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**REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE**

Int. No. 1378-2019

Council Members Rivera, Lander, Brannan, Holden, Rodriguez, Cabrera, Cohen, Rosenthal, Salamanca, Ayala, Espinal, Levine, Constantinides, Levin, Chin, Ampry-Samuel, Maisel, Menchaca, Grodenchik, Koslowitz, Reynoso, Vallone, Adams, Louis, Richards, Cornegy, Van Bramer, Ulrich, The Public Advocate (Mr. Williams)

A Local Law to amend the administrative code of the city of New York, in relation to banning the sale of certain poultry products that are the result of force-feeding birds.

THIS LEGISLATION IS SUPPORTED

I. SUMMARY OF THE PROPOSED LEGISLATION

Intro 1378-2019¹ (the “Proposed Legislation”) would prohibit retail food establishments² or food service establishments³ from storing, keeping, maintaining, selling or offering for sale any product that is the result of force-feeding⁴ a bird with the intent to fatten or enlarge the bird’s liver

¹ Int. 1378-2019, *available at*

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3844860&GUID=A91556AB-4F62-4902-A808-0FEE9B46F16D&Options=Advanced&Search=>. (All internet sources cited in this report were last visited on October 28, 2019.)

The Animal Law Committee has already testified before the New York City Council’s Committee on Health in support of the Proposed Legislation. New York City Bar Association, Animal Law Committee, Written Testimony in Support of Intro. 1378-2019 (June 18, 2019), https://s3.amazonaws.com/documents.nycbar.org/files/2019547-Foie_Gras_Testimony.pdf. In addition, the Committee previously supported a 2013 state ban on force-feeding birds. Committee Report on S. 456 (June 1, 2013), <https://www2.nycbar.org/pdf/report/uploads/20072525-ProhibitingofForceFeedingBirds.pdf>. We opposed another state ban because it provided for an unreasonably long 11-year implementation period. Committee Report on S.3330-A/A.6212-A (June 1, 2005), https://www.nycbar.org/pdf/report/foie_gras_report.pdf.

² “Retail food establishment” means a supermarket, grocery store, specialty food store or farmer’s market.

³ “Food service establishment” means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

⁴ “Force-feeding” means the practice of forcing by any means, food or supplements into the throat, esophagus or stomach of an animal.

— namely, foie gras.⁵ Violators would be subject to a civil penalty of not less than \$500 and not more than \$2,000 for each violation; and, in the case of a continuing violation, each day’s continuance may be treated as a separate offense.⁶ The Proposed Legislation would take effect three years after enactment, but the Department of Health and Mental Hygiene and Department of Consumer Affairs would be required to take such measures as are necessary for the implementation of the Proposed Legislation, including the promulgation of rules, before the effective date.

II. BACKGROUND AND REASONS FOR SUPPORT

Foie gras is a luxury food made by force-feeding ducks and geese. Several times a day the bird has a tube inserted into its esophagus and, by means of a pneumatic or hydraulic pump,⁷ is forced to eat high-energy food it neither wants nor needs.⁸ This force-feeding can injure the bird’s esophagus and abnormally fattens the liver, which has reduced function and can painfully swell to up to ten times its normal size⁹ and become diseased.¹⁰ The birds become obese, less active, and pant more to avoid overheating.¹¹ The product of this process is foie gras.¹²

Neither federal law nor state law specifically protects ducks and geese from this force-feeding. At the federal level, the Animal Welfare Act of 1970 expressly exempts animals raised for food,¹³ while the Humane Methods of Slaughter Act does not even mention birds.¹⁴ At the state

⁵ The bill provides for a rebuttable presumption that an item in a retail food establishment or food service establishment having the label “foie gras” or listed on a menu as “foie gras” is a force-fed product.

⁶ The bill also sets forth administrative procedures for recovering such penalties.⁷ Michaela DeSoucey, *Contested Tastes: Foie Gras and the Politics of Food* 51 (2016).

