

**Testimony of Assistant Commissioner Carlos A. Ortiz  
New York City Department of Consumer and Worker Protection**

**Before the Committees on  
Small Business and Governmental Operations**

**Hearing on  
Introductions 491 and 815**

**January 30, 2023**

***Introduction***

Good afternoon, Chair Menin and Chair Ung, and members of the Committees on Small Business and Government Operations. My name is Carlos Ortiz, and I am the Assistant Commissioner for External Affairs at the Department of Consumer and Worker Protection (DCWP). I am joined by Michael Tiger, DCWP's General Counsel, and my colleague Gregory Anderson, Deputy Commissioner at the Department of Sanitation (DSNY). Thank you for the opportunity to testify on today's legislation.

***DCWP and Small Businesses***

DCWP has been steadfast in its commitment to supporting small businesses in New York City. We do this in a number of ways. Our dedicated outreach teams share informational materials and conduct hundreds of educational events each year, partnering with sister agencies such as the Department of Small Business Services to bring resources to local businesses. DCWP's visiting inspector program has served more than 10,000 individual businesses since 2017, providing free, one-on-one educational inspections by a senior inspector. These efforts ensure that businesses have access to information regarding their requirements to operate in New York City, through which we hope to facilitate a culture of compliance with laws and rules that the Council and Administration have established. And, through our equitable enforcement and progressive discipline model, we prioritize our enforcement efforts against recidivist non-compliant businesses to ensure that the city's marketplace is free from predatory actors.

Moreover, DCWP regularly and meticulously assesses the provisions of the Administrative Code we enforce to ensure that the civil penalties we issue are appropriate and not overly burdensome on our city's small businesses. For example, in 2021, we worked with the Council to pass Local Law 80, which made business-friendly changes to over 30 categories or areas of our enforcement and substantially lowered penalties for over 150 individual violations that DCWP enforces. Local Law 80 also lowered civil penalties to zero dollars for the first-time offense of 12 violations and added the ability to cure a first-time violation for dozens more. Lastly, it repealed outdated or redundant licensing requirements to provide relief to small businesses recovering from the economic impact of the pandemic.<sup>1</sup> In 2022, as part of Mayor Adams' Small Business Forward Initiative, DCWP proposed an additional 24 reforms, principally to lower civil penalties to zero dollars for first time violations, which are projected to save businesses almost \$1 million

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<sup>1</sup> <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4805925&GUID=2C7D9F71-D49E-499E-A21F-F6A9D5C76B90&Options=ID|Text|&Search=2233>

a year.<sup>2</sup> The bill to implement those reforms, and similar reforms proposed by many other city agencies, also known as Introduction 845, is currently before the Council, carried by Chair Menin. The Administration looks forward to seeing it advance and provide substantive relief to New York City's small businesses.

## **DCWP's Penalty Schedules**

Along those lines, I would like to describe for the committees, today, how DCWP establishes public "penalty schedules" for the laws it enforces. When the Council passes legislation that involves a range of penalties, DCWP will engage in rulemaking to establish a specific penalty for the first violation that weighs into consideration our knowledge of the industry, our knowledge of the harm that has been identified by the legislation, and the potential for deterrence of that harm. The proposed penalty is shared with the public in order for elected officials, community boards, consumers, workers and businesses to provide feedback. When the penalty schedule is finalized, it is publicly available. Subsequently, whenever an OATH hearing officer issues a decision against a business, they will use the publicly available penalty schedule to assess a penalty against the business.

### ***Introductions 491 and 815***

Today, there are two bills for consideration at this hearing. The first, Introduction 491, would require DSNY and DCWP to establish a program for food service establishments to donate their excess food, and in return see certain civil penalties waived. DCWP defers to DSNY with respect to this legislation.

Introduction 815 relates to Administrative Code provisions that have a range of penalty amounts for a specific violation and would require city agencies enforcing those provisions to utilize the lowest amount in the range as the standard first time penalty. City agencies would only be able to impose a higher penalty by establishing specific aggravating factors by rule for each violation in the Administrative Code, which would then need to be proven by the agency each time during a proceeding at the Office of Administrative Trials and Hearings (OATH).

As I described earlier, DCWP has been committed to continually and intentionally reassessing penalties in the Administrative Code, listening to feedback from small businesses and advocates, to ensure that they are appropriate and effective. However, the Administration does not support this legislation as drafted and has concerns with its sweeping approach that could have adverse consequences spanning a range of City agencies. For DCWP, specifically, these mandated changes will weaken penalties that serve as a deterrent to some of the most egregious business activity we observe, such as tobacco retail dealers operating unlicensed, debt collectors illegally pursuing a consumer, or individuals deceiving immigrant New Yorkers with false services and promises of gaining documented status. The bill would also require DCWP to establish aggravating factors in order to issue penalties above the lowest amount in a range. Proving "aggravating factors" would likely require DCWP to staff lawyers to attend OATH proceedings, making the hearing process more time consuming and elaborate for businesses.

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<sup>2</sup> <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Small-Business-Forward.pdf>

Finally, as my colleague at DSNY can speak to, this bill would impact significant provisions of the laws they enforce, and those that our other sister agencies enforce to protect New Yorkers from illegal activity. We recommend, as an alternative, that we continue to collaborate on Introduction 845, which I referenced previously, to implement significant reforms to civil penalties as it relates to small businesses.

***Conclusion***

Once again, thank you Chairs Menin and Ung for the opportunity to testify today before your committees. I welcome any questions you and members may have about today's bills and DCWP's work to uplift small businesses and protect consumers and workers.



# sanitation

Jessica S. Tisch Commissioner

**Testimony of  
Gregory Anderson, Deputy Commissioner  
New York City Department of Sanitation**

**Hearing before the New York City Council  
Committees on Small Business and Governmental Operations**

**Monday, January 30, 2023  
1:00 P.M.**

**Regarding Intro. 491 and Intro. 815**

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Chair Menin and Chair Ung, and members of the Committees on Small Business and Government Operations. I am Gregory Anderson, Deputy Commissioner for Policy and Strategic Initiatives at the New York City Department of Sanitation (DSNY). Thank you for the opportunity to provide testimony on these bills before your committees today.

New York City households and businesses in New York City discard more than one million tons of food waste each year, some of which is edible food fit for donation and recovery. New York City government has long supported food donation and recovery as critical parts of both our strategy to feed hungry New Yorkers and our efforts to ensure a clean, sustainable City.

Under the leadership of the Mayor's Office of Food Policy, the City has released Food Forward NYC, the city's first-ever 10-year food policy plan. This plan outlines a comprehensive policy framework to increase food security, promote access to and consumption of healthy foods, and support economic opportunity and environmental sustainability in the food system.

DSNY plays a role in this work through our donation and reuse programs. Our donation and reuse directory gives New Yorkers an easy way to identify nearby organizations and reuse businesses that take dozens of kinds of products, including perishable and non-perishable food. We also support a network of reuse partners, including City Harvest and Food Bank for NYC, convening dozens of similar organizations to share best practices and promote collaboration in this space. DSNY donation and reuse partners recovered 29,600 tons of edible food last fiscal year for redistribution to food pantries, kitchens, and New Yorkers in need. And this is just a fraction of the overall food donation universe in New York City.

