

**OPENING STATEMENT OF
MADELYNN LIGUORI
ASSOCIATE COUNSEL, BUREAU OF LEGAL AFFAIRS
NEW YORK CITY DEPARTMENT OF SANITATION**

**COMBINED PUBLIC HEARING ON A PROPOSED RULE GOVERNING REQUIREMENTS
FOR WASTE CONTAINERIZATION SYSTEMS IN CERTAIN BUILDINGS AND A PROPOSED
RULE REQUIRING WASTE MANAGEMENT PLANS FOR CERTAIN BUILDINGS**

**THURSDAY, MAY 28, 2020
9:30 AM to 11:00 AM
(REMOTE HEARING)**

Good morning and welcome. My name is Madelynn Liguori. I am Associate Counsel in the Bureau of Legal Affairs for the Department of Sanitation (“DSNY”). Thank you for attending this public hearing this morning.

DSNY is conducting this remote hearing in accordance with the requirements of the City Administrative Procedure Act. The purpose of this hearing is to receive comments from the public on two proposed rules. The first rule governs the requirements for waste containerization systems in certain buildings. DSNY, in conjunction with the Department of Housing Preservation and Development (“HPD”) and the Department of Health and Mental Hygiene (“DOHMH”), initially published this proposed rule in the City Record on March 12, 2020, with a scheduled joint hearing date of April 16, 2020. Due to COVID-19, this initial hearing was postponed. This rule was then republished in the City Record on April 27, 2020, with a scheduled joint hearing date of today, May 28, 2020. Additionally, all three agencies emailed copies of the rule to all New York City local elected officials, the City’s fifty-nine community boards, media and interested parties, and published the proposed rule on their respective website.

While existing regulations require large, new buildings to incorporate minimum requirements for the storage of its refuse and recycling, there is currently no requirement that buildings contemplate what happens when the substantial amount of refuse and recyclables generated by its residents is placed curbside. Curbside placement of piled bags of refuse generated at such buildings for collection by DSNY, given their large size, results in mountains of black bags placed along the curb on the sidewalks, not only obstructing pedestrian flow, but also impacting the quality of life of the surrounding area, especially in the summer months and after delayed collection during the winter months due to snow. These bags are also a huge food source for rats.

This proposed rule would require owners and/or managing agents of certain new residential multiple dwellings to install a waste containerization system for the management of waste generated (unless DSNY determines that collection service through this system is not feasible).

Pursuant to Local Law 56 for the Year 1967, Local Law 11 for the Year 1971, and Chapter 907 of the Laws of 1985, DSNY, DOHMH and HPD must jointly approve via rule (“Tripartite General Orders”) any new specifications for waste management systems in dwellings.

This jointly drafted proposed rule would amend the existing Tripartite General Orders by requiring owners and/or managing agents of certain new residential multiple dwellings, including commercial buildings that are turned into residential buildings, to install a waste containerization

system to manage waste generated at such buildings unless DSNY determines that collection service through this system is not feasible.

Specifically, this proposed rule would require the installation of a waste containerization system in:

- Any new multiple dwelling building that contains 300 or more dwelling units; or
- Any commercial building that is altered, enlarged or otherwise modified from its original physical design in order to be newly classified by the New York City Department of Buildings (“DOB”) as a multiple dwelling building that contains 300 or more dwelling units; or
- Any commercial building having 50 percent or more of its floor area renovated in order to be classified by DOB as a multiple dwelling building that contains 300 or more dwelling units.

DSNY also reserves the right to waive this mandatory requirement if it determines such waste containerization system is not operationally feasible and may deny or suspend collection service to any building required by the proposed rule to have a waste containerization system if all provisions have not been met.

The second rule would require the submission of a waste management plan by certain buildings. This rule was initially published by DSNY in the City Record on March 12, 2020, with a scheduled hearing date of April 16, 2020. Due to COVID-19, this initial hearing was postponed. This rule was then republished in the City Record on April 27, 2020, with a scheduled hearing date of today, May 28, 2020. Additionally, DSNY emailed copies of the rule to all New York City local elected officials, the City’s fifty-nine community boards, media and interested parties, and published the proposed rule on its website.

This proposed rule would require owners and/or managing agents of certain new residential multiple dwellings to submit a building waste management plan for approval by DSNY. Such waste management plan will allow such owners and/or managing agents to take a more holistic approach to managing their waste and is important for the City to achieve its zero waste and recycling goals.

Specifically, this proposed rule would require the submission of a waste management plan to DSNY. Such waste management plan would be required for the following classes of buildings:

- any new multiple dwelling building that contains 150 or more dwelling units; or
- any commercial building that is altered, enlarged or otherwise modified from its original physical design in order to be classified by DOB as a multiple dwelling building that contains 150 or more dwelling units; or
- any commercial building with 50 percent or more of its floor area renovated in order to be classified by DOB as a multiple dwelling building that contains 150 or more dwelling units.

Such waste management plan must be submitted to DSNY in a form prescribed and made available on its website.

A building must submit the waste management plan to DSNY when plans that include design drawings are submitted to DOB. Additionally, DSNY reserves the right to deny collection to any

building for the failure to submit a waste management report or for those buildings required to have a waste containerization system for failing to submit a waste containerization plan or for submitting an inadequate plan.

A court reporter is present today and will record the hearing. You may present an oral statement or submit written comments concerning either or both of the proposed rules. We have been accepting written comments on the proposed rules since their publication. Today is the deadline for submission of written comments. Such comments may be emailed directly to nycrules@dny.nyc.gov by 5PM today.

DSNY will make available a copy of all written comments received through today, together with the hearing transcript, for viewing on its website within the next few weeks.

DSNY will carefully consider all the comments it receives today at the hearing and all written comments it receives.

