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NYC Administrative Code 5-371

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-371 City protected by payment; recovery from person not entitled thereto.

a. Payment of the compensation awarded in the final decree to the person or persons, corporation, or body politic named therein, (if not infants or persons of unsound mind) shall, in the absence of notice to the city of other claimants to such award, protect the city.

b. Where, however, any such sum or sums, or compensation, determined in favor of any person or persons, or party or parties, whatsoever, whether or not named in such report, shall be paid to any person or persons, or party or parties, when the same shall of right belong and should have been paid to some other person or persons, or party or parties, it shall be lawful for the person or persons, or party or parties to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suits, as so much money had and received to his, her or their use, by the person or persons, party or parties respectively to whom the same shall have been so paid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-23.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

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NYC Administrative Code 5-372

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-372 Awards; deposit of.

Whenever:

1. The owner or owners, person or persons interested in any real estate taken or affected in the proceedings, or in whose favor any such sum or sums or compensation shall have been determined, shall be under the age of twenty-one years, of unsound mind, or absent from the state of New York, or

2. The name or names of the owner or owners, person or persons interested in any such real estate shall not be set forth or mentioned in such final decree, or

3. Such owner or owners, person or persons, being named therein cannot, upon diligent inquiry, be found or

4. There are adverse or conflicting claims to the money awarded as compensation.

It shall be lawful for the city to pay the sum or sums determined to be payable to, or to which such owner or owners, person or persons, respectively, shall be entitled, with interest, thereon into such trust company as the court may direct. Such deposit shall be to the credit of such owner or owners, person or persons, and such payment shall be as valid and effectual, in all respects, as if made directly to the owner or owners, person or persons interested therein, respectively, according to their just rights.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-24.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-373

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-373 How defects may be remedied.

The supreme court of the judicial district in which the real estate is situated shall have power at any time to correct any defect or informality in any of the special proceedings authorized by this subchapter as may be necessary, or to cause other property to be included therein, and to direct such further notices to be given to any party in interest, as it deems proper. If, in any particular, it shall, at any time, be found necessary to amend any pleading or proceeding, or supply any defect therein, arising in the course of any special proceeding authorized by this subchapter, the same may be amended or supplied in such manner as shall be directed by the supreme court, which is hereby authorized to make such amendment or correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-26.0 added chap 929/1937 § 1

Amended LL 50/1942 § 29

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NYC Administrative Code 5-374

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-374 Acquisition of real estate for sewage disposal in connection with the city water supply.

a. The commissioner shall be authorized and empowered, subject to the approval of the mayor, by purchase or condemnation, to acquire, real estate

In or about the village of Brewster,

In or about the town of Carmel,

Within the Croton watershed in the county of Westchester, and

Within the Esopus and Schoharie watersheds in the counties of Ulster, Delaware, Schoharie and Greene, as may be necessary:

1. To carry into effect any agreed plan for the disposal of the sewage

Of the village of Brewster,

Of one or more villages or sewer districts, in the town of Carmel, (and for such purpose, to construct, operate and maintain a sewage disposal plant, equipment and facilities, or the extension and improvement of existing plants, if any, therein),

Within the Croton watershed in the county of Westchester and

Within the Esopus and Schoharie watersheds in the counties of Ulster, Delaware, Schoharie and Greene, including any agreed plan for the collection thereof in such counties.

2. To improve and protect the water supply of the city therein, any special or general act to the contrary, notwithstanding.

b. The land which shall be required for the purpose of carrying out any such agreed plan and to protect and improve the water supply of the city within the enumerated localities, except the town of Carmel, shall be taken only with the consent and approval of the authorities thereof.

c. If the city shall have been unable to secure such approval of the municipal authorities of the village or the town board of the town in which the land to be acquired is located, where such real estate shall be located within the Esopus and Schoharie watersheds in the counties of Ulster, Delaware, Schoharie and Greene, and the plans for such operating systems and plants for the collection and disposal of sewage shall have been approved by the state department of health, the city acting by or through its commissioner of environmental protection, notwithstanding the provisions of any special or general act to the contrary, may present a petition to the supreme court in the county involved, stating the proposed location of such operating system or plant for the collection and disposal of sewage, that the plans therefor have been approved by the state department of health, that application for the location thereof in accordance with such plans has been made to the municipal authorities or town board having jurisdiction thereover and has been unreasonably denied, or withheld, and such other facts as the petitioner may deem pertinent, together with a prayer for an order authorizing the construction of such operating system or sewage disposal plant in accordance with such plans. Notice of the time and place of presentation of such petition shall be served on the necessary municipal authorities or town board having jurisdiction over such applications and on the state department of health, and posted in such village or town in at least ten conspicuous public places for a period of ten days prior to the hearing of such petition. Upon the presentation of such petition, the presiding justice shall hear the parties to such proceeding and also such other residents of the sewer district of the village or town as desire to be heard. If the justice presiding be satisfied that the municipal authorities of the village or the town board of the town have unreasonably withheld the approval of the location of such operating system or sewage disposal plant, the justice may, by order, grant the petition. Upon the entry of such order, the city may acquire, by purchase or condemnation, in the manner provided by law, such real estate, rights of way and easements to and into such real estate as may be necessary for the proper erection, construction and operation, of such operating system or sewage disposal plant, and may construct the same in accordance with the plans approved by the state department of health.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-27.0 added chap 929/1937 § 1

Sub a amended chap 100/1963 § 278

Sub c amended chap 840/1977 § 149

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-376

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-376 Determination of additional sources of water supply; reports to board of estimate.

a. It shall be the duty of the commissioner of environmental protection to proceed immediately and with all reasonable speed, to ascertain what sources exist and are most available, desirable and best for an additional supply of pure and wholesome water for the city. The commissioner shall make such studies, investigations, surveys, maps, plans, profiles, estimates and reports as the commissioner may deem proper in order to ascertain the facts as to such sources and shall report to the board of estimate with recommendations as to what action should in the commissioner's opinion be taken with reference thereto. It shall be lawful for the board of estimate and the commissioner to report upon, consider and determine the project in parts or sections from time to time as they may deem fit, so that the city may be able to obtain an additional supply of water from one or more sources before the whole additional supply contemplated may be obtained.

b. If at any time the board of estimate shall determine it to be advisable that the needs of the city with respect to its water supply or with regard to the delivery of such supply to points convenient for distribution among the several boroughs shall be made the subject of study and investigation, the commissioner of environmental protection shall forthwith proceed with such studies and investigations and, together with his or her recommendations, report to the board of estimate. Upon receipt of any such report the board of estimate may consider and act upon it in the same manner and with the same authority as provided in this section and in any following sections.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-2.0 added chap 929/1937 § 1

Amended chap 357/1939 § 1

Renumbered chap 100/1963 § 1349

(formerly § K41-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-377

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-377 Further reports to board of estimate; hearings; map or plan of whole work to be approved and filed.

a. The board of estimate upon the receipt of such report or reports of the commissioner may adopt, modify or reject the whole or any part of the same, and may cause such studies, investigations, surveys, maps, plans, profiles, estimates and reports to be made, and such further information to be obtained as the commissioner shall deem expedient to enable him or her to act intelligently in the premises. In case of the modification or rejection of the recommendations in such report or reports or any part thereof by the board of estimate, the commissioner in like manner as aforesaid shall prepare and submit to the board of estimate further studies, investigations, surveys, maps, plans, profiles, estimates and reports and make such changes and modifications as shall seem proper to the board of estimate, and shall continue so to do under the direction of the board of estimate, until a map, plan or plans covering the entire work contemplated by this subchapter shall be approved and adopted by such board. The map, plan or plans may be made and adopted in parts or sections from time to time, and may be changed or modified either before or after adoption as the board of estimate may deem necessary for the more efficient carrying out of the provisions of this subchapter.

b. The board of estimate prior to the adoption of such map, plan or plans, or to a modification thereof shall afford to all persons interested a reasonable opportunity to be heard respecting the same, and shall give reasonable public notice of such hearing, at which testimony may be produced by the parties appearing in such manner as the board of estimate may determine, and each member of the board is hereby authorized to administer oaths and issue subpoenas in any proceeding pending before them under this subchapter. Notice of such hearing shall be given, in addition to the above provision, by mailing to the chairperson and clerk of the board of supervisors of the county where the real estate

to be acquired is situated a notice of such hearing at least eight days before the time named in the notice.

c. A final map, plan or plans approved and adopted by the board of estimate shall be executed in quadruplicate, one of which shall remain on file with the clerk of the board of estimate, one shall be placed on file in the office of the commissioner of environmental protection, one, or a certified copy thereof, shall be filed in the county clerk's office or register's office of each county in which any of the land affected thereby is situated.

d. Provided, however, that no reservoir or other structure for the storage or impounding of water, shall be constructed, at any time, within the drainage area of the Esopus creek in the county of Ulster, other than that designated in the reports of William H. Burr, Rudolph Hering and John R. Freeman to the Honorable George B. McClellan, mayor, chairman, board of estimate of the city of New York, as to the Ashokan reservoir, the flow line of which shall not exceed elevation six hundred feet coast and geodetic survey datum.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-3.0 added chap 929/1937 § 1

Amended chap 357/1939 § 2

Renumbered chap 100/1963 § 1349

(formerly § K41-3.0)

Sub c amended chap 702/1969 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-378

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-378 Entry to prepare maps and to post notice.

The commissioner of environmental protection, the commissioner's agents, engineers, surveyors and such other persons as may be necessary to enable the commissioner to perform his or her duties under this subchapter are hereby authorized to enter upon any land, or water, for the purpose of making surveys, examinations or investigations and preparing the maps, plans and reports contemplated by this subchapter and for the purpose of posting any notices that may be required to be published in like manner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-4.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1350

(formerly § K41-4.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-379

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-379 Real estate maps; preparation, submission and adoption thereof.

After the approval, adoption and filing of a final map, plan or plans described in section 5-377 of this subchapter, the commissioner shall prepare and submit to the board of estimate six similar maps of the real estate to be acquired or affected for the purpose of carrying out the said plan or plans, or any part thereof. Upon those maps there shall be laid out and separately numbered the various parcels of real estate acquisition of which is made necessary for the prosecution of the work authorized by this subchapter, including the lands adjoining the Esopus creek between the point on such creek, in the town of Shandaken, Ulster county, where the Schoharie tunnel empties into such creek, and the Ashokan reservoir of the city, in such county, the owners of which lands shall be entitled to recover the decrease in value of such lands by reason of any acts of the city under the provisions of this subchapter or any previous act, such damages to be determined by a commission in the same manner as damages for the taking of real property are determined. On such maps, the property division lines existing at the time of the survey shall be delineated, and there shall be plainly indicated those parcels of which the fee, and over or through which parcels the right to use and occupy the same temporarily or in perpetuity, is to be acquired. The board of estimate may adopt, modify or reject such maps in whole or in part and require others to be made instead thereof. In case of such rejection, the commissioner of environmental protection shall in like manner, as aforesaid, prepare and submit others, until maps shall be approved by the board of estimate covering the entire area required for the purpose of carrying out the said plan or plans, or any part thereof. Such maps may be made and filed in sections. One or more sections may be determined before the maps of the whole construction are completed. Such sections shall be determined and decided upon previous to the appointment of

the commissions as hereinafter provided for, and shall be so determined that one commission shall not be appointed for a section covering more property than can reasonably be passed upon and awards made by such commission within the limits of a year from the time of the filing of the oaths, as hereinafter provided. The proceedings hereinafter authorized may, in like manner, be taken separately in reference to one or more of such sections before the maps of the whole are filed. The work upon one or more of such sections may be begun before the maps of the remaining sections are filed. The maps when adopted by the board of estimate shall be transmitted by such board to the corporation counsel, with a certificate of such adoption written thereon and signed by a majority of the board.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-5.0 added chap 929/1937 § 1

Amended chap 357/1939 § 3

Renumbered and amended chap 100/1963 § 1351

(formerly § K41-5.0)

CASE NOTES FROM FORMER SECTION

¶ 1. A "taking map" is sufficient if it clearly delineates the properties in which the City proposes to acquire the fee or an easement. It need not similarly delineate all other parcels which might be affected by the taking. It is up to the owners of such "outside" parcels to assert their claims. Notice of the proceeding given by advertising and posting to such owners must be deemed sufficient.-Matter of Huie (Neilson), 6 App. Div. 2d 837, 176 N.Y.S. 2d 193 [1958].

¶ 2. A claimant owned a property located at a distance from a river with an easement to the river and the right, in common with others, to use the beach. The land, subject to these rights, was designated as Parcel 238 on the taking map, and as owned by another person. **Held:** The statute of limitations was not tolled as to the claimant, since the board was not required to map the upland parcels.-Matter of Huie (Consolidated Neversink Riparian Sections 3, 4 and 5), 9 App. Div. 2d 1009, 195 N.Y.S. 2d 30 [1959].

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NYC Administrative Code 5-380

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-380 Maps; filing of.

The corporation counsel shall cause one of the maps described in section 5-379 of this subchapter, or a certified copy thereof, to be filed in the office of the clerk of each county in which any real estate laid out on such map shall be located except that in any county in which there is a register's office, such map shall be filed therein instead of in the office of the county clerk. The other maps described in section 5-379 of this subchapter shall be disposed of in the manner indicated in succeeding sections of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-6.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1352

(formerly § K41-6.0)

Administrative Code of the City of New York

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NYC Administrative Code 5-381

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-381 Application for appointment of commissioners of appraisal.

After such maps shall have been filed as provided for in the preceding section of this subchapter, the corporation counsel, for and on behalf of the city, upon first giving the notice required in the next section of this subchapter, shall apply to the supreme court at any special term thereof to be held in the judicial district in which the lands or some part thereof shown on such maps, and the title to which it is proposed to acquire in the proceeding thus instituted, is situated, for the appointment of commissioners of appraisal. Upon such application the corporation counsel shall present to the court a petition signed and verified by the commissioner of environmental protection, according to the practice of the court, setting forth the action theretofore taken by the commissioner and by the board of estimate and the filing of such maps, and praying for the appointment of commissioners of appraisal. Such petition shall contain a general description of all the real estate to, in, or over which any title, interest, right or easement is sought to be acquired for the city for the purpose of this subchapter, each parcel being more particularly described by a reference to the number of such parcel as given on such maps, and the title, interest or easement sought to be acquired to, in or over such parcel, whether a fee or otherwise, shall be stated in the petition.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-7.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1353

(formerly § K41-7.0)

Administrative Code of the City of New York

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NYC Administrative Code 5-382

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-382 Notice of application for appointment of commissioners of appraisal.

The corporation counsel shall give notice in the City Record, and in two public newspapers published in the city of New York and in two public newspapers published in each other county in which any real estate laid out on such maps may be located, and which it is proposed to acquire in the proceeding, of the corporation counsel's intention to make application to such court for the appointment of commissioners of appraisal which notice shall specify the time and place of such application, shall briefly state the object of the applications and shall describe the real estate sought to be taken or affected. A statement of the real estate to be acquired or affected for the purpose of carrying out the said plan or plans or in any part thereof with separate enumerations of the numbers of the parcels to be taken in fee, and of the numbers of the parcels in which an easement is to be acquired, together with the route of the tunnels and aqueducts by courses and distances and of the greatest and least width of its required easement or parcel of land with a reference to the dates and places of filing such maps, shall be sufficient description of the real estate sought to be so taken or affected. Such notice shall be so published, once in each week, in each of such newspapers, for six weeks immediately previous to the presentation of such petition; and the corporation counsel shall in addition to such advertisement cause copies of the same in hand bills to be posted up, for the same space of time in at least twenty conspicuous places on the line of the aqueduct or in the vicinity of the real estate so to be taken or affected and shall cause a copy of such notice to be mailed to the owners of such real estate whose names and addresses are known or are readily ascertainable. After the original appointment of commissioners of appraisal pursuant to the provisions of this subchapter, the corporation counsel may apply at a special term of the supreme court in the same judicial district where application for such original

commission was made for the appointment of a successor commission, upon first giving ten days' notice by advertisement in the newspapers hereinabove described of his or her intention to make such application.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-8.0 added chap 929/1937 § 1

Amended chap 357/1939 § 4

Renumbered chap 100/1963 § 1354

(formerly § K41-8.0)

Amended chap 215/1964 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where notice of the presentation of the petition upon which the order appointing commissioners of appraisal was based was given by publication pursuant to Admin. Code § K41-8.0, claimant, not having appeared on the return of the petition upon which the order was granted, was only constructively before the court and was bound by the order only insofar as it appointed the commissioners, and the attempted adjudication of the construction of certain release paragraphs of the lease in question was a nullity.-Delaware County Electric Cooperative, Inc. v. City of N.Y., 99 N.Y.S. 2d 42 [1950], aff'd on this point, 278 App. Div. 526, 105 N.Y.S. 2d 960 [1951].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-383

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-383 Appointment of commissioners of appraisal; their qualifications.

At the time and place mentioned in such notice, unless such court shall adjourn such application to a subsequent day and in that event at the time to which the same may be adjourned, such court, upon due proof to its satisfaction of the required publication and posting aforesaid, and upon filing such petition, shall make an order for the appointment of three disinterested and competent freeholders, at least one of whom shall reside in the city and at least one of whom shall reside in the county or one of the counties in which such real estate shall be situated, as commissioner of appraisal to ascertain and appraise the compensation to be made to the owners and all persons interested in the real estate laid down on such maps as proposed to be taken or affected for the purpose indicated in this subchapter. Such order shall fix the time and place for the first meeting of such commissioners.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-9.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1355

(formerly § K41-9.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § K41-9.0, providing for appointment of three commissioners, one residing in New York City and at least one of the others residing in one of the counties in which the real estate was situated, applied also to a proceeding which included groups of parcels located severally in more than one county.-Application of Gillespie, 180 Misc. 139, 44 N.Y.S. 2d 424 [1942].

¶ 2. Admin. Code § K41-9.0 was not invalid on contended ground that the Constitution vested the power of appointment of commissioners in the court, and that the legislative prescription as to the residence of commissioners was an improper intrusion upon the constitutional grant.-Id.

¶ 3. An application to extend the terms of office of commissioners of appraisal can be made and entertained without notice to all parties interested, since the Admin. Code makes no requirement that notice be given, the giving of notice to all claimants over whose claims the expiring commission might have jurisdiction would be difficult, and in the absence of any statutory requirement there would be a problem as to what kind of notice should be given.-In re Gillespie, 271 App. Div. 767, 65 N.Y.S. 2d 113 [1946], reversing 64 N.Y.S. 2d 706 [1946], aff'd without opinion, 296 N.Y. 989, 73 N.E. 2d 567 [1947].

¶ 4. The fact that there were several unfinished claims before the expiring commission and some claims in which testimony had been taken but no reports made, constituted sufficient cause to extend the commission's life.-Id.

¶ 5. On the question whether the term of a commission of appraisal should be extended, any inquiry as to the amount of work done by the commission is irrelevant, as it is notorious that the work of any commission depends largely upon the diligence of the claimants and the Corporation Counsel of the City of New York.-Id.

¶ 6. The chairman of the Commission on Appraisal, after a hearing, consulted with accountants, teachers and bankers to resolve confusing theories of appraisal. **Held:** He was not entitled to compensation for the time so spent. His acts were illegal and transcended the statutory powers and duties of a Commissioner of Appraisal.-Matter of Ford, 18 App. Div. 2d 135, 238 N.Y.S. 2d 346 [1963].

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NYC Administrative Code 5-384

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-384 Oath of commissioners of appraisal; filing thereof.

Such commissioners shall take and subscribe the oath or affirmation required by article thirteen of the constitution and shall forthwith file the same or a certified copy thereof in the office of the clerk of the county in which the land or any part thereof is situated, and shall forthwith file certified copies of such oaths in the office of the clerk of the county of New York, and in the register's office in any county in which there is a register's office and in which is situated any of the real estate sought to be taken or affected by the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-10.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1356

(formerly § K41-10.0)

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NYC Administrative Code 5-385

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-385 Eligibility of commissioners for reappointment.

No person appointed a commissioner of appraisal in any proceedings conducted under this subchapter shall be eligible for reappointment on any commission provided for under this subchapter until three years shall have elapsed since such person shall have finished the duties imposed upon him or her as a commissioner under any previous appointment except a person appointed to fill a vacancy occurring in a commission more than six months after the original appointment of such commission, which said appointee shall be eligible for one additional appointment to the successor commission or any other commission.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-10.1 added chap 357/1939 § 5

Renumbered chap 100/1963 § 1357

(formerly § K41-10.1)

Administrative Code of the City of New York

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NYC Administrative Code 5-386

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-386 Vesting of title; possession; removal of buildings or improvements.

On filing such oaths, in the manner provided in section 5-384 of this subchapter, the city shall be and become seized in fee of all those parcels of real estate which are on the maps referred to in section 5-379 of this subchapter delineated as parcels, of which it has been determined that the fee should be acquired, and shall also be and become vested of the easements, in, over, upon or through all those other parcels of real estate which are on said maps delineated as parcels in, over, upon or through which it has been determined that easements should be acquired; and may immediately or at any time or times thereafter take possession of the same or any part or parts thereof without any suit or proceeding at law for that purpose; provided, however, that before the city takes possession of the same it shall pay to the respective owner or owners of each of such parcels of real estate, which are upon such maps delineated as parcels of which it has been determined that the fee should be acquired, (a) if located outside the counties of Ulster, Greene, Sullivan, Schoharie and Delaware, a sum of money equal to one-half the assessed valuation of such real property as the same appears upon the assessment roll of the town or tax district in which the same is situate for the year next preceding that in which the city becomes seized in fee of each of such parcels of real estate, and (b) if located in the counties of Ulster, Greene, Sullivan, Schoharie or Delaware, a sum of money equal to fifty per centum of the full valuation of such real estate. In the event that a parcel so delineated on said map as a fee parcel is not separately assessed on the assessment roll of the town or tax district in which the same is situated but is assessed as a part of another tract, then the amount which the city shall be required to pay or deposit under this section shall be (a) if the parcel be located outside the counties of Ulster, Greene, Sullivan, Schoharie and Delaware, the proportion which the

assessed valuation of the parcel acquired bears to the assessed valuation of the entire property as a part of which said parcel is assessed, and (b) if the parcel be located in the counties of Ulster, Greene, Sullivan, Schoharie or Delaware, the proportion which the full valuation of the parcel acquired bears to the full valuation of the entire property as a part of which said parcel is assessed. The supreme court in the judicial district in which the land is situated is hereby authorized to make an order prorating such assessed valuation or full valuation, as the case may be, and to determine the proportion of such assessed valuation or full valuation, as the case may be, which the city of New York shall be required to pay before taking possession of such parcel. The city, at its option and by agreement with such respective owner or owners, may, instead of paying to him or her or them the amount or amounts hereinbefore required, pay to him or her or them a sum or sums of money greater than but not more than twice the amount or amounts hereinbefore required. For the purposes of this section only, "full valuation" of real estate shall mean the assessed valuation thereof, as the same appears on the assessment roll of the town or tax district in which the real estate is situate for the year next preceding that in which the city becomes seized in fee thereof, divided by the rate of assessment of real property in such town or tax district for the same year as finally recommended for adoption by the state tax commission under the provisions of the real property tax law formerly contained in sections fifty and one hundred seventy-four of the tax law. Deposit of all moneys hereunder to the credit of, or payable to the order of the owner, pursuant to the direction of the court, shall be deemed a payment within the provisions of this section, and, thereupon, the commissioner of environmental protection, or any person or persons acting under their or its authority may enter upon and use and occupy to the exclusion of any and all other persons all the parcels of real estate delineated on such map for the purpose of carrying out the plan or plans, or any part thereof, described in section 5-377 of this subchapter, provided, however, that no buildings or improvements shall be removed or disturbed within one year from the date of the filing of the oaths of the commissioners unless thirty days' notice in writing is given to the owner, or to his or her attorney, if any, by the corporation counsel of the intention to make such removal, and affording the owner an opportunity to examine the property with the commissioners of appraisal and such witnesses as he or she may desire. If the owner of the property can not be found with due diligence, and there is no attorney representing such property or parcel, before removing, disturbing, or destroying any of the buildings, or the improvements, a representative of the commissioner of environmental protection or of the corporation counsel shall cause measurements to be made of the buildings and photographs of the exterior views thereof, which measurements and photographs shall be at the disposition thereafter of the claimants, or their attorneys, in case such claimants or their attorneys should appear and demand the same before the case is tried.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-11.0 added chap 929/1937 § 1

Amended chap 357/1939 § 6

Renumbered and amended chap 100/1963 § 1358

(formerly § K41-11.0)

CASE NOTES FROM FORMER SECTION

¶ 1. In view of Admin. Code §§ K41-11.0 and K41-17.0, providing that City should become vested with title to the parcels involved upon filing of the oath of the Commissioners of Appraisal, and that interest upon any award subsequently made should run from date of filing of the oath, the right to interest at the lawful rate prevailing at the time of the taking was a vested contractual obligation which might not be impaired until the lawful rate was changed, and consequently owner of award was entitled to interest thereon at 6 percent until July 1, 1939, when the lawful rate was changed to no more than 4 percent, and thereafter the owner was entitled to interest at 4 percent.-Application of

Gillespie, 173 Misc. 336, 16 N.Y.S. 2d 579 [1939].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-387

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-387 Commissioners of appraisal; powers and proceedings thereof; provisions for filling of vacancies.

a. Any one of such commissioners of appraisal may issue subpoenas and administer oaths to witnesses; and they or any one of them, in the absence of the others, may adjourn the proceedings from time to time in their discretion; but they shall continue to meet from time to time as may be necessary, within the judicial district where the lands or any part thereof may be located, to hear, consider and determine upon all claims which may be presented to them under the provisions of this subchapter. Within thirty days after the commissioners have been appointed and have qualified, the city shall furnish the commission with a list of the claims that have been filed and are to be determined and the commissioners shall have full power and authority to prepare a calendar of all such claims and to determine the order and priority of the hearing of such claims; to set down the hearing of any such claim for a day certain; and to order an inquest in or a dismissal of any claim for failure of a party to appear at the time designated for the hearing thereof unless the commissioners shall determine that a reasonable excuse for such failure exists. They shall view the real estate laid down on the maps and shall hear the proofs and allegations of any owner, lessee, or other person in any way entitled to or interested in such real estate or any part or parcel thereof, and also such proofs and allegations as may be offered on behalf of the city. They shall rule upon motions and objections made in connection with the admission or exculsion of testimony or evidence in any hearing before the commissioners and shall make findings upon which their awards are made and separate findings upon which the fees and allowances are based. They shall reduce the testimony taken before them to writing, and after the testimony is closed, they or a majority of them, all having considered the same, and having an opportunity to be present, shall without unnecessary delay, ascertain and determine the just and equitable

compensation which ought justly to be made by the city to the owners or the persons interested in the real estate sought to be acquired or affected by such proceedings, including just and equitable compensation to the owner of any leasehold taken or affected in the proceeding. Such commissioners of appraisal shall make reports of their proceedings to the supreme court as in the next section provided, with the minutes of the testimony taken by them and the findings of fact made by them, and they shall be entitled to the payments hereinafter provided for their services and expenses to be paid from the fund hereinafter provided.

b. In case of the death, resignation, refusal or neglect to serve of any or all of such commissioners of appraisal, the corporation counsel shall upon ten days' notice to be given by advertisement in the newspapers designated as hereinbefore provided, apply to the supreme court at a special term thereof, to be held in the judicial district in which the land or any part thereof affected by the proceedings, is situated, for the appointment of one or more commissioners to fill the vacancy or vacancies so occasioned.

c. In the event that the corporation counsel shall fail, neglect or refuse to make such application within thirty days after any such vacancy shall have occurred as hereinabove provided, any person interested in the proceeding may similarly apply after such advertisement for the filling of any vacancy. The city of New York shall be liable for the reasonable expenses of such advertisement together with ten dollars costs of motion in the event of any such application by any such interested person.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-12.0 added chap 929/1937 § 1

Amended chap 357/1939 § 7

Renumbered chap 100/1963 § 1359

(formerly § K41-12.0)

Sub a amended chap 794/1964 § 2

(Committee on city affairs, legislative declaration chap 794/1964 § 1)

CASE NOTES FROM FORMER SECTION

¶ 1. Under Admin. Code § K41-12.0, the Commissioners appointed "to hear, consider and determine upon all claims which may be presented to them under the provisions of this article," were limited to a finding of the value of claimant's property taken by eminent domain, and they were not empowered to hear and determine title to property.-Water Right & Electrical Co. v. Kaercher, 200 Misc. 1107, 109 N.Y.S. 2d 242 [1951].

¶ 2. Gas and electric corporation which, as result of the City's acquisition of electric light and power lines within the reservoir basin of the Roundout Reservoir, had been obliged to relocate its lines over a substitute hilly route through wooded terrain, **held** entitled to compensation representing the excess of cost of operating and maintaining the lines on the substituted route over cost of operating and maintaining the lines within the reservoir area. Admin. Code § K41-26.0 permitted the acquisition of the lines only upon providing a substitute route and upon the City bearing the expense or loss by reason of changing the route, and §§ K41-12.0 and K41-13.0 confirmed the broad legislative intent that the City should pay for all damage reasonably traceable to its exercise of the power of condemnation. That the corporation had waived any claim under § K41-44.0, which allows business damage claims, did not amount to a waiver as to the claimed items, particularly since the claim for increased cost of maintenance was not the same as a

claim for decrease in value of an established business or the consequential damage to real estate not taken.-Petition of Gillespie (Central Hudson Gas & Elec. Corp.), 263 App. Div. 175, 32 N.Y.S. 2d 96 [1942], aff'd without opinion, 288 N.Y. 514, 41 N.E. 2d 926 [1942].

¶ 3. Petitioner owned a parcel of property on a branch of the Delaware River. When the City diverted water from the river it caused variations in the depth, temperature and flow of the water and this damaged the swimming and fishing in the area. **Held:** Petitioner was entitled to damages for the diversion of the water and the consequent damage to his property. However, petitioner was not entitled to damages for an adjacent piece of property which he purchased about six weeks after the City took the diversion rights. As to this property, petitioner's claim was not within the ambit of this section.-Matter of Ford, 18 App. Div. 2d 855, 236 N.Y.S. 2d 591 [1962].

¶ 4. The chairman of the Commission on Appraisal, after a hearing, consulted with accountants, teachers and bankers to resolve confusing theories of appraisal. **Held:** He was not entitled to compensation for the time so spent. His acts were illegal and transcended the statutory powers and duties of a Commissioner of Appraisal.-Matter of Ford, 18 App. Div. 2d 135, 238 N.Y.S. 2d 346 [1963].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-388

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-388 Report of commissioners; compensation for loss to railroad or electric corporation or owner of water power; expenses.

a. The commissioners of appraisal shall prepare a report, and such copies thereof as may be required. Such report or reports shall contain a brief description of the several parcels of real estate so acquired, taken or affected, with a reference to the map or maps as showing the exact location and boundaries of each parcel; a statement of the sum estimated and determined upon by them as a just and equitable compensation to be made by the city to the owners or persons entitled to or interested in each parcel so taken, or as to which any right, title, interest, privilege or easement is taken, acquired or extinguished; and a statement of the respective owners or persons entitled thereto, or interested therein. In every case where the owners and parties interested, or their respective estates or interests are unknown, or not fully known to the commissioners of appraisal, it shall be sufficient for them to set forth and state in general terms the respective sums to be allowed and paid to the owners of, and parties interested therein generally, without specifying the name of estates or interests of such owners, or parties interested, or any or either of them.

b. Where loss, damage or expense, direct or consequential, has resulted to any duly incorporated railroad corporation, operating a steam railroad in any county in which land shall be acquired in pursuance of the provisions of this subchapter, or by reason of any of the matters in this subchapter involved, or any electric corporation, or the owner of any water power on any of the streams or waters affected by the provisions of this subchapter, the board of estimate is hereby authorized and empowered to agree with such railroad corporation, or any such electric corporation, or the owner of any such water power, upon the compensation which shall be made to it for such loss, damage or expense. In

the event of no agreement being reached between such board and such railroad corporation, or any such electric corporation, or the owner of any such water power, the commissioners of appraisal appointed to estimate damages for lands acquired in such county are hereby authorized and directed to pass upon such claim and to make awards therefor as provided in this subchapter.

c. Subject to review by the court as hereinafter provided, the commissioners may also recommend such sums, if any, as shall seem to them proper to be allowed, to parties appearing in the proceeding, as expenses and disbursements including reasonable compensation for witnesses and what sums, if any, ought to be paid to the general or special guardian of an infant, idiot, or person of unsound mind, or to an attorney appointed by the court to attend to the interests of any known owner or party in interest who has not appeared in the proceedings for expenses or counsel fees.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-13.0 added chap 929/1937 § 1

Amended chap 357/1939 § 8

Sub b amended chap 710/1943 § 577 (Part 3)

Renumbered chap 100/1963 § 1360

(formerly § K41-13.0)

Amended chap 794/1964 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. In proceeding by Board of Water Supply to acquire real estate for water supply purposes, **held** the evidence did not justify an award of $7,500 as compensation for the loss of a general store business.-In re Huie, 285 App. Div. 1206, 140 N.Y.S. 2d, 658 [1955].

¶ 2. Determination of value by Commissioners of Appraisal will be approved where it does not shock the conscience or sense of justice of the Court.-Matter of Huie, 2 N.Y. 2d 168, 157 N.Y.S. 2d 957, 139 N.E. 2d 140 [1956]; aff'g 283 App. Div. 678, 127 N.Y.S. 2d 214 [1954], aff'd 2 N.Y. 2d 168, 157 N.Y.S. 2d 957, 139 N.E. 2d 140 [1956].

¶ 3. Plaintiffs were entitled to interest on an award under § K41-44.0 of the Code from the date of confirmation of the award.-Hartman v. City of New York, 29 Misc. 2d 578, 218 N.Y.S. 2d 404 [1961].

¶ 4. The statute of limitations provided for in the New York City Water Supply Act may be waived.-Application of Huie, 14 A.D. 2d 627, 218 N.Y.S. 2d 791 [1961].

¶ 5. On appeal by the City from an order confirming awards for damages on account of the diversion of the Neversink River the Court found that one claim had not been filed within the statutory three-year period and that other awards were excessive.-Application of Huie, 14 App. Div. 2d 627, 218 N.Y.S. 2d 791 [1961].

¶ 6. In a proceeding for an order directing the Board of Water Supply to accept petitioner's claim which was not timely filed, petitioner contended that due process had been violated and the statute of limitations was ineffective. The Court found that the provisions of the Water Supply Act providing for constructive notice did not deny due process.-Application of Huie, 28 Misc. 2d 708, 221 N.Y.S. 2d 689 [1956].

¶ 7. Grantees who obtained title subsequent to legal date of vesting in City were not entitled to personal notice of condemnation nor to award of damages being made to estate of grantor.-Matter of Ford, 60 Misc. 2d 900, 304 N.Y.S. 2d 773 [1969].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-389

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-389 Filing of the commissioners' report.

Such report signed by such commissioners or a majority of them, shall be filed not more than one year after the date of the filing of the oaths of the commissioners in the office of a clerk of a county in which real estate sought to be acquired may be situated and in case a part of the real estate is in another county a duplicate report or certified copy shall be filed in the office of the clerk of such other county, provided, however, that the supreme court upon application and good reasons shown therefor may extend the time for the taking of testimony or for the preparation and filing of such report, or both, beyond one year for a period not exceeding eight months. The commissioners of appraisal shall notify the corporation counsel immediately upon the filing of a report.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-14.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1361

(formerly § K41-14.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Special Term has no authority to appoint a new commissioner or extend the life of an existing commissioner after an initial period in excess of one year and an extension exceeding eight months.-In re Huie (Furman), 24 App. Div. 2d 707, 261 N.Y.S. 2d 964 [1965].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-390

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-390 Notice of hearing on report.

The corporation counsel, or in case of the corporation counsel's neglect to do so within ten days after receiving notice of such filing, any person interested in the proceeding, shall give notice that such report will be presented for confirmation, modification (specifying the particulars of such modification in respect to the amount of the award, witness fees or other allowances made by the commissioners) or for rejection in whole or in part to the justice of the supreme court appointing the commissioners, or if the justice be unavailable, to a justice of the supreme court at a special term thereof, to be held in the judicial district in which the land or a part thereof is situated at a time and place to be specified in such notice, and the objections, if any, to the confirmation, modification or rejection of such report or any part thereof, shall be heard at such special term. The notice shall contain a statement of the time and place of the filing of the report and of the copy or copies thereof, and shall be published once in each week in each of the newspapers referred to previously in this subchapter, for at least three weeks immediately prior to the presentation of such report to the supreme court. As used in this section, section 5-391 and section 5-399 of this subchapter, the terms "modify" and "modification" shall be construed to include an increase, a decrease or any other change in an award, fee or allowance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-15.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1362

(formerly § K41-15.0)

Amended chap 794/1964 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-391

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-391 Hearing on the report.

The application for the confirmation, modification or rejection of the report shall be made to the supreme court at a special term thereof held in the judicial district in which the land or some part thereof is situated. Upon the hearing of the application such court may confirm or modify such report or may in its discretion order that the report or any portion thereof affecting one or more parcels be referred to the same commission, or a new commission for a new hearing, and make an order containing a recital of the substance of the proceedings in the matter of the appraisal with a general description of the real estate appraised and for which compensation is to be made; and shall also direct to whom the money is to be paid or in what bank or trust company and in what manner it shall be deposited by the comptroller. Such order confirming or modifying the report shall (except in case of an appeal, as provided in this subchapter) be final and conclusive as well upon the city as upon owners and all persons interested in or entitled to such real estate; and also upon all other persons whomsoever.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-16.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1363

(formerly § K41-16.0)

Amended chap 794/1964 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-392

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-392 Payment by the city.

The city shall, within three calendar months after the confirmation of the report of the commissioners of appraisal, pay to the respective owners and bodies politic or corporate, mentioned or referred to in such report, in whose favor, any sum or sums of money shall be estimated and reported by such commissioners, the respective sum or sums so estimated and reported in their favor respectively, with lawful interest thereon, from the date of filing the oath and certified copies thereof as by this subchapter required, deducting therefrom all sums of money paid on account thereof as provided in section 5-386 of this subchapter. In case of neglect or default in the payment of the same within the time aforesaid, the respective person or persons or bodies politic or corporate in whose favor the same shall be so reported, his, her, or their executors, administrators or successors, at any time or times, after application first made by him, her, or them, to the comptroller for payment thereof, may sue for and recover the same, with lawful interest as aforesaid, and the costs of suit in any proper form of action against the city in any court having cognizance thereof, and it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this subchapter for real estate taken or affected for the purpose herein mentioned, and the report of such commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded shall be conclusive evidence in such suit or action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-17.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1364

(formerly § K41-17.0)

CASE NOTES FROM FORMER SECTION

¶ 1. In view of Admin. Code §§ K41-11.0 and K41-17.0, providing that City should become vested with title to the parcels involved upon filing of the oath of the Commissioners of Appraisal, and that interest upon any award subsequently made should run from date of filing of the oath, the right to interest at the lawful rate prevailing at the time of the taking was a vested contractual obligation which might not be impaired until the lawful rate was changed, and consequently owner of award was entitled to interest thereon at 6 percent until July 1, 1939, when the lawful rate was changed to no more than 4 percent, and thereafter the owner was entitled to interest at 4 percent.-Application of Gillespie, 173 Misc. 336, 16 N.Y.S. 2d 579 [1939].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-393

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-393 Limitation of time for presenting claims.

All claims of every name and nature under this subchapter, except claims provided for under section 5-398, must be exhibited and presented to the commissioners of appraisal having jurisdiction of the same within the following periods of time:

(a) in the case of real estate acquired in fee or in which an easement is acquired, within three years after title thereto shall have become vested in the city;

(b) in the case of claims under section 5-423, within three years from the date of the filing of the oaths of the commissioners appointed after the acquisition by the city of New York of the real estate, the acquisition of which is claimed to be the direct or indirect cause of damage, or within three years from the execution of the plan or work, the execution of which is claimed to be the direct or indirect cause of damage.

In the case of real estate acquired in fee or in which an easement is acquired, every person neglecting or refusing to present a claim within such time shall be deemed to have surrendered his or her interest in such real estate or his or her claims for damages thereto, except so far as such person may be entitled as an owner of, or person interested in the award, if any, made by the commissioners of appraisal. All other claims not exhibited and presented within the time above specified shall be forever barred.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-18.0 added chap 929/1937 § 1

Amended chap 357/1939 § 9

Renumbered and amended chap 100/1963 § 1365

(formerly § K41-18.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § K41-18.0, providing that all claims under the Article except claims provided for under § K41-22.0 must be presented to the Commissioners of Appraisal within three years after the title shall have become vested in the City, in the case of real estate acquired in fee or in which an easement is acquired, and claims not so presented should be forever barred, **held** constitutional.-Application of Huie, 204 Misc. 945, 125 N.Y.S. 2d 925 [1953]. (2) Where title to petitioner's property was acquired by the City on October 14, 1947, a claim for compensation which was not made until 1952, **held** barred by the clear language of Admin. Code § K41-18.0.-Id.

¶ 2. Plaintiff, power and light company, was entitled to a declaratory judgment which will entitle it to file a claim for damages pursuant to § K41-18.0 where allegations in complaint state a good cause of action and right to file has been denied.-Rockland Light & Power Co. v. The City of New York, 263 App. Div. 284, 33 N.Y.S. 2d 258 [1942], aff'd 289 N.Y. 45, 43 N.E. 2d 803 [1942].

¶ 3. The Statute of Limitations began to run on claims for damages for the removal of people and the destruction of homes and businesses in November, 1955, when the construction of the reservoir, the removal of people and the destruction of homes and farms was completed. It did not begin to run only when the construction of highway and access roads was completed in 1957.-Matter of Huie (Tweedie), 18 App. Div. 2d 437, 239 N.Y.S. 2d 939 [1963].

¶ 4. Failure of petitioner to present claim for damages to Commissioners of Appraisal within three-year period barred claim for damages. Schroeder v. City of New York (371 U.S. 208) which held that the notice provisions were constitutionally deficient was not applicable where claimant had knowledge of condemnation proceeding and its right to assert a claim against the City and of the time limitations provided for its presentation.-Matter of Huie v. Furman, 22 App. Div. 2d 984, 254 N.Y.S. 2d 748 [1964].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-394

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-394 Calendar call after eighteen months; cessation of interest.

Not less than eighteen months after the date of the filing of the oaths of any original commission appointed pursuant to the provisions of this subchapter, the corporation counsel may call a session of the commission appointed and acting as successor to such original commission for the purpose of having such successor commission fix dates for the hearing and presentation of any and all claims not theretofore disposed of and heard; such session shall be known as the calendar call.

At least ten days prior to such calendar call the corporation counsel shall give personal notice in writing to any or all persons interested in the proceeding and their attorneys, if any, that such a calendar call will be held and that dates will be fixed for the hearing and presentation of claims. All persons so notified may appear at such calendar call for the purpose of having dates fixed for the hearing and presentation of their claims. In the event that persons so notified fail to appear at such calendar call, the commission at the request of the corporation counsel shall fix dates for the hearing and presentation of their claims, which dates shall be not less than twenty days after such calendar call. The corporation counsel shall further notify such persons in writing of the dates thus fixed, which notice shall be so served not less than five days before the date so fixed. All persons failing to appear on the dates fixed by the commission at such calendar call, or failing to give legal excuse for so failing to appear to the commission at or before the time of such calendar call, shall forfeit their right to interest from and after the date fixed by the commission at the calendar call on any award made to them.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-18.1 added chap 357/1939 § 10

Renumbered chap 100/1963 § 1366

(formerly § K41-18.1)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-395

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-395 Payment by city as termination of liability.

Payment of the compensation awarded by the commissioners of appraisal to the persons named in their report (if not infants or persons of unsound mind) shall, in the absence of notice to the city of other claimants to such award, protect the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-19.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1367

(formerly § K41-19.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-396

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-396 Payment to trust company to the credit of the owner; suit to determine the rightful owner.

Whenever the owner or owners, person or persons interested in any real estate taken or affected in such proceedings, or in whose favor any such sum or sums or compensation shall be so reported shall be under the age of twenty-one years, of unsound mind, or absent from the state of New York, and also in all cases where the name or names of the owner or owners, person or persons interested in any such real estate shall not be set forth or mentioned in such report, or where the owner or owners, person or persons being named therein, can not upon diligent inquiry be found, or where there are adverse or conflicting claims to the moneys awarded as compensation, it shall be lawful for the city to pay the sum or sums mentioned in such report, payable, or that would be coming to such owner or owners, persons or persons respectively, with interest aforesaid, into such trust company as the court may in the order of confirmation direct, to the credit of such owner or owners, person or persons, and such payment shall be as valid and effectual, in all respects as if made to such owner or owners, person or persons interested therein respectively, themselves, according to their just rights. In all cases, however, where any such sum or sums or compensation, reported by the commissioners in favor of any person or persons or party or parties, whatsoever, whether named or not named in such report shall be paid to any person or persons or party or parties, whomsoever, when the same shall of right belong and ought to have been paid to some other person or persons, or party or parties, it shall be lawful for the person or persons or party or parties to whom the same ought to have been paid, to sue for and recover the same with lawful interest and costs of suit as so much money had and received to his, her or their use by the person or persons, party or parties, respectively, to whom the same shall have been so paid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-20.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1368

(formerly § K41-20.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-397

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-397 Separate reports by the commissioners.

The commissioners of appraisal may, in their discretion, take up any specified claim or claims and finally ascertain and determine the compensation to be made thereon, and make a separate report with reference thereto, annexing to such report a copy of so much of the maps as displays the parcel or parcels so reported on. Such report as to the claims therein specified shall be the report required in this subchapter, and the subsequent action with reference thereto shall be had in the same manner as though no other claim were embraced in such proceeding, which, however, shall continue as to all claims upon which no such determination and report is made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-21.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1369

(formerly § K41-21.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-398

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-398 Unforeseeable damages; settlement or determination thereof.

Whenever the owner of any private property any part of or interest in which shall have been taken under any proceeding had pursuant to this subchapter shall claim that the prosecution of any work done pursuant to such proceeding has been the proximate cause of actual and material damage to any part of such property and that commissioners of appraisal could not have taken cognizance of such damage pursuant to section 5-387 of this subchapter, until the actual happening thereof because of its unforeseeable or speculative nature, the proper person or board representing the city may agree with such owner as to the amount of such damages. If such agreement cannot be made, such owner may present to the commissioners of appraisal his or her claim in writing duly verified on oath. It shall be the duty of the commissioners to hear allegations and proofs and to proceed in like manner as is provided in the case of property taken pursuant to such proceedings as aforesaid and to determine such actual damages, if any, which were unforeseeable or speculative until the actual happening thereof. The amount of such damages so agreed upon, if any, or so determined, shall be payable and collectible in the same manner as is provided in the case of awards made through the confirmation of a report of commissioners of appraisal in such proceedings. In case at the time of making any such claim there shall be no commissioners authorized to take cognizance thereof, the corporation counsel, for and on behalf of the city, shall make an application for the appointment of commissioners of appraisal in the manner prescribed by this subchapter, to take cognizance of such claims. Provided, however, that such claims shall be presented in the manner above specified within two years from and after the completion of the work, the prosecution of which is claimed to have been the proximate cause of such damage and that such claim shall be supported by proof of interest in

the property alleged to have been damaged and of such damage and that it resulted proximately from the prosecution of such work, as aforesaid, and that it was so unforeseeable or speculative, as aforesaid; and that the claim could not, with due diligence, have been presented to prior commissioners of appraisal subsequently to the happening of the damage. In every case the payment of the amount agreed upon or determined or adjudged under and pursuant to this section shall be a continuing, complete, and conclusive bar to all claim of damage by anyone whomsoever to the property concerned or any part thereof due to the prosecution of the work.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-22.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1370

(formerly § K41-22.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-399

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-399 Appeal from the report of the commissioners.

Within twenty days after notice of the confirmation, modification or rejection of the report of the commissioners, as provided for in section 5-391 of this subchapter, either party may appeal, by notice in writing to the other party, to the appellate division of the supreme court, from the order confirming, modifying or rejecting the report of the commissioners. Such appeal shall be heard on due notice thereof being given, according to the rules and practice of such court. On the hearing of such appeal, the court may affirm, modify or reverse the order of special term or it may direct a new appraisal and determination of any question passed upon, by the same or new commissioners, in its discretion, but from any determination of the appellate division, either party, if aggrieved, may take an appeal which shall be heard and determined by the court of appeals. If the amount of compensation to be made by the city is increased after a new trial, the difference shall be paid by the comptroller to the parties entitled to the same, or shall be deposited, as the court may direct; and if the amount is diminished, the difference shall be refunded to such city by the party to whom the same may have been paid, the judgment therefor may be rendered by the court, on the filing of a subsequent decision, against the party liable to pay the same. But the taking of an appeal by any person or persons shall not operate to stay the proceedings under this subchapter, except as to the particular parcel of real estate with which such appeal is concerned. Such appeal shall be heard upon the evidence taken before such commissioners, and any affidavits as to irregularities submitted to the court at special term, and three typewritten copies of such evidence shall be furnished by the city to the party taking the appeal within ten days after the appeal is perfected, and such appeals may be heard on the evidence so furnished, and such appeals may be taken without security thereon.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-23.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1371

(formerly § K41-23.0)

Amended chap 794/1964 § 6

CASE NOTES FROM FORMER SECTION

¶ 1. Appellate Division is not prevented from modifying awards upon an appeal from the order of confirmation even though appellant sought rejection of awards at Special Term.-Matter of Ford (Whitton) 35 App. Div. 2d 626, 313 N.Y.S. 2d 42 [1970], aff'd 29 N.Y. 2d 628, 273 N.E. 2d 143, 324 N.Y.S. 2d 416 [1971].

¶ 2. An action for additional interest on an award for acquisition by the city of riparian interests owned by plaintiff could not be maintained to fix the amount of interest due on a judgment while an appeal instituted by plaintiffs in a collateral action was pending even though city made preliminary payment of plaintiffs. Ferguson v. City of N.Y., 67 Misc. 2d 817, 324 N.Y.S. 2d 894 [1971], modf'd 39 A.D. 2d 569, 331 N.Y.S. 2d 735 [1972].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-401

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-401 Powers of the supreme court.

The supreme court of the judicial district in which the real estate, or any part thereof, is situated, shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this subchapter as may be necessary, or to cause other property to be included therein and to direct such further notice to be given to any party in interest as it deems proper, and also to appoint other commissioners in place of any who shall die, or refuse or neglect to serve, or be incapable of serving or be removed. Such court may at any time remove any of such commissioners of appraisal who, in its judgment, shall be incapable of serving or who shall for any reason in its judgment be an unfit person to serve as such commissioner. The cause of such removal shall be specified in the order making the same. If, in any particular, it shall, at any time, be found necessary to amend any pleading or proceeding, or to supply any defect therein, arising in the course of any special proceeding authorized by this subchapter, the same may be corrected or supplied in such manner as may be directed by the supreme court, which is hereby authorized to make such amendment or correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-24.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1372

(formerly § K41-24.0)

CASE NOTES FROM FORMER SECTION

¶ 1. In connection with the construction by the City of a reservoir in Delaware County, the Supreme Court directed the City to construct and maintain highways incident thereto. On motion of two towns to amend order to require the City to remove snow and ice from the said highways, held dispute could not be determined upon motion but towns should seek a determination of the controversy through an action or proceeding.-Huie v. City of N.Y., 285 App. Div. 922, 137 N.Y.S. 2d 605 [1955].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-402

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-402 Agreements as to compensation.