⁷ Michaela DeSoucey, *Contested Tastes: Foie Gras and the Politics of Food* 51 (2016).

⁸ American Veterinary Medical Association (AVMA), *Welfare Implications of Foie Gras Production: Literature Review 1-2* (May 7, 2014), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/foie_gras_bgnd.pdf.

⁹ *Id.* at 2.

¹⁰ The Humane Society of the United States, *Scientists and Experts on Force-Feeding for Foie Gras Production and Duck and Goose Welfare*, <https://www.humanesociety.org/sites/default/files/docs/hsus-expert-synopsis-force-feeding-duck-and-geese-welfare.pdf>; cf. Better Business Bureau, National Advertising Division, Case #4959, *D’Artagnan, Inc.* (Jan. 16, 2009) (finding that foie gras producer had not adequately substantiated claim that animal’s liver “is not diseased, simply enlarged” and recommending that producer discontinue making the claim).

¹¹ AVMA, *Welfare Implications of Foie Gras Production*, note 6 above, at 2.

¹² In addition to being subjected to the force-feeding process, birds may be housed in enclosures with slatted floors or individually in cages — conditions that restrict their natural movements and behaviors. Warren Skippon, *The Animal Health and Welfare Consequences of Foie Gras Production*, 54 *Canadian Veterinary Journal* 403, 403-04 (2013).

¹³ 7 U.S.C. § 2132(g) (excluding from the definition of “animal” “other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber”).

¹⁴ 7 U.S.C. § 1902 (referencing “cattle, calves, horses, mules, sheep, swine, and other livestock”). Although the Secretary of Agriculture could, under 7 U.S.C. § 1904, include birds among “other livestock,” the Secretary has to date declined to do so. See Cynthia F. Hodges, *Detailed Discussion of the Humane Methods of Slaughter Act* (2010), <https://www.animallaw.info/article/detailed-discussion-humane-methods-slaughter-act>. Indeed, while noting

level, New York’s anti-cruelty statute could, in the view of this Committee, be interpreted to prohibit force-feeding.¹⁵ And indeed, the ASPCA has argued that foie gras production violates state anti-cruelty laws.¹⁶ Nevertheless, we are unaware of any prosecutions on these grounds. Moreover, a state ban on the act of force-feeding would not stop the in-state sale of products from force-fed birds; it would just mean a change of suppliers.¹⁷

By passing the Proposed Legislation, the City Council could help protect birds from this inhumane practice.¹⁸ In particular, the Proposed Legislation would ban the sale of products that are the result of force-feeding birds with the intent to fatten or enlarge the bird’s liver.

Passing the Proposed Legislation would also bring New York City in line with other jurisdictions that have recognized the inherent cruelty of this so-called “delicacy.” In particular, in 2004 California became the first state to amend its health code to outlaw the in-state sale and

that existing law requires poultry to be treated humanely in line with “good commercial practices,” in 2015 the United States Department of Agriculture (“USDA”) issued a notice declaring that “there is no specific federal humane handling and slaughter statute for poultry.” USDA, Food Safety and Inspection Service [Docket No. 04–037N], Notice: Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56624 (Sept. 28, 2005).

¹⁵ N.Y. Agric. & Mkts. L. § 353 (prohibiting, among other things, overloading, torturing and unjustifiably injuring, maiming, mutilating, and killing any animal).

¹⁶ Stacy Wolf, Director, New York State Government Affairs & Public Policy, ASPCA, Letter to Attorney General Elliot Spitzer (Aug. 30, 2001), available at <https://web.archive.org/web/20061104160943/http://www.banfoiegras.com/aspca.pdf>. The ASPCA argued:

The ASPCA respectfully urges the Attorney General’s office to invoke our cruelty law to stop this practice within our borders. Section 353 of the agriculture and markets law makes it a misdemeanor to torture or to unjustifiably injure, maim, mutilate or kill any animal. Production of foie gras involves just such unnecessary and unjustifiable torture and injury. While humane slaughter of animals for food is of course lawful, causing prolonged pain prior to death is cruelty. Foie gras production involves, indeed necessitates untold suffering prior to death and therefore violates section 353.

