



Legislation Text

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Int. No. 1183

By Council Members R. Diaz, Yeger and Ampry-Samuel

A Local Law to amend the New York city charter, in relation to the office of administrative trials and hearings dismissing violations in the interests of justice

Be it enacted by the Council as follows:

Section 1. Subdivision 5 of section 1049 of chapter 45-A of the New York city charter is amended to read as follows:

5. During the course of an adjudication and upon the request of an agency or any party, or upon the administrative law judge's or hearing officer's own initiative, an administrative law judge or hearing officer may dismiss a notice of violation [for a specified violation, as defined by paragraph (b) of subdivision 4 of this section], when dismissal is appropriate in the interest of justice, within the meaning of this subdivision.

(a) An administrative law judge or hearing officer may dismiss a notice of violation in the interest of justice when, even though there may be no basis for dismissal as a matter of law, such dismissal is appropriate as a matter of discretion due to the existence of one or more compelling factors, considerations, or circumstances clearly demonstrating that finding the respondent in violation of the provision at issue would constitute or result in injustice. In determining whether such compelling factor, consideration, or circumstance exists, the administrative law judge or hearing officer must, to the extent applicable, examine and consider, individually and collectively, the following:

- (i) the seriousness and circumstances of the violation;
- (ii) the extent of harm caused by the violation;
- (iii) the evidence supporting or refuting the violation charged, whether admissible or inadmissible at a

hearing;

(iv) the history, character, and condition of the respondent;

(v) the purpose and effect of imposing upon the respondent a civil penalty [authorized by one of the provisions listed in this section];

(vi) the impact of a dismissal on the safety or welfare of the community;

(vii) the impact of a dismissal upon the confidence of the public in the office of administrative trials and hearings and in the implementation of laws by the city of New York;

(viii) the position of the relevant city agency regarding the proposed dismissal with reference to the specific circumstances of the respondent and the violation charged; and

(ix) any other relevant fact indicating that a decision to sustain the alleged violation would or would not serve a useful purpose.

(b) The administrative law judge or hearing officer's determination shall be limited to a consideration of the factors described in paragraph (a), and shall not include a consideration of the administrative law judge or hearing officer's judgment as to whether, as a matter of policy, certain conduct should be prohibited.

(c) Upon dismissing a violation in the interest of justice, the administrative law judge or hearing officer must set forth the reasons therefor upon the record.

§ 2. This local law takes effect 120 days after it becomes law.

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