

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2009**

No. 27

Introduced by Council Members Gennaro, Avella, Brewer, Fidler, Foster, Gentile, James, Liu, Mark-Viverito, Martinez, Nelson, Recchia Jr., Sanders Jr., Sears, Weprin, White Jr., Mendez, Yassky, Koppell, Vallone Jr., Lappin, Gonzalez, Eugene, Jackson, Dickens, Garodnick and Mitchell (in conjunction with the Mayor).

A LOCAL LAW

To amend the New York city charter and the administrative code of New York, in relation to developing a comprehensive program for the remediation and reuse of brownfields.

Be it enacted by the Council as follows:

Section 1. This local law shall be known as the “New York city brownfield and community revitalization act”.

§2. Section 15 of the New York city charter is amended by adding a new subdivision e to read as follows:

e. There shall be a director of environmental remediation within the office of operations. The director, who shall be appointed by the mayor, shall head the office of environmental remediation and shall have the power and the duty to:

1. in consultation with other city agencies and officials, including the department of health and mental hygiene, as appropriate, plan, establish, coordinate, and oversee city policy regarding the identification, investigation, remediation, and redevelopment of brownfields that is protective of public health and the environment, and supportive of the city’s economic development;

2. *develop programs for sustainable growth in consultation with the office of long-term planning and sustainability. Such programs shall focus on projects that are consistent with brownfield opportunity area plans and on communities that (i) contain a disproportionate number of brownfield sites, (ii) show indicators of economic distress, including low resident incomes, high unemployment, high commercial vacancy rates and depressed property values, or (iii) contain brownfield sites that present strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.*

3. *identify and catalogue brownfields and potential brownfields;*

4. *develop and administer a local brownfield cleanup program to facilitate the identification, investigation, remediation, and redevelopment of brownfields in support of the city's economic development;*

5. *develop and administer financial and other incentive programs to encourage public or private entities to identify, investigate, remediate, and redevelop brownfields in support of the city's economic development. The financial incentive program shall give priority to projects that are consistent with brownfield opportunity area plans;*

6. *promote community participation and community assistance, and provide technical support for community participation, in the identification, investigation, remediation, and redevelopment of brownfields in support of the city's economic development;*

7. *educate and train community groups, developers, and property owners about the identification, investigation, remediation, and redevelopment of brownfields in*

support of the city's economic development;

8. act as intermediary for city agencies and officials, as appropriate, for brownfield matters, including with respect to the state brownfield opportunity area program. The office shall facilitate interactions among city agencies, community based organizations, developers, and environmental experts and assist community based organizations in brownfield redevelopment.

9. support the efforts of community groups, developers, and property owners to obtain and utilize federal, state, and private incentives to identify, investigate, remediate, and redevelop brownfields;

10. coordinate, partner, and enter into agreements with federal and state agencies and officials and other entities in connection with the identification, investigation, remediation, and redevelopment of brownfields in support of the city's economic development. Such agreements may include a pledge by a federal or state agency or official that no further action may be taken against a local brownfield site that has been issued a certificate of completion pursuant to chapter nine of title twenty-four of the administrative code;

11. apply for and administer funds for the identification, investigation, remediation, and redevelopment of brownfields in support of the city's economic development;

12. advise city agencies and officials regarding the identification, investigation, remediation, and redevelopment of brownfields in support of the city's economic development;

13. evaluate and report publicly on progress in the identification,

investigation, remediation, and redevelopment of brownfields in support of the city's economic development;

14. take such other actions as may be necessary to facilitate the identification, investigation, remediation, and redevelopment of brownfields in support of the city's economic development, including the review and acceptance of remedial plans for brownfield redevelopment projects such as city-sponsored affordable housing projects;

15. administer the E-Designation program, as defined in section 11-15 of the zoning resolution of the city of New York, acting as successor to the department of environmental protection for such purpose;

16. ensure compliance with hazardous waste restrictive declarations arising from the environmental review of land use actions, acting as successor to the department of environmental protection for such purpose;

17. establish fees for programs administered by the office; and

18. promulgate such rules as are necessary to implement the provisions of this subdivision.

§3. Chapter 57 of the New York city charter is amended by adding a new section 1404 to read as follows:

§1404. Office of environmental remediation. There shall be an office of environmental remediation within the department. The office shall be headed by the director of the office of environmental remediation in accordance with subdivision e of section fifteen of the New York city charter. The office shall exercise such powers and duties as the director shall determine, including, but not limited to, the power and duty to

administer the E-Designation program, as defined in section 11-15 of the zoning resolution of the city of New York.

§4. Title 24 of the administrative code of the city of New York is amended by adding a new chapter 9 to read as follows:

Chapter 9

Local Brownfield Cleanup Program

§ 24-901 Short Title.

§ 24-902 Definitions.

§ 24-903 Rules for the Local Brownfield Cleanup Program.

§ 24-904 Eligibility.

§ 24-905 Citizen Participation.

§ 24-906 Certificate of Completion.

§ 24-907 Civil Penalties. § 24-908 Withholding of permits.

§24-901 Short Title. This chapter shall be known and may be cited as the “New York city local brownfield cleanup law”.

§24-902 Definitions. For the purposes of this chapter the following terms shall mean:

“Applicant” shall mean a person who has submitted a request to participate in the local brownfield cleanup program but is not yet an enrollee.

“Certificate of completion” shall mean a written certificate that is issued by the office to an enrollee who has successfully investigated and remediated a local

brownfield site to the satisfaction of the office.

“Change of use” shall mean the transfer of title to all or part of a local brownfield site, change in management of a local brownfield site, the erection of any structure on the site, the creation of a park or other public or private recreational facility on the site, or any activity that is likely to disrupt or expose contamination or to increase direct human exposure to contamination; or any other conduct that will or may tend to significantly interfere with an ongoing or completed remedial program at such site and the continued ability to implement the engineering and institutional controls associated with such site.

“Community based organization” shall mean a community based organization as defined in section 970-r of the general municipal law.

“Contaminant” shall mean hazardous waste and/or petroleum.

“Contamination” or “contaminated” shall mean the presence of a contaminant in any environmental media, including soil, surface water, groundwater, air, or indoor air.

“Declaration of covenants and restrictions” shall mean controls on the use of a site that are listed on the deed and that seek to prevent potential exposure to any residual contamination remaining at the site.

“Delegated brownfield site” shall mean any real property for which state or federal law requires the investigation or remediation, or a portion of an investigation or remediation, to be supervised and/or approved by a state and/or federal agency, but where such state and/or federal agency has expressly authorized in writing that such real property may be investigated and remediated under the city’s supervision or according to

a mutually agreed-upon form of supervised oversight, subject to any and all appropriate restrictions as may be required by law or agreed to by the parties.

“Director” shall mean the director of the office of environmental remediation.

“Enrollee” shall mean an applicant who has been accepted into the local brownfield cleanup program and has signed a local brownfield cleanup agreement.

“Hazardous waste” shall mean a hazardous waste as defined in section 27-1301 of the environmental conservation law.

“Historic fill material” shall mean non-indigenous material, deposited or disposed of to raise the topographic elevation of real property, which material may have been contaminated prior to emplacement, and is in no way connected with the subsequent operations at the location of the emplacement and which includes, without limitation, construction debris, dredge spoils, incinerator residue, demolition debris, coal ash, fly ash, and non-hazardous waste. “Historic fill material” does not include any material which is chemical production waste or waste from processing of metal or mineral ores, residues, slag or tailings. In addition, historic fill material does not include a municipal solid waste site built after nineteen hundred sixty two.

“Light to moderate levels of contamination” shall mean detectable levels of contamination, the presence of which does not require an applicant or enrollee to conduct any mandatory, governmental-supervised investigation or remediation of the contamination under any state or federal law.

