

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2009**

No. 47

Introduced by Council Members Sears, The Speaker (Council Member Quinn), Weprin, Felder, Fidler, James, Liu, Mealy, Mitchell, Reyna, Dickens and Gonzalez.

A LOCAL LAW

In relation to authorizing the commissioner of finance to establish a temporary program for the resolution of outstanding default judgments issued by the environmental control board.

Be it enacted by the Council as follows:

Section 1. Declaration of findings and legislative intent. The Council finds that too often notices of violation returnable to the environmental control board result in default judgments, payments for which remain uncollected; that the additional penalties for defaults create a special deterrence to payment in the present economic climate; that the city would benefit from the prompt and efficient resolution of such outstanding default judgments; that the environmental control board and the department of finance have embarked on a pilot program to permit respondents who are the subject of default judgments to resolve those judgments by admitting liability and paying the penalty associated with the underlying violation without paying an additional default penalty; that the results of that program show an expanded temporary default suspension program could enable respondents and the city to resolve many default judgments that would otherwise remain outstanding; that a temporary default resolution program is warranted for a period of ninety days; and that the city is now engaged in a comprehensive study that will, within the coming year, lead to a new approach to address permanently how to minimize the number of default judgments issued by the environmental control board and how

best to collect and record debt created by the board's judgments.

§2. Temporary default resolution program.

a. For purposes of this section, the following definitions apply:

1. "Base penalty" means, with respect to any notice of violation returnable to the environmental control board, the penalty that would be imposed upon a timely admission by the respondent or finding of liability after a hearing, pursuant to the environmental control board penalty schedule, without regard to reductions of penalty in cases of mitigation or involving stipulations.

2. "Default judgment" means a judgment of the environmental control board, pursuant to subparagraph (d) of paragraph (1) of subdivision d of section 1049-a of the charter of the city of New York, determining a respondent's liability based upon that respondent's failure to plead within the time allowed by the rules of the environmental control board or failure to appear before the environmental control board on a designated hearing date or on a subsequent date following an adjournment.

3. "Default penalty" means a penalty imposed by the environmental control board, pursuant to section 1049-a of the charter of the city of New York, in the maximum amount prescribed by law for the violation charged.

4. "Environmental control board" means the environmental control board of the city of New York and its tribunal, as described in section 1049-a of the charter of the city of New York.

5. "Environmental control board penalty schedule" means the schedule of penalties adopted as a rule by the environmental control board or such predecessor schedule as may have applied on the date of the violation.

6. "Resolve" means, with respect to an outstanding judgment of the

environmental control board, to conclude all legal proceedings in connection with a notice of violation.

7. "Respondent" means a person or entity named as the subject of a notice of violation returnable to, or a judgment issued by, the environmental control board, or such other person or entity who asserts legal responsibility for the liability of the person or entity named in the notice or the judgment.

8. "Temporary default resolution program" means the program authorized by this section.

b. Subject to an appropriate authorizing resolution of the environmental control board, and notwithstanding any other provision of law to the contrary, the commissioner of finance shall establish a temporary default resolution program for a ninety-day period, to be effective during the fiscal year of the city beginning July first, two thousand nine, to permit respondents who are subject to default judgments of the environmental control board to resolve such judgments by payment of base penalties without payment of default penalties and associated interest.

c. Eligibility to participate in the temporary default resolution program shall be restricted to respondents who are subject to default judgments of the environmental control board, and the program shall apply only to default judgments.

d. A respondent seeking to participate in the temporary default resolution program to resolve a default judgment arising out of a notice of violation that includes an order requiring the correction of a violation shall demonstrate to the satisfaction of the city agency issuing the notice of violation that the condition cited in the notice of violation has been corrected. A default judgment may not be resolved under the temporary default resolution program if the respondent seeking the resolution cannot demonstrate that any correction required

by an order has been made. Nothing contained herein shall require a city agency to issue or approve certificates of correction or the equivalent if such city agency does not have a program to do so as of the effective date of this local law.

e. A respondent seeking resolution of a default judgment under the temporary default resolution program shall admit liability for the violation. A default judgment may not be resolved under the temporary default resolution program if the respondent seeking resolution of the judgment fails or refuses to admit liability.

f. A respondent seeking resolution of a default judgment under the temporary default resolution program shall pay the base penalty for the violation that is the subject of the default judgment to be resolved. The base penalty amount shall be determined by referring to the environmental control board penalty schedule. A default judgment may not be resolved under the program unless the base penalty amount of the violation that is the subject of the default judgment can be determined from the notice of violation, default judgment and environmental control board penalty schedule alone.

g. A respondent's resolution of a default judgment under the temporary default resolution program shall constitute a waiver of all legal and factual defenses to liability for the judgment at issue. A judgment resolved under the temporary default resolution program shall have the same legal force and effect as any other judgment issued by the environmental control board.

h. A judgment of the environmental control board may not be resolved under the temporary default resolution program if the judgment was issued on or after May first, two thousand nine.

i. The duration of the program shall be ninety days, provided that the program shall be extended for a reasonable period to the extent necessary to permit participation by any

respondent who made application for approval of a certificate of correction, or the equivalent, for a violation that is the subject of a default judgment to be resolved by this program from any city agency within ninety days of the commencement of the program, but whose application was approved after such ninety-day period. After the program has concluded, any default judgment that remains outstanding and has not been resolved by this program shall continue to have full legal effectiveness and enforceability regardless of whether it could have been resolved under this program.

j. The commissioner of finance shall publicize the temporary default resolution program provided in this section so as to maximize public awareness of and participation in such program.

§3. This local law shall take effect immediately.

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 onJune 30, 2009.....and approved by the Mayor onJuly 17, 2009.....

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 47 of 2009, Council Int. No. 1041) contains the correct text and:

Received the following vote at the meeting of the New York City Council on June 30, 2009:

50 for, 0 against, 0 not voting.

Was signed by the Mayor on July 17, 2009

Was returned to the City Clerk on July 17, 2009

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.