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Int. No. 893

By Council Members Baez, Fidler, Gonzalez, James, Koppell, Liu, Nelson and Stewart

A Local Law to amend the administrative code of the city of New York, in relation to increasing penalties against gas stations that violate the administrative code.

Be it enacted by the Council as follows:

Section 1. Section 20-674 of the administrative code of the city of New York is amended to read as follows:

a. (1) Any person who violates the provisions of this subchapter or any rules or regulations promulgated thereunder, other than sections 20-673.1 and 20-673.2 and any rules or regulations promulgated thereunder, shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars nor more than ten thousand dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

(2) Any person who violates the provisions of this subchapter or any rules or regulations promulgated

thereunder, other than sections 20-673.1 and 20-673.2 and any rules or regulations promulgated thereunder, who has been found guilty of a violation of any such sections or such rules or regulations two times within the preceding twenty-four month period shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars nor more than fifteen thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

(3) In addition to the penalties prescribed by paragraph one of subdivision a of this section, any person who violates the provisions of this subchapter or any rules or regulations promulgated thereunder, other than sections 20-673.1 and 20-673.2 and any rules or regulations promulgated thereunder, shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars.

(4) In addition to the penalties prescribed by paragraph two of subdivision a of this section, any person who violates the provisions of this subchapter or any rules or regulations promulgated thereunder, other than sections 20-673.1 and 20-673.2 and any rules or regulations promulgated thereunder, who has been found guilty of a violation of any such sections or such rules or regulations two times within the preceding twenty-four month period shall be liable for a civil penalty of not less than one thousand dollars nor more than fifteen thousand dollars.

b. Any person who violates the provisions of section 20-673.1 of this subchapter or any rules or regulations promulgated thereunder shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars.

c. (1) If, after providing due notice and an opportunity to be heard, the commissioner finds that a person has violated any of the provisions of section 20-673.2 of this subchapter or any rule or regulation promulgated thereunder, he or she shall be authorized to issue and serve upon such person an order requiring such person to cease and desist from engaging in the prohibited activity. Such order shall become final (i) upon the expiration of the time allowed for filing any administrative appeal which may be available and for commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules or (ii) upon the

exhaustion of all appeals arising out of the proceedings described in item (i) of this paragraph. Any person who violates an order of the commissioner issued hereunder after it has become final shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars for each violation.

(2) Any person who violates the provisions of section 20-673.2 of this subchapter or any rules or regulations promulgated thereunder with actual knowledge or knowledge fairly implied on the basis of objective circumstances that the act or practice underlying the violation is unfair or deceptive shall be liable for a civil penalty of not less than five hundred dollars nor more than ten thousand dollars; provided, however, that in order for any retailer to be held liable under this paragraph for violating any of the provisions of subdivisions d or e of such section 20-673.2, such retailer shall be shown to have had actual knowledge that the act or practice underlying the violation is unfair or deceptive. In determining the amount of any civil penalty imposed under this paragraph, the following shall be considered: the degree of culpability; any history of prior such conduct; ability to pay; effect on ability to continue to do business; and such other matters as justice may require.

d. In the case of a violation through continuing failure to comply with any of the provisions of this subchapter, any rules or regulations promulgated thereunder, or any order of the commissioner issued pursuant to subdivision c of this section, each day of the continuance of such failure shall be treated as a separate violation.

e. If any person is found guilty of violating the provisions of this subchapter or any rules or regulations promulgated thereunder on four or more separate occasions within the preceding twenty-four month period, the commissioner after notice and hearing shall be authorized to order that any or all premises where the violations occurred be sealed for a period of not less than three (3) nor more than five (5) consecutive days. Such notice may be included with notice of any fourth violation for violating the provisions of this subchapter or any rules or regulations promulgated thereunder and shall specify the premises to be ordered sealed. For the purpose of this subparagraph, any violations at a place of business operated by a different person shall not be included in

determining the number of violations of any subsequent operator of a business at that location unless the commissioner establishes that the subsequent operator of such business did not acquire the premises or business through an arm's length transaction as defined in subparagraph (f) of this paragraph or that the sale or lease was conducted, in whole or in part, for the purpose of permitting the previous owner of the business who had been found guilty of violating any provisions of this subsection at such premises to avoid the effect of violations on the premises. The procedures provided for in subdivisions c, e, f, and h through j of section 20-105 of this code shall apply to an order for sealing of such premises.

f. For purposes of subparagraph (e) of this paragraph, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or a lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original operator to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original operator to avoid the effect of violations on the premises:

(i) a sale between relatives, which term shall mean, for purposes of this paragraph, a person and his or her spouse, domestic partner, parent, grandparent, child, stepchild, or stepparent, or any person who is the direct descendant of the grandparents of the person or of the spouse or domestic partner of the person;

(ii) a sale between related companies or partners in a business; or

(iii) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original operator to avoid the effect of violations on the premises.

g. For purposes of this paragraph:

(i) the term “premises” shall refer to land and improvements or appurtenances or any part thereof; and

(ii) companies shall be deemed “related” if an officer, principal, director, or stockholder owning more than ten percent of the outstanding stock of the corporation of one company is or has been an officer, principal, director, or stockholder owning more than ten percent of the outstanding stock of the other, but companies shall not be deemed related solely because they share employees other than officers, principals, or directors.

[e.] h. The civil penalties prescribed by the provisions of this section may be imposed by the commissioner after due notice and an opportunity to be heard have been provided or may be recovered in a civil action in the name of the city, commenced in a court of competent jurisdiction. In any civil action commenced to recover civil penalties for violation of a final order of the commissioner issued pursuant to subdivision c of this section, the supreme court of New York is empowered to grant such injunctive or equitable relief as the court deems appropriate in the enforcement of such final order.

[f.] i. Notwithstanding the foregoing, the commissioner shall cause to be published in the City Record once each month the name and business location of any person, firm or corporation that has been found to have violated any provision of sections 20-673.1 or 20-673.2 during the month immediately preceding.

§2. Subchapter 5 of Title 20 of the administrative code is amended to add a new subsection 20-674.1 to read as follows:

§20-674.1 Hearing Authority. (a) Notwithstanding any other provision of law, the department shall be authorized upon due notice and hearing, to impose civil penalties for the violation of any provision of this section. The department shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-674 of this subchapter for each such violation. All proceedings authorized pursuant to this paragraph shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this paragraph shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(b) All such proceedings shall be commenced by the service of a notice of violation returnable to the administrative tribunal of the department. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§3. This local law shall take effect thirty days after its enactment provided, however, that the commissioner shall take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

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