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Sponsors:	Alan J. Gerson, Bill De Blasio, Betsy Gotbaum, Tony Avella, Simcha Felder, Lewis A. Fidler, G. Oliver Koppell, Miguel Martinez, Michael C. Nelson, Philip Reed, Larry B. Seabrook, Kendall Stewart, Christine C. Quinn, Eva S. Moskowitz, Gale A. Brewer, Vincent J. Gentile, Letitia James, Peter F. Vallone, Jr.		
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Int. No. 54

By Council Members Gerson, DeBlasio, the Public Advocate (Ms. Gotbaum), Avella, Felder, Fidler, Koppell, Martinez, Nelson, Reed, Seabrook, Stewart, Quinn, Moskowitz, Brewer, Gentile, James and Vallone

A Local Law to amend the administrative code of the city of New York, in relation to violations of the noise code that pertain to the operation of motorcycles.

Be it enacted by the Council as follows:

Section 1. Section 24-203 of the administrative code of the city of New York is amended by adding thereto a new subdivision (fff) to read as follows:

(fff) Motorcycle means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

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§2. Section 24-218 of the administrative code of the city of New York is amended to read as follows:

§ 24-218 General Prohibitions. No person shall make, continue or cause or permit to be made or continued any unreasonable noise, except that this section shall not apply to any sound from any source, other than motorcycles, where the decibel level of such sound is within the limits prescribed by another section of this title and where there is compliance with all other applicable requirements of law with respect to such sound.

§3. Subchapter 4 of chapter 2 of title 24 of the administrative code of the city of New York is amended by adding thereto a new section 24-227.3 to read as follows:

§ 24-227.3 Motorcycles. (a) No person shall operate a motorcycle in such a way as to create an unreasonable noise.

(b) A person who violates this section, upon conviction thereof, shall be guilty of a misdemeanor, and shall be punished pursuant to subdivision g of section 24-269 of this chapter.

(c) Where a summons or notice of violation is issued for a violation of this section, a designated employee of the department or a police officer may seize and impound the motorcycle in accordance with the requirements of subdivision g of section 24-257 of this chapter.

§4. Section 24-232 of the administrative code of the city of New York is amended by adding thereto new subdivisions c and d to read as follows:

(c) A person who violates this section with respect to the operation of a motorcycle, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished pursuant to subdivision g of section 24-269 of this chapter.

(d) Where a summons or notice of violation for the operation of a motorcycle is issued for a violation of this section, a designated employee of the department or a police officer may seize and impound the motorcycle

in accordance with the requirements of subdivision g of section 24-257 of this chapter.

§5. Paragraph 5 of subdivision b of section 24-257 of the administrative code of the city of New York is amended by inserting the following line in Table V, immediately following the line regarding civil penalties for a violation of section 24-227.2 of this chapter:

24-227.3	525	130	1,050	260	1,575	390

§6. Section 24-257 of the administrative code of the city of New York is amended by adding thereto a new subdivision g to read as follows:

(g) (1) Any motorcycle seized pursuant to section 24-227.3 or section 24-232 of this chapter shall be delivered into the custody of the department. Where a notice of violation has been served, a hearing to adjudicate the violation underlying the seizure shall be held before the board within five business days after the seizure and such board shall render a decision within five business days after the conclusion of the hearing. Where a criminal summons has been served, a hearing to adjudicate the violation underlying the seizure shall be held before a court of competent jurisdiction. In the event that such court or the board determines that there has been no violation, the motorcycle shall be released forthwith to the owner or any person authorized by the owner to take possession of such motorcycle.

(2) Except as otherwise provided in paragraph (1) of this subdivision or where notice has been given that forfeiture will be sought pursuant to subparagraph (i) of paragraph (6) of this subdivision, a motorcycle seized pursuant to section 24-227.3 or section 24-232 of this chapter shall be released upon payment of a fine or civil penalty imposed for the violation underlying the seizure and the cost of removal and storage as set forth in the rules of the department. Where an action or a proceeding relating to the violation underlying the seizure is pending in a court of competent jurisdiction or an administrative proceeding before the board, the motorcycle shall be released upon the posting of a bond or other form of security sufficient to cover the maximum fine or civil penalty which may be imposed for such violation and the costs of removal and storage.

(3) Upon the seizure of a motorcycle pursuant to section 24-227.3 or section 24-232 of this chapter, the operator shall be given written notice of the procedure for redemption of the motorcycle and the procedures regarding a post-seizure hearing. Where the motorcycle is registered pursuant to the vehicle and traffic law, such notice shall also be mailed to the registered owner of the motorcycle at the address set forth in the records maintained by the department of motor vehicles. For motorcycles registered in a state other than New York state, such notice shall also be mailed to the registered owner of the motorcycle at the address set forth in the records maintained by the state of registration. Where the operator is less than eighteen years old, such notice shall also be either personally served upon the operator's parent or guardian or mailed to the operator's parent or guardian if the name and address of such person is reasonably ascertainable.

(4) Where a court of competent jurisdiction or the board makes a finding that there has been no violation of section 24-227.3 or section 24-232 of this chapter, the motorcycle shall be released forthwith to the owner or any person authorized by the owner to take possession of such motorcycle.

(5) Any motorcycle that has not been claimed by the owner within twenty business days after mailing by first class mail to such owner of notice of a determination by a court of competent jurisdiction or by the board that there has been no violation of section 24-227.3 or section 24-232 of this chapter shall be deemed by the department to be abandoned. Any motorcycle unclaimed under the provisions of this subdivision shall be disposed of by the department pursuant to section twelve hundred twenty-four of the vehicle and traffic law.

(6) In addition to any other fines, penalties, sanctions or remedies provided for in this chapter, a motorcycle that has been seized pursuant to section 24-227.3 or section 24-232 of this chapter and all rights, title and interest therein shall be subject to forfeiture upon notice and judicial determination thereof if the operator of such motorcycle has been found liable by a court of competent jurisdiction or the board on one or more prior occasions for violating section 24-227.3 or section 24-232 of this chapter.

(i) A forfeiture proceeding may not be commenced more than ten business days after the receipt of a request by the owner for return of the motorcycle. If a forfeiture proceeding is not commenced within such ten-

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day period, the motorcycle shall be returned to the owner upon payment of the fine or civil penalty imposed and the costs of removal and storage. A motorcycle that is the subject of such action shall remain in the custody of the department or other appropriate agency pending the final determination of the forfeiture action.

(ii) Notice of the institution of the forfeiture action shall be served by first class mail on: (a) an owner of the motorcycle at the address set forth in the records maintained by the department of motor vehicles, or for motorcycles registered in a state other than New York state, in the records maintained by the state of registration; (b) all persons holding a security interest in such motorcycle which security interest has been filed with the department of motor vehicles pursuant to the provisions of title ten of the vehicle and traffic law, at the address set forth in the records of such department, or for motorcycles registered in a state other than New York state, all persons who hold a security interest in such motorcycle which security interest has been filed with such state of registration and which persons are made known by such state to the department at the address provided by such state of registration.

(iii) Any owner who receives notice of the institution of a forfeiture action who wishes to claim an interest in the motorcycle subject to forfeiture may assert a claim in such action for the recovery of the motorcycle or satisfaction of the owner's interest in such motorcycle. Any person with a security interest in such motorcycle who receives notice of the institution of the forfeiture action who claims an interest in such motorcycle may assert a claim in such action for satisfaction of such person's security interest.

(iv) Forfeiture pursuant to this subdivision shall be made subject to the interest of a person who claims an interest in the motorcycle pursuant to subparagraph (iii) of this subdivision, where such person establishes that: (a) the use of such motorcycle in violation of section 24-227.3 or section 24-232 of this chapter that was the basis for seizure occurred without the knowledge of such person, or if such person had knowledge of such use, that such person did not consent to such use by failing to do all that could reasonably have been done to prevent such use, and that such person did not knowingly obtain such interest in the motorcycle in order to avoid the forfeiture; or (b) that the conduct that was the basis for such seizure was committed by any person

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other than such person claiming an interest in the motorcycle while such motorcycle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

(v) The department, after judicial determination of forfeiture, shall, at its discretion, either: (a) retain such motorcycle for the official use of the city; or (b) by public notice of at least five days, sell such forfeited motorcycle at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

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

(vii) For purposes of this section, the term "owner" shall mean an owner as defined in section one hundred twenty-eight of the vehicle and traffic law.

(viii) For purposes of this section, the term "security interest" shall mean a security interest as defined in subdivision k of section two thousand one hundred one of the vehicle and traffic law. The term includes the interest of a lessor under a lease intended as a security.

§7. Section 24-269 of the administrative code of the city of New York is amended by adding thereto a new subdivision g to read as follows:

(g) Any person convicted of violating section 24-227.3 or section 24-232 of this chapter, with respect to the operation of a motorcycle, shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars or by imprisonment for not more than twenty days, or both such fine and imprisonment, for a first offense; and by a fine of not less than two hundred dollars and not more than one thousand dollars or by imprisonment for not more than thirty days, or both such fine and imprisonment, for a second offense; and by a fine of not less than three hundred dollars and not more than two thousand dollars or

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by imprisonment for not more than four months, or both such fine and imprisonment for a third or subsequent offense.

§8. This local law shall take effect ninety days after it is enacted into law except that the Commissioner shall take all actions necessary for its implementation immediately.