

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1990**

No. 40

Introduced by Council Members Gerges and Robles (by the request of the Mayor); also Council Members Povman, Greitzer, Berman, Rivera, Alter, DiBrienza and Spigner—read and referred to the Committee on Finance. (Amended June 27, 1990. Ordered reprinted and laid over.)

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to regulation of the use of piers or land as non-putrescible solid waste transfer stations and putrescible solid waste transfer stations, transfer of permitting jurisdiction with respect to putrescible waste transfer stations from the department of health to the department of sanitation, fees charged by the department of sanitation in connection therewith, issuance, renewal, suspension and revocation of permits, permit enforcement, and penalties in connection therewith and in connection with other violations of chapter 1 of title 16 of such code, and the power of the commissioner to conduct inquiries, including subpoena power.

Be it enacted by the Council as follows:

Section 1. The title of section 16-130 of the administrative code of the city of New York, as amended by local law number 49 for the year 1989, is amended to read as follows:

Permit for operators of dumps, *non-putrescible solid waste transfer stations, putrescible solid waste transfer stations and fill material operations.*

§2. Subdivisions a and b of section 16-130 of such code, subdivision a as added and subdivision b as designated and amended by local law number 49 for the year 1989, are amended to read as follows:

a. As used in this section: 1. *The term "solid waste" shall mean all putrescible and non-putrescible materials or substances, other than those materials or substances described in subparagraph (b) of this paragraph, that are discarded or rejected, including but not limited to garbage, refuse, waste collected by any person required to be licensed or permitted pursuant to subchapter eighteen of chapter two of title twenty of this code, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal. Such term shall include recyclable materials, as defined in subdivision i of section 16-303 of this title.*

(a) A material is discarded or rejected if it is:

(1) spent, useless, worthless or in excess to the owners at the time of such discard or rejection;

(2) disposed of;

(3) burned or incinerated, including material burned as a fuel for the purpose of recovering useable energy; or

(4) accumulated, stored or physically, chemically or biologically treated (other than burned or incinerated) instead of or before being disposed of.

(b) The following are not solid waste for the purpose of this section:

(1) domestic sewage;

(2) any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment, except any material that is introduced into such system in order to avoid the provisions of this title or of state regulations promulgated to regulate solid waste management facilities;

(3) industrial wastewater discharges that are actual point source discharges subject to permits under article seventeen of the environmental conservation law; provided that industrial wastewaters while they are being collected, stored or treated before discharge and sludges that are generated by industrial wastewater treatment are solid wastes;

(4) irrigation return flows;

(5) radioactive materials that are source, special nuclear, or by-product material under the federal Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq.;

(6) materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process;

(7) hazardous waste as defined in section 27-0901 of the environmental conservation law, including material containing hazardous waste; and

(8) regulated medical waste as defined in title fifteen of article twenty-seven of the New York state environmental conservation law, in title thirteen of article thirteen of the New York state public health law or in section 16-120.1 of the code, or any rules or regulations promulgated pursuant to such provisions of law.

2. The term "putrescible solid waste" shall mean solid waste containing organic matter having the tendency to decompose with the formation of malodorous by-products;

3. The term ["debris"] "non-putrescible solid waste" shall mean [non-hazardous, non putrescible] solid waste, whether or not contained in receptacles, that does not contain organic matter having the tendency to decompose with the formation of malodorous by-products, including but not limited to dirt, earth, plaster, concrete, rock, rubble, slag, ashes, waste timber, lumber, plexiglass, fiberglass, ceramic tiles, asphalt, sheetrock, tar paper, tree stumps, wood, window frames, metal, steel, glass, plastic pipes and tubes, rubber hoses and tubes, electric wires and cables, paper[,] and cardboard[, and other nonhazardous material :];

[2] 4. The term "dump" shall mean any structure, building or other premises, whether improved or unimproved, at which [non-hazardous] solid waste is received for the purpose of final disposal, unless such waste is received for a fill material operation;

[3] 5. The term "non-putrescible solid waste transfer station" shall mean any structure, building or other premises, whether improved or unimproved, at which [debris] only non-putrescible solid waste is received for the purpose of subsequent transfer to another location, regardless of whether such [debris] non-putrescible solid waste is subject to any processing or reduction in volume at such structure, building or premises;

6. The term "putrescible solid waste transfer station" shall mean any structure, building or other premises, whether improved or unimproved, at which any amount of putrescible solid waste is received for the purpose of subsequent transfer to another location, regardless of whether such putrescible solid waste is mixed with non-putrescible solid waste or is subject to any processing or reduction in volume at such structure, building or premises;

[4] 7. The term "fill material" shall [include non-putrescible] mean only clean material [such as] consisting of earth, ashes, dirt, concrete, rock, gravel, stone or sand, provided that such

material shall not contain organic matter having the tendency to decompose with the formation of malodorous by-products; and

