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Title: A Local Law to amend the administrative code of the city of New York, in relation to requiring inspections of food service establishments.

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Int. No. 44

By Council Members Sears, Avella, Baez, Gennaro, Monserrate, Nelson, Reed and Reyna; also Council Members Martinez and Recchia Jr.

A Local Law to amend the administrative code of the city of New York, in relation to requiring inspections of food service establishments.

Be it enacted by the Council as follows:

Section 1. Title 17 of the administrative code of the city of New York is hereby amended by adding a new section 17-183 to read as follows:

§17-183 Restaurant inspections. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Food service establishment" shall mean any restaurant, coffee shop, cafeteria, luncheonette, sandwich stand, diner, short order café, fast food restaurant, soda fountain, salad bar, full service deli and any other commercial eating or beverage establishment which serves food, including such an establishment located in a hotel or motel, any public or private dining facility owned or operated on behalf of an educational,

charitable or religious institution or organization, or anyplace where food is prepared on the premises for individual portion service directly to the consumer, whether such food is provided free of charge or sold and whether such consumption occurs on or off the premises. This definition shall not include any pushcart, vehicle or stand subject to the provisions of chapter three of title seventeen of this code, nor any retail food store subject to the licensing provisions of article 20-c of the New York state agriculture and markets law, and shall also exclude any facility serving food at an event for which a street activity permit is required.

2. “Public health hazard” shall mean any violation, condition, or combination of violations or conditions making it probable that food served to the public by a food service establishment or the continued operation of a food service establishment will be injurious or dangerous to the health of any person consuming the establishment’s food.

b. Permit. (1) No person shall operate a food service establishment without a permit therefor issued by the department. An application for such a permit shall be in such form and manner as determined by the department, and shall be submitted to the department not less than twenty-one days prior to the date on which the establishment intends to commence operation, accompanied by such application fee as shall be required by the department. The department shall make an inspection of the establishment during the twenty-one day period prior to the scheduled date of the commencement of operations. If the department is unable, for good cause, to inspect the food service establishment during the required twenty-one day period, the department shall extend this inspection period an additional thirty days. If such extension is deemed necessary by the department, the department shall issue to the food service establishment a thirty-day temporary permit to enable it to commence operation during such additional thirty-day inspection period. The temporary permit must be conspicuously displayed on the premises of the food service establishment in accordance with rules established by the department .

(2) A permit for a food service establishment shall be issued upon determination of the department that the establishment (i) is maintained and operated in compliance with the applicable provisions of this section,

the rules promulgated hereunder, and the applicable provisions of the New York city health code, and (ii) does not present a danger to the health or safety of the consumer or the public.

(3) A permit for a food service establishment is not transferable.

(4) The owner, manager, operator, lessor, lessee or other person controlling the use of a food service establishment shall permit the commissioner or his or her duly authorized agents or employees to have access to any and all parts of such establishment including, but not limited to, locations where food is stored, prepared or served, for the purpose of determining compliance with the applicable provisions of this section, the rules promulgated hereunder and the applicable provisions of the New York city health code.

c. Inspections. (1) The department shall inspect every food service establishment in the city no less than once every six months in order to ensure compliance with the applicable provisions of this section, the rules promulgated hereunder and the applicable provisions of the New York city health code. When a violation deemed to be a public health hazard has been found during an inspection, the inspector shall require immediate correction of such violation, and issue the owner, manager, operator, lessor, lessee or other person controlling the use of the food service establishment a notice of such violation in accordance with the provisions of New York city health code and other applicable statutes, laws, rules and regulations. The inspector shall also issue a notice of violation with respect to any other violations of this section, the rules promulgated hereunder and applicable provisions of the New York city health code which are found during the inspection.

(2) The department may conduct subsequent surprise inspections as deemed necessary following the issuance of a violation deemed to be a public health hazard or any other violation in order to determine whether or not such violation has recurred or been corrected, whichever is applicable. The department shall issue additional notices of violation if a violation has recurred or remains uncorrected, or other violations are found. If a violation deemed to be a public health hazard requiring immediate correction during an inspection is found again at each of two subsequent surprise inspections, the department shall order such food service establishment to be closed in accordance with rules promulgated pursuant to subdivision f of this section.

(3) Nothing in this section shall prohibit the commissioner from immediately closing any food service establishment if, in his or her discretion, immediate closure is necessary to protect the public health.

d. Sign postings. (1) A sign, 8½ inches by 11 inches in size, designed and manufactured by the department, bearing the capital letters “PASSED INSPECTION” in bold black type at least two inches high and bearing, on the bottom of the sign, an identifying department logo, the date of the most recent department inspection, and the authorized signature of the inspector who conducted the inspection, shall be issued by the department to a food service establishment under the following circumstances:

(a) upon issuance of a permit pursuant to paragraph 2 of subdivision b of this section;

(b) upon completion of the first inspection of a food service establishment that takes place after the effective date of the local law that added this section, provided that the food service establishment has corrected all violations issued and paid all fines relating to such violations;

(c) upon satisfaction of the department that all violations that have resulted in the removal of a “PASSED INSPECTION” sign pursuant to paragraph 3 of subdivision d of this section have been corrected and all fines relating to such violations have been paid; and

(d) pursuant to rules established by the department, upon the re-opening of a food service establishment previously closed by the department.

(2) Every food service establishment that is issued a “PASSED INSPECTION” sign by the department shall post such sign on the outside of the door that serves as the main entrance to the establishment, so that the sign is visible to the public from outside of the establishment; provided, however, that where a food service establishment is located in a lobby or atrium of a building or within a hotel, and no door serves as such establishment’s main entrance, such establishment shall place such “PASSED INSPECTION” sign on a signpost located within the sight of patrons entering through its designated main entrance or, in the alternative, shall post such sign conspicuously on the podium, stand, counter or table where patrons inquire about seating availability.

(3) A posted “PASSED INSPECTION” sign shall only be removed from a food service establishment by an inspector, inspection supervisor or by order of the commissioner according to rules established by the department. No food service establishment may post a “PASSED INSPECTION” sign or other sign conveying a similar message when the establishment’s “PASSED INSPECTION” sign has been so removed; provided, however, that such sign may be re-posted by a food service establishment when re-issued to the establishment by the department upon determination of the department that all violations resulting in the sign’s removal have been corrected and all fines relating to such violations have been paid.

e. Publication. No less than once every month, the department shall provide for publication to at least one newspaper of daily circulation, other than the City Record, in such form and manner as determined by the department:

(1) a list of restaurants which had their “PASSED INSPECTION” signs removed by the department, accompanied by the violations which resulted in such removal;

(2) a list of restaurants that are closed by the department, accompanied by the violations which resulted in such closure;

(3) a list of restaurants that were reopened subsequent to closure by the department; and

(4) a list of existing restaurants that have not issued a “PASSED INSPECTION” sign at their first inspection, following the enactment of this section into law, accompanied by the violations which resulted in a “PASSED INSPECTION” sign not being issued.

f. Rules. (1) The commissioner shall promulgate rules in accordance with the provisions contained in this section, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this section. Such rules shall include, but not be limited to, a list of possible violations of this section and relevant New York city health code provisions, and other applicable statutes, laws, rule or regulations. The list shall be classified as to the severity of the violation, and shall indicate which violations are deemed to be public health hazards and which violations and/or combination of violations shall result in the surrender of a “PASSED INSPECTION” sign by a food service establishment to the department or closure by the department of a food service establishment. The rules shall also include, but not be limited to, the procedures the department shall follow when removing a “PASSED INSPECTION” sign from a food service establishment and when ordering that a food service establishment be closed; the circumstances under which a “PASSED INSPECTION” sign will be removed from a food service establishment; the circumstances under which a food service establishment must be closed; the requirements that a food service establishment must meet in order to be

re-issued a “PASSED INSPECTION” sign that has been removed by the department; and the requirements that a closed food service establishment must meet before the department shall permit it to re-open and re-issue its “PASSED INSPECTION” sign.

g. Penalties. Any person found to be in violation of this section shall be liable for a civil penalty of not less than five hundred dollars nor more than one thousand dollars for the first violation, and not less than one thousand dollars nor more than three thousand dollars for the second violation and any subsequent violations of this section occurring within any twelve month period. The commissioner shall order food service establishments to be closed only in accordance with the applicable provisions of this section, the rules promulgated hereunder, and the applicable provisions of the New York city health code.

(2) A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health or to any body succeeding such administrative tribunal. Such tribunal or its successor shall have the power to impose the civil penalties prescribed by this section.

(3) The penalties provided by this section shall be in addition to any other penalty imposed by any other provision of law, code, rule or regulation.

§2. This local law shall take effect sixty days after its enactment, provided, however, that the commissioner of the department shall take such actions, including the promulgation of rules, as are necessary for the timely implementation of this local law.