



Legislation Text

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Int. No. 561-A

By Council Member James, The Speaker (Council Member Quinn) and Council Members Brewer, Dilan, Comrie, Fidler, Gentile, Gonzalez, Koppell, Mark-Viverito, Martinez, McMahon, Nelson, Palma, Recchia Jr., Weprin, Liu, Avella, Mendez, White Jr., Garodnick, Jackson, Arroyo, Felder, Gennaro, Sears, DeBlasio and The Public Advocate (Ms. Gotbaum)

A Local Law to amend the administrative code of the city of New York, in relation to an alternative enforcement program by the department of housing preservation and development for violations of the housing maintenance code and multiple dwelling law.

Be it enacted by the Council as follows:

Section 1. Legislative intent. The traditional methods by which governmental agencies enforce housing maintenance standards within New York city have not always yielded the results intended. These techniques, usually litigation or repairs made by a contractor acting on behalf of a city agency, do not always result in reaching the core of the physical problems in distressed buildings. The program set forth in this legislation is intended to alleviate the serious physical deterioration of those buildings by forcing the owner to make effective repairs or have city government do so in a more comprehensive fashion so that emergency conditions are alleviated and the underlying physical conditions related to housing code violations are addressed.

§2. Subchapter five of chapter two of title twenty-seven of the administrative code of the city of New York is amended by adding a new article ten to read as follows:

ARTICLE 10

ALTERNATIVE ENFORCEMENT PROGRAM

§27-2153. Alternative Enforcement Program. The department shall establish an alternative enforcement program and identify distressed buildings for participation in such program. Notwithstanding any other provision of law, the department shall enforce violations of this code and the multiple dwelling law pursuant to

such program, as follows:

a. The department shall identify no fewer than two hundred different distressed buildings for participation in the alternative enforcement program in each of the first two years of such program. For purposes of this subdivision the criteria used to identify distressed buildings shall be:

(i) twenty-seven or more open hazardous or immediately hazardous violations of record which were issued by the department within the two-year period prior to identification of the building for such program; and

(ii) a ratio of open hazardous and immediately hazardous violations which were issued by the department within the two-year period prior to identification of the building for such program that equal in the aggregate five or more such violations for every dwelling unit in the multiple dwelling; and

(iii) unpaid emergency repair charges, including liens, in a ratio of one hundred or more dollars for each dwelling unit in the multiple dwelling which were incurred within the two-year period prior to identification of the building for such program.

b. In the third year of such program the department shall identify no fewer than two hundred different distressed buildings for participation in the alternative enforcement program. The criteria used to identify distressed buildings in such year shall be:

(i) twenty-five or more open hazardous or immediately hazardous violations which were issued by the department within the two-year period prior to identification of the building for such program; and

(ii) a ratio of open hazardous and immediately hazardous violations which were issued by the department within the two-year period prior to such identification that equal in the aggregate five or more such violations for every dwelling unit in the multiple dwelling; and

(iii) unpaid emergency repair charges, including liens, in a ratio of one hundred or more dollars for each dwelling unit in the multiple dwelling which were incurred within the two-year period prior to such identification.

c. In the fourth year and each succeeding year of such program the department shall identify no fewer than two hundred different distressed buildings for participation in the alternative enforcement program. The criteria used to identify distressed buildings in such years shall be:

(i) twenty-five or more open hazardous or immediately hazardous violations which were issued by the department within the two-year period prior to identification of the building for such program; and

(ii) a ratio of open hazardous and immediately hazardous violations which were issued by the department within the two-year period prior to such identification that equal in the aggregate five or more such violations for every dwelling unit in the multiple dwelling; and

(iii) emergency repair charges, including liens, which were incurred within the two-year period prior to such identification in a ratio of one hundred or more dollars for each dwelling unit in the multiple dwelling, whether or not such charges have been paid or liens satisfied,

d. For the purposes of subdivisions a, b, and c of this section, those buildings having the highest aggregate ratio of open hazardous and immediately hazardous violations for every dwelling unit shall be the buildings identified first for participation in the program.

e. Notwithstanding the criteria set forth in subdivisions a, b, and c of this section, a building that is currently the subject of an in rem foreclosure action by the city, or that is the subject of a court order appointing an administrator pursuant to article 7-A of the real property actions and proceedings law, shall not be included in the alternative enforcement program.

f. Where there are fewer than two hundred buildings that meet the applicable criteria only the buildings meeting such criteria shall participate in the alternative enforcement program.

g. The department shall within thirty days of the effective date of this article provide written notification to the owner of any building identified for participation in the alternative enforcement program, the occupants of such building and the council member in whose district the building is located, that such building is subject to the requirements of such program and the requirements of this article.

h. The department shall establish a process to provide the occupants of buildings participating in the alternative enforcement program and council members within whose districts such buildings are located with information regarding the status of the building during participation in such program.

