



## Legislation Details (With Text)

<b>File #:</b>	Int 1054-2023	<b>Version:</b>	*	<b>Name:</b>	Requiring the licensing of last-mile distribution centers.
<b>Type:</b>	Introduction	<b>Status:</b>		<b>In control:</b>	Filed (End of Session) Committee on Consumer and Worker Protection
<b>On agenda:</b>	5/25/2023				
<b>Enactment date:</b>		<b>Enactment #:</b>			
<b>Title:</b>	A Local Law to amend the administrative code of the city of New York, in relation to requiring the licensing of last-mile distribution centers				
<b>Sponsors:</b>					
<b>Indexes:</b>	Agency Rule-making Required				
<b>Attachments:</b>	1. Summary of Int. No. 1054, 2. Int. No. 1054, 3. May 25, 2023 - Stated Meeting Agenda, 4. Hearing Transcript - Stated Meeting 5-25-23, 5. Minutes of the Stated Meeting - May 25, 2023				

Date	Ver.	Action By	Action	Result
5/25/2023	*	City Council	Introduced by Council	
5/25/2023	*	City Council	Referred to Comm by Council	
12/31/2023	*	City Council	Filed (End of Session)	

Int. No. 1054

By Council Members Cabán, Avilés, Menin, Hanif, Restler, Hudson, Ossé and Nurse (by request of the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to requiring the licensing of last-mile distribution centers

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 38 to read as follows:

### SUBCHAPTER 38

### LAST-MILE DISTRIBUTION CENTERS

§ 20-565 Definitions. For the purposes of this subchapter, the following terms have the following meanings:

Community district. The term “community district” means a community district established pursuant to

chapter 69 of the charter.

Dedicated last-mile distribution center network. The term “dedicated last-mile distribution center network” means more than 1 last-mile distribution center where at least 50 percent of orders fulfilled at such center are placed through a website or mobile application with 1 brand or trade name or a common brand, trade, business or operating name, that offers or facilitates consumers goods for direct delivery that will be fulfilled through a last-mile distribution center.

Emission points. The term “emission points” means a number of points equal to a last-mile distribution center’s weighted annual truck trips where such total is computed, according to the classes maintained by the United States environmental protection agency based upon gross vehicle rate rating, by the sum of all Class 2b to 7 truck trips plus two and one-half times the sum of all Class 8 truck trips that occurred at a last-mile distribution center. Points may be earned through the purchase of near-zero and zero emission equipment or equipment that facilitates the use of near-zero and zero emission equipment, and through the use of near-zero and zero emission equipment, or by choosing to pay a mitigation fee to be expended exclusively in connection with environmental hazards in the community district of the operator who generated such funds or using any combination thereof.

End customer. The term “end customer” means a retail customer from whom a merchant received an offer to purchase a product.

Last-mile distribution center. The term “last-mile distribution center”:

1. Means a building of 10,000 square feet or more that is operated to receive and sort goods or combine product parts as part of a distribution channel, and from which goods are then directly transported to end customers; and

2. Does not include any facility where at least 30 percent of the floor area is open to retail customers.

Public transportation. The term “public transportation” means the modes of transportation provided by the metropolitan transportation authority or city ferry as defined in paragraph (1) of subdivision a of section 19-307.

Shared in the ownership. The term “shared in the ownership” means a person shares in the ownership of a publicly traded licensee if such person controls 5 percent or more of the outstanding voting shares of the licensee.

Sustainable modes of transportation. The term “sustainable modes of transportation” means bicycles or pedal-assisted bicycles, electric vehicles, and hand trucks.

§ 20-565.1 Licensing of last-mile distribution centers. a. License required. 1. It is unlawful for any person to engage in business as a last-mile distribution center without a valid license, as required by this section, for each place of business in which such person operates a last-mile distribution center.

2. It is unlawful for a person to permit any premises under such person’s control to be used by any other person in violation of paragraph 1 of this subdivision.

b. License application. 1. In order to obtain or renew a license to engage in business as a last-mile distribution center, a person shall file an application with the commissioner for a last-mile distribution center license for each place of business that the applicant desires to use for the operation of a last-mile distribution center in the city. The application for each such license or renewal thereof shall be made upon such form as prescribed by the commissioner and shall include an environmental health and safety plan as required pursuant to section 20-565.2 and such additional information as the commissioner shall require.

2. The commissioner shall require at least the following elements be included in the license application:

(a) Notarized certifications of each of the following:

(1) The facility will not be within 1,000 feet of a residential district;

(2) The facility will not be within 500 feet of a school, public park, or institution of religious worship;

(3) The facility will not be within 250 feet of a hospital, long-term acute care facility, or senior home;

(4) The facility will not be within 2,000 feet of another last-mile distribution center; and

(5) That delivery of parcels to end customers will be carried out solely by employees of the licensee.

(b) A labor market study to determine the net impact of issuance of a license on wages and workplace standards on the relevant labor market.

(c) A report stating the make, type, size, weight and number of vehicles to be used for delivery of parcels to end customers.

(d) A report stating the number and location of delivery routes.

(e) An analysis of the energy demands of the facility and nature and composition of the alternative, sustainable and renewable energy technologies to be incorporated into the operation of the facility.

3. An applicant for a last-mile distribution center license or renewal thereof under this section shall disclose to the commissioner any finding by a court of law or any final agency determination that the applicant or a principal of such applicant violated any city, state or federal law relating to worker protection, compensation, safety or discrimination or the protection of the environment, any docketed judicial or administrative settlement requiring the applicant or a principal of such applicant to pay any

finances, penalties or restitution in relation to any city, state or federal law relating to worker protection, compensation, safety or discrimination or the protection of the environment and any additional information with respect to good character and fitness that the commissioner deems appropriate. Multiple violations of city, state or federal law relating to worker protections, compensation, safety or discrimination or the protection of the environment by an applicant shall be grounds for denial of a license or renewal of a license.

4. For any last-mile distribution center located in a significant maritime industrial area as designated by a local waterfront revitalization program, 80 percent of deliveries to and from such distribution center shall be conducted by marine transport unless the applicant can demonstrate to the department the infeasibility of such requirement.

c. Fee and license term. There shall be an annual fee of \$500 for a license to engage in the business of a last-mile distribution center at each location where a last-mile distribution center operates in the city. The term of a license shall be 1 year, after which period the licensee may apply for renewal of the license.

d. Issuance and renewal of license. 1. A last-mile distribution center license shall be issued or renewed to a person to conduct the business of a last-mile distribution center in the city only if:

(a) The applicant for a license or renewal thereof meets all the requirements prescribed in this section and any additional criteria established by the commissioner by rule as deemed necessary to effectuate the purposes of this subchapter;

(b) The applicant satisfies the commissioner that such applicant and all principals of such applicant, as applicable, are in compliance with all local, state and federal laws, rules and regulations applicable to doing business as a last-mile distribution center, including but not limited to chapter 16 of this title, all other laws relating to worker protection, compensation, safety or discrimination or the protection of the environment and that such applicant has not materially misrepresented or concealed any information in the license application, as determined by the commissioner;

(c) The applicant demonstrates to the satisfaction of the commissioner that any last-mile distribution center acquired by the applicant for which a license has been revoked or that has been assessed a violation was acquired through an arm's length transaction and that such applicant:

(1) Did not share in the ownership, or otherwise exercise control over the management, of the original licensee of such center; or

(2) Does not employ any person who shared in the ownership, or otherwise exercised control over the management, of the original licensee of such center;

(d) The issuance or renewal of such license would not cause the number of licenses in the community district in which the place of business of such applicant is located to exceed the community district last-mile distribution center cap nor cause an undue concentration of last-mile distribution centers irrespective of administrative boundaries, as determined by the commissioner;

(e) A last-mile distribution center applying for renewal has earned the minimum number of emission points, as established by rule. Such rules shall also designate point values associated with particular purchases or uses based on cost accrued by the last-mile distribution center, reduction in nitrogen oxides and reduction in diesel particulate matter; and

(f) Less than 50 percent of the goods processed at such center was ordered through a website or application with 1 brand or trade name or a common brand, trade, business or operating name, that offers, facilitates or otherwise offers consumers goods for direct delivery that will be fulfilled through a last-mile distribution center.

2. A last-mile distribution center license shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business in the place designated therein and shall at all times be conspicuously displayed at the place for which it is issued.

3. An applicant may seek review, in the office of administrative trials and hearings, of a determination by the commissioner to deny an application for a license or a renewal thereof under this section within 30 days of receiving written notification of such determination.

e. Community district last-mile distribution center cap. 1. To protect and promote the health, safety and wellbeing of city residents, the commissioner, after consultation with the commissioners of transportation and environmental protection, shall promulgate rules establishing a community district last-mile distribution center cap for each community district in the city.

2. The commissioner, in conjunction with the commissioners of transportation and environmental protection, shall evaluate community district last-mile distribution center caps every year and any time community district boundaries change. Such evaluation shall include consideration of the number of last-mile distribution centers in the community district. If, based on the evaluation, the commissioner determines that a change to any community district last-mile distribution center cap is warranted in order to protect and promote the health, safety and wellbeing of city residents, the commissioner may amend such cap by rule.

3. The commissioner shall promulgate rules governing the application process for new last-mile distribution center licenses after the establishment of a community district last-mile distribution center cap.

f. Undue license concentration. 1. No single person shall hold more than 5 licenses or share in the ownership of a person or entity who holds more than 5 licenses.

2. No single person shall enter into 2 or more leases for premises licensed under this subchapter or lease more than a cumulative 300,000 square feet of facilities licensed under this subchapter, without first receiving a dedicated last-mile distribution center network license.

§ 20-565.2 Environmental health and safety. a. Last-mile distribution centers shall ensure that any distribution to end customers uses only sustainable modes of transportation or public transportation to effectuate such distribution.

b. Each application for a last-mile distribution center license shall include an environmental health and safety plan concerning the efforts by such center to reduce or mitigate negative impacts. The form and content of such plan shall be prescribed by the commissioner by rule and shall contain, at a minimum, the following:

1. A description of how delivery vehicle movements to and from the last-mile distribution center will be routed and scheduled;

2. A projection of the volume of deliveries traveling to and from such center during the license term and an analysis of the volume of deliveries traveling to and from such center during the prior year if renewal of an existing license is sought;

3. An analysis of and plan for how such center will reduce the number of delivery trips to and from the site, including but not limited to the consolidation of deliveries;

4. An analysis of and plan for how such center will reduce the impact of deliveries to and from the site on the surrounding environment and community, including but not limited to reducing vehicle miles traveled, noise, pollution, particulate matter, and greenhouse gas emissions caused by delivery trips or routing delivery traffic;

5. An analysis of and plan for such center to earn the emission points required pursuant to subdivision d of section 20-565.1;

6. An analysis and plan for reducing the risk of collisions, traffic deaths caused by, and traffic and parking violations incident to delivery trips or routing delivery traffic; and

7. An analysis and plan for fenceline monitoring of greenhouse gas emissions.

c. Upon the submission of an environmental health and safety plan, the commissioner shall publish such plan on the department's website and forward the plan within 5 days to the borough president, council member, and community board representing the area in which the last-mile distribution center is proposed to be located.

d. Such community board shall review such plan and, not later than 45 days after receipt of such plan, either (i) conduct a public hearing on such plan and submit a written recommendation regarding the approval or disapproval of the plan or recommended changes to the department or (ii) waive by a written statement its public hearing and recommendation on such plan and submit such statement to the department.

e. Prior to approval of any last-mile distribution center license, the applicant shall provide the department with any revisions

made in response to the recommendation of the community board or other comments received by the department on the website and an explanation of such changes or the reasons for a lack thereof.

§ 20-565.3 Licensing of dedicated last-mile distribution center network operators. a. License required. 1. It is unlawful for any person to operate a dedicated last-mile distribution center network without a valid license, as required by this section.

b. License application. 1. In order to obtain or renew a license to engage in business as a dedicated last-mile distribution center network, a person shall file an application with the commissioner for a license. The application for a license or renewal thereof shall be made upon such form as prescribed by the commissioner.

c. Fee and license term. There shall be an annual fee of \$1,000 for a license to engage in the business of a dedicated last-mile distribution center network. The term of a license shall be 1 year, after which period the licensee may apply for renewal of the license.

d. Issuance and renewal of license. 1. A license shall be issued or renewed to a person to conduct the business of a dedicated last-mile distribution center network in the city only if:

(a) The applicant for a license or renewal thereof meets all the requirements prescribed in this section and any additional criteria established by the commissioner by rule as deemed necessary to effectuate the purposes of this subchapter; and

(b) The applicant satisfies the commissioner that each last-mile distribution center in such network is in compliance with all city, state and federal laws, rules and regulations applicable to doing business as a last-mile distribution center, including but not limited to chapter 16 of title 20, all other laws relating to worker protection, compensation, safety or discrimination or the protection of the environment; and that such applicant has not materially misrepresented or concealed any information in the license application, as determined by the commissioner.

2. A dedicated last-mile distribution center network license shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business in the place designated therein and shall at all times be conspicuously displayed at each distribution center in such network.

3. An applicant may seek review, in the office of administrative trials and hearings, of a determination by the commissioner to deny an application for a license or a renewal thereof under this section within 30 days of receiving written notification of such determination.

§ 20-565.4 Revocation or suspension of license. 1. Any last-mile distribution center or dedicated last-mile distribution center network license may be suspended or revoked by the commissioner for the failure of a licensee to comply with any applicable provision of law or any rule duly promulgated by the commissioner. It is unlawful for a dedicated last-mile distribution center network to operate if the license for any distribution center in such network has been suspended or revoked.

2. A last-mile distribution center or dedicated last-mile distribution center network licensee may seek review, in the office of

administrative trials and hearings, of a determination by the commissioner that such license has been suspended or revoked within 30 days of receiving written notification of such determination.

§ 20-565.5 Pattern or practice of violations. a. The commissioner shall deny any application for a last-mile distribution center license or dedicated last-mile distribution center network license or renewal thereof, or revoke or suspend any such license, if the applicant or licensee has engaged in a pattern or practice of violations of local, state or federal law relating to worker protection or the protection of the environment in connection with operating 1 or more last-mile distribution centers in the city.

b. For purposes of this section, “pattern or practice of violations” means 3 or more violations in any 2-year period in the previous 5 years, or 4 or more violations in the previous 5 years, attributable to the licensee, or any corporate or legal parent or subsidiary thereof, where such subsidiary is dominated and controlled by the licensee.

c. For the purposes of this section, the term “violation,” as applied to any city, state or federal law, means a finding by a court of law or a final agency determination that the applicant or licensee violated such law.

§ 20-565.6 Penalties. Any person who violates a provision of this subchapter or any rule promulgated thereunder shall be subject to a civil penalty of \$1,000 per violation, except that the penalty for operating a dedicated last-mile distribution center network without a valid license issued by the commission is \$10,000 for each day such operation takes place.

§ 2. Title 20 of the administrative code of the city of New York is amended to add a new chapter 16 to read as follows:

CHAPTER 16

DISTRIBUTION CENTER WORKERS

SUBCHAPTER 1

GENERAL PROVISIONS

§ 20-1601 Definitions. As used in this chapter, except as otherwise specifically provided, the following terms have the following meanings:

Electronic monitoring. The term “electronic monitoring” means the collection of information concerning worker activities, communications, actions, biometrics or behaviors by electronic means including, but not limited to, video or audio surveillance, electronic work speed data and other means but shall not include any processes covered by section 52-c of the civil rights law as added by chapter 583 of 2021 and as may be amended subsequently.

Employee. The term "employee" means any person covered by the definition of "employee" set forth in subdivision 5 of section 651 of the labor law or by the definition of "employee" set forth in subdivision e of section 203 of title 29 of the United States code who performs works in connection to a last-mile distribution center.

Employee work speed data. The term “employee work speed data” has the meaning ascribed to such term by section 780 of



the labor law.

Employer. The term “employer” means a person who directly or indirectly, or through an agent or any other person, at any time in the prior 12 months, employs or exercises control over the wages, hours, or working conditions of employees.

Last-mile distribution center. The term "last-mile distribution center" has the meaning ascribed to such term by section 20-525.

§ 20-1602 Outreach and education. The commissioner shall conduct outreach and education about the provisions of this chapter. Such outreach and education shall be provided to employers, employees and members of the public who are likely to be affected by this law.

§ 20-1603 Reporting. a. No later than June 1, 2023 and by each June 1 thereafter, the commissioner shall publish a report on the city’s website, on the effectiveness of its enforcement activities under this chapter. Such report shall include the following information:

1. For administrative actions:

(a) The number and nature of complaints received;

(b) The results of investigations undertaken, including the number of complaints not substantiated and the number of notices of violations issued;

(c) The number and nature of administrative adjudications;

(d) The number of complaints resolved through mediation or conciliation, if any; and

(e) The average time for a complaint to be resolved.

2. For civil actions: the number, nature, and outcomes of civil actions commenced by the corporation counsel against employers involving violations under this chapter.

b. Such report shall not reveal identifying information about any non-public matter or complaint.

§ 20-1604 Retaliation. No person shall take any adverse action against an employee of a last-mile distribution center that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this chapter. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee, adversely reducing the hours or pay of an employee, informing another employer that an employee has engaged in activities protected by this chapter, discriminating against the employee, including actions related to perceived immigration status or work authorization, or assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include, but is not limited to, failure to receive a promotion or loss of pay. An employee need not explicitly refer to this chapter or the rights enumerated in this

chapter to be protected from retaliation.

§ 20-1605 Notice and posting of rights. a. The commissioner shall publish and make available notices for employers to post in the workplace or at any job site informing employees of their rights protected under each subchapter of this chapter before the effective date of the local law that added each corresponding subchapter. Such notices shall be made available in a downloadable format on the city's website in accordance with the requirements for language access as described in chapter 11 of title 23. The commissioner shall update such notices if any changes are made to the requirements of this chapter or as otherwise deemed appropriate.

b. In accordance with the rules of the department, every employer shall conspicuously post at any workplace or job site where any employee works the notices described in subdivision a of this section that are applicable to the particular workplace or job site. Such notices shall be in English and any language spoken as a primary language by at least 5 percent of employees at that location if the commissioner has made the notice available in that language.

§ 20-1606 Recordkeeping. a. Employers shall retain records documenting their compliance with the applicable requirements of this chapter for a period of 3 years and shall allow the department to access such records and other information, consistent with applicable law and in accordance with rules of the department and with appropriate notice, in furtherance of an investigation conducted pursuant to this chapter.

b. An employer's failure to maintain, retain or produce a record or other information required to be maintained by this chapter and requested by the department in furtherance of an investigation conducted pursuant to this chapter that is relevant to a material fact alleged by the department in a notice of violation issued pursuant to this subchapter creates a rebuttable presumption that such fact is true.

§ 20-1607 Administrative enforcement; jurisdiction and complaint procedures. a. Jurisdiction. The commissioner shall enforce the provisions of this chapter.

b. Complaints and investigations. 1. Any person, including any organization, alleging a violation of this chapter may file a complaint with the department within 2 years of the date such person knew or should have known of the alleged violation.

2. Upon receiving such a complaint, the department shall investigate it.

3. The department may open an investigation on its own initiative.

4. A person or entity under investigation shall, in accordance with applicable law, provide the department with information or evidence that the department requests pursuant to the investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation of this chapter has occurred, the department may attempt to resolve it through any action authorized by chapter 64 of the charter. Adjudicatory powers pursuant to this subchapter may be

exercised by the commissioner or by the office of administrative trials and hearings pursuant to chapter 64 of the charter.

5. The department shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will disclose the complainant's identity before such disclosure.

§ 20-1608 Specific administrative remedies for employees or former employees. a. In addition to all compensatory damages and other relief required to make the employee or former employee whole for all direct or foreseeable pecuniary harms suffered for violations of this chapter, the department may grant the following relief to employees or former employees:

1. An order directing compliance with the notice and posting of rights and recordkeeping requirements set forth in sections 20-1605 and 20-1606; and

2. For each violation of:

<u>§ 20-1604</u>	<u>Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1604; \$500 for each violation not involving termination; and \$2,500 for each violation involving termination</u>
<u>§ 20-1605</u>	<u>Order directing compliance</u>
<u>§ 20-1606</u>	<u>Order directing compliance</u>
<u>§ 20-1615</u>	<u>\$500 and order directing compliance</u>
<u>§ 20-1616</u>	<u>Reinstatement or restoration of any term and condition; \$500 for each violation; order directing compliance; rescission of any discipline issued; payment of back pay for any loss of pay or benefits resulting from the wrongful discharge or revised pay or benefits; and any other equitable relief as may be appropriate</u>
<u>§ 20-1617</u>	<u>Payment as required under such section; \$500; and order directing compliance</u>
<u>§ 20-1618(a)</u>	<u>Payment as required under such section; \$500; and order directing compliance</u>
<u>§ 20-1618(b)</u>	<u>Restoration of any deducted leave balance; \$500; and order directing compliance</u>
<u>§ 20-1621</u>	<u>\$500 and order directing compliance</u>
<u>§ 20-1623</u>	<u>\$500 and order directing compliance</u>
<u>§ 20-1624</u>	<u>\$500 and order directing compliance</u>

b. 1. Any employer who willfully fails to properly classify an individual as an employee pursuant to applicable law shall be subject to the civil and criminal penalties provided under this subdivision. The civil penalties set

forth in this section shall be imposed as follows: by the commissioner of consumer and worker protection where such penalty is based on a violation of a provision of title 20 and by the commissioner of finance when such penalty is based on a violation of a provision of title 11. For the purposes of this subdivision, the term "willfully violates" means an employer knew or should have known that his or her conduct was prohibited by this subdivision.

2. Any employer who willfully violates this subdivision shall be subject to a civil penalty of up to \$2,500 for the first violation per misclassified employee and to a civil penalty of up to \$5,000 for each subsequent violation per misclassified employee within a 5-year period. In addition to civil penalties, the criminal penalties imposed on an employer who willfully violates the provisions of this subdivision shall be a misdemeanor and upon conviction shall be punished for a first offense by imprisonment for not more than 30 days or a fine not to exceed \$25,000 and for a subsequent offense by imprisonment for not more than 60 days or a fine not to exceed \$50,000. If the employer is a corporation, any officer of such corporation or shareholder who owns or controls at least 10 percent of the outstanding stock of such corporation who knowingly permits the corporation to willfully violate the provisions of this article shall also be in violation of this article and the civil and criminal penalties herein shall attach to such officer upon conviction.

c. The relief authorized by this section shall be imposed on a per employee and per instance basis for each violation.

§ 20-1609 Specific civil penalties payable to the city. a. For each violation of this chapter, an employer is liable for a penalty of \$500 for the first violation and, for subsequent violations that occur within 2 years of any previous violation of this chapter, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.

b. The penalties imposed pursuant to this section shall be imposed on a per employee and per instance basis for each violation.

§ 20-1610 Enforcement by the corporation counsel. The corporation counsel or such other persons

designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to sections 20-1607 through 20-1609, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 20-1611 Private cause of action. a. Claims. Any person, including any organization, claiming to be aggrieved by a violation of subchapter 2 of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction.

b. Remedies. Such court may order compensatory, injunctive and declaratory relief, including the following remedies for violations of this chapter:

1. Payment of any amounts withheld in violation of this chapter;
2. An order directing compliance with the recordkeeping, information, and posting requirements set forth in sections 20-1605 and 20-1606;
3. Rescission of any discipline issued in violation of section 20-1604;
4. Reinstatement of any employee terminated in violation of section 20-1604;
5. Payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1604;
6. Other compensatory damages and any other relief required to make the employee whole; and
7. Reasonable attorney's fees.

c. Time limitation. A civil action under this section shall be commenced within 2 years of the date the person knew or should have known of the alleged violation.

d. Relationship to department action. 1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the department. Failure to so serve a notice does not adversely affect any plaintiff's cause of action.

2. An employee need not file a complaint with the department pursuant to subdivision b of section 20-1607 before bringing a civil action; however, no person shall file a civil action after filing a complaint with the department unless such complaint has been withdrawn or dismissed without prejudice to further action.

3. No person shall file a complaint with the department after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

4. The commencement or pendency of a civil action by an employee does not preclude the department from investigating the employer or commencing, prosecuting or settling a case against the employer based on some or all of the same violations.

e. Any person, including any organization, may bring a suit against an employer for failure to abide by any commitment, statement of values or promise found in an employee handbook, manual or corporate code of conduct, made in marketing, advertisements or on packaging, or regulatory filings. In bringing such suit, the plaintiff will not be obligated to establish actual reliance upon the commitment, that they were an intended third-party beneficiary of such commitment or that they were misled, deceived or damaged by a deceptive trade practice, as defined by section 20-701. An application to a court of competent jurisdiction pursuant to this subdivision may seek an order:

1. Enjoining such acts or practices, including by granting a temporary or permanent injunction or a restraining order;

2. Imposing civil penalties;

3. Compelling a defendant to make restitution of all monies, property, or other things of value, or proceeds thereof, received directly or indirectly as a result of any such violation;

4. Directing that the amount of money or the property or other things of value recovered be paid into an account established pursuant to section 2601 of the civil practice law and rules from which shall be paid over to any and all persons who purchased the goods or services during the period of violation such sum as was paid by them in a transaction involving the prohibited acts or practices, plus any costs incurred by such claimants in

making and pursuing their complaints; provided that if such claims exceed the sum recovered into the account, the awards to consumers shall be prorated according to the value of each claim proved;

5. Directing a defendant to pay to the city the costs and disbursements of the action or proceeding and the costs of the city's investigation leading to the judgment; or if not recovered from a defendant, such costs are to be deducted by the city from the grand recovery before distribution to the consumers;

6. Directing that any money, property, or other things of value in the account described in this subdivision and unclaimed by any persons with such claims within 6 years from creation of the account, be paid to the city; and

7. Granting all other appropriate relief.

§ 20-1612 Civil action by corporation counsel for pattern or practice of violations. a. Cause of action. 1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, relief for employees or former employees set forth in section 20-1608, civil penalties set forth in section 20-1609, and any other appropriate relief.

3. Such action may be commenced only by the corporation counsel or such other persons as are designated by the corporation counsel.

4. Nothing in this section prohibits (i) the department from exercising its authority under section 20-1607 through 20-1609, or (ii) a person alleging a violation of this chapter from filing a complaint pursuant to section 20-1607 or a civil action pursuant to section 20-1611 provided that a civil action pursuant to this section shall not have previously been commenced.

b. Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be

necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

c. Civil penalty. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than \$15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city.

## SUBCHAPTER 2

### DISTRIBUTION CENTER WORKERS

§ 20-1614 Distribution center standards and implementation board. a. There shall be a distribution center standards and implementation board comprised of 7 individuals. Six members shall be appointed by the council after a public application process and 1 member shall be appointed by the comptroller and may be an employee of the city. Of the 6 council appointees, 3 individuals shall represent last-mile distribution center workers, authorized representatives of last-mile distribution center workers or worker organizations who collaborate with last-mile distribution center workers and 3 individuals shall represent last-mile distribution centers employers or organizations comprised of last-mile distribution center employers. The comptroller shall provide appropriate assistance to support the work of the board.

b. The board shall meet upon the call of 4 members.

c. The board shall have the authority to investigate industry conditions, including via requests for information from employees, employers, worker and trade organizations, the distribution of surveys, the conduct of public hearings and contracting with non-governmental organizations.

d. The board shall have the responsibility to:

1. Evaluate the wages and standards for last-mile distribution center workers to ascertain whether the minimum wages and standards are sufficient to provide adequate maintenance and to protect the health and



safety of last-mile distribution center workers;

2. Make recommendations to the commissioner on minimum standards, regulations and minimum standards governing working conditions for last-mile distribution center workers, and to make other recommendations to promote employer compliance with minimum wages, regulations and minimum standards governing working conditions for last-mile distribution center workers;

3. Consult with last-mile distribution center employers and workers and with other persons with relevant expertise or authority with regard to last-mile distribution center workers, including the commissioner and experts in economics, health and labor standards, and other relevant fields; and

4. Collect information through hearings, testimonies, and written submissions on the following subjects as they pertain to last-mile distribution centers:

(a) Wage standards, overtime, and pay differentials;

(b) Scheduling requirements and advance notice for schedule changes;

(c) Access to paid and unpaid leave, retirement and health care benefits, and other employment benefits that may be necessary for the protection of the health and safety of the workers;

(d) Policies regarding disciplinary actions and terminations;

(e) Health and safety protections;

(f) Enforcement of applicable laws;

(g) Surveillance, data scraping, algorithmic discrimination, and work rate policies;

(h) Trainings on federal, state, and city worker protection laws, benefits, and protections, and workplace safety standards;

(i) Job descriptions and duties;

(j) Outreach and enforcement strategies to ensure compliance with applicable labor standards; and

(k) Any other emerging or relevant issues the board chooses to investigate.

e. The commissioner shall, in writing, accept or reject the board's report and recommendations within

45 days after filing with the department. The commissioner may modify the regulations recommended by the board. Such determination of the commissioner shall become effective 30 days after publication of a notice of such determination. The commissioner may, within 45 days, confer with the board, which may make such changes in its report or recommendation as it may deem fit. The commissioner also may, within such 45 days, remand the matter to the board for such further proceeding as may be directed.

§ 20-1615 Employment requirements. A last-mile distribution center shall directly employ all workers making deliveries to end customers on its behalf. Contracting to any third parties for such workers is prohibited.

§ 20-1616 Employment agreement. a. No employer may revise any term or condition of employment except in accordance with section 7 of the national labor relations act where applicable or upon agreement by an impacted employee. Unless otherwise provided pursuant to law, any term and condition of employment present at the time of employment or upon the effective date of the local law that added this chapter shall constitute a term of a contract of employment terminable only upon approval by the commissioner as to just cause or a bona fide economic reason and may be revised only upon the exchange of consideration other than employee retention.

b. It is unlawful to lay off, terminate, or indefinitely suspend an employee for failure to agree to a revised term or condition of employment.

§ 20-1617 Minimum compensation. a. For the purposes of this section, the term “compensation” includes all payments made to or on behalf of an employee as remuneration for employment whether paid periodically or at a later date and shall include, but not be limited to, wages, salary, rate of pay, fringe benefits, retirement or pension contributions, commissions, stock options, profit sharing, medical, hospital, accident or life insurance, payments in kind and any other payments made or advantage received directly or indirectly from an employer as remuneration for employment. Notwithstanding the proceeding sentence, no paid leave shall be included in such definition unless the following conditions are met:

1. The paid leave exceeds any amount that accrues pursuant to law;

2. Unused leave roll over from year to year;

3. The accrual of paid leave is not capped; and

4. All unused leave is paid out at separation.

b. No worker providing services to an employer shall receive hourly gross compensation in an amount less than fixed by this section.

c. The amount of hourly gross compensation shall be \$20 on the effective date of the local law that added this chapter. Annually thereafter, on January 1, the comptroller shall publish a revised hourly gross compensation amount which shall be no less than the current hourly gross compensation amount increased by the rate of inflation, if greater than zero, for the most recent 12-month period ending June of the prior year based on the consumer price index for all urban consumers on a national and seasonally unadjusted basis, or a successor index as calculated by the United States department of labor.

d. The majority of employees at any last-mile distribution center, as determined by any means the commissioner deems most expedient, may select a person independent of the control of the employer who shall be entitled to the names, addresses, telephone or cell phone numbers, or other contact information of the employees on whose behalf it functions as well as copies of all records retained by the employer that contain information concerning the employees' wages, work speed data and hours.

e. Whenever the comptroller has reason to believe that an employer has not complied with the requirements of this section, or upon a complaint from an employee, a former employee or an employee's representative, the comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the comptroller shall have the power to:

1. Institute and conduct inspections at the site of the work or elsewhere in aid of the effective administration and enforcement of the provisions of this section;

2. Examine the books, documents and records pertaining to the compensation paid to, and the hours of

work performed by, employees; and

3. Hold hearings, and in connection therewith to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 20-1618 Accumulation and use of leave. a. An employee who is injured while on premises maintained by an employer, while seeking to enter premises maintained by an employer or while engaged in activities at the direction of an employer regardless of location shall be entitled to receive compensation for any outstanding portion of the shift during which such injury occurred.

b. An employee who is tardy for the start of a shift shall not docked any accrued leave time, whether paid or unpaid, in excess of the closest 15-minute increment to the amount of time they are tardy.

§ 20-1619 Arbitration. a. 1. In an arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, the employer to pay certain fees and costs before the arbitration can proceed or during the pendency of the proceeding, if the fees or costs are not paid within 30 days after the due date, the employer is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration.

2. If the employer materially breaches the arbitration agreement and is in default under this subdivision, the employee may do either of the following:

(a) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction; or (b) Compel arbitration in which the drafting party shall pay reasonable attorney's fees and costs related to the arbitration.

3. The arbitrator or court shall impose a monetary sanction against an employer that materially breaches an arbitration agreement, by ordering the employer to pay the reasonable expenses, including attorney's fees and costs, incurred by the employee as a result of the material breach and may impose appropriate other sanctions including issue sanctions, evidence sanctions, contempt sanctions or terminating sanctions.

b. 1. An employee unable to have a claim adjudicated under this chapter as the result of entry of a court

order compelling arbitration may request that the commissioner represent the claimant in the arbitral proceeding. The commissioner shall represent the claimant in the arbitral proceeding if the claimant is financially unable to afford counsel, and if the commissioner determines, upon conclusion of an informal investigation, that the claim has merit.

2. A petition to compel arbitration of a claim that is pending under this chapter shall be served on the commissioner. Upon request of a claimant, the commissioner shall have the right to represent the claimant in proceedings to determine the enforceability of the arbitration agreement, notwithstanding whether the adjudication of the enforceability of the arbitration agreement is conducted in a judicial or arbitral forum.

§ 20-1620 Extension of terms. Whenever any term or condition of employment is agreed upon in any contract or contracts negotiated between employers in an industry defined by the commissioner and the representatives of more than one-half of the persons employed in said industries, the commissioner may extend such term and condition of employment to all employees in such industry upon 30 days' notice to the council.

§ 20-1621 Access to hours. Before hiring new employees, an employer shall offer any shifts that would otherwise be offered to a new employee to the employer's current employees employed at all last-mile distribution centers owned by the employer.

§ 20-1622 Seizure. If any person determines any goods have been produced in violation of any worker protection provision of the charter or administrative code, such person may apply to any court of competent jurisdiction for an order restraining violation of such sections and authorizing the seizure of such goods by the city from anyone in whose possession they are found.

§ 20-1623 Approval of technology. a. For the purpose of this section, the following terms have the following meanings:

Covered technology. The term "covered technology" includes electronic monitoring, algorithms, workplace data collection, task automation, machine learning, robotics and any other software or system designated by the department but does not include a tool that does not automate, support, substantially assist or

replace discretionary decision-making processes and that does not materially impact natural persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data.

Algorithm. The term “algorithm” means any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making.

b. Except as otherwise provided by law, before deploying any covered technology at a workplace or job site, any employer shall submit an application for approval to the department. Such submission shall be accompanied by a description of the purposes for the technology, any outputs or data collected, the uses of the data collected, how long the employer retains the outputs or data, any adverse mental or physical health effects the technology has on workers, whether the employer shares the outputs or data with any third parties and, if so, the identities of such third parties, the procedures the employer will implement to allow an employee to challenge any personal data collected and an impact assessment of any algorithms. The employer shall also submit evidence of notice to any certified representative of their employees and either a copy of their written assent and on what terms or for what consideration it was granted or a description of why such assent is not required. The department shall require the employer to post in each workplace or job site a notice containing the details of the submission, or where they can be accessed in both electronic and hardcopy form, and methods for submitting comments to the department.

c. No employer who has not received approval from the department may implement any covered technology.

d. No later than 22 months after the implementation of any covered technology utilizing an algorithm and every 3 years thereafter, an employer shall submit an updated impact assessment to the department. If the department fails to approve the continued use of the system for which the impact assessment was submitted within 60 days, the employer shall cease use of such system until approval is granted.

e. It is unlawful for an employer to sell or otherwise distribute or provide to any third-party any employee work speed data or any other data collected by electronic monitoring.

§ 20-1624 Electronic monitoring. a.1. An employer may not rely on data collected through electronic monitoring in discharging or disciplining an employee unless the employer can establish before each use that (i) there is no other practical means of tracking or assessing employee performance; (ii) the employer is using the least invasive form of electronic monitoring available; and (iii) the employer previously provided notice to the employee of that monitoring as required by this section.

2. Employers cannot establish the practical necessity for electronic monitoring without previously filing with the department an impartial evaluation from an independent auditor that said electronic monitoring is effective in undertaking its designated task.