The commissioner of environmental protection, subject to the approval of the board of estimate, may agree with the owners and persons interested in any real estate laid down on such maps as to the amount of compensation to be paid to such owners or persons interested for the taking or using and occupying such real estate. In case any such real estate shall be owned, occupied or enjoyed by the people of this state or by any county, town or school district within this state, such rights, titles, interests or properties may be paid for upon agreement respectively with the office of general services, who shall act for the people of the state, with a chairman and a majority in numbers of the board of supervisors of any county who shall act for such county, and with the supervisors and commissioner of highways, of any town who shall all act for such town, and with the trustees of any school district who shall act for such district. The office of general services shall have power to grant to the city any real estate belonging to the people of this state, which may be required for the purposes indicated in this subchapter, on such terms as may be agreed on between it and the commissioner of environmental protection, always, however, reserving and maintaining the rights of the people and riparian owners to go to the water at any point to which the same may be drawn. If any real estate of any county, town or school district is required by the city for the purposes of this subchapter the majority of the board of supervisors acting for such county, or the supervisors of any such town, with the commissioners of highway therein acting for such town, or the trustees of any school district acting for such district, may grant or surrender such real estate for such compensation as may be agreed upon between such officers respectively and the commissioner of environmental protection.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-25.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1373

(formerly § K41-25.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-403

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-403 Definitions; special provision concerning acquisition of real estate used for public purposes.

The term real estate as used in this subchapter shall be construed to signify and embrace all uplands, lands under water, the waters of any lake, pond or stream, all water rights or privileges, and any and all easements and incorporated hereditaments and every estate, interest and right, legal and equitable, in land or water, including terms for years, and liens thereon by way of judgment, mortgages or otherwise, and also all claims for damage to such real estate. It shall also be construed to include all real estate (as the term is above defined) heretofore or hereafter required or used for railroad, highway or other public purposes, providing the persons or corporations owning such real estate or claiming interest therein, shall be allowed the perpetual use for such purposes of the same or of such other real estate to be acquired for the purposes of this subchapter as will afford practicable route or location for such railroad, highway or other public purpose, and in the case of a railroad, commensurate with and adapted to its needs; and provided also that such persons or corporations shall not directly or indirectly be subject to expense, loss or damage by reason of changing such route or location, but that such expense, loss or damage shall be borne by the city. In case any real estate so acquired, or used for public purposes, is sought to be taken or affected for the purposes of this subchapter there shall be designated upon the maps referred to in the previous sections of this subchapter, and there shall be described in the petition, hereinbefore referred to, such portion of the other real estate shown on such maps and described in such petition, as it is proposed to substitute in place of the real estate then used for such railroad, highway or other public purposes. Provided, that wherever the commissioner of environmental protection has heretofore located on any map filed in the office of the commissioners of appraisal, a substituted route for any railroad, the same shall not be

subsequently changed without the assent of such company. The supreme court at the special term to which the petition is presented or at such other special term as the consideration thereof may be adjourned to, shall either approve the substituted route or refer the same back to the commissioner of environmental protection for alteration or amendment and may refer the same back, with such directions or suggestions as such court may deem advisable, and as often as necessary and until such commissioners shall determine such substituted route as may be approved by the court. An appeal from any order made by such court at special term, under the provisions of this section, may be taken by any person or corporation interested in and aggrieved thereby to the appellate division and court of appeals, and shall be heard as a non-enumerated motion. The commissioners of appraisal, hereinbefore referred to, in determining the compensation to be made to the persons or corporations owning such real estate, or claiming interest therein, shall include in the amount of such compensation such sum as shall be sufficient to defray the expenses of making such change of route and location and of building such railroad or highway. Such commissioners of appraisal shall suggest in their report, and the court in the order confirming such report shall determine, subject to review by the appellate division, what reasonable time after payment of the awards to such persons or corporations shall be sufficient within which to complete the work of making such change. Neither the city, nor the commissioner of environmental protection shall be entitled to take possession or interfere with the use of such real estate for the enumerated purposes, before the expiration of such time. Such time may be subsequently extended by the court (subject to review as aforesaid) upon a sufficient cause shown. After the expiration of this time so determined or extended no use shall be made of such real estate which shall cause pollution to the water in such reservoir or interfere with its flow.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-26.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1374

(formerly § K41-26.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Gas and electric corporation which, as result of the City's acquisition of electric light and power lines within the reservoir basin of the Rondout Reservoir, had been obliged to relocate its lines over a substitute hilly route through wooded terrain, **held** entitled to compensation representing the excess of cost of operating and maintaining the lines on the substituted route over cost of operating and maintaining the lines within the reservoir area. Admin. Code § K41-26.0 permitted the acquisition of the lines only upon providing a substitute route and upon the City bearing the expense or loss by reason of changing the route, and §§ K41-12.0 and K41-13.0 confirmed the broad legislative intent that the City should pay for all damage reasonably traceable to its exercise of the power of condemnation. That the corporation had waived any claim under § K41-44.0, which allows business damage claims, did not amount to a waiver as to the claimed items, particularly since the claim for increased cost of maintenance was not the same as a claim for decrease in value of an established business or the consequential damage to real estate not taken.-Petition of Gillespie (Central Hudson Gas & Elec. Corp.), 263 App. Div. 175, 32 N.Y.S. 2d 96 [1942], aff'd without opinion, 288 N.Y. 514, 41 N.E. 2d 926 [1942].

¶ 2. Where in connection with the City's acquisition of land and the proposed discontinuance of a certain town highway the improvement of a dirt cross road became necessary, an order which provided that the City should cause the cross road to be improved and necessary bridges erected thereon or in the alternative might require the town to do so, in which event the City should pay the town the actual cost of improvement. City should be obliged to maintain the highway and bridges thereafter. The actual cost was $12,000 instead of $3500, and under the statute, § K41-26.0, the City was required to pay all expense of relocating a highway, and moreover was required thereafter to maintain the

substituted highway and bridges thereon. By its failure to appear on return day for approval of maps and appointment of Commissioners of Appraisal the town did not waive its rights under the statute, as it had a right to assume that the order would follow the statute.-Application of Gillespie, 263 App. Div. 451, 264 App. Div. 972, modf'd in 33 N.Y.S. 2d 638 [1942] 37 N.Y.S. 2d 488 [1942].

¶ 3. The City of New York had purchased an abandoned railroad bed in 1942 in an area lying within a proposed reservoir, and thereafter it granted an electric light company a lease permitting its lines to cross the railway lands, but such lease was revocable by the City on 90 days' notice and furthermore contained covenants releasing the City from any claims the company might have under Admin. Code title K. The company had sought damages for the value of its transmission lines acquired by the City in a condemned area, for value of its lines and property located outside of the condemned area which were to be cut off and rendered useless, for severance damages to the remainder of its system, and for damages for decrease in value of its established business. **Held:** The electric light company is entitled to an order under this Article 78 proceeding directing that its claims for compensation, other than for the lines on the demised premises be heard and determined.-Delaware County Co-op., Inc. v. City of New York, 304 N.Y. 196, 106 N.E. 2d 605 [1952].

¶ 4. Claimants owned a two-acre parcel of land upon which a $1^1/_2$-story house was erected. They also held an easement permitting them to go to a river some 1,600 feet away from the parcel of land. **Held:** In view of the fact that the land was located in a river resort area, the easement would be construed as giving the claimants the right to fish and swim in the river. Claimants were therefore entitled to an award.-Matter of Huie (Consolidated Neversink Riparian Section 1), 22 Misc. 2d 1028, 192 N.Y.S. 2d 620 [1959], aff'd 11 App. Div. 2d 837, 202 N.Y.S. 2d 954 [1960].

¶ 5. Claimants, who were in possession of a riparian parcel under contract of purchase at date of acquisition, were equitable owners and were entitled to an award, subject to rights of vendor and holders of mortgage.-Matter of Huie (Consolidated Neversink Riparian Sections), 22 Misc. 2d 1028, 192 N.Y.S. 2d 620 [1959], aff'd 11 App. Div. 2d 837, 202 N.Y.S. 2d 954 [1960].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-410

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-410 Compensation, fees, expenses and allowances.

The commissioners of appraisal appointed in pursuance of this subchapter shall receive as compensation such fees and expenses as may be taxed by the court upon notice to the corporation counsel who shall also furnish them with the necessary clerks, stenographers, surveyors and other employees. The corporation counsel shall, either in person, or by such assistants or other counsel as he or she shall designate for the purpose, appear for and protect the interests of the city in all proceedings in court under this subchapter including the taxation of fees, compensation and expenses and proceedings before the commissioners. The fees of the commissioners and the salaries and compensation of their employees, and their necessary traveling expenses, and all other necessary expenses, in and about the special proceedings provided by this subchapter to be had for acquiring title or extinguishing claims for damages to real estate, and such allowances for counsel fees as may be made by order of the court shall be paid by the comptroller out of the funds provided therefor. Such fees and expenses shall not be paid until they have been taxed before a justice of the supreme court in the judicial district in which the lands or some part thereof are situated upon eight days' notice to the corporation counsel. Such allowances shall in no case exceed the limits prescribed by section eight thousand three hundred three of the civil practice law and rules. The salaries and compensation of the persons employed, as provided for in this subchapter, to prepare the necessary surveys, plans and estimates and for other purposes and to direct, supervise and inspect the work required to be done under the provisions of this subchapter, and such other expenses in and about the same as are not herein required to be under contracts let after completion, shall be paid by the comptroller on the certification of the commissioner of environmental protection or of such person or persons as the commissioner

may designate. The compensation and expenses of such of the corporation counsel's assistants or other counsel as the corporation counsel may designate to represent and aid the commissioner in the performance of his or her duties under this subchapter shall also be paid out of the funds provided therefor, and upon the certificate of the corporation counsel who shall have power to appoint such assistants or other counsel, and to fix their compensation. The various sums of money growing due from time to time, under the terms of the several contracts, made for the doing of the work and furnishing the material required by this subchapter, shall be paid by the comptroller on the certification of the commissioner of environmental protection or such person or persons as the commissioner may from time to time designate.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-33.0 added chap 929/1937 § 1

Amended chap 710/1943 § 578 (Part 3)

Renumbered chap 100/1963 § 1381

(formerly § K41-33.0)

CASE NOTES FROM FORMER SECTION

¶ 1. The Commissioners of Appraisal, in making an award for damages to the real estate and business of a claimant, and for witness fees, in connection with the acquisition of land by the City of New York for water supply purposes properly disallowed counsel fees. Counsel fees may be allowed upon such a condemnation only in "the taking" and not in "business damage" cases.-Matter of Huie, 10 Misc. 2d 766, 173 N.Y.S. 2d 640 [1958], aff'd 7 App. Div. 2d 24, 180 N.Y.S. 2d 449 [1958].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-418

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-418 Where acquired real estate taxable.

Real estate acquired under the provisions of this subchapter shall be taxable in the counties and taxation districts in which such real estate is situated.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-41.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1388

(formerly § K41-41.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Where riparian rights are severed from the land to which they are appurtenant and do not become appurtenant to other riparian land such rights in their severed state are not real property for real property tax purposes and thus real

property tax assessment levied by town assessors on value of such rights acquired by the City under this section in Town of Fallsberg were properly annulled.-Matter of City of N.Y. v. Schwartz, 36 A.D. 2d 402, 320 N.Y.S. 2d 983 [1971].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-423

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-423 Damage to value of real property; businesses, and employees thereof.

a. The owner of any real estate not taken by virtue of this subchapter and article fifteen of the environmental conservation law or of any established business on the first day of June, nineteen hundred five, except as hereinafter provided, and situate in the counties of Ulster, Albany or Greene, directly or indirectly decreased in value by reason of the acquiring of land by the city for an additional water supply or by reason of the execution of any plans for such additional water supply by the city under the provisions of this subchapter and article fifteen of the environmental conservation law, his or her heirs, assigns or personal representatives shall have a right to damages for such decrease in value. The owner of any real estate not taken by virtue of this subchapter or of any established business on the first day of December, nineteen hundred fourteen, except as hereinafter provided, situate in the counties of Ulster, Greene, Delaware or Schoharie, directly or indirectly decreased in value by reason of the acquisition, after the passage of this subchapter of land by the city for an additional water supply from the Schoharie watershed, or by reason of the execution of any plans for such additional water supply from such watershed, under the provisions of this subchapter, his or her assigns or personal representatives, shall have a right to damages for such decrease in value. The owner of any real estate, not taken, situate in any one or more of the counties of Ulster, Delaware, Orange or Sullivan, or of any established business, directly or indirectly decreased in value by reason of the execution of any plans for or by the acquisition of land by the city for a water supply from the Rondout and Delaware watersheds except that portion of the Delaware watershed of the west branch of the Delaware river within such counties, or any of them, and the owner of any real estate, not taken, situate in any one or more of such counties or situate in the corporate limits of the village of

Deposit in the county of Broome existing on the first day of April, nineteen hundred fifty-nine, or of any established business, which business was established on or prior to the first day of April, nineteen hundred fifty-nine which is directly or indirectly decreased in value by reason of the execution of any plans for or by the acquistion*3 of land by the city for a water supply from the watershed of the west branch of the Delaware river, pursuant to law, his or her or its assigns, or personal representatives in any such case shall have a right to damages for such decrease in value, from the time of the beginning of such decrease in value, provided, however, that in the case of an established business, the recovery of or award made to any claimant shall not include any business that may have resulted by reason of the execution of any plans for such water supply. The commissioner of environmental protection may agree with such person as to the amount of such damages, and if such agreement can not be made such damages, if any, shall be determined in the manner herein provided for the ascertaining and determining the value of real estate taken under the provisions of this subchapter, and the commissioners shall not be limited in the reception of evidence to the rules regulating the proof of direct damages. They may also recommend such sums, if any, as shall seem to them proper to be allowed to parties appearing in the proceeding, as expenses and disbursements, including reasonable compensation for witnesses. The amount of such damages so agreed upon as aforesaid or determined as aforesaid shall be payable and collectible in the same manner as is herein provided in the case of awards made through the confirmation of a report of commissioners of appraisal.

b. A person employed in a manufacturing establishment, or in an established business, or upon any lands, and who is not an owner or part owner thereof or of any interest therein, in the counties of Ulster, Delaware, Orange and Sullivan, which manufacturing establishment, established business or lands is injured or destroyed because of the acquisition by the city of an additional water supply from any watershed within such counties, except the watershed tributary to the west branch of the Delaware river, or which lands are taken or acquired for like purpose by the city and a person who was employed in a manufacturing establishment or in an established business or upon any lands within such counties or in the corporate limits of the village of Deposit in the county of Broome and who is not an owner or part owner thereof or of any interest therein, which manufacturing establishment or established business or lands is injured or destroyed because of an acquisition by the city of an additional water supply from the watershed of the west branch of the Delaware river, or which lands are taken or acquired for like purpose by the city, and who in any such case has been so employed continuously for six months prior to, and who continues in such employment up to the time of such injury, destruction, taking or acquisition, shall have a claim for damages against the city equal to the salary paid such employee for the six months immediately preceding such injury, destruction, taking or acquisition. Such damages may be determined by agreement with the commissioner of environmental protection. In case such agreement can not be made such employee may maintain an action against the city in the supreme court to recover such damages, not, however, to exceed the sum of wages paid the employee for the six months preceding such injury, destruction, taking or acquisition.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-44.0 added chap 929/1937 § 1

Subs a, c amended chap 424/1956 § 1

Renumbered chap 100/1963 § 1393

(formerly § K41-44.0)

Sub amended chap 100/1963 § 1393

Sub a, c amended chap 812/1970 § 1

(amendments by chap 100/1963 were overlooked)

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § K41-44.0 applies only to properties in certain designated counties, not including Westchester County.-In re Schiff (Gold), 176 Misc. 119, 26 N.Y.S. 2d 392 [1941].

¶ 2. Petitioner, who claimed that a well on his property in Westchester County was dried up and permanently made useless as result of blasting operations conducted by City of New York in construction of its water supply system on other property in the vicinity, might not seek compensation in the condemnation proceeding, since no land of petitioner had been taken by the City, there was no clear statutory authority for a hearing of his claim, and the claim might involve a difficult question as to causal relationship between the City's construction work and the damage to the well. However, petitioner might have a cause of action at law for trespass.-Id.

¶ 2.1. Where gross income and net profit of two doctors increased their business damages claims should have been dismissed and business damage claims of a soda fountain and candy store owner should have been dismissed where his net income increased.-Matter of Ford (Dosseff) 36 App. Div. 2d 352, 320 N.Y.S. 2d 543 [1971].

¶ 3. Gas and electric corporation which was prevented from proceeding with proposed hydro-electric development on land owned by it along the Neversink River because of the City's Delaware water project, **held** entitled presently to file a claim for damages with the City pursuant to Admin. Code § K41-44.0 for loss sustained by diminishment of the value of the water power site and of the value of the one hydro-electric plant already existing, since it was possible that the project would never be finished or would at least be held in abeyance for the duration of the war, and, since plaintiff was entitled to damages from the time when its damages accrued and Commissioners had already been appointed, the three-year Statute of Limitations was presently running and the corporation might be precluded from presenting its claim should the City delay cutting off the water from the river for many years. If the City actually diverted the water, damages presently recoverable on account of reduced value would be deductible from the total damage suffered.-Rockland Light and Power Co. v. City of N.Y., 263 App. Div. 284, 33 N.Y.S. 2d 258 [1942], aff'd 289 N.Y. 45, 43 N.E. 2d 803 [1942] on ground the complaint in a declaratory judgment action should not be dismissed as matter of law where the facts alleged show existence of a controversy concerning rights and legal relations and it appears that the discretionary and extraordinary power of the court has been invoked for sufficient reason, and that in the immediate case the Appellate Division order had merely sustained the sufficiency of the complaint as a matter of pleading. Whether plaintiff had suffered present legal injury and damages would not be decided.

¶ 4. Order awarding only nominal damages to Westchester County property owners for the acquisition by the City of subterranean easements for construction and maintenance of a subsurface tunnel 390 to 510 feet below the surface, was aff'd without opinion.-In re Gillespie (Iselin), 285 N.Y. 771, 34 N.E. 2d 915 [1941].

¶ 5. Where the tunnel to be constructed as an aqueduct would be 470 to 500 feet below the surface, the nominal award made by the Commissioners for taking of a sub-surface easement would be sustained, as the existence of such an easement was not a substantial encumbrance.-In re Gillespie (Del. Section, 1-3), 103 (8) N.Y.L.J. (1-10-40) 154, Col. 5 F, at 6 T, aff'd without opinion, 259 App. Div. 1045, 22 N.Y.S. 2d 127 [1940], aff'd 285 N.Y. 771, 34 N.E. 2d 915 [1941].

¶ 6. Gas and electric corporation which, as result of the City's acquisition of electric light and power lines within the reservoir basin of the Rondout Reservoir, had been obliged to relocate its lines over a substitute hilly route through wooded terrain, **held** entitled to compensation representing the excess of cost of operating and maintaining the lines on the substituted route over cost of operating and maintaining the lines within the reservoir area. Admin. Code § K41-26.0 permitted the acquisition of the lines only upon providing a substitute route and upon the City bearing the expense or loss by reason of changing the route, and §§ K41-12.0 and K41-13.0 confirmed the broad legislative intent that the City should pay for all damage reasonably traceable to its exercise of the power of condemnation. That the

corporation had waived any claim under § K41-44.0, which allows business damage claims, did not amount to a waiver as to the claimed items, particularly since the claim for increased cost of maintenance was not the same as a claim for decrease in value of an established business or the consequential damage to real estate not taken.-Petition of Gillespie (Central Hudson Gas & Elec. Corp.), 263 App. Div. 175, 32 N.Y.S. 2d 96 [1942], aff'd without opinion, 288 N.Y. 514, 41 N.E. 2d 926 [1942].

¶ 7. Awards made by Commissioners of Appraisal to each of five claimants after extensive hearings and after viewing the premises, would not be disturbed, notwithstanding there was conflicting evidence as to value. Order of Special Term rejecting the Commissioners' report unless the claimants stipulated to accept the lesser sums fixed by the Court, was reversed.-Application of Huie, 282 App. Div. 819, 122 N.Y.S. 2d 477 [1953], aff'd 306 N.Y. 951, 120 N.E. 2d 221 [1954].

¶ 8. Awards for indirect business and real property damage made to six claimants who were dairy farmers and a seventh who operated a seasonal farm boarding-house, for increased operating costs for shopping, hauling feed, obtaining gravel, hauling milk and obtaining seasonal help, and in the case of the boarding-house keeper for loss of boarders, as result of construction of vast reservoir which would destroy a hamlet which was formerly a shopping center for claimants and would require them to travel an additional six and a half miles to the nearest shopping center, **held** not so unreasonable as to be rejected. The Commissioners were on the ground, they viewed the terrain and were familiar with the roads obliterated and those replaced.-Application of Huie, 282 App. Div. 819, 123 N.Y.S. 2d 12 [1953], aff'd 306 N.Y. 951, 120 N.E. 2d 221 [1954].

¶ 9. Award for business damage to claimant who conducted a wholesale and retail feed business of approximately twice the total of annual cash losses was adequate. Matter of Huie (Crawford Brothers, Inc.), 26 App. Div. 2d 746, 272 N.Y.S. 2d 236 [1966].

¶ 9.1. Damages are payable under this section only to a business or profession which was organized, established or purchased before it was known that the condemnation proceeding would be instituted.-In re Delaware Sections etc., 18 App. Div. 2d 270, 239 N.Y.S. 2d 178 [1963] and in re Delaware Sections etc., 18 App. Div. 2d 437, 239 N.Y.S. 2d 939 [1963].

¶ 10. The claimant operated a boarding house near Honk Lake, whose waters were depleted when the City diverted Rondout Creek. Her land was close to but not adjacent to either the creek or the lake. She had the right to water farm stock from the creek and keep a rowboat in it. Her guests had customarily used the lake for swimming, boating, and fishing for many years. As a result of the City's activities, the lake became a murky pond, with hundreds of feet of muddy bottom separating claimant's property from the water. Mosquitoes multiplied, and an odor of dead fish prevailed. Claimant asserts a decrease in value of over $12,000, but the Commissioner made an award of $1,000. An order of the Special Term setting aside this award as wholly inadequate is hereby affirmed.-Matter of Huie (Geiselhart), 2 A.D. 2d 785, 154 N.Y.S. 2d 240 [1956].

¶ 11. Award of $400 for parcel consisting of 2.3 acres of unimproved land as to which by oversight no award had been made in 1909 when title vested in the City, **held** not inadequate, in view of considerations that at time of the taking the parcel was assessed at only $115 by the town which was now claiming the award, and the parcel had been repeatedly sold for taxes without any outside purchasers being interested.-In re Gillespie, 107 (82) N.Y.L.J. (4-9-42) 1502, Col. 3 F.

¶ 12. In proceeding to ascertain damages sustained by claimant by reason of induction of waters of the Schoharie Reservoir into the Esopus Creek and the compensation to be awarded claimant for acquisition by City of a right of perpetuity to increase the flow of Esopus Creek, order of Special Term confirming awards made by the Commissioners of Appraisal would be affirmed, notwithstanding the claim that the damages were grossly inadequate, where only questions of facts were involved and under the proof the Court was not justified in substituting its judgment for that of the Commissioners.-Application of Gillespie, 266 App. Div. 761, 41 N.Y.S. 2d 369 [1943].

¶ 13. Where the record indicated wide variances in the estimates of value and damages of witnesses for the City and landowners, respectively, the determination as to the amount of the awards to be made for lands appropriated by the City was primarily the province of the Commissioners of Appraisal, and there appeared no justification for a substitution of the Court's judgment for that of the Commissioners who had the opportunity for careful view of the premises, comparison of the several parcels, and opportunity of evaluating the testimony.-Application of Huie, 283 App. Div. 678, 127 N.Y.S. 2d 214 [1954].

¶ 14. Claim of property owner for temporary damages occasioned by work of construction of reservoir pipe line might not be sustained under Laws of 1905, ch. 724, § 19 and ch. 725, § 8.-In re Gillespie (Del. Section, 1-3), 103 (8) N.Y.L.J. (1-10-40) 154, Col. 5 F, at 6 T, aff'd without opinion, 259 App. Div. 1045, 22 N.Y.S. 2d 127 and 34 N.E. 2d 915.

¶ 15. Claim for damage by reason of proximity of the taking, and the change in character of the neighborhood due to uncertainty of use to which the parcel acquired would be put, could not be sustained under the statutes, since in absence of clear language imposing such liability statutes providing for compensation for property damaged or affected by a public improvement are not intended to embrace every species of loss or depreciation, even though such loss or depreciation may be due directly to the improvement.-Id.

¶ 16. With respect to indirect damage to the property and business of a milk plant, claimant said it lost 108 milk producers, but it appeared that only 16 of them were taken over by the City, the remainder shifting their business to other plants of the claimant and its competitors. In view of the fact that a cooperative does not make ordinary business profits, the award made was not deemed unreasonable. Claimant was not entitled to counsel fees or interest in the computation of the award.-Matter of Huie (Dairymen's League), 7 App. Div. 2d 24, 180 N.Y.S. 2d 449 [1958].

¶ 17. The property of the claimants was located near pools in Neversink River. Claimants and their guests walked along Route 42 for a distance of 150 feet and then through a field of less than 50 feet to a pool. The City in resisting the claims contended that the claimants were trespassers. **Held:** The claimants were licensees. Furthermore, the Legislature, in enacting this section, intended that claimants should have the right to be compensated in damages by reason of the decrease in value of their land due to acts of the City in diverting the waters of the river. However, claimants were not entitled to interest on their awards from the date of the report of the commissioners.-Matter of Huie (Consolidated Neversink Riparian Section 1), 22 Misc. 2d 1028, 192 N.Y.S. 2d 620 [1959], aff'd 11 App. Div. 2d 837, 202 N.Y.S. 2d 954 [1960].

¶ 18. Claimant, a milk dealer, established a dairy route in a hamlet known as Arena with knowledge that the city was planning a reservoir in that area and that the hamlet might eventually be taken as part of the reservoir area. This section, which permits compensation for the decrease in value of an "established business" did not permit recovery by claimant. A business could not be established within the intent of this section when it was known it was just a question of time before the property would be converted.-Matter of Huie v. White, 14 N.Y. 2d 692, 249 N.Y.S. 2d 887, 198 N.E. 2d 916 [1964], cert. den., 381 U.S. 920.

¶ 19. Petitioner owned a parcel of property on a branch of the Delaware River. When the City diverted water from the river, it caused variations in the depth, temperature and flow of the water and this damaged the swimming and fishing in the area. **Held:** petitioner was entitled to damages for the diversion of the water and the consequent damage to his property. However, petitioner was not entitled to damages for an adjacent piece of property which he purchased about six weeks after the City took the diversion rights. As to this property, petitioner's claim was not within the ambit of this section.-Matter of Ford, 18 App. Div. 2d 855, 236 N.Y.S. 2d 591 [1962].

¶ 20. Provisions of statute authorizing compensation to owners of property "affected" or "damaged" would seem not to contemplate compensation unless the property were physically affected or the owner disturbed in the enjoyment of some right which he was entitled to make use of in connection with his property, and loss or depreciation arising from mere proximity of the work or improvement, or from its unsightly nature, or its incongruity with the uses to which

neighboring property was put, might not be recovered.-Id.

¶ 21. It was reversible error to permit the jury to consider in mitigation of damages an increase in salary obtained by the plaintiff immediately upon the City acquiring the business in which plaintiff had theretofore been employed.-Eckert v. City of N.Y., 270 App. Div. 642, 62 N.Y.S. 2d 220 [1946], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 22. Admin. Code, § 394a-1.0, requiring that the complaint in an action against the City must allege that at least 30 days have elapsed since the demand upon which the action was founded was presented to the Comptroller, was not applicable to an action based on § K41-44.0, providing for the payment of damages to an employee of an established business which is injured or destroyed in the acquisition of an additional water supply. The Water Supply Act is a special statute, is complete in itself, and takes precedence over § 394a-1.0, which deals with claims generally.-Eckert v. City of New York, 268 App. Div. 46, 48 N.Y.S. 2d 590 [1944], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 23. Contention that the Water Supply Act does not contemplate claims by railroad employees under § K41-44.0, was rejected. Furthermore, it was not necessary that the claimants allege that they had been otherwise damaged to entitle them to recover the six months salary provided for by § K41-44.0.-Id.

¶ 24. While the statute does not provide for liquidated damages in any specific amount, they may be considered as liquidated subject to proof of the amount of salary for the six months' period prior to the time claimant was compelled to quit his position because of the acquisition by the city of the railroad business which employed him.-Terry v. City of N.Y., 270 App. Div. 642, 62 N.Y.S. 2d 220 [1946], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 25. The Commissioners of Appraisal, in making awards for damages to the real estate and business of a certain claimant, properly disallowed interest from the time of filing by the City of their "taking" maps. Despite the language of this section interest may not be granted on an award in such a "business damage" case.-Matter of Huie, 10 Misc. 2d 766, 173 N.Y.S. 2d 640 [1958], aff'd 7 A.D. 2d 24, 180 N.Y.S. 2d 449 [1958].

¶ 26. Plaintiffs were entitled to interest on an award under § K41-44.0 of the Code from the date of confirmation of the award.-Hartman v. City of New York, 29 Misc. 2d 578, 218 N.Y.S. 2d 404 [1961].

¶ 27. On application by the Board of Water Supply to acquire real estate, an award to the operator of a hardware store for indirect losses resulting from the acquisition of lands on which customers were located was excessive and would be reduced unless the parties stipulated to reduce the award.-Application of Huie, 14 A.D. 2d 627, 218 N.Y.S. 2d 370 [1961].

¶ 28. On appeal by the City from an order confirming awards for damages on account of the diversion of the Neversink River the Court found that one claim had not been filed within the statutory three-year period and that other awards were excessive.-Application of Huie, 14 A.D. 2d 627, 218 N.Y.S. 2d 791 [1961].

¶ 29. A milk company which extended its business into a territory which it knew the City had acquired for construction of a water system was not entitled to an award for loss of business when the City converted the land to its intended use.-Id.

¶ 30. Bank had no right to damages for loss of potential business based on speculation as to the farm loan business that might have been done by bank had one hundred fourteen farms that were acquired for the Pepactin Reservoir remained in area. The word "indirectly" in statute does not mean "potentially" and an actual loss of business must be proved.-Matter of Ford (First Nat. Bank of Downsville), 28 App. Div. 2d 634, 280 N.Y.S. 2d 316 [1967], aff'd 22 N.Y. 2d 834, 239 N.E. 2d 731, 293 N.Y.S. 2d 101 [1968].

¶ 31. In a proceeding for an order directing the Board of Water Supply to accept petitioner's claim which was not timely filed, petitioner contended that due process had been violated and the statute of limitations was ineffective. The

Court found that the provisions of the Water Supply Act providing for constructive notice did not deny due process.-Application of Huie, 28 Misc. 2d 708, 221 N.Y.S. 2d 689 [1956].

¶ 32. Owners of property in Delaware County acquiring title subsequent to January 1, 1956 may properly assert damage claims as to real estate "existing on" such prior date and as to businesses "established on or prior to" such date.-Matter of Ford (Tompkins), 25 App. Div. 2d 694, 268 N.Y.S. 2d 39 [1966], aff'd 20 N.Y. 2d 887, 285 N.Y.S. 2d 859, 232 N.E. 2d 855.

¶ 33. Private consultation between chairman of the appraisal commission and experts to aid Commissioner in understanding of accounting and economic theories and methods employed in the evaluation of business and business damage although "irregular" did not require reversal absent an indication that the determination of the Commissioner was influenced by such consultation.-Ford v. Siska, 24 App. Div. 14, 262 N.Y.S. 2d 35 [1965].

¶ 34. Cut-off date with respect to damages under this section which is silent as to that date is the date of the execution of any plans for requisition of land for the particular project.-Matter of Ford (Arens), 26 App. Div. 2d 408, 274 N.Y.S. 2d 753 [1966].

¶ 35. When Legislature in 1970 amended this section so as to change the cut-off date for a claim for damages upon the owner of real estate not taken from January 1, 1956 to April 1, 1959, claimants who purchased real property and/or business on December 1, 1958 had right to compel hearing on their claims.-Matter of Ford (Tompkins) 31 N.Y. 2d 932, 293 N.E. 2d 94, 340 N.Y.S. 2d 926 [1972], aff'g 38 A.D. 2d 641, 326 N.Y.S. 2d 884 [1971].

FOOTNOTES

3

[Footnote 3]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York

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NYC Administrative Code 5-424

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-424 Certain acts not to be affected.

This subchapter shall not be construed to repeal, affect or modify chapter nine hundred forty-two of the laws of eighteen hundred ninety-six, nor chapter seven hundred fifty-two of the laws of nineteen hundred four.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-45.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1394

(formerly § K41-45.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-426

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-426 Approval of maps and plans by the New York state department of environmental conservation.

The city shall have no power to acquire, take or condemn lands under this subchapter unless maps and plans covering the work contemplated by this subchapter shall have been submitted to and approved by the New York state department of environmental conservation or any of its predecessors. All amendments or modification of such maps and plans thereafter made shall be in like manner submitted to and approved by such department, and when so approved, shall have the same force and effect as the original plans filed therewith.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-47.0 added chap 929/1937 § 1

Amended chap 460/1938 § 6

Renumbered and amended chap 100/1963 § 1396

(formerly § K41-47.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-429

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-429 Former board of water supply.

Any reference to the former board of water supply occurring in any law, code, contract or document shall be deemed to refer to and mean the commissioner of environmental protection.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-1.0 added chap 542/1978 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Where property taken by City for water supply purposes consisted of farm property with buildings, previously used by the owners as a dairy farm and for accommodating paying summer guests, fishermen and hunters, and after the taking but before the hearings and award substantial quantities of bluestone and flagstone were discovered under the surface of the property and such stone was actually used in construction of the water supply project, the Commissioners in making their award should have considered the value of the stone deposits in addition to the value of the property as a farm unit.-Huie v. Campbell, 281 App. Div. 275, 121 N.Y.S. 2d 86 [1953].

¶ 2. The Board of Water Supply was not an entity, independent of the City, with powers similar to those of the Board of Education. Hence, the City had the right to audit a claim and withhold payment due to a contractor under a contract with the Board of Water Supply. The contract provided that the City shall not be estopped from showing the true value of the work done.-Matter of Frazier Davis Construction Co., 6 A.D. 2d 112, 175 N.Y.S. 2d 765 [1958].

¶ 3. A milk company which extended its business into a territory which it knew the City had acquired for construction of a water system was not entitled to an award for loss of business when the City converted the land to its intended use.-Application of Huie, 13 App. Div. 2d 596, 212 N.Y.S. 2d 925 [1961]; aff'd 14 N.Y. 2d 692, 249 N.Y.S. 2d 887, 198 N.E. 2d 915.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-430

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-430 Definitions.

As used in this subchapter unless otherwise expressly stated, or unless the context or subject-matter otherwise requires, the following terms shall mean:

1. "The court", "the supreme court": A special term of the supreme court held in a county within the judicial district in which the real property involved in any proceeding under this subchapter is situated.

2. "Days": Calendar days, exclusive of Sundays and full legal holidays.

3. "Owner": A person having an estate, interest or easement or lien, charge or encumbrance on any real property affected by proceedings under this subchapter.

4. "Street": Includes the surface, subsurface and air space over any street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct and every class of road, square and place, or part thereof, but only such as are public, and does not include marginal street or wharf or state arterial highways except those sections of such state arterial highways enumerated in section 5-432.

5. "Real property": Includes all surface and subsurface structures within closed streets and all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal and equitable, in lands, and every

right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise.

6. "Capital project proceeding": A condemnation proceeding pursuant to the provisions of this subchapter for capital project purposes, authorized pursuant to chapter nine of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-1.0 added chap 929/1937 § 1

Sub 4 amended LL 50/1942 § 30

Sub 6 repealed chap 100/1963 § 279

Sub 6 renumbered chap 100/1963 § 279

(formerly sub 7)

Sub 4 amended chap 1002/1971 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Inasmuch as the City of New York in closing a certain public street was acquiring the fee of the street for the purpose of erecting thereon a garage and bus depot in connection with its operation of the transit system, a proprietary activity, it could not escape its liability to compensate gas and electric corporations for appropriation of their facilities located under the surface of the street under the common law rule that a utility must bear the burden of changes required in the regulation or improvement of a highway. Moreover, Admin. Code § E15-1.0, subd. 5, specifically provides that compensation must be paid for property such as that owned by the utilities and affected by the proceeding. The compensation was measured by cost to the utilities of relocating their respective facilities.-In re City of N.Y. (Gillen Place), 195 Misc. 685, 90 N.Y.S. 2d 641 [1949], aff'd 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951] which aff'd 304 N.Y. 215, 106 N.E. 2d 897 [1952].

¶ 2. Where city condemned areas in which pipes of a public utility were laid for a slum clearance project which is a governmental function it was not required to recompense utility for cost of relocation. The definition of real property contained in this section does not abrogate this common law rule.-Matter of Consolidated Edison Co. v. Lindsay, 24 N.Y. 2d 309, 300 N.Y.S. 2d 321, 248 N.E. 2d 150 [1969].

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NYC Administrative Code 5-431

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-431 Effect upon prior street closings.

This subchapter, or any part thereof, shall not apply to any street heretofore closed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 280

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NYC Administrative Code 5-432

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-432 Authority to close streets and to acquire any right, title or interest therein.

a. The city may authorize the closing or discontinuance of the surface, subsurface or air space over such streets therein, in whole or in part, upon the determination that (1) such closing or discontinuance will further the health, safety, pedestrian or vehicular circulation, housing, economic development or general welfare of the city and (2) in the case of a partial closing or discontinuance of the subsurface or air space over such streets, will not substantially interfere with pedestrian or vehicular use of such streets. In connection with the closing or discontinuance of the subsurface or air space over such streets, the city may authorize the closing or discontinuance of so much of such streets, in whole or in part, for easements and such other rights as may be necessary or desirable in order to effect the construction and support of any improvements in the closed or discontinued air space over or the subsurface of such streets. Any such closing or discontinuance shall be effected as a capital project. In connection with any such closing or discontinuance, the city may acquire any right, title or interest in the closed or discontinued streets or the closed or discontinued portions thereof, including the surface or subsurface of or the air space over such streets as a capital project, whenever it may deem that such acquisition will more effectually secure the actual discontinuance and closing of streets, in whole or in part, which may be legally discontinued and closed pursuant to this subchapter. The provisions of this subchapter which refer to land or lands within or lying within a closed or discontinued street or within a street to be closed or discontinued shall be deemed to refer to the surface and subsurface of and air space over such street or any part of the surface or subsurface of or air space over such street. The provisions of this subchapter which refer to fee title shall be deemed to refer to any right, title or interest acquired or to be acquired by the city.

b. Compensation and recompense shall be made to the respective owners of the real property affected or damaged by reason of any such closing and to the respective owners of the fee title to the land within the closed street for the damages caused by the taking by the city of such fee title.

c. Notwithstanding the provisions of any general, special or local law, the provisions of chapter one of title four and subchapter four of chapter three of this title shall be applicable to the following sections of the state arterial highway system located within the city of New York provided that with regard to such sections all requirements imposed by federal and state law shall be complied with, including requirements relating to the construction and support of improvements in such sections: Franklin D. Roosevelt drive from and including the Brooklyn Battery crossing to the easterly prolongation of the northerly line of Robert F. Wagner, Senior place.

d. Where the whole or a part of the subsurface of a street has been closed or discontinued pursuant to this section, public utility facilities in such subsurface or part thereof may be maintained in place, or, if the proposed use of such subsurface requires the relocation of utility facilities, the owner of such facilities may relocate such facilities elsewhere within or without such subsurface, provided, however, that any maintenance in place or relocation of such facilities shall be authorized by the city pursuant to subdivision one-a of section 5-433 of this subchapter. Nothing in this section, however, shall be deemed to create any liability arising from the cost of public utility facility relocation not recognized at common law or otherwise created by statute.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-3.0 added chap 929/1937 § 1

Amended chap 100/1963 § 281

Amended chap 1002/1971 § 2

Sub d added chap 915/1972 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Land consisting of street area under the viaduct running around Grand Central Terminal did not cease to be a public street so as to allow City to grant a permit for its private use, unless it were closed pursuant to Admin. Code § E15-3.0. Section 383 of the Charter does not override such provision of the Admin. Code.-City of N.Y. v. Aviation Distributors, Inc., 84 N.Y.S. 2d 84 [1948].

¶ 2. Street closing statutes have as their primary purpose the securing and preservation of the "regularity and uniformity of the streets." Such a purpose is governmental, and the act of closing a street is to that extent a sovereign one.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951] which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 3. Closing of public street for purpose of erecting thereon a garage and bus depot in connection with the operation by the City of the Transit System **held** to have been for a proprietary purpose, rather than a governmental purpose, and gas and electric corporations which were forced to abandon their installations located under the surface of the street and to reconstruct them elsewhere and for a much greater distance were entitled to be compensated for their loss.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951] which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 4. Where the City closes part of a street producing a dead end or cul-de-sac street with access only in one

direction, property owners whose property fronts on the unobstructed portion of the street are nonetheless "affected or damaged" within the meaning of this section. Such property owners are entitled to consequential damages for the extinguishment of their private easements of access. However, where the evidence showed that there was no diminution in the property values, only nominal damages were awarded. In deciding the consequential damages, the Court took into consideration the fact that a school erected on the closed road would increase the value of the property.-Matter of City of New York (East 5th St.), 1 Misc. 2d 977, 146 N.Y.S. 2d 794 [1955].

¶ 5. A brewery company owned all the land on both sides of a public street for one block. It negotiated with the City to close the street to the end that it might use it for the parking of its vehicles. A taxpayer's complaint showed that this was not a case of public necessity or of the preservation of the regularity and uniformity of the streets. Order dismissing complaint reversed.-Stahl Soap Corp. v. City of N.Y., 4 A.D. 2d 957, 167 N.Y.S. 2d 717 [1957], aff'd 5 N.Y. 2d 200, 182 N.Y.S. 2d 808, 156 N.E. 2d 443 [1959].

¶ 6. Plaintiff, a taxpayer, charged in a complaint that the City could not close a designated street, since the closing was not due to public necessity. **Held:** The City could not assert, as affirmative defenses to the action that, the plaintiff failed to appear at a public hearing relative to the closing of the street or that the plaintiff was guilty of laches in sitting by idle while the City delivered a deed to the street to the other defendant. Furthermore, the other defendant could not assert as an affirmative defense that the plaintiff had brought the present action due to a private grievance.-Stahl Soap Corporation v. The City of New York, 19 Misc. 2d 142, 187 N.Y.S. 2d 90 [1959], aff'd 9 A.D. 2d 964, 195 N.Y.S. 2d 812 [1959].

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NYC Administrative Code 5-433

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-433 Resolution authorizing the closing or discontinuance of a street; contents of.

Whenever the closing or discontinuance of a street has been authorized as a capital project, the resolution of the board of estimate, providing for the institution of proceedings for the closing or discontinuance of such street, shall:

1. Specify and describe by courses and distances the part or section of such street which it is proposed to discontinue and close and the date upon which such street shall become and be closed, which date shall not be prior to the date upon which the map, showing the street or such part thereof proposed to be closed, shall be filed as provided in section 5-435 of this subchapter, nor subsequent to the date of the entry of the final decree of the court.

1-a. In the case of the closing or discontinuance of the subsurface of a street, in whole or in part, specify if public utility facilities within the subsurface of such street shall be maintained in place or relocated within or without such subsurface so that the maintenance in place or proposed relocation of such facilities is consistent with the proposed use of the closed portion of such subsurface and the requirements of other facilities located therein.

2. State whether the effectual closing of such street, or other public necessity, requires the acquisition of the fee title to the whole or any portion of the land within the street to be closed, and in case it shall state that such acquisition is necessary, shall further request the mayor to provide for such acquisition simultaneously with the closing of such street, and shall specify and describe the part of the lands within the closed street, fee title to which should be acquired.

3. Adopt three similar maps or plans, prepared by the agency requesting such closing and acquisition, showing the street discontinued and closed, the nature and extent of such discontinuance and closing and the location of the immediately adjacent or intersecting open or established public streets of the city, sufficient for the identification and location thereof.

4. Authorize and direct the corporation counsel to make application to the supreme court to have such court without a jury ascertain and determine the compensation which justly should be made to the respective owners of the real property affected, damaged, extinguished or destroyed by such closing.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-4.0 added chap 929/1937 § 1

Amended chap 100/1963 § 282

Sub 1-a added chap 915/1972 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-434

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-434 Acquisition of street being closed or discontinued.

Whenever the closing or discontinuance of a street requires the acquisition of the fee title to the whole or any portion of the land within the street to be closed, the order of the mayor directing such acquisition shall:

1. Approve three maps, prepared by the agency requesting the street closing and acquisition, showing the land in such closed street the fee title to which is to be acquired.

2. Authorize and direct the corporation counsel to make application to the supreme court to have such court without a jury ascertain and determine the compensation which ought justly be made to the respective owners of the fee title to the land within such closed street.

3. Specify the date upon which the city shall acquire fee title which date shall be the same as that specified in the resolution of the board of estimate as the date upon which the street proposed to be discontinued or closed, shall become and be closed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-4.1 added chap 100/1963 § 283

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-435

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-435 Street closing and acquisition maps; certification and filing of.

a. When the maps described in subdivision three of section 5433 of this subchapter shall have been adopted, as therein provided, such maps shall be certified in the manner provided by law for the certification of similar maps adopted by the board of estimate. One of the maps so certified shall be filed by the agency requesting the discontinuance or closing, and shall remain of record in its office. The second map so certified shall be filed by such agency in the office of the corporation counsel. The third map shall be filed by such agency, and remain of record in the office in which instruments affecting real property in the county in which the closed street may be situated are required to be recorded. Such map shall be final and conclusive upon the city and upon all persons whomsoever.

b. When the maps described in subdivision one of section 5-434 of this subchapter shall have been approved and certified, such maps shall be filed by the agency requesting the acquisition in the same offices specified in subdivision a of this section.

c. Street closing and acquisition maps required to be filed in the office in which instruments affecting real property in the county in which the street to be closed and acquired may be situated shall be filed on the same date.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-5.0 added chap 929/1937 § 1

Amended chap 100/1963 § 284

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Administrative Code of the City of New York

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NYC Administrative Code 5-436

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-436 Order to expedite.

At any time after the date of the filing of such street closing and acquisition maps, the corporation counsel, or any owner may apply to the court for an order directing any owner or owners, or the corporation counsel, as the case may be, to show cause why further proceedings under this subchapter on the part of such owner or owners or of the corporation counsel should not be expedited. Upon the hearing directed by such an order to show cause, the court, in its discretion, may make an order directing that such proceedings should be expedited in the manner stated therein and also making such further directions with respect to the particulars shown upon the application as shall be just and proper in the premises.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-6.0 added chap 929/1937 § 1

Amended chap 100/1963 § 285

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-437

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-437 Release to owners.

In any case where any street which has been conveyed or ceded to the city without compensation, shall be discontinued and closed and the person or persons who have made such grant or conveyance, or his, hers or their heirs, devisees, executors or successors, are the owners and have retained title to the property fronting thereon, the board of estimate is authorized, on behalf of the city, to release and convey without compensation or upon such terms as may appear to such board to be just and equitable, to such owner or owners, his, hers or their heirs, devisees, executors or successors, all the right, title and interest which the city may have so acquired in and to the part of such street, in consideration of the release by such owner or owners of any and all claims for damages or compensation for and on account of the discontinuance or closing thereof. In such case no proceeding shall be had to estimate such loss and damage as provided in this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-7.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-438

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-438 Closing of street; vesting of title.

Upon the date specified in the resolution of the board of estimate as the date upon which the street, proposed to be discontinued or closed, shall become and be closed, all easements, in and over the land within such closed street, of every nature whatsoever, whether in favor of the public or in favor of the owners of the real property abutting thereon, shall become and be extinguished and destroyed, and ever after such date, such former street shall cease to be or remain for any purpose whatever, a street. In all cases where the city, at the time of such closing, shall acquire the fee title to the whole or any part of the land within such closed street, the city shall acquire and become and be vested with the fee title thereto, simultaneously with the closing thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-8.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. A person whose property fronted on the unobstructed portion of a street which, as a result of a legal closing of

a part of the street, became a dead end or cul-de-sac with access only in one direction, was entitled to compensation where he had acquired a private easement of access in both directions by a grant originating prior to the City's acquisition of the bed of the street. Inasmuch as no actual damage was established, only nominal damages were awarded.-Matter of City of New York (East 5th St.), 1 Misc. 2d 977, 146 N.Y.S. 2d 794 [1955].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-439

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-439 Closing of street; effect on real property contracts.

In all cases where any part of any lot or parcel of land or other premises, under lease or other contract, shall be contiguous to any street after the closing thereof, all the covenants, contracts and agreements between landlord and tenant or any other contracting parties, touching the same or any part thereof, shall, upon the date of the closing thereof, respectively cease and determine and be absolutely discharged.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-9.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-440

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-440 Notice of application to court.

Whenever the maps shall have been filed pursuant to section 5-435 of this subchapter, the corporation counsel shall institute a proceeding to ascertain and determine the compensation which justly should be made to the respective owners of the real property affected or damaged by the closing of the street and to the respective owners of the fee title to the land in such closed street, the acquisition of which may be provided for in the order of the mayor. Such corporation counsel shall cause a notice of the application to the supreme court to have such court, without a jury, ascertain and determine such compensation, to be published in the City Record for ten days prior to the making of such application, and shall state the time and place when and where such application shall be made. Such notice shall specify and describe the closed street by means of the description contained in the resolution which provided for the closing thereof. It shall also specify what portion, if any, of the land in the closed street the acquisition of fee title to which is provided for in such order.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-10.0 added chap 929/1937 § 1

Amended chap 100/1963 § 286

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NYC Administrative Code 5-441

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-441 Application to court; contents of petition.

Upon the day stated in such notice, or upon such further day to which the court may for good cause adjourn such application, the corporation counsel shall present a petition, signed by him or her on behalf of the city:

1. Setting forth briefly the proceedings had in relation to such discontinuance or closing.

2. Showing the nature and extent thereof.

3. Indicating the real property affected thereby, and to what portion, if any, of the land within the closed street the city has acquired or is authorized to acquire the fee title, by reference to the maps which shall have been filed as provided in section 5-435 of this subchapter. A copy of each map shall be attached to the petition.

4. Praying that the compensation which justly should be made to the respective owners of the real property affected or damaged by reason of such closing and also, in a proper case, the compensation which justly should be made to the respective owners of the fee title to the land within the closed street, acquired or to be acquired in the proceeding, be ascertained and determined by the supreme court without a jury.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-11.0 added chap 929/1937 § 1

Sub 5 repealed chap 100/1963 § 287

Sub 3 amended chap 100/1963 § 287

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-442

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-442 Order granting application; filing thereof.

Upon due proof to its satisfaction of the publication of the required notice and upon the filing of the required petition, the court shall enter an order granting the application, which order shall be filed in the office of the clerk of each county in which the closed street and the property affected or damaged by the closing thereof or any part of either may be situated.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-12.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-443

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-443 Filing of damage map; notice to file claims.

a. Thereupon the corporation counsel shall file in the office of the clerk of each county in which the closed street and the real property affected or damaged by the closing thereof or any part of either may be situated, a survey or map showing such real property subdivided into parcels corresponding with the separate ownerships of the land within the closed street acquired by the city and of the real property affected or damaged by the closing thereof, as nearly as the same has been ascertained.

b. The corporation counsel shall also cause to be published in the City Record a notice containing:

1. The same description of the closed street which was contained in the resolution closing the same and a general description of the real property affected or damaged by the closing of such street, and the land in the closed street acquired or to be acquired in such proceeding by the city.

2. A statement that the survey or map thereof has been filed and requiring that all claimants, on or before a date therein specified, shall file with the clerk of each county in which such closed street and the real property affected or damaged by the closing or taking thereof, or any part of either, may be situated, a written claim or demand, duly verified, in the manner provided by law for the verification of pleadings in an action, setting forth the real property owned by the claimant, and the claimant's post office address.

c. The claimant or his or her attorney, within the same time, shall serve on the corporation counsel a copy of such verified claim.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-13.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-444

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-444 Proof of ownership.

a. The proof of title to real property for which damages caused by the closing of the street are claimed, and proof of title to real property taken or damaged by reason of the acquisition by the city of the fee title to the land within the closed street, in all cases where the title thereto is undisputed, together with proof of liens, encumbrances or burdens thereon, shall be submitted by the claimant to the corporation counsel, or to such assistant as the corporation counsel shall designate. The corporation counsel shall serve upon all parties or their attorneys who have served on the corporation counsel a copy of their verified claims, a notice of the time and place at which he or she will receive such proof of title. In all cases where the title of a claimant is disputed, it shall be the duty of the court to determine the ownership of such real property, or the right to damages thereto, upon the proof submitted to the court during the trial of the proceeding.

b. The court shall also have power to determine all questions of title and right to damages, incident to the trial of the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-14.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-445

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-445 Note of issue of the proceeding.

After all parties who have filed verified claims have proved their title, or have failed to do so after being notified by the corporation counsel of the time and place when and where such proof of title would be received by the corporation counsel, such corporation counsel shall serve upon all parties or their attorneys who have appeared in the proceeding, a note of issue thereof and shall file the same with the clerk of the court of the county in which the trial is to be had. The trial shall be had in such county within the judicial district in which the real property affected by the proceeding is situated as the corporation counsel in the note of issue shall designate. Such note of issue shall be served at least ten days before, and shall be filed at least eight days before the date for which the proceeding is noticed for trial. The note of issue shall briefly state:

1. The title of the proceeding.

2. The date and entry of the order granting the application to have the compensation for damages caused by the closing ascertained and determined.

3. The names and addresses of the parties who have filed claims, and the names and addresses of their respective attorneys.

4. A brief statement as to the extent of the street which has been closed and discontinued and the part thereof to

be acquired by the city. The clerk of the court must thereupon enter the proceeding upon the proper calendar, according to the date of the entry of the order granting such application. When the note of issue has been served and filed, the proceeding must remain on the calendar until finally disposed of.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-15.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-446

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-446 View by court.

It shall be the duty of the justice trying the proceeding to view the real property affected by the closing.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-16.0 added chap 929/1937 § 1

Amended chap 100/1963 § 288

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-447

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-447 Decision of the court.

The court, after hearing such testimony and considering such proofs as may be offered, shall ascertain and estimate the compensation which ought justly to be made by the city to the respective owners of the real property affected and damaged by any street closing, and shall also ascertain and determine the compensation to be made to the respective owners of the fee title to the land within the closed street for damages sustained by reason of the acquisition by the city of the fee title thereto. The court shall also ascertain and estimate the value of the city's interest in the respective parcels of the closed street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-17.0 added chap 929/1937 § 1

Amended chap 100/1963 § 289

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-448

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-448 Corporation counsel to furnish clerks; agencies to furnish maps.

a. It shall be the duty of the corporation counsel to furnish to the court in the proceeding to discontinue and close any street and to acquire title thereto, such necessary clerks and other employees, and to provide such suitable offices as they may require to enable them to fully and satisfactorily discharge the duties imposed upon the court by this subchapter.

b. The board of estimate may require any agency of the city to furnish any surveys or maps required in connection with the closing of any street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-18.0 added chap 929/1937 § 1

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NYC Administrative Code 5-449

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-449 Amendment of street closing proceeding to include acquisition of fee title to closed street.

Where a street has been closed pursuant to the provisions of this subchapter, and the compensation to be made for the damages caused by the closing thereof is to be ascertained and determined by the supreme court without a jury, and the city is not the owner of the fee title to the land within such closed street and the effectual closing of such street or part thereof, or other public necessity, requires that such city should acquire the fee title to the whole or part of the land within the closed street, the city shall be authorized to acquire the fee title thereto for the purposes provided by this subchapter. Such acquisition may be authorized before or after the institution of a proceeding to have the supreme court without a jury ascertain and determine the compensation to be made for the damages caused by the closing of such street, but the order of the mayor instituting the proceeding for the acquisition shall be approved prior to the filing of the tentative decree in any street closing proceeding. The mayor, in issuing such order, shall comply with the provisions of section 5-434 of this subchapter. Such order shall authorize and direct the corporation counsel to apply to the supreme court in the proper judicial district to have such court without a jury ascertain and determine the compensation which justly should be made to the respective owners of the fee title to the land within the closed street for the damages sustained by such owners on account of the acquisition by the city of the fee title thereto. Such order shall specify the date upon which the fee title to the land within the closed street shall become and be vested in the city, in accordance with the provisions of subdivision three of section 5-434, which date shall not be prior to the entry of the order authorizing the court to ascertain and determine the compensation to be made therefor nor subsequent to the entry of the final decree of the court in such proceeding. Upon the date so fixed, the fee title to the land within the closed street shall

become and be vested in the city. Upon the issuance of such order the corporation counsel shall give notice by publication for ten days in the City Record that he or she will apply to the supreme court, stating the time and place when and where such application will be made, to have such court without a jury ascertain and determine the compensation which justly should be made to the respective owners of the fee title to the land within the closed street. Upon such application the corporation counsel shall present to the court a petition signed and verified by him or her, setting forth the action had by the mayor, and indicating the land within the closed street, the fee title to which is to be acquired by the city, by a precise description with courses and distances, having reference to the city map, an extract from which shall be attached, and praying that the compensation to be made therefor shall be ascertained and determined by such court without a jury. At the time and place specified in such notice, unless the court shall adjourn such application to a subsequent day, and, in that event, at the time and place to which the same may be adjourned, upon due proof to its satisfaction of the publication of such notice and upon the filing of such petition, the court shall enter an order granting the application, which order shall be filed in the office of the clerk of the county in which the closed street is situated. Awards for damages, due to the acquisition of the fee title to the land within the closed street, shall be made as provided in any proceeding instituted pursuant to this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-19.0 added chap 929/1937 § 1

Amended chap 100/1963 § 290

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-450

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-450 Agreements with owners.

a. It shall also be lawful for the board of estimate, with respect to a street closing, and the mayor, with respect to acquisition, either before of after the institution of a proceeding under this subchapter, to agree with the owners of the real property that will be affected by such closing, for and about the cession to the city of other real property included within the boundaries of any established street shown on the city map, in lieu of the real property comprised within the lines of the closed street, or to agree for and about the compensation to be made to such owners for the same or for and about the value of real property to be ceded in lieu of such discontinued or closed portion or portions of such street.

b. In case of any such agreement or agreements with part only of the owners entitled to and interested in the same real property so affected, for the purpose of making any such discontinuance or closing, or cession in lieu of such closing, the same shall be valid and binding upon the parties thereto, and the court shall nevertheless enter upon and make or proceed with its estimate, and tentative and final decrees as to the residue of such real property affected by the closing, concerning which the owners thereof shall not agree.

c. The final decree of the court shall be of like force and effect in regard to the matters comprised therein, as if no such agreement as to the part of the premises had been made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-20.0 added chap 929/1937 § 1

Amended chap 100/1963 § 291

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Administrative Code of the City of New York

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NYC Administrative Code 5-451

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-451 Tentative decree; preparation, contents and filing of.

a. The court shall instruct the corporation counsel to prepare tabular abstracts of its estimated damage due to the closing, and of the damage due to the acquisition by the city of fee title to the land within the closed street and of the value of the city's interest in the respective parcels of the closed street. The tabular abstract of estimated damage due to the closing of the street shall set forth:

1. The amount of loss and damage to each and every parcel of real property affected by the proceeding.

2. The name of the respective owners of each and every parcel of real property affected thereby, as far as the same shall be ascertained.

3. A sufficient designation or description of the respective lots or parcels of real property damaged by the closing of the street or by the acquisition of the fee title to the lands in the closed street, by reference to numbers of the respective parcels indicated upon the surveys, diagrams, maps or plans which shall be attached to such tabular abstracts.

b. The court shall appraise and determine and separately set forth and state in the tabular abstract, the value of the right, title and interest of the city in and to the fee of the land within the closed street.

c. Such tabular abstracts shall be signed by the justice trying the proceedings and filed with the clerk of each

county in which the closed street and the real property abutting thereon or any part of either may be situated and when so filed shall constitute the tentative decree of the court as to awards for damages and as to the value of the city's interest in the respective parcels of land within the closed street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-21.0 added chap 929/1937 § 1

Amended chap 100/1963 § 292

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-452

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-452 Notice to file objections; hearing thereon.

a. Upon the filing of the tentative decree, the corporation counsel shall give notice, by advertisement to be published for fifteen days in the City Record, of the filing of such tentative decree, and that the city and all other parties to such proceeding or in any way interested in the real property affected thereby, having any objections thereto, shall file such objections, in writing, duly verified in the manner required by law for the verification of pleadings in an action, and setting forth the real property owned by the objector and his or her post office address, with such clerk within twenty days after the first publication of such notice, and that the corporation counsel, on a date specified in the notice, will apply to the justice who made the tentative decree to fix a time when the justice will hear the parties so objecting. Similar notice for at least ten days shall be given of the filing of any new, supplemental or amended tentative decree and for the filing of objections thereto. Every party so objecting or such party's attorney shall, within the same time, serve on the corporation counsel a copy of such verified objections.

b. Upon such application, the justice shall fix the time when he or she will hear the parties so objecting and desiring to be heard. At the time fixed, the justice shall hear the person or persons who have objected to the tentative decree or to the new, supplemental or amended tentative decree, and who may then and there appear, and shall have the power to adjourn, from time to time, until all parties who have filed objections and who desire to be heard shall have been fully heard.

c. After the filing of the tentative decree or of any new, or supplemental, or amended tentative decree, no award

for damages shall be diminished without notice to the owner of the real property affected or the owner's attorney appearing in the proceeding, and an opportunity given for a hearing in regard thereto, before the signing of the final decree.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-22.0 added chap 929/1937 § 1

Sub c amended chap 100/1963 § 293

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-453

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-453 Correction of defects.

The court shall have power at any time to correct any pleading or any defect or informality, in any special proceeding authorized by this subchapter, that may be necessary, or to amend any description, or cause other real property to be included therein or real property included therein to be excluded therefrom, or to permit any person having an interest therein to be made a party thereto, or to relieve from any default, mistake, or irregularity or to direct such further notice to be given to any party in interest as it shall deem proper.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-23.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-454

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-454 Final decree; preparation, contents and filing of.

a. After considering the objections, if any, and making any correction or alteration in the tentative decree as to any award or as to any matter in the tentative decree which the court shall consider just and proper, the justice trying the proceeding shall give instructions to the corporation counsel as to the preparation of the final decree. Such decree shall consist of the tentative decree, and shall have:

1. The final awards for damages due to the closing as determined by the court set opposite the respective damage parcel numbers in a column headed "final awards for closing damages" in the tabular abstract of awards.

2. The final awards for damages due to the acquisition of the fee title in the land within the closed street set opposite the respective parcels of the closed street in the column headed "final awards for land in closed street" in the tabular abstract of awards.

3. The value of the city's interest in the land within the respective parcels of the closed street in a column headed "value of city's interest in respective parcels of closed street."

b. Such final decree shall contain a statement:

1. Of the facts conferring on the court jurisdiction of the proceeding.

2. Of such other matters as the court shall require to be set forth.

3. That the amounts set opposite the respective damage parcel numbers in the column headed "final awards for closing damages" in the tabular abstract of awards constitute and are the just compensation which the respective owners are entitled to receive from the city for damages caused by the closing of the street.

4. That the amounts set opposite the respective parcels of the closed street in the column headed "final awards for land in closed street" in the tabular abstract of awards, constitute and are the just compensation which the respective owners are entitled to receive from the city for damages caused by the acquisition by the city of the fee title to the land within the closed street.

5. That the amounts set opposite the respective parcels of the closed street in the column headed "value of city's interest in the respective parcels of the closed street" in such tabular abstract constitute the sums of money to be paid to the city for a conveyance of the city's interest therein by the parties entitled to a conveyance thereof.

c. Such final decree shall also set forth:

1. The several parcels damaged by the closing of the street and the several parcels of the closed street and the several parcels outside of the closed street, by reference to the numbers of such parcels on the respective maps, survey, diagrams, or plans attached thereto, duly corrected, when necessary, and it shall not be necessary to describe any parcels by a description by metes and bounds.

2. The names of the respective owners of the several parcels damaged by the closing of such street, as far as the same shall have been ascertained, provided that in all cases where the owners are unknown or not fully known to the court, it shall be sufficient to set forth and state in general terms in the decree the respective sums to be allowed and paid to or by the owners of the respective parcels for loss or damage, without specifying their names or their estates or interests therein, and in such cases the owners may be specified as unknown.

d. The final decree, together with all of the affidavits and proofs upon which the same is based, shall be filed in the office of the clerk of each county in which the closed street and the real property damaged by the closing thereof or any part of either may be situated. The final decree, unless set aside or reversed on appeal, shall be final and conclusive as well upon the city as upon the owners of the real property mentioned therein, and also upon all other persons whomsoever.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-24.0 added chap 929/1937 § 1

Amended chap 100/1963 § 294

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-455

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-455 Appeals to appellate division and court of appeals.

a. The city, or any party or person affected by the proceeding and aggrieved by the final decree of the court therein, may appeal to the appellate division of the court. An appeal from the final decree of the court must be taken within thirty days after notice of the filing of such final decree. Such appeal shall be taken and heard in the manner provided by the civil practice law and rules and the rules and practice of the court in relation to appeals in special proceedings. Such appeal shall be heard and determined by the appellate division upon the merits, both as to the questions of law and fact. The determination of the appellate division shall be in the form of an order. The taking of an appeal by any person or persons shall not operate to stay the proceedings under this subchapter, except as to the particular parcel of real property with which the appeal is concerned. The final decree of the court shall be deemed to be final and conclusive upon all parties and persons affected thereby, who have not appealed. Such appeal shall be heard upon the evidence taken before the court, or such part or portion thereof, as the justice at special term, who made the decree appealed from, may certify, or the parties to such appeal may agree upon as sufficient to present the merits of the questions in respect to which such appeal shall be had.

b. The city, or any party or person affected by the proceeding and aggrieved by the order of the appellate division entered on any such appeal, may appeal to the court of appeals from such order. Such appeal shall be taken and heard in the manner provided by the civil practice law and rules and the rules and practice of the court of appeals in relation to appeals from orders in special proceedings. The court of appeals may affirm or reverse the order appealed from and may make such order or direction as shall be appropriate to the case.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-25.0 added chap 929/1937 § 1

Sub c repealed chap 100/1963 § 295

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-456

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-456 Taxation of costs, charges and expenses.

a. The costs or charges of any agency of the city, or others, which shall be required by law to be taxed, shall not be paid or allowed for any service performed under this subchapter, unless the same shall be taxed by the court. A bill of such costs, charges and expenses shall be filed in the office of the clerk of the court in the county in which the land is situated at least ten days before the same shall be presented for taxation, and there shall be annexed thereto a statement of the amounts, if any, previously taxed, to whom the same were payable and the date of such taxation. A notice shall be published in the City Record, for ten days, of the time and place of taxing such costs, charges and expenses, which shall be thereupon taxed by a justice of the supreme court, or by a referee under his or her special order.

b. All such costs and expenses or disbursements shall be stated in detail in the bill of costs, charges and expenses, and shall be accompanied by such proof of the reasonableness and necessity thereof as is now required by law and the practice of the court upon taxation of costs and disbursements in other special proceedings or actions in such court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-26.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-457

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-457 Awards and costs; when, how and to whom paid.

a. All damages awarded by the court, and all costs and expenses which may be taxed in the proceeding, shall be paid by the city to the respective persons mentioned or referred to in the final decree of the court or in whose favor such costs and expenses shall be taxed. In a capital project proceeding, such costs and expenses shall be deemed part of the cost of the acquisition of land or permanent rights in land and may be financed in the same manner as the acquisition of land or permanent rights in land.

b. Whenever the amount of damages awarded in any final decree, together with the costs which shall have been taxed in the proceeding, shall exceed the balance remaining in the fund, from which such amounts are payable, after deducting all outstanding claims against such balance, the court, upon proper application of an owner or other person entitled to such excess, shall require the city to issue and sell serial bonds the proceeds of which shall be paid into such fund to meet such deficiency.

c. In default of payment, in a capital project proceeding, the owners, or other persons entitled to be paid, may at any time after application first made to the comptroller therefor, sue for and recover the amount due, with lawful interest and the costs of suit.

d. Except when any sum or sums of money shall in the final decree be made to "unknown owners", the supreme court, upon the application of the city or of any person entitled to or claiming to be interested in the lands, tenements or

hereditaments for which such awards have been made, or any part thereof, shall either direct the same to be retained by the comptroller, or to be paid into the supreme court until the title thereto or the respective interests and estates of all parties therein shall be determined by the court. Upon such application the court may take the proofs and testimony of the claimant or claimants or parties interested in the lands for which the awards have been made or refer the matter to a referee for such purpose.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-27.0 added chap 929/1937 § 1

Subs a, b amended chap 710/1943 § 573 (Part 3)

Amended chap 100/1963 § 296

CASE NOTES FROM FORMER SECTION

¶ 1. Claimant in street closing proceeding was entitled to interest upon the award at six percent from date upon which a certified property of the order directing payment of the award was served on the Comptoller until July 1, 1939, and thereafter at four percent until date of payment.-Crossin v. McGoldrick, 264 App. Div. 115, 34 N.Y.S. 2d 618 [1942], aff'd 289 N.Y. 763, 46 N.E. 2d 363 [1943].

¶ 2. Where the City Comptroller in 1920 had prepared a warrant for payment of certain awards in a street closing proceeding, but delay in payment had been occasioned by petitioner and not by the City, petitioner **held** not entitled to interest on the awards from 1920, since the awards were made in a street closing proceeding and there was no provision in the Charter compelling the City in such a proceeding to deposit the award in the Supreme Court, and the delay in payment had not been caused by any act of the City. Greater New York Charter § 983, which would have obligated the deposit of the amount of the award with the Supreme Court, does not apply to a street closing proceeding (142 App. Div. 785, 202 N.Y. 602).-In re Crossin (Walton Ave.), 107 (10) N.Y.L.J. (1-13-42) 176, Col. 7 T.

¶ 3. Owners of property abutting street which had been closed to permit construction of incinerator and garage covering several blocks, were entitled to damages resulting from loss of easements of light, air, access and frontage on the closed street, but in the street closing proceeding such damages might be awarded only from date when such proceeding took effect and not from date when the Board of Estimate and Apportionment, pursuant to N.Y.C. Charter § 442, adopted a resolution changing the City map so as to discontinue the portion of the street in question, since § 442 is not a street closing act and action taken thereunder was not a legal closing. However, the alleged wrong to the property owners was in the nature of a tort or trespass upon their private easements apart from the street closing proceeding which the owners might pursue in a proper forum.-In re City of N.Y. (12th Ave., W. 55th St. to W. 57th St.), 105 (103) N.Y.L.J. (5-3-41) 1979, Col. 2 F.

¶ 4. The damages might not be offset by any charge for cost of a pavement not actually completed, as the Court must value the property as it was on the closing date, and possible improvements at expense of the property might not be considered.-Id.

¶ 5. Even assuming that the street closing proceeding was instituted to secure uniformity of the City street system, in the exercise of governmental power, still the utilities were entitled to compensation by reason of the statute which designated the proceeding as a condemnation proceeding and not merely a regulatory proceeding, and provided for compensation to owners of the real property affected and defined real property as including all surface and subsurface structures within closed streets and all easements and hereditaments, corporeal or incorporeal, and every right, interest,

privilege, easement and franchise relating to the same.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951], which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 6. The loss to the utilities was properly measured not merely by the intrinsic value of the pipes and conduits in the soil, but by the actual loss to claimants of the right to unobstructed passage through the street in question. The trial court had the right to deem a certain six-inch main "antiquated" and abandoned and of no value.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951], which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 7. An abutting property owner held to have been damaged in the sum of $17,750 representing $5,000 direct damage to lots which became interior lots and flow of traffic had been affected by streets becoming deadened, and $12,750 for consequential damages to remainder of property where the City condemned nine square blocks and closed certain streets for a slum clearance project.-Matter of City of New York (Ryerson Street), 145 (21) N.Y.L.J. (1-31-61) 15, Col. 6 F.

¶ 8. Public utility who owned gas, electric and steam utility facilities in certain streets to which the City had acquired fee title in connection with an urban renewal project was entitled to compensation for closing and discontinuance of streets.-Matter of Consolidated Edison Co., 157 (49) N.Y.L.J. (3-14-67) 15, Col. 6 M aff'd 30 A.D. 2d 392, 292 N.Y.S. 2d 12 [1968].

¶ 9. In condemnation proceeding to build a public school City is not required to institute a street closing proceeding in which a utility is compensated for the removal and relocation of sub-surface installations. The building of a school is a proper governmental function and as such the removal and relocation of the property of the utility is subject to the common law rule against compensation for such expenses.-Matter of City of N.Y., 157 (72) N.Y.L.J. (4-14-67) 18, Col. 5 F.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-458

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-458 Awards; deposits of; payment of, to persons not entitled thereto.

a. Whenever the owner, in whose favor any awards shall be made, shall be a minor or incompetent or absent from the city, and also in all cases where the name of the owner shall not be set forth or mentioned in the final decree, or where such owner, being named therein, cannot be found, or where there are adverse or conflicting claims to the money awarded as compensation, it shall be lawful for the comptroller to pay such awards made in the final decree into the supreme court, to be invested, secured, disposed of and paid out as such court shall direct. Such payment shall be as valid and effectual in all respects as if made to such owners according to their just rights, if they had been known and had all been present, of full age and competent.

b. In all cases, however, where any such award, which shall be made in the final decree in favor of any person whether named or not named in the final decree of the court, shall be paid to any person or persons whomsoever, when the same shall of right belong, and ought to have been paid to some other person or persons, it shall be lawful for the person or persons, to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suit, from the person or persons, to whom the same shall have been paid, as so much money had and received to the use of the plaintiff or plaintiffs, by the person or persons, respectively, to whom the same shall have been so paid, and the final decree of the court, with proof of payment, shall be conclusive evidence of such payment in such suit.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-28.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-459

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-459 Purchase of awards by the city.

The provisions of section 5-329 of this subchapter shall be construed to have application to and to be incorporated into this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-29.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-501

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-501 Director of management and budget; access to agencies.

The director of management and budget shall have access, at all reasonable times, to the offices of any agency for the purpose of carrying out the duties imposed upon him or her by law. The powers and duties of the director as to private institutions shall extend only to the moneys received from the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 111b-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 148

(formerly § 113-1.0)

Amended LL 54/1977 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-502

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-502 Departmental estimates; duplicates.

The director of management and budget, upon receipt of departmental estimates submitted to him or her, shall forward copies thereof to the council, to the board of estimate and each community board and borough board.

If the departmental estimate submitted by an agency contains budget requests for programs related to criminal justice, the director of management and budget shall also forward a copy of such budget requests to the coordinator of criminal justice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 150

(formerly § 114-1.0)

Amended LL 54/1977 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-503

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-503 Departmental estimates; preparation.

To assist in the preparation of departmental estimates, the head of each agency shall designate an official or employee thereof as budget officer who shall, in each year under the direction of such head, prepare the departmental estimate for such agency.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 151

(formerly § 114-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-504

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-504 Departmental estimates; necessity for funds requested.

a. The departmental estimates shall contain statements and other data showing the necessity for the funds requested and such supporting data as may be required by the director of management and budget.

b. The departmental estimates shall include particularly and in detail the reasons for all individual increases or decreases compared with the budget as modified for the prior year.

c. Departmental estimates for any agency that has local service districts within community districts and boroughs shall contain where practicable a statement of proposed direct expenses in each such service district for each requested unit of appropriation prepared according to the requirements specified in subdivision d of section one hundred twelve of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-3.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 152

(formerly § 114-3.0)

Amended LL 54/1977 § 6

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-505

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-505 When the director of management and budget is to prepare departmental estimate.

If a departmental estimate is not submitted on such date as the mayor may direct, the director of management and budget shall cause to be prepared such estimate and data necessary to include departmental estimate in the budget for such agency for the following fiscal year. In no event later than the fifteenth day of January, or such earlier date as the mayor may direct, the director of management and budget will forward copies of such estimate to the secretary of the board of estimate, the council and each community board and borough boards.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-4.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 153

(formerly § 114-4.0)

Amended LL 54/1977 § 7

Amended LL 6/1979 § 26

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-506

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-506 Departmental estimates; form of.

The classification of such estimates shall be as nearly uniform as possible and, as far as practicable, shall exhibit clearly the functions performed by each agency and the purpose of appropriations made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-5.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 154

(formerly § 114-5.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-507

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-507 The budget; details.

In addition to the requirements set out in the charter, the proposed budget and the preliminary budget shall be prepared in such detail as to the titles of appropriations, the terms and conditions under which the same may be expended and the aggregate sum allowed to each agency, as the mayor shall deem advisable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 164

(formerly § 119-1.0)

Amended LL 54/1977 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-508

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-508 The budget; miscellaneous revenues appropriated for specific purposes.

The budget and preliminary budget shall include the several items and amounts payable from funds other than those derived from taxation which are specifically provided by law to be so expended and which, in the judgment of the director of management and budget, are deemed necessary for the proper conduct of the various agencies, either in whole or in part as a supplement to the fund obtainable from taxation, and shall show the aggregate sum allowed to each agency and the total of all allowances contained in the budget to be obtained from taxation or other funds.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a7-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 165

(formerly § 119-2.0)

Amended LL 54/1977 § 11

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-509

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-509 Items to be included in annual budget.

There may annually be included in the budget:

1. A sum not exceeding eight thousand dollars to be paid to the trustees of the seventh regiment armory building, as an equivalent and in lieu of the rental of an armory for such regiment, to be applied to the preservation, maintenance and improvement of the armory building, such sum to be paid in the month of January in each year.

2. The amount necessary for the maintenance of the buildings, instruments and equipment of:

a. The meteorological and astronomical observatory.

b. The American museum of natural history.

c. The metropolitan museum of art, not exceeding ninety-five thousand dollars.

d. The Brooklyn institute of arts and sciences.

3. Such sums to any hospitals, charitable, eleemosynary, correctional or reformatory institution, wholly or partly under private control for the care, support and maintenance of its inmates, and for the care, support, maintenance and secular education of inmates of orphan asylums, protectories, homes for dependent children or correctional institutions and any other sum or sums which may heretofore have been duly authorized by law to be paid within the city of New York or any part thereof for the education and support of the blind, the deaf and dumb and juvenile delinquents and such sums other than salaries for reimbursement to any duly incorporated charitable institution or society employed by

the commissioner of welfare in the placing out, supervision and transfer of children who are public charges; such payments to be made only for such inmates as are received and retained therein pursuant to rules established by the state board of social welfare. The city may in any year, and from time to time, increase or diminish, the sum authorized to be paid to any such institution, association, corporation or society. The final estimate shall specify each institution by its corporate name and the sum to be paid thereto, with a reference to the laws authorizing the appropriation, and the comptroller is authorized to pay the sum to such institution upon its appearing to his or her satisfaction in such manner as he or she shall prescribe that the expenditure thereof by the institution is lawful and proper. Appropriations shall be made under this section to any corporation only if the mayor, or the president of the borough in which the chief office of such corporation is situated, is notified of all meetings of its board of management, and is empowered to attend the same or designate in writing some person to do so in his or her behalf; but this shall not be construed as impairing any existing powers of visitation vested in the supreme court or the state board of social welfare, or any provisions of law requiring statements by such corporations as to their affairs.

4. A sum for the due observance of Memorial day to be expended for such purpose.

5. A sum as may be necessary to pay the salaries of county officers within the counties of New York, Kings, Bronx, Queens and Richmond, and likewise all other expenses within such counties and each of them which are county as distinguished from city charges and expenses.

6. A sum sufficient, as determined by the council and the board of estimate, to maintain the rates of fare of the New York city transit authority existing on January first, nineteen hundred sixty-six.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a10-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 160

(formerly § 117(7)-1.0)

Sub 6 added LL 26/1966 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The codification and restatement of old Charter § 230 and Laws of 1893, ch. 518, in Admin. Code § 117a10-1.0 to provide that "the Board of Estimate, in its discretion," should include annually in its budget a sum not exceeding $8,000 for maintenance of the Seventh Regiment armory building, **held,** as respects the change from the mandatory inclusion required by the old law to a discretionary inclusion, to have been written in through "inadvertence or error", and consequently did not have effect of repealing § 230 or Laws of 1893, ch. 518, in view of stated purpose of the Code to be to codify and restate existing statutes (§§ 1-0.0; 982-1.0), that no existing right or remedy should be lost or impaired (§ 963-1.0), and that insofar as the Code continued or restated provisions of existing law such provisions should be deemed unchanged in substance and any new provision should be deemed an inadvertence or error (§ 982-1.0).-Tobin v. LaGuardia, 259 App. Div. 191, 18 N.Y.S. 2d 267 [1940], aff'd without opinion, 283 N.Y. 678, 28 N.E. 2d 403 [1940].

¶ 2. Charge of $8,000 for maintenance of Seventh Regiment Armory Building for the year 1943, and of $8,000 for year 1944, **held** not to have been made state charges by the 1942 revision of Military Law, Art. 9, and hence trustees of the Armory building were entitled to an order directing amendment of City budget to include such items [276 N.Y. 34;

283 N.Y. 678; Report of Attorney-General, (1944) pp. 102-105].-In re Tobin (O'Dwyer), 187 Misc. 476, 62 N.Y.S. 2d 462 [1946], aff'd without opinion, 270 App. Div. 994, 63 N.Y.S. 2d 826 [1946], 296 N.Y. 733, 70 N.E. 2d 544 [1946].

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***** Current through December 2009 ****

NYC Administrative Code 5-510

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-510 Payment of certain moneys from general fund

For the purpose of adjusting the reductions heretofore or hereafter made in the amount of taxes receivable by reason of the operation of the provisions of the tax law providing for the deduction from special franchise taxes of payments made in the nature of a tax, it shall be lawful for the comptroller and commissioner of finance to transfer at any time from the moneys in the general fund to the credit of the appropriate account or accounts, a sum or sums equivalent to but not exceeding such deductions.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 126-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 168

(formerly § 130-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-601

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-601 Criminal Justice Account.

There shall be within the general fund of the city a special accounting of the revenues and expenditures included in the safe streets-safe city omnibus criminal justice program. Such accounting shall be known as the "Criminal Justice Account."

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

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[Footnote 5]: * Note provisions of L.L. 11/1991 eff. Feb. 7, 1991:

Section one. Declaration of legislative findings. The Council hereby finds and declares that the rise in crimes against persons and property in New York City, compounded by an increased randomness of violence, has created a public safety emergency that requires an extraordinary governmental response.

In recognition of this emergency, the Council and the Mayor have formulated and agreed to fund an ambitious, but necessary, initiative known as the Safe Streets-Safe City Omnibus Criminal Justice Program.

The program addresses the needs of the criminal justice system, first and foremost through the addition of over 8,000 police officers to the streets of the City. This will be accomplished through a reorganization of the Police Department that will enable the men and women of the combined police forces to police the streets of the City. Workload sharing with other city departments and the civilianization of the Department will add 2,924 officers to patrol strength. Over the next six years, it is the intent of this program to hire an additional 2,873 officers to bring the number of uniformed positions in the New York City Police Department to 31,351. Additionally, funds will be provided to the New York City Transit Authority Police Department to civilianize the Department and add officers so that by 1994 there will be a police officer on every train in this City between the hours of 8 p.m. and 4 a.m. Finally, the force of the New York City Housing Authority Police Department with the addition of 208 officers will rise to its all-time high.

The Safe Streets-Safe City Program will do much more. While more police officers will be hired, other needs of the criminal justice system will be addressed, including: enhancing prosecution capabilities, expanding jail capacity, improving probation services, and increasing funding for legal aid and alternatives to incarceration.

The program also addresses the need for initiatives that will prevent crime and protect those most vulnerable to crime. The Council finds that the expansion of school security and after school programs in schools and libraries will provide protection and alternatives for young people. The expansion of employment training programs and senior citizen services are also integral components of a comprehensive solution to crime on our streets.

It is the declared intent of the Council that the funds dedicated to the Safe Streets-Safe City Omnibus Criminal Justice Program be used for the purposes outlined in section 5603 of the administrative code of the city of New York, as added by section two of this local law. To ensure that this goal is realized, the Council, through this legislation, is requiring an accounting of revenues and expenditures associated with this program and a public reporting as to the status of the implementation of the Safe Streets-Safe City Program.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-602

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-602 Revenues.

There is hereby established within the general fund of the city, a special accounting of revenues, composed of the following revenue sources, dedicated for the purposes identified in the safe streets-safe city omnibus criminal justice program: 1. a designated portion of the real property tax (to the extent not required for debt service);

2. the special anti-crime lottery within the city established and operated by the New York state division of the lottery:

3. the city personal income tax surcharge, to the extent required to be credited to the criminal justice account by subdivision (d) of section 11-1704 of the code; and

4. such other sources as may be credited or transferred to the criminal justice account.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

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[Footnote 5]: * Note provisions of L.L. 11/1991 eff. Feb. 7, 1991:

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-603

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-603 Dedication.

a. Except as otherwise provided in this chapter, the revenues identified pursuant to section 5-602 of this chapter shall be used for criminal justice purposes, including hiring of police officers, correction officers, probation officers, attorneys and ancillary personnel; funding public safety, education, youth services and community anti-crime programs; increasing capacity in the correction area; and engaging in such other efforts as are designed to protect public safety and deter crime in the city.

b. There shall be a separate accounting by the city within the general fund of the proceeds of the anti-crime lottery established and operated within the city by the New York state division of the lottery. Such proceeds shall be used exclusively for educational programs, including, but not limited to, increased security in elementary schools, special education sites and after school activities; increasing the number of community schools; providing academic and non-academic evening school activities for high school students; providing support services to students at risk of dropping out of school; strengthening basic skills of children in kindergarten through fourth grade; and providing additional after-school educational opportunities in the municipal library system.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-604

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-604 Expenditures.

a. No monies included in the revenue sources established pursuant to section 5-602 shall be available for appropriation unless a schedule for the proposed uses of the total projected amount of such revenue sources shall be set forth as a supporting schedule to the preliminary budget required to be presented by the mayor pursuant to charter section two hundred thirty-six, and as a supporting schedule to the executive budget required to be presented by the mayor pursuant to charter section two hundred thirty-six, and as a supporting schedule to the executive budget required to be presented by the mayor pursuant to charter section two hundred fifty. Such schedule shall indicate each agency and unit of appropriation to which amounts are proposed to be appropriated, and shall indicate by unit of appropriation the intended uses of such amounts and the objectives to be met.

b. The monies so available for appropriation shall be spent only in accordance with applicable state law and charter sections two hundred fifty-four, two hundred fifty-five, and two hundred fifty-six, or in accordance with charter sections one hundred seven or two hundred sixteen. If any source within the account accrues revenues in excess of the amount projected in the adopted budget to be received from such source, such excess revenues may not be expended except in accordance with such charter sections, and for the purpose of section one hundred seven of the charter shall be deemed new revenues pursuant to subdivision e of section one hundred seven of the charter.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

Subd c repealed L.L. 17/1991 § 1, eff. Feb. 25, 1991

FOOTNOTES

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[Footnote 5]: * Note provisions of L.L. 11/1991 eff. Feb. 7, 1991:

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-605

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-605 Reporting requirement.

The director of the office of management and budget, in consultation with the police commissioner and the heads of appropriate city agencies, shall make a year-end annual report specifying the actual year end spending for each of the purposes identified in the schedule required by subdivision a of section 5-604, updated to reflect changes, if any, made at adoption, to the chairpersons of the finance and public safety committees of the council on the allocation of funds from the criminal justice account and the status of implementation of the safe streets-safe city omnibus criminal justice program. Such report shall include a schedule of new hires for all police forces and criminal justice agencies; a status report on civilianization and workload sharing efforts of the police departments; the level of patrol strength in all borough commands of the city; status of the implementation and operation of youth, employment and senior citizen programs; and the status of programs funded through the education portion of the criminal justice account.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-101

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-101 Contracts; certificate of comptroller.

a. Any contract, except as otherwise provided in this section, shall not be binding or of any force, unless the comptroller shall indorse thereon the comptroller's certificate that there remains unexpended and unapplied a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same.

b. In contracts for the purchase of food supplies, forage, fuel, printing, stationery, books and other supplies required for daily or continuous use, or of supplies, materials and equipment needed for use immediately after the beginning of the next succeeding fiscal year, to be delivered within a period of one year from the date thereof, the comptroller shall indorse thereon the comptroller's certificate that there remains unexpended and unapplied a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract in so far as the same is to be executed during the current fiscal year, as certified by the officer making the same. Upon the first of the following fiscal year the comptroller shall certify by indorsement upon such contract as to the portion of such contract then unexecuted, and such certification by the comptroller shall make any such contract binding and of full force.

c. It shall be the duty of the comptroller to make such indorsement upon every contract so presented to him or her, if there remains unapplied and unexpended the amount so specified by the officer making the contract, and thereafter to hold and retain such sum to pay the expense incurred until such contract shall be fully performed. Such indorsement shall be sufficient evidence of such appropriation or fund in any action.

d. The provisions of this section shall not apply to supplies, materials and equipment purchased directly by any

agency pursuant to subdivisions (c) and (d) of section three hundred forty-four of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-3.0 added chap 929/1937 § 1

Sub d amended chap 852/1949 § 3

Subs b, d amended LL 54/1977 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Provision of Greater New York Charter § 149 that no contract not to be paid by assessments upon property benefited should be binding unless the Comptroller should indorse his certificate that there was a sufficient unexpended and unapplied balance of an appropriation or fund applicable, was without application to a contract with the City for construction of sewers, where the situation was controlled by provisions of the New York City Grade Crossing Elimination Act which specially authorized the work.-Remo Engineering Corp. v. City of New York, 260 App. Div. 587, 23 N.Y.S. 2d 314 [1940], aff'd without opinion, 286 N.Y. 657, 36 N.E. 2d 695 [1941].

¶ 2. Claimant was not forever precluded from recovery merely because the Comptroller had rejected his claim (dist'g 139 N.Y. 543).-Tyroler v. City of New York, 108 (124) N.Y.L.J. (11-28-42) 1651, Col. 7 T.

¶ 3. In action against City of New York to recover sum due from City for work performed by plaintiffs' assignor, defense alleging the filing in the Comptroller's office of various claims and injunctions restraining payment of the money demanded by plaintiff and asserting that the filing of such instruments made the claimants necessary parties, **held** insufficient, as plaintiffs were merely seeking to collect an indebtedness and not to recover a specific fund, and if the presence of the other claims made payment by the City hazardous, the City should have interpleaded the claimants.-Grossman v. City of New York, 188 Misc. 256, 66 N.Y.S. 2d 363 [1946].

¶ 4. Lien, which arose on November 2, 1944, of the United States against a contractor for unpaid taxes, **held** not superior to a mechanics lien filed on November 21, 1944 against the contractor which had moneys due it from the City of New York, where the Collector of Internal Revenue did not serve upon the City Treasurer-Comptroller a notice of levy for taxes until July 16, 1945. The lienor was in position of an assignee by operation of the lien statute, and assignees in such a situation are to be treated as purchasers under the exceptions in Internal Revenue Code § 3672 and they are protected unless and until the lien of the government is recorded.-Cranford Co. v. L. Leopold & Co., 117 (76) N.Y.L.J. (4-2-47) 1282, Col. 7 M.

¶ 5. Notwithstanding the defendant Board of Education of the City of New York had audited plaintiff's bill for an amount including that sought to be recovered in the present action, plaintiff was not entitled to summary judgment in view of issue raised as to non-performance of the contract. However, ordinarily when the Board of Education audits a claim the Comptroller may not arbitrarily refuse to pay, in the absence of illegality, fraud or manifest mathematical error.-In re Milgram (Board of Education), 120 (92) N.Y.L.J. (11-12-48) 1123, Col. 1 M.

¶ 6. Comptroller, who refused to pay on the ground that he was not certain that the Board of Education had conducted a proper audit was directed to make payment pursuant to voucher of Board of Education for services rendered pursuant to contract. Comptroller is merely the custodian of school funds and in the absence of illegality, fraud or manifest mathematical error the audit of the Board of Education prevails.-In re the Service Bureau Corp. (Proccacino), 158 (104) N.Y.L.J. (11-30-67) 16, Col. 7 T.

¶ 7. Proceeding under C.P.A. Art. 78 for order directing respondent City officials to issue and sign warrants in amounts which petitioner claimed were due for coal delivered pursuant to contracts with the City of New York through various departments and agencies of the City, was denied, where an investigation was presently being conducted into an alleged failure of petitioner to deliver the required quantities and quality of coal, and the Comptroller had determined that certain payments and gifts had been made to a City employee in connection with the performance of the contract and the Comptroller had certified to the Department of Purchase that he had exercised his discretion to declare void and forfeit the contract. Petitioner thus failed to show any clear legal right to the relief sought.-A.R. Fuels, Inc. v. Joseph, 125 (67) N.Y.L.J. (4-6-51) 1251, Col. 5 M.

¶ 8. Plaintiff-contractor's acceptance of final payment under a public works contract with the City of New York which provided that acceptance by the contractor of the amount certified for payment under the final certificate as audited by the Comptroller should operate as a release to the City for all claims of the contractor, **held** to preclude the contractor from suing the City for expenditures of moneys and cost of labor which allegedly were not contemplated by the contract.-Lyn Boro Const. Corp. v. City of New York 131 (32) N.Y.L.J. (2-17-54) 11, Col. 3 M.

¶ 9. The Board of Education advertised for bids for general construction of a school building including plumbing, heating and electrical work. The plaintiffs won the contract for the electrical work but because other contracts for the construction of the building were not awarded until some time later, the plaintiffs sustained additional costs for which they sought to recover on the ground that the Board impliedly misrepresented that all construction contracts would be awarded at once. All awards were not made at the same time because the total bids exceeded the City's appropriation for the project. The City Comptroller had endorsed on plaintiff's contract that there remained unapplied and unexpended a balance of the appropriation sufficient to pay the estimated expense of executing the same. In permitting plaintiff to recover his additional costs, the Court held that under all the circumstances, the plaintiffs were not required to know that the Board of Estimate had failed to appropriate the necessary funds for the advertised plumbing and heating contracts.-Bank v. Board of Education, 305 N.Y. 119, 111 N.E. 2d 238 [1953].

¶ 10. The provisions of this section requiring the endorsement of the Comptroller did not prevent the plaintiff from recovering for legal services furnished to a special committee of the City Council investigating unemployment relief even though there was no appropriation for this expense. Charter § 891 permits recovery even where there is no appropriation if the expenses are "otherwise authorized".-Barry v. City of New York, 175 Misc. 712, 25 N.Y.S. 2d 27, aff'd 261 App. Div. 957, 27 N.Y.S. 2d 425 [1941].

¶ 11. Petitioner, a demolition contractor, was granted an order directing the Comptroller to process bills and invoices submitted by him pursuant to a written contract even though the City contended that it should not pay until an investigation was completed to determine whether petitioner had purchased or distributed counterfeit construction waste dump tickets in the value of $390 where the city could be protected by the posting of a bond by the petitioner.-In re Abato (Comptroller), 165 (93) N.Y.L.J. (5-14-71) 18, Col. 5 M.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-102

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-102 Performance of contracts.

a. Each agency shall require and enforce the faithful performance of every contract made by it.

b. If the contractor or contractors shall fail in any respect to fulfill the contract within the time limited for its performance, then the agency in charge thereof shall complete the same in the manner provided for in the contract. The cost of such completion shall be a charge against such delinquent contractor or contractors.

c. If any work shall be abandoned by any contractor, the appropriate agency, if the best interest of the city be thereby served, and subject to the approval of the board of estimate, may adopt all subcontracts made by such contractor for such work. All subcontractors shall be bound by such adoption. The agency shall readvertise and relet the work specified in the original contract, exclusive of so much thereof as shall be provided for in the subcontracts so adopted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-1.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where the City withheld part of the contract price pending the determination of a claim filed against a

contract, which was withdrawn, the contractor was entitled to interest upon the amount withheld from the date when the Department of Finance received notice from the Bureau of Law and Adjustment of the cancellation of the claim. The City was justified in withholding sums to cover any claim of its own, notwithstanding the contractor's financial responsibility and the filing of a performance bond.-Atlas Tile & Marble Works, Inc. v. City of New York, 135 (44) N.Y.L.J. (3-6-56) 7, Col. 1 T.

¶ 2. The petitioner entered into a contract with the City. A provision of the contract provided that the Comptroller could withhold any money due in the event that a claim should be made by any corporation against the City. A co-contractor threatened suit against the City due to delay of petitioner in completing his contract. **Held:** The petitioner could not maintain an Art. 78 proceeding to compel the Comptroller to pay the balance due under the contract, but was relegated to a plenary suit where the City could, pursuant to §§ 193- and 264 of the C.P.A., obtain a complete determination of the opposing claims of all interested parties.-Matter of Five Boro Construction Corporation, 9 App. Div. 2d 360, 193 N.Y.S. 2d 888 [1959].

CASE NOTES

¶ 1. After a general contractor defaulted on its obligations to both the City and plaintiff subcontractor, the City issued a guarantee letter under which the City agreed to pay for the subcontractor's material in the event that the general contractor failed to pay. The court held that the after a default in an existing contract occurred, the City was authorized to complete the contract without replicating the procedures required for the initial formation of a contract. In other words, the requirements for making an initial contract did not apply to the guarantee letter. The purpose of statutory requirement of certification by the Comptroller is to ensure that funds are available for a project. Once the funds are allocated to the project, there is no need for recertification during the middle of the contract. Thus, the court held that the subcontractor's claim under the guarantee letter stated a cause of action. Bolt Electric, Inc. v. City of New York, 53 F.3d 465 (2nd Cir. 1995).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-103

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-103 Extension of time for performance.

The board of estimate, by a unanimous vote, may extend the time for the performance of any contract.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-2.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-104

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-104 Release from fines.

a. It shall be unlawful for the comptroller to release any contractor from any fine or penalty incurred under a contract, except upon the unanimous recommendation of the board of estimate.

b. The board of estimate may, by resolution, authorize the comptroller to dispose of such cases without reference to or further action by the board where the sum released does not exceed five hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-3.0 added chap 929/1937 § 1

Amended LL 34/1939 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-105

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-105 Vouchers.

The comptroller shall issue warrants for work done or supplies furnished only upon proper vouchers rendered by the head of the appropriate agency.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-4.0 added chap 929/1937 § 1

Sub b repealed LL 54/1977 § 18

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 343-4.0, which applies to a contract for purchase of supplies, such as the City's contract for purchase of an anti-freeze solution, does not require any final certificate.-Compound Products Corp. v. City of New York, 265 App. Div. 511, 39 N.Y.S. 2d 862 [1943].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-106

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-106 Certificate of completion.

Within five days after his or her acceptance of any work under contract, the head of an agency shall file with the comptroller a final certificate of the completion and acceptance thereof, signed by the chief engineer or head of such agency. The filing of such certificate shall be presumptive evidence that such work has been completed according to contract.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-6.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where the Commissioner of Public Works failed to comply with the requirements of Admin. Code §§ 343-5.0 and 6.0 in that his certificate of completion of plaintiff's work under its contract with the City was not furnished until nearly a year after actual completion and acceptance of the work and was not filed until nearly two weeks later, whereas the statute required it to be filed within five days after completion and acceptance, and moreover the contractor had never been given notice of such filing of the certificate in the Comptroller's office, the commencement of an action by the plaintiff against the City nearly a year after filing of the certificate, **held** to have been timely notwithstanding the

provision in the contract that any action thereon should be commenced within six months after filing of the final certificate.-Hauer Const. Co. v. City of New York, 193 Misc. 747, 85 N.Y.S. 2d 42 [1948], aff'd, on ground that under all the facts and circumstances disclosed in the record, including the City's failure to comply with § 343-6.0, and the long ensuing delay thereafter, the City should have given plaintiff notice of the filing when the certificate finally was filed, 276 App. Div. 841, 93 N.Y.S. 2d 915 [1949].

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NYC Administrative Code 6-107

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-107 Warrants upon vouchers.

a. All warrants upon vouchers for payment of amounts due under contracts, duly audited and approved, shall refer by number or other description to the voucher, the fund and the contract upon which the payment is to be made. All checks issued by the commissioner of finance on warrants duly approved and executed pursuant to law, as payments on contracts, may be mailed or delivered to the contractor or the contractor's authorized representative.

b. The indorsement by the contractor upon a check attached to such a warrant, which has been paid by the bank or depository upon which the same has been drawn, shall be considered as a receipt for the amount of such check.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-7.0 added chap 929/1937 § 1

Sub a amended chap 100/1963 § 215

Sub a amended LL 54/1977 § 20

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-107.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-107.1 Payments to city contractors to be made by electronic funds transfer.

a. Definitions. For purposes of this section:

(1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in an amount greater than twenty-five thousand dollars in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing;

(2) "Contractor" means any business, individual, partnership, corporation, firm, company, or other form of doing business to which a contract has been awarded; and

(3) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

b. Notwithstanding any other provision of law, except as otherwise provided in this section all payments made by the city of New York to any contractor of the city shall be paid by electronic funds transfer.

c. Each contractor shall, prior to the first payment made under a contract to which this law applies, designate one financial institution or other authorized payment agent and provide the commissioner of finance information necessary for the contractor to receive electronic funds transfer payments through the financial institution or other authorized payment agent so designated.

d. (1) The commissioner of finance and the comptroller may jointly issue standards pursuant to which contracting agencies may waive the application of this section to payments: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the city.

(2) In addition, an agency head may waive the application of this section to payments on contracts entered into pursuant to section three hundred fifteen of the city charter and any rules promulgated thereunder.

e. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by a contractor under this section shall constitute full satisfaction by the city of New York for the amount of the payment.

f. The department of finance shall assure the confidentiality of information supplied by contractors in effecting electronic funds transfers to the full extent provided by law.

g. This section shall apply to any payments made by the city of New York on contracts entered into on or after January first, two thousand eight to a contractor of the city. Further, this section shall apply to any payments made by the city of New York on contracts entered into prior to January first, two thousand eight, provided that where a contractor refuses to supply some portion of the required information necessary to effect payment by electronic funds transfer, the agency head may waive the application of this section where the need for the goods, services or construction is such that it is in the interest of the city to exempt the contractor from the requirements of this section.

HISTORICAL NOTE

Section added L.L. 43/2007 § 1, eff. Oct. 20, 2007.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-108

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-108 Discrimination in employment.

a. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the city, or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the city to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

b. It shall be unlawful for any person or any servant, agent or employee of any person described in subdivision a to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

c. The wording of subdivisions a and b of this section shall appear on all contracts entered into by the city, and disobedience thereto shall be deemed a violation of a material provision of the contract.

d. Any person, or the employee, manager or owner of or officer of a firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-8.0 added LL 44/1942 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Class action by negroes alleged that unions in construction industry maintained discriminatory practices which barred them from admittance and that city was spending public monies on five construction contracts. Action in equity which sought, among other things, to direct city officials to enforce the provisions of this section as to said contracts was dismissed, without prejudice. The complaint did not sufficiently show an "illegal official act * * * or * * * waste or injury" (General Municipal Law § 51). Moreover, the requested extent of judicial supervision of union activities was beyond the scope of judicial competence.-Gaynor v. Rockefeller, 21 App. Div. 2d 92, 248 N.Y.S. 2d 792 [1964], aff'd 15 N.Y. 2d 120, 256 N.Y.S. 2d 504, 204 N.E. 2d 627 [1965].

¶ 2. Deputy mayor, city administrator lacked power to mandate by regulation affirmative action in the form of meeting prescribed minority percentages of employment by construction contractors with city since the regulations exceeded existing authorized legislation and are beyond the executive power.-Matter of Broderick v. Lindsay, 39 N.Y. 2d 641 [1976].

¶ 3. Regulations promulgated by deputy mayor which compelled construction contractors working on city and city assisted programs to submit a program of affirmative action for minorities and women were unenforceable since they did not merely increase the pool of those eligible for employment but compelled employment of a quota.-Fullilone v. Beame, 177 (65) N.Y.L.J. (4-5-77) 6, Col. 4 T.

NYC Administrative Code 6-108.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-108.1 Locally based enterprises.

a. Definitions. As used in this section, the following terms have the following meanings:

(1) "Contract" means any written agreement whereby the city is committed to expend or does expend funds in connection with any construction project, except the term "contract" shall not include:

(a) contracts for financial or other assistance between the city and a government or government agency; or

(b) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the city, or consisting thereof; or

(c) any other types of contracts, to be designated in rules and regulations, to which the mayor determines that application of the provisions of this section is inappropriate.

(2) "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(3) "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by a contracting agency.

(4) "Economic development area" means an area of the city designated as eligible for participation in the

community development block grant program of the United States department of housing and urban development and any other area designated by the mayor by the adoption of a rule or regulation, after consultation with the council, upon a determination that such area has a special need for development of business and jobs in construction.

(5) "Economically disadvantaged person" means a person who, at the time of hiring by a locally based enterprise if such hiring occurred not more than three tax years prior to the time of such business's application for certification, or at the time of such application, is:

(a) a resident in a single person household who receives (i) wages not in excess of seventy percent of the lower-level "urban family budget" for the city as determined by the United States department of labor bureau of labor statistics; or (ii) cash welfare payments under a federal, state or local welfare program; or

(b) a member of a family which (i) has a family income less than seventy percent of the lower-level "urban family budget" for the city as determined by the United States department of labor, bureau of labor statistics, or (ii) receives cash welfare payments under a federal, state or local welfare program; or

(c) a Vietnam era veteran as defined by applicable federal law who has been unable to obtain non-government subsidized employment since discharge from the armed services; or

(d) a displaced homemaker who has not been in the labor force for five years but has during those years worked in the home providing unpaid services for family members and was (i) dependent on public assistance or the income of another family member but is no longer supported by that income, or (ii) receiving public assistance for dependent children in the home and that assistance will soon be terminated.

(6) "Locally based enterprise" means a business which:

(a) at the time of application for certification has received gross receipts in the last three tax years averaging no more than six hundred twenty-five thousand dollars or such higher amount as may have been established by regulation for the relevant category of locally based enterprise pursuant to subdivision g of this section; and

(b) in the tax year preceding such application, has

(i) earned at least twenty-five percent of its gross receipts from work performed in economic development areas, or

(ii) employed a workforce of which at least twenty-five percent were economically disadvantaged persons.

(7) "Mayor" means the mayor of the city of New York or the mayor's designee.

(8) "Graduate locally based enterprise" means a business which has been certified as a locally based enterprise and is not qualified for renewal of such certification because, during the three-year period immediately preceding its application for certification as a graduate locally based enterprise, its gross receipts averaged more than the amount established pursuant to subparagraph a of paragraph six of this subdivision, but not more than one million five hundred thousand dollars or such higher amount as may have been established by regulation for the relevant category of graduate locally based enterprise pursuant to subdivision g of this section.

b. Each contracting agency shall, consistent with the requirements of applicable city, state and federal law, including applicable competitive bidding requirements, seek to ensure that not less than ten percent of the total dollar amount of all contracts awarded for construction projects during each fiscal year shall be awarded to locally based enterprises or graduate locally based enterprises.

c. Each contracting agency shall, consistent with the requirements of applicable city, state and federal law, include in every contract to which it becomes a party such terms and conditions as may be required by regulation

promulgated pursuant to this section to provide that if any or all of the contract is subcontracted, not less than ten percent of the total dollar amount of the contract shall be awarded to locally based enterprises or graduate locally based enterprises; except that, where an amount less than such percentage is subcontracted, such lesser percentage shall be so awarded.

d. Consistent with the rules and regulations of the board of estimate, a full or partial waiver of performance and completion bonds may, with the approval of the corporation counsel, be granted by a contracting agency where such bonds are not deemed in the best interests of the city. Contractors shall not require performance and payment bonds from subcontractors which are locally based enterprises and graduate locally based enterprises.

e. The contracting agency may grant a full or partial waiver of the requirements of this section upon a finding that an emergency exists, or that no qualified locally based enterprise or graduate locally based enterprise is available to perform a subcontract on reasonable terms, or for other good cause. Any such finding shall be made in writing and shall set forth the reasons therefor. No waiver shall be granted without the approval of the mayor and timely written notification of such waiver to the council.

f. (1) The mayor shall establish a procedure for the certification of businesses which meet the requirements of this section and regulations promulgated hereunder as locally based enterprises or graduate locally based enterprises. Such procedure may provide for a business to be certified as a graduate locally based enterprise for a period not to exceed two years, to commence immediately after the expiration of its certification as a locally based enterprise. A business which has been in existence for less than one year prior to the date of application for certification, and which would otherwise qualify as a locally based enterprise except that it does not meet the criteria set forth in subparagraph (b) of paragraph six of subdivision a of this section, may nevertheless be certified as a locally based enterprise, provided however that such certification shall be rescinded unless the business meets the criteria set forth in such subparagraph within one year from the date of its certification. The mayor shall maintain a list of certified locally based enterprises and graduate locally based enterprises for each borough which identifies the companies which have performed work in such borough to qualify as a locally based enterprise or a graduate locally based enterprise. The contracting agency shall provide to contractors for their consideration the appropriate list of certified locally based enterprises and graduate locally based enterprises for the borough in which the construction contract on which they are bidding is located.

(2) The mayor may rescind the certification of a locally based enterprise or graduate locally based enterprise after providing notice and an opportunity to be heard to the business upon a finding that such business is not in compliance with the requirements of this section or the regulations promulgated hereunder.

g. The mayor shall promulgate such rules and regulations as may be necessary for the purpose of implementing the provisions of this section. Such regulations may increase the gross receipts limitation provided by subparagraph (a) of paragraph six of subdivision a of this section to an amount not to exceed two million dollars, and may increase the gross receipts limitation provided by paragraph eight of such subdivision to an amount not to exceed five million dollars, for all or specifically designated categories of locally based enterprises and graduate locally based enterprises, so as to effectuate the purposes of this section. By regulation, such gross receipts limitations may be further adjusted every two years to be higher than the amounts specified in this subdivision, as necessary to account for the effects of inflation as indicated by an appropriate index of costs in the construction industry, developed by the director of the office of construction, office of the mayor. Such regulations may also adjust upward the income limitation in paragraph five of subdivision a of this section to allow for increases in the cost of living. Any contractual terms and conditions for contractors and subcontractors provided for in any such regulation, including any sanctions to be imposed for failure to comply with this section, shall be approved as to form by the corporation counsel. All rules and regulations pursuant to and in furtherance of this section shall be adopted and amended in accordance with chapter forty-five of the charter.

h. The mayor shall submit an annual report to the council, on or before April first of each year, concerning the administration of the program established pursuant to this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd a par 6 subpar (a) amended LL 25/1989 § 1

Subd a par 8 added LL 25/1989 § 2

Subds b, c, d, e, f, g amended LL 25/1989 § 3

DERIVATION

Formerly § 343-8.1 added LL 49/1984 § 1

(Legislative findings; economically disadvantaged areas, business in, LL 49/1984 § 1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-108.2

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-108.2 6 Small business enterprises.

a. Definitions. For purposes of this section only, the following terms shall have the following meanings:

(1) "Base amount", for the time period commencing on the effective date of this paragraph and ending on December thirty-first, nineteen hundred eighty-nine, means the amount of seven hundred thousand dollars; for the year nineteen hundred ninety, means eight hundred fifty thousand dollars; for the year nineteen hundred ninety-one, means nine hundred thousand dollars; and for the time period commencing on January first, nineteen hundred ninety-two and ending on June thirtieth, nineteen hundred ninety-two, means nine hundred fifty thousand dollars.

(2) "Contract" means any contract, agreement, open market order, purchase order or any other means of procurement between a contracting agency and one or more parties: (a) for the purchase of goods for an amount in excess of five hundred dollars, or (b) for the performance of services.

(3) "Goods contract" means any contract for the purchase of goods of the categories specified by the mayor or mayor's designee pursuant to this section and the rules promulgated hereunder. Provided, however, that such term shall not include contracts which are awarded to the United States government and its instrumentalities, New York state, its political subdivisions and instrumentalities, and not-for-profit organizations which have not been certified as small business enterprises.

(4) "Professional services contract" means any contract for the performance of professional services of the categories specified by the mayor or mayor's designee pursuant to this section and the rules promulgated hereunder. Provided, however, that such term shall not include contracts which are awarded to the United States government and

its instrumentalities, New York state, its political subdivisions and instrumentalities, and not-for-profit organizations which have not been certified as small business enterprises.

(5) "Commercial services contract" means any contract for the performance of commercial services of the categories specified by the mayor or mayor's designee pursuant to this section and the rules promulgated hereunder. Provided, however, that such term shall not include contracts which are awarded to the United States government and its instrumentalities, New York state, its political subdivisions and instrumentalities, and not-for-profit organizations which have not been certified as small business enterprises.

(6) "Small business enterprise" means a small business enterprise vendor, a small professional services business enterprise or a small commercial services business enterprise.

(7) "Small commercial services business enterprise" means a business offering commercial services,

(a) in which annualized gross receipts for the performance of services did not exceed the base amount for the applicable year, as defined in paragraph one of this subdivision, in two of the three tax years immediately preceding the date of application for certification; provided, however, that a business which has been in existence for less than three tax years shall meet the requirements of this subparagraph for each tax year of its existence; and

(b) which has its principal place of business in the city as determined in accordance with rules promulgated pursuant to subdivision e of this section; and

(c) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(d) which has been operating for at least twelve months prior to the date of application for certification; and

(e) which has been certified according to the procedure provided for in subdivision d of this section.

(8) "Small business enterprise vendor" means a business supplying goods,

(a) in which, in two of the three tax years immediately preceding the date of application for certification, either:

(i) its annualized gross sales of goods were two million dollars or less, or

(ii) the difference between its annualized gross sales and its cost for goods sold was two hundred thousand dollars or less; provided, however, that a business which has been in existence for less than three tax years must meet the requirements of clause (i) or (ii) of this subparagraph for each year of its existence; and

(b) which has its principal place of business in the city as determined in accordance with rules promulgated pursuant to subdivision e of this section; and

(c) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(d) which has been operating for at least twelve months prior to the date of application for certification; and

(e) which has been certified according to the procedure provided for in subdivision d of this section.

(9) "Small professional services business enterprise" means a business offering professional services,

(a) in which annualized gross receipts for the performance of services did not exceed the base amount for the applicable year, as defined in paragraph one of this subdivision, in two of the three tax years immediately preceding the

date of application for certification; provided, however, that a business which has been in existence for less than three tax years shall meet the requirements of this subparagraph for each tax year of its existence; and

(b) which has its principal place of business in the city as determined in accordance with rules promulgated pursuant to subdivision e of this section; and

(c) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(d) which has been operating for at least twelve months prior to the date of application for certification; and

(e) which has been certified according to the procedure provided for in subdivision d of this section.

(10) "Not-for-profit organization" means an entity that is either: (a) incorporated as a not-for-profit corporation under the laws of the state of its incorporation; or

(b) exempt from federal income tax pursuant to subdivision c of section five hundred one of the internal revenue code of nineteen hundred eighty-six, as amended.

b. Goods contracts.

Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than twenty percent of the total dollar amount of all goods contracts awarded by such agency for an amount not more than ten thousand dollars during each fiscal year shall be awarded to small business enterprise vendors. The mayor or the mayor's designee shall promulgate rules pursuant to subdivision e of this section setting forth the contracts and the categories of goods which, because of the capacity of small business enterprises to provide such goods, and the appropriateness of contracting with such enterprises for the provision of such goods, shall be subject to the procedures set forth in this subdivision.

c. Professional and commercial services contracts.

(1) Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than ten percent of the total dollar amount of all professional services contracts awarded during each fiscal year shall be awarded to small professional services business enterprises. Contracting agencies shall seek to divide needed work into smaller units, if practicable and economically feasible, so that it may be bid on and successfully completed by small professional services business enterprises. The mayor or the mayor's designee shall promulgate rules pursuant to subdivision e of this section setting forth the contracts and the professional services which, because of the capacity of small business enterprises to provide such services, and the appropriateness of contracting with such enterprises for the provision of particular professional services, shall be subject to the procedures set forth in this subdivision.

(2) Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than ten percent of the total dollar amount of all commercial services contracts awarded during each fiscal year shall be awarded to small commercial services business enterprises. Contracting agencies shall seek to divide needed work into small units, if practicable and economically feasible, so that it may be bid on and successfully completed by small commercial services business enterprises. The mayor or the mayor's designee shall promulgate rules pursuant to subdivision e of this section setting forth the contracts and the commercial services which, because of the capacity of small business enterprises to provide such services, and the appropriateness of contracting with such enterprises for the provision of particular commercial services, shall be subject to the procedures set forth in this subdivision.

d. (1) The mayor or the mayor's designee shall establish a procedure for the certification of businesses which

meet the requirements of this section and rules promulgated hereunder as either small business enterprise vendors, small professional services business enterprises or small commercial services business enterprises. Such rules shall set forth criteria to ensure that any business certified as a small business enterprise is an independent business and not substantially owned or controlled by any other business entity which would not qualify as a small business enterprise. Such rules shall further require each business certified as a small business enterprise to submit periodic reports providing information as to its continuing qualification as a small business enterprise. Certification granted pursuant to this subdivision shall be valid for a period of three years.

(2) The mayor or the mayor's designee may rescind the certification of a small business enterprise after providing notice and an opportunity to be heard to the business upon a finding that such business is not in compliance with the requirements of this section or the rules promulgated hereunder.

e. The mayor or the mayor's designee shall promulgate such rules as may be necessary for the purpose of implementing the provisions of this section. Such rules shall require contracting agencies to submit monthly reports to the mayor or the mayor's designee concerning contract awards to small business enterprises. All rules pursuant to and in furtherance of this section shall be adopted and amended in accordance with the city administrative procedure act, chapter forty-five of the charter.

HISTORICAL NOTE

Section added L.L. 15/1986 § 2 [See Note 1]

Subd. a amended L.L. 107/1989 § 1 [See Note 3]

Subd. a amended L.L. 20/1988 § 1 [See Note 2]

Subd. b repealed and added L.L. 107/1989 § 2, eff. July 1, 1990 [See Note 3]

Subd. b par (3) subpar (d) amended L.L. 20/1988 § 2 [See Note 2]

Subd. c amended L.L. 107/1989 § 3 [See Note 3]

Subd. c amended L.L. 20/1988 § 3 [See Note 2]

Subd. d amended L.L. 107/1989 § 4 [See Note 3]

Subd. d par (1) amended L.L. 20/1988 § 4 [See Note 2]

Subd. e amended L.L. 107/1989 § 5 [See Note 3]

DERIVATION

Formerly § 343-8.2 added LL 15/1986 § 3

(Legislative findings, business with city, competing for contracts, LL 15/1986 § 1)

(Expiration, report, LL 15/1986 §§ 4, 6)

NOTE

1. L.L. 15/1986 §§ 1, 4-6 provide the following special provisions, legislative intent, amendment to the old code, and expiration date.

Section 1. Declaration of legislative intent. The council hereby finds and declares that small business enterprises, especially those which conduct business and provide employment within economically disadvantaged areas of the city, have generally provided a means for talented, innovative, diligent and dedicated individuals with limited financial backing to stimulate and contribute to the social and economic livelihood of themselves, their communities and their city. The council further finds that the costs of doing business in the city and the size of many contracts for goods and services awarded by the city have made it difficult for many small business enterprises to compete successfully for such contracts. The active encouragement of the development of small business enterprises benefits the people of the city of New York by providing jobs, economic opportunities, and a more diverse and accessible marketplace, as well as an expanded tax base. The development of such enterprises also serves the public interest in that a greater number of enterprises will be able to compete for city contracts, and this increased competition should lead to lower costs to the city. This local law authorizes the establishment of a two year pilot program to promote the opportunity for small business enterprises to bid successfully for city contracts for goods and services, without reducing the safeguards of the competitive bidding process, or in any way authorizing increased expenditures for, or diminished quality of, goods and services provided to the city. Before the end of the two year period the mayor shall report to the council concerning the effectiveness of this program, in order that it may be determined whether the program shall be continued, modified or allowed to expire.

Section 4. Not later than one year prior to the date of expiration of this local law, the mayor or the mayor's designee shall submit a report to the council concerning the administration of the program established pursuant to this section. Such report shall evaluate the effectiveness of the program and shall include recommendations as to whether the program should be extended or modified. Such a report shall also be made six months prior to the expiration of this local law.

Section 5. If any provision of this local law or the application thereof is held invalid, the remainder of this local law and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

Section 6. This local law shall take effect ninety days from the date it shall have become a law, and shall expire and be of no further force or effect on and after June 30, 1992. Actions necessary to prepare for the implementation of this local law may be taken prior to its effective date. (Section 6 amended L.L. 20/1988 § 6, L.L. 107/1989 § 7)

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 May 22, 1986 and approved by the Mayor on June 6, 1986.

CARLOS CUEVAS, City Clerk. Clerk of the Council

2. L.L. 20/1988 provisions

§ 5. Not later than one year prior to the date of expiration of this local law, the mayor or the mayor's designee shall submit a report to the council concerning the administration of the program established pursuant to this section including, but not limited to, the number of businesses which have been certified pursuant to this program and their business address, the number of firms which have been denied certification pursuant to this program and the number of small business enterprises which have been awarded contracts by each agency and the dollar amount of each contract. Such report shall also include recommendations as to whether the program should be extended or modified and how to improve the program, if applicable. Such a report shall also be made six months prior to the expiration of the law.

3. L.L. 107/1989 provisions

§ 6. Not later than one year prior to the date of expiration of this local law, the mayor or the mayor's designee shall submit a report to the council concerning the administration of the program established pursuant to section 6-108.2 of the administrative code of the city of New York as amended by this local law including, but not limited to, the number of businesses and firms which have been certified pursuant to this program and their business addresses, and the number of small business enterprises which have been awarded contracts by each agency and the dollar amount of each contract. Such report shall also include recommendations as to whether the program should be extended or modified and how to improve the program, if applicable. Such a report shall also be made six months prior to the expiration of this local law.

FOOTNOTES

6

[Footnote 6]: * Section expired 6/30/1992.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-109

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-109 [Living wage, prevailing wage and health benefits for certain city service contractors or subcontractors.]

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) "City" means the City of New York.

(2) "Entity" or "Person" means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

(3) "Homecare Services" means the provision of homecare services under the city's Medicaid Personal Care/Home Attendant or Housekeeping Programs, including but not limited to the In-Home Services for the Elderly Programs administered by the Department for the Aging.

(4) "Building Services" means work performing any custodial, janitorial, groundskeeping or security guard services, including but not limited to, washing and waxing floors, cleaning windows, cleaning of curtains, rugs, or drapes, and disinfecting and exterminating services.

(5) "Day Care Services" means provision of day care services through the city's center-based day care program administered under contract with the city's administration for children's services. No other day care programs shall be covered, including family-based day care programs administered by city-contracted day care centers.

(6) "Head Start Services" means provision of head start services through the city's center-based head start program administered under contract with the city's administration for children's services. No other head start programs

shall be covered.

(7) "Services to Persons with Cerebral Palsy" means provision of services which enable persons with cerebral palsy and related disabilities to lead independent and productive lives through an agency that provides health care, education, employment, housing and technology resources to such persons under contract with the city or the department of education.

(8) "Food Services" means the work preparing and/or providing food. Such services shall include, but not be limited to, those as performed by workers employed under the titles as described in the federal dictionary of occupational titles for cook, kitchen helper, cafeteria attendant, and counter attendant. Any contracting agency letting a food services contract under which workers will be employed who do not fall within the foregoing definitions must request that the comptroller establish classifications and prevailing wage rates for such workers.

(9) "Temporary Services" means the provision of services pursuant to a contract with a temporary services, staffing or employment agency or other similar entity where the workers performing the services are not employees of the contracting agency. Such services shall include those performed by workers employed under the titles as described in the federal dictionary of occupational titles for secretary, word processing machine operator, data entry clerk, file clerk, and general clerk. Any contracting agency letting a temporary services contract under which workers will be employed who do not fall within the foregoing definitions must request the comptroller to establish classifications and prevailing wage rates for such workers.

(10) "City Service Contract" means any written agreement between any entity and a contracting agency whereby a contracting agency is committed to expend or does expend funds and the principle purpose of such agreement is to provide homecare services, building services, day care services, head start services, services to persons with cerebral palsy, food services or temporary services where the value of the agreement is greater than the city's small purchases limit pursuant to section 314 of the city charter. This definition shall not include contracts with not-for-profit organizations, provided however, that this exception shall not apply to not-for-profit organizations providing homecare, headstart, day care and services to persons with cerebral palsy. This definition shall also not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the city charter.

(11) "City Service Contractor" means any entity and/or person that enters into a city service contract with a contracting agency. An entity shall be deemed a city service contractor for the duration of the city service contract that it receives or performs.

(12) "City Service Subcontractor" means any entity and/or person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that is engaged by a city service contractor to assist in performing any of the services to be rendered pursuant to a city service contract. This definition does not include any contractor or subcontractor that merely provides goods relating to a city service contract or that provides services of a general nature (such as relating to general office operations) to a city service contractor which do not relate directly to performing the services to be rendered pursuant to the city service contract. An entity shall be deemed a city service contractor for the duration of the period during which it assists the city service subcontractor in performing the city service contract.

(13) "Contracting Agency" means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury or the department of education.

(14) "Covered Employer" means a city service contractor or a city service subcontractor.

(15) "Employee" means any person who performs work on a full-time, part-time, temporary, or seasonal basis and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity. For

purposes of this definition and this section, "employ" means to maintain an employee, as defined in this section. For purposes of counting numbers of employees or employed persons when required by this section, full-time, part-time, temporary, or seasonal employees shall be counted as employees. Where an employer's work force fluctuates seasonally, it shall be deemed to employ the highest number of employees that it maintains for any three month period. However, in the case of city service contractors and city service subcontractors that provide day care services, independent contractors that are family-based day care providers shall not be deemed employees of the agencies and shall not be subject to the requirements of this section.

(16) "Covered Employee" means an employee entitled to be paid the living wage or the prevailing wage and/or health benefits as provided in subdivision b of this section.

(17) "Not-for-Profit Organization" means a corporation or entity having tax exempt status under section 501(c)(3) of the United States internal revenue code and incorporated under state not-for-profit law.

(18) "Prevailing Wage and Supplements" means the rate of wage and supplemental benefits per hour paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with the provisions of section 234 of the New York state labor law or, for titles not specifically enumerated in or covered by that law, determined by the comptroller at the request of a contracting agency or a covered employer in accordance with the procedures of section 234 of the New York state labor law. As provided under section 231 of the New York state labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the comptroller.

(19) "Living Wage" has the meaning provided in paragraph 2 of subdivision b of this section.

(20) "Health Benefits" has the meaning provided in paragraph 3 of subdivision b of this section.

(21) "Health Benefits Supplement Rate" has the meaning provided in subparagraph b of paragraph 3 of subdivision b of this section.

b. Living Wage, Prevailing Wage and Health Benefits. (1) Coverage. (a) A city service contractor or city service subcontractor that provides homecare services, day care services, head start services or services to persons with cerebral palsy must pay its covered employees that directly render such services in performance of the city service contract or subcontract no less than the living wage and must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. This requirement applies for each hour that the employee works performing the city service contract or subcontract.

(b) A city service contractor or city service subcontractor that provides building services, food services or temporary services must pay its employees that are engaged in performing the city service contract or subcontract no less than the living wage or the prevailing wage, whichever is greater. Where the living wage is greater than the prevailing wage, the city service contractor or city service subcontractor must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the city service contractor or city service subcontractor must provide its employees the prevailing wage and supplements as provided in paragraph 18 of subdivision a of this section. These requirements apply for each hour that the employee works performing the city service contract or subcontract.

(2) The Living Wage. The living wage shall be an hourly wage rate of ten dollars per hour and will be phased in as provided below. Provided, however, that for homecare services under the Personal Care Services program, the wage and health rates below shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section:

(a) As of the effective date of this section, $8.10 per hour;

(b) As of July 1, 2003, $8.60 per hour;

(c) As of July 1, 2004, $9.10 per hour;

(d) As of July 1, 2005, $9.60 per hour;

(e) As of July 1, 2006, $10.00 per hour.

(3) Health Benefits. (a) Health Benefits means receipt by a covered employee of a health care benefits package for the covered employee and/or a health care benefits package for the covered employee and such employee's family and/or dependents.

(b) The Health Benefits Supplement Rate shall be $1.50 per hour.

(c) For homecare services provided under the Personal Care Services program, the wage and health rates above shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section.

(d) In the case of city service contractors or subcontractors providing homecare services, the health benefits requirements of this section may be waived by the terms of a bona fide collective bargaining agreement with respect to employees who have never worked a minimum of eighty (80) hours per month for two consecutive months for that covered employer, but such provision may not be waived for any employees once they have achieved a minimum of eighty (80) hours for two consecutive months and no other provisions of this section may be so waived.

(4) Exemption for Employment Programs for the Disadvantaged. The following categories of employees shall not be subject to the requirements of this section:

(a) Any employee who is:

(i) Under the age of eighteen who is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer employee; or

(ii) Employed as a trainee in a bona fide training program consistent with federal and state law where the training program has the goal that the employee advances into a permanent position; provided, however, that this exemption shall apply only when the trainee does not replace, displace or lower the wages or benefits of any covered employee, and the training does not exceed two years; and

(b) Any disabled employee, where such disabled employee:

(i) Is covered by a current sub-minimum wage certificate issued to the employer by the United States department of labor; or

(ii) Would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the federal minimum wage.

(5) Retaliation and Discrimination Barred. It shall be unlawful for any covered employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any covered employee for reporting or asserting a violation of this section, for seeking or communicating information regarding rights conferred by this section, for exercising any other rights protected under this section, or for participating in any investigatory or court proceeding relating to this section. This protection shall also apply to any covered employee or his or her representative who in good faith alleges a violation of this section, or who seeks or

communicates information regarding rights conferred by this section in circumstances where he or she in good faith believes this section applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered employee subjected to any action that violates this subsection may pursue administrative remedies or bring a civil action pursuant to subsection e of this section in a court of competent jurisdiction.

(6) Nothing in this section shall be construed to establish a wage or benefit pattern or otherwise affect the establishment of wages or benefits for city employees.

c. Obligations of Covered Employers. (1) A covered employer shall comply with the wage, benefits and other requirements of this section.

(2) Certification of Compliance. (a) Prior to the award or renewal of a city service contract, the applicant for award or renewal shall provide to the extent permitted by law the awarding contracting agency a certification containing the following information:

(i) The name, address, and telephone number of the chief executive officer of the applicant;

(ii) A statement that, if the city service contract is awarded or renewed, the applicant agrees to comply with the requirements of this section, and with all applicable federal, state and local laws;

(iii) The following workforce information concerning employees of the applicant that will be covered employees under the planned city service contract: (a) the absolute number of covered employees and the number of full-time equivalent covered employees; (b) for all categories of covered employees, the following information broken down by category: (1) job classifications of covered employees in each category; and (2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave). The applicant further agrees to require all of its city service subcontractors to provide the same workforce information as described herein;

(iv) To the extent permitted by law, a record of any instances during the preceding five years in which the applicant has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or to the extent permitted by law, in which any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws; and

(v) An acknowledgement that a finding by a contracting agency that the applicant has violated the requirements of this section may result in the cancellation or rescission of the city service contract.

The certification shall be signed under penalty of perjury by an officer of the applicant, and shall be annexed to and form a part of the city service contract. The certification (including updated certifications) and the city service contract shall be public documents and the contracting agency shall make them available to the public upon request for inspection and copying pursuant to the state freedom of information law.

(b) A city service contractor shall each year throughout the term of the city service contract submit to the contracting agency an updated certification, identifying any, if any exist, changes to the current certification.

(c) A covered employer shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of this section, and the wages paid and benefits provided for such hours worked. The covered employer shall maintain these records for the duration of the term of the city service contract and shall retain them for a period of four years after completion of the term of the city service contract. Failure to maintain such records as required shall create a rebuttable presumption that

the covered employer did not pay its covered employees the wages and benefits required under the section. Upon the request of the comptroller or the contracting agency, the covered employer shall provide a certified original payroll record.

(d) A city service contractor providing building services, food services or temporary services shall, as required by the predecessor version of this section, continue to submit copies of such payroll records, certified by the city service contractor under penalty of perjury to be true and accurate, to the contracting agency with every requisition for payment.

(e) A city service contractor providing homecare, day care, head start or services to persons with cerebral palsy may comply with the certification and other reporting requirements of this paragraph by submitting, as part of the contract proposal/contract and requests for payment categorical information about the wages, benefits and job classifications of covered employees of the city service contractor, and of any city service subcontractors, which shall be the substantial equivalent of the information required in clause iii of subparagraph (2)(a) of this paragraph.

(3) A city service contractor shall ensure that its city service subcontractors comply with the requirements of this section, and shall provide written notification to its city service subcontractors of those requirements, and include in any contract or agreement with its city service subcontractors a provision requiring them to comply with those requirements.

(4) No later than the day on which any work begins under a city service contract subject to the requirements of this section, the covered employer shall post in a prominent and accessible place at every work site and provide each covered employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under this section. Such notices shall be provided in english, spanish and other languages spoken by ten percent or more of a covered employer's covered employees. The comptroller shall provide contracting agencies with sample written notices explaining the rights of covered employees and covered employers' obligations under this section, and contracting agencies shall in turn provide those written notices to city service contractors, which shall in turn provide them to their subcontractors.

d. City Implementation and Reporting. (1) Coordination by the Comptroller. The comptroller shall monitor, investigate, and audit the compliance by all contracting agencies, and provide covered employers and employees with the information and assistance necessary to ensure that the section is implemented.

(a) The mayor or his or her designee shall promulgate implementing rules and regulations as appropriate and consistent with this section and may delegate such authority to the comptroller. The comptroller shall be responsible for publishing the living wage and for calculating and publishing all applicable prevailing wage and health benefits supplement rates. The comptroller shall annually publish the adjusted rates. The adjusted living wage and health benefits supplement rate shall take effect on July 1 of each year, and the adjusted prevailing wage rates shall take effect on whatever date revised prevailing wage rates determined under section 230 of the state labor law are made effective. At least 30 days prior to their effective date, the relevant contracting agencies, shall provide notice of the adjusted rates to city service contractors, which shall in turn provide written notification of the rate adjustments to each of their covered employees, and to any city service subcontractors, which shall in turn provide written notification to each of their covered employees. Covered employers shall make necessary wage and health benefits adjustments by the effective date of the adjusted rates.

(b) The comptroller and the mayor shall ensure that the information set forth in the certifications (including annual updated certifications and alternatives to certifications authorized for city service contractors providing homecare, day care, or head start services or services to persons with cerebral palsy) required to be submitted under paragraph 2 of subdivision c of this section is integrated into and contained in the city's contracting and financial management database established pursuant to section 6-116.2 of the administrative code. Such information shall to the extent permitted by law be made available to the public. Provided, however, that the comptroller and the mayor may agree to restrict from disclosure to the public any information from the certifications required under paragraph 2 of

subdivision c of this section that is of a personal nature.

(c) The comptroller shall submit annual reports to the mayor and the city council summarizing and assessing the implementation and enforcement of this section during the preceding year, and include such information in the summary report on contracts required under section 6-116.2 of the administrative code.

(2) Implementation by Contracting Agencies. (a) Contracting agencies shall comply with and enforce the requirements of this section. The requirements of this section shall be a term and condition of any city service contract. No contracting agency may expend city funds in connection with any city service contract that does not comply with the requirements of this section.

(b) Every city service contract shall have annexed to it the following materials which shall form a part of the specifications for and terms of the city service contract:

(i) A provision obligating the city service contractor to comply with all applicable requirements under this section;

(ii) The certification required under paragraph 2 of subdivision c of this section;

(iii) A schedule of the current living wage and health benefits supplement rates, a schedule of job classifications for which payment of the prevailing wage is required under this section together with the applicable prevailing wage rates for each job classification, as determined by the comptroller and notice that such rates are adjusted annually; and

(iv) A provision providing that: (a) Failure to comply with the requirements of this section may constitute a material breach by the city service contractor of the terms of the city service contract; (b) Such failure shall be determined by the contracting agency; and (c) If, within thirty days after or pursuant to the terms of the city service contract, whichever is longer, the city service contractor and/or subcontractor receives written notice of such a breach, the city service contractor fails to cure such breach, the city shall have the right to pursue any rights or remedies available under the terms of the city service contract or under applicable law, including termination of the contract.

e. Monitoring, Investigation and Enforcement. (1) Enforcement. (a) Whenever the comptroller has reason to believe that a covered employer or other person has not complied with the requirements of this section, or upon a verified complaint in writing from a covered employee, a former employee, an employee's representative, a labor union with an interest in the city service contract at issue, the comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the comptroller shall have the same investigatory, hearing, and other powers as are conferred on the comptroller by sections 234 and 235 of the state labor law. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by section 235.2 of the state labor law, instruct or, in the case of homecare services, day care services, head start services or services to persons with cerebral palsy, advise the relevant contracting agency to withhold any payment due the covered employer in order to safeguard the rights of the covered employees. Provided, however, that in the case of city service contractors providing services to persons with cerebral palsy, day care or head start services, no such withholding of payment may be ordered until such time as the comptroller or contracting agency, as applicable, has issued an order, determination or other disposition finding a violation of this section and the city service contractor has failed to cure the violation in a timely fashion. Based upon such investigation, hearing, and findings, the comptroller shall report the results of such investigation and hearing to the contracting agency, who shall issue such order, determination or other disposition. Such disposition may:

(i) Direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of the underpayment to the worker, based on the rate of interest per year then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the state banking law, but in any event at a rate no less than six percent per year;

(ii) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(iii) Direct the reinstatement of, or other appropriate relief for, any person found to have been subject to retaliation or discrimination in violation of this section;

(iv) Direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due in violation of this section;

(v) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer; and

(vi) Declare a finding of non-responsibility and bar the covered employer from receiving city service contracts from the contracting agency for a prescribed period of time.

In assessing an appropriate remedy, a contracting agency shall give due consideration to the size of the employer's business, the employer's good faith, the gravity of the violation, the history of previous violations and the failure to comply with record-keeping, reporting, anti-retaliation or other non-wage requirements. Any civil penalty shall be deposited in the city general revenue fund.

(b) In circumstances where a city service contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, a contracting agency may obtain from another source the required service as specified in the original contract, or any part thereof, and may charge the non-performing city service contractor for any difference in price resulting from the alternative arrangements, may assess any administrative charge established by the contracting agency, and may, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

(c) Before issuing an order, determination or any other disposition, the comptroller or contracting agency, as applicable, shall give notice thereof together with a copy of the complaint, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person or covered employer affected thereby. The comptroller or contracting agency, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and disposition. Such person or covered employer shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard in respect to such matters.

(d) In an investigation conducted under the provisions of this section, the inquiry of the comptroller or contracting agency, as applicable, shall not extend to work performed more than three years prior to the filing of the complaint, or the commencement of such investigation, whichever is earlier.

(e) When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the wage, benefits, anti-retaliation, record-keeping or reporting requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any city service contract for a period of five years from the date of the second disposition.

(f) When a final determination has been made in favor of a covered employee or other person and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the comptroller or contracting agency, as applicable, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the comptroller or contracting agency, as applicable, shall file a copy of such order containing the amount found to be due with the city clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof

who knowingly participated in the violation of this section. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the comptroller or contracting agency, as applicable, in the same manner and with like effect as that prescribed by the state civil practice law and rules for the enforcement of a money judgment.

(g) Before any further payment is made, or claim is permitted, of any sums or benefits due under any city service contract covered by this section, it shall be the duty of the contracting agency to require the covered employer, including each city service subcontractor of the covered employer, that has been found to have violated the law, to file a written statement certifying to the amounts then due and owing from each such covered employer to or on behalf of all covered employees, or the city for wages or benefits wrongly denied them, or for civil penalties assessed, and setting forth the names of the persons owed and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the covered employer under penalty of perjury. If any interested person shall have previously filed a protest in writing objecting to the payment to any covered employer on the ground that payment is owing to one or more employees of the covered employer for violations of this section, or if for any other reason it may be deemed advisable, the comptroller, a contracting agency or the city department of finance may deduct from the whole amount of any payment to the covered employer sums admitted by the covered employer in the verified statement or statements to be due and owing to any covered employee before making payment of the amount certified for payment, and may withhold the amount so deducted for the benefit of the employees or persons that are owed payment as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due them.

(h) The comptroller or any contracting agency shall be authorized to contract with non-governmental agencies to investigate possible violations of this section. Where a covered employer is found to have violated the requirements of this section, the covered employer shall be liable to the city for costs incurred in investigating and prosecuting the violation.

(2) Enforcement by Private Right of Action. (a) When a final determination has been made and such determination is in favor of a covered employee, such covered employee may, in addition to any other remedy provided by this section, institute an action in any court of appropriate jurisdiction against the covered employer found to have violated this section. For any violation of this section, including failure to pay applicable wages, provide required benefits, or comply with other requirements of this section, including protections against retaliation and discrimination, the court may award any appropriate remedy at law or equity including, but not limited to, back pay, payment for wrongly denied benefits, interest, other equitable or make-whole relief, reinstatement, injunctive relief and/or compensatory damages. The court shall award reasonable attorney's fees and costs to any complaining party who prevails in any such enforcement action.

(b) Notwithstanding any inconsistent provision of this section or of any other general, special or local law, ordinance, city charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee under the provisions of this section because of the prior receipt by the employee without protest of wages or benefits paid, or on account of the employee's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages or benefits received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages or benefits due the employee for the period covered by such payment.

(c) Such action must be commenced within three years of the date of the alleged violation, or within three years of the final disposition of any administrative complaint or action concerning the alleged violation or, if such a disposition is reviewed in a proceeding pursuant to article 78 of the state civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

f. Other provisions. (1) Except where expressly provided otherwise in this section, the requirements of this section shall apply to city service contracts entered into after the effective date of this section, and shall not apply to any existing city service contract entered into prior to that date. Where a city service contract is renewed or extended after the effective date of this section, such renewal or extension shall be deemed new city service contracts and shall trigger coverage under this section if the terms of the renewed or extended city service contract, otherwise meet the requirements for coverage under this section. However, city service contractors and city service subcontractors that provide services to persons with cerebral palsy, day care services or head start services shall be subject to the requirements of this section only upon the award or renewal of city service contracts after the effective date of this section. City service contractors and city service subcontractors that provide homecare services shall be subject to the requirements of this section immediately upon the effective date of this section.

(2) Members of the public shall have a right of access to documents or information that is designated as public under article six of the public officers law. Such public documents or information as pursuant to the law shall be made available to the public for inspection and copying. The custodians of such documents or information may charge a reasonable fee, not to exceed twenty-five cents per page, for copying.

(3) Contracting agencies shall begin requiring city service contractors to supplement the information currently required to be submitted pursuant to section 6-116.2 of the administrative code with the additional information specified in clause iii of subparagraph a of paragraph 2 of subdivision c of this section. This information shall be compiled by the contracting agency and included in the computerized database jointly maintained by the mayor and the comptroller pursuant to section 6-116.2 of the administrative code.

(4) Nothing in this section shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement, that mandates the provision of higher or superior wages, benefits, or protections to covered employees. No requirement or provision of this section shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law. However, in such circumstances, only those specific applications or provisions of this section for which coverage would be preempted shall be construed as not applying.

(5) In the event that any requirement or provision of this section, or its application to any person or circumstance, should be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other requirements or provisions of this section, or the application of the requirement or provision held invalid to any other person or circumstance.

HISTORICAL NOTE

Section repealed and added L.L. 38/2002 § 1, eff. Feb. 25, 2003.

Section repealed and added L.L. 79/1996 § 2, eff. Mar. 10, 1997.

[See Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-9.0 added LL 91/1961 § 1

Sub d amended chap 100/1963 § 216

Sub a par 1 amended LL 118/1967 § 1

Sub a par 1 amended LL 59/1969 § 1

NOTE

1. Provisions of L.L. 79/1996 §§ 1, 3, 4:

Section 1. Declaration of Legislative Findings and Intent. The Council finds that in several areas in which the city contracts for services there appears to be a trend toward paying low wages. This problem appears to be most egregious in the areas of security, temporary, cleaning and food services. Although the Council recognizes that this situation exists in other areas as well, it is an important first step to concentrate on these four industries where the problem is most blatant.

The city spends over $3 billion annually on personal service contracts, including approximately $200 million spent annually to purchase security, temporary, cleaning and food services. It is vital that the city receive the greatest level of service and economic return for its contractual expenditures. The Council, therefore, finds that it is in the best interest of the city to require as a condition of every contract for security, temporary, cleaning and food services that the contractor or subcontractor pay persons employed under such contract the applicable prevailing wage in the industry.

Recognizing that the not-for-profit sector is uniquely instrumental in the provision of services to the city's most vulnerable populations, such organizations are exempt from the requirements of this legislation. This is consistent with the state constitution's recognition that institutions whose mission is charity cannot be treated in the same manner as those organizations whose mission is profit-making.

§ 3. This local law shall take effect immediately for all contracts for the provision of security and cleaning services, and shall only apply to contract solicitations issued after its effective date.

§ 4. This local law shall take effect one hundred eighty days after it shall be enacted into law for all contracts for temporary and food services, and shall only apply to contract solicitations issued after its effective date. Actions to effectuate the implementation of this local law as it applies to contracts for temporary and food services, including, but not limited to, establishing the prevailing wage rates for the following occupations found in the federal dictionary of occupational titles: secretary; word processing machine operator; data entry clerk; file clerk; general clerk; cafeteria attendant; counter attendant; cook; and kitchen helper, shall begin immediately.

CASE NOTES FROM FORMER SECTION

¶ 1. Section 343-9.0 of the Code requires that public work contracts with the City contain an agreement by the contractor to pay a minimum wage of $1.50 per hour and to do the work in safe and sanitary surroundings. These provisions are valid, whether the contractor's employees are in or out of State. Section 220 of the Labor Law has not pre-empted the entire field. The provisions are not inconsistent with sections 27 or 343 of the Charter, or with the State Constitution.-McMillen v. Browne, 40 Misc. 2d 348, 243 N.Y.S. 2d 293 [1963], aff'd 20 App. Div. 2d 531, 244 N.Y.S. 2d 833 [1963], aff'd 14 N.Y. 2d 326, 251 N.Y.S. 2d 641, 200 N.E. 2d 546 [1964].

¶ 2. The minimum wage requirements of this section do not apply to the purchase of thermometers which were or will be manufactured in Japan. Application by bidder for order disqualifying lower bidders who did not pay minimum wage was denied. Minimum wage requirements do not apply to work performed outside the United States.-Matter of Kaye Thermometer Corp., 43 Misc. 2d 1026, 252 N.Y.S. 2d 639 [1964].

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NYC Administrative Code 6-110

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-110 Additional work.

Any contract for work or supplies may contain a provision to the effect that the head of the agency making the contract may order additional work to be done or supplies furnished for the purpose of completing such contract, at an expense not exceeding five per centum of the amount thereof; provided, however, that the board of estimate may by resolution adopt regulations providing that any contract for work or supplies may contain a provision to the effect that the head of the agency making the contract may order additional work to be done or supplies furnished for the purpose of completing such contract, at an expense not exceeding ten per centum of the amount thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343a-1.0 added chap 929/1937 § 1

Amended LL 60/1983 § 1

CASE NOTES

¶ 1. On the issue of extra work, § 6-110 limits a city agency when ordering additional work to not exceed an expense over 10% of the contract price. City will broadly interpret work requirements to claim as contract work what contractors would claim as additional work. Further action regarding claims is a matter of law. Chief engineer is not

final authority.-Crimmins v. City of New York, 138 App. Div. 2d 138 [1988].

¶ 2. Sanitation commissioner ordered the installation of concrete pads below underground fuel tanks pursuant to contract's disputed work provision. Contract provided a disputed work procedure to include postponing any claim for additional compensation until contract completion. The commissioner is prohibited from ordering extra work exceeding 10% of contract price by § 6-110 but commissioner does determine what work is required by the contract.-Kalisch-Jarcho Inc. v. City of New York, 72 N.Y. 2d 727 [1989].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-111

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-111 Bids; opening of.

All bids shall be publicly opened by the officer or officers advertising therefor in the presence of the comptroller, or the comptroller's representative. The opening of such bids shall not be postponed if the comptroller or the comptroller's representative shall, after due notice, fail to attend.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343b-1.0 added chap 929/1937 § 1

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NYC Administrative Code 6-111.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-111.1 [Electronic posting of requests for proposals.*]

All requests for[14] proposals and any other public notices of opportunities to contract with the city shall, simultaneously with their publication, be posted on the city's website in a location that is accessible by the public.

HISTORICAL NOTE

Section added L.L. 11/2004 § 1, eff. Oct. 1, 2004.

FOOTNOTES

[14]

[Footnote 14]: * [Section heading supplied by editor.

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NYC Administrative Code 6-111.2

Administrative Code of the City of New York

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§ 6-111.2 Client services contracts.

No request for proposal for new client services program contracts shall be released to the public unless at least 45 days prior to such release a concept report regarding such request for proposal is released to the public. Prior to the release of concept reports, the city shall publish a notification of the release in five consecutive editions of the city record and electronically on the city's website in a location that is accessible to the public, and upon release, concept reports shall be posted on the city's website in a location that is accessible by the public. For purposes of this subdivision, the term, "new client services program" shall mean any program that differs substantially in scope from an agency's current contractual client services programs, including, but not limited to, substantial differences in the number or types of clients, geographic areas, evaluation criteria, service design or price maximums or ranges per participant if applicable. For purposes of this subdivision, the term, "concept report", shall mean a document outlining the basic requirements of a request for proposal for client services contracts and shall include, but not be limited to, statements explaining:

(i) the purpose of the request for proposal;

(ii) the planned method of evaluating proposals;

(iii) the proposed term of the contract;

(iv) the procurement timeline, including, but not limited to, the expected start date for new contracts, expected request for proposal release date, approximate proposal submission deadline and expected award announcement date;

(v) funding information, including but not limited to, total funding available for the request for proposal and sources of funding, anticipated number of contracts to be awarded, average funding level of contracts, anticipated funding minimums, maximums or ranges per participant, if applicable, and funding match requirements;

(vi) program information, including, but not limited to, as applicable, proposed model or program parameters, site, service hours, participant population(s) to be served and participant minimums and/or maximums; and

(vii) proposed vendor performance reporting requirements.

b. Notwithstanding the issuance of a concept report, the agency may change the above-required information at any time after the issuance of such concept report. Non-compliance with this section shall not be grounds to invalidate a contract.

HISTORICAL NOTE

Section added (Subd. a designation omitted) L.L. 13/2004 § 2, eff. Oct.

1, 2004. [See Note 1]

NOTE

1. Provisions of 13/2004 §§ 1, 3:

Section 1. Legislative Findings and Intent. The Council hereby finds that the request for proposal process for human service contracts for vital services is long, inefficient and cumbersome. The Council further finds that currently, community input into requests for proposals is inadequate leading to amendments, long delays and sometimes the outright cancellation of requests for proposals for contracts in vital areas such as youth development and summer jobs. The Council finds that community-based organizations-those who provide human services and who will likely be responding to the requests for proposals-are important sources of information on best practices, program design and community needs and trends. Without such information and input the city cannot competently craft requests for proposals. The Council therefore finds and declares that it is the policy of the city to allow ample opportunity and notice regarding imminent requests for proposals for human services to provide input into the proposed content of such proposals and ensure more efficient and timely letting of human services contracts.

l§ 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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***** Current through December 2009 ****

NYC Administrative Code 6-111.3

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-111.3 Online reverse auction pilot program.

a. The mayor may create a pilot program to determine the efficacy of online reverse auctions. The pilot program shall be for a period of twenty-four months during which period the mayor shall conduct at least six online reverse auctions for purchase contracts chosen by the mayor the combined value of which shall not be less than six million dollars. For purposes of this section the term, "online reverse auction," shall mean an auction for the purchase of goods by the city which is conducted online in electronic interactive format during which potential vendors bid against one another to provide goods for the city. The mayor may promulgate rules to implement the requirements of this section. The mayor shall submit a report to the Council and the Comptroller detailing the results of the online reverse auction pilot program no more than 60 days after the completion of such pilot program.

HISTORICAL NOTE

Section added (Subd. a only) L.L. 12/2004 § 1, eff. July 18, 2004.

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NYC Administrative Code 6-112

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CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-112 False statements.

Any person who makes or causes to be made a false, deceptive or fraudulent representation in any statement required by the board of estimate to set forth the financial condition, present plant and equipment, working organization, prior experience, and other information pertinent to the qualifications of any bidder, shall be guilty of an offense punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, by imprisonment for a period not exceeding six months, or both; and the person on whose behalf such false, deceptive or fraudulent representation was made, shall thenceforth be disqualified from bidding on any contracts for the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343b-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 218

(formerly § 343b-3.0)

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NYC Administrative Code 6-113

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CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-113 Security.

Each bidder whose bid is accepted shall give security for the faithful performance of his or her contract in the manner prescribed in the regulations of the board of estimate. The adequacy and sufficiency of such security, as well as the justification and acknowledgment thereof, shall be subject to the approval of the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343c-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-114

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-114 Participation in an international boycott.

a. Every contract for or on behalf of the city for the manufacture, furnishing or purchasing of supplies, material or equipment or for the furnishing of work, labor or services, in an amount exceeding five thousand dollars, shall contain a stipulation, as a material condition of the contract, by which the contractor agrees that neither the contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the export administration act of nineteen hundred sixty-nine, as amended, or the regulations of the United States department of commerce promulgated thereunder.

b. Upon the final determination by the commerce department or any other agency of the United States as to, or conviction of any contractor or substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the export administration act of nineteen hundred sixty-nine, as amended, or the regulations promulgated thereunder, the comptroller may, at his or her option, render forfeit and void any contract containing the conditions specified in this section. In those instances where the comptroller determines that no action shall be taken pursuant to this section, the comptroller shall report the basis therefore to the city council.

c. Nothing contained herein shall operate to impair any existing contract, except that any renewal, amendment or modification of such contract occurring on or after the fourth of November, nineteen hundred seventy-eight shall be subject to the conditions specified in this section.

d. The comptroller shall have the power to issue rules and regulations pursuant to this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-10.0 added LL 27/1978 § 1

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NYC Administrative Code 6-115

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-115 Anti-apartheid contract provisions. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 75/1993 § 4, eff. Sept. 24, 1993

(Legislative findings, build new South Africa)

Subd. a amended L.L. 81/1986 § 2

Subd. a open par amended L.L. 49/1990 § 4, eff. Sept. 1, 1990

(Legislative findings, progress made)

Subd. a par 1 amended L.L. 49/1990 § 5, eff. Sept. 1, 1990

Subd. a par 2 amended L.L. 49/1990 § 6, eff. Sept. 1, 1990

Subd. a par 3 amended L.L. 49/1990 § 6, eff. Sept. 1, 1990

Subd. a par 3 added L.L. 81/1986 § 5

Subd. a pars 4-8 added L.L. 49/1990 § 6, eff. Sept. 1, 1990

Subds. b, c amended L.L. 49/1990 § 7, eff. Sept. 1, 1990

Subd. d amended L.L. 49/1990 § 7, eff. Sept. 1, 1990

Subd. d amended L.L. 81/1986 § 3

(Legislative findings, strengthen anti-apartheid laws)

Subd. e amended L.L. 49/1990 § 8, eff. Sept. 1, 1990

Subd. e amended L.L. 81/1986 § 3

Subd. f amended L.L. 49/1990 § 9, eff. Sept. 1, 1990

Subd. g amended L.L. 49/1990 § 10, eff. July 25, 1990

Subd. g added L.L. 81/1986 § 4

Subds. h-j added L.L. 49/1990 § 11, eff. Sept. 1, 1990

DERIVATION

Formerly § 343-11.0 added LL 19/1985 § 3

(Legislative findings, apartheid repugnant, LL 19/1985 § 1)

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NYC Administrative Code 6-115

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-115 [City11 contracts with entities that do business in Burma.]**

a. With16 respect to contracts described in subdivisions b and c of this section, and in accordance with such provisions, no city agency shall contract for the supply of goods, services or construction with any person who does not agree to stipulate to the following as material conditions of the contract if there is another person who will contract to supply goods, services or construction of comparable quality at a comparable price:

(1) That the contractor and its affiliates shall not during the term of such contract sell or agree to sell goods or services to Burma, the Government of Burma, or to any entity owned or controlled by the Government of Burma; and

(2) In the case of a contract to supply goods, that none of the goods to be supplied to the city originated in Burma.