In 2019, DSNY created the online food donation portal to match businesses who have surplus edible food with non-profits who distribute it to those in need. In three years, the portal has successfully matched hundreds of donations, totaling more than 540,000 pounds of food.

We are also pleased to see progress at the federal level to support food donation practices. Earlier this month, President Biden signed the bipartisan Food Donation Improvement Act, which extends important Good Samaritan protections to food businesses who provide food below cost or who provide food directly to those in need.

Edible food is less than half of food waste in New York City, and DSNY is also taking steps to divert all food waste (along with yard waste and food-soiled paper) from landfills to improve cleanliness of our neighborhoods, fight rats, and reduce methane emissions in landfills. In October, we rolled out curbside composting to every household in Queens – the largest curbside composting program in the country. In just 12 weeks, that program diverted nearly 13 million pounds of yard and food waste, the most successful organic waste diversion program in the City's history.

Intro. 491, sponsored by Chair Menin, would require DSNY and the Department of Consumer and Worker Protection (DCWP) to establish a food donation program where businesses could have the civil penalties for eligible violations waived if they agree to donate their excess food to a non-profit for a certain period of time. The proposed bill would apply to food service establishments and would only be applicable for types of violations identified in this bill by the respective departments by rule. For DSNY, eligible violations could include those related to source separation and recycling of designated materials or the posting of signage related to such source separation and recycling. For DCWP, eligible violations could include those that require the display of prices, the accuracy of scanners or the posting of signage.

The Administration agrees with intended purposes of this bill – to offer regulatory relief to some small businesses and to incentivize the donation of excess food to non-profits for the purposes of feeding hungry New Yorkers. However, this bill would likely create an unintended burden on both participating businesses and the City agencies tasked with implementing it by requiring onerous documentation, review, and reporting procedures.

We fully agree with the intended regulatory reform as it applies to commercial recycling and organics requirements, but we believe it would be more appropriate to pursue reductions in penalties for first-time violations as envisioned in Intro. 845. We look forward to working with the City Council to implement regulatory reform for small businesses and to explore further opportunities to incentivize food donation and recovery.

In addition, while my colleagues at DCWP are addressing Intro. 815 at today's hearing on behalf of the Administration, I do want to amplify their concerns as they specifically relate to DSNY. Many of DSNY's violations in the Administrative Code have fixed penalties. However, those that do have ranges of penalties include important categories related to environmental justice, public health, and public safety, such as the transport and disposal of asbestos waste, the operation of waste transfer stations, and the disposal of medical and hazardous waste. We firmly believe that any changes to penalties set forth in the Administrative Code should be made specifically and deliberately on a case-by-case basis, rather than across the board.

Thank you for the opportunity to testify today, and we are now happy to answer any questions.



**Comments of the NYC Hospitality Alliance on Int. 0815-2022 (Menin) and Int. 0491-2022 (Menin)  
before the NYC Council Committee on Small Business along with the Committee on Governmental  
Operations on Monday, January 30th at 1:00pm in the Committee Room, City Hall, New York, NY**

The NYC Hospitality Alliance (“The Alliance”) is a not-for-profit association serving and representing thousands of restaurants, bars, and nightclubs across the five boroughs, and we submit the following comments on proposed:

- Int. 0815-2022 (Menin), in relation to the rules of construction for unspecified ranges of civil penalties.
- Int. 0491-2022 (Menin), in relation to reducing civil penalties where food service establishments donate leftover food.

First, The Alliance strongly supports Int. 0815-2022. The City of New York has the unfortunate reputation of treating small businesses like an ATM with fines and penalties over multiple mayoral administrations and city councils. While there have been positive efforts made to reduce unnecessary regulatory burdens by reducing fines and allowing warnings and cure periods for certain violations, much more reform is still needed.

Int. 0815-2022 is an example of such needed reform, not only because it is important for small businesses, but because it will help ensure that regulatory agencies follow the legislative intent of laws passed by the City Council. For example, when the City Council passes a law creating a new violation for small businesses the legislation often creates a penalty range with a minimum and maximum fine amount. However, when the law is enacted and sent for agency Rule Making, the agency often ignores the City Council’s intent and schedules the minimum fine amount significantly higher than stated in the law, creating a bigger financial burden for small businesses, and disregarding your legislative intent.

The Alliance recently saw an example of this when an agency’s proposed Rule set a first violation at \$1,500, even though the City Council directed the civil penalty to start at \$500 – a \$1,000 increase! Thankfully, when The Alliance brought this to the attention of the agency during the public comment period, they amended the proposal to correspond with the local law’s minimum fine amount.

Nonetheless, this is not a matter that should be left to whim, and that’s why Int. 0815-2022 is important legislation that The Alliance supports because it’s essential in the City’s effort to structurally reduce unnecessary fines on small businesses. Lastly, we do not know how many established minimum / first time penalties have fines higher than prescribed in local laws, and that’s why it’s very important that Int. 0815-2022 applies retroactively to all existing penalties and that agencies understand that they must amend any existing rules and penalty schedules that do not comply.

We thank Council Member Menin for her leadership on the important bill, along with its supporters and we encourage the Council to pass this legislation ASAP and we urge Mayor Adams to sign it into law.



Second, The Alliance appreciates the intent of Int. 0491-2022 in relation to reducing civil penalties where food service establishments donate leftover food because it encourages businesses to donate food to feed hungry New Yorkers, which is a practice so many restaurants currently engage in. However, we would like to see the bill amended, to instead incentivize restaurants to donate more food by reducing fees for permits and licenses and/or providing other tax incentives.

Our belief is such an amendment will encourage the same desirable behavior, without using fines, which we agree are already too high for small businesses as leverage. Fines should be reduced. Period. Because it's the right thing to do, just as donating left-over food is, but one shouldn't be used to compel the other behavior as it sets a concerning regulatory precedent.

We thank the Chairs, Committees, and Council Members for your consideration of the NYC Hospitality Alliance's comments. If you have questions and/or comments, please contact our executive director Andrew Rigue at [arigue@thenycalliance.org](mailto:arigue@thenycalliance.org).

Respectfully submitted,

NYC Hospitality Alliance

**Testimony of Justin Wood, Director of Policy,  
New York Lawyers for the Public Interest  
to the New York City Council Committees on Government Operations  
and Small Business on January 30<sup>th</sup>, 2023**

Thank you to Chairs Menin and Ung for the opportunity to offer comments on two bills impacting civil violations charged to businesses in New York City by various agencies including the Department of Sanitation and the Department of Consumer and Worker Protection.

**Intro 491 – reducing recycling and organics business penalties for businesses participating in food donation.**

We fully support the goal of increasing food donations as a strategy to tackle the immense problems of food waste, hunger, and climate emissions in our city. Rapidly boosting donations of edible food could help to mitigate the climate impacts of waste while reducing food insecurity that many New Yorkers struggle with daily. However, we are concerned that the approach taken by Intro 491 is not comprehensive or aggressive enough to rapidly reduce food waste and increase food donations from our city's huge commercial business sector.

Last summer, our organization participated in a food waste tour, stopping outside several grocery stores and chain restaurants in Manhattan as they closed and set out their waste in the evening. The quantities of food waste we found in just one neighborhood were shocking: entire black garbage bags filled with fresh edible bread, bagels, sandwiches, vegetables, and just-expired dairy products were found at every location – including large profitable chain stores that claim to be participating in sustainable waste recycling programs.

First, relatively few businesses appear to be impacted by recycling violations, which may point to problems of under-enforcement of the current commercial recycling laws and a lack of transparent and affordable recycling services offered to customers by the commercial waste industry. As we heard today, the number of commercial recycling violations issued by DSNY has declined substantially over the last three years, and our search of public data shows that relatively few recycling-related violations have been issued to businesses over the last six months since enforcement of organic waste rules was slated to begin.

Under current rules, only large stores, restaurant chains, and food manufacturers are required to source-separate and recycle organics waste. We are concerned that forgiving the minimal recycling-related fines charged to these businesses in exchange for participation in food rescue and donation programs will not be an effective motive for large and profitable food waste generators to change their harmful practices and comply with the recycling laws.

# NYLPI

## JUSTICE THROUGH COMMUNITY POWER

We would welcome the opportunity to work with the City Council to take a more comprehensive approach.

First, the city could pass legislation requiring that food waste businesses participate in food rescue and food donation programs. Currently, a [New York State law](#) requiring large food waste generators to donate edible food does not apply to New York City, and Local Law 146 does not direct businesses to donate or rescue edible food.

Second, we believe the best way to incentivize businesses to participate in food donations and organic waste recycling is to make substantial investments in food rescue, food banks, organics recycling, infrastructure, customer service, and customer education in sync with the new Commercial Waste Zones (CWZ) program mandated by Local Law 199 which is due for full implementation this year.

Under the new CWZ program, waste haulers will be required to charge clear and transparent prices for organics, recycling, and garbage services, and to ensure that composting and recycling services are discounted to create additional incentives for businesses to properly source separate materials.

Local Law 199 also enables designated carters to partner with subcontractors to reduce the amount of commercial waste sent to landfills and incinerators in each zone. These subcontractors can include food rescue, food donation, and zero-emissions “micro-haulers” and every business citywide should receive clear, transparent information in multiple languages on how to access these services in each zone, meet waste reduction goals, and realize cost savings.

A scaled-up food rescue and donation system can also be a source of good, green local jobs, especially when compared with landfilling and incineration which produce relatively few jobs and are environmentally harmful.

We would support legislation that complements the forthcoming reform of the commercial waste system and takes a comprehensive approach to boosting investments, infrastructure, customer education, and enforcement of recycling rules to put our city back on track to meet zero waste goals while ensuring that all excess edible food gets to New Yorkers who most need it.

### **Intro 815 – Reducing Penalty amounts for unspecified ranges of civil penalties.**

NYLPI represents and partners with numerous communities and individuals negatively impacted by unscrupulous businesses in New York City. We are concerned that, as currently written, Intro 815 would broadly limit the City’s ability to impose meaningful fines across a range of enforcing agencies and for a range of bad actors. Before moving forward, we urge the affected city agencies and the Council to compile and publish a full list of the agencies, regulations and enforcement mechanisms that would be impacted by Intro 815, and to ensure that this bill would not undermine any regulations that help deter corporations from breaking environmental, recycling, consumer protection, and worker protection laws.

# **N Y L P I**

**JUSTICE THROUGH  
COMMUNITY POWER**

For example, we are concerned that this bill may reduce the effectiveness of civil penalties that can be imposed on truck-based waste transfer stations, which are overwhelmingly concentrated in a few environmental justice communities and have been associated with violations including leachate runoff, water pollution, air pollution, noise, odor, and safety hazards on sidewalks and streets.

Similarly, we have represented numerous clients with immigration and health-related issues who have been misled and harmed by unscrupulous immigration service providers, and we are concerned that the current bill might restrict the Department of Consumer and Worker Protection's ability to deter those who seek to take advantage of immigrant New Yorkers.

We appreciate the opportunity to comment on these bills, and look forward to continuing to work with the Council to advance equity and sustainability for all New Yorkers.

Sincerely,

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Robert S. Bookman | Partner | [rbookman@pb.law](mailto:rbookman@pb.law)

Testimony of Robert Bookman before the city council on intro 815.

January 30, 2023

I've been deeply involved in New York City administrative law from my time in the early 1980s at the Department of Consumer Affairs to decades of private practice representing thousands of small businesses in multiple industries. We have represented countless individuals and businesses against violations issued by multiple City agencies and defended in multiple forums. To say that fine schedules are all over the place is an understatement of gross proportions. Some fines can be found in the administrative code. Others in rules. And then some are in policies or guidelines ...written and unwritten,,,for per diem ALJ's to follow .

It is near impossible for small business owners to compare fines imposed upon them with the penalty range set by Law. This bill will ultimately require the agencies to do this necessary work. And it is long overdue.

I have handed up some examples of these fines schedules.

One thing is obvious. Agencies are setting their own minimum fines for many violations and for defaults of those summonses higher than the minimum set by statute. The Air Code schedule you see the first offense for some minor violations is \$200, but the default penalty is \$800. Another one first offense \$800 default \$3200.

Why should the default penalty be double or triple for a first-time violation where the busy small business owner simply didn't have time to respond or appear for a hearing?  
Something that happens multiple times every day at OATH.

Some laws passed by this Council set a specific min and max range. That should be clear then the minimum MUST be available., but many others use language like a fine "shall not exceed" (DCA) or "up to" or "no more than". When the Council uses such language, then the range is obviously Zero on the low end up to that max number set by law. Yet the agencies create their own minimum above zero as if they were the Council. That cannot be allowed to continue.

We need the law to make it clear that administrative agencies cannot simply by rule or policy, change the violation amounts set by Statute. Just because we are currently in a time where there is interest in reducing penalties doesn't mean in 2 years 4 years when budgets might be tighter that the opposite will happen and once again, we go back to higher minimum penalties than set by law. This bill will correct that and put the power to set fines where it belongs... in the city council, not the agencies.

Very truly yours,

PESETSKY & BOOKMAN, P.C.



By: Robert S. Bookman

## Chapter 43: Air Code Penalty Schedule

### **§ 43-01 General.**

1. Unless otherwise indicated, all citations are to the New York City Administrative Code.
2. Sections marked with an asterisk (\*) indicate that the conduct or activity is subject to an aggravated penalty for excess profit, equal to twice the amount of money saved by respondent as a result of its failure to comply. When an aggravated penalty is sought, it will be indicated on the face of the summons and no stipulation will be offered. The respondent will be required to appear.
3. "Stipulation" is abbreviated as "Stip."
4. "N/A" means not applicable.
5. Except in connection with violations of § 24-163, a second offense means a violation of any section of the Air Code by the same respondent within two years of the prior violation, at the same premises (if premises-related), and involving the same equipment. In connection with violations of § 24-163, a second or third or subsequent offense is a violation by the same respondent within two years of the prior violation(s) and involving the same equipment, where the prior violation(s) was for a violation of § 24-163.
6. "(Mitigation: 01)" A zero penalty may be imposed for a first offense following a respondent's timely submission to DEP (within 45 days of the return date indicated on the Notice of Violation) of acceptable certification of compliance and admission of liability.

(Added City Record 4/11/2016, eff. 5/11/2016)

### **§ 43-02 Air Code Penalty Schedule.**

When a respondent is found in violation of any of the following provisions of the New York City Administrative Code, Rules of the City of New York, or New York Codes, Rules and Regulations, any civil penalties imposed by a Hearing Officer under 48 RCNY § 6-17(a) and/or any default penalties imposed under 48 RCNY § 6-20(b) in accordance with Section 1049-a(d)(1)(d) of the Charter, and/or any civil penalties imposed for admissions of violation(s) under 48 RCNY § 6-09(a) or late admissions under 48 RCNY § 3-17, will be imposed in accordance with the following penalty schedule:

Section of Law	Violation Description	Compliance	1st Offense Stip. (\$)	1st Offense (\$)	Default Penalty (\$)	2nd Offense (\$)	2nd Stip. (\$)	3rd and Subsq. Offense (\$)	3rd and Subsq. Stip. (\$)
Section of Law	Violation Description	Compliance	1st Offense Stip. (\$)	1st Offense (\$)	Default Penalty (\$)	2nd Offense (\$)	2nd Stip. (\$)	3rd and Subsq. Offense (\$)	3rd and Subsq. Stip. (\$)
Admin. Code § 24-108(c)	Failure to allow DEP to obtain samples	Allow access forthwith	200	200	800	400	400	600	600
Admin. Code § 24-108(f)	Location of key to boiler room not posted or no key on premises	Post sign/provide key - forthwith	200	200	800	400	400	600	600
Admin. Code § 24-109(a)(1)	Spraying insulation material without registration	Register for spraying - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-109(a)(2)	Building demolition without registration	Register demolition site - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-109(a)(3)	Unregistered boiler or water heater- 350,000 - 4,200,000 btu/hr	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(4)	Unregistered boilers or water heaters- aggregate 350,000+ btu/hr	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(5)	Unregistered fuel burning equipment or portable equipment- 350,000 - 4,200,000 btu/hr	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(6)	Unregistered emergency generator - 40 kw+	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(7)	Unregistered portable generator - 40 kw+	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(8)	Unregistered portable engine - 50 - 600 hp	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200

Admin. Code § 24-109(a)(9)	Unregistered stationary generator - 40 - 450 kw	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(10)	Unregistered stationary engine - 50 - 600 hp	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(11)	Unregistered engine used at construction site - 50 hp +	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(12)	Unregistered equipment with environmental rating of C - 100 - 2,000 cfm	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(13)	Unregistered cogeneration system - 350,000 - 4,200,000 btu/hr	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(14)	Unregistered flare	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(15)	Unregistered gasoline dispensing station	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(16)	Unregistered commercial char broiler	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(a)(17)	Unregistered equipment- all other emission sources	Obtain registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(f)	Failure to notify regarding change in registration information	Notify of change - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(g)	Operating emission source with expired registration	Obtain renewal of registration - 60 days	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(h)	Failure to cancel existing registration upon registration of new equipment	Cancel existing registration - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-109(i)	Failure to notify and cancel registration when removing registered equipment	Notify and cancel registration - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-111	Interference with or obstruction of DEP personnel	Stop interference with personnel - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-112	Making/filing false or misleading statements/documents	Submit accurate/truthful documented information - forthwith	No	400	1,600	800	No	1,200	No
Admin. Code § 24-113	Permit, certificate, or registration not displayed	Post permit, certificate, or registration - forthwith	200	200	800	400	400	600	600
Admin. Code § 24-118	Installation of refuse burning equipment other than permitted types	Remove prohibited equipment - forthwith	No	1,600	6,400	3,200	No	4,800	No
Admin. Code § 24-120	Equipment installed/alter ed without work permit	File plans and application - 30 days	800	800	3,200	1,600	No	2,400	No
Admin. Code § 24-122(a)	Operating permitted equipment without operating certificate	Obtain operating certificate - 90 days	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-122(b)(1)	Operating fuel burning equipment without operating certificate	Obtain operating certificate - 90 days	800	800	3,200	1,600	No	2,400	No
Admin. Code § 24-122(b)(2)	Operating process equipment without operating certificate	Obtain operating certificate - 90 days	800	800	3,200	1,600	No	2,400	No
Admin. Code § 24-122(b)(3)	Operating portable equipment without operating certificate	Obtain operating certificate - 90 days	800	800	3,200	1,600	No	2,400	No
Admin. Code § 24-122(b)(4)	Operating permitted types of refuse burning equipment without operating certificate	Obtain operating certificate - 90 days	800	800	3,200	1,600	No	2,400	No
Admin. Code § 24-123(d)	Operating without renewal of expired operating certificate	File for renewal of operating certificate - 30 days	800	800	3,200	1,600	No	2,400	No
Admin. Code § 24-131	Failure to comply with conditions of work permit or operating certificate	Comply with conditions - forthwith	200	200	800	400	400	600	600
Admin. Code § 24-135	Improper transfer of work permit	Recertify application - forthwith	400	400	1,600	800	800	1,200	1,200

Admin. Code § 24-140	Spraying asbestos onto building or structure during construction, alteration or repair	Stop spraying asbestos - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-141	Emission of odorous air contaminant	Stop odorous emission - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-142	Emission of air contaminant (smoke)	Operate without further emissions - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-143	Emission of air contaminant from motor vehicle	Operate without further emissions - forthwith	200	200	800	400	400	600	600
Admin. Code § 24-145	Emission of particulates	Prevent particulates from becoming airborne - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-146(b)	Dust allowed to become airborne	Keep dust from becoming airborne - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-146(c)	Dust resulting from construction activity	Keep dust from becoming airborne - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-146(d)	Failure to take precautions to prevent dust from lots covered by ZR 12-10	Take precautions to prevent dust from becoming airborne - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-146(e)	Spraying of insulation material without proper required precaution	Take proper precautions for spraying - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-146(f)	Failure to take required precautions during demolition	Take proper precautions for demolition - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-147	Emission of nitrogen oxides from boiler	Reduce nitrogen oxides emissions to legal limits - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-148	Use of prohibited architectural coating	Stop use of prohibited coating - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-149	Causing or permitting air contaminant from open fire	Stop use of open fire - forthwith	200	200	800	400	400	600	600
Admin. Code § 24-149.1(a)	Burning improper fuel in outdoor wood boiler	Stop use of improper fuel - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.1(b)	Impermissible smoke emission from outdoor wood boiler	Stop emission from boiler - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.1(c)	Improperly operating outdoor wood boiler under 250,000 btu/hr	Stop improper operation of boiler - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.1(d)	Operating outdoor wood boiler over 250,000 btu/hr	Stop operating boiler - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.2(b)	Operating fireplace as primary source of heat	Stop operating fireplace - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.2(c)	Operating new fireplace with improper fuel	Use proper fuel - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.2(d)	Operating existing fireplace with improper firewood	Use proper firewood - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.2(e)	Operating fireplace not in compliance with federal emissions standards	Stop using fireplace - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.3(a)	Operating wood burning heater as primary source of heat	Stop operating heater - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.3(b)	Operating wood burning heater with non-renewable fuel	Stop operating heater with improper fuel - forthwith	400	400	1,600	800	800	1,200	1,200
Admin. Code § 24-149.4(b)	Operating commercial char broiler to cook 875+ lbs of meat without emissions control	Install emissions control - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-149.4(e)	Failure to keep maintenance records for commercial char broiler	Maintain records - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code § 24-149.4(f)	Failure to maintain records showing amount of meat cooked/pure hased for commercial char broiler	Maintain records - forthwith	800	800	3,200	1,600	1,600	2,400	2,400
Admin. Code	Operating cookstove without emission control device	Install required device - forthwith	400	400	1,600	800	800	1,200	1,200

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## OATH Hearings & Penalties

If you admit guilt prior to the scheduled hearing, you do not have to attend the hearing and the OATH penalties may be reduced or eliminated. The violation will be shown on BISWEB as **in violation**.

### *Curing the Violation – Zero Penalty*

If there is a date indicated in the **Cure Date** box on the violation, you are eligible to cure your violation. To cure, correct the condition and submit a valid Certificate of Correction on or before the cure date. If approved, you do not have to attend the hearing or pay a penalty.

### *Admit Option – Standard Penalty Imposed*

If you admit to the violation and submit a payment to OATH for the standard penalty prior to or on the scheduled hearing date, you do not need to attend the hearing.

### *Stipulation (pre-hearing) – Reduced Penalty Imposed*

For certain violations, you have the option to enter into a stipulation with the Department in which you admit guilt in exchange for additional time (75 days) to correct the violating condition. You do not have to attend the hearing and a reduced penalty (usually  $\frac{1}{2}$  the standard penalty) is imposed. If eligible, a Stipulation Offer will be mailed to you by OATH. You may accept the stipulation offer any time before the hearing begins.

# Attending a Hearing

You always have the right to a hearing at OATH Court if you wish to contest the violation. At the hearing, you have the right to representation, but it is not required. You may bring witnesses or other evidence to substantiate a defense against the violation. After the hearing, the OATH Administrative Law Judge will make a decision that will be mailed to you. Hearing outcomes:

## *Dismissal – No Penalty Imposed*

If you prevail in contesting your violation, you will not owe any penalties and your violation will be dismissed. However, the Department may re-inspect, reissue a violation, or appeal the decision.

## *In Violation – Standard Penalty Imposed*

If you are found in violation, a penalty will be imposed. You have the right to appeal this decision. The appeal process is conducted entirely in writing, and therefore no further appearances are necessary.

## *Mitigation – Reduced Penalty Imposed*

For certain violations, if you attend the hearing, admit guilt and demonstrate that the condition has been corrected, the OATH Administrative Law Judge may impose a mitigated (reduced) penalty ( $\frac{1}{2}$  the standard penalty).

## *Stipulation at Hearing – Standard Penalty Imposed*

Depending on the violation, you may have the option to enter into a stipulation with the Department during the first hearing. By entering into a stipulation, you admit guilt and agree to correct violating condition within 75 days.

## *Default – Five Times Standard Penalty Imposed*

If you fail to attend your hearing, you will be found in violation and a penalty five times higher than the standard amount will be imposed.

# DOB Penalty Schedule

Consult the Department's Penalty Schedule found in Title 1 of the Rules of the City of New York (1RCNY) Section 102-01 to determine the applicable fines that may be

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
1 RCNY 3319-02(c)	Class 1	Equipment User failed to designate a lift director.	No	No	\$10,000	No	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
1 RCNY 3319-02(c)(1)	Class 1	No lift director on site.	No	No	\$10,000	No	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
1 RCNY 3319-02(c)(2)	Class 1	Equipment User failed to designate a qualified and competent Lift Director.	No	No	\$5,000	No	\$25,000	\$12,500	\$25,000	\$25,000	\$25,000
1 RCNY 3319-02(c) (3)	Class 1	Equipment User failed to designate the proper party as Lift Director.	No	No	\$2,500	Yes	\$12,500	\$6,250	\$25,000	\$12,500	\$25,000
1 RCNY 3319-01(i)(6)	Class 1	No Assembly/Disassembly Director on site.	No	No	\$10,000	No	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
1 RCNY 3319-01(i) (i)	Class 1	Unqualified/Incompetent Assembly/Disassembly Director on site.	No	No	\$5,000	Yes	\$25,000	\$12,500	\$25,000	\$25,000	\$25,000
1 RCNY 3319-01(i)(6)	Class 1	Failed to assemble or disassemble or ensure crane or derrick assembled/dissembled as per plans.	No	No	\$2,500	No	\$12,500	\$6,250	\$25,000	\$12,500	\$25,000
1 RCNY 3319-01(i)(6)	Class 2	Failed to assemble or disassemble or ensure crane or derrick assembled/dissembled as per plans.	No	No	\$1,250	No	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000
1 RCNY 3319-01(k)(1)(ii)	Class 1	HMO failed to provide proof of conducting a frequent inspection.	No	No	\$2,500	No	\$12,500	\$6,250	\$25,000	\$12,500	\$25,000
1 RCNY 3319-01(u)	Class 1	Failed to provide/maintain the required documents.	No	Yes	\$5,000	No	\$25,000	\$12,500	\$25,000	\$25,000	\$25,000
1 RCNY 3319-01(H)	Class 1	Equipment User failed to maintain crane or derrick log.	No	Yes	\$5,000	No	\$25,000	\$12,500	\$25,000	\$25,000	\$25,000

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
1 RCNY-Misc., RS-Misc.	Class 1	Miscellaneous violations.	No	No	\$2,500	No	\$12,500	\$6,250	\$25,000	\$12,500	\$25,000
1 RCNY-Misc., RS-Misc.	Class 2	Miscellaneous violations.	Yes	Yes	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000
1 RCNY-Misc., RS-Misc.	Class 3	Miscellaneous violations.	Yes	Yes	\$500	Yes	\$500	\$500	\$500	\$500	\$500
1 RCNY 5-02	Class 2	Failure to meet the requirements of licensing/identification/qualification as required by 1 RCNY 5-02.	Yes	No	\$2,500	Yes	\$10,000	\$6,250	\$10,000	\$10,000	\$10,000
1 RCNY 104-20	Class 1	Licensed Rigger designated an unqualified foreman.	No	No	\$2,500	No	\$12,500	\$6,250	\$25,000	\$12,500	\$25,000
1 RCNY 104-20	Class 2	Licensed Rigger designated an unqualified foreman.	No	No	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000
1 RCNY 49-03	Class 1	Outdoor Advertising Company failed to comply with Commissioner's sign-related Order.	No	No	\$10,000	Yes	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
1 RCNY 101-07	Class 2	Failure of approved agency to comply with requirements of 1 RCNY 101-07.	Yes	No	\$2,500	Yes	\$10,000	\$6,250	\$10,000	\$10,000	\$10,000
1 RCNY 103-04(b)(5)(iii)	Class 2	Removal of public protection from unsafe façade without approval from the department.	No	No	\$1,250	Yes	\$6,250	\$3,125	\$10,000	\$6,250	\$10,000
BC 3301.13.7 thru BC 3301.13.13	Class 1	Construction Superintendent failed to perform duties per code.	No	No	\$10,000	No	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
BC 3301.13.7 thru BC 3301.13.13	Class 2	Construction Superintendent failed to perform duties per code.	No	No	\$5,000	Yes	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
BC 3301.13.10	Class 1	Construction superintendent failed to immediately notify the department of conditions as required.	No	No	\$2,500	No	\$12,500	\$6,250	\$25,000	\$12,500	\$25,000

[Deleted material is in brackets.]

DOT

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

### Rule Amendment

**Section 1.** Section 3-01 of Title 34 of the Rules of the City of New York is amended to read as follows:

## CHAPTER 3

### PENALTY SCHEDULE

#### § 3-01. Department of Transportation Penalty Schedule.

All citations are to the Administrative Code of the City of New York or to this Title.

Except as otherwise noted or provided in the relevant rule or law, a second or subsequent violation is a violation by the same respondent of the same provision of law, with a date of occurrence within 6 months of the date of occurrence of the previous violation.

When a respondent is found to be in violation of any of the following provisions of the Administrative Code or this Title, any civil penalty recommended by the Hearing Officer under 48 RCNY, § 6-17(c)(3), any default penalty imposed pursuant to 48 RCNY § 6-20(b) and subject to § 1049-a(d)(1)(d) of the Charter, and any civil penalty imposed for admissions of violation(s) pursuant to 48 RCNY § 6-09(a) or late admissions pursuant to 48 RCNY § 3-17 will be imposed in accordance with the following penalty schedule:

<u>Section</u>	<u>Description</u>	<u>Penalty (\$)</u>	<u>Default (\$)</u>
Admin. Code 19-108	Failure to have DOT permit on site or in field office	50	[150] <u>75</u>
Admin. Code 19-124(b)	<u>Failure to abide by permit conditions</u>	<u>50</u>	<u>75</u>
Admin. Code 19-124(e)	Unlawful advertising on canopy	<u>50</u>	<u>75</u>
Admin. Code 19-124.1(a)	Displaying or installing banners without DOT permit	<u>150</u>	<u>450</u>
Admin. Code 19-124.1(c)	<u>Unlawful advertising on banner</u>	<u>50</u>	<u>75</u>
Admin. Code 19-125(a)	<u>Failure to obtain permit or revocable consent for flagpole socket/lamppost</u>	<u>150</u>	<u>300</u>
Admin. Code 19-125(c)	<u>Improper placement of barber poles</u>	<u>50</u>	<u>150</u>

<u>Admin. Code</u> 19-127	<u>Failure to properly label hand truck</u>	<u>50</u>	<u>75</u>
Admin. Code 19-128.1(c)(2)	Failure to notify DOT of required newsrack information for: 1 - 99 racks	[ 375] <u>250</u>	[500] <u>250</u>
Admin. Code 19-128.1(d)	Failure to maintain/provide required indemnification/insurance information for: 1 - 99 racks	[375] <u>250</u>	[500] <u>250</u>
Admin. Code 19-128.1(e)(1)	Failure to inaccurately certified graffiti-removal info for: 1 - 99 racks (OATH Code AD90)	[375] <u>250</u>	[500] <u>250</u>
Admin. Code 19-128.1(e)(1)	Failure to maintain accurate logs/records as per subsection for: 1 - 99 racks (OATH Code AD91)	[375] <u>250</u>	[500] <u>250</u>
Admin. Code 19-128.1(e)(1)	Failure to provide maintenance logs/records as per subsection for: 1 - 99 racks (OATH Code AD92)	[375] <u>250</u>	[500] <u>250</u>
<u>Admin. Code</u> 19-136(j)	<u>Improper placement or maintenance of coin-operated rides</u>	<u>150</u>	<u>300</u>

## Subchapter 8: Enforcement

*Noise Code*

### **§ 24-257 Powers of the board.**

(a) The board, in addition to other duties assigned to it by law, shall have the power to conduct hearings pursuant to this subchapter and, by the issuance of a subpoena, compel the attendance of witnesses and the production of any books, papers or other things relating to the matter under investigation.

(b) The board may, upon notice pursuant to section 24-259 of this code, and after a hearing pursuant to section 24-263 of this code, or in default thereof pursuant to section 24-264 of this code:

(1) Order the commissioner to revoke or suspend a certificate or tunneling permit issued pursuant to this code for any device or activity where such device or activity causes, or is maintained or operated so as to cause a violation of any provision of this code or order or regulation promulgated by the commissioner or the board;

(2) Order the owner of any device which causes or is maintained or operated so as to cause a violation of any provision of this code or any order or regulation promulgated by the commissioner or the board, to install any apparatus which can reasonably be expected to correct the violation, or to repair, properly maintain, replace or alter such device in a manner which can reasonably be expected to correct the violation;

(3) Seal any device which causes or is maintained or operated so as to cause a violation of any provision of this code or order or regulation promulgated by the commissioner or the board, except as provided in subdivision (c) of this section;

(4) Order any person to cease and desist from any activity which causes or is conducted so as to cause a violation of any provision of this code or any order or regulation promulgated by the commissioner or the board, except as provided in subdivision (c) of this section;

(5) Impose a civil penalty in each instance in an amount as set out in table I against any person who violates a provision of this code, or of any order, rule or regulation promulgated by the commissioner or the board.

