

**LOCAL LAWS
OF
THE CITY OF NEW YORK**

FOR THE YEAR 1998

No. 1

Introduced by Council Members Eisland, Fisher, Fields, Freed, Pinkett, Powell IV, Eristoff and Marshall (by the request of the Mayor); also Council Members Clarke, DiBrienza, Duane, Lasher, McCabe, Perez, Povman, Sabini, Warden, Weiner, Wooten, Abel and Robinson.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to violations of the landmarks preservation and historic districts law.

Be it enacted by the Council as follows:

Section 1. Section 25-302 of the administrative code of the city of New York is amended by adding new subdivisions c-1, f-1, q-1 and x to follow, respectively, subdivisions c, f, q and w to read as follows:

c-1. "Chair." The chair of the landmarks preservation commission.

f-1. "Designation report." The report prepared by the commission and used as a basis for designating a landmark or historic district pursuant to this chapter.

q-1. "Offense." As used in the phrase "second and subsequent offense", a violation encompassing some or all of the conditions or actions described or encompassed by a prior notice of violation or summons. For purposes of this definition, there shall be a presumption that the conditions encompassed by a second or subsequent offense have been in existence for each day between the time the respondent admits to liability or is found liable for or guilty of the prior offense and the time the second or subsequent notice of violation or summons is served.

x. As used in section 25-317.1:

(1) "Type A violation." Except as otherwise defined by the rules of the commission, the following work done or condition created or maintained in violation of this chapter without an appropriate approval from the commission:

(a) the removal of or alterations to, except for painting, a significant portion of an exterior architectural feature, including, without limitation thereof, removal of or alterations to:

(i) the windows on a single facade or, where original, historic or special windows exist, the removal of or alterations to a significant portion of such original, historic or special windows on a single facade;

(ii) a decorative element made of metal, glass, wood, brick, ceramic and/or stone including, without limitation thereof, a cornice, lintel, grille or molding;

- (iii) *the paving stones or curbstones of a stone sidewalk;*
- (iv) *an exterior doorway or stoop;*
- (v) *a wall, fence, railing, porch, balcony or roof, including dormers, bays, gables and parapets; and*
- (vi) *a storefront, but not including the installation of signs, awnings, flagpoles or banners;*
- (b) *the removal of or alterations to a significant portion of a protected feature of an interior landmark as described in the designation report;*
- (c) *the construction of all or a portion of a new building, structure, addition or any other improvement on a landmark site or within the boundaries of a historic district. Without limiting the generality of the foregoing, any significant modification of the existing bulk or envelope of a building shall be a violation under this paragraph;*
- (d) *the elimination by paving or other construction of a significant portion of an area-way, planting area, or front, rear or side yards, where such feature is a significant component of the landmark or historic district;*
- (e) *where the improvement is not a building or an interior landmark, the removal of or alterations to a significant portion of such improvement;*
- (f) *the failure to submit to the commission any periodic inspection report required under the terms of a restrictive declaration recorded in connection with any zoning permit, certification or authorization granted to an improvement under the jurisdiction of the commission.*

(4) *"Type B violation." All other violations of this chapter, except for violations of section 25-311 of this chapter.*

§ 2. Section 25-317 of such code is REPEALED and new sections 25-317, 25-317.1 and 25-317.2 are added to read as follows:

25-317 *Criminal punishments and fines.* a. *Any person who violates any provision of subdivision a of section 25-305 of this chapter or any order issued by the chair with respect to such provisions shall be guilty of a misdemeanor and shall be punished by a fine of not more than ten thousand dollars and not less than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.*

b. *Any person who violates any provision of subdivision a of section 25-310 of this chapter or any provision of section 25-311 or any order issued by the chair with respect to such provisions shall be punished, for a first offense, by a fine of not more than one thousand dollars and not less than five hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment, and shall be punished for a second or subsequent offense, by a fine of not more than five thousand dollars or less than two thousand five hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.*

c. *Any person who willfully makes any false statement or an omission of material fact in an application or request to the commission for a certificate, permit or other approval or in any document submitted to the commission certifying the correction of a violation, shall be punished by a fine of not more than five thousand dollars or less than one thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.*

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

§ 25-317.1 Civil penalties. a. Any person who violates any provision of sections 25-305 or 25-310 or subdivision c of section 25-317 or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered by the corporation counsel in a civil action in any court of competent jurisdiction. Such civil penalty shall be determined as follows:

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

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

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

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

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

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

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

b. In addition to or as an alternative to any of the remedies and penalties provided in this chapter, any person who violates any provision of sections 25-305 or 25-310 or subdivision c of section 25-317 of this chapter or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered in an administrative proceeding before the office of administrative trials and hearings, the environmental control board or other administrative tribunal having jurisdiction as hereinafter provided.

(1) An administrative proceeding for civil penalties shall be commenced by the service of a notice of violation in accordance with the applicable law and rules governing the procedures of the administrative tribunal before which the notice of violation is returnable or as otherwise provided by the rules of the commission. The notice of viola-

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

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

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

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

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

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

(3) Notwithstanding the penalty schedule set forth above, the chair may, in his or her discretion, for good cause shown, recommend that a lesser or no civil penalty be imposed on a respondent in an administrative proceeding.

(4) Restrictions on service of notice of violation for second or subsequent offense.
 (a) The chair shall not serve a notice of violation for a second or subsequent offense unless (i) more than twenty-five days have elapsed since the respondent was found liable

or admitted liability in the prior proceeding and (ii) where the respondent in the prior proceeding has submitted an application to the commission for an appropriate approval to legalize or to undertake the work necessary to cure the condition underlying the prior proceeding, more than thirty days have elapsed since such application has been disapproved or denied in whole or in part or if granted, such approval by its terms has expired. If the respondent has filed more than one such application with the commission, the thirty day period shall commence after the first such application has been disapproved or denied in whole or in part or, if granted, by its terms has expired.

(b) Nothing in this subdivision shall prohibit the chair, subject to the rules of the administrative tribunal having jurisdiction over the proceeding, from serving an amended notice of violation for the purpose of clarifying the allegedly illegal conditions referred to in the prior notice of violation, or from serving a subsequent notice of violation that alleges separate violations of this chapter. An amended notice of violation shall be returnable on the same date and before the same administrative body as the initial notice of violation.

(5) Multiple violations incurred for the same work. If work, reasonably identified in a notice of violation, was done without an appropriate approval from the commission, the total amount of any civil penalty for such work shall be determined by, to the extent feasible, separately considering and assessing a penalty for each type of work and/or each distinct effect on the protected features of the landmark, interior landmark or improvement in an historic district. In no event shall the civil penalty exceed five thousand dollars for a first offense. Where the respondent is the owner, separate penalties shall not be assessed for each type of work and/or each distinct effect if the illegal work was performed during a period of time when the premises were leased to and under the control of a person other than the owner.

(6) Grace period. (a) No civil penalty shall be imposed in an administrative proceeding for a first violation if prior to the return date of the notice of violation, the respondent concedes liability for the violation and supplies the commission with proof, satisfactory to the commission, that the violation has been corrected. If the respondent makes any misrepresentation or omission of a material fact to the commission regarding the removal of the violation, the respondent shall be liable for a civil penalty of not more than ten thousand dollars.

(b) No civil penalty shall be imposed in an administrative proceeding for a first violation if prior to the return date of the notice of violation the respondent concedes liability for the violation and submits an application to the commission for approval to legalize or to undertake the work necessary to cure the violation.

(c) The provisions of this paragraph shall not apply to a second or subsequent offense or where the respondent is alleged to have violated a stop work order or where the respondent has after the issuance of a warning letter pursuant to paragraph one of subdivision (b) of section 25-317.1 applied for and received a permit to cure or otherwise address a violation, and the respondent has failed to cure the violation pursuant to the terms of such permit.

§ 25-317.2 Violations of landmarks laws: enforcement.

a. Stop-work orders. (1) An order to stop work may be issued by the chair, or his or her authorized representative, at any time when the chair reasonably believes that

work is being performed in violation of the provisions of this chapter. Each order issued by the chair shall have his or her signature affixed thereto, but the chair may authorize any subordinate to affix such signature.

(2) Such order may be given orally or in writing to a person in charge or apparently in charge of the improvement or involved in the work being performed thereon or may be served on the owner or person in charge of the improvement parcel as otherwise provided in the commission's rules. The police department and the department of buildings shall, upon the request of the chair, assist the chair in the enforcement of such orders. Where the order is given orally a written notice of such order shall be mailed to the person to whom the order was addressed or affixed to the premises where the violation occurred within forty-eight hours after service of such oral order.

b. Contents of orders. All stop work orders issued by the chair shall identify the allegedly illegal conditions or work with reasonable specificity. As used in this subdivision, the term "reasonable specificity" shall mean a description of work or conditions, reasonably described given the circumstances, sufficient to inform a reasonable person that (1) work has been or is being done without an appropriate approval from the commission or (2) conditions have been created or are being maintained in violation of this chapter. The order shall also identify the subject premises by the tax block and lot or street address, and shall be addressed to a person in charge of the improvement, or to a person who is alleged to have created the illegal conditions or performed, authorized, overseen or permitted the illegal work. The chair may issue a separate order to each person who, as a result of the same condition or work, is alleged to have violated the provisions of this chapter.

c. In addition to any of the remedies or penalties provided for in this section, failure to comply with a stop work order shall be subject to the payment of a civil penalty in the sum of five hundred dollars for each day there is non-compliance, to be recovered in a civil action brought in the name of the chair or in an administrative proceeding before the office of administrative trials and hearings, the environmental control board or other administrative tribunal having jurisdiction.

d. Enforcement proceedings. (1) Upon the violation of any provision of this chapter, or the failure to comply with any stop-work order issued by the chair thereunder, or whenever any person is about to engage in or is engaging in any act or practice that may constitute a violation of any provision of this chapter, the chair may request the corporation counsel to institute all necessary actions and/or proceedings to restrain, correct or abate such violation or potential violation, to compel compliance with such order and/or to seek civil penalties pursuant to this chapter. The corporation counsel may institute such actions or proceedings as may be necessary and appropriate for such purposes.

(2) Such actions and proceedings may be instituted by the corporation counsel in the name of the city in any court of appropriate jurisdiction. In such actions or proceedings, the city may apply for restraining orders, preliminary injunctions or other provisional remedies, with or without notice.

e. Notice of violation; presumptive evidence. In any action or proceeding founded upon a claim by the chair that any law or rule enforceable by the commission has been

violated, or that a lawful order issued by the chair has not been complied with, a notice of violation shall be presumptive evidence of any matter stated therein.

f. In addition to police officers, officers and employees of the commission and employees of other city agencies designated by the chair may enforce the provisions of this chapter and may issue summonses and appearance tickets returnable in the criminal court and notices of violation returnable before the environmental control board, the office of administrative trials and hearings or other administrative tribunal having jurisdiction.

§ 3. This local law shall take effect one hundred eighty days after the date of its enactment into law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 17, 1997, and approved by the Mayor on January 6, 1998.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 1 of 1998, Council Int. No. 1008-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 17, 1997: 48 FOR, 0 AGAINST.

Was returned signed by the Mayor on January 6, 1998.

Was returned to the City Clerk on January 7, 1998.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel