



Legislation Text

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By Council Members Krishnan, Sanchez, Fariás, De La Rosa, Hanif, Ayala, Ossé, Cabán, Nurse, Marte, Restler, Gutiérrez, Won, Avilés, Hudson, Louis, the Public Advocate (Mr. Williams), and Council Members Stevens, Brewer, Bottcher, Feliz, Rivera, Abreu, Brannan, Banks and Salaam

A Local Law to amend the administrative code of the city of New York, in relation to repealing the misdemeanor criminal penalties for general vendors and mobile food vendors

Be it enacted by the Council as follows:

Section 1. Legislative findings. The council has reviewed the application of both criminal and civil penalties in enforcing street vending offenses for purposes of efficiency, equity and fairness. The street vendor advisory board, established pursuant to local law number 18 for the year 2021, was tasked with examining and making recommendations regarding the city's vending laws. One recommendation by the board, was to remove the misdemeanor criminal penalties in § 17-325 and § 20-472 of the administrative code for mobile food vendors and general vendors, respectively. Based upon this recommendation, as well as hearing testimony and discussions with relevant stakeholders, the council intends to address concerns with the use of criminal enforcement for vending offenses, as well as serious and unintended consequences of charging a vendor with a misdemeanor. The council finds that a significant portion of individuals engaged in street vending are members of marginalized communities, for whom a criminal penalty can result in a consequence that is disproportionate to the underlying offense.

§ 2. Paragraph 2 of subdivision a of section 17-317 of the administrative code of the city of New York, as added by local law number 15 for the year 1995, is amended to read as follows:

2. the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have been found [guilty of] to have committed four or more violations of this subchapter or any

rules promulgated pursuant thereto within a two-year period or have been found guilty of a violation of the provisions of part fourteen of the state sanitary code or of the New York city health code, or the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have pending any unanswered summonses for violation of this subchapter or any rules promulgated pursuant thereto.

§ 3. Section 17-325 of the administrative code of the city of New York, subdivision b as amended by local law number 38 for the year 213, subdivision c as amended by local law number 80 for the year 2021, is amended to read as follows:

§ 17-325 Penalties. a. Any person who violates the provisions of subdivision a, b, or c of section 17-307 of this subchapter shall be guilty of [a misdemeanor] a violation, punishable by a fine of not less than [one hundred fifty dollars] \$150 nor more than [one thousand dollars, or by imprisonment for not more than three months or by such fine and imprisonment] \$250.

b. [Except as provided in subdivision a of this section, a person who violates any provision of this subchapter or any of the rules or regulations promulgated hereunder shall be guilty of an offense punishable by the court as follows:

1. For the first violation, a fine of not less than twenty-five nor more than fifty dollars.

2. For the second violation issued for the same offense within a period of two years of the date of a first violation, a fine of not less than fifty dollars nor more than one hundred dollars.

3. For a third violation issued for the same offense within a period of two years of the date of a first violation, a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, in addition to the remedy provided for in subdivision f of section 17-317 of this subchapter.

4. For any subsequent violations issued for the same offense within a period of two years of the date of a first violation, a fine of not more than five hundred dollars.

c.] 1. In addition to the penalties prescribed by subdivision a of this section, any person who violates, or any person aiding another to violate, the provisions of subdivision a, b, or c of section 17-307 of this subchapter

shall be liable for a civil penalty of not less than [one hundred fifty dollars] \$150 nor more than [one thousand dollars] \$1,000 together with a penalty of [one hundred dollars] \$100 per day for every day during which the unlicensed business operated; except that a person who violates, or any person aiding another to violate, the provisions of subdivision a, b, or c of section 17-307 of this subchapter by engaging in continued unlicensed activity as defined by the commissioner, considering factors including but not limited to the frequency and duration of such unlicensed activity, shall be liable for a civil penalty of \$1,000 together with a penalty of \$250 per day for every day during which the unlicensed business operated.

2. [In addition to the penalties prescribed by subdivision b of this section, any] Any person who violates any of the provisions of this subchapter, other than subdivision a, b, or c of section 17-307 of this subchapter, or any of the rules and regulations promulgated hereunder shall be liable for a civil penalty as follows:

(a) For the first violation, a penalty of [twenty-five dollars] \$25.

(b) For the second violation issued for the same offense within a period of two years of the date of a first violation, a penalty of [fifty dollars] \$50.

(c) For the third violation issued for the same offense within a period of two years of the date of a first violation, a penalty of [one hundred dollars] \$100, in addition to the remedy provided for in subdivision f of section 17-317 of this subchapter.

(d) For any subsequent violations issued for the same offense within a period of two years of the date of a first violation, a penalty of [two hundred fifty dollars] \$250.

