

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1996**

No. 42

Introduced by The Speaker (Council Member Vallone), Council Members Fisher, Koslowitz, O'Donovan, Michels, Freed, Malave-Dilan, Henry, Dear and Eristoff (by the request of the Mayor and the Public Advocate); also Council Members Leffler, Povman, Abel, Fields, Lasher and Powell IV.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to commercial waste removal.

Be it enacted by the Council as follows:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest,

it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§2. The administrative code of the city of New York is amended to add a new title 16-A, to read as follows:

Title 16-A

Chapter 1

NEW YORK CITY TRADE WASTE COMMISSION

§16-501 Definitions.

a. "Applicant" shall mean, if a business entity submitting an application for a license or registration pursuant to this chapter, the entity and each principal thereof.

b. "Commission" shall mean the New York city trade waste commission as established by section 16-502 of this chapter.

c. "Position" in a trade association shall mean an officer, member of the board of directors, partner, trustee, shareholder holding ten percent or more of the outstanding shares of stock in such association, or administrator, business agent or other status involving participation directly or indirectly in the management or control of such association.

d. "Principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; if another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership, or a corporation, a "principal" shall also include the partners of such partnership or the officers, directors and stockholders holding ten percent or more of the outstanding shares of such corporation, as is appropriate. For the purposes of this chapter (1) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (i) such individual; (ii) the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled); (iii) the children, grandchildren and parents of such individual; and (iv) a corporation in which any of such individual, the spouse, children, grandchildren or parents of such individual in the aggregate own fifty percent or more in value of the stock of such corporation; (2) a partnership shall be considered to hold stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (3) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation.

e. "Trade association" shall mean an entity having as a primary purpose the promotion, advancement or self-regulation of businesses that remove, collect or dispose of trade waste, including but not limited to a corporation, unincorporated association, partnership, trust or limited liability company, whether or not such entity is organized for profit, not-for-profit, business or non-business purposes.

f. "Trade waste" or "waste" shall mean: (1) all putrescible and non-putrescible materials or substances, except as described in paragraph (2) of this subdivision, that are

discarded or rejected by a commercial establishment required to provide for the removal of its waste pursuant to section 16-116 of this code as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, street sweepings, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, medical waste, offal and any other offensive or noxious material. Such term shall also include recyclable materials as defined in subdivision i of section 16-303 of this code that are generated by such commercial establishments.

(2) The following are not "trade waste" or "waste" for the purposes of this chapter: sewage; industrial wastewater discharges; irrigation return flows; radioactive materials that are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 41 U.S.C. §2011 et seq.; materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process; and hazardous waste as defined in section 27-0901 of the environmental conservation law.

g. "Trade waste broker" shall mean a person or entity who, for a fee, brokers agreements between commercial establishments and providers of trade waste removal, collection or disposal services or conducts evaluations or analyses of the waste generated by such commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices.

§16-502 New York city trade waste commission. There is hereby created a New York city trade waste commission. Such commission shall consist of the commissioner of investigation, the commissioner of business services, the commissioner of consumer affairs, the commissioner of sanitation, and one member who shall be appointed by the mayor and shall serve as chair with compensation therefor; provided that if the chair holds other city office or employment, no additional compensation shall be received. The chair shall have charge of the organization of the commission and have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this chapter.

§16-503 Functions. The commission shall be responsible for the licensing, registration and regulation of businesses that remove, collect or dispose of trade waste and trade waste brokers.

§16-504 Powers and duties. The powers and duties of the commission shall include but not be limited to:

a. To issue and establish standards for the issuance, suspension and revocation of licenses and registrations authorizing the operation of businesses engaged in the collection, removal or disposal of waste within the city and trade waste broker businesses, provided that unless otherwise provided herein, the commission may by resolution delegate to the chair the authority to make individual determinations regarding: issuance, suspension and revocation of such licenses and registrations; investigations of background and determinations of fitness in regard to employees of licensees; and the appointment of independent auditors and monitors in accordance with the provisions of this chapter;

b. To establish maximum and minimum rates for the collection, removal, or disposal of such waste;

c. To investigate any matter within the jurisdiction conferred by this chapter and to have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation;

d. To establish standards for service and for the regulation and conduct of businesses licensed or registered pursuant to this chapter, including but not limited to requirements governing the level of service to be provided by licensees, contracts for trade waste

removal, billing form and procedures, the maintenance and inspection of records, the maintenance of appropriate insurance, and compliance with safety and health measures;

e. To appoint, within the appropriations available therefor, such employees as may be required for the performance of the duties prescribed herein. In addition to such employees appointed by the commission, the commissioners of business services, investigation, consumer affairs, transportation, sanitation, health, finance, environmental protection and police may, at the request of the chair, provide staff and other assistance to the commission in all matters under its jurisdiction;

f. To conduct studies or investigations into the needs of commercial and other enterprises for waste removal and the trade waste industry in the city and other jurisdictions in order to assist the city in formulating policies to provide for orderly and efficient trade waste removal at a fair and reasonable cost to businesses;

g. To establish programs for the education of customers, including but not limited to education of customers in the accurate assessment of the types and volume of waste and the rights of such customers in relationship to contracting, service and customer complaint procedures established pursuant to this chapter;

h. To establish special trade waste removal districts pursuant to section 16-523 of this chapter; and

i. To establish fees and promulgate rules as the commission may deem necessary and appropriate to effect the purposes and provisions of this chapter.

§16-505 Licenses and registration required. a. It shall be unlawful for any person to operate a business for the purpose of the collection of trade waste from the premises of a commercial establishment required to provide for the removal of such waste pursuant to the provisions of section 16-116 of this code, or the removal or disposal of trade waste from such premises, or to engage in, conduct or cause the operation of such a business, without having first obtained a license therefor from the commission pursuant to the provisions of this chapter. Notwithstanding the provisions of this subdivision, a business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation shall be exempt from the licensing provisions of this subdivision where, except in regard to the principals of a business solely in either or both of the class seven or the class three category of licensees as defined in rules previously promulgated by the commissioner of consumer affairs pursuant to subchapter eighteen of chapter two of title twenty of this code, no principal of such applicant is a principal of a business or a former business required to be licensed pursuant to this chapter or such former subchapter eighteen. Grant of such exemption shall be made by the commission upon its review of an exemption application, which shall be in the form and contain the information prescribed by rule of the commission and shall be accompanied by a statement by the applicant describing the nature of the applicant's business and listing all principals of such business.

b. It shall be unlawful for any person to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business, or to operate as a trade waste broker, without first having registered with the commission. Nothing in this subdivision shall be construed to require registration with the commission of (i) a commercial establishment required to provide for the removal of waste pursuant to section 16-116 of this code in order for such establishment to remove recyclable materials generated in the course of its own business to a location owned or leased by such establishment for the purpose of collecting or storing such materials for sale or further distribution; (ii) an owner or managing agent of a building in order to remove recyclable materials generated by commercial tenants within such building to a central location within such building for the purpose of collecting or storing such materials for sale or

further distribution; or (iii) an owner of an establishment required to provide for the removal of waste pursuant to section 16-116 of this code in order to transport beverage containers, as such term is defined in section 27-1003 of the environment conservation law, or any other recyclable material generated in the course of operation of its own business, to a redemption center, as such term is defined in section 27-1003 of such law, or to any other place where payment will be received by the commercial establishment for such materials. Notwithstanding any other provision of this subdivision, a business granted an exemption from the requirement for a license pursuant to subdivision a of this section shall be thereupon issued a registration pursuant to this subdivision.

c. A license or registration issued pursuant to this chapter or any rule promulgated hereunder shall not be transferred or assigned to any person or used by any person other than the licensee or registrant to whom it was issued.

§16-506 Term and fee for license or registration. a. A license or registration issued pursuant to this chapter shall be valid for a period of two years.

b. The commission shall promulgate rules establishing the fee for any license or registration required by this chapter. Such rules may provide for a fee to be charged for each vehicle in excess of one that will transport waste pursuant to such license and for each such vehicle operated pursuant to such registration.

§16-507 Registration application. a. Except in the case of a business issued a registration by reason of the grant of an exemption from the requirement for a license pursuant to section 16-505 of this chapter, an applicant for registration shall submit an application on a form prescribed by the commission and containing such information as the commission determines will adequately identify the business of such applicant. An applicant for registration to remove trade waste generated in the course of such applicant's business shall identify, in a manner to be prescribed by the commission, each vehicle that will transport waste pursuant to such registration. An application for registration as a trade waste broker shall contain information regarding any financial, contractual or employment relationship between such broker and a trade waste business. Any such relationship shall be indicated on the registration issued to such broker.

b. A registrant shall, in accordance with rules promulgated by the commission pursuant to section 16-504 of this chapter, inform the commission of any changes in the ownership composition of the registrant, the addition or deletion of any principal at any time subsequent to the issuance of the registration, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted on the application for registration.

c. (i) Notwithstanding any provision of this chapter, the commission may, when there is reasonable cause to believe that a trade waste broker who is an applicant for registration lacks good character, honest and integrity, require that such applicant be fingerprinted and provide to the commission the information set forth in subdivision b of section 16-508 of this chapter and may, after notice and the opportunity to be heard, refuse to register such applicant for the reasons set forth in paragraphs (i) through (xi) of subdivision a of section 16-509 of this chapter.

(ii) If at any time subsequent to the registration of a trade waste broker or the issuance of a registration issued by reason of the grant of an exemption from the requirement for a license pursuant to section 16-505 of this chapter, the commission has reasonable cause to believe that any or all of the principals of such broker or such exempt business do not possess good character, honesty and integrity, the commission may require that such principal[s] be fingerprinted and provide the background information required by subdivision b of section 16-508 of this chapter and may, after notice and the opportunity to be heard, revoke the registration of such trade waste broker or such exempt

business for the reasons set forth in paragraphs (i) through (x) of subdivision a of section 16-509 of this chapter.

§16-508 License application. a. An applicant for a license pursuant to this chapter shall submit an application in the form and containing the information prescribed by the commission. An application shall include, without limitation: (i) a list of the names and addresses of all principals of the applicant business, including any manager or other person who has policy or financial decision-making authority in the business; and (ii) a list of the names and job titles of all employees and prospective employees of the applicant business who are or will be engaged in the operation of the trade waste business; and (iii) such other information as the commission shall determine by rule will properly identify such employees and prospective employees.

b. An applicant shall: (i) be fingerprinted by a person designated for such purpose by the commission and pay a fee to be submitted by the commission to the division of criminal justice services for the purposes of obtaining criminal history records; and (ii) provide to the commission, upon a form prescribed by the commission and subject to such minimum dollar thresholds and other reporting requirements established on such form, information for the purpose of enabling the commission to determine the good character, honesty and integrity of the applicant, including but not limited to: (a) a listing of the names and addresses of any person having a beneficial interest in the applicant, and the amount and nature of such interest; (b) a listing of the amounts in which such applicant is indebted, including mortgages on real property, and the names and addresses of all persons to whom such debts are owed; (c) a listing of such applicant's real property holdings or mortgage or other interest in real property held by such applicant other than a primary residence and the names and addresses of all co-owners of such interest; (d) a listing of mortgages, loans, and instruments of indebtedness held by such applicant, the amount of such debt, and the names and addresses of all such debtors; (e) the name and address of any business in which such applicant holds an equity or debt interest, excluding any interest in publicly traded stocks or bonds; (f) the names and addresses of all persons or entities from whom such applicant has received gifts valued at more than one thousand dollars in any of the past three years, and the name of all persons or entities (excluding any organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code) to whom such applicant has given such gifts; (g) a listing of all criminal convictions, in any jurisdiction, of the applicant; (h) a listing of all pending civil or criminal actions to which such applicant is a party; (i) a listing of any determination by a federal, state or city regulatory agency of a violation by such applicant of laws or regulations relating to the conduct of the applicant's business where such violation has resulted in the suspension or revocation of a permit, license or other permission required in connection with the operation of such business or in a civil fine, penalty, settlement or injunctive relief in excess of threshold amounts or of a type set forth in the rules of the commission; (j) A listing of any criminal or civil investigation by a federal, state, or local prosecutorial agency, investigate agency or regulatory agency, in the five year period preceding the application, wherein such applicant has: (A) been the subject of such investigation, or (B) received a subpoena requiring the production of documents or information in connection with such investigation; (k) a certification that the applicant has paid all federal, state, and local income taxes related to the applicant's business for which the applicant is responsible for the three tax years preceding the date of the application or documentation that the applicant is contesting such taxes in a pending judicial or administrative proceeding; (l) the name of any trade association in which the applicant is or has been a member or held a position and the time period during which such membership or position was held; (m) the names and addresses of the principals of

any predecessor trade waste business of the applicant; and (n) such additional information concerning good character, honesty and integrity that the commission may deem appropriate and reasonable. An applicant may submit to the commission any material or explanation which the applicant believes demonstrates that any information submitted pursuant to subparagraphs (g), (h), (i), or (j) of this paragraph does not reflect adversely upon the applicant's good character, honesty and integrity. The commission may require that such applicants pay such fees to cover the expenses of fingerprinting and background investigations provided for in this subdivision as are set forth in the rules promulgated pursuant to section 16-504 of this chapter. Notwithstanding any other provision of this chapter, for purposes of this section: (A) in the case of an applicant which is a regional subsidiary of or otherwise owned, managed by or affiliated with a business that has national or international operations: (aa) (i) fingerprinting and disclosure under this section shall also be required of any persons not employed by the applicant who has direct management supervisory responsibility for the operations or performance of the applicant; and (ii) the chief executive officer, chief operating officer and chief financial officer, or any person exercising comparable responsibilities and functions, of any regional subsidiary or similar entity of such business over which any person subject to fingerprinting and disclosure under item (i) of this clause exercises similar responsibilities shall be fingerprinted and shall submit the information required pursuant to subparagraphs g and h of this paragraph, as well as such additional information pursuant to this paragraph as the commission may find necessary; and (bb) the listing specified under subparagraph (j) of this paragraph shall also be provided for any regional subsidiary or similar entity of the national or international business for which fingerprinting and disclosure by principals thereof is made pursuant to (aa) of this paragraph; and (B) "predecessor trade waste business" shall mean any business engaged in the removal, collection or disposal of trade waste in which one or more principals of the applicant were principals in the five year period preceding the application. For purposes of determining the good character, honesty and integrity of a business that removes, collects or disposes of trade waste, a trade waste broker or a business issued a registration by reason of the grant pursuant to section 16-505 of this chapter of an exemption from the requirement for a license, the term "applicant" shall apply to the business of such trade waste business, trade waste broker or exempt business and, except as specified by the commission, all the principals thereof; for purposes of investigations of employees or agents pursuant to section 16-510 of this chapter, the term "applicant" as used herein shall be deemed to apply to employees, agents or prospective employees or agents of an applicant for a license or a licensee. Notwithstanding any provision of this subdivision, the commission may accept, in lieu of submissions required pursuant to this subdivision, information, such as copies of submissions to any federal, state or local regulatory entity, where and to the extent that the commission finds that the contents of such submissions are sufficient or comparable to that required by this subdivision.

c. A licensee shall, in accordance with rules promulgated by the commission pursuant to section 16-504 of this chapter, inform the commission of any changes in the ownership composition of the licensee, the addition or deletion of any principal at any time subsequent to the issuance of the license, membership in a trade association in addition to an association identified in the application submitted pursuant to this section, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted on the application for a license. A licensee shall provide the commission with notice of at least ten business days of the proposed addition of a new principal to the business of such licensee. The commission may waive or shorten such period upon a showing that there exists a bona fide business requirement

therefor. Except where the commission determines within such period, based upon information available to it, that the addition of such new principal may have a result inimical to the purposes of this chapter, the licensee may add such new principal pending the completion of review by the commission. The licensee shall be afforded an opportunity to demonstrate to the commission that the addition of such new principal pending completion of such review would not have a result inimical to the purposes of this chapter. If upon the completion of such review, the commission determines that such principal lacks good character, honesty and integrity, the license shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such license, as the case may be, within the time period prescribed by the commission.

d. Each applicant shall provide the commission with a business address in New York city where notices may be delivered and legal process served.

§16-509 Refusal to issue a license. a. The commission may, by majority vote of its entire membership and after notice and the opportunity to be heard, refuse to issue a license to an applicant who lacks good character, honesty and integrity. Such notice shall specify the reasons for such refusal. In making such determination, the commission may consider, but is not limited to: (i) failure by such applicant to provide truthful information in connection with the application; (ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending; (iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license; (iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; (v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction; (vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person; (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision; (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter; (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter; (x) failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction. For purposes of

determination of the character, honesty and integrity of a trade waste broker pursuant to subdivision c or subdivision d of section 16-507 of this chapter, the term "applicant" shall refer to the business of such trade waste broker and all the principals thereof; for purposes of determining the good character, honesty and integrity of employees or agents pursuant to section 16-510 of this chapter, the term "applicant" as used herein shall be deemed to apply to employees, agents or prospective employees or agents of an applicant for a license or a licensee.

b. The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto or who has otherwise failed to demonstrate eligibility for such license under this chapter or any rules promulgated pursuant hereto.

c. The commission may refuse to issue a license to an applicant when such applicant: (i) was previously issued a license or a trade waste permit pursuant to this chapter or former subchapter eighteen of chapter two of title twenty of this code and such license was revoked pursuant to the provisions of this chapter or revoked or not renewed pursuant to the provisions of such former subchapter eighteen or any rules promulgated thereto; or (ii) has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license pursuant to this chapter or any rules promulgated hereto.

d. The commission may refuse to issue a license pursuant to this chapter to any applicant, where such applicant or any of the principals of such applicant have been principals of a licensee whose license has been revoked pursuant to paragraph two of subdivision b of section 16-513 of this chapter.

§16-510 Investigation of employees. a. (i) Each person who is not otherwise a principal as defined in section 16-501 of this chapter and who is employed or proposed to be employed by a licensee in a managerial capacity, or in a job category specified in rules promulgated by the commission pursuant to section 16-504 of this chapter, and each person who acts or is proposed to act in such a capacity or in such a category as an agent of a licensee, shall: (i) be fingerprinted by a person designated for such purpose by the commission and pay a fee to be submitted by the commission to the division of criminal justice services for the purposes of obtaining criminal history records, and (ii) submit to the commission the information set forth in subparagraphs (b) through (n) of paragraph (ii) of subdivision b of section 16-508 of this chapter and pay the fee for the investigation of such information set forth in the rules promulgated pursuant to section 16-504 of this chapter. Where, at any time subsequent to an investigation of an employee subject to the provisions of this subdivision, the commission has reasonable cause to believe that such employee lacks good character, honesty and integrity, the commission may conduct an additional investigation of such employee and may require, if necessary, that such employee provide information updating, supplementing or explaining information previously submitted. The job categories specified in rules of the commission for purposes of such fingerprinting and disclosure shall not include personnel engaged solely in operating vehicles or handling waste or clerical personnel who have no contact with customers.

(ii) Notwithstanding any other provision of this chapter, a licensee shall provide the commission with notice of at least ten business days of the proposed addition to the business of the licensee of any person subject to the provisions of this subdivision. The commission may waive or shorten such ten day period upon a showing that there exists a bona fide business requirement therefor. Except where the commission determines within such period, based on information available to it, that the addition of such new person

may have a result inimical to the purposes of this chapter, the licensee may add such person pending the completion of an investigation by the commission. The licensee shall be afforded an opportunity to demonstrate to the commission that the addition of such new person pending completion of the investigation would not have a result inimical to the purposes of this chapter. If upon the completion of such investigation, the commission makes a final determination that such person lacks good character, honesty and integrity, the license shall cease to be valid unless the employment of such person in the business of such licensee is discontinued within the time period prescribed by the commission.

b. (i) Where the commission has reasonable cause to believe that an employee or agent or prospective employee or agent of a licensee or an applicant for a license not subject to the provisions of subdivision a of this section lacks good character, honesty and integrity, the commission shall notify such employee or agent or prospective employee or agent that he or she shall be required to be fingerprinted and submit the information required by subdivision a of this section.

c. Where, following a background investigation conducted pursuant to this section, the official designated by the commission to review the findings of such investigation concludes that an employee or agent or prospective employee or agent of a licensee lacks good character, honesty and integrity, such person shall be provided with notice of such conclusion and the reasons therefor and may contest the conclusion in person or in writing to such official. Such official shall review such response and, in the event that he or she continues to find that such person lacks good character, honesty and integrity, shall submit such final conclusion to the commission. The commission shall provide such person with notice of the conclusion of the official and an opportunity to be heard to appeal such conclusion before the commission makes a final determination.

d. A licensee shall not employ or engage as an agent any person with respect to whom the commission has made a final determination, following a background investigation conducted pursuant to this section, that such person lacks good character, honesty and integrity.

§16-511 Independent auditing or monitoring required. a. The commission may, in the event the background investigation conducted pursuant to section 16-508 of this chapter produces adverse information, require as a condition of a license that the licensee enter into a contract with an independent auditor approved or selected by the commission. Such contract, the cost of which shall be paid by the licensee, shall provide that the auditor investigate the activities of the licensee with respect to the licensee's compliance with the provisions of this chapter, other applicable federal, state and local laws and such other matters as the commission shall determine by rule. The contract shall provide further that the auditor report the findings of such monitoring and investigation to the commission on a periodic basis, no less than four times a year.

b. In the case of an applicant or licensee who is the subject of a pending indictment or criminal action for a crime that would provide a basis for the refusal to issue a license under this chapter, the commission, in its discretion, may, in the case of an applicant, refrain from making a licensing determination until final disposition of the criminal case, and may also require as a condition of the license that an applicant or licensee enter into a contract with an independent monitor approved or selected by the commission. The cost of such contract shall be paid by the applicant or licensee, and such contract shall require that the monitor review and either approve or disapprove certain actions proposed to be taken by the licensee, where such actions fall within a category identified by rule of the commission as having a particular bearing on the fitness of an applicant or a licensee to hold a license to conduct a trade waste removal business under this chapter. Such actions

shall include, without limitation, any decision to assign contracts for the removal, collection or disposal of trade waste, any decision to transfer an ownership interest or substantial assets to another person or entity where such interests or assets exceed a threshold established in such rule, any significant expenditure by the business as defined in such rule, and the initiation of any litigation against a customer or another trade waste removal business or its customer. The monitor shall report promptly to the commission concerning the disposition of any such actions in the manner set forth in rules of the commission.

c. The commission shall be authorized to prescribe, in any contract required by the commission pursuant to this section, such reasonable terms and conditions as the commission deems necessary to effectuate the purposes hereof.

§16-512 Investigations by the department of investigation. In addition to any other investigation authorized pursuant to law, the commissioner of the department of investigation shall, at the request of the commission, conduct a study or investigation of any matter arising under the provisions of this chapter, including but not limited to investigation of the information required to be submitted by applicants for licenses and employees and the ongoing conduct of licensees.

§16-513 Revocation or suspension of license or registration. a. In addition to the penalties provided in section 16-515 of this chapter, the commission may, after due notice and opportunity to be heard, revoke or suspend a license or registration issued pursuant to the provisions of this chapter when the registrant or licensee and/or its principals, employees and/or agents: (i) have been found to be in violation of this chapter or any rules promulgated pursuant thereto; (ii) have been found by a court or administrative tribunal of competent jurisdiction to have violated: (A) any provision of section 16-119 of this code, or any rule promulgated pursuant thereto, relating to illegal dumping, (B) any provision of section 16-120.1 of this code, or any rule promulgated pursuant thereto, relating to the disposal of regulated medical waste and other medial waste or (C) any provision of section 16-117.1 of this code, or any rule promulgated pursuant thereto, relating to the transportation and disposal of waste containing asbestos; (iii) has repeatedly failed to obey lawful orders of any person authorized by section 16-517 of this chapter to enforce the provisions hereof; (iv) has failed to pay, within the time specified by a court, the department of consumer affairs or an administrative tribunal of competent jurisdiction, any fines or civil penalties imposed pursuant to this chapter or the rules promulgated pursuant thereto; (v) has been found in persistent or substantial violation of any rule promulgated by the commission pursuant to section 16-306 of this code or by commissioner of consumer affairs pursuant to section 16-306 or former subchapter eighteen of title twenty of this code; (vi) has been found in persistent or substantial violation of any city, state, or federal law, rule or regulation regarding the handling of trade waste, or any laws prohibiting deceptive, unfair, or unconscionable trade practices; (vii) whenever, in relation to an investigation conducted pursuant to this chapter, the commission determines, after consideration of the factors set forth in subdivision a of section 16-509 of this code, that the licensee or registrant as a trade waste broker lacks good character, honesty and integrity; (viii) whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of such license or registration was based; or (ix) whenever the licensee or registrant has failed to notify the commission as required by subdivision b of section 16-507 or subdivision c of section 16-508 of this chapter of any change in the ownership interest of the business or other material change in the information required on the application for such license or registration, or of the arrest or criminal conviction of

such licensee or registrant or any of his or her principals, employees and/or agents of which the licensee had knowledge or should have known.

b. The commission shall, in addition: (1) suspend a license issued pursuant to this chapter for thirty days following determination that the licensee, or any of its principals, employees or agents has violated subdivision a of section 16-524 of this chapter; and (2) revoke a license issued pursuant to this chapter upon determination that the licensee, or any of its principals, employees or agents has violated subdivision a of section 16-524 of this chapter two times within a period of three years.

§16-514 Emergency suspension of license or registration. Notwithstanding any other provision of this chapter or rules promulgated thereto, the commission may, upon a determination that the operation of the business of a licensee or the removal of waste by a business required by this chapter to be registered creates an imminent danger to life or property, or upon a finding that there has likely been false or fraudulent information submitted in an application pursuant to section 16-507 or section 16-508 of this chapter, immediately suspend such license or registration without a prior hearing, provided that provision shall be made for an immediate appeal of such suspension to the chair of the commission who shall determine such appeal forthwith. In the event that the chair upholds the suspension, an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed four business days and the commission shall issue a final determination no later than four days following the conclusion of such hearing.

§16-515 Penalties. In addition to any other penalty provided by law: a. Except as otherwise provided in subdivision b or subdivision c of this section, any person who violates any provision of this chapter or any of the rules promulgated thereto shall be liable for a civil penalty which shall not exceed ten thousand dollars for each such violation. Such civil penalty may be recovered in a civil action or may be returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction;

b. (i) Any person who violates subdivision a of section 16-505 or section 16-524 of this chapter shall, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars for each day of such violation or by imprisonment not exceeding six months, or both; and any such person shall be subject to a civil penalty of not more than five thousand dollars for each day of such violation to be recovered in a civil action or returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction; and

c. Any person who violates subdivision b of section 16-505 of this chapter or any rule pertaining thereto shall, upon conviction thereof, be punished by a civil penalty not to exceed one thousand dollars for each such violation to be recovered in a civil action or returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction.

d. The corporation counsel is authorized to commence a civil action on behalf of the city for injunctive relief to restrain or enjoin any activity in violation of this chapter and for civil penalties.

e. (i) In addition to any other penalty prescribed in this section for the violation of subdivisions a or b of section 16-505 or subdivision a of section 16-524 of this chapter, or when there have been three or more violations within a three year period of the provisions herein, the commission shall, after notice and the opportunity to be heard, be authorized: to order any person in violation of such provisions immediately to discontinue the operation of such activity at the premises from which such activity is operated; to order that any premises from which activity in violation of such provisions is operated shall be sealed, provided that such premises are used primarily for such activity; and to

order that any vehicles or other devices or instrumentalities utilized in the violation of such provisions shall be removed, sealed, or otherwise made inoperable. An order pursuant to this paragraph shall be posted at the premises from which activity in violation of such provisions occurs.

(ii) Ten days after the posting of an order issued pursuant to paragraph (i) of this subdivision, this order may be enforced by any person so authorized by section 16-517 of this chapter.

(iii) Any vehicle or other device or instrumentality removed pursuant to the provisions of this section shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such item may be charged with reasonable costs for removal and storage payable prior to the release of such item.

(iv) A premise ordered sealed or a vehicle or other device or instrumentality removed pursuant to this section shall be unsealed or released upon payment of all outstanding fines and all reasonable costs for removal and storage and, where the underlying violation is for unlicensed or unregistered activity or unauthorized activity in a special trade waste district, demonstration that a license has been obtained or a business registered or proof satisfactory to the commission that such premise or item will not be used in violation of subdivision a or b of section 16-505 or subdivision a of section 16-524 of this chapter.

(v) It shall be a misdemeanor for any person to remove the seal from any premises or remove the seal from or make operable any vehicle or other device or instrumentality sealed or otherwise made inoperable in accordance with an order of the commission.

(vi) A vehicle or other device or instrumentality removed pursuant to this section that is not reclaimed within ninety days of such removal by the owner or other person lawfully entitled to reclaim such item shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture, the commission shall, upon a public notice of at least five days, sell such item at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

§16-516 Liability for violations. A business required by this chapter to be licensed or registered shall be liable for violations of any of the provisions of this chapter or any rules promulgated pursuant hereto committed by any of its employees and/or agents.

§16-517 Enforcement. Notices of violation for violations of any provision of this chapter or any rule promulgated hereunder may be issued by authorized employees or agents of the commission. In addition, such notices of violation may be issued by the police department, and, at the request of the commission and with the consent of the appropriate commissioner, by authorized employees and agents of the department of consumer affairs, the department of business services, the department of transportation, and the department of sanitation.

§16-518 Hearings. a. A hearing pursuant to this chapter may be conducted by the commission, or, in the discretion of the commission, by an administrative law judge employed by the office of administrative trials and hearings or other administrative tribunal of competent jurisdiction. Where a hearing pursuant to a provision of this chapter is conducted by an administrative law judge, such judge shall submit recommended findings of fact and a recommended decision to the commission, which shall make the final determination.

b. Notwithstanding the provisions of subdivision a of this section, the commission may provide by rule that hearings or specified categories of hearings pursuant to this chapter may be conducted by the department of consumer affairs. Where the department of consumer affairs conducts such hearings, the commissioner of consumer affairs shall make the final determination.

§16-519 Rate fixing; hearings and production of records. The commission shall have the power to fix by rule and from time to time refix maximum and minimum rates, fixed according to weight or volume of trade waste, for the removal of waste by a licensee, which rates shall be based upon a fair and reasonable return to the licensees and shall protect those using the services of such licensees from excessive or unreasonable charges. The commission may compel the attendance at a public hearing held pursuant to a rate-fixing rule-making of licensees and other persons having information in their possession in regard to the subject matter of such hearing and may compel the production of books and records in relation thereto, and may require licensees to file with the commission schedules of rates.

§16-520 Conduct by licensees of trade waste collection, removal or disposal.

a. Every licensee pursuant to this chapter shall provide to every recipient of its services a sign which the licensee shall obtain from the commission. In addition to the information printed on the sign by the commission, the licensee shall print the day and approximate time of pickup clearly and legibly on the sign. Such sign shall be conspicuously posted as prescribed in section 16-116(b) of this code by the owner, lessee or person in control of the commercial establishment which receives the licensee's services.

b. Except as otherwise provided in subdivision d of section 16-523, a licensee shall not charge, exact or accept rates for the collection, removal or disposal of trade waste any amount greater than any maximum rates or less than any minimum rates that the commission may fix pursuant to section 16-519 of this chapter.

c. All licensees shall maintain audited financial statements, records, ledgers, receipts, bills and such other written records as the commission determines are necessary or useful for carrying out the purposes of this chapter. Such records shall be maintained for a period of time not to exceed five years to be determined by rule by the commission, provided however, that such rule may provide that the commission may, in specific instances at its discretion, require that records be retained for a period of time exceeding five years. Such records shall be made available for inspection and audit by the commission at its request at either the licensee's place of business or at the offices of the commission.

d. A licensee shall be in compliance with all applicable state, federal and local laws, ordinances, rules and regulations pertaining to the collection, removal and disposal of trade waste.

e. (i) A contract for the collection, removal or disposal of trade waste shall not exceed two years in duration. All such contracts shall be approved as to form by the commission.

(ii) An assignee of contracts for the removal, collection or disposal of trade waste shall notify each party to a contract so assigned of such assignment and of the right of such party to terminate such contract within three months of receiving notice of such assignment upon thirty days notice. Such notification shall be by certified mail with the receipt of delivery thereof retained by the assignee and shall be upon a form prescribed by the commission. Where no written contract exists with a customer for the removal, collection or disposal of trade waste, a company that assumes such trade waste removal from another company shall provide such customer with notice that a new company will be providing such trade waste removal and that the customer has the right to terminate such service. Such notice shall be by certified mail with the receipt of delivery thereof retained by the assignee.

f. A licensee shall bill commercial establishments for removal, collection or disposal of trade waste in a form and manner to be prescribed by the commission.

g. A licensee shall not refuse to provide service to a commercial establishment that is located within an area of ten blocks from an establishment served by such licensee unless such licensee has demonstrated to the commission a lack of capacity or other business justification for the licensee's refusal to service such establishment. For the purposes of this subdivision, the term "block" shall mean the area of a street spanning from one intersection to the next.

h. A licensee shall provide to the commission the names of any employees proposed to be hired or hired subsequent to the issuance of a license and such information regarding such employees as is required in regard to employees and prospective employees pursuant to subdivision a of section 16-508 of this chapter.

i. A licensee who provides services for a commercial establishment shall keep the sidewalk, flagging, curbstone and roadway abutting such establishment free from obstruction, garbage, refuse, litter, debris and other offensive material resulting from the removal by the licensee of trade waste.

j. (i) No licensee or principal thereof shall be a member or hold a position in any trade association: (aa) where such association, or a predecessor thereof as determined by the commission, has violated state or federal antitrust statutes or regulations, or has been convicted of a racketeering activity or similar crime, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C §1961 et seq.) or an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time; (bb) where a person holding a position in such trade association, or a predecessor thereof as determined by the commission, has violated state or federal antitrust statutes or regulations, or has been convicted of a racketeering activity or similar crime, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq) or an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time; (cc) where a person holding a position in such trade association, or a predecessor thereof as determined by the commission, is a member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency; or (dd) where the trade association has failed to cooperate fully with the commission in connection with any investigation conducted pursuant to this chapter. The commission may determine, for purposes of this subdivision, that a trade association is a predecessor of another such trade association by finding that transfers of assets have been made between them or that all or substantially all of the persons holding positions in the two associations are the same. A licensee shall be in violation of this paragraph when the licensee knows or should know of a violation, conviction, association with organized crime or failure to cooperate set forth herein.

(ii) Notwithstanding the provisions of paragraph (i) of this subdivision, the commission may permit a licensee to be a member of such a trade association upon a determination by the commission that such association does not operate in a manner inconsistent with the purposes of this chapter.

