



Legislation Details (With Text)

File #: Int 0403-2004 **Version:** B **Name:** Allowing civil penalties for neglect of a landmark site or a site within a historic district.

Type: Introduction **Status:** Enacted
In control: Committee on Land Use

On agenda: 7/21/2004

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Title: A Local Law to amend the administrative code of the city of New York, in relation to civil penalties for failure to maintain landmark or historic district improvements.

Sponsors: Tony Avella, Gale A. Brewer, Yvette D. Clarke, Vincent J. Gentile, Alan J. Gerson, Letitia James, G. Oliver Koppell, John C. Liu, Michael E. McMahon, Michael C. Nelson, Domenic M. Recchia, Jr., Helen Sears, David I. Weprin, Christine C. Quinn, Robert Jackson, David Yassky, Miguel Martinez, James S. Oddo

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Attachments: 1. Fiscal Impact Statement, 2. Hearing Transcript - Landmarks - 10/20/04, 3. Hearing Transcript - Landmarks - 11/30/04, 4. Hearing Transcript - Landmarks - 12/13/04, 5. Local Law, 6. Hearing Transcript - Land Use - 10/21/04, 7. Hearing Transcript - Stated Meeting 10/27/04, 8. Hearing Transcript - Stated Meeting 11/10/04, 9. Hearing Transcript - Stated Meeting 11/23/04, 10. Hearing Transcript - Land Use - 1/13/05, 11. Hearing Transcript - Stated Meeting - 1/19/05, 12. Hearing Transcript - Stated Meeting 2/2/05

Date	Ver.	Action By	Action	Result
7/21/2004	*	City Council	Introduced by Council	
7/21/2004	*	City Council	Referred to Comm by Council	
9/7/2004	*	Subcommittee on Landmarks, Public Siting and Maritime Uses	Hearing Held by Committee	
9/7/2004	*	Subcommittee on Landmarks, Public Siting and Maritime Uses	Laid Over by Subcommittee	
9/21/2004	*	Subcommittee on Landmarks, Public Siting and Maritime Uses	Hearing Held by Committee	
9/21/2004	*	Subcommittee on Landmarks, Public Siting and Maritime Uses	Laid Over by Subcommittee	
10/20/2004	*	Subcommittee on Landmarks, Public Siting and Maritime Uses	Hearing Held by Committee	
10/20/2004	*	Subcommittee on Landmarks, Public Siting and Maritime Uses	Amendment Proposed by Comm	
10/20/2004	*	Subcommittee on Landmarks, Public Siting and Maritime Uses	Amended by Committee	
10/20/2004	A	Subcommittee on Landmarks, Public Siting and Maritime Uses	Approved by Subcommittee	Pass
10/21/2004	*	Committee on Land Use	Amendment Proposed by Comm	
10/21/2004	*	Committee on Land Use	Amended by Committee	
10/21/2004	A	Committee on Land Use	Approved by Committee	Pass
10/21/2004	*	Committee on Land Use	Hearing Held by Committee	
10/27/2004	A	City Council	Laid Over by Council	

11/10/2004	A	City Council	Laid Over by Council	
11/23/2004	A	City Council	Re-referred to Committee by Council	
11/30/2004	A	Subcommittee on Landmarks, Public Siting and Maritime Uses	Hearing Held by Committee	
11/30/2004	A	Subcommittee on Landmarks, Public Siting and Maritime Uses	Laid Over by Subcommittee	
12/13/2004	A	Subcommittee on Landmarks, Public Siting and Maritime Uses	Hearing Held by Committee	
12/13/2004	A	Subcommittee on Landmarks, Public Siting and Maritime Uses	Laid Over by Subcommittee	
1/13/2005	A	Committee on Land Use	Hearing Held by Committee	
1/13/2005	A	Committee on Land Use	Amendment Proposed by Comm	
1/13/2005	A	Committee on Land Use	Amended by Committee	
1/13/2005	B	Committee on Land Use	Approved by Committee	Pass
1/19/2005	B	City Council	Laid Over by Council	
2/2/2005	B	City Council	Approved by Council	Pass
2/2/2005	B	City Council	Sent to Mayor by Council	
2/15/2005	B	Mayor	Hearing Held by Mayor	
2/15/2005	B	Mayor	Signed Into Law by Mayor	
2/16/2005	B	City Council	Recved from Mayor by Council	

Int. No. 403-B

By Council Members Avella, Brewer, Clarke, Gentile, Gerson, James, Koppell, Liu, McMahon, Nelson, Recchia, Sears, Weprin, Quinn, Jackson, Yassky, Martinez and Oddo

A Local Law to amend the administrative code of the city of New York, in relation to civil penalties for failure to maintain landmark or historic district improvements.

Be it enacted by the Council as follows:

§1. Paragraph 4 of subdivision x of section 25-302 of the administrative code of the city of New York, as added by local law number 1 for the year 1998, is renumbered paragraph 2 and amended and a new paragraph 3 is added to read as follows:

(2) “Type B violation”. [All other violations of this chapter, except for violations of section 25-311 of this chapter.] Except as otherwise defined by the rules of the commission, the failure to maintain an improvement in a condition of good repair in violation of section 25-311 of this chapter, and where such condition results or may result in significant deterioration of either a significant portion of the improvement or

a character-defining, protected, architectural feature of such improvement.

(a) For purposes of this subdivision, and without limiting the scope thereof, the term “significant deterioration” shall include the failure to maintain:

(i) the improvement in a structurally sound or reasonably water-tight condition; or

(ii) a character-defining, protected, architectural feature in a structurally sound or reasonably water-tight condition or otherwise failing to preserve the integral historic material of such feature.