I will begin calling those of you who wish to speak this morning in the order in which you have signed up to testify. While the notices requested that persons wishing to testify sign up in advance of this hearing, anyone wishing to testify at this time may do so by indicating in the chat area that you wish to testify by indicating your name and affiliation, if any. When you speak, please state your name and affiliation and speak slowly and clearly so that the court reporter can understand and accurately record your statement. [We also ask that you limit your statement to five minutes.]

Comments Regarding Proposed Regulations Requiring Waste Management and Waste Containerization Plans in Certain Residential Buildings



May 28, 2020

These comments are offered on behalf of the Brooklyn Solid Waste Advisory Board regarding two proposed Regulations – one requiring the installation of a waste containerization system in new residential dwellings of 300 or more units, and one requiring waste management plans for new residential dwellings of 150 or more units.

Interestingly, both of these proposals were envisioned as far back as 1988 in the ***New York City Recycling Strategy***, otherwise known as the “white paper” that laid the groundwork for adoption of the city’s Mandatory Recycling Law - Local Law 19 (of 1989) – providing the roadmap for planning and implementation of a wide range of programs, services and policies meant to advance a progressive vision for management of New York City’s residential and commercial wastes.

In part, the Strategy said: “The Department is drafting legislation that would require builders of new residential buildings to designate adequate space for indoor storage of recyclables and recycling containers, and insure truck access to that material.”

More than thirty years later, in general both of the proposed regulations are long overdue and finally will advance the integration of the city’s progressive waste management policies in new buildings, albeit at a time when new residential construction may be slowed or halted in the post-COVID era. As proposed, these requirements would ensure that the “program” of new residential buildings will consider from the earliest design stages how to best manage the variety of wastes generated by their future residents.

Unfortunately, they do not attempt to address the existing built environment, and therefore will not make any meaningful impact – at least in the short-term – on the challenges presented by the wastes we generate.

In addition to amending Chapter 17 of the RCNY, it is equally if not more important that the intent of these regulations also be integrated into the process by which the City’s building code is regularly updated. That is the point of intervention best able to reach the universe of professionals involved in the conception, planning, design, development and management of residential buildings, instead of relying on this single amendment to have optimal impact.

The following specific comments regard each of the two proposed regulations.

With respect to requiring a waste management plan:

1. The regulation should provide assurances that DSNY will have appropriate staff and resources to review the plans that builders are required to provide. The regulation should specify the timeframe for DSNY’s review of both the initial and revised plans, much like the city’s ULURP rules.

2. DSNY should provide guidance to architects and builders as they design the program for new residential building by developing and issuing guidance materials, e.g., Zero Waste by Design, and avoid the potential for redesign costs. This educational function is essential to optimizing the impact of such plans.

With respect to requiring a containerization system:

1. The language regarding when a waiver from the base requirement may be considered and issued should be clarified. It appears to suggest that the preferred plan is for a DSNY collection vehicle to be able to operate within the property boundaries (e.g., a loading dock), but it is unclear what alternate means of collection would justify a waiver with continuing service from DSNY, or whether the issuance of a waiver would satisfy DSNY for a prescribed period of time. Those alternate means might include the ability of the building to move waste materials safely to the curb (e.g., in enclosed containers) for conventional DSNY collection.

It is not clear to what extent DSNY has faced and dealt with such collection challenges in existing residential buildings that in the future would trigger this requirement, or a waiver.

It is not clear for consideration by designers what type of collection vehicles DSNY might use – either at present or in the future – and what building design requirements those might trigger.

2. Given the absence of alley-ways and other off-street means of supporting truck-based collection, consideration should be given to how street-level collection areas would sacrifice what otherwise could be revenue-generating retail space for this function.

Taken together, DSNY estimates that somewhat more than 200 residential buildings might be affected by these requirements in the last building cycle; it is now impossible to predict how many might new residential buildings might be constructed during the coming decade, potentially rendering this requirement minimal in its impact.

That circumstance reinforces the suggestion that instead of these regulations, fuller consideration should be given to their integration into the city's building code – where architects and their clients are more likely to focus attention.

Thank you for considering these comments.



Comments on DSNY Proposed Rules:

1. Waste Management Plan Rule:

<https://dsny.cityofnewyork.us/wp-content/uploads/2020/04/AMENDED-WITH-DATES-CERTIFICATIONS-2020-RG-010-Waste-Management-Plans-for-Certain-Buildings-Preliminary-Rule.pdf>

Summary of rule:

Requires new residential buildings with 150 or more units to submit a waste management plan that outlines:

- Storage plans for trash, recyclables and organics that ensure 150 percent of generated waste can be stored inside the building between regularly scheduled collections,
- Estimates of waste generation - trash, recyclable materials and organic waste if building fully occupied
- Confirmation of compliance with BC sections 1213.1,2 and 3
- Plans for proper recycling and organic waste separation and proper setout, and that doesn't impede flow of pedestrian traffic
- Details regarding containerization if relevant or required
- Plans need to be submitted no later than when design drawings submitted to DOB, or effective date of rule whichever later.

Such waste management plan must be submitted to DSNY in a form prescribed and made available on its website.

Comments:

This was one of the recommendations of the Zero Waste Design Guidelines (ZWDG) and we are in strong support of this requirement, and are pleased that it includes a requirement for storage of organic waste.

We have the following comments and questions on the specifics of the rule:

- The prescribed form for the waste management plan should have instructions with detailed information about how to calculate volumes and areas required for all streams, including waste stream densities, capture rates, and compaction rates. These assumptions are all stated the online waste calculator from the ZWDG, and maybe this could be used for planning purposes.
- Criteria for assessing whether setout is a sidewalk obstruction must be defined. For example, how much width for clear pedestrian flow needs to be provided, must waste be a certain distance from a hydrant, can it be set out in a tree pit, how tall can the stack of bags be?
- If a building cannot comply as the sidewalk is not large enough, and they've used all the compaction equipment they can, what do they do? Do they need to use a private carter?
- We think it would make more sense for the approval process to happen as a requirement for pulling a permit, much like the process for [street trees](#).
- We would recommend a requirement for sign-off to ensure that the building was built and equipment was furnished per the plan. This could be a special inspection or a DSNY review.



2. Waste Containerization System Rule:

<https://dsny.cityofnewyork.us/wp-content/uploads/2020/04/AMENDED-NOTICE-DATES-CERTIFICATIONS-2019-RG-091-Requirements-for-Waste-Containerization-Systems-in-Certain-Buildings-Preliminary-Rule-DSNY.pdf>

Summary of rule:

Requires owners of new or converted residential buildings with 300 or more units to install a waste containerization system for trash (unless DSNY determines that collection service through this system is not feasible).

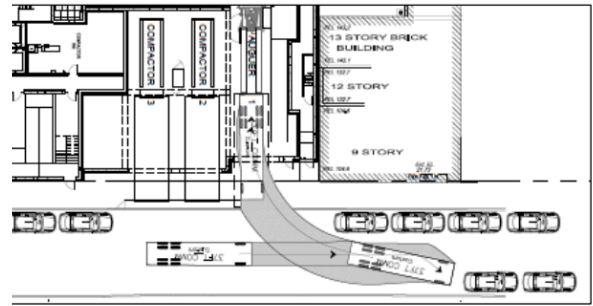
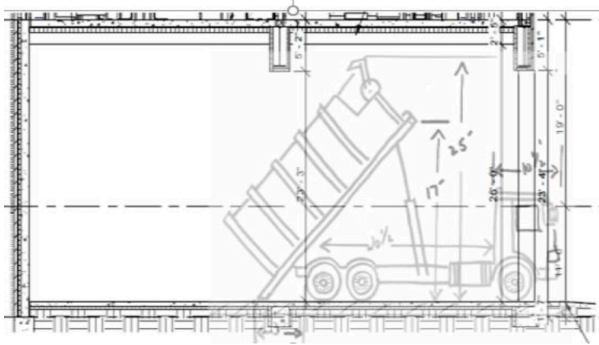
- DSNY may waive mandatory requirements for installation if determines not feasible as truck can't drive safely in / DSNY doesn't have necessary vehicles / if area isn't kept clean and safe/ if doesn't meet specs of 9-12
- Applies to any building for which plans have been submitted to DOB (but not yet approved).
- Definition of waste containerization system from 9-11: systems for the disposal of waste that utilize large containers which are mechanically lifted and emptied into, loaded onto or attached to collection vehicles.
- Section 9-12 (existing rules):
 - Any waste containerization system must be sufficient for 150% of waste or if not enough for 72 hours need additional receptacles to store.
 - Capacity to clean - hose & brush / steam cleaner and sewer drain.
 - Hold 700 lbs of waste /CY of capacity. No leaking of liquids, skids / rollers so keeps off ground
 - Tight fitting doors /lids to prevent rodents, insects and pests from entering.
 - Safe convenient access for loading and emptying- location to be approved by DSNY, HPD and DofH
 - DSNY to have a list of compliant containers.

Comments:

While we support waste containerization, we have several concerns that arise when this rule is combined with DSNY's current policy of collecting 30 CY containers of compacted trash, but no longer collecting the smaller 1-8 CY containers.

The rule applies to all buildings that have not yet been approved by DOB on effective date, but it should be recognized that adding a 30CY waste container to a building that has already been designed would require substantial redesign work and have significant financial impact. Any rule should only apply to building plans that have not yet been submitted to DOB, preferably with a 12 month announcement period for buildings in planning but not yet submitted to DOB.

DSNY's rules for containerized collection need to be made clearer. The current requirements, see excerpt below, are not clear in their requirements, but seem to require 25' clear headroom within the building for a compactor within a building on the street line, requiring significant extra floor area.



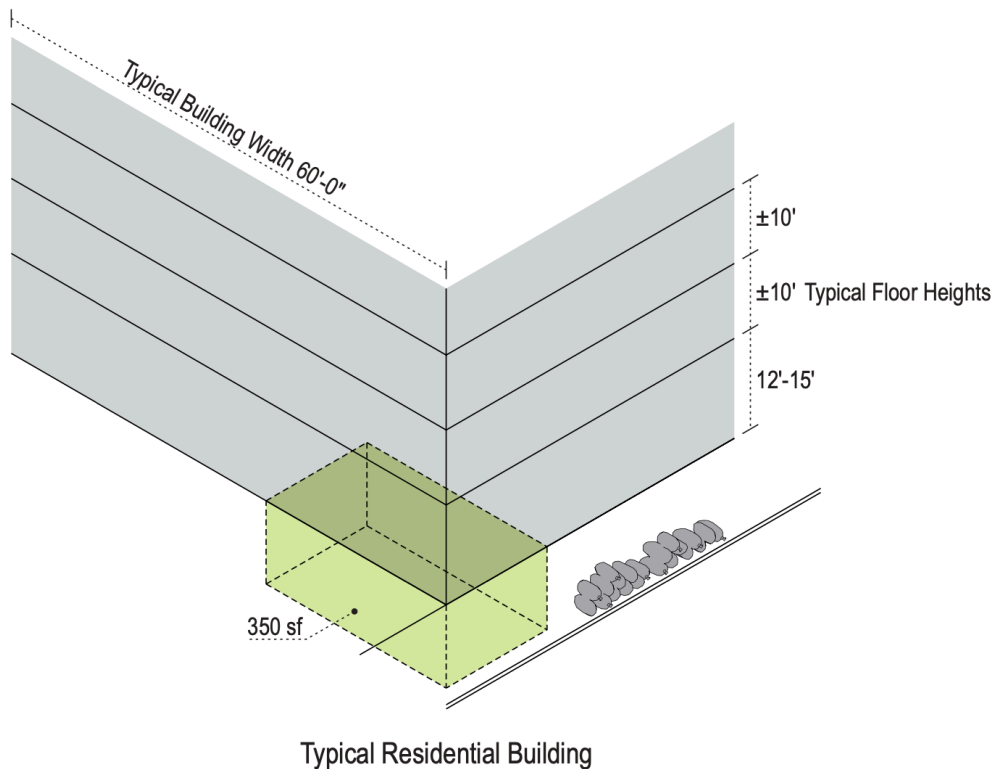
Excerpts from DSNY Roll On Roll Off Container Specifications

We believe that in many cases the collection vehicle does not need to enter the building, as is the case in Battery Park City and Stuyvesant Town installations shown on photos below. This will result in a lower clear headroom requirement. BPC provides 18'-10" clear in the new maintenance building.



Top Left: Stuy Town, Bottom Left: Battery Park City, Right: Battery Park City Maintenance Facility

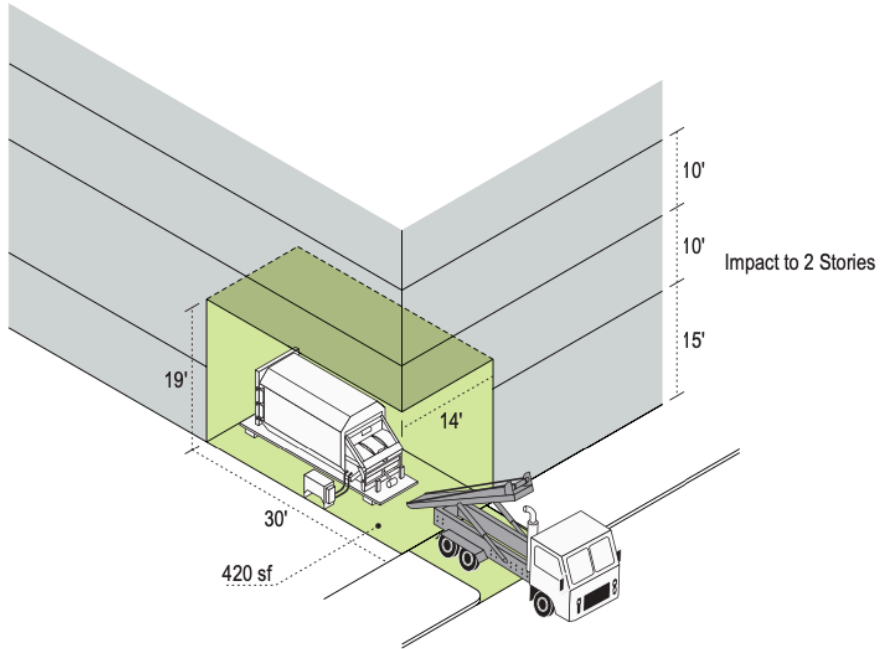
A typical residential building stores waste in the cellar, and brings bags out to the street, using no zoning floor area for waste storage. If 1-2 CY containers were collected by DSNY they could be stored in the cellar too. While there would be street design and collection vehicle issues for 2-4 CY containers, there are also street design issues with large roll doors and curb cuts for RoRos, and they should be as infrequent as possible.



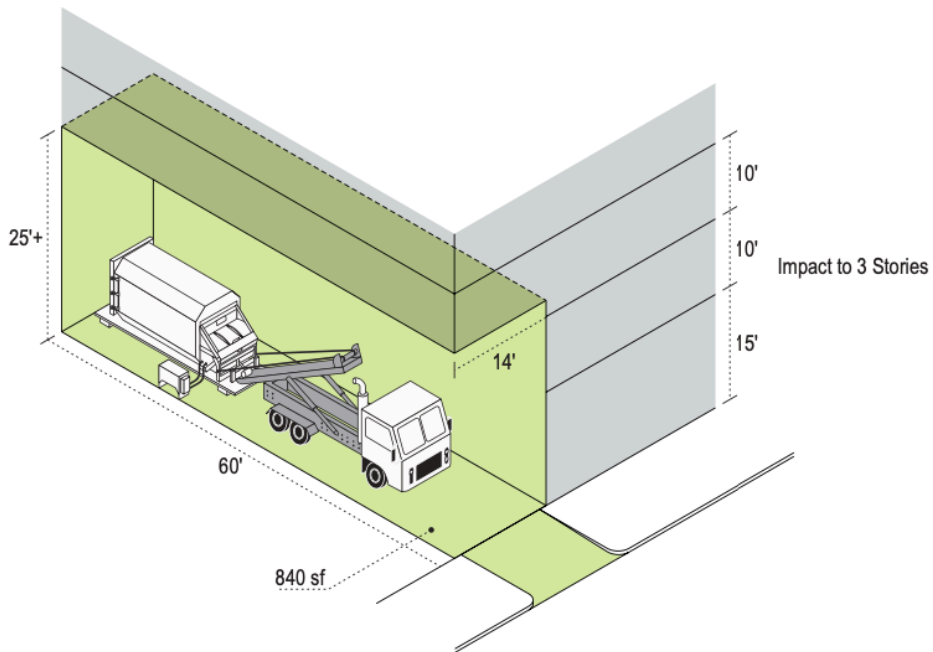
The Battery Park City type scenario with around 19' clear headroom would require approximately 420 SF, and likely impact 2 stories, so would require 840 SF of zoning floor area.

A 25' headroom and space for the truck to enter the building doubles the floor area and increases the number of typical stories impacted to 3, effectively tripling the zoning floor area required to 2520 SF.

See diagrams on the following page:



Battery Park City Scenario



Current Requirements



We have the following comments:

- Criteria should be given for when the collection vehicle needs to enter the building or if it is safe for it to remain on the sidewalk to load the container. If it is safe it requires much less floor area and cost.
- Smaller containers (2-4 CY) would give much more flexibility of building design, if they were collected by DSNY.
- We also think containerization should be required for organic waste as well as trash, since it makes up more of the waste stream.
- We would suggest that DSNY collaborate with DCP to see if zoning could be changed to allow a roll off container to be shared between buildings, as it is in Battery Park City, but is not always allowed by zoning. We think 300 units is too low a threshold. See waste calculations below.

Waste calculations for 300 unit building using online waste calculator:

1. Current: Average Capture Rates
2. Improved: 90% generation, 80% Capture Rates, Cardboard Baler. Also shown with no roll off and larger containers for all streams.
3. Zero Waste: 75% generation, 95% Capture Rates, Cardboard Baler. Also shown with no roll off and larger containers for all streams.

Scenario	Area - footprint of containers^	Trash	Organics / 3 days	MGP / week	Paper & Cardboard / week
Current	792 SF	Roll off - 8 days	14 x 32 gallons	73 bags	44 bags
Improved	1019 SF	Roll off - 12 days	45 x 32 gallons	97 bags	48 bags
Improved - no roll off	531 SF	5 x 2CY / 3 days	23 x 64 gallon	14 x 2CY	3 x 2CY, 5 bales
Zero Waste	610 SF	Roll off - 18 days	22 x 64 gallon	13 x 2CY	3 x 2CY, 4 bales
Zero Waste no roll off	472 SF	3 x 2CY / 3 days	22 x 64 gallon	13 x 2CY	3 x 2CY, 4 bales

As shown in the table, as the city moves towards a zero waste future it makes less sense to have a 30 CY roll off compactor for trash for a 300 unit building, as it would only need to be emptied every 18 days, which is not best practice.

In the Zero Waste scenario a roll off container could be replaced by 3 x 2 CY containers which would take much less space. In all scenarios the roll off container requires more space for footprint of the containers or storage bags, not including the additional headroom or access space.

We believe that any requirement for containerization should be planned with consideration of the city's zero waste goals, and not require such a large amount of space and equipment be given for the trash waste stream, which the city is aiming to reduce to under 10% of current volume. Buildings are designed for a long time scale, and the 25' headroom space for a RoRo is not easily adaptable for other uses and small containers.

Testimony to the New York City Department of Sanitation on the Proposed Rule,
“Requirements for Waste Containerization Systems in Certain Buildings,”
to be Added as Section 9-11.1 in Chapter 9, Title 16 of the Rules of the City of New
York

Bethany Davis Noll and Isabel Carey
May 28, 2020

We are residents of New York City with an interest in the city’s waste management systems stemming from our work on environmental regulatory policy. In addition, one of us has experience running a public food scraps drop-off site in upper Manhattan. We submit this comment in support of the proposed rule, “Requirements for Waste Containerization Systems in Certain Buildings,”¹ and to offer suggestions for strengthening its effectiveness. The proposed rule would require new residential and renovated commercial buildings with over 300 dwelling units to store waste for collection using a containerization system rather than curbside piles. This proposal will advance the city’s ability to reduce the waste piles that impede pedestrian flow, attract rats and other vermin, and impair the aesthetics of our streetscapes. As we explain below, to achieve these benefits more widely, the Department of Sanitation (DSNY) should remove the availability of compliance waivers for buildings that fail to maintain safe, accessible, and rule compliant container sites.

The proposed rule allows DSNY to waive the mandatory requirement for containerized waste systems if DSNY determines that a waste containerization system is not “operationally feasible” because:

- DSNY vehicles cannot drive safely and easily within the property,
- the area surrounding the containers poses risks to DSNY workers, vehicles, or equipment, or
- the container fails to meet the design and management requirements of the Rules of the City of New York Department of Sanitation (16 RCNY) § 9-12.²

¹ Rules of the City of New York Department of Sanitation [16 RCNY] § 9-11.1 (proposed).

² 16 RCNY § 9-11.1(c) (proposed).

As written, the proposed rule permits DSNY to waive compliance requirements for buildings that place containers in inaccessible or dangerous areas. Similarly, DSNY would be allowed to waive the compliance requirement for buildings with containers that fail to comply with § 9-12.

But, as proposed, these waivers are not reasonable. Building operators should not be able to avoid the waste containerization requirement if the site is not maintained in a good condition, or “pose[s] any threat of injury to Department of Sanitation workers or damage to its vehicles and equipment during collection.”³ This would reward bad faith behavior with an exemption from waste management practices needed to promote the public interest.

If DSNY wants to provide compliance waivers for buildings that, due to design limitations or hazardous on-site operations, will be unable to provide safe and navigable access to containers, the Department should issue such waivers only during the building design process. At that stage, DSNY should further limit its determinations that a waste containerization system is not “operationally feasible” to instances where a building’s design cannot reasonably accommodate an accessible container or where the building’s normal operations would create a hazardous environment for DSNY workers and property. When addressing the reasonability of requiring a design change to accommodate an accessible container, DSNY should weigh the costs of the design change against the substantial health, aesthetic, and quality-of-life benefits provided by waste containers. DSNY should not extend any compliance waivers to facilities that fail to meet § 9-12 requirements for container design or maintenance, because to do so would undermine the building’s independent obligation to comply with the § 9-12 requirements.

To address noncompliance by buildings that can, but fail to, maintain safe, accessible, and rule compliant systems, DSNY should use the proposed rule’s enforcement structure instead of compliance waivers. The proposed rule permits DSNY to “deny or suspend collection service” for non-compliant buildings, and mandates that the conditions leading to denial or suspension of service “must be corrected within 60 days of the date of denial or suspension.”⁴ By making waste collection contingent on prompt regulatory compliance, this provision incentivizes buildings to follow the rule’s requirements, which will in turn provide greater benefits to the city.

