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Int. No. 654

By Council Member Sanchez (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to abatement of taxation for alterations and improvements to certain multiple dwellings

Be it enacted by the Council as follows:

Section 1. Title 11 of the administrative code of the city of New York is amended by adding a new section 11-243.2 to read as follows:

§ 11-243.2 Tax abatement for alterations and improvements to certain multiple dwellings.

a. Definitions. As used in this section, the following terms shall have the following meanings:

1. "Certificate of eligibility and reasonable cost" means a document issued by the department of housing preservation and development that establishes that a property is eligible for rehabilitation program benefits and sets forth the certified reasonable cost of the eligible construction for which such benefits shall be received.

2. "Certified reasonable cost schedule" means a table providing maximum dollar limits for specified alterations and improvements, established, and updated as necessary, by the department of housing preservation and development.

3. "Checklist" means a document that the department of housing preservation and development issues requesting additional information or documentation that is necessary for further assessment of an application for a certificate of eligibility and reasonable cost where such application contained all information and documentation required at the initial filing.

4. "Commencement date" means, with respect to eligible construction, the date on which any

physical operation undertaken for the purpose of performing such eligible construction lawfully begins.

5. "Completion date" means, with respect to eligible construction, the date on which:

(a) every physical operation undertaken for the purpose of all eligible construction has concluded; and

(b) all such eligible construction has been completed to a reasonable and customary standard that renders such eligible construction capable of use for the purpose for which such eligible construction was intended.

6. "Dwelling unit" means any residential accommodation in a class A multiple dwelling that:

(a) is arranged, designed, used or intended for use by 1 or more persons living together and maintaining a common household;

(b) contains at least 1 room; and

(c) contains within such accommodation lawful sanitary and kitchen facilities reserved for its occupants.

7. "Dwelling unit floor area" means the gross square footage within the dwelling unit measured from the interior faces of the demising partitions or party walls.

8. "Eligible building" means an eligible rental building, an eligible homeownership building, or an eligible regulated homeownership building, provided that such building contains 3 or more dwelling units.

9. "Eligible construction" means alterations or improvements to an eligible building that:

(a) are specifically identified on the certified reasonable cost schedule;

(b) meet the minimum scope of work threshold;

(c) have a completion date that is after June 29, 2022 and prior to June 30, 2026 and that is not more than 30 months after their commencement date; and

(d) are not attributable to any increased cubic content in such eligible building.

10. "Eligible homeownership building" means an existing building that:

(a) is a class A multiple dwelling operated as condominium or cooperative housing;

(b) is not operating in whole or in part as a hotel; and

(c) has an average assessed valuation, including the valuation of the land, that as of the commencement date does not exceed the homeownership average assessed valuation limitation.

11. "Eligible regulated homeownership building" means an existing building that is a class A multiple dwelling owned and operated by either:

(a) a mutual company that continues to be organized and operated as a mutual company and that has entered into and recorded a mutual company regulatory agreement; or

(b) a mutual redevelopment company that continues to be organized and operated as a mutual redevelopment company and that has entered into and recorded a mutual redevelopment company regulatory agreement.

12. "Eligible rental building" means an existing building that:

(a) is a class A multiple dwelling in which all of the dwelling units are operated as rental housing;

(b) is not operating in whole or in part as a hotel; and

(c) satisfies 1 of the following conditions:

(1) not less than 50 percent of the dwelling units in such building are qualifying rental units;

(2) such building is owned and operated by a limited-profit housing company; or

(3) such building is the recipient of substantial governmental assistance.

13. "Existing building" means an enclosed structure which:

(a) is permanently affixed to the land;

(b) has 1 or more floors and a roof;

(c) is bounded by walls;

(d) has at least 1 principal entrance utilized for day-to-day pedestrian ingress and egress;

(e) has a certificate of occupancy or equivalent document that is in effect prior to the commencement date; and

(f) exclusive of the land, has an assessed valuation of more than $1,000 for the fiscal year immediately preceding the commencement date.

14. "Homeownership average assessed valuation limitation" means an average assessed valuation of $45,000 per dwelling unit.

15. "Limited-profit housing company" has the same meaning as "company" set forth in section 12 of the private housing finance law.

16. "Market rental unit" means a dwelling unit in an eligible rental building other than a qualifying rental unit.

17. "Marketing band" means maximum rent amounts ranging from 20 percent of 80 percent of the area median income, adjusted for family size, to 30 percent of 80 percent of the area median income, adjusted for family size.

18. "Minimum scope of work threshold" means a total amount of certified reasonable cost established by rules and regulations of the department of housing preservation and development, provided that such amount shall be no less than $1,500 for each dwelling unit in existence on the completion date.

19. "Multiple dwelling" has the meaning set forth in section 4 of the multiple dwelling law.

20. "Mutual company" has the meaning set forth in section 12 of the private housing finance law.

21. "Mutual company regulatory agreement" means a binding and irrevocable agreement between a mutual company and the commissioner of housing of the state of New York, the mutual company supervising agency, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such mutual company pursuant to section 35 of the private housing finance law for not less than 15 years from the commencement of rehabilitation program

benefits for the existing building owned and operated by such mutual company.

22. "Mutual company supervising agency" has the same meaning, with respect to any mutual company, as "supervising agency" set forth in section 2 of the private housing finance law.

23. "Mutual redevelopment company" has the same meaning as "mutual" when applied to a redevelopment company as set forth in section 102 of the private housing finance law.

24. "Mutual redevelopment company regulatory agreement" means a binding and irrevocable agreement between a mutual redevelopment company and the commissioner of housing of the state of New York, the redevelopment company supervising agency, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such mutual redevelopment company pursuant to section 123 of the private housing finance law until the earlier of: (a) 15 years from the commencement of rehabilitation program benefits for the existing building owned and operated by such mutual redevelopment company; or (b) the expiration of any tax exemption granted to such mutual redevelopment company pursuant to section 125 of the private housing finance law.

25. "Qualifying rent" means the maximum rent within the marketing band that is allowed for a qualifying rental unit as such rent is established by the department of housing preservation and development.

26. "Qualifying rental unit" means a dwelling unit in an eligible rental building that, as of the filing of an application for a certificate of eligibility and reasonable cost, has a rent at or below the qualifying rent.

27. "Redevelopment company" has the meaning set forth in section 102 of the private housing finance law

28. "Redevelopment company supervising agency" has the same meaning, with respect to any redevelopment company, as "supervising agency" set forth in section 102 of the private housing finance law.

29. "Rehabilitation program benefits" means abatement of real property taxes pursuant to this section.

30. “Rent regulation” means, collectively, the emergency housing rent control law, any local law enacted pursuant to the local emergency housing rent control act, the rent stabilization law of 1969, the rent stabilization code, and the emergency tenant protection act of 1974, all as in effect as of October 23, 2023, or as any such statute is amended thereafter, together with any successor statutes or regulations addressing substantially the same subject matter.

31. “Restriction period” means, notwithstanding any termination or revocation of rehabilitation program benefits prior to such period, 15 years from the initial receipt of rehabilitation program benefits, or such additional period of time as may be imposed pursuant to paragraph 7 of subdivision d of this section.

32. “Substantial governmental assistance” means grants, loans, or subsidies from any federal, state or local governmental agency or instrumentality in furtherance of a program for the development of affordable housing approved by the department of housing preservation and development, provided that such grants, loans, or subsidies are provided in accordance with a regulatory agreement entered into with such agency or instrumentality that is in effect for no less than 15 more years as of the filing date of the application for a certificate of eligibility and reasonable cost.

33. “Substantial interest” means an ownership interest of 10 percent or more.

b. Abatement. Notwithstanding the provisions of section 11-243 of the administrative code or of any general, special or local law to the contrary, real property taxes on an eligible building in which eligible construction has been completed may be abated by an aggregate amount that shall not exceed 70 percent of the total certified reasonable cost of such alterations or improvements, as determined under rules and regulations of the department of housing preservation and development, provided that:

(1) such abatement shall not be effective for a period of more than 20 years;

(2) the annual abatement of real property taxes on such eligible building shall not be greater than eight and one-third percent of the total certified reasonable cost of such eligible construction;

(3) the annual abatement of real property taxes on such eligible building in any consecutive 12

month period shall in no event exceed the amount of real property taxes payable in such 12 month period for such building, provided, however, that such abatement shall not exceed 50 percent of the amount of real property taxes payable in such 12 month period for any of the following:

(a) an eligible rental building owned by a limited-profit housing company or a redevelopment company;

(b) an eligible homeownership building; and

(c) an eligible regulated homeownership building;

(4) such abatement shall become effective beginning with the first quarterly tax bill immediately following the date of issuance of the certificate of eligibility and reasonable cost;

(5) such abatement shall not be applied to abate or reduce the taxes upon the land portion of real property, which shall continue to be taxed based upon the assessed valuation of the land and the applicable tax rate at the time such taxes are levied;

(6) such abatement shall not be allowed for any eligible building receiving a tax exemption or abatement concurrently for rehabilitation or new construction under any other provision of state or local law with the exception of any eligible construction to an eligible building receiving a tax exemption or abatement under the provisions of the private housing finance law;

(7) such abatement shall not be allowed for any item of eligible construction in an eligible building if such eligible building is receiving a tax exemption or abatement for the same or a similar item of eligible construction as of the December 31 preceding the date of application for a certificate of eligibility and reasonable cost for such abatement;

(8) where the eligible construction includes or benefits a portion of an eligible building that is not occupied for dwelling purposes, the assessed valuation of such eligible building and the cost of the eligible construction shall be apportioned so that such abatement shall not be provided for eligible construction made for other than dwelling purposes.

c. Application.

(1) An application for a certificate of eligibility and reasonable cost shall be made after the completion date and no later than on or before the later of: (a) 4 months from the effective date of this local law, or (b) 4 months from such completion date.

(2) Such application shall include evidence of eligibility for rehabilitation program benefits and evidence of reasonable cost as shall be satisfactory to the department of housing preservation and development including, but not limited to, evidence showing the cost of eligible construction.

(3) The department of housing preservation and development shall require a non-refundable filing fee that shall be paid by a certified check or cashier's check upon the filing of an application for a certificate of eligibility and reasonable cost. Such fee shall be (a) $1,000, plus (b) $75 for each dwelling unit in excess of 6 dwelling units in the eligible building that is the subject of such application.

(4) Any application that is filed pursuant to this subdivision that is missing any of the information and documentation required at initial filing by this local law and the rules and regulations of the department of housing preservation and development shall be denied, provided that a new application for the same eligible construction, together with a new non-refundable filing fee, may be filed within 15 days of the date of issuance of such denial. If such second application is also missing any such required information and documentation, it shall be denied and no further applications for the same eligible construction shall be permitted.

(5) The failure of an applicant to respond to any checklist within 30 days of the date of its issuance by the department of housing preservation and development shall result in denial of the application for which such checklist was issued, and no further applications for the same eligible construction shall be permitted. The department of housing preservation and development shall issue not more than 3 checklists per application. An application for a certificate of eligibility and reasonable cost shall be denied when the department of housing preservation and development does not have a sufficient basis to issue a certificate of

eligibility and reasonable cost after the timely response of an applicant to the third checklist concerning such application. After the department of housing preservation and development has denied an application for the reason described in the preceding sentence, the department of housing preservation and development shall permit no further applications for the same eligible construction.

(6) An application for a certificate of eligibility and reasonable cost shall also include an affidavit of no harassment.

(a) Such affidavit shall set forth the following information:

(i) the name of every owner of record and owner of a substantial interest in the eligible building or entity owning the eligible building or sponsoring the eligible construction; and

(ii) a statement that none of such persons had, within the 5 years prior to the completion date, been found to have harassed or unlawfully evicted tenants by judgment or determination of a court or agency, including a non-governmental agency having appropriate legal jurisdiction, under the penal law, any state or local law regulating rents or any state or local law relating to harassment of tenants or unlawful eviction.

(b) No eligible building shall be eligible for rehabilitation program benefits where:

(i) any affidavit required under this paragraph has not been filed; or

(ii) any such affidavit contains a willful misrepresentation or omission of any material fact; or

(iii) any owner of record or owner of a substantial interest in the eligible building or entity owning the eligible building or sponsoring the eligible construction has been found, by judgment or determination of a court or agency, including a non-governmental agency having appropriate legal jurisdiction, under the penal law, any state or local law regulating rents or any state or local law relating to harassment of tenants or unlawful eviction, to have, within the 5 years prior to the completion date, harassed or unlawfully evicted tenants, until and unless the finding is reversed on appeal.

(c) Notwithstanding the provisions of any general, special or local law to the contrary, the corporation counsel or other legal representative of the city of New York or the district attorney of any county,

may institute an action or proceeding in any court of competent jurisdiction that may be appropriate or necessary to determine whether any owner of record or owner of a substantial interest in the eligible building or entity owning the eligible building or sponsoring the eligible construction has harassed or unlawfully evicted tenants as described in this paragraph.

