

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 1997**

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**No. 27**

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Introduced by Council Members Dear and Fisher—read and referred to the Committee on Transportation. Preconsidered April 8, 1997, Ordered, Printed and Laid Over.

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to the food vending business.**

*Be it enacted by the Council as follows:*

Section 1. Legislative findings and intent. The council finds that local law 15 for the year 1995 restricted the number of food vendor permits to be issued to those engaged in the food vending business to one full-term or temporary food vendor permit per individual, corporation, partnership or other business entity in order to stop the amassing of large numbers of permits by any one individual, corporation, partnership or other business entity, and the illegal leasing of such permits by some of these multiple permit holders for exorbitant sums of money. The council further finds that an unintended effect of such local law was the difficulty this one permit limitation created for certain small business owners who held multiple temporary permits and who are exclusive distributors or manufacturers of food such as ice cream sold on a seasonal basis on the streets of the City. These exclusive distributors or manufacturers must rely on their ability to maintain a certain number of pushcarts or vehicles that can legally purvey their food products on the City's streets during a limited season, and such pushcarts or vehicles each need a valid temporary food vendor permit from the City's Department of Health. Without more than one temporary permit, these exclusive distributors or manufacturers cannot maintain the requisite number of pushcarts or vehicles they need during their limited vending season to stay in business and to keep their product available to the City's residents, work force and visiting tourists. The council further finds that through the use of unissued temporary food vendor permits and as currently issued temporary food vendor permits are retired, those exclusive distributors or manufacturers who held multiple temporary food vendor permits before local law 15 for the year 1995 divested them of their additional permits should be allowed to again hold their multiple temporary food vendor permits up to a maximum of a total of sixty temporary food vendor permits. Moreover, multiple temporary food vendor permits should only be issued to persons who were in business as exclusive distributors or manufacturers at the time local law 15 for the year 1995 was enacted and such multiple permits should not be transferable.

§ 2. Section 17-306 of the administrative code of the city of New York is amended by adding two new subdivisions o and p to read as follows:

*o. Exclusive distributor. A person who has a written agreement with a manufacturer of a food product for the sale of that product by a food vendor licensed pursuant to this subchapter from a vehicle or pushcart to the exclusion of any similar food product manufactured by any other manufacturer.*

*p. Manufacturer. A person who processes or fabricates food products from raw materials for commercial purposes.*

§ 3. Subparagraph (c) of paragraph two of subdivision b of section 17-307 of the administrative code of the city of New York, as added by local law number 15 for the year 1995, is amended to read as follows:

(c) On and after January first, nineteen hundred ninety-five, full-term permits shall be issued only to persons who at the time of application for a permit have not had a full-term permit revoked or suspended and who satisfy the commissioner that they are fit and able to conduct, maintain or operate a food vending business. [No] *Except as otherwise provided in item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of this section, no person shall be issued more than one permit, whether full-term or temporary.*

§ 4. Subparagraph (f) of paragraph two of subdivision b of section 17-307 of the administrative code of the city of New York, as added by local law number 15 for the year 1995, is amended to read as follows:

(f) [On] *Except as otherwise provided in item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of this section, on and after January first, nineteen hundred ninety-six, and on every renewal date thereafter, a permit holder may not renew more than one permit, whether full-term or temporary. Such permit shall be renewed provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permit was issued or the permit has not been revoked or suspended and such person has not committed a violation or violations which could be a basis for permit or license suspension or revocation.*

§ 5. Subparagraph a of paragraph three of subdivision f of section 17-307 of the administrative code of the city of New York, as amended by local law number 15 for the year 1995, is amended to read as follows:

3. (a) (i) On and after July thirtieth, nineteen hundred eighty-three, no new temporary permits shall be issued until the number of such permits which are in effect is less than one thousand. Thereafter, the maximum number of such permits which may be in effect shall be one thousand and no permits shall be issued in excess of such maximum number. Notwithstanding the limitations on the issuance of new temporary permits, a temporary permit issued prior to July thirtieth, nineteen hundred eighty-three shall be renewable by the licensee to whom the permit was issued within one year of its expiration date subject to the provisions of [subparagraph (f) of paragraph two of subdivision b of this section] *clause (ii) of this subparagraph* and provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permit was issued or the permit has not been revoked or suspended and the licensee has not commit-

ted a violation or violations which could be a basis for license or permit revocation or suspension.

*(ii)(A) Except as otherwise provided in item (B) of this clause, on and after January first, nineteen hundred ninety-six, and on every renewal date thereafter, a permit holder may not renew more than one permit, whether full-term or temporary. Such permit shall be renewed provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permit was issued or the permit has not been revoked or suspended and such person has not committed a violation or violations which could be a basis for permit or license suspension or revocation.*

*(B) (I) Notwithstanding any other provision of law to the contrary, on and after the effective date of the local law which added this subitem, any person who is an exclusive distributor or a manufacturer of a food product and who on February third, nineteen hundred ninety-five was an exclusive distributor or a manufacturer of such food product who held more than one temporary permit issued pursuant to this subchapter, may be issued the number of additional temporary permits such person held on February third, nineteen hundred ninety-five and, in addition, may continue to hold one full-term permit issued pursuant to this subchapter if such exclusive distributor or manufacturer held one full-term permit issued pursuant to this subchapter on the effective date of the local law which added this subitem. A written agreement evidencing an exclusive distributorship shall be proof satisfactory that an applicant for multiple temporary permits was an exclusive distributor of a food product on February third, nineteen hundred ninety-five and is an exclusive distributor of such food product at the time of such application. Any written agreement evidencing an applicant's status as an exclusive distributor on February third, nineteen hundred ninety-five shall have been in effect on such date.*

*(II) Any person who is eligible for the issuance of additional temporary permits pursuant to subitem (I) of this item shall be issued a maximum of sixty temporary permits.*

*(III) Additional temporary permits shall be issued pursuant to subitem (I) of this item only to persons who are eligible therefor who have not at the time of application for such additional temporary permits had a permit issued pursuant to this subchapter revoked or suspended and who satisfy the commissioner that they are fit and able to conduct, maintain and operate a food vending business. Such permits shall be renewed provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permits were issued or the permits have not been revoked or suspended and such person has not committed a violation or violations which would be a basis for permit or license suspension or revocation.*

*(IV) Nothing contained in subitem (I) of this item shall be construed as authorizing the issuance of full-term or temporary permits in excess of the numbers of such permits that are authorized to be issued pursuant to paragraph two of subdivision b of this section or clause (i) of this subparagraph.*

§ 6. Paragraph three of subdivision f of section 17-307 of the administrative code of the city of New York is amended by adding a new subparagraph e to read as follows:

*(e) Temporary permits and temporary licenses issued pursuant to this subchapter shall be valid only during the period of time beginning on April first and ending on October thirty-first of each calendar year.*

§ 7. Subdivision c of section 17-314 of the administrative code of the city of New York, section 17-314 as amended by local law number 15 for the year 1995, is amended to read as follows:

c. Not use or permit anyone else to use a food vending vehicle or pushcart for vending any foods other than those authorized for sale by the commissioner or board unless prior written approval has been obtained from the commissioner or board; *provided, however, that an exclusive distributor who has been issued more than one temporary permit pursuant to subitem (I) of item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter must primarily vend or permit anyone else using a pushcart or vehicle for which such exclusive distributor has a temporary permit to primarily vend, the food product that was the subject of the exclusive distribution agreement that such exclusive distributor had with a manufacturer on February third, nineteen hundred ninety-five, and, provided further, that a manufacturer who has been issued more than one temporary permit pursuant to subitem (I) of item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter must primarily vend or permit anyone else using a pushcart or vehicle for which such manufacturer has a temporary permit to primarily vend, the product that such manufacturer sold from a pushcart or vehicle on February third, nineteen hundred ninety-five;*

§ 8. Subdivisions c and d of section 17-314.1 of the administrative code of the city of New York, as added by local law number 15 for the year 1995, are amended to read as follows:

c. A transfer in violation of this section shall be deemed to have occurred where, if a corporation is the permittee, there has been a change in fifty percent or more of the ownership interest in such corporation from the ownership interest existing on the date the permit was issued, or where the permittee is a limited liability company, where there has been the addition of any member, and where the permittee is a partnership, where there has been the addition of any partner. *Furthermore, any such transfer in an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter shall result in the automatic revocation of all such additional temporary permits issued to such persons pursuant to such provision.*

d. Notwithstanding the provisions of subdivisions a, b and c of this section[,]:

1. the commissioner may, in his or her discretion, transfer a permit to a dependent husband, wife or child of an incapacitated or deceased person to whom the permit was issued under this subchapter;

2. *an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter may lease a vehicle or pushcart owned by such exclusive distributor or manufacturer with such exclusive distributor's or manufacturer's temporary permit attached thereto to a person licensed as a food vendor pursuant to this subchapter if (a) such exclusive distributor or manufactur-*

*er files with the department the bill of sale or other proof of ownership for such vehicle or pushcart with a duly issued sales tax receipt attached thereto; and (b) such lease agreement sets forth the food product which may be primarily sold using such vehicle or pushcart. Subleasing of any such vehicle or pushcart owned by such exclusive distributor or manufacturer with such exclusive distributor's or manufacturer's temporary permit attached thereto is prohibited. Any violation or violations of the provisions of this paragraph or any rules promulgated hereunder by an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter may be the basis for suspension or revocation of all of the permits issued to such exclusive distributor or manufacturer pursuant to this subchapter.*

§ 9. Paragraph two of subdivision d of section 17-314.1 of the administrative code of the city of New York, as added by section eight of this local law, is amended to read as follows:

2. an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter may lease a vehicle or pushcart owned by such exclusive distributor or manufacturer with such exclusive distributor's or manufacturer's temporary permit attached thereto to a person licensed as a food vendor pursuant to this subchapter if (a) such exclusive distributor or manufacturer files with the department the bill of sale or other proof of ownership for such vehicle or pushcart with a duly issued sales tax receipt attached thereto; [and] (b) such lease agreement sets forth the food product which may be primarily sold using such vehicle or pushcart; *and (c) such lease agreement is approved by the department, provided, however, that if such lease agreement is not approved or disapproved within thirty calendar days after such lease agreement is filed with the department, such lease agreement shall be deemed to be approved by the department. The commissioner shall promulgate rules establishing the standards by which the department shall evaluate such lease agreements and such standards shall include, but not be limited to, requirements that such lease agreements contain fair and reasonable terms based upon such factors as the cost of purchasing and maintaining such pushcart or vehicle and that the terms of such lease agreement are the result of an arm's length negotiation between the parties thereto.* Subleasing of any such vehicle or pushcart owned by such exclusive distributor or manufacturer with such exclusive distributor's or manufacturer's temporary permit attached thereto is strictly prohibited. *Authorized officers and employees of the department of business services and the department of investigation may assist the commissioner and the department in effectuating the provisions of this paragraph.* Any violation or violations of the provisions of this paragraph or any rules promulgated hereunder by an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter may be the basis for suspension or revocation of all of the permits issued to such exclusive distributor or manufacturer pursuant to this subchapter.

§ 10. Section 17-317 of the administrative code of the city of New York is amended by adding a new subdivision f to read as follows:

*f. Any person issued a food vendor license pursuant to this subchapter who commits three or more violations of the provisions of this subchapter and any rules promulgated thereunder within a two year period shall have his or her food vendor license revoked.*

§ 11. Paragraph 3 of subdivision b of section 17-325 of the administrative code of the city of New York is amended to read as follows:

3. For a third violation within a period of two years of the date of a first violation, a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, *in addition to the remedy provided for in subdivision f of section 17-317 of this subchapter.*

§ 12. Subparagraph c of paragraph two of subdivision c of section 17-325 of the administrative code of the city of New York is amended to read as follows:

(c) For the third violation within a period of two years of the date of a first violation, a penalty of not less than one hundred dollars nor more than two hundred and fifty dollars, *in addition to the remedy provided for in subdivision f of section 17-317 of this subchapter.*

§ 13. This local law shall take effect immediately, provided, however, that section nine of this local law shall not take effect until one hundred twenty days after the date of enactment of this local law, and, provided, further, that the commissioner of the department of health may promulgate any necessary rules and take any other actions necessary for the timely implementation of section nine of this local law prior to such effective date. Any person who has been issued more than one temporary permit pursuant to subitem (I) of item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of the administrative code of the city of New York, as added by section five of this local law, who leases a vehicle or pushcart owned by such person with such person's temporary permit attached thereto to a person licensed as a food vendor pursuant to subchapter two of chapter three of title seventeen of such code shall be subject to the provisions of section nine of this local law on or after the effective date of such section.

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 April 16, 1997 and approved by the Mayor on May 5, 1997.

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 27 of 1997, Council Int. No. 939) contains the correct text and:

Received the following vote at the meeting of the New York City Council on April 16, 1997: 45 for, 0 against.

Was approved by the Mayor on May 5, 1997.

Was returned to the City Clerk on May 5, 1997.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel