



TITLE 26

HOUSING AND BUILDINGS

CHAPTER 1			
DEPARTMENT OF BUILDINGS			
Sub-Art.	Sub-chapter	Subchapter 1	
or Sec.	or Sec.*	General Provisions	
[641-1.0]	101	Definitions	[643a-12.0] 126
[641-2.0]	102	Seal; Judicial Notice	[643a-12.1] 126.1
[641-3.0]	103	Records in Department	[643a-12.2] 126.2
[641-4.0]	104	Complaint Book	
[641-5.0]	105	Taxpayers' Requests for Institution of Actions	[643a-12.3] 126.3
[641-6.0]	106	Proofs, Affidavits and Oaths	
[641-7.0]	107	Cooperation of Other Departments	[643a-12.4] 126.4
[641-8.0]	108	Reports from Different Institutions and Agencies	
[641-9.0]	109	Annual Report	
[641-10.0]	110	Publications of Statistics and Other Data	[643a-13.0] 127
[642-1.0]	111	Uniforms and Badges	
[642-2.0]	112	Falsely Impersonating an Officer	
[642-3.0]	113	Subordinates; Discipline of	
[642-4.0]	114	Certain Outside Work, Employment and Financial Interests Prohibited	
[643a-1.0]	115	Notice and Orders	
[643a-2.0]	116	Contents of Notices and Orders	[643a-14.0] 128
[643a-3.0]	117	Service of Notices and Orders	
[643a-4.0]	118	Stop Work Notices and Orders	[644-1.0] 129
[643a-5.0]	119	List Pendens	[644-2.0] 130
[643a-6.0]	120	Enforcement Proceedings	
[643a-7.0]	121	Certificate of Commissioner; Presumptive Evidence	
[643a-8.0]	122	Non-Compliance With Order and Illegal Places of Assembly; Punishment; Penalty	
[643a-9.0]	123	Non-Compliance With Orders Execution of Work by Department	
[643a-10.0]	124	False Statements in Certificates, Forms, Written Statements, Applications, Reports or Certificates	
[643a-11.0]	125	Violations of Building Laws;	
			Punishments; Penalty Violations of Building Laws; Punishments and Penalties for Illegal Operation of Cranes and Derricks
			Violations of Zoning Resolutions
			Environmental Control Board; Civil Penalties
			Environmental Control Board Proceedings; Order to Certify Correction
			Civil Penalty for Failure to Certify the Correction of a Violation
			Limitations on Power of Commissioner to Designate Administrative Code Provisions Which May Enforced by the Environmental Control Board
			Dangerous Buildings, Places and Things; Nuisance
			Penalties for Violation or Order to Vacate and Order to Seal, Secure and Close; Access to Premises
			Violations of Zoning Resolution in Residential Districts; Public Nuisance; Order of Closure
			Illegal Outdoor Signs; Public Nuisance
			Liens on Premises for Inspection, Reinspection, Examination, Service or Permit Fees
			Record of Applications
			Borough Superintendents to Furnish Tax Department With Copies of Permits

**C26" omitted from section numbers in this column.*

SUBCHAPTER 1

GENERAL PROVISIONS

§[641-1.0] 26-101 Definitions.-For the purposes of this chapter:

1. The term "multiple dwelling" shall mean such dwelling as defined by section four of the multiple dwelling law;
2. The term "building" shall mean any building, structure, premises, or part thereof;
3. The term "service equipment" shall mean equipment, and all components thereof, which provide sanitation, power, light, heat, ventilation, air conditioning, refuse disposal, fire-fighting, transportation or other facilities for buildings.
4. The term "commissioner" shall mean the city commissioner

of buildings.

5. The term "department" shall mean the city department of buildings.

§[641-2.0] 26-102 Seal; judicial notice.-

The commissioner may design and adopt a seal for the department, and cause the same to be used in the authentication of the orders and proceedings of the department, and for such other purposes as he or she may prescribe. The courts shall take judicial notice of such seal, and of the signature of the commissioner and the deputy commissioners of such department.

§[641-3.0] 26-103 Records in department.-

The department shall keep records of every building in the city. Such records shall be kept in the manner and form prescribed by the commissioner.

****§[641-4.0] 26-104 Complaint book.** -The department shall keep a general complaint book, or several such books, in which may be entered any complaint made by any person in reference to any building. Such entry shall include the name and residence of the complainant, the name of the person complained of, the date of the entry of the complaint and any suggested remedies. Except for entries of names and residences of the complainants, such book shall be open to public examination during the office hours of the department, subject to such regulations as the commissioner may prescribe. The commissioner shall cause all complaints to be investigated.

*** Local Law 91-1989.*

§[641-5.0] 26-105 Taxpayers' requests for institution of actions.- Taxpayers' requests for institution of actions for liens upon buildings shall be presented to the department.

§[641-6.0] 26-106 Proofs, affidavits and oaths. –

Proofs, affidavits and examinations as to any matter arising in connection with the performance of any of the duties of the department may be taken by or before the commissioner, or a deputy commissioner, or such other person as the commissioner may designate; and such commissioner, deputy or other person may administer oaths in connection therewith.

§[641-7.0] 26-107 Cooperation of other departments.-

Upon request of the commissioner, it shall be the duty of all departments to cooperate with the department of buildings at all times, and to furnish to such department such information, reports and assistance as the commissioner may require.

§[641-8.0] 26-108 Reports from different institutions and agencies. –

a. All dispensaries and hospitals in the city shall make weekly statements to the department as to the cases of sickness received in such hospital or treated in such

dispensary from each building. Such statement shall show the location of such building by street and number, the nature of the sickness treated, whether the patient was an adult or child and the date of the treatment.

b. The police department shall furnish to the department a weekly statement of the number of arrests of persons living in such buildings. Such statement shall show the location of such building, by street and number, the offense with which the person is charged, the age and name of the offender, and such other information as the department may require. The commissioner shall prescribe and furnish blank forms for making such statements.

c. Such department may require reports and information of such facts relative to the condition of persons residing in such buildings as the commissioner may deem useful in carrying out the duties of the department. Such reports also may be required from all dispensaries, hospitals, charitable or benevolent societies, infirmaries, prisons and schools, and from the managers, principals and officers thereof. The managers, principals and officers of such institutions shall give such information promptly and shall make such reports, verbally or in writing, as the commissioner may require.

§[641-9.0] 26-109 Annual report. -The annual report of the department shall be published in book form for public information. Such report shall contain the statistics kept by the department.

§[641-10.0] 26-110 Publication of statistics and other data.- The commissioner may provide for the publicity of the papers, files, reports, records and the proceedings of the department whenever he or she deems it necessary for the public good.

§[642-1.0] 26-111 Uniforms and badges.- The commissioner may provide or designate a suitable uniform to be worn by inspectors. He or she shall also provide a metal badge with a suitable inscription thereon, and shall require that such badge shall be worn by the inspectors, officers and other employees of the department.

***§[642-2.0] 26-112 Falsely impersonating an officer.-** Any person who falsely represents himself or herself as an officer, inspector or employee of the department, or a not-for-profit corporation performing services on behalf of the department pursuant to article twenty-seven of subchapter one of chapter one of title twenty-seven of the code, or as acting under the authority of the department or of such not-for-profit corporation, or who without authority uses, wears or displays a shield or other insignia or emblem such as is worn by such officer, inspector or employee, shall be guilty of a misdemeanor.

**Local Law 107-1993.*

§[642-3.0] 26-113 Subordinates; discipline of.- The commissioner shall have power to punish any employee, for

neglect of duty, or omission to properly perform his or her duty, or for violation of rules, or neglect or disobedience of orders, or incapacity or absence without leave, by forfeiting or withholding compensation for a specified time, or by suspension from duty with or without pay for a period of not exceeding thirty days.

§[642-4.0] 26-114 Certain outside work, employment and financial interests prohibited. -It shall be unlawful for any officer or employee of the department to be engaged in conducting or carrying on business as an architect, civil engineer, structural engineer, sanitary engineer, carpenter, plumber, iron worker, mason or builder, or any other profession or business concerned with the construction, alteration or equipment of buildings. It shall also be unlawful for such employees to be engaged in the manufacture or sale of automatic sprinklers, fire extinguishing apparatus, fire protection devices, fire prevention devices, devices relating to the means or adequacy of exit from buildings, or articles entering into the construction or alteration of buildings, or to act as agent for any person engaged in the manufacture or sale of such articles, or own stock in any corporation engaged in the manufacture or sale of such articles.

§[643a-1.0] 26-115 Notices and orders.-

The commissioner shall have the power to issue notices and orders for enforcing compliance with any law, rule or regulation in respect to any matters under the jurisdiction of the department, and for remedying any condition found to exist in, on or about any building, enclosure or premises, in violation of any law, rule or regulation in respect to any such matters. Each such notice or order issued by the commissioner shall have his or her signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature.

§[643a-2.0] 26-116 Contents of notices and orders.- All notices and orders issued by the commissioner shall, in addition to the statement of requirements, contain a description of the building, premises or property affected; and except for such orders as may be served pursuant to section three hundred twenty-six of the multiple dwelling law, the notice or order shall be addressed to the owner, lessee or occupant of the building, premises or property affected. It shall be unnecessary to designate such owner, occupant or lessee by name in the notice or order; but the premises shall be designated in the address so that the premises may readily be identified.

§[643a-3.0] 26-117 Service of notices and orders. - Except for such orders as may be served pursuant to section three hundred twenty-six of the multiple dwelling law, service of notices and orders issued by the commissioner may be made: (a) by delivery of a copy thereof personally to the owner, lessee or occupant of the building, premises or property affected thereby; or (b) by

delivery of a copy thereof personally to any person of suitable age and discretion in charge or apparently in charge of such building, premises or property, or any building work being executed thereon; or (c) by posting a copy thereof in a conspicuous place upon such building, premises or property and mailing a copy thereof to the owner of such building, premises or property at his or her last known address, in which latter case the service shall be deemed to have been effected three days after the date of mailing.

§[643a-4.0] 26-118 Stop Work notices and orders.- Notwithstanding the provisions of sections 26-115 through 26-117 of this subchapter, a notice or order to stop work may be issued by the commissioner, or his or her authorized representative, at any time when it is found that building work is being executed in violation of the provisions of any law, rule or regulation enforceable by the department, or in a dangerous or unsafe manner.

Such notice or order may be given orally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons executing the work and may require all persons in and about the building or premises to vacate the same forthwith, and also require such work to be done as, in the opinion of the commissioner, may be necessary to remove any danger therefrom. The police department shall, upon the request of the commissioner, assist the department in the enforcement of this section.

Conditions warranting issuance of a stop work order include but are not limited to, the failure to have a construction site safety coordinator present in the course of on-going construction at those sites where department rules and regulations require that a construction site safety coordinator be designated and present; the failure to erect a sidewalk shed (or portions thereof) as required by section 27-1021 of the code, or the removal of a sidewalk shed or portions thereof, when such sidewalk shed is still required pursuant to such section.

In addition to the penalties provided for in this subchapter, failure to comply with a stop work order shall be subject to the payment of a 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 commissioner; provided, however, this shall not apply to any work performed to remedy an unsafe or hazardous condition.

§[643a-5.0] 26-119 Lis pendens.- The commissioner, after issuing any notice or order, or in any subsequent action or proceeding, may also file a notice of lis pendens, consisting of a copy of the notice or order issued by the commissioner and a notice of the action or proceeding instituted or to be instituted thereon.

§[643a-6.0] 26-120 Enforcement proceedings. -

a. Upon the violation of any law, rule or regulation enforceable by the department, or the failure to comply

with any order issued by the commissioner thereunder, the commissioner may, in his or her discretion, request the corporation counsel to institute legal proceedings to restrain, correct or abate such violation, or to compel compliance with such order; and the corporation counsel shall thereupon institute such actions or proceedings as may be necessary and appropriate for such purposes.

b. Such actions and proceedings may be instituted by the corporation counsel in the name of the city in any court of civil jurisdiction in the city and shall be given preference over pending causes therein. In such actions or proceedings, the city may apply for restraining orders preliminary injunctions or other provisional remedies, with or without notice; 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.

c. In no case shall the department, or any officer or employee thereof, be liable for costs in any such action or proceeding; and officers and employees of the department, acting in good faith and without malice, shall be free from liability for acts done in any such action or proceeding.

d. Any judgment rendered in any such action or proceeding shall be and become a lien upon the premises involved and named in the complaint in such action or proceeding, the lien to date from the time of filing a notice of lis pendens in the office of the clerk of the county in which the premises is located, and to have priority before any mortgage or other lien existing prior to such filing, except tax and assessment liens.

§[643a-7.0] 26-121 Certificate of commissioner; presumptive evidence. -In any action or proceeding founded upon a claim by the commissioner that any law, rule or regulation enforceable by the department has been violated, or that a lawful order issued by him or her has not been complied with, a certificate in writing by the commissioner, or his authorized representative shall be presumptive evidence of any matter stated therein.

***§[643a-8.0] 26-122 Non-compliance with order and illegal places of assembly; punishment; penalty.** -Every person who owns or operates a place of assembly without a current permit or emergency lighting as required by law, or who shall fail to comply with an order issued by the commissioner except an order issued pursuant to section 26-126.2; or who shall knowingly violate any requirement of any notice or order of the commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punishable by a fine not to exceed five thousand dollars, or by imprisonment not to exceed six months, or both. Such person shall also be subject to the payment of a penalty of not more than five thousand dollars to be recovered in a civil action brought in the name of the city in any court of competent jurisdiction or in a proceeding before the environmental control board.

**Local Law 80-1985, language juxtaposed per Ch. 907-1985.*

§[643a-9.0] 26-123 Non-compliance with orders; execution of work by department. -Upon the failure to comply with any order of the commissioner within the time limited thereby, and subject to the provisions of article eight of subchapter three of this chapter, any work required to be executed by such order may be executed by the commissioner through the officers, agents or contractors of the department; and the city shall be reimbursed promptly for all costs and expenses of such work. Such costs and expenses shall become a lien upon the premises involved and named in the commissioners order, from the time of filing of a notice of lis pendens as provided in section 26-119 of this subchapter; and such lien shall be enforceable in accordance with the mechanics' lien laws applicable in the city.

***§[643a-10.0] 26-124 False statements in certificates, forms, written statements, applications, reports or certificates of correction.** -

a. Any person who shall knowingly make a false statement or who shall knowingly falsify or allow to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this code or any rule or regulation of any agency promulgated thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment not to exceed six months, or both.

b. Such person shall also be liable for a civil penalty of not less than one thousand dollars nor more than five thousand dollars which may be recovered in a proceeding before the environmental control board. In any such proceeding which relates to a false statement in a certification filed pursuant to section 26-126.2, if an inspection made within six months after the filing of the certification finds a condition constituting a violation which is the same as the condition described in the notice of violation with respect to which such certification was filed, there shall be a rebuttable presumption that the condition described in such notice of violation continued and is the same condition found in the inspection.

c. The provisions of this section shall apply with respect to any certificate, form, signed statement, application or report submitted to a not-for-profit corporation performing services on behalf of the department pursuant to article twenty-seven of subchapter one of chapter one of title twenty-seven of the code.

**Local Law 80-1985, language juxtaposed per Ch. 907-1985.*

**Local Law 107-1993.*

****§[643a-11.0] 26-125 Violations of building laws; punishments; penalty.** -

a. Except as otherwise provided in subdivisions b and f of

this section, section 26-126 or 26-248 of this title, every person who shall violate any of the provisions of any laws, rules or regulations enforceable by the department or who shall knowingly take part or assist in any such violation shall be guilty of an offense, and upon conviction thereof shall be punishable by a fine of not more than five thousand dollars. Such person shall also be subject to the payment of a penalty of not more than five thousand dollars to be recovered in a civil action brought in the name of the city in any court of record in the city.

b. Notwithstanding any other law, rule or regulation, and in addition to any other penalties provided in this code or elsewhere, any person who shall convert, or knowingly take part or assist in the conversion or permit the maintenance of the conversion of a residence, which is legally approved for occupancy as a one-family, or two-family dwelling, to a dwelling for occupancy by four or more families shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for a period not to exceed one year and by a fine for each dwelling unit added of not less than one thousand dollars nor more than five thousand dollars for the first offense, not less than two thousand five hundred dollars nor more than fifteen thousand dollars for a second offense and not less ten thousand dollars nor more than twenty thousand dollars for a third or subsequent offense.

c. In addition to the penalties provided in subdivision a of this section, any owner who shall fail to file a report pursuant to the provisions of section 27-228.5 or 27-1000 of the code shall be liable for a civil penalty of not less than twenty-five dollars nor more than one hundred dollars per day not to exceed one thousand dollars commencing with the date after which such report was required to be filed with the department and terminating on the date of the filing of such report with the department.

d. In addition to the penalties provided in subdivision a of this section, any owner who shall fail to file a report pursuant to the provisions of section 27-793 of this code shall be liable for a civil penalty of not less than twenty-five dollars nor more than fifty dollars per day, commencing with the day following the date on which such report was required to be filed with the department and terminating on the date of the filing of such report with the department, provided that the maximum amount of such penalty shall not exceed one thousand five hundred dollars for any report for a building greater than six stories and five hundred dollars for any report for a building of six stories or less.

*e. In addition to the penalties provided in subdivision a of this section and notwithstanding the provisions of subdivision d of this section, any owner who files a report pursuant to the provisions of section 27-793 of this code after the date such report was required to be

filed with the department but who provides evidence in accordance with rules promulgated by the commissioner that the boiler was inspected in accordance with the provisions of subdivision b of section 27-793 of this code shall only be liable for a civil penalty of fifty dollars for any report for a building six stories or less and one hundred fifty dollars for any report for a building greater than six stories.

f. As an alternative to the penalties provided in subdivision b of this section, any person who violates the provisions of such subdivision may be subject to the payment of a civil penalty of one thousand dollars per day for each dwelling unit added, commencing on the date such notice of violation was issued and terminating on the date of the filing of a valid certification that the condition constituting the violation has been corrected or the date of final adjudication of the violation, whichever occurs first, to be recovered in a civil action brought in the name of the city in any court of record in the city or returnable to an administrative tribunal of competent jurisdiction. There shall be a rebuttable presumption that the violation continued to exist from the date of the issuance of a notice of violation until the date of adjudication or proof of correction to the satisfaction of the commissioner.

[†]g. (i) Notwithstanding any other provision of law, where a notice of violation or summons is issued on or after July fourteen, two thousand three for a violation of section 27-147 of this code or paragraph (a) of section 32-653 or paragraph (a) of section 42-542 of the zoning resolution, or any provision amending, replacing or supplementing such sections of the zoning resolution, for an awning in existence on such date, no penalty may be imposed, nor may injunctive relief be sought to restrain such violation, during the period commencing on such date and ending on the later of (A) July fourteen, two thousand five, and (B) the date established by the commissioner in accordance with paragraph (iii) of this subdivision as the date of the conclusion of a program of education of the public regarding amendments of section 32-653 or 42-542 of the zoning resolution or the replacement or supplementation of such sections. Where the person to whom the violation was issued cures such violation during such period, no penalty may subsequently be sought or imposed for such violation.

(ii) The provisions of paragraph i of this subdivision shall not apply where such awning creates an imminent threat to public health or safety.

(iii) The commissioner shall develop a program to educate the public regarding amendments, adopted after the enactment of the local law that added this paragraph, of section 32-653 or 42-542 of the zoning resolution or the replacement or supplementation of such sections. Such program shall be implemented as

soon as practicable following the adoption of such amendments, replacement or supplementation, and shall continue for a period of time deemed sufficient by the commissioner to provide reasonable notice to the public of the requirements imposed by such amendments, replacement or supplementation. The date of the conclusion of such program shall be established by the commissioner by rule which date shall be no later than November thirtieth, two thousand five.

***Local Law 65-1997; Local 62-1991; Local Law 80-1985, language juxtaposed per Ch. 907-1985.*

**Local Law 27-1996.*

[†]Local Law 35-2004; Local Law 44-2003.

*****§26-125.1 Violation of building laws; punishment and penalties for illegal operation of cranes and derricks.-**

a. Any person who:

(1) shall operate a crane or derrick as such terms are defined in section 27-232 of this code without first having obtained a license required to operate such crane or derrick, except for learners operating such crane or derrick in the presence of and under the direct supervision of a licensed operator, pursuant to reference standard 19-2; or (2) is in charge of, in control of, or is either supervising or directing construction activities at a construction site, and who (i) either permits or authorizes the operation of a crane or derrick by a person who he or she either knows or should know does not have a license to operate such equipment, except for learners operating such crane or derrick in the presence of and under the direct supervision of a licensed operator, pursuant to reference standard 19-2; or (ii) either permits or authorizes the operation of a crane or derrick without having first obtained all necessary approvals and permits for the operation of the equipment, or for the work to be performed, shall be guilty of a class B misdemeanor and upon conviction thereof shall be subject to a civil penalty of not more than twenty-five thousand dollars in addition to a sentence not to exceed ninety days.

b. Any person who:

(1) shall operate a crane or derrick as such terms are defined in section 27-232 of this code without first having obtained a license required to operate such crane or derrick, except for learners operating such crane or derrick in the presence of and under the direct supervision of a licensed operator, pursuant to reference standard 19-2; (2) is in charge of, in control of, or is either supervising or directing construction activities at a construction site, and who (i) either permits or authorizes the operation of a crane or derrick by a person who he or she either knows or should know does not have a license to operate such equipment, except for learners operating such crane or derrick in the presence

of and under the direct supervision of a licensed operator, pursuant to reference standard 19-2; or (ii) either permits or authorizes the operation of a crane or derrick without having first obtained all necessary approvals and permits for the operation of the equipment, or for the work to be performed, where such operation results in serious physical injury to another person or persons, as such term is defined in section 10.00 of the penal law, shall be guilty of a class A misdemeanor and upon conviction thereof shall be subject to a civil penalty of not more than one hundred thousand dollars in addition to a sentence not to exceed six months.

c. There shall be no liability under the provisions of this section for the operation of a crane or derrick by any person who has been duly licensed by the department to operate such crane or derrick, or by a learner who operates such crane or derricks in the presence of and under the direct supervision of such person, during the thirty calendar days subsequent to the expiration of such person's license; provided, however, that, for one year after the effective date of this section, there shall be no liability under the provisions of this section for the operation of a crane or derrick by any person who has been duly licensed by the department to operate such crane or derrick, or by a learner who operates such crane or derrick in the presence of and under the direct supervision of such person, during the one year period subsequent to the expiration of such person's license.

d. For purposes of this section, the terms "crane" and "derrick" shall have the meaning as ascribed by section 27-232 of this code.

****Local Law 99-1991.*

§[643a-12.0] 26-126 Violations of zoning resolutions. -

a. The owner, lessee, or occupant of any building in which a violation of the zoning resolution has been committed or shall exist, or the agent, architect, builder, contractor, or any other person who commits, takes part or assists in any such violation or who maintains any building in which any such violation shall exist, shall be guilty of a misdemeanor, and where the violation shall be for the construction, alteration, use or occupancy of any building, structure or area set forth within use groups five through eighteen inclusive in a zoning district where such use is not permitted, the person convicted thereof shall be punished by a fine of not less than two hundred fifty dollars nor more than one thousand dollars for the first offense, not less than five hundred dollars nor more than one thousand dollars for a second offense and five thousand dollars for a third, and all subsequent offenses, or for any such offense by imprisonment for not more than ninety days, or by both fine and imprisonment.

b. Any such person, having been served with an order

to remove any such violation, who shall fail to comply with such order within ten days after such service or who shall continue to violate any provision of the zoning resolution in the respect named in such order, shall be guilty of a misdemeanor.

c. In addition to the foregoing remedies, the city may maintain an action for an injunction to restrain any violation of such zoning resolution.

[†]d. (i) Notwithstanding any other provision of law, where a notice of violation or summons is issued on or after July fourteen, two thousand three for a violation of section 27-147 of this code or paragraph (a) of section 32-653 or paragraph (a) of section 42-542 of the zoning resolution, or any provision amending, replacing or supplementing such sections of the zoning resolution, for an awning in existence on such date, no penalty may be imposed, nor may injunctive relief be sought to restrain such violation, during the period commencing on such date and ending on the later of (A) July fourteen, two thousand five, and (B) the date established by the commissioner in accordance with paragraph (iii) of this subdivision as the date of the conclusion of a program of education of the public regarding amendments of section 32-653 or 42-542 of the zoning resolution or the replacement or supplementation of such sections. Where the person to whom the violation was issued cures such violation during such period, no penalty may subsequently be sought or imposed for such violation.

(ii) The provisions of paragraph i of this subdivision shall not apply where such awning creates an imminent threat to public health or safety.

(iii) The commissioner shall develop a program to educate the public regarding amendments, adopted after the enactment of the local law that added this paragraph, of section 32-653 or 42-542 of the zoning resolution or the replacement or supplementation of

such sections. Such program shall be implemented as soon as practicable following the adoption of such amendments, replacement or supplementation, and shall continue for a period of time deemed sufficient by the commissioner to provide reasonable notice to the public of the requirements imposed by such amendments, replacement or supplementation. The date of the conclusion of such program shall be established by the commissioner by rule which date shall be no later than November thirtieth, two thousand five.

[†]Local Law 35-2004; Local Law 44-2003.

***§[643a-12.1] 26-126.1 Environmental control board; civil penalties. -**

a. In addition to or as an alternative to any of the remedies and penalties provided in subchapters one, two and three of chapter one of this title or chapter one of title twenty-seven any person who shall violate or fail to comply with any of the provisions of subchapters one, two and three of chapter one of this title or chapter one of title twenty-seven or the rules and regulations promulgated hereunder shall, except as otherwise specifically provided in subdivision c of section 26-126.2, be liable for a civil penalty which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable before the board. The provisions of sections 26-244, 26-246 and 26-248 relating to notification prior to the commencement of judicial proceedings shall not apply to the recovery of civil penalties in proceedings before the environmental control board.

Except as otherwise specifically provided, such civil penalty shall be determined in accordance with the following schedule:

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First Violation	Second or Subsequent Violation by the respondent of the same provision of law, rule or regulation and, if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violations occurred, at the same premises (all violations committed within an eighteen month period).			
	Minimum (Dollars)	Maximum (Dollars)	Minimum (Dollars)	Maximum (Dollars)
27-118.1.....	250	2,500	1,000	10,000
27-508.3(b).....	0	300	350	1,000
Any Provision of subchapter 19 of chapter 1 of title 27.....	0	5,000	0	10,000
Any provisions of subchapters 1,2, and 3 of chapter 1 of this title and all other provisions of chapter 1 of title 27 or any provisions of the zoning resolution and related rules and regulations.....	0	2,500	0	10,000

(Reference to a section of the code is intended to include any rules and regulations related to such section).

b. For the purposes of the multiple offense schedule, if the respondent is the owner or agent of the building or structure with respect to which the violation occurred or a lessee of the entire building or structure, the term premises shall mean the entire building or structure. If the respondent is the lessee or person in control of a part of such building or structure, the term premises shall mean that part of such building or structure leased to or under the control of the respondent.

c. Notwithstanding any other provision of this section, if the respondent is the owner or agent of the building or structure with respect to which the violation occurred or a lessee of the entire building or structure, a prior violation by the same respondent shall not serve as a predicate for purposes of the multiple offense schedule set forth in this section if the prior violation or the violation for which penalties are to be imposed occurred within an area of the building or structure which, at the time of the violation, was leased to and under the control of a person other than the respondent, except that this provision shall not apply if both the prior violation and the violation for which penalties are to be imposed occurred within areas leased to and under the control of the same lessee. In any proceeding before the board, the burden of proof with respect to this exception shall be upon the respondent.

d. The commissioner may, by rule or regulation, establish a schedule of civil penalties providing a maximum penalty for the violation of each separate provision of law, rule or regulation based on the degree of seriousness of the violation. Such maximum penalties shall not exceed the maximum penalties for such violations set forth in this section.

e. In addition to the penalties set forth in subdivision a of this section: (i) any individual who shall violate or fail to comply with the provisions of section 27-118.1 of this code shall also be subject to the payment of a penalty of

not less than fifty dollars nor more than one hundred dollars per day, for each dwelling unit added, commencing on the date such notice of violation was issued and terminating on the date of the filing of a certification that the condition constituting the violation has been corrected or the date of final adjudication of the violation by the environmental control board, whichever occurs first, and there shall be a rebuttable presumption that the violation continued to exist from the date of the issuance of the notice of violation until the date of the filing of the certification or final adjudication; and (ii) a third or subsequent violation of section 27-118.1 of this code by the same respondent and, if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violation occurred at the same premises (all violations committed within an eighteen month period), shall result in a civil penalty of not less than five thousand dollars nor more than fifteen thousand dollars.

**Local Law 3-1998; Local Law 65-1997; Local Law 80-1985, language juxtaposed per Ch. 907-1985.*

**** §[643a-12.2] 26-126.2 Environmental control board proceedings; order to certify correction.**

***a. Except as otherwise provided in subdivision e, f, i and j of this section whenever the commissioner serves a notice of violation such notice shall include an order which requires the respondent to correct the condition constituting the violation and to file a certification with the department that the condition has been corrected. Such order shall require that the condition be corrected within thirty days from the date that the order is issued and that certification of the correction of the condition shall be filed with the department in a manner and [sic] form and within such further period of time as shall be established by rule or regulation of the department.

b. If the board finds, upon good cause shown, that the

respondent cannot correct the violation within the period specified in subdivision a, it may, with the concurrence of the commissioner, postpone the period for compliance with such order upon such terms and conditions and for such period of time as shall be appropriate under the circumstances.

c. For violations which are subject to the penalties for a first violation as set forth in section 26-126.1 of this title, if the respondent complies with the order issued pursuant to subdivision a of this section within the time set forth in such subdivision, there shall be no civil penalty for such first violation. Such violation may however serve as a predicate for purposes of the multiple offense schedule set forth in section 26-126.1 of this title.

d. In any proceeding before the environmental control board, if the board finds that the commissioner has failed to prove the violation charged, it shall notify the commissioner and the order requiring the respondent to correct the condition constituting the violation shall be deemed to be revoked.

e. Subdivisions a, b, c and d of this section shall not apply to environmental control board proceedings to impose penalties for violations of section 26-122 (except violations relating to the operation of an illegal place of assembly), section 26-124 and section 26-126.3 of this title or to impose penalties for any violation which the commissioner in his [or her]** discretion determines to be hazardous.

***Copy in brackets not enacted but probably intended.*

*f. A notice of violation alleging a violation of subdivision a or b of section 27-508.3 of this code shall include an order (i) directing the respondent to correct the condition constituting the violation within thirty days from the date that the order is issued and to file a certification that the condition has been corrected with the department in a manner and form and within such further period of time as shall be established by rule of the department or (ii) directing a respondent who is a record owner of a premises on which a tobacco product advertisement is placed or maintained in violation of subdivision a of section 27-508.3 of this code but who has not posted or placed such advertisement or has not directed, caused or contracted for the posting or placing of such advertisement by a servant, agent, employee, contractor or other individual under such record owner's control, to notify, within thirty days from the date the notice of violation alleging a violation of subdivision a of section 27-508.3 of this code was issued, the person who posted or placed such advertisement or who directed, caused or contracted for the posting or placing of such advertisement, by certified mail of the notice of violation, and to send, by certified mail, a copy of such notification to the department. A record owner shall not be deemed to have directed, caused or contracted for the posting or placing of a tobacco product advertisement by a servant, agent, employee, contractor or other individual under such record owner's control unless the record owner

retains the right to cause the content of an advertisement to be changed. A general "compliance with laws" provision in a lease or contract shall not constitute such a right for purposes of this subdivision. A notice of violation issued pursuant to subdivision a or b of section 27-508.3 of this code shall also contain a statement that any hearing for a third or subsequent violation of subdivision a or b of section 27-508.3 by a wholesale or retail dealer of cigarettes shall also constitute a hearing for the revocation of a license issued to such wholesale dealer pursuant to section 11-1303 of this code or to such retail dealer pursuant to section 20-202 of this code, where the wholesale or retail dealer of cigarettes is found to be in violation.

***g. Where the respondent receives a notice of violation of subdivision a or b of section 27-508.3 of this code and the respondent complies with item (i) of subdivision f of this section, there shall be no civil penalty for such violation; provided, however, where such violation is a first violation, such violation may serve as a predicate for purposes of the multiple offense schedule as set forth in section 26-126.1 of this chapter and for purposes of revoking a license pursuant to subdivision k of this section.

***h. Where the respondent receives a notice of violation of subdivision a of section 27-508.3 of this code and the respondent is a record owner of premises who complies with item (ii) of subdivision f of this section, the notice of violation issued to such record owner shall be dismissed and shall not serve as a predicate for purposes of the multiple offense schedule as set forth in section 26-126.1 of this chapter.

***i. Where a respondent receives a notice of violation alleging a violation of subdivision a or b of section 27-508.3 of this code, and such respondent establishes that the school building, playground, amusement arcade, child day care center, or youth center that is within one thousand feet of the respondent's building, structure or premises opened, or was authorized or licensed by, or received a permit from a city or state, or certified to the department as required pursuant to subdivision o of section 27-508.2 of this code after the date such respondent placed or caused to be placed, maintained or caused to be maintained the tobacco product advertisement that is the subject of the alleged violation on such respondent's building, structure or premises, then upon the respondent so establishing within thirty days of the date of issue of the notice of violation, the environmental control board shall grant an adjournment in contemplation of dismissal. Where the respondent corrects the condition constituting the violation and certifies such correction to the department (i) within ninety days of the issuance of such adjournment in contemplation of dismissal of a notice of violation of subdivision a of section 27-508.3 or (ii) within thirty days of the granting of such adjournment in contemplation of dismissal of a notice of violation of subdivision b of section 27-508.3, in a manner and form as shall be established by rule of the department, the notice of violation shall be dismissed and shall not serve

as a predicate for purposes of the multiple offense schedule as set forth in section 26-126.1 of this chapter or for purposes of revoking a license pursuant to subdivision k of this section.

***j. Where the respondent receives a notice of violation of section 27-508.5 of this code, the respondent shall be liable for a civil penalty as set forth in section 26-126.1 of this chapter and for purposes of revoking a license pursuant to subdivision k of this section.

*k. In addition to the penalties provided in subdivision f of this section, where a wholesale or retail dealer of cigarettes is found liable for a third or subsequent violation, within an eighteen-month period, the license issued to such wholesale dealer of cigarettes pursuant to section 11-1303 of this code, or to such retail dealer of cigarettes pursuant to section 20-202 of this code, shall be revoked.

***Local Law 3-1998.

**Local Law 80-1985, language juxtaposed per Ch. 907-1985.

* Local Law 2-2000;Local Law 3-1998.

*** §[643a-12.3] 26-126.3 Civil penalty for failure to certify the correction of a violation.** - a. Any person who shall fail to comply with an order of the commissioner issued pursuant to subdivision a of section 26-126.2 of this title within the time specified in such subdivision or within such further period of time as may be provided by the environmental control board pursuant to subdivision b of section 26-126.2 of this title, in addition to the penalties which may be imposed for the violation pursuant to section 26-126.1 of this title be liable for a civil penalty of not more than five thousand dollars for each violation for which there has been a failure to comply with such order. Such civil penalty may be recovered in a proceeding before the environmental control board.

b. For the purposes of this section, if the environmental control board finds that a respondent has knowingly made false statements relating to the correction of a violation in a certification filed pursuant to section 26-126.2 of this title such certification as to correction shall be null and void and the penalties set forth in this section may be imposed as if such false certification had not been filed with and accepted by the department.

*Local Law 80-1985, language juxtaposed per Ch. 907-1985.

*****§[643a-12.4] 26-126.4 Limitations on power of commissioner to designate administrative code provisions which may be enforced by the environmental control board.**- Notwithstanding any other provision of law, the commissioner may not designate the following provisions of the administrative code for enforcement by the environmental control board:

- (1) Paragraph (6) or (7) of subdivision (c) of section 27-339.
- (2) Subdivision (c) of section 27-353.
- (3) Section 2-4 or 4-4 of building code reference standard RS13-1.
- (4) Paragraph (12) of subdivision (f) of section 27-972.
- (5) Paragraph (10) of subdivision (g) of section 27-972.

(6) Subdivision (c) of section 27-975.

(7) Subdivision (c) of section 27-989.

(8) Section 27-228.

(9) Any provision of the administrative code specified in section 15-232 of such code.

***Ch. 349, Laws of 1990; Local Law 80-1985, language juxtaposed per Ch. 907-1985. Sub.10-Local Law 3-1998, repealed by Local Law 14-2001.

***26-126.5 Enforcement of environmental control board judgements against owners for certain building code violations.** -

a. Notwithstanding any provision of law to the contrary, an environmental control board judgement against an owner for a building code violation with respect to (i) a private dwelling, (ii) a wooden-framed single occupancy multiple dwelling, or (iii) a dwelling with a legal occupancy of three or fewer dwelling units shall constitute a tax lien on the property named in the violation with respect to which such judgement was rendered, as hereinafter provided.

b. Such liens shall be entered and enforced as follows:

(i) There shall be filed in the office of the department a record of all such unpaid judgements. Such records shall be kept by tax lot and block number and shall be accessible to the public during business hours. An entry of a judgment on the records of the department shall constitute notice to all parties.

(ii) All such unpaid judgments shall constitute a lien upon the property named in the violation with respect to which such judgment was rendered when the amount thereof shall have been definitely computed as a statement of account by the department, and the department shall cause to be filed in the office of the city collector an entry of the account stated in the book in which such charges against the property are to be entered. Such lien shall have a priority over all other liens and encumbrances except for the lien of taxes and assessments. However, no lien created pursuant to this section shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless the requirements of paragraph (i) of this subdivision are satisfied.

(iii) A notice thereof, stating the amount due and the nature of the charge, shall be mailed by the city collector within five days after such entry to the last known address of the person whose name appears on the records in the office of the city collector as being the owner or agent of the property or as the person designated by the owner to receive tax bills or, where no name appears, to the property, addressed to either the "owner" or the "agent".

(iv) Such notice mailed by the city collector pursuant to this section shall have stamped or printed thereon a reference to this section.

(v) If such charge is not paid within thirty days from the date of entry, it shall be the duty of the city collector to receive interest thereon at the same rate as unpaid real property taxes, to be calculated to the date of payment from the date of entry.

(vi) Such charge and the interest thereon shall continue to be, until paid, a lien on the property. Any remedy or procedure available for the enforcement of tax liens against such property, including, but not limited to, any sale of a tax lien or any foreclosure of a tax lien, shall be available with respect to such tax lien. In addition, such tax lien may be satisfied in accordance with the provisions of section thirteen hundred fifty-four of the real property actions and proceedings law.

(vii) In any proceeding to enforce or discharge a lien created pursuant to this section, the validity of the lien shall not be subject to challenge based on the lawfulness of the judgment, except as provided in this section.

(viii) No such challenge may be made except by (1) the owner of the property or (2) a mortgagee or lienor whose mortgage or lien would, but for the provisions of this section, have priority over the department's lien.

c. Notwithstanding the foregoing provisions, no such judgement shall be entered and enforced as a tax lien against any property unless at the time of the issuance of the notice of violation a copy of such notice was also served on all mortgagees and lienors of record of such property by mail addressed to the recorded addresses of such mortgagees and lienors.

d. The procedures provided in this section for the enforcement of environmental control board judgements against owners shall be in addition to any other methods provided under any other provision of law for the enforcement of such judgements.

**Chapter 45, Laws of 2000.*

**** §[643a-13.0] 26-127 Dangerous buildings, places and things; nuisance; order to vacate building; expenses. -**

a. Whenever any building, excavation, business, pursuit, matter or thing, or the lot on which it is situated, or the plumbing, sewerage, drainage, light or ventilation thereof is, in the opinion of the commissioner, in a condition or in effect dangerous or detrimental to life or health, the commissioner may declare that the same, to the extent that he or she may specify, is a public nuisance and he or she may order the same to be removed, sealed, abated, suspended, altered or otherwise improved or purified. The commissioner may order or cause any excavation, building, sewer, plumbing, pipe, passage, ground, matter or thing or the lot on which it is situated to be purified, cleansed, disinfected, removed, altered, repaired or improved. Any building, structure, place or premises perilous to life or property by reason of the nature or condition of its contents, its use, the overcrowding of persons therein, defects in its construction, or deficiencies in fire alarm, or fire extinguishing equipment or fire escape equipment, or by reason of any condition in violation of law or order of the commissioner, is a public nuisance within the meaning of the code and the penal law. The commissioner is empowered to abate any such public nuisance.

b. In case any order to remedy a condition imminently perilous to life or property issued by the commissioner or

the department is not complied with, or the commissioner certifies in writing than an emergency exists requiring such action, he or she may order and immediately cause any building, structure, place or premises (i) to be vacated; and, also, if the commissioner determines such action is necessary to the preservation of life and safety, (ii) to be sealed, secured and closed; provided, however, that the commissioner shall not order sealed, secured and closed any dwelling unit or other space lawfully used for residential purposes unless such dwelling unit or other space is sealed pursuant to article eight of subchapter three of chapter one of title twenty-six of the code.

c. All orders issued pursuant to this section shall be posted upon the premises. Immediately upon the posting of an order upon the premises, officers and employees of the police department, the department, and other authorized officers and employees of the city shall immediately act upon and enforce such order. The police department shall provide all reasonable assistance to the department and other authorized officers and employees necessary to carry out the provisions of this section.

d. For the purpose of this section, "sealed" and "sealed, secured and closed" shall mean the use of any means available to render the building, structure or part thereof inaccessible, including but not limited to the use of a padlock or cinder blocks.

e. (i) Any order to seal, secure and close issued pursuant to item (ii) of subdivision b of this section shall contain notice of the opportunity for a hearing with respect to such order to determine if the order was properly issued in accordance with the provisions of this section. Such hearing shall be conducted by the commissioner, or in the commissioner's discretion, by the office of administrative trials and hearings or the environmental control board. If the matter is referred to such office or board, the hearing officer shall submit his or her findings of fact and a recommended decision to the commissioner. The hearing shall be held within three business days after the receipt of the written request of an owner, lessor, lessee, or mortgagee for such hearing and the commissioner shall render a decision within three business days after such hearing is concluded.

(ii) Any order issued pursuant to this section shall be served in accordance with section 26-117 of the code and, in addition, shall be mailed to the record owner of such premises and any record mortgagee of such premises at the address for such person as set forth in the recorded instrument and to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property. A copy shall also be

filed with the county clerk of the county in which such premises are located. Such filing shall be notice of the order to any subsequent owner and such owner shall be subject to such order

f. An order issued pursuant to this section shall not be rescinded unless the owner, lessor, lessee or mortgagee seeking such rescission provides assurance, in a form satisfactory to the commissioner, that the conditions which caused the issuance of such order have been corrected and will not reoccur. If such order is rescinded, upon the request of the owner, lessor, lessee or mortgagee, the commissioner shall provide a certified copy of such rescission, which may be filed with the county clerk of the county in which such premises are located.

g. Expenses of enforcing orders. The expenses attending the execution of any and all orders duly made by the department shall respectively be a several and joint personal charge against each of the owners or part owners, and each of the lessees and occupants of the building, structure, enclosure, place or premises to which such order relates, and in respect to which such expenses were incurred; and also against every person or body who was by law or contract bound to do that in regard to such building, structure, enclosure, place or premises which such order requires. Such expenses shall also be a lien on all rent and compensation due, or to grow due, for the use of any building, structure, place or premises, or any part thereof, to which such order relates, and in respect to which such expenses were incurred.

h. The commissioner shall give written notice of the closing of any building, structure, enclosure, place or premises pursuant to this section, and any subsequent actions taken with respect thereto, as soon as practicable, to (i) the borough president of the borough within which the closing has occurred; (ii) the council member representing the district within which the closing has occurred; and (iii) the local community board. On January first of each year, the commissioner shall submit a report to the council, setting forth the number of closings made in the previous year, the locations of such closings, and the nature and use of the premises closed. The commissioner shall, in addition, as soon as practicable after a building, structure, enclosure, place or premises has been closed, make and publish a report of said closing in a manner calculated to quickly notify the local community in which such closing occurred. The commissioner shall also make and publish a report of any premises reopened pursuant to his or her permission under this section. Failure to comply with this subdivision shall not invalidate any action taken by the commissioner pursuant to this section.

*** Local Law 23-1990.*

*** §26-127.1 Penalties for violation of order to vacate and order to seal, secure and close; access to premises.-**

a. Any person who violates the provisions of a vacate

order issued pursuant to section 26-127 of this code shall be liable for a civil penalty of not more than twenty-five thousand dollars and an additional civil penalty of not more than one thousand dollars for each day the violation continues.

b. Except as authorized by the commissioner, any person who removes or causes to be removed the seal from any premises sealed in accordance with an order of the commissioner or his or her designee shall be guilty of a misdemeanor punishable by imprisonment for no more than one year or a fine not to exceed fifty thousand dollars, or both such fine and imprisonment. Such person shall also be subject to a civil penalty not to exceed fifty thousand dollars.

c. The commissioner shall allow access to the premises to an owner, or a lessor, lessee or mortgagee, in accordance with the terms of the parties' lease or mortgage agreement, upon the following conditions: (i) the submission of a written affirmation, satisfactory to the commissioner, that such person or persons will commence or cause to be commenced without delay all work necessary to correct the conditions stated in the vacate order or otherwise to make the premises meet all applicable laws, rules and regulations and will complete such work within a period of time and in a manner to be approved by the commissioner; (ii) the submission of an affirmation or other proof satisfactory to the commissioner describing the steps that have been taken and will be taken in the future to ensure that the premises will be used or operated in a lawful manner and specifying such lawful use; (iii) if a license, permit or certificate of occupancy is necessary for such lawful use, the submission of a written affirmation or other proof, satisfactory to the commissioner, describing the steps that have been taken and will be taken in the future to ensure that such premises will be used or operated in compliance with any law requiring such license, permit or certificate of occupancy; and (iv) if the premises are leased and the person making the affirmations described in items (i), (ii) and (iii) is not such lessee, the commissioner may also require any authorized person seeking access pursuant to this subdivision to submit an affirmation or other proof that proceedings to enable such person to take actions necessary to ensure compliance with the affirmations submitted by such authorized person pursuant to items (i), (ii) and (iii) have been commenced.

d. Any person who makes a material false statement in any document submitted pursuant to subdivision c of this section which statement he or she knows or has reason to know will be relied upon by the commissioner in determining whether he or she will allow access to the premises shall be liable for a civil penalty of not more than fifty thousand dollars.

e. Notwithstanding any other law, rule, or regulation, any person, corporation, partnership, association or any other legal entity who permits a building, structure, enclosure, place or premises, or any part thereof, to be unlawfully occupied or used in contravention of an order of the

commissioner pursuant to section 26-127, or who negligently fails to prevent or prohibit such unlawful occupancy or use, shall be liable for a civil penalty of not more than one million dollars, if any other person suffers serious physical injury, as defined in section ten of the penal law, or death in the building, structure, place or premises or any part thereof subject to such order as a result of such unlawful occupancy or use. If more than one person suffers serious physical injury or death, such penalty shall be recoverable for each person suffering injury or death. Such penalty shall be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction. In determining the amount of the civil penalty to be imposed the court shall consider:

- (i) The extent and severity of injury to persons and property caused by the violation;
- (ii) The history of violations by the defendant at such premises, or any other premises, of laws, rules or regulations enforced by the department;
- (iii) The degree of willfulness, recklessness, or negligence displayed by the defendant in committing the subject violation;
- (iv) The defendant's financial resources; and
- (v) The defendant's good faith efforts to cure the subject violation, including efforts to obtain entry or possession of the premises in order to do so.

In the event that any person seriously injured or the family of any person [sic] who has died as the result of any unlawful occupancy or use described in this subdivision is unable to collect a judgment recovered in a civil action for personal injury or wrongful death against a defendant who has violated this subdivision because of the insolvency of such defendant, the city may, in its discretion, pay to such injured person or the family of such deceased person an amount, as hereinafter provided, collected from such defendant in an action relating to the same injury or death commenced by the corporation counsel against such defendant pursuant to this subdivision. Payments pursuant to this subdivision shall be made as a matter of grace and shall be in such amounts and in accordance with such standards and procedures as shall be established by the mayor, provided, however, that any payment made pursuant to this subdivision shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which such action is based; loss of earnings or support resulting from such injury; burial expenses not exceeding two thousand five hundred dollars of a person who died as a result of such unlawful occupancy or use described in this subdivision; and the unreimbursed cost of repair or replacement of articles of essential personal property lost, damaged or destroyed as a direct result of such unlawful occupancy or use. In no event shall the payment made to any person exceed the amount of such person's uncollected judgment for personal injury or wrongful death and in no event shall the total amount paid

to any number of persons with such uncollected judgments against a single defendant exceed the actual amount collected by the city from such defendant in an action under this subdivision.

** Local Law 23-1990.*

****§26-127.2 Violations of the zoning resolution in residential districts; public nuisance; order of closure.-**

- a. Any building or part thereof that is located in a residential district, which is occupied for a commercial or manufacturing use in violation of the zoning resolution without a valid certificate of occupancy, is hereby declared to be a public nuisance.
- b. If a building or part thereof in which such a nuisance occurs is not occupied primarily as a residence, the commissioner may, in addition to or as an alternative to any other remedy under any other provision of law, after notice and the opportunity for a hearing in accordance with section, order the closing of such building or part thereof to the extent necessary to abate the nuisance.
- c. A notice of hearing with respect to an order of closure shall be served on the owner and mortgagee of record of such building or part thereof and on the person alleged to be occupying such building or part thereof for commercial or manufacturing use in the following manner:
 - (1) service may be made on the owner by delivering such notice to the owner or to an agent of the owner or to a person of suitable age and discretion at the residence or place of business of the owner or, if upon reasonable application such delivery cannot be completed, by affixing such notice in a conspicuous place at the owner's place of business or residence or by placing it under the entrance door at either of such locations or by delivering such notice to a person employed by the owner to work at or to manage or maintain the premises at which the nuisance is located and, in all instances except personal delivery upon such owner by mailing the notice of hearing as follows:
 - (i) 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 the administrative code; or
 - (ii) to the person designated as owner of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or
 - (iii) to the person in whose name the real estate affected by the order of the commissioner is recorded in the office of the city register or the county clerk as the case may be at the address set forth on the recorded instrument.
 - (2) service may be made on an owner that is a corporation pursuant to section three hundred six of the business

corporation law; however, service upon a corporation shall be deemed to have been completed forty-five days following service upon the secretary of state;

(3) service may be made upon mortgagees of record by mailing such notice to the mortgagees at the address set forth on the recorded instrument;

(4) service may be made upon an occupant (i) by delivering such notice to the occupant or to a person employed by the occupant to work at or to manage or maintain the premises at which the nuisance is located; or (ii) by affixing such notice to the premises at which the nuisance is located in a conspicuous place or by placing a copy under the entrance door of such premises and mailing a copy of such notice to the occupant at such premises; (iii) and in all instances except personal delivery upon such occupant, by mailing the notice of hearing to the occupant at the premises at which the nuisance is located.

(5) proof of service pursuant to paragraphs (1), (2), (3), and (4) of this subdivision shall be filed with commissioner.

d. Such hearing shall be conducted by the office of administrative trials and hearings. The administrative law judge assigned to hear the matter shall submit his or her proposed findings of fact and recommended decision to the commissioner. If based on such recommended decision, proposed findings of fact, and the record of the hearing the commissioner determines that the building or part thereof is located in a residential district and that it has been occupied for a commercial or manufacturing use in violation of the zoning resolution without a valid certificate of occupancy, he or she may issue an order of closure. Such order shall not bar legally required ingress or egress for residential occupancy of parts of the building, which are not subject to the order of closure.

e. At such hearing it shall not be a defense that the owner, occupant, lessor, lessee, mortgagee, or other person having an interest in the property lacked knowledge of or did not acquiesce or participate in the commercial or manufacturing use of such property.

f. A closure ordered by the commissioner pursuant to this section shall not constitute an act of possession, ownership, or control by the city over the closed premises.

g. An order of closure shall be posted at the building or part thereof, which is the subject of such order, and shall be mailed to the record owner of such premises, and any record mortgagee at the address for such person set forth in the recorded instrument, and to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property. A copy shall also be filed with county clerk or register of the county in which such premises are located. Such

filing shall be notice of the order to any subsequent owner and such owner shall be subject to such order.

h. On the tenth business day after the posting of such order and upon the written directive of the commissioner, police officers and authorized employees of the department shall act upon and enforce such order by sealing, padlocking, or otherwise preventing access to the premises in a manner that will not bar legally required ingress or egress for residential occupancy of parts of the building that are not subject to the closure order.

i. If at any time after the issuance of such order, the owner, mortgagee, or other person having an interest in the property provides assurance, in a form satisfactory to the commissioner, that the commercial or manufacturing use of the premises has been discontinued and will not reoccur, or such owner, mortgagee, or other person establishes that the premises may be lawfully occupied for such manufacturing or commercial use, the commissioner shall rescind the closure order. If such order is rescinded, the commissioner shall, upon request of such owner, mortgagee, or other person, provide a copy of such rescission, [sic] which may be filed with the county clerk or register of the county in which such premises are located.

j. It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building or part thereof that has been sealed, padlocked, or otherwise closed pursuant to an order of the commissioner. Mutilation or removal of a posted order of the commissioner shall be punishable by a fine of not more than two hundred fifty dollars or by imprisonment not exceeding fifteen days, or both, provided such order contains therein a notice of penalty.

k. Intentional disobedience or resistance to any provision of an order issued by the commissioner pursuant to this section, in addition to any other punishment prescribed by law, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not exceeding six months, or both.

***Local Law 6-1993.*

*****26-127.3 Illegal outdoor signs; public nuisance.-**

a. A sign with a surface area greater than two hundred square feet that is erected, maintained, attached, affixed, painted on, or in any other manner represented on a building or premises in violation of the zoning resolution, the administrative code or rules adopted pursuant thereto is hereby declared to be a public nuisance. The commissioner may, after notice and hearing, order the removal of such illegal sign or its sign structure or both, as hereinafter provided.

b. The commissioner shall serve a notice of hearing with regard to the proposed nuisance abatement on the owner and mortgagee of record of the building or premises and other persons having a recorded interest in the property in the manner provided in subdivision c of section 26-127.2 of this code for the service of an order of closure. If the sign is under the control of an outdoor advertising company, as defined in section 26-259 of the code, and an address for such company is reasonably

ascertainable, the notice shall also be served on such outdoor advertising company by mail to the last known address for such company or, if such company is registered in accordance with section 26-260 of the code, at the address provided to the department by the registrant.

c. The office of administrative trials and hearings shall conduct the hearing. The administrative law judge assigned to hear the matter shall submit his or her proposed findings of fact and recommended disposition to the commissioner. If based on such recommended disposition, proposed findings of fact and the record of the hearing the commissioner determines (i) that the sign has a surface area greater than two hundred square feet and, (ii) that the sign has been erected, maintained, attached, affixed, painted on, or in any other manner represented on the building or premises in violation of the zoning resolution, the administrative code or rules adopted pursuant thereto, he or she may order the removal of the illegal sign or its sign structure or both.

d. At such hearing it shall not be a defense that an owner or other person having an interest in the property lacked knowledge of or did not participate in the erection or maintenance of the illegal sign.

e. The commissioner's order of removal shall be posted, mailed and filed in the manner provided in subdivision g of section 26-127.2 of this code for an order of closure.

f. On or after the tenth business day after the posting of such order and upon the written directive of the Commissioner, police officers and authorized representatives of the department shall act upon and enforce such order by removing, covering, painting over or otherwise rendering ineffective the illegal sign or its sign structure or both. Such work shall at all times be performed by a licensed sign hanger where required by law. Nothing in this section shall be construed to prohibit an owner or other person having an interest in the property from removing or causing the removal of an illegal sign or its sign structure prior to the arrival of such enforcement officers. On and after the posting of such removal order, no further permits for signs shall be issued for such building or premises pursuant to section 26-253 or sections 27-147, 27-148 and article sixteen of sub-chapter one of title twenty-seven of this code and, if the sign structure is not removed, no further display shall be exhibited on such sign structure unless and until the commissioner rescinds such order. The commissioner may rescind the order if the owner or other person having an interest in the building or premises provides assurance in a form satisfactory to the commissioner that all signs erected or maintained at such building or premises will be in compliance with the zoning resolution, the administrative code or rules adopted pursuant to such provisions. If such order is rescinded, the commissioner shall, upon request of such owner, mortgagee or other person, provide a certified copy of such rescission which may be filed with the county clerk or register of the county in which such building or premises is located.

g. The costs and expenses for painting over, covering, rendering ineffective or for the removal and storage of such sign and its sign structure may be recovered from the owner of the premises or, if the illegal sign is under the control of an outdoor advertising company and notice was served on such company in accordance with subdivision b of this section, from such outdoor advertising company. Such amounts may be recovered by the city in an action or proceeding in any court of appropriate jurisdiction and, with respect to amounts owed by an outdoor advertising company, by drawing upon any bond posted by such company pursuant to section 26-260 of this code. Nothing in this subdivision shall be construed to limit the ability of an owner to seek recovery of such costs and expenses from any other party.

h. In addition, such costs and expenses shall constitute a lien on the land and building on which the sign was located which may be entered and enforced pursuant to section 26-128 of this code in the same manner as an unpaid fee.

i. The commissioner shall adopt rules to provide for the storage and disposal of any sign or sign structure removed pursuant to this section. If the identity and address of the owner of such property is reasonably ascertainable, notice of the removal shall be sent to the owner within a reasonable period of time after the removal. If such property is not claimed within thirty days after its removal it shall be deemed to be abandoned and may be sold at a public auction after having been advertised in the City Record and the proceeds paid into the general fund or if the commissioner determines that the property is not saleable, he or she may turn over such property to the department of sanitation for disposal. Property removed pursuant to this section shall be released to the owner or other person lawfully entitled to possession upon payment of the costs of removal and storage as set forth in the rules of the department and any fines or civil penalties imposed for the violation or, if an action or proceeding for the violation is pending in court or before the environmental control board, upon the posting of a bond or other form of security acceptable to the department in an amount which will secure the payment of such costs and any fines or civil penalties which may be imposed for the violation.

j. For the purposes of this section the terms "sign" and "surface area", in reference to a sign, shall be as defined under section 12-10 of the zoning resolution.

k. An order of the commissioner issued pursuant to subdivision c of this section shall be a final determination of the commissioner for purposes of review pursuant to article seventy-eight of the civil practice law and rules. Notwithstanding any inconsistent provision of paragraph (a) of subdivision six of section six hundred sixty-six of the New York city charter, such order shall not be subject to review by the board of standards and appeals.

***Local Law 14-2001.

§[643a-14.0] 26-128 Liens on premises for inspection, reinspection, examination, service or permit fees.-

- a. Any unpaid fee for an inspection, reinspection, examination or service performed by the department, and all permits issued by the department, pursuant to law shall constitute a lien upon the land and buildings upon or in respect to which such inspection, reinspection, examination or service was performed or permit issued, as hereinafter provided.
- b. There shall be filed in the office of the department a record of all fees for inspections, reinspections, examinations or services performed and all permits issued by or on behalf of the department. Such records shall be kept on a building by building basis and shall be accessible to the public during business hours. An entry of a fee on the records of the department shall constitute notice to all parties.
- c. All such unpaid fees shall constitute a lien upon the land and building upon, or in respect to which, such inspection, reinspection, examination or service was performed or permit issued when the amount thereof shall have been definitely computed as a statement of account by the department and the department shall cause to be filed in the office of the city collector an entry of the account stated in the book in which such charges against the premises are to be entered. Such lien shall have a priority over all other liens and encumbrances except for the lien of taxes and assessments. However, no lien created pursuant to this section shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless the requirements of subdivision b of this section are satisfied.
- d. A notice thereof, stating the amount due and the nature of the charge, shall be mailed by the city collector, within five days after such entry, to the last known address of the person whose name appears on the records in the office of the city collector as being the owner or agent or as the person designated by the owner to receive tax bills or, where no name appears, to the premises, addressed to either the owner or the agent.
- e. If such charge is not paid within thirty days from the date of entry, it shall be the duty of the city collector to receive interest thereon at the rate of fifteen percent per annum, to be calculated to the date of payment from the date of entry.
- f. Such charge and the interest thereon shall continue to be, until paid, a lien on the premises. Such lien shall be a tax lien within the meaning of sections 11-319 and 11-401 of the code and may be sold, enforced or foreclosed in the manner provided in chapter three or four of title eleven of such code or may be satisfied in accordance with the provisions of section thirteen hundred fifty-four of the real property actions and proceedings law.
- g. Such notice mailed by the city collector pursuant to this section shall have stamped or printed thereon a reference to this section.
- h. In any proceedings to enforce or discharge a lien created pursuant to this section the validity of the lien shall not be subject to challenge based on:
 - (1) The lawfulness of the inspection, reinspection, examination, service or permit, or
 - (2) The propriety and accuracy of the fee for which a

lien is claimed, except as provided in this section.

- i. No such challenge may be made except by (1) the owner of the property, or (2) a mortgagee or lienor whose mortgage or lien would, but for the provisions of this section, have priority over the department's lien.

§[644-1.0] 26-129 Record of applications.-

Each borough superintendent shall keep a record of all applications presented to him or her concerning, affecting or relating to the construction, alteration or removal of buildings. Such record shall include the date of the filing of each such application; the name and address of the applicant; the name and address of the owner of the land on which the building mentioned in such application is situated; the names and addresses of the architect and builder employed thereon; a designation of the premises by street number, or by any means sufficient to identify the same: * statement of the nature and proposed use of such building; and a brief statement of the nature of the application, together with a memorandum of the decision of the borough superintendent upon such application and the date of the rendition of such decision. The books containing such records are hereby declared to be public records, and shall be open to inspection at all reasonable times.

**Colon enacted; semicolon probably intended.*

§[644-2.0] 26-130 Borough superintendents to furnish tax department with copies of permits.- Whenever any permit shall be granted by the commissioner or any borough superintendent for the erection or alteration of any building or for the installation or alteration of any service equipment therein, a copy of such permit shall be furnished by the commissioner or such superintendent to the department of finance within five days after the issuance of such permit.

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