“Local brownfield site” or “site” shall mean any real property within the city, the redevelopment or reuse of which may be complicated by the presence or

potential presence of light to moderate levels of contamination, or any real property that meets the definition of a delegated brownfield site, including, but not limited to, real property containing historic fill material and real property rejected from state programs on grounds that the environmental contamination is not sufficient to warrant state involvement. "Local brownfield site" or "site" shall not include real property: (1) containing discharges of petroleum, except as authorized by the state department of environmental conservation upon agreement with the office or by state law, (2) at the time of application to this program and pursuant to section 27-1305 of the environmental conservation law, listed in the state registry of inactive hazardous waste disposal sites and classified as either (i) causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment-immediate action required, or (ii) significant threat to the public health or environment-action required; (3) listed on the national priorities list pursuant to 42 U.S.C. section 9605; (4) subject to an enforcement action under title seven or nine of article twenty-seven of the environmental conservation law, except a treatment, storage or disposal facility subject to a permit; provided, that nothing herein contained shall be deemed to exclude from the scope of the term "local brownfield site" a hazardous waste treatment, storage or disposal facility having interim status according to regulations promulgated by the state department of environmental conservation; (5) subject to an order for cleanup pursuant to article twelve of the navigation law or pursuant to title ten of article seventeen of the environmental conservation law except such property shall not be deemed ineligible if it is subject to a stipulation agreement; or (6) subject to any other on-going city, state or federal environmental enforcement action related to the contamination which is at or

emanating from the real property.

“Office” shall mean the office of environmental remediation.

“Participant” shall mean an enrollee who either: (1) was the owner of the local brownfield site at the time of disposal or discharge of contaminants, or (2) is otherwise a person responsible according to applicable principles of statutory or common law liability, unless such person’s liability arises solely as a result of such person’s ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants.

“Petroleum” shall mean oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene.

“Remedial action work plan” shall mean a written document providing for the development and implementation of a remedial program for contamination within the boundaries of the local brownfield site; provided, however, that a participant shall also be required to provide in the remedial action work plan for the development and implementation of a remedial program for contamination that has emanated from the local brownfield site.

“Remedial investigation report” shall mean a report that fully characterizes the nature and extent of contamination at and/or emanating from a brownfield site.

“Site management” shall mean the management of physical barriers and methods and non-physical means to limit human and environmental exposure to contamination at and/or emanating from a site, as well as the implementation of any

necessary monitoring, reporting, certification and/or operation and maintenance of a remedy, after the issuance of a certificate of completion.

“Site management plan” shall mean a written document providing for site management.

“Volunteer” shall mean an enrollee other than a participant, including without limitation a person whose liability arises solely as a result of such person’s ownership or operation of or involvement with the local brownfield site subsequent to the disposal or discharge of contaminants, provided, however, that such person exercises appropriate care with respect to contamination found at the site by taking reasonable steps to: (1) stop any continuing release; (2) prevent any threatened future release; and (3) prevent or limit human, environmental, or natural resource exposure to any previously released contamination.

§24-903 Rules for the Local Brownfield Cleanup Program. The director shall develop and administer a local brownfield cleanup program and shall promulgate rules to effectuate the provisions of this chapter including, but not limited to, rules:

(a) Prescribing the form for an application to participate in the local brownfield cleanup program and establishing an application review process to ensure that only eligible local brownfield sites, as provided in section 24-904 of this chapter, are accepted into the local brownfield cleanup program.

(b) Prescribing a local brownfield cleanup agreement, including a requirement that the enrollee pay for costs incurred by the city and an indemnification provision holding the city harmless from any claim, suit, action, and cost arising out of or resulting from the fulfillment or attempted fulfillment of the agreement.

(c) *Prescribing requirements for remedial investigation reports, remedial action work plans, and such other reports and work plans as the office shall require, and providing mechanisms for the preparation, submission, review, approval, modification, and rejection of such reports and work plans.*

(d) *Providing adequate procedures to ensure that remedial action work plans and remedial actions are protective of public health and the environment, and consistent with the current, intended or reasonably anticipated residential, commercial, industrial or other end use of the local brownfield site. Cleanup standards and remedial selection criteria shall be consistent with standards and criteria applicable to the state brownfield cleanup program, including all applicable guidance documents.*

(e) *Prescribing procedures for citizen participation.*

(f) *Providing for access by the office or any person so authorized by the office (1) to any real property that has either submitted a request to participate in the local brownfield cleanup program, is enrolled in the local brownfield cleanup program, or has been issued a certificate of completion, for the purpose of ensuring that any applicant, enrollee, or recipient of a certificate of completion complies with the provisions of this chapter or rules promulgated pursuant thereto, including, but not limited to, providing access for the purpose of inspecting and taking samples of contaminants and/or environmental media, and for the purpose of inspecting the adequacy of site management activities; (2) to information relating to any applicant's or enrollee's current and past activities concerning contaminants; and (3) to documents relating to the current and past contamination of a local brownfield site.*

(g) *Prescribing mechanisms for the office to determine whether the*

remedial actions are complete and to issue documentation indicating that the remedial actions are complete, including through the issuance of a certificate of completion.

(h) Providing for the issuance of a clean property certification to those properties that have successfully completed the local brownfield cleanup program or other programs equivalent to the local brownfield cleanup program.

(i) Establishing procedures and enforcement mechanisms, including recording of the declaration of covenants and restrictions and notification of the department of buildings and other appropriate agencies of such declaration, to ensure that the owner of the local brownfield site or its successors or assigns continues in full force and effect all institutional and engineering controls required at the site in accordance with the local brownfield cleanup agreement, remedial action work plan, declaration of covenant and restrictions, site management plan, and any other applicable document or plan. The procedures shall include the process for notifying the public regarding compliance with institutional and engineering controls.

(j) Requiring notice to the office of any change of use at a local brownfield site and an opportunity for the office to prohibit such change of use for cause.

§ 24-904 Eligibility. The office shall determine whether to accept or reject an application to participate in the local brownfield cleanup program.

(a) The office shall reject the application if:

(1) the real property does not meet the definition of a local brownfield site as provided in section 24-902 of this chapter;

(2) there is an action or proceeding relating to the local brownfield site against the applicant that is pending in any civil or criminal court in any jurisdiction, or

before any city, state or federal administrative agency or body, wherein the city, state or federal government seeks penalties or the investigation, removal, or remediation of contamination; or

(3) there is an order against the applicant providing for the investigation, removal, or remediation of contamination relating to the local brownfield site.

(b) The office may reject the application if the office determines that the public interest would not be served by accepting the application.

§ 24-905 Citizen Participation.

(a) The borough president and council member representing the area in which the local brownfield site is located, community board for the district in which the local brownfield site is located, residents living on or immediately adjacent to the local brownfield site, community based organizations, and other appropriate community groups shall be notified upon receipt by the office of the application to participate in the local brownfield cleanup program; before the office finalizes a remedial action work plan or approves a report on remedial action; and before the enrollee commences construction at the local brownfield site.

(b) The office shall provide opportunities for public comment and shall prescribe a procedure for enrollees to make documents available to the public.

§24-906 Certificate of Completion.

(a) A certificate of completion shall include (1) a finding that the enrollee has successfully completed the local brownfield cleanup program, (2) a statement that, subject to the provisions of this section and except as provided in the remedial action work plan, site management plan, declaration of covenants and restrictions, or certificate

of completion, the city shall not take or require any further investigatory or remedial action against the site and the enrollee, his or her successors, and his or her assigns, regarding the contamination addressed at the site, and (3) a recommendation that no other governmental entity take or require any investigatory or remedial action against the site and the enrollee, his or her successors, and his or her assigns, regarding the contamination addressed at the site. The director shall seek to enter into agreements with federal and/or state agencies and other entities that formally recognize cleanups for which a city certificate of completion has been issued, and that stipulate that the federal and/or state agency or other entity does not intend or anticipate taking further actions requiring additional cleanup and investigation for contamination that an enrollee has appropriately addressed under the local brownfield cleanup program, subject to such terms and conditions as may be required by the federal and/or state agency or other entity. Nothing in this section shall in any way be interpreted as a binding legal commitment or obligation on behalf of the director to enter into such an agreement with the federal and/or state agency or other entity for any site enrolled in the local brownfield cleanup program, nor in any way restrict the director's discretion in negotiating the terms and conditions of such an agreement with the federal and/or state agency or other entity.

(b) (1) The city nonetheless shall reserve all of its rights concerning any further investigation and/or remediation the office deems necessary due to:

(i) environmental contamination at, on, under, or emanating from the local brownfield site if, in light of such conditions, the site is no longer protective of public health or the environment; or

(ii) *non-compliance with the terms of the local brownfield cleanup agreement, the remedial action work plan, the site management plan, declaration of covenants and restrictions, or the certificate of completion; or*

(iii) *fraud committed by the applicant in the application for or by the enrollee during participation in the local brownfield cleanup program; or*

(iv) *a written finding by the office that a change in an environmental standard, factor, or criterion upon which the remedial action work plan was based, renders the local brownfield site remedial program implemented at the site no longer protective of public health or the environment; or*

(v) *a change in the local brownfield site's use subsequent to the office's issuance of the certificate of completion unless additional remediation is undertaken as determined by the office, which shall meet the standard for protection of public health and the environment that applies under this chapter.*

(2) *In the case of a volunteer, subparagraph v of paragraph one of this subdivision shall not apply if the property has been remediated for unrestricted use as provided in section 27-1415 of the environmental conservation law.*

(c) *The certificate of completion provided pursuant to this section shall run with the land, extending to the enrollee's successors or assigns through acquisition of title to the local brownfield site and to a person who develops or otherwise occupies the local brownfield site; provided, however, that such persons act with due care and in good faith to adhere to the requirements of the local brownfield cleanup agreement, remedial action work plan, site management plan, declaration of covenants and restrictions, and certificate of completion. The certificate of completion does not extend, and cannot be*

transferred, to a person who is responsible for the disposal or the discharge of contaminants on the local brownfield site according to applicable principles of statutory or common law liability as of the effective date of the certification of completion issued pursuant to this chapter, unless that person was party to the local brownfield cleanup agreement for the local brownfield site.

(d) The provisions of this section shall not affect an action or a claim, including a statutory or common law claim for contribution or indemnification, that an enrollee has or may have against a third party.

(e) Nothing in this section shall be construed to affect the liability of any person with respect to any costs, damages, or investigative or remedial activities that are not included in the local brownfield cleanup agreement, or remedial action work plan for the local brownfield site.

§24-907 Civil Penalties.

Any applicant, enrollee, or recipient of a certificate of completion who misrepresents any material fact related to the investigation, remediation or site management of a local brownfield site shall be liable for a civil penalty of not more than twenty-five thousand dollars. Such civil penalty may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable before the environmental control board.

§24-908 Withholding of permits.

Where the office has determined that the owner of a local brownfield site or its successors or assigns has failed to continue in full force and effect all institutional and engineering controls required at such site in accordance with any applicable

document or plan, it shall notify the department of buildings of such failure and the department of buildings shall withhold the issuance of permits from such site.

§5. This local law shall take effect immediately.

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 onApril 22, 2009..... and approved by the Mayor onMay 11, 2009.....

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 27 of 2009, Council Int. No. 21-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on April 22, 2009:
48 for, 0 against, 0 not voting.
Was signed by the Mayor on May 11, 2009
Was returned to the City Clerk on May 11, 2009

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.