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Int. No. 543

By Council Members Torres, Espinal, Reynoso, Chin, Gentile, Richards, Rosenthal, Menchaca, Johnson, King, Levine, Levin, Rose, Kallos, Lander, Dromm and the Public Advocate (Ms. James)

A Local Law to amend the administrative code of the city of New York, in relation to the issuance of orders to correct underlying conditions.

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 27-2004 of the administrative code of the city of New York is amended by adding a new paragraph 49 to read as follows.

49. "Underlying condition" means a physical defect or failure of a building system that causes or has caused a violation of this code, the multiple dwelling law or any other state or local law that imposes requirements on dwellings. Proof that five or more such violations of the same or a substantially similar nature

are occurring or have occurred in a building within the preceding five years, whether or not such violations have been corrected, is prima facie evidence that an underlying condition exists in such building.

§ 2. Paragraph 3 of subdivision c of section 27-2091 of the administrative code of the city of New York is amended to read as follows:

3. An owner shall comply with such order and submit such documentation as the department may require indicating compliance with the order no later than four months after the order has been issued, provided, however, that the department may reduce or extend the deadline for compliance by a period not to exceed two months, in accordance with criteria promulgated by the department in rules. If such owner fails to comply with such order, the department may perform all or part of the work required by such order.

§ 3. Paragraph 5 of subdivision c of section 27-2091 of the administrative code of the city of New York is amended to read as follows:

5. Notwithstanding any provision of this code to the contrary, an owner who fails to comply with an order issued pursuant to this subdivision shall be subject to a civil penalty of one thousand dollars, plus one hundred twenty-five dollars per day of noncompliance, for each dwelling unit that is the subject of such order, provided, however, that the total amount of such penalty shall not be less than five thousand dollars.

§ 4. Subdivisions a, b and c of section 27-2115 of the administrative code of the city of New York are amended to read as follows:

(a) A person who violates any law relating to housing standards shall be subject to a civil penalty of not less than ten dollars nor more than fifty dollars for each non-hazardous violation, not less than twenty-five dollars nor more than one hundred dollars and ten dollars per day for each hazardous violation, fifty dollars per day for each immediately hazardous violation, occurring in a multiple dwelling containing five or fewer dwelling units, from the date set for correction in the notice of violation until the violation is corrected, and not less than fifty dollars nor more than one hundred fifty dollars and, in addition, one hundred twenty-five dollars per day for each immediately hazardous violation, occurring in a multiple dwelling containing more than five

dwelling units, from the date set for correction in the notice of violation until the violation is corrected. A person wilfully making a false certification of correction of a violation shall be subject to a civil penalty of not less than fifty dollars nor more than two hundred fifty dollars for each violation falsely certified, in addition to the other penalties herein provided. An owner who fails to comply with an order to correct an underlying condition shall pay a civil penalty of one thousand dollars, plus one hundred twenty-five dollars per day of noncompliance, for each dwelling unit that is the subject of such order, provided, however, that the total amount of such penalty shall not be less than five thousand dollars.

(b) The department shall serve a notice of violation upon the owner, his or her agent or other person responsible for its correction. The notice shall identify the condition constituting the violation, the provision of law applicable thereto, any underlying condition that may be causing the violation, the department's order number, the classification of the violation according to its degree of hazard, the time for certifying the correction of such violation, and the amount of the possible penalty. It shall also advise that the department will, if requested, confer with the owner or his or her representative concerning the nature and extent of the work to be done to insure compliance and the methods of financing such work. In any case where the provisions of this section authorize the service of such notice by mail, the statement of any officer, clerk, or agent of the department, or of anyone authorized by the department to mail such notice of violation, subscribed and affirmed by such person as true under the penalties of perjury, which describes the mailing procedure used by the department, or by the department's mailing vendor, or which states that these procedures were in operation during the course of mailing a particular cycle of notices of violation, shall be admitted into evidence as presumptive evidence that a regular and systematic mailing procedure is followed by the department for the mailing of its notices of violation. Where the department introduces into evidence the business records which correspond to the various stages of the mailing of a particular cycle of notices of violation, pursuant to subdivision (c) of rule forty-five hundred eighteen of the civil practice law and rules, then a presumption shall have been established that the mailing procedure was followed in the case of such cycle, and that such notice of

violation has been duly served.

(c) The said notice of violation shall also specify the date by which each violation shall be corrected.

Such date shall be:

(1) ninety days from the date of mailing of the notice in the case of non-hazardous violations; (2) thirty days from the date of mailing of the notice in the case of hazardous violations; [and] (3) twenty-four hours in the case of immediately hazardous violations in which case the notice shall be served by personal delivery to a person in charge of the premises or to the person last registered with the city as the owner or agent, or, by registered or certified mail, return receipt requested, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided that where a managing agent has registered with the department, such notice shall be served on the managing agent; and (4) four months in the case of an underlying condition, except that the department may reduce or extend the time for correcting an underlying condition by a period not to exceed two months, in accordance with criteria promulgated by the department in rules. Service of the notice shall be deemed completed five days from the date of mailing. The department may postpone the date by which a violation shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of technical difficulties, inability to obtain necessary materials, funds, or labor, or inability to gain access to the dwelling unit wherein the violation occurs or such other part of the building as may be necessary to make the required repair. In the case of immediately hazardous violations such showing must be made prior to the close of business on the next full day the department is open following the period set for correction. The department may condition such postponement upon the applicant's written agreement to correct all violations placed against the premises by the department or other appropriate governmental agency and to satisfy within an appropriate period of time, all sums owing to the department for repairs made to said premises. The department may require such other conditions as are deemed necessary to insure correction of the violations within the time set by the postponement. The department shall prepare a

written statement signed and dated by the person making such decision setting forth the reasons for the postponement of the date by which a violation shall be corrected or the reason for the denial of such application for postponement and said written statement shall be part of the record of the department.

§ 5. Paragraph 3 of subdivision f of section 27-2115 of the administrative code of the city of New York is amended to read as follows:

(3) Such violation shall be deemed corrected seventy days from the date of receipt of such certification by the department unless the department has determined by a reinspection made within such period that the violation still has not been corrected and has recorded such determination upon its records and has notified the person who executed the certification by registered or certified mail to the address stated in the certification that it has been set aside and the reasons therefor; a copy of such notice shall be sent to the complainant. This subdivision does not apply to orders to correct underlying conditions.

§ 6. Paragraph 1 of subdivision h of section 27-2115 of the administrative code of the city of New York is amended to read as follows:

(1) Should the department fail to issue a notice of violation upon the request of a tenant or group of tenants within thirty days of the date of such request, or if there is a notice of violation outstanding respecting the premises in which the tenant or group of tenants resides, or, if there is a claim of harassment pursuant to subdivision d of section 27-2005 of this chapter, the tenant or any group of tenants[,] may individually or jointly apply to the housing part for an order directing the owner and the department to appear before the court. Such order shall be issued at the discretion of the court for good cause shown, and shall be served as the court may direct. If the court finds a condition constituting a violation exists, it shall direct the owner to correct the violation and any underlying condition that the court finds caused the violation, and, upon failure to do so within the time set for certifying the correction of such violation or underlying condition pursuant to subdivision (c) of this section, it shall impose a penalty in accordance with subdivision (a) of this section. Nothing in this section shall preclude any person from seeking relief pursuant to any other applicable provision

of law.

§ 7. Section 27-2120 of the administrative code of the city of New York is amended by adding a new subdivision c to read as follows:

c. Order to Correct Underlying Condition. 1. A tenant or group of tenants of a building may apply individually or jointly to the housing part of the civil court for an order to correct an underlying condition in a building that the tenant or tenants occupy. Pursuant to such an application, the housing part may issue an order directing an owner and the department to appear in court. The housing part shall direct the manner of service of such an order and may allow service by a tenant or group of tenants by certified or registered mail, return receipt requested. If the housing part finds that an underlying condition exists, the housing part shall order such owner to correct such underlying condition. It is not a defense against the application of this subdivision that an underlying condition to be corrected is not itself a violation.

2. An owner shall comply with an order to correct an underlying condition within four months and shall certify such compliance to the department in the manner provided by subdivision f of section 27-2115. The housing part may reduce or extend the time for compliance by a period not to exceed two months, in accordance with criteria promulgated by the department in rules. A tenant affected by a false certification of compliance may apply to the housing part for a determination of violation as provided in subdivision h of section 27-2115.

3. An owner who fails to comply with an order to correct an underlying condition within the time allowed is subject to a civil penalty as provided in subdivision a of section 27-2115.

§ 8. Section 27-2121 of the administrative code of the city of New York is amended to read as follows:

§ 27-2121 Injunctive relief in other actions; powers of the court.

In any action or proceeding brought in the housing part of the New York city civil court, the court, on motion of any party or on its own motion, may issue such preliminary, temporary or final orders requiring the owner of property or other responsible person to abate or correct violations of this code or underlying

conditions, [or] to comply with an order or notice of the department, or to take such other steps as the court may deem necessary to assure continuing compliance with the requirements of this code, including direction of correction of violations of this code or underlying conditions by a contractor, materialman or municipal department and payment of rent or release of funds deposited with the court in an appropriate amount to (i) such contractor or materialman upon the proper presentation of bills for the correction of such conditions or (ii) such municipal department.

§ 9. This local law shall take effect 120 days after its enactment, except that the department may take any actions necessary for its implementation, including the promulgation of rules, before its effective date.

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