

THE COUNCIL

The City of New York

Int. No. 352

July 15, 1998

Introduced by Council Members Berman and Ognibene (by request of the Mayor); also Council Member Michels—read and referred to the Committee on Finance.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the construction industry

Be it enacted by the Council as follows:

1 Section 1. Legislative findings. The council hereby finds that New York City's
2 seven-billion dollar construction industry has for many decades suffered from the influ-
3 ence of organized crime and other forms of corruption. Corruption in the construction
4 industry has taken many forms. Corrupt contractors have rigged bids, bribed city inspec-
5 tors to overlook code violations, engaged in shoddy building practices, fraudulently
6 billed public agencies and private owners, exploited unskilled workers, and committed
7 pension and tax fraud. Many corrupt contractors have been infiltrated by or formed
8 alliances with organized crime figures in order to achieve their objectives. The time-sen-
9 sitive and labor-intensive nature of the construction process has left many opportunities
10 for bribery, extortion and other classic forms of corruption, as demonstrated by succes-
11 sive federal and state criminal prosecutions of contractors and others in recent years.

12 The council finds that corruption has helped to drive the costs of construction in
13 New York City to levels as much as 35% above the national average. Indeed, the
14 Manhattan District Attorney's on-going investigation of a bid rigging cartel made up of
15 many of the largest of New York City's interior contractors has revealed that as much as

1 20% was added to the cost of virtually all major interior renovation projects undertaken
2 in New York city in the 1990s. This "mob tax" takes a heavy toll—on businesses that
3 must bear the high costs of leasing or construction if they wish to remain in New York
4 City, on honest contractors or union workers whose opportunity to earn a decent living
5 are undercut by corruption, on average New York City families struggling to afford a
6 decent home, and on victims of construction accidents resulting from shoddy workman-
7 ship tolerated or encouraged by contractors who ignore safety requirements, among oth-
8 ers. With precious resources wasted on corruption, fewer commercial developments,
9 apartment buildings and other construction projects, both public and private, are built
10 each year in New York City, and all New Yorkers therefore suffer the consequences.

11 The council further finds that criminal prosecutions alone cannot reform New York
12 City's construction industry. Despite numerous successful prosecutions which have led
13 to the conviction of hundreds of organized crime members and associates over the last
14 fifteen years, corruption continues to be present in the construction industry. Most
15 recently, the Manhattan District Attorney's investigation of the interior construction
16 industry has resulted in several top executives pleading guilty to accepting kickbacks
17 and bid rigging. Comprehensive and lasting reform can only be achieved by means of
18 effective oversight of the industry through licensing and regulation. The City's recent
19 success in regulating the Fulton Fish Market and the trade waste industry demonstrate
20 this. Despite successful criminal prosecutions in those industries, true reform only
21 occurred when the City recently exercised its police power to remove organized crime
22 influences, license businesses and set standards of conduct.

23 The council also finds that these types of reforms will promote contractor account-
24 ability. Today, in the absence of any City licensing authority or other competence stan-
25 dards for construction contractors, a contractor may continue to obtain building permits

1 even in the face of a history of incompetence, egregious safety violations or dishonest
2 business practices. Recent accidents and construction failures have vividly illustrated
3 the consequences of not complying with industry standards and failing to adhere to
4 approved building plans and obey the requirements of the building code and related
5 laws. Other jurisdictions, including Boston, Buffalo and Dade County, have implement-
6 ed the licensing of construction contractors as a means to promote safety and compe-
7 tence. New York City needs to do the same.

8 The council therefore finds and declares that in order to eliminate corruption in the
9 construction industry and its deleterious effects on all New Yorkers, and in order to pro-
10 tect the public safety, it is necessary to establish a New York city construction commis-
11 sion charged with responsibility for the licensing and regulation of contractors in the
12 construction industry. The council finds that the establishment of the commission and
13 enactment of the regulatory scheme set forth in this legislation is the best means to
14 achieve the comprehensive and lasting reform that is needed in New York city's con-
15 struction industry.

16 § 2. The administrative code of the city of New York is amended to add a new title
17 27-A, to read as follows:

18 *Title 27-A*

19 *Chapter 1*

20 *NEW YORK CITY CONSTRUCTION COMMISSION*

21 *§ 27-5001 Definitions.*

22 *a. "Applicant" for a license pursuant to this chapter shall mean the business entity*
23 *and each principal thereof. For purposes of determination of the character, honesty and*
24 *integrity of a subcontractor business pursuant to section 27-5008 of this chapter, the*
25 *term "applicant" shall mean such subcontractor business and each principal thereof;*

1 for purposes of section 27-5009 of this chapter, the term "applicant" shall include all
2 employees, agents or prospective employees or agents of an applicant for a license or a
3 licensee.

4 b. "Commission" shall mean the New York city construction commission as estab-
5 lished by section 27-5002 of this chapter.

6 c. "Construction manager" shall mean any person or entity that oversees, coordi-
7 nates, supervises, directs, manages, superintends or in any manner assumes charge of a
8 construction project and any persons or entities that are to perform such project,
9 whether as part of a joint venture, or otherwise. Notwithstanding the provisions of this
10 subdivision, "construction manager" shall not include: (i) a utility company subject to
11 the jurisdiction of the public service commission of the state of New York, or (ii) a per-
12 son or entity exclusively engaged in performing minor alterations or ordinary repairs on
13 a building, as such terms are defined in sections 27-124 through 27-126 of this code,
14 (iii) an employee of the city of New York or other entity acting within the scope of such
15 employment, (iv) a person employed by a not-for-profit corporation formed under the
16 laws of New York State, or (v) an owner that does not employ persons performing the
17 functions described in this subdivision as part of the ongoing operations of its business.
18 The term "construction manager" shall mean any person or entity performing a func-
19 tion set forth in this subdivision, regardless of the title or job description of or used by
20 such person or entity, including but not limited to a person or entity denominated as a
21 general contractor or similar title or job description.

22 d. "Construction project" shall mean any site clearance, land contour work,
23 dredging, demolition or excavation; any construction, alteration or improvement of a
24 building, building interior, facility, lot or other structure; or any such work or mainte-
25 nance work with respect to a street, highway, bridge, sewer, tunnel, water main, pier, or

1 other infrastructure or public works project within the city of New York.

2 e. "Principal" shall mean, of a sole proprietorship, the proprietor; of a corpora-
3 tion, every officer and director and every stockholder holding ten percent or more of the
4 outstanding shares of the corporation; of a partnership, all the partners; of a limited
5 liability corporation, all members who have an interest therein of ten percent or more
6 and all managers; of another type of business entity, the chief operating officer or chief
7 executive officer, irrespective of organizational title, and all persons or entities having
8 an ownership interest of ten percent or more; and with respect to all business entities,
9 all other persons participating directly or indirectly in the control of such business enti-
10 ty. Where a partner or stockholder holding ten percent or more of the outstanding
11 shares of a corporation is itself a partnership, or a corporation, a "principal" shall
12 also include the partners of such partnership or the officers, directors and stockholders
13 holding ten percent or more of the outstanding shares of such corporation, as is appro-
14 priate. For the purposes of this chapter (1) an individual shall be considered to hold
15 stock in a corporation where such stock is owned directly or indirectly by or for (i) such
16 individual; (ii) the spouse or domestic partner, as such term is defined in subdivision 21
17 of section 1-112 of the administrative code of the city of New York, of such individual
18 (other than a spouse who is legally separated from such individual pursuant to a bona
19 fide judicial decree or agreement cognizable under the laws of the state in which such
20 individual is domiciled); (iii) the children, grandchildren and parents of such individu-
21 al; and (iv) a corporation in which any of such individual, the spouse or domestic part-
22 ner, as such term is defined in subdivision 21 of section 1-112 of the administrative code
23 of the city of New York, children, grandchildren or parents of such individual in the
24 aggregate own fifty percent or more in value of the stock of such corporation; (2) a
25 partnership shall be considered to hold stock in a corporation where such stock is

1 owned, directly or indirectly, by or for a partner in such partnership; and (3) a corpora-
2 tion shall be considered to hold stock in a corporation that is an applicant as defined in
3 this section where such corporation holds fifty percent or more in value of the stock of a
4 third corporation that holds stock in the applicant corporation.

5 f. "Subcontractor" shall mean any person or entity who, as part of the operation of
6 a business, enters or offers to enter into an oral or written contract with a construction
7 manager or another subcontractor, to furnish such construction manager or other sub-
8 contractor with labor, material, equipment, supplies or services related to a construc-
9 tion project; provided, however, that "subcontractor" shall not include a person who is
10 an employee of a construction manager.

11 § 27-5002 New York city construction commission. There is hereby created a New
12 York city construction commission. Such commission shall consist of the commissioner
13 of buildings, the commissioner of investigation, the commissioner of business services,
14 the commissioner of design and construction, or designees of such officials appointed
15 pursuant to the provisions of section eleven hundred of the New York city charter, and
16 one member who shall be appointed by the mayor and shall serve as chair with compen-
17 sation therefor; provided that if the chair holds other city office or employment, no
18 additional compensation shall be received. The chair shall have charge of the organiza-
19 tion of the commission and its operations and shall have authority to employ, assign and
20 superintend the duties of such officers and employees as may be necessary to carry out
21 the provisions of this chapter. The commission may by resolution delegate to the chair
22 such of its powers and duties as it deems appropriate.

23 § 27-5003 Powers and duties. The powers and duties of the commission shall
24 include, but not be limited to, the following;

25 a. to issue, suspend and revoke and establish standards for the issuance, suspen-

1 sion and revocation of licenses authorizing the operation of construction manager busi-
2 nesses, and to place such conditions upon such licenses as the commission deems appro-
3 priate to effectuate the purposes of this chapter; to review the performance of
4 construction managers and subcontractors with respect to safety and code compliance;
5 and to impose fines and penalties, and otherwise discipline licensees, for violations of
6 the provisions of this chapter.

7 b. to make determinations regarding the good character, honesty and integrity of
8 subcontractor businesses and to prohibit licensees from engaging in business with any
9 subcontractor business that the commission has determined lacks good character, hon-
10 esty or integrity; or to require the appointment of an independent monitor to oversee the
11 business operations and/or safety and regulatory compliance of such subcontractor or
12 take such other measures as the commission deems appropriate to effectuate the purpos-
13 es of this chapter, including the measures set forth in section 27-5008 of this chapter
14 with respect to such subcontractor;

15 c. to investigate any matter, including any violation of law, within the jurisdiction
16 conferred by this chapter and to have full power to compel the attendance, examine and
17 take testimony under oath of such persons as the commission may deem necessary in
18 relation to such investigation, and to require the production of books, records, accounts,
19 papers and other evidence relevant to such investigation;

20 d. to establish standards for the regulation and conduct of businesses licensed pur-
21 suant to this chapter, the maintenance and inspection of records, the maintenance of
22 appropriate insurance, and compliance with safety and health measures, standards of
23 competence and applicable provisions of federal, state and local law and regulation;

24 e. to appoint, within the appropriations available therefor, such employees as may
25 be required for the performance of the duties prescribed herein. In addition to such

1 *employees appointed by the commission, the chair of the New York city trade waste*
2 *commission, the commissioners of business services, design and construction, investiga-*
3 *tion, buildings, transportation, environmental protection and police may, at the request*
4 *of the chair, provide staff and other assistance to the commission in all matters under its*
5 *jurisdiction. Staff provided to the commission pursuant to this provision shall, for pur-*
6 *poses of this title, be deemed employees of the commission;*

7 *f. to conduct studies or investigations into the construction industry in the city and*
8 *other jurisdictions;*

9 *g. to establish, by rule, mechanisms for the orderly implementation of the licensing*
10 *provisions of this chapter, taking into account various categories of construction man-*
11 *agers subject to such provisions, as indicated by factors such as amount of revenues,*
12 *types of construction, size of projects or such other factors as the commission shall, in*
13 *its discretion, deem appropriate;*

14 *h. to establish fees to cover the costs of processing applications and conducting*
15 *investigations pursuant to the provisions of this chapter;*

16 *i. to create and disseminate materials on matters of concern to the construction*
17 *industry and related industries, and to educate persons and entities within the industry*
18 *and members of the public regarding such matters; and*

19 *j. to promulgate rules, including but not limited to rules governing the conduct of*
20 *licensees and transactions between licensees and others, as the commission may deem*
21 *reasonable and appropriate to effect the purposes and provisions of this chapter.*

22 *§ 27-5004 Licenses required. a. Except as otherwise provided, it shall be unlawful*
23 *for any person or entity to operate as a construction manager, to engage in, conduct or*
24 *cause the operation of such a business, or to hold itself out as a licensed construction*
25 *manager without having first obtained a license therefor from the commission pursuant*

1 *to the provisions of this chapter.*

2 *b. A license issued pursuant to this chapter or any rule promulgated hereunder*
3 *shall not be transferred or assigned to any person or entity or used by any person or*
4 *entity other than the licensee to whom it was issued.*

5 *c. Where a construction manager licensed by the commission proposes to enter into*
6 *a contract subject to the provisions of chapter thirteen of the New York city charter,*
7 *such construction manager shall be considered to have met the requirements of the pro-*
8 *curement policy board promulgated pursuant to such chapter with respect to the integri-*
9 *ty component of vendor responsibility; provided that this subdivision shall not apply*
10 *where such licensee is the subject of an investigation or enforcement action by the com-*
11 *mission or any federal, state or local agency or a proceeding by the commission to*
12 *revoke or suspend such license or where such licensee is subject to any condition autho-*
13 *rized by section 27-5010 of this chapter.*

14 § 27-5005 *Term of license. A license issued pursuant to this chapter shall be valid*
15 *for a period of two years.*

16 § 27-5006 *License application. a. An applicant for a license pursuant to this*
17 *chapter shall submit an application in the form and containing the information pre-*
18 *scribed by the commission.*

19 *b. An applicant shall provide to the commission, upon a form prescribed by the*
20 *commission, any and all information required therein for the use of the commission in*
21 *determining the good character, honesty and integrity of the applicant, including but not*
22 *limited to information related to: (a) the experience, educational and technical back-*
23 *ground, training and other qualifications of the applicant; (b) persons or entities hold-*
24 *ing a beneficial interest in the applicant business, and the amount and nature of such*
25 *holdings; (c) any debt, including loans and mortgages on real property, owed by or to*

1 *the applicant; (d) the financial condition and business transactions and operations of*
2 *the applicant business and its principals; (e) the applicant's compliance with its obliga-*
3 *tions under collective bargaining agreements; (f) any business in which the applicant*
4 *holds an equity, debt or other interest; (g) gifts given or received by the applicant,*
5 *excluding gifts to any organization recognized by the Internal Revenue Service under*
6 *section 501(c)(3) of the Internal Revenue Code; (h) criminal charges or convictions, in*
7 *any jurisdiction, against the applicant or any of its principals or employees; (i) civil or*
8 *criminal actions to which the applicant is or was a party; (j) any determination by a fed-*
9 *eral, state or local regulatory agency of a violation by the applicant of laws or regula-*
10 *tions relating to the conduct of the applicant's business; (k) any criminal or civil*
11 *investigation relating to the applicant by a federal, state, or local prosecutorial agency,*
12 *investigative agency or regulatory agency, including any such investigation in which the*
13 *applicant was interviewed, testified, or otherwise provided information; (l) the tax histo-*
14 *ry of the applicant; (m) any predecessor or affiliated business of the applicant; and (n)*
15 *such other matters pertaining to the good character, honesty and integrity of the appli-*
16 *cant or its principals or employees, inquiry into which the commission may deem appro-*
17 *priate and reasonable to effectuate the purposes of this chapter. An applicant may*
18 *submit to the commission any material or explanation that the applicant believes*
19 *demonstrates that any information submitted pursuant to this paragraph does not reflect*
20 *adversely upon the applicant's good character, honesty and integrity. The commission*
21 *may also require that any or all of the principals of an applicant be fingerprinted by a*
22 *person designated for such purpose by the commission, the department of investigation*
23 *or the New York city trade waste commission and pay a fee to be submitted by the com-*
24 *mission to the division of criminal justice services and/or the federal bureau of investi-*
25 *gation for the purpose of obtaining criminal history records. The commission may*

1 *require that applicants pay such fees to cover the expenses of background investigations*
2 *provided for in this section as are set forth in the rules promulgated pursuant to section*
3 *27-5003 of this chapter.*

4 *c. Notwithstanding any other provision of this chapter, for purposes of this section:*
5 *in the case of an applicant that is a regional subsidiary of or otherwise owned, managed*
6 *by or affiliated with a business that has national or international operations: (i) the*
7 *commission may require that any person not employed by the applicant who has direct*
8 *management or supervisory responsibility for the operations or performance of the*
9 *applicant business may be fingerprinted and such person shall be subject to the disclo-*
10 *sure requirements of this section; (ii) the chief executive officer, chief operating officer*
11 *and chief financial officer, or any similar officer of such business that has direct man-*
12 *agement or supervisory responsibility over any person subject to the fingerprinting and*
13 *disclosure provisions of paragraph (i) of this subdivision may be required to be finger-*
14 *printed and shall submit to the commission a listing of all criminal convictions of such*
15 *officer in any jurisdiction and a listing of all pending civil or criminal actions to which*
16 *such person is a party, as well as such additional information as the commission may*
17 *deem necessary; and (iii) any regional subsidiary or similar entity of a national or*
18 *international business any of the principals of which is subject to the provisions of para-*
19 *graph (i) of this subdivision shall submit a listing of any criminal or civil investigations*
20 *by a federal, state, or local prosecutorial agency, investigative agency or regulatory*
21 *agency, in the five year period preceding the application, wherein the entity has been*
22 *the subject of such investigation or received a subpoena requiring the production of*
23 *documents or information or otherwise provided information in connection with such*
24 *investigation.*

25 *d. For the purposes of this section, the term "predecessor business" shall mean*

1 *any business, including but not limited to a construction manager or a subcontractor*
2 *business, in which one or more of the principals of the applicant were principals at any*
3 *time during the five year period preceding the application.*

4 *e. A licensee shall, in accordance with rules promulgated by the commission pur-*
5 *suant to section 27-5003 of this chapter, inform the commission of any material changes*
6 *or changes with respect to other matters specified by the commission in the information*
7 *provided in its license application. A licensee shall provide the commission with notice*
8 *of at least thirty business days of the proposed addition of a new principal to the busi-*
9 *ness of such licensee. The commission may waive or shorten such period upon a show-*
10 *ing satisfactory to the commission that there exists a bona fide business requirement*
11 *therefor and that to do so would not be inconsistent with the purposes of this chapter.*
12 *Except where the commission determines within such period, based upon information*
13 *available to it, that the addition of such new principal may have a result inconsistent*
14 *with the purposes of this chapter, the licensee may add such new principal pending the*
15 *completion of review by the commission. The licensee shall be afforded an opportunity,*
16 *as prescribed by the commission, to demonstrate to the commission that the addition of*
17 *such new principal pending completion of such review would not have a result inconsis-*
18 *tent with the purposes of this chapter. If upon the completion of such review, the com-*
19 *mission determines that such principal lacks good character, honesty or integrity, the*
20 *license shall cease to be valid unless such principal divests his or her interest, or dis-*
21 *continues his or her involvement in the business of such licensee, as the case may be,*
22 *within the time period prescribed by the commission.*

23 *f. Each applicant shall provide the commission with a business address in New*
24 *York city where notices may be delivered and legal process served.*

25 *§ 27-5007 Refusal to issue a license, determinations regarding employees and sub-*

1 contractors. a. The commission may, after notice and the opportunity to be heard as
2 prescribed by the commission, refuse to issue a license to an applicant upon a finding
3 that the applicant lacks good character, honesty or integrity. Such notice shall specify
4 the reasons for such refusal. In making such determination, the commission may consid-
5 er any of the following factors, as well as any other factors deemed by the commission
6 to be appropriate for consideration: (i) false, inaccurate, incomplete or misleading
7 information provided by the applicant in connection with an application; or (ii) adverse
8 information related to (a) the criminal history of the applicant business or its principals
9 or employees, including but not limited to any conviction of the applicant of a crime
10 which, considering the factors set forth in section seven hundred fifty-three of the cor-
11 rection law, would provide a basis under such law for the refusal of a license; (b) a
12 finding of liability in a civil or administrative action that bears a direct relationship to
13 the fitness of the applicant to conduct the business for which the license is sought; (c)
14 any violations of law by the applicant, including but not limited to any failure to comply
15 with applicable federal, state or local safety or regulatory requirements; (d) commission
16 of a racketeering act by the applicant, its principals or employees, or knowing associa-
17 tion by the principals or employees of an applicant business with a person who has been
18 convicted of a racketeering act under federal law or the law of any state; (e) knowing
19 association by the applicant, its principals or employees with any member or associate
20 of an organized crime group as identified by a federal, state or local law enforcement or
21 investigative agency when the applicant, principal or employee knew or should have
22 known of the organized crime associations of such person; (f) having been a principal in
23 a predecessor business where the commission would be authorized to deny a license to
24 such predecessor business pursuant to this subdivision; (g) failure to pay any tax, fine,
25 penalty or fee related to the applicant's business for which liability has been admitted,

1 or for which judgment has been entered by a court or administrative tribunal of compe-
2 tent jurisdiction; the failure to comply with prevailing wage laws or obligations under
3 collective bargaining agreements; or (i) any other matter that reflects adversely upon
4 the good character, honesty or integrity of the applicant. For the purposes of this sec-
5 tion "predecessor business" shall mean a construction industry business, including but
6 not limited to a general contractor business, a construction manager business or a sub-
7 contractor business in which one or more principals of the applicant were principals at
8 any time during the five year period preceding the application.

9 b. The commission may refuse to issue a license to an applicant who has knowingly
10 failed to provide the information and/or documentation required by the commission pur-
11 suant to this chapter or any rules promulgated pursuant hereto or who has otherwise
12 failed to demonstrate eligibility for such license under this chapter or any rules promul-
13 gated pursuant hereto.

14 c. The commission may refuse to issue a license to an applicant when such appli-
15 cant: (i) was previously issued a license pursuant to this chapter or a license to practice
16 a trade pursuant to title twenty-seven of this code and such license was revoked pur-
17 suant to the provisions of this chapter or such title; or (ii) has been determined to have
18 committed any of the acts which would be a basis for the suspension or revocation of a
19 license to practice a trade pursuant to title twenty-seven of this code or any rules pro-
20 mulgated thereto or this chapter or any rules promulgated hereto.

21 § 27-5008 Subcontractors. a. Where the commission, based upon information
22 available to it, believes that a subcontractor may lack good character, honesty or
23 integrity, the commission may notify such subcontractor that the principals of the sub-
24 contractor business must be fingerprinted and the business and its principals must sub-
25 mit the information required by subdivisions a and b of section 27-5006 of this chapter.

1 *b. Where a subcontractor refuses to cooperate in an investigation commenced pur-*
2 *suant to subdivision a of this section, or upon a finding by the commission that the sub-*
3 *contractor lacks good character, honesty or integrity, the commission may, after notice*
4 *to the subcontractor setting forth the reasons for any such finding and the opportunity to*
5 *be heard in response thereto, take any of the following measures, any combination of*
6 *such measures, or any other measures the commission deems appropriate: (i) enter an*
7 *order prohibiting any and all licensees or applicants from entering into any oral or*
8 *written contract with such subcontractor, or with any business identified by the commis-*
9 *sion at any time as a business in which one or more principals of any such subcontrac-*
10 *tor are principals, which order may, as the commission deems appropriate, include*
11 *provision for the subcontractor or principal to apply to the commission at a later date*
12 *for reconsideration based on changed circumstances; (ii) prescribe such terms of a con-*
13 *tract between a licensee or applicant and such subcontractor that the commission deems*
14 *necessary and appropriate to effectuate the purposes of this chapter; (iii) require, as a*
15 *condition of permitting licensees or applicants to enter into contracts or continue to do*
16 *business with such subcontractor, that the commission supervise the relationship of*
17 *licensees or applicants with such subcontractor; (iv) require, as a condition of permit-*
18 *ting licensees or applicants to enter into contracts or continue to do business with such*
19 *subcontractor or any business identified by the commission at any time as a business in*
20 *which one or more principals of such subcontractor are principals, that the subcontract-*
21 *tor enter into a written contract with an independent auditor or monitor pursuant to the*
22 *provisions of section 27-5010 of this chapter; or (v) where there is evidence of recent or*
23 *ongoing criminal activity, organized crime associations or any threat to the public safe-*
24 *ty by such subcontractor on or in connection with an ongoing construction project,*
25 *require that a licensee or applicant on such project cease conducting business with such*

1 *subcontractor pursuant to a timetable and subject to such other terms or conditions as*
2 *may be set forth in the order of the commission.*

3 *c. (i) Upon a determination that the purposes of this chapter may more effectively*
4 *be served by a requirement that all subcontractors in a particular category or trade*
5 *obtain licenses from the commission, the commission may, by rule, provide that the*
6 *licensing provisions of section 27-5004 of this chapter shall apply to such category or*
7 *trade, which shall be defined by rule of the commission, provided that no such rule shall*
8 *apply to a person or entity exclusively engaged in performing minor alterations or ordi-*
9 *nary repairs, as such terms are defined section 27-124 through 27-126 of this code. For*
10 *purposes of this subdivision, the term subcontractor shall include persons or entities*
11 *awarded contracts pursuant to chapter thirteen of the New York city charter who are not*
12 *subject to the provisions of section 27-5004 of this chapter. In the event that a person or*
13 *entity in such category is required to possess a license from the department of buildings*
14 *pursuant to title twenty-six or title twenty-seven of this code, the department of buildings*
15 *shall direct licensees and applicants to submit to the commission for its review the*
16 *information and other materials required pursuant to section 27-5006 of this chapter. In*
17 *the event that the commission finds that the licensee or applicant lacks good character,*
18 *honesty and integrity, the commission shall recommend that the commissioner of build-*
19 *ings, notwithstanding any other provision of law contained in title twenty-six or title*
20 *twenty-seven of this code, take appropriate action, including but not limited to refusing*
21 *to issue a license to an applicant, commencing proceedings to revoke or suspend a*
22 *license or imposing such other discipline as the commissioner deems suitable.*

23 *(ii) It shall be unlawful for a subcontractor subject to the provisions of this subdi-*
24 *vision, or a principal of any such subcontractor, to engage in, conduct or cause the*
25 *operation of such a business without a license from the commission or, where applica-*

1 *ble, a license in good standing from the department of buildings.*

2 *d. A subcontractor subject to a directive of the commission pursuant to subdivision*
3 *b of this section, or a business identified by the commission at any time as a business in*
4 *which one or more principals of such subcontractor are principals, shall not engage in*
5 *business with a licensee in violation of such directive.*

6 *§ 27-5009 Investigation of employees or agents. The commission may, in the*
7 *course of making a determination regarding a licensee, applicant for a license or sub-*
8 *contractor, inquire into the good character, honesty and integrity of an employee or*
9 *agent of such licensee, applicant or subcontractor.*

10 *a. Where the commission, based upon information available to it, believes that an*
11 *employee or agent or prospective employee or agent of a licensee, an applicant for a*
12 *license or a subcontractor may lack good character, honesty or integrity, the commis-*
13 *sion may require that such employee or agent or prospective employee or agent be fin-*
14 *gerprinted, be subject to the disclosure requirements of section 27-5006 of this chapter*
15 *and pay the fees for fingerprinting and such background investigation set forth in the*
16 *rules promulgated pursuant to section 27-5003 of this chapter.*

17 *b. Where, following a background investigation conducted pursuant to this section,*
18 *the official designated by the commission to review the findings of such investigation*
19 *concludes that an employee or agent or prospective employee or agent of a licensee,*
20 *applicant for a license or subcontractor lacks good character, honesty or integrity, such*
21 *person shall be provided with notice of such conclusion and the reasons therefor and*
22 *may contest the conclusion to such official in such manner as the commission may pre-*
23 *scribe. Such official shall review such response and, in the event that he or she again*
24 *concludes that such person lacks good character, honesty or integrity, shall submit such*
25 *final conclusion to the commission. The commission shall provide such person with*

1 *notice of the conclusion of the official and an opportunity to be heard in opposition to*
2 *such conclusion before the commission makes a final determination.*

3 *c. An applicant, a licensee or a subcontractor shall not employ any person deter-*
4 *mined by the commission pursuant to this section to lack good character, honesty or*
5 *integrity.*

6 *§ 27-5010 Independent auditing or monitoring required. In the event that the com-*
7 *mission, during the course of an investigation, obtains information bearing adversely*
8 *upon the good character, honesty or integrity of a licensee, an applicant for a license or*
9 *a subcontractor, the commission may require such applicant or licensee, as a condition*
10 *to the issuance or continuance of a license, or such subcontractor to be subject to the*
11 *supervision of an independent auditor or monitor or other person approved or selected*
12 *by the commission to monitor or supervise, in a manner prescribed by the commission,*
13 *the business operations of the licensee or subcontractor, including but not limited to its*
14 *compliance with safety standards and legal and regulatory requirements. The cost of*
15 *such monitoring or supervision shall be borne by the licensee or subcontractor.*

16 *§ 27-5011 Investigations by the department of investigation. In addition to any*
17 *other investigation authorized pursuant to law, the commissioner of investigation may,*
18 *at the request of the commission, conduct a study or investigation of any matter arising*
19 *under the provisions of this chapter, including but not limited to investigation of the*
20 *information required to be submitted by applicants for licenses and others and the ongo-*
21 *ing conduct of licensees and subcontractors.*

22 *§ 27-5012 Revocation or suspension of license. a. In addition to the penalties pro-*
23 *vided in section 27-5014 of this chapter, the commission may, after due notice and*
24 *opportunity to be heard, revoke or suspend a license issued pursuant to the provisions of*
25 *this chapter when the licensee and/or any of its principals, employees and/or agents: (i)*

1 *has been found to be in violation of this chapter or any rule promulgated pursuant*
2 *thereto; (ii) has failed to pay, within the time specified by a court or an administrative*
3 *tribunal of competent jurisdiction, any fines or civil penalties imposed pursuant to this*
4 *chapter or the rules promulgated pursuant thereto or has otherwise failed to comply*
5 *with an order of such tribunal; (iii) has failed to comply with safety or regulatory*
6 *requirements, as evidenced by, among other things, the following: illegal demolitions,*
7 *undermining building foundations, failure to obtain required permits or other permis-*
8 *sions or causing others to begin work without such permits or permissions, contracting*
9 *with persons or entities that do not possess required licenses, and failure to comply with*
10 *regulations concerning worker safety; (iv) has failed to comply with collective bargain-*
11 *ing agreements or prevailing wage laws; (v) has, in the case of a licensee, been deter-*
12 *mined by the commission, after consideration of the factors set forth in subdivision a of*
13 *section 27-5007 of this chapter and any other pertinent factors, to lack good character,*
14 *honesty or integrity; (vi) has, in the case of a licensee, submitted any material false*
15 *statement or made any misrepresentation or omission as to a material fact in the appli-*
16 *cation or other documents or information upon which the issuance of such license was*
17 *based; or (vii) has, in the case of a licensee, failed to notify the commission as required*
18 *by subdivision b of section 27-5006 of this chapter of any change in the ownership inter-*
19 *est of the business, other material change or other change with respect to other matters*
20 *specified by the commission in the information required on the application for such*
21 *license.*

22 *§ 27-5013 Emergency orders to stop work. Notwithstanding any other provision of*
23 *this code or any rule promulgated pursuant thereto, the commission or an official desig-*
24 *nated by the commission to review such matters may, upon a determination that the con-*
25 *tinued conduct of a person or entity subject to the provisions of this chapter poses an*

1 *imminent threat to the public order, issue an order that such person or entity immediate-*
2 *ly cease such conduct and/or take such preventive or corrective measures as the com-*
3 *mission may prescribe. A person or entity subject to such an order may seek immediate*
4 *review of such order by the commission, which shall provide an opportunity for a*
5 *prompt hearing within a period not to exceed four business days and issue a final deter-*
6 *mination no later than four business days following the conclusion of such hearing.*
7 *Where a danger to life or property is posed by a structural, mechanical or other defect*
8 *caused by a person or entity subject to the provisions of this chapter, the commission*
9 *shall, as soon as practicable, refer such matter to the appropriate government agency*
10 *for action.*

11 § 27-5014 *Penalties. In addition to any other penalty provided by law. a. Except*
12 *as otherwise provided in subdivision b of this section, any person who violates any pro-*
13 *vision of this chapter or any of the rules promulgated pursuant thereto shall be liable*
14 *for a civil penalty which shall not exceed ten thousand dollars for each such violation.*
15 *Such civil penalty may be recovered in a civil action or proceeding before an adminis-*
16 *trative tribunal of competent jurisdiction;*

17 *b. A construction manager who violates section 27-5004 of this chapter or a sub-*
18 *contractor who violates subdivision c or subdivision d of section 27-5008 of this chapter*
19 *shall be guilty of a misdemeanor, and upon conviction thereof, be punished for each*
20 *violation by a criminal fine of not more than ten thousand dollars for each day of such*
21 *violation or by imprisonment not exceeding six months, or both; and any such person*
22 *shall be subject to a civil penalty of not more than five thousand dollars for each day of*
23 *such violation to be recovered in a civil action or a proceeding before an administrative*
24 *tribunal of competent jurisdiction.*

25 *c. In addition to any other penalty provided in this section for the violation of sec-*

1 tion 27-5004 or subdivision c or subdivision d of section 27-5008 of this chapter, the
2 commission shall, after notice and the opportunity to be heard, be authorized to: (i)
3 order any person in violation of such provisions immediately to discontinue the opera-
4 tion of such activity at any premises from which such activity is conducted; (ii) order
5 that the place of business of such person be sealed pursuant to the provisions of subdivi-
6 sion d of this section, provided that such place of business is used primarily for such
7 activity; and (iii) order that any vehicle, equipment or other property used in the viola-
8 tion of such provisions be subject to seizure and forfeiture pursuant to the provisions of
9 subdivision e of this section.

10 d. (i) An order sealing a place of business pursuant to subdivision c of this section
11 shall be posted at the premises so sealed.

12 (ii) Such order may be enforced by any person authorized to enforce the provi-
13 sions of this title no sooner than ten days following such posting.

14 (iii) A premises sealed pursuant to this subdivision shall be unsealed upon the pay-
15 ment of all outstanding fines and penalties and a demonstration satisfactory to the com-
16 mission that such premises shall not be used in violation of the provisions of section
17 27-5004 or subdivision c or subdivision d of section 27-5008 of this chapter.

18 (iv) It shall be a misdemeanor for any person to remove the seal from any premises
19 sealed in accordance with this subdivision.

20 e. (i) Any person authorized to enforce the provisions of this title may, upon service
21 of a notice of violation upon the owner or operator of a vehicle, equipment or other
22 property, seize such vehicle, equipment or other property which such person has reason-
23 able cause to believe is being used in connection with an act constituting a violation of
24 section 27-5004 of this chapter or subdivision c or subdivision d of section 27-5008 of
25 this chapter. Any vehicle, equipment or other property seized pursuant to this subdivi-

1 sion shall be delivered into the custody of the commission or other appropriate agency.
2 A hearing to adjudicate the violation underlying the seizure shall be held before the
3 commission or other tribunal of competent jurisdiction within five business days after
4 the date of seizure and a decision shall be rendered within five business days after the
5 conclusion of the hearing. In the event that the commission or other tribunal determines
6 that there has been no violation, the vehicle, equipment or other property shall be
7 released forthwith to the owner.

8 (ii) Except as otherwise provided in paragraph (i) of this subdivision or where
9 notice has been given that forfeiture will be sought pursuant to paragraph (v) of this
10 subdivision, a vehicle, equipment or other property seized pursuant to this subdivision
11 shall be released upon payment of the fine or civil penalty imposed for the violation
12 underlying the seizure and the costs of removal and storage as set forth in the rules of
13 the commission.

14 (iii) Where a proceeding relating to the violation underlying the seizure is pending
15 before the commission or other tribunal of competent jurisdiction, the vehicle, equip-
16 ment or other property may be released upon the posting of a bond or other form of
17 security sufficient to cover the maximum fine or civil penalty which may be imposed for
18 such violation and the costs of removal and storage.

19 (iv) Any vehicle, equipment or other property that has been seized but has not been
20 claimed by the owner within ten days after service of a notice of violation pursuant to
21 paragraph (i) of this subdivision shall be deemed to be abandoned. Vehicles deemed
22 abandoned pursuant to this subdivision shall be disposed of pursuant to section twelve
23 hundred twenty-four of the vehicle and traffic law. Equipment or other property, other
24 than a vehicle, deemed abandoned pursuant to this subdivision shall be disposed of by
25 sale at a public auction following notice by publication in the city record describing

1 *such equipment or other property not less than ten business days prior to such sale.*
2 *Such notice shall provide that the owner may reclaim such equipment or other property*
3 *in accordance with this subdivision until a date no sooner than ten business days from*
4 *the date the notice is published.*

5 (v) (A) *In addition to any other fines, penalties, sanctions or remedies provided for*
6 *in this chapter, a vehicle, equipment or other property which has been seized pursuant*
7 *to this subdivision and all rights, title and interest therein shall be subject to forfeiture*
8 *upon notice and judicial determination thereof that such vehicle, equipment or other*
9 *property has been used in connection with an act constituting a violation of section 27-*
10 *5004 or subdivision c or subdivision d of section 27-5008 of this chapter.*

11 (B) *A forfeiture proceeding may not be commenced more than ten days after the*
12 *receipt of a claim by the owner for return of the vehicle, equipment or other property. If a*
13 *forfeiture proceeding is not commenced within such ten day period, the vehicle, equip-*
14 *ment or other property shall be returned to the owner upon payment of the fine or civil*
15 *penalty imposed and the costs of removal and storage. A vehicle, equipment or other*
16 *property which is the subject of a forfeiture proceeding shall remain in the custody of the*
17 *commission or other appropriate agency pending the final determination of the proceed-*
18 *ing.*

19 (C) *Notice of the institution of the forfeiture action shall be served by first class*
20 *mail on: (1) an owner of a vehicle at the address set forth in the records maintained by*
21 *the department of motor vehicles, or, for vehicles not registered in New York state, at*
22 *the address set forth in the records maintained by the state of registration; (2) all per-*
23 *sons holding a security interest in a vehicle that has been filed with the department of*
24 *motor vehicles pursuant to the provisions of title ten of the vehicle and traffic law, at the*
25 *address set forth in the records of such department; (3) all persons holding a security*

1 *interest in a vehicle that has been filed with a state of registration other than New York*
2 *state where such persons are made known by such state to the commission, at the*
3 *address provided by such state of registration; and (4) the owner of equipment or other*
4 *property, other than a vehicle, at the address obtained from the person from whom the*
5 *equipment or property was seized. Notice of the institution of the forfeiture action*
6 *against equipment or other property, other than a vehicle, shall also be made by publi-*
7 *cation in the city record describing such equipment or other property.*

8 (D) *Any owner who receives notice of the institution of a forfeiture action who*
9 *claims an interest in the vehicle, equipment or other property subject to forfeiture may*
10 *assert a claim in such action for the recovery of the vehicle, equipment or other prop-*
11 *erty or satisfaction of the owner's interest in such vehicle, equipment or other property.*
12 *Any person with a security interest in such vehicle, equipment or other property who*
13 *receives notice of the institution of the forfeiture action who claims an interest in such*
14 *vehicle, equipment or other property may assert a claim in such action for satisfaction*
15 *of such person's security interest.*

16 (E) *Forfeiture pursuant to this subdivision shall be made subject to the interest of a*
17 *person who claims an interest in the vehicle, equipment or other property pursuant to*
18 *subparagraph (D) of this paragraph, where such person establishes that: (1) the con-*
19 *duct that was the basis for the seizure occurred without the knowledge of such person,*
20 *or if such person had knowledge of such conduct, that such person did not consent to*
21 *such conduct and did all that reasonably could have been done to prevent such conduct,*
22 *and that such person did not obtain an interest in the vehicle, equipment or other prop-*
23 *erty for the purpose of preventing the forfeiture; or (2) that the conduct that was the*
24 *basis for such seizure was committed by a person other than such person claiming an*
25 *interest in the vehicle, equipment or other property and possession of such vehicle,*

1 *equipment or other property was acquired in violation of the criminal laws of the United*
2 *States or any state.*

3 *(F) The commission, after judicial determination of forfeiture, shall, at its discre-*
4 *tion, either: (1) retain such vehicle, equipment or other property for the official use of*
5 *the city; or (2) by public notice of at least five days, sell such forfeited vehicle, equip-*
6 *ment or other property at a public sale. The net proceeds of any such sale shall be paid*
7 *into the general fund of the city.*

8 *(G) In any forfeiture action commenced pursuant to this paragraph where the court*
9 *awards a sum of money to one or more persons in satisfaction of such person's interest*
10 *in the forfeited vehicle, equipment or other property, the total amount awarded to satisfy*
11 *such interest shall not exceed the amount of the net proceeds of the sale of the forfeited*
12 *vehicle, equipment or other property after deduction of the lawful expenses incurred by*
13 *the city, including the reasonable costs of removal and storage between the time of*
14 *seizure and the date of sale.*

15 *(H) At any time prior to forfeiture, a person other than the owner of the vehicle,*
16 *equipment or other property subject to the forfeiture, who claims ownership of any*
17 *property contained in such vehicle, equipment or other property may request that such*
18 *property be released to such person. A request for the release of property may be made*
19 *to the person seizing the vehicle, equipment or other property or, after the seizure has*
20 *been made, to the commission. The property may be released upon a satisfactory*
21 *demonstration of ownership of such property and that the property is not subject to for-*
22 *feiture pursuant to this section.*

23 *(vi) For purposes of this subdivision, the term "owner" of a vehicle shall mean an*
24 *owner as defined in section one hundred twenty-eight and in subdivision three of section*
25 *three hundred eight of the vehicle and traffic law. The term "owner" of equipment or*

1 *other property, other than a vehicle, subject to seizure or forfeiture pursuant to this sub-*
2 *division shall mean a person who demonstrates ownership of such equipment or other*
3 *property to the satisfaction of the commission.*

4 *f. The corporation counsel is authorize to commence a civil action on behalf of the*
5 *city for injunctive relief to restrain or enjoin any activity in violation of this chapter and*
6 *for civil penalties.*

7 *g. The penalties provided in this section shall be in addition to any other penalty*
8 *provided by law. Nothing in this section shall be construed to limit the imposition of*
9 *finest and/or imprisonment for an offense other than the offenses listed herein.*

10 *§ 27-5015 Liability for violations. A business required by this chapter to be*
11 *licensed shall be liable for violations of any of the provisions of this chapter or any*
12 *rules promulgated pursuant hereto committed by any of its principals, employees and/or*
13 *agents.*

14 *§ 27-5016 Enforcement. Notices of violation for violations of any provision of this*
15 *chapter or any rule promulgated hereunder may be issued by authorized employees or*
16 *agents of the commission. In addition, such notices of violation may be issued by the*
17 *police department, the trade waste commission and, at the request of the commission*
18 *and with the consent of the appropriate commissioner, by authorized employees and*
19 *agents of the department of buildings.*

20 *§ 27-5017 Hearings. A hearing pursuant to this chapter may be conducted by the*
21 *commission, or, in the discretion of the commission, by an administrative law judge*
22 *employed by the office of administrative trials and hearings or other administrative tri-*
23 *bunal of competent jurisdiction. Where a hearing pursuant to a provision of this chapter*
24 *is conducted by an administrative law judge, such judge shall submit recommended find-*
25 *ings of fact and a recommended decision to the commission, which shall make the final*

1 *determination.*

2 § 27-5018 *Conduct by licensees. The commission shall, by rule, prescribe a code*
3 *of conduct for licensees, including but not limited to rules regarding: insurance require-*
4 *ments; recordkeeping; transactions with subcontractors and others; display of licenses;*
5 *ethical and lawful conduct and the prohibition of improper practices; prohibition of*
6 *employment of persons identified by the commission as lacking good character, honesty*
7 *or integrity; prohibition of association with persons identified as members or associates*
8 *of organized crime; and such other matters as the commission determines are reason-*
9 *able and appropriate to effectuate the provisions of this chapter.*

10 § 3. Section 27-150 of the administrative code of the city of New York is amended
11 to read as follows:

12 § 27-150 *Application for permit. All applications for permits shall be submitted on*
13 *forms furnished by the department, and shall be accompanied by the required fee. The*
14 *application shall contain a general description of the proposed work or equipment, its*
15 *location, and such other pertinent information as required pursuant to section 27-198.1*
16 *or as the commissioner may require. An applicant for a permit who is a construction*
17 *manager as such term is defined in section 27-5001 of chapter 1 of title twenty-seven-A*
18 *of the administrative code shall demonstrate, in a manner specified by the commission-*
19 *er, compliance with the licensing provisions of section 27-5004 of such chapter. A sub-*
20 *contractor, as such term is defined in section 27-5001 of such chapter, who is applying*
21 *for a permit with respect to work conducted pursuant to a contract with a business*
22 *required to apply for or possess a license pursuant to section 27-5004 of such chapter*
23 *shall document that such business is in compliance with such provision.*

24 § 4. The provisions of this local law shall be severable and if any phrase, clause,
25 sentence, paragraph, subdivision or section of this local law, or the applicability thereof

1 to any person or circumstance, shall be held invalid by any court of competent jurisdic-
2 tion, the remainder of this local law and the application thereof shall not be affected
3 thereby.

4 § 5. Whenever by or pursuant to any provision of this local law functions, powers
5 or duties may be assigned to the New York construction commission which have been
6 heretofore exercised by any other agency or officer, any officers and employees in the
7 classified city civil service who are engaged in the performance of such functions, pow-
8 ers or duties may be transferred to such commission without further examination or
9 qualification, and shall retain their respective civil service classifications and civil ser-
10 vice status.

11 § 6. This local law shall take effect immediately; provided however, that:

12 a. the requirement for a license set forth in section 27-5004 of the administrative
13 code of the city of New York, as added by section 2 of this local law, shall apply, on and
14 after sixty days following the date upon which the New York city construction commis-
15 sion, as created by section 2 of this local law, has made application forms for such
16 license available, to any construction manager business that: (i) at any time during the
17 twelve month period directly preceding the effective date of this local law has held con-
18 tracts with government entities to perform construction projects in New York city, as
19 such term is defined in subdivision d of section 27-5001 of the administrative code as
20 added by section 2 of this local law, the aggregate amount of which has exceeded three
21 million dollars; (ii) during the twelve month period directly preceding the effective date
22 of this local law has paid filing fees to the department of buildings the aggregate amount
23 of which has exceeded twenty thousand dollars; or (iii) is engaged in, or proposes to
24 undertake, a construction project to which site safety program requirements apply pur-
25 suant to section 27-1009 of the administrative code of the city of New York and any

1 rules promulgated pursuant thereto; and provided, further that:

2 b. no enforcement of such licensing requirement shall take place with respect to
3 such a business (i) that was in existence within New York city at any time within the
4 ninety day period preceding the effective date of this local law, (ii) that has paid the
5 required fees and submitted an application for a license to such commission in the form
6 and containing the information and other requirements set forth therein, within sixty
7 days after such application forms have been made available by the commission and (iii)
8 whose application has not been denied. A construction manager subject to the provisions
9 of this section that fails to apply for a license in the manner described in subparagraph
10 (ii) of this subdivision or that has been denied a license by the commission shall no
11 longer be authorized to conduct such business in the city of New York. Such a business
12 shall cease all work in accordance with requirements set forth in an order of the com-
13 mission; and

14 c. A construction manager subject to the provisions of subdivision a of this section
15 that has not been in existence during the ninety day period preceding the effective date
16 of this local law and that has applied to the commission for a license as set forth in para-
17 graph (ii) of subdivision b of this section, may, upon a preliminary review of the appli-
18 cation and any other investigation that the commission may deem appropriate, be
19 granted provisional authorization by the commission to conduct business pending a
20 licensing determination or for a limited period of time. It shall be unlawful to operate
21 such a construction manager business without first having obtained such provisional
22 authorization. At any time during or following the preliminary review of the application
23 of such a business, the commission may, in its sole discretion, refuse to issue a provi-
24 sional authorization or revoke such an authorization. A provisional authorization to con-
25 duct a construction manager business pursuant to this section shall be deemed void upon

1 the issuance or denial of a license.

2 d. The requirement for a license set forth in section 27-5004 of the administrative
3 code of the city of New York, as added by section 2 of this local law, shall apply to con-
4 struction managers not subject to the provisions of subdivision a of this section in the
5 manner specified in rules of the commission promulgated pursuant to subdivision g of
6 section 27-5003 of such code, as added by section 2 of this local law.

Note: Matter in *italics* is new; matter in brackets [] to be omitted.