



FOR IMMEDIATE RELEASE
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STREAMLINING DYSFUNCTION: STATEMENT BY TRANSPORTATION ALTERNATIVES IN OPPOSITION TO NEW YORK CITY COUNCIL INTRO 637

Today City Council will vote to make the injudicious Stipulated Fine Program official city law.

Intro 637, by Council Members Yassky, Weprin and Felder, will cement the Department of Finance's unfair practice of deeply discounting parking violation fines for commercial fleet operators that agree to waive their rights to contest parking tickets.

The Stipulated Fine Program reduces or eliminates fines for parking violations. Parking violations "on sale" under the program include blocking a fire hydrant, parking in a traffic lane, parking on the sidewalk, blocking a crosswalk, parking in a bike lane and double parking.

The Stipulated Fine Program also undermines NYPD enforcement and subverts attempts to fix New York City's already dysfunctional curbside regulations.

"Instead of fixing New York City's broken parking policies, this bill locks them into place," protested Paul Steely White of Transportation Alternatives.

City Council and City Hall should redress the root causes of widespread parking violations, which include New York City's underpriced curbside parking, lack of adequate delivery zones and rampant placard parking abuse. The Council and the Bloomberg Administration must adopt curbside parking policies that help delivery trucks abide by—not skirt—parking law.

To improve parking compliance, Transportation Alternatives encourages City agencies to follow model curbside parking programs in cities such as the District of Columbia, London and San Francisco that reduce parking violations with smart curbside management. These cities use carefully calibrated curbside pricing rates to reduce parking violations and parking "cruising" that comprises as much as 45% of traffic on some NYC streets.

"Parking laws exist for very good reasons," adds White. "Without them, we would have more traffic congestion and all of its attendant pollution. In allowing large companies to evade accountability while ignoring the root causes of the problem, the City Council and City Hall are subverting efforts to green our streets."

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TESTIMONY IN OPPOSITION TO CITY COUNCIL INTRO - 637

Submitted by Devora Cohn, Esq.

Counsel to Parkingticket.com

Formerly Counsel to the Parking Violations Bureau

1. DELIVERY SOLUTIONS PROGRAM

In late 2004 The Finance Department implemented the Delivery Solutions Program in which it slashed some fines and eliminated others for certain commercial trucks that joined the program. Under that program, the violator signed an agreement to pay the stipulated fine when he received summonses and waived the right to contest or appeal. These programs made life much easier for Finance by eliminating the burgeoning caseload of commercial adjudications, cutting back dramatically on hearings, making it possible to reduce personnel and paperwork and computerizing commercial work.

Under Delivery Solutions, summonses for double parking are dismissed with no fine on the theory that a commercial driver could assert a successful defense to such a summons and historically have usually done so. Also, under the Delivery Solutions Program, tickets for no parking except trucks loading and unloading are also dismissed without penalty because these tickets are also frequently defended successfully. However, because the fine schedule for the program shows these fines as zero, no driver has the incentive to make their street stops expeditious. Indeed, they might enjoy stopping for lunch. If they get a ticket, it's dismissed. There are no time limits on program participants illegal parking and the way the program works, a vehicle could park all day and still have the summons thrown out. There are 28 other violations (a total of 30 or 34% of possible violations) for which the fine is zero out of the 89 possible types of parking violations a driver might receive. Many other violations are reduced by 75 percent.

No regulations were promulgated as to the fine schedule to give the public a chance to react to this radical program. Indeed, rules are required by law to be promulgated to enact fines. The Charter requires a rulemaking process to be followed and that rules be promulgated at the conclusion of that process in order to establish a fine structure for parking infractions. The Finance Department played fast and loose with these programs and now comes before this Council with a skeletal intro that merely codifies and legitimizes the unlawful acts of Finance in its implementation of this program. The Finance Department has deliberately cloaked this program in secrecy. It has not only failed to promulgate regulations but has made the stipulated fines inaccessible to the public. On the Finance website, you must have a password to access the fines for the program. Passwords are only given to participants in the program. To say the least, this program has been designed to prevent transparency to the public.

Speaking of transparency, I made a number of Freedom of Information Law requests to the Finance Department. I was denied access to statistics regarding parking violations that would have been useful in my research and my testimony here today.

2. STIPULATED FINE PROGRAMS VIOLATE THE VEHICLE AND TRAFFIC LAW, ART. 2-B

The VTL, Art. 2-B sets forth with great particularity the means by which a parking summons is to be handled. It is required to be adjudicated or pleaded before a judge. There is certainly no authority for a driver to be given an advance excusal from his parking violations under a stipulation waiving and discounting fines. Thus, the City would need to seek an amendment to the VTL to legalize the currently illegal Stipulated Fine Programs. Enactment of this bill would be in clear contravention of state law, just as the Finance program in existence today violates state law.

3. POLICE OFFICERS AND TRAFFIC ENFORCEMENT AGENTS ARE WASTING TIME AND MONEY ISSUING SUMMONSES TO COMMERCIAL VEHICLES.

Throughout the City enforcement employees of the City are issuing summonses to commercial vehicles in the program that will be automatically dismissed. This is truly a disturbing waste of City resources.

4. NO IMPLEMENTING REGULATIONS HAVE BEEN PROMULGATED BY FINANCE IN ESTABLISHING THE STIPULATED FINE PROGRAMS.

Finance has been running these programs for years without promulgating any rules regarding criteria for entrance into the programs or promulgating the fines being used for the various violations as required by law. Now it comes before the Council asking it to codify an illegal program.

5. THE STIPULATED FINE PROGRAMS HAVE AN ENVIRONMENTAL IMPACT AND THE CITY SHOULD BE REQUIRED TO STUDY THAT IMPACT AND MAKE FINDINGS WITH RESPECT TO THE ENVIRONMENTAL CONSEQUENCES OF THE PROGRAMS CONTEMPLATED BY THIS BILL AS REQUIRED BY ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW.

The impact of giving trucks carte blanche to park illegally without time limitation in restricted zones all over the City often leaving their engines running causing other vehicles to circle or to be backed up on side streets must obviously be properly studied for environmental consequences. Now that Congestion Pricing is on hold we must be especially careful not to allow additional sources of congestion and pollution to negatively affect this City.

Vote “No”

Bill 637

April 30th, 2008

FINANCE COMMITTEE MEMBERS

Urgent: A new Bill – Bill No. 637 – creates more congestion and pollution. This bill comes on the heels of congestion pricing and makes no sense for the City because:

- A. It is not “green” friendly as it encourages illegal parking.**
- B. The cost for Double Parking Fines goes away entirely.**
- C. The cost of Obstructing Traffic Lanes is cut in half.**
- D. The cost of illegal parking in a Bicycle Lane is reduced in this program.**
- E. The cost of illegal parking in a Bus Stop is reduced in this program.**
- F. The cost of illegal parking at a Fire Hydrant is reduced in this program.**

“Police Commissioner Raymond Kelly blasted a city policy that allows FedEx, UPS and other delivery companies to defy parking rules without punishment – while average New Yorkers get socked with tickets.” - New York Daily News – March 22, 2006

“Instead of fixing New York City’s broken parking policies, this bill streamlines them. It is wrong to make it city policy to reduce parking fines for large corporations. They should be forced to pay them, or be forced to adjudicate them like everyone else. Even better, the City Council should focus its attention on the root solution, which is to adopt curbside parking policies that encourage delivery trucks to abide by-- not skirt-- parking law.” - Paul Steely White, Executive Director of Transportation Alternatives

“This bill violates State law, Section 235, and hurts all New Yorkers.” - Glen Bolofsky, President of parkingticket.com

This bill gets an “F” – for failing to look at the details as per the attached pages.

For more information contact:

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Parking Perks

Intro No. 637

Summary: This bill is based upon flawed information provided from DOF.

1. During the period of time the Stipulated Fine Program has been in existence the quantity of parking tickets issued for Obstructing Traffic has exploded. This violation creates traffic congestion and pollution. It thwarts the use of bicycles and bicycle lanes. The impact of this program has no doubt created a large, negative impact on traffic conditions as evidenced by the increase of violations for obstructing traffic. The cost of paying this violation (Code # 45) is reduced by half under the Stipulated Fine Program.
2. Under this program, the cost of Double Parking for trucks and commercial vehicles in Brooklyn, Queens, The Bronx, Staten Island and most of Manhattan is reduced to zero. Double parking creates congestion, pollution, blocks bicycle lanes and creates public safety issues. Companies are rewarded, not fined, to illegally Double Park.
3. The cost of illegal parking in a Bicycle Lane is reduced in this program.
4. The cost of illegal parking in a Bus Stop is reduced in this program.
5. The cost of illegal parking at a Fire Hydrant is reduced in this program.
6. Under the Vehicle and Traffic Law, section 235, the City is obligated to establish a tribunal to hear and determine complaints of parking violations. The regulations pertaining thereto are required to "be constituted in substantial conformance... with the provisions of article 2-B." Thus, the DOF Rule authorizing this program is not in conformance with the VTL nor can the City claim that such an illogical scheme is not in conflict with the VTL and the City's Traffic Rules.
7. This legislation violates Article 8, section 1 of the New York State Constitution in that it constitutes a gift of City funds to member companies.
8. The "30 minute parameter" which has been stated to you and your Committee under testimony to be a litmus test for enrollment into the Stipulated Fine Program is untruthful. This statement, promulgated by the DOF to you and your committee is wantonly false. The DOF has in their possession hundreds of thousands of sworn affidavits from member entities showing average delivery times in excess of an hour. The 30 minute rule is simply bogus. Time is needed to identify if there has been false and misleading statements made to you and the Committee by the DOF.
9. This bill is the polar opposite of an environmentally friendly bill. It actually rewards companies who don't park legally by reducing fines for true safety violations.
10. Police Commissioner Kelly testified against this program at Council's DOT committee hearings calling the program "park and slide" – see The New York Post article dated March 22nd, 2006.

Request: Table this vote for 30 days to require the DOF to produce actual numbers regarding the increase in the number of Obstruction of Traffic Lane Violations (Violation Code # 45) since inception of the test program compared to the three year period immediately prior to the test program's inception.

APPENDIX A VEHICLE AND TRAFFIC LAW - ARTICLE 2-B

* § 235. Jurisdiction. 1. Notwithstanding any inconsistent provision of any general, special or local law or administrative code to the contrary, in any city which heretofore or hereafter is authorized to establish an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations, or to adjudicate the liability of owners for violations of subdivision (d) of section eleven hundred eleven of this chapter in accordance with section eleven hundred eleven-a of this chapter, or to adjudicate the liability of owners for violations of toll collection regulations as defined in and in accordance with the provisions of section two thousand nine hundred eighty-five of the public authorities law and sections sixteen-a, sixteen-b and sixteen-c of chapter seven hundred seventy-four of the laws of nineteen hundred fifty, such tribunal and the rules and regulations pertaining thereto shall be constituted in substantial conformance with the following sections.

2. Notwithstanding any inconsistent provision of any general, special or local law or administrative code to the contrary, any city with a population in excess of one hundred thousand persons according to the nineteen hundred eighty United States census hereinafter referred to as a city shall provide notice of parking violations and of the imposition of additional penalties whenever the person who is liable therefor fails to respond to the parking ticket in the manner designated thereon. Such notice shall be in substantial conformance with the following provisions:

a. Notice. (1) Whenever a city issues a notice of violation for a parking violation, it shall be served in the manner prescribed by subdivision two of section two hundred thirty-eight of this article.

(2) Whenever a person has been issued a notice of violation for a parking violation and has not responded in the manner described in the notice, a city shall give the owner a second notice of the violation by regular first class mail: (i) within forty days of issuance of the first notice of violation for a parking violation where the vehicle is a vehicle registered in this state; or (ii) within forty days of the receipt by such city of the name and address of the owner of the vehicle where the vehicle is a vehicle registered in any other state. Such second notice shall include, but not be limited to, the following information:

(A) that the owner has a period of twenty days from issuance of the second notice in which to respond to the notice of violation for a parking violation;

(B) that failure to respond to the notice of violation for a parking violation may result in the suspension and non-renewal of the owner's registration;

(C) that failure to respond to the notice of violation for a parking violation may subject the owner to additional penalties as provided in paragraph b of this subdivision;

(D) that failure to respond to the notice of violation for a parking violation shall subject the owner to a default judgment as provided in paragraph c of this subdivision and the additional penalties imposed upon parking violations pursuant to paragraph b of this subdivision; and

(E) that submission of a plea of guilty to the parking violation makes the owner liable for payment of the stated fine and additional penalties imposed pursuant to paragraph b of this subdivision and the mandatory surcharge of fifteen dollars imposed upon parking violations pursuant to section eighteen hundred nine-a of this chapter.

(1) Upon written application of the chief executive officer of any such city, the commissioner may authorize for a specified time period the use of a notice mailer form that does not contain all the information set forth in this subdivision but which was used by such city on or before the effective date of this section.

(2) In addition, the commissioner may suspend for a period not to exceed one year from the effective date of this section the provisions of this subdivision requiring that a second notice of violation be served within forty days of issuance of the first notice of a parking violation, upon written application of the chief executive officer of any such city demonstrating that immediate imposition of such notice requirement will cause substantial financial hardship to such city, and setting forth the steps to be taken by such city to achieve compliance with the notice requirements of this subdivision at the end of such one hundred eighty day period. Upon granting such application, the commissioner shall specify a period, not to exceed seventy-five days, within which such second notice must be served, and shall adjust accordingly the time periods set forth in paragraph b of this subdivision to provide that the additional penalties set forth in such subdivision will not be imposed prior to the stated number of days from the service of such notice.

b. Additional penalties. (1) For the purposes of this paragraph, each locality shall determine an initial response date of not less than eight days nor more than thirty days, after which time a penalty may be imposed. The liability for such initial penalty shall commence on the date following the initial response date.

(2) Failure to respond to a notice of violation for a parking violation by the initial response date may result in the liability for a penalty in an amount of the fine indicated on the notice of violation for a parking violation; where a city has given a second notice pursuant to paragraph a of this subdivision, the following schedule of additional penalties may apply:

(A) failure to respond to a notice of violation for a parking violation by the initial response date may result in the liability for an additional penalty not to exceed ten dollars or, if the first penalty assessed by a city does not exceed five dollars, such city may assess an additional penalty within thirty-one to seventy-five days not to exceed ten dollars; and

(B) where a city has given a second notice pursuant to paragraph a of this subdivision failure to respond to a notice of violation for a parking violation within seventy-five days may result in the liability, commencing on the seventy-sixth day, for an additional penalty not to exceed twenty dollars.

(3) Where the additional penalty schedule set forth in subparagraph two of this paragraph, as interpreted in 9 New York Code of Rules and Regulations Part 6180, has not been implemented by a city and is not in effect in such city on or before January first, nineteen hundred ninety-three, the provisions of this paragraph shall not apply. For the purposes of this subdivision, the provisions of this paragraph shall not be considered to have been implemented and in effect unless the penalty schedule contained herein shall have been applied to parking violations issued in such city on or before January first, nineteen hundred ninety-three.

b-1. Alternate additional penalty schedule. In any city in which the schedule of penalties contained in subparagraph two of paragraph b of this subdivision, as interpreted in 9 New York Code of Rules and Regulations Part 6180, has not been implemented and is not in effect on

or before January first, nineteen hundred ninety-three, the provisions of this paragraph shall only apply upon enactment of a local law containing the penalty schedule provided in this paragraph within forty-five days of the effective date of this paragraph. Following the enactment of such a local law, such city may elect to impose the additional penalties set forth in subparagraphs one and two of this paragraph for failure to respond to a notice of violation for a parking violation in accordance with this paragraph. In the event that no such local law is enacted within forty-five days of the effective date of this paragraph, the alternate additional penalty schedule set forth in paragraph b-2 of this subdivision shall apply.

(1) Failure to respond to a notice of violation for a parking violation within thirty days shall result in liability, commencing on the thirty-first day, for an additional penalty in an amount not to exceed ten dollars, indicated on the notice of violation for a parking violation: where a city has given a second notice pursuant to paragraph a of this subdivision failure to respond to a notice of violation for a parking violation within forty-five days may result in liability, commencing on the forty-sixth day, for the penalty prescribed above for failure to respond within thirty days and an additional penalty not to exceed twenty dollars; and where a city has given a second notice pursuant to paragraph a of this subdivision failure to respond to a notice of violation for a parking violation within seventy-five days may result in liability, commencing on the seventy-sixth day, for the penalties prescribed above for failure to respond within thirty days and for failure to respond within forty-five days and an additional penalty not to exceed thirty dollars.

(2) Notwithstanding the foregoing schedule of alternative additional penalties, if an owner makes a plea or appears within twenty days after issuance of a second notice of violation in accordance with paragraph a of this subdivision, or prior to such mailing, such additional penalty shall not exceed ten dollars.

b-2. Alternate additional penalty schedule. In any city in which the schedule of penalties contained in paragraph b of this subdivision, as interpreted in 9 New York Code of Rules and Regulations Part 6180, has not been implemented and is not in effect on or before January first, nineteen hundred ninety-three and which has not enacted a local law pursuant to paragraph b-1 of this subdivision within forty-five days of the effective date of this paragraph, the following alternate additional penalty schedule shall apply:

(1) Failure to respond to a notice of violation for a parking violation within eight days may result in the liability, commencing on the ninth day, for an additional penalty in an amount not to exceed five dollars;

(2) Failure to respond to a notice of violation for a parking violation within thirty days may result in the liability, commencing on the thirty-first day, for the penalty prescribed above for failure to respond within eight days and an additional penalty not to exceed ten dollars or, if the first penalty assessed by the city does not exceed five dollars, such city may assess an additional penalty within thirty-one to seventy-five days not to exceed ten dollars;

(3) Where a city has given a second notice pursuant to paragraph a of this subdivision failure to respond to a notice of violation for a parking violation within seventy-five days may result in the liability, commencing on the seventy-sixth day, for the penalties prescribed above for failure to respond within eight days and for failure to respond within thirty days and an additional penalty not to exceed twenty

dollars; and

(4) Notwithstanding the foregoing schedule of alternate penalties, if an owner makes a plea or appears within twenty days after issuance of a second notice of violation in accordance with paragraph a of this subdivision, or prior to such mailing, such additional penalty shall not exceed five dollars.

b-3. Application. Notwithstanding any other provision of law, any rule or regulation previously or heretofore issued prior to the effective date of this paragraph by any state or local agency, division, bureau or other entity, authorizing the imposition of an additional penalty equal to the amount of the initial fine for failure to respond to the first notice of violation within eight days of its issuance shall be of no force and effect in a city to which the provisions of paragraph b-1 or b-2 of this subdivision apply.

c. Default judgment. Where a city has given notice pursuant to paragraph a of this subdivision, failure to respond to a notice of violation for a parking violation within ninety days shall be deemed an admission of liability and shall subject the owner to a default judgment being entered thereon in an amount not greater than the amount of the original fine and accrued penalties plus any applicable surcharges. Such default shall be reported to the department which department shall cause a suspension and non-renewal of the owner's registration pursuant to the provisions of subdivision four-c of section five hundred ten of this chapter.

* NB Effective until September 1, 2007

* § 235. Jurisdiction. Notwithstanding any inconsistent provision of any general, special or local law or administrative code to the contrary, in any city which heretofore or hereafter is authorized to establish an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations, or to adjudicate the liability of owners for violations of subdivision (d) of section eleven hundred eleven of this chapter in accordance with section eleven hundred eleven-a of this chapter, or to adjudicate the liability of owners for violations of toll collection regulations as defined in and in accordance with the provisions of section two thousand nine hundred eighty-five of the public authorities law and sections sixteen-a, sixteen-b and sixteen-c of chapter seven hundred seventy-four of the laws of nineteen hundred fifty, such tribunal and the rules and regulations pertaining thereto shall be constituted in substantial conformance with the following sections.

* NB Effective September 1, 2007 until December 1, 2009 (ch. 166/91 § 372 is deleted)

* § 235. Jurisdiction. Notwithstanding any inconsistent provision of any general, special or local law or administrative code to the contrary, in any city which heretofore or hereafter is authorized to establish an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations, or to adjudicate the liability of owners for violations of toll collection regulations as defined in and in accordance with the provisions of section two thousand nine hundred eighty-five of the public authorities law and sections sixteen-a, sixteen-b and sixteen-c of chapter seven hundred seventy-four of the laws of nineteen hundred fifty, such tribunal and the rules and regulations pertaining thereto shall be constituted in substantial conformance with the following sections.

* NB Effective December 1, 2009 (ch. 746/88 is deleted but amendment by ch. 379/92 § 5 is alive)