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THE NEW YORK CITY COUNCIL
LATONIA MCKINNEY, DIRECTOR, FINANCE DIVISION

COMMITTEE ON FINANCE
HON. DANIEL DROMM, CHAIR

November 20, 2018

INT. NO. 1143:

By Council Members Dromm and Yeger (by request of the Mayor)

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to installment agreements for the payment of real property taxes, assessments and other charges

ADMINISTRATIVE CODE:

Adds §11-322.1 and amends §§11-320(g) and 11-321 of the Administrative Code

PRECONSIDERED INT.:

By Council Member Dromm

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to interest rates applicable to installment agreements for the payment of property tax arrears, and to repeal subdivision c of section 11-312 and subdivision e of subdivision 313, relating to the interest rates recommended by the banking commission for the nonpayment of water and sewer rents

ADMINISTRATIVE CODE:

Amends §11-224.1(e) and repeals §§11-312(c) and 11-313(e) of the Administrative Code

I. Introduction

On November 20, 2018, the Committee on Finance, chaired by Council Member Daniel Dromm, will hold a hearing on two pieces of legislation. The first is Proposed Intro. No. 1143, sponsored by Council Members Dromm and Yeger (by the request of the Mayor), a local law to amend the administrative code of the city of New York, in relation to installment agreements for the payment of real property taxes, assessments and other charges. The second is a Preconsidered Intro., sponsored by Council Member Dromm, a local law to amend the administrative code of the city of New York, in relation to interest rates applicable to installment agreements for the payment of property tax arrears, and to repeal subdivision c of section 11-312 and subdivision e of subdivision 313, relating to the interest rates recommended by the banking commission for the nonpayment of water and sewer rents. This is the first hearing on both pieces of legislation. Those invited to testify include representatives from the New York City Department of Finance, the Mayor’s Office of Management and Budget, and members of the public.

II. Property Tax Lien Sale

A lien is a legal claim against real property for unpaid property taxes, water, sewer or other property charges, as well as the interest due on these taxes and charges.¹ When outstanding amounts have been delinquent for a legally specified period of time, and the City has mailed notice to the property owner, the City of New York is allowed to sell the lien(s) to an authorized third

¹ See generally, NYC Administrative Code, Title 11, Chapter 3.

party, who becomes the tax lien purchaser.² The new tax lien purchaser then has the authority to collect the money that was previously owed to the City, plus other fees and interest.³

The tax lien sale was created in 1996, when the Council adopted Local Law No. 26 of 1996, which provided that “a tax lien or tax liens on a property or any component of the amount thereof may be sold by the city when [certain specified thresholds are met]....” The Council reauthorized the City’s ability to sell liens in 1997, 2001, 2006, 2007, 2011, 2015 and 2017.⁴

Currently, all unpaid real property taxes, water and sewer charges, and other City charges on property become liens on the day they become due and payable.⁵ However, they can be sold through the lien sale only when a certain dollar amount and time threshold is met.⁶ As of 2007, the sale of certain tax liens is prohibited for residential properties owned by certain senior citizen, disabled, or low-income homeowners, and water and sewer liens on any single-family Class 1 property or residential properties owned by certain senior citizen, disabled, or low-income homeowners as long as they receive one of a number of exemptions.⁷

III. Installment Agreements

Currently, when a property owner owes property tax arrears, he or she is able to enter into an installment agreement with the Department of Finance (“DOF”) in order to pay back the amount owed over time.⁸ Such an installment agreement can be entered into for a period of up to ten years

² See NYC Administrative Code § 11-319.

³ See *id.*

⁴ See Local Law 98 of 1997, Local Law 26 of 2001, Local Law 2 of 2006, Local Law 68 of 2007, Local Law 15 of 2011, Local Law 14 of 2015, and Local Law 4 of 2017.

⁵ The Report of the Tax Lien Task Force, September 2016, available at: http://www.nyc.gov/html/dep/pdf/water_sewer/report-of-the-lien-sale-task-force.pdf (last accessed November 19, 2018).

⁶ See *id.*

⁷ See *id.*

⁸ See Administrative Code §11-322.

with as little as zero dollars in down payment.⁹ If a property has a lien or liens noticed for the lien sale, execution of an installment agreement will result in the lien not being sold in the lien sale.¹⁰ However, if a property owner defaults on the installment agreement, defined as failing to make payments for a period of six months, he or she will be barred from entering into a new payment agreement for a period of five years, unless the property owner can 1) demonstrate extenuating circumstances (such as loss of income due to unemployment, death, treatment of an illness, military service, or involuntary absence), 2) cures the default by paying all missed payments plus accrued interest, or 3) makes a down payment of 20 percent or more of all applicable delinquent taxes and charges including any outstanding interest and fees on a new installment agreement.¹¹ The consequence of being barred from entering into another installment agreement for five years is that if the property owner continues to owe tax arrears and the property is noticed for a subsequent lien sale within that five years they will have no recourse to remove the property from the lien sale.

