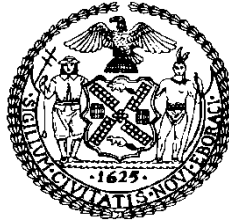


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THE COUNCIL
COMMITTEE REPORT OF THE GOVERNMENT AFFAIRS AND HUMAN
SERVICES DIVISIONS

Robert Newman, Legislative Director

COMMITTEES ON GOVERNMENT OPERATIONS AND SMALL BUSINESS

Hon. Gale Brewer and Hon. Diana Reyna, Chairs

February 28, 2013

Int. No. 941 By Council Members Brewer, Jackson, Chin, Gentile, Gonzalez, James, Koo, Koppell, Mendez, Palma, Recchia, Rose, Williams, Lappin, Arroyo and Ulrich

Title: A Local Law to amend the New York city charter, in relation to standardized customer service training for agency inspectors.

Charter: Amends section 15.

Proposed Int. No. 942-A: By Council Members Comrie, Arroyo, Gentile, James, Koo, Palma, Rose and Williams

Title: A Local Law to amend the administrative code of the city of New York, in relation to agency liaisons.

Administrative Code: Adds a new section 3-114.

Proposed Int. No. 949-A: By Council Members Reyna, Comrie, Koo, Mendez, Rose, Wills and Halloran

Title: A Local Law to provide for retrospective review by the department of buildings, the department of consumer affairs, the department of health and mental hygiene, the department of environmental protection, the department of sanitation, and the fire department of those agencies' existing violations.

Int. No. 956 By Council Members Koslowitz, Barron, Chin, Fidler, Gentile, James, Gonzalez, Koo, Rose, Van Bramer, Williams, Wills, Rodriguez and Ulrich

Title: A Local Law to amend the New York city charter, in relation to distribution of the business owner's bill of rights.

Charter: Amends section 15.

1. INTRODUCTION

Today, the Committees on Governmental Operations and Small Business, chaired by Council Members Gale Brewer and Diana Reyna, respectively, will hold a hearing on Ints. No. 941, 942, 949, and 956. Int. No. 941 requires the creation of a standardized customer service training regime for agency inspectors. Int. No. 942 requires the appointment of agency liaisons for many agencies responsible for regulating small businesses. Int. No. 949 requires these agencies to perform a retrospective review of existing violations. Int. No. 956 requires the distribution of the business owner's bill of rights. We expect to hear testimony from the Mayor's Office of Operations as well as advocates and other stakeholders.

2. BACKGROUND

Burdensome regulations and high regulatory compliance costs are commonly cited as among the biggest difficulties facing small businesses. According to the National Federation of Independent Businesses most recent survey, 21% of small businesses list “government requirements and red tape” as their single most important problem – a larger proportion than list any other difficulty, including sales.¹

The Council, along with the Bloomberg administration, has been working to address this problem. Local Law 45 of 2009 created the Regulatory Review Panel to review the City's regulatory environment for small businesses and to recommend improvements that would make it easier to open and run a business in New York City by

¹ National Federation of Independent Businesses, “NFIB Small Business Trends,” February 2013, available at <http://www.nfib.com/Portals/0/PDF/sbet/sbet201302.pdf>.

minimizing costs and regulatory burdens. The Panel was tasked with making recommendations to improve the efficiency of the City's laws and procedures.

The Panel engaged in outreach in all five boroughs, and received input from dozens of regulated entities and other stakeholders. The Panel issued its report in December of 2009.² Since that time, many of its recommendations have been implemented successfully.³ Recommendations of the Panel that have not yet been implemented are the impetus behind the four bills being considered today.

The bills being heard today share a common purpose with the Regulatory Review Panel: ensuring that the City is regulating in a smart, effective way that minimizes unnecessary burdens and maximizes constructive participation by regulated entities.

Int. No. 941 has the goal of standardizing the training of inspectors as much as possible. This will help to “ensure consistent enforcement and interpretation of agency rules.”⁴

Int. No. 942 will create agency liaisons so that regulating agencies will maintain clear and open lines of communications with chambers of commerce and other stakeholders. “[V]arious chambers of commerce offer valuable perspectives on local businesses and can play a significant role in representing their members’ interest before the City.” These liaisons will serve “as mechanisms for small businesses to present their regulatory issues and concerns to agencies.”⁵

² The report is available at http://www.nyc.gov/html/nycrules/downloads/pdf/regulatory_review_panel_report.pdf.

³ For example, Local Law 18 of 2010 required the creation of the Business Owner’s Bill of Rights, Local Law 46 of 2010 required review of all rules by the Mayor’s Office of Operations to ensure that the proposed rule is easy to understand and is drafted in a way that minimizes compliance costs, and the NYC Rules website was created by Executive Order 133 of 2010.

⁴ Final Report of the Regulatory Review Panel, page 25.

⁵ *Id.* at 28.

Int. No. 949 requires many regulating agencies to report which of their violations offer no cure period or other opportunity for ameliorative action, and to recommend to the Council and the Mayor whether such an opportunity should be added to any such violations. Adopting this strategy “saves businesses time and money, allowing them to focus on business rather than deal with government. It also fosters a productive relationship between small business owners and City agencies...”⁶

Int. 959 is a minor change to a law passed in 2010 in response to the Regulatory Review Panel’s report. Local Law 18 of 2010 required the publication of a Business Owner’s Bill of Rights. Int. 956 explicitly requires that a physical copy be handed out at all non-undercover inspections, to ensure that small businesses are getting as much use out of the bill of rights as possible.

3. ANALYSIS OF LEGISLATION

INT. NO. 941

Section 1

Section 1 of the bill amends Section 15 of the New York City charter to require the Mayor’s Office of Operations to develop a standardized customer service training curriculum for training agency inspectors within the Departments of Buildings, Consumer Affairs, Health and Mental Hygiene, Environmental Protection, Sanitation, and the Bureau of Fire Prevention of the Fire Department. The Office of Operations is then required to review each agency’s inspector training program to: (i) ensure that, to the extent practicable, it includes the standardized customer training; and (ii) certify each inspector training program that does.

⁶ *Id.* at 24.

Subdivision g further provides that no later than December 1, 2012, the office of operations is to submit to the Mayor and the Speaker of the Council a copy of the standardized customer service training curriculum, a report on the number of agency inspector training programs reviewed, and the number of such programs that were certified.⁷ Beginning December 1, 2013 and annually thereafter, the Office of Operations will submit to the Mayor and the Speaker any substantive changes made to the standardized customer service training curriculum, the number of training programs reviewed, and the number of training programs certified during the prior year.

Section 2

This bill will take effect thirty days following its enactment

INT. NO. 942-A

Section 1

Section 1 of the bill amends the administrative code to require the Chief Business Operations Officer or other representative of the Office of the Mayor to ensure that the Departments of Buildings, Consumer Affairs, Health and Mental Hygiene, Environmental Protection, Sanitation, and the Bureau of Fire Prevention of the Fire Department each designate an employee to serve as a liaison to the agency's regulated community and that each liaison meet regularly with members of that community. The agency liaisons will report to the Chief Business Operations Officer or other designated representative of the Mayor. No later than January 1st of each year, the mayor's

⁷ This date was inserted when the bill was originally drafted in 2012. We plan to amend it so that the date comes some time after the bill's enactment.

representative shall provide a listing of the agency liaisons and their contact information to the mayor and the speaker of the council.

Section 2

This bill will take effect thirty days following its enactment

INT. NO. 949-A

Section 1

This bill requires the Departments of Buildings, Consumer Affairs, Health and Mental Hygiene, Environmental Protection, Sanitation, and the Bureau of Fire Prevention of the Fire Department to conduct a retrospective review of their rules establishing violations and to submit to the Mayor and the Speaker of the Council a report regarding existing violations for which the agency may assess a penalty or fine and for which there is no cure period or other opportunity for the parties subject to enforcement to take ameliorative action prior to the imposition of a penalty or fine.

The report shall include a description of each violation for which the agency recommends there be a cure period or other opportunity for ameliorative action prior to the imposition of a fine. The agency shall provide the basis for such a conclusion.

The report shall also include a list of all other existing violations for which there is no cure period or opportunity for ameliorative action shall identify individually or on an aggregate basis the reason why there is not one.

The report shall be due ninety days after enactment of the bill.

Section 2

This bill will take effect immediately.

INT. NO. 956

Section 1

The bill amends subdivision f of Section 15 of the New York City Charter, relating to the establishment and distribution of a business owner's bill of rights. Subdivision f currently does not specify the format in which the bill of rights is to be delivered to business owners, nor does it specify whether it should be delivered before, during, or after an inspection. The amendment would require the Office of Operations to develop and implement a plan in coordination with the relevant agencies to provide the business owner or manager with a physical copy of the bill of rights at the time of inspection or, if the inspection is an undercover inspection or if the business owner or manager is not present at the time of the inspection, as soon as practicable.

Section 2

This local law will take effect thirty days following its enactment.

Int. No. 941

By Council Members Brewer, Jackson, Chin, Gentile, Gonzalez, James, Koo, Koppell, Mendez, Palma, Recchia, Rose, Williams, Lappin, Arroyo and Ulrich

A LOCAL LAW

To amend the New York city charter, in relation to standardized customer service training for agency inspectors.

Be it enacted by the Council as follows:

Section 1. Section 15 of the New York city charter is amended by adding a new subdivision g to read as follows:

g. 1. The office of operations shall develop a standardized customer service training curriculum to be used, to the extent practicable, by relevant agencies for training agency inspectors. For purposes of this subdivision, relevant agencies shall include the department of buildings, the department of consumer affairs, the department of health and mental hygiene, the department of environmental protection, the department of sanitation, and the bureau of fire prevention of the fire department.

2. The office of operations shall review each relevant agency's inspector training program to ensure that such program includes customer service training and, to the extent practicable, includes the standardized customer service training curriculum developed by the office of operations pursuant to paragraph one of this subdivision. After completing such review, the office of operations shall certify an agency's inspector training program if it includes, to the extent practicable, the standardized customer service training curriculum developed by the office of operations pursuant to paragraph one of this subdivision. Any such certification shall be provided to the speaker of the council upon request.

3. No later than December 1, 2012, the office of operations shall submit to the mayor and the speaker of the council a copy of the standardized customer service training curriculum developed pursuant to paragraph one of this subdivision and shall report the number of agency inspector training programs reviewed by the office of operations and the number of such programs that were certified. No later than December 1, 2013 and annually thereafter, the office of operations shall submit to the mayor and the speaker of the council any substantive changes to the standardized customer service training curriculum and shall report the number of agency inspector training programs that were reviewed and the number of such programs that were certified by the office of operations during the prior year.

§2. This local law shall take effect thirty days following enactment.

Proposed Int. No. 942-A

By Council Members Comrie, Arroyo, Gentile, James, Koo, Palma, Rose and Williams

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to agency liaisons.

Be it enacted by the Council as follows:

Section 1. Subchapter 1 of chapter 1 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-114 to read as follows:

§ 3-114 Agency liaisons. a. The chief business operations officer, or other representative of the office of the mayor designated by the mayor, shall ensure that each relevant agency designates an employee or employees to serve as agency liaison(s) to such agency's regulated community or communities, including but not limited to relevant chambers of commerce and industry groups. Each liaison shall report to the chief business operations officer, or other representative of the office of the mayor designated by the mayor. Each liaison shall, to the extent practicable, meet regularly with such liaison's agency's regulated community or communities. For purposes of this subdivision, relevant agencies shall include the department of buildings, the department of consumer affairs, the department of health and mental hygiene, the department of environmental protection, the department of sanitation, and the fire department.

b. No later than January 1, 2013, and no later than every January 1 thereafter, the chief business operations officer, or other representative of the office of the mayor designated by the mayor, shall provide to the mayor and the speaker of the council a listing of the name and contact information of designated agency liaisons.

§ 2. This local law shall take effect thirty days following enactment.

Proposed Int. No. 949-A

By Council Member Reyna, Comrie, Koo, Mendez, Rose, Wills and Halloran

A LOCAL LAW

To provide for retrospective review by the department of buildings, the department of consumer affairs, the department of health and mental hygiene, the department of environmental protection, the department of sanitation, and the fire department of those agencies' existing violations.

Be it enacted by the Council as follows:

Section 1. Retrospective review of existing violations. Within 90 days of the enactment of this section, the department of buildings, the department of consumer affairs, the department of health and mental hygiene, the department of environmental protection, the department of sanitation, and the fire department shall conduct a retrospective review of such agency's rules establishing violations and submit a report to the mayor and the speaker regarding those existing violations for which a penalty or fine may be assessed for which there is no cure period or other opportunity for ameliorative action by the party or parties subject to enforcement prior to the imposition of a penalty or fine. This report shall include:

(1) a description of each violation for which the agency recommends that a cure period or other opportunity for ameliorative action be provided prior to the imposition of a penalty or fine, and the basis for such conclusion; and

(2) a list of all other existing violations established by the agency's rules for which a penalty or fine may be assessed for which there is no cure period or other opportunity for ameliorative action by the party or parties subject to enforcement prior to the imposition of a penalty or fine. This list shall identify, either on individual item or

aggregate basis, the rationale for the absence of a cure period or other opportunity for ameliorative action.

§2. This local law shall take effect immediately.

Int. No. 956

By Council Members Koslowitz, Barron, Chin, Fidler, Gentile, James, Gonzalez, Koo, Rose, Van Bramer, Williams, Wills, Rodriguez and Ulrich

A LOCAL LAW

To amend the New York city charter, in relation to distribution of the business owner's bill of rights.

Be it enacted by the Council as follows:

Section 1. Subdivision f of section 15 of the New York city charter, as added by local law number 18 for the year 2010, is amended to read as follows:

f. 1. The office of operations shall develop a business owner's bill of rights. The bill of rights shall be in the form of a written document, drafted in plain language, that advises business owners of their rights as they relate to agency inspections. The bill of rights shall include, but not be limited to, notice of every business owner's right to: i) consistent enforcement of agency rules; ii) compliment or complain about an inspector or inspectors, and information sufficient to allow a business owner to do so; iii) contest a notice of violation before the relevant local tribunal, if any; iv) an inspector who behaves in a professional and courteous manner; v) an inspector who can answer reasonable questions relating to the inspection, or promptly makes [and] an appropriate referral; and vi) an inspector with a sound knowledge of the applicable laws, rules and regulations.

2. To the extent practicable, the office of operations shall develop and implement a plan to distribute the bill of rights to all relevant business owners, including via electronic publication on the internet, and to notify such business owners if the bill of rights is subsequently updated or revised. The office of operations shall also develop and implement a plan in cooperation with all relevant agencies to facilitate distribution of a

physical copy of the bill of rights to business owners or managers [prior to, during, or after]at the time of an inspection, except that if the inspection is an undercover inspection or if the business owner or manager is not present at the time of the inspection, then a copy of the bill of rights shall be provided as soon as practicable.

3. The bill of rights shall serve as an informational document only and nothing in this subdivision or in such document shall be construed so as to create a cause of action or constitute a defense in any legal, administrative, or other proceeding.

§2. This local law shall take effect thirty days following enactment.