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Sponsors: Mark Gjonaj, Ben Kallos, Helen K. Rosenthal

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1/31/2018	*	City Council	Introduced by Council	
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Int. No. 259

By Council Members Gjonaj, Kallos and Rosenthal

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to regulation of the heating oil supply industry by the business integrity commission

Be it enacted by the Council as follows:

Section 1. Subdivision a and the opening paragraph of subdivision b of section 2101 of the New York city charter, as amended by local law number 21 for the year 2002, are amended to read as follows:

a. The business integrity commission shall be responsible for the regulation of the trade waste industry, the shipboard gambling industry, the fulton fish market distribution area and other seafood distribution areas [and], the public wholesale markets, and the heating oil supply industry. In regulating such industries, areas and markets, the commission shall have the powers and duties conferred by this chapter and such other powers and duties as are conferred by law.

b. The powers and duties of the business integrity commission shall be exercised in a manner consistent

with all local laws governing the regulation of the trade waste industry, the shipboard gambling industry, the Fulton fish market distribution area and other seafood distribution areas [and], the public wholesale markets and the heating oil supply industry and shall include but not be limited to the following:

§ 2. Title 20-A of the administrative code of the city of New York is amended by adding a new chapter 2 to read as follows:

CHAPTER 2

HEATING OIL SUPPLY INDUSTRY ADVISORY BOARD

§ 20-9498 Heating oil supply industry advisory board. a. By no later than 30 days after the effective date of this chapter, the chair of the business integrity commission shall establish a heating oil supply industry advisory board, which shall include but need not be limited to representatives of the heating oil supply industry, a heating oil industry trade association, and small businesses within the heating oil industry, and may include employees of such commission and of other relevant city agencies. The minutes of the meetings of the advisory board shall be made available on the website of such commission.

b. Such advisory board shall provide advice and recommendations to such commission on any rules or other measures such commission deems necessary for the implementation of the local law that added this chapter. Such advice and recommendations shall be provided to such commission by no later than 90 days after the effective date of this chapter, and shall be provided thereafter either on such advisory board's initiative or at the request of such commission.

c. Such advisory board shall meet at least twice per calendar year to discuss the general status of fraudulent business practices within the heating oil industry and any common and emerging methods that are being used within such industry to short consumers of heating oil and to generate recommendations with respect to eliminating fraudulent business practices.

d. Within three months of the first meeting of the advisory board, such commission shall submit to the mayor and speaker a report including advice and recommendations from the advisory board and a description of such commission's response to such advice and recommendations

§20-9499 Annual report. a. On or before September 1, 2019 and thereafter on or before September 1 in each fiscal year, such commission shall submit to the mayor and the speaker of the council a report relating to enforcement of this chapter containing the following information:

1. Number of licenses denied, suspended or revoked in the preceding fiscal year;
2. Number of complaints received regarding violations of this chapter in the preceding fiscal year;
3. Number of violations adjudicated in administrative proceedings or in court in the preceding fiscal year;
4. Any other information related to the status of fraudulent business practices within the heating oil industry that the commission deems appropriate;
5. Any advice and recommendations from the advisory board and a description of such commission's response to such advice and recommendations;
6. Any recommendations with respect to eliminating fraudulent business practices; and
7. Any other information the commission deems relevant.

b. The report due on or before September 1, 2021 pursuant to paragraph a of this section shall also include:

1. Data on any increase in the cost of heating oil after the effective date of the local law that added this chapter;
2. The number of businesses in the heating oil supply industry which closed after the effective date of the local law that added this chapter;
3. Recommendations from the advisory board on regulation of the heating oil supply industry;
4. Responses to recommendations from the advisory board on regulation of the heating oil supply

industry; and

5. Recommendations from the commission on regulation of the heating oil supply industry.

§ 3. Title 20-A of the administrative code of the city of New York is amended by adding a new chapter 3 to read as follows:

CHAPTER 3

REGULATION OF THE HEATING OIL SUPPLY INDUSTRY

§ 20-9500 Definitions. As used in this chapter:

Applicant. The term “applicant” means a person or business entity, and all of the principals of such business entity, that has submitted an application for a license or the renewal of a license pursuant to this chapter.

Affiliate. The term “affiliate” means a business entity that is under common ownership with another business entity or that has an interlocking board of directors with another business entity.

Commission. The term “commission” means the business integrity commission established pursuant to chapter 63 of the charter or a person designated by such commission to act on its behalf.

Fraudulent business practice. The term “fraudulent business practice” means, with intent to defraud a consumer, delivering a heating oil product to a consumer that differs from the quality and/or quantity of heating oil that the consumer agreed to purchase. A fraudulent business practice includes, but is not limited to, shorting and the practice of mixing heating oil with additives or other ingredients which cause the oil to not meet the ASTM specifications prescribed for heating oil in § 24-168.1 of the administrative code or other requirements regarding such oil pursuant to such section or other applicable law before delivery to a consumer without the consumer’s knowledge. Nothing in this definition is intended to prevent the lawful blending and sale of used oil with virgin heating oil in accordance with federal, state and local law and rules.

Heating oil. The term “heating oil” means oil refined for the purpose of use as fuel for combustion in a heating system.

Heating oil consumer. The term “heating oil consumer” or “consumer” means a person responsible for providing heat within a building in the city or the agent of such person who has agreed to purchase or has purchased heating oil for use in such building.

Heating oil dealer. The term “heating oil dealer” or “dealer” means a person that advertises for sale, makes available for sale, offers to sell or sells heating oil to consumers.

Heating oil dealer license. The term “heating oil dealer license” or “dealer license” means a license issued by the commission, pursuant to this chapter, to a person engaged in business as a heating oil dealer.

Heating oil deliverer. The term “heating oil deliverer” or “deliverer” means a person who utilizes a vehicle to deliver heating oil to consumers.

Heating oil deliverer license. The term “heating oil deliverer license” or “deliverer license” means a license issued by the commission, pursuant to this chapter, to a person engaged in business as a heating oil deliverer.

Heating oil delivery vehicle. The term “heating oil delivery vehicle” or “delivery vehicle” means a vehicle that is used to deliver heating oil to consumers.

Heating oil delivery vehicle operator. The term “heating oil delivery vehicle operator” or “operator” means a person who operates a delivery vehicle.

Heating oil dispatcher. The term “heating oil dispatcher” or “dispatcher” means a person employed by a heating oil dealer, deliverer or terminal who schedules or directs deliveries of heating oil to consumers and/or communicates with the operators of delivery vehicles and/or consumers with regard to deliveries of heating oil to consumers. Such term includes any person who supervises employees who perform such function.

Heating oil terminal. The term “heating oil terminal” or “terminal” means a business entity that operates a facility where heating oil is received, stored and sold to dealers for re-sale to consumers or sold directly to consumers. A terminal that sells or delivers heating oil directly to consumers shall be subject to regulation pursuant to this chapter as a dealer and/or deliverer, as applicable.

Licensee. The term “licensee” means a person or business entity that holds a license issued by the commission pursuant to this chapter.

Operate. The term “operate,” with respect to a delivery vehicle, means to drive such vehicle or to operate or to assist in the operation of equipment used in the transfer of heating oil between such delivery vehicle and the tank of a consumer. Such equipment includes, but is not limited to, any hose, meter, connection to a consumer tank, air eliminators and fittings on such delivery vehicle.

Owner. The term “owner” with respect to a delivery vehicle or heating oil means a person having the property in or title to such vehicle or heating oil, including, but not limited to, a person entitled to use or possession of such vehicle or heating oil subject to a security interest in another person and also includes any lessee or bailee having exclusive use thereof, except that the term shall not include a person who is only a holder of a security interest in such vehicle or heating oil.

Person. The term “person” means an individual, partnership, corporation, limited liability company or other legal entity.

Predecessor heating oil business. The term “predecessor heating oil business” means any business engaged in the supply, transport or delivery of heating oil to which an applicant or licensee is a successor pursuant to subdivision b of section 20-9504 of this chapter.

Principal. The term “principal” means, of a sole proprietorship, the proprietor; of a corporation, every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation who participates directly or indirectly in a business required to be licensed by the city of New York; of a partnership, all the partners; if another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership, or a corporation, a “principal” shall also include the

partners of such partnership or the officers, directors and stockholders holding ten percent or more of the outstanding shares of such corporation where such stockholders participate directly or indirectly in a business required to be licensed by the city of New York, as is appropriate. For the purposes of this chapter (1) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (i) such individual; (ii) the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled); (iii) the children, grandchildren and parents of such individual; and (iv) a corporation in which any of such individual, the spouse, children, grandchildren or parents of such individual in the aggregate own fifty percent or more in value of the stock of such corporation; (2) a partnership shall be considered to hold stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (3) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation.

Shorting. The term “shorting” means, with intent to defraud a consumer, the practice of delivering heating oil in a quantity that is less than the quantity of heating oil that a consumer has agreed to purchase or has paid for, including, but not limited to, by (i) delivering less heating oil to a consumer than the meter on the delivery vehicle indicates has been delivered and (ii) creating a false delivery ticket, receipt or other record indicating that more heating oil has been delivered to a consumer than the amount that has actually been delivered to such consumer, or that bills a consumer for more heating oil than has actually been delivered to such consumer.

§ 20-9501 General. a. The commission shall regulate businesses supplying heating oil for use within the city in accordance with this chapter and chapter 63 of the charter and rules promulgated by the commission pursuant thereto. The commission may issue orders requiring compliance with any provision of this chapter or rule promulgated pursuant to this chapter.

b. The commission shall promulgate rules to carry out the provisions of this chapter and chapter 63 of the charter and to establish standards for service and for the regulation and conduct of businesses licensed pursuant to this chapter, including, but not limited to, requirements governing the level of service to be provided by licensees, contracts for the transport and delivery of heating oil, that the contents of bills include the amount of oil sold and the price for such oil, the maintenance, filing and inspection of records, the inspection of delivery vehicles, the maintenance of appropriate insurance and compliance with environmental, safety and health measures. The commission may by rule delegate such rulemaking authority, including the authority to promulgate final rules to carry out the provisions of this chapter, to the chair of the commission.

c. In carrying out its powers and duties pursuant to this chapter and chapter 63 of the charter, the commission may exercise the powers delegated to any other city agency under any other provision of law or rule relating to the regulation of the supply of heating oil in the city and shall have the same authority as such agency to administer and enforce such law or rule.

d. The commission may enter into agreements with agencies responsible for compliance with local laws relating to climate change, the reduction of greenhouse gases and energy efficiency to share information submitted to the commission by licensees regarding the delivery of heating oil to consumers.

e. Nothing in this chapter shall be construed to limit, abridge, affect or amend the power of the department of consumer affairs, the department of environmental protection or any other agency.

§ 20-9502 Unlawful practices. a. It shall be unlawful for a person to act as a heating oil deliverer or heating oil dealer without a license issued by the commission pursuant to this chapter. Any terminal that acts as a deliverer or dealer must obtain a dealer and/or deliverer license, as applicable.

b. It shall be unlawful for a dealer to use a deliverer to deliver heating oil to consumers unless such deliverer is licensed by the commission pursuant to this chapter.

c. It shall be unlawful for a deliverer to deliver heating oil to consumers who purchase heating oil from a dealer unless such dealer is licensed by the commission pursuant to this chapter.

d. It shall be unlawful for a person to sell or deliver or offer to sell or deliver or to hold itself out to the public as authorized to sell or deliver heating oil to consumers without the applicable license issued by the commission pursuant to this chapter.

e. It shall be unlawful to operate or use a delivery vehicle unless such vehicle is registered with the commission.

f. It shall be unlawful to alter a delivery vehicle or the equipment of a delivery vehicle to enable the practice of shorting, or to engage in any other fraudulent business practice, as defined in section 20-9500 of this chapter and the rules of the commission.

g. It shall be unlawful to operate a delivery vehicle or the equipment of a delivery vehicle that has been altered to enable the practice of shorting.

