



Legislation Text

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Int. No. 889-A

By Council Members James, Williams, Dromm, Koo, Koppell, Mendez, Lappin, Gentile, Levin, Gennaro, Van Bramer, Jackson and Halloran

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.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The Council finds that it is important to the general welfare and economic vitality of the City to have a robust residential and commercial recycling program. Unfortunately, there has been an increase in the theft of recyclable material placed curbside for collection by the Department of Sanitation (DSNY) or private carters by persons utilizing motor vehicles. Additionally, the City does not receive recyclables from certain large residential and institutional buildings. Such activity has a negative economic impact on the City, jeopardizes the stability and integrity of the City's residential and commercial recycling program and makes it more difficult to achieve the City's recycling goals. Furthermore, there has been a dramatic increase in the theft of recyclable material containing refrigerants placed curbside by residents for DSNY removal. Theft of this material likely means that the chlorofluorocarbons (CFCs) and other refrigerants present in this material are not being properly removed pursuant to the Clean Air Act. To address these issues, the Council finds that it is necessary to strengthen the laws against the unlawful removal of recyclable material and bolster DSNY's collection from residential and institutional buildings.

§ 2. Subdivision 7 of section 16-118 of the administrative code of the city of New York is REPEALED and reenacted to read as follows:

7. No person shall prevent, or otherwise interfere with, the sweeping or 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 department.

§ 3. Subdivisions 8 and 9 of section 16-118 of the administrative code of the city of New York, as amended by local law number 50 for the year 2007, are amended to read as follows:

8. [Except for any violation of subparagraph one of paragraph b or paragraph c of subdivision seven of this section by a person using or operating a motor vehicle, or any violation of subparagraph two of paragraph b of subdivision seven of this section, or any violation of paragraph d of subdivision seven of this section, the] The violation of any provision of this section shall constitute an offense punishable by a fine of not less than fifty dollars nor more than two hundred fifty dollars, or by imprisonment not to exceed ten days, or both.

9. [Except for any violation of subparagraph one of paragraph b or paragraph c of subdivision seven of this section by a person using or operating a motor vehicle, or any violation of subparagraph two of paragraph b of subdivision seven of this section, or any violation of paragraph d of subdivision seven of this section, any] Any person violating the provisions of this section shall be liable for a civil penalty of not less than fifty dollars nor more than two hundred fifty dollars, except that for a second violation of subdivision one, three, four, or six of this section within any twelve-month period, such person shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than three hundred fifty dollars and for a third or subsequent violation of subdivision one, three, four or six of this section within any twelve-month period such person shall be liable for a civil penalty of not less than three hundred fifty dollars nor more than four hundred fifty dollars.

§ 4. Title 16 of the administrative code of the city of New York is amended by adding a new chapter 4-C to read as follows:

CHAPTER 4-C: UNLAWFUL REMOVAL AND ACCEPTANCE OF RECYCLABLE MATERIAL

§ 16-460 Definitions.

§ 16-461 Unlawful removal or sale of material.

§ 16-462 Rewards.

§ 16-463 Receipt of recyclable material.

§ 16-464 Enforcement.

§ 16-465 Severability.

§ 16-460 Definitions. As used in this chapter:

“Department-marked item” means any refrigerant-containing item that: (i) has written upon it a department service identification number that has been provided to the property owner by a 311 or department representative, or (ii) has affixed upon it an official decal or sticker indicating that such item is designated for future servicing of refrigerant removal by the department, or (iii) has affixed upon it an official decal or sticker indicating that such item has already been serviced for refrigerant removal by the department.

"Motor vehicle" means any vehicle operated or driven upon a street that is propelled by any power other than human or animal power.

"Motor vehicle operator" means any person who operates, drives or is in actual physical control of a motor vehicle, and shall include any other person in such vehicle who assists the motor vehicle operator by removing any recyclable material placed out for collection by the department or a licensed carter or by loading recyclable material into the motor vehicle, or both, in violation of section 16-461 of this chapter.

"Motor vehicle owner" or “owner of a motor vehicle” means any person, other than a lienholder, having the property in or title to a motor vehicle, including a person entitled to the use and possession of a motor vehicle subject to a security interest by another person, and any lessee or bailee of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.

“Not-for-profit corporation” means a not-for-profit corporation as defined in subparagraph five or subparagraph seven of subdivision a of section one hundred two of the New York state not-for-profit corporation law.

"Person" means any individual, firm, corporation or other legal entity.

"Recyclable material" means material that is discarded by or in excess to its owner at the time of

such discard and (i) is designated as recyclable by the commissioner by rule pursuant to subdivision b of section 16-305 of this title or (ii) has an identifying mark, stamp or embossment indicating such material is the public property of the city or state of New York or the property of any public or private utility company.

“Refrigerant” means any substance consisting in whole or in part of a class I or class II ozone-depleting substance, which is used for heat transfer purposes and provides a cooling effect, including, but not limited to, chlorofluorocarbons, hydro-chlorofluorocarbons, or any other substitute substance as may be defined by the United States environmental protection agency. A class I or class II ozone-depleting substance shall be those substances as defined by the United States environmental protection agency in section 602 of the United States clean air act. A substitute substance shall be any environmental protection agency approved replacement for a class I or II ozone-depleting substance in a refrigeration or air-conditioning end-use.

“Refrigerant-containing item” means any recyclable material that uses a refrigerant that must be removed prior to disposal, including, but not limited to, any air conditioner, refrigerator, water cooler, or freezer.

"Solid waste" means solid waste as defined in section 16-303 of this title.

“Street” means any public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, including marginal streets.

§ 16-461 Unlawful removal or sale of material. a. Recyclable material. 1. Except for an authorized employee or agent of the department, it shall be unlawful for any person to remove and transport by motor vehicle any recyclable material 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 or removal by the department. The owner of any motor vehicle used in violation of this subdivision shall also be liable for any such violation. This paragraph shall not prohibit any person from lawfully entering into a written agreement

with the owner of a building, or his or her agent, pursuant to subdivision a of this section.

2. i. The owner or agent of any building containing four or more residential units or any building that is occupied by a city agency or institution receiving department collection, may not enter into an agreement for the supplemental collection of recyclable material for purposes of transport, handling or management with any person other than the department unless (A) regularly scheduled department collection of recyclable material from such building is insufficient to meet the needs of such building, (B) such owner or agent has requested supplemental collection of recyclable material from the department and the department has denied the request, and (C) such supplemental collection by a person other than the department does not take place on the same day as regularly scheduled department collection of recyclable material for such building, in which case such owner or agent may enter into an agreement for the supplemental collection of recyclable material with a person other than the department. The department shall respond to requests for supplemental collection of recyclable material within thirty days of the receipt of such request. If the department does not respond within such period, the department shall be deemed to have denied the request for supplemental collection. The requirements of this paragraph shall not apply to recyclable material that is not designated recyclable by the department pursuant to subdivision b of section 16-305 of this title. In no event may such agreement for the supplemental collection of recyclable material provide for the removal of department-marked items.

ii. Nothing in this section shall be construed to allow the owner or agent of any building containing four or more units or any building that is occupied by a city agency or institution receiving department collection to enter into an agreement for recycling collection on the same day as regularly scheduled department collection of recyclable material for any such building.

iii. Any agreement lawfully entered into for the supplemental collection of recyclable material pursuant to this paragraph shall be written; signed and dated by the owner or agent and by or on behalf of the person responsible for the supplemental collection of recyclable material; notarized; filed with the commissioner within five business days of being signed; and shall include the address of the building receiving

supplemental collection; the names, telephone numbers and taxpayer identification numbers, including individual or employer taxpayer identification numbers, but not social security numbers, of the person responsible for the collection of such material; the names, titles and telephone numbers of all signatories to such agreement; the terms relating to price and the days and times of collection, if any; the duration of such agreement; the estimated quantity of recyclable material to be collected on a weekly basis; and any other information required by the commissioner by rule.

iv. Any agreement lawfully entered into for the supplemental collection of recyclable material pursuant to this paragraph shall not exceed two years in duration.

v. Valid proof of any agreement lawfully entered into for the supplemental collection of recyclable material pursuant to this paragraph must be in the possession of the motor vehicle operator at the time such recyclable material is collected. Valid proof shall mean a copy of such agreement or a copy of the notarized signatory page of such agreement, together with a letter from the department acknowledging the filing of such agreement with the commissioner. Such proof shall not be required where the person responsible for the supplemental collection of recyclable material is licensed pursuant to subdivision a of section 16-505 of this code.

3. On or before February first and August first of every year, every person engaged in the lawful collection of recyclable material pursuant to a written agreement in accordance with paragraph two of this subdivision shall submit to the commissioner a report identifying the weight of each type of recyclable material collected by such person during the periods of July first to December thirty-first and January first to June thirtieth, respectively. It shall be unlawful for any person to fail to submit a report in accordance with this paragraph or to submit a report containing false or misleading information.

4. i. 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.

ii. Any such agreement shall 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 shall include the address of such building and the names and telephone numbers of the parties to such agreement and shall be in the possession of such person at the time such recyclable material is removed. No such agreement may provide for the collection of department-marked items.

b. Refrigerant-containing and department-marked items. 1. Except for an authorized employee or agent of the department, it shall be unlawful for any person to remove and transport by motor vehicle any refrigerant-containing item or department-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. The owner of any motor vehicle used in violation of this subdivision shall also be liable for any such violation. This paragraph shall not apply to any person who has lawfully entered into a written agreement with the owner of a building, or his or her agent, pursuant to subdivision a of this section for the collection of refrigerant-containing items that are not department-marked items.

2. There shall be a rebuttable presumption that the owner and/or operator of any motor vehicle carrying a department-marked item has violated this subdivision by either (i) unlawfully removing such department-marked item or (ii) directing or permitting an agent or employee or other individual under such person's control to unlawfully remove such department-marked item.

3. 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 shall not be a defense in any proceeding before the environmental control board or other court of appropriate jurisdiction to the improper removal of such item.

c. Commercial buildings. Except for an authorized employee of a person licensed by or registered with the business integrity commission pursuant to subdivision a or b of section 16-505 of this code,

it shall be unlawful 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 the business integrity commission pursuant to subdivision a or b of section 16-505 of this code. It shall be presumed that a person operating a motor vehicle without plates issued by the business integrity commission is not an authorized employee of a person licensed by or registered with the business integrity commission pursuant to subdivision a or b of section 16-505 of this code. The owner of any motor vehicle used in violation of this subdivision shall also be liable for any such violation.

§ 16-462 Rewards. The commissioner shall establish a program to allow individuals to submit a sworn statement affirming the observation of a violation of section 16-461 of this chapter and, where the commissioner deems it appropriate, allow for a reward for any such sworn statement. Where a notice of violation or summons is issued for a violation of section 16-461 of this chapter based upon a sworn statement by one or more individuals and where the commissioner determines, in the exercise of his or her discretion, that such sworn statement, either alone or in conjunction with the testimony of the person submitting such sworn statement at a civil or criminal proceeding or in a proceeding before the environmental control board, contributes to the imposition of a civil or criminal penalty upon any person for a violation of section 16-461 of this chapter, the commissioner shall offer as a reward to such individual or individuals an amount that, in the aggregate, is equal to fifty percent of any civil or criminal penalty collected. No peace officer, employee of the department or of the environmental control board, employee of any company under contract with the department, or employee of any governmental entity that, in conjunction with the department, conducts enforcement activity relating to a violation of section 16-461 of this chapter, shall be entitled to obtain the benefit of any such reward when acting in the discharge of his or her official duties.

§ 16-463 Receipt of recyclable material. a. 1. Notwithstanding any other provision of law, the commissioners of sanitation and consumer affairs, and the chairperson of the business integrity commission,

shall 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. This paragraph shall not apply to a redemption center, dealer or distributor as defined in section 27-1003 of the environmental conservation law.

2. Any rules adopted pursuant to this subdivision shall 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.

b. No person shall receive for storage, collection or processing recyclable material generated within the city of New York from any person other than (i) an authorized employee or agent of the department, (ii) an authorized employee of an entity licensed by or registered with the business integrity commission pursuant to subdivision a or b of section 16-505 of this code, (iii) a not-for-profit corporation, (iv) 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 (v) a person who has lawfully entered into a written agreement pursuant to subdivision a of section 16-461 of this chapter. There shall be a rebuttable presumption that all recyclable material received for storage, collection or processing was generated within the city of New York. This subdivision shall not apply to a redemption center, dealer or distributor as defined in section 27-1003 of the environmental conservation law, or to any person who, using a motor vehicle, collects recyclable containers in bulk and is required to be registered pursuant to local law.

c. No person shall receive for storage, collection or processing any department-marked item from any person other than an authorized employee or agent of the department. 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 shall not be a defense in any proceeding before the environmental control board or

other court of appropriate jurisdiction to the improper receipt of such item.

d. No person shall 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 United States environmental protection agency, or has a valid agreement to remove such refrigerant with a person certified by the United States environmental protection agency to remove refrigerant, or is receiving such item for reuse for its original purpose.

§ 16-464 Enforcement. a. 1. Any person who violates paragraph one of subdivision a of section 16-461 of this chapter shall be liable for (i) a criminal fine of five hundred dollars or imprisonment not to exceed forty-eight hours, or both, or (ii) a civil penalty of five hundred dollars for the first offense, seven hundred fifty dollars for the second offense that occurs on a different day within any eighteen-month period and one thousand dollars for each subsequent offense that occurs on a different day within any eighteen-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this paragraph, every building or lot from which recyclable material has been removed unlawfully shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

2. No person shall be in violation of paragraph one of subdivision a of section 16-461 of this chapter if such person has removed three or fewer recyclable items, in the aggregate, per day or if such removed items are loose, individual magazines or soft-cover books that are not bundled and tied together with other mixed paper. This paragraph shall not apply to any refrigerant-containing item, or any large bulk metal item as defined by the commissioner by rule, or if the department observes the presence of additional recyclable material in the motor vehicle. There shall be a rebuttable presumption that the presence of such additional recyclable material in the motor vehicle indicates that such material was collected in violation of paragraph one of subdivision a of section 16-461 of this chapter.

3. Any person who violates subparagraph i of paragraph two of subdivision a of section 16-461

of this chapter shall be liable for a civil penalty of one thousand dollars.

4. Any person who violates subparagraphs iii, iv or v of paragraph two of subdivision a of section 16-461 of this chapter shall be liable for a civil penalty of one hundred dollars for each such violation.

5. Any person who violates paragraph three of subdivision a of section 16-461 of this chapter shall be liable for a civil penalty of five hundred dollars.

b. Any person who violates subdivision b of section 16-461 of this chapter shall be liable for (i) a criminal fine of seven hundred fifty dollars or imprisonment not to exceed forty-eight hours, or both, or (ii) a civil penalty of seven hundred fifty dollars for the first offense, one thousand dollars for the second offense that occurs on a different day within an eighteen-month period and one thousand five hundred dollars for each subsequent offense that occurs on a different day within such eighteen-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this subdivision, every building or lot from which recyclable material has been removed unlawfully shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

c. Any person who violates subdivision c of section 16-461 of this chapter shall be liable for (i) a criminal fine of one thousand dollars or imprisonment not to exceed forty-eight hours, or both, or (ii) a civil penalty of one thousand dollars for the first offense and two thousand dollars for each subsequent offense that occurs on a different day within any eighteen-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this subdivision, every building or lot from which recyclable material has been removed unlawfully shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

d. 1. Any owner of a motor vehicle used in violation of subdivision a or b of section 16-461 of this chapter shall be liable for a civil penalty of five hundred dollars for the first offense, seven hundred fifty dollars for a second offense within any eighteen-month period and one thousand dollars for each subsequent offense within any eighteen-month period, regardless of whether the same vehicle was used in the subsequent offense. Notwithstanding the foregoing, such motor vehicle owner shall not be liable if such owner establishes

that the motor vehicle was used for purposes of violating the provisions of this chapter without such owner's permission.

2. Any owner of a motor vehicle used in violation of subdivision c of section 16-461 of this chapter shall be liable for a civil penalty of one thousand dollars for the first offense and two thousand dollars for each subsequent offense within any eighteen-month period, regardless of whether the same vehicle was used in the subsequent offense. Notwithstanding the foregoing, such motor vehicle owner shall not be liable if such owner establishes that the motor vehicle was used for purposes of violating the provisions of this chapter without such owner's permission.

3. Any motor vehicle that has been used or is being used to commit a violation of subdivision a, b or c of section 16-461 of this chapter may be impounded by the department and shall not be released until either all storage fees and the applicable fines and penalties have been paid or a bond has been posted in an amount satisfactory to the commissioner. Rules of the department related to the impoundment and release of motor vehicles in chapter five of title sixteen of the rules of the city of New York shall be applicable to the impoundment and release of motor vehicles pursuant to this paragraph. The commissioner shall have the power to promulgate amended rules concerning the impoundment and release of motor vehicles and the payment of storage fees for such motor vehicles, including the amounts and rates thereof. Where it is determined that the motor vehicle was not used to commit a violation of subdivision a, b or c of section 16-461 of this chapter, such fees shall be promptly returned.

4. In addition to any other penalties provided in this subdivision, the interest of a vehicle owner in any motor vehicle impounded pursuant to paragraph three of this subdivision shall be subject to forfeiture upon notice and judicial determination thereof if such vehicle owner has been convicted of or found liable for a violation of this chapter in a criminal or civil proceeding or in a proceeding before the environmental control board three or more times, all of which violations were committed within any eighteen-month period.

5. Except as otherwise provided in this subdivision, the city agency having custody of a motor

vehicle after judicial determination of forfeiture shall no sooner than thirty days after such determination upon a notice of at least five days, sell such forfeited motor vehicle at public sale. Any person, other than a vehicle owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in such motor vehicle, including a part ownership or security interest, shall be entitled to delivery of the motor vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof;

(ii) pays the reasonable expenses of the safekeeping of such motor vehicle between the time of seizure and such redemption; and

(iii) asserts a claim within thirty days after judicial determination of forfeiture. Notwithstanding the foregoing provisions, establishment of a claim shall not entitle such person to delivery of such vehicle if the city establishes that the violation for which the motor vehicle was seized was expressly or impliedly permitted by such person.

e. Any person who violates subdivision b of section 16-463 of this chapter shall be liable for (i) a criminal fine of one thousand dollars or imprisonment not to exceed forty eight hours, or both, or (ii) a civil penalty of one thousand dollars for the first offense and two thousand dollars for each subsequent offense within any eighteen-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this subdivision, each receipt from a separate motor vehicle of recyclable material shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

f. Any person who violates subdivision c of section 16-463 of this chapter shall be liable for (i) a criminal fine of one thousand five hundred dollars or imprisonment not to exceed forty eight hours, or both, or (ii) a civil penalty of one thousand five hundred dollars for the first offense and three thousand dollars for each subsequent offense within an eighteen-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this subdivision, each receipt from a separate motor vehicle of department-marked material

shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

g. Any person who violates subdivision d of section 16-463 of this chapter shall be liable for (i) a criminal fine of one thousand five hundred dollars or imprisonment not to exceed forty eight hours, or both, or (ii) a civil penalty of one thousand five hundred dollars for the first offense and three thousand dollars for each subsequent offense within any eighteen-month period. For the purpose of imposing a criminal fine or civil penalty pursuant to this subdivision, each receipt from a separate motor vehicle of a refrigerant-containing item shall constitute a separate violation for which a criminal fine or civil penalty may be imposed.

h. The provisions of this chapter may be enforced by the department, the police department, the department of consumer affairs and the business integrity commission.

i. Where a notice of violation is issued for a violation of any of the provisions of this chapter, such process shall be returnable to the environmental control board or court of appropriate jurisdiction, which shall have the power to impose the civil penalties provided in this section.

§ 16-465 Severability. If any provision of this local law shall be adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered.

§ 5. Notwithstanding paragraph two of subdivision a of section 16-461 of chapter 4-C of title 16 of the administrative code of the city of New York, as added by section four of this local law, an agreement for the collection of recyclable material entered into prior to June 26, 2013, shall terminate on the date provided therein or shall be deemed to terminate on June 26, 2015, whichever date is earlier, provided, however, that if such agreement terminates prior to June 26, 2015, it may be renewed once for a period ending no later than June 26, 2015.

§ 6. This local law shall take effect one hundred twenty days after enactment, except that paragraph two of subdivision a of section 16-461, subdivision c of section 16-461, paragraph three of

subdivision a of section 16-464, subdivision c of section 16-464, and subdivision h of section 16-464, as added by section four of this local law, and section five of this local law, shall take effect immediately; and provided that the commissioners of sanitation and consumer affairs, and the chairperson of the business integrity commission, may take such actions as are necessary for the implementation of this local law, including promulgation of rules, on and after the date of enactment.

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