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Proposed Int. No. 66-A

By Council Members Gennaro, Nelson and Liu

A Local Law to amend the administrative code of the city of New York, in relation to the environmental control board.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York hereby finds that the Environmental Control Board (“ECB”) requires modifications to its structure and hearing processes in order to provide greater fairness and more timely and effective decisions for City residents and business owners appearing before it. The Council, through its oversight functions and through receipt of numerous reports from persons who have appeared before the Environmental Control Board, has discerned alarming practices relating to ECB adjudications that raise serious questions as to whether respondents are

treated fairly and accorded due process, and also raises concerns that outcomes at the ECB are not always based upon the merits of the matters adjudicated. The Council seeks to address these shortcomings in an effort to provide a more fair administrative adjudicatory process that will engender greater confidence in and respect for the ECB's determinations and that will also serve to help foster an environment for business, especially small businesses to thrive in New York City.

§2. Subdivision a of section 1404 of the New York city charter is amended to read as follows:

§1404. Environmental control board. a. There shall be in the department an environmental control board consisting of the commissioner, who shall be chairman, the commissioner of sanitation, the commissioner of buildings, the commissioner of [public] health and mental hygiene, the police commissioner, the fire commissioner and the commissioner of consumer affairs, all of whom shall serve on the board without compensation and all of whom shall have the power to exercise or delegate any of their functions, powers and duties as members of the board, and six persons to be appointed by the mayor, with the advice and consent of the city council, who are not otherwise employed by the city, one to be possessed of a broad general background and experience in the field of air pollution control, one with such background and experience in the field of water pollution control, one with such background and experience in the field of noise pollution control, one with such background and experience in the real estate field, one with such background and experience in the business community, and one member of the public, and who shall serve for four-year terms. Such members shall be compensated at the rate of one hundred fifty dollars per day when performing the work of the board. Within its appropriation, the board may appoint an executive director and [such hearing officers, including non-salaried hearing officers and other] any employees as it may from time to time find necessary for the proper performance of its duties. The chairperson of the board shall appoint a chief administrative law judge who shall be an attorney in good standing admitted to practice in the state of New York for at least ten years. Such chief administrative law judge shall be appointed for a term of five years, which term may be renewed, and may be removed only for good cause shown after notice and opportunity for a hearing on a record, and may

be represented by counsel. The chief administrative law judge shall appoint a staff of administrative law judges each of whom shall be authorized to conduct a hearing on any notice of violation within the jurisdiction of the board. Each administrative law judge shall be an attorney in good standing admitted to practice in the state of New York for at least five years. Each administrative law judge shall be appointed for a term of four years and may be removed only for good cause shown after notice and opportunity for a hearing on a record, and may be represented by counsel.

§3. The preface to paragraph 1 of subdivision c of section 1404 of the New York city charter is amended to read as follows:

c. (1) The environmental control board shall adjudicate proceedings to enforce the provisions of the charter and the administrative code, and any rules and regulations made thereunder, which relate to:

§4. Paragraph 2 of subdivision c of section 1404 of the New York city charter is amended to read as follows:

(2) The board shall have concurrent jurisdiction with the board of health to [enforce] adjudicate those provisions of the health code and the rules and regulations relating thereto which the board of health shall designate.

§5. Subparagraph a of paragraph 1 of subdivision d of section 1404 of the New York city charter is amended to read as follows:

d. (1) (a) The [environmental control board] administrative law judges appointed in accordance with the provisions of subdivision a of this section, shall conduct proceedings for the adjudication of violations of the laws, rules and regulations within the jurisdiction of the environmental control board pursuant to the provisions of subdivision c of this section or of any other law providing for enforcement by the environmental control board in accordance with this paragraph (1) and with the rules and regulations promulgated by the board, and shall have the power to render decisions and orders and to impose the civil penalties provided under law for such violations.

§6. Paragraph 1 of subdivision d of section 1404 of the New York city charter is amended by adding thereto a new subparagraph c-1 to read as follows:

(c-1) In addition to the information required by subparagraph c of this paragraph, the notice of violation shall inform the person charged that such person has the right to receive from the agency that issued the notice of violation a list of the names of all witnesses who may be called by the agency and copies of all documents intended to be submitted into evidence by the agency; (ii) to an interpreter at such hearing and (iii) the right to apply to consolidate two or more notices of violation for adjudication at one hearing and (iv) the right to an adjournment under certain circumstances.

§7. Subdivision d of section 15-227 of the administrative code of the city of New York is amended to read as follows:

d. (i) Any order to seal, secure and close issued pursuant to item(ii) of subdivision b of this section shall contain notice of the opportunity for a hearing with respect to such order, to determine if the order was properly issued in accordance with the provisions of this section. Such hearing shall be conducted by the commissioner, or in the commissioner's discretion, by the office of administrative trials and hearings or the environmental control board. If the matter is referred to such office or board, the [hearing officer] administrative law judge shall submit his or her findings of fact and a recommended decision to the commissioner. The hearing shall be held within three business days after the receipt of the written request of an owner, lessor, lessee or mortgagee for such hearing and the commissioner shall render a decision within three business days after such hearing is concluded.

§8. Section 15-232 of the administrative code of the city of New York is amended to read as follows:

§15-232 Limitations on power of commissioner to designate administrative code provisions which may be [enforced] adjudicated by the environmental control board. Notwithstanding any other provision of law, the commissioner may not designate the following provisions of the administrative code for [enforcement] adjudication by the environmental control board:

- (1) Section 15-208
- (2) Section 15-125
- (3) Subdivision a of section 15-126
- (4) Section 15-214
- (5) Paragraph one of subdivision b of section 15-127
- (6) Subdivision c of section 15-127
- (7) Subchapters four, five and six of the fire prevention code
- (8) Section 27-4093
- (9) Section 27-4195
- (10) Section 27-4196
- (11) Subdivision nine of section 27-4207
- (12) Section 27-4213
- (13) Subdivision a of section 27-4242
- (14) Subdivision a of section 27-4247
- (15) Section 27-4253
- (16) Section 27-4260
- (17) Subdivision b of section 27-4265
- (18) Subdivision f of section 27-4265
- (19) Any provision of the administrative code specified in section 26-126.4 of such code.

§9. Subdivision a of section 19-176 of the administrative code of the city of New York is amended to read as follows:

c. A person who violates subdivision b of this section in a manner that endangers any other person or property shall be guilty of a misdemeanor, punishable by a fine of not more than one hundred dollars or imprisonment for not more than twenty days or both such fine and imprisonment. Such person shall also be

liable for a civil penalty of not less than one hundred dollars nor more than three hundred dollars, except where [a hearing officer] an administrative law judge has determined that where there was physical contact between the rider and another person, an additional civil penalty of not less than one hundred dollars nor more than two hundred dollars may be imposed. Such civil penalties may be recovered in a proceeding before the environmental control board. Enforcement agents shall indicate on the summons or notice of violation issued pursuant to this subdivision whether physical contact was made between the rider and another person. Any person who violates any provision of this subdivision more than once within any six month period shall be subject to the imposition of civil penalties in an amount that is double what would otherwise have been imposed for the commission of a first violation. It shall be an affirmative defense that physical contact between a rider and another person was in no way the fault of the rider.

§10. Subdivision a of section 24-178 of the administrative code of the city of New York is amended to read as follows:

(a) The board, in addition to other duties assigned to it by law, shall have the power to conduct hearings to be presided over by duly appointed administrative law judges and pursuant to this chapter and, by the issuance of a subpoena, compel the attendance of witnesses and the production of any books, papers or other things relating to the matter under investigation.

§11. Subdivision b of section 24-179 of the administrative code of the city of New York is amended to read as follows:

(b) If a member of the board has presided over the initial hearing, he or she shall [not] be disqualified from reviewing the hearing.

§12. Subdivision c of section 24-180 of the administrative code of the city of New York is amended to read as follows:

(c) A notice of violation shall:

(1) Specify the section or sections of this code, order, or regulation that such person or equipment is in

violation of; and

(2) Indicate the amount of the civil penalty that such person is subject to; and

(3) Contain a brief statement of the nature of the violation; and

(4) Require a written response that conforms to section 24-181 of this code; and

(5) Contain a brief statement of the rights available to such person pursuant to chapter eight of this title.

(6) Require such person or owner of equipment to answer the allegations in the notice of violation at a designated time and place, unless a hearing is not required by section 24-178 of this code.

§13. Section 24-184 of the administrative code of the city of New York is amended to read as follows:

§24-184 Hearings. (a) The chairperson of the board shall designate [a hearing officer or] at least one member of the board or the chief administrative law judge shall designate an administrative law judge to preside over hearings held pursuant to this subchapter. In any hearing in which a quorum of the board is present such members shall be deemed to be sitting as the board.