3. Notwithstanding paragraph 2 of this subdivision, any person that violates subdivision c of section 17-311 by failing to firmly affix a current letter grade or letter grade pending card to a vending vehicle or pushcart in a conspicuous place as required by rules of the department shall be liable for a civil penalty of [five hundred dollars] \$500.

4. Any person that violates section 17-311 or subdivisions a or b of section 17-315, or any rules promulgated thereunder, shall not be subject to a civil penalty for a first-time violation if such person proves to

the satisfaction of the department, within seven days of the issuance of the notice of violation and prior to the commencement of an adjudication of the violation, that the violation has been cured. The submission of proof of a cure, if accepted by the department as proof that the violation has been cured, shall be deemed an admission of liability for all purposes. The option of presenting proof that the violation has been cured shall be offered as part of any settlement offer made by the department to a person who has received, for the first time, a notice of violation of section 17-311 or subdivisions a or b of section 17-315, or any rules promulgated thereunder. The department shall permit such proof to be submitted electronically or in person. A person may seek review, in the office of administrative trials and hearings, of the determination that the person has not submitted proof of a cure within 15 days of receiving written notification of such determination.

[d.] c. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision [c] b of this section shall be commenced by the service of a notice of violation which shall be returnable to the environmental control board or [the administrative tribunal established by the board of health] a tribunal of the office of administrative trials and hearings. The environmental control board or [the board of health's administrative] a tribunal of the office of administrative trials and hearings shall have the power to impose the civil penalties prescribed by subdivision [c] b of this section.

§ 4. Section 17-325.1 of the administrative code of the city of New York, as added by local law number 19 for the year 1994, is amended to read as follows:

§ 17-325.1 Failure to display and produce license or permit; presumptive evidence of unlicensed or unpermitted activity.

a. In any [civil or criminal] action or proceeding, failure by a food vendor who is required to be licensed pursuant to the provisions of this chapter to display and exhibit upon demand a food vendor's license in accordance with the provisions of this chapter to any police officer, public health sanitarian or other authorized officer or employee of the department or other city agency shall be presumptive evidence that such food vendor is not duly licensed.

b. In any [civil or criminal] action or proceeding, the failure of any vehicle or pushcart which is required to be permitted pursuant to the provisions of this chapter to have a permit plate affixed thereto in accordance with the provisions of this chapter shall be presumptive evidence that such vehicle or pushcart is not duly permitted.

§ 5. Section 20-460 of the administrative code of the city of New York is amended to read as follows:

§ 20-460 Hearings. Unless otherwise specifically provided, notice and hearings upon denial of an application, the suspension or revocation of a license or the imposition of penalties provided in [subdivision b of] section 20-472 shall be in accordance with the provisions of chapter one of this title and the rules and regulations applicable thereto.

§ 6. Section 20-472 of the administrative code of the city of New York, subdivision a as amended by local law number 63 for the year 1990, subdivision b as amended by local law number 38 for the year 2013, subdivision c as amended by and paragraph 2 of such subdivision c as added by local law number 80 for the year 2021, subdivision e as amended by local law number 14 for the year 1995, is amended to read as follows:

§ 20-472 Penalties. a. Any person who violates the provisions of sections 20-453 and 20-474.1 of this subchapter shall be guilty of a [misdemeanor] violation punishable by a fine of [not less than two hundred fifty dollars nor more than one thousand dollars, or by imprisonment for not more than three months or by both such fine and imprisonment] \$250. In addition, any police officer may seize any vehicle used to transport goods to a general vendor, along with the goods contained therein, where the driver is required to but cannot produce evidence of a distributor's license. Any vehicle and goods so seized may be subject to forfeiture upon notice and judicial determination. If a forfeiture proceeding is not commenced, the owner or other person lawfully entitled to possession of such vehicle and goods may be charged with the reasonable cost for removal and storage payable prior to the release of such vehicle and goods, unless the charge of unlicensed distributing has been dismissed.

b. [Except as provided in subdivision a of this section, a person who violates any provision of this

subchapter or any of the rules or regulations promulgated hereunder shall be guilty of an offense punishable by the court as follows:

1. For the first violation, a fine of not less than twenty-five nor more than fifty dollars.

2. For the second violation issued for the same offense within a period of two years of the date of a first violation, a fine of not less than fifty dollars nor more than one hundred dollars.

3. For a third violation issued for the same offense within a period of two years of the date of a first violation, a fine of not less than one hundred dollars nor more than two hundred and fifty dollars.

4. For any subsequent violations issued for the same offense within a period of two years of the date of a first violation, a penalty of not more than five hundred dollars.

c.] 1. In addition to the penalties prescribed by subdivision a of this section, any person who violates, or any person aiding another to violate, the provisions of section 20-453 of this subchapter shall be liable for a civil penalty of [two hundred fifty dollars] \$250 together with a penalty of [two hundred fifty dollars] \$250 per day for every day during which the unlicensed business operated; except that a person who violates, or any person aiding another to violate, the provisions of section 20-453 of this subchapter by engaging in continued unlicensed activity as defined by the commissioner, considering factors including but not limited to the frequency and duration of such unlicensed activity, shall be liable for a civil penalty of [one thousand dollars] \$1,000 together with a penalty of [two hundred fifty dollars] \$250 per day for every day during which the unlicensed business operated.

2. [In addition to the penalties prescribed by subdivision b of this section, any] Any person who violates any of the provisions of this subchapter, other than section 20-453, or any of the rules and regulations promulgated hereunder shall be liable for a civil penalty as follows:

(a) For the first violation, a penalty of [twenty-five dollars] \$25.

(b) For the second violation issued for the same offense within a period of two years of the date of a first violation, a penalty of [fifty dollars] \$50.

(c) For the third violation issued for the same offense within a period of two years of the date of a first violation, a penalty of [one hundred dollars] \$100.

(d) For any subsequent violations issued for the same offense within a period of two years of the date of a first violation, a penalty of [two hundred and fifty dollars] \$250.

3. Notwithstanding any inconsistent provision of this subdivision, a person shall be subject to a civil penalty of zero dollars for a first violation of subdivision b of section 20-461 of this subchapter or any rule or regulation promulgated thereunder. The notice of violation for such first violation shall inform the respondent of the provision of law or rule that the department believes the respondent has violated, describe the condition or activity that is the basis for the notice of violation, and advise the respondent that the law authorizes civil penalties for such violation and that subsequent violations may result in the imposition of such civil penalties. Any person who violates subdivision b of section 20-461 or any rule or regulation promulgated thereunder shall be subject to a civil penalty of [twenty-five dollars] \$25 for a second violation and a civil penalty of [fifty dollars] \$50 for a third or subsequent violation.

[d.] c. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision [c] b of this section shall be commenced by the service of a notice of violation which shall be returnable to the environmental control board. The board shall have the power to impose the penalties prescribed by subdivision [c] b of this section.

[e. Any person who violates the provisions of sections 20-465 and 20-465.1 of this subchapter and any rules promulgated thereunder shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment.]

§ 7. Section 20-473, as amended by local law number 51 for the year 2024, is amended to read as follows:

§ 20-473 Exemptions for general vendors who exclusively vend written matter. General vendors who exclusively vend written matter are exempt from the following provisions of this subchapter: sections 20-454,

20-455, 20-456, 20-457, 20-459, 20-461, 20-462 and 20-464; paragraph 1 of subdivision g of section 20-465; subdivision j of section 20-465, except that nothing herein shall be construed to deprive the commissioner of the department of parks and recreation of the authority to regulate the vending of written matter in a manner consistent with the purpose of the parks and the declared legislative intent of this subchapter; section 20-465.1 and any rules promulgated thereunder, except that on any street where both general vending is prohibited pursuant to section 20-465.1 and any rules promulgated thereunder and food vending is prohibited pursuant to section 20-465.1 and any rules promulgated thereunder or pursuant to subdivision 1 of section 17-315, general vendors who exclusively vend written matter shall not be permitted to vend with the use of any vehicle, pushcart or stand; sections 20-466 and 20-467; subdivisions c and d of section 20-468; sections 20-469 and 20-470; and subdivision a, and paragraph 1 of subdivision [c] b of section 20-472.

§ 8. Section 20-474.3 of the administrative code of the city of New York, as added by local law number 19 for the year 1994, is amended to read as follows:

§ 20-474.3 Failure to produce license; presumptive evidence of unlicensed activity.

a. In any [civil or criminal] action or proceeding, failure by a general vendor who is required to be licensed pursuant to the provisions of this subchapter to exhibit upon demand a general vendor's license in accordance with the provisions of this subchapter to any police officer or authorized officer or employee of the department or other city agency shall be presumptive evidence that such general vendor is not duly licensed.

b. In any [civil or criminal] action or proceeding, failure by any person who is required to obtain a distributor's license pursuant to the provisions of this subchapter, or failure by the driver of such person, to exhibit upon demand a distributor's license in accordance with the provisions of this subchapter to any police officer or authorized officer or employee of the department or other city agency shall be presumptive evidence that such person is not duly licensed.

§ 9. This local law takes effect 180 days after it becomes law.

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