³ *Id.*

⁴ § 9-11.1(d) (proposed).

We thank DSNY for proposing to reduce our city's visible and fetid waste piles. By revising how the proposed rule manages compliance obligations, DSNY can expand this policy's ability to improve sanitation, reduce obstacles for pedestrians, and beautify our streets. Thank you for considering these comments.

Sincerely,

Bethany Davis Noll, Manhattan, NY

Isabel Carey, Brooklyn, NY

Public comments for: [Amendment to Tripartite General Orders regarding Waste Containerization Systems \(Chapter 17 of the RCNY\)](#)

Comments

Dylan Oakley

Comment:

Please see attachment for comments.

Supporting Document:

 [bkswab-comments-buildingregsproposals-may2020-final.pdf](#)

Agency: [DOHMH](#)

Dylan Oakley

Comment:

Please see attached document for comments.

Supporting Document:

 [bkswab-comments-buildingregsproposals-may2020-final.pdf](#)

Agency: [DOHMH](#)

Lucian Reynolds

Comment:

Manhattan Community Board 1 generally supports this proposed rule. Our resolution is attached. Here are the final points from the document: Manhattan Community Board 1)applauds this jointly drafted proposed rule as our district is popular destination for development interest of new large residential buildings conversions of large commercial buildings into residential buildings; and CB 1 urges the agencies bound by the Tripartite General Orders to modify the unit threshold to invoke this rule from 300 units to 100 units, which will ensure that more new residential units will not contribute to the legion sidewalk waste issues that currently plague our district.

Supporting Document:

 [manhattancb1_may2020_qol_dohmh-containerizedwaste-rulechange.pdf](#)

Agency: [DOHMH](#)

Public comments for: AMENDED NOTICE - Requirements for Waste Containerization Systems in Certain Buildings

Comments

Dylan Oakley

Comment:

Please see attachment for comments.

Supporting Document:

 [bkswab-comments-buildingregsproposals-may2020-final.pdf](#)

Agency: [DSNY](#)

Public comments for: Proposed Rules relating to Waste Containerization Systems

Comments

Dylan Oakley

Comment:

Please see attachment for comments.

Supporting Document:

 [bkswab-comments-buildingregsproposals-may2020-final.pdf](#)

Agency: [HPD](#)

Dylan Oakley

Comment:

Please see attachment for comments.

Supporting Document:

 [bkswab-comments-buildingregsproposals-may2020-final.pdf](#)

Agency: [HPD](#)

Liguori, Madelynn (DSNY)

From: NYC Rules (DSNY)
Sent: Friday, May 29, 2020 7:55 AM
To: Liguori, Madelynn (DSNY)
Subject: FW: Comments to Rule (DSNY)

From: Jodi Stein [JStein@sheppardmullin.com]
Sent: Thursday, May 28, 2020 17:11
To: NYC Rules (DSNY)
Subject: Comments to Rule (DSNY)

To Whom It May Concern:

The New York City Department of Sanitation (“DSNY”), is proposing to amend its rules to require new residential buildings with over 150 units to submit a building waste management plan that could require the inclusion of a Waste Containerization System. Further, it appears that this Waste Containerization System would also be required for all buildings larger than 300 units. On behalf of clients who are the owners, managers, and developers of a new buildings, they also seek to ensure that tenants do not have waste piling up in front of their residence and that there are no rodent problems as a result of exposed waste lingering in any area inside or outside of their residence – and in that regard, our goals are the same. However, resolving this problem by requiring owners to build a Waste Containerization System that does not take into account the actual size of the building, resident population, the more importantly zoning implications, site constraints, as well as the cost of such structure and equipment, is both irresponsible and thoughtless.

The proposed rule fails to take into account many important factors that go into analyzing a new development. For example, the new rule fails to look to the square footage of a building or how much street frontage a new building has, rather than solely looking to the amount of new units being constructed. A 400 unit building could be built in the same square footage as a 150 unit building by making the apartments smaller. And in that 400 unit building, which may only have 50 feet of street frontage, there may not be enough space on the ground floor to build the Waste Containerization System DSNY is requiring; or perhaps that space is encroaching upon, or entirely taking over income-producing space that would have made my development feasible. Or, conceivably, the height required to house the Waste Containerization System is not permitted in this zoning district where the new development is located. There would be no waiving this requirement in a 400-unit building, yet this requirement would be impossible to meet in many circumstances. Moreover, even in a building where a waiver was available, such waiver would be discretionary and it would be unknown whether it would be issued. A developer cannot expose itself to purchasing and developing a building with an unknown risk, which may be impossible to mitigate.

DSNY has failed to take into account the various limitations and restrictions placed on a new development due to zoning and other requirements in proposing this rule. Any proposed rule that requires the use of space in a new development and does not contemplate a way to compensate for that lost space, is not feasible to comply with. Moreover, any requirement upon a new development that does not take into consideration the zoning of a new development, including the floor area, height, setbacks, lot area, curb cut accessibility, street elevations and street frontage, etc., is not a well-thought out plan and lacks rationality and reasonableness.

These Waste Containerization Systems could cost millions of dollars to construct, operate and maintain, and in most cases, will take up space otherwise occupied by income generating floor area. The responsibility being placed on a new development providing much needed housing in this City, is onerous at best and disastrous at worst. Additionally, this is being passed under the radar, during a pandemic, and without other agencies and the public properly weighing in. On behalf of our clients, we object to this proposed rule and I am happy to provide more detail on the various ways this rule

contradicts and fails to account for zoning, while costing developers an inordinate amount of money, only to produce an outcome that could be accomplished in various other ways that are less intrusive and costly.

Thank you for your consideration.

Respectfully,

Jodi Stein

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This email does not constitute a zoning opinion or guaranty of Sheppard Mullin and should not be relied upon for investment, tax or real estate transaction purposes

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COMMUNITY BOARD 1 – MANHATTAN
RESOLUTION

DATE: MAY 26, 2020

COMMITTEE OF ORIGIN: QUALITY OF LIFE & DELIVERY SERVICES

COMMITTEE VOTE:	9 In Favor	0 Opposed	0 Abstained	0 Rescued
PUBLIC VOTE:	2 In Favor	0 Opposed	0 Abstained	0 Rescued
BOARD VOTE:	46 In Favor	0 Opposed	0 Abstained	0 Rescued

RE: Proposed New York City Department of Health and Mental Hygiene Rule to Require Certain Buildings To Install and Utilize Waste Containerization Systems

WHEREAS: When large, new buildings are designed, there currently is no requirement that such buildings consider waste management planning and incorporate measures for managing the substantial amount of refuse and recyclables generated by residents of such buildings; and

WHEREAS: Curbside placement of piled bags of refuse generated at such buildings for collection by the Department of Sanitation (“DSNY”), given their large size, results in mountains of black bags placed along the curb on the sidewalks, not only obstructing pedestrian flow, but also impacting the quality of life of the surrounding area, especially in the summer months and after delayed collection during the winter months due to snow; and

WHEREAS: These bags are also a huge food source for rats, which are a huge detractor for quality of life as well as a vector for disease and are responsible for outbreaks of diseases such as Leptospirosis; and

WHEREAS: Pursuant to Local Law 56 for the Year 1967, Local Law 11 for the Year 1971, and Chapter 907 of the Laws of 1985, DSNY, the Department of Health and Mental Hygiene (“DOHMH”), and the Department of Housing Preservation and Development (“HPD”) must jointly approve via rule (“Tripartite General Orders”) any new specifications for waste management systems in dwellings; and

WHEREAS: This jointly drafted proposed rule would amend the existing Tripartite General Orders by requiring owners and/or managing agents of certain new residential multiple dwellings, including commercial buildings that are turned into residential buildings, to install a waste containerization system to manage waste generated at such building unless DSNY determines that collection service through this system is not feasible; and

WHEREAS: Specifically, this proposed rule would require the installation of a waste containerization system in any new multiple dwelling building that contains 300 or more dwelling units; or any commercial building that is altered, enlarged or otherwise modified from its original physical design in order to be newly classified by the New York City Department of Buildings (“DOB”) as a multiple dwelling building that contains 300 or more dwelling units; or any commercial building having 50 percent or more of its floor area renovated in order to be classified by DOB as a multiple dwelling building that contains 300 or more dwelling units; now

THEREFORE
BE IT
RESOLVED

THAT: Manhattan Community Board 1 (CB 1) applauds this jointly drafted proposed rule as our district is popular destination for development interest of new large residential buildings conversions of large commercial buildings into residential buildings; and

BE IT
FURTHER
RESOLVED

THAT: CB 1 urges the agencies bound by the Tripartite General Orders to modify the unit threshold to invoke this rule from 300 units to 100 units, which will ensure that more new residential units will not contribute to the legion sidewalk waste issues that currently plague our district.

Rule Title: Requirements for Waste Containerization Systems in Certain Buildings

Reference Number: 2019 RG 091

COMMENTS & CLARIFICATION

1. Will there be key criteria's that all waste plan submissions must abide to?
2. What are our DNSY's primary goals for these programs.
3. Where space will not permit 30 -yard compactors or any self-contained compactor, will (closed) Wheelie Totters (96/68 Gallon) be an option?
 - 3a. Multiple US Cites have successfully used wheelie Totters for general waste and composting collection.
4. Who will be qualified to submit waste audits to DNSY?

Sincerely

J. Mark Lanning

President

919-665-8557 Cell



**PREMIER FACILITY
MANAGEMENT**



PREMIER
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May 28, 2020

Rule Title: Requirements for Waste Containerization Systems in Certain Buildings

Reference Number: 2019 RG 091

COMMENTS & CLARIFICATION

- What are the Key points / guidelines that define compliance with the buildings that will be required for containerization?
- What are DSNY’s top five (5) goals with the containerization plan?
- What are the qualifications needed to submit a full waste management plan for DSNY’s review
- Who at DSNY will oversee the approval of the waste management plans
- For mixed-use buildings with 300+ units and retail/commercial space, how with this impact the proposed City Waste Zone plan
- What is the timeframe to convey a waste management plan to existing customers and the timeframe to convert these existing buildings to be compliant

Sincerely,

John Frustaci

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COMMENT OF THE REAL ESTATE BOARD OF NEW YORK TO THE DEPARTMENTS OF SANITATION, HEALTH AND MENTAL HYGIENE, AND HOUSING AND PRESERVATION ON THE PROPOSED RULE THAT WOULD REQUIRE CERTAIN BUILDINGS TO INSTALL AND UTILIZE WASTE CONTAINERIZATION SYSTEMS

May 28, 2020

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the Departments for the opportunity to comment on the proposed rule that would require certain buildings to install and utilize waste containerization.

New York City stands apart from other municipalities in its waste management, largely a result of its scale and city design. With the country's biggest population, NYC produces 14 million tons of waste a year in a hyper dense built environment that lacks alley space. Consequently, buildings are often forced to temporarily lay waste curbside until it can be collected. Understanding the garbage bags on sidewalks affects New Yorkers' quality of life, impeding pedestrian traffic and posing potential health risks, REBNY supports the departments in their search for a solution to reduce the presence of semi-exposed waste in the public domain.