Under the existing installment agreement plan, installment amounts are calculated based on the amount owed, interest rates, and pay-off period, but without regard for income or ability to pay. Moreover, as a term of the installment agreement, property owners must agree to pay all current property taxes as they accrue and interest continues to accrue on the unpaid taxes until they are paid through the installment agreement plan at the same rate of interest as they did prior to the execution of the agreement.¹² As a result, the default rate on DOF's installment agreements is quite high. According to DOF, the default rate in Fiscal 2018 was 46.5%. The following table provides a breakdown of the total number of defaults and payments plans from Fiscal 2012 through 2018, as provided by DOF:

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See id.*

¹² *See id.*

	2012	2013	2014	2015	2016	2017	2018
Number of Payment Plans	1,512	1,489	1,183	953	929	1,168	1,172
Number of Defaults	455	438	391	297	360	624	545
Default Rate (%)	30.1%	29.4%	33.1%	31.2%	38.8%	53.4%	46.5%

IV. Late Payment Interest Rates

Currently, the Administrative Code requires that the Banking Commission, by May 13 each year, recommend to the Council the following interest rates:

1. rate to be charged for the nonpayment of property taxes for properties with an assessed value of \$250,000 or less, or \$250,000 or less per residential unit for cooperative apartments, that must be at least equal to the interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the City (“the prime rate”);¹³
2. rate to be charged for the nonpayment of property taxes for properties with an assessed value of more than \$250,000 that must be at least six points higher than the prime rate;¹⁴
3. rate to be charged for the nonpayment of water rents that must be at least six points higher than the prime rate;¹⁵ and
4. rate to be charged for the nonpayment of sewer rents that must be at least six points higher than the prime rate.¹⁶

The Council may adopt such rates by resolution upon receipt of the recommendations.¹⁷ If the Council fails to act, then a default interest rate will be in effect for the following fiscal year.¹⁸

From Fiscal 1976 to Fiscal 1990, the interest rate for non-payment of property taxes was at times as high as 25.5%, and at times as low as 15.5%. Prior to Fiscal 2005, for water and sewer charges, there was no distinction between properties with a higher or lower assessed values. Similarly, prior to Fiscal 1991, for property taxes, there was no distinction between properties with

¹³ See Administrative Code §11-224.1(e)(i).

¹⁴ See Administrative Code §11-224.1(e)(i).

¹⁵ See Administrative Code §11-312(c).

¹⁶ See Administrative Code §11-313(e).

¹⁷ See Administrative Code §11-224.1(e).

¹⁸ See Administrative Code §11-224.1(c).

a higher or lower assessed values. All property owners paid the same interest rate on either delinquent property taxes or on water/sewer charges regardless of the assessed value of their properties. The interest rate for the delinquent or non-payment of property taxes and water/sewer charges has remained steady between Fiscal 1991 and Fiscal 2016 with the rates for higher assessed property at 18% and the rates for lower assessed property at 9%. Beginning in Fiscal 2016, the Council adopted a rate lower than 9% in an attempt to ease the burden on property owners who were already struggling to pay their property taxes and to bring the interest rate charged by the City more in line with interest rates charged in other contexts.

Fiscal Year	Discount Rate	Prime Rate	Delinquent Property Tax Large Properties	Delinquent Property Tax Small Properties	Delinquent Water/Sewer Large Properties	Delinquent Water/Sewer Small Properties
Large Property Threshold = \$2,000						
1976	6.50%	6.75%	N/A	N/A	N/A	N/A
1977	6.00%	6.50%	15%	N/A	15%	N/A
1978	6.00%	8.25%	15%	N/A	15%	N/A
1979	6.00%	11.75%	18%	N/A	18%	N/A
1980	6.00%	16.50%	22%	N/A	22%	N/A
1981	6.00%	20.00%	25.5%	N/A	25.5%	N/A
1982	6.00%	16.50%	25.5%	N/A	25.5%	N/A
1983	6.00%	10.50%	25%	N/A	23%	N/A
1984	2.00%	12.50%	16.5%	N/A	16.5%	N/A
Large Property Threshold = \$2,750						
1985	2.00%	10.50%	18.5%	N/A	18.5%	N/A
1986	2.00%	8.50%	16%	N/A	16%	N/A
1987	2.00%	8.25%	15%	N/A	15%	N/A
1988	2.00%	9.00%	15.5%	N/A	15.5%	N/A
1989	2.00%	11.50%	19%	N/A	19%	N/A
1990	2.00%	10.00%	19%	N/A	19%	N/A
1990-2004 Local Law 47 of 1990 provided for delinquent payments on properties with value less than \$2,750 and further distinguished those paid by a mortgage agent.						
1991	2.00%	8.50%	18%	9%	Not Cited	N/A
1992	2.00%	6.50%	18%	9%	N/A	N/A
1993	2.00%	6.00%	18%	9%	N/A	N/A

1994	2.00%	7.25%	18%	9%	N/A	N/A
1995	2.00%	9.00%	18%	9%	N/A	N/A
1996	2.00%	8.25%	18%	9%	N/A	N/A
1997	2.00%	8.50%	18%	9%	N/A	N/A
1998	2.00%	8.50%	18%	9%	N/A	N/A
1999	2.00%	7.75%	18%	9%	N/A	N/A
2000	2.00%	9.50%	18%	9%	N/A	N/A
2001	2.00%	7.00%	18%	9%	N/A	N/A
2002	2.00%	4.25%	18%	9%	N/A	N/A
2003	2.00%	4.25%	18%	9%	N/A	N/A
2004	2.00%	4.00%	18%	9%	N/A	N/A
2005-2008 thresholds were changed from </> \$2,750 to </> \$80,000. References to DOH order and escrow agents eliminated. Water & sewer divisions determined by the new thresholds. Delinquent Water/Sewer < \$80,000						
2005	2.00%	6.00%	18%	9%	N/A	9%
2006	1.50%	8.00%	18%	9%	N/A	9%
2007	1.50%	8.25%	18%	9%	N/A	9%
2008	1.50%	5.00%	18%	9%	N/A	9%
2006 to present Large/Small Property threshold changed from </> \$80,000 to </>\$250,000						
2009	1.50%	3.25%	18%	9%	18%	9%
2010	1.50%	3.25%	18%	9%	18%	9%
2011*	1.50%	3.25%	18%	9%	18%	9%
2012	1.00%	3.25%	18%	9%	18%	9%
2013	1.00%	3.25%	18%	9%	18%	9%
2014	1.00%	3.25%	18%	9%	18%	9%
2015	1.00%	3.25%	18%	9%	18%	9%
2016	0.50%	3.25%	18%	9%	N/A	9%
2017	0.50%	4.00%	18%	6%	N/A	9%
2018	0.50%	4.75%	18%	6%	N/A	N/A
2019	0.50%	4.75%	18%	7%	N/A	N/A

Despite the requirements in the Administrative Code, in Fiscal 2018, the Banking Commission ceased recommending rates for nonpayment of water and sewer rents because the Law Department determined that these provisions were preempted by a State law which sets the nonpayment interest rate for these charges. Specifically, §1045-j(5) of the Public Authorities Law states that “Such fees, rates, rents or other charges, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien *and charge shall bear interest at the same rate as would unpaid taxes of the city.*” (emphasis added)

Moreover, all tax arrears owed to the City accrue interest at the same rate regardless of whether the property owner is making a good faith effort to address the debt by entering into an installment agreement with the City or whether the property owner is taking no steps to pay the City what it is owed.

V. Lien Sale Task Force

When the Council reauthorized the lien sale in 2015, among various consumer protections included in the law, Local Law 14 established a temporary lien sale task force (the “Task Force”) comprised of ten members (representatives of the Mayor, Mayor’s Office of Management and Budget (“OMB”), DOF, the Department of Housing Preservation and Development (“HPD”), the Department of Environmental Protection (“DEP”), four Council members, and one Council staff member) to review and evaluate the lien sale program in an effort to ensure that it is “fair, efficient and effective” and to present the findings of the Task Force in a report issued to the Mayor and the Speaker.¹⁹

¹⁹ See Local Law 14 of 2015.

The Task Force held meetings on October 1, 2015, November 23, 2015, and January 28, 2016.²⁰ At those meetings, the Task Force discussed areas in which the lien sale program could be modified to address various issues and concerns, heard presentations from outside groups and advocates, and exchanged ideas and proposals.²¹ In addition, the Administration and Council staff met on numerous occasions outside of the official Task Force meetings to review data and research questions proposed by the Task Force members.²² One of the proposals put forth by the Council during the course of the Task Force was that the Administration create income-based installment agreements to increase the likelihood that a property owner in a payment plan is able to stay current with the installment agreement based on individual circumstances.

In September 2016, the Task Force released a report with its findings and recommendations.²³ As part of its recommendations, the Task Force included four guiding principles in the report for the administration and legislative reauthorization of the tax lien sale:²⁴

1. Minimize the Number of Properties with Liens Sold in the Tax Lien Sale
2. Create Clear and User-friendly Bills and Notification
3. Better Understand the Lien Sale Impact
4. Assess Whether the Resolution of Outstanding Debt Could Be an Opportunity to Advance Other City Priorities

For purposes of today's hearing, the first guiding principle and its accompanying recommendations is the most relevant. The Task Force found that in general, properties are included in the lien sale only when they meet a certain threshold of delinquency and do not qualify for, or have in place, an exemption that would make them ineligible for the sale. Therefore, the fewer properties that have liens sold it means either 1) that delinquency rates are

²⁰ See *supra* fn. 5.

²¹ See *id.*

²² See *id.*

²³ See *id.*

²⁴ See *id.*

low or delinquent property owners pay their debts or enter into installment agreements to pay their debts in order to avoid the lien sale, demonstrating the efficacy of the Program as an enforcement tool, or 2) that more eligible properties have been granted exemptions, demonstrating the efficiency and fairness of the City's outreach and administration of its exemption programs.²⁵

As provided in the report, the number of properties with liens sold in the lien sale as compared to the number of properties noticed for sale 90 days prior to the sale has generally been on the decline since a series of reforms were implemented as part of the 2011 legislative renewal of the City's authority to hold the lien sale.²⁶ Therefore, the Task Force recommended that further efforts be made to minimize the number of properties with liens sold in the lien sale by offering improved options for payment, increased access to information about available exemptions and abatements, and assistance to property owners to help them resolve their payment problems and avoid a stressful and financially overwhelming process.²⁷

Specifically, the Task Force first recommended that installment agreements be modified to ensure that they are feasible and affordable.²⁸ Given the high default rate referenced above, the Task Force determined that reasonable adjustments to the installment agreement process that provide relief and information to struggling property owners, while still incentivizing timely payments, should be pursued.

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

Second, the Task Force recommended that interest rates be set at a fair and effective level that does not effectively prohibit property owners from overcoming their debt but also serves as a deterrent to would-be delinquent payers.²⁹

Third, the Task Force recommended that the City should provide flexibility to owners who make good faith efforts.³⁰ While the goal of the lien sale program is largely focused on resolving outstanding municipal debt, the City has historically recognized that external shocks may make it temporarily difficult for property owners to pay their debts.³¹ The Task Force advocated that the City continue and, where feasible, strengthen its commitment to providing some flexibility to owners who show a demonstrated effort to resolving their debt.³²

The two pieces of legislation being considered by the Finance Committee today are a product of the recommendations of the joint Task Force of the Council and the Administration and were guided by the principles set forth in the report.

VI. Analysis of Int. No. 1143

Section 1 of Intro. No. 1143 would establish three new installment agreements available to property owners with a combined income of \$50,000 or less who own one- to three- family or condominiums where such property is the owner's primary residence. A property owner who satisfies the requirements can enter into an installment agreement with DOF for the payment of real property taxes, assessments, or other charges subject to a lien (except for sewer rents, sewer surcharges or water rents). The execution of any installment agreement will not suspend the

²⁹ *See id.*

³⁰ *See id.*

³¹ *See id.*

³² *See id.*

accrual of applicable liens, interest or other charges against the property, but it will prevent inclusion of the property in the lien sale.

Eligible property owners would have the option to choose from the following installment agreements: 1) the senior low-income installment agreement; 2) the income-based installment agreement; and 3) the extenuating circumstances income-based installment agreement. In order for property owners to be eligible to enter into any installment agreement they would be required to demonstrate the following:

1. the applicant is a property owner;
2. the property has been the primary residence of the property owner(s) for an uninterrupted period of no less than one year immediately preceding the application submission date and continues to be the property owner(s) primary place of residence through the date in which the agreement is entered into with DOF; and
3. the combined adjusted gross income of the applicant and all additional property owners may not exceed \$50,000 for the tax year immediately before the application submission date.

In addition to meeting the above-stated criteria, property owners would also need to meet additional requirements based on the installment plan type. The senior low-income installment agreement would require that applicants be 65 years or older on the date the application is submitted. For the extenuating circumstances income-based installment agreement, DOF would be required to make a finding of extenuating circumstances (such as loss of income due to unemployment, death, treatment of an illness, military service, or involuntary absence) for an applicant to qualify for the agreement.

To apply for any installment plan, property owners would be required to submit an initial application to DOF. The initial application must include a title search identifying all mortgages and other property liens, and signatures of all property owners consenting to the application process. The cost of such title search could be rolled into the terms of the installment agreement.

A summary of each installment plan is as follows:

- Senior low-income installment agreement: Property owners would have the option to make payments for either a fixed period of time or for a non-fixed period of time, and have the ability to switch between the two at any point in time. The installment agreement would include both the payment of percentages of taxes and charges that have accrued and that will accrue after the date of the agreement. Property owners would have the option to pay an installment amount based on 0%, 25%, 50%, or 75% of the annual taxes and charges that have accrued and that will accrue, while having the option to adjust the payment percentage once within any six-month period. For the senior low-income installment agreement, property owners would be able to defer payment of a percentage of their tax arrears and prospective tax liability until the termination of the installment agreement upon expiration, death, or transfer.
- Income-based installment agreement: For the income-based installment agreement, property owners would have the ability to make payments on those taxes and charges that have accrued, and that will accrue over the next fiscal year. The annual payment amount would be based on a percentage of the combined income of all property owners for the tax year immediately preceding the initial application of the installment agreement. Property owners would have the option to select a payment percentage of either 2%, 4%, 6%, or 8% of the combined income, and the installment payment will be determined by dividing the annual payment amount by 12 or four (depending on whether the property owner selects a monthly or quarterly payment schedule).

- Extenuating circumstances income-based installment agreement: The extenuating circumstances income-based installment agreement would allow property owners to pay the percentage of taxes and charges that have accrued on the property during the agreement, and the percentage of taxes and charges that will accrue after the agreement becomes effective. Similar to the income-based installment agreement, the annual payment amount required on the installment agreement will be based on a percentage of the combined income of all property owners for the tax year immediately preceding the initial application of the installment agreement. Property owners will have the option to select a payment percentage of either 2%, 4%, 6%, or 8% of the combined income, and the installment payment will be determined by dividing the annual payment amount by 12 or four (depending on whether the property owner selects a monthly or quarterly payment schedule). The installment agreement would be for a one-year term, but may be extended annually under extenuating circumstances, if determined by DOF. Property owners would also have the option to adjust the payment percentage at any point during the installment agreement but may only do so once during any six-month period.

These installment agreements may be terminated based on the following reasons:

1. the property subject of the installment agreement is no longer the primary residence of the applicant;
2. the fixed term of the installment agreement expired;
3. the applicant is deceased;
4. the applicant opts out of an installment agreement without a fixed term agreement;
5. the applicant failed to timely file renewal application as required;
6. the applicant is in default and has not cured such default as required; or
7. the applicant defaulted on the installment agreement and has cured such default by entering into a new installment agreement.

If an installment agreement is terminated, all taxes and charges that accrued before it being terminated would need to be paid by the property owner. If the property owner fails to pay such taxes and charges within six months of the termination, the tax lien or tax liens on such property may be sold.

In order to cure a defect a property owner could do so by either bringing all outstanding installment payments and charges, due at the time of the default, to a current status prior to the tax lien sale; entering into a new installment agreement with a down payment of 20 percent, or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges subject to the lien, prior to the date of the tax lien sale; or entering into a new installment agreement if DOF made a finding of extenuating circumstances.

To renew any installment agreement, the property owner would be required to submit a renewal application one year from the effective date of the underlying installment agreement, and submit a renewal application each year thereafter. In the renewal application, property owners would need to demonstrate that the property continues to be the primary residence of the property owners and has continued to be the primary residence since the date that the initial installment agreement was entered into, and that the combined income of all property owners do not exceed \$50,000 for the income tax year immediately preceding the date of the renewal of the installment agreement (except for property owners seeking to renew the income-based installment agreement who would not be required to submit income information in the renewal application). If a property owner defaults on an installment agreement and is unable cure the default prior to the date of the tax lien sale, the applicant will not be eligible to enter into an

installment agreement for the subject property for five years, unless a finding of extenuating circumstances is made by DOF.

Section 2 of Intro. No. 1143 would update a reporting requirement to the Council to include these types of installment agreements.

Section 3 of Intro. No. 1143 would update a notice requirement for the lien sale to include these types of installment agreements.

Section 4 of Intro. No. 1143 would provide that the local law takes effect on January 1, 2019 and remains in effect until December 31, 2020 when this local law is deemed repealed, except that the commissioner of finance may take any measures necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

VII. Analysis of Preconsidered Intro.

Section 1 of the Preconsidered Intro. would specify that for real property with an assessed value of \$250,000 or less that is subject to an executed installment agreement that is not default, the Banking Commission must recommend an interest rate for the nonpayment of property taxes that is at least equal to the most recently determined federal short-term rate. The Council would then be authorized to adopt a rate applicable to those properties.

Section 2 of the Preconsidered Intro. would repeal subdivision c of section 11-312 of the administrative code of the city of New York which requires the Banking Commission to submit a recommendation to the Council, and authorizes the Council to adopt, an interest rate for the nonpayment of water charges.

Section 3 of the Preconsidered Intro. would repeal subdivision e of section 11-313 of the administrative code of the city of New York which requires the Banking Commission to submit a

recommendation to the Council, and authorizes the Council to adopt, an interest rate for the nonpayment of sewer charges.

Section 4 of the Preconsidered Intro. would provide that the local law takes effect on the same date as a local law amending the administrative code of the city of New York relating to installment agreements for the payment of real property taxes, assessments and other charges, as proposed in introduction number 1143 for the year 2018, takes effect.

Int. No. 1143

By Council Member Dromm (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to installment agreements for the payment of real property taxes, assessments and other charges

Be it enacted by the Council as follows:

Section 1. Chapter 3 of title 11 of the administrative code of the city of New York is amended by adding a new section 11-322.1 to read as follows:

§ 11-322.1 Hardship installment agreements. a. Definitions. For purposes of this section, the following terms have the following meanings:

Applicant. The term “applicant” means a property owner who files an application for an installment agreement under this section. Such term includes a property owner who has entered into an installment agreement after filing such an application.

Default. The term “default” means that an installment payment required under the installment agreement entered into under this section remains unpaid in whole or in part for six months from the date payment is required to be made, or any other tax or charge that becomes due on the property during the term of such agreement remains unpaid in whole or in part for six months.

Department. The term “department” means the department of finance.

Dwelling unit. The term “dwelling unit” means a unit in a condominium used primarily for residential purposes.

Fair market value. The term “fair market value” means the fair market value of property as determined by the department or, for a dwelling unit in a condominium, either the fair market

value as determined by the department or the fair market value as determined by an appraisal obtained by the applicant pursuant to paragraph 4 of subdivision g of this section, provided that such appraisal shall be subject to review, and may be rejected, by the department.

Income. The term “income” means the adjusted gross income for federal income tax purposes as reported on an applicant’s federal or state income tax return for the applicable income tax year, subject to any subsequent amendments or revisions; provided that if no such return was filed for the applicable income tax year, “income” means the adjusted gross income that would have been so reported if such a return had been filed.

Income tax year. The term “income tax year” means the most recent calendar year or fiscal year for which an applicant filed a federal or state income tax return.

Net equity. The term “net equity” means the fair market value of property minus any liabilities outstanding against such property, such as mortgages, outstanding property taxes, water and sewer charges, and any other liens on such property.

Property. The term “property” means real property classified as class one pursuant to section 1802 of the real property tax law or a dwelling unit in a condominium.

Property owner. The term “property owner” means an owner of real property classified as class one pursuant to section 1802 of the real property tax law or of a dwelling unit in a condominium, or other eligible person, as defined in subdivision (i) of section 40-03 of title 19 of the rules of the city of New York, acting on behalf of such owner.

b. A property owner who satisfies the requirements described in subdivision c and d, e or f of this section may enter into an agreement with the department pursuant to this section for the

payment in installments of real property taxes, assessments or other charges that are made a lien subject to the provisions of this chapter, except for sewer rents, sewer surcharges or water rents. The entry into an installment agreement pursuant to this section shall not suspend the accrual of interest charged against the property pursuant to section 11-306. A property owner shall not be party to more than one installment agreement with the department at any one time.

c. Eligibility requirements for an installment agreement under this section. To be eligible to enter into an installment agreement pursuant to this section, an applicant must demonstrate that the following requirements are met:

1. The applicant is a property owner.

2. The property shall have been the primary residence of the applicant for an uninterrupted period of not less than one year immediately preceding the date the application for the installment agreement is submitted and continues to be the primary residence of the applicant through the date the installment agreement is entered into. Hospitalization or a temporary stay in a nursing home or rehabilitation facility for a period of not more than two years shall not be considered a change in primary residence.

3. The combined income of the applicant and of all the additional property owners may not exceed \$50,000 for the income tax year immediately preceding the date of the application for the installment agreement.

d. Eligibility requirement for senior low-income installment agreement. In addition to the requirements set forth in subdivision c of this section, to be eligible to enter into a senior low-

income installment agreement pursuant to subdivision l, an applicant must be 65 years of age or older when the application is submitted.

e. Eligibility requirement for income-based installment agreement. To be eligible to enter into an income-based installment agreement pursuant to subdivision m, an applicant must satisfy the requirements set forth in subdivision c of this section.

f. Eligibility requirements for extenuating circumstances income-based installment agreement. In addition to the requirements set forth in subdivision c of this section, for an applicant to be eligible to enter into an extenuating circumstances income-based installment agreement pursuant to subdivision n of this section, the department must make a finding of extenuating circumstances pursuant to the process described in paragraph (4) of subdivision (e) of section 40-03 of title 19 of the rules of the city of New York.

g. Initial application procedure. 1. An initial application for an installment agreement under this section shall include:

(a) a title search identifying all mortgages and other liens on the property; and

(b) the signature of all property owners, regardless of any such owner's residence in the property, consenting to the application for an installment agreement.

2. A complete application must be submitted to, and approved by, the department.

3. An applicant may select a monthly or quarterly payment schedule and may also select the amount that is required to be paid under the applicable installment agreement pursuant to the options available pursuant to subdivision l, m or n.

4. An applicant who is the property owner of a dwelling unit in a condominium may submit an appraisal obtained by such applicant of the fair market value of such dwelling unit provided that:

(a) the valuation date of such appraisal is a date within, and such appraisal shall have been prepared no more than, twelve months prior to submission of an application;

(b) the cost of such appraisal shall be borne by such applicant; and

(c) the cost of such appraisal may not be included in the amount subject to the installment agreement.

h. Renewal. 1. An installment agreement under this section shall terminate unless an applicant files a renewal application each year.

2. To renew an installment agreement under this section, an applicant must submit a renewal application to the department on or before one year from the date such installment agreement was entered into and each year thereafter for which renewal is sought. To be eligible to renew such agreement, an applicant must demonstrate that:

(a) the property continues to be the primary residence of such applicant and such residence has been uninterrupted since the date the initial installment agreement was entered into; and

(b) the combined income of such applicant and of all the additional property owners does not exceed \$50,000 for the income tax year immediately preceding the date of the renewal of such installment agreement, except that an applicant for the renewal of an income-based

installment agreement pursuant to subdivision m of this section is not required to submit income information.

i. Effects of installment agreement on tax lien and tax lien sale. 1. The execution of an installment agreement pursuant to this section shall not suspend the accrual of liens, interest and other charges against the property, which continue to accrue in accordance with applicable law.

2. A property for which an application has been submitted that contains proof of income and, for a senior low-income installment agreement described in subdivision l, proof of age, and that is signed, but is otherwise incomplete, shall be withdrawn from the next tax lien sale. Such property, however, shall be included in the tax lien sale subsequent to the next tax lien sale if a completed application is not submitted within 45 days from the date of the additional information request notice sent to the applicant by the department or if the completed application is denied.

j. Amount subject to installment agreement. 1. Each approved installment agreement shall set forth terms of repayment, including (i) the frequency of payments, (ii) the percentage of the taxes and charges that forms the basis of the required payment for the senior low-income installment agreement described in subdivision l, or the percentage of the combined income of the property owners for the income tax year immediately preceding the initial application that forms the basis of the required payment for the installment agreement for the income-based and the extenuating circumstances income-based installment agreements described in subdivision m and n respectively, (iii) the payment schedule and (iv) the payment amount.

2. A lien sold in a tax lien sale before the date of an application for an installment agreement is not eligible to be included in an installment agreement under this section.

3. The applicant may choose to include the cost of the title search required to be submitted with an application pursuant to subparagraph (a) of paragraph 1 of subdivision g of this section in the amount subject to the installment agreement. If an applicant chooses to include such cost, the applicant may either select a title company to conduct the required search and present documentation to the department of the cost, or direct the department to use a title company selected by the department. The department shall pay the cost of the title search and be reimbursed by the applicant through the addition of the cost to the amount subject to the installment agreement. The applicant shall make such reimbursement in the first year of the installment agreement, in monthly or quarterly payments, consistent with the payment frequency selected for the installment agreement. The cost of the title search shall bear interest at the same rate as the interest on unpaid real property tax as provided in section 11-224.1 of the code.

4. (a) Any time the amount of the liens on a property subject to an installment agreement under this section exceeds 25 percent of the net equity in such property, the applicant shall pay all taxes and charges imposed against the property that exceed 25 percent of the net equity in the property as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement.

(b) Notwithstanding subparagraph (a) of this paragraph and provided that section 581 of the real property tax law is in effect in the same form as such section was in effect as of the effective date of the local law that added this section, for property that is a dwelling unit in a condominium subject to an installment agreement under this section and for which an appraisal has not been obtained pursuant to paragraph 4 of subdivision g of this section, any time the

amount of the liens subject to such agreement exceeds 50 percent of the net equity in such property, the applicant shall pay all taxes and charges imposed against such property that exceed 50 percent of the net equity in such property as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement. For property that is a dwelling unit in a condominium and for which an appraisal has been obtained pursuant to paragraph 4 of subdivision g of this section, any time the amount of the liens subject to an installment agreement under this section exceeds the higher of (i) 50 percent of the net equity in such property based on the fair market value determined by the department; or (ii) 25 percent of the net equity in such property based on the fair market value determined by the appraisal obtained by the applicant, the applicant shall pay all taxes and charges imposed against such property that exceed the higher of the amounts described by clause (i) and (ii) of this subparagraph as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement.

(c) The department shall provide each applicant with a written projection at the time the installment agreement is entered into as to when the 25 or 50 percent threshold, as determined pursuant to subparagraphs (a) and (b) of this paragraph, will be exceeded. The department shall also notify each property owner in writing when the amount of the liens exceeds such threshold. Failure by the department to provide an applicant with such projection or to notify a property owner when the amount of the liens exceeds the applicable threshold, however, shall not affect the validity of the installment agreement that has been entered into, nor shall any claim arise or

exist against the commissioner of finance or any officer or agency of the city by reason of such failure to provide such projection or such notification.

5. If at any time the department determines that the fair market value of a property subject to an installment agreement under this section has increased, an applicant may request that the net equity in such property be recalculated and the net equity amount included in such installment agreement be adjusted to reflect the recalculated net equity in such property.

6. If the combined income of all of the property owners exceeds \$50,000 for the income tax year immediately preceding the date of making a renewal application pursuant to subdivision h of this section, the applicant shall pay all taxes and charges imposed against the property after the date of such renewal application as such taxes and charges become due, in addition to the payment amount set forth in such installment agreement.

k. Termination of installment agreement. 1. An installment agreement shall be terminated when any of the following occurs:

(a) The property whose liens are the subject of such installment agreement is no longer the primary residence of the applicant.

(b) The fixed term of the installment agreement expires. An applicant whose installment agreement has been terminated because of such expiration may apply to enter into an installment agreement pursuant to section 11-322 or to this section.

(c) The applicant is deceased.

(d) The applicant opts out of an installment agreement without a fixed term as described in paragraph 1 of subdivision l of this section. An applicant who opts out of such agreement may apply to enter into an installment agreement pursuant to section 11-322 or to this section.

(e) The applicant does not file a timely renewal application as required by subdivision h of this section.

(f) The applicant is in default and has not cured such default as provided in subparagraph (a) of paragraph 3 of this subdivision prior to the next tax lien sale.

(g) The applicant has defaulted on the installment agreement and has cured such default by entering into a new installment agreement pursuant to clause (2) or (3) of subparagraph (a) of paragraph 3 of this subdivision.

2. If an installment agreement is terminated, all taxes and charges that accrued before such termination are required to be paid. If such taxes and charges are not paid within six months of such termination, the tax lien or tax liens on such property may be sold. Notwithstanding the preceding sentence, if an agreement is terminated pursuant to subparagraph (c) of paragraph 1 of this subdivision, a surviving spouse has one year from the death of the applicant to pay all taxes and charges on such property before the tax lien or tax liens on such property may be sold. If such surviving spouse is a property owner, he or she may enter into a separate installment agreement pursuant to section 11-322 or subdivision l, m or n of this section, as long as he or she meets the eligibility requirements for the respective installment agreement.

3. Cure of default. (a) An applicant may cure a default by:

(1) bringing all installment payments and all current charges, including but not limited to any interest and fees, that are outstanding at the time of the default to a current status prior to the date of the tax lien sale;

(2) entering into a new installment agreement with a down payment of 20 percent, or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of such sale; or

(3) entering into a new installment agreement under this section if the department has made a finding of extenuating circumstances pursuant to the process described in paragraph (4) of subdivision (e) of section 40-03 of title 19 of the rules of the city of New York.

(b) If a default is not cured prior to the date of the tax lien sale, such applicant shall not be eligible to enter into an installment agreement for the subject property for five years, unless the department has made a finding of extenuating circumstances pursuant to the process described in paragraph (4) of subdivision (e) of section 40-03 of title 19 of the rules of the city of New York.

(c) Notwithstanding the prohibition in subparagraph (b) of this paragraph against entering into an installment agreement for the subject property for five years, an applicant who has defaulted on an installment agreement and whose lien has been sold and, after the sale of the lien, whose property on which the lien was sold is subject to another tax lien that is eligible to be sold, may apply to enter into another installment agreement with respect to such other lien before the end of such five-year period, provided that such applicant makes a down payment of 20

percent, or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of the tax lien sale. An applicant shall not be eligible to enter an installment agreement with a down payment under this subparagraph more than once for the subject property.

1. Senior low-income installment agreement. 1. At the option of the applicant, a senior low-income installment agreement may provide for payments for a fixed period of time or for payments without a fixed period of time. If the applicant selects an installment agreement with a fixed time period, the applicant may select the term of the agreement. The applicant may switch from an installment agreement without a fixed time period to an installment agreement with a fixed time period, or from an installment agreement with a fixed time period to an installment agreement without a fixed time period, at any point.

2. A senior low-income installment agreement shall provide for the payment of both a percentage of taxes and charges that have accrued and a percentage of taxes and charges that will accrue after the date of the installment agreement. The applicant may elect to pay an installment amount based on zero percent, 25 percent, 50 percent or 75 percent of the annual taxes and charges that have accrued and that will accrue. If the applicant selects an agreement with a fixed time period, the required payment shall be based on the percentage selected and the term selected. If the applicant selects an agreement without a fixed time period, the required payment shall be based on the percentage selected for prospective taxes and charges and a partial or full payment of the percentage of taxes and charges that have accrued. The applicant may adjust the

payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

m. Income-based installment agreement. 1. At the option of the applicant, an income-based installment agreement pursuant to this subdivision may provide for the payment of (i) only taxes and charges that have accrued or (ii) taxes and charges that have accrued and taxes and charges that will accrue over the next fiscal year. If option (i) is selected, the applicant shall pay all taxes and charges that become due on the property after the installment agreement is entered into in addition to the payment schedule provided in the installment agreement. If option (ii) is selected, the applicant shall pay all taxes and charges that will accrue on the property after the installment agreement has been in effect for one year in addition to the payment schedule provided in the installment agreement.

2. The annual payment amount required pursuant to an installment agreement described by this subdivision shall be based on a percentage of the combined income of all of the property owners for the income tax year immediately preceding the initial application for such installment agreement. The applicant may select a percentage of two percent, four percent, six percent or eight percent of such combined income. The installment payment shall be calculated by dividing the annual payment amount by 12 or four, depending on whether a monthly or quarterly payment schedule is selected. The term of the agreement shall be calculated by dividing the taxes and charges included in the agreement pursuant to paragraph 1 of this subdivision by the installment payment determined by the calculation described in this paragraph.

n. Extenuating circumstances income-based installment agreement. 1. An extenuating circumstances income-based installment agreement shall provide for the payment, during the period of such agreement, of a percentage of taxes and charges that have accrued on the property and taxes and charges that accrue after the date of the installment agreement.

2. The annual payment amount required pursuant to an installment agreement described by this subdivision shall be based on a percentage of the combined income of all of the property owners for the income tax year immediately preceding the initial application for an installment agreement. The applicant may select a percentage of two percent, four percent, six percent, or eight percent of such combined income. Such installment payment shall be calculated by dividing the annual payment amount by 12 or four, depending on whether a monthly or quarterly payment schedule is selected. The installment agreement shall be for a term of one year but may be extended on a yearly basis if the department determines that the extenuating circumstances continue.

3. An applicant may adjust the payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

o. After an applicant has entered into an installment agreement with the department pursuant to this section, the department shall record the entry of such agreement on the automated city register information access system. Failure by the department to record such agreement, however, shall in no manner affect the validity of such agreement, nor shall any claim arise or exist against the commissioner of finance or any officer or agency of the city by reason of such failure to record.

p. All installment agreements executed on or after January 1, 2019 pursuant to this section shall include:

1. a conspicuous statement that if payments required from an applicant pursuant to such an agreement are not made for a period of six months, such applicant shall be in default of such agreement, and the tax lien or tax liens on the subject property may be sold, provided, however, that such default may be cured upon such applicant's bringing all installment payments and all current charges that are outstanding at the time of the default to a current status, which shall include, but not be limited to, any outstanding interest and fees, prior to the date of the tax lien sale;

2. a notification that if such default is not cured prior to the date of the tax lien sale, such property owner shall not be eligible to enter into an installment agreement for the subject property for five years, unless a finding of extenuating circumstances has been made by the department pursuant to the process described in paragraph (4) of subdivision (e) of section 40-03 of title 19 of the rules of the city of New York;

3. the definition of extenuating circumstances pursuant to such paragraph; and

4. a statement describing the conditions under which the property owner may be eligible, after default, to enter into another installment agreement in accordance with paragraph 3 of subdivision k of this section.

§ 2. Subdivision g of section 11-320 of the administrative code of the city of New York, as added by local law number 15 for the year 2011, is amended to read as follows:

g. No later than one hundred twenty days after the tax lien sale, the commissioner of finance shall submit to the council a list of all properties, identified by block and lot, noticed for sale pursuant to subdivision b of this section. Such list shall also include a description of the disposition of such properties that shall include, but not be limited to, whether an owner entered into a payment plan with the city pursuant to section 11-322 or 11-322.1 of this chapter, whether an owner satisfied the tax lien or liens, whether ownership of the property was transferred, provided that such information is available to the city, or whether the property was distressed, as defined in subdivision four of section 11-401 of this title, or removed from the sale pursuant to the discretion of the commissioner of the department of housing preservation and development.

§ 3. Section 11-321 of the administrative code of the city of New York, as amended by local law number 26 for the year 1996, is amended to read as follows:

§ 11-321 Continuation of sale; notice required. A sale of a tax lien or tax liens may be continued from time to time, if necessary, until all the tax liens on the property so advertised and noticed shall be sold unless such sale is canceled or postponed in accordance with section 11-322 or 11-322.1 of this chapter. If a sale of a tax lien or tax liens is continued, the commissioner of finance, or his or her designee, shall give such notice as is practicable of such continuation.

§ 4. This local law takes effect on January 1, 2019 and remains in effect until December 31, 2020 when this local law is deemed repealed, except that the commissioner of finance may take any measures necessary for the implementation of this local law, including the promulgation of rules, before such effective date.

Preconsidered Int. No.

By Council Member Dromm

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to interest rates applicable to installment agreements for the payment of property tax arrears, and to repeal subdivision c of section 11-312 and subdivision e of subdivision 313, relating to the interest rates recommended by the banking commission for the nonpayment of water and sewer rents

Be it enacted by the Council as follows:

Section 1. Subdivision e of section 11-224.1 of the administrative code of the city of New York, as amended by local law number 30 for the year 2015, is amended to read as follows:

(e) Council adopted rates. By May thirteenth of each year, the banking commission shall send a written recommendation to the council of a proposed interest rate to be charged for nonpayment of taxes on real property.

(i) The commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and:

[(i)] (1) for real property with an assessed value of two hundred fifty thousand dollars or less that is not subject to an executed installment agreement or that is in default of an executed installment agreement pursuant to section 11-322 or 11-322.1, shall propose a rate at least equal to such prevailing prime rate;

[(ii)] (2) for real property with an assessed value of over two hundred fifty thousand dollars, shall propose a rate of at least six percent per annum greater than such prevailing prime rate.

(ii) For real property with an assessed value of two hundred fifty thousand dollars or less that is subject to an executed installment agreement that is not default pursuant to section 11-322 or 11-322.1, the commission shall consider the most recently determined federal short-term rate, as determined pursuant to sections 1247(d) and 6621(b) of the internal revenue code, and shall propose a rate at least equal to such rate.

The council may by resolution adopt interest rates to be applicable to the aforementioned properties and may specify in such resolution the date that such rates will take effect.

§2. Subdivision c of section 11-312 of the administrative code of the city of New York is REPEALED.

§3. Subdivision e of section 11-313 of the administrative code of the city of New York is REPEALED.

§4. This local law takes effect on the same date as a local law amending the administrative code of the city of New York relating to installment agreements for the payment of real property taxes, assessments and other charges, as proposed in introduction number 1143 for the year 2018, takes effect.

RKC
LS #6720, 8698
11/8/18 2:48 p.m.