

## The New York City Department of Transportation

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The purpose of the proposed rule is to update the New York City Department of Transportation's (DOT) civil penalty schedule to reflect changes in the law and recently adopted rules.

**When and where is the hearing?** The New York City Department of Transportation (DOT) will hold a public hearing on the proposed rule online. The virtual public hearing will take place on Thursday, October 1, 2020 at 2PM.

#### **Join through Internet:**

- To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar.

Join Zoom Meeting

<https://zoom.us/j/94661891065?pwd=eEdYMDhlaThDaTdqRkdBOStKdnVIZz09>

Meeting ID: 946 6189 1065

Password: 899974

- Then follow the prompts.
- If you have low bandwidth or inconsistent Internet connection, we suggest you use the phone option below for the hearing.

#### **Join via phone only:**

- To join the meeting only by phone, use the following information to connect:
- Phone: 1-929-205-6099
- Meeting ID: 946 6189 1065
- Password: 899974

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DOT through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [rules@dot.nyc.gov](mailto:rules@dot.nyc.gov)
- **Mail.** You can mail comments to:

Vincent Maniscalco, Assistant Commissioner  
New York City Department of Transportation  
55 Water Street, 7<sup>th</sup> Floor  
New York, NY 10041

- **Fax.** You can fax comments to Assistant Commissioner Vincent Maniscalco at 212-839-8867.

**By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing [rules@dot.nyc.gov](mailto:rules@dot.nyc.gov) by September 30, 2020 and including your name and affiliation. While you will be given an opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, the deadline to submit comments is Thursday, October 1, 2020 at 5PM.

**Do you need assistance to participate in the hearing?** You must tell the DOT Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing other than the one(s) indicated above. You must tell us if you need a sign language interpreter. You can tell us by e-mailing at [rules@dot.nyc.gov](mailto:rules@dot.nyc.gov) by September 24, 2020.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available through the DOT Freedom of Information Law (FOIL) Office, 55 Water Street, 4<sup>th</sup> Floor, New York, NY 10041.

**What authorizes DOT to make this rule?** Sections 1043 and 2903 of the New York City Charter authorize DOT to make this proposed rule. This proposed rule was not included in DOT's regulatory agenda for this fiscal year because it was not contemplated when DOT published the agenda.

**Where can I find DOT's rules?** DOT's rules are in Title 34 of the Rules of the City of New York.

**What rules govern the rulemaking process?** DOT must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the New York City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

The Commissioner of the New York City Department of Transportation is authorized to issue rules regarding parking and traffic operations and highway operations in the City pursuant to Sections 1043 and 2903 of the New York City Charter.

Pursuant to Local Law 5 of 2018, the maximum civil penalty amounts relating to street construction, maintenance, repairs, obstructions and closures were increased significantly,

particularly where public safety is involved. Accordingly, DOT is seeking to increase certain penalty amounts for violations adjudicated at the Office of Administrative Trials and Hearings. The increased penalties are expected to increase compliance with the Department’s rules and thereby promote public safety in the street construction and maintenance process.

Specifically, the proposed rule will:

- increase the penalty amounts of 8 current violations;
  - update the schedule as needed to reflect recently adopted rules and changes to the law;
- and
- provide clearer, more concise language in describing the penalties.

The DOT penalty schedule is being updated to increase penalty amounts, update descriptions, and add new penalties for the following: New York City Administrative Code sections 19-109, 19-121, 19-122, 19-123, 19-124, 19-147, 19-159.4, 19-170, as well as sections 2-02, 2-05, 2-07, 2-09, 2-11 and 2-20 of Title 34 of the Rules of the City of New York.

See the chart below for the specific justifications by penalty:

<b>Section</b>	<b>Description</b>	<b>Justification for Increased Penalty Amount</b>
34 RCNY 2-07(b)(2)	Failure to repair defective street condition found within an area extending 12 inches outward from the perimeter of the cover/grating	This penalty should be increased to \$750 from the current \$250 penalty amount. This violation is almost exclusively issued to utility companies since it relates to hardware covers/grating, however, prior to issuance of such a violation DOT issues the utilities a Corrective Action Report which provides the utility notification of the condition and an opportunity to repair the condition within a minimum of 30 days. The purpose of the rule and subsequent issuance of a violation is to ensure the integrity of the roadway and a smooth driving surface. Additionally, the proposed penalty is consistent with other roadway paving defects violations.
34 RCNY 2-09(f)(4)(xiv)	Except as in NYC Administrative Code § 19-152, failure to install pedestrian ramp as per DOT drawings	This penalty should be increased to \$1,500 from the current \$400 penalty amount. The lower fine of \$400 is not incentive enough to motivate permittees to construct a corner quadrant with one to two pedestrian ramps. The average cost of such construction is approximately \$6,000 per ramp. This purpose of the rule and subsequent issuance of a violation is to ensure a greater level of overall completion and compliancy with the pedestrian ramp construction specification (#H-1011) and the Americans with Disabilities Act. The violation is generally issued after failure to comply within a 30 day period from a Corrective Action Report.
34 RCNY 2-11(e)(10)(v)	Failure to post “Steel Plates Ahead” or	This violation is being split into 2 separate and distinct penalties--one for failure to post the appropriate signage

	<p>“Raise Plow” sign; failure to countersink plates flush with roadway</p>	<p>and the other for failure to countersink plates. The fine for failure to post "Steel Plates Ahead" or "Raise Plow" signs should be increased from the current amount of \$250 to \$1,000. The fine for failure to countersink plates should be increased to \$750 from the current \$250 penalty amount. The lower fine of \$250 is not incentive enough to motivate contractors to post the required signage or to countersink the steel plates. Failure to post the required signage and failure to countersink plates creates a safety issue during the winter plow months. Additionally, the proposed penalty amount for failure to countersink plates is consistent with other violations relating to steel plates.</p>
<p>34 RCNY 2-11 (e)(12)(ix)</p>	<p>Failure to obtain DOT permit for any changes to, or installation of, temporary roadway pavement markings and temporary construction, parking or regulatory signs and supports</p>	<p>This violation is being split into 2 separate and distinct penalties--one for failure to obtain DOT permit for changes or installation of temporary roadway pavement markings, and the other for failure to obtain DOT permit for changes or installation of temporary construction, parking or regulatory signs or supports. The new separate fine for not obtaining a permit for any changes or installation of temporary construction, parking or regulatory signs or supports should be \$1,500. Failure to obtain DOT permits for such changes or installation creates a safety and enforcement issue if these important elements are not installed properly or are changed without DOT’s knowledge. Construction, parking and regulatory signage and supports are important to regulate the speed and flow of traffic and to manage parking along curbs.</p>
<p>34 RCNY 2-11(e)(12)(ix)</p>	<p>Failure to restore in kind all roadway pavement markings; failure to restore in kind any parking or regulatory signs or supports</p>	<p>This violation is being split into 2 separate and distinct penalties--one for failure to restore in kind all roadway pavement markings, and the other for failure to restore in kind parking or regulatory signs or supports. The fine for roadway pavement markings should be increased from the current amount of \$750 to \$1,500. The fine for parking or regulatory signs or supports should be increased to \$1,500 from the current \$750 penalty amount. The lower fine of \$750 is not incentive enough to motivate permittees to appropriately restore in kind. Failure to restore in kind the various elements of a street opening job creates a safety issue if these important elements are not restored in kind. Roadway pavement markings, especially the double yellow lines, are essential to guide and control traffic. Parking and regulatory signage and supports are equally important to regulate the speed and flow of traffic and parking.</p>

34 RCNY 2-11(g)(1)(ii)	Doing non-emergency work with an emergency authorization number	This penalty should be increased to \$2,000 from the current \$1,000. The purpose of the rule is so that valid emergency permits are secured when appropriate. Permittees cannot conduct non-emergency work under the auspices of emergency work, especially since emergency work allows for street closures with no stipulated working hours.
34 RCNY 2-11(g)(2)(i)	Failure to begin emergency work within 2 hours after authorization	This penalty should be increased to \$1,000 from the current \$500. The purpose of the rule is so that valid emergency work starts within two 2 hours of obtaining the authorization so that the emergency can be resolved quickly.
34 RCNY 2-11(g)(2)(viii)	Failure to apply for DOT permit within two business days of emergency work	This penalty should be increased to \$750 from the current \$250. The lower fine is not incentive enough to motivate permittees from not applying for DOT permits to document their work. The purpose of the rule and subsequent issuance of a violation is to ensure that contractors follow up and obtain a regular non-emergency permit. If a permit is not "turned over" DOT cannot review proposed restorations (mark outs) of concrete roadways, cobblestone roadway, roadway with bike lanes, and/or roadway with pedestrian plazas.
34 RCNY 2-20 (b) (2)	Installation of an overhead shunt or wrap-around shunt without a DOT permit; installation of street shunt without a DOT permit	This violation is being split into 2 separate and distinct penalties--one for installation of an overhead or wrap-around shunt without a DOT permit, and the other for installation of a street shunt without a DOT permit. The fine for overhead or wrap-around shunts should be increased from the current amount of \$250 to \$750. The fine for street shunts should be increased to \$1,200 from the current \$250 penalty amount. The lower fine of \$250 is not incentive enough to motivate utility providers to obtain a DOT permit. Failure to obtain a DOT permit creates a safety issue because shunts are used to provide electrical connectivity and DOT must be made aware of their locations on or over the street.

New material is underlined.  
[Deleted material is in brackets.]

“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.

**Proposed 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:

<b><u>Section</u></b>	<b><u>Description</u></b>	<b><u>Penalty</u></b> <b><u>(\$)</u></b>	<b><u>Default</u></b> <b><u>(\$)</u></b>
Admin. Code 19-109(a)	Failure to provide adequate protection <u>to persons and/or property</u> at worksite	1,200	3,600
Admin. Code 19-121(a)	<u>Obstruction of any portion of street with [Construction] construction materials/equipment [stored on street] without DOT permit</u>	750	2,250
Admin. Code 19-121(b)(2)	Debris/construction materials obstructing [gutters/sidewalk, etc.] <u>sidewalks, gutters, crosswalks, and driveways without DOT permit</u>	250	750
Admin. Code 19-121(b)(3)	Construction material/equipment without proper [reflective] markings <u>capable of producing a warning glow</u>	250	750
Admin. Code 19-121(b)(4)	Material/equipment without name, [ & ] address, <u>and telephone number</u> of owner	100	300

Admin. Code 19-121(b)(7)	<u>Obstruction of fire hydrant or bus stop or other area with construction material or equipment, which would impair safety or convenience of public</u>	500	1,500
Admin. Code 19-122	<u>Failure to remove [Sand/dirt/rubbish/debris] sand, dirt, rubbish, or debris [not removed] from site within 7 days</u>	250	750
Admin. Code 19-123	<u>Placement of [Commercial] commercial refuse container [stored] on the street without DOT permit</u>	750	2,250
Admin. Code 19-124(a)	<u>Erect or maintain [Canopy] canopy over the sidewalk without DOT permit</u>	100	300
Admin. Code 19-147(d)	<u>Failure to replace loose, slippery or broken utility maintenance hole (manhole) covers, castings, and other street hardware</u>	250	750
<u>Admin. Code 19-159.4</u>	<u>Failure to equip concrete mixer truck driven in or through the city of New York with chute closure device during the transport of liquid concrete</u>	<u>\$1,000</u>	<u>\$3,000</u>
<u>Admin. Code 19-170(c)(3)</u>	<u>Parking a tractor-trailer combination, tractor, truck trailer or semi-trailer on a residential street from 9pm to 5am (FIRST OFFENSE)</u>	<u>\$400</u>	<u>\$400</u>
<u>Admin. Code 19-170(c)(3)</u>	<u>Parking a tractor-trailer combination, tractor, truck trailer or semi-trailer on a residential street from 9pm to 5am (SECOND OR SUBSEQUENT OFFENSE WITHIN SIX MONTHS)</u>	<u>\$800</u>	<u>\$800</u>
34 RCNY 2-05(d)(10)	Failure to provide space <u>within the storage area</u> for loading [&] <u>and unloading of construction materials</u> [on the roadway]	250	750
34 RCNY 2-05(d)(16)	Failure to [house] <u>carry overhead [cables/hoses/wires] equipment hoses, cables, or wires across the sidewalk</u> with 14 feet minimum clearance [on the sidewalk]	250	500
34 RCNY 2-05(i)(1)	<u>Crossing sidewalk for the delivery or removal of any construction material or equipment on the street by vehicle or motorized equipment where there is no approved drop curb (driveway) [with a motorized vehicle] without DOT permit</u>	250	500
34 RCNY 2-07(a)(2)	[Opening a utility access cover without an authorization number] <u>Failure to obtain an emergency number if opening an underground street access cover to perform emergency work during an embargo.</u>	1,500	5,000

34 RCNY 2-07(b)(2)	Failure to repair defective street condition found within an area extending 12 inches outward from the perimeter of the cover/grating	[250] <u>750</u>	[750] <u>2,250</u>
34 RCNY 2-09(f)(4)(xiv)	Except as in NYC Administrative Code § 19-152, failure to install pedestrian ramp as per DOT drawings	[400] <u>1,500</u>	[1,000] <u>4,500</u>
34 RCNY 2-11(e)(10)(ii)	Failure to properly place and ramp plating and decking <u>a minimum of 12 inches beyond the edge of the trench</u>	1,200	3,600
34 RCNY 2-11(e)(10)(v)	Failure to post “Steel Plates Ahead” or “Raise Plow” sign; [failure to countersink plates flush with roadway]	[250] <u>750</u>	[750] <u>2,250</u>
<u>34 RCNY 2-11(e)(10)(v)</u>	<u>Failure to countersink plates flush with roadway</u>	<u>1,000</u>	<u>3,000</u>
34 RCNY 2-11(e)(10)(vi)	Failure to use [skid resistant] plating and/or decking <u>that is skid-resistant in its entirety on roadway</u>	1,000	[5,000] <u>3,000</u>
34 RCNY 2-11(e)(12)(ix)	Failure to obtain DOT permit for any changes to, or installation of, temporary roadway pavement markings [and temporary construction, parking or regulatory signs and supports]	750	1,000
<u>34 RCNY 2-11(e)(12)(ix)</u>	<u>Failure to obtain DOT permit for any changes to, or installation of, temporary construction, parking or regulatory signs and supports</u>	<u>1,500</u>	<u>4,500</u>
34 RCNY 2-11(e)(12)(ix)	Failure to restore in kind all roadway pavement markings[, and any parking or regulatory signs or supports]	[750] <u>1,500</u>	[1,000] <u>4,500</u>
<u>34 RCNY 2-11(e)(12)(ix)</u>	<u>Failure to restore in kind any parking or regulatory signs or supports</u>	<u>1,500</u>	<u>4,500</u>
<u>34 RCNY 2-11(e)(12)(xiii)</u>	<u>Failure to provide smooth riding surface free of defects in the final completed wearing course</u>	<u>750</u>	<u>2,250</u>
34 RCNY 2-11(g)(1)(ii)	Doing non-emergency work with an emergency authorization number	[1,000] <u>2,000</u>	[3,000] <u>6,000</u>
34 RCNY 2-11(g)(2)(i)	Failure to begin emergency work within 2 hours after authorization	[250] <u>1,000</u>	[750] <u>3,000</u>
34 RCNY 2-11(g)(2)(viii)	Failure to apply for DOT permit within two business days of [emergency work] <u>receiving an emergency permit number</u>	[250] <u>750</u>	[750] <u>2,250</u>

34 RCNY 2-20 (b) (2)	Installation of an overhead <u>shunt</u> or wrap-around shunt without a DOT permit	[250] <u>750</u>	[500] <u>2,250</u>
<u>34 RCNY 2-20</u> (b) (2)	<u>Installation of street shunt without a DOT permit</u>	<u>1,200</u>	<u>3,600</u>

**NEW YORK CITY LAW DEPARTMENT**

**DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Amendment of Penalty Schedule**

**REFERENCE NUMBER: 2020 RG 040**

**RULEMAKING AGENCY: Department of Transportation**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN L. GOULDEN  
Acting Corporation Counsel

Date: August 21, 2020

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Penalty Schedule**

**REFERENCE NUMBER: DOT-54**

**RULEMAKING AGENCY: Department of Transportation**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it a cure period would defeat the deterrent purpose of the violations.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

August 21, 2020  
Date