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|  | **The Council of the City of New York****Finance Division****Preston niblack, Director****jeffrey rodus, first deputy director****Fiscal Impact Statement****Intro. No: 889-A****Committee: Committee on Sanitation and Solid Waste Management** |
| **Title:**  A Local Law to amend the administrative code of the city of New York, in relation to the unlawful removal or acceptance of recyclable material. | **Sponsor(S):** Council Members James, Williams, Dromm, Koo, Koppell, Mendez, Lappin, Gentile, Levin, Gennaro, and Halloran |

**Summary of Legislation**: Proposed Int. No.889- A would amend New York City’s Administrative Code in relation to the unlawful removal or acceptance of recyclable material.

No person would be able to prevent, or otherwise interfere with cleaning of any street, the removal of snow or ice from any street, or the collection or removal of any solid waste or recyclable material from any street, by any employee of the NYC Department of Sanitation (DSNY). Any violation would constitute an offense punishable by a fine of $50 to $250, and/ or by imprisonment of ten days or less. If a person were to violate the law a second time within a 12 month period they would be liable to pay a civil penalty of $250 to $350. A person who violates the law a third time within a 12 month period would be liable to a civil penalty of $350 - $450.

Unlawful Removal or Sale of Material -- Recyclables

*Prohibition of Removal*

This legislation would make it illegal for any person, other than a DSNY employee, to remove and transport by motor vehicle any recyclable material that has been placed within the stoop area, adjacent to the curb line or otherwise adjacent to such building or lot for collection or removal by the DSNY by any persons or entities that currently receive DSNY collection. It would be legal for an owner of a building or a representative of the owner to enter into a legal agreement to have someone pickup materials from their property.

Any violation would constitute an offense punishable by a criminal fine of $500 or imprisonment of up to 48-hours or both, or a civil penalty of $500 for the first offense, $750 for a second offense that occurs on a different day within any 18-month period, and $1,000 for each subsequent offense that occurs on a different day within any 18-month period.

No person would be in violation as long as they had removed three or fewer recyclable items, per day, or if the items removed are loose such as individual magazines that are not bundled together with other mixed paper.

Additionally, any owner of a motor vehicle used in violation of this section of the law would be liable for a civil penalty of $500 for the first offense, $750 for a second offense within any 18-month period, and $1,000 for each subsequent offense within any 18-month period, regardless of whether the same vehicle was used in the subsequent offense. The vehicle could be impounded by DSNY and not be released until all storage fees and the applicable fines and penalties have been paid, or a bond has been posted in an amount approved by the Commissioner. If the owner of the vehicle is convicted or found liable in a criminal or civil proceeding before the NYC Environmental Control Board (ECB) three or more times within 18-months the impounded vehicle would be forfeited after notice was given and a judicial determination made. After 30 days the City could sell the motor vehicle at a public sale.

The motor vehicle owner would not be liable if the owner was able to prove that the motor vehicle was used without the owner's permission.

*Right of First Refusal – Four or More Units*

The owner of any building containing four or more residential units or any building that is occupied by a City agency or institution receiving DSNY collection may not enter in agreement with any person for supplemental collection of recyclable material for purposes of transport or handling unless:

* regular scheduled department collection from such building is insufficient to meet the needs of the building,
* the owner has requested DSNY supplemental collection of recyclable material and was denied, and
* the supplemental pickup would not be the same day as DSNY pickup.

DSNY would be required to respond to requests for supplemental collection within thirty days. Non-responsiveness from the DSNY would equate to a denial of the request. Any violation would constitute a civil penalty of $1,000.

Any agreement for supplemental recyclables collection between the building owner and the entity to do the collection would need to be written, signed and dated by the owner or agent, signed and dated by the representative of the collectors, notarized, and filed with the DSNY Commissioner’s office within five business days of the signing. Other information requirements are outlined in the legislation. Any violation would constitute a civil penalty of $100.

The contracts for supplemental collection are not to exceed two years. Any violation would constitute a civil penalty of $100.

Valid proof of this agreement should be readily available by the person or vehicle dong the supplemental pickup. Any violation would constitute a civil penalty of $100.

Twice a year on or before February 1 and August 1 the people engaged in the supplemental recyclables pickup (building owner and the entity doing the collection) would be required to submit a written report that includes the weight of each type of recyclable material. It would be illegal to include false or misleading information or to fail to submit the report. If this law is violated the person would be liable for a civil penalty of $500.

*Buildings with 1-3 Units*

The owner or agent of any residential building containing one, two or three residential units may enter into an agreement with any person for the collection of recyclable material from such building. All agreements would be written; signed and dated by such owner and by or on behalf of the person responsible for the collection of recyclable material from such building; and would include the address of such building and the names and telephone numbers of the parties involved in the agreement and would be in the possession of the person at the time such recyclable material is removed. No such agreement may provide for the collection of DSNY-marked items.

Unlawful Removal or Sale of Material – DSNY-Marked Items Containing Refrigerants

*Prohibition of Removal*

Except for an authorized employee or agent of the DSNY, it would be unlawful for any person to remove and transport by motor vehicle any refrigerant-containing item or DSNY-marked item that has been placed by any owner, tenant or occupant of any residential building, building occupied by city agencies or institutions, or vacant lot, or by their agent, within the stoop area, adjacent to the curb line or otherwise adjacent to such building or lot for collection, removal, or refrigerant removal by the department.

Any person that violates this law would face a criminal fine of $750 or imprisonment not to exceed 48-hours, or both; or a civil penalty of $750 for the first offense, $1,000 for the second offense that occurs on a different day within an 18-month period and $1,500 for each subsequent offense that occurs on a different day within such 18-month period. Every building or lot from which recyclable material has been removed illegally would constitute a separate violation for which a criminal fine or civil penalty could be imposed.

For any department-marked item removed in violation of this subdivision, a written agreement between the owner of a residential building or an authorized agent of such owner, and the person removing such item would not be a defense in any proceeding before the ECB or other court of appropriate jurisdiction to the improper removal of such item.

Additionally, any owner of a motor vehicle used in violation of this section of the law would be liable for a civil penalty of $500 for the first offense, $750 for a second offense within any 18-month period, and $1,000 for each subsequent offense within any 18-month period, regardless of whether the same vehicle was used in the subsequent offense. The vehicle could be impounded by DSNY and not be released until all storage fees and the applicable fines and penalties have been paid, or a bond has been posted in an amount approved by the Commissioner. If the owner of the vehicle is convicted or found liable in a criminal or civil proceeding before the NYC Environmental Control Board (ECB) three or more times within 18-months the impounded vehicle would be forfeited after notice was given and a judicial determination made. After 30 days the City could sell the motor vehicle at a public sale.

The motor vehicle owner would not be liable if the owner was able to prove that the motor vehicle was used without the owner's permission.

Unlawful Removal or Sale of Material – Commercial Buildings

Except for an authorized employee of a person licensed by or registered with the NYC Business Integrity Commission (BIC) it would be illegal for any person to remove and transport by motor vehicle any amount of recyclable material that has been placed by any owner, tenant or occupant of a commercial building, or by their agent, within the stoop area, adjacent to the curb line or otherwise adjacent to such building for collection or removal by an entity licensed by or registered with BIC. It would be presumed that a person operating a motor vehicle without plates issued by BIC is not an authorized employee of a person licensed by or registered with BIC. The owner of any motor vehicle used in violation of this subdivision would also be liable for any such violation.

Any person that violates this law would face a criminal fine of $1,000 or imprisonment not to exceed 48-hours, or both; or a civil penalty of $1,000 for the first offense and $2,000 dollars for each subsequent offense that occurs on a different day within any 18-month period. Every building or lot from which recyclable material has been illegally removed would constitute a separate violation for which a criminal fine or civil penalty may be imposed.

Additionally, any owner of a motor vehicle used in violation of this section of the law would be liable for a civil penalty of $1,000 for the first offense, and $2,000 for any subsequent offense within any 18-month period and, regardless of whether the same vehicle was used in the subsequent offense. The vehicle could be impounded by DSNY and not be released until all storage fees and the applicable fines and penalties have been paid, or a bond has been posted in an amount approved by the Commissioner. If the owner of the vehicle is convicted or found liable in a criminal or civil proceeding before the NYC Environmental Control Board (ECB) three or more times within 18-months the impounded vehicle would be forfeited after notice was given and a judicial determination made. After 30 days the City could sell the motor vehicle at a public sale.

The motor vehicle owner would not be liable if the owner was able to prove that the motor vehicle was used without the owner's permission.

Rewards

This legislation would establish a rewards program to allow individuals to submit a sworn statement affirming that they observed an unauthorized employee remove and transport by motor vehicle any amount of recyclable material as described above. If the testimony of sworn statement contributes to the imposition of a civil or criminal penalty upon any person for the violation, the DSNY Commissioner would then offer a reward.

Receipt of Recyclable Materials

Notwithstanding any other provision of law, the Commissioners of DSNY and the NYC Department of Consumer Affairs, and the Chairperson of BIC, would be authorized to adopt rules providing for the licensing or registration, supervision and inspection of the operation and activities relating to the purchase and sale, acceptance and storage of recyclable material, including but not limited to scrap metal facilities located within the city of New York.

Any rules adopted would provide that any person who removes refrigerant or contracts with a third party for the removal of refrigerant from refrigerant-containing items must submit proof that refrigerant removal was conducted in accordance with rules and guidelines established by the United States Environmental Protection Agency (EPA).

No person would be able to receive for storage, collection or processing recyclable material generated within the NYC from any person other than an authorized employee or agent of DSNY, an authorized employee of an entity licensed by or registered with BIC, not-for-profit corporation, an owner, tenant or occupant of a building returning his or her own recyclable material generated solely by such owner, tenant or occupant and his or her household members, or a person who has lawfully entered into a written agreement pertaining to recyclable material. There would be a rebuttable presumption that all recyclable material received for storage, collection or processing was generated within the NYC.

Any person who violates this portion of the law would be liable for a criminal fine of $1,000 or imprisonment not to exceed 48-hours, or both; or a civil penalty of $1,000 for the first offense and $2,000 for each subsequent offense within any 18-month period. Each receipt from a separate motor vehicle of recyclable material would constitute a separate violation for which a criminal fine or civil penalty may be imposed.

No person would be able to receive for storage, collection or processing any department-marked item from any person other than an authorized employee or agent of DSNY. A written agreement between the owner of a residential building or an authorized agent of such owner, and anyone delivering a department-marked item to such person would not be a defense in any proceeding before the ECB or other court of appropriate jurisdiction to the improper receipt of such item.

Any person who violates this portion of the law would be liable for a criminal fine of $1,500 or imprisonment not to exceed 48-hours, or both; or a civil penalty of $1,500 for the first offense and $3,000 for each subsequent offense within any 18-month period. Each receipt from a separate motor vehicle of department-marked material would constitute a separate violation for which a criminal fine or civil penalty may be imposed.

No person would be able to receive for storage, collection or processing any refrigerant-containing item that has not had such refrigerant lawfully removed by a person authorized to remove refrigerants, unless the person receiving the refrigerant-containing item either possesses refrigerant recovery equipment certified by the U.S. EPA.

Any person who violates this portion of the law would be liable for a criminal fine of $1,500 or imprisonment not to exceed 48-hours, or both; or a civil penalty of $1,500 for the first offense and $3,000 for each subsequent offense within any 18-month period. Each receipt from a separate motor vehicle of department-marked material would constitute a separate violation for which a criminal fine or civil penalty may be imposed.

**Effective Date:** This local law shall take effect 120 days after enactment, except that certain portions as outlined in the legislation shall take effect immediately.

**Fiscal Year In Which Full Fiscal Impact Anticipated:** Fiscal 2014

**Fiscal Impact Statement:**

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|  | **Effective FY14** | **FY Succeeding****Effective FY15** | **Full Fiscal****Impact FY14** |
| **Revenues**  | **$0** | **$0** | **$0** |
| **Expenditures**  | **$0** | **$0** | **$0** |
| **Net** | **$0** | **$0** | **$0** |

**Impact on Revenues:** No impact on revenues is expected. Full compliance with the law is assumed.

**Impact on Expenditures:** There would be no expenditures generated by the enactment of this legislation as enforcement would continue using existing resources.

**Source of Funds To Cover Estimated Costs:** N/A

**Source of Information:** Mayor’s Office of Legislative Affairs

Department of Sanitation (DSNY)

**Estimate Prepared By:** Kate Seely-Kirk, Senior Legislative Financial Analyst

**Estimated Reviewed By:** Nathan Toth, Deputy Director

Tanisha Edwards, Finance Counsel

**Legislative History:** On June 28, 2012, Intro. 889 was introduced by the Council and referred to the Committee on Sanitation and Solid Waste Management. On June 29, 2012 the Committee held a hearing regarding this legislation, which was then laid over and subsequently amended. The Committee will consider an amended version of the legislation, Proposed Intro. 889-A. on July 23, 2013. Following a successful Committee vote, the Full Council will vote on Proposed Int. 889-A on July 24, 2013.

**Date Submitted To Council:** June 28, 2012