§16-521 Conduct of trade waste brokers. a. A trade waste broker shall not conduct an evaluation or analysis of the trade waste generated by a commercial establishment in order to recommend cost efficient means of waste disposal or other changes in related business practices, or broker a transaction between a commercial establishment which seeks trade waste removal, collection or disposal services and a trade waste business required to be licensed pursuant to this chapter, unless such broker has first presented a copy of his or her registration to such consumer.

b. A trade waste broker who conducts an evaluation or analysis of a trade waste generated by a commercial establishment in order to recommend cost efficient means of waste disposal or other changes in related business practices shall not request or accept any payment in regard to such evaluation or analysis from a party other than the commercial establishment for whom such services are performed unless such broker has first disclosed to such establishment that he or she proposes to request or accept such payment.

c. A trade waste broker who brokers a transaction between a commercial establishment seeking trade waste removal, collection or disposal services and a trade waste business required to be licensed pursuant to this chapter shall not request or accept payment from such trade waste business.

d. A trade waste broker shall not engage in the collection of fees from commercial establishments for trade waste removal by a trade waste business required to be licensed pursuant to this chapter except where: (i) the contract for such fee collection complies with standards set forth in rules promulgated by the commission; (ii) such fee collection is upon the request of the customer; and (iii) such fee collection is part of an agreement providing for other services such as periodic waste evaluation and consulting with respect to source separation, recycling or other business practices relating to trade waste.

e. A trade waste broker shall maintain such financial statements, records, ledgers, receipts, bills and other written records as the commission determines are necessary or useful for carrying out the purposes of this chapter. Such records shall be maintained for a period of time not to exceed five years to be determined by rule by the commission, provided however, that such rule may provide that the commission may, in specific instances at its discretion, require that records be retained for a period of time exceeding five years. Such records shall be made available for inspection and audit by the commission at its request at either the place of business of the trade waste broker or at the offices of the commission.

§16-522 Investigation of customer complaints. The commission shall by rule establish a procedure for the investigation and resolution of complaints by commercial establishments regarding overcharging and other problems relating to the collection, removal or disposal of waste.

§16-523 Special trade waste removal districts; designation; agreement. a. The commission shall by rule designate no more than two areas of the city in commercial areas within different boroughs to participate in a pilot project as special trade waste removal districts. In making any such designation, the commission shall consider:

1. the number and types of commercial establishments within the proposed district;
2. the amount and types of waste generated by commercial establishments within the proposed district;
3. existing service patterns within the proposed district;
4. the types and estimated amounts of recyclable materials generated by commercial establishments within the proposed district that are required to be recycled, reused or sold for reuse pursuant to section 16-306 of this code and any rules promulgated pursuant thereto;
5. the rates being charged by persons licensed pursuant to this subchapter to commercial establishments within the proposed district; and
6. the history of complaints from commercial establishments within the district regarding overcharging for the removal of trade waste or the inability to change providers of trade waste removal services.

b. For each area designated as a special trade waste removal district by the commission pursuant to subdivision a of this section, the commission shall be authorized

to enter into agreements with one or more specified licensee[s] permitting such licensee[s] to provide for the removal of trade waste within such district. The term of any such agreement, inclusive of any period by which the original term is extended at the option of the commission, shall not exceed two years. No such agreement[s] shall be entered into until a public hearing has been held with respect thereto after publication in the City Record at least thirty days in advance of such hearing and the commission has solicited as part of the record of such hearing whether there is support for the establishment of such special trade waste removal district from local business organizations or business improvement districts.

c. The commission shall issue requests for proposals to conduct trade waste removal in a special trade waste removal district and, based upon the review and evaluation of responses thereto, may negotiate and enter into such agreement[s] pursuant to subdivision b of this section, as the commission, in its discretion, determines will best provide for the efficient and orderly removal of trade waste in such district. Such request for proposals shall solicit information regarding the qualifications of proposers, the nature and frequency of the trade waste removal services to be provided, the rate or rates to be charged to establishments for such services, the nature and extent of recycling services and waste audit services, if any, to be provided, and any other information relating to performance standards, customer service and security of performance the commission deems appropriate. The commission shall enter into one or more such agreement[s] if it finds, on the basis of the proposals, that such agreement[s] will likely result in improved customer service and lower rates.

d. Any agreement[s] entered into pursuant to subdivision b of this section shall:

- (1) specify the area within which services will be provided under such agreement;
- (2) specify the frequency with which trade waste will be removed;
- (3) specify the maximum rate or rates to be charged to establishments in such area for the removal of trade waste generated by such establishments;
- (4) specify any recycling services and any waste audit programs to be provided to establishments within such area; and
- (5) establish a procedure to determine the type and volume of waste removed from establishments in order to ensure adequate assessment of the charges for such removal, and prescribe any other appropriate requirements relating to performance standards, customer service, security of performance, or such other matters as the commission deems necessary to effectuate the purposes of this section.

(6) require that the licensee shall enter into a contract with an independent auditor approved or selected by the commission, and that such contract, the cost of which shall be paid by the licensee, shall provide: that the auditor shall investigate the activities of the licensee with respect to the licensee's compliance with the provisions of this chapter, other applicable federal, state and local laws and such other matters as the commission shall determine by rule; and that the auditor shall report the findings of such monitoring and investigation to the commission on a periodic basis, no less than four times a year. The commission shall be authorized to prescribe such reasonable terms and conditions in such contract as the commission deems necessary to effectuate the purposes of this section.

e. No service provided pursuant to an agreement entered into pursuant to subdivision b of this section shall be subcontracted, nor shall the right to provide service pursuant to such an agreement be assigned or otherwise delegated, whether upon an emergency or any other basis, unless the commission has provided specific written authorization therefor.

f. The commission shall be authorized, upon due notice and hearing, to terminate an agreement entered into pursuant to subdivision b of this section based upon a

determination that there has been a default in the performance of the terms and conditions of such agreement. In the event of termination, if the remaining licensees authorized to remove trade waste in the special trade waste district lack the capacity to adequately service the commercial establishments in such districts the commission may, as appropriate: (i) enter into an additional agreement with a licensee who responded to the request for proposals previously issued for the special trade waste removal district pursuant to subdivision c of this section; or (ii) issue a new request for proposals pursuant to subdivision c of such section.

g. The provisions of this section and agreements concluded pursuant to subdivision b of this section shall not apply to:

(1) the collection and disposal of recyclable materials as such term is defined in subdivision i of section 16-303 of this code where a commercial establishment wishes to contract separately for the sale of any such materials;

(2) the collection and disposal of regulated medical waste pursuant to section 16-120.1 of this code;

(3) the collection and disposal of waste containing asbestos pursuant to section 16-117.1 of this code;

(4) the collection and disposal of demolition and construction debris or waste;

(5) the collection and disposal of hazardous waste pursuant to section 27-0901 of the environmental conservation law, including material containing hazardous waste;

(6) the removal and disposal of waste by the owner, lessee or person in control of a commercial establishment; and

(7) the removal and disposal of trade waste from a building with a floor area of two hundred thousand square feet or more, when the owner or managing agent of such building elects to arrange for the removal and disposal of all the trade waste from such building by a licensee other than a licensee with whom the commission has entered into agreement pursuant to subdivision b of this section.

(8) the removal and disposal of trade waste from a building located within the special trade waste removal district owned or controlled by an individual or an entity that owns or controls a building or buildings within the city of New York which, in the aggregate, occupy a floor area of one million square feet or more, where the contract for the collection, removal or disposal of trade waste for the building located within the special trade waste removal district is with a licensee who also provides trade waste removal services for other buildings within the city of New York that are owned or controlled by such individual or entity. For the purpose of this paragraph: an entity shall be defined as a sole proprietorship, partnership, corporation, net lessee, mortgagee or vendee in possession, a trustee in bankruptcy or a receiver; and an individual shall be defined as a sole proprietor, the managing or general partner of one or more partnerships or the chief operating officer or executive officer of one or more corporations. An individual's aggregate ownership or controlling interest shall be computed by adding the square footage of all buildings within the city of New York owned by partnerships and corporations in which the individual serves as the managing or general partner of the partnerships and/or the chief operating officer or executive officer of the corporations, including those buildings where the managing or general partner is a corporation in which the individual is the chief operating officer or executive officer.

h. Except for a licensee who has entered into an agreement with the commission pursuant to subdivision b of this section, a trade waste business required to be licensed pursuant to this chapter shall notify the commission of any agreement to provide a service described in subdivision g of this section within a special trade waste district. The

commission may provide by rule for the visual identification of vehicles providing such services in a special trade waste district.

i. Nothing in subdivision g of this section shall be construed to prohibit a commercial establishment in a special trade waste district from contracting for the services described in such subdivision with a licensee who has concluded an agreement pursuant to subdivision b of this section.

§16-524 Special trade waste removal districts; violations; enforcement. a. Upon the date of commencement of service pursuant to agreements entered into pursuant to subdivision b of section 16-523 of this chapter permitting specified licensees to provide for the removal of trade waste generated by commercial establishments within a special trade waste district designated by the commission, (i) any contract for trade waste removal, except for services set forth in subdivision g of section 16-523 of this chapter, with a business other than a licensee who has entered into an agreement pursuant to subdivision b of section 16-513 of this chapter shall be considered terminated, and (ii) it shall be unlawful for any person not party to such an agreement, other than a person who is performing a contract for services set forth in subdivision g of section 16-523, whether or not licensed pursuant to this chapter, to provide for the removal of trade waste within such district, or to solicit commercial establishments located within such district for such purpose, or to make false, falsely disparaging or misleading oral or written statements or other representations to the owners or operators of such commercial establishments which have the capacity, tendency or effect of misleading such owners or operators, for the purpose of interfering with performance of terms of such an agreement.

b. Whenever a person interferes or attempts to interfere by threats, intimidation, or coercion, or by destruction or damage of property or equipment, with performance of the terms of an agreement entered into pursuant to subdivision b of section 16-523 of this code, the corporation counsel, at the request of the commission, may bring a civil action on behalf of the city for injunctive and other appropriate relief in order to permit the uninterrupted and unimpeded delivery of such services. Violations of an order issued pursuant to this subdivision may be punished by a proceeding for contempt brought pursuant to article nineteen of the judiciary law and, in addition to any relief thereunder, a civil penalty may be imposed not exceeding ten thousand dollars for each day that the violation continues.

§16-525 Displaced employee list. The commission shall maintain a list containing the names and contact addresses or telephone numbers of persons formerly employed by a business engaged in the collection, removal or disposal of trade waste whose employment ended following the denial or revocation of a license pursuant to this chapter. The addition or deletion of information on such list shall be made only upon the request of such a former employee. A copy of such list shall be made available upon request to an applicant for a license pursuant to this chapter. The provision of such list shall in no way be construed as a recommendation by the city regarding the employment of any person on such list, nor shall the city be responsible for the accuracy of the information set forth therein.

§3. Section 16-116 of the administrative code of the city of New York, subdivision a as amended by local law number 61 for the year 1988, subdivisions c and d as amended by local law number 41 for the year 1992, is amended to read as follows:

§16-116 Removal of commercial waste; posting of sign; [permit], registration number. a. Every owner, lessee or person in control of a commercial establishment shall provide for the removal of waste by a [private carter] business licensed by the [department of consumer affairs] New York city trade waste commission as required by subdivision a of section 16-505 of this code or register and obtain a [trade waste permit] registration

number from the [department of consumer affairs for disposal of] *New York city trade waste commission as required by subdivision b of section 16-505 of this code to remove its own waste except as provided in subdivision c of this section, however nothing contained herein shall preclude the commissioner from providing for the removal of waste from any commercial establishment pursuant to the authority vested in the commissioner by section seven hundred fifty-three of the charter; provided, further, that every owner, lessee or person in control of a commercial establishment that is located in a special trade waste removal district designated by the New York city trade waste commission pursuant to section 16-523 of this code, except for an owner, lessee or person in control of a commercial establishment who has registered with the New York city trade waste commission as required by subdivision b of section 16-505 of this code and except as otherwise provided by subdivision g of section 16-523 of this code, shall provide for the removal of waste by a licensee with whom such commission has entered into an agreement pursuant to subdivision b of such section.*

b. Every owner, lessee or person in control of a commercial establishment shall post a sign which states clearly and legibly the trade or business name, address, telephone number and the day and time of the pickup of the [private carter] *trade waste removal business* presently serving the establishment, or if the commercial establishment [disposes of] *removes its own waste, a [trade waste permit] registration number* issued by the [department of consumer affairs] *New York city trade waste commission* shall be posted. Such sign or [permit] *registration number* shall be prominently displayed by affixing it to a window near the principal entrance to the commercial establishment so as to be easily visible from outside the building. If this is not possible, such sign or permit shall be prominently displayed inside the commercial establishment near the principal entrance to the premises.

c. This section shall not apply to (i) unimproved or vacant property or premises generating infrequent waste or insignificant amounts of waste; and (ii) home occupations, medical offices/group medical centers, and other residential offices, which receive department collection and disposal service pursuant to section 16-114.1 of this code.

d. [Violation] (i) *Except as provided in paragraph (ii) of this subdivision, violation of any of the provisions of this section or any rules promulgated pursuant thereto shall be punishable by a civil penalty of not less than fifty nor more than one hundred dollars. Any notice of violation of this section shall be returnable before the environmental control board which shall impose the penalty herein provided.*

(ii) *A commercial establishment required by subdivision b of section 16-505 of this code to register with the New York city trade waste commission shall be subject to a penalty for the violation of such subdivision or any rule pertaining thereto as provided in subdivision c of section 16-515 of this code. Such penalty may be recoverable in the manner provided therein or may be returnable in a civil action brought in the name of the commissioner before the environmental control board which shall impose a penalty not to exceed one thousand dollars.*

§4. Subdivision b of section 16-306 of the administrative code of the city of New York, as added by local law number 87 for the year 1992, is amended to read as follows:

b. The rules promulgated pursuant to subdivision a of this section shall require that generators of [private carter-collected] *waste collected by businesses required to be licensed pursuant to section 16-505 of this code* source separate the designated materials in such manner and to such extent as the commissioner determines to be necessary to minimize contamination and maximize the marketability of such materials. However, in promulgating such rules the commissioner shall not require source separation of a material unless the commissioner has determined that an economic market exists for such

material. For the purpose of this section, the term "economic market" refers to instances in which the full avoided costs of proper collection, transportation and disposal of source separated materials are equal to or greater than the cost of collection, transportation and sale of said materials less the amount received from the sale of said materials. The [commissioner of consumer affairs, in consultation with the commissioner,] *New York city trade waste commission* shall adopt and implement rules requiring [private carters] *businesses licensed to remove, collect or dispose of trade waste* to provide for the collection of, and ensure the continued separation of, designated materials that have been source separated, provide for the separation of all other designated materials, and provide for recycling of all the designated materials [, provided, however, that generators may arrange for the recycling, reuse or sale for reuse of designated materials by persons other than private carters if the designated materials have been source separated]. *Rules promulgated by the trade waste commission pursuant to this subdivision shall be enforced in the manner provided in section 16-517 of this code and violations of such rules shall be subject to the penalties provided in subdivision a of section 16-515 of this code for violation of the provisions of chapter 16-A. In addition, the commissioner shall have the authority to issue notices of violation for any violation of such rule and such notices of violation shall be returnable in a civil action brought in the name of the commissioner before the environmental control board which shall impose a penalty not to exceed ten thousand dollars for each such violation.*

§5. The introductory sentence of paragraph 1 of subdivision a of section 16-130 of the administrative code of the city of New York, as amended by local law number 40 for the year 1990, is amended to read as follows:

1. The term "solid waste" shall mean all putrescible and non-putrescible materials or substances, other than those materials or substances described in subparagraph (b) of this paragraph, that are discarded or rejected, including but not limited to garbage, refuse, waste collected by any person required to be licensed or [permitted] *registered* pursuant to [subchapter eighteen of chapter two of title twenty] *chapter 1 of title 16-A* of this code, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal. Such term shall include recyclable materials, as defined in subdivision i of section 16-303 of this title.

§6. Paragraph 3 of subdivision a of section 16-131 of the administrative code of the city of New York, as amended by local law number 40 for the year 1990, is amended to read as follows:

3. requiring permittees to maintain records determined by the commissioner to be necessary for the department to fulfill its duties under this chapter and to protect the public health and safety. *Such records shall include, without limitation, a log of the names of prospective customers denied the use of such dump, transfer station, or fill material operation.*

§7. Section 16-131.1 of the administrative code of the city of New York, as added by local law number 40 for the year 1990, is amended to read as follows:

§16-131.1 Issuance, renewal, suspension and revocation of permits. *The commissioner shall be responsible for the issuance, renewal, suspension and revocation of permits required by section 16-130 of this chapter. An application for such a permit shall also be presented by the department to the New York city trade waste commission for review by such commission. The commissioner shall consider the recommendations of such commission in making a determination pursuant to this section.*

a. *The commissioner, consistent with article twenty-three-A of the correction law, may refuse to issue or renew a permit required by section 16-130 of this chapter, or may, after notice and the opportunity to be heard, suspend or revoke such a permit when the*

applicant for such permit or such permittee has been denied a license required by section 16-505 of this code to operate a business for the collection, removal or disposal of trade waste or has had such a license revoked for the reason that such applicant or licensee has been found to lack good character, honesty and integrity by the trade waste commission pursuant to the provisions of title 16-A of this code.

b. The commissioner, consistent with article twenty-three-A of the [corrections] correction law, may refuse to issue to an applicant a permit required by section 16-130 of this chapter and may, after due notice and hearing, in addition to any other penalties provided by law, refuse to renew, suspend or revoke such permit upon the occurrence of any of the following conditions:

1. the applicant or permittee[, or its officers, principals, directors, employees or stockholders owning more than ten percent of the outstanding stock of the corporation have] has been convicted of a crime which in the judgment of the commissioner has a direct relationship to his or her fitness or ability to perform any of the activities for which a permit is required under section 16-130 of this chapter; or

2. the applicant or permittee[, or its officers, principals, directors, employees or stockholders owning more than ten percent of the outstanding stock of the corporation have] has been found by a court or an administrative agency of competent jurisdiction to have violated:

(A) any provision of section 16-117.1, 16-119, 16-120.1, 16-130, 16-131, 16-131.2, 16-131.3 or 16-135.5 of this chapter; or

(B) any provision of article one hundred fifty-seven of the New York city health code; or

(C) any other law or rule related to the conduct, operation or use of a dump, non-putrescible solid waste transfer station, putrescible solid waste transfer station or fill material operation; or

(D) any federal or state law prohibiting unfair trade practices or conduct in restraint of competition, including but not limited to the Sherman Anti-Trust Act (15 U.S.C. §1, §2), the Clayton Act (15 U.S.C. §18), the Robinson Patman Act (15 U.S.C. §12 et seq.), the Federal Trade Commission Act (15 U.S.C. §45 et seq.), and sections 340 et seq. of the general business law or an equivalent offense under the laws of any other jurisdiction; or

3. the commissioner has determined, after consideration of the results of an investigation conducted pursuant to this section, that the applicant or permittee has operated the business for which a permit is required by section 16-130 of this chapter in a manner inconsistent with the provisions of the federal or state laws prohibiting unfair trade practices or conduct in restraint of competition set forth in subparagraph (D) of paragraph two of this subdivision; or

4. the applicant or permittee has violated or failed to comply with any of the conditions for issuance of such permit as provided in this chapter or any of the rules promulgated hereunder.

c. Where the commissioner or the New York city trade waste commission has reasonable cause to believe that a permittee or an applicant for a permit required by section 16-130 of this code may lack good character, honesty and integrity, such applicant or permittee shall, in addition to providing the information required by the rules promulgated pursuant to paragraph two of subdivision a of section 16-131 of this code, also comply with the fingerprinting and disclosure requirements set forth in subdivision b of section 16-508 of this code and pay the fee for the investigation thereof set forth in the rules of the New York city trade waste commission. The commissioner may, after consideration of the results of such investigation, refuse for the reasons set forth in

section 16-509 of this code to issue a permit required by section 16-130 of this chapter and, after notice and opportunity to be heard, may revoke or suspend any such permit upon a finding that the applicant or the permittee lacks good character, honesty and integrity.

d. For the purposes of this section, "applicant" or "permittee" shall mean the business of the applicant or permittee and any principal thereof, as the term "principal" is defined in section 16-501 of this code.

e. The New York city trade waste commission or the department of investigation may, at the request of the commissioner, assist the commissioner in any investigation conducted pursuant to this section.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of

such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date

pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits and application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on May 22, 1996, and approved by the Mayor on June 3, 1996.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 42 of 1996, Council Int. No. 676-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on May 22, 1996: 41 for, 6 against.

Was approved by the Mayor on June 3, 1996.

Was returned to the City Clerk on June 4, 1996.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel