

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

No. 65

Introduced by Council Members Brewer, Vallone, Jr., Comrie, Fidler, Gennaro, Gentile, James, Koppell, Nelson, Palma, Sears, Weprin, Avella, Recchia Jr., Crowley, Oddo, White Jr., Jackson, Vacca, Garodnick, Mitchell, Reyna and Ulrich (in conjunction with the Mayor). Passed under a Message of Necessity from the Mayor.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the abatement of graffiti on commercial and residential buildings and repealing subdivisions d, e and f of section 10-117.3 of the administrative code of the city of New York, in relation to the failure to remove graffiti from commercial and residential buildings and the city's removal of such graffiti through nuisance abatement proceedings.

Be it enacted by the Council as follows:

Section 1. Paragraph 1 of subdivision a of section 10-117.3 of the administrative code of the city of New York, as added by local law number 111 for the year 2005, is amended to read as follows:

1. "Graffiti" means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing or other mark of any kind visible to the public from a public place that is drawn, painted, chiseled, scratched, or etched on a commercial building or residential building, or any portion thereof, including fencing, that is not consented to by the owner of the commercial building or residential building. There shall be a rebuttable presumption that such letter, word, name, number, symbol, slogan, message, drawing, picture, writing or other mark of any kind is not consented to by the owner. Such presumption may be rebutted [in any proceeding pursuant to this section] *by the owner informing the city that the*

owner consents to the marking and intends that it remain on the building.

§ 2. Subdivision c of section 10-117.3 of the administrative code of the city of New York, as added by local law number 111 for the year 2005, is amended to read as follows:

c. Availability of city funds; graffiti removal [through written consent]. Subject to the availability of annual appropriations, *an agency or agencies designated by the mayor*[, through the community assistance unit,] shall provide graffiti removal services to abate graffiti on commercial buildings and residential buildings without charge to the property owner [if the property owner first executes a written consent and a waiver of liability in the form prescribed by the mayor]. *The owner of any commercial or residential building may request that such agency or agencies remove or conceal graffiti from such building through the city's graffiti removal services.*

§ 3. Subdivisions d, e, and f of section 10-117.3 of the administrative code of the city of New York are REPEALED, and new subdivisions d, e, f, g, h, i and j are added, to read as follows:

d. *Notification to owner of nuisance. If the owner of a commercial or residential building is in violation of subdivision b of this section, the city shall notify the owner of such building that the building has been determined to be a nuisance and that, after thirty-five days from the date of such notice, or after fifty days from the date of such notice if such owner has requested an extension within the initial thirty-five day period, unless such owner abates the nuisance by removing or concealing the graffiti and notifies the city of such abatement or informs the city that the owner consents to the marking and intends that it remain on the building, the owner shall be deemed to have given permission to the city and/or*

its contractors or agents to enter or access the property and use the means it determines appropriate to abate the nuisance by removing or concealing the graffiti. Such permission shall not be deemed to include permission to enter any commercial or residential building.

e. Content of notice.

1. The notice that the property has been determined to be a nuisance as a result of graffiti on such property shall be provided (a) to the owner of a commercial or residential building by mailing a copy of such notice to the address of such building, if any, appearing in the latest assessment roll, (b) to the owner of record at the address provided by such owner to the commissioner of finance for communications from the commissioner of finance, and (c) if the address filed with the department of housing preservation and development in compliance with article two of subchapter four of chapter two of title twenty-seven of this code is different than the addresses described in subparagraphs (a) and (b) of this paragraph, to the person registered with the department of housing preservation and development as the owner or agent of the premises, at the address filed with such department in compliance with article two of subchapter four of chapter two of title twenty-seven of this code.

2. Such written notice shall, at a minimum: (a) describe the city's graffiti removal services; (b) identify the property that has become a nuisance; (c) indicate that, if an owner, within thirty-five days of the date of such notice, or within fifty days of the date of such notice if such owner has requested an extension within the initial thirty-five day period, fails: (i) to abate the nuisance by removing or concealing the graffiti and to notify the city of such abatement, or (ii) to inform the city that the owner consents to the marking and intends that it remain on the building, the city and/or its contractors or agents may enter or access the

property and use the means it determines appropriate to abate the nuisance by removing or concealing the graffiti; (d) indicate the method by which an owner may contact the city for the purpose of conveying any information or making any request in accordance with subdivision d of this section; and (e) provide a telephone number for the owner to call with any questions regarding the city's graffiti removal services.

f. Removal of graffiti by the city.

1. If an owner, within thirty-five days of the date of notice provided pursuant to subdivision d of this section, or within fifty days of the date of such notice if such owner has requested an extension within the initial thirty-five day period, fails to abate the nuisance by removing or concealing the graffiti and to notify the city of such abatement, or to inform the city that the owner consents to the marking and intends that it remain on the building, the city and/or its contractors or agents may enter or access the property and use the means it determines appropriate to abate the nuisance by removing or concealing the graffiti.

2. In no case shall the city be required to clean, paint, or repair any area more extensive than where the graffiti is located.

g. Express permission to enter building.

1. If, after entering or accessing the property pursuant to subdivision f of this section, the city has determined that it is necessary to enter a commercial or residential building in order to provide graffiti removal services, it shall request the express permission of the owner of such building to enter such building for the purpose of providing graffiti removal services. In making such request, the city shall notify the owner of such building that it has determined that it is necessary to enter the building in order to provide graffiti removal

services, and that the owner may either (a) grant permission for the city and/or its contractors or agents to enter such building for the purpose of providing graffiti removal services; (b) abate the nuisance by removing or concealing the graffiti and notify the city of such abatement; (c) inform the city that the owner consents to the marking and intends that it remain on the building. Such request shall indicate the method by which an owner may contact the city for the purpose of conveying any information or making any request in accordance with this section.

2. The failure of the owner to comply with subparagraph (a), (b) or (c) of paragraph one of this subdivision within thirty-five days of the date of such request, or within fifty days of the date of such request if such owner has requested an extension within the initial thirty-five day period, shall result in the issuance of a notice of violation pursuant to subdivision h of this section.

3. For purposes of this subdivision, "owner" shall mean the person registered with the department of housing preservation and development pursuant to article two of subchapter four of chapter two of title twenty-seven of this code as the owner or agent of the premises or the owner identified in records maintained by the commissioner of finance for communications from the commissioner of finance.

h. Notice of violation. 1. Notwithstanding any provision in this section to the contrary, where the city has determined that it is unable to provide graffiti removal services to a particular property, or to a specific location on the property, an agency or agencies designated by the mayor shall serve a notice of violation, in the manner prescribed in paragraph two of subdivision d of section 1049-a of the charter, on the owner of the property. Such notice shall indicate that the owner is in violation of subdivision b of this

section and that the failure to remove or conceal the graffiti within sixty days of receipt of the notice or to consent to the marking shall result in the imposition of a penalty as set forth in subdivision i of this section.

2. Notwithstanding paragraph one of this subdivision, a residential building containing fewer than six dwelling units shall not be issued a notice of violation pursuant to this subdivision.

3. Notwithstanding paragraph one of this subdivision, a residential building containing six or more dwelling units or a commercial building shall not be issued a notice of violation pursuant to this subdivision more than once in any sixty-day period.

4. Notwithstanding paragraph one of this subdivision, a commercial or residential building whose owner has granted permission for the city and/or its contractors or agents pursuant to subdivision g of this section to enter such building for the purpose of providing graffiti removal services shall not be issued a notice of violation pursuant to this subdivision.

i. Penalty for failure to remove graffiti from commercial and residential buildings. The owner of a commercial or residential building who has been given written notice pursuant to subdivision h of this section and who fails to remove or conceal such graffiti within sixty days of receipt of such notice or to consent to the marking shall be liable for a civil penalty of not less than one hundred fifty dollars nor more than three hundred dollars. Such civil penalty may be recovered in a proceeding before the environmental control board.

j. Rulemaking. The agency or agencies designated by the mayor to provide graffiti removal services shall have the authority to promulgate rules to implement

the provisions of this section.

§ 4. Severability clause. If any provision of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this local law would have been enacted even if such invalid provisions had not been included herein.

§ 5. This local law shall take effect one hundred eighty days after it shall have become a law, except that the agency or agencies designated by the mayor to provide graffiti removal services may take such steps as are necessary to implement the provisions of this local law, including the promulgation of rules, if necessary, prior to such effective date.

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 ...September 30, 2009..... and approved by the Mayor onOctober 7, 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 65 of 2009, Council Int. No. 1042-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on September 30, 2009:
46 for, 2 against, 0 not voting.
Was signed by the Mayor on October 7, 2009
Was returned to the City Clerk on October 7, 2009

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.