness to the implementation of unrelated policy behavior will undermine the original purpose of the violations. In addition, the Department has no means of determining whether a retail store in fact makes its restroom available to the public, and so we have determined that the establishment of a penalty mitigation program for Sanitation violations for retail establishments is neither feasible nor appropriate.

The City's commercial organics regulations offer a clearer potential for the establishment of a penalty mitigation program. Given that the intent of LL146 of 2013 was to reduce the amount of food waste that is sent to landfills and promote the beneficial use of such waste, there is a clear nexus between the commercial organics law and the penalty mitigation program for food service establishments envisioned in LL74. As such, we have determined that it is appropriate to establish a penalty mitigation program for food service establishments related to certain penalties under this program.

Specifically, the Department's regulations under 16 RCNY 1-11(c)(1) and 16 RCNY 1-11(d)(2) establish requirements that designated covered establishments properly label organics collection bins and post a sign in the entity's food preparation area instructing its employees on how to properly source separate food waste material. The civil penalty for these infractions is \$250 for a first offense within a twelve-month period.

The Department believes that allowing a large food generator business covered by the city's commercial organics program to waive into the penalty mitigation program contemplated under LL74, by donating its excess food to a non-profit entity, is consistent with the Department's goal to reduce food waste and feed hungry New Yorkers, and there is an appropriate link between the violation infraction and penalty waiver activity.

As such, the Department of Sanitation will proceed with the promulgation of rules to establish such a penalty mitigation program.