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Title: A Local Law to amend the administrative code of the city of New York, in relation to establishing a photo noise violation monitoring device program for motor vehicles

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Attachments: 1. Summary of Int. No. 2385, 2. Int. No. 2385, 3. August 26, 2021 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 8-26-21, 5. Minutes of the Stated Meeting - August 26, 2021

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Int. No. 2385

By Council Members Kallos, Holden, Yeger, Dinowitz, Brannan, Powers and Lander

A Local Law to amend the administrative code of the city of New York, in relation to establishing a photo noise violation monitoring device program for motor vehicles

Be it enacted by the Council as follows:

Section 1. Subchapter 6 of chapter 2 of title 24 of the administrative code of the city of New York is amended by adding a new section 24-236.1 to read as follows:

§ 24-236.1 Owner liability for failure to comply with motor vehicle sound limits. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Lessee. The term "lessee" has the meaning provided in section 239 of the vehicle and traffic law.

Lessor. The term "lessor" has the meaning provided in section 239 of the vehicle and traffic law.

Owner. The term "owner" has the meaning provided in section 239 of the vehicle and traffic law.

Photo noise violation monitoring device. The term "photo noise violation monitoring device" means one or more mobile or fixed vehicle sensors installed to work in conjunction with one or more noise measuring apparatuses such as a decibel reader which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each motor vehicle at the time it is used or operated in violation of the motor vehicle noise limits prescribed in section 24-236 of this subchapter.

b. Photo noise violation monitoring device program established. 1. The department, in consultation with the police department and the department of transportation, shall establish a demonstration program of photo noise violation monitoring devices to monitor compliance with motor vehicle noise limits provided in section 24-236. Any motor vehicle found to be violating such provisions shall be issued a notice of violation and subject to the civil penalty prescribed in table I of paragraph 5 of subdivision b of section 24-257.

2. No photo noise violation monitoring device shall be used unless it has undergone an annual calibration check performed pursuant to paragraph 3 of this subdivision.

3. Each photo noise violation monitoring device shall undergo an annual calibration check performed by an independent calibration laboratory which shall issue a signed certificate of calibration. The department shall keep each such annual certificate of calibration on file until the final resolution of all cases involving a notice of violation issued during such year which were based on photographs, microphotographs, videotape or other recorded images produced by such photo noise violation monitoring device.

4. It shall be a defense to any prosecution for a violation issued pursuant to this section that such photo noise violation monitoring device was malfunctioning at the time of the alleged violation.

5. Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs, microphotographs, videotape or other recorded images produced by such photo noise violation monitoring devices shall not include images that identify the driver, the passengers, or the contents of the motor vehicle. Provided, however, that no notice of violation issued pursuant to this section shall be dismissed solely because such photograph, microphotograph, videotape or other recorded image allows for the

identification of the driver, the passengers, or the contents of motor vehicles where the department shows that it made reasonable efforts to comply with the provisions of this paragraph in such case.

6. Any photograph, microphotograph, videotape or other recorded image from a photo noise violation monitoring device shall be for the exclusive use of the city for the purpose of the adjudication of liability imposed pursuant to subchapter 8 of this chapter and of the motor vehicle owner receiving a notice of violation, and shall be destroyed by the department upon the final resolution of the notice of violation to which such photograph, microphotograph, videotape or other recorded image relates, or one year following the date of issuance of such notice of violation, whichever is later. Notwithstanding the provisions of any other law, rule or regulation to the contrary, a photograph, microphotograph, videotape or other recorded image from a photo noise violation monitoring device shall not be available to the public, nor subject to civil or criminal process or discovery, nor used by any court or administrative or adjudicatory body in any action or proceeding therein except that which is necessary for the adjudication of a notice of violation, and no public entity or employee, officer or agent thereof shall disclose such information, except that a photograph, microphotograph, videotape or other recorded image from such devices:

(a) Shall be available for inspection and copying and use by the motor vehicle owner for so long as such photograph, microphotograph, videotape or other recorded image is required to be maintained or is maintained by such public entity, employee, officer or agent;

(b) Shall be furnished for use in a criminal action or proceeding when described in a search warrant issued by a court authorized to issue such a search warrant pursuant to article 690 of the criminal procedure law or a federal court authorized to issue such a search warrant under federal law, where such search warrant states that there is reasonable cause to believe such information constitutes evidence of, or tends to demonstrate that, a misdemeanor or felony offense was committed in this state or another state, or that a particular person participated in the commission of a misdemeanor or felony offense in this state or another state, provided, however, that if such offense was against the laws of another state, the court shall only issue a warrant if the

conduct comprising such offense would, if occurring in this state, constitute a misdemeanor or felony against the laws of this state; and

(c) Shall be furnished for use in a criminal action or proceeding in response to a subpoena duces tecum signed by a judge of competent jurisdiction and issued pursuant to article 610 of the criminal procedure law or a judge or magistrate of a federal court authorized to issue such a subpoena duces tecum under federal law, where the judge finds and the subpoena states that there is reasonable cause to believe such information is relevant and material to the prosecution, or the defense, or the investigation by an authorized law enforcement official, of the alleged commission of a misdemeanor or felony in this state or another state, provided, however, that if such offense was against the laws of another state, such judge or magistrate shall only issue such subpoena if the conduct comprising such offense would, if occurring in this state, constitute a misdemeanor or felony in this state.

7. A certificate, sworn to or affirmed by a technician employed by the city, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotapes or other recorded images produced by a photo noise violation monitoring device, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotapes or other recorded images evidencing such a violation shall include at least two date and time stamped images of the rear of the motor vehicle that include the same stationary object near the motor vehicle and shall be available for inspection reasonably in advance of and at any proceeding to adjudicate the liability for such violation pursuant to subchapter 8 of this chapter.

8. A notice of violation shall be sent by first class mail to each person alleged to be liable as a motor vehicle owner for a violation of section 24-236, within 14 business days if such owner is a resident of this state and within 45 business days if such owner is a non-resident. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the facts contained therein.

9. A notice of violation shall contain the name and address of the person alleged to be liable as a motor

vehicle owner for a violation of section 24-236, as documented by a photo noise violation monitoring device, the registration number of the motor vehicle involved in such violation, the location where such violation took place, the date and time of such violation, the identification number of the camera which recorded the violation or other document locator number, at least two date and time stamped images of the rear of the motor vehicle that include the same stationary object near the motor vehicle, and the certificate charging the violation, which shall be a statement within the notice of violation that an owner violated section 24-236 and is liable for penalties in accordance with this section.

10. The notice of violation shall contain information advising the person charged of the manner and the time in which the alleged violation may be contested in a hearing pursuant to section 24-263.

11. If a motor vehicle owner receives a notice of violation pursuant to this section for any time period during which the motor vehicle or the number plate or plates of such motor vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of section 24-236 that the motor vehicle or the number plate or plates of such motor vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense provided by this paragraph, it shall be sufficient that a certified copy of the police report on the stolen motor vehicle or number plate or plates of such motor vehicle be sent by first class mail to the body adjudicating the proceeding.

12. A motor vehicle owner who is a lessor of a motor vehicle to which a notice of violation is issued shall not be liable for a violation of section 24-236, provided that:

(a) Prior to the violation, the lessor has filed in accordance with the provisions of section 239 of the vehicle and traffic law; and

(b) Within 37 days after receiving notice of the date and time of the violation, together with the other information contained in the notice of violation, the lessor submits to the body adjudicating the proceeding the correct name and address of the lessee of the motor vehicle identified in the notice of violation at the time of

such violation, together with such additional information contained in the rental, lease, or other contract document, as may be reasonably required by such adjudicating body pursuant to regulations promulgated for such purpose.

13. Failure to comply with the provisions of paragraph 12 of this subdivision shall render the motor vehicle owner liable for the penalty prescribed in table I of paragraph 5 of subdivision b of section 24-257.

14. Where the lessor complies with the provisions of paragraph 12 of this subdivision, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for such violation pursuant to this section and shall be sent a notice of violation pursuant to paragraph 10 of this section.

15. If the motor vehicle owner liable for a violation of section 24-236 pursuant to this section was not the operator of the motor vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

16. Notwithstanding any other provision of this section, no owner of a motor vehicle shall be subject to a monetary fine imposed pursuant to table I of paragraph 5 of subdivision b of section 24-257 if the operator of such motor vehicle was operating such motor vehicle without the consent of the owner at the time of the violation. For purposes of this paragraph there shall be a presumption that the operator of such motor vehicle was operating the motor vehicle with the consent of the owner at the time of such violation.

c. Placement of devices. The department shall select the locations for each photo noise violation monitoring device based on motor vehicle noise complaint data reported by the 311 customer service center within 30 days of the effective date of this law. To the extent practicable, the department shall take into consideration requests made by elected officials or community boards for placement of photo noise violation monitoring devices. Upon receipt of a request by an elected official or a community board for installation of a photo noise violation monitoring device at a particular location, the department shall assess the request and respond within 30 days with a determination as to whether the location requested is appropriate for inclusion in

the program.

d. Warning signs. The department shall install signs giving notice to approaching motor vehicle operators where a photo noise violation monitoring device is in use, provided that the department shall not use dynamic display signs to display real time decibel readings of motor vehicles unless it determines that the use of such signs will be beneficial at specific locations.

e. Multiple technologies. The department shall trial different sound detection technologies within the photo noise violation monitoring devices as part of this program, including but not limited to:

1. Acoustic monitoring;

2. Beamforming devices; and

3. Artificial intelligence.

f. Reporting. No later than December 1, 2021, and annually on December 1 thereafter in each succeeding year in which the demonstration program is operable, the commissioner shall submit to the mayor and the speaker of the council, and post on the department's website, a report on the use of photo noise violation monitoring devices. Such report shall include:

1. The locations where and dates when photo noise violation monitoring devices were used;

2. The total number of violations recorded by photo noise violation monitoring devices on a daily, weekly and monthly basis;

3. The total number of notices of violation issued for violations recorded by such devices;

4. The number of fines and total amount of fines paid after the first notice of violation issued for violations recorded by such devices;

5. The number of violations adjudicated in accordance with subchapter 8 of this chapter and the results of such adjudications disaggregated by dispositions made for violations recorded by such devices;

6. The total amount of revenue realized by the city in connection with the program;

7. Any expenses incurred by the city in connection with the program;

8. A cost-benefit analysis of the different types of technology trialed pursuant to subdivision e of this section; and

9. A description of the quality of the adjudication process and its results.

§ 2. This local law takes effect 60 days after it becomes law, except that the administering agency shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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