

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2010**

No. 43

Introduced by Council Members Gennaro, Brewer, Fidler, James, Koppell, Lander, Sanders Jr., Van Bramer, Mark-Viverito, Lappin, Levin, Nelson, Garodnick, Crowley, Mendez, Vacca, Koslowitz, Recchia, Chin, Williams, Ferreras, Jackson and Barron

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the use of clean heating oil in New York City.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The Council finds that heating oil is a significant local source of air pollution in New York City. According to a report of the Environmental Defense Fund, the combustion of heating fuel is responsible for approximately 14% of the local emissions of fine particulate matter, more than vehicle traffic or power plants. Particulate matter and other pollutants, such as sulfur and heavy metals, contribute to asthma, heart disease and other public health problems.

The Council finds that the use of bioheating fuel would reduce the emission of air pollutants, reduce cleaning and maintenance costs, increase the ease of handling fuel oils, provide other operational benefits, strengthen the alternative fuels market, support regional farmers and local businesses, and increase energy independence and the diversity of our energy supply.

The Council further finds that No. 4 and No. 6 residual heating oils are more polluting than No. 2 distillate heating oil. According to the New York City Community Air Survey's 2009 winter data report, the strongest predictor of particulate matter and sulfur dioxide in the air in New York

City is the density of nearby buildings that burn fuel oil. Boilers burning heavier residual oils also require more maintenance because of the need to clean burners fouled by the high sulfur content of the oil and the need to heat the non-viscous oils before they can be pumped and burned. Accordingly, the Council finds that is it necessary to address pollutants from the heating oil sector by reducing the sulfur level of No. 4 oil.

§2. Section 24-167 of the administrative code of the city of New York is amended to read as follows:

§24-167 Improper use of equipment or apparatus prohibited. No person shall use or permit the use of equipment or apparatus for a purpose or in a manner which causes it to function improperly or not in accordance with its design. *Nothing in this section shall be construed to prohibit the use of bioheating fuel in equipment that may be adapted for such use.*

§3. Subdivision a of section 24-168 of the administrative code of the city of New York is amended to read as follows:

(a) No person shall cause or permit the use of a kind or grade of fuel in fuel burning equipment which is not designed to burn that kind or grade of fuel. *Nothing in this subdivision shall be construed to prohibit the use of bioheating fuel in equipment that may be adapted for such use.*

§4. Subchapter 8 of chapter 1 of title 24 of the administrative code of the city of New York is amended by adding a new section 24-168.1 to read as follows:

§ 24-168.1 Clean heating oil. (a) Definitions. *For the purpose of this section, the following terms shall have the following meanings:*

(1) *“Biodiesel” shall mean a fuel, designated B100, that is composed exclusively of mono-alkyl esters of long chain fatty acids derived from feedstock and that meets the specifications*

of the American Society of Testing and Materials designation D 6751-09a.

(2) “Bioheating fuel” shall mean a fuel comprised of biodiesel blended with petroleum heating oil that meets the specifications of the American Society of Testing and Materials designation D 396-09a or other specifications as determined by the commissioner.

(3) “District steam system” shall mean a system for the production of steam and for its transmission and distribution through underground pipelines to multiple buildings.

(4) “Emergency generator” shall mean a machine or device that combusts fuel to create electricity and that is used for the purpose of providing backup power in the event of a general interruption in electrical service.

(5) “Feedstock” shall mean soybean oil, oil from annual covercrops, algal oil, biogenic waste oils, fats or greases, or non-food grade corn oil, provided that the commissioner may modify the definition of feedstock based on the vegetable oils, animal fats or cellulosic biomass listed in table 1 of 40 C.F.R. § 80.1426.

(6) “Heating oil” shall mean oil refined for the purpose of use as fuel for combustion in a heating system and that meets the specifications of the American Society of Testing and Materials designation D 396-09a or other specifications as determined by the commissioner.

(7) “Heating system” shall mean a system that generates heat, hot air, hot water or steam by combustion and distributes it within a building.

(8) “Renewable biomass” shall mean crops and crop residue from existing agricultural land, tree residues, animal waste material and byproducts, slash and pre-commercial thinnings from non-federal forest lands, biomass cleared from the vicinity of buildings and other areas to reduce the risk of wildfire, algae, and separated yard waste or food waste. Such term shall not include processed materials such as particle board, treated or painted wood, and melamine

resin-coated panels.

(9) "Renewable fuel" shall mean fuel produced from renewable biomass.

(b) (1) After October 1, 2012, no person shall cause or permit the use in any building in the city or deliver to any building in the city for use in such building, heating oil that is fuel oil grade no. 2, no. 4 or no. 6 containing less than two percent biodiesel by volume. The provisions of this subdivision shall not apply to the use or delivery of heating oil for use in an emergency generator or for use in a boiler where heating oil from a dual-use tank supplies both such boiler and an emergency generator.

(2) The commissioner may authorize the use of any renewable fuel in heating systems if he or she determines that such fuel meets an applicable American Society for Testing and Materials standard or other standard as determined by the commissioner, and the emissions from such fuel contain equal or lesser amounts of particulate matter, sulfur dioxide and nitrogen oxides than the emissions from fuel oil grade no. 2.

(c) The commissioner may waive the requirements of paragraph 1 of subdivision b of this section in accordance with the provisions of this subdivision.

(1) A waiver may be issued for a particular type of boiler or fuel if the commissioner finds that:

(i) a sufficient quantity of bioheating fuel containing two percent biodiesel is not available in the city for that boiler type;

(ii) the price of available bioheating fuel for that boiler type is at least fifteen percent more than the price of a comparable fuel oil grade of one hundred percent petroleum heating oil;

(iii) the use of bioheating fuel would void the manufacturer's warranty for that boiler type;

or

(iv) there is no applicable American Society of Testing and Materials standard or other standard as determined by the commissioner to govern the specification of the bioheating fuel for purposes of receiving bids and enforcing contracts.

(2) Any waiver issued pursuant to subparagraph (i) or (ii) of paragraph 1 of this subdivision shall expire after three months, unless renewed in writing by the commissioner.

(3) Any waiver issued pursuant to subparagraph (iii) or (iv) of paragraph 1 of this subdivision shall expire after six months, unless renewed in writing by the commissioner.

(4) A waiver may be issued for a specific district steam system if the commissioner finds based on documentation submitted by the applicant, including but not limited to a report certified by a professional engineer, that compliance with the requirements of paragraph 1 of subdivision b of this section would result in damage to equipment used to generate steam within such district steam system. Any waiver issued pursuant to this paragraph shall expire after one year, unless renewed in writing by the commissioner.

(d) (1) No later than September 1, 2013, and no later than September 1 of every year thereafter, the commissioner shall submit a report to the mayor and the speaker of the council, which shall include:

(i) all waivers, findings and renewals of such findings issued pursuant to this section during the immediately preceding calendar year;

(ii) a summary of the information received pursuant to subdivision e of this section;

(iii) all waivers, findings and renewals of such findings issued pursuant to subdivision b of section 24-169 of this code during the immediately preceding calendar year; and

(iv) determinations made by the commissioner regarding renewable biomass pursuant to paragraph 2 of subdivision b of this section and any recommendations with respect to the use of

renewable biomass in the city, considering appropriate standards and experiential use.

(2) The report required pursuant to this subdivision may be satisfied by including such information in the management report and preliminary management report made public and submitted to the council by the mayor pursuant to section twelve of the New York city charter.

(e) (1) The commissioner shall require persons who supply heating oil directly to buildings in the city to disclose annually to the commissioner the following information regarding fuel oil supplied:

(i) the amount in gallons of each fuel oil grade supplied by such person to buildings by zip code; and

(ii) the average percentage of biodiesel blended into each fuel oil grade supplied by such person within the city and the types of feedstock used in the creation of such biodiesel.

(2) The commissioner shall prescribe the form in which required information shall be reported annually to the department. Such form shall be certified by the person supplying the information as to the completeness and accuracy of the information provided.

(3) The department shall require that records be maintained to substantiate the information provided pursuant to this subdivision and that such records shall be made available for inspection and audit by the department for a period up to three years.

(f) The term “fuel oil” as used in any provision of the administrative code of the city of New York or the rules of the city of New York shall be deemed to include heating oil that is fuel oil grade no. 2, no. 4 or no. 6 containing biodiesel.

(g) The commissioner shall promulgate rules to carry out the provisions of this section.

(h) The commissioner shall have the authority to sample, test and analyze heating oil supplied to buildings in the city to determine compliance with this section.

§5. Subdivisions a and b of section 24-169 of the administrative code of the city of New York are amended to read as follows:

(a) Fuel oil grade no. 2 as classified by the American [society for testing and materials] *Society for Testing and Materials* [, which] *that* contains more than [the following percentages] 0.2 percent of sulfur by weight[:

(1) For a period ending October first, nineteen hundred seventy-one, 0.5 percent;

(2) After October first, nineteen hundred seventy-one, 0.2 percent] *and after June 30, 2012, more than the amount set forth in section 19-0325 of the environmental conservation law or as provided by an executive order of the governor issued pursuant to such section.*

(b) Residual fuel oil and fuel oil grade no. 4 as classified by the American [society for testing and materials] *Society for Testing and Materials* or solid fuel on a dry basis[, which] *that* contains more than the following percentages of sulfur by weight:

(1) [For a period ending October first, nineteen hundred seventy-one, one percent;

(2) After October first, nineteen hundred seventy-one,] 0.30 percent *and*

(2) for fuel oil grade no. 4 after October 1, 2012, more than 0.15 percent, provided that the commissioner may waive the requirements of this paragraph if the commissioner finds that there is an insufficient quantity of fuel oil grade no. 2 that contains no more than 0.0015 percent of sulfur by weight. Any waiver issued pursuant to this subdivision shall expire after three months, unless renewed in writing by the commissioner. The provisions of paragraph 1 of this subdivision shall apply during the period such waiver is in effect.

§6. The table of civil penalties in subparagraph (i) of paragraph 5 of subdivision b of section 24-178 of the administrative code of the city of New York is amended by adding after the line beginning 24-168 civil penalties for violation of subdivisions b and d of section 24-168.1, to

read as follows:

TABLE OF CIVIL PENALTIES

<u>Violations related to section, subdivision and paragraph</u>	<u>Maximum</u>	<u>Civil Penalties Minimum</u>
<u>24-168.1(b); provided that the penalty specified herein shall apply only to a violation by reason of the use or purchase of fuel oil that does not conform to the standards in such subdivision.....</u>	<u>As Per Schedule E</u>	<u>As Per Schedule E</u>
<u>24-168.1(b); plus twice the amount of money saved for failure to comply with such section; provided that such \$1,000-\$10,000 penalty and additional penalty shall apply only to a violation by reason of the delivery of fuel oil that does not conform to the standards in such subdivision.....</u>	<u>10,000</u>	<u>1,000</u>

§7. If any section, subdivision, sentence, clause, phrase or other 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 law, which remaining portions shall continue in full force and effect.

§8. This local law shall take effect ninety days after enactment, except that the commissioner of environmental protection shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

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 onJuly 29, 2010..... and approved by the Mayor
onAugust 16, 2010.....

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

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 43 of 2010, Council Int. No. 194-A) contains the correct text and was passed by the New York City Council on July 29, 2010, approved by the Mayor on August 16, 2010 and returned to the City Clerk on August 16, 2010.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel