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**THE COUNCIL****REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

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**COMMITTEE ON CONSUMER AFFAIRS**

Hon. Leroy Comrie, Chairperson

**January 31, 2008**

**PROPOSED INT. NO. 665-A:**

By Council Member Comrie, Rivera, The Speaker (Council Member Quinn), Brewer, Fidler, Gerson, James, Koppell, Nelson, Palma, Recchia Jr., Seabrook, Stewart, Weprin and Arroyo (by request of the Mayor)

**TITLE:**

A local law to amend the administrative code of the city of New York, in relation to green carts.

**ADMINISTRATIVE CODE:**

Amends subdivision f of section 17-306; adds new subdivisions q, r, and s to section 17-306; amends paragraphs 1, 2 and 3 of subdivision b of section 17-307; adds paragraph 4 of subdivision b of section 17-307; amends subdivision d of section 17-307; amends paragraph 1 of subdivision c of section 17-308; amends paragraph 2 of subdivision b and subdivision d of section 17-309; adds a new subdivision d to section 17-31 amends subdivision c of section 17-321.

**INTRODUCTION**

On January 31, 2008, the Committee on Consumer Affairs, chaired by Council Member Leroy Comrie, will hold a hearing on Proposed Int. No. 665-A, a local law that would create permits for green carts. Expected to testify are the Department of Health and Mental Hygiene (DOHMH) and interested members of the community.

## **BACKGROUND**

Healthy People 2010, a set of national health objectives developed by federal agencies, includes the “[p]romote health and reduce chronic disease associated with diet and weight.”<sup>[1]</sup> This goal reflects the significant relationship between diet and disease. Poor diet is associated with obesity, a condition that has grown significantly in the United States.<sup>[2]</sup> More than half of adults in New York City are overweight or obese.<sup>[3]</sup> Being overweight or obese is linked to a variety of health problems such as high blood pressure, high cholesterol and diabetes.<sup>[4]</sup>

In addition to obesity, poor diet is associated with many of the leading causes of death.<sup>[5]</sup> Heart disease, the leading cause of death in both the United States<sup>[6]</sup> and New York City, killed 21,844 people in the City in 2006.<sup>[7]</sup> Studies have shown lower rates of heart disease are related to a diet low in saturated fat and cholesterol and high in fruits and vegetables.<sup>[8]</sup> For example, an NIH report found there is a 20 to 40 percent reduction in heart disease associated with diet high in fruits and vegetables.<sup>[9]</sup> Similarly, at least one study showed that people who eat five or more servings of fruits and vegetables a day have about half the risk of getting cancer,<sup>[10]</sup> the second leading cause of death in New York City.<sup>[11]</sup> Risk of the next leading cause of death, stroke, was reduced by four to seven percent from each additional daily serving of fruits and vegetables, according to one study.<sup>[12]</sup> Finally, a decreased risk of diabetes, a disease that affects an estimated 12.5 percent of New York City adults,<sup>[13]</sup> is associated with daily consumption of fruits and vegetables.<sup>[14]</sup>

The benefits of diets high in fruits and vegetables are reflected in the federal *Dietary Guidelines for Americans* which recommend eating five to 13 servings of fruits and vegetables each day, depending on calorie intake.<sup>[15]</sup> Despite this advice, 73 percent of New Yorkers consumed less than five servings of fruits and vegetables p

day in 2005.<sup>[16]</sup> Hispanics had the highest percentage of people who ate less than five servings each day and Blacks had greatest percentage of people who ate less than one serving a day.<sup>[17]</sup> A variety of factors may contribute to the lack of consumption of fruits and vegetables, including socioeconomic status, cost, lack of time to prepare food and the availability of fruits and vegetables.<sup>[18]</sup> For example, limited access to fresh fruits and vegetables has been documented in some neighborhoods in New York City. Surveys of food retail stores in the neighborhoods of Bedford-Stuyvesant, Bushwick and Harlem determined that the vast majority of retail food stores in these neighborhoods are bodegas, with supermarkets comprising only five to 8.1 percent of food stores.<sup>[19]</sup> These studies also found that bodegas are much less likely to carry fruits and vegetables than supermarket. Only 20 to 40 percent of bodegas in the three neighborhoods carry apples, oranges and bananas and only two to six percent stock leafy green vegetables.<sup>[20]</sup>

#### **PROPOSED INT. NO. 665-A**

Section 1 of Proposed Int. No. 665-A would amend the Administrative Code by amending subdivision f by adding to the definition of pushcart that the term shall include any green cart. Section 1 would also add the following new definitions in new subdivisions q, r and s:

q. “Fresh fruits and vegetables”. Unprocessed unfrozen raw fruits and vegetables that have not been combined with other ingredients. Fruits and vegetables which are cut, sliced, diced, or peeled, or which would otherwise be considered processed food, may be offered for sale as fresh fruits and vegetables only if such fruits and vegetables are commercially wrapped in pre-sealed packages.

r. “Fresh fruits and vegetables permit”. A full-term permit for the vending at retail solely of fresh fruits or vegetables, or both, from a pushcart or vehicle in a public place. Unless otherwise specified, a fresh fruits and vegetables permit shall be a permit in accordance with the provisions of this subchapter.

s. “Green cart”. A pushcart used exclusively by those issued fresh fruits and vegetables full-term permits pursuant to section 17-307 of this subchapter and which are in compliance with standards established by the commissioner.

Section 2 of Proposed Int. No. 665-A would amend paragraph 1 of subdivision b of section 17-307 of

the Administrative Code by adding a prohibition against a food vendor with a fresh fruits and vegetables permit vending from anything other than a vehicle or a green cart. In addition, such a vendor cannot vend any food other than fresh fruits and vegetables from the green cart or vehicle for which the permit was issued.

Section 3 of Proposed Int. No. 665-A would add a new subparagraph g to paragraph 2 of subdivision b of section 17-307 of the Administrative Code stating that, except for subparagraphs c, d and f, paragraph 2 would not apply to the issuance of fresh fruits and vegetables permits.

Section 4 of Proposed Int. No. 665-A would add a new subparagraph d to paragraph 3 of subdivision b of section 17-307 of the Administrative Code stating that paragraph 3 would not apply to fresh fruits and vegetables permits.

Section 5 of Proposed Int. No. 665-A would add a new paragraph 4 to subdivision b of section 17-307 of the Administrative Code that would authorize the commissioner of DOHMH to issue up to a total of 1500 fresh fruits and vegetable permits. In the first year that such permits were available, no more than 750 of the fresh fruits and vegetables permits could be issued and no more than half of the permits designated for each borough could be issued. The remaining permits would be able to be issued in the second year. The number of permits in each borough would be limited to 500 in the Bronx in police precincts 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52; 500 in Brooklyn in police precincts 63, 66, 67, 69, 70, 71, 72, 73, 75, 77, 79, 81, 83, 90, 94; 200 in Manhattan in police precincts 23, 25, 26, 28, 30, 32, 33, 34; 250 in Queens in police precincts 101, 102, 103, 105, 106, 113; and 50 in Staten Island in police precinct 120. Fresh fruits and vegetables vendors would be subject to the same time and place restrictions for vending in these specified areas as other food vendors.

For a vendor to receive a full-term fresh fruits and vegetables permit, the vendor would have to present a green cart or vehicle for inspection by DOHMH within three months after the certification of a complete application and pass the inspection within six months after such certification. No individual could be issued more than one permit.

Fresh fruits and vegetables permits would be issued according to procedures established by rules of the commissioner of DOHMH. The commissioner would be required to establish a separate waiting list for each borough and could limit the number of places on each waiting list by rule. Permits and placement on the waiting list would be given according to the following preferences:

persons who, on the effective date of the local law, are on any of the existing waiting lists established by the commissioner for the issuance of mobile food unit permits for pushcarts or vehicles. From among those persons within this preference category, additional preference in the issuance of fresh fruits and vegetables permits and placement on any waiting list for such permits would be given to these persons in this order: disabled veterans; disabled persons; and veterans;

- disabled veterans;
- disabled persons; and
- veterans.

A person who has been issued a fresh fruits and vegetables permit would not be eligible to obtain another type of full-term vending permit if, at the time of application for the other full-term permit, such person is a holder of a full-term fresh fruits and vegetables permit or such person has had a full-term fresh fruits and vegetables permit revoked or suspended.

Section 6 of Proposed Int. No. 665-A would amend subdivision d of section 17-307 of the Administrative Code to add that a food vendor selling from a green cart or vehicle with a fresh fruits and vegetables permit shall only be authorized to vend fresh fruits and vegetables.

Section 7 of Proposed Int. No. 665-A would amend paragraph 1 of subdivision c of section 17-308 of the Administrative Code to state that the fee for a pushcart or vehicle selling prepackaged food or for a fresh fruits and vegetables permit is 50 dollars for the first year and 25 dollars for each year thereafter.

Section 8 of Proposed Int. No. 665-A would amend paragraph 2 of subdivision b of section 17-309 of the Administrative Code to add that an application must include a statement whether or not the application is for a fresh fruits and vegetables permit.

Section 9 of Proposed Int. No. 665-A would amend subdivision d of section 17-309 of the Administrative Code to add that a plate issued to a vendor would indicate whether or not the permit is a fresh fruits and vegetable permit.

Section 10 of Proposed Int. No. 665-A would add a new subdivision d to section 17-311 of the Administrative Code to state that vendors issued fresh fruits and vegetables permits would have to carry a map, prepared and issued to them by the commissioner, designating those areas of the City in which they are authorized to vend. Anyone issued a fresh fruits and vegetables permit found to be vending from green cart

and vehicles in precincts other than those designated on their borough-specific permits would be considered to be operating such vehicle or pushcart without a permit.

Section 11 of Proposed Int. No. 665-A would amend subdivision c of section 17-321 of the Administrative Code by adding a provision permitting seizure of a vehicle or pushcart that is selling authorized by the permit.

Section

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of Proposed Int. No. 665-A would make the local law effective on the ninetieth day after enactment.

## Proposed Int. No. 665-A

By Council Member Comrie, Rivera, The Speaker (Council Member Quinn), Brewer, Fidler, Gerson, Koppell, Nelson, Palma, Recchia Jr., Seabrook, Stewart, Weprin and Arroyo (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to green carts.

Be it enacted by the Council as follows:

Section 1. Section 17-306 of the administrative code of the City of New York is amended by amending subdivision f, as added by local law 97 for the year 1985, and by adding new subdivisions q, r and s to read as follows:

f. "Pushcart". Any wheeled vehicle or device used by a food vendor, other than a motor vehicle or trailer, which may be moved with or without the assistance of a motor and which does not require registration by the department of motor vehicles.

The term "pushcart" shall include any green cart, as that term is defined by subdivision s of this section.

q. "Fresh fruits and vegetables". Unprocessed unfrozen raw fruits and vegetables that have not been combined with other ingredients.

Fruits and vegetables which are cut, sliced, diced, or peeled, or which would otherwise be considered processed food, may be offered for sale as fresh fruits and vegetables only if such fruits and vegetables are commercially wrapped in pre-sealed packages.

r. "Fresh fruits and vegetables permit". A full-term permit for the vending at retail solely of fresh fruits or vegetables, or both, from a pushcart or vehicle in a public place. Unless otherwise specified, a fresh fruits and vegetables permit shall be a permit in accordance with the provisions of this subchapter.

s. "Green cart". A pushcart used exclusively by those issued fresh fruits and vegetables full-term permits pursuant to section 17-307 of this subchapter and which are in compliance with standards established by the commissioner.

§2. Paragraph 1 of subdivision b of section 17-307 of the administrative code of the city of New York, as amended by local law 15 for the year 1995, is amended to read as follows:

1. It shall be unlawful to vend food from any vehicle or pushcart in a public space without having first obtained a permit for such vehicle or pushcart from the commissioner in accordance with the provisions of this subchapter. The commissioner shall establish standards relating to the size and design of such vehicles

and pushcarts. No vendors shall vend from any vehicle or pushcart which does not comply with the established by the commissioner. No vendor shall vend from other than a vehicle or pushcart. No food vendor issued a fresh fruits and vegetables permit shall vend from other than a vehicle or a green cart. No food vendor issued a fresh fruits and vegetables permit shall vend any food other than fresh fruits and vegetables from the green cart or vehicle for which the permit was issued.

§3. Paragraph 2 of subdivision b of section 17-307 of the administrative code of the city of New York is amended by adding a new subparagraph g to read as follows:

(g) Other than subparagraphs (c), (d) and (f), this paragraph shall not apply to the issuance of fresh fruits and vegetables permits.

§4. Paragraph 3 of subdivision b of section 17-307 of the administrative code of the city of New York is amended by adding a new subparagraph d to read as follows:

(d) This paragraph shall not apply to fresh fruits and vegetables permits.

§5. Subdivision b of section 17-307 of the administrative code of the city of New York is amended adding a new paragraph 4 to read as follows:

4. (a) Notwithstanding the provisions of paragraph two of this subdivision limiting the total number of full-term permits that are authorized to be issued, the commissioner may issue up to a maximum of five hundred fresh fruits and vegetables permits, as that term is defined in subdivision r of section 17-306 of chapter. The initial issuance of these fifteen hundred fresh fruits and vegetables permits shall be phased in over a two-year period. No more than seven hundred fifty permits shall be issued during the first year of permit availability, nor shall more than one-half of the number of fresh fruits and vegetables permits designated for use in a borough be issued during the first year of permit availability. During the second year of permit availability the commissioner may issue the remaining seven hundred fifty permits along with permits from the initial seven hundred and fifty not issued during the first year of permit availability. Thereafter, the maximum number of such permits which may be in effect shall be fifteen hundred and no new permits shall be issued in excess of such number. Each of the fifteen hundred fruits and vegetables permits to be issued pursuant to this paragraph shall be designated for use exclusively in a specified borough as follows:

(i) five hundred of such fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of the Bronx in the areas designated in clause (i) of subparagraph b of this paragraph.

(ii) five hundred of such fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Brooklyn in the areas designated in clause (ii) of subparagraph b of this paragraph.

(iii) two hundred of such fresh fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Manhattan in the areas designated in clause (iii) of subparagraph b of this paragraph.

(iv) two hundred-fifty of such fresh fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Queens in the areas designated in clause (iv) of subparagraph b of this paragraph.

(v) fifty of such fresh fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Staten Island in the areas designated in clause (v) of subparagraph b of this paragraph.

(b) The issuance or renewal of a full-term permit issued pursuant to this paragraph shall be subject to the permittee within three months after the certification of a complete application therefore presenting a green cart or vehicle for inspection by the department and, within six months after such certification, passing inspection. No person shall be issued more than one permit. Fresh fruits and vegetables permits, in addition to being designated for use exclusively in a borough as specified in subparagraph (a) of this paragraph, shall be designated for use exclusively within the police precincts specified below and shall be subject to the same time and place restrictions for vending in such areas as other food vendors:

(i) Bronx: Police Precincts 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52;

(ii) Brooklyn: Police Precincts 63, 66, 67, 69, 70, 71, 72, 73, 75, 77, 79, 81, 83, 90, 94;

(iii) Manhattan: Police Precincts 23, 25, 26, 28, 30, 32, 33, 34;

(iv) Queens: Police Precincts 100, 101, 102, 103, 105, 106, 113; and

(v) Staten Island: Police Precinct 120.

(b) Fresh fruits and vegetables permits shall be issued in accordance with the preferences set forth in subparagraph (c) of this paragraph and the procedures established by the commissioner. The commissioner shall establish a separate waiting list for each borough, to be administered in accordance with procedures to be established by rules of the commissioner. The commissioner may by rule limit the number of places on each such waiting list.

(c) Preferences shall be given in the issuance of fresh fruits and vegetables permits pursuant to

paragraph and in the placement on any waiting list for such permits to the following categories of persons in the following order:

(i) Persons who, on the effective date of the local law which added this provision, are on any of existing waiting lists established by the commissioner for the issuance of mobile food unit permits for pushcarts and vehicles. From among those persons within this preference category, additional preference in both the issuance of fresh fruits and vegetables permits and placement on any waiting list for such permits shall be given to those persons who fall within the following groups of persons in the following order: disabled veterans; disabled persons; veterans.

(ii) Disabled veterans.

(iii) Disabled persons.

(iv) Veterans.

(d) A person who has been issued a permit pursuant to this paragraph shall not be eligible to obtain a full-term permit authorized by paragraphs two or three of this subdivision if at the time of application for a full-term permit authorized by such paragraphs such person is a holder of a full-term permit issued pursuant to this paragraph or such person has had a full-term permit issued pursuant to this paragraph revoked or suspended.

§6. Subdivision d of section 17-307 of the administrative code of the city of New York is amended to read as follows:

d. A food vendor's license shall entitle the holder thereof to vend any food which the commissioner or board may authorize or otherwise approve, except that a food vendor vending from a green cart or vehicle with a fresh fruits and vegetables permit shall only be authorized to vend fresh fruits and vegetables. No food vendor while acting as such shall vend any item which the commissioner or board has not authorized or otherwise approved.

§7. Paragraph 1 of subdivision c of section 17-308 of the administrative code of the city of New York is amended to read as follows:

1. For a pushcart or vehicle selling prepackaged food or for a fresh fruits and vegetables permit: fifty dollars for the first year and twenty-five dollars for each year thereafter.

§8. Paragraph 2 of subdivision b of section 17-309 of the administrative code of the city of New York, is amended to read as follows:

2. A description of the food to be offered for sale and a description of the vehicle or pushcart to be

used and a statement whether or not the application is for a fresh fruits and vegetables permit.

§9. Subdivision d of section 17-309 of the administrative code of the city of New York is amended read as follows:

d. Upon approval of an application the commissioner shall issue a license to the applicant for a license and a permit and plate to the applicant for a vehicle or pushcart permit. Such license shall contain the name and address of the licensee, his or her license number and a non-removable photograph of such licensee. The plate shall indicate whether or not the permit is a fresh fruits and vegetables permit.

§10. Section 17-311 of the administrative code of the city of New York is amended by adding subdivision d to read as follows:

d. Vendors issued fresh fruits and vegetables permits pursuant to paragraph four of subdivision b section 17-307 of the administrative code of the city of New York shall carry upon their person a map prepared and issued to them by the commissioner, designating those areas of the city in which they are authorized to vend. Those persons issued a fresh fruits and vegetables permit found to be vending from gr carts and vehicles in precincts other than those designated on their borough-specific permits shall be deemed to be operating such vehicle or pushcart without a permit.

§11. Subdivision c of section 17-321 of the administrative code of the city of New York, as amended by chapter 11 of the laws of 2004, is amended to read as follows:

c. An officer or employee designated in subdivision a of this section may seize any vehicle or pushcart which (i) does not have a permit or (ii) is being used to vend on property owned by the city and und jurisdiction of a city agency including, but not limited to, the department of parks and recreation or department of small business services, without the written authorization of the commissioner of suc department, or (iii) is being used by an unlicensed vendor, or (iv) is being used to vend in the area includin and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street, or (v) is selling food not authorized by the permit, and may seize any food sold or offered for sale from such vehicle or pushcart. Such vehicle, pushcart or fc shall be subject to forfeiture as provided in section 17-322 of this subchapter. If a forfeiture proceec commenced, the vendor may be charged with the reasonable costs for removal and storage payable prior to the release of such food, vehicle or pushcart unless the charge of vending without a permit or vending without a license or vending without the authorization of such commissioner is dismissed.

§12. This local law shall take effect on the ninetieth day after it shall have become a law.

1/25/08

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[1] U.S. Dep't of Health & Human Svcs., *Healthy People 2010 Midcourse Review 19-1-19-25* (2006), available at <http://www.healthypeople.gov/data/midcourse/pdf/fa19.pdf>.

[2] *Id.* at 19-3.

[3] N.Y. City Dep't of Health & Mental Hygiene, *Obesity and Health: Risks and Behaviors*, Vital Signs, November 2005.

[4] *Id.*

[5] U.S. Dep't of Health & Human Svcs., *supra* note 1 at 19-3.

[6] Hsiang-Ching Kung et. al, Division of Vital Statistics, Ctrs. for Disease Control & Prevention, *Deaths: Final Data for 2005*, National Vital Statistics Reports, Table 12, January 2008.

[7] Bureau of Vital Statistics, N.Y. City Dep't of Health & Mental Hygiene, *Summary of Vital Statistics 2006: The City Of New York* 10 (2007).

[8] U.S. Gen'l Accounting Office, *Fruits and Vegetables: Enhanced Federal Efforts to Increase Consumption Could Yield Health Benefits for Americans* 47 (2002).

[9] *Id.*

[10] *Id.*

[11] Bureau of Vital Statistics, *supra* note 4.

[12] U.S. Gen'l Accounting Office, *supra* note 5.

[13] N.Y. Dep't of Health & Mental Hygiene, *Diabetes in New York City: Public Health Burden and Disparities* 1-1 (2006).

[14] U.S. Gen'l Accounting Office, *supra* note 5.

[15] U.S. Dep't of Health & Human Svcs. & U.S. Dep't of Agric., *Dietary Guidelines for Americans 2005* 24 (2005).

[16] See Ctrs. for Disease Control & Prevention, U.S. Dep't of Health & Human Svcs., *Fruit and Vegetable Consumption Data and Statistics* (2005), <http://apps.nccd.cdc.gov/5ADaySurveillance/>.

[17] *Id.*

[18] See e.g., J. Nicholas Bodor et al., *Neighbourhood Fruit and Vegetable Availability and Consumption: the Role of Small Food Stores in an Urban Environment*, Public Health Nutr., forthcoming; Kimberly Morland & Susan Filomena, *Disparities in the Availability of Fruits and Vegetables between Racially Segregated Neighborhoods* 1481 (2007); Ming-Chen Yeh et al., *Understanding Barriers and Facilitators of Fruit and Vegetable Consumption among a Diverse Multi-Ethnic Population in the USA*, Health Promot Int., Jan. 8, 2008.

[19] N.Y. City Dep't of Health & Mental Hygiene, *Eating in, Eating Out, Eating Well: Access to Healthy Food in North and Central Brooklyn* 1 (2006) [hereinafter *Brooklyn*]; N.Y. City Dep't of Health & Mental Hygiene, *Eating Well in Harlem: How Available Is Healthy Food?* 2 (2007) [hereinafter *Harlem*].

[20] *Brooklyn*, *supra* note 19 at 2; *Harlem*, *supra* note 19 at 3.