

Proposed Int. No. 650-B

By Council Members Vallone Jr., Addabbo Jr., Comrie, Fidler, Gentile, James, Nelson, Recchia Jr., Stewart, Weprin and White Jr. (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to permits for biological, chemical and radiological detectors.

Be it enacted by the Council as follows:

Section 1. Legislative purposes. The Council recognizes the need to protect the citizens of New York City from possible terrorist attacks involving chemical, biological, radiological, or nuclear devices or weapons. As part of this effort, the Council understands the importance of the deployment of certain instruments designed to detect the presence of certain chemicals, biological agents, and radiation in the environment in order to provide notice of a possible chemical, biological or radiological weapon. While the proliferation of these defensive capabilities may represent a positive development in furthering public safety, such instruments should be deployed and operated only with the knowledge of the Police Department and other appropriate City agencies. Moreover, the City has an interest in the reliability and effectiveness of these instruments so that their deployment will not cause excessive false alarms and unwarranted anxiety that a large-scale public emergency is occurring. Therefore, the Council finds that, to further the public safety, the possession and deployment of biological, chemical and radiological detectors should be regulated by the issuance of permits and the promulgation of standards for such detectors and their use, and that alarms triggered by such detectors should be immediately reported according to prescribed procedures.

§ 2. Title 10 of the administrative code of the city of New York is amended by adding a new chapter 8 to read as follows:

CHAPTER 8

PERMITS FOR BIOLOGICAL, CHEMICAL AND RADIOLOGICAL DETECTORS

§ 10-801 Definitions.

§ 10-802 Permits for possession or deployment of biological, chemical and radiological

detectors.

§ 10-803 Application for permit.

§ 10-804 Permit term.

§ 10-805 Notifications.

§ 10-806 Coordination.

§ 10-807 Rules.

§ 10-808 Penalties.

§ 10-801 Definitions. For the purposes of this chapter, the following terms shall have the following meanings.

a. The term “alarm” shall mean any alarm or other indication of a biological, chemical or radiological detector that indicates the presence of a biological agent, chemical agent, radiation or radioactive substance at the level or levels prescribed pursuant to section 10-807 of this chapter.

b. The term “biological agent” shall mean any micro-organism, including bacteria and viruses, or structural components or products of such micro-organisms, including toxins, whether engineered or naturally-occurring, that are capable of causing death, disease or other biological malfunction in a living organism, deterioration or poisoning of food or water, or deleterious alteration of the environment.

c. The term “biological detector” shall mean an instrument used for the purpose of monitoring the release or presence of one or more biological agents, including an instrument which samples the atmosphere for such purpose.

d. The term “chemical agent” shall mean a chemical which through its action on life processes can cause death, serious physical injury or permanent harm to humans or animals and shall include but not be limited to toxic industrial chemicals and chemical warfare agents as identified by the commissioner.

e. The term “chemical detector” shall mean an instrument used for the purpose of

monitoring the release or presence of one or more chemical agents, including an instrument which samples the atmosphere for such purpose.

f. The term “commissioner” shall mean the police commissioner of the city of New York or his or her designee.

g. The term “deploy” shall mean use or operate a biological, chemical and radiological detector, and “deployment” shall mean the use or operation of such a detector.

h. The term “permit” shall mean the permit issued by the commissioner for possession or deployment of a biological, chemical or radiological detector.

i. The term “radioactive substance” shall mean a substance that emits ionizing radiation including alpha, beta, gamma or neutron radiation.

j. The term “radiological detector” shall mean an instrument used for the purpose of monitoring the release or presence of radiation or a radioactive substance.

§ 10-802 Permits for possession or deployment of biological, chemical and radiological detectors. a. It shall be unlawful for any person to possess or deploy a biological, chemical or radiological detector in the city of New York unless such person holds a valid permit therefor, provided, however, that the commissioner shall exclude by rule any class or type of biological, chemical or radiological detector that shall not require such permit because such detector is not possessed or deployed with a purpose of detecting a possible biological, chemical or radiological weapons attack.

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b. This section shall not apply to biological, chemical and radiological detectors:

(1) possessed or deployed by the department of health and mental hygiene, the fire department, or any other city agency authorized by the commissioner to possess or deploy a biological, chemical or radiological detector without a permit; or

(2) possessed by any person, without deployment, for the sole purpose of (i) selling such detector to another person for deployment by another person or (ii) transporting such detector from one location to another.

§ 10-803 Application for permit. a. Application for a permit to possess or deploy a biological, chemical or radiological detector, or for renewal of such permit, shall be made to the commissioner upon such form as the commissioner shall prescribe and shall contain such information as the commissioner may require, including but not limited to a detailed description of the biological, chemical or radiological detector to be possessed or deployed, the manner in which such detector will be installed and maintained, the location of such installation (or, if such detector is portable a description of the types of locations in which it will be deployed), the manner by which such detector will indicate or transmit an alarm, and the proposed emergency action plan to be implemented in the event of an alarm, including any such plan developed pursuant to section 27-4267.4 of the administrative code. Applicants shall affirm the truth of the contents of the application under penalty of perjury.

b. There shall be no fee required for processing such application.

c. The commissioner shall review the application and investigate the information contained therein, requesting and receiving from the applicant any further information as may be necessary for his or her determination. The commissioner may consult as appropriate with other city agencies with respect to such application or investigation, including but not limited to the department of health and mental hygiene, the fire department and the department of environmental protection.

d. Applicants also may be required to meet with the police department and other appropriate city agencies in order to coordinate potential emergency responses to an alarm indicated or transmitted by a biological, chemical or radiological detector.

e. An application for a permit or for renewal thereof will be approved and a permit will be issued by the commissioner if he or she determines that the application and the biological, chemical or radiological detector to be possessed or deployed meet the requirements of this chapter and the rules promulgated hereunder. Such permit shall be issued upon such terms and conditions the commissioner may prescribe, including but not limited to the requirements set

forth in section 10-807 of this chapter. If the application is disapproved, the commissioner shall so notify the applicant, including any reasons for the disapproval.

f. The commissioner shall render a determination on an application for a permit or for renewal thereof within thirty days of completion of the review and investigation of the permit application conducted pursuant to subdivisions c and d of this section and the rules promulgated pursuant to such subdivisions, provided, however, that where the commissioner previously approved a permit for the same type and model of biological, chemical or radiological detector sought to be possessed or deployed, whether submitted by the applicant or by another individual or entity, the commissioner shall render a determination on an application for a permit or for renewal thereof within thirty days of receipt of a completed application. Where the commissioner fails to render a determination on an application for a permit or for renewal thereof in accordance with this subdivision, such permit application shall be deemed approved and the applicant shall be subject to the requirements applicable to a permit holder set forth in this chapter and the rules promulgated hereunder until such time as such person's application for a permit is denied.

§ 10-804 Permit term. A permit issued pursuant to this chapter shall expire on the last day of the fifth December after the date of issue and may be renewed for five-year terms thereafter by submission of an application for renewal as described in section 10-803 of this title.

§ 10-805 Notifications. a. Following issuance of the permit, the permit holder shall immediately notify the commissioner of any material change in the information contained in the application or of other relevant circumstances established by rule of the commissioner, including but not limited to the acquisition of a biological, chemical or radiological detector different from the detector for which the permit was issued. Upon notification of such change, the commissioner may suspend, revoke or amend the permit and/or direct that the holder submit an application for a new permit.

b. Any person deploying a biological, chemical or radiological detector covered by this

chapter shall immediately notify the police department if such detector indicates an alarm, notwithstanding whether the person holds a permit for such detector, by following such procedures and utilizing such technologies as are prescribed by rule of the commissioner and/or are included as a term of the permit itself, provided that the commissioner shall exclude by rule any class or type of biological, chemical or radiological detector that shall not require notification of such alarm because such detector does not have as a purpose the detection of a possible biological, chemical or radiological weapons attack.

§ 10-806 Coordination. With respect to biological, chemical and radiological detectors possessed or deployed within the city of New York by local, state, regional, federal or foreign government agencies or authorities, or as an element of programs or initiatives undertaken by such agencies or authorities, the commissioner shall be authorized to coordinate such activities and request and receive such information as is necessary to carry out this function.

§ 10-807 Rules. a. The commissioner is authorized to promulgate such rules as he or she deems necessary to implement the provisions of this chapter.

b. To promote the legislative purposes of this chapter, such rules may include but are not limited to:

(1) minimum technical standards and capabilities that must be met by biological, chemical and radiological detectors, as determined in consultation with other appropriate city agencies, including but not limited to the department of health and mental hygiene and department of environmental protection;

(2) requirements relating to the manner in which such detectors will indicate or transmit an alarm;

(3) the thresholds of an indicated biological agent, chemical agent, radiation or radioactive substance, as determined in consultation with the department of health and mental hygiene and the department of environmental protection, at which the police department must be notified by the permit holder or other action by such permit holder must be taken;

(4) requirements relating to the installation and maintenance of such detectors;

(5) requirements relating to the means by which the police department will be notified in the event of an alarm, including whether such notification shall be immediate or shall follow preliminary investigation by the permit holder;

(6) emergency response protocols and any other requirements for the emergency action plan to be implemented in the event of an alarm, including a requirement that permit holders comply with the instructions of police department personnel and cooperate in any investigation resulting from such alarm;

(7) requirements relating to the character and fitness of applicants to possess or deploy such detectors;

(8) requirements relating to the responsibility of applicants and permit holders to provide additional information upon material change to information contained in the permit application or circumstances affecting the permit;

(9) circumstances under which the commissioner may direct those possessing or deploying a biological, chemical or radiological detector to surrender possession and/or discontinue deployment of such detector;

(10) the grounds for the refusal to issue, revocation or suspension of a permit and the procedures to be followed in the event of such refusal to issue, revocation or suspension; and

(11) provisions relating to the ability of applicants and permit holders to consult with the police department regarding whether a permit is required for the possession or deployment of a biological, chemical or radiological detector.

§ 10-808 Penalties. a. Any person who violates subdivision a of section 10-802 or section 10-805 of this chapter or any rule promulgated pursuant to section 10-807 of this chapter shall be guilty of a misdemeanor punishable by a fine of not more than two thousand dollars or imprisonment of not more than twenty days, or both.

b. The commissioner may suspend or revoke a permit upon his or her determination that:

(1) an application contains a material false statement; (2) the permit holder or his or her authorized employees or agents have failed to comply with this chapter, the rules promulgated hereunder, or the terms and conditions of a permit; (3) the biological, chemical or radiological detector for which a permit was issued has failed to be in compliance with such chapter, rules or permit; or (4) the permit holder or his or her authorized employees or agents have failed to comply with the instructions of the police department or cooperate in any investigation relating to the permit or to the biological, chemical or radiological detector for which a permit was issued.

§ 3. This local law shall take effect immediately and shall apply to all biological, chemical or radiological detectors possessed or deployed on or after the effective date of the rules promulgated pursuant to section 10-807 of the administrative code of the city of New York, as added by section two of this local law; provided that no enforcement of subdivision b of section 10-805 of the administrative code of the city of New York, as added by section two of this local law, shall take place before the effective date of such rules; and provided further, however, that no enforcement of the requirement of a permit for the possession or deployment of a biological, chemical or radiological detector pursuant to section 10-802 of the administrative code of the city of New York, as added by section two of this local law, shall take place with respect to any biological, chemical or radiological detector possessed or deployed by any person before the effective date of such rules if such person:

(a) notifies the police commissioner, no later than five days following the effective date of such rules in accordance therewith, that such person possesses or is deploying a biological, chemical or radiological detector; and

(b) submits a complete application for a permit for the possession or deployment of such detector to the police commissioner pursuant to section 10-803 of the administrative code of the city of New York, as added by section two of this local law, no later than twenty days following the effective date of such rules or twenty days following the date application forms have been

made available by the police commissioner, whichever date is later.

Any person who timely notifies the police commissioner in accordance with paragraph (a) of this section shall be subject to the requirements applicable to a permit holder set forth in chapter eight of title ten of the administrative code of the city of New York, as added by section two of this local law, until such time as such person fails to timely submit an application in accordance with paragraph (b) of this section or such person's application for a permit is denied. If such person fails to timely submit an application in accordance with paragraph (b) of this section or such person's application for a permit is denied, such person shall no longer be authorized to possess or deploy the biological, chemical or radiological detector and shall discontinue the deployment and dispose of such detector in accordance with the rules promulgated pursuant to section 10-807 of the administrative code of the city of New York, as added by section two of this local law.