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Local Legislation: The Year in Review

The preparation and review of legislative proposals is one of the legally mandated functions performed by attorneys of the Law Department. In 2011 and the first months of this year, a number of significant local laws were enacted that reflect this work and will affect life in New York City for years to come. These laws, among others, serve to demonstrate how the public welfare is benefited by the cooperative efforts of the City Council, the Mayor's Office and the Law Department. In the past year, these cooperative efforts have resulted in local laws promoting public health and government transparency, protecting the environment, and preventing the unfair treatment of non-citizens.



The Law Department is involved in the legislative process at the federal, state, and local level. At the local level, on which this article will focus, Law Department attorneys play a substantial role in the legislative process by working with the Office of the Mayor, city agencies and City Council legal staff to draft and review legislative proposals. Law Department involvement in the legislative process is mandated by §7-104 of the New York City Administrative Code, which requires the Law Department to prepare local laws as well as proposed state legislation presented by the city in Albany. This function is performed primarily by the Law Department's Legal Counsel Division, which is responsible for drafting or reviewing the legislative proposals in the Mayor's annual legislative packages and many local bills.

Open Data

As I noted in a previous article, increasing transparency in government has been an important city priority. A notable step in this direction was the enactment of Local Law Number 11 of 2012. This local law establishes one of the most ambitious open data programs in the country, and will increase public access to the vast amount of data used by New York City agencies as they carry out their governmental functions.

The term "open data," as used in Local Law 11, refers to information that is freely available in an open format and that can be used without restrictions such as licensing requirements or copyright limitations. When city data is open, software developers can use the data to build useful tools, such as applications for mobile devices. Innovative applications of open city data have already been developed, including one that

provides real time updates on bus times and other transit conditions and another that allows users to organize spontaneous sports games by providing the location of nearby public sports facilities. As more data is made available and open to the public under the new law, there will be ever-increasing opportunities for the public to create such programs and to find other innovative uses for the government data.

The new legislation provides for implementation in three phases. First, the Department of Information Technology and Telecommunications (DoITT), within six months of the law's enactment, is required to promulgate technical standards that each agency must comply with when making its data available in an open format. Second, within a year of the law's enactment, all agencies must make all data that they already post online available in an open format. This means that if a data set is "locked," for example, in a PDF, it must be converted into an open format. Finally, within a year and a half of the law's enactment, each agency, in cooperation with DoITT, must create and post online a compliance plan that specifies all of the data under the agency's control that it will make public under the law. The compliance plan will be updated annually, and will state when the agency will make its data available online through a single web portal linked to nyc.gov.

Detainer Requests

The city's Department of Correction (DOC), like other state and local authorities, has a longstanding practice of cooperating with detainer requests from U.S. Immigration and Customs Enforcement (ICE), the federal agency charged with carrying out investigations and enforcing federal laws governing immigration, border control, customs, and trade. Pursuant to a detainer request, law enforcement agencies request notification from another jurisdiction before that jurisdiction releases a certain individual from custody. This allows the agency submitting the request to arrest the individual if he or she is wanted for a crime in its jurisdiction, or to detain the individual for questioning in connection with a law enforcement investigation.

Federal regulations authorize ICE to issue civil immigration detainer requests to any law enforcement agency that has custody of an individual of interest to the ICE, authorizing the agency to hold the detained individual for up to 48 hours, excluding weekends and holidays, past the time when he or

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she would otherwise have been released so that ICE may take that person into its custody.

Acknowledging that detainer requests serve an important law enforcement function, the Mayor and City Council were concerned that, in certain circumstances, civil immigration detainees were affecting non-citizen residents who did not have a criminal record or were not otherwise a risk to public safety. Accordingly, local legislation, enacted this past November as Local Law Number 62 of 2011, was drafted to address DOC's response to civil immigration detainees.

Local Law 62 provides that a civil immigration detainer will not be given effect by DOC unless the individual who is the subject of the request: has been convicted of a crime; is a defendant in a pending case; has an outstanding criminal warrant in any jurisdiction within the United States; is identified as a known gang member in the FBI's National Crime Information Center; is a possible match on the U.S. government's Terrorist Watchlist; or is subject to a final order of removal or has an outstanding warrant of removal pursuant to federal immigration law. Convictions and pending cases include misdemeanors and felonies, but exclude youthful offenders. The legislation requires DOC to search criminal justice databases accessible through a state computer application and, where applicable, to contact ICE in order to determine whether the subject of the detainer request comes within any of these categories.

Local Law 62 further requires DOC to report annually on civil immigration detainees on its website, including, among other things, the number of individuals held or transferred to federal authorities pursuant to such requests and information about the individuals who were transferred, such as whether they have criminal records.

Smoking in Public Places

According to the city's Department of Health and Mental Hygiene, smoking in public areas, such as parks, exposes bystanders to secondhand smoke, which has serious negative health impacts including causing asthma, respiratory infections, heart disease and lung cancer. It also contributes significantly to litter. Further, the city's Department of Parks and Recreation (DPR) reports that cigarette litter accounts for 33 percent of all litter in public parks and 75 percent of all litter on public beaches.

New York City has a long history of local legislation establishing public health programs that are intended to reduce exposure to secondhand smoke and to decrease the number of New Yorkers who smoke. In 1988, the Smoke Free Air Act was enacted, prohibiting smoking in some public areas, such

as common areas in workplaces, and requiring restaurants above a certain size to create non-smoking areas. The act has since been amended to prohibit smoking in all restaurants and most bars in New York City.

In order to address the hazards of outdoor smoking discussed above, the administration and City Council agreed upon legislation, enacted as Local Law Number 11 of 2011, that further amends the Smoke Free Air Act to prohibit smoking in all indoor and outdoor areas of any park or other property under the DPR's jurisdiction. This includes public parks, beaches, pools, boardwalks, marinas, playgrounds and recreation centers. Pedestrian plazas are also included in the list of outdoor public places where smoking is prohibited. Exceptions to the rule include sidewalks immediately adjacent to parks, squares and public places, and pedestrian routes that go through any park strip, median, or mall adjacent to vehicular traffic.

Cool Rooftops Legislation

Local Law Number 21 of 2011 takes advantage of the untapped potential of New York City's rooftops to promote energy efficiency and combat climate change. Buildings are a major source of greenhouse gas emissions in the city, producing approximately 80 percent of its emissions. Moreover, traditional rooftops have a significant environmental effect. Because they are generally covered by dark, absorbent materials, temperatures on roofs can be about 100 degrees higher than ambient temperatures on hot days, meaning rooftop temperatures can reach nearly 200 degrees Fahrenheit during the summer. This contributes to the Urban Heat Island Effect, which describes the common fact that cities are significantly warmer than surrounding areas due to their abundance of dark, impermeable surfaces and lack of vegetation.

Local Law 21 provides that newly constructed roofs and alterations to buildings involving the recovering or replacement of an existing roof must comply with new "cool roof" requirements set forth in the city's Building Code. "Cool roofs" refer to roofs covered with materials that have a greater capacity to reflect sunlight and release absorbed heat than traditional roofing materials.

Cool roofs can help reduce a building's emissions by lowering the amount of heat that is transferred from the roof to the inside of a building, resulting in less need for air conditioning during hot months. In addition, cool roofs mitigate the Urban Heat Island Effect by reflecting solar radiation back into the atmosphere rather than retaining heat. New York City has almost one billion square feet of rooftop area, so cool roofs can be a significant part of the city's strategy in reducing the

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Urban Heat Island Effect and combating the effects of climate change through a reduction in greenhouse gas emissions.

Certain types of roof alterations are exempt from the "cool roof" requirements, including changes that will affect less than 50 percent of the roof area and less than 500 square feet, and changes to portions of roofs covered by a "green roof system," which includes agricultural plantings and other vegetation.

These are just a few examples of important legislation enacted by the City Council over the past year. These along with other local enactments demonstrate how the collaborative local legislative process can advance public policy goals.

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