**Table I**

Violations related to section and subdivision	Civil Penalties					
	First Violation		Second Violation*		Third and Subsequent Violations*	
	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum
Civil Penalties						
Violations related to section and subdivision	First Violation		Second Violation*		Third and Subsequent Violations*	
	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum
	2,625	650	5,250	1,300	7,875	1,950
24-216(d)	150	75	250	150	500	350
24-218(a-1)	350	350	700	700	1,050	1,050
24-218(e)	1,000	350	2,000	700	3,000	1,050
24-218.1	50	50	50	50	50	50
24-220	1,400	440	2,800	880	4,200	1,320
24-222	3,500	875	7,000	1,750	10,500	2,625
24-223	3,500	875	7,000	1,750	10,500	2,625
24-224	3,500	875	7,000	1,750	10,500	2,625
24-225	1,400	440	2,800	880	4,200	1,320
24-226	1,400	440	2,800	880	4,200	1,320
24-227	220	220	440	440	660	660
24-228	1,400	440	2,800	880	4,200	1,320
24-229	1,400	440	2,800	880	4,200	1,320
24-230	1,400	440	2,800	880	4,200	1,320
24-231(a)	2,000	2,000	4,000	4,000	6,000	6,000
24-231(d)	560	560	1,120	1,120	1,680	1,680

24-232	440	440	880	880	1,320	1,320
24-233(a)	175	50	350	100	525	150
24-233(b)(1)	175	50	350	100	525	150
24-233(b)(2)	350	100	700	200	1,050	300
24-234	175	50	350	100	525	150
24-235	175	50	350	100	525	150
24-236(a)	525	150	1,050	300	1,575	450
24-236(b)(c)(d)	1,440	440	2,800	880	4,200	1,320
24-237(a)	1,000	150	2,000	300	3,000	450
24-237(b)	875	220	1,750	440	2,625	660
24-237(c)	875	220	1,750	440	2,625	660
24-237(d)	350	350	700	700	1,050	1,050
24-238(a)	220	220	440	440	660	660
24-238(b)	875	220	1,750	440	2,625	660
24-239(b)	350	100	700	200	1,050	300
24-241	1,400	440	2,800	880	4,200	1,320
24-242	220	220	440	440	660	660
24-244(a)	1,750	440	3,500	880	5,250	1,320
24-244(b)	440	440	880	880	1,320	1,320
24-245	2,625	660	5,250	1,320	7,875	1,980
All remaining sections and subdivisions	875	220	1,750	440	2,625	660

\* By the same respondent of the same provision of law, order, rule or regulation and, if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violation occurred, at the same premises (all violations committed within two years).

Each day during which such violation continues shall constitute a separate violation. The board may remit, in whole or in part, such a civil penalty if, at the conclusion of the hearing or at the time of the board determination under section 24-266 of this code, the respondent is no longer in violation of a provision of this code, or of any order, rule or regulation promulgated by the commissioner or the board;

(6) Impose a civil penalty of not more than two hundred fifty dollars on any owner of a device for each day such equipment is sealed pursuant to this section;

(7) Impose a civil penalty of not less than one thousand nor more than four thousand dollars on any person who willfully breaks, or causes or permits the breaking of, a seal placed on a device pursuant to this section.

(8) Impose an additional civil penalty in the amount of twenty-five percent of that which would otherwise be imposed for each twelve decibels by which the sound or noise level measured exceeds the maximum sound level as contained in subchapters five and six of this chapter.

(9) Impose an additional civil penalty in the amount of ten percent of the penalty originally imposed, for late payment of penalty for each month, or part thereof, that the penalty payment is in arrears. In no event shall the total additional civil penalty exceed the maximum set forth in the table of civil penalties, or as modified pursuant to paragraph eight of this subdivision or paragraph ten of this subdivision, or both.

(10) Order any person to be classified as a persistent violator if such person is found to be in violation of this code and has also on one or more prior occasions within the preceding five years been found to be in violation of this code, where such repeated violations evidence substantial\* disregard thereof. If a person is classified as a persistent violator, the board shall in each instance double the amount of the penalty which it would otherwise impose pursuant to paragraph five of this subdivision. Such double penalties shall be imposed for violations which the board finds a person committed pursuant to the same proceeding at which it classified such person as a persistent violator and for all violations committed within two years immediately following such classification, after which such classification shall terminate. However, if at the end of such two year period such person is still in violation of this code because of a failure to take or complete a corrective action as required by the board, such classification shall continue until such time as such person is no longer in violation of this code because of such failure, at which time such classification shall cease. Thereafter, the board may again classify such person as a persistent violator, on the same basis it used originally.

(c) The board may, upon notice pursuant to section 24-259 of this code:

(1) order any person to cease and desist from the operation of any listed device without a certificate as required by section 24-245 of this code and the board may also seal such device;

(2) order any person to cease and desist from tunneling without a tunneling permit as required by section 24-245 of this code and the board may also seal any device used in such tunneling;

(3) order any person not in possession of an after hours work authorization issued pursuant to section 24-223 of this code to cease and desist from construction activities other than during the permissible hours specified in section 24-222 of this code and the board may also seal any device used in such construction activities;

(4) order any person to cease and desist from the operation of a device without registration required by section 24-208 of this code and the board may also seal such device.

(d) The board may order the commissioner to install any apparatus or to repair or alter any device or apparatus which causes or is maintained or operated so as to cause a violation of an order issued pursuant to paragraph two of subdivision (b) of this section, where such repairing or alteration can reasonably be expected to correct such a violation. Any work required under such an order may be executed by the commissioner through the officers, agents or contractors of the department. The department shall be reimbursed promptly for all costs and expenses of such work by the owner of the device to which the order relates and in respect to which such expenses were incurred. Such expenses may be recovered in a civil action brought in the name of the commissioner.

(e) If an order of the board issued pursuant to subdivisions (b) and (c) of this section provides for a period of time during which a person subject to the order is permitted to correct a violation, the board may require the respondent to post a performance bond or other security with the department in a form and amount sufficient to assure the correction of such violation within the prescribed time. In the event of a failure to meet the schedule prescribed by the board, the sum named in the bond or other security shall be forfeited and shall be paid to the commissioner.

(f) (1) The board may order any person to cease and desist from an activity which it reasonably believes causes unreasonable noise which creates imminent peril to the public health and well being, or to cease and desist from an activity which it reasonably believes constitutes a willful or continued violation of any provision of this code or order or regulation, promulgated by the commissioner or board. Such order shall be effective upon service thereof. Any party affected by such an order may request a hearing on written notice, and he or she shall be afforded a hearing, within twenty-four hours after service of such request, pursuant to section 24-263 of this code. If such an accelerated hearing is not requested, then a hearing shall be afforded within ten days of the issuance of the order. The board shall issue its final decision and order thereon within three days from the conclusion of a hearing held pursuant to this subdivision.

(g) Notwithstanding the penalty amounts set forth in Table I in paragraph (5) of subdivision (b) of this section, the department may set default penalties that shall not exceed 400 percent of the penalty amount set by rule by the department for a violation of this chapter, except that the default penalty imposed pursuant to subdivision (b) of this section for a violation of subdivision (a) of section 24-218, as set forth in section 47-02 of title 15 of the rules of the city of New York or any successor provision, shall not exceed 150 percent of the scheduled penalty set forth therein.

(h) (1) Notwithstanding table I in paragraph 5 of subdivision (b) of this section, a cure period is available for a first violation of subdivision (e) of section 24-218 as set forth in such subdivision, a first violation of section 24-227 as set forth in subdivision (d) of such section, a first violation of section 24-231 as set forth in paragraph (1) of subdivision (b) of such section and a first violation of section 24-232 as set forth in subdivision (g) of such section.

(2) Notwithstanding table I in paragraph 5 of subdivision (b) of this section, an owner, operator, manager or other person having control of any place of public performance shall be subject to a civil penalty of \$0 for a first violation of subdivision d of section 24-218.1. The notice of violation for such first violation shall inform such owner, operator, manager or other person of the provision of law or rule that the department believes such owner, operator, manager or other person has violated, describe the condition or activity that is the basis for the notice of violation, advise such owner, operator, manager or other person that the law authorizes civil penalties for such violation and that subsequent violations may result in the imposition of such civil penalties. For a second, third or subsequent violation of subdivision d of section 24-218.1 or any rules promulgated pursuant thereto, such owner, operator, manager or other person shall be liable for a civil penalty in the amount prescribed for such violation in table I of paragraph 5 of subdivision (b) of this section.

(Am. L.L. 2016/072, 6/13/2016, eff. 3/13/2017; Am. L.L. 2021/080, 7/18/2021, eff. 11/15/2021)

**Editor's note:** For related unconsolidated provisions, see Appendix A at L.L. 2016/072 and L.L. 2021/080.

February 2, 2023

Thank you for this opportunity to submit testimony to talk about the need to increase food donation and address the massive amount of food waste in our city.

<https://nypost.com/2023/01/10/tons-of-food-gets-tossed-by-nyc-hotel-because-migrants-wont-eat-it/>

<https://abc7ny.com/the-row-migrants-food-waste/12690112/>

Some of you may have seen this recent story (covered by the Post & Eyewitness News - links above) about the startling volume of food being thrown away at Hotel Row, provided for migrants by the city, which is unfortunately only just the latest example of how food is wasted every day - even by city government. This incident should be investigated and I hope someone immediately put an end to this wasteful practice and has addressed the city agency responsible for providing this food. It's a clear example of well intended food donation gone horribly wrong while people struggle with food insecurity throughout the city every minute of the day.

We must stop this. I agree with Felipe Rodriguez, a worker from Hotel Row, quoted in the above article - "It's a crime to be throwing out so much food,"

We need an investigation into how this happened, how widespread this problem is, what is being done NOW to stop this waste, what all this waste is costing city taxpayers and more. Plus, is this hotel in compliance with NYC's Commercial Organics Rules?

As the Council has shown an interest in increasing food donation, I ask the Council to follow up with the Mayor's office and potentially ask for the creation of a new Food Waste Reduction Council and revisit the 2021 Food Forward NYC 10 year food policy plan to look into all this and bring city stakeholders together to take the steps needed to more aggressively address the problem of food waste. We need to take steps to end food waste.

There are countless social services agencies in this city that could have undoubtedly used this wasted food from Hotel Row to help New Yorkers in need - the estimated 1.6 million of New Yorkers (one in five) that are food insecure and people struggling to buy groceries at increasingly inflated prices while perfectly edible food is being dumped all around them. There is a network of community refrigerators and there is one just 2 blocks away from this hotel that could have put this food to good use to help people in need.

We can also no longer ignore that stores dump perfectly good, edible food all the time, simply because the expiration date or a holiday has passed. These "expiration" dates are not an indication of product safety but some consumers won't buy expired food so stores dump perfectly good food, including post holiday purges of candy and food just because the packaging is now out of date - and Valentine's day is next. Why? So they can report it as a tax loss? Are these figures available anywhere? Someone needs to explore this so perhaps this is

something the Council can also investigate further. NYC taxpayers are spending an estimated \$540M this year to export all our waste. Food waste comprises approximately 41% of this exported waste and it's not really all waste - but it is costing us untold millions in so many ways and something must be done now to stop the waste of edible food by businesses and also schools.

I encourage you all to also google food expiration date legislative efforts as we also need to do more to change the system of product labeling with misleading dates and also better educate the public that those "sell by" dates are not indicators of product safety.

To start, I hope the Council will establish a working group immediately to look into all of this and come up with a plan of action, as we can and must do better to reduce food (and other) waste as it is also a leading contributor of methane emissions that exacerbate global warming. We can help our neighbors, our finances and the planet by increasing focus to fix this problem. We desperately need city officials to act. I'm sure that not a day goes by without an extreme amount of food being wasted in this city. We must take aggressive and immediate action to end the waste of food asap. I would be happy to help in any way.

Thank you.

Allison Allen  
New York, NY  
[allisonaallen@aol.com](mailto:allisonaallen@aol.com)

Thank you for the opportunity to submit testimony regarding Intro 815.

I believe that the basic principle behind Intro 815, providing adequate notice to Respondents of the penalty amounts that they may be subject to, is an admirable one.

However, I believe Intro 815 is confusingly written, and may have unintended consequences, depending on how the language might be interpreted.

Specifically, it should be clarified in the legislative text that agencies retain their frequently-exercised power to set higher penalties (within the legislatively prescribed-range) in the event of a no-show by the Respondent at the hearing (that is, frequently referred to as a "default" in the various agency penalty schedules). This is a common strategy by agencies, and a reasonable one.

It is important to set higher penalties in the event of such "defaults", because otherwise there is limited reason for Respondents to show up and learn from the agencies and the tribunals about the specific cause of the socially problematic violation, and how to correct it. Rather, Respondents, absent higher penalties in the event of "defaults," would likely opt for the strategy of ignoring the summons, not showing up at the hearing, and waiting for a period of years until the Respondent may (or may not) be hounded by the City for the (still relatively small) payment. This behavior, while economically rational, would show disrespect for our city's adjudicative tribunals, and society itself, and delay correction of the violative condition by the Respondent. No-shows / "defaults" are already a serious issue in New York City, and a misinterpretation of Intro 815's current language could make the problem significantly worse.

A simple fix, to make what I think is already the intent of the bill, clearer, would be to change the applicable language in the bill as follows:

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"b. For any unspecified range of penalties set forth in the code, the default civil penalty for a first violation, where the respondent either stipulates to the violation prior to the initial scheduled trial or hearing date or makes an appearance at the initial scheduled trial or hearing, shall be the lowest amount in the range. No agency or officer may impose a civil penalty greater than the default civil penalty for a violation, where the respondent either stipulates to the violation prior to the initial scheduled trial or hearing date or makes an appearance at the initial scheduled trial or hearing, unless the agency establishes by rule the aggravating factors that would justify the imposition of a greater penalty."

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Again, thank you for this opportunity to be heard on this issue.

Eric Eisenberg

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Name: Gregory Anderson

Address: \_\_\_\_\_

I represent: Deputy Commissioner DSNY

Address: \_\_\_\_\_

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Name: Carlos Ortiz

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I represent: Assistant Commissioner DCWP

Address: \_\_\_\_\_

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Date: 1/30/23

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Name: Michael J. Tjepkema

Address: 42 Broadway

I represent: NYC DCWP

Address: 42 Broadway

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Date: 11/30/23

**(PLEASE PRINT)**

Name: ANDREW RIGIE

Address: 65 W 55<sup>ST</sup>, 203A, NY, NY 10019

I represent: NYC HOSPITALITY ALLIANCE

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Date: 11/30/23

**(PLEASE PRINT)**

Name: Robert Bookman

Address: 325 Broadway, Suite 501

I represent: SPiF & NYC Hospitality Alliance

Address: same

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