§ 20-9503 Term of license and fees. a. The term of a license issued pursuant to this chapter and of renewal of such license shall be set forth in rules promulgated by the commission.

b. The commission shall promulgate rules establishing fees for licenses, the renewal of licenses, registration and inspection of delivery vehicles, and to reimburse the city for the expense of background investigations required by this chapter.

c. A license issued pursuant to this chapter or any rule promulgated hereunder is not transferrable or assignable and may not be used by any person other than the licensee. A license that is used, transferred or assigned in violation of this subdivision shall expire by operation of law as of the date of such unlawful transfer, assignment or use.

d. A person applying for both a heating oil dealer license and a heating oil deliverer license shall only be required to submit one application and one set of fees.

§ 20-9504 License application. a. An applicant for a license shall submit an application in the form and containing the information prescribed by the commission. Such information may include information regarding any predecessor heating oil business to which the applicant is a successor or any affiliate or subsidiary of the

applicant that owns or operates a heating oil business in any jurisdiction. The commission may require that applications and other information and/or documentation required by the commission pursuant to this chapter or the rules promulgated by the commission be submitted electronically.

b. For purposes of this chapter, an applicant shall be considered a successor to a predecessor heating oil business upon a finding by the commission, in its sole discretion, that such applicant satisfies two or more of the following criteria:

1. The applicant uses the same facility, facilities or workforce to offer substantially the same services as the predecessor heating oil business;

2. The applicant shared in the ownership, or otherwise exercised control over the management of the predecessor heating oil business;

3. The applicant employs in a managerial capacity any person who controlled the wages, hours, or working conditions of the affected employees of the predecessor heating oil business; or

4. The applicant is an immediate family member, including a parent, step-parent, child, or step-child, foster or adopted child, of any owner, partner, officer, or director of the predecessor heating oil business, or of any person who had a financial interest in the predecessor heating oil business.

c. Fingerprinting of applicant. 1. An applicant for a license issued pursuant to this chapter shall submit fingerprints of the individuals described in paragraph 4 of this subdivision. Such fingerprinting and any applicable fees must be submitted to the New York state division of criminal justice services in the form and manner prescribed by the New York state division of criminal justice services. Fingerprints of the same individuals shall not be required for license renewal applications.

2. The chair of the commission and persons on the staff of the commission designated by the chair shall be responsible for receiving and reviewing the results of such criminal history record searches supplied by such division.

3. If an applicant has been convicted of a crime, any decision regarding such applicant's fitness for a

license issued pursuant to this chapter shall be made upon consideration of articles 23 and 23-a of the correction law.

4. The applicant shall be required to provide information required by the commission pursuant to subdivision a of this section and to provide fingerprints with respect to the following individuals:

(a) All principals of the applicant;

(b) If the applicant is a regional subsidiary of or otherwise owned, managed by or an affiliate of a business that has national or international operations, the commission may by rule provide for additional disclosures relating to principals of such national or international entity where such entity participates directly or indirectly in a business required to be licensed by the city of New York.

§ 20-9505 Refusal to issue a license. The commission may, by majority vote of its entire membership and after notice and the opportunity to respond to such notice in writing, refuse to issue a license to an applicant who lacks good character, honesty and integrity. Such notice shall specify the reasons for such refusal. In making such determination, the commission may consider, but is not limited to, considering:

a. Failure of such applicant to provide any information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto;

b. Failure of such applicant to provide truthful information to the commission in connection with the application or in relation to any investigation by the commission;

c. (i) A pending indictment or criminal action against such applicant for a crime which directly relates to the fitness to conduct the business or perform the work for which the license is sought; (ii) a pending civil or administrative action to which such applicant is a party and which directly relates to a fraudulent business practice, in which case the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

d. Conviction of such applicant of a crime that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; or

e. A finding of liability in a civil or administrative action which directly relates to a fraudulent business practice;

f. Commission of a racketeering activity, as such term is defined in subdivision one of section 1961 of title 18 of the United States Code or of any offense listed in subdivision one of section 460.10 of the penal law, or the equivalent offense under the laws of any other jurisdiction;

g. Having been a principal in a predecessor heating oil business to which the applicant is a successor where the commission would be authorized to deny a license to such predecessor business pursuant to this section;

h. Failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person or business liable therefore, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction;

i. For any business entity required to register as a distributor with the department of taxation and finance pursuant to article 12-A of the tax law, cancellation of the registration of such business entity by such department in accordance with subdivision four of section 283 of the tax law; and

j. Any final determination of liability in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages; except that the commission shall take into account mitigating factors including: (i) the passage of time since such determination of liability or the underlying illegal act or omission, (ii) the severity of the illegal act or omission underlying such final determination of liability, (iii) whether any such determination of liability or other illegal act or omission has been appealed and whether the appeal is pending, and (iv) any change in circumstance that might reduce the likelihood of the illegal act or omission underlying such determination recurring during the period of licensure.

§ 20-9506 Duty to inform the commission of change in application; investigation of employees. a. An applicant or licensee shall, in accordance with rules promulgated by the commission, provide the commission with notice of the following, no later than 10 business days after the occurrence of such event or events:

1. All changes in the ownership composition of the business;
2. The addition or removal of any principal or any individual listed in paragraph one of subdivision d of section 20-9504 at any time subsequent to the submission of the application or issuance of the license;
3. The arrest or criminal conviction of any principal of the business or any individual listed in paragraph one of subdivision d of section 20-9504; or
4. Any other material change, as that term is defined by the rules of the commission or in the application, in the information submitted on the application for a license.
 - b. 1. Fingerprints of employees and prospective employees described in paragraph 4 of this subdivision shall be submitted to the commission. Such fingerprinting and any applicable fees must be submitted to the New York state division of criminal justice services in the form and manner prescribed by the New York state division of criminal justice services.
 2. The chair of the commission and persons on the staff of the commission designated by the chair shall be responsible for receiving and reviewing the results of such criminal history record searches supplied by such division.
 3. If an employee or prospective employee has been convicted of a crime, any determination by the commission regarding the good character, honesty and integrity of such employee or prospective employee pursuant to this chapter shall be made upon consideration of articles 23 and 23-a of the correction law.
 4. Fingerprints shall be provided for the following employees and prospective employees:
 - (a) All heating oil delivery vehicle operators whose services will be used by the applicant to deliver heating oil to consumers;
 - (b) All heating oil dispatchers whose services will be used by the applicant with respect to deliveries of heating oil to consumers;
 - (c) Any individual who, with respect to the applicant's delivery of heating oil within the city:
 - (1) Engages in bill collection;

(2) Has authority to agree or refuse to agree to provide service to a consumer;

(3) Has authority to resolve consumer complaints;

(4) Performs maintenance on heating oil delivery vehicles;

(5) Maintains books and records; and

(d) Any other individual specified in the rules promulgated by the commission whose relationship to the applicant relates to the applicant's delivery of heating oil within the city.

c. Where, at any time subsequent to an investigation of a person subject to the provisions of this section, the commission has reasonable cause to believe that such employee lacks good character, honesty and integrity, the commission may conduct an additional investigation of such person and may require, if necessary, that such person provide information updating, supplementing or explaining information previously submitted.

d. Where the commission has reasonable cause to believe that an employee or agent of a licensee not otherwise subject to the fingerprinting requirements of this chapter lacks good character, honesty and integrity, the commission shall notify such employee or agent that he or she shall be required to be fingerprinted and submit the information required by the commission.

e. Following a background investigation conducted pursuant to this section, the commission may by majority vote of its entire membership, and after notice and opportunity to respond to such notice in writing, find that a principal, employee or agent of a licensee or of an applicant lacks good character, honesty and integrity. Such notice shall specify the reasons for such a determination. In making such determination, the commission may consider, but is not limited to considering, the factors specified in section 20-9505 of this chapter.

f. A licensee shall not employ or engage as an agent any person with respect to whom the commission has made a final determination, following a background investigation conducted pursuant to this section, that such person lacks good character, honesty and integrity.

§ 20-9507 Independent monitoring required. a. The commission may, in the event that the background

investigation conducted pursuant to this chapter produces adverse or derogatory information, require as a condition of a license that the licensee enter into a contract with an independent monitor approved or selected by the commission. Such contract, the cost of the services of such monitor, and all related costs, shall be paid by the licensee. Such contract shall provide that the monitor investigate the activities, as applicable, of the licensee with respect to the licensee's compliance with the provisions of this chapter, other applicable federal, state and local laws and such other matters as the commission shall determine by rule. The contract shall provide further that the monitor report the findings of such monitoring and investigation to the commission on a periodic basis.

b. The commission shall be authorized to prescribe in any contract required by the commission pursuant to this section such reasonable terms and conditions as the commission deems necessary to effectuate the purposes hereof.

§ 20-9508 Revocation or suspension of license. In addition to the penalties provided in section 20-9510 of this chapter, the commission, after notice and the opportunity for a hearing conducted by the office of administrative trials and hearings, may revoke or suspend a license issued pursuant to this chapter whenever:

a. The licensee or any of its principals, employees or agents has been found to be in violation of this chapter or any rules promulgated pursuant thereto;

b. The licensee or any of its principals, employees or agents has been found by a court or administrative tribunal of competent jurisdiction to have violated:

1. Any law or rule relating to meter tampering; or

2. Any law or rule relating to engaging in a fraudulent business practice;

c. The licensee or any of its principals, employees or agents has repeatedly failed to obey lawful orders of any person authorized to enforce the provisions hereof;

d. The licensee or any of its principals, employees or agents has failed to pay, within the time specified by a court, the office of administrative trials and hearings or an administrative tribunal of competent

jurisdiction, all fines or civil penalties imposed pursuant to this chapter or the rules promulgated pursuant thereto;

e. The licensee or any of its principals, employees or agents has been found to be in persistent or substantial violation of any city, state or federal law, rule or regulation regarding the transport or delivery of heating oil;

f. In relation to an investigation conducted pursuant to this chapter, the commission determines, after consideration of the factors set forth in section 20-9505 of this chapter, that the licensee lacks good character, honesty and integrity;

g. There has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of such license was based;

h. The licensee has failed to notify the commission of any change in the ownership interest of the business or any other material change in the information required on the application for such license, or of the arrest or criminal conviction of such licensee or any of its principals, employees, or agents of which the licensee had knowledge or should have had knowledge;

i. For any business entity required to register as a distributor with the department of taxation and finance pursuant to article 12-A of the tax law, cancellation of the registration of such business entity by such department in accordance with subdivision four of section 283 of the tax law; or

j. There has been a final determination of liability in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages; except that the commission shall take into account mitigating factors including: (i) the passage of time since such determination of liability or the underlying illegal act or omission, (ii) the severity of the illegal act or omission underlying such final determination of liability, (iii) whether any such determination of liability or other illegal act or omission has been appealed and whether the appeal is pending, and (iv) any change in circumstance that might reduce the likelihood of the illegal act or omission underlying such determination recurring during the period of licensure.

§ 20-9509 Emergency suspension of license. Notwithstanding any inconsistent provision of section 20-9508, the commission may, upon a finding that the operation of the business of a licensee or the transport or delivery of heating oil by a business required by this chapter to be licensed creates an imminent danger to life or property, immediately suspend such license without prior notice. The commissioner shall forthwith notify the licensee of such suspension and the reasons for such suspension, that the license is proposed to be revoked, that the licensee has the right to request a hearing within 14 days of the date of such notice and that a hearing will be provided within 5 business days of the date of such request.

§ 20-9510 Penalties. a. Any person who violates any provision of this chapter or any of the rules promulgated pursuant to this chapter or any order issued by the commission pursuant to this chapter shall be liable for a civil penalty of not more than \$10,000 for each violation. Such civil penalty may be recovered in a civil action in any court of competent jurisdiction or in a proceeding before an administrative tribunal within the jurisdiction of the office of administrative trials and hearings.

b. Any person who violates any of the provisions of section 20-9502 of this chapter or any of the rules promulgated pursuant thereto shall upon conviction thereof be punished by a criminal fine of not more than \$10,000 for each violation, and/or in the case of a continuing violation \$10,000 for each day of such violation or by imprisonment not exceeding six months or both such criminal fine and imprisonment. In addition to or as an alternative to such criminal fine and imprisonment, such person shall be liable for a civil penalty of not more than \$10,000 for each violation, and/or in the case of a continuing violation \$10,000 for each day of such violation, which may be recovered in a civil action in any court of competent jurisdiction or in a proceeding before an administrative tribunal within the jurisdiction of the office of administrative trials and hearings.

§ 20-9511 Impoundment and forfeiture. a. Where there is reasonable cause to believe that any delivery vehicle has been used or is being used in violation of section 20-9502, such vehicle shall be impounded by the commission. In addition to any other penalties provided in this chapter, the interest of an owner in such delivery vehicle or any heating oil contained in such vehicle shall be subject to forfeiture upon notice and

judicial determination of forfeiture.

b. 1. Except as hereinafter provided, the city agency having custody of a delivery vehicle, after judicial determination of forfeiture, shall no sooner than 30 days after such determination upon notice of at least 5 days, sell such forfeited vehicle and/or heating oil at public sale. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in a vehicle or heating oil, including a part ownership or security interest, shall be entitled to delivery of the vehicle or heating oil if such person:

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

(b) Pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(c) Asserts a claim within 30 days after judicial determination of forfeiture.

2. Notwithstanding the foregoing provisions, establishment of a claim shall not entitle such person to delivery of the vehicle or heating oil if the city establishes that the unlawful use for which the vehicle was impounded was expressly or impliedly permitted by such person.

c. The commission shall promulgate rules concerning the impoundment, forfeiture and release of delivery vehicles and the payment of removal charges and storage fees for such vehicles, including the amounts and rates thereof, the procedure for disposal of unclaimed vehicles, and procedures for innocent owners to file claims. Such rules shall provide for notice to the registered owner of the vehicle and the opportunity for a hearing before the office of administrative trials and hearings to determine whether there was reasonable cause to believe that such vehicle should be subject to forfeiture. A hearing shall be provided within three business days of such request. Within four business days of the conclusion of such hearing, the hearing officer shall submit recommended findings of fact and a recommended decision to the commission, which shall make the final findings of fact and the final determination within four business days of such recommendation. If the commission determines that there is not reasonable cause to believe that such vehicle should be subject to

forfeiture, the commission shall release such vehicle and no charges or fees shall be imposed as a condition of such release. If the commission determines that there is reasonable cause to believe that such vehicle should be subject to forfeiture, the commission may retain such vehicle pending forfeiture pursuant to the provisions of this section.

§ 20-9512 Liability for violations by employees or agents. a. A business required by this chapter to be licensed shall establish and implement procedures for the prevention and detection of fraudulent business practices by employees and agents. Such procedures must be made available to the commission upon request.

b. A business required by this chapter to be licensed shall be liable for violations of any of the provisions of this chapter or any rules promulgated pursuant hereto committed by any of its employees or agents.

c. 1. Notwithstanding any other provision of this section, in any proceeding in which a business may be considered liable for acts conducted by an employee or agent, such business may assert an affirmative defense that it has implemented the procedures required pursuant to subdivision a of this section to the satisfaction of the commission and there are no further actions the business could have taken to prevent or mitigate the conduct of such employee or agent.

2. Such affirmative defense shall not be available where:

(a) The business had knowledge of the conduct of the employee or agent and acquiesced in such conduct or failed to take immediate and appropriate corrective action. For purposes of this section, a business shall be deemed to have knowledge of an employee's or agent's conduct where that conduct was known by any employee or agent who exercised managerial or supervisory responsibility;

(b) The employee or agent who committed the violation exercised managerial or supervisory responsibility at the time the violation occurred; or

(c) There is a record of prior incidents of fraudulent business practices by such employee or agent or other employees or agents of the business.

§ 20-9513 Enforcement. a. In addition to police officers and employees and agents of the commission, notices of violation and appearance tickets for violation of any provision of this chapter or any rule promulgated hereunder may be issued by authorized employees and agents of other agencies of the city designated by the commission.

b. With respect to any notice of violation or order of the commission alleging the unlicensed operation of a business regulated by this chapter, the operator of a delivery vehicle engaged in delivering or transporting heating oil in violation of this chapter shall be deemed to be the agent of the business entity employing such operator or on whose behalf such operator is acting and service of such notice of violation or order on such operator shall be deemed to be lawful service upon such business entity.

§ 20-9514 Hearings. Except as otherwise specified, the commission may provide by rule that hearings or specified categories of hearings pursuant to this chapter may be conducted by the office of administrative trials and hearings and may provide that such office shall make the final decision or determination with respect to the matter.

§ 20-9515 Conduct. a. 1. All licensed dealers and deliverers shall maintain financial statements, records, ledgers, receipts, bills and such other written or electronic records as the commission determines are necessary for carrying out the purposes of this chapter. Such written or electronic records may include, but are not limited to:

(a) Compilation reports on financial statements;

(b) Reviewed financial statements; and

(c) Audited financial statements; provided that licensees shall not be required to perform an audit of any financial statements.

2. Such records shall be maintained for a period of time established in rules promulgated by the commission not to exceed five years, except that the commission may promulgate rules providing that the commission may, in specific instances at its discretion, require that records be retained for a period of time

exceeding five years.

3. Such records shall be made available for inspection and audit by the commission, in accordance with applicable law, at either the licensee's place of business or at the offices of the commission.

b. A licensee shall be in compliance at all times with all applicable federal, state, and local laws, ordinances, rules and regulations and orders of the commission pertaining to the transport and delivery of heating oil.

c. A licensee or applicant shall comply with any rule or order by the commission requiring the inspection of a delivery vehicle.

d. A licensed dealer or deliverer shall bill consumers for the delivery of heating oil and ensure that the contents of such bill include the amount of oil sold and the price for such oil in compliance with rules prescribed by the commission.

§ 20-9516 Investigation of complaints. The commission shall by rule establish a procedure for the investigation and resolution of complaints regarding fraudulent business practices.

§ 20-9517 Protection of criminal history. Nothing in this chapter shall be construed to supersede, alter or amend subdivision 9 of section 8-107 of the administrative code.

§ 4. This local law takes effect 210 days after it becomes law, except that (i) the commission may adopt rules and take other measures as it deems necessary for the implementation of this local law prior to such effective date, including, but not limited to, rules providing for the continued operation of an existing business that would otherwise be required to have a license on such effective date, where an application for such license is submitted to the commission by a date and in accordance with such conditions as are specified in such rules and (ii) section 2 of this local law takes effect immediately.

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