(b) All such hearings shall be open to the public.

(c) At such hearings, an interpreter shall be made available upon request of any party. The administrative law judge or member of the board may accept as an interpreter a friend or relative of a respondent or witness, or any other person who can provide acceptable translation but such person shall be administered an oath as though he or she were a witness in such proceeding. Otherwise, the administrative law judge or member of the board shall direct that an interpreter be obtained from an official registry of interpreters or shall otherwise be assured that a qualified interpreter is provided.

(d) At the request of any party to such a hearing, the member of the board or the administrative law judge conducting the hearing shall by the issuance of a subpoena compel the attendance of such witnesses and shall require the production of any such books, papers, or other things relating to the matter under investigation if such a request reasonably relates to such hearing.

[(d)] (e) Any party to a hearing may be represented by counsel, may make oral and written argument

and cross-examine witnesses and may make application for production of any evidence relied upon by the opposing party. All testimony taken before the member of the board or the designated [hearing officer] administrative law judge shall be under oath and shall be recorded. The record shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproduction.

(f) Upon application of any party and in the interest of convenient, expeditious and complete determination of cases involving the same or similar issues or the same parties, the administrative law judge or member of the board may consolidate two or more notices of violation for adjudication at one hearing.

§14. Section 24-186 of the administrative code of the city of New York is amended to read as follows:

§24-186 Hearing [officer's] decision. (a) At the conclusion of the hearing, the [hearing officer or] member of the board or administrative law judge conducting the hearing shall prepare a decision stating findings of fact and conclusions, as well as reasons for his or her determination on all material issues, and making recommendations as to action which should be taken in the matter.

(b) The [hearing officer or] member of the board or administrative law judge conducting the hearing shall file his or her decision with the board and send copies by mail to the parties. Any party may file exceptions with the board within twenty days after service of such decision. If no exceptions have been filed within the prescribed time, the recommendations of the [hearing officer or] member of the board or administrative law judge conducting the hearing shall automatically become the decision of the board and shall constitute its findings, conclusions, and order.

§15. Subdivision a of section 24-187 of title 24 of the administrative code of the city of New York is amended to read as follows:

§24-187 Board decision and order. (a) If any party files exceptions to the decision of the [hearing officer or] member of the board or administrative law judge conducting a hearing within the prescribed time, the board shall review the record and issue its decision and order in which it may adopt, modify, or reject the

findings, conclusions, and recommendations of the [hearing officer or] member of the board or administrative law judge who conducted the hearing.

§16. Section 24-214 of the administrative code of the city of New York, is amended to read as follows:

§24-214 Inconsistent provisions. Insofar as the provisions of this code are inconsistent with any provision of any other title of the code, or any rule or regulation of any governmental agency of the city of New York, other than provisions of the New York city charter or the administrative code of the city of New York relating to procedures for hearings at the environmental control board, the provisions of this code shall be controlling.

§17. Section 24-258 of the administrative code of the city of New York is amended to read as follows:

§24-258 The board. (a) The board shall be convened by the chairperson, or in the chairperson's absence the assistant commissioner of air resources, or at the request of any three members thereof.

(b) If a member of the board has presided over the initial hearing, he or she shall [not] be disqualified from reviewing the hearing.

(c) Five members of the board, at least two of whom shall not be city officials, shall constitute a quorum.

§18. Subdivision c of section 24-259 of the administrative code of the city of New York is amended by adding a new paragraph 6 to read as follows:

6. Contain a brief statement of the rights available to such person pursuant to chapter eight of this title.

§19. Section 24-263 of the administrative code of the city of New York is amended to read as follows:

§24-263 Hearings. (a) The chairperson of the board shall designate [a hearing officer] an administrative law judge or at least one member of the board to preside over hearings held pursuant to this subchapter. In any hearing in which a quorum of the board is present, such members shall be deemed to be sitting as the board.

§20. Subdivisions a and b of section 24-265 of the administrative code of the city of New York are amended to read as follows:

§24-265 Hearing [officer's] decision. (a) At the conclusion of the hearing, the [hearing officer] administrative law judge or member of the board conducting the hearing shall prepare a decision stating findings of fact and conclusions, as well as reasons for his or her determination on all material issues, and making recommendations as to action which should be taken in the matter.

(b) The [hearing officer] administrative law judge or member of the board conducting the hearing shall file his or her decision with the board and send copies by mail to the parties. Any party may file exceptions with the board within twenty days after service of such decision. If no exceptions have been filed within the described time, the recommendations of the [hearing officer]administrative law judge or member of the board conducting the hearing shall automatically become the decision of the board and shall constitute its findings, conclusions and order.

§21. Subdivision a of section 24-266 of the administrative code of the city of New York is amended to read as follows:

§24-266 Board decision and order. (a) If any party files exceptions to the decision of the [hearing officer] administrative law judge or member of the board conducting a hearing within the prescribed time the board shall review the record and issue its decision and order in which it may adopt, modify or reject the findings, conclusions and recommendations of the [hearing officer] administrative law judge or member of the board who conducted the hearing.

§22. Section 24-268 of the administrative code of the city of New York is amended to read as follows:

§24-268 Procedural rules. The board shall have authority from time to time to make, amend and rescind such procedural rules as may be necessary to carry out the provisions of this subchapter that are not inconsistent with any provision of the New York city charter or any other provision of the administrative code of the city of New York.

§23. Subdivisions a and b of section §24-346 of the administrative code of the city of New York are amended to read as follows:

a. Notwithstanding any other provision of law, the commissioner of environmental protection [and the environmental control board] shall enforce the provisions of this chapter and chapter four of this title and the regulations promulgated pursuant thereto or pursuant to section fourteen hundred three of the New York city charter as hereinafter provided and the environmental control board shall adjudicate proceedings for the enforcement of such provisions of this code and such regulations. Such commissioner and board shall have the power to issue such orders as may be provided for herein and such additional orders as may be necessary for the enforcement and adjudication, as is applicable, of such provisions.

b. Any person who violates or fails to comply with any of the provisions of this chapter and chapter four of this title or any order, rule or regulation issued by the board or commissioner or with the conditions of any permit issued by the commissioner within the city of New York shall be liable for a civil penalty of not less than fifty nor more than one thousand dollars for each violation. In the case of a continuing violation each days continuance shall be a separate and distinct offense. The environmental control board shall have the power to impose such civil penalties. A proceeding to impose such penalties shall be commenced by the service of a notice of violation returnable to such board. Such board, after a hearing as provided by the rules and regulations of the board, shall have the power to enforce its final decisions and orders imposing such civil penalties as if they were money judgments pursuant to subdivision d of section fourteen hundred four of the New York city charter. A civil penalty imposed by the board may also be collected in an action brought in the name of the city in any court of competent jurisdiction. The board, in its discretion, may, within the limits set forth in this subdivision, establish a schedule of civil penalties indicating the minimum and maximum penalty for each separate offense, but such schedule of civil penalties may not establish a minimum civil penalty for any violation that is in excess of the minimum civil penalty established for such violation by any law.

§24. Subdivision a, paragraph 4 of subdivision b, paragraph 1 of subdivision d and subdivision f of section 24-524 of the administrative code of the city of New York are amended to read as follows:

§24-524 Enforcement and penalties. a. Notwithstanding any other provision of law, the commissioner

of environmental protection shall enforce and the environmental control board shall [enforce] adjudicate proceedings relating to enforcement of the provisions of sections 24-504 through 24-522 and 24-523 of this chapter and the regulations promulgated pursuant thereto. Such commissioner and board shall have the power to issue such orders as may be provided for therein and such additional orders as may be necessary for the enforcement of such provisions.

4. Any person affected by such an order may make written application to the environmental control board for a hearing. Such hearing shall be provided, pursuant to the rules and regulations of the board and applicable provisions of law, and shall be held within forty-eight hours after the receipt of such application. The board may suspend, modify or terminate such order.

d. 1. In the case of any continued or knowing violation of any of the provisions of sections 24-504 through 24-522 and 24-523 of this chapter or any order, rule or regulation issued by the environmental control board or commissioner of environmental protection pursuant thereto or of the conditions of any permit issued pursuant to such provisions or where the board finds that the violation of any of such provisions or of the conditions of any such permit presents or may present a danger to the environment or threatens to interfere with the operation of the sewer system, the board after notice and the opportunity for a hearing in accordance with the rules and regulations of the board and applicable provisions of law, may issue a cease and desist order requiring any person who owns, leases, operates, controls or supervises any building, structure, facility or installation to cease and desist from any activity or process which causes or is conducted so as to cause such violation within the time specified in such order.

f. Any person who violates or fails to comply with any of the provisions of sections 24-504 through 24-522 and 24-523 of this chapter or any order, rule or regulation issued by the environmental control board or commissioner of environmental protection pursuant thereto or with the conditions of any permit issued pursuant thereto shall be liable for a civil penalty not exceeding ten thousand dollars for each violation, provided that this subdivision shall not apply to subdivision c of section 24-509 or subdivisions a

and b of section 24-521. In the case of a continuing violation each day's continuance shall be a separate and distinct offense. The environmental control board shall have the power to impose such civil penalties in accordance with the applicable provisions of law. A proceeding to impose such penalties shall be commenced by the service of a notice of violation returnable to such board. Such board, after a hearing as provided by the New York city charter and the rules and regulations of the board and applicable provisions of law, shall have the power to enforce its final decisions and orders imposing such civil penalties as if they were money judgments pursuant to subdivision d of section fourteen hundred four of the New York city charter. A civil penalty imposed by the board may also be collected in an action brought in the name of the city in any court of competent jurisdiction. The board, in its discretion, may, within the limits set forth in this subdivision, establish a schedule of civil penalties indicating the minimum and maximum penalty for each separate offense, but such schedule of civil penalties may not establish a minimum civil penalty for any violation that is in excess of the minimum civil penalty established for such violation by any law.

§25. Title 24 of the administrative code of the city of New York is amended by adding a new chapter 8 to read as follows:

Chapter 8

Procedures at the Environmental Control Board

§24-801 Conduct of hearings.

§24-802 Witnesses and documents.

§24-803 Interpreter.

§24-804 Adjournments and consolidation of proceedings.

§24-801 Conduct of hearings a. Notwithstanding the provisions of any other law, any hearing held by the environmental control board to adjudicate an alleged violation of any matter within its jurisdiction shall be conducted in a manner consistent with the provisions of this chapter.

§24-802 Witnesses and documents. The person to whom a notice of violation was issued shall have the right, upon at least five business days written notice to the board and the agency that issued the notice of violation prior to a hearing on the notice of violation, to receive from the agency that issued the notice of violation a list of the names of all witnesses who may be called by the agency and copies of all documents intended to be submitted into evidence by the agency. Such witness list and documents shall be presented to such person, an attorney for such person or another representative of such person at least two business days prior to the hearing.

§24-803 Interpreter. The person to whom a notice of violation was issued shall have the right to an interpreter at any hearing held to adjudicate such notice of violation. Such interpreter shall obtained from any official registry of interpreters, except that, the member of the board or administrative law judge conducting the hearing may authorize a friend or relative of a respondent or witness, or any other person who it is believed can provide acceptable translation services, to do so. Anyone providing translation services who is not listed on any official registry shall be administered an oath as though he or she were a witness in such proceeding.

§24-804 Adjournments and consolidation of proceedings. a. Where the person to whom a notice of violation was issued appears at the designated time and place as required by the notice of violation pursuant to section 24-180 or 24-182 of this code and the opposing party has failed to appear as of one full hour after such designated time, the respondent shall be given a choice at such point to adjourn the hearing or to proceed with the hearing in which case the administrative law judge shall rely upon the notice of violation and any other evidence properly before him or her.

b. In the interest of convenient, expeditious and complete determination of cases involving the same or similar issues or the same parties, a person to whom a notice of violation was issued may apply to the administrative law judge or member of the board conducting the hearing to consolidate two or more notices of violation for adjudication at one hearing.

§26. Paragraph i of subdivision e of section 26-127 of the administrative code of the city of New York

is amended to read as follows:

(i) Any order to seal, secure and close issued pursuant to item (ii) of subdivision b of this section shall contain notice of the opportunity for a hearing with respect to such order to determine if the order was properly issued in accordance with the provisions of this section. Such hearing shall be conducted by the commissioner, or in the commissioner's discretion, by the office of administrative trials and hearings or the environmental control board. If the matter is referred to such office or board, the [hearing officer] administrative law judge shall submit his or her findings of fact and a recommended decision to the commissioner. The hearing shall be held within three business days after the receipt of the written request of an owner, lessor, lessee, or mortgagee for such hearing and the commissioner shall render a decision within three business days after such hearing is concluded.

§27. This local law shall take effect ninety days after its enactment into law except that the commissioner of environmental protection shall take such actions as are necessary to implement the provisions of this local law prior to such effective date.

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