The proposed rule seeks to mitigate the piling of trash in public by requiring the installation of waste containerization systems in 1) new multiple dwellings with 300+ units, 2) commercial buildings that either alter or enlarge their physical design to be classified as a multiple dwelling building and have 300+ units, and 3) commercial buildings that renovate 50% or more of the floor area to be classified as a multiple dwelling building and have 300+ units. The proposal would further require that any containerized system installations allow for Department of Sanitation (DSNY) drivers to safely and easily access the property, and the area must be well maintained so as not to pose a risk to workers. DSNY would be allowed to request plans of the containerization area to confirm those requirements and reserve the right to deny or suspend collection to buildings that do not comply with the rule. Finally, DSNY will waive the requirement if it determines the property is not suitable for containerization.

REBNY shares in the departments' commitment to cultivating better public health and quality of life. However, we believe the rulemaking initiated by the departments is not the proper venue for the consideration of such a requirement. Instead, REBNY encourages the departments put this idea forward in the Department of Buildings (DOB) current code revision process, which is the general venue in which the requirements for new construction of buildings are discussed and established. Using this DOB process would ensure that all parties involved in the development of new construction standards, including but not limited to owners, architects, engineers, contractors, builders, consultants as well as other City agencies have the opportunity to provide their expertise on the proposal and that the requirements are fully aligned with other sections of code.

In addition, as the departments further consider this issue, the following items should be more fully addressed.

First, the departments and other City agencies must clarify how the rule impacts or conflicts with the requirement of Quality Housing, streetscape standards for the ground floor and other provisions of the Zoning Resolution. Moreover, the rule should be explicit in how the proposed containerization systems would relate to the buildings' floor area ratios (FARs). Hospitals, for example, are required to include waste containerization in their development and are allowed to deduct some of the footprint from the FAR. We encourage the departments to consider similar measures for residential buildings covered by the rule, particularly given constructing a containerization system can lead to frontage loss for ground floor retail.

Recognizing the diversity of the built landscape, the rule allows for DSNY to exempt buildings from complying with the requirements if they are not suited to incorporating waste containerization. This is appropriate and

REBNY encourages the departments to identify the criteria DSNY will use to make that determination. Delineating the circumstances under which DSNY would exempt a covered residential building would ensure the development is not slowed and limit potential issues of DSNY's capacity to process the covered properties.

Further, significantly more clarity needs to be given to how this requirement, and any exemption process, will fit into the project development timeline and other City agency plan review requirements. Specifically, greater detail will need to be given to clarify when the developer should approach DSNY for approval of plans or to ask for an exemption and how that will be communicated to DOB. If the project is not advised whether it needs to include containerization systems until after designs have been drafted, it will lead to delays in projects completing development and delivering additional housing units to the city.

Moreover, the departments should ensure the effective date of the proposed rule is consistent with how buildings are developed. Currently, when changes are made to building design requirements, those changes are typically phased in based on a date by which complete plans have been filed with the Department of Buildings. To be consistent, the implementation of this rule, if adopted, should similarly only apply to those buildings that have not filed complete plans with the Department of Buildings before the effective date.

Thank you for the consideration of these points.

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COMMENT OF THE REAL ESTATE BOARD OF NEW YORK TO THE DEPARTMENT OF SANITATION ON THE PROPOSED RULE THAT WOULD REQUIRE CERTAIN BUILDINGS TO SUBMIT A BUILDING WASTE MANAGEMENT PLAN

May 28, 2020

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the Department of Sanitation (DSNY) for the opportunity to comment on the proposed rule that would require certain buildings to develop waste management plans.

New York City stands apart from other municipalities in its waste management, largely a result of its scale and city design. With the country's biggest population, NYC produces 14 million tons of waste a year in a hyper dense built environment that lacks alley space. Consequently, buildings are often forced to temporarily lay waste curbside until it can be collected. Understanding the garbage bags on sidewalks affects New Yorkers' quality of life, impeding pedestrian traffic and posing potential health risks, REBNY supports the departments in their search for a solution to reduce the presence of semi-exposed waste in the public domain.

The proposed rule would require a waste management plan for 1) new multiple dwellings with 150+ units, 2) commercial buildings that either alter or enlarge their physical design to be classified as a multiple dwelling building and have 150+ units, and 3) commercial buildings that renovate 50% or more of the floor area to be classified as a multiple dwelling building and have 150+ units.

REBNY supports the department's commitment to improving public health through better waste management. To ensure buildings can effectively help DSNY achieve its goal, the department needs to provide further clarity within the rule.

The rule would require owners and managers to estimate the full amount of refuse of fully occupied building as part of the waste management plan, yet waste generation varies greatly between units. The DSNY should provide guidance as to how owners and managers should calculate the maximum refuse for a fully occupied building. In doing so, REBNY encourages the department to consider different factors that may impact waste generation, such as the season, socioeconomic status of residents, and the state of the economy.¹ Though DSNY has not included those factors in its waste analysis reports, other parts of the cities have confirmed their impact on waste generation.²

The plan would also require owners and managers to indicate storage for refuse, recyclables, and organic waste at 150% capacity of expected accumulated waste between regular collections. To do so, DSNY will need to provide guidance on how to determine expected waste generation level – different from the maximum requested as part of the plan.

Finally, the proposed rule affords the department 25 days to review the plan and provide details for correction if the plan is rejected, but there is no obligation to confirm the plans are approved. REBNY encourages DSNY to inform owners and managers if the department accepts their plans so building development may move forward with certainty of compliance.

Thank you for the consideration of these points.

¹ Denafas, G. (2014) "Seasonal variation of municipal solid waste generation and composition in four East European cities." *Resources, Conservation, and Recycling* 89 (1) 22-30. <https://doi.org/10.1016/j.resconrec.2014.06.001>

² Zia, A. et al (2017) "Influence of Income Level and Seasons on Quantity and Composition of Municipal Solid Waste: A Case Study of the Capital City of Pakistan." *Sustainability* 9 (9) 1568. <https://doi.org/10.3390/su9091568>

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