

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1995**

No. 77

Introduced by Council Members Berman, DeMarco, Henry, and Pagan (by the request of the Mayor); also Council Members Fisher, Leffler and Eristoff.

A LOCAL LAW

To amend the charter of the city of New York, and the administrative code of the city of New York, in relation to creating a department of design and construction, and, in furtherance thereof, amending procedures relating to scope of projects, review by the art and landmarks preservation commissions and community boards.

Be it enacted by the Council as follows:

Section 1. The New York city charter is amended by adding a new chapter 55 to read as follows:

CHAPTER 55

DEPARTMENT OF DESIGN AND CONSTRUCTION

§1200. Department; commissioner. There shall be a department of design and construction, the head of which shall be the commissioner of design and construction.

§1201. Deputies. The commissioner may appoint five deputies.

§1202. Powers and duties of the commissioner. a. Except as otherwise required by state or federal law or by direction of the mayor pursuant to subdivision b of this section, and notwithstanding any inconsistent provision of this charter or the administrative code, the commissioner shall have charge and control of and be responsible for functions and operations and shall exercise powers of the city relating to city construction projects. Such projects shall include but not be limited to the design, construction and alteration of streets and highways, bridges and tunnels, parks and recreational facilities, sewers and sewage disposal plants, water supply and distribution structures, waste management facilities, correctional facilities and all other public buildings, structures and facilities. The commissioner shall also perform responsibilities as the mayor shall direct with respect to the acquisition of real or personal property in connection with construction or a capital project, including responsibilities delegated elsewhere by the charter or the administrative code, provided that the acquisition of real property shall be made in the same manner as acquisitions made pursuant to subdivision three of section sixteen hundred two of this charter.

b. Notwithstanding any inconsistent provision of this section, the mayor may assign in whole or in part operations and functions related to a particular construction project or particular category or class of construction projects to an agency other than the department

of design and construction, if the mayor determines that it is appropriate for such other agency to perform such operations and functions.

§1203. Consultation with other agencies. In preparing and considering plans and specifications and in carrying out such plans or specifications, the department shall consult with agencies for whose use the building, structure or facility is intended and shall consider any recommendations made by such agencies.

§1204. Right of entry. The commissioner, officers and employees of the department may, in accordance with applicable law, enter upon public or private property for the purpose of making surveys, test pits and borings or other investigations necessary for the exercise of the powers or the performance of the duties of the department. Refusal by the owner or the agent of such owner to permit such entry shall be a misdemeanor and punishable by not more than thirty days' imprisonment or a fine of not more than five hundred dollars, or both.

§1205. Powers and duties of other agencies. a. Where state or federal law designates an agency other than the department of design and construction to perform a function that would otherwise be within the jurisdiction of the department of design and construction pursuant to subdivision a of section twelve hundred two of this chapter, such agency shall delegate such function to the department of design and construction if such delegation may be made consistent with applicable provisions of state or federal law.

b. Wherever the powers and duties of an agency other than the department of design and construction as set forth in the charter or the administrative code include city construction projects within the jurisdiction of the commissioner of design and construction pursuant to subdivision a of section twelve hundred two of this chapter, such powers and duties shall be deemed to be within the jurisdiction of the department of design and construction and shall be exercised by such department; provided that such other agency may exercise such powers and duties pursuant to subdivision b of such section or where required by state or federal law.

§2. Section 105 of the New York city charter, as added by a vote of the electors of such city at a general election held on November 7, 1989, is amended to read as follows:

§105. Appropriations for goods, services or construction. Appropriations for the procurement of goods[,] or services [or construction] or the provision of services, utilities, or facilities by the department of general services for other agencies and institutions in accordance with the authority of the department of general services under the provisions of this charter shall be made to the department of general services but shall be segregated under the name of the agency or institution for which they are intended and shall be considered and accounted for as appropriated for such agency or institution. Nothing herein contained shall prevent the designation of part of such appropriations as a general stores account or under other appropriate designation to enable the department of general services to maintain a stock in anticipation of requirements or to provide services, utilities or facilities for joint use by more than one agency or institution.

§3. Paragraph (2) of subdivision e of section 204 of the New York city charter, as added by a vote of the electors of such city at a general election held on November 7, 1989, is amended to read as follows:

(2) The mayor, assisted by the department of city planning, the department of design and construction and the department of general services, shall review such departmental statements of need and use them to prepare the statement of needs. In preparing the

statement of needs, the mayor shall apply the criteria established pursuant to section two hundred three.

§4. The New York city charter is amended by adding a new section 265-a to read as follows:

§265-a. Allocation of authorizations to department of design and construction. So much of the amount of any obligation authorized as is applicable to the completion of construction projects, acquisition of real property or acquisition of personal property in connection with construction or a capital project by the department of design and construction, including but not limited to the provision of services, utilities or facilities of such department, shall be allotted to the department of design and construction, but shall be considered and accounted for as a part of the cost of the project for which the obligations were authorized.

§5. The introductory paragraph of section 1602 of the New York city charter, as amended by a vote of the electors of such city at a general election held on November 7, 1989, is amended to read as follows:

§1602. Powers and duties of the commissioner. Except as otherwise provided by law, the commissioner shall have the power and it shall be the commissioner's duty to perform all the functions and operations of the city of New York relating to the [construction,] maintenance and care of public buildings and facilities; the procurement of goods and other personal property; the disposition of surplus property; the provision to city agencies of services other than personal services; the acquisition, disposition and management by the city of real property other than housing; the provision of automotive, communication, energy, and data processing services, including without limitation:

§6. Subdivision 1 of section 1602 of the New York city charter, as amended by a vote of the electors of such city at a general election held on November 7, 1989, is amended to read as follows:

1. Public buildings and facilities. With respect to public buildings and facilities, the commissioner shall have the following powers and duties:

[(a) to have charge and control over the plans and specifications for and the construction of all buildings and facilities paid for in whole or in part from the city treasury;

(b)] (a) to manage, alter, repair, operate, maintain and clean buildings, facilities and offices leased or occupied for public use by more than one city agency whose management, alteration, repair, operation, maintenance or cleaning is paid for in whole or in part from the city treasury, and as directed by the mayor, to perform services in space occupied for public use by a single city agency;

[(c)] (b) except for the provisions of chapter nine of this charter, to employ, when in the commissioner's opinion such services are necessary or desirable, qualified consultants in private practice to aid the commissioner in carrying out his duties and responsibilities with respect to public buildings or facilities; such consulting or advisory services shall be performed under the supervision of the commissioner;

[(d) to consult with the agencies for whose use the buildings or structures are intended in preparing and considering plans and specifications and in carrying out such plans and specifications, and to consider any recommendations made by such agency.

Notwithstanding the provisions of this subdivision one, the exercise of the powers and duties set forth herein shall be subject to the jurisdiction of any city agency

performing urban renewal and public and publicly-aided housing functions to the extent, and in such areas, as directed by the mayor;]

[(e)] (c) to exercise and perform such other powers and duties as may be prescribed by law or delegated to him in relation to laboratory testing of commodities and construction materials.

Notwithstanding the provisions of this subdivision one, the exercise of the powers and duties set forth herein shall be subject to the jurisdiction of any city agency performing urban renewal and public and publicly-aided housing functions to the extent, and in such areas, as directed by the mayor.

§7. Subdivision e of section 854 of the charter of the city of New York, as amended by local law 52 for the year 1988, is amended to read as follows:

e. No structure, except as provided in subdivision f or h, shall be erected or placed upon land belonging to the city, and no arch, bridge, structure or approach which is the property of any corporation or private individual shall extend over or upon any street, avenue, highway, park or public place belonging to the city, and no new lines, grades or plotting or layout of public ways and grounds shall be accepted or work in pursuance thereof commenced unless the design thereof, accompanied by an estimate of cost and a plan showing the proposed location, shall have been submitted to the commission and the design, and in the case of a building or other structure its location in relation to existing or projected developments in the vicinity, shall have been approved in writing by it. If exterior wall, fences, gates, steps, curbing, distinctive paving, benches, lamps, posts, signage, traffic signals or other structures of the same type and design are considered for installation at various locations, the commission may approve the type and design with specifications as to the types of location for which they would be approved as suitable without passing on each individual installation. *In addition, replacements-in-kind need not be approved by the commission.* The commission shall have the authority to bar final payment for such structure, or for such lines, grades or plotting or layout of public ways and grounds if the president or executive director of the commission certifies that the work has not been erected or placed substantially in accordance with the approval of the commission.

§8. Subdivision f of section 854 of the charter of the city of New York, as amended by local law 52 for the year 1988, is amended to read as follows:

f. In the case of any building or other structure *that is part of a construction or other project, where* the total estimated cost of [which] *such project* shall not exceed [two hundred fifty thousand] *one million* dollars, the approval of the commission pursuant to this section shall not be required if the mayor or the council shall in writing request the commission not to act. Nothing in this section shall be construed as intended to impair the concurrent power of the commissioner of parks and recreation to refuse his or her consent to the erection or acceptance of any public monument or memorial or other work of any sort within any park, square or other public place under his jurisdiction.

§9. Section 854 of the charter of the city of New York shall be amended by adding a new subdivision h to read as follows:

h. Notwithstanding any inconsistent provision of this chapter, if an approval of a structure pursuant to subdivision e of this section primarily concerns a landmark, landmark site, landmark interior, an existing building within a scenic landmark, or an action within an historic district, and also requires a report or determination by the landmarks preservation commission pursuant to chapter three of title twenty-five of the

administrative code of the city of New York, then, in that event, the powers and duties of the art commission with respect to such structures pursuant to such subdivision e and subdivisions f and g of this section shall instead be exercised by the landmarks preservation commission pursuant to its own rules and procedures. If such commission shall fail to take action upon any matter legally submitted to it within sixty days after such submission, its action shall be deemed unnecessary. Any action taken by such commission pursuant to this subdivision shall be filed with the art commission.

§10. Paragraph 14 of subdivision d of section 2800 of the charter of the city of New York, as added by vote of the electors of such city at a general election held on November 4, 1975, and renumbered by vote of the electors of such city at a general election held on November 7, 1989, is amended to read as follows:

(14) Assist in the planning of individual capital projects funded in the capital budget to be located in the community district and review scopes of projects and designs for each capital project *within such time, not to exceed thirty days, as determined by the mayor;*

§11. Subdivision h of section 2800 of the charter of the city of New York, as amended by vote of the electors of such city at a general election held on November 7, 1989 is amended to read as follows:

h. [Except during the months of July and August, each] *Each* community board shall meet at least once each month within the community district and conduct at least one public hearing each month. Each board shall give adequate public notice of its meetings and hearings and shall make such meetings and hearings available for broadcasting and cablecasting. At each public meeting, the board shall set aside time to hear from the public. The borough president shall provide each board with a meeting place if required by the board.

§12. Section 3020 of the charter of the city of New York is amended by adding a new subdivision 11 to read as follows:

11. In addition to the powers conferred by this chapter, the commission shall have the powers specifically conferred upon it by chapter thirty-seven of the charter.

§13. The administrative code of the city of New York is amended by adding a new section 19-101.1, to follow section 19-101, to read as follows:

§19-101.1 Department of design and construction. Any power granted by this chapter to the commissioner of transportation or the department of transportation related to construction or other work shall be performed by the department of design and construction in accordance with chapter fifty-five of the charter unless otherwise directed by the mayor pursuant to such chapter. Where the commissioner of transportation or the department of transportation is authorized by this chapter to promulgate specifications relating to construction or other work, such promulgation shall be done in consultation with the department of design and construction.

§14. Section 19-122 of the administrative code of the city of New York, as amended and renumbered by local law number 104 for the year 1993, is amended to read as follows:

§19-122 Removal of debris. Any person other than the commissioner of environmental protection *or the commissioner of design and construction*, who may hereafter pave or cause to be paved any street, shall remove the sand, dirt, rubbish or debris from such street and every part thereof, within seven days after the pavement shall have been completed. In addition to any penalties which may be imposed for violation of this section, [the] *either* commissioner may cause such sand, dirt, rubbish or debris to be removed at the expense of the party neglecting or refusing so to do, who shall be liable

for the amount expended by the city. This section shall be so construed as to apply to the removal of all sand, dirt, rubbish or debris collected in any part of any and all streets covered by any pavement so done or laid, or excavation that may have been made, or other work done in pursuance thereof.

§15. Subdivision b of section 24-411 of the administrative code of the city of New York, as amended by local law number 69 for the year 1985, which amendment was codified pursuant to section 16 of chapter 907 of the laws of 1985, is amended to read as follows:

b. The persons owning, operating, managing or controlling poles, wires or appurtenances which may have been so disused or abandoned, or which may be dangerous or unsafe, shall take down and remove them, and upon their failure to do so, the [commissioner of transportation] *commissioner of design and construction, in accordance with chapter fifty-five of the charter, unless otherwise directed by the mayor pursuant to such chapter*, shall remove the same forthwith, at the expense of such persons. Before such removal, the commissioner of transportation *or the commissioner of design and construction*, except where a condition of danger exists, shall mail a notice thereof to the last known address of such persons, a copy of which shall be posted for a period of ten days on each of such poles prior to its removal.

§16. Subdivision b of section 24-521 of the administrative code of the city of New York is amended to read as follows:

b. Public service corporations shall protect their property. Public service corporations whose pipes, mains or conduits are about to be disturbed by the constructing, altering or repairing of any sewer, culvert, water main or pipe, shall, on the receipt of the notice provided for in the preceding subdivision, remove or otherwise protect and replace their pipes, mains and conduits, and all fixtures and appliances connected therewith or attached thereto, where necessary, under the direction of the commissioner *of design and construction in accordance with chapter fifty-five of the charter, unless otherwise directed by the mayor pursuant to such chapter*.

§17. Section 25-318 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

d. *In addition to the powers conferred by this chapter, the commission shall have the powers specifically conferred upon it by chapter thirty-seven of the charter.*

§18. Any agency or officer to which are assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§19. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to some other agency or officer, shall continue in force

as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§20. If any of the functions, powers or duties of any agency or part thereof is by or pursuant to sections one through six and sections thirteen through sixteen of this local law assigned to another agency, all records, property and equipment relating to such transferred function, power or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§21. No existing right or remedy of any character accruing to the City shall be lost or impaired or affected by reason of the adoption of this local law.

§22. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§23. Whenever by or pursuant to any provision of sections one through six and sections thirteen through sixteen of this local law functions, powers or duties may be assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to the agency to which such functions, powers or duties may be assigned by or pursuant to this local law.

§24. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to sections one through six and sections thirteen through sixteen of this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§25. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§26. a. No later than eighteen months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work now performed by the division of design and construction services of the department of general services, design and construction work relating to streets and highways now performed by the department of transportation, and design and construction work relating to sewers and water mains now performed by the department of environmental protection, and no later than thirty-six months from the effective date of this local law, the department of design and construction shall assume jurisdiction over design and construction work relating to buildings now performed by the department of

parks and recreation and design and construction work relating to garages now performed by the department of sanitation.

b. Notwithstanding subdivision a of this section, if the mayor, pursuant to subdivision b of section 1202 of the New York city charter, assigns to any agency other than the department of design and construction work described in subdivision a of this section, the mayor shall notify the council at least thirty days prior to the later of (1) the date by which the department of design and construction would otherwise have assumed such jurisdiction pursuant to subdivision a of this section, or (2) the date that the assignment is to take effect.

§27. This local law shall take effect thirty days after its enactment into law, provided that:

(1) the mayor may confer jurisdiction over pending construction projects or over categories of construction projects to the agency that had jurisdiction over such projects prior to the effective date of this local law to the extent and for the period the mayor deems appropriate except as provided in section twenty-six of this local law;

(2) that sections seven, eight, nine and twelve of this local law shall not apply to matters submitted to the art commission prior to the effective date of this local law; and

(3) that section ten of this local law shall not apply to matters submitted to a community board prior to the effective date of this local law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on October 5, 1995, and approved by the Mayor on October 24, 1995.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 77 of 1995, Council Int. No. 599-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on October 5, 1995: 46 for, 2 against, 1 not voting.

Was approved by the Mayor on October 24, 1995.

Was returned to the City Clerk on October 25, 1995.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel