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Int. No. 193

By Council Members Yeger, Borelli and Carr

A Local Law to amend the administrative code of the city of New York, in relation to the creation of a remediation of unsafe flooded homes program

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Hurricane Sandy hit New York City on October 29, 2012, causing heavy flooding, severe winds, power outages, and widespread damage to buildings and homes across the City. The Council finds that homes that were affected by Hurricane Sandy but which have been vacant with no evidence of pursuit of remediation by the owner may be unsafe and unsound due to conditions including, but not limited to, scour and erosion undermining foundations and/or floor slabs, breakage or collapse of parts of foundation piers or walls, corroded electrical gear posing a fire risk, destabilization in connectors or retaining walls and foundations, and problems arising from sitting salty water and mold. Failing to remedy such conditions can have impact on the long-term structural integrity and habitability of a building and pose serious

danger to the health and safety of residents.

The Remediation of Unsafe Flooded Homes Program is designed to address the risks posed by homes that may be structurally unsafe or unsound due to flooding and other damage inflicted by Hurricane Sandy. The Program focuses on homes which may be vacant, abandoned or in foreclosure proceedings, and in which there is indicia of structural damage and/or lack of remediation since the storm.

The goals of the Program are to make these homes livable, habitable and safe and to give the Department of Housing Preservation and Development and the Department of Buildings the power to take appropriate action to remediate and to correct the conditions of these homes.

§ 2. Subchapter 5 of chapter 2 of title 27 of the administrative code of the city of New York is amended by adding a new article 11 to read as follows:

Article 11

Remediation of Unsafe Flooded Homes Program

§ 27-2143 Remediation of Unsafe Flooded Homes Program. a. For the purposes of this section, “Private dwelling shall have the same meaning as it does in paragraph 6 of subdivision a of section 27-2004 of this code.

b. The department, in consultation with the department of buildings, shall within 60 days of the effective date of this article, identify no fewer than 100 private dwellings for participation in the remediation of unsafe flooded homes program, including private dwellings identified pursuant to subdivision c of this section, provided however that a private dwelling shall not be included in the program if it is undergoing or has undergone repair work performed or funded by the build it back program. The criteria used to identify such dwelling shall be:

1. Evidence that the private dwelling experienced flooding due to Hurricane Sandy. Such evidence may include, but is not limited to, maps or other materials provided by the office of emergency management, the federal emergency management agency or other government agencies which indicate that such private dwelling

is within the geographic areas exposed to flooding during Hurricane Sandy; and

2. Evidence, visible or demonstrable from the exterior of the private dwelling, indicating one or more of the following:

(i) damage related to Hurricane Sandy, including, but not limited to, erosion or scour at the foundation and/or floor slabs, cracks in the façade or foundation, breakage or collapse of parts of foundation piers or walls, or any other damage to the foundation, partial collapse of brick siding or loss of walls and floors, the presence of one or more sinkholes on the property, visible signs of mold and/or flooding or water damage, evidence of disrepair, or the presence of debris;

(ii) a condition or conditions constituting a public nuisance pursuant to section 27-2114 of this title or section 28-207.3 of title 28 of the administrative code of the city of New York;

(iii) a condition or conditions constituting an unsafe building or structure, pursuant to article 216 of chapter 2 of title 28 of the administrative code of the city of New York;

(iv) a hazardous or immediately hazardous violation relating to articles 2, 4, 5 or 7 of subchapter 2 of chapter 2 of this title; or

(v) a major or immediately hazardous violation, as such terms are used in title 28 of the administrative code of the city of New York, relating to articles 302 or 305 of chapter 3 of title 28 of the administrative code of the city of New York, or chapters 14, 15 or 18 of the New York city building code; and

3. Evidence that the private dwelling is vacant or abandoned.

c. The borough presidents and members of the council of the city of New York are authorized to provide the department with information in writing concerning one or more private dwellings within their respective borough or district for participation in the remediation of unsafe flooded homes program. The department, in consultation with the department of buildings, shall include such private dwelling in this program if such private dwelling identified satisfies the criteria provided pursuant to subdivision b of this section.

d. The department shall within 30 days of identifying private dwellings pursuant to subdivisions b and c of this section provide written notification to the owner and mortgagee of record of any such private dwelling identified for participation in the remediation of unsafe flooded homes program, the occupants of such private dwelling and the council member in whose district such private dwelling is located, and the borough president in whose borough such private dwelling is located, that such private dwelling is subject to the requirements of this article. The department shall simultaneously provide to such owner information about programs that may be available to such private dwelling for the purpose of remediating damage caused by flooding. The department shall provide such owner an opportunity to contest inclusion of such private dwelling in such program at a hearing held pursuant to section 27-2092 of this title within 30 days of such written notification. Upon receiving sufficient evidence that (i) the private dwelling does not satisfy one or more of the criteria set forth in subdivision b of this section, (ii) the conditions alleged to satisfy the criteria set forth in paragraph 2 of subdivision b are not related to or caused by Hurricane Sandy, (iii) the private dwelling is currently undergoing repair work performed or funded by a government program or service providing remediation or assistance to private dwellings affected by Hurricane Sandy, or is undergoing or has undergone repair work performed or funded by the build it back program, or (iv) that the owner has applied or is in the process of applying for assistance or remediation from the build it back program for such dwelling, the department shall remove such dwelling from the remediation of unsafe flooded homes program.

e. 1. Notwithstanding any other provision of law, the department, together with the department of buildings, shall perform a building-wide inspection of any private dwelling that is identified pursuant to subdivisions b and c of this section. Such building-wide inspection shall be commenced no later than 30 days after the period to contest inclusion in the remediation of unsafe flooded homes program pursuant to subdivision d of this section or, if contested, 30 days from the date of a final determination by the department that such private dwelling shall be included in such program pursuant to subdivision d of this section. After such building-wide inspection is completed, the department, in consultation with the department of buildings,

shall issue an order to such owner and mortgagee of record to correct violations of this title, title 28 of the administrative code of the city of New York, the multiple dwelling law, and any other law, rule or regulation which relates to the maintenance, use, occupancy, safety or sanitary condition of any building or portion thereof which is occupied, arranged or intended to be occupied as a home, residence or dwelling place, and repair the related underlying conditions as shall be specified in such order. Such building-wide inspection shall be completed and such order issued within 90 days of commencement of the building-wide inspection. Such order shall be filed in the office of the county clerk in the county in which the private dwelling is located. For purposes of this article, a “related underlying condition” shall mean a physical defect or failure of a building system that is causing or has caused a violation, such as, but not limited to, a structural defect, or failure of a heating or plumbing system.

2. The department, in consultation with the department of buildings, shall: (i) within 30 days of the filing of such order prepare a scope of work necessary to correct the violations and repair the related underlying conditions as are specified in such order; (ii) cause repair work to be commenced and expeditiously completed unless there are circumstances beyond the control of the department or the department of buildings to commence such repair work, such as the inability to obtain access to the building or any part thereof necessary for the making of such repairs, in which case the repairs related to the portion of the building to which access could not be obtained may be delayed until access is obtained; or the inability to obtain necessary legal approvals, materials or labor; or where there is ongoing litigation with respect to the building that prevents such work from being performed by the department or the department of buildings; or where the owner or the mortgagee of record undertakes the repair work in a manner that is satisfactory to the department; or where commencement or completion of the work is not practicable because a vacate or similar order has been issued by the department or any city agency and/or the cost of performing work necessary for restoring the building pursuant to the order is economically infeasible; and (iii) monitor repair work as it is performed. For the purposes of this section, “economically infeasible” shall mean a determination by the department or department

of buildings that the cost of repairing a particular building would exceed the anticipated market value of such building after all repairs have been completed. However, any determination by the department or the department of buildings that, for the purposes of this section, repairs to a particular building would be economically infeasible for the department or any city agency to undertake, shall not take into consideration the owner's conduct with respect to the building.

3. If the department or the department of buildings determines that the cost of performing work necessary for restoring the building pursuant to the order is economically infeasible, the department, in consultation with the department of buildings, shall make a determination as to the disposition of the building, which may include, but not be limited to, issuing and enforcing a vacate order pursuant to the authority and procedural requirements set forth in article 207 of chapter 2 of title 28 of the administrative code of the city of New York or pursuant to the authority and procedural requirements set forth in article 7 of subchapter 5 of chapter 2 of title 27 of the administrative code of the city of New York, demolishing or removing an unsafe building or structure pursuant to the authority and procedural requirements set forth in article 216 of chapter 2 of title 28 of the administrative code of the city of New York, or causing the city of New York to acquire the property according to law by purchase.

f. The department, in consultation with the department of buildings, may discharge from the remediation of unsafe flooded homes program a building for which an order to correct has been issued pursuant to subdivision e of this section upon: (1) substantial compliance, (2) payment of fees provided for in subdivision i of this section, (3) payment to the department of all outstanding emergency repair charges, including liens, or entry into an agreement with the department of finance to pay such charges and liens, provided however that the terms of such discharge have been satisfied within 30 days of the filing of an order pursuant to subdivision e, and (4) registration of such building in accordance with article 2 of subchapter 4 of chapter 2 of this title where applicable. Where the department determines to discharge a building from such program, it shall provide a written determination to the owner, the mortgagee of record, the occupants of such

building, the council member in whose district such building is located, and the borough president in whose borough such building is located, and shall file in the office of the county clerk in the county in which such building is located, a rescission of the order issued pursuant to subdivision e of this section, where such order has been issued. For the purposes of this section, “substantial compliance” shall mean that at the time of reinspection by the department, all violations relating directly to the underlying conditions that make the building unsafe, dangerous to human life or safety or detrimental to health, have been determined by the department to have been corrected.

g. The department and the department of buildings shall enforce the provisions of this section.

h. In the event the owner, mortgagee of record or occupant of such private dwelling does not permit access for inspection pursuant to subdivision c of this section, the department shall apply for an order of access in accordance with the provisions of section 27-2123 of this code. For purposes of satisfying the requirement to submit an application by the department to a judge of a civil court of competent jurisdiction pursuant to subdivision a of section 27-2123 of this code, the application shall be accompanied by an affidavit affirming that the criteria provided in subdivision b of this section are satisfied. If the court grants an order of access, but the person to whom the order is directed does not provide or refuses access, the department and the department of buildings shall have recourse to remedies provided by law to secure entry. Any time period set forth in this section within which the department is required to act shall be tolled during the period in which the department is making such efforts to obtain access or is seeking an order of access.

i. An owner of a private dwelling who has been notified of participation in the remediation of unsafe flooded homes program pursuant to subdivision d of this section shall be subject to fees for any inspection, reinspection or any other action taken by the department or department of buildings in relation to such private dwelling during the time period that the private dwelling is in such program, provided, however, that such dwelling has not been removed from such program pursuant to such subdivision. A schedule of fees for this purpose shall be prescribed in rules promulgated by the department.

j. All amounts for expenses incurred and fees imposed by the department or the department of buildings pursuant to this article that remain unpaid by an owner, shall constitute a debt recoverable from the owner or mortgagee of record and a lien upon the private dwelling and lot, and upon the rents and other income thereof. The provisions of article 8 of this subchapter shall govern the effect and enforcement of such debt and lien. The department in consultation with the department of buildings may serve a statement of account upon an owner for such amounts pursuant to section 27-2129 of this subchapter.

k. Any failure by the department or the department of buildings to provide notification to occupants of a building that is participating in the remediation of unsafe flooded homes program or borough presidents or council members as required by this article shall not prevent the department or department of buildings from taking any actions under or enforcing the provisions of this article, except that the department in consultation with the department of buildings shall attempt to remedy any such failure immediately upon its discovery.

l. On or before March 1 of each year, the department together with the department of buildings shall prepare and submit to the council a report on the results of the remediation of unsafe flooded homes program. Such report shall be cumulative and shall include the following: (i) the address and owner of each private dwelling that has been or is currently in the program; (ii) the council member in whose district such private dwelling is located; (iii) for each such private dwelling, the number of open hazardous and immediately hazardous violations, and open major or immediately hazardous violations as such terms are used in title 28 of the administrative code of the city of New York at the time the remediation of unsafe flooded homes program was used as an enforcement mechanism, whether or not the department or the department of buildings has sought a remedy under paragraph 3 of subdivision e of this section, and the remedial course taken, whether or not such private dwelling has been discharged from the program and the reason for such status; and (iv) the number of private dwellings for which substantial compliance has not been achieved within twelve months from the start of their participation in the program. Such report shall be posted on the department's website within ten days of its submission to the council.

m. Nothing in this section shall prevent the department or the department of buildings from enforcing the provisions of this code, title 28 of the administrative code of the city of New York, the multiple dwelling law or any other law or rule. Nothing in this article shall be deemed to affect the duties of an owner, a tenant or the department or department of buildings under any other article of this code, title 28 of the administrative code of the city of New York, the multiple dwelling law or other law or rule.

n. Any notifications or information required by this section to be provided to an owner or occupant of a private dwelling shall be in English, the languages set forth in subdivision j of section 8-1002 of the administrative code of the city of New York and in such other languages as the department deems appropriate.

o. No later than July 31, 2019 and every two years thereafter the department shall conduct a study to evaluate the effectiveness of the remediation of unsafe flooded homes program. Such study shall examine, but shall not be limited to examining, the following:

1. the program's cost effectiveness, including the amount of fees collected;
2. whether the criteria established pursuant to subdivisions b of this section are appropriate and if not, how they should be adjusted;
3. whether the monitoring undertaken by the department or department of buildings is appropriate and if not, what modifications should be made; and
4. recommendations as to whether the program should be continued or modified in any way and the reasons therefore.

§ 3. This local law takes effect 120 days after it becomes law except that the commissioner of the department and the commissioner of the department of buildings shall take such actions as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

DSH - PLS
LS 724-2014/Int. 1119-2013/Int. 342-14
LS 580

12/19/17