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Title: A Local Law to amend the administrative code of the city of New York, in relation to after hours work authorization

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Attachments: 1. Summary of Int. No. 1737, 2. Int. No. 1737, 3. September 25, 2019 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 9-25-19, 5. Minutes of the Stated Meeting - September 25, 2019, 6. Committee Report 5/4/21, 7. Hearing Testimony 5/4/21, 8. Hearing Transcript 5/4/21

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Int. No. 1737

By Council Members Rivera, Powers, Chin, Holden, Kallos, Adams, Lander, Rodriguez, Reynoso, Menchaca, Van Bramer and Levin

A Local Law to amend the administrative code of the city of New York, in relation to after hours work authorization

Be it enacted by the Council as follows:

Section 1. Subdivision (e) of section 24-223 of the administrative code of the city of New York, as added by local law number 113 for the year 2005, is amended to read as follows:

(e) Authorization for after hours construction work may only be issued in the following circumstances:

(1) Emergency work. Agencies shall authorize such after hours construction work for emergency

conditions, inside or outside the property line, involving a threat to public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise. An emergency authorization issued pursuant to this paragraph shall expire as determined by the agency but no later than the [ninetieth] fifteenth day after its issuance and shall be renewable in accordance with agency procedures while the emergency continues.

(2) Public safety. Agencies may authorize such after hours work, inside or outside of the property line, where the agency determines that the work cannot reasonably or practicably be performed on weekdays between the hours of 7 a.m. and 6 p.m. because of traffic congestion and/or concern for worker and/or public safety. An authorization issued pursuant to this paragraph shall [expire, as determined by the agency, but] expire after a number of days that the commissioner of environmental protection shall, in consultation with the commissioner of buildings, establish by rule for the type of work involved, provided that such authorization shall expire no later than the [ninetieth] fifteenth day after its issuance and shall be renewable in accordance with [agency procedures] subdivision (f) of this section.

(3) [City] Government construction projects. Agencies may authorize after hours work (i) by or on behalf of federal, state or city agencies for projects that are judicially mandated or the subject of consent orders and/or where a project is necessary in the public interest including but not limited to facilities, equipment, and infrastructure for the provision of water, sewerage, sanitation, transportation, public utilities and other services necessary for the health or safety of the public and (ii) by or on behalf of educational institutions. An authorization issued pursuant to this paragraph for a government construction project shall remain in effect for the duration of the project.

(4) Construction activities with minimal noise impact. The commissioner shall promulgate rules setting forth a list of construction activities with minimal noise impact and specific noise mitigation measures applicable to such activities. Agencies may authorize the performance of such construction activities after hours in accordance with such rules.

(5) Undue hardship. [Agencies] Subject to the requirements of subdivision (f) of this section, agencies may authorize after hours work if the commissioner certifies that the permit holder has substantiated a claim of undue hardship resulting from unique site characteristics, unforeseen conditions, scheduling commitments and/or financial considerations outside the control of the permit holder and that the applicant has received approval from the department of an alternative noise mitigation plan pursuant to section 24-221 of this subchapter, specifying the activities and devices that will be used for such after hours construction and setting forth the additional mitigation measures, above and beyond those measures otherwise required for such devices and activities pursuant to the department's rules, that the applicant will use to significantly limit noise emissions from the site of such after hours work. Applications for such certification shall be submitted to the department in a form and manner to be set forth in the rules of the department. The applicant for an after hours authorization under this paragraph shall submit such certification to the issuing agency.

§ 2. Section 24-223 of the administrative code of the city of New York is amended by adding a new subdivision (f) to read as follows:

(f) (1) Authorization for after hours construction work pursuant to paragraph (5) of subdivision (e) of this section or renewals of after hours construction work permits pursuant to paragraph (2) of such subdivision may only be issued for the hours of 6 a.m. to 7 a.m. and 6 p.m. to 10 p.m. on weekdays and for the hours of 8 a.m. to 6 p.m. on weekends.

(2) An applicant seeking an authorization for after hours construction pursuant to paragraph (5) of subdivision (e) of this section or renewals of after hours construction work permits pursuant to paragraph (2) of such subdivision shall be required to include in their application, and the agency that provides such authorization must post on their website:

(A) The name, electronic mail address and phone number of an individual who will be able to take complaints and provide information about the project and the after hours construction authorization;

(B) A certification from a registered design professional, as defined in section 28-101.5 of the code,

providing a detailed explanation of the condition or conditions that exist that require such authorization and the estimated number of days such authorization will be needed; and

(C) The days for which such applicant seeks such authorization for after hours construction, provided that such requested days may not exceed three weekdays per week, one Saturday or one Sunday per week and shall not include any holiday on which alternate side of the street parking rules are suspended pursuant to section 19-163.

(3) (A) Pursuant to rules set forth by the department, after submitting an application for authorization for after hours construction, the commissioner shall issue a written notification to such applicant that approves, denies or otherwise amends the days sought by such applicant for such after hours construction. The commissioner shall also provide an explanation of such denial or amendment to such applicant.

(B) Where such applicant submits a request for an authorization for after hours construction and the commissioner has issued an authorization to a prior applicant for after hours construction to occur on the same or adjacent block on a date to occur after such submission, the commissioner may only issue the authorization for after hours construction to such present applicant for after hours construction to occur on the same date as the previously issued authorization that was granted to the prior applicant. Such applicant may appeal such decision in writing within 10 days that such decision was issued by the commissioner.

(4) No later than December 1, 2020 and by December 1 every year thereafter, the department shall submit a report to the mayor and the council on the issuance of authorizations for after hours construction. Such report shall, for the immediately preceding fiscal year include, but not be limited to:

(A) The total number of applications for authorizations for after hours construction disaggregated by borough and community district and the number of authorizations for after hours construction issued by the department;

(B) The location for each project for which an authorization for after hours construction was issued by the department;

(C) The permitted length of time for each authorization for after hours construction that was issued by the department;

(D) A description of any violation of the terms of an authorization for after hours construction by an applicant, the identifying information of such applicant and the penalties, if any, issued to such applicant; and

(E) The number of complaints, received for each project for which an authorization for after hours construction was issued by the department, received through the 311 citizen service center or other means.

§ 3. Section 28-104.2.7.1 of the administrative code of the city of New York, as amended by local law number 10 for the year 2016, is amended to read as follows:

§ 28-104.2.7.1 Notification of approval. The department shall, on a weekly basis, send council members and community boards, by electronic mail, a copy of all notices of approval for applications for a new [building or] building, an alteration that will require a new certificate of occupancy for a building, or an authorization for after hours construction work, including an explanation for the reason such authorization was granted, sent to applicants during the prior week, disaggregated by community board. In addition, the department shall post such information on its website on a weekly basis.

§ 4. This local law takes effect 90 days after it becomes law, except that the commissioner of environmental protection and the commissioner of buildings may take such measures as are necessary for its implementation, including the promulgation of rules, before such effective date.

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