[5] 8. The term "fill material operation" shall mean the grading, levelling, surcharging, compacting or final disposition of fill material for the purpose of land alteration or improvement, including but not limited to change of the existing property grade, filling of lands below established grades or of lands under water to established grades, and filling of lands which requires approval by any city or state agency.

b. It shall be unlawful for any person or public agency *other than the department* to conduct, operate or use any pier or part thereof, or any piece or parcel of land or land under water within the city as a dump or *as a non-putrescible solid waste transfer station or putrescible solid waste transfer station*, or for a fill material operation without having first obtained for each pier or part thereof, or for each piece or parcel of land or of land under water, in addition to any other permit required by law, a permit from the commissioner and, where required by any law or [regulation] *rule*, the prior written approval of the commissioner of ports and trade. The commissioner may establish by [regulation] *rule* one or more classes of permits pursuant to this section and section 16-131 of this chapter.

§3. The title of section 16-131 of such code, as amended by local law number 49 for the year 1989, is amended to read as follows:

§16-131 Rules [and regulations] *for the operation of dumps, non-putrescible solid waste transfer stations, putrescible solid waste transfer stations and fill material operations; permits and fees.*

§4. Subdivision a of section 16-131 of such code, as amended by local law number 49 for the year 1989, is amended to read as follows:

a. The commissioner shall have power to adopt rules [and regulations]:

1. *controlling and providing for supervision over the conduct, operation, and use by persons or public agencies of all piers or lands or lands under water used as dumps, non-putrescible solid waste transfer stations or putrescible solid waste transfer stations, or for fill material operations;*

2. *requiring applicants and permittees to disclose to the department information determined by the commissioner to be necessary for the department to fulfill its duties under this title. Such information may include but need not be limited to financial statements, and any annual or quarterly report required to be filed with the state department of environmental conservation pursuant to regulations promulgated by such department to regulate solid waste management facilities;*

3. *requiring permittees to maintain records determined by the commissioner to be necessary for the department to fulfill its duties under this chapter and to protect the public health and safety.*

§5. Subdivisions b, c, d and e of section 16-131 of such code are relettered subdivisions c, d, e and f respectively.

§6. Section 16-131 of such code is amended by adding a new subdivision b to read as follows:

b. *The commissioner shall, pursuant to subdivision a of this section, adopt rules:*

1. *establishing, in consultation with the commissioners of health and environmental protection, requirements appropriate for protection of public health and the environment concerning siting of dumps, non-putrescible solid waste transfer stations, putrescible solid waste transfer stations and/or fill material operations in relation to other such facilities, residential premises and/or other premises for which such requirements may be appropriate. Requirements established pursuant to this paragraph shall be in addition to other applicable siting require-*

ments;

2. limiting the hours of operation of premises required to be permitted pursuant to section 16-130 of this chapter;

3. prescribing the use of deodorants, and other odor control measures as may be needed, at putrescible solid waste transfer stations and, where appropriate, at other facilities required to be permitted pursuant to such section;

4. prescribing the use of ventilation systems in fully enclosed structures on premises required to be permitted pursuant to this section; and

5. requiring that all activities relating to the processing, tipping, sorting, storage and compaction of solid waste at putrescible solid waste transfer stations, and, in the commissioner's discretion, at other premises required to be permitted pursuant to this section, be conducted within a fully enclosed structure. If the commissioner determines that such activities would not adversely affect a residential area if not conducted within a fully enclosed structure, then the commissioner may grant an exemption from such requirement, provided that no exemption may be granted in contravention of regulations promulgated by the state department of environmental conservation to regulate solid waste management facilities or other applicable law. Any person who, on the effective date of this local law, holds a permit for, and conducts such activities on, premises where no fully enclosed structure exists, and who shall be required to conduct such activities within a fully enclosed structure, may be granted a reasonable time, to be determined by the commissioner, to construct such structure.

§7. Subdivisions c, e and f of section 16-131 of such code, as relettered by section five of this local law, are amended to read as follows:

c. The commissioner shall issue permits to such persons or public agencies engaged in use of piers or lands or lands under water within the city as dumps, *non-putrescible solid waste transfer stations* or *putrescible solid waste transfer stations*. The commissioner shall collect an annual fee of [twenty-five] *thirty-five* hundred dollars for each permit for any such pier or part thereof, or for each piece or parcel of land or land under water *used as a dump or as a non-putrescible solid waste transfer station, and an annual fee of sixty-five hundred dollars for each permit for any such pier or part thereof, or for each piece or parcel of land or land under water used as a putrescible solid waste transfer station.* The commissioner may by [regulation] *rule* provide for suspension or revocation of any [such] permit *issued pursuant to this subdivision* for cause or violation of the orders or rules [or regulations] of the commissioner.

e. Rules [and regulations] adopted by the commissioner pursuant to this section shall become effective only after filing and publication as prescribed by chapter forty-five of the charter. *In addition, notwithstanding such chapter, prior to adoption by the commissioner of a final rule pursuant to subdivision e of section one thousand forty-three of the charter, and after consideration of relevant comments presented pursuant to subdivision d of such section, the commissioner shall submit to the council the draft text of the final rule proposed to be published in the City Record; the council shall have thirty days to comment upon such text. The final rule may include revisions in response to comment from members of the council and shall not be published in the City Record before the thirty-first day after such submission, unless the speaker of the council authorizes earlier publication.*

f. As used in this section, the terms "dump," "*non-putrescible solid waste transfer station,*" "*putrescible solid waste transfer station,*" "fill material" and "fill material operation" shall have the meanings ascribed in section 16-130 of this chapter.

§8. Such code is amended by adding five new sections 16-131.1, 16-131.2, 16-131.3, 16-131.4 and 16-131.5 to read as follows:

§16-131.1 Issuance, renewal, suspension and revocation of permits. The commissioner, consistent with article twenty-three-A of the corrections law, may refuse to issue to an applicant a permit required by section 16-130 of this chapter and may, after due notice and hearing, in addition to any other penalties provided by law, refuse to renew, suspend or revoke such permit upon the occurrence of any of the following conditions:

1. the applicant or permittee, or its officers, principals, directors or stockholders owning more than ten percent of the outstanding stock of the corporation have been convicted of a crime which in the judgment of the commissioner has a direct relationship to his or her fitness or ability to perform any of the activities for which a permit is required under section 16-130 of this chapter; or

2. the applicant or permittee, or its officers, principals, directors, employees or stockholders owning more than ten percent of the outstanding stock of the corporation have been found by a court or an administrative agency of competent jurisdiction to have violated:

(A) any provision of section 16-117.1, 16-119, 16-120.1, 16-130, 16-131, 16-131.2, 16-131.3 or 16-131.5 of this chapter; or

(B) any provision of article one hundred fifty-seven of the New York city health code; or

(C) any other law or rule related to the conduct, operation or use of a dump, non-putrescible solid waste transfer station, putrescible solid waste transfer station or fill material operation; or

3. the applicant or permittee has violated or failed to comply with any of the conditions for issuance of such permit as provided in this chapter or any of the rules promulgated hereunder.

§16-131.2 Additional powers of the commissioner. In addition to any other enforcement procedures authorized by law, the commissioner shall have the powers described in this section.

a. The commissioner may order any person violating section 16-130 or 16-131 of this chapter or article one hundred fifty-seven of the New York city health code to discontinue such violation immediately.

b. 1. If the commissioner finds that premises for which a permit is required pursuant to section 16-130 of this chapter are being used either without such permit or in a manner which poses an imminent threat to the public health or safety, then the commissioner may order in writing that (a) such premises be sealed, secured and closed and/or (b) that equipment, vehicles or other personal property used on such premises be removed or sealed and secured. Upon the effective date of such order, no person shall have access to such premises and/or use such equipment except as authorized by the commissioner. Upon such effective date, authorized officers and employees of the department, the department of health and the New York city police department shall act upon and enforce such order. The finding whether an imminent threat to the public health or safety exists shall be based on factors that include but are not limited to: (i) the quantity of solid waste, or of material listed in subparagraph (b) of paragraph one of subdivision a of section 16-130 of this chapter, that may pose a threat; (ii) the types of solid waste, or of such material listed in such subparagraph, that may pose a threat; and/or (iii) the risk of harm to the public or the environment. For the purpose of this paragraph: "sealed, secured and closed" or "sealed and secured" shall mean the use of any means available to render the premises or any part thereof, and/or any equipment, vehicles or other personal property contained therein, inaccessible or inoperable, including but not limited to the use of a padlock or cinder blocks.

2. Any equipment, vehicles or other personal property removed pursuant to an order issued under paragraph one of this subdivision may be stored in a garage, pound or other place of safety, and the owner or other person lawfully entitled to the possession of such equipment, vehicles or other personal property may be charged with the reasonable costs for removal and storage, payable prior to the release of such equipment, vehicles or other personal property. Equipment,

vehicles or other personal property not reclaimed by such owner or other person within ninety days of the notification to such owner or other person that such order has been rescinded shall be deemed abandoned and may be disposed of by the department at a public auction, provided that vehicles deemed abandoned shall be disposed of in a manner consistent with section twelve hundred twenty-four of the vehicle and traffic law and that timely notice of any public auction shall be provided to any record holder of a security interest at the address for such holder set forth in any instrument recorded in the city of New York.

3. Any order to seal, secure and close premises pursuant to paragraph one of this subdivision, or to remove or seal and secure equipment, vehicles or other personal property issued pursuant to such paragraph, shall contain notice of the right to request a hearing within thirty days of delivery of such order and posting of such order pursuant to the first sentence of paragraph four of this subdivision. If a hearing is requested within such thirty day period, the order shall be effective as set forth in the determination of the commissioner. If no hearing is requested within such thirty day period the order shall be effective on the thirtieth day after such delivery and posting pursuant to such sentence. A hearing held pursuant to this paragraph shall be conducted by the department. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination. Notwithstanding the foregoing provisions of this paragraph, if such order is based upon a finding by the commissioner of an imminent threat to the public health or safety, such order may provide that it shall be effective immediately upon posting pursuant to the first sentence of paragraph four of this subdivision; in such case a hearing shall be held within three business days of a request for such hearing and a determination shall be rendered within four business days of the conclusion of such hearing.

4. Orders of the commissioner issued pursuant to this subdivision shall be served by delivery of the order to the permittee, owner or other person of suitable age and discretion in actual or apparent control of the premises, equipment, vehicles or other personal property, and shall be posted at the premises that have been sealed, secured and closed, or on or in the vicinity of the equipment, vehicles or other personal property that has been sealed and secured, or on the premises from which equipment, vehicles or other personal property has been removed. The commissioner shall ensure that notice is delivered and posted pursuant to this paragraph, and in addition shall ensure that such order is mailed to the permittee at the residence or business address for such permittee set forth in the records of the department, to the record owner of such premises, and any record mortgagee of such premises, at the address set forth in the recorded instrument and to the person designated as owner or agent of the premises or designated to receive real property tax or water bills for the premises at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property, to the owner of such vehicles at the address for such owner set forth in the registration record maintained by the department of motor vehicles pursuant to section four hundred one of the vehicle and traffic law or for vehicles not registered in New York state, such equivalent record in the state of registration, and to any record holder of a security interest in equipment, vehicles or other personal property at the address for such holder set forth in any instrument recorded in the city of New York, and at the address for such holder set forth in any certificate of title issued by the department of motor vehicles pursuant to title ten of the vehicle and traffic law. In addition, such order shall be mailed to the owner of equipment or personal property, other than vehicles, at any address for such owner provided by the permittee or the

person to whom such order is delivered pursuant to the first sentence of this paragraph.

5. Where premises have been sealed, secured and closed or equipment, vehicles, or other personal property has been sealed and secured or removed by order of the commissioner issued pursuant to paragraph one of this subdivision, the permittee, owner or other person lawfully entitled to the possession of the premises or equipment, vehicles or other personal property, may at any time provide to the commissioner assurances that the conditions which caused the issuance of such order have been corrected and will not reoccur and any necessary permit will be obtained. Upon receipt of such assurances, the commissioner shall within two business days either issue a written determination that such conditions have not been corrected, or are likely to reoccur, or, if such assurances are satisfactory, rescind such order; provided that no equipment, vehicles or other personal property shall be released after such rescission unless costs for removal and storage owed pursuant to paragraph two of this subdivision have been paid.

6. (a) No person shall remove or cause to be removed the seal from, or otherwise enter without the commissioner's authorization, any premises sealed by order of the commissioner issued pursuant to paragraph one of this subdivision.

(b) No person shall remove or cause to be removed the seal from, or otherwise tamper with or use, any equipment, vehicles or other personal property sealed by order of the commissioner issued pursuant to paragraph one of this subdivision.

(c) Any person who violates this paragraph shall upon conviction be guilty of a misdemeanor and be punished by a fine not to exceed twenty-five thousand dollars, or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

§16-131.3 Removal or abatement of public nuisance. a. 1. Whenever the commissioner finds that there exists, on premises required to be permitted pursuant to section 16-130 of this chapter, a condition hazardous to public health or safety, the commissioner may declare such premises to be a public nuisance and order the permittee and/or owner to remove or abate such public nuisance as such order shall specify. It shall be the duty of such permittee and/or owner upon whom such an order has been served to remove or abate such public nuisance in the manner and in the time provided by such order.