¹⁷ While the largest producer of foie gras in the United States is located in upstate New York, most of the world’s foie gras comes from France. Ari Z. Zivotofsky, *Duck, Duck, Goose*, Mishpacha Jewish Family Weekly (Jan. 2, 2019), <https://mishpacha.com/duck-duck-geese/> (noting that Hudson Valley Foie Gras is the country’s largest producer of foie gras); Ruud Peys, *Excellent Year for French Foie-Gras*, Poultry World (March 9, 2016), <https://www.poultryworld.net/Meat/Articles/2015/3/Excellent-year-for-French-foie-gras-1728020W/>; see also Hudson Valley Foie Gras “About Hudson Valley Foie Gras,” <https://www.hudsonvalleyfoiegras.com/about-us>.

¹⁸ In 2013 a federal court declined to dismiss Lanham Act false advertising claims against New York foie gras producer Hudson Valley Foie Gras (“HVFG”), where HVFG had claimed that its foie gras was the “the humane choice.” Animal Legal Defense Fund v. HVFG LLC (939 F. Supp. 2d 992, 1001-02 (N.D. Cal. 2013). HVFG removed the claim following the decision. Margaret Badore, *Foie Gras Maker Drops “Humane” Label After False-Advertising Lawsuit*, Treehugger (Aug. 19, 2019), <https://www.treehugger.com/green-food/foie-gras-maker-drops-humane-label-after-false-advertising-lawsuit.html>; cf. Better Business Bureau, National Advertising Division, Case #4959, D’Artagnan, Inc. (Jan. 16, 2009) (finding that foie gras producer had not adequately substantiated claim that force-fed animals are handraised “under the strictest of animal care standards” and recommend that producer discontinue making the claim).

production of foie gras.¹⁹ That ban, which took effect in 2012, was upheld by the Ninth Circuit, and in January 2019 the U.S. Supreme Court declined further review.²⁰ In addition, over a dozen countries — including India, Germany, the UK, and Israel — have banned production of foie gras and deemed force-feeding a violation of national animal welfare laws.²¹ Indeed, the Israel Supreme Court’s 2003 decision led to an abolition of the foie gras industry in Israel, which at the time was the world’s fourth-largest producer of the product.²²

Banning foie gras may have other benefits too. For instance, one 2007 study cautions children and adults with rheumatoid arthritis against consuming the product, due to the potential transmission of amyloidosis, a disease that occurs when substances called amyloid proteins build up in organs.²³ The study also noted that it “may be hazardous for individuals who are prone to develop other types of amyloid-associated disorders, e.g., Alzheimer’s disease or type II diabetes, to consume such products.”²⁴

III. COUNTERARGUMENTS

Opponents of the Proposed Legislation argue that the Proposed Legislation could hurt farms that produce foie gras.²⁵ As an initial matter, only three farms in the entire country produce

¹⁹ SB-1520 Force fed birds, as amended May 6, 2004 (2003-2004) (codified at Cal. Health & Safety Code §§ 25980-25984). The text of the California law is available at https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=200320040SB1520.

²⁰ *Ass’n des Éleveurs de Canards et d’Oies du Québec v. Harris*, 729 F.3d 937 (9th Cir. 2013), cert. denied, 586 U.S. __ (Jan. 7, 2019) (No. 17-1285). The text of the Ninth Circuit opinion is available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2017/09/15/15-55192.pdf>.

²¹ These countries include Argentina, Denmark, Finland, Germany, India, Israel, Italy, Norway, Poland, and the United Kingdom. The Humane Society of the United States, *An HSUS Report: The Welfare of Animals in the Foie Gras Industry*, HSUS Reports, at 7 (March 2012), https://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1021&context=hsus_reps_impacts_on_animals. (including citations to relevant legislation).

²² Israeli Supreme Court, *Noah v. The Attorney General et al.*, HCJ n° 9232/01 (Aug. 13, 2003), available at <https://www.animallaw.info/sites/default/files/Israel2003case.pdf>. The 2003 decision also referenced the traditional Jewish duty to protect animals, as reflected in the Torah and Jewish law. *Id.* at 22-22. See also Sophie Inge, *Israel Risks French Ire with Ban on Foie Gras*, *The Local* (Aug. 2, 2013), <https://www.thelocal.fr/20130802/israel-to-ban-foie-gras-selling-and-importation>.

²³ Alan Solomon et al., *Amyloidogenic Potential of Foie Gras*, 26 PNAS 10998-11001, at 10998 (2007), <https://www.pnas.org/content/pnas/104/26/10998.full.pdf>.

²⁴ *Id.* at 11000. The study also noted that meat from cattle and sheep may present similar risks. *Id.* The USDA’s Food Safety and Inspection Service did not determine that the 2007 study warranted a finding that foie gras was an adulterated food product, finding that the presence of amyloid-enhancing factors in birds used for foie gras was “not surprising,” as amyloidosis is “fairly common in ducks in general.” Letter from Philip S. Derfler, Food Safety and Inspection Service to Peter J. Petersan, Esq., The Humane Society of the United States (Aug. 27, 2009), available at <https://tinyurl.com/y4mx9w8u>. Even so, the USDA concluded that “additional research is needed on the potential human health effects associated with the consumption of foie gras.” *Id.*

²⁵ See, e.g., Verena Dobnik, *Farms Worry as New York City Considers Foie Gras Ban*, NBC New York (Aug. 30, 2019), <https://www.nbcnewyork.com/news/local/Farms-Worry-as-New-York-City-Considers-Foie-Gras-Ban-558778371.html>; Sam Bloch, *New York City Is Set to Ban Foie Gras*, *The New Food Economy* (July 25, 2019), <https://newfoodeconomy.org/new-york-city-foie-gras-ban-gavage/>.

foie gras, and the two farms in New York State do around 70% of their business outside New York City — an area unaffected by the Proposed Legislation.²⁶ More importantly, the Committee disagrees that the potential harm to a few companies' profits should outweigh the definite harm to the hundreds of thousands of animals subjected to force-feeding — Hudson Valley Foie Gras in Ferndale, New York alone slaughters around 800 ducks a day.²⁷

We understand that the ban's three-year implementation period may be driven in part by such arguments raised by foie gras producers. An earlier version of the Proposed Legislation, which this Committee supported,²⁸ would have taken effect 90 days after enactment. While we continue to believe that the original implementation period was reasonable for a city-wide ban of just one menu item,²⁹ we ultimately support passing the Proposed Legislation.

IV. CONCLUSION

For the reasons set forth above, the New York City Bar Association's Animal Law Committee supports the Proposed Legislation.

Animal Law Committee
Christopher Wlach, Chair

October 2019

²⁶ Amelia Nierenberg and Jeffery C. Mays, *Can New York City Live Without Foie Gras? We May Soon Find Out*, N.Y. Times (Aug. 29, 2019), <https://www.nytimes.com/2019/08/29/nyregion/foie-gras-nyc-ban.html>.

²⁷ *Id.*

²⁸ New York City Bar Association, Animal Law Committee, Written Testimony in Support of Intro. 1378-2019, note 1 above.

²⁹ In particular, 90 days gives restaurants ample time to sell off any foie gras in stock: unopened foie gras has a shelf-life of three weeks; opened, foie gras should be used within two days. BBC Good Food, Glossary: Foie Gras, <https://www.bbcgoodfood.com/glossary/foie-gras>.