



Legislation Text

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Int. No. 2411

By Council Member Cornegy (by request of the Mayor)

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to enforcement of provisions of the zoning resolution related to eligibility requirements with respect to the development, acquisition, rehabilitation, preservation, sale or rental of affordable housing administered by the department of housing preservation and development

Be it enacted by the Council as follows:

Section 1. Paragraphs (l) and (m) of subdivision 6 of section 1802 of the New York city charter, as amended by a vote of the electors on November 7, 1989, are amended, and a new paragraph (n) is added, to read as follows:

(l) exercise such other powers and duties as may be prescribed by law in relation to the management, demolition or sealing or other treatment of residential real property of the city; [and]

(m) employ professional, community and other personnel to manage residential real property of the city; and

(n) enforce the provisions of the zoning resolution related to eligibility requirements with respect to the development, acquisition, rehabilitation, preservation, sale or rental of affordable housing administered by the department pursuant to such resolution, including, but not limited to, sections 23-154 and 23-90 thereof and related provisions of law and rules promulgated pursuant thereto.

§ 2. Title 26 of the administrative code of the city of New York is amended by adding a new chapter thirty to read as follows:

CHAPTER 30

ENFORCEMENT OF ZONING RESOLUTION PROVISIONS RELATED TO ELIGIBILITY

REQUIREMENTS REGARDING THE DEVELOPMENT, ACQUISITION, REHABILITATION,
PRESERVATION, SALE OR RENTAL OF AFFORDABLE HOUSING ADMINISTERED BY THE
DEPARTMENT

§ 26-3001 Definitions. For the purposes of this chapter, the following terms have the following meanings:

Affordable housing unit. The term “affordable housing unit” means a dwelling unit subject to affordability restrictions by the zoning resolution.

Applicable affordable housing provisions. The term “applicable affordable housing provisions” means provisions of the zoning resolution related to eligibility requirements with respect to the development, acquisition, rehabilitation, preservation, sale or rental of affordable housing administered by the department pursuant to such resolution, including, but not limited to, those found in sections 23-154 and 23-90 of the zoning resolution, and related provisions of law and rules promulgated pursuant thereto.

Authorized monitor. The term “authorized monitor” means a person, partnership, corporation or other legal entity appointed by the department pursuant to contract to ensure that unlawful conduct under this chapter has been corrected. The department shall, through standards imposed by means of procurement, ensure that such person, partnership, corporation or other legal entity is subject to appropriate eligibility criteria, training requirements and grounds for revoking monitoring authority.

Building. The term “building” has the meaning set forth in section 28-101.5.

Commissioner. The term “commissioner” means the commissioner of the department of housing preservation and development or the commissioner’s designee.

Department. The term “department” or “HPD” means the department of housing preservation and development or its successor agency or designee.

Owner. The term “owner” means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, the premises, or their successors.

Premises. The term “premises” has the meaning set forth in section 28-101.5.

Qualifying household. The term “qualifying household” has the meaning set forth in section 23-911 of the zoning resolution.

Regulatory agreement. The term “regulatory agreement” has the meaning set forth in section 23-911 of the zoning resolution.

Zoning resolution. The term “zoning resolution” means the New York city zoning resolution.

§ 26-3002 General. The department shall enforce compliance with applicable affordable housing provisions, as provided in this chapter and the rules of the department.

§ 26-3003 Methods of enforcement. The commissioner may use any of the methods set forth in this chapter to enforce compliance with applicable affordable housing provisions. Those methods include, but are not limited to:

a. Proceedings before an administrative tribunal within the jurisdiction of the office of administrative trials and hearings for the recovery of civil penalties for violations.

b. Civil judicial proceedings for the recovery of civil penalties or injunctive relief or both for violations, and for the enforcement of orders issued by the commissioner.

c. Investigatory powers as set forth in this chapter.

d. Appointment of an authorized monitor.

e. Other special remedies as set forth in this chapter, the zoning resolution, or other related provisions of law and rules.

§ 26-3004 Unlawful conduct. It shall be unlawful to erect, construct, alter, extend, occupy, use, operate, rent, or sell any building or premises subject to applicable affordable housing provisions, or to cause or permit same to be done, in conflict with or in violation of any such provisions. It shall be unlawful to fail to comply with an order of the commissioner or to violate any order of the commissioner issued pursuant to this chapter, or to cause or permit same to be done.

§ 26-3005 Enforcement. Officers and employees of the department and of other city agencies designated by the commissioner shall have the power to issue notices of violation, administrative summonses and appearance tickets for violations of applicable affordable housing provisions.

§ 26-3006 Classification of violations. The commissioner shall promulgate rules classifying all violations of applicable affordable housing provisions as major violations or minor violations. Such classification of violations shall be based upon such factors as the effect of the violation on neighborhood economic diversity, the public interest or the necessity for economic disincentives.

§ 26-3007 Rules. The department shall promulgate rules necessary to effectuate applicable affordable housing provisions. Such rules shall include, but not be limited to, provisions that prohibit the following, which shall constitute violations of section 23-154 or 23-90 of the zoning resolution:

- a. Occupancy of an affordable housing unit by other than a qualifying household.
- b. Unlawful configuration, distribution, sizing or use of an affordable housing unit.
- c. Charging unlawful monthly rent or fees for an affordable housing unit.
- d. Filing a certification of correction of a violation or a statement that an unlawful use or condition has been corrected or did not exist that contains material misstatements of fact.
- e. Failing to comply with a commissioner's order issued pursuant to this chapter.
- f. Charging an unlawful sales price or fees for an affordable housing unit.
- g. Failing to comply with primary residence requirements.
- h. Unlawful restriction of access to the premises.

§ 26-3008 Civil penalties. Except as otherwise provided by law, violations of applicable affordable housing provisions shall be punishable by civil penalties in accordance with penalty schedules established by rules promulgated by the department and such schedules shall be within the ranges set forth below:

- a. For major violations, a civil penalty of not more than \$25,000 may be imposed for each

violation. In addition to such civil penalty, a separate additional penalty may be imposed of not more than \$1,000 for each day that the violation is not corrected.

b. For minor violations, a civil penalty of not more than \$10,000 may be imposed for each violation. In addition to such civil penalty, a separate additional penalty may be imposed of not more than \$250 for each 30-day period that the violation is not corrected.

c. Notwithstanding the assessment of daily penalties, each day that a violation continues shall be a separate and distinct offense.

§ 26-3009 Enforcement of civil penalty. The owner, architect, builder, contractor, engineer, or any other person who maintains any building, or who erects, constructs, alters, extends, occupies, uses, operates, rents, or sells any building or affordable housing unit subject to applicable affordable housing provisions, or assists or causes same to be done, in conflict with or in violation of any of such provisions, or who fails to comply with an order of the commissioner or violates any order of the commissioner issued pursuant to this chapter, shall be liable for a civil penalty that may be recovered in a proceeding before an administrative tribunal within the jurisdiction of the office of administrative trials and hearings or before a court of competent jurisdiction.

§ 26-3010 Correction order. Each notice of violation, administrative summons, or appearance ticket issued pursuant to this chapter shall contain an order of the commissioner directing the respondent to correct the condition constituting the violation and to file with the department electronically, or in such other manner as the department may authorize by rule, a certification that the condition has been corrected. The time for correction of such violation may be as specified by the department in rules.

§ 26-3011 Dismissal. In any proceeding pursuant to this chapter, if the administrative tribunal determines that the commissioner has failed to prove the violation charged, the order requiring the respondent to correct the condition constituting the violation shall be deemed dismissed.

§ 26-3012 Failure to comply. Failure to comply with an order of the commissioner issued

pursuant to this chapter to correct and to certify correction of a violation within the applicable time period shall be a violation of this chapter for which a civil penalty of not more than \$10,000 may be imposed in addition to the penalties that may be or have been imposed for the violation referred to in such order. Upon application, for good cause, the commissioner may extend the time for filing the certification of correction of a violation.

§ 26-3013 Material misstatements of fact. For the purposes of this chapter, if there is a finding that a certification of correction filed pursuant to section 26-3010 or a statement filed pursuant to subdivision c of section 26-3016 contained material misstatements of fact relating to the correction or existence of a violation, such certification of correction or statement shall be deemed null and void and the penalties set forth in this chapter for the violation may be imposed as if such false certification or statement had not been filed with and accepted by the department. It shall be an affirmative defense that the respondent neither knew nor should have known that such material misstatements of fact in such certification of correction or statement were false.

§ 26-3014 Orders. a. The commissioner may issue an order to the persons responsible for any unlawful use or condition relating to applicable affordable housing provisions in any premises, directing such person to correct the unlawful use or condition. Each such order shall have the commissioner's signature affixed thereto; provided, however, that the commissioner may authorize any subordinate to affix such signature, including an electronic signature.

b. All orders issued by the commissioner shall contain a description of the building or subject matter affected, and shall be designated by address, where applicable. All such orders shall be served by regular mail or, upon consent, electronically. Such orders may be served by any officer or employee of the department, or of any agency authorized by the department. Failure to comply with a commissioner's order within the time stated in the order shall be a violation of this chapter punishable by a civil penalty of not more than \$10,000. Proof of compliance with a commissioner's order shall consist of certification as prescribed by the rules of the department.

§ 26-3015 Power to hold investigatory hearings; subpoena power; production of documents. The department may investigate any matter within its jurisdiction pursuant to this chapter and shall have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation.

§ 26-3016 Commissioner's request for corrective action. a. As an alternative to the issuance of an order or notice of violation, administrative summons or appearance ticket the commissioner may issue a request for corrective action to any person responsible for any claimed violation of applicable affordable housing provisions. Each request for corrective action shall have the commissioner's signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature, including an electronic signature.

b. The request for corrective action shall contain a description of the building, premises, affordable housing unit or subject matter affected, which shall be designated by address, where applicable, and shall be sent by regular mail or, upon consent, electronically to the owner, lessee, person in charge, or occupant of the building or to any person responsible for the unlawful use or condition at the last known address for such person. Requests for corrective action may be sent to a managing agent or other person specifically designated by the owner to attend to such requests on behalf of the owner. Each such request shall describe the violation of applicable affordable housing provisions and call upon the person addressed to correct it and to inform the department of the action taken. A time for correction or response shall be specified.

c. The department shall keep a record, available to the public, of requests for corrective action issued pursuant to this chapter. The record of a request for corrective action shall be reflected as withdrawn upon submission to the department of a statement in a form prescribed by rule indicating that the use or condition has been corrected or did not exist, or following an inspection or investigation by the department that confirms correction. A request for corrective action may be issued in response to a complaint, investigation, or inspection. Nothing in this section shall be construed to require that the commissioner issue a request for

corrective action as a prerequisite to any other enforcement action.

§ 26-3017 Inspection. a. An authorized representative of the department may, consistent with applicable law and in accordance with rules of the department, enter on any premises and access any records of the owner related to unlawful conduct under this chapter to confirm that such violation has been corrected.

b. The commissioner shall have the authority to delegate to authorized monitors the authority to carry out inspections pursuant to this chapter or any rule promulgated pursuant thereto and report their findings to the department.

c. The cost of inspections pursuant to this chapter shall be paid by the owner.

§ 26-3018 Judicial proceedings. a. The owner, architect, builder, contractor, engineer, or any other person who maintains any building or premises, or who erects, constructs, alters, extends, occupies, uses, operates, rents, or sells any building, premises or affordable housing unit subject to applicable affordable housing provisions, or assists or causes same to be done, in conflict with or in violation of any of such provisions, or who fails to comply with an order of the commissioner or violates any order of the commissioner issued pursuant to this chapter, shall be subject to an action or proceeding to restrain, correct, or abate such violation, or to compel compliance with such order. Upon request of the commissioner, the corporation counsel may institute judicial actions or proceedings seeking such relief. In addition to any other remedies, in any such action or proceeding, the defendant or respondent shall be subject to the payment of civil penalties as provided in this chapter.

b. Such actions and proceedings may be instituted by the corporation counsel in the name of the city in any court of competent jurisdiction in such city. In such actions or proceedings, the city may apply for restraining orders, preliminary injunctions or other provisional remedies and no undertakings shall be required as a condition to the granting or issuing of any such order, injunction or remedy, or by reason thereof.

§ 26-3019 Regulatory agreement. The commissioner may take any actions necessary to enforce the provisions of any regulatory agreement recorded in accordance with section 23-953 of the zoning resolution

or any successor provision. Such actions may include seeking the imposition of penalties or injunctive relief.

§ 26-3020 Appeals to board of standards and appeals. Any order, requirement, decision or determination of the commissioner made pursuant to provisions of the zoning resolution related to the construction or renovation of affordable housing, including, but not limited to, sections 23-96(c) and 23-94(f) of the zoning resolution, and related provisions of law and rules promulgated thereto, shall be subject to review by the board of standards and appeals in the same manner and with the same effect as determinations of the commissioner of buildings with respect to such matters pursuant to section 666 of the New York city charter.

§ 3. This local law takes effect 180 days after it becomes law, provided, however, that the commissioner of housing preservation and development may take any actions, including the promulgation of rules, for its implementation prior to such effective date.