(b) For purposes of this subdivision, the term “significant deterioration” shall not include:

(i) any condition that may permit some water penetration and/or evidence slight structural deterioration, unless such condition has existed over a period of time such that it has led or may reasonably lead to significant water penetration or structural damage to a significant part of a facade or roof; or

(ii) the failure to maintain a small part of a single, character-defining, protected, architectural feature or a small portion of the decorative, architectural features of the improvement taken as a whole.

(3) “Type C violation”. All other violations of this chapter, except for violations of section 25-311 of this chapter.

§2. Subdivision a of section 25-317.1 of the administrative code of the city of New York, as added by local law number 1 for the year 1998, is amended to read as follows:

a. Any person who violates any provision of sections 25-305 [or], 25-310 or 25-311 or subdivision c of section 25-317 of this chapter or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered by the corporation counsel in a civil action in any court of competent jurisdiction. Such civil penalty shall be determined as follows:

[1.] (1) The defendant shall be liable for a civil penalty of up to the fair market value of the improvement parcel, with or without the improvement, whichever is greater, where in violation of such provision or order:

(a) all or substantially all of an improvement on a landmark site or within a historic district has

been demolished;

(b) work has been performed or a condition created or maintained which significantly impairs the structural integrity of an improvement on a landmark site or within a historic district; [or]

(c) work has been performed or a condition created or maintained which results in the destruction, removal or significant alteration of more than fifty percent of the square footage of two facades of an improvement on a landmark site or within a historic district, including party and sidewalls; or

(d) the defendant has failed to take action to prevent any condition described in subparagraph a, b or c of this paragraph from occurring.

[2.] (2) Where, in violation of such provision or order, work is performed or a condition is created or maintained which results in the destruction, removal or significant alteration of a significant portion of the protected features identified in the designation report of an interior landmark, the defendant shall be liable for a civil penalty equal to two times the estimated cost of replicating the protected features that were demolished, removed or altered.

[3.] (3) All other violations. The defendant shall be liable for a civil penalty of not more than five thousand dollars.

[4.] (4) For the purposes of this subdivision, each day during which there exists any violation of the provisions of paragraph three of subdivision a of section 25-305 of this chapter or paragraph two of subdivision a of section 25-310 of this chapter or subdivision a, b or c of section 25-311 of this chapter or any order issued by the chair with respect to such provisions shall constitute a separate violation.

§3. The opening paragraph and paragraphs 1 and 2 of subdivision b of section 25-317.1 of the administrative code of the city of New York, as added by local law number 1 for the year 1998, are amended to read as follows:

b. In addition to or as an alternative to any of the remedies and penalties provided in this chapter, any person who violates any provision of sections 25-305 [or], 25-310 or 25-311 or subdivision c of

section 25-317 of this chapter or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered in an administrative proceeding before the office of administrative trials and hearings, the environmental control board or other administrative tribunal having jurisdiction as hereinafter provided.

(1) An administrative proceeding for civil penalties shall be commenced by the service of a notice of violation in accordance with the applicable law and rules governing the procedures of the administrative tribunal before which the notice of violation is returnable or as otherwise provided by the rules of the commission. The notice of violation shall identify the allegedly illegal conditions or work with reasonable specificity. As used in this subdivision, the term “reasonable specificity” shall mean a description of work or conditions, reasonably described given the circumstances, sufficient to inform a reasonable person that (1) work has been or is being done without an appropriate approval from the commission, [or] (2) conditions have been created or are being maintained in violation of this chapter, or (3) there has been a failure to take action to prevent conditions that are in violation of this chapter. Such administrative tribunal shall have the power to impose civil penalties in accordance with this chapter. A judgment of an administrative tribunal imposing civil penalties may be enforced by the commencement of a civil action or proceeding in a court or as otherwise authorized by the applicable law governing the procedures of such administrative tribunal. Prior to serving a notice of violation, the chair shall serve a warning letter upon a respondent either personally or by mail in the manner provided by the rules of the commission. The warning letter shall inform the respondent that the chair believes the respondent has violated the provisions of this chapter, shall describe generally the allegedly illegal conditions and/or activities, shall warn the respondent that the law authorizes civil penalties for such violations, and shall provide the respondent with a grace period for removing or applying for a permit to legalize or otherwise address the allegedly illegal conditions. No such warning letter shall be required prior to the service of a notice of violation where (i) the subject violation is a second or subsequent offense, (ii) the subject violation is alleged to be an intentional violation, or (iii) the chair is seeking civil penalties for failure to

comply with a stop work order, issued pursuant to this chapter.

(2) Except as otherwise specifically provided in this chapter, where a respondent has been found liable for or admitted liability to a violation of this chapter in an administrative proceeding, a civil penalty for such violation shall be imposed in accordance with the schedule set forth below.

(a) Type A [violation] and Type B violations. (i) First offense. The respondent shall be liable for a civil penalty of not more than five thousand dollars.

(ii) Second and subsequent offenses. The respondent shall be liable for a civil penalty of not more than two hundred fifty dollars a day for each day that a condition underlying a prior violation continues to exist, measured from the date the respondent was found liable for or admitted liability to the prior violation, but in no event shall the civil penalty be less than the maximum possible penalty for a first offense.

(b) Type [B] C violation. (i) First offense. The respondent shall be liable for a civil penalty of not more than five [thousand] hundred dollars.

(ii) Second and subsequent offenses. The respondent shall be liable for a civil penalty of not more than fifty dollars a day for each day that a condition underlying a prior violation continues to exist, measured from the date the respondent was found liable for or pled guilty to the prior violation, but in no event shall the civil penalty be less than the maximum possible penalty for a first offense.

§4. This local law shall take effect immediately.