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Int. No. 1398

By Council Members Matteo, Reynoso, Richards, Gentile and Chin

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to allowing community service as a civil penalty for dumping

Be it enacted by the Council as follows:

Section 1. Subdivision 4 of section 1049 of the New York city charter, as added by local law number 73 for the year 2016, is amended to read as follows:

4. Notwithstanding any other provision of law, in the conduct of an adjudication relating to a natural person accused of committing a specified violation, as defined in paragraph (b) of this subdivision, or any other adjudication where such alternative is specifically provided by this charter or the administrative code, an administrative law judge or a hearing officer shall offer the respondent the option to perform community service in lieu of a monetary civil penalty.

§ 2. Paragraph 3 of subdivision a of section 3-121 of the administrative code of the city of New York,

as added by local law number 55 for the year 2011, is amended to read as follows:

3. "Waterfront dumping" shall mean any violation of subdivision [a] b of section 16-119 of this code that occurs in or upon any wharf, pier, dock, bulkhead, slip or waterway or other area, whether publicly or privately owned, that is adjacent to any wharf, pier, dock, bulkhead, slip or waterway, and any violation of section 22-112 of this code.

§ 3. Section 16-119 of the administrative code of the city of New York, as amended by local law number 4 for the year 2010, is amended to read as follows:

§ 16-119 Dumping prohibited. a. Definitions. For purposes of this section, the term “community service” means performing services for a public or not-for-profit corporation, association, institution or agency in lieu of payment of a monetary civil penalty. Such services may include, but are not limited to, attendance at programs, either in person or web-based, designed to benefit, improve or educate either the community or the respondent.

[a.] b. It shall be unlawful for any person, his or her agent, employee or any person under his or her control to suffer or permit any dirt, sand, gravel, clay, loam, stone, rocks, rubble, building rubbish, sawdust, shavings or trade or household waste, refuse, ashes, manure, garbage, rubbish or debris of any sort or any other organic or inorganic material or thing or other offensive matter being transported in a dump truck or other vehicle to be dumped, deposited or otherwise disposed of in or upon any street, lot, park, public place, wharf, pier, dock, bulkhead, slip, navigable waterway or other area whether publicly or privately owned.

[b.] c. Any person who violates the provisions of this section shall be liable to arrest and upon conviction thereof shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than [one thousand five hundred dollars] \$1,500 nor more than [ten thousand dollars] \$10,000 or by imprisonment not to exceed [ninety] 90 days or by both such fine and imprisonment.

[c.] d. (1) Any person who violates the provisions of subdivision [a] b of this section shall also be liable for a civil penalty of not less than [one thousand five hundred dollars] \$1,500 nor more than [ten thousand

dollars] \$10,000 for the first offense, and not less than [five thousand dollars] \$5,000 nor more than [twenty thousand dollars] \$20,000 for each subsequent offense. In addition, every owner of a dump truck or other vehicle shall be liable for a civil penalty of not less than [one thousand five hundred dollars] \$1,500 nor more than [ten thousand dollars] \$10,000 for the first offense and not less than [five thousand dollars] \$5,000 nor more than [twenty thousand dollars] \$20,000 for each subsequent offense of unlawful dumping described in subdivision [a] b of this section by any person using or operating the same, in the business of such owner or otherwise, with the permission, express or implied, of such owner.

(2) Notwithstanding paragraph 1 of this subdivision, any person who violates the provisions of subdivision b of this section shall be offered the option to perform community service in lieu of a monetary penalty by an administrative law judge or a hearing officer pursuant to the procedures established in section subdivision 4 of section 1049 of the charter.

(A) The option to perform community service shall not require the payment of any fee by any person who violates the provisions of subdivision b of this section.

(B) The performance of community service offered pursuant to this subdivision shall not displace employed workers or impair existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout.

(C) An administrative law judge or a hearing officer shall offer up to 70 hours of community service in lieu of payment of a civil penalty in an amount up to \$3,000. Fewer hours of service shall be offered in proportion to civil penalties that are less than \$3,000.

(D) If a respondent accepts the option to perform community service and an administrative law judge or hearing officer finds that the respondent has failed to perform such services within the time prescribed, an administrative law judge or hearing officer shall issue an order reinstating the applicable civil penalty and, if otherwise authorized by law, such order shall constitute a judgment that may be entered and enforced.

(E) The office of administrative trials and hearings shall promulgate any rules as may be necessary for

the purposes of carrying out the provisions of this subdivision, which shall include, but not be limited to, rules specifying the correspondence between the amount of service offered and the amount of civil penalties imposed.

[(2)] (3) Any owner, owner-operator or operator who is found in violation of this section in a proceeding before the environmental control board and who shall fail to pay the civil penalty imposed by such environmental control board shall be subject to the suspension of his or her driver's license, privilege to operate or vehicle registration or renewal thereof imposed pursuant to section [twelve hundred twenty-a] 1220-a of the vehicle and traffic law, in addition to any other civil and criminal fines and penalties set forth in this section.

[(3)] (4) As used in this subdivision, the terms "owner", "owner-operator" and "operator" shall have the meaning set forth in subdivision [one] 1 of section [twelve hundred twenty-a] 1220-a of the vehicle and traffic law.

[(4)] (5) The provisions of this section may also be enforced by the commissioner of small business services and the commissioner of environmental protection with respect to wharfs, piers, docks, bulkheads and slips located on waterfront property, and navigable waterways.

[d.] e. In the instance where the notice of violation, appearance ticket or summons is issued for a breach of the provisions of subdivision [a] b of this section and sets forth thereon civil penalties only, such process shall be returnable to the environmental control board, which board shall have the power to impose the civil penalties hereinabove provided in subdivision [c] d of this section, provided further, that, notwithstanding any other provision of law, the environmental control board shall have such powers and duties as are set forth under section [twelve hundred twenty-a] 1220-a of the vehicle and traffic law.

[e.] f. (1) Any dump truck or other vehicle that has been used or is being used to violate the provisions of this section shall be impounded by the department and shall not be released until either all removal charges and storage fees and the applicable fine have been paid or a bond has been posted in an amount satisfactory to the commissioner or as otherwise provided in paragraph (2) of this subdivision. The commissioner shall have

the power to establish regulations concerning the impoundment and release of vehicles and the payment of removal charges and storage fees for such vehicles, including the amounts and rate thereof.

(2) In addition to any other penalties provided in this section, the interest of an owner as defined in subdivision [c] d of this section in any vehicle impounded pursuant to paragraph (1) of this subdivision shall be subject to forfeiture upon notice and judicial determination thereof if such owner (i) has been convicted of or found liable for a violation of this section in a civil or criminal proceeding or in a proceeding before the environmental control board three or more times, all of which violations were committed within an [eighteen] 18 month period or (ii) has been convicted of or found liable for a violation of this section in a civil or criminal proceeding or in a proceeding before the environmental control board if the material unlawfully dumped is a material identified as a hazardous waste or an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law.

(3) Except as hereinafter provided, the city agency having custody of a vehicle, after judicial determination of forfeiture, shall no sooner than [thirty] 30 days after such determination upon a notice of at least five days, sell such forfeited vehicle at public sale. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof; and

(ii) pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(iii) asserts a claim within [thirty] 30 days after judicial determination of forfeiture. Notwithstanding the foregoing provisions establishment of a claim shall not entitle such person to delivery of the vehicle if the city establishes that the unlawful dumping for which the vehicle was seized was expressly or impliedly permitted by such person.

[f.] g. Rewards. (1) Where a notice of violation, appearance ticket or summons is issued for a violation of subdivision [a] b of this section based upon a sworn statement by one or more individuals and where the commissioner determines, in the exercise of his or her discretion, that such sworn statement, either alone or in conjunction with testimony at a civil or criminal proceeding or in a proceeding before the environmental control board, results in the conviction of or the imposition of a civil penalty upon any person for a violation of subdivision [a] b of this section, the commissioner shall offer as a reward to such individual or individuals an amount that, in the aggregate, is equal to:

(i) [fifty] 50 percent of any fine or civil penalty collected; or

(ii) [five hundred dollars] \$500 when a conviction is obtained, but no fine or civil penalty is imposed.

(2) Where a notice of violation, appearance ticket or summons is issued for a violation of subdivision [a] b of this section based upon information furnished by an individual or individuals and where the commissioner determines, in the exercise of his or her discretion, that such information, in conjunction with enforcement activity conducted by the department or another governmental entity, results in the conviction of or the imposition of a civil penalty upon any person for a violation of subdivision [a] b of this section, the commissioner shall offer as a reward to such individual or individuals an amount that, in the aggregate, is:

(i) up to [fifty] 50 percent of any fine or civil penalty collected; or

(ii) up to [five hundred dollars] \$500 when a conviction is obtained, but no fine or civil penalty is imposed.

In determining the amount of the reward, the commissioner shall consider factors that include, but are not limited to: (a) the quantity and type of the material dumped, deposited or otherwise disposed of; (b) the specificity of the information provided, including, but not limited to, the license plate number, make or model or other description of the dump truck or other vehicle alleged to have been used and the location, date or time of the alleged violation; (c) whether the information provided by the individual or individuals identified one or more violations of subdivision [a] b of this section; and (d) whether the department has knowledge that

violations of subdivision [a] b of this section have previously occurred at that location.

(3) No peace officer, employee of the department or of the environmental control board, or employee of any governmental entity that, in conjunction with the department, conducts enforcement activity relating to a violation of subdivision [a] b of this section shall be entitled to obtain the benefit of any such reward or obtain the benefit of such reward when acting in the discharge of his or her official duties.

[g.] h. In addition to the foregoing penalties the offender shall be required to clear and clean the area upon which the offender dumped unlawfully within [ten] 10 days after conviction thereof. In the event the offender fails to clear and clean the area within such time such clearing and cleaning may be done by the department or under the direction of the department by a private contractor and the cost of same shall be billed to the offender. In the event that the department has cleaned or cleared the area, or has caused the area to be cleaned or cleared by a private contractor prior to the offender's conviction, the offender shall be responsible for the cost of such clearing and or cleaning. Payment by such offender when required by this subdivision shall be made within [ten] 10 days of demand by the department.

[h.] i. The commissioner shall post a sign in any area where the commissioner deems appropriate because of instances of illegal dumping. Such sign shall state the penalties for illegal dumping and the reward provisions therein.

§ 3. This local law takes effect September 1, 2017.

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