i. The owner of a building that is identified for participation in the alternative enforcement program shall be required to respond in writing to the notification provided pursuant to subdivision g of this section whether he or she intends to correct the existing violations of this code and the multiple dwelling law in such building. Such owner shall correct the existing violations of this code and the multiple dwelling law in such building no later than four months after written notification by the department pursuant to subdivision g of this section, provided, however, that the original correction date for any violation issued in such building shall not be deemed to be changed or postponed by such notification. Nothing in this subdivision shall preclude the department from determining after such identification that the provisions of subdivision k may be immediately implemented. Where such owner believes that such violations have been corrected, such owner shall request a reinspection of such violations for dismissal by the department. The process to request a reinspection and dismissal of such violations shall be prescribed in rules promulgated by the department. The department shall perform a reinspection within sixty days of receipt of a request for such reinspection by the owner and upon completion of such reinspection the department shall assess whether such owner has substantially complied with the requirements of this subdivision. The department shall issue a notice of violation for any new violation observed in the course of such reinspection. After completion of such reinspection, the department shall within twenty days provide a written determination to such owner. For the purposes of this subdivision, "substantial compliance" shall mean that at the time of reinspection by the department, all violations relating directly to providing heat and hot water and eighty percent of all other open hazardous and immediately hazardous violations have been determined by the department to have been corrected.

j. (i) Where an owner has received a written determination by the department that he or she has substantially complied with the requirements of subdivision i of this section, such owner shall pay to the

department all outstanding charges, including liens, for emergency repair work performed by the department in such building that are due, if any, and shall register the building in accordance with article two of subchapter four of chapter two of this title if the building is not validly registered. Upon such payment and valid registration, where applicable, the department shall notify the owner, the occupants in such building and the council member in whose district such building is located that the building has been discharged from participation in the alternative enforcement program, provided, however, that the department shall continue to monitor the building to ensure continued compliance with this code. Such monitoring shall be performed no less often than every three months for a period of at least a one year with special consideration given to any uncorrected immediately hazardous violations.

(ii) Except as provided in subdivision l of this section, the failure by an owner to substantially comply with the provisions of subdivision i of this section, or pay all outstanding charges, including liens, for emergency repair work, if any, or validly register the building in accordance with article two of subchapter four of chapter two of this title, where applicable, shall result in the building remaining in the alternative enforcement program, and such building shall continue to be subject to the fees and other requirements applicable to such program. Upon such failure, the department shall notify such owner that the building has not been discharged from the alternative enforcement program.

k. (i) The department shall perform a building-wide inspection of a building that is subject to the requirements of the alternative enforcement program if: (1) the owner has been notified that such building has not been discharged from the program pursuant to subdivision i of this section, or (2) the owner has failed to respond to written notification by the department in accordance with subdivision g of this section. Such building-wide inspection shall be commenced no later than thirty days after notice is given to the owner pursuant to paragraph ii of subdivision j of this section. After such building-wide inspection is completed, the department shall issue an order to such owner to correct existing violations of this code and the multiple dwelling law and any new violations written since the notification of the owner in accordance with subdivision

g of this section 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 ninety 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 building 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.

(ii) The department shall: (1) within thirty 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; (2) cause repair work to be commenced and expeditiously completed unless there are circumstances beyond the control of the department 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 for so long as there is ongoing litigation with respect to the building that prevents such work from being performed by the department; or the owner undertakes the repair work in a manner that is satisfactory to the department; or 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 (3) monitor repair work as it is performed in accordance with subdivision m of this section. For the purposes of this subdivision, “economically infeasible” shall mean a determination by the department that the cost of repairing a particular building exceeds the anticipated market value of such building after all repairs have been completed. However, any determination by the department that, for the purposes of this subdivision, repairs to a particular building would be economically infeasible for the department to undertake, shall not take into consideration the owner's conduct with respect to the building.

l. The owner or managing agent or other designated representative of a building which is the subject of

an order by the department pursuant to subdivision k of this section shall be required to participate in a course of training relating to building operation and maintenance, approved by the department, prior to discharge of the building from the alternative enforcement program.

m. The department shall reassess, at quarterly intervals, or more often as necessary, each building that has been identified for participation in the alternative enforcement program for which the department has issued an order pursuant to subdivision k of this section and in which the department or an owner has commenced repairs, to ensure progress towards completion of such repairs. At each such reassessment the department shall determine whether repairs are progressing in a timely fashion. When conducting such reassessment the department shall give special consideration to the correction of immediately hazardous violations. No later than six months from the commencement of such repair work, if the department determines that such repair work is not progressing in a timely fashion, then the department shall expeditiously complete the repairs.

n. The department may discharge from the alternative enforcement program a building for which an order has been issued pursuant to subdivision k of this section upon: (1) substantial compliance, (2) payment of fees, (3) payment to the department of all outstanding emergency repair charges, including liens, and (4) registration of such building in accordance with article two of subchapter four of chapter two of this title or such other criteria as may be established by rule which are not inconsistent with any of the provisions of this article as are applicable. Where the department determines to discharge a building from such program, it shall provide a written determination to the owner, the occupants of such building and the council member in whose district 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 k of this section. For the purposes of this subdivision, “substantial compliance” shall mean that at the time of reinspection by the department, all violations relating directly to providing heat and hot water and eighty percent of all other open hazardous and immediately hazardous violations and the related underlying conditions, have been determined by the department to have been corrected.

o. The department shall expeditiously undertake good faith efforts to obtain access to any portion of the building where access is necessary in order to perform an inspection, perform work to correct a violation of this code or the multiple dwelling law or perform work to repair a related underlying condition. If access is not obtained even after such good faith efforts, the department shall seek an order of access in accordance with the provisions of section 27-2123 of this code. 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 good faith efforts to obtain access or is seeking an order of access.

p. An owner of a building who has been notified of participation in the alternative enforcement program pursuant to subdivision g of this section shall be subject to fees for any inspection, reinspection or any other action taken by the department in relation to such building during the time period that the building is in such program. A schedule of fees for this purpose shall be prescribed in rules promulgated by the department.

q. All amounts for expenses incurred and fees imposed by the department pursuant to this article that remain unpaid by an owner, shall constitute a debt recoverable from the owner and a lien upon the building and lot, and upon the rents and other income thereof. The provisions of article eight of this subchapter shall govern the effect and enforcement of such debt and lien. The department may serve a statement of account upon an owner for such amounts pursuant to section 27-2129 of this subchapter.

r. Any failure by the department to provide notification to occupants of a building that is participating in the alternative enforcement program or council members as required by this article shall not prevent the department from taking any actions under or enforcing the provisions of this article, except that the department shall attempt to remedy any such failure immediately upon its discovery.

s. On or before February 15th of each year, the department shall prepare and submit to the council a report on the results of the alternative enforcement program. Such report shall be cumulative and shall include the following: (i) the address and owner of each building in the program; (ii) the council member in whose district the building is located; (iii) for each building, the aggregate number of open hazardous and immediately

hazardous violations at the time the alternative enforcement program was used as an enforcement mechanism for such building, the ratio of such violations and unpaid and paid emergency repair charges or liens, as is applicable, to the number of dwelling units at such time, whether or not the building has been discharged from the program and the reason for such status; and (iv) the number of buildings 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.

t. Nothing in this section shall prevent the department from enforcing the provisions of this code or the multiple dwelling law pursuant to any other provision of this code, the multiple dwelling law or any other law where the department determines that additional enforcement mechanisms are necessary to do so. Nothing in this article shall be deemed to affect the duties of an owner, a tenant or the department under any other article of this code or the multiple dwelling law.

u. Any notifications or information required by this section to be provided to an owner or occupant of a building 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.

v. No later than four years after such program begins the department shall conduct a study to evaluate the effectiveness of the alternative enforcement 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 a, b or c of this section were appropriate and if not, how they should be adjusted; and

(3) whether the monitoring undertaken by the department is appropriate and if not, what modifications should be made.

Such study shall also include recommendations as to whether the program should be continued or modified in any way and the reasons therefore. Such study shall be incorporated into a report required by

subdivision s of this section.

§3. Paragraph 1 of subdivision f of section 27-2115 of the administrative code of the city of New York is amended to read as follows:

(1) The notice of violation shall direct that when any violations of a particular class have been corrected, they [shall] may be certified at one time to the department or, in the alternative, each violation may be separately and independently certified. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent. Such certification shall be delivered to the department in person and acknowledgement of receipt therefor obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than fourteen days after the date set for correction in the case of non-hazardous and hazardous violations, and no later than five days after the date set for correction in the case of immediately hazardous violations, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement by the person who performed the work if performed by an employee or agent of the owner.

§4. Paragraph 1 of subdivision f of section 27-2115 of the administrative code of the city of New York is amended to read as follows:

(1) The notice of violation shall direct that when any violations of a particular class have been corrected, they may be certified at one time to the department or, in the alternative, each violation may be separately and independently certified. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent except that, in the alternative, such certification may be submitted in an electronic form in accordance with the rules of the department which shall provide a mechanism for authenticating the source of the electronic submission; the department shall be required to accept such electronic submissions if submitted in accordance with such rules on and after the effective date of the local law that added these provisions authorizing such electronic submissions. Such certification shall be delivered to the department in person or electronically and

acknowledgement of receipt therefor obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than fourteen days after the date set for correction in the case of non-hazardous and hazardous violations, and no later than five days after the date set for correction in the case of immediately hazardous violations, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement, which may be submitted in an electronic form in accordance with the rules of the department, by the person who performed the work if performed by an employee or agent of the owner.

§5. This local law, other than the provisions of section four, shall take effect one hundred fifty days after its enactment, provided, however, that the commissioner of housing preservation and development shall take all actions necessary to implement this local law, including the promulgation of rules and the identification of buildings, on or before such date. The provisions of section four of this local law shall take effect two years after its enactment.

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