



## Legislation Text

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Int. No. 541-C

By Council Members Reynoso, Torres, Williams, Lander, Dromm, Menchaca, Rose, Richards, Palma, Rosenthal, Johnson, Cornegy, Rodriguez, Levin, Chin, Kallos, Levine, Cumbo, Mendez, King, Ferreras-Copeland, Barron, Mealy, Espinal, Lancman, Miller, Salamanca, Eugene, Van Bramer, Gentile, Perkins, Treyger and Adams

A Local Law to amend the administrative code of the city of New York, in relation to requiring the New York police department to develop and provide guidance for its officers on obtaining consent to search individuals

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. The Council finds that many New Yorkers are unaware of their constitutional rights when interacting with law enforcement officers. The Council further finds that, according to reports issued by the Civilian Complaint Review Board from 2014-2016, alleged improper searches of persons, vehicles, and homes are a persistent source of civilian complaints related to alleged officer misconduct. Therefore, the Council finds that it is necessary for the Police Department to develop, with input from the community and Council, and provide guidance regarding advising individuals of their right to be secure against unreasonable searches and seizures, as provided by the Fourth Amendment to the United States Constitution, so that searches that are based solely on an individual's consent are predicated on an individual's voluntary, knowing, and intelligent consent. Furthermore, in the event the Department has to develop a procedure to document voluntary, knowing, and intelligent consent to search other than through the use of body-worn cameras, such procedure should be developed with community and Council input.

§ 2. Chapter 1 of title 14 of the administrative code of the city of New York is amended to add a new section 14-173 to read as follows:

§ 14-173 Guidance regarding consent searches.

a. The department shall develop and provide guidance for its officers, whether in uniform or civilian clothing, not including those engaged in undercover operations, with respect to obtaining voluntary, knowing, and intelligent consent prior to the search of a person, or a person's vehicle, home, or property, for a search that is based solely on a person's consent to such search, when such search is not conducted pursuant to a warrant, any other exception to the warrant requirement under applicable law, or probable cause, or when such search is not incident to a lawful arrest. Such guidance shall specify conduct for:

1. Articulating, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search;

2. Securing such consent without threats or promises of any kind being made to such person;

3. Affirming that such person understands the information communicated pursuant to paragraph 1;

4. Refraining from conducting such search where such consent has not been obtained; and

5. Utilizing interpretation services pursuant to the department's language access plan, as appropriate, when seeking consent to conduct a search of a person with limited English proficiency or such person's vehicle, home, or property, including but not limited to the use of bilingual officers and telephonic interpretation, prior to conducting such search.

b. An officer who seeks consent to conduct a search that is subject to the guidance developed and provided pursuant to subdivision a shall:

1. Create a video record of the information communicated pursuant to such guidance and such person's response to such information when such officer is equipped with a body-worn camera issued by the department; and

2. Document the time, location, and date of such search, and the apparent race/ethnicity, gender, and age

of the person who was the subject of such search, and such officer's name, precinct, and shield number.

c. Where an officer has created a video record pursuant to subdivision b, such officer shall offer the person who is the subject of the search information on obtaining a copy of such record. Upon receiving a request from such person for a copy of such record, the department shall acknowledge receipt of such request within five days of receiving such request. Such acknowledgment shall include a date by which the department will provide such record or the basis for the denial of such request, provided that such date shall not be longer than 90 days from the date of receipt of such request. If the department is unable to provide such copy or denial to such person within 90 days due to extenuating circumstances, it shall provide such record or denial within 30 days of such 90 days and provide the basis of such circumstances.

d. Notwithstanding any other provision in this section, the guidance developed and provided by the department pursuant to subdivision a need not apply when:

1. An officer is conducting a security search of a person or property where such search is predicated upon entrance to a public building or facility, location, event, or gathering, including random security checks of backpacks and containers conducted in facilities operated by the metropolitan transportation authority, and where such person's entrance into any such location constitutes implied consent to be searched under an exception to the warrant requirement;

2. Exigent circumstances require immediate action by law enforcement; or

3. An officer reasonably expects that he or she or any other person is in danger of physical injury or that there is an imminent risk of damage to property, or to forestall the imminent escape of a suspect or the imminent potential destruction of evidence.

e. Commencing within 30 days of the end of the quarter beginning on October 1, 2018, and within 30 days of the end of every quarter thereafter, the department shall post on its website a report of data collected pursuant to paragraph 2 of subdivision b, specifically the total number of consent searches conducted during the preceding quarter disaggregated by the:

1. Apparent race/ethnicity, gender, and age of the person searched; and

2. Precinct where each search occurred, and further disaggregated by the apparent race/ethnicity, gender, and age of the person searched.

f. The information required pursuant to subdivision e for each reporting period shall be stored permanently and shall be accessible from the department's website, and shall be provided in a format that permits automated processing. Each report shall include a comparison of the current reporting period to the prior four reporting periods, where such information is available.

g. Nothing in this section or in the implementation hereof shall be construed to:

1. Restrict or limit any activity or proceeding regulated by the criminal procedure law or any other state law; or

2. Create a private right of action on the part of any persons or entity against the city of New York, the department, or any official or employee thereof.

h. 1. In the event body worn cameras are not provided by the department to officers engaged in a patrol function, whether in uniform or civilian clothing, by December 31, 2019, or the department ceases to use such cameras, the department shall (i) develop and implement a procedure to obtain objective proof of voluntary, knowing, and intelligent consent to search by documenting the information communicated by an officer pursuant to the guidance that the department developed pursuant to subdivision a and the response of the person who is the subject of such search in writing and by offering such person to sign a statement confirming such consent, or by documenting such information through audio, through video and audio, or by other methods, excluding fingerprinting; and (ii) develop a process for such person to request such information or record.

2. If body worn cameras are not provided by the department by December 31, 2019, or the department ceases to use such cameras solely due to circumstances within the control of the commissioner, the department shall develop and implement such procedure by such date.

3. If body worn cameras are not provided by the department by December 31, 2019, or the department

ceases to use such cameras due to circumstances not within the control of the commissioner, the department shall develop and implement such procedure no later than 6 months from such date or the date on which the department ceases to use such technology.

i. Notwithstanding any other provision in this section, the procedure developed by the department pursuant to subdivision h need not apply when:

1. An officer is conducting a security search of a person or property where such search is predicated upon entrance to a public building or facility, location, event, or gathering, including random security checks of backpacks and containers conducted in facilities operated by the metropolitan transportation authority, and where such person's entrance into any such location constitutes implied consent to be searched under an exception to the warrant requirement;

2. Exigent circumstances require immediate action by law enforcement; or

3. An officer reasonably expects that he or she or any other person is in danger of physical injury or that there is an imminent risk of damage to property, or to forestall the imminent escape of a suspect or the imminent potential destruction of evidence.

§ 3. Severability. If any portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 4. This local law takes effect 120 days after it becomes law, provided that paragraph 2 of subdivision b of section 14-173 of the administrative code of the city of New York, as added by section 2 of this local law, takes effect 9 months after it becomes law.

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