



Legislation Text

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By Council Members Oddo, Gallagher, Avella, McMahon, James, Gentile, Nelson, Comrie, Fidler, Gennaro, Stewart, White Jr., Liu, Jackson, DeBlasio, Reyna, Sears and Weprin

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of general contractors of new one-, two- or three-family homes.

Be it enacted by the Council as follows

Section 1. Section 26-137 of the administrative code of the city of New York, as amended by local law number 51 for the year 2001, is amended to read as follows:

§26-137 Term of license and registrations; renewal. All licenses and registrations, except for plumbing licenses [and], fire suppression piping contractor licenses and general contractor registrations, issued by the commissioner under the provisions of this subchapter shall expire one year from the date of issuance thereof, and may be renewed annually, provided that application for renewal of the license or registration is made thirty calendar days prior to the expiration date of the license or registration. A plumbing license [and], a fire suppression piping contractor license and a general contractor registration shall expire two years from the date of issuance thereof, and may be renewed every two years thereafter, provided that application for renewal of the license or registration is made between thirty and sixty calendar days prior to its expiration date. All applications for renewal of a license or registration shall be accompanied by the required renewal fee. If application for renewal is not made as provided above, the commissioner may, nevertheless, renew the license or registration provided the applicant pays an additional fee [of five dollars] in an amount specified by rule of the department, except as otherwise provided in this subchapter, and provided further that the applicant satisfies the commissioner as to his or her qualifications.

§2. Subchapter 2 of chapter 1 of title 26 of the administrative code of the city of New York is amended by adding a new article 11 to read as follows:

ARTICLE 11

General Contractor Registration

§26-204.11 General contractor.

§26-204.12 Requirement of registration.

§26-204.13 Unlawful use of general contractor title.

§26-204.14 Compliance with other provisions.

§26-204.15 Registration fees.

§26-204.16 Application requirements.

§26-204.17 Insurance.

§26-204.18 Warranties.

§26-204.19 Duties and responsibilities.

§26-204.20 Seizure, forfeiture.

§26-204.21 Fines; issuance, renewal, suspension and revocation of registration.

§26-204.22 Violations and penalties.

§26-204.11 General contractor. For the purposes of this article “general contractor” means any individual, corporation, partnership or other business entity that applies for a new building permit to construct a residential structure containing no more than three dwelling units. The term “general contractor” shall not include an individual, corporation, partnership or other business entity that has been issued a license pursuant to another provision of this subchapter, or pursuant to subchapter twenty-two of chapter two of title twenty of this code, and enters into a contract to perform work exclusively within the scope of that license, nor shall it include an individual who constructs a residential structure containing no more than three dwelling units for his or her own occupancy, or any subcontractors working for the general contractor.

§26-204.12 Requirement of registration.

- a. The department shall accept applications for general contractor registration beginning on April 1, 2008.
- b. The registration shall expire on the second anniversary of such registration or such other date as determined by the commissioner by rule so as to distribute the expiration dates of the registrations more evenly over the course of a year.
- c. Beginning November 1, 2008, it shall be unlawful to conduct business as a general contractor unless the general contractor has applied for and received a general contractor registration in accordance with the provisions of this article.

§26-204.13 Unlawful use of general contractor title. It shall be unlawful to use or cause to be used the title registered general contractor or any other title in a manner as to convey the impression that an individual, corporation, partnership or other business entity, or any person it employs, is a registered general contractor, unless such individual, corporation, partnership or other business entity is registered in accordance with the provisions of this article.

§26-204.14 Compliance with other provisions. All applications for a general contractor registration shall comply with and

be subject to the provisions of section 26-132 of this subchapter and all applicants shall comply with and be subject to the provisions of sections 26-137 through 26-140 of this subchapter.

§26-204.15 Registration fees. The fee for a general contractor registration shall be two hundred dollars, and the biennial renewal fee shall be one hundred sixty dollars. Renewals not submitted in a timely manner shall be subject to an additional late registration surcharge of one hundred sixty dollars.

§26-204.16 Application requirements.

a. An application for a general contractor registration or renewal under this article shall be made in writing to the commissioner on a form provided by the department, and shall be accompanied by the following:

1. If the applicant is an individual: the applicant's full name, residence address, business address and business telephone number;

2. If the applicant is a corporation:

(i) the corporate name, address and telephone number of the applicant's principal office or place of business;

(ii) the date and state of incorporation;

(iii) the name, residence address and residence telephone number of all corporate officers and registered agents and any person owning an interest of ten percent or more in the corporation;

(iv) proof that the corporation is in good standing under the laws of the state of New York;

3. If the applicant is a partnership:

(i) the name, address and telephone number of the applicant's principal office or place of business;

(ii) the name, residence address and residence telephone number of all partners;

4. the registration fee;

5. a verified statement that the applicant or any person owning an interest of ten percent or more in the applicant is financially solvent;

6. the name and address of the principal location from which the applicant has engaged in the business of general contracting at any time within the last five years;

7. if the applicant is not a sole proprietor, proof that the applicant is authorized to do business in the state of New York;

8. proof of insurance as required by section 26-204.17 of this article;

9. the name and address of the officer, principal or director of the applicant who is primarily responsible for the registrant's compliance with the requirements of subchapters one, two or three of chapter one of title twenty-six or chapter one of title

twenty-seven of this code or any rule adopted thereunder;

10. upon renewal, proof of completion of such courses pertaining to general contracting activities as the commissioner shall establish by rule; and

11. any other information that the commissioner may require.

b. For the purposes of this section, financial solvency shall mean that the applicant's operating capital shall exceed twenty-five thousand dollars.

c. It is a condition of the registration that information in the application be kept current. Any change in required information shall be reported to the department within fourteen days after such change.

d. For any applicant other than a natural person, the above requirements shall apply to every principal or officer and to any person owning, directly or indirectly, an interest of ten percent or more in the applicant.

§26-204.17 Insurance.

a. Prior to the issuance of a general contractor registration, each applicant shall submit proof of commercial general liability insurance in an amount not less than one million dollars per occurrence, five million dollars aggregate combined single limit, or as otherwise specified by rule, to insure any and all persons and entities, both public and private, fully for all risks of loss, damage to property or injury to or death of persons, arising out of or in connection with the performance of all work under the registration, including any and all work involving excavation, shoring and underpinning, and including the work of subcontractors.

b. Each policy of insurance required under this section shall include a provision requiring thirty days' advance notice to the commissioner prior to cancellation or lapse of the policy.

c. The registrant shall maintain the insurance required under this section in full force and effect for the duration of the registration period.

§26-204.18 Warranties.

a. A warranty shall be provided to the buyer of a new one-, two- or three-family structure that accords with the provisions of article thirty-six-B of the New York state general business law, including the following:

1. one year from and after the warranty date the home will be free from defects due to a failure to have been constructed in a skillful manner;

2. two years from and after the warranty date the plumbing, electrical, heating, cooling and ventilation systems of the home will be free from defects due to a failure by the builder to have installed such systems in a skillful manner; and

3. six years from and after the warranty date the home will be free from material defects, including, but not limited to, any construction that is not in compliance with the building code or the zoning resolution of the city of New York.

b. Except as otherwise provided in section seven hundred seventy-seven-b of such article thirty-six -B, no such warranty shall be modified or excluded in any way.

§26-204.19 Duties and responsibilities.

a. The general contractor shall be responsible for providing information to the department about his or her subcontractors and the particular jobs they performed. Such information shall be provided in a format and at the times specified in the rules of the department.

b. The general contractor shall maintain at the work site such technical reports as specified in the rules of the department and shall make such reports available to department personnel on request.

§26-204.20 Seizure, forfeiture.

a. 1. For purposes of this section, the term “owner” as applied to vehicles shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of the vehicle and traffic law.

2. For purposes of this section, the term “security interest” as applied to vehicles shall mean a security interest as defined in subdivision k of section two thousand one hundred one of the vehicle and traffic law.

3. For purposes of this section, the term “unlicensed activity” shall mean the conduct of any

activity at a work site for the construction of a residential structure containing no more than three dwelling units without a license for which a license is required under any law, rule or regulation enforced by the commissioner of buildings, and the term “unregistered activity” shall mean the conduct of any activity at a work site for the construction of a residential structure containing no more than three dwelling units without a registration for which a registration is required under any law or regulation enforced by the commissioner of buildings.

b. 1. Any police officer or authorized officer or authorized employee of the department may seize any vehicle and any tools contained therein which such police officer or authorized officer or authorized employee has reasonable cause to believe is being used in connection with unlicensed or unregistered activity, upon service on the owner or operator of the vehicle of a notice of violation for engaging in such activity. Any vehicle and tools seized pursuant to this subdivision shall be delivered into the custody of the department or other appropriate agency.

2. The owner or operator of the vehicle and/or tools may make a written demand for a hearing for the return of the seized property. Notice of the right to a hearing shall be provided to the operator at the time of seizure of the vehicle and/or tools, and a copy of such notice shall be sent by mail to the registered and/or title owner of the vehicle, if other than the operator, and to the owner of the tools if other than the owner or operator of the vehicle and if reasonably ascertainable, within five business days of the seizure. The department shall schedule the hearing at the office of administrative trials and hearings (OATH) or its successor agency, as applicable, for a date within ten business days after receipt of the demand and shall notify the operator and the owner(s) of the opportunity to participate in the hearing and the date thereof.

3. A claimant seeking release of the vehicle and tools at the hearing may be either the person from whom the vehicle and tools were seized, if that person was in lawful possession of the vehicle and tools, or the owner if different from such person.

4. The OATH judge shall issue a determination within five business days after the conclusion of the hearing.

5. The department shall establish a procedure whereby an owner or operator who wishes to have the vehicle and/or tools returned pending the hearing shall post a bond in an amount determined by the department, but in no event less than an amount sufficient to cover any applicable removal and storage fees as well as fines and penalties.

6. The department shall establish a procedure whereby an owner or operator may request the return of the vehicle and/or tools without a hearing if he or she a) establishes that the vehicle and/or tools were seized in error or b) immediately applies for licensure or registration pursuant to the applicable provisions of this subchapter and pays a fine not to exceed removal and storage fees and any fines or penalties that could have been imposed under the provisions of this subchapter. Where the owner or operator establishes that the vehicle and/or tools were seized in error, the department shall expeditiously return such vehicle and/or tools.

c. Any vehicle and tools for which a written demand for return of the vehicle and/or tools or a hearing pursuant to subdivision b of this section has not been made within thirty days of service on the operator or the owner of the vehicle and/or tools, if other than the operator, of the notice of violation shall be deemed abandoned and shall be disposed of by the department pursuant to applicable law.

d. 1. Notwithstanding the provisions of section 26-140 of this code, in the event the department chooses to have the violation underlying the seizure returnable to and heard at OATH, that hearing may be combined with the hearing for the return of the seized property and under such circumstances the OATH judge shall make a determination as to both. The OATH judge shall issue a determination within five business days after the conclusion of the hearing.

2. If the OATH judge finds that the vehicle and/or tools were not used in connection with unlicensed or unregistered activity, the department shall promptly release such vehicle and/or tools.

3. If the OATH judge finds that the vehicle and/or tools were used in connection with unlicensed or unregistered activity, the department may release such vehicle and/or tools upon payment of all applicable fines and civil penalties and all reasonable costs of removal and storage, or may commence a forfeiture action within

twenty business days after the date of the judge's determination.

e. In the event that the adjudication of the violation underlying the seizure is not held at OATH, and a determination is made that the vehicle and tools were not used in connection with unlicensed or unregistered activity, the department shall promptly release such vehicle and/or tools.

f. In addition to any other fines or penalties provided in this, any person who violates the provisions of this subchapter shall be subject to a penalty of not less than five thousand dollars nor more than ten thousand dollars to be recovered in a proceeding before OATH and shall be subject to a fine of not less than five thousand dollars nor more than ten thousand dollars or imprisonment for not more than six months, or both.

g. 1. A forfeiture action pursuant to this section shall be commenced by the filing of a summons with a notice or a summons and complaint in accordance with the civil practice law and rules. Such summons with notice or a summons and complaint shall be served in accordance with the civil practice law and rules on the vehicle operator, the owner of the tools, if different from the vehicle operator, and owner of the vehicle, and on all owners of the subject vehicle listed in the records maintained by the department of motor vehicles, or for vehicles not registered in the state of New York, in the records maintained by the state of registration. A vehicle and/or tools that are the subject of such action shall remain in the custody of the department or other appropriate agency pending the final determination of the forfeiture action, unless released pursuant to the provisions of subdivisions d or e, above.

2. Notice of the institution of the forfeiture action shall be given by certified mail to all persons holding a security interest in such vehicle or tools, if known, if such security interest in the vehicle has been filed with the department of motor vehicles pursuant to the provisions of title ten of the vehicle and traffic law, at the address set forth in the records of such department, or, for vehicles not registered in the state of New York, all persons holding a security interest in such vehicle if such security interest has been filed with the state of registration and which persons are made known by such state to the department, at the address provided by

such state of registration.

3. Any person with a security interest in such vehicle or tools who receives notice of the institution of the forfeiture action who claims an interest in such vehicle or tools subject to forfeiture may assert a claim in such action for satisfaction of such person's security interest in such vehicle or tools.

4. Forfeiture pursuant to this subdivision shall be made subject to the interest of a person who claims an interest in the vehicle or tools pursuant to paragraph three of this subdivision, where such person establishes that: (i) the use of the vehicle or tools for the conduct that was the basis for the seizure of the vehicle and tools occurred without the knowledge of such person, or if such person had knowledge of such use, that such person did not consent to such use by doing all that could reasonably have been done to prevent such use, and that such person did not knowingly obtain such interest in the vehicle or tools in order to avoid the forfeiture of such vehicle or tools, or (ii) that the conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the vehicle or tools, while such property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

5. The department or agency having custody of the vehicle and tools, after judicial determination of forfeiture, shall, at its discretion, either (i) retain such vehicle and tools for the official use of the city; or (ii) by public notice of at least five days, sell such forfeited vehicle and tools at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

6. In any forfeiture action commenced pursuant to this subdivision, where the court awards a sum of money to one or more persons in satisfaction of such person's interest in the forfeited vehicle and tools, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle and tools after deduction of the lawful expenses incurred by the city, including reasonable costs of removal and storage of the vehicle and tools between the time of seizure and the date of sale.

§26-204.21 Penalties; issuance, renewal, suspension and revocation of registration.

a. The commissioner shall have the power to refuse to issue or renew a registration or, after notice and an opportunity to be heard in a proceeding to be commenced at OATH, impose a penalty of not less than five thousand nor more than ten thousand dollars upon a registrant and/or suspend or revoke a registration under this article upon a finding of any one or more of the following by the applicant or registrant or by a business entity in which one of the applicant's or registrant's principals, officers or directors has been a principal, officer or director:

1. Fraud, misrepresentation, or bribery in securing a registration, permit, approval of work or a temporary or permanent certificate of occupancy.

2. The making of any false statement as to a material matter in any application for a registration, permit, approval of work or a temporary or permanent certificate of occupancy.

3. A practice on the part of the registrant of failure to timely perform or complete its contracts for the construction of new residential structures containing no more than three dwelling units, or the manipulation of assets or accounts, or fraud or bad faith.

4. Failure to comply with any demand or requirement lawfully made by the commissioner.

5. Approval or knowledge on the part of the registrant of an act of omission, fraud, or misrepresentation committed by one or more agents or employees of the registrant, and failure to report such act to the department.

6. Violation of any provision of this subchapter or any rule adopted hereunder.

7. Violation of any provision of subchapters one, two or three of chapter one of title twenty-six or chapter one of title twenty-seven of this code, or any rule adopted thereunder, including continuing to work in violation of a stop-work notice or order issued pursuant to section 26-118 of this code.

b. Notwithstanding the foregoing, when public health or safety may be in imminent jeopardy, the commissioner shall immediately suspend a registration for up to five business days, pending a hearing and

determination at OATH.

c. In addition to any of the powers that may be exercised by the commissioner pursuant to this article, the commissioner may refuse to issue or renew or, after notice and an opportunity to be heard in a proceeding to be commenced at OATH, may suspend or revoke, a registration required under this article if (a) the applicant or registrant, or any of its principals, officers or directors, or any of its stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in accordance with article twenty-three-a of the correction law, is determined to have a direct relationship to such person's fitness or ability to perform any of the activities for which a registration is required under this article or (b) the applicant or registrant, or any of its principals, officers or directors has been a principal, officer or director of a registered general contractor whose registration has been revoked.

d. Notwithstanding any inconsistent provision of this subchapter, any registered general contractor who has defaulted at or been found liable after proceedings before the environmental control board or in an adjudication in criminal court of violations of any building code provisions relating to a stop work order, public health or safety, structural integrity, building in compliance with approved plans or fire safety three times within any twenty-four-month period shall be subject to immediate suspension of his or her registration, pending a hearing and determination at OATH.

e. The names of all general contractors whose registration was suspended or revoked after an OATH decision shall be posted on the department's website.

f. General contractors shall notify all their suppliers of all pending suspension or revocation actions against them and shall provide an affidavit to the department stating that this notification has been made.

§26-204.22 Violations and penalties.

a. 1. Any person who shall own, conduct or operate a general contracting business without a registration therefor or who shall knowingly violate any of the provisions of this article or any rules

promulgated thereunder or, having had his or her registration suspended or revoked, shall continue to engage in such business, shall be guilty of a misdemeanor, and upon conviction, shall be punishable by imprisonment for not more than six months, or by a fine of not less than five thousand nor more than ten thousand dollars, or both such fine and imprisonment, and each such violation shall be deemed a separate offense.

2. In addition to the penalties provided by paragraph one of this subdivision, any person who violates any of the provisions of this article shall be liable for a civil penalty of not less than five thousand nor more than ten thousand dollars for each such violation to be recovered in a proceeding before the environmental control board.

b. The corporation counsel may bring an action in the name of the city to restrain or prevent any violation of this article or any continuance of any such violation.

§3. Subdivision g of section 26-248 of the administrative code of the city of New York is amended by adding a new paragraph 6 to read as follows:

6. Engaging a person to perform work on or construct a structure where such person has not been issued a license or has not registered and such license or registration is required under any law, rule or regulation enforced by the commissioner .

§4. Severability. If any section, subdivision, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall remain in full force and effect.

§5. This local law shall take effect on November 1, 2008, provided that, prior to such date, the commissioner of buildings may promulgate such rules as are necessary to implement its provisions, except that the rules required by paragraph 9 of subdivision a of section 26-204.16 shall be promulgated by and registration may commence on April 1, 2008.

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