3. Employers who have established practical necessity for using data from electronic monitoring for tracking and assessing employee performance may not rely solely on such data but must also use other means of assessment such as manager observation or interviewing clients, customers or other employees to solicit feedback.

b. Notwithstanding subdivision a, an employer may use data gathered through electronic monitoring:

1. To record the beginning or end of a work shift, meal break, or rest break;

2. For non-employment-related purposes;

3. To discharge or discipline an employee in cases of egregious misconduct or involving threats to the health or safety of other persons; or

4. Where required by state or federal law.

c. Notwithstanding subdivision a, an employer may not use data for discipline or discharge if such data is gathered using biometric technologies, video or audio recordings within the private home of an employee, apps or software installed on personal devices or geofencing technologies.

d. 1. Notwithstanding subdivision a, when discharging or disciplining employees, an employer may rely on electronic employee work speed data to determine whether an employee has met a quota, so long as it measures total output over an increment of time that is no shorter than 1 day.

2. An employer may not discipline or discharge an employee based on failure to meet a daily quota if the employee did not complete their entire shift.

e. 1. Notwithstanding subdivision a, an employer using electronic monitoring to measure increments of time within a day during which an employee is or is not meeting performance standards may not record or rely on such data in discharging or disciplining an employee unless it is gathered during a periodic performance review and so long as the employee subject to the performance review has been given at least 7 days advance notice of the exact timing of such review.

2. Such reviews can occur not more than once a quarter and can occur for a duration of time not longer than 3 hours.

f. An employer or agent thereof that is planning to electronically monitor an employee for the purposes of discipline or discharge shall provide the employee with notice that electronic monitoring will occur prior to conducting each specific form of electronic monitoring. Notice shall include, at a minimum, the following elements:

1. Whether the data gathered through electronic monitoring will be used to make or inform disciplinary or discharge decisions, and if so, the nature of that decision, including any associated benchmarks or performance standards;

2. Whether the data gathered through electronic monitoring will be used to assess employees' productivity performance or to set productivity standards, and if so, how;

3. The names of any vendors conducting electronic monitoring on the employer's behalf;

4. A description of the dates, times, and frequency that electronic monitoring will occur;



5. An explanation for why there is no other practical means of tracking or assessing employee performance and how the specific monitoring practice is the least invasive means available;

6. The employees' right to access or correct the data; and

7. The administrative and judicial mechanisms available to challenge the use of electronic monitoring.

g. 1. Notice of the specific form of electronic monitoring shall be clear and conspicuous. A notice that states electronic monitoring "may" take place or that the employer "reserves the right" to monitor shall not be considered clear and conspicuous.

2. An employer who engages in periodic electronic monitoring of employees for the purposes of discipline or discharge shall inform the affected employees of the specific events which are being monitored at the time the monitoring takes place.

3. Notice of periodic electronic monitoring may be given after electronic monitoring has occurred only if necessary to preserve the integrity of an investigation of illegal activity or protect the immediate safety of employees, customers or the public.

5. An employer shall provide additional notice to employees when an update or change is made to the electronic monitoring or in how the employer is using it.

h. Employers shall provide a copy of the disclosures required by this section to the department at the time they are required to be disseminated to employees.

§ 20-1627 Data access and accuracy. a. An employer shall ensure that any data collected through electronic monitoring that may be used for the purposes of discipline or discharge is accurate and, where relevant, kept up to date.

b. A current employee shall have the right to request a copy of employee work speed data that may be used for the purposes of discipline and termination at least once every 7 days.

c. 1. Employers using electronic monitoring to collect employee work speed data for the purposes of

discipline or discharge must provide employees the opportunity to supplement that data to record any increments of time during which they are not performing work-related tasks and to record the reason that they are not performing work-related tasks during that time.

2. Such opportunity must be made available to employees both at the time of data collection and after.

3. Employers must give employees the option to record reasons for not performing tasks that include, at a minimum, the following: using the bathroom, taking meal breaks, responding to an emergency, injury, illness, fear of injury, disability, complying with local, state or federal laws or exercising workplace rights under local, state or federal laws.

d. 1. Employers using electronic monitoring to collect employee work speed data for the purposes of discipline or discharge must provide employees with the opportunity to review and request correction of such data both at the time of its collection and after.

2. An employer that receives an employee request to correct inaccurate data that was collected through electronic monitoring shall investigate and determine whether such data is inaccurate.

3. If an employer, upon investigation, determines that such data is inaccurate, the employer shall:

(a) Promptly correct the inaccurate data and inform the employee of the employer's decision and action.

(b) Review and adjust, as appropriate, any disciplinary or discharge decisions that were partially or solely based on the inaccurate data and inform the employee of the adjustment.

(c) Inform any third parties with which the employer shared the inaccurate data, or from which the employer received the inaccurate data, and direct them to correct it, and provide the employee with a copy of such action.

4. If an employer, upon investigation, determines that the data is accurate, the employer shall inform the employee of the following:

(a) The decision not to amend the data; and

(b) The steps taken to verify the accuracy of the data and the evidence supporting the decision not to amend the data.

§ 5. This local law takes effect 120 days after it becomes law, except that subdivision a of section 20-565.2 of the administrative code of the city of New York, as added by section one of this local law, takes effect 1 year after it becomes law, and the commissioners of consumer and worker protection and transportation shall take such measures as are necessary for the implementation of this local law, including promulgation of rules, within 120 days after this local law becomes law.