(7) Notwithstanding the provisions of any general, special or local law to the contrary, applications for a certificate of eligibility and reasonable cost shall be filed electronically if the department of housing preservation and development makes electronic filing available and requires such filing by rules and regulations.

d. Additional requirements for an eligible rental building other than one owned and operated by a limited-profit housing company. In addition to all other conditions of eligibility for rehabilitation program benefits, an eligible rental building, other than one owned and operated by a limited-profit housing company, must also comply with all provisions of this subdivision. Notwithstanding the foregoing, an eligible rental building that is the recipient of substantial governmental assistance shall not be required to comply with the provisions of paragraph 2 of this subdivision.

(1) Notwithstanding any provision of rent regulation to the contrary, any market rental unit within such eligible rental building subject to rent regulation as of the filing date of the application for a certificate of eligibility and reasonable cost and any qualifying rental unit within such eligible rental building shall be subject to rent regulation until such unit first becomes vacant after the expiration of the restriction period at which time such unit, unless it would be subject to rent regulation for reasons other than the provisions of this section, shall be deregulated, provided, however, that during the restriction period, no exemption or exclusion from any requirement of rent regulation shall apply to such dwelling units.

(2) Additional requirements for an eligible rental building that is not a recipient of substantial governmental assistance.

(a) Not less than 50 percent of the dwelling units in such eligible rental building shall be

designated as qualifying rental units.

(b) The owner of such eligible rental building shall ensure that no qualifying rental unit is held off the market for a period that is longer than reasonably necessary.

(c) The department of housing preservation and development may establish by rules and regulations such requirements as it deems necessary or appropriate for designating qualifying rental units, including, but not limited to, designating the unit mix and distribution requirements of such qualifying rental units in an eligible rental building;

(3) The owner of such eligible rental building shall waive the collection of any major capital improvement rent increase granted by the New York state division of housing and community renewal pursuant to rent regulation that is attributable to eligible construction for which such eligible rental building receives rehabilitation program benefits, and shall file a declaration with the New York state division of housing and community renewal providing such waiver.

(4) The owner of such eligible rental building shall not engage in or cause any harassment of the tenants of such eligible rental building or unlawfully evict any such tenants during the restriction period.

(5) No dwelling units within such eligible rental building shall be converted to cooperative or condominium ownership during the restriction period.

(6) No dwelling unit in such eligible rental building shall be rented on a temporary, transient or short-term basis. Each such dwelling unit must be leased for permanent residential purposes for a term of not less than 1 year during the restriction period. Every lease and renewal thereof for each such dwelling unit shall be for a term of 1 or 2 years, at the option of the tenant, and shall include a notice in at least 12 point type informing such tenant of their rights pursuant to this section, including an explanation of the restrictions, if any, on rent increases that may be imposed on such dwelling unit.

(7) Any non-compliance of an eligible rental building with the provisions of this subdivision shall permit the department of housing preservation and development to take the following action:

(a) extend the restriction period;

(b) increase the number of qualifying rental units in such eligible rental building;

(c) impose a penalty of not more than the product of $1,000 per instance of non-compliance and the number of dwelling units contained in such eligible rental building; and

(d) terminate or revoke any rehabilitation program benefits in accordance with subdivision p of this section.

e. Compliance with applicable law. Rehabilitation program benefits shall not be allowed for any eligible building unless and until such eligible building complies with all applicable provisions of law. Rehabilitation program benefits shall not be allowed if the department of housing preservation and development determines that eligible construction was not carried out in conformity with all applicable provisions of law.

f. Bedroom count. If eligible construction results in a change in the number of dwelling units in an eligible building, then, upon the completion date, the number of bedrooms in such eligible building shall be equal to no less than 75 percent of the total number of dwelling units, provided, however, that if the average dwelling unit floor area in such eligible building is 1,000 square feet or more, the requirement that the number of bedrooms be equal to no less than 75 percent of the total number of dwelling units shall not be applicable and, provided further, that such requirement shall be reduced to the extent the application of such requirement would necessitate a reduction in the number of dwelling units which are contained in such eligible building prior to the commencement date.

g. Tenant notification. Notwithstanding any provision of this section to the contrary, no rehabilitation program benefits shall be granted for any eligible construction with a commencement date on or after the effective date of this local law unless the applicant provides to tenants, if any, of such eligible building prior to the commencement date, notice of the following information: (1) the proposed work, (2) the identity and contact information of the eligible building's representative, and (3) the tenants' rights under applicable law

with respect to such work; provided that, in the case of a loan program supervised by the department of housing preservation and development, the department may provide the required notice to the tenants.

h. Notice of intent. An applicant for rehabilitation program benefits for any eligible construction with a commencement date on or after the effective date of this local law shall file with the department of housing preservation and development a form supplied by such department which (1) states an intention to file for rehabilitation program benefits, (2) describes the work for which rehabilitation program benefits will be claimed, (3) estimates the cost of such work which will be eligible for rehabilitation program benefits, and (4) provides proof of the notice required under subdivision g of this section. Such form shall be filed prior to the commencement date. If the scope of such work or the estimated cost thereof changes materially, such applicant shall file a revised notice of intent. An applicant who fails to comply with the requirements of this subdivision shall be subject to a penalty not to exceed 100 percent of the filing fee otherwise payable pursuant to paragraph 3 of subdivision c of this section.

i. Re-inspection penalty. If any eligible construction claimed on an application for a certificate of eligibility and reasonable cost cannot be verified upon the first inspection by the department of housing preservation and development, such applicant shall be required to pay 10 times the actual cost of any additional inspection needed to verify such eligible construction.

j. Strict liability for inaccurate applications. If the department of housing preservation and development determines that an application for a certificate of eligibility and reasonable cost contains a false statement or omission as to any material matter, such application shall be rejected and no other applications pursuant to this section with respect to such eligible building shall be allowed for a period of 3 years following such determination. An applicant shall not be relieved from liability under this subdivision because it submitted its application under a mistaken belief of fact. Furthermore, any person or entity that files more than 6 applications containing such a false statement or omission within any 12 month period shall be barred from submitting any new application for a certificate of eligibility and reasonable cost on behalf of any eligible

building for a period of 5 years.

k. False statements. Any person who shall knowingly and willfully make any false statement or omission as to any material matter in any application for a certificate of eligibility and reasonable cost shall be guilty of an offense punishable by a fine of not more than $500 or imprisonment for not more than 90 days, or both.

l. Implementation of rehabilitation program benefits. Upon issuance of a certificate of eligibility and reasonable cost and payment of outstanding fees, the department of housing preservation and development may transmit such certificate of eligibility and reasonable cost to the department of finance. Upon receipt of a certificate of eligibility and reasonable cost, the department of finance shall certify the amount of taxes to be abated pursuant to subdivision b of this section and pursuant to such certificate of eligibility and reasonable cost provided by the department of housing preservation and development.

m. Outstanding taxes and charges. Rehabilitation program benefits shall not be allowed for an eligible building in either of the following cases:

(1) there are outstanding real estate taxes or water and sewer charges or payments in lieu of taxes that are due and owing as of the last day of the tax period preceding the date of the receipt of the certificate of eligibility and reasonable cost by the department of finance; or

(2) real estate taxes or water and sewer charges due at any time during the authorized term of such benefits remain unpaid for 1 year after the same are due and payable.

n. Investigatory authority. The department of housing preservation and development may require such certifications and consents necessary to access records, including other tax records, as may be deemed appropriate to enforce the eligibility requirements of this section. For purposes of determining and certifying eligibility for rehabilitation program benefits and the reasonable cost of any eligible construction, the department of housing preservation and development shall be authorized to:

(1) administer oaths to and take the testimony of any person, including, but not limited to, the

owner of such eligible building;

(2) issue subpoenas requiring the attendance of such persons and the production of any bills, books, papers or other documents as it may deem necessary;

(3) make preliminary estimates of the maximum reasonable cost of such eligible construction;

(4) establish maximum allowable costs of specified units, fixtures or work in such eligible construction;

(5) require the submission of plans and specifications of such eligible construction before the commencement thereof;

(6) require physical access to inspect the eligible building; and

(7) on an annual basis, require the submission of leases for any dwelling unit in an eligible rental building granted a certificate of eligibility and reasonable cost.

o. No owner of an eligible building to which rehabilitation program benefits shall be applied, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status, or the use of, participation in, or being eligible for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program, 42 U.S.C. § 1437 et. seq., or the senior citizen or persons with disabilities rent increase exemption program, pursuant to either chapter 7 of title 26 of this code or section 26-509 of such code, any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein. The term "disability" as used in this subdivision shall have the meaning set forth in section 8-102 of the code. Nothing in this subdivision shall restrict such consideration in the development of housing accommodations for the purpose of providing for the special needs of a particular group.

p. Termination or revocation. Failure to comply with the provisions of this section, any rules and regulations promulgated thereunder, or any mutual company regulatory agreement or mutual redevelopment

company regulatory agreement entered into thereunder may result in revocation of any rehabilitation program benefits retroactive to the commencement thereof. Such termination or revocation shall not exempt such eligible building from continued compliance with the requirements of this section, such rules and regulations, and such mutual company regulatory agreement or such mutual redevelopment company regulatory agreement.

q. Criminal liability for unauthorized uses. In the event that any recipient of rehabilitation program benefits uses any dwelling unit in an eligible building in violation of the requirements of this section and any rules and regulations promulgated pursuant thereto, such recipient shall be guilty of an unclassified misdemeanor punishable by a fine in an amount equivalent to double the value of the gain of such recipient from such unlawful use or imprisonment for not more than 90 days, or both.

r. Private right of action. Any prospective, present, or former tenant of an eligible rental building may sue to enforce the requirements and prohibitions of this section, or any rules and regulations promulgated thereunder, in the supreme court of New York. Any such individual harmed by reason of a violation of such requirements and prohibitions may sue therefor in the supreme court of New York on behalf of himself or herself, and shall recover threefold the damages sustained and the cost of the suit, including a reasonable attorney's fee. The department of housing preservation and development may use any court decision under this subdivision that is adverse to the owner of an eligible building as the basis for further enforcement action. Notwithstanding any other provision of law, an action by a tenant of an eligible rental building under this subdivision must be commenced within 6 years from the date of the latest violation.

s. Appointment of receiver. In addition to the remedies for non-compliance provided for in paragraph 7 of subdivision d and subdivision p of this section, the department of housing preservation and development may make application for the appointment of a receiver in accordance with the procedures contained in this subdivision. Any receiver appointed pursuant to this subdivision shall be authorized, in addition to any other powers conferred by law, to effect compliance with the provisions of this section and any rules and regulations of the department of housing preservation and development promulgated thereunder. Any

expenditures incurred by the receiver to effect such compliance shall constitute a debt of the owner and a lien upon the eligible building, and upon the rents and income thereof, in accordance with the procedures contained in this subdivision. The department of housing preservation and development in its discretion may provide funds to be expended by the receiver, and such funds shall constitute a debt recoverable from the owner in accordance with applicable local laws.

(1) Power to order corrections of violations. Whenever the department of housing preservation and development determines that any violation of the provisions of this section, any rules and regulations promulgated thereunder, or any mutual company regulatory agreement or mutual redevelopment company regulatory agreement entered into thereunder, has occurred, it may order the owner of the eligible building or other responsible party to correct such violation. An order issued pursuant to this paragraph shall state the violations involved and the corrective action to be taken, and shall specify a time for compliance, which shall be not less than 21 days from the date of service of the order, except that where a condition dangerous to human life and safety or detrimental to health exists or is threatened, a shorter period for compliance may be specified.

(2) Grounds for appointment of receiver. Upon failure of an eligible building to comply with an order to correct issued pursuant to paragraph 1 of this subdivision within the specified time for compliance, the department of housing preservation and development may apply for the appointment of a receiver to correct the violations.

(3) Notice to owner, mortgagees and lienors.

(a) If the department of housing preservation and development intends to seek the appointment of a receiver pursuant to this subdivision, it shall serve upon the owner, along with the order authorized pursuant to paragraph 1 of this subdivision, a notice stating that in the event the violations covered by the order are not corrected in the manner and within the time specified therein, such department may apply for the appointment of a receiver of the rents, issues and profits of the property with rights superior to those of the owner and any mortgagee or lienor.

(b) Within 5 days after service of the order and notice upon the owner, the department of housing preservation and development shall serve a copy of the order and notice upon every mortgagee and lienor of record, personally or by registered or certified mail, at the address set forth in the recorded mortgage or lien. If no address appears therein, a copy shall be sent by registered mail to the person at whose request the instrument was recorded.

(c) The department of housing preservation and development shall file a copy of the notice and order in the office of the county clerk in which mechanics liens affecting the eligible building would be filed.

(4) Order to show cause.

(a) The department of housing preservation and development, upon failure of the owner to comply with an order issued pursuant to paragraph 1 of this subdivision within the time provided therein, may thereafter apply to a court of competent jurisdiction in the county where the eligible building is situated for an order directing the owner and any mortgagees or lienors of record to show cause why the commissioner of housing preservation and development should not be appointed receiver of the rents, issues and profits of the eligible building and why the receiver should not correct such violation and obtain a lien in favor of the department of housing preservation and development against the eligible building having the priority provided in article 8 of subchapter 5 of chapter 2 of title 27 of the administrative code to secure repayment of the costs incurred by the receiver in removing such conditions. Such application shall contain (i) proof by affidavit that an order of the department has been issued, served on the owner, mortgagees and lienors, and filed, in accordance with subparagraph (c) of paragraph 3 of this subdivision; (ii) a statement that a violation continued to exist in such eligible building after the time fixed in the order for correction of the condition, and a description of the eligible building and violations involved; and (iii) a brief description of the nature of the actions required to correct the violations and an estimate as to the cost thereof.

(b) The order to show cause shall be returnable not less than 5 days after service is completed.

(c) A copy of the order to show cause, and the papers on which it is based, shall be served on the

owner, mortgagees of record, and lienors. If any such persons cannot with due diligence be served personally within the city of New York within the time fixed in the order, then service may be made by posting a copy of the order in a conspicuous place on the eligible building, and by sending a copy thereof by registered mail to the owner at the last address, if any, registered by such owner with the department of housing preservation and development, or to his or her last address, if any, known to the department of housing preservation and development, or, in the case of a mortgagee or lienor, to the address set forth in the recorded mortgage or lien, and by publication in a newspaper of general circulation in the county where such eligible building is located. Service shall be deemed complete on filing proof thereof in the office of the clerk of the court in which application for such order is made.

(5) Proceedings on return of order to show cause.

(a) On the return of the order to show cause, determination thereof shall have precedence over every other business of the court unless the court shall find that some other pending proceeding, having a similar statutory preference, has priority.

(b) If the court finds that the facts stated in the application warrant the granting thereof, then it shall appoint the commissioner of housing preservation and development receiver of the rents, issues and profits of the eligible building.

(c) Notwithstanding subparagraph (b) of this paragraph, if, after determination of the issue, the owner, or any mortgagee or lienor or other person having an interest in the eligible building, shall apply to the court to be permitted to correct the violations set forth in the department of housing preservation and development's application and shall (i) demonstrate the ability to promptly undertake the actions required; and (ii) post security for the performance thereof within the time, and in the amount and manner, deemed necessary by the court, then the court may in lieu of appointing a receiver issue an order permitting such person to perform the actions within a time fixed by the court. If at the time fixed in the order the actions have not been satisfactorily done, the court shall appoint such receiver. If after the granting of an order permitting a person to

perform the actions but before the time fixed by the court for the completion thereof it shall appear to the department of housing preservation and development that the person permitted to do the same is not proceeding with due diligence, then such department may apply to the court, on notice to those persons who have appeared in the proceeding, for a hearing to determine whether a receiver shall be appointed immediately. On the failure of any person to complete the corrective actions in accordance with the provisions of an order under this subparagraph, such department, or any receiver thereafter appointed shall be reimbursed for costs incurred by him or her in correcting the violation and other charges herein provided for out of the security posted by such person.

(6) Powers and duties of receiver.

(a) A receiver appointed pursuant to this subdivision shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with such additional powers and duties as herein granted and imposed. Such receiver shall not be required to file any bond.

(b) The receiver shall with all reasonable speed remove violations in the eligible building. Such receiver shall have the power to let contracts or incur expenses therefor in accordance with the provisions of law applicable to contracts for public works except that advertisement shall not be required for each such contract. Notwithstanding any provision of law, the receiver may let contracts or incur expenses for individual items without the procurement of competitive bids where the total amount of any such individual item does not exceed $2,500.

(c) The receiver shall collect the accrued and accruing rents, issues and profits of the eligible building and apply the same to the cost of the corrective actions authorized in subparagraph (b) of this paragraph, to the payment of expenses reasonably necessary to the proper operation and management of the eligible building, including insurance and the fees of the managing agent, and the necessary expenses of his or her office as receiver, the repayment of all moneys advanced to the receiver by the department of housing preservation and development to cover the costs incurred by the receiver and interest thereon; and then, if there

be a surplus, to unpaid taxes, assessments, water rents, sewer rents and penalties and interest thereon, and then to sums due to mortgagees or lienors. If the income of the eligible building shall be insufficient to cover the cost of the repairs and improvements or the expenses reasonably necessary to the proper operation and management of such eligible building and other necessary expenses of the receiver, the department of housing preservation and development shall advance to the receiver any sums required to cover such cost and expense and thereupon shall have a lien against such eligible building having the priority provided in article 8 of subchapter 5 of chapter 2 of title 27 of the administrative code for any such sums so advanced with interest thereon.

(d) The receiver shall be entitled to the same fees, commissions and necessary expenses as receivers in actions to foreclose mortgages. Such fees and commissions shall be paid into the fund created pursuant to section 27-2111 of the administrative code. The receiver shall be liable only in his or her official capacity for injury to person and property by reason of conditions of the eligible building in a case where an owner would have been liable; such receiver shall not have any liability in his or her personal capacity. The personnel and facilities of the department of housing preservation and development and the corporation counsel shall be availed of by the receiver for the purpose of carrying out his or her duties as receiver, and the costs of such services shall be deemed a necessary expense of the receiver.

(7) Discharge of receiver. The receiver shall be discharged upon rendering a full and complete accounting to the court when the actions herein authorized are completed and the cost thereof and all other costs authorized herein have been paid or reimbursed from the rents and income of the eligible building and the surplus money, if any, has been paid over to the owner or the mortgagee or lienor as the court may direct. However, at any time, the receiver may be discharged upon filing his or her account as receiver without affecting the right of the department of housing preservation and development to its lien. Upon the completion of the repairs and improvements, the owner, the mortgagee or any lienor may apply for the discharge of the receiver upon payment to the receiver of all moneys expended by him or her therefor and all other costs

authorized by paragraph 6 of this subdivision which have not been paid or reimbursed from the rents and income of such eligible building.

(8) Recovery of expenses of receivership; lien of receiver.

(a) The expenditures made by the receiver pursuant to paragraph 6 of this subdivision shall, to the extent that they are not recovered from the rents and income of the eligible building collected by the receiver, constitute a debt of the owner and a lien upon such building and lot, and upon the rents and income thereof. Except as otherwise provided in this paragraph, the provisions of article 8 of subchapter 5 of chapter 2 of title 27 of the administrative code shall govern the effect and enforcement of such debt and lien; references therein to the department shall, for purposes of this article be deemed to refer to the receiver and, after such receiver's discharge, the department of housing preservation and development.

(b) Failure to serve a copy of the order and notice required in the manner specified by paragraph 3 of this subdivision, or failure to serve any mortgagee or lienor with a copy of the order to show cause as required by subparagraph (c) of paragraph 4 of this subdivision, shall not affect the validity of the proceeding or the appointment of a receiver, but the rights of the department of housing preservation and development or of the receiver shall not in such event be superior to the rights of any mortgagee or lienor who has not been served as provided therein.

(c) Any mortgagee or lienor who at his or her expense corrects the violations to the satisfaction of the court pursuant to the provisions of subparagraph (c) of paragraph 5 of this subdivision shall have and be entitled to enforce a lien equivalent to the lien granted to the receiver in favor of the department of housing preservation and development hereunder. Any mortgagee or lienor who, following the appointment of a receiver by the court, shall reimburse the receiver and the department of housing preservation and development for all costs and charges as hereinabove provided shall be entitled to an assignment of the lien granted to the receiver in favor of the department of housing preservation and development.

(9) Obligations of owner not affected. Nothing herein contained shall be deemed to relieve the

owner of any civil or criminal liability incurred or any duty imposed by law by reason of acts or omissions of the owner prior to the appointment of a receiver; nor shall anything contained herein be construed to suspend during the receivership any obligation of the owner for the payment of taxes or other operating and maintenance expenses of the eligible building nor of the owner or any other person for the payment of mortgages or liens.

t. Rulemaking. Each agency or department to which functions are assigned by this section may adopt and promulgate rules and regulations for the effectuation of the purpose of this section.

u. State enabling law. This section is enacted pursuant to the provisions of subdivision 21 of section 489 of the real property tax law.

§ 2. This local law takes effect immediately after it becomes law.