

**THE CITY OF NEW YORK
DEPARTMENT OF SANITATION**

**NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED
AMENDMENTS TO RULES GOVERNING THE IMPOUNDMENT OF TRUCKS OR
VEHICLES UNDER THE ILLEGAL DUMPING LAW**

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 Sanitation by section 753(a) and (b) of the New York City Charter and section 16-119 of the Administrative Code of the City of New York that the Department proposes to adopt the following amendments to the Department's rules regarding the impoundment of trucks or vehicles. This rule amends section 5-08 of Chapter 5 of Title 16 of the Rules of the City of New York. Existing provisions to be deleted are shown below in brackets and new provisions are underlined.

Written comments regarding the proposed amendments may be sent to the Deputy Commissioner for Legal Affairs, New York City Department of Sanitation, 125 Worth Street, Room 710, New York, New York, 10013 on or before August 22, 2005. In addition, a public hearing regarding the proposed amendments will be held on August 22, 2005 at 125 Worth Street, Room 819 from 9:30 a.m. to 11:30 a.m. Persons who request that a language interpreter or sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are asked to notify Edna Luna by August 8, 2005. Ms. Luna may be contacted 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 the hours of 9:00 a.m. and 5:00 p.m. at the Office of the Deputy Commissioner for Legal Affairs at 125 Worth Street, Room 710, New York, New York. Dated: July 22, 2005, John J. Doherty, Commissioner.

§ 5-08 Impoundment of Trucks or Vehicles.

(a) Definitions.

Commissioner. "Commissioner" shall mean the Commissioner of Sanitation or his authorized representative, the Chief Clerk of the Department.

Department. "Department" shall mean the Department of Sanitation.

ECB. "ECB" shall mean the Environmental Control Board of the City of New York.

Operator. "Operator" shall mean the person operating the vehicle at the time of the dumping in violation of § 16-119 of the Administrative Code of the City of New York.

Owner. "Owner" shall mean "owner" as defined in Section one hundred twenty-eight and in Subdivision three of Section three hundred eighty-eight of the Vehicle and Traffic Law.

Person. "Person" shall mean any natural person, firm, copartnership, association or corporation.

(b) Redemption Procedure:

(1) Upon impoundment of any vehicle as provided for by §16-119(e) of the Administrative Code, 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 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) 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 [cost] 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 [the] 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 by the ECB, then such owner shall be entitled to a refund of any money 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 the event that the owner has been found not guilty of violating §16-119 of the Administrative Code but the operator has been found guilty of violating such section, the owner shall not be entitled to a refund of such money.

(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 Section 16-119 of the Administrative Code) which is not redeemed and removed from City property pursuant to [subdivision 5 (1) (2) and (3) of this Section] 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 [paragraph (d) of subdivision (1) of] Section 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.

Statement of Basis and Purpose:

The Commissioner of the Department of Sanitation is authorized to promulgate rules concerning the impoundment and release of vehicles, the payment of removal charges and storage fees for such vehicles, including the amounts and rates thereof, and any costs associated with the removal of illegally dumped material, under section 753 of the New York City Charter and under section 16-119(e) and (g) of the Administrative Code.

The purpose of these amendments is to clarify how the Department calculates certain costs for which those who illegally dump are liable and which are reimbursable to the Department. Such calculation shall include the Department's actual costs incurred to remove and dispose of the illegally dumped material. Additionally, these amendments clarify how the Department calculates the charges associated with the storage of a vehicle impounded pursuant to section 16-119 of the Administrative Code for illegal dumping.