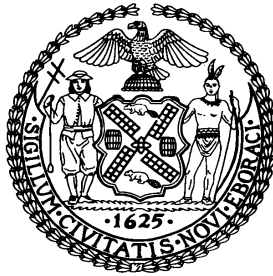


Staff: Committee on Public Safety  
Elizabeth Dubin, Counsel  
Jennine Ventura, Policy Analyst



## THE COUNCIL

### Report of the Governmental Affairs Division

Robert Newman, Legislative Director  
Alix Pustilnik, Deputy Director

### COMMITTEE ON PUBLIC SAFETY

Hon. Peter F. Vallone Jr., Chair

**February 13, 2007**

**INT. NO. 484:** By Council Members Vallone Jr., Fidler, Gentile, Gonzalez, James, Koppell, Martinez, Mendez, Nelson, Palma, Recchia Jr., Sears, Stewart, White Jr., Gallagher, and Oddo

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to expanding the nuisance abatement law to include certain violations related to the production and sale of false identification.

**INT. NO. 515:** By Council Member Vallone (by request of the Mayor)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to including in the nuisance abatement law certain violations of the penal law and the alcoholic beverage control law.

## **I. INTRODUCTION**

On February 13, 2007, the Committee on Public Safety, chaired by Council Member Peter F. Vallone Jr., will conduct a hearing on Introductions 484 and 515. Representatives of the New York City Police Department (“NYPD”), the New York Nightlife Association, and the Criminal Justice Coordinator are expected to testify.

## **II. BACKGROUND**

The proposed bills are part of a package of legislation drafted in the wake of several highly publicized incidents involving New York City nightlife. Almost exactly one year ago, on the evening of February 24, 2006, Imette St. Guillen, a 24-year-old graduate student at John Jay College of Criminal Justice, went out with her friends in Manhattan. Ms. St. Guillen parted with her friends around 3:30 a.m. and went to the Falls Bar in SoHo. Approximately 17 hours later, Ms. St. Guillen’s body was found 11 miles away in Brooklyn. According to reports, she had been sexually assaulted and strangled. Darryl Littlejohn, who was employed as a bouncer at the Falls despite a criminal record including seven convictions for armed robbery, assault and other offenses, was indicted for her murder.<sup>1</sup>

The New York State Liquor Authority issued seven charges against the Falls on March 17, 2006, including knowingly hiring a convicted felon, violating the State Alcoholic Beverage Control Law, and employing security guards who were not licensed by the state.<sup>2</sup> On June 9, 2006, the NYPD shuttered the Falls, citing the City’s nuisance abatement laws, charging that employees of the bar sold liquor to minors at least three

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<sup>1</sup> McFadden, “Hoping Details Will Add Up In Student’s Final Night,” *N.Y. Times*, March 14, 2006.

<sup>2</sup> Fahim, “Liquor Board Issues Charges Against Bar in Murder Case,” *N.Y. Times*, May 17, 2006.

times this year and served alcohol after-hours. Other charges included numerous noise and disorderly conduct complaints.<sup>3</sup>

A few months after the incident involving Imette St. Guillen, on June 9, 2006, Stephen Sakai of Brooklyn was indicted on murder, attempted murder, and other charges stemming from a shooting outside Opus 22, a Chelsea nightclub where Sakai worked as a bouncer. The shooting led to the death of Gustavo Cuadros and the wounding of Julian Andres Cuadros, Ian Davis and Yeison Correa. Also in June, Francisco Sollizan, 24, an unlicensed bouncer at Club Soma in Astoria, Queens, was charged with misdemeanor assault in connection with the death of 19-year-old Antonios Fasarakis who was killed outside the nightclub.<sup>4</sup> In July, Jennifer Moore, an 18-year old from New Jersey scheduled to begin college in the fall, was brutally murdered after a night of bar-hopping in Manhattan. And then, in October, there were multiple nightclub related shootings. On October 13<sup>th</sup>, a gun was fired inside the Roxy nightclub. On October 15<sup>th</sup>, a fight started inside Club Hush, a midtown strip club, and continued onto the street. Two people were stabbed and shots were fired in the air. The very next day, on October 16<sup>th</sup>, another fight erupted inside Club Hush, resulting in the shooting death of a man outside the club.

In addition to these highly publicized violent incidents, New York City nightlife has become increasingly riddled with problems – from underage drinking to community disturbance to personal safety. Underage drinking in particular consistently is identified as presenting significant problems for nightlife establishments, law enforcement, and the community. While there are of course a handful of establishments that may purposely look the other way with regard to underage drinking, the prevalence and increasing

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<sup>3</sup> Fahim and Moynihan, “Police Shutter Downtown Bar Where Student Drank Her Last Drink,” *N.Y. Times*, June 10, 2006.

<sup>4</sup> Wisloski and Moore, “Assault Rap For Bouncer in Fatal Hit,” *N.Y. Daily News*, June 11, 2006

sophistication of false identification greatly contributes to the problem of underage drinking.

### III. USE AND AVAILABILITY OF FALSE IDENTIFICATIONS

Of the various forms of identity theft or forgery, false identifications or fake IDs used for procuring alcoholic drinks are by far the most popular—and ubiquitous.<sup>5</sup> Police say there are likely millions of fake IDs in circulation throughout the country, and some estimate that fully half of all high school students carry some sort of forged identification.<sup>6</sup> Young people have many potential sources of false IDs. One source is from older siblings or friends who are willing to lend or give their own ID cards to an underage person. There are also numerous websites that offer authentic-looking forged IDs, as well as raw materials for individuals to produce accurate renderings of government identifications on their own. Traveling merchants and shops also manufacture and sell fake IDs. With the proliferation of computers and high quality printers and scanners, it has become easier to mass produce first-rate forged IDs and more difficult to distinguish genuine IDs from false ones. While obtaining a fake ID is a right of passage for many young people who want to purchase alcoholic beverages or gain access to bars and clubs, the potential security threat posed by forged driver's licenses and other documents—most prominently, the threat of access to commercial airliners—has cast this long-standing problem in a new light.<sup>7</sup>

While many turn to Internet sources to obtain false identifications or the materials needed to create them, there are a number of establishments in New York City that

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<sup>5</sup> Jonsson, "Teens Can Get Fake IDs in a Few Keystrokes on Web," *Christian Science Monitor*, August 29, 2001.

<sup>6</sup> *Id.*

<sup>7</sup> St. John, "In the ID Wars, the Fakes Gain," *N.Y. Times*, March 6, 2005.

produce and sell fake IDs. Electronic Concept, a store located near Times Square on Eighth Avenue and 45<sup>th</sup> Street that sells sunglasses and stereos, is one such example.<sup>8</sup> Investigating how challenging—or uncomplicated—it would be for an individual to purchase false identification, a reporter entered Electronic Concept and asked the manager if he sells fake IDs.<sup>9</sup> The manager handed the reporter a form to fill out, and said that he has never encountered any difficulties selling fake IDs for the past two years and that many teenagers come in to buy them.<sup>10</sup> The reporter’s information was then entered into a computer and her picture was taken with a digital camera.<sup>11</sup> The photo was downloaded and placed on the ID, and after the reporter paid \$50 in cash, she had a fake ID in a matter of minutes.<sup>12</sup> It was the same procedure at El-Cid Camera and Electronics, a similar shop located across the street from Electronic Concept, which charged \$40 for a fake ID and displayed a sign saying “IDs for Sale” outside.<sup>13</sup>

**A. NYPD Actions Addressing False Identifications**

The New York City Police Department has recently made efforts to curb the use of false IDs by teenagers. Since August 2006, the NYPD has arrested 106 underage individuals for using fake IDs to enter nightclubs in the Chelsea area in Manhattan.<sup>14</sup> Police officers in the 10<sup>th</sup> Precinct in Chelsea have been monitoring underage club patrons on West 27<sup>th</sup> Street and the surrounding vicinity, which was where Jennifer Moore was before she was slain last July.<sup>15</sup> Undercover and uniformed officers perform random ID checks of patrons inside clubs and observe club entrances, targeting youthful

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<sup>8</sup> Garvey, “I Got a Fake ID in 5 Minutes Flat,” *N.Y. Post*, December 29, 2006.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Hamilton and Montefinise, “Sweep Vs. Club-Kid ‘Fakers,’” *N.Y. Post*, January 7, 2007.

<sup>15</sup> *Id.*

revelers.<sup>16</sup> The NYPD also sets up road signs in the area warning, “Using a fake ID is a crime.”<sup>17</sup> The youths arrested in Chelsea for having a false ID were charged with criminal possession of a forged instrument,<sup>18</sup> which is a misdemeanor punishable by up to one year in jail and a \$1,000 fine.<sup>19</sup> Some of the 106 underage individuals were issued a summons with a future court date, but the majority stayed overnight in jail and appeared before a judge the following day.<sup>20</sup> Prior to these increased efforts to address fake ID use in Chelsea, NYPD enforcement was minimal and most offenders were released.<sup>21</sup>

The NYPD has also worked to stop those who supply fake IDs. In September 2006, officers raided Village Body Arts, Tattoos and Piercings on West 14<sup>th</sup> Street near Eighth Avenue in the West Village section of Manhattan, which operated as a sophisticated fake ID mill frequented by underage individuals.<sup>22</sup> The owner of the tattoo parlor was arrested and charged with identity theft and criminal possession of stolen property.<sup>23</sup> Officers seized forged driver’s licenses, embossing machines, and computers, all of which were used to produce high quality licenses that included magnetic strips encoded with stolen personal information from other motorists.<sup>24</sup> The cost of the IDs ranged from \$50 to \$100, and were allegedly sold at the shop and possibly through the mail as well.<sup>25</sup> The raid took place after NYPD detectives learned about the outfit while investigating various nightlife establishments for underage drinking in Chelsea.<sup>26</sup>

## **B. Overall Implications**

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Montefinise, Wolff, and Hamilton, “Cops Vow Stings in Teenage Wasteland,” *N.Y. Post*, August 6, 2006.

<sup>20</sup> Hamilton and Montefinise, *supra* note 14.

<sup>21</sup> *Id.*

<sup>22</sup> Chiaramonte, “‘Fake ID’ Artist is Tattooed,” *N.Y. Post*, September 13, 2006.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Aside from underage drinking, obtaining a forged ID has many different implications in a post-9/11 world.<sup>27</sup> A false ID can be used for countless objectives and allow tremendous access. In an effort to catch up with counterfeiters, the government and a growing document verification industry are turning to both legislation and technological innovations.<sup>28</sup> Law enforcement agencies, motor vehicle departments, and other government bureaus throughout the nation are working to diminish the ranks of college students, illegal immigrants, and corrupt individuals carrying high quality forged IDs.<sup>29</sup>

#### **IV. NEW YORK CITY COUNCIL ACTIONS**

In response to the various safety and community disturbance issues associated with the City's nightlife, over the past year the Council has taken several actions, including: (1) unanimously passing the "comprehensive bouncer bill," which modified existing city law to give the NYPD, the Department of Consumer Affairs ("DCA"), and the Department of Buildings ("DOB") a greater role in ensuring that security guards meet the requirements of applicable state laws, including undergoing criminal background checks, registering with the State, and completing State-approved training courses; (2) convening a Nightlife Safety Summit, which brought together invested parties such as the NYPD, the Criminal Justice Coordinator, the Nightlife Association, and representatives from the State Liquor Authority ("SLA"), to discuss the chronic problems impacting safety in and around the City's nightclubs; (3) issuing a report entitled *Safer Nights, Safer City* detailing the Nightlife Summit and making a series of recommendations for future action; (4) calling for the State to amend the Alcoholic Beverage Control Law ("ABC

<sup>27</sup> St. John, *supra* note 7.

<sup>28</sup> *Id.*

<sup>29</sup> Jonsson, *supra* note 5.

law”) to give the City enforcement authority to establish and maintain its own tribunals and to fully enforce the State’s liquor laws; (5) introducing an initial package of nightlife legislation on September 27, 2006 to address safety, underage drinking, and public nuisance; and (6) introducing the two bills described herein to address underage drinking and club safety.

## **V. ANALYSIS OF PROPOSED LEGISLATION**

Both of the bills under consideration today seek to amend New York City’s Nuisance Abatement Law by adding additional violations of law to serve as statutory predicates for the closing of premises pursuant to nuisance abatement proceedings. The Nuisance Abatement Law plays a vital role in addressing crime and quality of life conditions in New York City by using civil law to close premises used to conduct illegal activity. Currently, a number of offenses, including drug crimes, Administrative Code violations and prostitution, serve as predicates for the closure of a premises. The NYPD’s Civil Enforcement Unit works with operational commanders to identify locations where such illegal activity and businesses are conducted and files civil actions to abate the nuisance by closing the premises. The two pieces of proposed legislation seek to bring additional relief to neighborhoods suffering from illegal activity and public nuisance by establishing additional offenses as predicates for nuisance abatement proceedings.

### **A. Int. No. 484**

Int. No. 484 expands the Nuisance Abatement Law to include the illegal creation, production, storage or sale of false identification documents, forged instruments, or forgery devices as predicate offenses for nuisance abatement proceedings. A false



identification document is defined as a “document of a type intended or commonly accepted for the purposes of identification of individuals that (A) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and (B) appears to be issued by or under the authority of the United States Government, a State, a political subdivision of a foreign government, or an international governmental or quasi-governmental organization.” A forged instrument is defined as “a written instrument which has been falsely made, completed or altered.” And, a forgery device includes any “plate, die or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.”

The proposed legislation seeks to address the concerns raised by law enforcement, community residents, and nightlife establishments regarding the increasing use of illegal, false identification by persons seeking entrance to New York City’s clubs and bars. The bill would increase enforcement options by rendering premises used for the creation, production, storage, or sale of false identification documents public nuisances subject to being shut down. By making it easier to target producers and sellers, the legislation is intended to decrease the availability of false identification documents, thus making it more difficult and costly for individuals to obtain such identification.

**B. Int. No. 515**

Int. No. 515 also would amend the Nuisance Abatement Law by adding additional violations of law as statutory predicates for the closing of premises pursuant to a nuisance abatement proceeding. First, the proposed legislation would amend Administrative Code § 7-703 by adding new subdivisions (o) and (p). Subdivision (o) would add as statutory

predicates for nuisance abatement proceedings two or more violations constituting separate occurrences within one year of one or more of the following crimes: criminally negligent homicide (Penal Law § 125.10), aggravated criminally negligent homicide (Penal Law § 125.11), manslaughter (Penal Law §§ 125.15 and 125.20), aggravated manslaughter (Penal Law §§ 125.21 and 125.22), murder (Penal Law §§ 125.25 and 125.27), and aggravated murder (Penal Law § 125.26). Subdivision (p) would add as a statutory predicate for such proceedings three or more violations constituting separate occurrences within one year of one or more of any of the crimes mentioned above and in addition the following crimes: felony assault (Penal Law §§ 120.05 and 120.10), assault on a peace officer, police officer, fireman, or emergency medical services professional (Penal Law § 120.08), aggravated assault upon a police officer or a peace officer (Penal Law § 120.11), aggravated assault upon a person less than eleven years old (Penal Law § 120.12), and gang assault (Penal Law §§ 120.06 and 120.07).

Second, the bill would add a new subdivision (q), which would render two or more violations within one year of section 96 of the Alcoholic Beverage Control Law (“ABC Law”) relating to warehouse permits a statutory predicate for nuisance abatement proceedings. This new subdivision is intended to target unlicensed establishments, such as social clubs, which are improperly engaged in the sale of alcohol.

Premises that permit disorderly and violent conduct are disruptive to their surrounding communities and often attract additional disorder and crime. The bill identifies various categories of serious crime that should be controllable in most instances by adequate security, owner accountability, and employee training. While one incident of the delineated criminal activity may be impossible to foresee or prevent, the bill envisions

that multiple such incidents within a one-year time period may suggest significant problems with the establishment and thus will serve as a statutory predicate for nuisance abatement proceedings.

Int. No. 484

By Council Members Vallone Jr., Fidler, Gentile, Gonzalez, James, Koppell, Martinez, Mendez, Nelson, Palma, Recchia Jr., Sears, Stewart, White Jr., Liu, Gallagher, and Oddo

A Local Law to amend the administrative code of the city of New York, in relation to expanding the nuisance abatement law to include certain violations related to the production and sale of false identification.

Be it enacted by the Council as follows:

Section 1. Section 7-703 of the administrative code of the city of New York is amended by adding a new subdivision (o) to read as follows:

(o) Any building, erection or place, including one-or two-family dwellings, which is being used for the creation, production, storage, or sale of a false identification document as defined by 18 USCS § 1028, a forged instrument as defined by penal law § 170.00(7), or forgery devices as that term is used in penal law § 170.40, or is used in connection with a violation of one or more of the following provisions: 18 USCS § 1028, sections 170.10, 170.20, 170.25, or 170.40 of the penal law, or section 509(6) of the vehicle and traffic law.

§2. Subdivision (a) of section 7-704 of the administrative code of the city of New York is amended to read as follows:

(a) The corporation counsel shall bring and maintain a civil proceeding in the name of the city in the supreme court of the county in which the building, erection or place is located to permanently enjoin the public nuisances, defined in subdivisions (a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), [and (n)] (n), and (o) of section 7-703 of this chapter, in the manner provided in subchapter two of this chapter.

§3. Section 7-705 of the administrative code of the city of New York is amended to read as follows:

§7-705 Applicability. This subchapter shall be applicable to the public nuisances defined in subdivisions (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), [and (n)] (n) and (o) of section 7-703 of this chapter.

§4. This local law shall take effect ninety days after its enactment; provided that the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of rules, to ensure the prompt implementation of this local law upon its effective date.

Int. No. 515

By Council Member Vallone Jr., Gentile, Koppell, Liu, Nelson, Recchia Jr., Gerson and Oddo (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to including in the nuisance abatement law certain violations of the penal law and the alcoholic beverage control law.

Be it enacted by the Council as follows:

Section 1. Subdivision (g) of section 7-703 of the administrative code of the city of New York, as amended by local law number 113 for the year 1993, is amended to read as follows:

(g) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of one or any combination of the provisions of article two hundred twenty, two hundred twenty-one or two hundred twenty-five of the penal law;

§2. Subdivisions (m) and (n) of section 7-703 of the administrative code of the city of New York, subdivision (m) as amended and subdivision (n) as added by local law number 35 for the year 2006, are amended to read as follows:

(m) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more violations on the part of the lessees, owners, operators, or occupants, of one or any combination of the following provisions: sections 165.40, 165.45, 165.50, 170.65, 170.70 or 175.10 of the penal law or section four hundred fifteen-a of the vehicle and traffic law; [and]

(n) Any building, erection or place, including one- or two-family dwellings, in which a security guard, as defined in subdivision six of section eighty nine-f of the general business law, is employed in violation of one or more of the following provisions: the alcoholic beverage control law or sections 20-360.1 or 27-525.1 of this code[.];

§3. Section 7-703 of the administrative code of the city of New York is amended by adding three new subdivisions (o), (p) and (q) to read as follows:

(o) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more violations constituting separate occurrences on the part of the lessees, owners, operators, occupants or patrons, of one or any combination of the following provisions: sections 125.10, 125.11, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26 or 125.27 of the penal law;

(p) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations constituting separate occurrences on the part of the lessees, owners, operators, occupants or patrons, of one or any combination of the following provisions: sections 120.05, 120.06, 120.07, 120.08, 120.10, 120.11, 120.12, 125.10, 125.11, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26 or 125.27 of the penal law; and

(q) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more violations on the part of the lessees,

owners, operators, occupants or patrons, of section ninety-six of the alcoholic beverage control law.

§4. Subdivision (a) of section 7-704 of the administrative code of the city of New York, as amended by local law number 35 for the year 2006, is amended to read as follows:

(a) The corporation counsel shall bring and maintain a civil proceeding in the name of the city in the supreme court of the county in which the building, erection or place is located to permanently enjoin the public nuisances, defined in subdivisions (a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), [and] (n), ~~(o), (p) and (q)~~ of section 7-703 of this chapter, in the manner provided in subchapter two of this chapter.

§5. Section 7-705 of the administrative code of the city of New York, as amended by local law number 35 for the year 2006, is amended to read as follows:

§7-705 Applicability. This subchapter shall be applicable to the public nuisances defined in subdivisions (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), [and] (n), ~~(o), (p) and (q)~~ of section 7-703 of this chapter.

§6. This local law shall take effect thirty days after its enactment.