



Legislation Text

File #: Int 0728-2018, **Version:** B

Int. No. 728-B

By Council Members Espinal, Gjonaj, Yeger, Holden, Cornegy, Deutsch, Menchaca, Cumbo, Brannan, Koo, Williams, Lander, Kallos, Constantinides, Treyger, Rivera, Levin, Ayala, Miller and Ulrich

A Local Law in relation to establishing temporary programs, conducting education, establishing a task force related to accessory sign violations and waiving penalties for violations for signs that are accessory to a use on the same zoning lot

Be it enacted by the Council as follows:

Section 1. Definitions. For purposes of this local law, the following terms have the following meanings:

Administrative tribunal. The term “administrative tribunal” means the office of administrative trials and hearings (OATH), or any other tribunal authorized to adjudicate applicable violations.

Applicable violations. The term “applicable violations” means any violation with respect to a sign that is accessory to a use on the same zoning lot, as defined in section 12-10 of the New York city zoning resolution, alleged in a summons returnable to the administrative tribunal, as determined by the department of buildings.

Base penalty. The term “base penalty” means, with respect to any summons returnable to the administrative tribunal the penalty that would be imposed upon a timely admission by the respondent or finding of liability after an adjudication, pursuant to the department of buildings penalty schedule, without regard to reductions of penalty in cases of mitigation or involving stipulations.

Default decision and order. The term “default decision and order” means a decision and order of the administrative tribunal, pursuant to subparagraph (d) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York, determining a respondent’s liability for a violation charged based upon that respondent’s failure to plead within the time allowed by the rules of the administrative tribunal or failure to appear before the administrative tribunal on a designated adjudication date or on a subsequent date following an

adjournment.

Default penalty. The term “default penalty” means, with respect to any summons returnable to the administrative tribunal, the penalty imposed by the administrative tribunal, pursuant to subparagraph (d) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York, in an amount up to the maximum amount prescribed by law for the violation charged.

Imposed penalty. The term “imposed penalty” means, with respect to any summons returnable to the administrative tribunal, the penalty imposed by the administrative tribunal after an adjudication, pursuant to subparagraph (a) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York.

Judgment. The term “judgment” means monies owed to the city of New York as a result of a final order of the administrative tribunal imposing a civil penalty, either as a result of a default decision and order or after a hearing and finding of violation, that was entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, pursuant to subparagraph (g) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York, no later than ninety days prior to the commencement of the temporary program to resolve outstanding judgments pursuant to subdivision b of this local law and determining a respondent’s liability for a violation charged in accordance with the administrative tribunal penalty schedule.

Resolve. The term “resolve” means, with respect to an outstanding judgment of the administrative tribunal to conclude all legal proceedings in connection with a summons returnable to the administrative tribunal.

Respondent. The term “respondent” means a person or entity named as the subject of a summons returnable to, or a judgment issued by, the administrative tribunal.

§ 2. Temporary program to resolve outstanding judgments for applicable violations. a. Notwithstanding any other provision of law to the contrary, the commissioner of finance shall establish a temporary program to

resolve outstanding judgments imposed by the administrative tribunal, for a 180 day period, that permits respondents who are subject to:

1. Judgments resulting from a default decision and order to resolve such judgments by payment of base penalties without payment of default penalties and accrued interest; and

2. Judgments entered after an adjudication and finding of violation to resolve such judgments by payment of 50 percent of the imposed penalties without payment of accrued interest.

b. Resolution of outstanding judgments. 1. A judgment resulting from a default decision and order may not be resolved under the temporary program to resolve outstanding judgments pursuant to paragraph one of subdivision a of this section unless the base penalty of the violation that is the subject of the default decision and order can be determined from the summons returnable to the administrative tribunal, default decision and order, and the department of buildings penalty schedule alone.

2. A judgment may not be resolved under the temporary program to resolve outstanding judgments pursuant to subdivision a of this section if the judgment had previously been the subject of a settlement agreement with the department of finance or the department of law.

3. A judgment arising out of a summons returnable to the administrative tribunal that includes an order requiring the correction of the violation may not be resolved under the temporary program to resolve outstanding judgments pursuant to subdivision a of this section unless the respondent or other payor:

(i) Verifies with the department of buildings that such judgment violation is an applicable violation pursuant to section 1 of this law;

(ii) Enters into an agreement with the department of finance in a format established by the department, which may include an electronic format;

(iii) Makes a payment to the department of finance in the applicable amount established pursuant to subdivision a of this section, provided that the violation has been corrected pursuant to subparagraph (iv) of this

paragraph; and

(iv) Demonstrates to the satisfaction of the department of buildings that the condition cited in the summons returnable to the administrative tribunal has been corrected and such respondent or payor provides to the department of finance any requested documentation concerning such correction, including an acceptable certificate of correction.

4. If a violation that is the subject of an agreement with the department of finance pursuant to paragraph three of this subdivision is not corrected to the satisfaction of the department of buildings within the 180 day period established by subdivision a, or after the expiration of an extension period specifically granted by department of buildings for the purpose of complying if any such extension is granted, judgment in the amount of the default penalty plus accrued interest less the deposit, or judgment in the amount of the imposed penalty plus accrued interest less the deposit, as applicable, shall continue to have full legal effectiveness and enforceability and there shall be no refund of any amount paid.

c. Conditions for participation in the temporary program to resolve outstanding judgments. 1. A respondent seeking resolution of a judgment resulting from a default decision and order under the temporary program to resolve outstanding judgments pursuant to paragraph one of subdivision a of this section shall admit liability for the violation that resulted in the default decision and order. A judgment resulting from a default decision and order may not be resolved under the temporary program to resolve outstanding judgments pursuant to paragraph one of subdivision a of this section if the respondent seeking resolution of the judgment fails or refuses to admit liability; and further participation in this temporary program and payment by either a respondent or a payor encompasses and includes the respondent's admission of liability. 2. A judgment shall not be resolved under the temporary program to resolve outstanding judgments pursuant to subdivision a of this section if a respondent or payor fails to pay the amounts described in subdivision a of this section to the department of finance within the period of such temporary program.

3. A respondent who is the subject of a criminal investigation relating to a violation that is the subject of

the judgment shall not be eligible to participate in the temporary program to resolve outstanding judgments.

4. A resolution of a judgment under the temporary program to resolve outstanding judgments operated pursuant to this section shall constitute a waiver of all legal and factual defenses to liability for the judgment.

d. Program expiration. After the temporary program to resolve outstanding judgments operated pursuant to this section has concluded, any judgment that remains outstanding and has not been resolved by this program shall have full legal effectiveness and enforceability regardless of whether it could have been resolved under this program.

e. Exception. The provisions of the temporary program to resolve outstanding judgments operated pursuant to this section shall not apply where the applicable violation creates an imminent threat to public health or safety.

f. Nothing in this section creates a private right of action for any respondent.

§ 3. Violations for existing accessory signs. Notwithstanding any other provision of law, no applicable violations shall be issued on or after the effective date of this section for an accessory sign in existence on or before the effective date of this section for a period of two years commencing on the effective date of this section, unless such accessory sign creates an imminent threat to public health or safety or the commissioner of buildings determines that such sign is otherwise not eligible for the temporary waiver created under this section.

§ 4. Temporary assistance for respondents. a. Notwithstanding any other provision of law to the contrary, the commissioner of buildings shall establish a temporary program to provide assistance to respondents of judgments resulting from applicable violations resolved by payment by the respondent or other payor between June 1, 2006 and the effective date of this legislation for a 180 day period. The assistance provided by such program shall include, but not be limited to:

1. Technical assistance in acquiring the permit or permits required to install an accessory sign;

2. Review of all permit applications relevant to the installation of an accessory sign including a preliminary review of compliance with paragraph (a) of section 32-653 or paragraph (a) of section 42-542 of the zoning resolution, or any provision amending, replacing or supplementing such sections of the zoning resolution within seven days of receiving such application;

3. A waiver of 75 percent of fees in connection with permits relevant to the installation of an accessory sign; and

§ 5. Business assistance for respondents. Respondents of judgments resulting from applicable violations resolved by payment by the respondent or other payor between June 1, 2006 and the effective date of this legislation shall be directed by the department of buildings to the department of small business services for additional business assistance, financial or otherwise.

§ 6. Notification of public. The commissioner of buildings and the commissioner of finance shall publicize the temporary programs created pursuant to sections two, three and four with the goal of enhancing public awareness of, and participation in, such programs.

§ 7. Educational program. a. The department of buildings and the department of city planning, in consultation with the department of small business services, shall develop a program to educate the business community about accessory signs, related regulations and mechanisms for bringing existing non-compliant signs into compliance, including, but not limited to:

1. The issuance of a permit where an existing sign was installed without a permit;

2. The issuance of a zoning variance where an existing sign is non-compliant with relevant zoning regulations; and

3. Information about what persons are qualified to conduct work to bring signs into compliance.

b. Such program shall, at a minimum, consist of written educational materials in the top ten most commonly spoken languages in the city, provided, however, that the department of small business services may expand the number of languages to meet the needs of business communities. All written educational materials

must also be available on the websites of the department of buildings and the department of small business services. Such program shall, at a minimum, begin 90 days before the expiration of the temporary program to resolve applicable violations created pursuant to section three and continue for a minimum period of 180 days following the expiration of the program created pursuant to section three.

§ 8. Interagency Task Force. a. There shall be an interagency task force to explore issues related to accessory sign regulations in the building code and zoning resolution.

b. The task force shall consist of the following 17 members:

1. The commissioner of buildings, or their designee, who shall serve as co-director of the task force;
2. The chair of city planning, or their designee, who shall serve as co-director of the task force;
3. The chair of the landmarks preservation commission, or their designee;
4. The commissioner of small business services, or their designee;
5. The commissioner of citywide administrative services, or their designee;
6. The president of the Manhattan chamber of commerce, or their designee;
7. The president of the Staten Island chamber of commerce, or their designee;
8. The president of the Brooklyn chamber of commerce, or their designee;
9. The president of the Queens chamber of commerce, or their designee;
10. The president of the Bronx chamber of commerce, or their designee;
11. Two members appointed by the chair of the council's committee on small business, one of whom must be a small business owner and one of whom must have experience in advocacy work for the small business community;
12. Three members appointed by the speaker of the council, one of whom must represent labor unions or labor organizations that engage in work related to signs that are accessory to a use on the same zoning lot, as defined in section 12-10 of the New York city zoning resolution, one of whom must be the holder of a sign hanger license required pursuant to section 28-415.1 of the administrative code and one of whom must be a

small business owner; and

13. Two members appointed by the mayor, one of whom must be a small business owner and one of whom must have experience in advocacy work for the small business community.

c. The task force shall consult, on an ongoing basis, with businesses across the city to determine the common issues and potential solutions for businesses that have or want to install accessory signs, analyzing the effectiveness of other provisions in this local law, analyzing outreach practices and investigating whether predatory practices contribute to areas of concentrated applicable violations.

d. The task force shall meet not less than quarterly.

e. Within 12 months of the enactment of this local law, the task force must complete an evaluation of the relevance and appropriateness of current regulatory practices for accessory signs in the zoning resolution and building code and the issues faced by businesses, especially small businesses, in complying with these regulations. By such date, the task force shall also evaluate the special sign hanger qualifications established in section 28-415.4.2 of the administrative code and make recommendations as to (i) whether such qualifications should be changed and (ii) the feasibility and implications of amending such qualifications to allow certain general contractors as defined in section 28-401.3 of the administrative code to hang or attach accessory signs. The task force shall issue a report to the mayor and the council including its findings and recommendations.

f. This task force shall dissolve upon submission of its report as required by subdivision e of this section.

§ 9. The commissioner of buildings shall no later than thirty days after this legislation takes effect, provide to the council a report containing the following information for each applicable violation issued after June 1, 2006 and before the effective date of this legislation:

1. The location of each applicable violation;

2. A description of the provisions of the administrative code, zoning resolution, agency rules or combination thereof associated with the applicable violation and the associated fine; and

3. The status of each applicable violation.

§ 10. Section 28-213.1 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

§ 28-213.1 Department penalty for work without a permit. In addition to any penalties otherwise authorized by law pursuant to article 202 and the rules of the department, whenever any work for which a permit is required pursuant to this code has been performed without a permit, a penalty shall be imposed by the department as provided in this article.

Exception: No such penalty shall be imposed for work performed without a permit to hang or attach upon or on the outside of any building a sign that is accessory to a use on the same zoning lot, as defined in section 12-10 of the zoning resolution that does not exceed one hundred fifty square feet in area, measured on one face only, or exceed one thousand two hundred pounds in weight. All such outstanding penalties imposed on or after December 28, 2017 shall be waived.

§ 11. This local law takes effect 180 days after it becomes law, except that sections three, nine and ten of this local law take effect immediately after it becomes law, and the commissioner of finance and the commissioner of buildings may promulgate rules necessary to implement the programs established by sections two, four, five, six and seven of this local law prior to the effective date.

MMB/CCF/APB
LS # 4911
12/21/18 4:49 pm