



Legislation Text

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Int. No. 1131-A

By Council Members Salamanca, Riley, Farías, Sanchez, Yeger, Krishnan, Dinowitz, Velázquez, Abreu, Feliz, Powers, Ayala, Ossé, Louis, Schulman, Hanks, Holden, Ung, Brewer, Gennaro, Rivera and Vernikov

A Local Law to amend the administrative code of the city of New York, in relation to outreach to unlicensed mobile car wash operators and authorizing seizure for certain mobile car washes, and to repeal certain educational outreach requirements upon expiration thereof

Be it enacted by the Council as follows:

Section 1. The definition of “car wash” set forth in section 20-540 of the administrative code of the city of New York, as added by local law number 62 for the year 2015, is amended to read as follows:

Car wash. The term “car wash” means any individual, partnership, corporation, limited liability company, joint venture, association, or other business entity that engages in the cleaning of vehicles, including washing, detailing, drying, polishing, vacuuming or otherwise providing cosmetic care to vehicles. “Car wash” includes a mobile car wash. “Car wash” shall not include:

1. any business entity that is engaged in selling, leasing, renting or repairing motor vehicles, where car washing is ancillary to the primary business of such entity;

2. any self-service facility for washing vehicles, where the facility’s employees do not provide assistance to customers in the cleaning of vehicles, such as washing, detailing, drying, polishing, vacuuming or otherwise providing cosmetic care to vehicles, including businesses such as convenience stores, gas stations and oil change facilities, where car washing is ancillary to the primary business of the facility;

3. any person that engages in the cleaning of vehicles on an intermittent basis to raise funds for a not-for-profit organization; or

4. any federal, state or local governmental agency.

§ 2. Section 20-540 of the administrative code of the city of New York is amended by adding a new definition of “mobile car wash” in alphabetical order to read as follows:

Mobile car wash. The term “mobile car wash” means any individual or business entity that engages in the cleaning of vehicles, including washing, detailing, drying, polishing, vacuuming, or otherwise providing cosmetic care to vehicles at a place other than a fixed business address.

§ 3. a. Definitions. As used in this section of this local law, the following terms have the following meanings:

Commissioner. The term “commissioner” means the commissioner of the department of consumer and worker protection.

Mobile car wash. The term “mobile car wash” has the same meaning as set forth in section 20-540 of the administrative code of the city of New York.

b. Mobile car wash outreach program. The commissioner shall design and implement a program to inform operators of any mobile car wash of the licensing requirements set forth in subchapter 33 of chapter 2 of title 20 of the administrative code of the city of New York. Pursuant to such program, the commissioner shall produce educational materials related to the requirements for a license, the application process for such license, and the penalties for operating a mobile car wash without such license. Such educational materials shall be available in the designated citywide languages as defined in section 23-1101 of the administrative code of the city of New York. Such program shall involve direct and in person outreach to operators of mobile car washes. The commissioner shall implement such program no later than 120 days after the effective date of this local law, and shall conduct such program for 6 months.

§ 4. Subdivision b of section 20-545 of the administrative code of the city of New York, as added by local law number 62 for the year 2015, is amended to read as follows:

b. 1. Any individual or business entity operating a car wash without a valid license issued by the commissioner shall be liable for a civil penalty [of one hundred dollars per day] recoverable in a proceeding

before the office of administrative trials and hearings pursuant to section 1048 of the charter. Such penalties shall be in the amount of \$100 per day for every calendar day during which the unlicensed car wash operated.

2. Any individual or business entity operating a mobile car wash without a valid license issued by the commissioner shall be liable for a civil penalty recoverable in a proceeding before the office of administrative trials and hearings pursuant to section 1048 of the charter. Such penalties shall be in the amount of \$100 per day for every calendar day during which the unlicensed mobile car wash operated. Any authorized officer or employee of the department of sanitation shall have the power to enforce this paragraph or any rule promulgated pursuant to this paragraph.

§ 5. Section 20-545 of the administrative code of the city of New York is amended by adding new subdivisions d, e, f, and g to read as follows:

d. In addition to any other penalty imposed by any other provision of law or rule promulgated thereunder, whenever any owner or operator of a mobile car wash has engaged in any acts or practices that constitute a violation of subdivision 4 or 6 of section 16-118 or paragraph 1 of subdivision b of section 15-205 and any authorized officer or employee of the department of sanitation has served upon such owner or operator a notice of violation of such subdivision or such paragraph, such officer or employee may remove, tow, or seize any vehicle or equipment used to operate such mobile car wash. Any vehicle or equipment seized pursuant to this subdivision shall be delivered into the custody of the department of sanitation or other appropriate agency.

1. The office of administrative trials and hearings shall hold a hearing to adjudicate the violation of subdivision 4 or 6 of section 16-118 or paragraph 1 of subdivision b of section 15-205 upon the request of such owner or operator within 2 business days after such request, and shall render a determination within 2 business days after the conclusion of the hearing.

2. Where the office of administrative trials and hearings conducts an adjudication as required by paragraph 1 of this subdivision, and finds that such violation has not occurred, the agency having custody of the vehicle or equipment used to operate such mobile car wash shall, upon written demand of the owner of such

vehicle or equipment, promptly release such vehicle or equipment to such owner.

e. Where the office of administrative trials and hearings conducts an adjudication as required by paragraph 1 of subdivision d of this section, and finds that such violation has occurred, the agency having custody of the vehicle or equipment seized shall proceed as follows:

1. if the vehicle or equipment is not subject to forfeiture pursuant to paragraph 1 of subdivision g of this section, the agency shall release such vehicle or equipment to the owner of such vehicle or equipment upon payment of all applicable civil penalties and all reasonable costs of removal and storage; or

2. if the vehicle or equipment are subject to forfeiture pursuant to paragraph 1 of subdivision g of this section, the agency having custody of the vehicle or equipment seized may release such vehicle or equipment to the owner of such mobile car wash upon payment of all civil penalties and all reasonable costs of removal and storage, or may commence a forfeiture action within 10 days after the written demand by such owner for such vehicle or equipment.

f. The department of sanitation shall establish by rule the time within which vehicle or equipment that are not redeemed may be deemed abandoned and the procedures for disposal.

g. 1. In addition to any other penalty or sanction provided for in this section, any vehicle or equipment seized pursuant to subdivision d of this section, and all rights, title, and interest therein shall be subject to forfeiture to the city upon notice and judicial determination thereof if the owner of such vehicle or equipment has been found liable at least 2 times within a 3 year period for having violated subdivision 4 or 6 of section 16-118 or paragraph 1 of subdivision b of section 15-205.

2. A forfeiture action pursuant to this subdivision shall be commenced by the filing of a summons with a notice or a summons and complaint in accordance with the civil practice law and rules. Such summons with notice or a summons and complaint shall be served in accordance with the civil practice law and rules on the individual or business entity that owns such vehicle or equipment used to operate such mobile car wash, and on any person listed on an application or other record of the department of consumer and worker protection as an

owner of such mobile car wash. Vehicle or equipment which are the subject of such action shall remain in the custody of the department of sanitation or other appropriate agency pending the final determination of the forfeiture action.

3. Any person who receives notice of the institution of a forfeiture action who claims an interest in the vehicle or equipment subject to forfeiture may assert a claim in such action for the recovery of the vehicle or equipment or satisfaction of such owner's interest in such vehicle or equipment.

4. Forfeiture pursuant to this subdivision shall be made subject to the interest of a person who claims an interest in such vehicle or equipment pursuant to paragraph 3 of this subdivision, where such person establishes that: (i) such mobile car wash was operated in violation of subdivision 4 or 6 of section 16-118 or paragraph 1 of subdivision b of section 15-205 without the knowledge of such person, or if such person had knowledge of such operation, that such person did not consent to such operation by doing all that could reasonably have been done to prevent such operation; or (ii) that the operation of such mobile car wash in violation of subdivision 4 or 6 of section 16-118 or paragraph 1 of subdivision b of section 15-205 was conducted by any person other than such person claiming an interest in the vehicle or equipment used to operate such mobile car wash, while such vehicle or equipment was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

5. The department of sanitation or other agency having custody of the vehicle or equipment, after judicial determination of forfeiture, shall, by public notice of at least 5 days, sell such forfeited vehicle or equipment at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

6. In any forfeiture action commenced pursuant to this subdivision, where the court awards a sum of money to 1 or more persons in satisfaction of such person's interest in the forfeited vehicle or equipment, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle or equipment after deduction of the lawful expenses incurred by the city, including reasonable costs of removal and storage of the vehicle or equipment between the time of the seizure and the

date of sale.

§ 6. This local law takes effect immediately, except that section three of this local law expires and is deemed repealed 6 months after the first day of implementation of the program established by such section, and sections four and five of this local law take effect on the same day as such expiration and repeal, provided that the commissioner of consumer and worker protection shall notify the legislative bill drafting commission of such first day of implementation in order that the commission may maintain an accurate and timely effective database of the official text of the New York city charter and the administrative code of the city of New York in furtherance of effectuating the provisions of section 70-b of the public officers law and notify relevant publishers of such first day of implementation in furtherance of effectuating the provisions of section 7-111 of the administrative code, provided that failure to provide the notifications described in this section shall not affect the effective date of any section of this local law.

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