2. For the purpose of this subdivision, the finding whether a condition hazardous to the public health or safety exists shall be based on factors that include but are not limited to: (i) the quantity of solid waste, or of material listed in subparagraph (b) of paragraph one of subdivision a of section 16-130 of this chapter, that may create a condition hazardous to the public health or safety; (ii) the types of solid waste, or of such material listed in such subparagraph, that may create such a condition; and/or (iii) the risk of harm to the public or the environment.

b. 1. An order of the commissioner issued pursuant to subdivision a of this section shall specify the work to be performed and shall fix a reasonable time for compliance which shall not be less than thirty days from the date of service of such order, or twenty days after the commissioner's determination pursuant to paragraph four of this subdivision, whichever is later. Such order shall contain a statement that upon the failure of the permittee and/or owner of such premises to comply with the commissioner's order within the stated time, the department may perform the work specified in the order or the department may apply for a court order directing such permittee and/or owner to comply with the commissioner's order or directing the department to perform the work specified in the commissioner's order. Such statement shall also indicate that if any of the work specified in the commissioner's order is performed by or on behalf of the department, the expense incurred in performing such work shall be a debt recoverable from such permittee and/or owner and a lien on the premises, including the land and buildings, with respect to which such order was issued.

2. Service of such order shall be made upon such permittee and/or owner by personal service or by certified mail addressed to the last known address of such permittee and/or owner or in any manner provided for service of process by article three of the civil practice law and rules. The commissioner may serve a copy of such order on any mortgagee or lienor of record in the same manner.

3. A copy of such order shall be filed with the office of the register in the county in which the premises with respect to which such order was issued are situated, provided, that in the county of Richmond, such copy shall be filed with the county clerk.

4. Within fifteen days after service of such order upon the permittee and/or owner, such permittee and/or owner or a mortgagee or lienor upon whom a copy of such order has been served may request a hearing. Such hearing shall be conducted by the department. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination.

c. If the permittee and/or owner fails to comply with the commissioner's order within the time fixed for compliance pursuant to subdivision b of this section, the department may perform the work specified in the order.

d. As an alternative to the remedy set forth in subdivision c of this section, if the permittee and/or owner fails to comply with the commissioner's order within the time fixed for compliance pursuant to subdivision b of this section, the commissioner may apply to any court of competent jurisdiction, upon such notice and in such manner as the court shall direct, for an order directing the permittee and/or owner to comply with the commissioner's order or directing the department to perform the work specified in the commissioner's order.

e. 1. Whenever the commissioner finds that there exists on premises declared to be a public nuisance pursuant to subdivision a of this section a condition that poses an imminent threat to the public health or safety which requires immediate remedial action, the commissioner may, in his or her discretion, order the permittee and/or owner to remove or abate such public nuisance, or direct the department to remove or abate such public nuisance, and, notwithstanding any provision of this section to the contrary, no hearing shall be required to be held before the time fixed in the order for compliance, or before the department removes or abates such public nuisance, and the time for compliance provided in paragraph one of subdivision b of this section shall not apply to an order issued pursuant to this subdivision. Notice of an order or direction issued pursuant to this subdivision shall be served in the manner prescribed in paragraph two of subdivision b of this section, provided, that if the commissioner determines that service in such manner would result in delay prejudicial to the public health or safety, then the commissioner may serve such order or direction by delivery of a copy thereof to a person of suitable age and discretion in actual or apparent control of the premises to which it relates, or, if service cannot be made in such manner, by copy posted upon the premises to which it relates. An order or direction served in the manner prescribed in this subdivision shall take effect when delivered or when posted. After such order or direction takes effect, the commissioner shall serve such order or direction in the manner prescribed in paragraph two of subdivision b of this section. Such additional service shall include notice of the earlier service of such order or direction.

2. Notwithstanding any other provision of this section, if an order or direction is issued pursuant to paragraph one of this subdivision, a hearing shall be held within three business days of a request for such hearing and a determination shall be rendered within four business days of the conclusion of such hearing. Such hearing shall be conducted by the department. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination.

3. For the purpose of this subdivision, the finding whether an imminent threat to the public health or safety exists shall be based on factors that include but are not limited to: (i) the quantity of solid waste, or of material listed in subparagraph (b) of paragraph one of subdivision a of section 16-130 of this chapter, that may pose a threat; (ii) the types of solid waste, or of such material listed in such subparagraph, that may pose a threat; and/or (iii) the risk of harm to the public or the environment.

f. The commissioner may request the assistance of the department of health or any city, state or federal agency to perform work on its behalf pursuant to this section.

g. 1. The expense of the department with respect to any work performed by or on behalf of the department pursuant to subdivisions c, d and e of this section shall be a debt recoverable from the permittee and/or owner and a lien upon the premises, including the land and buildings, with respect to which such work was performed.

2. The department shall keep a record of all work performed by or on behalf of the department. Such records shall be accessible to the public during business hours. Within thirty days after the issuance of a purchase or work order for such work, such order shall be entered on the records of the department. Such entry shall constitute notice to all parties.

3. All such expenses shall constitute a lien upon the premises when the amount thereof shall have been definitely computed as a statement of account by the department and the department shall cause to be filed in the office of the city collector an entry of the account stated in the book in which such charges against the premises are to be entered. Such lien shall have a priority over all other liens and encumbrances on the premises except for the lien of taxes and assessments. However, no lien created pursuant to this section shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless such transaction occurred after the date of entry of a purchase or work order on the records of the department pursuant to paragraph two of this subdivision.

4. A notice thereof stating the amount due and the nature of the charge shall be mailed by the city collector within five days after such entry to the last known address of the person whose name appears on the records in the office of the city collector as being the owner or agent or as the person designated by the owner to receive tax bills or, where no name appears, to the premises, addressed to either the owner or the agent. Such notice shall have stamped or printed thereon a reference to this section.

5. If such charge is not paid within thirty days from the date of entry, it shall be the duty of the city collector to receive interest thereon at the rate of interest set for late payment of real property taxes pursuant to section 11-224 of the code to be calculated to the date of payment from the date of entry.

6. Such charge and the interest thereon shall continue to be, until paid, a lien on the premises. Such charge and interest may be collected and the lien thereof may be foreclosed in the manner provided by law for the collection and foreclosure of taxes, sewer rents, sewer surcharges and water charges due and payable to the city and the provisions of chapter four of title eleven of the code shall apply to such charges and the interest thereon and the lien thereof.

7. (a) In any proceedings to enforce or discharge the lien, the validity of the lien shall not be subject to challenge based on (i) the lawfulness of the work done; or (ii) the propriety and accuracy of the items of expenses for which a lien is claimed, except as provided in this paragraph.

(b) No such challenge may be made except by (i) the owner of the property, or (ii) a mortgagee or lienor whose mortgage or lien would but for the provisions of this section have priority over the department's lien.

(c) An issue specified in subparagraph (a) which was decided or could have been contested in a prior court proceeding to secure a court order pursuant to subdivision d of this section shall not be open to reexamination, but if any mortgagee or lienor of record was not served with an order of the commissioner pursuant to paragraph two of subdivision b and with notice of such proceeding, his or her mortgage or lien shall have the same priority over the lien of the department that it would have had but for the provisions of this section.

8. In addition to establishing a lien, the department may recover such expenses and interest by bringing an action against the permittee and/or owner. The institution of such action shall not suspend or bar the right to pursue any other remedy provided by law for the recovery of such debt.

h. Nothing contained in this section shall be construed to restrict authority to provide for the abatement of a public nuisance conferred upon any agency of the city by any other provision of law.

i. For purposes of this section, "owner" means a person having title to any premises or structure; a tenant, lessee or occupant; a mortgagee or vendee in possession; a trustee in bankruptcy; a receiver or any other person having legal ownership or control of any premises or structure.

§16-131.4 Impoundment and forfeiture. a. Any equipment, vehicles or other personal property that has been used or is being used to violate the provisions of section 16-130, 16-131, 16-131.2 or 16-131.3 of this chapter or article one hundred fifty-seven of the New York city health code may be impounded by the department pending forfeiture pursuant to the provisions of this section. Such equipment, vehicles or other personal property shall be released by the end of the following business day unless the department ascertains either (i) that the owner of the premises upon which the equipment, vehicles or other personal property has been or is being used has not obtained a permit required by section 16-130 of this chapter, (ii) that the owner has been convicted of or found liable for a violation of section 16-130, 16-131, 16-131.2 or 16-131.3 of this chapter, or article one hundred fifty-seven of the New York city health code, in a civil or criminal judicial proceeding or in a proceeding before an agency of competent jurisdiction and such violation was committed within eighteen months prior to the violation of law for which such equipment, vehicles or other personal property was impounded, or (iii) that the alleged violation of such sections or article for which such equipment, vehicles or other personal property was impounded involves the unlawful handling, processing, transportation, disposal or storage of a material identified as a hazardous waste or an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law.

b. Notice of impoundment and intended forfeiture shall be served together with the notice of the violation of law for which equipment, vehicles or other personal property was impounded. Such notice shall contain notice of the right to request a hearing before the department with respect to whether there is reasonable cause to believe that such equipment, vehicles or other personal property will be subject to forfeiture; a hearing shall be provided within three business days of such request, and a determination shall be rendered within four business days of the conclusion of such hearing. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination. If the commissioner determines that there is not reasonable cause to believe that such equipment, vehicles or other personal property will be subject to forfeiture, the department shall release such equipment, vehicles or other personal property, and no charges or fees shall be imposed as a condition of such release. If the commissioner determines that there is reasonable cause to believe that such equipment, vehicles or other personal property will be subject to forfeiture, the department may retain such equipment, vehicles or other personal property

pending forfeiture pursuant to the provisions of this section. If after adjudication of the violation of law for which such equipment, vehicles or other personal property was impounded the court or agency of competent jurisdiction finds the respondent not guilty of or not liable for such violation, such equipment, vehicles or other personal property shall be released forthwith, and no charges or fees shall be imposed as a condition of such release. If after adjudication of such violation of law, the court or agency of competent jurisdiction finds the respondent guilty of or liable for such violation, then upon demand of the respondent the department shall either release such equipment, vehicles or other personal property upon payment of all outstanding fines and civil penalties, and removal charges and storage fees, or commence a forfeiture proceeding pursuant to this section within ten days after such demand.

c. In addition to any other penalties provided in this section, the interest of an owner in any equipment, vehicles or other personal property impounded pursuant to subdivision a of this section shall be subject to forfeiture upon notice and judicial determination thereof if such owner either (i) has not obtained a permit required by section 16-130 of this chapter and has been convicted of or found liable for a violation of section 16-130, 16-131, 16-131.2, or 16-131.3 of this chapter, or article one hundred fifty-seven of the New York city health code, in a civil or criminal judicial proceeding or in a proceeding before an agency of competent jurisdiction, (ii) has been convicted of or found liable for a violation of one of such sections, or such article, two or more times, in a civil or criminal judicial proceeding or in a proceeding before such agency, both of which violations were committed within an eighteen month period, or (iii) has been convicted of or found liable for a violation of one of such sections or such article in a civil or criminal judicial proceeding or in a proceeding before such agency where such violation involved the unlawful handling, processing, transportation, disposal or storage of a material identified as a hazardous waste or an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law.

d. Except as hereinafter provided, the city agency having custody of equipment, vehicles or other personal property, after judicial determination of forfeiture, shall no sooner than thirty days after such determination upon a notice of at least five days, sell such forfeited equipment, vehicles or other personal property at public sale, provided that no sooner than thirty days after judicial determination of forfeiture or the date of final determination of a claim asserted pursuant to this subdivision, whichever is later, the city may instead convert such equipment, vehicles or other personal property to its own use. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in equipment, vehicles or other personal property, including a part ownership or security interest, shall be entitled to delivery of the equipment, vehicles or other personal property if such person:

1. redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof; and
2. pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and
3. asserts a claim within thirty days after judicial determination of forfeiture.

Notwithstanding the foregoing provisions establishment of a claim shall not entitle such person to delivery if the city establishes that the activity in violation of law for which the equipment, vehicles or other property was seized was expressly or impliedly permitted by such person.

e. For purposes of this section, "owner" means a person, other than a holder of a security interest, having the property in or title to equipment, vehicles or other personal property, including but not limited to a person entitled to use and possession of equipment, vehicles or other

personal property subject to a security interest in another person and also includes any lessee or bailee having exclusive use thereof.

§16-131.5 Inquiries and subpoena power. The commissioner shall have the power to conduct such inquiries as may assist him or her in the performance of the functions of the department pursuant to sections 16-117.1, 16-120.1, 16-119, 16-130, 16-131, 16-131.1, 16-131.2, 16-131.3, 16-131.4 or 16-133 of this chapter and for such purpose shall have subpoena power to compel the attendance of witnesses, to administer oaths, examine witnesses and to compel the production of books, papers and documents.

§9. Section 16-133 of such code is REPEALED and reenacted to read as follows:

§16-133 Enforcement. a. 1. Any person who violates any provision of section 16-129, 16-130, 16-131, 16-131.2, 16-131.3 or 16-131.5 of this chapter, or article one hundred fifty-seven of the New York city health code, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed twenty-five thousand dollars, or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

2. In addition to any other penalties provided under paragraph one of this subdivision, any violation of section 16-129, 16-130, 16-131, 16-131.2, 16-131.3 or 16-131.5 of this chapter, or article one hundred fifty-seven of the New York city health code, shall be punishable by a civil penalty of not less than twenty-five hundred dollars nor more than ten thousand dollars for the first violation, not less than five thousand nor more than ten thousand dollars for the second violation committed in a period of three years, and ten thousand dollars for the third and any subsequent violation committed in such period. Every owner of premises or of equipment, vehicles or other personal property shall be punishable by a civil penalty of not less than twenty-five hundred dollars nor more than ten thousand dollars for the first violation, not less than five thousand nor more than ten thousand dollars for the second violation committed in a period of three years, and ten thousand dollars for the third and any subsequent violation committed in such period by any person using or operating the same, in the business of such owner or otherwise, with the permission, express or implied, of such owner. In the case of a continuing violation, every day's continuance thereof may be deemed to be a separate and distinct violation. Civil penalties shall be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board, provided however that civil penalties for violations of article one hundred fifty-seven of the New York city health code may only be recovered as provided by law for violations of the New York city health code. As used in this paragraph, "owner" means a person, other than a holder of a security interest, having the property in or title to premises or equipment, vehicles or other personal property, including but not limited to a person entitled to use and possession of premises or equipment, vehicles or other personal property subject to a security interest in another person and also includes any lessee or bailee having exclusive use thereof.

b. 1. Any person who violates any provision of section 16-117 of this chapter shall be guilty of a violation, and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars nor more than five hundred dollars, or by imprisonment for a term of not more than fifteen days, or by both such fine and imprisonment.

2. In addition to any other penalties provided under paragraph one of this subdivision, any violation of section 16-117 of this chapter shall be punishable by a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars. Civil penalties shall be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board.

c. The commissioner shall have the power to issue notices of violation for violations of article

one hundred fifty-seven of the New York city health code and such notices of violation shall be returnable as provided by law for violations of the New York city health code.

d. The commissioner of health shall have the power to issue notices of violation for violations of sections 16-130 and 16-131 of this chapter, and such notices of violation shall be returnable in a civil action brought in the name of the commissioner of health or in a proceeding before the environmental control board.

e. Nothing contained in this section shall be construed to restrict existing authority of any agency to enforce any other provision of law, including but not limited to any provision of the New York city health code.

§10. Notwithstanding any other provision of law, on and after the effective date of rules promulgated by the commissioner of sanitation to provide for the issuance of putrescible solid waste transfer station permits pursuant to section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, no putrescible solid waste transfer station, as such term is defined in such section, shall be required to obtain a permit from the commissioner of health pursuant to article one hundred fifty-seven of the New York city health code. The commissioner of sanitation shall promulgate such rules within one hundred twenty days of the effective date of this local law. Nothing contained in this section or any other provision of this local law shall be construed to affect the continued application of provisions of the health code not related to issuance of permits for putrescible solid waste transfer stations, as such term is defined in such section.

§11. Notwithstanding any other provision of this local law, including section 16-130 as amended by section two of this local law, any permit issued to a putrescible solid waste transfer station, as defined in section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, by the commissioner of health pursuant to article one hundred fifty-seven of this article that is in full force and effect on the effective date of this local law shall continue in full force and effect on and after such date and shall, after the effective date of rules promulgated by the commissioner of sanitation to provide for the issuance of putrescible solid waste transfer station permits pursuant to such section, be deemed to constitute a permit issued by the commissioner of sanitation, provided that the holder of such permit files an application for a new permit with such commissioner within thirty days after such effective date of such rules. During the pendency of such application, such permit issued by the commissioner of health shall remain in full force and effect until such time as the commissioner of sanitation either suspends or revokes such permit pursuant to law, issues a new permit or denies the application for a new permit. If the holder of such permit fails to file an application for a new permit with the commissioner of sanitation within thirty days after such effective date of such rules, such permit issued by the commissioner of health shall be null and void and be of no further effect. Notwithstanding any other provision of law, the fee for any putrescible solid waste transfer station permit issued by the commissioner of sanitation pursuant to such section to a person who holds a permit issued by the commissioner of health pursuant to article one hundred fifty-seven of the New York city health code shall be reduced by an amount which is equal to the permit fee paid to the department of health prorated to the unexpired portion of the license term.

§12. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, or at the time when the commissioner of sanitation promulgates rules to provide for the issuance of putrescible solid waste transfer station permits pursuant to section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, brought by or against the city, or the department of health or any officer or employee of such department shall be affected or abated by the adoption of this local law or by anything contained herein; but

all such actions or proceedings may be continued notwithstanding that certain functions, powers and duties of the department of health may have by this local law been assigned or transferred to the department of sanitation; and such actions and proceedings may be prosecuted or defended by the department of sanitation or the officer or employee to which such functions, powers and duties have been assigned or transferred by this local law.

§13. Notwithstanding any other provision of law, except as provided in sections ten, eleven and twelve of this local law, the commissioner of sanitation may, on and after the effective date of this local law, enforce the provisions of this local law, provided that where the commissioner's authority to enforce the provisions of this local law is predicated upon a finding by the commissioner that a permit is required for premises pursuant to section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, a finding by the commissioner that a permit is required pursuant to article one hundred fifty-seven of the New York city health code shall be deemed to constitute the predicate finding.

§14. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§15. This local law shall take effect immediately upon its enactment into law, provided however that the addition of section 16-131.4 of the administrative code by section eight of this local law and the repeal and reenactment of section 16-133 of such code by section nine of this local law shall take effect thirty days after their enactment into law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 30, 1990, and approved by the Mayor on July 12, 1990.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed local law (Local Law 40 of 1990, Council Int. No. 464-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on June 30, 1990:
34 for, 0 against

Was approved by the Mayor on July 12, 1990.

Was returned to the City Clerk on July 13, 1990.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel