

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2015**

No. 62

Introduced by The Speaker (Council Member Mark-Viverito) and Council Members Arroyo, Barron, Chin, Constantinides, Dromm, Ferreras-Copeland, Johnson, Koo, Lancman, Lander, Palma, Reynoso, Richards, Rose, Torres, Van Bramer, Williams, Mendez, Koslowitz, Kallos, Menchaca, Rodriguez, Levine, Levin, Rosenthal, Crowley, Gibson, King, Garodnick and the Public Advocate (Ms. James).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to licensing car wash businesses.

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 33 to read as follows:

Subchapter 33

CAR WASHES

§ 20-539 **Short Title.** *This subchapter shall be known as and may be cited as the “car wash accountability law”.*

§ 20-540 **Definitions.** *For purposes of this subchapter:*

Applicant. *The term “applicant” means any individual, partnership, corporation, limited liability company, joint venture, association or other business entity that seeks a license or renewal of a license to engage in the operation of a car wash.*

Car wash. *The term “car wash” means any individual, partnership, corporation, limited liability company, joint venture, association, or other business entity that engages in the*

cleaning of vehicles, including washing, detailing, drying, polishing, vacuuming or otherwise providing cosmetic care to vehicles. “Car wash” shall not include:

1. any business entity that is engaged in selling, leasing, renting or repairing motor vehicles, where car washing is ancillary to the primary business of such entity;

2. any self-service facility for washing vehicles, where the facility’s employees do not provide assistance to customers in the cleaning of vehicles, such as washing, detailing, drying, polishing, vacuuming or otherwise providing cosmetic care to vehicles, including businesses such as convenience stores, gas stations and oil change facilities, where car washing is ancillary to the primary business of the facility;

3. any person that engages in the cleaning of vehicles on an intermittent basis to raise funds for a not-for-profit organization; or

4. any federal, state or local governmental agency.

Collective bargaining representative. The term “collective bargaining representative” means a bona fide labor organization that is the recognized or certified exclusive bargaining representative of the employees of an employer under applicable law. The commissioner may request documentation as proof that the employer’s employees have a collective bargaining representative.

Licensee. The term “licensee” means any individual, partnership, corporation, limited liability company, joint venture, association or other business entity that is currently licensed by the commissioner to engage in the operation of a car wash.

§ 20-541 License. *a. It shall be unlawful for any car wash to operate without a license.*

b. All licenses issued pursuant to this subchapter shall be valid for two years.

c. Each applicant applying for a car wash license or renewal thereof shall file an application in such form and detail as the commissioner shall prescribe and shall pay a fee of five hundred fifty dollars for each location where such applicant's car wash operates.

d. In addition to an applicant's name, address, corporate structure and ownership, and other information as the commissioner may require, an applicant for a license required by this subchapter shall furnish the following information:

1. A signed statement certifying compliance with all applicable laws, regulations and rules including:

i. that the applicant is in compliance with the New York city plumbing code section PC 1003 and any rules promulgated by the commissioner of buildings or the commissioner of environmental protection, regarding the applicant's oil/water separator system, sand interceptor, and/or backflow prevention devices, if any such equipment or devices are required for the operation of such car wash;

ii. that the applicant is in compliance with section 24-334 of this code;

iii. that the applicant has received any necessary permits from the department of health and mental hygiene to use non-potable ground water; and

iv. that the applicant has complied with subdivision b of section 24-529 of this code;

2. Written proof of compliance with the surety bond requirement as described in section 20-542 of this subchapter;

3. Signed certification by the applicant that there are no outstanding final judgments or warrants against the applicant in any action arising out of a violation of this subchapter or any rules promulgated thereunder;

4. *Certificates of insurance for workers' compensation, unemployment insurance and disability insurance coverage; and*

5. *Original or true copies of liability insurance policies or certificates of insurance for liability insurance carried by the applicant.*

e. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or chapter one of this title or any rules promulgated thereunder, the commissioner may deny issuance or renewal of a license upon a finding that:

1. the applicant has failed to satisfy any fine or civil penalty ordered against such applicant in a judicial or administrative proceeding arising out of a violation of this subchapter or any rules promulgated thereunder;

2. an entity to which the applicant is a successor, as such term is described in section 20-543 of this subchapter, has failed to satisfy any fine or civil penalty ordered against such entity in a judicial or administrative proceeding arising out of a violation of this subchapter or any rules promulgated thereunder; or

3. the applicant lacks good moral character. In making such determination, the commissioner may consider, but is not limited to, any of the following factors:

i. failure by such applicant to provide truthful information or documentation in connection with the application or other request for information;

ii. final determinations of liability in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages or other illegal acts or omissions bearing a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; except that the commissioner shall take into account mitigating factors including (A) the passage of time since such findings of liability or other illegal acts or omissions

at issue, (B) the severity of such findings of liability or other illegal acts or omissions, (C) whether any such findings or other illegal acts or omissions were resolved or are still pending, and (D) any change in circumstance that might reduce the likelihood of such findings or other illegal acts or omissions recurring during the period of licensure, including the fact that such findings or other illegal acts or omissions at issue took place prior to the effective date of this subchapter;

iii. a prior revocation by the commissioner of a car wash license held by the applicant or licensee; or

iv. a finding that within the last ten years an entity to which the applicant is a successor, as such term is described in section 20-543 of this subchapter, has been denied the issuance or renewal of a license pursuant to this subdivision or has had a license revoked pursuant to section 20-545 of this subchapter.

§ 20-542 **Surety bonds.** a. Except as provided in subdivision b of this section, prior to the issuance or renewal of a car wash license, each applicant shall furnish to the commissioner a surety bond in the sum of one hundred fifty thousand dollars, payable to the city of New York and approved as to form by the commissioner.

b. Prior to the issuance or renewal of a car wash license, an applicant described in paragraph one or two of this subdivision shall furnish to the commissioner a surety bond in the sum of thirty thousand dollars, payable to the city of New York and approved as to form by the commissioner.

1. The applicant is a party to a current and bona fide collective bargaining agreement, with a collective bargaining representative of its employees, that expressly provides for the timely

payment of wages and an expeditious process to resolve disputes concerning nonpayment or underpayment of wages.

2. The applicant is covered by an active monitoring agreement pursuant to a settlement supervised by the office of the attorney general of the United States or the state of New York, or the department of labor of the United States or the state of New York, or other government agency with jurisdiction over wage payment issues, on the condition that such monitoring agreement:

i. expressly provides for the timely payment of wages at or above the applicable minimum wage rate;

ii. requires that the employer be subjected to at least monthly monitoring by an independent monitor appointed; and

iii. provides for an expeditious process to resolve disputes concerning wage violations without the expense of litigation, including reasonable mechanisms to secure the assets necessary to cover any judgment or arbitration award.

c. The surety bond required by subdivisions a and b of this section shall be conditioned upon the applicant's compliance with the provisions of this subchapter and any rules promulgated thereunder, and upon the further condition that the applicant shall pay or satisfy:

1. any fine, penalty or other obligation to the city within thirty days of the imposition of such fine, penalty or obligation;

2. any final judgment recovered by any person who received car wash services from a licensee thereunder and was damaged thereby within thirty days of such judgment; and

3. any final judgment recovered by any employee of the licensee for nonpayment or underpayment of wages within thirty days of such judgment.

§ 20-543 **Successor.** *An applicant shall be considered a successor to a predecessor car wash upon a finding that such applicant satisfies two or more of the following criteria:*

1. the applicant uses the same facility, facilities or workforce to offer substantially the same services as the predecessor car wash;

2. the applicant shared in the ownership, or otherwise exercised control over, the management of the predecessor car wash;

3. the applicant employs in a managerial capacity any person who controlled the wages, hours, or working conditions of the affected employees of the predecessor car wash; or

4. the applicant is an immediate family member, including a parent, step-parent, child, or step, foster or adopted child, of any owner, partner, officer, or director of the predecessor car wash, or of any person who had a financial interest in the predecessor car wash.

§ 20-544 **Records.** *Each licensee under this subchapter shall maintain a log documenting complaints of damage to vehicles in an electronic format to be designated by the commissioner. Each such log entry shall include a detailed description of such damage, and the amount of compensation, if any, that the customer received for such damage. Such records shall be kept for a period of at least three years and shall be made available to the department upon request. Each such licensee shall also maintain the records described in subdivision b of section 24-529 of this code for at least three years and shall make such records available to the department and the department of environmental protection upon request.*

§ 20-545 **Enforcement.** *a. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or chapter one of this title or any rules promulgated thereunder, the commissioner, after due notice and an opportunity to be heard, may suspend or*

revoke a license issued pursuant to section 20-541 of this subchapter upon the occurrence of any one or more of the following conditions:

1. Fraud, misrepresentation or false statements contained in the application for the license;

2. A final determination of liability concerning a violation of any of the provisions of this subchapter;

3. A final determination of liability in a civil, criminal or administrative action involving egregious or repeated nonpayment or underpayment of wages or other illegal acts or omissions bearing a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; except that the commissioner shall take into account mitigating factors including (A) the passage of time since such findings of liability or other illegal acts or omissions at issue, (B) the severity of such findings of liability or other illegal acts or omissions, (C) whether any such findings or other illegal acts or omissions were resolved or are still pending, and (D) any change in circumstance that might reduce the likelihood of such findings or other illegal acts or omissions recurring during the period of licensure, including the fact that such findings or other illegal acts or omissions at issue took place prior to the effective date of this subchapter;

4. Failure to answer a summons, notice of violation or subpoena, appear for a hearing, or satisfy a fine or civil penalty ordered against such entity in a judicial or administrative proceeding arising out of a violation of this subchapter or any rules promulgated thereunder; or

5. Failure to submit records described in section 20-544 for inspection by the department.

b. Any individual or business entity operating a car wash without a valid license issued by the commissioner shall be liable for a civil penalty of one hundred dollars per day for every calendar day during which the unlicensed car wash operated.

c. An applicant who knowingly submits false information to the commissioner as part of an application for a license pursuant to section 20-541 of this subchapter or in response to any other request for information shall be liable for a civil penalty of up to one thousand dollars in addition to any other civil or criminal penalties that may be applicable under this code or any other law, rule or regulation.

*§20-546 **Rules.** The commissioner may make and promulgate such rules as are necessary to carry out the provisions of this subchapter.*

§ 2. Chapter 5 of title 24 of the administrative code of New York is amended by adding a new section 24-529 to read as follows:

*§ 24-529 **Car wash, standards.** a. Definitions. For purposes of this section:*

Applicant. The term “applicant” means any individual, partnership, corporation, limited liability company, joint venture, association or other business entity that seeks a license or renewal of a license to engage in the operation of a car wash.

Car wash. The term “car wash” means any individual, partnership, corporation, limited liability company, joint venture, association, or other business entity that engages in the cleaning of vehicles, including washing, detailing, drying, polishing, vacuuming or otherwise providing cosmetic care to vehicles. “Car wash” shall not include:

1. any business entity that is engaged in selling, leasing, renting or repairing motor vehicles, where car washing is ancillary to the primary business of such entity;

2. any self-service facility for washing vehicles, where the facility's employees do not provide assistance to customers in the cleaning of vehicles, such as washing, detailing, drying, polishing, vacuuming or otherwise providing cosmetic care to vehicles, including businesses such as convenience stores, gas stations and oil change facilities, where car washing is ancillary to the primary business of the facility;

3. any person that engages in the cleaning of vehicles on an intermittent basis to raise funds for a not-for-profit organization; or

4. any federal, state or local governmental agency.

b. Prior to filing an application for a license or renewal of a license to operate a car wash pursuant to subchapter 33 of chapter 2 of title 20 of this code, an applicant shall certify to the commissioner that the following information, in a form and method prescribed by the commissioner, will be maintained by the applicant at its principal place of business for a minimum of three years, and such information shall be made available to the department or the department of consumer affairs upon request:

1. The source from which the applicant draws or will draw its water, whether from the public water supply, well water or other source;

2. For renewal applicants, the amount of water drawn from public sources each month since the applicant last filed an application;

3. Construction drawings and as-built plans, meaning the final set of drawings produced at the completion of construction, of any oil/water separator system or sand interceptor, attesting to the volume of the system and to the maximum flow of wastewater that the system can filter and otherwise clarify efficiently;

4. *Written certification that the applicant has regularly removed, in accordance with the respective manufacturer's specifications, oil, sediment and other residues that may be regulated by the commissioner pursuant to department rules regarding sewer use from its oil/water separator system and sand interceptor, as well as the method or methods used to remove and dispose of such oil, sediment and other residues, and for renewal applicants, the frequency of such removal and disposal since the applicant last filed an application;*

5. *Written certification that the applicant has complied with the rules of the department regarding testing and reporting with respect to all backflow prevention devices;*

6. *A logbook of monitoring and inspection results and repair and maintenance activities with regard to oil/water separators, sand interceptors and other pretreatment devices or systems, and backflow prevention devices, since the applicant last filed an application, provided that an applicant for a new car wash shall begin maintaining such information between sixty and ninety days of commencement of operations after receiving a license from the department of consumer affairs pursuant to section 20-541 of this code; and*

7. *Material safety data sheets or safety data sheets that indicate the chemicals used in the operation of the car wash, where such material safety data sheets or safety data sheets are required by federal, state or local law, rule or regulation.*

§ 3. Severability. If any portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 180 days after enactment, except that prior to such date, the commissioners of consumer affairs and environmental protection shall take such actions, including the promulgating of rules and the processing of applications as provided in section 20-541 of the administrative code of the city of New York, as added by section one of this local law, as necessary to implement the provisions of this local law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

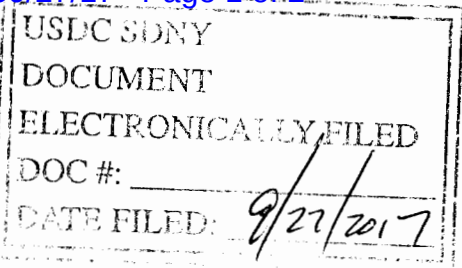
I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 10, 2015 and approved by the Mayor on June 29, 2015.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 62 of 2015, Council Int. No. 125-B of 2014) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASSOCIATION OF CAR WASH OWNERS INC., *et al.*,

Plaintiffs,

15 CV 8157 (AKH)(DCF)

- against -

AMENDED JUDGMENT

CITY OF NEW YORK and LORELEI SALAS, in her
official capacity as Commissioner of the New York City
Department of Consumer Affairs,

Defendants.

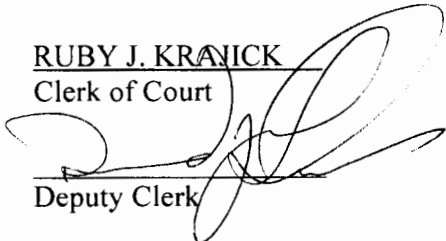
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Whereas both sides having moved for dispositive relief: plaintiffs for partial summary judgment that Local Law 62 is preempted by federal and New York State laws, and Defendants for judgment dismissing the complaint, and the matter having come before the Honorable Alvin K. Hellerstein, United States District Judge, and the Court, on June 20, 2017, having rendered its Amended Order granting plaintiffs' motion as to federal preemption of Section 20-542(b)(1) of Local Law 62, and denying Defendants' corresponding motion, that since the NLRA preempts Section 20-542(b)(1) of Local Law 62 and the Local Law is invalid, there is no reason to enjoin its enforcement, and declining to issue a preliminary injunction, granting defendants' motion for judgment on the pleadings, dismissing with prejudice plaintiffs' equal protection, due process, and Section 1983 claims, and dismissing without prejudice plaintiffs' state law preemption and Article 78 claims, and directing the Clerk to close the case, and the Court, on August 31, 2017, having rendered its Order Resolving Post-Termination Motions and ordering that the Judgment of June 20, 2017 should be amended to provide that Section 20-542(b)(1) is severed from Local Law 62, and reinstating plaintiffs' Fifth Cause of Action for relief under 42 U.S.C. §1983, and the parties having

stipulated that the Court's judgment in favor of plaintiffs on their federal preemption claim warrants relief pursuant to 42 U.S.C. § 1983, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Amended Order dated June 20, 2017 and Order dated August 31, 2017, plaintiffs' motion as to federal preemption of Section 20-542(b)(1) of Local Law 62 and judgment on Count V of its Complaint pursuant to 42 U.S.C. § 1983 is granted, and defendants' corresponding motion is denied, and Section 20-542(b)(1) is severed from Local Law 62, with the validity of the remaining provisions of Local Law 62 not affected by this judgment; and that since the NLRA preempts Section 20-542(b)(1) of Local Law 62, there is no reason to enjoin its enforcement, and the Court declines to issue a preliminary injunction; defendants' motion for judgment on the pleadings is granted, in part, dismissing with prejudice plaintiffs' equal protection and due process claims, and dismissing without prejudice plaintiffs' state law preemption and Article 78 claims; and the case will remain open for the purpose of determining the amount, if any, of the attorneys' fees to be awarded plaintiffs, which determination will be made following the disposition of all appeals from this judgment or any other rulings of this Court.

Dated: New York, New York
September 27, 2017

BY: RUBY J. KRAJICK
Clerk of Court

Deputy Clerk

THIS DOCUMENT WAS FILED
ON THE DOCKET ON 9/27/2017