

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2016**

No. 73

Introduced by The Speaker (Council Member Mark-Viverito) and Council Members Gibson, Kallos, Lancman, Rosenthal, Torres, Williams, Levine, Cumbo, Rodriguez, Levin, Richards, Palma, Garodnick, Eugene, Wills and Lander.

A LOCAL LAW

To amend the New York city charter, in relation to OATH procedures for certain quality of life offenses.

Be it enacted by the Council as follows:

Section 1. Section 1049 of chapter 45-A of the New York city charter is amended by adding new subdivisions 4, 5, 6 and 7 to read as follows:

4. Notwithstanding any other provision of law, in the conduct of an adjudication relating to a natural person accused of committing a specified violation, as defined in paragraph (b) of this subdivision, an administrative law judge or a hearing officer shall offer the respondent the option to perform community service in lieu of a monetary civil penalty.

(a) For purposes of this section, the term “community service” means performing services for a public or not-for-profit corporation, association, institution, or agency in lieu of payment of a monetary civil penalty. Such services may include, but are not limited to, attendance at programs, either in person or web-based, designed to benefit, improve, or educate either the community or the respondent.

(b) For purposes of this section, the term “specified violation” means a violation of: subparagraph (i) of paragraph 9 of subdivision a of section 533; section 10-125 of the

administrative code; subdivision 1 of section 16-118 of the administrative code; subdivision 6 of section 16-118 of the administrative code, with respect to the act of public urination; section 18-146 of the administrative code, excluding paragraphs 2, 3, 21, 23, and 24 of subdivision c; or subdivision (a) of section 24-218 of the administrative code. Specified violations shall not include violations arising during the course of conducting any commercial activity or violations arising from any activity carried out for a commercial purpose, except that a violation of paragraph 15 of section 18-146 of the administrative code is a specified violation, regardless of whether such violation arose during the course of conducting a commercial activity or from an activity carried out for a commercial purpose.

(c) The option to perform community service shall not require the payment of any fee by the respondent.

(d) The performance of community service offered pursuant to this subdivision shall not result in the displacement of employed workers or in the impairment of existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout.

(e) An administrative law judge or a hearing officer shall offer up to seven hours of community service in lieu of payment of a civil penalty in an amount up to 300 dollars. Fractional and multiple hours of service shall be offered for civil penalties that are less than, and greater than, 300 dollars, respectively.

(f) If a respondent accepts the option to perform community service and an administrative law judge or hearing officer finds that the respondent has failed to perform such services within the time prescribed, an administrative law judge or hearing officer shall issue an order reinstating the applicable civil penalty and, if otherwise authorized by law, such order shall constitute a

judgment which may be entered and enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions.

(g) The office of administrative trials and hearings shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this subdivision, which shall include, but not be limited to, rules specifying the correspondence between the amount of service that shall be offered and the amount of civil penalties imposed.

5. During the course of an adjudication and upon the request of an agency or any party, or upon the administrative law judge's or hearing officer's own initiative, an administrative law judge or hearing officer may dismiss a notice of violation for a specified violation, as defined by paragraph (b) of subdivision 4 of this section, when dismissal is appropriate in the interest of justice, within the meaning of this subdivision.

(a) An administrative law judge or hearing officer may dismiss a notice of violation in the interest of justice when, even though there may be no basis for dismissal as a matter of law, such dismissal is appropriate as a matter of discretion due to the existence of one or more compelling factors, considerations, or circumstances clearly demonstrating that finding the respondent in violation of the provision at issue would constitute or result in injustice. In determining whether such compelling factor, consideration, or circumstance exists, the administrative law judge or hearing officer must, to the extent applicable, examine and consider, individually and collectively, the following:

(i) the seriousness and circumstances of the violation;

(ii) the extent of harm caused by the violation;

(iii) the evidence supporting or refuting the violation charged, whether admissible or inadmissible at a hearing;

(iv) the history, character, and condition of the respondent;

(v) the purpose and effect of imposing upon the respondent a civil penalty authorized by one of the provisions listed in this section;

(vi) the impact of a dismissal on the safety or welfare of the community;

(vii) the impact of a dismissal upon the confidence of the public in the office of administrative trials and hearings and in the implementation of laws by the city of New York;

(viii) the position of the relevant city agency regarding the proposed dismissal with reference to the specific circumstances of the respondent and the violation charged; and

(ix) any other relevant fact indicating that a decision to sustain the alleged violation would or would not serve a useful purpose.

(b) The administrative law judge or hearing officer's determination shall be limited to a consideration of the factors described in paragraph (a), and shall not include a consideration of the administrative law judge or hearing officer's judgment as to whether, as a matter of policy, certain conduct should be prohibited.

(c) Upon dismissing a violation in the interest of justice, the administrative law judge or hearing officer must set forth the reasons therefor upon the record.

6. No later than 20 days after the quarter ending June 30, 2017, and no later than 20 days after the end of each quarter thereafter, the chief administrative law judge shall submit to the council and the mayor, and post to the office of administrative trial and hearing's website a report regarding adjudications for specified violations, as defined by paragraph (b) of subdivision 4 of this section, during the prior quarter. Such report shall contain the number and percentage of such adjudications, in total and disaggregated by violation, in which:

(a) the respondent appeared, in total and disaggregated by whether such appearance was made in person or by another method;

(b) the respondent accepted the option to perform community service pursuant to subdivision 4 of this section, in total and disaggregated by whether such service was performed;

(c) a pre-adjudication withdrawal was made by the agency;

(d) a decision was rendered after a hearing;

(e) a civil penalty was ordered, disaggregated by numerical ranges of penalty amounts;

(f) the violation was dismissed;

(g) the violation was dismissed in the interest of justice pursuant to subdivision 5 of this section;

(h) the respondent paid the civil penalties imposed, in whole or in part; and

(i) a default judgment was ordered due to the respondent's failure to appear for a hearing.

7. The chief administrative law judge shall conduct a yearly evaluation of penalties and judgments imposed for specified violations, as defined by paragraph (b) of subdivision 4 of this section. Such evaluation shall examine the amount of penalties and judgments accrued by natural persons for such specified violations both in total and during the previous year. A summary of this evaluation shall be provided to the council and the mayor within 45 days of the end of each year. Such summary shall include, but not be limited to, the number of natural persons who have accrued civil penalties and judgments in amounts higher than 500 dollars, 750 dollars, 1000 dollars, and 2000 dollars, both in total and during the previous year, for specified violations. Such summary shall additionally include the chief administrative law judge's recommendation as to whether, based upon the chief administrative law judge's evaluation, a limit should be enacted by local law on the civil penalties and judgments that may be imposed for specified violations upon

a natural person within a particular period of time. This recommendation shall take into account whether the amount of civil penalties or community service imposed for the specified violations on certain natural persons is disproportionate to the harm caused by such specified violations and shall additionally include the chief administrative law judge's recommendations for which specified violations, if any, should be subject to a limit and the dollar amount of such limit, if any.

§ 2. This local law takes effect 1 year after it becomes law, except that subdivision 6 of section 1049 of chapter 45-A of the New York city charter, as added by section one of this local law, takes effect immediately.

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 May 25, 2016 and approved by the Mayor on June 13, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 73 of 2016, Council Int. No. 1059-A of 2016) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel