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Title: A Local Law to amend the administrative code of the city of New York, in relation to licensing car washes.

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12/12/2013	*	Committee on Civil Service and Labor	Hearing Held by Committee	
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12/31/2013	A	City Council	Filed (End of Session)	

Proposed Int. No. 852-A

By Council Member Mark-Viverito, Brewer, Chin, Dromm, Ferreras, James, Koppell, Koslowitz, Lander, Lappin, Levin, Recchia, Van Bramer, Williams, Barron, Rodriguez, Nelson, Garodnick, Rose, Jackson, Arroyo, Eugene, Crowley, Vann, Palma, Mendez, Koo, Cabrera, King and Gonzalez

A Local Law to amend the administrative code of the city of New York, in relation to licensing car washes.

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 33 to read as follows:

Subchapter 33

CAR WASHES

§ 20-539 **Short Title.** This local law shall be known as the car wash accountability act of 2013.

§ 20-540 Definitions. a. “Car wash” means any individual, partnership, corporation, limited liability company, joint venture, association, or other business entity that engages in cleaning, detailing, drying, polishing, vacuuming, washing, or otherwise providing cosmetic care to vehicles, including waterless or dry wash systems.

1. For purposes of this subchapter, “car wash” does not include:

i. Any business entity that is engaged in selling, leasing, renting or repairing motor vehicles and that conducts car washing and polishing ancillary to its primary business of selling, leasing, renting or repairing vehicles; or
ii. Any charitable, service, sports, veteran, or youth association, club or group that conducts car washing and polishing on an intermittent basis to raise funds for charitable, educational, or religious purposes.

b. “Applicant” means any individual, partnership, corporation, limited liability company, joint venture, association or other business entity that seeks a license to engage in the operation of a car wash.

c. “Licensee” means to any individual, partnership, corporation, limited liability company, joint venture, association or other business entity that is currently licensed by the commissioner to engage in the operation of a car wash.

c. “Sludge” means the residual grit and materials that collect in the filtration system of a car wash.

§ 20-541 License. a. It shall be unlawful for any car wash to operate without a license.

b. All licenses issued pursuant to this subchapter shall be valid for one year unless sooner suspended or revoked.

c. Each applicant applying for a car wash license or renewal thereof shall file an application in such form and detail as the commissioner may prescribe and shall pay a fee of three hundred dollars for each location where a car wash shall be in operation.

d. In addition to any other information as the commissioner may require, an applicant for a car wash license or renewal shall furnish as part of his, her, or its application the following information:

1. The name and home address of the applicant;

2. The name of the business entity and, if applicable, the entity’s fictitious or “doing business as” name;

3. The form of the business entity and, if a corporation, all of the following:

i. The date of incorporation;

ii. The state of incorporation;

iii. If a foreign corporation, the date that an application for authority to do business in New York state was filed and approved by the New York secretary of state; and

iv. Whether the corporation is in good standing with the New York secretary of state.

4. The federal employer identification number and the state employer identification number of the business;

5. The address and telephone number of the principal place of business and, if applicable, the addresses

and telephone numbers of any branch locations;

6. Whether the application is for a new or renewal license and, if the application is for a renewal license,

the prior license number;

7. The names, residential addresses, telephone numbers, photo identifications, and social security

numbers of the following individuals:

i. All corporate officers, if the business entity is a corporation;

ii. All individuals exercising management responsibility in the applicant’s office, regardless of form of business entity; and

iii. All individuals who have a financial interest of ten percent or more in the business, regardless of the form of business entity, and the actual percentage owned by each of those persons.

8. Written proof of compliance with all applicable laws, regulations and rules, including:

i. Verification that the applicant has received all necessary permits from the New York city department of environment protection for groundwater wastewater discharge pursuant to the United States clean water act at 33 U.S.C. § 1251 *et seq.*, and under such regulations at 40 C.F.R. §§ 403.3(v) and 403.8(f)(1)(iii) or any successor laws or regulations, and 15 R.C.N.Y. §§ 19-02(f) and 19-05 or any successor rules, or verification that the applicant is exempt from said permits;

ii. Verification that the applicant is in compliance with any rules promulgated, as directed by section 3 of this law, and as formally included in 15 R.C.N.Y. § 19 or any successor rules, or otherwise required by the commissioner of environmental protection, concerning the discharge of materials and substances into the public sewers; and

iii. Verification that the applicant seeking renewal has informed the commissioner of environmental protection immediately prior to filing an application of the following information through the customary and efficient means of conveying such information, including:

(1). The source where the applicant car wash draws its water, whether from the public water supply or from well water or other;

(2) The amount of water drawn from public sources each month since the applicant last filled an application;

(3) The amount of water discharged into the public sewer system each month since the applicant last filled an application;

(4) The characteristics of the wastewater filtration system per construction drawings, which must attest to the volume of the filtration tank or tanks and to the maximum flow of wastewater that the system can filter and otherwise clarify efficiently; and

(5) The dates on which the car wash removed sludge from its filtration system, as well as the method or methods used to remove and dispose of the sludge, since the applicant last filled an application.

F. A logbook of monitoring and inspection results and repair and maintenance activities with regard to wastewater systems and processes since the applicant last filled an application; and

G. Material Safety Data Sheets (MSDS) or Safety Data Sheets (SDS) that indicate the chemicals used in wash operations since the applicant last filled an application.

iv. Verification that the applicant has received all necessary permits from the New York city department of health and mental hygiene to use non-potable ground water pursuant to 24 R.C.N.Y. § 141.17(b)(2) or any successor rules, or verification that the applicant is exempt from said permits.

9. Written proof of compliance with the surety bond requirement as described in section 20-542 of this subchapter;

10. Signed certification by applicant that there are no outstanding judgments or warrants against the applicant, as defined in section 20-543(a) of this subchapter;

11. Certificates of insurance for workers' compensation, unemployment insurance and disability insurance coverage; and

12. Original or true copies of liability insurance policies or certificates of insurance for liability insurance carried by the applicant.

e. Licensees shall keep a comprehensive log documenting complaints of damage to vehicles. Each such log entry shall include a detailed description of the damage and the manner and amount, if any, that the customer was compensated for the damage. Such records shall be kept for a period of at least three years and must be immediately provided to the department upon request.

f. The commissioner shall refuse to issue a license to an applicant who lacks good character, honesty and integrity. For purposes of determining good character, honesty and integrity, the term "applicant" as used herein

shall be deemed to apply to all agents of an applicant for a license. In making such determination, the commissioner may consider, but is not limited to considering any of the following factors:

1. Failure by such applicant to provide truthful information or documentation in connection with the application;
2. A finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought. Examples of actions that bear a direct relationship to a fitness to conduct business include, but are not limited to any of the following factors:
 - i. Back taxes and related penalties;
 - ii. Violations of federal, state, and city environmental, health, and other applicable regulations;
 - iii. Unpaid back wages and related penalties;
 - iv. Judgments for liability in tort; or
 - v. Judgments for breach of contract.
3. A prior revocation by the commissioner of a car wash license held by the applicant;
4. A finding that the applicant is a successor, as such term is described in section 20-543 (b) of this subchapter, to a previous car wash for which the commissioner, pursuant to the provisions of this subchapter, denied the issuance or renewal of a license or revoked a license; or
5. A finding that the applicant is a successor, as such term is described in section 20-543 (b) of this subchapter, to a previous car wash for which the commissioner, pursuant to the provisions of this subchapter, would have been authorized either to deny the issuance or renewal of a license or to revoke a license.

§ 20-542 Surety bonds. a. Prior to issuance of a car wash license, each applicant shall obtain a surety bond from a duly authorized surety company approved by the commissioner.

b. Such bond shall be payable to the people of the city, and shall be conditioned upon compliance with the provisions of this subchapter, and upon the further condition that the licensee will pay to the city, state, or federal government any fine, penalty or other obligation within thirty days of being ordered to do so. Such bond shall also be conditioned upon satisfaction of any final legal judgment recovered by any individual who had a claim against the licensee, or provided goods and services to the licensee and was damaged or had statutory rights violated thereby, or was employed by the licensee and was damaged by the licensee's failure to pay wages or liquidated damages or interest associated with a claim for unpaid wages..

c. The principal sum of the bond shall be in such amounts as are indicated in the following schedule, depending on the number of persons employed by such applicant:

- i. If the car wash has ten or fewer employees, the principal sum of the bond shall not be less than one hundred and fifty thousand dollars;
- ii. If the car wash has between eleven and twenty employees, the principal sum of the bond shall not be less than two hundred and twenty five thousand dollars; or
- iii. If the car wash has twenty one or more employees, the principal sum of the bond shall not be less than three hundred thousand dollars.

d. The schedule of bond amounts in part (c) of this section shall not apply to any car wash which has signed a bona fide collective bargaining agreement with a labor organization that is the lawful representative of the employees pursuant to the national labor relations act. For any car wash which has signed a bona fide collective bargaining agreement with a labor organization that is the lawful representative of the employees pursuant to the national labor relations act, the principal sum of the bond shall not be less than thirty thousand dollars.

§ 20-543 Payment of judgments. a. No license shall be issued or renewed pursuant to this subchapter, and every license already issued shall be subject to suspension or revocation, upon the failure of applicant or licensee to pay or satisfy any judgment secured against him or her or it, provided that such judgment was secured in a court of competent jurisdiction against the applicant or licensee for acts of commission or omission with regard to the business maintained, operated or conducted by him, her, or it pursuant to the license issued hereunder.

b. This requirement shall be applicable to any applicant or licensee who is a successor to any predecessor car

wash which has failed to pay or satisfy any judgment secured against he, she, or it according to the terms listed in subdivision a of this section. An applicant shall be considered a successor if he, she, or it satisfies two or more of the following criteria:

1. Uses substantially the same facility, facilities or workforce to offer substantially the same services as the predecessor employer;

2. Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor car wash;

3. Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor car wash; or

4. Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor car wash.

§ 20-544 **Enforcement.** a. The commissioner shall enforce this local law pursuant to the commissioner's powers established in chapter one of this title, provided, however, that in the event of a conflict between the provisions of such chapter and the provisions of this subchapter, the provisions of this subchapter shall prevail.

b. Any license issued pursuant to the provisions of this subchapter may be suspended or revoked by the commissioner upon notice and hearing for any of the following causes:

1. Fraud, misrepresentation, or false statements contained in the application for the license;

2. Violation of any of the provisions of chapter one of this title, provided, however, that in the event of a conflict between the provisions of such chapter and the provisions of this subchapter, the provisions of this subchapter shall prevail;

3. Violation of any of the provisions of this subchapter;

4. Fraud, misrepresentation, or false statements made in the course of maintaining, operating, or conducting business pursuant to the license issued under the provisions of this subchapter; or

5. Failure to answer a summons or notice of violation, appear for a hearing, or pay a fine or civil penalty imposed pursuant to the operation of the car wash for which the license was issued.

c. 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 two hundred dollars per day for every calendar day during which the unlicensed car wash operated, up to a maximum of fifteen thousand dollars.

d. Any applicant who knowingly or willingly submits false information to the commissioner as part of an application for license under section 20-541 of this subchapter shall be liable for a civil penalty of five thousand dollars in addition to any other civil or criminal penalties otherwise applicable under the law.

§ 2. This local law shall take effect 180 days after enactment, except that prior to such date, the commissioner may take such actions, including the promulgating of rules and the processing of applications as provided herein in section 20-541, as necessary to implement the provisions of this local law.