



Legislation Text

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By Council Members Lander, Johnson, Cohen, Rose, Kallos, Rodriguez, Richards, Ferreras-Copeland, Torres, Reynoso, Rosenthal, Constantinides, Levin, Levine, Salamanca, Van Bramer, Koslowitz, Lancman, Menchaca, Chin, Crowley, Cabrera, Espinal, Eugene, Maisel, Miller, Williams, Cumbo, Dromm, Cornegy, Barron, Gibson, Palma, Treyger, King, Perkins, Vacca and the Public Advocate (Ms. James)

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to establishing general provisions governing fair work practices and requiring certain fast food employers to provide advance notice of work schedules to employees and to provide a schedule change premium when hours are changed after required notices

Be it enacted by the Council as follows:

Section 1. Subdivision c of section 20-a of the New York city charter, as added by local law number 104 for the year 2015, is amended to read as follows:

c. Notwithstanding any other provision of law, the director shall have all powers of the commissioner of consumer affairs as set forth in section 2203 of this charter in connection with the enforcement of chapter 8 of title 20 of the administrative code of the city of New York regarding the earned sick time act[and shall have], the power to enforce chapter 9 of title 20 of such code regarding mass transit benefits and all other powers granted to the director by this charter and by the administrative code.

§ 2. Subdivision (e) of section 2203 of the New York city charter, as amended by local law number 11 for the year 2016, is amended to read as follows:

(e) The commissioner shall have all powers as set forth in:

(1) chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violation of such chapter upon his or her own initiative; [and]

(2) section 22-507 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding the retention of grocery workers, and the power to conduct investigations regarding violations of such section upon his or her own initiative[.]; and

(3) all other powers granted to the commissioner by this charter and by the administrative code.

§ 3. Title 20 of the administrative code of the city of New York is amended by adding new chapters 11 and 12 to read as follows:

CHAPTER 11

RESERVED

CHAPTER 12

FAIR WORK PRACTICES

Subchapter 1
General Provisions

§ 20-1201 Definitions. As used in this chapter, the following terms have the following meanings, unless otherwise specified for a particular subchapter:

Chain. The term “chain” means a set of establishments that share a common brand or that are characterized by standardized options for decor, marketing, packaging, products and services.

Department. The term “department” means the department of consumer affairs.

Employee. The term “employee” includes any person covered by the definition of “employee” set forth in subdivision 5 of section 651 of the labor law or any person covered by the definition of “employee” set forth in subsection (e) of section 203 of title 29 of the United States code, and who is employed within the city and who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law. The term “employee” does not include any person who is employed by (i) the United States government; (ii) the state of New York, including any

office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

Employer. The term “employer” includes any person or entity covered by the definition of “employer” set forth in subdivision 6 of section 651 of the labor law or any person or entity covered by the definition of “employer” set forth in subsection (d) of section 203 of title 29 of the United States code. The term “employer” does not include (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or agency or other body thereof.

Fast food employee. The term “fast food employee” means any person employed or permitted to work at or for a fast food establishment by any employer that is located within the city where such job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance. The term “fast food employee” does not include any employee who is salaried.

Fast food employer. The term “fast food employer” means any employer that employs a fast food employee at a fast food establishment.

Fast food establishment. The term “fast food establishment” means any establishment (i) that has as its primary purpose serving food or drink items; (ii) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out or delivered to the customer’s location; (iii) that offers limited service; (iv) that is part of a chain; and (v) that is one of 30 or more establishments nationally, including (A) an integrated enterprise that owns or operates 30 or more such establishments in the aggregate nationally or (B) an establishment operated pursuant to a franchise where the franchisor and the franchisees of such franchisor own or operate 30 or more such establishments in the aggregate nationally. The term “fast food

establishment” includes such establishments located within non-fast food establishments.

Franchise. The term “franchise” has the same definition as set forth in section 681 of the general business law.

Franchisee. The term “franchisee” means a person or entity to whom a franchise is granted.

Franchisor. The term “franchisor” means a person or entity who grants a franchise to another person or entity.

Good faith estimate. The term “good faith estimate” means a good faith estimate in writing setting forth the number of hours, days, times and expected work locations at which the employee is expected to work.

Integrated enterprise. The term “integrated enterprise” means two or more entities sufficiently integrated so as to be considered a single employer as determined by application of the following factors: (i) degree of interrelation between the operations of multiple entities; (ii) degree to which the entities share common management; (iii) centralized control of labor relations; and (iv) degree of common ownership or financial control.

On-call hour or on-call shift. The term “on-call hour” or “on-call shift” means any time that the employer requires the employee to be available to work, to contact the employer or the employer’s designee or to wait to be contacted by the employer or the employer’s designee to determine whether the employee must report to work. The term “on-call hour” or “on-call shift” applies whether or not the employee is on the employer’s premises when contacted.

Retail business. The term “retail business” means any entity with five or more employees that is engaged in the sale of consumer goods at one or more stores within the city. For the purposes of this definition, “consumer goods” means products that are primarily for personal, household, or family purposes, including but not limited to appliances, clothing, electronics, groceries, and household items. In determining the number of employees performing work for a retail business for compensation, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of

employees who work for an employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

Retail employee. The term “retail employee” means any employee who is employed by a retail business.

Retaliate. The term “retaliate” includes actions to threaten, intimidate, discipline, discharge, demote, suspend, harass, reduce employee hours or pay, inform another employer that an employee has engaged in activities protected by this chapter, or discriminate against an employee, and any other such action that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise any right protected under this chapter. The term “retaliate” also includes threats or adverse action related to perceived immigration status or work authorization because the employee or former employee exercises a right protected under this chapter.

Schedule change premium. The term “schedule change premium” means money that an employer pays to an employee as compensation for changes the employer makes to the employee’s work schedule, including canceling, shortening or moving shifts, including on-call shifts, to another date or time; adding additional hours to shifts already scheduled; and adding previously unscheduled shifts to shifts already scheduled. Such payment is not wages earned for work performed by that employee but rather is in addition to wages.

Shift. The term “shift” means a span of consecutive hours starting when an employer requires an employee to report to a work location and ending when such employee is free to leave a work location. Breaks totaling two hours or less are not an interruption of consecutive hours, provided that such breaks do not include time when the employee’s work location is closed.

Work schedule. The term “work schedule” means those locations, hours, days and times at or on which an employer requires an employee to work.

§ 20-1202 Application. This chapter does not discourage, prohibit, preempt or displace any law, regulation, rule, requirement, policy or standard that is at least as protective of an employee as the requirements of this chapter.

§ 20-1203 Outreach and education. The department shall conduct outreach and education about the provisions of this chapter. Such outreach and education shall be provided to employers, employees and members of the public who are likely to be affected by this law.

§ 20-1204 Reporting. The commissioner shall report annually on the department website, without revealing identifying information about any particular non-public matter or complaint, on the effectiveness of its enforcement activities under this chapter, which report shall include the following information:

- a. Complaints. 1. The number and nature of the complaints received pursuant to this chapter;
- 2. The results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued;
- 3. The number and nature of administrative adjudications pursuant to this chapter;
- 4. Whether and how many complaints were resolved through mediation or conciliation; and
- 5. The average time for a complaint to be resolved.
- b. Civil actions commenced by corporation counsel against employers involving violations under this chapter.

§ 20-1205 Retaliation. a. No employer, employer's agent, officer or agent of any corporation, partnership, or limited liability company or any other person shall retaliate against an employee for exercising or attempting to exercise any right guaranteed under this chapter.

b. No employer, employer's agent, officer or agent of any corporation, partnership, or limited liability company, or any other person shall interfere with any investigation, proceeding or hearing pursuant to this chapter.

c. An employee complaint or other communication need not make explicit reference to any section or

provision of this chapter to trigger the protections of this section.

§ 20-1206 Notice and posting of rights. a. The commissioner shall, by the effective date of this chapter, publish and make available a notice for employers to post in the workplace or at any job site informing employees of their rights protected under each subchapter. Such notices shall be available in a downloadable format on the department website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the commissioner. The commissioner shall update such notice once a year if any changes are made to the requirements of this chapter.

b. Every employer shall conspicuously post at any workplace or job site where any employee works the notice described in subdivision a of this section that is applicable to the particular workplace or job. Such notice shall be in English and any language spoken as a primary language by at least five percent of employees at that location if the commissioner has made the notice available in that language.

§ 20-1207 Recordkeeping a. Employers shall retain records documenting their compliance with the applicable requirements of this chapter for a period of three years and shall allow the department to access such records and other information, with appropriate notice, in furtherance of an investigation conducted pursuant to this subchapter.

b. When an employer fails to maintain, retain or produce a record or other information required to be maintained by this chapter and requested by the department in furtherance of an investigation conducted pursuant to this chapter that is relevant to a material fact alleged by the department in a notice of violation issued pursuant to this subchapter creates a rebuttable presumption that such fact is true.

§ 20-1208 Administrative enforcement; jurisdiction and complaint procedures. a. Jurisdiction. The department shall enforce the provisions of this chapter and shall have all of the powers as set forth in sections 20-a and 2203 of the charter, including the power to conduct an investigation in response to a complaint or upon its own initiative.

b. Complaint procedure. 1. Any person alleging a violation of this chapter, or an organization that

represents the rights of workers, may file a complaint with the department within two years of the date the person knew or should have known of the alleged violation.

2. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and, pursuant to its power to conduct an investigation upon its own initiative, may investigate the workplace-wide practices of the person or entity identified in the complaint, regardless of whether the complaint is meritorious, withdrawn or otherwise dismissed.

3. The person or entity under investigation shall provide the department with information or evidence that the department requests. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation of this chapter has occurred, the department may attempt to resolve it through any action authorized by section 20-a of the charter, including by issuing a notice of violation returnable to the office of administrative trials and hearings, or through settlement.

4. The department shall maintain confidentiality of the identity of any complainant unless disclosure is necessary for resolution of the investigation or otherwise required by the law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or her identity before such disclosure.

§ 20-1209 Administrative remedies for employees or former employees; generally. a. The department may seek or impose penalties as provided in this chapter and may grant employees or former employees all appropriate relief.

b. Such penalties and relief to employees shall be imposed based on a per employee and per instance basis for each violation.

§ 20-1210 Specific administrative remedies for employees or former employees for violations of this chapter. a. Employees' administrative remedies pursuant to subchapter 2 of this chapter. For violations of subchapter 2 of this chapter regarding advance scheduling and schedule change premiums, the department may grant the following relief to employees or former employees:

1. Payment of schedule change premiums withheld in violation of section 20-1222;
2. An order directing compliance with the recordkeeping, information, posting and consent requirements set forth in sections 20-1206, 20-1207 and 20-1221, and the requirements set forth in sections 20-1231 and 20-1241;
3. Rescission of any discipline issued in violation of section 20-1205;
4. Reinstatement of any employee terminated in violation of section 20-1205;
5. Payment of back pay for any loss of pay resulting from discipline or other action taken in violation of section 20-1205;
6. Other compensatory damages and any other relief required to make the employee whole; and
7. The following penalties payable to employees or former employees:
 - (a) \$200 for each violation of subdivision b of section 20-1206, subdivision a of section 20-1207, and section 20-1221;
 - (b) \$300 for each violation of section 20-1222;
 - (c) \$500 for each violation of section 20-1205 not involving termination; and
 - (d) \$2,500 for each termination in violation of section 20-1205.
- b. Employees' administrative remedies pursuant to subchapter 3. For violations of subchapter 3 of this chapter regarding minimum time between shifts, the department may grant the following relief to employees or former employees:
 1. Payment required for a violation of section 20-1231;
 2. An order directing compliance with the recordkeeping and posting requirements set forth in subdivision b of section 20-1206 and subdivision a of 20-1207 and the requirements set forth in section 20-1231;
 3. Rescission of any discipline issued in violation of section 20-1205;
 4. Reinstatement of any employee terminated in violation of section 20-1205;

5. Payment of back pay for any loss of pay resulting from discipline or other action take in violation of section 20-1205;

6. Other compensatory damages and any other relief required to make the employee whole; and

7. The following penalties payable to employees or former employees:

(a) \$200 for each violation of subdivision b of section 20-1206 and subdivision a of section 20-1207;

(b) \$500 for each violation of section 20-1205 not involving termination; and

(c) \$2,500 for each termination in violation of section 20-1205.

c. Employees' administrative remedies pursuant to subchapter 4. For violations of subchapter 4 of this chapter regarding access to hours for fast food workers, the department may grant the following relief to employees or former employees:

1. An order directing compliance with the posting and recordkeeping requirements set forth in subdivision b of section 20-1206, subdivision a of 20-1207, and the requirements set forth in section 20-1241;

2. Rescission of any discipline imposed in violation of section 20-1205;

3. Reinstatement of any employee terminated in violation of section 20-1205;

4. Payment of back pay for any loss of pay resulting from discipline or other action taken in violation of section 20-1205;

5. Other compensatory damages and any other relief required to make the employee whole; and

6. The following penalties payable to employees or former employees:

(a) \$200 for each violation of subdivision b of section 20-1206 and subdivision a of section 20-1207;

(b) \$300 for each violation of section 20-1241;

(c) \$500 for each violation of section 20-1205 not involving termination; and

(d) \$2,500 for each termination in violation of section 20-1205.

d. Employees' administrative remedies pursuant to subchapter 5. For violations of subchapter 5 of this chapter providing a right to request flexible work arrangements and a right to receive temporary work schedule

changes in certain emergency situations, the department may grant the following relief to employees or former employees:

1. Payment of \$200 for each violation of sections 20-1252 to 20-1254;

2. An order directing compliance with the posting and recordkeeping requirements set forth in subdivision b of section 20-1206 and subdivision a of 20-1207;

3. Rescission of any discipline imposed in violation of section 20-1205;

4. Reinstatement of any employee terminated in violation of section 20-1205;

5. Payment of back pay for any loss of pay resulting from discipline or other action take in violation of section 20-1205;

6. Other compensatory damages and any other relief required to make the employee whole; and

7. The following penalties payable to employees or former employees:

(a) \$200 for each violation of subdivision b of section 20-1206 and subdivision a of section 20-1207;

(b) \$500 for each violation of section 20-1205 not involving termination; and

(c) \$2,500 for each termination in violation of section 20-1205.

e. Employees' administrative remedies pursuant to subchapter 6. For violations of subchapter 6 of this chapter regulating on-call hours, the department may grant the following relief to employees or former employees:

1. For each violation of paragraphs 1 and 2 of subdivision a of section 20-1261 and for each violation of section 20-1261, the greater of \$500 or such employee's actual damages;

2. For each act in violation of subdivision a of section 20-1262, \$300;

3. For each instance of unlawful retaliation other than discharge from employment, the greater of \$500 or full compensation, including lost wages and benefits and equitable relief as appropriate; and

4. For each instance of unlawful discharge from employment, the greater of \$1,000 or full compensation including lost wages and benefits, and equitable relief, including reinstatement, as appropriate.

§ 20-1211 Specific civil penalties payable to the city. a. For each violation of subchapter 2 of this chapter relating to advanced scheduling and schedule change premiums, the department may impose a penalty of up to \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.

b. For each violation of subchapter 3 of this chapter relating to minimum time between shifts, the department may impose a penalty of up to \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.

c. For each violation of subchapter 4 of this chapter relating to access to hours for existing employees, the department may impose a penalty of up to \$1,000 for the first violation and, for subsequent violations that occur within two years of any previous violation, up to \$2,000 for the second violation and up to \$3,000 for each succeeding violation.

d. For each violation of subchapter 5 of this chapter relating to the right to request flexible work arrangements and to receive temporary schedule changes in certain emergency circumstances, the department may impose a penalty of up to \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.

e. For each violation of subchapter 6 of this chapter relating to the regulation of on-call scheduling, the department may impose a penalty of up to \$500 for the first violation and, for subsequent violations that occur within one year of any previous violation, not less than \$750 for the second violation and not less than \$1,000 for each succeeding violation.

§ 20-1212 Additional enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any

violation issued pursuant to sections 20-1208 to 20-1211, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 20-1213 Private cause of action a. Statute of limitations. Any person claiming to be aggrieved by a violation of this chapter may bring a cause of action within two years of the date the person knew or should have known of the alleged violation in any court of competent jurisdiction. An organization that represents the rights of workers has standing to bring an action on behalf of such a person.

b. Remedies. Such court has authority to order compensatory, injunctive and declaratory relief and shall award the following remedies for violations of this chapter:

1. Payment of schedule change premiums withheld in violation of section 20-1222;
2. Payment required for a violation of section 20-1231;
3. Payment of \$200 for each violation of sections 20-1252 to 20-1254;
4. An order directing compliance with the recordkeeping, information, posting and consent requirements set forth in sections 20-1206, 20-1207 and 20-1221, and the requirements set forth section 20-1231 and 20-1241;
3. Rescission of any discipline issued in violation of section 20-1205;
4. Reinstatement of any employee terminated in violation of section 20-1205;
5. Payment of back pay for any loss of pay resulting from discipline or other action taken in violation of section 20-1205;
6. Other compensatory damages and any other relief required to make the employee whole; and
7. Reasonable attorney's fees.

c. Relationship to department action. 1. Any person filing such a cause of action must simultaneously serve notice of any civil action and a copy of the complaint upon the department. Failure to so serve a notice does not adversely affect any plaintiff's cause of action.

2. An employee need not file a complaint with the department before bringing a civil action, however, no person shall file a civil action after filing a complaint with the department unless such complaint has been withdrawn or dismissed without prejudice to further action.

3. No person shall file a complaint with the department after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

4. The commencement or pendency of a civil action by an employee does not preclude the department from investigating the employer, or commencing, prosecuting or settling a case against the employer based on some or all of the same violations.

§ 20-1214 Civil action for pattern or practice of violations. a. Cause of action. 1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. An action pursuant to paragraph 1 of this subdivision shall be commenced by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.

3. Nothing in this section prohibits:

(a) The department from exercising its powers outlined in section 20-1208 to 20-1212, unless otherwise barred from doing so.

(b) A person alleging a violation of this subchapter from filing a civil action pursuant to section 20-1213 based on the same facts as a civil action commenced by the corporation counsel pursuant to this section.

b. Civil penalty. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than \$15,000 for a finding that a an employer has engaged in a pattern or practice of violations of this subchapter. Any civil penalty so recovered shall be paid into the general fund of the city.

Subchapter 2
Advance Scheduling and Schedule Change Premiums

§ 20-1221 Advance scheduling. a. Upon hiring and before a new fast food employee receives the first work schedule, a fast food employer shall provide each such employee with a good faith estimate. If a long-term or indefinite change is made to the good faith estimate provided pursuant to this paragraph, the fast food employer shall provide an updated good faith estimate to the affected employee as soon as possible and before the employee receives the first work schedule.

b. A fast food employer shall provide a fast food employee with a written work schedule containing regular and on-call shifts no later than 14 days before the first day of that schedule. Such work schedule must span a period of no less than seven days. At least 51 percent of the employee's shifts in the written schedule must be regular shifts, except that changes to the regular or on-call shifts that meet the requirements of subdivision d of this section and of section 20-1222 shall be permitted.

c. A fast food employer shall:

1. Provide fast food employees with notice of the work schedule for each period of no less than seven days at least 14 days in advance by (i) posting the schedule 14 days before the first day of the schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees and (ii) transmitting the work schedule by electronic means, if such means are regularly used to communicate scheduling information, so long as all employees are given access to the electronic schedule at the workplace;

2. Update such schedule within 24 hours of any change and provide the revised written schedule to the employee.

3. Upon request by any fast food employee, provide the employee with such employee's work schedule in writing for any previous week worked and the most current version of all such employee's work schedules at that location, whether or not changes to the work schedule have been posted.

d. A fast food employee may decline to work additional hours not included in the initial written work

schedule. When a fast food employee consents to work such hours, consent must be recorded in writing, which may be transmitted electronically at or before the start of the shift. The fast food employer must contact the employee to notify such employee of the addition to the employee's schedule of work hours not included in the initial written work schedule before the change takes effect.

§ 20-1222 Schedule change premium. a. A fast food employer shall provide a fast food employee with the following amount per shift for each previously scheduled regular or on-call shift established pursuant to the written work schedule required by this subchapter that the employer changes or cancels in the employee's work schedule, in addition to the employee's regular pay for shifts actually worked by the employee:

1. With less than 14 days' notice to the employee, \$15 for each shift to which additional hours are added pursuant to subdivision c of section 20-1222, or for which the date or start or end time of a shift is changed with no loss of hours;

2. With less than 14 days' but at least 24 hours' notice to the employee, \$45 for each instance in which hours are subtracted from a shift or a shift is cancelled; and

3. With less than 24 hours' notice to the employee, \$75 for each instance in which hours are subtracted from a shift or a shift is cancelled.

b. A fast food employer shall pay the non-wage schedule change premiums required under this chapter at such time as the employer pays an employee wages owed for work performed during that work week. Schedule change premium pay shall be separately noted on a wage stub provided to the employee for that pay period.

c. Notwithstanding subdivisions a and b of this section, a fast food employer is not required to provide a fast food employee with the amounts set forth in such subdivisions in the event that:

1. The employer's operations cannot begin or continue due to:

(a) Threats to the employees or the employer's property;

(b) The failure of public utilities, including a power failure, or the shutdown of public transportation;

(c) A fire, flood or other natural disaster;

(d) A state of emergency declared by the president of the United States, governor of the state of New York, or mayor of the city;

2. The employee requested in writing a change in schedule or traded shifts with another employee; or

3. The employer is required to pay the employee overtime pay for a changed shift.

§ 4. Sections 20-950 to 20-966 of the administrative code of the city of New York, as added by local law number 57 for the year 1997, subdivision l of section 20-950 as amended by local law 27 for the year 1998, are amended to read as follows:

§ [20-950] 20-9001 Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

a. "Affiliate" shall mean (i) a business entity in which twenty-five percent or more is owned, or is subject to a power or right of control or a power to vote, or is managed by, a shipboard gambling business, or (ii) a business entity that owns twenty-five percent or more of a shipboard gambling business, or that exercises a power or right of control or a power to vote over twenty-five percent or more of a shipboard gambling business, or that manages a shipboard gambling business.

b. "Applicant" shall mean, if a business entity submitting an application for a license pursuant to this chapter, the entity and each principal thereof; if an individual submitting an application for a license, certificate of approval or registration pursuant to this chapter, such individual.

c. "Business entity" shall mean a corporation, partnership, limited liability company, individual or sole proprietorship.

d. "Certificate of approval" shall mean a certificate issued by the commission pursuant to the provisions of this chapter approving the employment in a shipboard gambling business of a gambling employee or agent.

e. "Commission" shall mean the New York city gambling control commission established pursuant to section [20-951] 20-9002 of this chapter.

f. "Gambling" shall mean any contest, game, gaming scheme or other activity in which a person stakes or risks something of value upon the outcome of a contest involving an element of chance or a future contingent event not under his or her control or influence, upon the understanding that he or she will receive something of value in the event of a certain outcome.

g. "Gambling device" shall mean a slot machine or any other machine or mechanical device which when operated may deliver or entitle a person to receive, as the result of the application of an element of chance, any money or property.

h. "Gambling employee or agent" shall mean a person employed in a shipboard gambling business who is not a key employee or agent and whose duties include (i) the conduct, operation or facilitation of gambling, whether or not involving the use of a gambling device; or (ii) the repair or maintenance of a gambling device. "Gambling employee or agent" shall include, but not be limited to, boxmen, dealers or croupiers, floormen, gambling machine mechanics, casino security personnel, count room personnel, cage personnel, slot machine and slot booth personnel, collection personnel, casino surveillance personnel and data processing personnel. "Gambling employee or agent" may also include any other category of persons identified by rule of the commission whose duties require regular presence in the area or areas of a vessel in which gambling takes place or for whom the commission determines a certificate of approval is appropriate and necessary to effectuate the purposes of this chapter. The job categories specified in such rule shall not include categories of employees, without limitation, such as kitchen personnel, food and beverage servers or vessel's crew, that are not involved in gambling operations.

i. "Key employee or agents" shall mean a person employed in a shipboard gambling business in a supervisory or managerial capacity or empowered to make discretionary decisions regarding such business, including, but not limited to, pit bosses, shift bosses, credit executives, casino cashier supervisors, casino facility managers and assistant managers and managers or supervisors of gambling employees or agents. Key employees shall also include any other category of persons identified by rule of the commission for which the

commission determines licensure as a key employee is appropriate and necessary to effectuate the purposes of this chapter.

j. "License" shall mean a shipboard gambling license, a key employee license or a key vendor license issued by the commission pursuant to the provisions of this chapter.

k. "Parent business" or "parent business entity" shall mean a business entity that owns fifty percent or more of another business entity, or that has a power or right of control or power to vote over fifty percent or more of such business entity, or that manages such other business entity.

i. "Principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; if another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership or a corporation, the term "principal" shall also include the partners of such partnership or the officers, directors and stockholders holding the equivalent of ten percent or more ownership interest of the applicant business. For the purposes of this chapter: (1) an individual shall be considered to hold stock in a corporation where such individual participates in the operation of or has a beneficial interest in such corporation and such stock is owned directly or indirectly by or for (i) such individual, (ii) the spouse or domestic partner of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled), (iii) the children, grandchildren and parents of such individual or (iv) a corporation in which any of such individual, the spouse, domestic partner, children, grandchildren or parents of such individual in the aggregate own fifty percent or more in value of the stock of such corporation; (2) a partnership shall be considered to hold stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (3) a corporation shall be considered to hold stock in a corporation that is an applicant as

defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation. Notwithstanding any other provision of this subdivision, where there is reasonable cause to believe that any owner, officer or director of a business entity with an interest in an applicant business not otherwise within the scope of this subdivision lacks good character, honesty and integrity, the commission may designate such person as a principal for the purposes of sections [20-954, 20-955, 20-956 and 20-959 of this chapter] 20-9005, 20-9006, 20-9007 and 20-9010.

m. "Registrant" shall mean a service employee or agent or an auxiliary vendor who has registered with the commission pursuant to the provisions of this chapter.

n. "Service employee or agent" shall mean a person employed in a shipboard gambling business who is not a key employee or agent or a gambling employee or agent.

o. "Shipboard gambling business" shall mean a business in which passengers are transported for the purpose of participating in gambling outside the territorial waters of the United States from a location within New York city and returned to a location within such city; provided that a business shall not be deemed a shipboard gambling business for purposes of this chapter where the gambling cruises or the gambling activities aboard such cruises operated by or on behalf of such business are conducted or proposed to be conducted no more than two times a year or every cruise operated by such business during which gambling activities occur is of at least seventy-two hours duration or where the commission determines, in its discretion, that the gambling offered aboard a vessel owned or operated by such business does not constitute a primary activity conducted aboard such vessel. In reaching a determination that gambling does not constitute a primary activity, the commission shall consider, without limitation, factors including: the passenger capacity of the vessel in relation to the number of gaming positions in the areas in which gambling will occur; the percentage of space devoted to public accommodation in which gambling will occur; the number of hours during which gambling will take place in relation to the total time of the cruise; and the nature of the advertising and other customer solicitation engaged in by the business.

p. "Subsidiary" shall mean any business that is managed by another business entity or any business in which fifty percent or more of the business is owned or in which fifty percent or more of the business is subject to a power or right of control or held with power to vote by another business entity.

q. "Vendor" shall mean any business, except for a business the primary function of which is to provide legal or accounting services or that is required to register as a lobbyist pursuant to section 3-213 of the code or pursuant to the New York state lobbying act (enacted by chapter 1040 of the laws of 1981, as amended) that provides a shipboard gambling business with goods or services used in the operation of such business. "Key vendor" shall mean a vendor, in a category identified by rule of the commission, that furnishes goods or services related to the security operations, gambling operations, gambling equipment, the hiring, supervision or training of gambling employees or agents, the provision of alcoholic beverages, and the provision of food or food services the cost of which exceeds an amount to be set forth by rule of the commission. "Auxiliary vendor" shall mean a vendor, other than a key vendor, that furnishes goods or services to a shipboard gambling business, the cost of which goods or services exceeds an amount to be established for each category of such vendor by rule of the commission, related to maintenance of a vessel or facilities or equipment aboard a vessel, food or non-alcoholic beverages, entertainment or such other activity for which the commission determines by rule that registration is necessary or appropriate to effectuate the provisions of this chapter, provided that the commission may by rule determine that registration of a specific category of auxiliary vendor is unnecessary to achieve the purposes of this chapter. The commission shall by rule list the categories of goods and services and/or the amount of sales of such goods and services that do not require obtaining a key vendor license or an auxiliary vendor registration and may also, in its discretion, waive a requirement for a key vendor license or auxiliary vendor registration upon a determination that such license or registration is unnecessary to achieve the purposes of this chapter. In addition, the commission shall establish, by rule, a procedure whereby a shipboard gambling business may obtain temporary permission, on an expedited basis, to purchase goods or services from an unlicensed or unregistered vendor in a situation where such purchase is necessary to the operation of such

business. The commission shall make provision for the issuance of licenses pursuant to sections [20-954 and 20-956 of this chapter] 20-9005 and 20-9007 to key vendors who furnish goods or services to shipboard gambling licensees and for the registration pursuant to section [20-955] 20-9006 of auxiliary vendors who furnish goods or services to shipboard gambling licensees. The commission shall maintain a list of all licensed and registered vendors and those vendors to whom a waiver has been granted and shall make such list available upon request.

§ [20-951] 20-9002 New York city gambling control commission. a. There is hereby created a New York city gambling control commission. Such commission shall consist of five members appointed by the mayor, two of whom shall be appointed after recommendation by the city council. The mayor shall appoint a chair from among the members of the commission. Each member of the commission shall be appointed for a two year term.

b. In the event of a vacancy on the commission during the term of office of a member, a successor shall be chosen in the same manner as the original appointment. A member appointed to fill a vacancy shall serve for the balance of the unexpired term.

c. The members of the commission shall be compensated on a per diem basis, provided, however, that a member who holds other city office or employment shall receive only the compensation for such office or employment. The chair shall have charge of the organization of the commission and shall have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this chapter.

§ [20-952] 20-9003 Power and duties of the commission. The commission shall be responsible for the licensing and regulation of shipboard gambling businesses. The powers and duties of the commission shall include, but not be limited to the following:

a. To issue and establish standards for the issuance, renewal, suspension and revocation of licenses, certificates of approval and registrations and waivers therefrom pursuant to this chapter; provided that the commission may by resolution delegate to the chair the authority to make individual determinations regarding

the issuance, renewal, suspension and revocation of such licenses, certificates of approval and registrations and the appointment of independent auditors in accordance with the provisions of this chapter, except that a determination to refuse to issue a license, renewal, certificate of approval or registration or to refuse to grant a waiver therefrom pursuant to this chapter shall be made only by a majority vote of the commission.

b. To investigate any matter within the jurisdiction conferred by this chapter, including, but not limited to, any matter that relates to the good character, honesty and integrity of any owner, officer or director of an applicant business entity, or affiliate or subsidiary thereof, irrespective of whether such person is a principal of such business as defined in subdivision 1 of section [20-950 of this chapter] 20-9001, and to have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other documents and materials relevant to such investigation.

c. To appoint, within the appropriations available therefor, such employees as may be required for the performance of the duties prescribed herein. In addition to such employees, the commission may request that the commissioner of any other appropriate city agency provide staff and other assistance to the commission in conducting background investigations for licenses, certificates of approval and registrations pursuant to this chapter in order that such work may be performed efficiently, within existing city resources.

d. To conduct studies or investigations into matters related to gambling in the city and other jurisdictions in order to assist the city in formulating policies relating to the regulation of shipboard gambling.

e. To establish standards for the conduct of shipboard gambling businesses.

f. To set forth requirements necessary to protect the public health, safety and welfare, including but not limited to requirements for the provision of security for patrons on shipboard or on the pier or adjacent area in coordination with appropriate law enforcement authorities, and other measures to provide for the welfare of patrons on such piers and in such areas.

g. To establish standards to protect consumers from fraudulent and misleading advertising and other

solicitation of customers for shipboard gambling businesses.

h. To establish fees and promulgate rules as the commission may deem necessary and appropriate to effectuate the purposes and provisions of this chapter.

§ [20-953] 20-9004 Licenses, certificates of approval, and registration required. a. Unless otherwise provided, (i) It shall be unlawful to operate a shipboard gambling business unless such business has first obtained a shipboard gambling license from the commission.

(ii) It shall be unlawful for a shipboard gambling licensee to employ a key employee or agent unless such employee or agent has first obtained a key employee license from the commission pursuant to the provisions of this chapter.

(iii) It shall be unlawful for a shipboard gambling licensee to employ a gambling employee or agent unless such employee or agent has first obtained a certificate of approval from the commission pursuant to the provisions of this chapter.

(iv) It shall be unlawful for a shipboard gambling licensee to employ a service employee or agent unless such employee or agent has first registered with the commission pursuant to the provisions of this chapter.

(v) It shall be unlawful for a shipboard gambling licensee to purchase goods or services from a key vendor or an auxiliary vendor unless such vendor has first obtained a key vendor license or has registered with the commission, whichever is appropriate.

b. A license, certificate of approval or registration issued pursuant to this chapter or any rule promulgated hereunder shall not be transferred or assigned or used by any person or entity other than the licensee, holder of a certificate of approval or registrant to whom it was issued.

c. A license, certificate of approval or registration issued pursuant to this chapter shall be valid for a period of two years and shall, upon proper application for renewal pursuant to rule of the commission setting forth an expeditious procedure for the updating and review of the information required to be submitted by the applicant, be renewable for two year periods thereafter, except that the renewal period for a shipboard gambling

license shall be for one year for each of the first two renewal periods succeeding the initial issuance of such license, and thereafter for two years.

d. The commission shall promulgate rules establishing the fees and the manner of payment of fees for any investigation, license, certificate of approval or registration required by this chapter in an amount sufficient to compensate the city for the administrative expense of conducting investigations and issuing or renewing a license, certificate of approval or registration and the expense of inspections and other activities related thereto.

§ [20-954] 20-9005 License application; application for certificate of approval. a. An applicant for a license or certificate of approval pursuant to this chapter shall submit an application in the form and containing the information prescribed by the commission. An application for a license shall be accompanied by: (i) in the case of any applicant business, a list of the names and addresses of all principals of such business, and, in the case of a shipboard gambling business, all key employees employed or proposed to be employed in the business; and (ii) in the case of a shipboard gambling business, a list of the names of all key and auxiliary vendors and prospective and anticipated key and auxiliary vendors and the names and job titles of all gambling and service employees and agents, prospective gambling and service employees and agents of the applicant business who are or who the applicant proposes to be engaged in the operation of the shipboard gambling business; (iii) such other information as the commission shall determine by rule will properly identify employees and agents and prospective employees and agents; (iv) in the case of a shipboard gambling business, a description, accompanied by diagrams where appropriate, detailing the provisions that will be made by the applicant for security and other measures prescribed for the welfare of patrons by rule of the commission; (v) in the case of a shipboard gambling business, a description of the financial capacity and cash management system of the shipboard gambling business demonstrating the ability of such business to maintain and operate the business responsibly and to provide payment to patrons; and (vi) a form signed by each applicant authorizing the release to the city of financial and other information required by the commission and waiving any claims against the city that might arise in connection with the investigation of the applicant or the release of any

information resulting from such investigation to other appropriate government officials.

b. i. An applicant for a license or a certificate of approval shall be fingerprinted by a person designated for such purpose by the commission, the department of investigation or the police department and pay a fee to be submitted to the division of criminal justice services and/or the federal bureau of investigation for the purposes of obtaining criminal history records.

ii. An applicant for a license or a certificate of approval shall provide to the commission, upon a form prescribed by the commission and subject to such minimum dollar thresholds and other reporting requirements set forth on such form, information for the purpose of enabling the commission to determine the good character, honesty and integrity of the applicant, including but not limited to: (a) a listing of the names and addresses of any person having a beneficial interest in an applicant business, and the amount and nature of such interest; (b) a listing of the amounts in which such applicant is indebted, including mortgages on real property, and the names and addresses of all persons to whom such debts are owed; (c) a listing of such applicant's real property holdings or mortgage or other interest in real property held by such applicant other than a primary residence and the names and addresses of all co-owners of such interest; (d) the name and address of any business in which such applicant holds an equity or debt interest, excluding any interest in publicly traded stocks or bonds; (e) the names and addresses of all persons or entities from whom an applicant has received gifts valued at more than one thousand dollars in any of the past three years, and the name of all persons or entities excluding any organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code to whom the applicant has given such gifts in any of the past three years; (f) a listing of all criminal convictions, in any jurisdiction, of the applicant; (g) a listing of all pending civil or criminal actions to which the applicant knows or should have known that he or she is a party; (h) a listing of any determination by a federal, state or city regulatory agency of a violation by the applicant of statutes, laws, rules or regulations relating to the applicant's conduct where such violation has resulted in the suspension or revocation of a permit, license or other permission required in connection with the operation of a business or in a civil fine, penalty, settlement or

injunctive relief in excess of threshold amounts or of a type established by the commission; (i) a listing of any criminal or civil investigation by a federal, state, or local prosecutorial agency, investigative agency or regulatory agency, in the five year period preceding the application, wherein such applicant: (A) knew or should have known that the applicant was the subject of such investigation, or (B) has received a subpoena requiring the production of documents or information in connection with such investigation; (j) a certification that an applicant business has paid all federal, state, and local income taxes related to the applicant's business for which the applicant is responsible for the three tax years preceding the date of the application or documentation that the applicant is contesting such taxes in a pending judicial or administrative proceeding; (k) a listing of any license, permit or other permission held by the applicant to engage in any capacity in a gambling business or activity in any jurisdiction; (l) a listing of any denials to the applicant by any jurisdiction of a license, permit or other permission to engage in any capacity in a gambling business or activity; and (m) such additional information concerning the sources and nature of funding of an applicant business and the good character, honesty and integrity of applicants that the commission may deem appropriate and reasonable. An applicant may submit any additional information that the applicant believes demonstrates the applicant's good character, honesty and integrity, including a licensing determination from another jurisdiction. Notwithstanding any provision of this subdivision, an applicant for a certificate of approval shall not be required to submit information described in subparagraphs (a) and (m) of this paragraph or any other information the commission determines is not necessary or appropriate. An applicant may also submit to the commission any material or explanation which the applicant believes demonstrates that any information submitted pursuant to this paragraph does not reflect adversely upon the applicant's good character, honesty and integrity. The commission may require that applicants pay fees to cover the expenses of fingerprinting and background investigations provided for in this subdivision.

iii. In the case of a shipboard gambling business, the commission may also require that an applicant submit any or all of the information required by this paragraph with respect to any affiliate or subsidiary of the

applicant that owns or operates a business in any jurisdiction.

iv. Notwithstanding any provision of this chapter, for purposes of this section in the case of an applicant shipboard gambling business that has a parent business entity: (A) fingerprinting and disclosure under this section shall be required of any person acting for or on behalf of the parent business who has direct management or supervisory responsibility for the operations or performance of the applicant; (B) the chief executive officer, chief operating officer and chief financial officer, or any other person exercising comparable responsibilities and functions, of any subsidiary or affiliate of such parent business entity over which any person subject to fingerprinting and disclosure under subparagraph (A) of this paragraph exercises similar responsibilities shall be fingerprinted and shall submit the information required pursuant to subparagraphs (f) and (g) of paragraph ii of this subdivision, as well as such additional information pursuant to this paragraph as the commission may find necessary; and (C) the listing specified under subparagraph (i) of paragraph ii of this subdivision shall also be provided for any subsidiary or affiliate of the parent business entity for which fingerprinting and disclosure by principals thereof is made pursuant to (B) of this paragraph.

v. The chief executive officer, chief operating officer and chief financial officer, or any other person exercising comparable responsibilities and functions, of any subsidiary or affiliate of a shipboard gambling business shall be fingerprinted and shall submit the information required pursuant to subparagraphs (f), (g) and (i) of paragraph ii of this subdivision, as well as such other information pursuant to this paragraph that the commission may find necessary.

c. A business required to be licensed pursuant to this chapter shall inform the commission, within a reasonable time, of any changes in the ownership composition of such business, the addition or deletion of any principal at any time subsequent to the issuance of the license, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted on the application for a license. A business required to be licensed shall provide the commission with notice of at least ten business days of the proposed addition of a new principal to such business. The commission may waive or shorten such period upon

a showing that there exists a bona fide business requirement therefor. Except where the commission determines within such period, based upon information available to it, that the addition of such new principal may have a result inimical to the purposes of this chapter, the licensee may add such new principal pending the completion of review by the commission. The licensee shall be afforded an opportunity to demonstrate to the commission that the addition of such new principal pending completion of such review would not have a result inimical to the purposes of this chapter. If upon the completion of such review, the commission determines that such principal has not demonstrated that he or she possesses good character, honesty and integrity, the license shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such licensee, as the case may be, within a reasonable time period prescribed by the commission.

d. Each applicant business shall provide the commission with a business address in New York city where notices may be delivered and legal process served and shall designate a person of suitable age and discretion at such address who shall be an agent for service of process.

§ [20-955] 20-9006 Registration application; application for renewal. a. An applicant for registration or renewal pursuant to this chapter shall submit an application on a form prescribed by the commission and containing such information as the commission determines will adequately identify and establish the background of such applicant. The commission may refuse to register or to renew the registration of an applicant who has knowingly failed to provide the information and/or documentation required by such form, or who has knowingly provided false information or documentation, required by this chapter or any rule promulgated pursuant hereto.

b. Notwithstanding any other provision of this chapter: (i) the commission may, where there is reasonable cause to believe that an applicant has not demonstrated to the commission that he or she possesses good character, honesty and integrity, require that such applicant be fingerprinted and provide to the commission the information set forth in subdivisions a and b of section [20-954 of this chapter] 20-9005 and may, after notice and the opportunity to be heard, refuse to register such applicant for the reasons set forth in

subdivision a of section [20-956 of this chapter] 20-9007; and

(ii) if at any time subsequent to registration, the commission has reasonable cause to believe that the registrant lacks good character, honesty and integrity, the commission may require that such registrant be fingerprinted and provide the background information required by subdivision b of section [20-954 of this chapter] 20-9005 and may, after notice and the opportunity to be heard, revoke the registration for the reasons set forth in subdivision a of section [20-956 of this chapter] 20-9007.

§ [20-956] 20-9007 Refusal to issue or renew a license or certificate of approval. a. The commission shall refuse to issue or to renew a license to an applicant who has not demonstrated to the commission that he or she possesses good character, honesty and integrity. In determining that an applicant has not met his or her burden to demonstrate good character, honesty and integrity, the commission may consider, but is not limited to: (i) knowing failure by such applicant to provide truthful or complete information in connection with the application; (ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal to issue such license or certificate of approval, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license or certificate of approval is sought, in which case the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending; (iii) conviction of such applicant for a crime which, considering the factors set forth in section [seven hundred fifty-three] 753 of the correction law, would provide a basis under such law for the refusal of such license or certificate of approval; (iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business or to perform the employment for which the license or certificate of approval is sought; (v) commission of a racketeering activity or knowing association with a person who has been convicted for a racketeering activity when the applicant knew or should have known of such conviction, including but not limited to the offenses listed in subdivision one of section [nineteen hundred sixty-one] 1961 of the Racketeer

Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction; (vi) conviction of a gambling offense under 18 U.S.C. § 1081 et seq., 18 U.S.C. §§ 1953 through 1955, article 225 of the penal law or the equivalent offense under the laws of any other jurisdiction; (vii) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person; (viii) in the case of an applicant business, failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction and such judgment has not been stayed; and (ix) denial of a license or other permission to operate a gambling business or activity in another jurisdiction. For purposes of determining the good character, honesty and integrity of applicants for registration or registrants pursuant to section [20-955 of this chapter] 20-9006, the term "applicant" as used herein shall be deemed to apply to such applicants for registration or registrants.

b. The commission may refuse to issue or to renew a certificate of approval to an applicant who has not demonstrated that he or she possesses good character, honesty and integrity. In reaching such a determination, the commission may consider, but is not limited to, the factors set forth in paragraphs (i) through (ix) of subdivision a of this section.

c. The commission may refuse to issue or to renew a license or certificate of approval to an applicant who has knowingly failed to provide the information and/or documentation required in the form prescribed by the commission pursuant to section [20-954 of this chapter] 20-9005, or who has knowingly provided false information or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto.

d. The commission may refuse to issue or to renew a license or certificate of approval to an applicant

when such applicant: (i) was previously issued a license or certificate of approval pursuant to this chapter and such license or certificate of approval was revoked pursuant to the provisions of this chapter; or (ii) has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license or certificate of approval pursuant to this chapter or any rules promulgated hereto.

e. The commission may refuse to issue or to renew a license pursuant to this chapter to an applicant business where such applicant business or any of the principals of such applicant business have been principals of a licensee whose license has been revoked pursuant to subdivision a of section [20-959 of this chapter] 20-9010.

§ [20-957] 20-9008 Independent auditing required. a. The commission may, in the event the background investigation conducted pursuant to section [20-954 of this chapter] 20-9005 produces adverse information, require as a condition of a shipboard gambling license that the licensee enter into a contract with an independent auditor, approved or selected by the commission. Such contract, the cost of which shall be paid by the licensee, shall provide that the auditor investigate the activities of the licensee with respect to the licensee's compliance with the provisions of this chapter, other applicable federal, state and local laws and such other matters as the commission shall determine by rule. The contract shall provide further that the auditor report the findings of such monitoring and investigation to the commission on a periodic basis.

b. The commission shall be authorized to prescribe, in any contract required by the commission pursuant to this section, such reasonable terms and conditions as the commission deems necessary to effectuate the purposes of this chapter.

§ [20-958] 20-9009 Investigations by the department of investigation or police department. In addition to any other investigation authorized pursuant to law, the commissioner of the department of investigation or the police commissioner shall, at the request of the commission, conduct a study or investigation of any matter arising under the provisions of this chapter, including but not limited to investigation of the information required to be submitted by applicants for licenses, certificates of approval and registration and the ongoing

conduct of licensees, holders of certificates of approval and registrants.

§ [20-959] 20-9010 Revocation or suspension of license, certificate of approval or registration. a. In addition to the penalties provided in section [20-960 of this chapter] 20-9011, the commission may, after notice and opportunity to be heard, revoke or suspend a license, certificate of approval or registration issued pursuant to the provisions of this chapter when the licensee or a principal, employee or agent of a licensee, a holder of a certificate of approval or a registrant: (i) has been found to be in violation of this chapter or any rules promulgated hereunder; (ii) has repeatedly failed to obey the lawful orders of any person authorized to enforce the provisions of this chapter; (iii) has failed to pay, within the time specified by a court, the commission or an administrative tribunal of competent jurisdiction, any fines or civil penalties imposed pursuant to this chapter or the rules promulgated pursuant hereto; (iv) whenever, in relation to an investigation conducted pursuant to this chapter, the commission determines, after consideration of the factors set forth in subdivision a of section [20-956 of this chapter] 20-9007, that the licensee, holder of a certificate of approval or registrant lacks good character, honesty and integrity or lacks the financial capacity to maintain and operate the business responsibly in a manner that will ensure the immediate payment to patrons; (v) whenever there has knowingly been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of such license, certificate of approval or registration was based; or (vi) whenever a licensee has failed to notify the commission as required by subdivision c of section [20-954 of this chapter] 20-9005 of any change in the ownership interest of the business or any other material change in the information required on the application for such license, or of the arrest or criminal conviction of a principal of such licensee or any of its employees or agents of which the licensee had knowledge or should have known.

b. Notwithstanding any other provision of this chapter or rules promulgated thereto, the commission may, upon a determination that the operation of a shipboard gambling business or the conduct of an employee of such business creates an imminent danger to life or property, immediately suspend the license of such business or the certificate of approval or registration of such employee without a prior hearing, provided that

provision shall be made for an immediate appeal of such suspension to the chair of the commission who shall determine such appeal forthwith. In the event that the chair upholds the suspension, an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed four business days and the commission shall issue a final determination no later than four days following the conclusion of such hearing.

§ [20-960] 20-9011 Penalties. In addition to any other penalty provided by law: a. Except as otherwise provided in subdivision b of this section, any person who violates any provision of this chapter or any of the rules promulgated thereto shall be liable for a civil penalty which shall not exceed ten thousand dollars for each such violation. Such civil penalty may be recovered in a civil action or may be returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction;

b. Any person who violates subdivision a of section [20-953 of this chapter] 20-9004 shall, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars for each day of such violation or by imprisonment not exceeding six months, or both; and any such person shall also be subject to a civil penalty of not more than five thousand dollars for each day of such violation to be recovered in a civil action or returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction; and

c. (i) In the event that a shipboard gambling business has violated subdivision f of section [20-963 of this chapter] 20-9014, the commission, in addition to any other penalty prescribed in this section, shall, after providing notice and the opportunity to be heard, be authorized to order that any gambling device or other gambling equipment used in the violation of such subdivision shall be removed, sealed or otherwise made inoperable. An order pursuant to this paragraph shall be posted on the vessel on which such violation occurs. The commission shall take reasonable measures to provide notice to a person(s) holding a security interest(s) in a gambling device or gambling equipment with respect to which action is taken pursuant to this section.

(ii) Ten days after the posting of an order issued pursuant to paragraph (i) of this subdivision, this order may be enforced by any person so authorized by section [20-962 of this chapter] 20-9013.

(iii) Any gambling device or gambling equipment removed pursuant to the provisions of this subdivision shall be stored at a dock or in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such item may be charged with reasonable costs for removal and storage payable prior to the release of such item.

(iv) A gambling device or gambling equipment sealed or otherwise made inoperable or removed pursuant to this subdivision shall be unsealed, restored to operability or released upon payment of all outstanding fines and all reasonable costs for removal and storage and upon demonstration satisfactory to the commission that the provisions of subdivision f of section [20-963] 20-9014 will be complied with in all respects.

(v) It shall be a misdemeanor for any person to remove the seal from or make operable any gambling device or gambling equipment sealed or otherwise made inoperable in accordance with an order of the commission.

(vi) A gambling device or gambling equipment removed pursuant to this subdivision that is not reclaimed within ninety days of such removal by the owner or other person lawfully entitled to reclaim such item shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture, the commission shall, upon a public notice of at least ten business days, sell such item at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

d. The corporation counsel is authorized to commence a civil action on behalf of the city for injunctive relief to restrain or enjoin any activity in violation of this chapter and for civil penalties.

§ [20-961] 20-9012 Liability for violations. A shipboard gambling business required by this chapter to be licensed shall be liable for violations of any of the provisions of this chapter or any rules promulgated pursuant hereto committed by any of its principals acting within the scope of such business and any of its employees and/or agents within the scope of their employment.

§ [20-962] 20-9013 Enforcement. Notices of violation for violations of any provision of this chapter or any rule promulgated hereunder may be issued by authorized employees or agents of the commission or the police department. In addition, such notices of violation may, at the request of the commission and with the consent of the appropriate commissioner, be issued by authorized employees and agents of the department of consumer affairs or the department of investigation.

§ [20-963] 20-9014 Conduct of shipboard gambling licensees. a. A shipboard gambling licensee shall be in compliance with all applicable federal, state and local statutes, laws, rules and regulations governing operation of a shipboard gambling business, including but not limited to: (i) specifications for design and construction, equipment required to be present on board such vessel, maintenance, inspection, documentation, operation and licensing of such vessels; requirements for the medical fitness, training and other qualifications, drug testing and licensing of the crew of such vessels; environmental requirements; requirements regarding safety and conditions of employment on such vessel; and requirements for accessibility under the Americans with Disabilities Act and any regulations promulgated pursuant thereto, as such regulations may from time to time be amended and analogous provisions of title eight of this code;

(ii) prohibitions of gambling activity or the use of gambling devices within the territorial waters of the United States or the state of New York;

(iii) applicable zoning and building code requirements;

(iv) requirements governing the service and provision of food and alcoholic beverages within the territorial waters of the state of New York; and

(v) health and sanitary regulations.

b. A shipboard gambling licensee shall maintain audited financial statements, records, ledgers, receipts, bills and such other records as the commission determines are necessary or useful for carrying out the purposes of this chapter. Such records shall be maintained for a period of time not to exceed five years to be determined by rule of the commission, provided, however, that such rule may provide that the commission may, in its

discretion, require that records be retained for a period of time exceeding five years. Such records shall be made available for inspection and audit by the commission at its request and, at the option of the commission, at either the licensee's place of business or at the offices of the commission.

c. A shipboard gambling licensee shall maintain liability and other insurance as prescribed by rule of the commission.

d. A shipboard gambling licensee shall, in accordance with rules of the commission, institute and maintain security and safety measures and shall provide and maintain such other public services for the welfare of patrons required by such rules.

e. A shipboard gambling licensee shall, upon request by a passenger who does not wish to leave the vessel carrying cash on his or her person, provide payment of winnings by check.

f. A shipboard gambling licensee shall ensure, by means acceptable to the commission and the department of investigation, that all gambling devices and gambling equipment on board the vessel are secured or made inoperable during any period the vessel is in the territorial waters of New York and shall comply with all rules promulgated by the commission regarding the maintenance, safeguarding and storage of gambling devices.

g. A shipboard gambling licensee shall adopt measures to ensure that persons under eighteen years of age do not engage in gambling aboard a vessel operated by or on behalf of such licensee.

h. All advertising by a shipboard gambling licensee shall prominently state the age restrictions for engaging in gambling aboard the vessel, and shall comply with all rules governing advertising promulgated by the commission.

i. A shipboard gambling licensee shall provide access to the vessel(s) operated by or on behalf of the shipboard gambling business to any person authorized by section [20-962 of this chapter] 20-9013 to enforce the provisions of this chapter including, but not limited to, regular and permanent access by any person assigned to such vessel by an agency authorized to enforce the provisions of this chapter.

j. A shipboard gambling licensee shall not purchase goods or services from a key vendor or an auxiliary vendor unless such vendor has first obtained a license from or registered with the commission, whichever is applicable, unless the shipboard gambling licensee has obtained permission from the commission as provided by rule of the commission pursuant to subdivision q of section [20-950 of this chapter] 20-9001 or the key vendor or auxiliary vendor has been granted a waiver pursuant to such subdivision.

k. (i) A shipboard gambling licensee shall not employ any person required to obtain a license, certificate of approval or to register pursuant to the provisions of this chapter unless such person has obtained such license, certificate of approval or registration; provided, however, that the commission shall, by rule, make provision for temporary permission for employment pending completion by the commission of review of an applicant for a certificate of approval or registration and may, in its discretion, permit the employment of a key employee who has not obtained the required license where the employment of such person is necessary for the operation of the shipboard gambling business.

(ii) The commission may, upon the request of a shipboard gambling business, make available the names of applicants for employment who have been approved for licenses, certificates of approval or registrations.

l. A shipboard gambling licensee shall demonstrate and ensure for each vessel operated by or on behalf of such licensee, irrespective of the size of the vessel, that (i) every crew member required by the certificate of inspection issued for each such vessel by the United States coast guard or the analogous document issued pursuant to the international convention for the safety of lives at sea meets all marine personnel requirements set forth in such certificate or document and holds the applicable documentation, (ii) at least sixty-five percent of the required number of crew actually manning the vessel, as set forth in the certificate of inspection issued for each such vessel by the United States coast guard or the analogous document issued pursuant to the international convention for the safety of lives at sea, exclusive of those required to be licensed by the United States coast guard or the international maritime organization, have merchant mariners' documents endorsed for a rating of at least able seaman or the international maritime equivalent, and (iii) every person employed on

each such vessel has received familiarization training consistent with the standards regarding emergency occupational safety, medical care and survival functions set forth in the seafarer's training, certification and watchkeeping code.

m. A shipboard gambling licensee shall comply with all additional rules governing conduct of a shipboard gambling business promulgated by the commission in order to effectuate the purposes of this chapter.

§ [20-964] 20-9015 Rules. The commission may promulgate such rules as it may deem necessary or useful to effectuate the purposes of this chapter.

§ [20-965] 20-9016 Hearings. a. A hearing pursuant to this chapter may be conducted by the commission, or, in the discretion of the commission, by an administrative law judge employed by the office of administrative trials and hearings or other administrative tribunal of competent jurisdiction. Where a hearing pursuant to a provision of this chapter is conducted by an administrative law judge, such judge shall submit recommended findings of fact and a recommended decision to the commission, which shall make the final determination.

b. Notwithstanding the provisions of subdivision a of this section, the commission may provide by rule that hearings or specified categories of hearings pursuant to this subchapter may be conducted by the department of consumer affairs. Where the department of consumer affairs conducts such hearings, the commissioner of consumer affairs shall make the final determination.

§ [20-966] 20-9017 Reporting requirements. a. No later than one week following the submission of the mayor's management report, the commission shall submit to the council a report detailing its activities pursuant to this chapter for the period covered by the mayor's management report. The report required by this section shall at a minimum include:

i. the number of applicants for a license, certificate of approval or registration that were denied by the commission and a statement of the reasons for such denials;

ii. the number of licenses, certificates of approval and registrations issued by the commission;

iii. the number of applications for licenses, certificates of approval or registrations, respectively, presently pending;

iv. the number of licenses, certificates of approval and registrations that have been suspended or revoked by the commission pursuant to section [20-959 of this chapter] 20-9010, a statement of the reasons for such suspensions and revocations, and the average duration of such suspensions;

v. the amounts, by category, of all fees relating to implementation of this chapter to which the city is entitled, the amounts actually collected, and the reasons for any difference between the two amounts; and

vi. the amounts, by category, of all expenditures relating to enforcement of the provisions of this chapter.

b. The information required by paragraphs i, ii and iv of subdivision a of this section shall identify the shipboard gambling business to which the information relates.

§ 5. This local law takes effect 180 days after it becomes law, except that the commissioner of the department shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

MC/ADW

LS 1258/4041-2013; LS 1935; LS 2786; LS 3299; LS 4236; LS 9068

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