(3) The contractor and its affiliates do not do business in Burma or the contractor and its affiliates are actively engaged in the withdrawal of their operations from Burma and will have completed such withdrawal in six months, provided, however, that any such company that has withdrawn or is so engaged in withdrawing its operations from Burma that maintains a presence in Burma after such six month period solely for the purpose of liquidating its business shall not be ineligible for that reason to make the certification provided for in this paragraph.

(4) (a) It shall not make new investments in Burma.

(b) If at any time during the course of the contract the contractor acquires an entity which is doing business in Burma, the contractor shall initiate withdrawal of its acquisition's operations from Burma.

(c) It shall not enter into any new agreement with a Burmese entity allowing the use of its trademark, copyright or patent by such entity.

(5) In the case of a contract to supply motor vehicles, heavy equipment, electronic data processing equipment and software, copying machines or petroleum products, the contractor will, in addition to providing the certification described in this section with respect to itself and its affiliates, certify or provide a certification to the contracting agency from the manufacturer or refiner of the product to be supplied to the city that such manufacturer or refiner of the product to be supplied to the city that such manufacturer or refiner and its affiliates are in compliance with the terms set forth in this subdivision and subdivision d of this section. The commissioner of the department of citywide administrative services shall consider whether to designate other goods supplied to the city to be subject to the provisions of this paragraph, and by rule so designate any such goods as he or she determine appropriate based upon considerations including information that one or more manufacturers of such goods or affiliates of such manufacturers have not withdrawn operations from Burma, the effects on the city's procurement process, including the opportunities of small, minority and women owned business enterprises to compete for such contracts, and the recommendations of other agency heads.

(6) For the purposes of this subdivision, an entity shall be considered to have withdrawn its operations from Burma if:

(a) it does not maintain any office, plant or employee in Burma other than for the following purposes: (i) the activities of religious, educational or charitable organizations; (ii) activities intended to promote the exchange of information, including the publication or sale of newspapers, magazines, books, films, television programming, photographs, microfilm, microfiche, and similar materials; (iii) the gathering or dissemination of information by news media organizations; and (iv) the providing of telecommunications and mail services not involving the sale or leasing of equipment;

(b) it has no investments in Burma; and

(c) it does not provide goods or services to any Burmese entity pursuant to any non-equity agreement.

(7) The provisions of paragraphs four and six of this subdivision concerning investments, agreements concerning trademarks, copyrights and patents, and non-equity agreements shall not apply to the ownership or agreements with entities engaged in activities described in clauses, i, ii, iii and iv of subparagraph a of paragraph six.

(8) Notwithstanding the provisions of this section a city agency may purchase medical supplies intended to preserve or prolong life or to cure, prevent, or ameliorate diseases, including hospital, nutritional, diagnostic, pharmaceutical and non-prescription products specifically manufactured to satisfy identified health care needs, or for which there is no medical substitute. The determination of whether no medical substitute exists shall be made by the city agency requiring the supply, pursuant to general standards of good medical and professional practice. The city agency shall give notice to the city chief procurement officer in writing, certifying compliance with this exemption, said notice and certification being sufficient to allow the purchase of medical supplies under this exemption.

To the extent that a person doing business in Burma is providing only medical supplies, as described hereinabove, to persons in Burma, then the supply of goods or equipment to the city by said person shall also be exempt from the requirements of this section. This exemption from the requirements of this section shall not apply in any case in which the nature of any person's business dealings in Burma include both medical and non-medical supplies.

(9) For the purposes of this subdivision:

(a) "Affiliates" of a contractor means the parent company of the contractor, and any subsidiaries of the parent company, and any subsidiaries of the contractor.

(b) "Parent company" shall mean an entity that directly controls the contractor.

(c) "Subsidiary" shall mean an entity that is controlled directly or indirectly through one or more intermediaries, by a contractor or the contractor's parent company.

(d) "Control" shall mean holding five percent or more of the outstanding voting securities of a corporation, or having an interest of five percent or more in any other entity.

(e) "Entity" shall mean a sole proprietorship, partnership, association, joint venture, company, corporation or any other form of doing business.

(f) "Burmese entity" shall mean an entity organized in Burma, or a branch or office in Burma of an entity that is domiciled or organized outside Burma.

(g) "Investment" shall mean the beneficial ownership or control or a controlling interest in a Burmese entity, but shall not include the purchase of securities of a Burmese entity for a customer's account.

(h) "Non-equity agreement" shall mean a license, franchise, distribution or other written agreement pursuant to which an entity provides management, maintenance, or training services directly to a Burmese entity, or supplies goods directly to a Burmese entity for distribution by such Burmese entity, or for use as component parts in the manufacture of other goods by such Burmese entity. In addition, a non-equity agreement shall mean an original equipment manufacturer agreement, as defined pursuant to rules promulgated by the commissioner of the department of citywide administrative services, for equipment sold by a manufacturer of computers, copiers, or telecommunication equipment, which provides for or authorizes the sale of such equipment alone or part of a finished product, to a Burmese entity. Such commissioner shall consider whether to designate other equipment to be subject to this provision regarding original equipment manufacturer agreements, and by rule to so designate any such equipment as he or she determines appropriate based upon considerations including the effects on the city's procurement process, including the opportunities of small, minority and women owned business enterprises to compete for such city contracts.

b. In the case of contracts subject to competitive sealed bidding pursuant to section three hundred thirteen of the charter, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in subdivision a of this section and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting agency shall refer such bids to the mayor or such other official as may exercise such power pursuant to section three hundred ten of the charter, who, in accordance with subdivision b of section three hundred thirteen of the charter may determine that it is in the best interest of the city that the contract shall be awarded to other than the lowest responsible bidder.

c. In the case of contracts for goods, services or construction involving an expenditure of an amount greater than the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter, the contracting agency shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in subdivision a of this section unless the head of the agency seeking to use the goods, services or construction determines that the goods, services or construction supplied by such person are necessary for the agency to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price. Such determination shall be made in writing and shall be forwarded to the procurement policy board and the agency designated by the mayor pursuant to subdivision j of this section, and published in the City Record.

d. No city agency shall enter into a contract for an amount in excess of the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter with any proposed contractor who does not agree to stipulate as a material condition of the contract that such entity and its affiliates have not within the twelve months prior to the award of such contract violated, and shall not during the period of such contract violate the provisions of section 138 of the U.S. customs and trade act of 1990 or any other sanctions imposed by the United States government with

regard to Burma.

e. Upon receiving information that a contractor, manufacturer or refiner who has agreed to the conditions set forth in subdivision a of this section is in violation thereof, the contracting agency shall review such information and offer the contractor and such other entity an opportunity to respond. If the contracting agency finds that a violation of such conditions has occurred, or if a final determination has been made by the commerce department or any other agency of the United States or a finding has been made by a court that any such entity has violated any provision of section 138 of the U.S. customs and trade act of 1990 or any other sanctions imposed by the United States government with regard to Burma, the contracting agency shall take such actions as may be appropriate and provided by law, rule or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages and declaring the contractor in default. The mayor shall designate an agency to maintain records of actions taken in such cases.

f. As used in this section, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to the emergency procurement procedure set forth in section three hundred fifteen of the charter, or contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, provided that agencies, shall consider the policies of this law when selecting a consultant to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.

g. The provisions of this section shall not apply to contracts for which the city receives funds administered by the United States department of transportation, except to the extent congress has directed that the department of transportation, not to withhold funds from states and localities that implement Burmese embargo policies, or to the extent that such funds are not otherwise withheld by the department of transportation.

h. The department of the citywide administrative services and any other agency or agencies designated by the mayor shall conduct a study to develop recommendations concerning the application of the policies set forth in this section to procurement of goods, services or construction for amounts less than or equal to the amounts established pursuant to subdivisions b and c of section three hundred fourteen of this charter, and shall, on or before January first, nineteen hundred ninety-seven, submit a report to the mayor and the council containing such recommendations.

i. Nothing in this section shall be construed to limit the authority of a contracting agency or any official authorized by the charter to approve the selection of a contractor from taking into account, in making a determination to select or approve the selection of a contractor, in a manner consistent with applicable law and rules, any information concerning any direct or indirect relationship an entity may have related to business activities in Burma.

j. (1) The mayor shall designate an agency or agencies to collect information concerning entities doing business in Burma and to maintain records of contractors which have or have not agreed to the conditions set forth in subdivision a of this section. In October of each year, beginning in nineteen hundred ninety-seven, such agency or agencies shall submit a report to the mayor and the council setting forth information concerning contractors that have and have not agreed to such terms during the previous fiscal year, and the circumstances under which any contract subject to this section was awarded to a contractor who did not agree to such terms. The agency shall also report at such time on the efforts of public and quasi-public entities operating in the city to implement the Burmese embargo policies.

(2) The mayor shall designate an agency to collect information concerning whether entities withdrawing from Burma have given or agreed to give advance notification to their Burmese employees and representative trade unions (or other representative employee organizations if there are no appropriate unions) of the planned termination of investment not less than six months prior to such termination, and have engaged or agreed to engage in good faith negotiations with such representative unions or organizations regarding the terms of such termination, including but not limited to pension benefits; relocation of employees; continuation of existing union recognition agreements; severance pay; and acquisition of the terminated business or its assets by representative trade unions, union-sponsored workers trusts, other representative worker organizations or employees. Such agency shall inform such entities of, and offer

them an opportunity to respond to, any such information it collects. In October of each year, beginning in nineteen hundred ninety-seven, such agency shall submit a report to the mayor and the council on the information collected pursuant to this subdivision.

HISTORICAL NOTE

Section added L.L. 33/1997 § 4, eff. July 14, 1997. [See Note]

NOTE

Provisions of L.L. 33/1997:

Section 1. Declaration of Legislative findings and intent. In 1990, after a free election in Burma in which Nobel Peace Prize winner Aung Sam Suu Kyi's National League for Democracy (NLD) won 80% of the Parliamentary seats, the State Law and Order Restoration Council (SLORC) arrested, murdered and exiled such elected members of the NLD and annulled the election. Aung San Suu Kyi was placed under house-arrest. Since then, thousands of civilians have been killed, arrested, tortured or forced out of Burma as a result of Brutal government repression. The SLORC has conducted extensive military operations against ethnic groups within Burma. Additionally, the SLORC has refused to implement recommendations adopted by the United Nations General Assembly in December, 1993 and the United Nations Human Rights Commission in March, 1994.

The United States has already imposed a ban on new U.S. investment in Burma, suspended all economic and military aid to Burma, imposed an arms embargo against the country, ended some low tariffs that had applied to its products and blocked the international Monetary Fund and the World Bank from making loans to Burma.

The system of oppression by the SLORC is illegal and contrary to international laws and covenants. It being morally repugnant to the citizens of the City of New York and the New York City Council, the City of New York as an expression of moral outrage at the SLORC's continuing human rights violations in Burma does hereby set forth a municipal policy restricting its business with banks and companies doing business in Burma.

§ 5. If any provision of this local law or application thereof is held invalid, the remainder of this local law and the application thereof to the other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

§ 6. No bank shall be denied designation pursuant to section three of this local law because of any action taken prior to the effective date of this local law.

§ 7. This local law shall take effect forty-five days after its adoption and shall apply to contracts for which a request for bids or proposals is issued on and after the effective date.

FOOTNOTES

11

[Footnote 11]: ** * New York City's "Burma Law" (Local Law No. 33 of 1997) No Longer to be Enforced. In light of the United States Supreme Court's decision in **Crosby v. National Foreign Trade Council,** 530 U.S. 363 (2000), the City has determined that New York City's Local Law No. 33 of 1997 (codified in Administrative Code § 6-115 and Charter § 1524), which restricts City business with banks and companies doing business in Burma, is unconstitutional. This is to advise, therefore, that the language relating to Burma contained in existing New York City contracts may not be enforced.

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[Footnote 16]: ** Section heading supplied by editor.

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NYC Administrative Code 6-115.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-115.1 Nondiscrimination in employment in Northern Ireland.

a. Definitions. For the purposes of this section "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

(5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;

(7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to

train, upgrade and improve the skills of workers from underrepresented religious groups;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

b. 1. With respect to contracts described in paragraphs two and three of this subdivision, and in accordance with such paragraphs, no agency, elected official or the council shall contract for the supply of goods, services or construction with any contractor who does not agree to stipulate to the following, if there is another contractor who will contract to supply goods, services or construction of comparable quality at a comparable price: the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

2. In the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this section and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the mayor, the speaker or other official, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder.

3. In the case of contracts let by other than competitive sealed bidding for goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, the contracting entity shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in this section unless the entity seeking to use the goods, services or construction determines that the goods, services or construction are necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price. Such determination shall be made in writing and shall be filed in accordance with rules of the procurement policy board or any rules of the council relating to procurement, as appropriate, and shall be published in the City Record.

c. Upon receiving information that a contractor who has made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and offer the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, it shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking debarment or suspension of the contractor.

d. As used in this section, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to the emergency procurement procedure set forth in section three hundred fifteen of the charter or in rules of the procurement policy board or any rules of the council relating to procurement, as appropriate, or contracts, resolutions, indentures, declarations of trust or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, provided that the policies of this section shall be considered when selecting a contractor to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.

e. The provisions of this section shall not apply to contracts for which the city receives funds administered by the United States department of transportation, except to the extent congress has directed that the department of transportation not withhold funds from states and localities that choose to implement selective purchasing policies based

on agreement to comply with the MacBride Principles, or to the extent that such funds are not otherwise withheld by the department of transportation.

HISTORICAL NOTE

Section added L.L. 34/1991 § 1, eff. Sept. 10, 1991

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-116

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-116 Additional contract provisions.

a. Every contract shall contain a provision which permits the agency, in addition to any other right or remedy, to give notice to the contractor that the agency finds the contractor's performance to be improper, dilatory or otherwise not in compliance with the requirements of the contract.

b. The contract shall provide that if such notice is given, upon the termination of the contract the contractor may be declared not to be a responsible bidder for a period of time which shall not exceed three years, following notice and the opportunity for a hearing at which the contractor shall have the right to be represented by counsel.

c. The provisions of the contract and the procedure set forth therein for making the finding and declaration referred to in subdivisions a and b shall be consistent with applicable rules and regulations of the board of estimate.

HISTORICAL NOTE

Section added L.L. 94/1985 § 1, language juxtaposed per chap 907/1985

§ 14

DERIVATION

Formerly § 343-12.0 added LL 94/1985 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-116.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-116.1 Information required to be kept on contractor performance.

All agencies letting contracts shall monitor the performance of every contractor. Information with respect to contractor performance shall be maintained by the city at a central location and shall be accessible to the members of the board of estimate, the members of the city council and city agencies upon request.

HISTORICAL NOTE

Section added L.L. 94/1985 § 2, language juxtaposed per chap 907/1985

§ 14

DERIVATION

Formerly § 343-13.0 added LL 94/1985 § 2

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-116.2

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-116.2 [Reporting of contracted goods and services; computerized data base]*7

a. The comptroller and the mayor shall jointly maintain, at the financial information services agency, a computerized data base. Such data base shall contain information for every franchise and concession and every contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, entered into by an agency, New York city affiliated agency, elected official or the council, including, but not limited to:

(1) the name, address, and federal taxpayer's identification number of the contractor, franchisee or concessionaire where available in accordance with applicable law;

(2) the dollar amount of each contract including original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures;

(3) the type of goods or services to be provided pursuant to the contract;

(4) the term of the contract, or in the case of a construction contract the starting and scheduled completion date of the contract and the date final payment is authorized;

(5) the agency, New York city affiliated agency, elected official or the council that awarded the contract, franchise or concession and the contract registration number, if any, assigned by the comptroller;

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to,

in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure, and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder; and

(7) the date of any public hearing held with respect to the contract and the date and agenda number of action taken with respect to a concession or franchise by the franchise and concession review committee; and

(8) Reserved

(9) the contract budget category to which the contract is assigned, where applicable.

b. (i) The mayor and comptroller shall be responsible for the maintenance of a computerized data system which shall contain information for every contract, in the following manner: the mayor shall be responsible for operation of the system; the mayor and the comptroller shall be jointly responsible for all policy decisions relating to the system. In addition, the mayor and the comptroller shall jointly review the operation of the system to ensure that the information required by this subdivision is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. This system shall have access to information stored on other computerized data systems maintained by agencies, which information shall collectively include, but not be limited to:

(1) the current addresses and telephone numbers of:

A. the contractor's principal executive offices and the contractor's primary place of business in the New York city metropolitan area, if different,

B. the addresses of the three largest sites at which it is anticipated that work would occur in connection with the proposed contract, based on the number of persons to be employed at each site,

C. any other names under which the contractor has conducted business within the prior five years, and

D. the addresses and telephone numbers of all principal places of business and primary places of business in the New York city metropolitan area, if different, where the contractor has conducted business within the prior five years;

(2) the dun & bradstreet number of the contractor, if any;

(3) the taxpayer identification numbers, employer identification numbers or social security numbers of the contractor or the division or branch of the contractor which is actually entering into the contract;

(4) the type of business entity of the contractor including, but not limited to, sole proprietorship, partnership, joint venture or corporation;

(5) the date such business entity was formed, the state, county and country, if not within the United States, in which it was formed and the other counties within New York State in which a certificate of incorporation, certificate of doing business, or the equivalent, has been filed within the prior five years;

(6) the principal owners and officers of the contractor, their dates of birth, taxpayer identification numbers, social security numbers and their current business addresses and telephone numbers;

(7) the names, current business addresses and telephone numbers, taxpayer identification numbers and employer identification numbers of affiliates of the contractors;

(8) the principal owners and officers of affiliates of the contractor and their current business addresses and telephone numbers;

(9) the principal owners and officers of every subcontractor;

(10) the type, amount and contract registration number of all other contracts awarded to the contractor, as reflected in the database maintained pursuant to subdivision a of this section;

(11) the contract sanction history of the contractor for the prior five years, including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon the contractor's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(12) the contract sanction history for the prior five years of affiliates of the contractor including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon such entity's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;
(13) the name and telephone number of the chief contracting officer or other employee of the agency, elected official or the council responsible for supervision of those charged with day-to-day management of the contract;

(14) judgments or injunctions obtained within the prior five years in any judicial actions or proceedings initiated by any agency, any elected official or the council against the contractor with respect to a contract and any such judicial actions or proceedings that are pending;

(15) record of all sanctions imposed within the prior five years as a result of judicial or administrative disciplinary proceedings with respect to any professional licenses held by the contractor, or a principal owner or officer of the contractor;

(16) whether city of New York income tax returns, where required, have been filed for the past five years;

(17) outstanding tax warrants and unsatisfied tax liens, as reflected in the records of the city;

(18) information from public reports of the organized crime control bureau and the New York state organized crime task force which indicates involvement in criminal activity;

(19) criminal proceedings pending against the contractor and any principal owner or officer of such contractor;

(20) record of all criminal convictions of the contractor, any current principal owner or officer for any crime related to truthfulness or business conduct and for any other felony committed within the prior ten years, and of any former principal owner or officer, within the prior ten years, for any crime related to truthfulness or business conduct and for any other felony committed while he or she held such position or status;

(21) all pending bankruptcy proceedings and all bankruptcy proceedings initiated within the past seven years by or against the contractor and its affiliates;

(22) whether the contractor has certified that it was not founded or established or is not operated in a manner to evade the application or defeat the purpose of this section and is not the successor, assignee or affiliate of an entity which is ineligible to bid or propose on contracts or against which a proceeding to determine eligibility to bid or propose on contracts is pending;

(23) the name and main business address of anyone who the contractor retained, employed or designated to influence the preparation of contract specifications or the solicitation or award of this contract.

(ii) When personnel from any agency, elected officials or their staff, or members of the council or council staff learn that the certification required by subparagraph twenty-two of paragraph (i) may not be truthful, the appropriate law enforcement official shall be immediately informed of such fact and the fact of such notification shall be reflected in the data base, except when confidentiality is requested by the law enforcement official.

(iii) Information required from a contractor consisting of a contractor's social security number shall be obtained by the agency, elected official or the council entering into a contract as part of the administration of the taxes administered by the commissioner of finance for the purpose of establishing the identification of persons affected by such taxes.

(iv) In the event that procurement of goods, services or construction must be made on an emergency basis, as provided for in section three hundred fifteen of the charter, on an accelerated basis as provided for in section three hundred twenty-six of the charter, or expedited action is required due to urgent circumstances, or in such other circumstances as may be determined by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement, where it is not feasible to submit the information required by subdivision b prior to contract award, the required information may be submitted after award of the contract. However, all of the information required by subdivision b herein shall be submitted no later than thirty days from the date of the award. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on or otherwise be awarded a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(v) Where a contractor or subcontractor becomes obligated to submit information required by this subdivision by reason of having been awarded a contract or subcontract, the value of which, when aggregated with the value of all other contracts or subcontracts awarded to that contractor or subcontractor during the immediately preceding twelve-month period, is valued at one hundred thousand dollars, or more, such information shall be submitted no later than thirty days after registration of the contract which resulted in the obligation to submit such information. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(vi) For the calendar year commencing on January 1, 1992, subcontractors shall be required to provide the information required by subparagraph nine of paragraph i and on or after June 30, 1994, subcontractors shall be subject to paragraph i in its entirety.

(vii) This subdivision shall not apply to any New York city affiliated agency, except that such New York city affiliated agency shall report cautionary information and the name and telephone number of the employee responsible for responding to inquiries concerning such information.

c. The information maintained pursuant to subdivision b shall be made accessible to the computerized data system established pursuant to subdivision a of this section in a form or format agreed upon by the mayor and the comptroller. The information contained in these computerized data systems shall be made available to any other data retrieval system maintained by an agency, New York city affiliated agency, elected official or the council for the purpose of providing information regarding contracts, franchises and concessions awarded and the contractors, franchisees and concessionaires to which they were awarded. The information concerning the past performance of contractors that is contained in a computerized data base maintained pursuant to section 6-116.1 of this code for such purposes shall be made available to these data systems.

d. All of the information as required by subdivisions a and b contained in these computerized data bases shall be made available on-line in read-only form to personnel from any agency or New York city affiliated agency, elected

officials, members of the council and council staff, and shall be made available to members of the public, in accordance with sections three hundred thirty four and one thousand sixty four of the charter and article six of the public officers law.

e. No contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, franchise or concession shall be let by an agency, elected official or the council, unless the contract manager or other person responsible for making the recommendation for award has certified that these computerized data bases and the information maintained pursuant to section 6-116.1 of this code have been examined. This shall be in addition to any certifications required by chapter thirteen of the charter, the rules of the procurement policy board, where applicable, or any rules of the council relating to procurement.

f. Not later than January thirtieth following the close of each fiscal year, the comptroller shall publish a summary report setting forth information derived from the data base maintained pursuant to subdivision a of this section and the following information for each franchise, concession or contract for goods or services having a value of more than ten thousand dollars or in the case of construction, having a value of more than fifteen thousand dollars, including, but not limited to:

(1) the types and dollar amount of each contract, franchise or concession entered into during the previous fiscal year;

(2) the registration number assigned by the comptroller, if any;

(3) the agency, New York city affiliated agency, elected official or the council entering into the contract, franchise or concession;

(4) the vendor entering into the contract, franchise or concession and the subcontractors engaged pursuant to each contract;

(5) the reason or reasons why the award of each such contract was deemed appropriate pursuant to subdivision a of section 312 of the charter, where applicable; and

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selcted without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder. For franchises, this information shall also include whether the authorizing resolution of the council was complied with.

g. Nothing in this section shall be deemed to require the disclosure of information that is confidential or privileged or the disclosure of which would be contrary to law.

h. Except for submissions to elected officials or to the council, contractors or subcontractors may only be required to submit information required under subdivision b of this section to a single agency, and any such submission shall be applicable to all contracts or subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. Any contractor or subcontractor that has submitted to any agency, elected official or the council, the information required to be provided in accordance with subdivision b of this section shall be required to update that information only at three-year intervals, and except as provided in paragraph iv or v of subdivision b, no contract or subcontract shall be awarded unless the contractor or subcontractor has certified that information previously submitted as to those requirements is correct as of the time of the award of the contract or subcontract. The contractor or

subcontractor may only be required to submit such updated information to a single agency and such submission shall be applicable to all contracts or subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. The procurement policy board may, by rule, provide for exceptions to this subdivision.

i. Except as otherwise provided, for the purposes of subdivision b of this section,

(1) "affiliate" shall mean an entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty per cent of the voting stock;

(2) "cautionary information" shall mean, in regard to a contractor, any adverse action by any New York city affiliated agency, including but not limited to poor performance evaluation, default, non-responsibility determination, debarment, suspension, withdrawal of prequalified status, or denial of prequalified status;

(3) "contract" shall mean and include any agreement between an agency, New York city affiliated agency, elected official or the council and a contractor, or any agreement between such a contractor and a subcontractor, which (a) is for the provision of goods, services or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at one hundred thousand dollars or more; or (b) is for the provision of goods, services or construction, is awarded to a sole source and is valued at ten thousand dollars or more; or (c) is a concession and has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more; or (d) is a franchise. However, the amount provided for in clause a herein may be varied by rule of the procurement policy board, where applicable, or rule of the council relating to procurement, or, for franchises and concessions, rule of the franchise and concession review committee, as that amount applies to the information required by paragraphs 7, 8, 9 and 12 of subdivision b of this section, and the procurement policy board, where applicable, or the council, or, for franchises and concessions, the franchise and concession review committee, may by rule define specifically identified and limited circumstances in which contractors may be exempt from the requirement to submit information otherwise required by subdivision b of this section, but the rulemaking procedure required by chapter forty-five of the charter may not be initiated for such rule of the procurement policy board or franchise and concession review committee less than forty-five days after the submission by the procurement policy board or, for franchises and concessions, the franchise and concession review committee, to the council of a report stating the intention to promulgate such rule, the proposed text of such rule and the reasons therefor;

(4) "contractor" shall mean and include all individuals, sole proprietorships, partnerships, joint ventures or corporations who enter into a contract, as defined in paragraph three herein, with an agency, New York city affiliated agency, elected official or the council;

(5) "officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;

(6) "New York city affiliated agency" shall mean any entity the expenses of which are paid in whole or in part from the city treasury and the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, but shall not include any entity established under the New York city charter, this code or by executive order, any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility;

(7) "parent" shall mean an individual, partnership, joint venture or corporation which owns more than fifty percent of the voting stock of a contractor;

(8) "principal owner" shall mean an individual, partnership, joint venture or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor;

(9) "subcontract" shall mean any contract, as defined in paragraph three herein, between a subcontractor and a contractor; and

(10) "subcontractor" shall mean an individual, sole proprietorship, partnership, joint venture or corporation which is engaged by a contractor pursuant to a contract, as defined in paragraph three herein.

j. Notwithstanding any other provisions of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be submitted in a form or format and on a schedule to be determined by the mayor and the comptroller. In no event shall New York city affiliated agencies be required to submit such information prior to the award of any contract.

k. Notwithstanding any other provision of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be required only as to contracts funded in whole or in part with city funds, although nothing shall preclude New York city affiliated agencies from submitting information on contracts funded by other than city funds.

HISTORICAL NOTE

Section added L.L. 52/1987 § 2 [See Note 2]

Subd. a amended L.L. 44/1992 § 2, eff. Oct. 5, 1992 [See Note 1]

Subd. a par (7) separately amended L.L. 34/1992 § 1, eff. June

16, 1992

Subd. a par (9) added L.L. 34/1992 § 1, eff. June 16, 1992

Subd. b added L.L. 5/1991 § 2, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4

Subd. b par (i) open par amended L.L. 44/1992 § 3, eff. Oct. 5, 1992 [See Note 1]

Subd. b par (i) open par amended L.L. 13/1991 § 1, eff. Feb. 7, 1991

Subd. b par (i) subpar (1) amended L.L. 21/1992 § 1, eff. Mar. 27, 1992

Subd. b par (i) subpar (22) amended L.L. 49/1992 § 1 eff. July 16, 1992, amended L.L. 13/1991 § 2, eff. Feb. 7, 1991

Subd. b par (i) subpar (23) added L.L. 49/1992 § 1 eff. July 16, 1992

Subd. b pars (ii), (iv), (v) amended L.L. 13/1991 § 3, eff. Feb. 7, 1991

Subd. b par (vi) amended L.L. 64/1993 retro. to Dec. 31, 1992

Subd. b par (vi) added L.L. 13/1991 § 3, eff. Feb. 7, 1991

Subd. b par (vii) added L.L. 44/1992 § 4, eff. Oct. 5, 1992 [See Note 2]

Subd. c amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. c relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. b)

Subd. d amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. d relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. c)

Subd. e amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. e relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. d)

Subd. f amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. f relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. e)

Subd. g relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. f)

Subd. h amended L.L. 22/2004 § 1, eff. July 28, 2004.

Subd. h amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. h added L.L. 5/1991 § 5, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4

Subd. h repealed after relettering L.L. 5/1991 §§ 1, 4, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4, (formerly subd. g)

Subd. i amended L.L. 44/1992 § 6, eff. Oct. 5, 1992 [See Note 2]

Subd. i added L.L. 5/1991 § 6, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4

Subds. j, k added L.L. 44/1992 § 7, eff. Oct. 5, 1992 [See Note 2]

NOTE

1. L.L. 44/1992 provisions

Section 1. Legislative intent. In 1987, the council enacted Local Law 52 to require the mayor and the comptroller to jointly establish a computerized data base containing information about contracts, franchises and concessions entered into by mayoral and non-mayoral agencies. Local Laws 5 and 13 of 1991 created the complement to this data base and require the mayor and the comptroller to be jointly responsible for the maintenance of a computerized data system that contains information about people and companies with whom the city does business. These legislative initiatives were pressed because of the council's concern that contracts go only to honest and capable vendors and that the city obtain the highest quality and quantity of goods and services for the approximately six billion dollars in city funds that are spent each year through procurement. Much of this money consists of funds allocated in the New York city budget to public benefit corporations and similar entities, such as the Health and Hospitals Corporation and the Economic Development Corporation.

It is the intent of this legislation to make clear that public benefit corporations and similar entities that receive city funds are responsible for reporting contractual expenditures to the taxpayers who supply those funds.

2. L.L. 52/1987 provisions

Section one. Legislative Intent. The Council hereby finds that approximately 22% of the City's annual budget is spent on contracted goods and services. However, information pertaining to these contracts is not kept in one central location. It is the intent of this legislation to create a computerized contract registry which would streamline City contract information and make this information accessible to City government officials and employees and members of the public. The Council recognizes the monumental effort necessary to create a central computerized repository for tracking the $5 billion spent annually on City contracts. Therefore, this legislation mandates that the financial information services agency begin to establish this data base immediately and provides for a period of up to two years

for the establishment of this computerized data base.

FOOTNOTES

7

[Footnote 7]: * Section heading supplied by editor.

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NYC Administrative Code 6-117

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-117 Purchases; statement of.

The department of citywide administrative services shall furnish each agency for which it has purchased supplies, materials and equipment with a monthly statement of such purchases, with details of the quantities and prices paid, showing the quantities delivered for the account of such agency.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 46, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 782a-1.0 added chap 929/1937 § 1

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NYC Administrative Code 6-118

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-118 Printing and stationery.

The department of citywide administrative services shall purchase all printing and stationery for all agencies.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 47, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 782a-3.0 added chap 929/1937 § 1

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NYC Administrative Code 6-119

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-119 Copies; printing of.

It shall be unlawful to print, apart from the City Record, more than two thousand copies of any message of the mayor or report of the head of any agency, or more than one thousand copies of any report of a committee of the council.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 782a-4.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-120

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-120 Standards and specifications.

The commissioner of citywide administrative services shall have power to use the laboratory and engineering facilities of any agency, together with the technical staff thereof, in connection with work of preparing and adopting standards and written specifications. The commissioner shall consult freely with the heads and other officials of the various agencies to determine their precise requirements, and shall endeavor to prescribe those standards which meet the needs of the majority of such agencies. After adoption , each standard specification shall, until revised or rescinded, apply alike in terms and effect to every future purchase and contract for the commodity described in such specification. The commissioner of citywide administrative services, however, may exempt any such agency from the use of the commodity described in such standard specification.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 48, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 783-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 586

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-121

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-121 Purchase of low-emission motor vehicles.

a. As used in this section, the terms "as defined" and "as specified" shall mean as defined and as specified from time to time in the relevant regulations of the administrator of the United States environmental protection agency.

b. As used in this section, the term "low-emission motor vehicle" shall mean a self-propelling light duty vehicle, as defined which is certified in accordance with the terms of subdivision d of this section.

c. Low-emission motor vehicles which meet the standards prescribed by subdivision e of this section, and which have been determined by the department of citywide administrative services to be suitable for use as a substitute for a class or model of motor vehicles presently in use by the city of New York, shall be purchased by the city for use by the city government in lieu of other vehicles, provided that the commissioner of citywide administrative services shall first determine that such low-emission motor vehicles have procurement and maintenance costs not substantially greater than those of the class or model of motor vehicles for which they are to be substituted.

d. The commissioner of environmental protection of the city of New York shall, upon request of the commissioner of citywide administrative services, and after such tests as he or she may deem appropriate, certify as a low-emission motor vehicle any particular class or model of motor vehicles that:

1. meets either (i) the hydrocarbon and carbon monoxide exhaust emission standards as defined and as specified for nineteen hundred seventy-five model year vehicles and the oxides of nitrogen exhaust emission standard as defined and as specified for the then current model year or (ii) the oxides of nitrogen exhaust emission standard as defined and as specified for nineteen hundred seventy-six model year vehicles and the hydrocarbon and carbon monoxide exhaust

emission standards as defined and as specified for the then current model year; and

2. meets the crankcase emission standard as defined and as specified and the fuel evaporative emission standard as defined and as specified; and

3. will not emit an air contaminant not emitted by the class or model of motor vehicle presently in use in the city of New York unless the commissioner of environmental protection determines that such air contaminant will not cause significant detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or damage to property or business.

4. After conducting such tests the commissioner of environmental protection shall advise the commissioner of citywide administrative services whether such class or model of motor vehicles has been so certified. Any such certification shall be valid until the end of the then current model year unless sooner revoked by the commissioner of environmental protection.

e. The commissioner of environmental protection of the city of New York shall, upon request of the commissioner of citywide administrative services, and after such tests as he or she may deem appropriate, advise the commissioner of citywide administrative services, as to any class or model of low-emission motor vehicle, with respect to:

(1) the safety of the vehicle;

(2) its performance characteristics;

(3) its reliability potential; and

(4) its fuel availability.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. c, d, e amended L.L. 59/1996 § 49, eff. Aug. 8, 1996

DERIVATION

Formerly § 784-1.0 added LL 32/1972 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-122

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-122 Purchase of18 recycled paper products.

a. When purchasing paper products made with and without significant recycled content, recovered from materials otherwise destined for disposal, the department of citywide administrative services shall, wherever the price is reasonably competitive and the quality adequate for the purpose intended, purchase the recycled product. For the purpose of this section the term "recycled paper" shall mean any paper products which have been manufactured from materials otherwise destined for the waste stream including, but not limited to, old newspapers, magazines, paperboard, boxes, tabulating cards, mixed waste, used fibrous materials such as rags and overstock or obsolete inventories from distributors, wholesalers, printers and other companies as defined in rules and regulations promulgated by the commissioner provided that the term "recycled paper" does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process. "Reasonably competitive" shall mean a comparable recycled product with a cost premium of no greater than ten percent.

b. The department of citywide administrative services shall review its own paper product procurement specifications and consider those of the State of New York in order to establish realistic recycled content standards and to eliminate, wherever feasible, discrimination against the procurement of products manufactured with recovered materials. The department of general services shall submit a report on recycled paper procurement activities to the mayor and the city council eighteen months after the effective date of this section.

HISTORICAL NOTE

Section repealed L.L. 121/2005 § 2, eff. Jan. 1, 2007. Section transferred

to Title 6 Subchapter 4.

Section amended L.L. 59/1996 § 50, eff. Aug. 8, 1996

Section added L.L. 20/1987 § 1

NOTE

L.L. 20/1987 provisions:

§ 2. This local law shall take effect one hundred and twenty days from the date it shall have become law, but all actions necessary to prepare for the implementation of this local law may be taken prior to its effective date. This local law shall expire twenty four months after its 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 April 23, 1987, and approved by the Mayor on May 4, 1987.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

FOOTNOTES

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[Footnote 18]: * Section repealed Jan. 1, 2007.

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NYC Administrative Code 6-123

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-123 Contractor human rights compliance.

a. For purposes of this section only, the following terms shall have the following meanings: (1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(a) For purposes of this section only, unless otherwise required by law, the term "contract" shall include any city grant, loan, guarantee or other city assistance for a construction project.

(b) The term "contract" shall not include: (i) contracts for financial or other assistance between the city and a government or government agency; or

(ii) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, or consisting thereof.

(2) "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(3) "Contractor" means a person who is a party or a proposed party to a contract with a contracting agency as those terms are defined herein.

b. All contractors doing business with the city without regard to the dollar amount shall not engage in any unlawful discriminatory practice as defined and pursuant to the terms of title viii of the administrative code. Every contract in excess of $50,000 shall contain a provision or provisions detailing the requirements of this section.

c. The contractor will not engage in any unlawful discriminatory practice as defined in title viii of the administrative code. In the case of a contract for supplies or services, the contractor shall include a provision in any agreement with a first-level subcontractor for an amount in excess of $50,000 that such subcontractor shall not engage in such an unlawful discriminatory practice. In the case of a contract for construction, the contractor shall include a provision in all subcontracts in excess of $50,000 that the subcontractor shall not engage in such an unlawful discriminatory practice.

d. Enforcement, remedies, and sanctions. Upon receiving a complaint or at his or her own instance, the commissioner of business services, acting pursuant to section 1305 of the charter, may conduct such investigation as may be necessary to determine whether contractors and subcontractors are in compliance with the equal employment opportunity requirements of federal, state and local laws and executive orders. If the commissioner has reason to believe that a contractor or subcontractor is not in compliance with the provisions of this section, or where there has been a final adjudication by the human rights commission or a court of competent jurisdiction that a contractor has violated one or more of the provisions of title viii of the administrative code, as to its work subject to the contract with the contracting agency, the commissioner of business services shall seek the contractor's or subcontractor's agreement to adopt and adhere to an employment program designed to ensure equal employment opportunity, including but not limited to measures designed to remedy underutilization of minorities and women in the contractor's or subcontractor's workforce, and may, in addition, recommend to the contracting agency that payments to the contractor be suspended pending a determination of the contractor's or subcontractor's compliance with such requirements. If the contractor or subcontractor does not agree to adopt or does not adhere to such a program, the commissioner shall make a determination as to whether the contractor or subcontractor is in compliance with the provisions of this section, and shall notify the head of the contracting agency of such determination and any sanctions, including the withholding of payment, imposition of an employment program, finding the contractor to be in default, cancellation of the contract, or other sanction or remedy provided by law or by contract, which the commissioner believes should be imposed. The head of the contracting agency shall impose such sanction unless he or she notifies the commissioner in writing that the agency head does not agree with the recommendation, in which case the commissioner and the head of the contracting agency shall jointly determine any sanction to be imposed. If the agency head and the commissioner do not agree on the sanction to be imposed, the matter shall be referred to the mayor, who shall determine any sanction to be imposed.

e. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

HISTORICAL NOTE

Section added L.L. 15/2001 § 1, eff. May 12, 2001.

CASE NOTES

¶ 1. The New York City Transit Authority (TA) is not a City contractor within the meaning of the statute. Although the TA is fiscally interdependent with the City, it is an entity separate and distinct from the City. Reilly v. Transport Workers' Union, N.Y.L.J., Jan. 2, 2003, page 18, col. 5 (Sup.Ct. New York Co.).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-124

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-124 [Apparel and textile services procurement by city.]

a. For purposes of this section only, the following terms shall have the following meanings:

(1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(2) "Responsible manufacturer" means that the manufacturer of apparel and textiles is able to demonstrate current compliance with all applicable wage, health, labor, environmental and safety laws, building and fire codes and any laws relating to discrimination in hiring, promotion or compensation on the basis of race, disability, national origin, gender, sexual orientation or affiliation with any political, non-governmental or civic group except when federal or state law precludes the city from attaching the procurement conditions provided herein. A responsible manufacturer for the purposes of this section shall not engage in any abuse of its employees except where federal or state law precludes the city from attaching the conditions provided herein. A responsible manufacturer for the purposes of this section shall pay a non-poverty wage as defined herein, and shall not contract with any subcontractor operating in violation of any provision of this section.

(3) "Contracting agency" means a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, that purchases, leases, or contracts for the purchase or lease of goods or services financed in whole or in part from the city treasury, except where partial federal or state funding precludes the city from attaching the procurement conditions provided herein.

(4) "Contractor" means any supplier, by sale or lease, of apparel or textiles to a contracting agency, including suppliers of uniforms for purchase by city employees through any uniform or voucher system, and any provider of laundering or other services to a contracting agency for the cleansing, repair, or maintenance of apparel or textiles.

(5) "Subcontractor" means any person or enterprise who contracts with a contractor, either directly or through other intermediary subcontractors, for the manufacture or supply in whole or in part or for the laundering or other servicing of apparel or textiles. Subcontractor shall include beneficiaries of bankruptcies, assignment, transfer, sales of operations, or other successorship intended to evade liability or responsibility for any of the wrongful conduct enumerated in this section.

(6) "Apparel or textiles" means all articles of clothing, cloth, or goods produced by weaving, knitting, or felting, or any similar goods.

(7) "Non-Poverty wage" means the nationwide hourly wage and health benefit level sufficient to raise a family of three out of poverty.

(8) "Relative national standard of living index" means a ratio of the standard of living in a given country to the standard of living in the United States, when standard of living is defined as real per capita income multiplied by the percentage of gross domestic product used for non-military consumption.

(9) "Incentive pay" means any pay system contingent on performance.

b. A contracting agency shall only enter into a contract to purchase or obtain for any purpose any apparel or textiles from a responsible manufacturer. The provisions of this section shall apply to every contract in excess of $2,500.

c. All contractors and subcontractors in the performance of a contract with a contracting agency shall pay their employees a non-poverty wage. The comptroller shall determine, and, if deemed necessary, annually adjust the precise level of the non-poverty wage, and shall ensure that it is no less than the level of wages and health benefits earned by a full-time worker that is sufficient to ensure that a family of three does not live in poverty as measured by the nationwide poverty guidelines issued annually by the United States department of health and human services in the federal register, and, in any event, no less than $8.75 an hour, of which $7.50 must be paid in hourly wages; and, as applied to employees of contractors and subcontractors outside of the United States, a comparable nationwide wage and benefit level, adjusted to reflect that country's level of economic development using a factor such as the relative national standard of living index in order to raise a family of three out of poverty. The comptroller shall have the authority to promulgate such rules as deemed necessary for determining a non-poverty wage. For contractors or subcontractors that pay employees on an incentive pay basis, it shall be sufficient for the purposes of this section for the contractor or subcontractor to ensure that average pay for the lowest paid class of those employees engaged in the performance of a contract with a contracting agency exceeds the non-poverty wage.

d. A contracting agency shall not enter into a contract to purchase or obtain for any purpose any apparel or textiles from a contractor unable to provide certified documentation in writing:

(1) that such apparel and textiles are manufactured in accordance with the requirements that constitute responsibly manufactured as defined in this section;

(2) listing the names and addresses of each subcontractor to be utilized in the performance of the contract;

(3) listing each manufacturing, processing, distributing, storing, servicing, shipping or other facility or operation of the contractor and its subcontractors for performance of the contract, and the location of each such facility;

(4) listing the wages and health benefits by job classification provided to all employees engaged in the

manufacture, distribution or servicing of apparel and textiles for contracting services at each such facility.

The contracting agency must maintain this information in the agency contract file and make it available for public inspection. Such information shall also be made available to the comptroller's office.

e. A contracting agency shall not contract for apparel and textiles with any contractor who does not agree to permit independent monitoring at the request of the contracting agency or the comptroller of their compliance with the requirements of this section. The contractor shall be responsible for ensuring that subcontractors comply with the independent monitoring requirements of this subdivision. If through independent monitoring it is determined that the contractor or subcontractor has failed to comply with the provisions of this section, the costs associated with the independent monitoring to the city shall be reimbursed by the contractor or subcontractor.

f. The comptroller shall collect and maintain information concerning the city's apparel and textile contracts that have been awarded and shall ensure that the information listed in subdivision d of this section be made available to the public. The comptroller shall allow interested third parties an opportunity to submit information relating to the apparel and textile industry and shall review and consider such submissions as they become available. In October of each year, beginning one year after the enactment of this section, the comptroller shall submit a report to the mayor and the council on the information collected pursuant to this subdivision.

g. Upon information and belief that a contractor or subcontractor may be in violation of this section, the comptroller shall review such information and offer the contractor or subcontractor an opportunity to respond. If the comptroller finds that a violation has occurred, it shall present evidence of such violation to the contracting agency. Where such evidence indicates a violation of the subcontractor, the contractor shall be responsible for such violation. It shall be the duty of the contracting agency to take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking debarment or suspension of the contractor or subcontractor. In circumstances where a contractor or subcontractor fails to perform in accordance with any of the requirements of this section, and there is a continued need for the service, a contracting agency may obtain the required service as specified in the original contract, or any part thereof, by issuing a new solicitation, and charging the non-performing contractor or subcontractor for any difference in price resulting from the new solicitation, any administrative charge established by the contracting agency, and shall, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

h. A contractor shall be liable for a civil penalty of not less than $5,000 upon a determination that a contractor or subcontractor has been found, through litigation or arbitration, to have made a false claim under the provisions of this section with the contracting agency.

i. Every contract for or on behalf of all contracting agencies for the supply and service of textiles and apparels shall contain a provision or provisions detailing the requirements of this section.

j. In an investigation conducted under the provisions of this section, the inquiry of the comptroller shall not extend to work performed more than three years prior to: (i) the filing of a complaint of any provision of this section; or (ii) the commencement of the investigation of the comptroller's own volition, whichever is earlier.

k. Notwithstanding any inconsistent provision of this law or of any other general, special or local law, ordinance, charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee because of the prior receipt by the employee without the protest of wages paid or on account of the employee's failure to state orally or in writing upon any payroll or receipt of which the employee is required to sign that the wages received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages due to the employee for the period covered by such payment.

l. The requirements of this section shall be waived in writing under the following circumstances:

(1) there is only one prospective contractor willing to enter into a contract, where it is determined that all bidders to a contract are deemed ineligible for purposes of this section; or

(2) where it is available from a sole source and the prospective contractor is not currently disqualified from doing business with the city; or

(3) the contract is necessary in order to respond to an emergency which endangers the public health and safety and no entity which complies with the requirements of this section capable of responding to the emergency is immediately available; or

(4) where inclusion or application of such provisions will violate or be inconsistent with the terms and conditions of a grant, subvention or contract of the United States government or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

m. All waivers shall become part of the contract file of the contracting agency. Notwithstanding any waiver, the contracting agency shall take every reasonable measure to contract with a contractor who best satisfies the requirements of this section.

n. This section shall not apply to any contract with a contracting agency entered into prior to the effective date of this local law, except that renewal, amendment or modification of such contract occurring on or after the effective date shall be subject to the conditions specified in this section.

o. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

p. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

HISTORICAL NOTE

Section added L.L. 20/2001 § 2, eff. Jan. 20, 2002. [See Note]

NOTE

Provisions of L.L. 20/2001:

Section 1. Declaration of Legislative Findings and Intent. The Council of the City of New York finds that it is in the City's best interest to procure items of apparel and textiles from responsible contractors that provide quality and service at the lowest responsible price and provide a safe work environment for their employees. The Council finds that, after almost a century of progress in the struggle against sweatshops in the apparel and textile sectors, there has been a recent resurgence of such exploitative and abusive workplaces in New York, the United States, and around the world. The City should not spend its citizens' money in ways that shock the conscience of a vast majority. Acting with the discretion allowed any private participant in the market, the City should choose to allocate its purchasing dollars in order to enhance, rather than degrade, the economic and social wellbeing of people, while at the same time assure the public that the City is acquiring the maximum quality for the lowest possible cost. Furthermore, it is essential to the public interest that the City require manufacturers, who contract to provide the City with apparel and textile goods, to submit information necessary for the determination of responsibility. Accordingly, the Council finds that it is in the best

interests of the city of New York to procure apparel and textile goods from responsible contractors and subcontractors that provide a safe, non-discriminatory work environment and compensate their employees with a non-poverty wage.

CASE NOTES

¶ 1. The statute, which sought to prevent the City from purchasing uniforms manufactured in sweatshops (those in New York, or other states or countries) violates City Charter § 335, which vests in the Mayor the power to determine the qualifications of bidders on City contracts. In other words, the statute impermissibly encroaches on the Mayor's function and the discretion of the agencies vested with the duty to determine whether a bidder is responsible. The statute runs afoul of the doctrine of separation of powers. The only way to curtail the power of the Mayor over City contracts would be by means of a public referendum pursuant to City Charter § 38(5). The court further held that, pursuant to State Finance Law § 162, the state pre-empted the field in terms of regulation of contracts between municipalities and alleged sweatshops. Mayor of City of New York v. Council of City of New York, 6 Misc.3d 533, 789 N.Y.S.2d 860 (Sup.Ct. New York Co. 2004).

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NYC Administrative Code 6-125

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§6-125 [Emergency contraception to rape victims in hospital emergency department.]*

a. For the13 purposes of this section only, the following terms shall have the following meanings:

(1) "City agency" means a city, county, borough, administration, department, division bureau, board or commission, or a corporation, institution or agency of government the expenses of which are paid in whole or in part from the city treasury, but shall not include the health and hospitals corporation.

(2) "Covered agreement" means any agreement, including but not limited to, memoranda of understanding, and excluding contracts, entered into on or after the effective date of the local law that added this section, between a hospital and a city agency.

(3) "Covered contract" means any contract entered into on or after the effective date of the local law that added this section, between a hospital and a city agency.

(4) "Emergency contraception" shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United States food and drug administration.

(5) "Hospital" means any facility operating pursuant to article 28 of the public health law which provides emergency medical care.

(6) "Rape victim" means any female person who alleges or is alleged to have been raped and presents to a hospital.

b. No city agency shall enter into a covered agreement or covered contract with any hospital that does not contain a provision whereby such hospital agrees to inform rape victims presenting to its emergency department of the availability of emergency contraception and, if requested, to administer, if medically appropriate, such contraception in a timely manner.

c. No city agency shall enter into a covered agreement or covered contract with any hospital that does not contain a provision whereby such hospital agrees to provide the department of health and mental hygiene, on an annual basis, a report indicating the following information with respect to each reporting period: i) the number of rape victims treated in such hospital's emergency department; ii) the number of rape victims treated in such hospital's emergency department which were offered emergency contraception; iii) the number of rape victims treated in such hospital's emergency department for whom the administration of emergency contraception was not medically indicated and a brief explanation of the contraindication; and iv) the number of times emergency contraception was accepted or declined by a rape victim treated in such hospital's emergency department.

d. No city agency shall enter into a covered agreement or covered contract with any hospital that does not contain a provision whereby such hospital agrees to provide the department of health and mental hygiene with a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to section 405.19 of title 10 of the codes, rules and regulations of the state of New York; provided however, that such hospital shall be required to provide such protocol upon amendment or renewal of a covered agreement or covered contract only if such protocol has been amended since the date such hospital initially entered into such covered agreement or covered contract.

e. A hospital shall be liable for a civil penalty of not less than five thousand dollars upon a determination that such hospital has been found, through litigation or arbitration, to have made a false claim with respect to its provision of information to rape victims regarding the availability of emergency contraception or its provision of emergency contraception, if medically indicated, to rape victims in a timely manner.

HISTORICAL NOTE

Section added L.L. 26/2003 § 2, eff. May 24, 2003. [See Note 1]

NOTE 1. Local Law 26/2003 was vetoed Mar. 21, 2003 overridden Apr. 9, 2003 and effective May 24, 2003. Note provisions of L.L. 26/2003: Section 1. Legislative history and intent. In 2002, 2,013 rapes were reported to the New York City Police Department. Public health and public safety advocates alike acknowledge that the number of rapes reported to authorities constitute only a fraction of the number of rapes that actually occur. Alarmingly, between one and five percent of all rapes end in pregnancy (Holmes, et al., **Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women,**American Journal of Obstetrics and Gynecology, 175:2, 1996). Over half of these pregnancies will end in abortion. Emergency contraception (EC) is a safe and effective way to prevent unintended pregnancy. Approved by the United States Food and Drug Administration in 1997, EC works to prevent pregnancy by delaying ovulation or preventing fertilization. If taken within 72 hours of unprotected intercourse, EC reduces the risk of unintended pregnancy by as much as 89 percent. EC is frequently and erroneously confused with mifepristone and methotrexate, drugs used in medical abortion. EC differs from these drugs by working to prevent pregnancy from occurring instead of terminating an established pregnancy. The provision of EC to rape victims is considered to be the accepted standard of care for treatment of rape victims by the New York State Department of Health, as well as health professional organizations, including the American College of Obstetricians and Gynecologists, the American Medical Association and the American College of Emergency Physicians. Surveys on the provision of EC in emergency departments in New York City hospitals reveal that approximately half of New York City emergency departments do not provide rape victims with EC. Significantly, these surveys also reveal that

emergency departments operated by the New York City Health and Hospitals Corporation do in fact provide EC. The Council finds that the provision of EC to a rape victim when medically appropriate aids to reduce the trauma already inflicted on the victim by preventing an unwanted pregnancy from resulting from that rape. The City Council further finds that the prevention of unintended pregnancies resulting from rape avoids costs associated with unwanted pregnancy, including medical care and foster care, some of which are ultimately borne by the City. Therefore, the Council declares that New York City should contract only with hospitals which provide rape victims with the accepted standard of care for treatment of such patients, including the administration of emergency contraception. . . . . .

§ 3. Severability. If any subsection, sentence, clause, phrase or other portion of the local law that added this section is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect. § 4. Effective date. This section shall take effect forty five days after its enactment; provided, however, that any rules consistent with this local law and necessary to its implementation may be promulgated prior to such effective date.

FOOTNOTES

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[Footnote 13]: * Supplied by editor

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NYC Administrative Code 6-126

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-126 [Equal employment benefits to the employees of city contractors.*]

a. This section15 shall be known and may be cited as the "Equal Benefits Law."

b. For purposes of this section only, the following terms shall have the following meanings:

(1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for an interest in real property, work, labor, services, supplies, equipment, materials, construction, construction related service or any combination of the foregoing.

(2) "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(3) "Contractor" means any individual, sole proprietorship, partnership, joint venture, corporation or other form of doing business.

(4) "Covered contract" means a contract between a contracting agency and a contractor which by itself or when aggregated with all contracts awarded to such contractor by any contracting agency during the immediately preceding twelve months has a value of one hundred thousand dollars or more.

(5) "Domestic partners" means persons who are domestic partners as defined in section 3-240(a) of the administrative code, or who have registered as domestic partners with a contractor pursuant to subdivision n of this

section.

(6) "Employee" means a person employed by a contractor.

(7) "Employment benefits" means benefits including, but not limited to, health insurance, pension, retirement, disability and life insurance, family, medical, parental, bereavement and other leave policies, tuition reimbursement, legal assistance, adoption assistance, dependent care insurance, moving and other relocation expenses, membership or membership discounts, and travel benefits provided by a contractor to its employees.

(8) "Equal benefits" means employment benefits equal to those provided to employees with spouses and to their spouses.

(9) "Household member coverage" means the provision of equal benefits to an employee and to one designated member of such employee's household provided that such household member is eighteen years of age or older, lives permanently with the employee, is unmarried, is not a dependent of any other person and is not the tenant or landlord of the employee.

(10) "Implementing agency" means the city chief procurement officer or any agency or officer that the mayor designates.

c. (1) No contracting agency shall enter into or renew any covered contract with a contractor that discriminates in the provision of employment benefits between employees with spouses and employees with domestic partners and/or between the domestic partners and spouses of such employees; and unless the contractor certifies that:

(a)(i) it offers equal benefits to employees with domestic partners; or

(ii) if the contractor is a religious or denominational institution or organization, or an organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious organization, and the certification required in subsection c(1)(a)(i) of this section would, in the opinion of such contractor, be inconsistent with the religious principles for which such organization was established or maintained, it offers household member coverage to its employees, provided that such employees shall not be required to disclose to the contractor information concerning the nature of their relationship with a designated household member beyond that which such contractor deems necessary to determine eligibility for household member coverage; and

(b) it will not retaliate against an employee in the terms and conditions of employment in the event that such employee requests equal benefits or informs the city that such contractor has failed to provide equal benefits in violation of this section.

(2) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan or plans, to the contracting agency and to the implementing agency prior to entering into a covered contract. The implementing agency shall reject a contractor's certification if it determines that such contractor discriminates in the provision of employment benefits in violation of this section, or if the implementing agency determines that the contractor was created, or is being used, for the purpose of evading the requirements of this section.

d. Every covered contract shall contain a provision detailing the contractor's obligations pursuant to this section, which shall be a material provision of such contract.

e. The requirements of subdivision c shall apply to the employees of a contractor who, during the term of such contract, work within the city of New York, and to those employees of a contractor who work outside of the city of New York and who work directly on fulfilling the terms of a covered contract.

f. In the event that a contractor's actual cost of providing an equal benefit or benefits exceeds that of providing the equivalent spousal benefit or benefits, such contractor shall not be deemed to have discriminated in the provision of employment benefits if such contractor conditions the provision of such equal benefit or benefits upon the employee agreeing to pay the excess costs.

g. Nothing in this section shall be construed to require a contractor to pay income tax liabilities incurred through the provision of equal benefits as required under this section.

h. (1) In the event a contractor is unable to provide a particular equal benefit or benefits as required pursuant to this section despite taking all reasonable measures to do so, such contractor shall not be deemed to have discriminated in the provision of employment benefits for failure to provide such employment benefit or benefits if such contractor provides the cash equivalent of such employment benefit or benefits to the affected employee(s). The contractor shall provide the implementing agency with sufficient proof of such inability to provide such benefit or benefits, which shall include the measures taken to provide such benefit or benefits and the cash equivalent proposed, along with the certification required pursuant to subdivision c of this section. The implementing agency shall, based on submitted evidence, determine whether the contractor's failure to provide such employment benefit or benefits precludes such contractor from entering into a covered contract pursuant to the requirements of this section.

(2) In the event that a contractor is unable to provide a particular equal benefit or benefits as required pursuant to this section because it would require administrative action that would delay the provision of such equal benefit or benefits, then the contractor may request an extension of time to take such administrative action which shall not exceed three months. Applications for such extensions of time shall be submitted to the implementing agency, which shall have the discretion to grant such applications. A contractor may, if necessary, request an additional extension of time to provide the delayed equal benefit or benefits. Applications for such additional extensions of time shall be submitted to the implementing agency, which shall have the discretion to grant such applications provided that the contractor provides the cash equivalent of any delayed equal benefit or benefits to the affected employee(s) during the additional extension period. The implementing agency shall monitor contracting agencies to which it grants extensions of time to ensure compliance with the requirements of this section within such extension periods.

i. Every contractor shall, to the extent permitted by law, provide the contracting agency and the implementing agency access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section.

j. If during the term of a covered contract a contractor fails to provide equal benefits as required pursuant to this section, or if a contractor retaliates against an employee in the terms and conditions of employment for requesting equal benefits or for informing the city that such contractor has failed to provide equal benefits, such failure and/or retaliation shall be deemed a material breach of such contract. Upon receiving information that a contractor has failed to provide equal benefits as required pursuant to this section and/or retaliated against an employee in violation of this section, the implementing agency shall review such information, notify the contractor of such information and offer the contractor an opportunity to respond. If it is found that a violation has occurred, the implementing agency shall take such action as may be appropriate and provided by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking a finding that the contractor is not a responsible contractor pursuant to section 335 of the charter. Nothing in this subdivision shall be construed to limit the remedies a contractor's employee or the domestic partner of such employee may seek in law or equity in the event of such contractor's non-compliance.

k. (1) The requirements of this section may be waived by the implementing agency upon application by a contracting agency under the following circumstances:

(i) for sole source contracts entered into pursuant to section 321 of the charter, where the sole source is

unwilling to comply with the requirements of this section; or

(ii) for emergency contracts entered into pursuant to section 315 of the charter and for which no entity which complies with the requirements of this section and which is capable of fulfilling such contract is immediately available; or

(iii) where compliance with the requirements of this section would violate or be inconsistent with the terms or conditions of a grant, subvention or contract with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract; or

(iv) where there are no prospective bidders for a contract that are willing to comply with the requirements of this section and it is essential for the city to enter into such contract.

(2) All applications for waivers pursuant to this subdivision shall be made in writing. The implementing agency shall, within a reasonable period of time, determine whether to grant such waiver applications. All decisions regarding waivers shall be issued in writing and shall include the reason for the granting or denial of such application. All decisions granting waivers shall become part of the relevant contract file.

(3) Beginning twelve months after the effective date of the local law that added this section and annually thereafter, the implementing agency shall report to the council regarding the twelve month period immediately preceding the report, the number and total dollar value of waivers for which it received applications disaggregated by type of waiver and contracting agency; the number and total dollar value of waivers granted disaggregated by type of waiver and contracting agency; and the number and total dollar value of waivers denied or withdrawn disaggregated by type of waiver and contracting agency.

l. The requirements of this section shall not apply to contracts relating to the investment of assets held in trust by the city or to the investment of city monies.

m. The comptroller shall conduct annual investigations, on a sample basis, to measure contractor compliance with the requirements of this section. Contractors shall make such information available as is necessary to conduct such investigations. Beginning twelve months after the effective date of the local law that added this section and annually thereafter, the comptroller shall report the results of such investigations to the mayor and the council.

n. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partners who are not domestic partners as defined in section 3-240(a) of the administrative code, or who are located in a jurisdiction where no such governmental domestic partnership registry exists; provided, however, that a contractor that institutes such a registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the city of New York. A contractor may also verify the existence of a domestic partnership or marriage to the extent such verification is undertaken equally for employees with domestic partners and employees with spouses.

o. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or to otherwise deny a person or entity city business.

p. This section shall only apply to contracts entered into or renewed on or after the effective date of the local law that added this section.

q. The procurement policy board may promulgate rules to implement the requirements of this section.

HISTORICAL NOTE

Section added L.L. 27/2004 § 1, eff. Oct. 26, 2004. [See Note 1]

NOTE

1. Provisions of 27/2004 § 2:

§ 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

FOOTNOTES

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[Footnote 15]: * [Section heading supplied by editor.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-127

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-127 Procurement of19 energy-using products.

a. For purposes of this section only, the following terms shall have the following meaning:

(1) "Agency" means a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "ENERGY STAR label" means a designation indicating that a product meets the energy efficiency standards set forth by the United States environmental protection agency for compliance with its ENERGY STAR program.

b. In any solicitation by an agency for the purchase or lease of energy-using products, the agency shall include a specification that such products be ENERGY STAR labeled, provided that there are at least six manufacturers that produce such products with the ENERGY STAR label. Nothing herein shall preclude an agency from including a specification in a solicitation for energy-using products requiring that such products be ENERGY STAR labeled if there are fewer than six manufacturers that produce such products with the ENERGY STAR label.

c. In any solicitation by an agency for the purchase or lease of energy-using products which are not available in a form that meets the specifications and criteria of subdivision b of this section, the agency shall include a specification that the product be energy efficient.

d. This section shall not apply to procurements:

(1) where federal or state funding precludes the city from imposing the requirements of this section;

(2) that are emergency procurements pursuant to section three hundred fifteen of the charter; or

(3) where the contracting agency finds that the inclusion of a specification otherwise required by this section would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that such finding by the contracting agency shall, to the extent practicable, be based upon analysis of life-cycle cost-effectiveness.

e. The mayor shall designate an agency or office to develop and implement a plan for fulfilling the requirements of this section.

f. On or before May 1, 2004, the agency or office that the mayor designates pursuant to subdivision e of this section shall submit a report to the city council and the comptroller detailing the city's progress in meeting the goals and requirements of this local law. Such report shall not be required to detail or summarize small purchases pursuant to section three hundred fourteen of the charter.

HISTORICAL NOTE

Section redesignated to be § 6-306 and amended L.L. 119/2005 §§ 2, 3,

eff. Jan. 1, 2007.

Section amended L.L. 30/2003 § 1, eff. May 26, 2003.

Section added L.L. 37/2002 § 2, eff. Nov. 20, 2002. [See Note 1]

NOTE

Provisions of L.L. 37/2002:

Section 1. Declaration of Legislative Findings and Intent. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The ENERGY STAR labeling program tags products that meet energy efficient criteria, and as a result, reduce overall energy use, lessening the amount of fossil fuel being burned by power plants, and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the ENERGY STAR program, manufacturers and retailers sign voluntary agreements allowing them to place ENERGY STAR labels on products that meet or exceed energy-efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers may also use the label in product packaging, promotions and advertising for qualified products. Most ENERGY STAR labeled products have the same or better performance, features, reliability, and price as conventional models.

ENERGY STAR labeled office equipment saves energy by automatically entering a low-power mode when not in use. The energy-efficient models have all of the performance features of standard office equipment, but help to eliminate energy waste through special power management features. ENERGY STAR labeled office products use about half as much electricity as conventional office equipment, thereby significantly reducing energy costs.

The Council finds that the potential benefits associated with the procurement and use of ENERGY STAR products are enormous and easily achievable. On June 10, 2001, the Governor issued an executive order requiring that "State agencies and other affected entities shall select ENERGY STAR energy-efficient products when acquiring new energy-using products or replacing existing equipment." Executive Order No. 111, Section III, June 10, 2001. Given the

cost savings alone, it makes fiscal sense for the City to do the same.

The Council finds that the City of New York should join New York State and lead other municipalities and New Yorkers by example in promoting the use of energy efficient products. Accordingly, the City in its role of market participant should, whenever possible, exercise its purchasing power to ensure that ENERGY STAR and other energy efficient products are acquired.

FOOTNOTES

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[Footnote 19]: * Effective until Jan. 1, 2007. Pursuant to L.L. 119/2005 § 6-127 is redesignated and amended to be § 6-306 on that date.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-128

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-128 [Home loans; predatory lending practices prohibited.]

a. Definitions. For purposes of this section only, the following terms shall have the following meanings:

(1) "Affiliate" means any person that controls, is controlled by, or is under common control with another person, incluing any successors in interest. Control shall mean ownership of ten percent or more of any class of outstanding stock of a company or the power to direct or cause the direction of the management and policies of a person.

(2) "Annual Percentage Rate" means the annual percentage rate for a home loan calculated according to the provisions of the federal truth in lending act, as amended by the home ownership and equity protection act of 1994 (15 U.S.C. §1601, et seq.), and its implementing regulations, as said statute or regulations may be amended from time to time.

(3) "Bona Fide Loan Discount Points" means discount points knowingly paid by the borrower, funded through any source, for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided that the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices.

(4) "City Agency" means a city, county, borough, or other office, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(5) "Compliance Worksheet" means a form or forms contained in each file of a high-cost home loan as defined

by this section provided by each lender certifying as to the presence or absence of each fact or circumstance that could give rise to the classification of the loan as a high-cost home loan, or a predatory home loan, including, without limitation, underwriter judgments as to the credit worthiness of the borrower for the loan and the tangible benefits to the borrower, the compensation paid directly or indirectly to the mortgage broker for the loan, if any, whether the high-cost home loan refinances a special mortgage and whether the high-cost home loan refinances another high-cost home loan made by the same lender or an affiliate of the lender.

(6) "Financial Institution" means a bank, savings and loan association, thrift, credit union, investment company, mortgage banker, mortgage broker, trust company, savings bank, securities broker, municipal securities broker, securities dealer, municipal securities dealer, securities underwriter, municipal securities underwriter, investment trust, bank holding company, finance company or financial services holding company.

(7) "First-Lien Home Loan" means a home loan secured by a first lien on residential real property, a condominium unit or cooperative shares.

(8) "High-Cost Home Loan" means a home loan that meets or exceeds the threshold set forth in either subparagraph a or b of this definition:

(a) the total points and fees on the loan exceed four percent of the total loan amount if the total loan amount is fifty thousand dollars or more; or the greater of five percent of the total loan or one thousand five hundred dollars, if the total loan amount is less than fifty thousand dollars; provided that up to and including four bona fide loan discount points payable by the borrower in connection with the loan transaction shall be excluded from the calculation of the total points and fees payable by the borrower, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the federal national mortgage association or the federal home loan mortgage corporation, whichever is greater; or

(b) for a first-lien home loan, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds six percentage points over the yield on United States treasury securities having comparable periods of maturity to the loan maturity, measured as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender; or for a junior-lien home loan, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds eight percentage points over the yield on United States treasury securities having comparable periods of maturity to the loan maturity, measured as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender. For purposes of subparagraph b of this definition, if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate that is calculated and disclosed on the initial disclosure statement required under section 226.6 of title 12 of the code of federal regulations for the period after the initial or introductory period.

(9) "Home Loan" means a residential mortgage, other than a reverse mortgage transaction, but including an open-end line of credit, in which:

(a) the borrower is a natural person;

(b) the loan is secured by a mortgage on real estate upon which there is located or there is to be located a structure or structures intended principally for occupancy by from one to four families, or by a residential condominium or by a cooperative unit, or shares issued in respect thereof, which is or will be occupied by the borrower as the borrower's principal residence;

(c) the property is located in the city of New York;

(d) the principal amount of the loan does not exceed the greater of:

(i) the conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association; or

(ii) three hundred thousand dollars;

(e) the loan is primarily for personal, family or household purposes; and

(f) the loan is entered into on or after the date this section takes effect.

(10) "Junior-Lien Home Loan" means a home loan secured by a lien on residential real property, condominium unit or cooperative shares that is junior in priority to a first-lien home loan with respect to such property.

(11) "Lender" means any person that extends, purchases or invests in, directly or indirectly, including through collective investment or securitization entities, one or more home loans, or any person that arranges, directly or indirectly, including through collective investment or securitization, for the extension, purchase of or investment in one or more home loans, including, but not limited to, the securities trust trustee and underwriter, and any mortgage broker with respect to home loans. However, for purposes of this definition, a lender shall not be deemed to be:

(a) collective investment entities, including, without limitation, investment companies as defined under the Investment Company Act of 1940, hedge funds, bank collective trust funds, offshore funds and similar entities that are not created to and do not acquire pools of mortgage loans, or issue securities based on and backed by pools of mortgage loans, and any passive investor in the interests created therein that exercises no discretion regarding such interests other than to buy, hold or sell them;

(b) purchasers of mortgage loans or mortgage related securities where the seller is obligated by written agreement and, in fact, intends to repurchase all the loans or securities within 180 days of such sale;

(c) lenders whose interest in high-cost home loans is limited to a security interest or who acquire title as a result of the foreclosure of such security interest, except that such lenders shall not extend credit to a person found to be a predatory lender as defined by this section;

(d) securities broker dealers that trade in but otherwise are not involved in any material respect in the securitization of the underlying mortgages; or

(e) any passive investor in securities or interests in securities based on or backed by a pool of high-cost home loans that exercises no discretion regarding the securities other than to buy, hold or sell them.

(12) "Mortgage Broker" means any person engaged in the business of soliciting, processing, placing, or negotiating home loans who functions as an intermediary for compensation, paid directly or indirectly, between the borrower and the lender in the making of a home loan.

(13) "Person" means any natural person, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture or unincorporated association, or other like organization, engaged in a business or commercial enterprise.

(14) "Points and Fees" means:

(a) all items listed in 15 U.S.C. sections 1605(a)(1) through (4), except interest or the time-price differential;

(b) all charges for items listed under section 226.4(c)(7) of title 12 of the code of federal regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the

charge is paid to an affiliate of the lender;

(c) all compensation not otherwise specified in this definition paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of funds and subsequently assigns the home loan to the person advancing the funds;

(d) the premium of any single-premium credit life, credit disability, credit property, credit unemployment or other life or health insurance, including any payments for debt cancellation or suspension, except that insurance premiums calculated and paid on a monthly basis shall not be included; and

(e) all prepayment fees or penalties that are charged to the borrower if the loan refinances a prior loan made by the same lender or an affiliate of the lender.

(15) "Predatory Lender" means:

(a) a lender that, in the aggregate for such lender and its affiliates, extends, purchases or invests in, during a twelve-month period, the lesser of:

(i) ten individual predatory loans, or

(ii) any number of predatory loans constituting five percent of the total number of home loans made, purchased or invested in during such twelve-month period by such lender and its affiliates.

(b) Notwithstanding subparagraph a of this definition, any lender shall not be a predatory lender if:

(i) the lender obtains the approval of the comptroller of the city of New York for a plan to discontinue the practice of making, purchasing or otherwise investing in predatory loans by the lender and its affiliates, and the lender and its affiliates then completely cease making, purchasing or otherwise investing in predatory loans within 60 days after the plan is approved by the comptroller; and

(ii) the lender and its affiliates remain in compliance with such plan; provided that no more than one plan may be submitted to the comptroller on behalf of any lender, except a subsequent plan may be submitted to the comptroller:

(A) if ten or more years have passed since the same lender submitted a prior plan pursuant to this section; or

(B) by a person solely in connection with the acquisition of a predatory lender after the date of submission of a prior plan if such plan will discontinue the practice of making, purchasing or otherwise investing in predatory loans by the acquired predatory lender within 90 days of such acquisition; or

(iii) when directly or indirectly purchasing or investing in high-cost home loans, or arranging for the purchase or investment in high-cost home loans by collective investment or securitization, the lender reasonably believes, after reasonable investigation, conducted by or on behalf of such lender, based upon reasonable procedures consistent with industry practice for the review of the terms and other characteristics of home loans in connection with the purchase or securitization of, or investment in, high-cost home loans generally, that the home loans purchased or invested in do not constitute predatory loans as defined by this section. For purposes of this clause iii, "procedures consistent with industry practice" shall include, but not be limited to, a random statistical sample of not less than ten percent of the home loans for real property located in the city of New York included in the home loan pool to be securitized or purchased, except that if the lender has an established business relationship with the originator or wholesaler of the home loans being purchased or securitized, as demonstrated by the lender having completed not less than four transactions with said entity during the preceding two years, the lender may conuct a random statistical sample of not less than five percent of the home loans described above. Furthermore, for purposes of this clause, the lender may rely on a complete Compliance Worksheet, as defined in this section, to establish a reasonable belief that a high-cost home loan is not a predatory loan

as defined in subparagraphs a, b, d (only with respect to the lender or an affiliate not having advised or recommended that the borrower obtain a waiver of home loan counseling), o, p and q of paragraph 16 of this subdivision; or

(iv) the lender is an exempt organization qualified under section 501(c)(3) of the internal revenue code, and operates to remediate predatory loans with the approval of, or in association with, a city, state or federal agency.

(16) "Predatory Loan" means any high-cost home loan with one or more of the following characteristics:

(a) Proceeds of the high-cost home loan are used to pay all or part of an existing home loan and the borrower does not receive a reasonable and tangible benefit from the new home loan considering all the circumstances, including the terms of both the new and existing home loan and any other debt being refinanced by the new loan, the cost of the new home loan, and the borrower's circumstances. For purposes of this subparagraph, there shall be a presumption that the borrower has received a reasonable and tangible benefit if, at the time the refinance loan is made, any of the following is true:

(i) as a result of the refinance there is a net reduction in the borrower's total monthly payments on all debts consolidated into the new home loan, and this reduction will continue for at least thirty-six months after the refinance;

(ii) as a result of the refinance there is a reduction in the borrower's blended interest rate on all debts consolidated into the new home loan, and it will not take more than five years for the borrower to recoup the points and fees charged for the refinance; or

(iii) the refinance loan is necessary to prevent default under an existing home loan or other secured debt of the borrower, provided that the lender for the refinanced loan is not the same as or an affiliate of the lender for the existing home loan or other secured debt.

(b) The lender does not reasonably believe at the time it makes the high-cost home loan that the borrower will be able to make the scheduled payments, based upon a consideration of the borrower's current and expected income, current obligations, employment status, and other financial resources (other than equity in the home being financed). There shall be a presumption that the borrower is able to make the scheduled payments if, at the time the loan is made:

(i) the scheduled monthly payments (after giving effect to any index adjustments with respect to the loan) on the loan (including principal, interest, taxes, insurance, assessments, condominium fees, cooperative maintenance expenses) combined with the scheduled payments for all other debt, do not exceed fifty percent of the borrower's documented and verified monthly gross income; and

(ii) the borrower has sufficient residual income as defined in the guidelines established in section 36.4337(e) of title 38 of the code of federal regulations and United States department of veteran administration form 26-6393 to pay essential monthly expenses after paying the scheduled monthly payments and any additional debt; or

(iii) if clauses (i) or (ii) of this subparagraph do not apply, the home loan shall be a predatory loan unless the lender determines and documents prior to the closing of the loan that the making of the loan is justified based upon specific compensating factors, such as the borrower's long-term credit history, the borrower's demonstrated ability to make payments under comparable or greater debt obligations to income ratios, the conservative use of credit standards, the borrower's significant liquid assets or other reasonable factors.

(c) The lender finances points and fees, as defined in paragraph 14 of subdivision a of this section, in an amount that exceeds four percent of the total loan amount for a closed-end high-cost home loan or four percent of the maximum line of credit amount for an open-end line of credit.

(d) Prior to making the high-cost home loan, the lender does not receive a written certification from an independent housing or credit counselor, approved by the United States department of housing and urban development,

that the borrower received counseling on the advisability of the loan transaction and the appropriateness of the loan for the borrower, or waived the loan counseling. Provided that a borrower may waive the loan counseling required pursuant to this subparagraph only by contacting such an independent housing or credit counselor by personal meeting or live telephone conversation at least three days prior to the closing of the home loan and certifying in a notarized written statement to the counselor that he or she has elected to waive the loan counseling, and no such waiver shall be valid if the lender or any of its affiliates has recommended or advised the borrower to make such waiver.

(e) More than two periodic payments required under the high-cost home loan are consolidated and paid in advance from the loan proceeds provided to the borrower other than a loan issued by or guaranteed by an instrumentality of the United States or of any state or any city agency, such as loan products offered by the United States department of veterans administration, fair housing administration or state of New York mortgage agency.

(f) Default by the borrower triggers an interest rate increase. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement, provided the change in the interest rate is not occasioned by the event of a default or the acceleration of the indebtedness.

(g) The lender, at its sole discretion, may accelerate the indebtedness and demand repayment of the entire outstanding balance of a high-cost home loan. This prohibition does not apply when repayment of the loan has been accelerated by bona fide default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan agreement unrelated to the payment schedule, such as bankruptcy or receivership.

(h) The payment schedule for the high-cost home loan requires regular periodic payments that cause the principal balance to increase, except as a result of a temporary forbearance sought by the borrower.

(i) There is a required scheduled payment that is twice as large as the average of the earlier scheduled payments, unless such increases are justified by a reamortization as a result of a new withdrawal in an open-ended line of credit. This provision does not apply:

(i) when the payment schedule is adjusted to the seasonal or irregular income of the borrower; or

(ii) if the purpose of the loan is a construction bridge loan connected with the construction of a dwelling intended to become the borrower's principal residence.

(j) The loan agreement imposes a penalty or fee on the borrower in violation of section 5-501(3)(b) of the general obligations law or section 393(2) of the banking law for paying the balance of the loan, in whole or in part.

(k) The loan agreement contains a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of the borrower.

(l) Any of the proceeds of the high-cost home loan are paid to either a home improvement contractor that is an affiliate of the lender or any home improvement contractor other than:

(i) by an instrument payable solely to the borrower; or

(ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor prior to the disbursement.

(m) The high-cost home loan finances any credit life, credit disability, credit property, credit unemployment, health or life linsurance, or proceeds of the loan are used to make payments pursuant to debt cancellation or suspension agreements. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the home loan.

(n) The borrower is charged any fees or other charges to modify, renew, extend or amend a high-cost home loan

or to defer any payment due under the terms of the loan if, after the modification, renewal, extension or amendment, the loan is still a high-cost home loan or, if no longer a high-cost home loan, the annual percentage rate has not been decreased by at least two percentage points. For purposes of this subparagraph, fees shall not include interest that is otherwise payable and consistent with the provisions of the loan documents. This subparagraph shall not apply to a home loan where the lender is charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing high-cost home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for high-cost home loans.

(o) The high-cost home loan refinances an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears either a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower would lose one or more of the benefits of the special mortgage, unless the lender is provided prior to the loan closing documentation by an independent housing or credit counselor, approved by the United States department of housing and urban development, or the lender who originally made the special mortgage, that a borrower has received home loan counseling on the advantages and disadvantages of the refinancing. There shall be no waiver of the home loan counseling requirement of this subparagraph.

(p) The lender charges points and fees on a high-cost home loan that refinances a prior high-cost home loan extended by the same lender or an affiliate of the lender and the refinancing occurs within five years of the extension of the prior home loan.

(q) The home loan is secured as a result of fraudulent or deceptive marketing or sales efforts.

(r) The home loan violates any applicable provision of the federal truth in lending act, as amended by the home ownership and equity protection act of 1994 (15 U.S.C. §1601, et seq.), the federal real estate settlement procedures act of 1974 (12 U.S.C. §2601, et seq.), or any regulations implementing these statutes, or the restrictions and limitations on high-cost home loans in the general regulations of the New York state banking board (3 NYCRR Part 41), as these statutes and these regulations may be amended from time to time.

b. City Financial Assistance. (1) No city agency shall approve, grant, award, pay, distribute or issue any city financial assistance to a financial institution where the financial institution or an affiliate of the financial institution is a predatory lender as defined by this section.

(2) As a condition to receiving any form of financial assistance from a city agency, a financial institution shall provide a statement to the city agency certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution, or the designee of any such person, and shall be made a part of the award, grant or assistance agreement. A violation of any provision of the certified statement shall constitute a material violation of the conditions of the award, grant or assistance agreement.

(3) After the approval or issuance of an award, grant, or any other financial assistance, the comptroller may conduct an investigation pursuant to subdivision f of this section to determine whether a financial institution or any of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the city agency that approved or issued the financial assistance that the financial institution or its affiliate is a predatory lender and request in writing that the city agency take the appropriate actions to rescind or otherwise void the award, grant or assistance. Upon receipt of the comptroller's request, the city agency shall then make a finding whether or not the

financial institution or its affiliate is a predatory lender in violation of this section. Upon making a finding of violation, the city agency shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to: declaring the financial institution in default of the award, grant or financial assistance agreement; imposing sanctions; recovering the funds advanced; or requiring repayment of any taxes or interest abated or deferred. Within sixty days of receiving notification from the comptroller, the city agency shall place a written explanation in the financial institution's file regarding any action the city agency has taken pursuant to this section, or the reasons no action was taken. Copies of the written explanation shall be immediately forwarded to the comptroller and to the city council. Nothing in this paragraph shall preclude a city agency, in the absence of a request from the comptroller, from investigating and making a determination whether or not a financial institution or its affiliate is a predatory lender in violation of this section.

(4) For the purposes of this section, city financial assistance shall include, but not be limited to, tax abatements (including, but not limited to, abatements of property, sales or mortgage recording taxes), cash payments or grants.

(5) Nothing in this section shall operate to impair any contract or agreement regarding financial assistance in effect on the date this section takes effect, except that renewal, amendment or modification of such contract or agreement occurring on or after the enactment of this section shall be subject to all conditions specified in this section.

(6) Notwithstanding any city laws, rules or regulations to the contrary, any financial institution or its affiliate that has been found by a city agency to be a predatory lender shall be prohibited from applying for or receiving any city financial assistance from any city agency for a period of three years from the date of the last disbursement or approval of an award, grant or other financial assistance, or from the date of the finding, whichever is later.

c. City Contracts. (1) No city agency shall enter into a contract for goods or services with a financial institution or an affiliate of a financial institution where either the financial institution or its affiliate is a predatory lender as defined by this section.

(2) As a condition of contracting with a city agency, the financial institution or its affiliate shall provide a statement to the city agency certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution or affiliate, or the designee of any such person, and shall be made a part of the contract or agreement. A violation of any provision of the certified statement shall constitute a material breach of the contract.

(3) During the period of a city contract, the comptroller may conduct an investigation pursuant to subdivision f of this section to determine whether a financial institution or one of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the city agency that issued the contract that the financial institution or its affiliate is a predatory lender and request in writing that the city agency take the appropriate actions to rescind or otherwise void the contract. Upon receipt of the comptroller's request, the city agency that issued the contract shall then make a finding whether or not the financial institution or its affiliate is a predatory lender in violation of this section. Upon making a finding of violation, the city agency shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to: declaring the financial institution or the affiliate in default; arranging for the alternate procurement of the goods or services to which such contract relates in such manner as to prevent any loss to the city agency that otherwise might result from the immediate cessation of the contract; imposing sanctions; or recovering damages. Within sixty days of receiving notification from the comptroller, the city agency shall place a written explanation in the financial institution's or affiliate's contract file regarding any action the city agency has taken pursuant to this section, or the reasons no action was taken. Copies of the written explanation shall be immediately forwarded to the comptroller and to the city council. Nothing in this paragraph shall preclude a city agency, in the absence of a request from the comptroller, from investigating and making a determination whether or not a financial institution or its affiliate is a predatory lender in violation of this section.

(4) This subdivision shall not apply to any contract evidencing or establishing the terms of any debt obligations issued by or on behalf of the city agency, but shall apply to contracts with respect to agency, underwriting and other services provided in connection with any issuance thereof.

(5) Nothing in this section shall operate to impair any contract in effect on the date this section takes effect, except that renewal, amendment or modification of such contract occurring on or after the enactment of this section shall be subject to all conditions specified in this section.

(6) Nothing in this section shall be construed to limit the authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

(7) Notwithstanding any city laws, rules or regulations to the contrary, any financial institution or affiliate that has been found by a city agency to be a predatory lender shall be prohibited from contracting with any city agency for a period of three years from the termination date of the contract or the date of the finding, whichever is later.

d. Deposits. (1) A financial institution that is a predatory lender as defined by this section, or that has affiliates that are predatory lenders, shall not be a depository for the funds of any city agency.

(2) As a condition for being a depository of city agency funds, the financial institution shall provide a statement to the city banking commission certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution, or the designee of any such person, and shall constitute a material provision of the deposit contract or agreement.

(3) The comptroller shall have the authority to investigate a financial institution that is a depository for city funds or its affiliates pursuant to subdivision f of this section to determine whether the financial institution or any of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the banking commission that the financial institution or its affiliate is a predatory lender and request that the banking commission revoke the designation of the financial institution as a depository pursuant to section 1524 of the city charter. The banking commission shall then make a finding whether the financial institution or its affiliate is a predatory lender pursuant to this section and is in violation of its certification pursuant to section 1524(2)(a)(4) of the city charter. Upon making a finding of violation, the banking commission shall take appropriate action to revoke the financial institution's or affiliate's designation as a depository of the funds of any city agency.

e. Investments. (1) The comptroller may, in his or her discretion, recommend that city moneys or funds not be invested or permitted to remain invested in the stocks, securities or other obligations of any financial institution that is a predatory lender or of an affiliate of a predatory lender.

(2) The comptroller, when investing city funds in a financial institution or an affiliate of the financial institution, may consider the institution or affiliate's compliance with federal, state and local laws or regulations governing predatory lending. The comptroller, in his or her discretion and in accordance with his or her sound investment judgment, may remove investments with financial institutions or their affiliates that fail to comply with such federal, state or local laws or regulation. Provided that in cases where the comptroller decides, in the exercise of his or her discretion and sound investment judgment, not to remove investments in a financial institution or its affiliate that is a predatory lender as defined by this section, the comptroller shall immediately place a written explanation in the financial institution or affiliate's file regarding the reasons for his or her decision not to remove the investments, and forward a copy of the written explanation to the city council.

f. Enforcement. (1) The comptroller shall have the authority to investigate whether financial institutions or their affiliates are predatory lenders as defined in this section.

(2) Whenever the comptroller has reason to believe that a financial institution or its affiliate has violated any provisions of this section, or upon a verified complaint in writing by an aggrieved borrower, the comptroller may conduct an investigation to determine whether a violation has occurred. The verified complaint shall, at a minimum, describe the violation and contain a release signed by the borrower authorizing the comptroller to obtain or otherwise gain access to all loan documents pertaining to the complaint and to any other records, files or information deemed necessary by the comptroller to conduct the investigation. An investigation by the comptroller may include, but is not limited to, reviewing information from regulatory or oversight agencies regarding lending or other activities of a financial institution as it relates to high-cost home loans, and investigating verified complaints from borrowers that a financial institution has engaged in predatory lending practices.

(3) (a) Upon the commencement of an investigation, the comptroller shall notify the financial institution or affiliate in writing, and allow the financial institution or affiliate an opportunity to respond. If the financial institution or affiliate denies the allegations or fails to respond within thirty days of the receipt of written notice, the comptroller shall determine whether the financial institution has violated the provisions of this section.

(b) If the financial institution or affiliate has been found to have violated the provisions of this section, the financial institution or affiliate shall have thirty days to cure the violation or to submit to the comptroller for his or her approval a corrective plan to discontinue the predatory lending practices according to clauses i and ii of subparagraph b of paragraph fifteen of subdivision a of this section. Upon good cause shown, the comptroller may extend the initial thirty-day period up to an additional thirty days.

(c) If the financial institution or affiliate fails to cure the violation within the thirty days or to submit and obtain the comptroller's approval for a corrective plan pursuant to this section, the comptroller shall inform the appropriate city agency or the banking commission, as applicable, and request that it take action pursuant to either paragraph 3 of subdivision b, paragraph 3 of subdivision c, or paragraph 3 of subdivision d of this section. Until the comptroller gives notice to the applicable city agency or banking commission pursuant to this subparagraph, the comptroller shall hold confidential any information he receives, gathers, produces, collects or generates as a result of any investigation pursuant to this section. However, nothing herein shall restrict the comptroller from exchanging information with government agencies in the furtherance of an investigation pursuant to this section.

(4) Any person found to have made a false statement in a certification required under this section shall be liable to the city for a civil penalty of not less than $25,000 in addition to the other remedies that the city agency may have under this local law.

HISTORICAL NOTE

Section added L.L. 36/2002 § 2, eff. Feb. 18, 2003. [See Note 1]

NOTE

1. Provisions of L.L. 36/2002:

Section 1. Declaration of legislative findings and intent. The subprime lending industry has grown rapidly in the last few years, increasing almost tenfold since 1993. Assisted by unscrupulous mortgage brokers and home improvement contractors, some abusive subprime lenders aggressively market high-cost home loans that borrowers are unable to repay, and engage in other unfair or fraudulent credit practices that are stripping families and communities of the equity they have in their homes. These practices are commonly referred to as "predatory lending."

Predatory lending practices, as documented by the United States Departments of Housing and Urban Development and Treasury Task Force and other commentators, include, among other things: repeated refinancing of a loan without any tangible benefit to the borrower; charging excessive prepayment penalties; financing single-premium credit insurance; encouraging a borrower to default on his or her other debts; failing to comply with federal

requirements with respect to the disclosure of loan terms and loan settlements; making a loan for more than the borrower can repay; financing excessive points and fees; requiring advance payments; charging fees to modify a loan or to defer payments; permitting acceleration of loans at lenders' discretion; and increasing interest rates upon default.

These practices can lock borrowers into high-rate loans even when they qualify for lower rates; strip equity from borrowers' homes; lead to impoverishment as borrowers pay thousands and tens of thousands of dollars in excessive costs, while owning less and less of their homes; and lead to increased foreclosures with profoundly damaging consequences for both families and neighborhoods.

Because of increased property values and home equity, some New York residents in low-income areas are "asset rich and cash poor" and are thus prime targets for predatory lending practices. In particular, it has been documented that subprime lending is heavily concentrated in lower-income and minority areas of the City of New York, which can lead to a significant economic drain on lower-income families and communities throughout the City.

The Council of the City of New York finds that the City should not encourage or support predatory lending, which damages the economic health of our City and its residents, by doing business with institutions that engage, directly or indirectly, in predatory lending practices. The Council finds that the City should not do business with institutions that adversely impact City revenues by siphoning resources from communities, thereby decreasing City sales and property tax revenues, and that increase City expenditures necessary to assist residents that are impoverished by predatory lending. The Council further finds that the City should not permit home improvement contractors to steer borrowers to specific lenders.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-129

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-129 Participation by minority-owned and women-owned business enterprises and emerging business enterprises in city procurement.

a. Programs established. There are hereby established a program, to be administered by the department of small business services in accordance with the provisions of this section, designed to enhance participation by minority-owned and women-owned business enterprises in city procurement and a program, also to be administered by such department in accordance with the provisions of this section, designed to enhance participation by emerging business enterprises in city procurement.

b. Policy. It is the policy of the city to seek to ensure fair participation in city procurement; and in furtherance of such policy to fully and vigorously enforce all laws prohibiting discrimination, and to promote equal opportunity in city procurement by vigorously enforcing the city's contractual rights and pursuing its contractual remedies. The program established pursuant to this section is intended to address the impact of discrimination on the city's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for city business, and lowering contract costs.

c. Definitions. For purposes of this section, the following terms shall have the following meaning:

(1) "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Agency chief contracting officer" means the person to whom an agency head has delegated authority to

organize and supervise the agency's procurement activity.

(3) "Availability rate" means the percentage of business enterprises within an industry classification that are owned by minorities, women or persons who are socially and economically disadvantaged willing and able to perform agency contracts.

(4) "Bidder" means any person submitting a bid or proposal in response to a solicitation for such bid or proposal from an agency.

(5) "Bidders list" or "proposers list" means a list maintained by an agency that includes persons from whom bids or proposals can be solicited.

(6) "City" means the city of New York.

(7) "City chief procurement officer" means the person to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(8) "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the work called for in a contract. In determining whether an MBE, WBE or EBE is performing a commercially useful function, factors including but not limited to the following shall be considered:

(i) whether it has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses;

(ii) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and

(iii) whether it purchases goods and/or services from another business and whether its participation in the contract would have the principal effect of allowing it to act as a middle person or broker in which case it may not be considered to be performing a commercially useful function for purposes of this section.

(9) "Commissioner" shall mean the commissioner of small business services.

(10) "Construction contract" means any agreement with an agency for or in connection with the construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind.

(11) "Contract" means any agreement, purchase order or other instrument whereby the city is committed to expend or does expend funds in return for goods, professional services, standard services, architectural and engineering services, or construction.

(12) "Contractor" means a person who has been awarded a contract.

(13) "Directory" means a list prepared by the division of firms certified pursuant to section 1304 of the charter.

(14) "Division" shall mean the division of economic and financial opportunity within the department of small business services.

(15) "Geographic market of the city" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

(16) "Goal" means a numerical target.

(17) "Graduate MBE," "graduate WBE" or "graduate EBE" means an MBE, WBE or EBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

(18) "Industry classification" means one of the following classifications:

(i) construction;

(ii) professional services;

(iii) standard services; and

(iv) goods.

(19) "Joint venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.

(20) "MBE" means a minority-owned business enterprise certified in accordance with section 1304 of the charter.

(21) "Minority group" means Black Americans; Asian Americans, and Hispanic Americans, provided that the commissioner shall be authorized to add additional groups to this definition upon a finding that there is statistically significant disparity between the availability of firms owned by persons in such a group and the utilization of such firms in city procurement.

(22) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

(23) "Professional services" means services that require specialized skills and the exercise of judgment, including but not limited to accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, and construction management services.

(24) "Qualified joint venture agreement" means a joint venture between one or more MBEs, WBEs, and/or EBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the contract, as set forth in the joint venture agreement, is at least 25% of the total profit.

(25) "Scope of work" means specific tasks required in a contract and/or services or goods that must be provided to perform specific tasks required in a contract.

(26) "Standard services" means services other than professional services.

(27) "Subcontractor" means a person who has entered into an agreement with a contractor to provide something that is required pursuant to a contract.

(28) "Utilization rate" means the percentage of total contract expenditures expended on contracts or subcontracts with firms that are owned by women, minorities, or persons who are socially and economically disadvantaged, respectively, in one or more industry classifications.

(29) "WBE" means a women-owned business enterprise certified in accordance with section 1304 of the charter.

(30) "EBE" means an emerging business enterprise certified in accordance with section 1304 of the charter.

d. Citywide goals. (1) The citywide contracting participation goals for MBEs, WBEs and EBEs shall be as follows:

For construction contracts under one million dollars:

Category:	Participation goal:
Black Americans	12.63% of total annual agency expenditures on such contracts
Hispanic Americans	9.06% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For professional services contracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	9% of total annual agency expenditures on such contracts
Hispanic Americans	5% of total annual agency expenditures on such contracts
Caucasian females	16.5% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For standard services contracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	9.23% of total annual agency expenditures on such contracts
Hispanic Americans	5.14% of total annual agency expenditures on such contracts
Caucasian females	10.45% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For goods contracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	7.47% of total annual agency expenditures on such contracts
Asian Americans	5.19% of total annual agency expenditures on such contracts
Hispanic Americans	4.99% of total annual agency expenditures on such contracts
Caucasian females	17.87% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For construction subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 12.63% of total annual agency expenditures on such subcontracts

Asian Americans 9.47% of total annual agency expenditures on such subcontracts

Hispanic Americans 9.06% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

For professional services subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9% of total annual agency expenditures on such subcontracts

Hispanic Americans 5% of total annual agency expenditures on such contracts

Caucasian females 16.5% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

(2) Agencies shall develop agency utilization plans pursuant to subdivision g of this section. Agencies shall seek to ensure substantial progress toward the attainment of each of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in subdivision i of this section, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals.

(4)(A) Beginning twelve months after the effective date of the local law that added this section and every two years thereafter, the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities and women to the utilization rates of such firms in agency contracts and subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. In making such revision, the commissioner shall consider the extent to which discrimination continues to have an impact on the ability of minorities and women to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals.

(B) Beginning twelve months after the effective date of the local law that added this section and every two years thereafter, the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses.

e. Responsibilities of the division. (1) The division shall create and maintain and periodically update directories by industry classification of MBEs, WBEs, and EBEs which it shall supply to all agencies, post on its website and on other relevant city websites and make available for dissemination and/or public inspection at its offices and other locations within each borough.

(2) The division shall make its resources available to assist agencies and contractors in (i) determining the availability of MBEs, WBEs, and EBEs to participate in their contracts as prime contractors and/or subcontractors; and (ii) identifying opportunities appropriate for participation by MBEs, WBEs, and EBEs in contracts.

(3) The division shall develop and maintain relationships with organizations representing contractors, including MBEs, WBES,* and EBEs, and solicit their support and assistance in efforts to increase participation of MBEs, WBES,*26 and EBEs in city procurement.

(4) The division shall coordinate with city and state entities that maintain databases of MBEs, WBES,* and EBEs and work to enhance city availability data and directories.

(5) The division shall keep agency M/WBE and EBE officers informed of conferences, contractor fairs, and other services that are available to assist them in pursuing the objectives of this section.

(6) The division shall conduct, coordinate and facilitate technical assistance and educational programs for MBEs, WBES,* and EBEs and other contractors designed to enhance participation of MBEs, WBES,* and EBEs in city procurement. The division shall further develop a clearinghouse of information on programs and services available to MBEs, WBES, and EBEs.

(7) The division shall develop standardized forms and reporting documents for agencies and contractors to facilitate the reporting requirements of this section.

(8) The division shall direct and assist agencies in their efforts to increase participation by MBEs, WBES,* and EBEs in any city-operated financial, technical, and management assistance program.

(9) The division shall study and recommend to the commissioner methods to streamline the M/WBE and EBE certification process.

(10) Each fiscal year the division, in consultation with the city chief procurement officer, shall audit at least 5% of all contracts for which utilization plans are established in accordance with subdivision i of this section and 5% of all contracts awarded to MBEs, WBES,* and EBEs to assess compliance with this section. All solicitations for contracts for which utilization plans are to be established shall include notice of potential audit.

(11) The division shall assist agencies in identifying and seeking ways to reduce or eliminate practices such as bonding requirements or delays in payment by prime contractors that may present barriers to competition by MBEs, WBES,*27 and EBEs.

f. Responsibilities of agency M/WBE officers. Each agency head shall designate a deputy commissioner or other executive officer to act as the agency M/WBE officer who shall be directly accountable to the agency head concerning the activities of the agency in carrying out its responsibilities pursuant to this section. The duties of the M/WBE officer shall include, but not be limited to:

(i) creating the agency's utilization plan in accordance with subdivision g of this section;

(ii) acting as the agency's liaison with the division;

(iii) acting as a liaison with organizations and/or associations of MBEs, WBEs, and EBEs, informing such organizations and/or associations of the agency's procurement procedures, and advising them of future procurement opportunities;

(iv) ensuring that agency bid solicitations and requests for proposals are sent to MBEs, WBEs, and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

(v) referring MBEs, WBEs, and EBEs to technical assistance services available from agencies and other organizations;

(vi) reviewing requests for waivers of target subcontracting percentages and/or modifications of participation

goals and contractor utilization plans in accordance with paragraphs 11 and/or 12 of subdivision i of this section; (vii) working with the division and city chief procurement officer in creating directories as required pursuant to subdivision k of this section. In fulfilling this duty, the agency M/WBE officer shall track and record each contractor that is an MBE, WBE or EBE and each subcontractor hired pursuant to such officer's agency contracts that is an MBE, WBE or EBE, and shall share such information with the commissioner and the city chief procurement officer;

(viii) for contracts for which utilization goals have been established pursuant to subdivision i of this section, monitoring each contractor's compliance with its utilization plan by appropriate means, which shall include, but need not be limited to, job site inspections, contacting MBEs, WBEs and EBEs identified in the plan to confirm their participation, and auditing the contractor's books and records;

(ix) monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in such plan; and

(x) providing to the city chief procurement officer information for the reports required in subdivision l of this section and providing any other plans and/or reports required pursuant to this section or requested by the city chief procurement officer.

g. Agency utilization plans. (1) Beginning May 15, 2006, and on April 1 of each year thereafter, each agency which has made procurements in excess of five million dollars during the fiscal year which ended on June 30 of the preceding calendar year shall submit an agency utilization plan for the fiscal year commencing in July of the year when such plan is to be submitted to the commissioner. Upon approval by the commissioner such plan shall be submitted to the speaker of the council. Each such plan shall, at a minimum, include the following:

(i) the agency's participation goals for MBEs, WBEs and EBEs for the year;

(ii) an explanation for any agency goal that is different than the participation goal for the relevant group and industry classification as determined pursuant to subdivision d of this section;

(iii) a list of the names and titles of agency personnel responsible for implementation of the agency utilization plan;

(iv) methods and relevant activities proposed for achieving the agency's participation goals; and

(v) any other information which the agency or the commissioner deems relevant or necessary.

(2) An agency utilization plan may be amended from time to time to reflect changes in the agency's projected expenditures or other relevant circumstances and resulting changes in such agency's participation goals. Such amendments shall be submitted to the commissioner, the city chief procurement officer and the speaker of the council at least thirty days prior to implementation.

h. Achieving agency participation goals. (1) Each agency head shall be directly accountable for the goals set forth in his or her agency's utilization plan.

(2) Each agency shall make all reasonable efforts to meet the participation goals established in its agency utilization plan. Agencies shall, at a minimum, use the following methods to achieve participation goals:

(i) Agencies shall engage in outreach activities to encourage MBEs, WBEs and EBEs to compete for all facets of their procurement activities, including contracts awarded by negotiated acquisition, emergency and sole source contracts, and each agency shall seek to utilize MBEs, WBEs and/or EBEs for all types of goods, services and construction they procure.

(ii) Agencies shall encourage eligible businesses to apply for certification as MBEs, WBEs and EBEs and

inclusion in the directories of MBEs, WBEs and EBEs. Agencies shall also encourage MBEs, WBEs and EBEs to have their names included on their bidders lists, seek pre-qualification where applicable, and compete for city business as contractors and subcontractors. Agencies are encouraged to advertise procurement opportunities in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations, and send written notice of specific procurement opportunities to minority and women's business organ- izations.

(iii) All agency solicitations for bids or proposals shall include information referring potential bidders or proposers to the directories of MBEs, WBEs and EBEs prepared by the division.

(iv) In planning procurements, agencies shall consider the effect of the scope, specifications and size of a contract on opportunities for participation by MBEs, WBEs and EBEs.

(v) For construction contracts, agencies shall consider whether to enter into separate prime contracts for construction support services including, but not limited to, trucking, landscaping, demolition, site clearing, surveying and site security.

(vi) Prior to soliciting bids or proposals for contracts valued at over ten million dollars, an agency shall submit the bid or proposal to the city chief procurement officer for a determination whether it is practicable to divide the proposed contract into smaller contracts and whether doing so will enhance competition for such contracts among MBEs, WBEs and EBEs and other potential bidders or proposers. If the city chief procurement officer determines that it is both practicable and advantageous in light of cost and other relevant factors to divide such contracts into smaller contracts, then he or she shall direct the agency to do so.

(vii) Agencies shall examine their internal procurement policies, procedures and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs and EBEs in city procurement.

(viii) Agency M/WBE officers shall, in accordance with guidelines established by the city chief procurement officer, establish a process for quarterly meetings with MBEs, WBEs and EBEs to discuss what the agency looks for in evaluating bids and proposals.

(ix) Agencies shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs and EBEs.

i. Participation goals for construction and professional services contracts. (1) Prior to issuing the solicitation of bids or proposals for individual construction and professional services contracts, agencies shall establish a target subcontracting percentage for the contract and participation goals for MBEs, WBEs and EBEs. The "target subcontracting percentage" for the contract shall represent the percentage of the total contract which the agency anticipates a typical prime contractor in the relevant industry would in the normal course of business award to one or more subcontractors for amounts under one million dollars. The participation goals established for a contract shall represent a percentage of the total dollar value of all subcontracts for amounts under one million dollars pursuant to the award. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to subdivision d of this section. In determining the participation goals for a particular contract, an agency shall consider the following factors:

(i) the scope of work;

(ii) the availability of MBEs, WBEs and EBEs able to perform the particular tasks required in the contract;

(iii) the extent to which the type of work involved in the contract presents subcontracting opportunities for amounts under one million dollars;

(iv) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs and EBEs in the agency's future contracts; and

(v) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals (i) for procurements described in subdivision q of this section; or

(ii) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals.

(3) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars, the contractor shall be subject to participation goals unless such goals are modified by the agency in accordance with this section.

(4) For each contract in which participation goals are established, the agency shall include in its solicitation and/or bidding materials, a referral to the directories prepared by the division pursuant to this section.

(5) For each contract for which participation goals are established the contractor shall be required to submit with its bid or proposal, a utilization plan indicating the percentage of the work it intends to subcontract, and the percentage of work it intends to award to subcontractors for amounts under one million dollars, and, in cases where the contractor intends to award subcontracts for amounts under one million dollars, a description of the type and dollar value of work designated for participation by MBEs, WBEs and/or EBEs, and the time frames in which such work is scheduled to begin and end. When the utilization plan indicates that the bidder or proposer does not intend to award the target subcontracting percentage, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award waiver pursuant to paragraph 11 of this subdivision.

(6) For each contract for which a utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, the contractor submit a list of persons to which it intends to award subcontracts within the next twelve months. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time to propose alternate subcontractors.

(7) For each contract for which a utilization plan has been submitted, the contractor shall, with each voucher for payment, and/or periodically as the agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); the names, addresses and contact numbers of each MBE, WBE or EBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE, WBE or EBE. The contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE, WBE or EBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

(8) If payments made to, or work performed by, MBEs, WBEs or EBEs are less than the amount specified in the contractor's utilization plan, the agency shall take appropriate action in accordance with subdivision o of this section, unless the contractor has obtained a modification of its utilization plan pursuant to paragraph 12 of this subdivision.

(9) When advertising a solicitation for bids or proposals for a contract for which a participation goal has been established, agencies shall include in the advertisement a general statement that the contract will be subject to

participation goals for MBEs, WBEs and/or EBEs.

(10) In the event that a contractor with a contract that includes a utilization plan submits a request for a change order the value of which exceeds ten percent of such contract, the agency shall establish participation goals as if for a new contract for the work to be performed pursuant to such change order.

(11) Pre-award waiver. (i) Subject to subparagraph (ii) of this paragraph, the contracting agency may grant a full or partial waiver of the target subcontracting percentage to a bidder or proposer who demonstrates that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. The contracting agency shall make its determination in light of factors which shall include, but not be limited to, whether the bidder or proposer has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the target subcontracting percentage. In making such determination, the agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, and whether the bidder or proposer has made good faith efforts to identify portions of the contract that it intends to subcontract. Within thirty days of the registration of a contract, the city chief contracting officer shall notify the council of any such waiver granted with respect to the contract.

(ii) The agency M/WBE officer shall provide written notice of requests for a full or partial waiver of the target subcontracting percentage to the division and the city chief procurement officer and shall not approve any such request without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer shall notify the speaker of the council in writing within thirty days of the registration of a contract for which a request for a full or partial waiver of a target subcontracting percentage was granted, provided that where an agency has been authorized to grant waivers without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of contractor, the original target subcontracting percentage, the waiver request, including all documentation, and an explanation for the approval of such request.

(12) Modification of utilization plans. (i) A contractor may request modification of its utilization plan after the award of a contract. Subject to subparagraph (ii) of this paragraph, an agency may grant such request if it determines that such contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by the agency for the contract. In making such determination, the agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(A) The contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(B) The contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;

(C) The contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs, WBEs or EBEs that their interest in the contract was solicited;

(D) The contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs, WBEs and/or EBEs in the contractor utilization plan, and for which the contractor claims an inability to retain MBEs, WBEs or EBEs; (E) The contractor held meetings with MBEs, WBEs and/or EBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(F) The contractor made efforts to negotiate with MBEs, WBEs and/or EBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(G) Timely written requests for assistance made by the contractor to the agency M/WBE liaison officer and to the division;

(H) Description of how recommendations made by the division and the contracting agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs, WBEs and/or EBEs.

(ii) The agency M/WBE officer shall provide written notice of requests for such modifications to the division and the city chief procurement officer and shall not approve any such request for modification without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer, shall notify the speaker of the council in writing within seven days of the approval of a request for modification of a utilization plan, provided that where an agency has been authorized to grant modifications without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original utilization plan, the modification request, including all documentation, and an explanation for the approval of such request.

(iii) The agency M/WBE officer shall provide written notice to the contractor of its determination that shall include the reasons for such determination.

(13) For each contract in which a contracting agency has established participation goals, the agency shall evaluate and assess the contractor's performance in meeting each such goal. Such evaluation and assessment shall be a part of the contractor's overall contract performance evaluation required pursuant to section 333 of the charter.

j. Determining credit for MBE, WBE and EBE participation. (1) An agency's achievement of its annual goals shall be calculated as follows:

(i) The total dollar amount that an agency has paid or is obligated to pay to a prime contractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(ii) The total dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(iii) For requirements contracts, credit may be given for the actual dollar amount paid under the contract.

(iv) Where one or more MBEs, WBEs or EBEs is participating in a qualified joint venture, the dollar amount of the percentage of total profit to which MBEs, WBEs or EBEs are entitled pursuant to the joint venture agreement shall be credited toward the relevant goal.

(v) No credit shall be given for participation in a contract by an MBE, WBE or EBE that does not perform a commercially useful function.

(vi) No credit shall be given for the participation in a contract by any company that has not been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter.

(vii) In the case of a contract for which the contractor is paid on a commission basis, the dollar amount of the contract may be determined on the basis of the commission earned or reasonably anticipated to be earned under the

contract.

(viii) No credit shall be given to a contractor for participation in a contract by a graduate MBE, WBE or EBE.

(ix) The participation of a certified company shall not be credited toward more than one participation goal.

(2) A contractor's achievement of each goal established in its utilization plan shall be calculated in the same manner as described for calculating the achievement of agency utilization goals as described in paragraph (1) of this subdivision; provided that no credit shall be given to the contractor for the participation of a company that is not certified in accordance with section 1304 of the charter before the date that the agency approves the subcontractor.

k. Small purchases. (1) Each agency shall, consistent with the participation goals established in subdivision d of this section and such agency's utilization plan, establish goals for purchases valued at or below five thousand dollars which shall be made from MBEs, WBEs and/or EBEs.

(2) Whenever an agency solicits bids or proposals for small purchases pursuant to section three hundred fourteen of the charter, the agency shall maintain records identifying the MBEs, WBEs and EBEs it solicited, which shall become part of the contract file.

l. Compliance reporting. (1) The city chief procurement officer, in consultation with the division shall prepare and submit semiannual reports to the speaker of the council as described in this section. A preliminary report containing information for the fiscal year in progress shall be submitted to the speaker of the council by April 1, 2007, and annually thereafter, and a final report containing information for the preceding fiscal year shall be submitted to the speaker of the council by October 1, 2007 and annually thereafter. The reports, which shall also be posted on the division's website, shall contain the following information, disaggregated by agency:

(i) the number and total dollar value of contracts awarded, disaggregated by industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(ii) the number and total dollar value of contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(iii) the total number and total dollar value of contracts awarded valued at less than five thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group;

(iv) the total number and total dollar value of contracts awarded valued at between five thousand and one hundred thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(v) the total number and total dollar value of contracts awarded valued at between one hundred thousand dollars and one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vi) the total number and total dollar value of contracts awarded valued at over one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vii) for those contracts for which an agency set participation goals in accordance with subdivision i of this section:

A. The number and total dollar amount of such contracts disaggregated by industry classification;

B. the number and total dollar value of such contracts that were awarded to qualified joint ventures and the total dollar amount attributed to the MBE, WBE or EBE joint venture partners, disaggregated by minority and gender group and industry classification;

C. The number and total dollar value of subcontracts entered into pursuant to such contracts and the number and total dollar amount of such subcontracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification; and

D. a list of the full or partial waivers of target subcontracting percentages granted for such contracts pursuant to paragraph 11 of subdivision i of this section, and the number and dollar amount of those contracts for which such waivers were granted, disaggregated by industry classification; E. a list of the requests for modification of participation requirements for such contracts made pursuant to paragraph 12 of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such modifications were granted, disaggregated by industry classification;

(viii) a detailed list of each complaint received pursuant to paragraph 1 of subdivision o of this section which shall, at a minimum, include the nature of each complaint and the action taken in investigating and addressing such complaint including whether and in what manner the enforcement provisions of subdivision o of this section were invoked and the remedies applied;

(ix) a detailed list of all non-compliance findings made pursuant to paragraph 4 of subdivision o of this section and actions taken in response to such findings;

(x) the number of firms certified or recertified in accordance with section 1304 of the charter during the six months immediately preceding such report;

(xi) the number and percentage of contracts audited pursuant to section paragraph 10 of subdivision e of this section and a summary of the results of each audit.

(xii) a summary of efforts to reduce or eliminate barriers to competition as required pursuant to paragraph 11 of subdivision e of this section;

(xiii) A list of all solicitations submitted to the city chief procurement officer pursuant to subparagraph vi of paragraph 2 of subdivision h of this section and a summary of the determination made regarding each such submission; and

(xiv) any other information as may be required by the commissioner.

(2) The annual reports submitted in October shall, in addition, contain a determination made by the commissioner, as to whether each agency has made substantial progress toward achieving its utilization goals and whether the city has made substantial progress toward achieving the citywide goals established pursuant to subdivision d of this section. The first three annual reports shall also include detailed information about steps that agencies have taken to initiate and ramp up their efforts to comply with the requirements this section.

(3) The data that provide the basis for the reports required by this subdivision shall be made available electronically to the council at the time the reports are submitted.

m. Agency compliance. (1) The agency shall submit to the commissioner and the city chief procurement officer such information as is necessary for the city chief procurement officer to complete his or her report as required in subdivision l of this section. The commissioner and the city chief procurement officer shall review each agency's submissions and whenever it has been determined that an agency is not making adequate progress toward the goals established in its agency utilization plan, the commissioner and the city chief procurement officer shall act to improve

such agency's performance, and may take any of the following actions:

(i) require the agency to submit more frequent reports about its procurement activity;

(ii) require the agency to notify the commissioner and the city chief procurement officer, prior to solicitation of bids or proposals for, and/or prior to award of, contracts in any category where the agency has not made adequate progress toward achieving its utilization goals;

(iii) reduce or rescind contract processing authority delegated by the mayor pursuant to sections 317 and 318 of the charter; and

(iv) any other action the city chief procurement officer or the commissioner deem appropriate.

(2) Noncompliance. Whenever the city chief procurement officer or the commissioner finds that an agency has failed to comply with its duties under this section, he or she shall attempt to resolve such noncompliance informally with the agency head. In the event that the agency fails to remedy its noncompliance after such informal efforts, the city chief procurement officer shall submit such findings in writing to the mayor and the speaker of the council, and the mayor shall take appropriate measures to ensure compliance.

(3) Failure by an agency to submit information required by the division or the city chief procurement officer, in accordance with this section, including but not limited to the utilization plan required pursuant to subdivision g of this section, shall be deemed noncompliance.

n. Pre-qualification. An agency establishing a list of pre-qualified bidders or proposers may deny pre-qualification to prospective contractors who fail to demonstrate in their application for pre-qualification that they have complied with applicable federal, state and local requirements for participation of MBEs, WBEs and EBEs in procurements. A denial of pre-qualification may be appealed pursuant to applicable procurement policy board rules.

o. Enforcement. (1) Any person who believes that a violation of the requirements of this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section or such rules, including, but not limited to, any contractor utilization plan, has occurred may submit a complaint in writing to the division, the city chief procurement officer and the comptroller. Such complaint shall be signed and dated. The division shall promptly investigate such complaint and determine whether there has been a violation.

(2) Any complaint alleging fraud, corruption or other criminal behavior on, the part of a bidder, proposer, contractor, subcontractor or supplier shall be referred to the commissioner of the department of investigation.

(3) Contract award. (i) When an agency receives a protest from a bidder or proposer regarding a contracting action that is related to this section, the agency shall send copies of the protest and any appeal thereof, and any decisions made on the protest or such appeal, to the division and the comptroller.

(ii) Whenever a contracting agency has determined that a bidder or proposer has violated this section, or rules promulgated pursuant to its provisions, the agency may disqualify such bidder or proposer from competing for such contract and the agency may revoke such bidder's or proposer's prequalification status.

(4) Contract administration. (i) Whenever an agency believes that a contractor or a subcontractor is not in compliance with this section, rules promulgated pursuant to its provisions or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the agency shall send a written notice to the city chief procurement officer, the division and the contractor describing the alleged noncompliance and offering an opportunity to be heard. The agency shall then conduct an investigation to determine whether such contractor or subcontractor is in compliance.

(ii) In the event that a contractor has been found to have violated this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the contracting agency shall, after consulting with the city chief procurement officer and the division, determine whether any of the following actions should be taken:

(A) enter an agreement with the contractor allowing the contractor to cure the violation;

(B) revoke the contractor's pre-qualification to bid or make proposals for future contracts;

(C) make a finding that the contractor is in default of the contract;

(D) terminate the contract;

(E) declare the contractor to be in breach of contract;

(F) withhold payment or reimbursement;

(G) determine not to renew the contract;

(H) assess actual and consequential damages;

(I) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by this section, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;

(J) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or

(K) take any other appropriate remedy.

(5) To the extent available pursuant to rules of the procurement policy board, a contractor may seek resolution of a dispute regarding a contract related to this section. The contracting agency shall submit a copy of such submission to the division.

(6) Whenever an agency has reason to believe that an MBE, WBE or EBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function, or has violated any provision of this section, the agency shall notify the commissioner who shall determine whether the certification of such business enterprise should be revoked.

(7) Statements made in any instrument submitted to a contracting agency pursuant to these rules shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE, WBE or EBE in any instrument submitted pursuant to these rules shall, in addition, be grounds for revocation of its certification.

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

p. Procurements by elected officials and the council. (1) In the case of procurements by independently elected city officials other than the mayor, where these rules provide for any action to be taken by the city chief procurement

officer, such action shall instead be taken by such elected officials.

(2) In the case of procurements by the council, where these rules provide for any action to be taken by the city chief procurement officer, such action shall instead be taken by the speaker of the council.

q. Applicability. Agencies shall not be required to apply participation requirements to the following types of contracts:

(i) those subject to federal or state funding requirements which preclude the city from imposing the requirements of this subdivision;

(ii) those subject to federal or state law participation requirements for MBEs, WBEs and/or EBEs;

(iii) contracts between agencies;

(iv) procurements made through the United States general services administration or another federal agency, or through the New York state office of general services or another state agency, or any other governmental agency.

(v) emergency procurements pursuant to section three hundred fifteen of the charter;

(vi) sole source procurements pursuant to section three hundred twenty-one of the charter;

(vii) small purchases as defined pursuant to section three hundred fourteen of the charter; and

(viii) contracts awarded to not-for-profit organizations.

r. Comptroller. The comptroller shall randomly examine contracts for which contractor utilization plans are established to assess compliance with such plans. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential comptroller examinations.

HISTORICAL NOTE

Section added L.L. 129/2005 § 3, eff. Apr. 28, 2006, except that subd. g

effective Dec. 29, 2005. [See Note 1]

Section heading amended L.L. 12/2006 § 3, eff. May 23, 2006. [See

Note 2]

Subd. a amended L.L. 12/2006 § 3, eff. May 23, 2006. [See Note 2]

Subd. c amended L.L. 12/2006 § 3, eff. May 23, 2006. [See Note 2]

Subd. d amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. e amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. f amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. g amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. h amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. i amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. j amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. k amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. l amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. n amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. o amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. q amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

NOTE

1. Provisions of L.L. 129/2005:

§ 4. Severability. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. Effective date. a. Sections 1 and 2 of this local law shall take effect upon enactment [Dec. 29, 2005]. Section 3 of this local law shall take effect 120 days after enactment except for subdivision g of section 6-129 which shall be effective upon enactment and further provided that any agency, including, but not limited to, the procurement policy board, may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

b. The council shall review the annual reports prepared pursuant to this local law and take action to repeal provisions for participation goals upon finding that such provisions are no longer necessary to address the impact of discrimination on the city's procurement.

2. Provisions of L.L. 12/2006:

§ 5. Severability. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. Effective date. a. Sections 1, 2, 3 and 5 of this local law shall take effect immediately [May 23, 2006], and section 4 of this local law shall take effect 180 days after the date of enactment of this local law; provided that any agency, including, but not limited to, the procurement policy board, may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

b. The council shall review the annual reports prepared pursuant to this local law and take action to repeal provisions for participation goals upon finding that such provisions are no longer necessary to address the impact of discrimination on the city's procurement.

FOOTNOTES

26

[Footnote 26]: * Should be "WBEs".

27

[Footnote 27]: * Should be "WBEs".

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-201

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-201 Definition.

The term "the streets of the city" as used in this chapter shall include streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and public grounds or waters within or belonging to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 361-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 219

CASE NOTES FROM FORMER SECTION

¶ 1. City's duty with respect to maintenance of order on public pier at West 132nd Street and the Hudson River was merely the public duty of police protection and not the duty that a railroad would be required to exercise for the protection of passengers in a station, as the City was not conducting any business on the pier or operating boats or excursions therefrom, but merely possessed the status of owner of the pier, which was an extension of a street and under the Admin. Code is treated as a street (Admin. Code § 361-1.0).-Murrain v. Wilson Line, Inc., 270 App. Div. 372, 59 N.Y.S. 2d [1946], aff'd 296 N.Y. 845, 72 N.E. 2d 29 [1947].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-202

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-202 Stage and omnibus routes forbidden until franchise obtained.

It shall be unlawful for any omnibus route or routes for public use, or any alteration or extension thereof, or any alteration or extension of any existing stage or omnibus route to be operated in or upon any street within the city until and unless a franchise or right therefor shall be obtained from the board of estimate in like manner as, and subject to the limitations and conditions relating to, franchises or rights provided and imposed by the charter and the code.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-1.0 added chap 929/1937 § 1

Amended LL 50/1942 § 25

CASE NOTES FROM FORMER SECTION

¶ 1. Taxicab owners and others who, on discontinuance of Westchester branch of railroad, had undertaken to employ their automobiles to carry commuters to and from New York City and Westchester County points at a fixed rate of fare, a taxicab owners' association having been formed, and waiting rooms being established at fixed locations and fixed routes and fares being set up and tickets being sold in connection therewith, **held** to be engaging in a regular omnibus service within meaning of Public Service Law § 63d, Transportation Corporation Law § 65, and Admin.

Code § 362-1.0, and since such conduct was illegal it would be enjoined on suit of the railroad company.-Palmer v. Royal Cadillac Service, Inc., 171 Misc. 575, 13 N.Y.S. 2d 140 [1939].

¶ 2. City **held** entitled to injunction pendente lite restraining defendant bus line from operating its buses in certain portions of Queens County, where such bus line had no franchise from the City authorities as required by Admin. Code § 362-1.0, nor certificates of convenience and necessity from the State Transit Commission.-City of New York v. Bee Line, Inc. 101 (127) N.Y.L.J. (6-2-39) 2547, Col. 6 T.

¶ 3. Railroad company **held** not entitled to temporary injunction enjoining defendant taxicab drivers from operating an omnibus line between New York and New Rochelle without complying with the Transportation Corporation Law and the Public Service Law, where it appeared that although defendants had been constantly carrying passengers for hire between such termini the operation of the taxicabs between the termini was not regular and defendants were always ready to transport passengers anywhere within Westchester County or New York City, there was no showing that they were holding themselves out to the public as maintaining a service on schedule at a fixed rate between fixed termini or that they were associated together or were in conspiracy to violate the law.-Westchester Elec. RR v. Sica, 104 (77) N.Y.L.J. (9-30-40) 865, Col. 3 M.

¶ 4. A corporation which under written contracts with owners of apartment houses located in a certain area provided bus service to tenants of the houses between their homes and a certain subway station, and also carried the tenants to some thirteen regular bus stops along the route, thus serving some 678 families for a compensation paid by the apartment house owners totalling almost $1,000 monthly, **held** to be operating an omnibus line for the use and convenience of the public. Such operation without a franchise from the City of New York or a certificate of convenience or necessity from the Public Service Commission, was unauthorized and would be enjoined on suit of a duly authorized omnibus corporation with which the defendant was in competition.-Surface Transp. Corp. v. Reservoir Bus Lines, 271 App. Div. 556, 67 N.Y.S. 2d 135 [1946].

¶ 5. Respondents who had been operating their buses from fixed termini in New York City to the nearby race tracks, **held** required to obtain a certificate of public convenience under Transportation Corporation Law §§ 65 and 66 and Public Service Law § 63d, as well as a franchise from the City of New York. Contention that the buses were sight-seeing buses and as such came within the applicable provisions of the Admin. Code relating to such buses, was rejected.-Maltbie v. Veterans Bus Corp., 119 (122) N.Y.L.J. (6-24-48) 2376, Col. 1 F.

¶ 6. Petitioners who operated omnibuses carrying school children along stated and regular routes on stated and regular schedules with stated termini at a ten-cent fare, **held** to be operating omnibus lines within meaning of Public Service Law, § 2, subd. 28, and also to be common carriers under provisions of Transportation Corporation Law §§ 65 and 66, even though the buses did not traverse any routes served by the Board of Transportation of the City and there was no alternative transportation. Such operation without a certificate of public convenience and necessity and a franchise from the City, was illegal. That defendants merely transported students did not prevent them from being classed as common carriers. That petitioners were operating in good faith and in the belief that a certificate of convenience and necessity was not necessary, and that they had been operating for years without such a certificate, did not alter the situation. However, the Court would suspend enforcement of the injunctions issued, to the end of the present school year to prevent hardship upon the students.-Public Service Commission v. Columbo, 118 N.Y.S. 2d 873 [1952].

¶ 7. Operator of an omnibus route transporting passengers from two airports to locations in Nassau and Suffolk counties, which had a certificate of public convenience and necessity issued by the State Transportation Commissioner, was enjoined from operating its omnibus line over the streets of New York City absent a valid city franchise since approval of both the State Commissioner of Transportation and of the City of New York is required.-City of N.Y. v. L.I. Airports Limousine Service.-68 App. Div. 2d 37 [1979].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-203

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-203 Long Island railroad.

a. No freight or passenger car detached from an engine of the Long Island railroad company shall remain longer than ten minutes in any street. Bituminous coal shall not be used on any engine running upon such railroad. Whenever platforms are placed in the streets for accommodation of passengers, such company shall at its own expense keep the entire street between the platform and the curb in a cleanly and passable condition and this provision shall be construed to apply to each station and each platform wherever erected by such company within the city.

b. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this section, or who shall permit same to be violated, shall be liable to a penalty of one hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-10.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 362-10.0, providing that bituminous coal should not be used by the Long Island Railroad on any engine running upon such railroad, was not limited to Brooklyn, but prohibited the Long Island Railroad from burning soft coal anywhere in the City of New York.-People (Greene) v. Long Island Railroad Co., 31 N.Y.S. 2d 537

[1941].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-204

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-204 Grade crossings; gates and attendants.

a. The Bronx.

1. Every person operating or controlling any railroad in the borough of the Bronx, upon which cars are drawn by locomotive engines, other than those known as "dummies", shall erect and maintain suitable and substantial gates or doors on either side of such railroad, at every point in such borough at which its roads or tracks cross any public street, at the grade thereof. Such gates or doors shall be kept well painted and in good repair, and shall be attended at all times during the approach and passage of cars or trains by sober, careful and experienced persons, whose duty it shall be to keep the tracks clear of all horses, cattle and vehicles, to warn all the persons against crossing the tracks during the approach of any train, locomotive or car, and to close the gates or doors at least one minute before the passage of any locomotive, engine or car over such public street. No person operating or controlling any railroad in the borough of the Bronx, shall run or allow to be run any locomotive or locomotive tender without cars across any public street in such borough, unless the gates or doors at such crossing are closed or down.

2. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this subdivision, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars.

b. Brooklyn. 1. At each street crossing between Linwood street and Flatbush avenue, in the borough of Brooklyn, persons shall be constantly stationed, at all hours of the night and day when trains are in motion, and all crosswalks between such street crossings shall be properly guarded by strong, heavy gates at least twenty feet in width, at each street crossing, which shall be closed before the passage of any engine or train.

2. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this subdivision, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars.

c. Disregard of closed gates. 1. It shall be unlawful to attempt to cross the tracks of any railroad at any street crossing, while the gates for the protection of such crossings are closed or being closed.

2. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this subdivision, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars. Violation of the provisions of this subdivision by a person, other than a railroad, or the manager or agent or employee thereof, shall be punishable by a fine of not exceeding ten dollars or by imprisonment not exceeding ten days, or by both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-11.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-205

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-205 Obstruction of streets; penalty.

a. No train of cars, nor any part thereof, including the locomotive and tender, shall remain or be left across or upon any street or sidewalk, so as to obstruct or prevent free travel thereon for a longer period than five minutes, during any period or during any hour, unless the same shall be unavoidable.

b. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this section, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-12.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-206

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-206 Railroads from Long Island to East river to have unobstructed right-of-way.

a. Any railroad running from any part of Long Island to the East river shall have unobstructed right to run to the East river with their locomotives and cars, but shall furnish suitable guards or signals at the street crossings, for the proper protection of the public.

b. Any person who shall violate any provision of this section, upon conviction thereof, shall be punished by a fine of not more than twentyfive dollars, or imprisonment for thirty days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-13.0 added chap 929/1937 § 1

Amended LL 172/1939 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-207

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-207 Release of certain railroad obligations.

The board of estimate shall be without power to compromise or release any liability or obligation to the city which may be compromised or released pursuant to section one hundred seventy-three, railroad law, but such liabilities and obligations shall be and remain inviolable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-14.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 25

(formerly § 70-1.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-208

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-208 Copies of franchise resolutions and contracts to be filed in certain offices and to be public records.

Within five days after the final execution of any contract made pursuant to chapter fourteen of the charter, a copy of such contract, together with the resolution authorizing the same, duly attested by the secretary of the board of estimate, shall be transmitted to each of the following: the comptroller, the commissioner of finance, the corporation counsel, the city clerk, the commissioner of transportation and the public service commission, to be preserved by them in the archives of their departments or offices. All such certified copies shall be deemed to be public records.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 363-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 221

CASE NOTES FROM FORMER SECTION

¶ 1. The defendants were convicted of conspiracy to violate this section in that they charged a fee in excess of $1.00 for the purchase and resale of railroad tickets and accommodations. Over defendants' contention that the section was not within the scope of the legislative power of cities, the conviction was affirmed.-People v. Cooper, 294 N.Y. 797, 62 N.E. 2d 236 [1945].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-301

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 1 GENERAL PROVISIONS

§ 6-301 Definitions.

a. For the purposes of this chapter only, the following terms shall have the following meaning:

(1) "Agricultural wastes" means materials that remain after the harvesting or production of annual crops, including but not limited to rice, flax, wheat and rye.

(2) "Architectural coatings" means any coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. This term shall not include the following: marine-based paints and coatings; coatings or materials to be applied to metal structures, such as bridges; or coatings or materials labeled and formulated for application in roadway maintenance activities.

(3) "Capital project" means a capital project as defined in section 210 of the charter that is paid for in whole or in part from the city treasury.

(4) "Carpet" means any fabric used as a floor covering, but such term shall not include artificial turf.

(5) "Carpet adhesive" means any substance used to adhere carpet to a floor by surface attachment.

(6) "Carpet cushion" means any kind of material placed under carpet to provide softness when it is walked upon.

(7) "Cathode ray tube" means any vacuum tube, typically found in computer monitors, televisions and oscilloscopes, in which a beam of electrons is projected on a phosphorescent screen.

(8) "City's environmental purchasing standards" or "city environmental purchasing standard" means any standards set forth in this chapter and any directives, guidelines or rules promulgated by the director.

(9) "Composite wood or agrifiber products" means plywood, particleboard, chipboard, medium density fiberboard, standard fiberboard, orient strand board, glu-lams, wheatboard or strawboard.

(10) "Construction work" means any work or operations necessary or incidental to the erection, demolition, assembling or alteration of any building, but such term shall not include minor repairs.

(11) "Contractor" means any person or entity that enters into a contract with any agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such contract.

(12) "Copier" means any device that makes paper copies of text or graphic material.

(13) "Covered electronic device" means: (i) any cathode ray tube, any product containing a cathode ray tube, any liquid crystal display (LCD), plasma screen or other flat panel television or computer monitor or similar video display product, any battery containing lead, cadmium, lithium or silver, any computer central processing unit that contains one or more circuit boards and includes any desktop computer or any laptop computer, any computer peripherals including, but not limited to, any keyboard, mouse and other pointing device, printer, scanner, facsimile machine and card reader, and any copier, but not including any automobile, household appliance, large piece of commercial or industrial equipment containing a cathode ray tube, a cathode ray tube product, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or any device used by emergency response personnel; or (ii) any other electronic device designated by the director.

(14) "CPG" means the Comprehensive Procurement Guideline for Products Containing Recovered Materials, as set forth in part 247 of title 40 of the United States code of federal regulations.

(15) "Desktop computer" means any personal computer or workstation designed to operate only on alternating current power and to reside on or under a desktop.

(16) "Desktop-derived server" means any computer designed to provide services to other computers on a network and that contains an EPS12V or EPS1U form factor power supply.

(17) "Director" means the director of citywide environmental purchasing.

(18) "Electronic product environmental assessment tool" means a tool for evaluating the environmental performance of electronic products throughout their life cycle developed by the federal government and other stakeholders.

(19) "End-of-life management" means promoting the recycling or reuse of a product through features of the product or materials from which the product is manufactured.

(20) "ENERGY STAR labeled" means a designation indicating that a product meets the energy efficiency standards set forth by the United States environmental protection agency and the United States department of energy for compliance with the ENERGY STAR program.

(21) "Flow rate" means the volume, mass, or weight of water flowing past a given point per unit of time.

(22) "Green cleaning product" means any environmentally preferable cleaning product whose use has been

determined to be feasible through the pilot program established pursuant to the local law that added subchapter 6 of this chapter or through any other testing and evaluation conducted by the director.

(23) "Hazardous substance" means any substance that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(24) "Incandescent lamp" means any lamp in which a filament is heated to incandescence by an electric current to produce visible light.

(25) "Lamp" means any glass envelope with a gas, coating, or filament that produces visible light when electricity is applied, but such term shall not include automotive light bulbs.

(26) "Local area network" means any two or more computers and associated devices that share a common communications line or wireless link and typically share the resources of a single processor or server within a small geographic area.

(27) "Minor repairs" means replacement of any part of a building for which a permit issued by the department of buildings is not required by law, where the purpose and effect of such work or replacement is to correct any deterioration or decay of or damage to such building or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

(28) "Persistent, bioaccumulative and toxic chemicals" means those chemicals that are toxic to living organisms, persist in the environment and build up in the food chain. This definition shall include any substance on the United States environmental protection agency's list of priority chemicals published under the national partnership for environmental priorities, as well as hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers.

(29) "Postconsumer material" means a material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is a part of the broader category of recovered materials.

(30) "Power supply" means any device intended to convert line voltage alternating current to one or more lower voltages of direct current.

(31) "Printer" means any device that prints the text or graphics output of a computer onto paper.

(32) "Reasonably competitive" means at a cost not exceeding that permissible under section 104-a of the general municipal law.

(33) "Recovered material" means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. For purposes of purchasing paper and paper products, "recovered material" includes "post-consumer recovered paper" and "recovered materials, for purposes of purchasing paper and paper products", as those terms are defined in the CPG.

(34) "Recycled product" shall mean recycled product as defined in section 104-a of the general municipal law.

(35) "Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, as specified in part 51.100 of chapter 40 of the United States code of federal regulations.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-302

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 1 GENERAL PROVISIONS

§ 6-302 Applicability.

a. Except where otherwise provided, the provisions of this chapter shall apply to any product:

(1) purchased or leased by any agency;

(2) purchased or leased by any contractor pursuant to any contract with any agency where the director has designated such contract as one subject to this chapter in whole or in part; or

(3) purchased or leased by any contractor pursuant to any contract with any agency for construction work in any building; provided that this paragraph shall only require that such contractors meet the requirements of subdivisions a, b and c of section 6-313 and subdivisions a and b of section 6-306 of this chapter. Notwithstanding the foregoing, except when otherwise determined by the director, this paragraph shall not apply to any such contract:

(i) subject to green building standards pursuant to subdivision b of section 224.1 of the charter;

(ii) subject to energy efficiency standards pursuant to subdivision c of section 224.1 of the charter; provided, however, that this exception shall only apply to the purchase of energy using products and to the extent the purchase or lease of any such products is necessary for compliance with such subdivision;

(iii) subject to water efficiency standards pursuant to subdivision d of section 224.1 of the charter; provided,

however, that this exception shall only apply to the purchase of water using products;

(iv) where construction work is for a portion of a building that is less than fifteen thousand (15,000) square feet;

(v) where construction work is in any building or portion of a building leased by the city; provided, however, that this subparagraph shall not apply to any product purchased or leased by any contractor pursuant to any contract with any agency for construction work that (1) is a capital project and (2) is in a building or portion of a building that is leased for the use of a single agency where such single agency's lease is for more than fifty thousand (50,000) square feet of space; or

(vi) where the commissioner of the department of citywide administrative services determines that the requirements of this paragraph will result in significant difficulty in finding a suitable site for an agency facility and that such a circumstance could materially adversely affect the health, safety, or welfare of city residents.

b. Notwithstanding subparagraph (v) of paragraph 3 of subdivision a of this section, for any building where any single agency leases less than fifty thousand (50,000) but more than fifteen thousand (15,000) square feet of space, the contracting agency shall nonetheless make good faith efforts to apply subdivisions a, b and c of section 6-306 and subdivisions a and b of section 6-313 of this chapter to any capital construction work.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment

by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

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Administrative Code of the City of New York

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NYC Administrative Code 6-303

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 1 GENERAL PROVISIONS

§ 6-303 Exemptions and waivers.

a. This chapter shall not apply:

(1) to any product purchased or leased before the effective date of the local law that added this chapter;

(2) to any procurement where federal or state funding restrictions precludes the city from imposing the requirements of this chapter;

(3) to small purchases pursuant to section three hundred fourteen of the charter;

(4) to emergency procurements pursuant to section three hundred fifteen of the charter;

(5) to intergovernmental purchases pursuant to section three hundred sixteen of the charter;

(6) where compliance with the city's environmental purchasing standards would conflict with the purpose of chapter 3 of title 25 of this code; (7) to any product if there are fewer than three manufacturers that produce such product meeting the city's environmental purchasing standards and that are capable of producing any such product in a quantity and within a time period that are adequate for the city's needs;

(8) where the contracting agency finds that the inclusion of a specification otherwise required by sections 6-306

or 6-310 of this chapter would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that in making any such finding the contracting agency shall consider life-cycle cost-effectiveness; and

(9) where the contracting agency finds that the inclusion of a specification otherwise required by subchapters 5 or 6 of this chapter would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that in making any such finding the contracting agency shall consider the health and safety benefits of such specification.

b. The city's environmental purchasing standards may be waived by the director upon application by any agency:

(1) where compliance with the city's environmental purchasing standards would conflict with any consumer, health or safety:

(i) regulation of any agency; or

(ii) requirement of the federal government or state of New York or any nationally recognized testing laboratory designated by the director; or

(2) for any product if there are fewer than five manufacturers that produce such product meeting the city's environmental purchasing standards and that are capable of producing any such product in a quantity and within a time period that are adequate for the city's needs.

c. Any application for any waiver pursuant to this section shall be made in writing by the applying agency. The director shall, within a reasonable period of time, issue a written determination on whether to grant any such waiver application and shall include an explanation of any such deter- mination.

d. Except as otherwise provided in this chapter, the director may exempt from the provisions of this chapter up to the following total dollar amounts, provided such amounts shall be indexed to inflation beginning in the second year after the effective date of this local law, of contracts for goods or construction work in the following fiscal years if in his or her judgment such exemption is in the best interests of the city:

(1) for fiscal years 2007 and 2008, one hundred million dollars ($100,000,000);

(2) for fiscal year 2009, seventy-five million dollars ($75,000,000); and

(3) for fiscal year 2010 and any fiscal year thereafter, fifty million dollars ($50,000,000).

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-304

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 2 OVERSIGHT OF ENVIRONMENTAL PURCHASING

§ 6-304 Director of citywide environmental purchasing.

There shall be a director of citywide environmental purchasing who shall:

a. develop, establish, as appropriate, by promulgation of rules and implement environmental purchasing standards, in addition to those set forth in this chapter, the purpose of which shall be to: conserve energy and water; increase the use of recycled and reused materials; reduce hazardous substances, with an emphasis on persistent, bioaccumulative and toxic chemicals; decrease greenhouse gas emissions; improve indoor air quality; promote end-of-life management; and reduce waste;

b. at least once every two years, review and, if necessary, update or revise the city's environmental purchasing standards;

c. when promulgating any rules pursuant to this chapter, consider, as appropriate, any available scientific evidence, or specifications, guidelines or rules of other governmental agencies or organizations supporting the establishment of environmental purchasing standards, as well as the electronic product environmental assessment tool;

d. partner, as appropriate, with other levels of government or jurisdictions to establish joint environmental purchasing standards, including working with and encouraging state agencies that supervise contracts from which the city purchases goods pursuant to paragraph five of subdivision a of section 6-303 of this chapter to meet or exceed any

relevant city environmental purchasing standard;

e. monitor agency compliance with the city's environmental purchasing standards; and

f. submit an annual report to the speaker of the council and the mayor by October 1 of each year detailing the city's progress in meeting the purposes of this chapter, as specified in subdivision a of this section, and the city's environmental purchasing standards, which report shall at a minimum include:

(1) the total value of goods contracts entered into by any agency that comply with one or more city environmental purchasing standards;

(2) a list of all solicitations that include any product that is subject to this chapter with an indication of the environmental purchasing specifications in each such solicitation and the city environmental purchasing standard that is applicable to any such product specified in such solicitation;

(3) a list and the aggregate dollar value of contracts exempted pursuant to subdivision a of section 6-303 of this chapter according to each type of exemption;

(4) a list and the aggregate dollar value of contracts for which a waiver has been issued pursuant to subdivision b of section 6-303 of this chapter according to each type of waiver with an explanation of the director's basis for granting each such waiver;

(5) any material changes to the city's environmental purchasing standards since the last publication of such report, including any new, updated or revised rules established or determinations made by the director;

(6) an identification of any product for which new or additional environmental purchasing standards are necessary;

(7) beginning January 1, 2008, an explanation of any determination pursuant to subdivision b of section 6-308 of this chapter not to require compliance with the CPG;

(8) a list of products considered in implementing subdivision c of section 6-308 of this chapter, including an indication of whether any such products were determined to be of inadequate quality, unavailable within a reasonable period of time, at a price that does not exceed a cost premium of seven percent (7%) above the cost of a comparable product that is not a recycled product or at a price that does not exceed a cost premium of five percent (5%) above the cost that would apply pursuant to subdivision a of section 6-308;

(9) beginning January 1, 2008, an explanation of any determination pursuant to subdivision c or d of section 6-306 of this chapter not to require compliance with the federal energy management program;

(10) a description of the good faith efforts required pursuant to subdivision b of section 6-302 of this chapter;

(11) a description of the director's efforts pursuant to subdivision d of this section;

(12) until October 12, 2012, a report on the implementation of section 6-307, section 6-309 and subdivision b of section 6-310 of this chapter; and

(13) for the annual report required in 2008, and every fourth year thereafter, for each product subject to the provisions of this chapter, the total dollar value of such products purchased or leased by any agency and the portion of such purchases that comply with the city's environmental purchasing standards; and, to the extent practicable, the total value of such products purchased or leased by any contractor pursuant to any contract with any agency, including any such contract for construction work in any building, that is subject to this chapter and the portion of such purchases that comply with the city's environmental purchasing standards.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New

York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-305

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 2 OVERSIGHT OF ENVIRONMENTAL PURCHASING

§ 6-305 Agency implementation.

a. Each agency shall designate an environmental purchasing officer who shall:

(1) coordinate with the director to ensure agency compliance with the city's environmental purchasing standards; and

(2) submit an annual report as required by the director detailing such compliance.

b. The department of education shall submit an annual report to the speaker of the council and the mayor by October 1 of each year detailing the department's procurement activities that are consistent with the city's environmental purchasing standards.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-306

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 3 ENERGY EFFICIENCY*21

§ 6-306 Energy efficiency standards.

a. Any energy-using product purchased or leased by any agency for which the United States environmental protection agency and the United States department of energy have developed energy efficiency standards for compliance with the Energy Star program shall be ENERGY STAR labeled.

b. Any faucet, showerhead, toilet, urinal, fluorescent tube lamp, fluorescent ballast, industrial HID luminaire, downlight luminaire, fluorescent luminaire or compact fluorescent lamp that is purchased or leased by any agency for which the federal energy management program of the United States department of energy has issued product energy efficiency recommendations shall achieve no less energy efficiency or flow rate than the minimum recommended in such recommendations.

c. Unless the director makes a determination otherwise for any particular contract, any air-cooled chiller or water-cooled chiller that is purchased or leased by any agency for which the federal energy management program of the United States department of energy has issued product energy efficiency recommendations shall achieve no less energy efficiency or flow rate than the minimum recommended in such recommendations.

d. Beginning January 1, 2008, the director shall make a determination whether or not any product not specified in subdivisions a or b of this section that is purchased or leased by any agency for which the federal energy management program of the United States department of energy has issued product energy efficiency recommendations shall achieve

no less energy efficiency or flow rate than the minimum recommended in such recommendations. The director shall review any such determination not to require compliance with the federal energy management program for any product at least once every two years.

e. Beginning January 1, 2008, unless prior to such date the director determines that products that would comply with this subdivision are not available in sufficient quantities and upon reasonable terms, the minimum energy efficiency of the power supply of any desktop computer or desktop-derived server purchased or leased by any agency containing an internally mounted power supply shall be 80% at 20%, 50% and 100% of rated power supply output, when tested according to a proportional allocation method of loading the power supply. The director shall investigate the feasibility of purchasing such products prior to such date. In the event that this subdivision does not apply after January 1, 2008 as a result of any determination of the director, the director shall annually reconsider any such determination and, where applicable as a result of any such reconsideration, the requirement in this subdivision shall take effect as soon as practicable thereafter.

f. No lamp purchased or leased by any agency shall be an incandescent lamp if a more energy efficient lamp is available that provides sufficient lumens and is of an appropriate size for the intended application.

HISTORICAL NOTE

Section redesignated (former § 6-127) and amended L.L. 119/2005

§§ 2, 3, eff. Jan. 1, 2007. [See Subchapter 3 footnote]

Section amended L.L. 30/2003 § 1, eff. May 26, 2003.

Section added L.L. 37/2002 § 2, eff. Nov. 20, 2002. [See Note 1]

NOTE

1. Provisions of L.L. 37/2002:

Section 1. Declaration of Legislative Findings and Intent. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The ENERGY STAR labeling program tags products that meet energy efficient criteria, and as a result, reduce overall energy use, lessening the amount of fossil fuel being burned by power plants, and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the ENERGY STAR program, manufacturers and retailers sign voluntary agreements allowing them to place ENERGY STAR labels on products that meet or exceed energy-efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers may also use the label in product packaging, promotions and advertising for qualified products. Most ENERGY STAR labeled products have the same or better performance, features, reliability, and price as conventional models.

ENERGY STAR labeled office equipment saves energy by automatically entering a low-power mode when not in use. The energy-efficient models have all of the performance features of standard office equipment, but help to eliminate energy waste through special power management features. ENERGY STAR labeled office products use about half as much electricity as conventional office equipment, thereby significantly reducing energy costs.

The Council finds that the potential benefits associated with the procurement and use of ENERGY STAR products are enormous and easily achievable. On June 10, 2001, the Governor issued an executive order requiring that "State agencies and other affected entities shall select ENERGY STAR energy-efficient products when acquiring new

energy-using products or replacing existing equipment." Executive Order No. 111, Section III, June 10, 2001. Given the cost savings alone, it makes fiscal sense for the City to do the same.

The Council finds that the City of New York should join New York State and lead other municipalities and New Yorkers by example in promoting the use of energy efficient products. Accordingly, the City in its role of market participant should, whenever possible, exercise its purchasing power to ensure that ENERGY STAR and other energy efficient products are acquired.

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to

repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
21

[Footnote 21]: * Subchapter 3 added L.L. 119/2005 §§ 2, 3, eff. Jan. 1, 2007. Note provisions of L.L. 119/2005:

Section 1. Statement of findings and purpose. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The Energy Star labeling program certifies products that meet energy efficient criteria, and as a result, reduces energy use, lessening the amount of fossil fuel being burned by power plants and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the Energy Star program, manufacturers and retailers sign voluntary agreements allowing them to place Energy Star labels on products that meet or exceed energy efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers also can use the label in product packaging, promotions and advertising for qualified products. Most Energy Star labeled products have the same or better performance, features, reliability, and price as conventional models.

Federal buyers are directed by Federal Acquisition Regulation Part 23 and Executive Orders 13123 and 13221 to purchase, where life-cycle cost-effective, products that are Energy Star labeled or products that are designated to be in the upper 25% of energy efficiency in their class, as well as products with low standby power. Federal agencies are also required to reduce their energy use by 35% by 2010 in comparison to 1985 levels. In addition, the DOE established the Federal Energy Management Program (FEMP), which provides federal agencies with energy efficiency recommendations that exceed the scope of Energy Star by addressing commercial-sized products and water-using products. Under the Energy Policy Act of 2005, the FEMP standards became mandatory for all federal agencies, subject to certain exemptions.

Accordingly, the Council declares it is reasonable and necessary to require the purchase of energy efficient products.

. . . . . § 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective

Jan. 1, 2007].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-307

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 3 ENERGY EFFICIENCY*21

§ 6-307 Office equipment energy use reduction.

a. Notwithstanding section 6-302 of this chapter, this section shall apply to any computer, printer, facsimile machine or photocopy machine owned or leased by any agency.

b. The power management software options of any computer, printer, facsimile machine or photocopy machine that contains such software shall be calibrated to achieve the highest energy savings practicable.

c. For any computer that contains power management software, the computer monitor and central processing unit shall be set to enter into a low power mode after the shortest practicable period of inactivity. Any screensaver or other computer program that directly interferes with the proper functioning of the low power mode of any computer monitor or central processing unit, shall be disabled.

d. Any agency need not comply with the provisions of this section if compliance would interfere with any mission of such agency or cause instability in any computer system.

HISTORICAL NOTE

Section added L.L. 119/2005 § 3, eff. Jan. 1, 2007. [See Subchapter 3

footnote]

FOOTNOTES

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Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

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Section 1. Statement of findings and purpose. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The Energy Star labeling program certifies products that meet energy efficient criteria, and as a result, reduces energy use, lessening the amount of fossil fuel being burned by power plants and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the Energy Star program, manufacturers and retailers sign voluntary agreements allowing them to place Energy Star labels on products that meet or exceed energy efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers also can use the label in product packaging, promotions and advertising for qualified products. Most Energy Star labeled products have the same or better performance, features, reliability, and price as conventional models.

Federal buyers are directed by Federal Acquisition Regulation Part 23 and Executive Orders 13123 and 13221 to purchase, where life-cycle cost-effective, products that are Energy Star labeled or products that are designated to be in the upper 25% of energy efficiency in their class, as well as products with low standby power. Federal agencies are also required to reduce their energy use by 35% by 2010 in comparison to 1985 levels. In addition, the DOE established the Federal Energy Management Program (FEMP), which provides federal agencies with energy efficiency recommendations that exceed the scope of Energy Star by addressing commercial-sized products and water-using products. Under the Energy Policy Act of 2005, the FEMP standards became mandatory for all federal agencies, subject to certain exemptions.

Accordingly, the Council declares it is reasonable and necessary to require the purchase of energy efficient products.

. . . . . § 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007].

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Administrative Code of the City of New York

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NYC Administrative Code 6-308

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 4 RECYCLED MATERIALS*22

§ 6-308 Minimum recycled material content.

a. Any reprographic paper, tablet paper, envelope paper, file folder, commercial/industrial sanitary tissue, rock wool or fiberglass building insulation, polyester carpet, flowable fill, steel shower or restroom divider/partition, traffic cone, plastic fencing, plastic park bench, hydraulic mulch, garden or soaker hose, plastic trash bag, office recycling container, office waste receptacle, mat, signage or pallet, as such terms are utilized in the CPG: (i) purchased or leased by any agency; (ii) that can be procured at a reasonably competitive price; and (iii) that is listed in the CPG, for which the United States environmental protection agency has issued a recovered materials advisory notice, shall contain no less recovered material and postconsumer material than the minimum amount recommended in the most recent such notice, or, with respect to any paper or paper product, may, at the discretion of the director, contain no less than fifty percent agricultural wastes.

b. Beginning January 1, 2008, the director shall make a determination whether or not any product: (i) purchased or leased by any agency; (ii) that can be procured at a reasonably competitive price; (iii) in any category listed in the CPG, but not specified in subdivision a of this section, for which the United States environmental protection agency has issued a recovered materials advisory notice, shall contain no less recovered material and postconsumer material than the minimum amount recommended in the most recent such notice. The director shall review any such determination not to require compliance with the CPG for any product at least once every two years.

c. In addition to the requirements of subdivision a of this section, any reprographic paper product purchased or

leased by any agency shall contain the highest recovered material content available, to the extent any such product: (i) can be procured at a price that does not exceed a cost premium of seven percent (7%) above the cost of a comparable product that is not a recycled product; (ii) can be procured at a price that does not exceed a cost premium of five percent (5%) above the cost that would apply pursuant to subdivision a of this section; (iii) is of adequate quality for the intended use; and (iv) is available within a reasonable period of time, as determined by the director.

HISTORICAL NOTE

Section added L.L. 121/2005 § 4, eff. Jan. 1, 2007. [See Subchapter 4

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a

proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
22

[Footnote 22]: * Subchapter 4 added L.L. 121/2005 § 4, eff. Jan. 1, 2007. Derived from § 6-122 added L.L. 20/1987, amended L.L. 59/1996 § 50 and § 16-322 added L.L. 19/1989, amended L.L. 59/1996 § 77. Note provisions of L.L. 121/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between copy paper with no recycled content and copy paper with thirty percent post-consumer recycled content.

Pursuant to section 6002 of the Resource Conservation and Recovery Act, the United States Environmental Protection Agency (EPA) has developed recommended guidelines on the minimum recovered materials content of items purchased by federal agencies and other levels of government that apply more than $10,000 in federal funding towards a purchase. These guidelines apply to products in the following categories: paper; vehicular; construction; transportation; park and recreation; landscaping; non-paper office; and miscellaneous. The minimum percentage of recovered materials recommended for products in these categories is determined and updated periodically through the Federal Register in the form of Recovered Materials Advisory Notices. The EPA conducts an extensive consultation process in setting recovered materials standards.

The Council finds that the purchase of recycled products will protect the environment and improve the welfare of New York City residents and workers. Accordingly, the Council declares that it is reasonable and necessary to require the purchase of products with recycled content.

. . . . . § 5. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A , a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007].

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NYC Administrative Code 6-309

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 4 RECYCLED MATERIALS*22

§ 6-309 Printing on recycled paper.

a. Any document or graphic material prepared or printed for any agency pursuant to any contract with such agency, which can be procured at a reasonably competitive price and is of adequate quality for the intended use, shall be printed on paper with no less recovered material and postconsumer material, or agricultural wastes, than the minimum amount required pursuant to subdivision a of section 6-308 of this chapter and, where practicable, shall be printed double-sided.

b. Any solicitation of any agency shall request that any response to such solicitation be printed double-sided and on paper with no less recovered material and postconsumer material than the minimum required pursuant to subdivision a of section 6-308 of this chapter, and shall require that such response indicate whether such requests have been met; provided, however, that nothing in this subdivision shall be construed as requiring a finding of non-responsiveness.

c. Any pre-printed paper or publication, including any letterhead or report, purchased or leased by any agency that has been printed on paper that contains the minimum percentage of postconsumer recycled fiber required pursuant to subdivision a of section 6-308 of this chapter, shall include a statement and/or symbol indicating the minimum percentage of postconsumer recycled material contained in such paper, consistent with section 104-a of the general municipal law.

HISTORICAL NOTE

Section added L.L. 121/2005 § 4, eff. Jan. 1, 2007. [See Subchapter 4 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

22

[Footnote 22]: * Subchapter 4 added L.L. 121/2005 § 4, eff. Jan. 1, 2007. Derived from § 6-122 added L.L. 20/1987, amended L.L. 59/1996 § 50 and § 16-322 added L.L. 19/1989, amended L.L. 59/1996 § 77. Note provisions of L.L. 121/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between copy paper with no recycled content and copy paper with thirty percent post-consumer recycled content.

Pursuant to section 6002 of the Resource Conservation and Recovery Act, the United States Environmental Protection Agency (EPA) has developed recommended guidelines on the minimum recovered materials content of items purchased by federal agencies and other levels of government that apply more than $10,000 in federal funding towards a purchase. These guidelines apply to products in the following categories: paper; vehicular; construction; transportation; park and recreation; landscaping; non-paper office; and miscellaneous. The minimum percentage of recovered materials recommended for products in these categories is determined and updated periodically through the Federal Register in the form of Recovered Materials Advisory Notices. The EPA conducts an extensive consultation process in setting recovered materials standards.

The Council finds that the purchase of recycled products will protect the environment and improve the welfare of New York City residents and workers. Accordingly, the Council declares that it is reasonable and necessary to require the purchase of products with recycled content.

. . . . . § 5. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A , a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007].

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NYC Administrative Code 6-310

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 4 RECYCLED MATERIALS*22

§ 6-310 Paper waste reduction.

a. Any printer purchased or leased by any agency that can print at a rate of twenty pages or faster per minute or that is considered a local area network printer shall have the capacity to print double-sided. Any copier purchased or leased by any agency that can print at a rate of twenty pages or faster per minute shall have the capacity to print double-sided and shall perform equally well with paper containing postconsumer material as with paper containing no postconsumer material.

b. Notwithstanding section 6-302 of this chapter, this subdivision shall apply to any printer or copier purchased or leased by any agency after January 1, 2007 and, to the extent practicable, to any printer or copier

purchased or leased by any agency before such date. The default parameters of any printer with the capacity to print double-sided, and any computer that utilizes such printer, shall be set to duplex mode, such that the printer prints double-sided pages. The default parameters of any copier with the capacity to print double-sided for which the default parameters can be adjusted, shall be set to duplex mode, such that the copier places images on both sides of a copy sheet, performing one-sided to two-sided copying, and two-sided to two-sided copying.

HISTORICAL NOTE

Section added L.L. 121/2005 § 4, eff. Jan. 1, 2007. [See Subchapter 4

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

22

[Footnote 22]: * Subchapter 4 added L.L. 121/2005 § 4, eff. Jan. 1, 2007. Derived from § 6-122 added L.L. 20/1987, amended L.L. 59/1996 § 50 and § 16-322 added L.L. 19/1989, amended L.L. 59/1996 § 77. Note provisions of L.L. 121/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between copy paper with no recycled content and copy paper with thirty percent post-consumer recycled content.

Pursuant to section 6002 of the Resource Conservation and Recovery Act, the United States Environmental Protection Agency (EPA) has developed recommended guidelines on the minimum recovered materials content of items purchased by federal agencies and other levels of government that apply more than $10,000 in federal funding towards a purchase. These guidelines apply to products in the following categories: paper; vehicular; construction; transportation; park and recreation; landscaping; non-paper office; and miscellaneous. The minimum percentage of recovered materials recommended for products in these categories is determined and updated periodically through the Federal Register in the form of Recovered Materials Advisory Notices. The EPA conducts an extensive consultation process in setting recovered materials standards.

The Council finds that the purchase of recycled products will protect the environment and improve the welfare of New York City residents and workers. Accordingly, the Council declares that it is reasonable and necessary to require the purchase of products with recycled content.

. . . . . § 5. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A , a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007].

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NYC Administrative Code 6-311

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-311 Reuse or recycling of electronic devices.

By January 1, 2008, unless otherwise directed by a subsequent local law, the city shall develop a plan for the reuse or recycling of any covered electronic device purchased or leased by any agency.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products

that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
23

[Footnote 23]: * Subchapter 5 added L.L. 120/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 120/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option.

Many common consumer products contain hazardous materials. Some of these materials, like lead and mercury, which can be found in computers and other electronic goods, are persistent bioaccumulative toxins. When these products are improperly stored or disposed of they can contaminate the soil, groundwater and air. Likewise, many products used in office building improvements, including carpeting materials and paints, have

environmentally preferable alternatives. In response to the damage posed by hazardous products, governments, industry, healthcare professionals and non-profit organizations have supported the establishment of environmental purchasing standards.

The Council finds that environmentally preferable products should be purchased by the City.

. . . . . § 3. The director shall investigate and report to the speaker of the council and the mayor by October 1, 2007, on the environmental effect of the city's use of road de-icing products and the potential for reducing the use of such products that contain high levels of chlorides and urea.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal section 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007]; and Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of section 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-312

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-312 Hazardous content of electronic devices.

a. No new covered electronic device purchased or leased by any agency shall contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers, except as provided by rules promulgated by the director.

b. No new covered electronic device purchased or leased by any agency shall contain any hazardous substance in any amount exceeding that proscribed by the director through rulemaking. In developing such rules, the director shall consider European Union directive 2002/95/EC and any subsequent material directive issued by the European Parliament and the Council of the European Union.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
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Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated

with the environmentally preferable option.

Many common consumer products contain hazardous materials. Some of these materials, like lead and mercury, which can be found in computers and other electronic goods, are persistent bioaccumulative toxins. When these products are improperly stored or disposed of they can contaminate the soil, groundwater and air. Likewise, many products used in office building improvements, including carpeting materials and paints, have environmentally preferable alternatives. In response to the damage posed by hazardous products, governments, industry, healthcare professionals and non-profit organizations have supported the establishment of environmental purchasing standards.

The Council finds that environmentally preferable products should be purchased by the City.

. . . . . § 3. The director shall investigate and report to the speaker of the council and the mayor by October 1, 2007, on the environmental effect of the city's use of road de-icing products and the potential for reducing the use of such products that contain high levels of chlorides and urea.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal section 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007]; and Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of section 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007].

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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-313 Volatile organic compounds and other airborne hazards.

a. (1) No carpet, carpet cushion or carpet adhesive purchased or leased by any agency shall contain the following volatile organic compounds in any concentration exceeding that specified by the director through rulemaking: (i) for carpets, 4-phenylcyclohexene, formaldehyde or styrene;

(ii) for carpet cushions, butylated hydroxytoluene, formaldehyde or 4-phenylcyclohexene; and

(iii) for carpet adhesives, formaldehyde or 2-ethyl-1-hexanol.

(2) In developing such rules, the director shall consider any widely accepted industry recommendations for reduced volatile organic compounds in carpeting products.

b. No architectural coating purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified by the director through rulemaking. In developing such rules, the director shall consider rule 1113 of the south coast air quality management district.

c. No construction or furnishing materials purchased or leased by any agency, other than any product covered by subdivisions a or b of this section, shall contain any chemical compound in any concentration exceeding that specified by the director through rulemaking. In developing such rules, the director shall consider section 01350 of the reference

specifications for energy and resource efficiency of the California energy commission.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option.

Many common consumer products contain hazardous materials. Some of these materials, like lead and mercury, which can be found in computers and other electronic goods, are persistent bioaccumulative toxins. When these products are improperly stored or disposed of they can contaminate the soil, groundwater and air. Likewise, many products used in office building improvements, including carpeting materials and paints, have environmentally preferable alternatives. In response to the damage posed by hazardous products, governments, industry, healthcare professionals and non-profit organizations have supported the establishment of environmental purchasing standards.

The Council finds that environmentally preferable products should be purchased by the City.

. . . . . § 3. The director shall investigate and report to the speaker of the council and the mayor by October 1, 2007, on the environmental effect of the city's use of road de-icing products and the potential for reducing the use of such products that contain high levels of chlorides and urea.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-314 Mercury-added lamps.

Any mercury-added lamp purchased or leased by any agency shall achieve no less energy efficiency than the minimum required by the director through rulemaking and, among lamps meeting such energy efficiency requirements, shall contain the lowest amount of mercury per rated hour.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

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§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-315 Miscellaneous.

a. By January 1, 2008, the director shall promulgate rules to reduce the city's purchase or lease of materials whose combustion may lead to the formation of dioxin or dioxin-like compounds.

b. The director shall investigate the environmental and health effects of composite wood or agrifiber products that contain added urea-formaldehyde resins and, by January 1, 2008, where practicable, shall promulgate rules to reduce the city's purchase or lease of such products.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 6 CLEANING PRODUCTS*24

§ 6-316 Green cleaning products.

a. Beginning June 1, 2009, the city shall purchase and use green cleaning products to the extent and in the manner that such use is determined to be feasible through the pilot program established pursuant to the local law that added subchapter 6 of this chapter or through any other testing and evaluation conducted by the director. Such green cleaning products shall meet the health and environmental criteria for the relevant product category as established by the director under the pilot program or any such criteria as updated or revised by the director.

b. No later than June 1, 2009, the director shall publish a list of green cleaning products that may be purchased by the city to comply with this section. At least once annually, such list shall be reviewed and revised, if necessary.

HISTORICAL NOTE

Section added L.L. 123/2005 § 5, eff. June 1, 2009. [See Note 1]

NOTE

1. Provisions of L.L. 123/2005:

Section 1. Statement of findings and purpose. The Council finds that there are environmentally preferable alternatives to the products that we commonly use for routine tasks, such as cleaning and maintaining interior building

finishes. Such alternatives are most beneficial to those who apply them and those who occupy buildings where such products are used. In addition to the federal government, a number of state and local jurisdictions have taken steps to purchase environmentally preferable or "green" cleaning products.

The Council finds that the purchase and use of many such environmentally preferable cleaning alternatives will result in improved indoor air quality and enhanced environmental health.

§ 2. This law shall be known and may be cited as the "Greening Our Cleaning Act".

§ 3. Green cleaning product pilot program. a. For the purpose of this section and section four of this local law, the following terms shall have the following meanings:

(1) "Air freshener" means any product including, but not limited to, sprays, wicks, powders, blocks, gels and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting or deodorizing the air. This term shall not include products that are used on the human body, products that function primarily as cleaning products or disinfectant products claiming to deodorize by killing germs on surfaces.

(2) "Bathroom cleaner" means any product used to clean hard surfaces in a bathroom, such as counters, walls, floors, fixtures, basins, tubs and tile. This term may include products that are required to be registered under the federal insecticide, fungicide, and rodenticide act, such as disinfectants and sanitizers, but shall not include products specifically intended to clean toilet bowls.

(3) "Carpet cleaner" means any product used for the routine cleaning of carpets and rugs. This term shall include, but not be limited to, products used in cleaning by means of extraction, shampooing, dry foam, bonnet or absorbent compound, but shall not include products intended primarily for spot removal or any products required to be registered under the federal insecticide, fungicide, and rodenticide act, such as those making claims as sterilizers, disinfectants or sanitizers.

(4) "Degreaser" means any product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from interior or exterior building surfaces.

(5) "Director" means the director of citywide environmental purchasing.

(6) "Disinfectant" means any United States environmental protection agency-registered agent that is used to destroy or irreversibly inactivate infectious fungi, viruses and bacteria, but not necessarily their spores.

(7) "Floor finish" means any product designed to polish, protect or enhance floor surfaces by leaving a protective wax, polymer or resin coating that is designed to be periodically removed and reapplied.

(8) "Floor stripper" means any product designed to remove floor finish through breakdown of the finish polymers, or by dissolving or emulsifying the finish, polish or wax. This term shall not include general-purpose cleaners that can be used to clean floors, floor sealers, spray buffing products or products or equipment designed to remove floor wax solely through abrasion.

(9) "General-purpose cleaner" means any product used for routine cleaning of hard surfaces, including impervious flooring, such as concrete or tile. This term shall not include any cleaner intended primarily for the removal of rust, mineral deposits or odors; any product intended primarily to strip, polish or wax floors; any cleaner intended primarily for cleaning toilet bowls, dishes, laundry, glass, carpets, upholstery, wood or polished surfaces; or any product required to be registered under the federal insecticide, fungicide, and rodenticide act, such as those making claims as sterilizers, disinfectants or sanitizers.

(10) "Glass cleaner" means any product used to clean windows, glass and polished surfaces. This term shall not

include any product required to be registered under the federal insecticide, fungicide, and rodenticide act, such as those making claims as sterilizers, disinfectants or sanitizers.

(11) "Green Seal" means the independent, non-profit organization that sets standards for environmentally responsible products.

(12) "Metal cleaner" means any product designed primarily to improve, by physical or chemical action, the appearance of finished metal, metallic, or metallized furniture or interior or exterior building surfaces, including, but not limited to fittings and decorative ornamentation. This term shall not include any product designed primarily to remove grease, grime and oil.

(13) "Sanitizer" means any United States environmental protection agency-registered agent that is used to reduce, but not necessarily eliminate microorganisms to levels considered safe by public health codes or regulations.

b. A pilot program, which the director shall administer, is hereby established to study the feasibility of using green cleaning products in city facilities.

c. The director shall develop a list of cleaning products currently used in large quantities by agencies and shall select cleaning product categories currently used by agencies that are suitable for inclusion in the pilot program. At a minimum, general-purpose cleaners, bathroom cleaners, glass cleaners, carpet cleaners, floor finishes, floor strippers and air fresheners shall be included in the pilot program if used by the city and disinfectants, sanitizers, graffiti removers, metal cleaners, furniture polishes and degreasers shall be considered for inclusion in such program.

d. For each product category included in the pilot program, the director shall establish health and environmental criteria for selecting products to be tested and evaluated in the pilot program. The following may be considered in establishing such criteria:

(1) any available scientific evidence;

(2) any specifications, guidelines or rules of other governmental agencies or jurisdictions, or organizations supporting the establishment of environmental purchasing standards;

(3) whether such products contain any known respiratory irritants, mutagens or petrochemical-based fragrances, are produced from bio-based materials, or are sold in containers that reduce worker exposure to the chemicals contained therein; and

(4) any other matter determined by the director to be relevant to determining such health and environmental criteria.

e. The director shall select environmentally preferable cleaning products in each product category for inclusion in the pilot program that meet the criteria established pursuant to subdivision d of this section. Where the director selects a product for testing and evaluation in a product category for which an applicable Green Seal standard exists, the director shall, to the extent practicable, direct that the product, at a minimum, meet such Green Seal standard, with the exception of product packaging and concentrate requirements.

f. The director shall select an appropriate, representative sample of facilities, or portions thereof, owned by the city within which to implement the pilot program.

g. No later than one year after the date of enactment of this local law, the director shall develop and publish a pilot program plan for the testing and evaluation of environmentally preferable cleaning products, which shall include: the list of products in each category to be tested and evaluated in the pilot program; testing and evaluation guidelines for such products; the facilities, or portions thereof, designated for inclusion in such pilot program; and any other

information relating to the pilot program that the director deems appropriate. Immediately upon its publication, such plan shall be distributed to all agencies participating in the pilot program, in addition to the mayor and the speaker of the council. Any update or modification to such plan shall immediately be distributed as described above.

h. The testing and evaluation process of the pilot program shall assess products selected for the program based upon effectiveness, health and safety, costs and savings.

i. No later than three years after the enactment of this local law, the director shall submit a report to the mayor and the speaker of the council, which shall detail the results of the pilot program. Such report shall include, but not be limited to, the following:

(1) a list of the products that were tested and evaluated in each product category;

(2) a description of the pilot program process and how each product category and product was selected for inclusion in the program and tested and evaluated, as applicable;

(3) the health and environmental criteria established for each product category and, where the director has not directed that tested and evaluated products, at a minimum, meet the applicable Green Seal standard for the relevant product category where such a standard exists, with the exception of product packaging and concentrate requirements, an explanation as to why the director has not done so;

(4) the facilities, or portions thereof, in which the pilot program was implemented;

(5) the agencies whose facilities or employees were included in the pilot program;

(6) the list of cleaning products developed pursuant to subdivision c of this section, the amount of each such product purchased during the fiscal year beginning July 1, 2007, and whether or not these products meet the health and environmental criteria established by the director pursuant to the pilot program;

(7) an analysis and conclusion regarding the testing and evaluation of each product with respect to effectiveness, health and safety, and anticipated costs or savings and how such results compare to an assessment of such characteristics for the standard cleaning product used for the same purpose; and

(8) a determination as to the feasibility of using environmentally preferable cleaning products in each of the product categories included in the pilot program citywide in facilities, or portions thereof, owned and/or leased by the city, based upon effectiveness, health and safety, costs and savings of the products in such category. For any facility type or specific application for which the director determines that the use of such products in a specific product category is not feasible, the reasons for such lack of feasibility and all efforts made to successfully use such products in such facility type or application shall be described.

j. The director may, on an ongoing basis, test and evaluate environmentally preferable cleaning products, not limited to the product categories included in the pilot program, to determine the feasibility of using such products by the city.

§ 4. Green cleaning technical advisory committee. a. A green cleaning technical advisory committee shall be established, which shall provide advice and recommendations to the director for the duration of its term on the green cleaning product pilot program established pursuant to section three of this local law, regarding:

(1) the scope and implementation of the pilot program, including the product categories, products, facilities, or portions thereof, and agencies included in the program;

(2) for each program category, the health and environmental criteria that products shall meet;

(3) the testing and evaluation of products;

(4) a determination as to the feasibility of using environmentally preferable cleaning products citywide in facilities, or portions thereof, owned and/or leased by the city; and

(5) any other recommendations to improve upon or make the pilot program more effective, including regarding end-user outreach and training and the experience of other jurisdictions.

b. Such advisory committee shall be comprised of seven members, two of whom shall be appointed by the speaker of the council and five by the mayor. The members, who shall serve without compensation, shall have technical, scientific or other relevant experience regarding the procurement or use of green cleaning products and shall be appointed no later than March 3, 2006. A chairperson shall be elected from amongst the members. Members shall serve at the pleasure of the appointing official and any vacancy shall be filled in the same manner as the original appointment. The director may provide staff to assist the advisory committee.

c. The advisory committee shall continue to exist until three years after the enactment of this local law, after which time the committee shall cease to exist.

. . . . . .

§ 6. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect. § 7. This local law shall take effect immediately [Dec. 29, 2005], except that section five of this local law shall take effect June 1, 2009. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivision a, c, d, e and f of section 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007]; Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007]; and Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal section 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007].

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
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[Footnote 24]: * Subchapter 6 added L.L. 123/2005 § 5, eff. June 1, 2009.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-101

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-101 Bond to be executed by corporation counsel.

The corporation counsel shall execute a bond to the city, in the penal sum of five thousand dollars, conditioned for the faithful performance of the duties of that office. Such bond shall contain one or more sureties, who shall be approved by the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 391-1.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-102

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-102 Law department relieved from payment of fees to city, county or other officers.

a. It shall be unlawful for any salaried officer of the city or of the counties within the city or of any court exercising jurisdiction within the limits thereof, or for any public officer who is required by law to deposit the fees collected by his or her office in the city treasury, to receive from the law department or from any bureau thereof, any fee for levy, service or return of executions or other mandate or order, or for entering, filing, docketing, registering, recording or issuing any paper, record, mandate, precept or document required by law to be filed in or issued out of his or her office.

b. Every such officer must, upon application therefor, furnish to the law department or any bureau thereof, a certified or photostatic copy, extract or transcript of any paper, record, mandate, precept or document on file in his or her office, or of the return upon an execution, mandate or order, without receiving therefor the fee prescribed by law.

c. The law department or any bureau thereof shall file its notice of trial or note of issue or demand for a jury trial in any court in the city without being required to pay a trial or jury fee to any court clerk thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-3.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-103

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-103 Corporation counsel.

It shall be unlawful for the corporation counsel or any of the corporation counsel's assistants to appear as attorney or counsel in any action or litigation except in the discharge of his or her official duties, or to accept an appointment as referee or receiver in any action or proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-4.0 added chap 929/1937 § 1

Amended LL 50/1942 § 31

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-104

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-104 Legislative bills; local laws.

The corporation counsel shall prepare the draft of any bill to be presented by the city to the legislature for enactment, with a proper memorial for the passage thereof, and shall prepare such local laws as may be required by the council or any committee thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-5.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-105

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-105 Actions and proceedings for recovery of penalties.

The assistant corporation counsel in charge of the recovery of penalties, subject only to the approval of the corporation counsel, may settle, compromise, adjust or discontinue any action brought to recover a penalty in the name of the city or any agency thereof, provided that the penalty sued for does not exceed the sum of two hundred fifty dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394c-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-106

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-106 Collection of debts.

The comptroller shall direct legal proceedings to be taken when necessary to enforce payment of debts due to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-11.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-107

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-107 Register of actions.

The corporation counsel shall keep in proper books, to be provided for that purpose, a register of all actions prosecuted or defended by the corporation counsel, and all proceedings had therein.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394c-2.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-108

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-108 Bond or other security on behalf of city; by whom executed.

In all actions or proceedings, in either the state or United States courts, in which the city or any department thereof shall be a party, an undertaking, bond, security, or stipulation which is required of the city as a condition to the obtaining of any legal remedy or process, or to the perfecting of an appeal or the stay of execution or other writ in the nature thereof, may be executed on behalf of the city by the comptroller, upon the advice of the corporation counsel that it should be executed, and in such form or manner as he or she may approve or advise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394c-3.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The Commissioner of Welfare obtained a judgment against a debtor who had a bank savings account in his name as trustee for another. The debtor signed a paper directing the bank to pay the account to the Sheriff. The bank's by-law provided that payment would not be made without the passbook except upon a surety company indemnity bond. **Held:** the City itself could execute by its Comptroller a suitable indemnity bond to the bank and the bank would then be required to make payment to the Commissioner.-Dumpson v. Taylor, 38 Misc. 2d 118, 237 N.Y.S. 2d 871 [1963].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-109

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-109 Corporation counsel; when the corporation counsel may appear for officer, subordinate, or employee of an agency.

The corporation counsel, in his or her discretion may appear, or direct any of his or her assistants to appear, in any action or proceeding, whether criminal or civil, which may be brought against any officer, subordinate or employee in the service of the city, or of any of the counties contained therein, by reason of any acts done or omitted by such officer, subordinate or employee, while in the performance of his or her duty, whenever such appearance is requested by the head of the agency in which such officer, subordinate or employee is employed or whenever the interests of the city require the appearance of the corporation counsel. The head of the agency in which such officer, subordinate or employee is employed shall submit all pertinent papers and other documents to the corporation counsel.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 395-1.0 added chap 929/1937 § 1

Amended LL 77/1960 § 1

(amended as § 395-1.10)

Renumbered chap 100/1963 § 315

(formerly § 395-1.10)

CASE NOTES FROM FORMER SECTION

¶ 1. Corporation Counsel could appear for real estate commissioner in private defamation action based on words allegedly spoken by commissioner while acting as advisor during Board of Estimate meeting.-Ungar v. Lazarus, 45 Misc. 2d 889, 258 N.Y.S. 2d 40 [1964].

¶ 2. The Corporation Counsel had authority to represent co-employees of plaintiff in the Department of Social Services who had been witnesses in hearings against plaintiff which resulted in his dismissal in a subsequent action brought by plaintiff against the co-employees.-Boshnack v. Meyer, 161 (121) N.Y.L.J. (6-23-69) 2, Col. 2 M.

¶ 3. The Corporation Counsel has discretion to reject a request by an employee for representation in a suit against the employee and action of Corporation Counsel in rejecting representation of petitioner as defendant in action for false arrest was not arbitrary where petition failed to indicate in what respect petitioner was performing services for the city at the time of the occurrence in question or any other relevant fact that would indicate arbitrariness by the Corporation Counsel.-In re Ward (Dept. of Correction), 174 (67) N.Y.L.J. (10-3-75) 5, Col. 3 T.

¶ 4. The Corporation Counsel is the proper representative to appear for the property clerk division of the police department and for the district attorney as defendants and not the district attorney per se or the Assistant Commissioner for Civil Matter of Police Department.-Killen v. Property Clerk Division Police Department of City of New York, 109 Misc. 2d 529 [1981].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-110

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-110 Corporation counsel; representation and indemnification of district attorneys.

The district attorney and the employees of his or her office in each of the counties within the city shall be entitled to legal representation by the corporation counsel and indemnification by the city pursuant to the provisions of, and subject to the conditions, procedures and limitations contained in section fifty-k of the general municipal law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 395-2.0 added LL 36/1983 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-201

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-201 Actions against the city.

a. In every action or special proceeding prosecuted or maintained against the city, the complaint or necessary moving papers shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims, upon which such action or special proceeding is founded, were presented to the comptroller for adjustment, and that the comptroller has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment, except that in every action or special proceeding in relation to excise or non-property taxes, such complaint or necessary moving papers shall contain an allegation that such demand, claim or claims upon which the action or special proceeding is founded, were presented to the commissioner of finance for adjustment and that the commissioner has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.

b. An action against the city, for damages for injuries to real or personal property, or for the destruction thereof, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by the city, or any agency thereof, shall be commenced within one year after the cause of action therefor shall have accrued, provided that a notice of the intention to commence such action and of the time when and place where the damages were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed, and the value thereof, shall have been filed with the comptroller within six months after such cause of action shall have accrued.

c. 1. As used in this subdivision:

(a) The term "street" shall include the curbstone, an avenue, underpass, road, alley, lane, boulevard, concourse, parkway, road or path within a park, park approach, driveway, thoroughfare, public way, public square, public place,

and public parking area.

(b) The term "sidewalk" shall include a boardwalk, underpass, pedestrian walk or path, step and stairway.

(c) The term "bridge" shall include a viaduct and an overpass.

2. No civil action shall be maintained against the city for damage to property or injury to person or death sustained in consequence of any street, highway, bridge, wharf, culvert, sidewalk or crosswalk, or any part or portion of any of the foregoing including any encumbrances thereon or attachments thereto, being out of repair, unsafe, dangerous or obstructed, unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive such notice, or where there was previous injury to person or property as a result of the existence of the defective, unsafe, dangerous or obstructed condition, and written notice thereof was given to a city agency, or there was written acknowledgement from the city of the defective, unsafe, dangerous or obstructed condition, and there was a failure or neglect within fifteen days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe.

3. The commissioner of transportation shall keep an indexed record in a separate book of all written notices which the city receives and acknowledgement of which the city gives of the existence of such defective, unsafe, dangerous or obstructed conditions, which record shall state the date of receipt of each such notice, the nature and location of the condition stated to exist and the name and address of the person from whom the notice is received. This record shall be a public record. The record of each notice shall be maintained in the department of transportation for a period of three years after the date on which it is received and shall be preserved in the municipal archives for a period of not less than ten years.

4. Written acknowledgement shall be given by the department of transportation of all notices received by it.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-1.0 added chap 929/1937 § 1

Sub a amended chap 829/1965 § 1

(special provision chap 829/1965 § 2)

Sub d added LL 82/1979 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. A notice served upon the City of New York pursuant to Admin. Code § 394a-1.0, which omitted the date of the accident, was fatally defective.-Jablon v. City of N.Y., 177 Misc. 838, 31 N.Y.S. 2d 764 [1941], aff'd 268 App. Div. 859, 51 N.Y.S. 2d 82 [1944].

¶ 2. Notice which was served upon the City Comptroller without the date of the alleged accident was so defective that no amendment could cure it, and hence motion to amend nunc pro tunc by inserting the date, was denied.-Francis v. City of N.Y., 127 (109) N.Y.L.J. (6-5-52) 2247, Col. 6 F.

¶ 3. A notice of claim which stated that the accident occurred "on or about" a given date at a specified subway station was sufficient although it did not identify the particular part of the platform where the accident occurred and did

not state the date of the accident with exactness and certainty.-Attamian v. City of New York, 297 N.Y. 640, 75 N.E. 2d 748 [1947], aff'g 271 App. Div. 1001, 69 N.Y.S. 2d 322 [1947].

¶ 4. Omission of date of accident in notice of claim filed with the City of New York prior to commencement of death action was fatal, and the Court was without power to permit amendment of the claim nunc pro tunc. The insufficiency was not waived by the City's retention of the notice.-Rossi v. City of N.Y., 107 (57) N.Y.L.J. (3-11-42) 1065, Col. 6 M.

¶ 5. An acknowledged but unverified notice of claim did not constitute compliance with Admin. Code § 394a-1.0.-Tannenbaum v. City of N.Y., 182 Misc. 109, 50 N.Y.S. 2d 122 [1944], aff'd 268 App. Div. 1062, 52 N.Y.S. 2d 600 [1945].

¶ 6. An acknowledged but unverified notice of claim does not constitute compliance with this section which requires the service of a notice of intention to sue together with a verified statement showing in detail the property alleged to have been damaged or destroyed.-Tannenbaum v. City of New York, 182 Misc. 109, 50 N.Y.S. 2d 122 [1944], aff'd 268 App. Div. 1062, 52 N.Y.S. 2d 600 [1945].

¶ 7. Notices filed with Comptroller and Corporation Counsel which were copies containing the typewritten names of plaintiff and of the notary, were not verified as required by Admin. Code § 394a-1.0 and 394b-1.0, and hence the complaint in the action would be dismissed (282 N.Y. 17; 282 N.Y. 607; etc.; dist'g 59 N.Y.S. 2d 700).-Chambers Carting Co. v. Dept. of Sanitation, 115 (71) N.Y.L.J. (3-27-46) 1197, Col. 5 T.

¶ 8. Complaint should be dismissed where the notice of claim was neither verified, as required by Admin. Code § 394a-1.0, subd. b, nor sworn to.-Berner v. City of N.Y., 276 App. Div. 1069, 96 N.Y.S. 2d 492 [1950].

¶ 9. Defendant bus company's letter to City Comptroller merely informing him that it had applied to the Board of Estimate for return of deposit theretofore made by it, did not constitute the presentment of a claim or demand within meaning of Admin. Code § 394a-1.0.-City of N.Y. v. N.Y.C. Omnibus Corp., 120 (106) N.Y.L.J. (12-3-48) 1385, Col. 4 F.

¶ 10. Notice of claim served upon City by plaintiff, which merely stated that plaintiff had sustained personal injuries by reason of the City's negligence "in permitting a portion of the sidewalk at or about the intersection of West 29th Street and Eighth Avenue in the Borough of Manhattan" to be in an unsafe condition, with result that plaintiff caught her foot in a depression in the sidewalk, **held** insufficient, and required the setting aside of a verdict for plaintiff, since the location of the defective condition was too indefinite, and furthermore it was doubtful that the notice unmistakably pointed out that the defect was on any of the corners, as "at or about the intersection" are words purely correlative.-Todd v. City of N.Y., 23 N.Y.S. 2d 884 [1940].

¶ 11. Notice of claim which placed the alleged foot-trap hole "at and about the sidewalk curb on the public street, where Watson Avenue and Manor Avenue have their intersection, at about and near such corner of the intersection of Watson Avenue and Manor Avenue, as is located a store bearing number 1570 Watson Avenue . . . and to my belief, is the northwest corner of Watson Avenue and Manor Avenue", **held** indefinite and confusing, and a verdict for plaintiff would be set aside and the complaint dismissed where on the trial the place of accident was fixed as in front of a candy store numbered 1571 Watson Avenue, which was at or near the northwesterly corner of the two avenues, and it appeared that number 1570 was in fact on the southerly side of that avenue, about 90 feet from the corner, and such latter place was the one investigated and photographed by defendant.-Kantor v. City of N.Y., 34 N.Y.S. 2d 652 [1942].

¶ 12. Notice of claim which described the point between the express train and a specified side of a specified platform where plaintiff's injuries were allegedly sustained, sufficiently located the place of accident within meaning of Admin. Code § 394a-1.0.-Abramowitz v. City of N.Y., 33 N.Y.S. 2d 416 [1942].

¶ 13. Notice of claim against City of New York which merely charged that the City had been negligent "in failing

to remove snow and ice from the public sidewalk on Fifty-first Street, several feet from the intersection of Fifty-first Street and Thirtieth Avenue", in the Borough of Brooklyn, **held** insufficient. However, a different ruling might have been required if it were not an accident resulting from snow and ice on the sidewalk, or if the description of the place of accident were coupled with an identifying reference to a fixed and continuing object, obstruction or defect.-Meiner v. City of N.Y., 105 (69) N.Y.L.J. (3-25-41) 1331, Col. 3 T.

¶ 14. Notice of intention to sue with respect to accident which happened at the southwest corner of Vanderbilt & St. Marks Avenue, Brooklyn, **held** sufficient, under Admin. Code § 394a-1.0, notwithstanding the unnecessary and erroneous reference to premises on St. Marks Avenue. In view of the small area covered by the places mentioned in the notice, the notice, when reasonably construed, accomplished the purpose of the statute to give the City the opportunity to investigate the claim.-Freligh v. City of New York, 265 App. Div. 967, 38 N.Y.S. 2d 960 [1942].

¶ 15. Where the plaintiff contended in her pleading and in her oral testimony that the accident happened at the Grand Central end of the subway shuttle service, but a police officer and station guard testified that the accident occurred at the Times Square station of the shuttle and the hospital showed first aid was there given by the ambulance doctor, the complaint was dismissed because of the great disparity between the place set forth in the notice of claim as the situs of the accident and that found in the special verdict, to effect that the accident occurred at the Times Square station.-McQueen v. City of N.Y., 110 (90) N.Y.L.J. (10-16-43) 960, Col. 3 M.

¶ 16. Notice of intention to sue the City because of a subway accident, which specified that the accident occurred on a Manhattan-bound train at the "17th Street Station of the Fourth Avenue Line" in Brooklyn, was not fatally defective because the subway station located there was known as the "Prospect Avenue" station. The sufficiency of the notice as to specification of the place of the accident was demonstrated by the fact that the City actually produced upon the trial an eye witness who was an agent at that station and who testified as to the facts in issue.-De Luca v. City of N.Y., 182 Misc. 583, 52 N.Y.S. 2d 260 [1944].

¶ 17. Where concededly there was no hole, as stated in the notice of claim, "in front of and adjacent to" the premises 1827-31 65th Street, and there was no particular description of the hole which would tell the City where else there was a hole which plaintiff claimed was the place of accident, the notice of claim was defective and the action was dismissed.-Berkowitz v. City of N.Y., 115 (24) N.Y.L.J. (1-29-46) 390, Col. 3 F.

¶ 18. Notice of claim, served pursuant to Laws of 1886, ch. 572, was fatally defective where it stated that the claimed pavement defect which caused plaintiff's injury existed "near the intersection of Eastern Parkway and Rochester Avenue", without specifying in which of the three roadways on Eastern Parkway or the roadway of Rochester Avenue the claimed defect existed, or near which of the several corners the accident happened.-Belzer v. City of New York, 269 App. Div. 987, 58 N.Y.S. (2d) 278 [1945].

¶ 19. In action to recover for injuries sustained when plaintiff slipped on an icy crosswalk at a street intersection, notice of claim which failed to recite at which of the four crosswalks at Bushwick Avenue and Scheffer Street, Brooklyn, the accident occurred, was fatally defective.-Smith v. City of N.Y., 270 App. Div. 905, 61 N.Y.S. 2d 744 [1946], aff'd without opinion, 296 N.Y. 921, 73 N.E. 2d 39 [1947].

¶ 20. Where plaintiff's original notice of claim served on City to recover for injuries sustained as result of alleged sidewalk defect, described the place of the accident as "at or near the **South East** corner of Unionport Road and East Tremont Avenue", it was error to grant plaintiff's motion, made over a year later, to amend the notice of claim to designate the "**South West** corner of Unionport Road and East Tremont Avenue".-Balding v. Park Plains Corp., 70 N.Y.S. 2d 181 [1947].

¶ 21. Notice which fixed place at which plaintiff was injured as the "east side of Troy Avenue between Prospect Place and Park Place", Brooklyn, was vague, and the notice of intention to sue was therefore fatally defective and the right to sue the City terminated six months after happening of the accident. The remedy was not revived thereafter so as

to enable plaintiffs to amend the notice, by reason of enactment of Laws of 1945, ch. 694.-Rozell v. City of New York, 271 App. Div. 832, 65 N.Y.S. 2d 864 [1946].

¶ 22. Notice of claim which consisted of a diagram containing an "X" mark allegedly indicating the place where plaintiff fell, was sufficient. Cohen v. City of N.Y., 296 N.Y. 814, 72 N.E. 2d 11 [1947], reversing 270 App. Div. 1017, 62 N.Y.S. 2d 455 [1946] which held that since the mark indicated the accident at a place approximately 100 feet westerly of the actual place of the accident as testified to by the plaintiff upon the trial, there was a fatal variance precluding any recovery.

¶ 23. Where plaintiff, suing City to recover for fall sustained because of alleged defect in fifth step of a certain stairway, inadvertently referred to the step as the third, she would be permitted to amend her notice of claim to specify the fifth step, notwithstanding City's claim of prejudice because the step had been repaired and it could not ascertain its condition as of time of the accident. It appeared that the City had repaired the step immediately after the occurrence so that the evidence no longer existed when the original notice was served.-In re Nash (City of N.Y.), 117 (98) N.Y.L.J. (4-28-47) 1656, Col. 5 M.

¶ 24. In action to recover for personal injuries allegedly sustained by plaintiff in fall through space between a subway station platform and a subway train car, a notice of claim which stated that the city negligently permitted an "unusually wide and dangerous opening" between the edge of the platform and the subway car to exist "at or about Canal Street Station", without further specification of the place, although the Canal Street Station consists of three separate and distinct train levels, each level with platforms to accommodate the trains operated in two directions, running under different streets, with the distance from one station to another being almost three blocks, **held** insufficient.-Marino V. City of N.Y., 277 App. Div. 1003, 100 N.Y.S. 2d 173 [1950].

¶ 25. The plaintiff was injured on a ferry boat crossing from Staten Island to New York when, as the boat neared the New York side it hit pilings causing the plaintiff to be thrown to the deck. The notice of claim filed by the plaintiff was held sufficient although it did not state the name of the ferry boat, the time it left Staten Island, or the place of the accident.-Badaracco v. City of New York, 297 N.Y. 657, 76 N.E. 2d 322 [1947].

¶ 26. The notice served on the Comptroller with respect to plaintiff's claim for damages to his property as result of construction of subway adjacent thereto, was not defective because it set forth his relation to the building as "owner and/or lessee." The alleged defect could not have resulted in prejudice to the City, as it was immaterial whether claimant was the owner or lessee as he would have a cause of action in either case, and in any event his exact legal status could have been ascertained at the hearing held by the City.-Felder v. George R. Flinn Corp., 181 Misc. 119, 45 N.Y.S. 2d 439 [1943].

¶ 27. Notice of claim presented to Comptroller by pedestrian injured when a truck came into contact with the visors of the lighting section of a traffic light pole and caused the top section of the pole to fall upon him, **held** not insufficient for failure to disclose that the act of negligence of a third party was in any way responsible for the injuries, and that the traffic light signal which caused the injuries was affixed to a stanchion which inclined toward the curb so that a portion extended over the roadway. The notice was in substantial compliance with the statute and set forth a time when and place where the accident occurred, and described the claim insofar as it related to the City of New York, which information was sufficient to enable the City to investigate the claim.-Kamnitzer v. City of New York, 265 App. Div. 636, 40 N.Y.S. 2d 139 [1943].

¶ 28. The notice served on the Comptroller with respect to the plaintiff's claim for damages to his property as the result of the construction of a subway adjacent thereto was not defective for failure to set forth the acts or omissions causing the damage, as there is no requirement that the cause be specified. Even if a statement of cause were required, the notice disclosed that the cause was undermining of the building due to carelessness in subway construction. The specification of the date of injury was sufficient, as it was stated that the condition of the complaint was caused by "undermining," and that the subway construction occurred in 1941 and 1942 and was still continuing.-Felder v. George

R. Flinn Corp., 181 Misc. 119, 45 N.Y.S. 2d 439 [1943].

¶ 29. The notice of claim was not defective for failure to allege that it was the City or an agent thereof which brought about the alleged injuries to the building. The Admin. Code does not require such an allegation.-Id.

¶ 30. Notice of claim which specified that the damage was to a "Fruehauf Semi-Trailer No. 49876" and that the damage amounted to $156.28, sufficiently complied with Admin. Code § 394a-1.0(b) in that it showed "in detail the property alleged to have been damaged or destroyed, and the value thereof".-Reich Bros. L. I. Motor Freight v. City of N.Y., 101 (40) N.Y.L.J. (2-18-39) 795, Col. 7 M.

¶ 31. In action against City of New York to recover for property damage, notice which specified that the damage was to an automobile owned by the plaintiff and identified as "a 1941 Chrysler Royal bearing registration No. 1K1337," and that the damage amounted to "the sum of $247.25," **held** sufficiently to comply with Admin. Code § 394a-1.0(b), as it showed in detail the property alleged to have been damaged or destroyed and the value thereof.-Chasnov v. City of N.Y., 181 Misc. 367, 47 N.Y.S. 2d 418 [1943].

¶ 32. The computation of the time in which service of the notice must be made upon the City of New York under Admin. Code § 394a-1.0 is governed by General Construction Law § 30, and not § 20, inasmuch as Admin. Code § 394a-1.0 specifies the period for service in months, and not in days.-Jablon v. City of N.Y., 177 Misc. 838, 31 N.Y.S. 2d 764 [1941], aff'd 268 App. Div. 859, 58 N.Y.S. 2d 82 [1944].

¶ 33. Where the last day of the six-month period for service of a notice upon the City pursuant to Admin. Code § 394a-1.0 fell upon a Sunday, the service of the notice on the following day was ineffective, since the computation of days was governed by General Construction Law § 30, and this section contained no reservation excluding Sundays and public holidays in the computation of time.-Id.

¶ 34. Under provisions of the Soldiers and Sailors Civil Relief Act, plaintiff, who was in military service at time of the occurrence and for the entire six months during which the notice required by Admin. Code § 394a-1.0c should have been served, was relieved of the necessity of serving the notice within the statutory time.-Calderon v. City of N.Y., 184 Misc. 1057, 55 N.Y. Supp. 2d 674 [1945].

¶ 35. In action against City of New York to recover damages for personal injuries arising out of City's alleged negligence, a verdict for plaintiff was set aside and the complaint dismissed for failure to file the notice of claim and intention to sue until July 19, 1943, although the last date to file the notice was June 14 under Admin. Code § 394a-1.0. A finding that plaintiff was physically and mentally incapable of complying with the statute was against the weight of evidence, where plaintiff had been confined to his bed and home for three weks but thereafter visited his doctor's office about 18 times, the doctor testified he was normal mentally and able to use the telephone, for approximately three months he was able to perform light duties as porter and doorman, and he testified he did not engage a lawyer until July, 1943, because he was waiting for the City to send an agent to see him about his claim.-Bertha v. City of N.Y., 114 (120) N.Y.L.J. (12-24-45) 1435, Col. 5 T.

¶ 36. Provisions of General Municipal Law § 50-e requiring a notice of claim to be given within 60 days after the claim arises, did not apply to plaintiff who was injured in a subway accident on July 28, 1945, as § 50-e did not take effect until September 1, 1945. Admin. Code § 394a-1.0, subd. c, provides for a six months' period in which to serve a notice of claim.-Everett v. City of New York, 186 Misc. 39, 58 N.Y. Supp. (2d) 463 [1945].

¶ 37. Where the accident occurred on August 11, the service of a notice of claim upon the City on October 11, was timely.-In re Nash (City of N.Y.), 117 (98) N.Y.L.J. (4-28-47) 1656, Col. 5 M.

¶ 38. Failure of five-year-old infant to serve notice of intention to sue the Board of Education within six months after the cause of action accrued, did not bar his cause of action, since provision of the statute that the action must be commenced within one year after the cause accrued is not in the nature of a Statute of Limitations, which runs during

infancy.-Tilinsky v. City of New York, 255 App. Div. 815, 7 N.Y.S. 2d 402 [1938].

¶ 39. Failure of plaintiff, within six months after his alleged injury, to serve upon the Corporation Counsel and Comptroller of the City of New York a notice of his intention to sue the City, **held** not to preclude the maintenance of his action against the city, where the plaintiff was a boy 13 years of age at the time, and after examination and cross-examination of him the Court was of the opinion that during such six-month period he did not have sufficient understanding or experience to appreciate the requirements of law as to service of the intention to sue, and the notice was in fact served eight months after the accident.-Cloyd v. City of N.Y., 101 (103) N.Y.L.J. (5-4-39) 2064, Col. 2 T.

¶ 40. Russo v. City of New York (258 N.Y. 344), is authority for a statement that in some instances an infant is not to be held to strict compliance with Admin. Code § 394a-1.0, subd. c, but it is not authority for a statement that the provisions of the Admin. Code may be totally disregarded in any case simply because plaintiff is an infant or that no notice of claim and intention to sue need be served where the plaintiff is an infant.-White v. Bd. of Education of City of N.Y., 109 (25) N.Y.L.J. (1-30-43) 422, Col. 2 M.

¶ 41. Where plaintiffs filed with the Comptroller and Corporation Counsel of the City of New York original and carbon copies of the intention to commence the action, together with a verified statement showing in detail the property damaged or destroyed and the value thereof, and both the Comptroller and Corporation Counsel stamped on the original copies the statement that they had been received, but for some reason each office retained the carbon copies and returned the originals to the plaintiffs, there was nevertheless a sufficient filing within meaning of the statute.-D'Angelo v. City of N.Y., 107 (101) N.Y.L.J. (5-1-42) 1848, Col. 3 M.

¶ 42. Where an original and true copy of the claim against the City were tendered at the proper offices and the copy was retained in each office, and a stamped endorsement admitting such receipt was endorsed on the original, this constituted a sufficient filing within meaning of the statute, and a motion to permit plaintiff to substitute the original notices of claim in lieu of the copies, was unnecessary.-Abrami v. City of N.Y., 117 (69) N.Y.L.J. (3-25-47) 1164, Col. 4 F.

¶ 43. Admin. Code § 349a-1.0 now requires that notice of intention to sue the City be served upon the Corporation Counsel in like manner as the service of a summons in the Supreme Court, although prior to 1933 notice of intention to sue was required merely to be filed with, or in some way received by, the Corporation Counsel.-Byrnes v. City of N.Y., 188 Misc. 85, 69 N.Y.S. 2d 375 [1945].

¶ 44. Plaintiff-wife's failure to serve a notice of intention to sue on the Corporation Counsel was not fatal to her cause of action, where the notice of claim served, containing a notice of intention to sue, was transmitted by the Comptroller, upon whom it was served, to the Corporation Counsel, to whom it was directed, and an examination of the plaintiff was thereon conducted.-Zimmerman v. City of N.Y., 183 Misc. 298, 53 N.Y.S. 2d 434 [1944].

¶ 45. However, the husband was barred from recovery, in his action for medical expenses and loss of his wife's services, by his own unexplained failure to appear for examination by the Comptroller on the day set therefor. That the wife had recovered in her action was immaterial, as the husband's action was distinct and severable from hers. That the wife in her examination was questioned concerning medical expenses, was also immaterial.-Id.

¶ 46. In view of provisions of General Municipal Law § 50-e, service of notice of claim and notice of intention to sue upon the Corporation Counsel of the City of New York was sufficient without service on the Comptroller in addition thereto. Provisions of the Admin. Code, § 394a-1.0, requiring duplicate service, are no longer applicable.-Ferrara v. City of N.Y., 187 Misc. 478, 65 N.Y.S. 2d 327 [1946].

¶ 47. In action against City to recover for personal injuries, court had power to permit plaintiff to amend his notice of claim and the complaint so as to increase the amount sued for (97 N.Y. 620; Gen. Mun. Law § 50-e, subd. 6).-Kidziak v. City of N.Y., 114 (107) N.Y.L.J. (11-7-45) 1213, Col. 1 M.

¶ 48. Plaintiff **held** entitled to serve amended notice of claim upon City of New York.-In re Primscott (City of N.Y.), 115 (84) N.Y.L.J. (4-11-46) 1434, Col. 3 M.

¶ 49. A written notice of intention to sue served upon the City within six months after the happening of the accident on November 13, 1941, if defective, could not be rendered valid by means of amendment as of June, 1946, under Laws of 1945, ch. 694, effective September 1, 1945.-Marino v. City of N.Y., 272 App. Div. 822, 70 N.Y.S. 2d 189 [1947].

¶ 50. Where notice of claim had been timely asserted by wife for personal injuries, by husband for loss of her services and medical expenses and by the infant daughter for her personal injuries, a motion now made by the husband four years after the accident to amend the notice to include therein his claim for loss of the services of his daughter and for medical expense incurred by him in her behalf, was denied, as an entirely new claim was sought to be interposed and not an amendment of a mere technical or formal nature. Moreover, the failure to include the claim did not appear to have been inadvertent, and the assertion of a new claim was also barred by Statute of Limitations.-Fanelli v. City of N.Y., 130 (59) N.Y.L.J. (9-22-53) 509, Col. 3 F.

¶ 51. That the City had retained the notice and examined the plaintiff, **held** not to constitute a waiver of defects in the notice as served, notwithstanding that on the examination plaintiff, in response to a question, stated that she was injured at the curb of the southwest corner of 29th Street and Eighth Avenue.-Todd v. City of New York, 23 N.Y.S. 2d 884 [1940].

¶ 52. That claimant in action against City to recover damages for injuries sustained in fall upon an icy sidewalk, and for loss of services, had been examined by the City as to the details of his claim, did not relieve him of the necessity of complying with the statute requiring the giving of notice to officers of the municipality.-Meiner v. City of N.Y., 262 App. Div. 970, 30 N.Y.S. 2d 177 [1941].

¶ 53. Failure to serve a notice of intention to sue upon the Corporation Counsel with respect to accident occurring in October, 1940, was not cured by the examination of plaintiff by a representative of the Corporation Counsel's office on behalf of the Comptroller. Furthermore, General Municipal Law § 50-e, subd. 6, permitting amendments, applies only to mistakes, omissions and defects pertaining "to the manner or time of service" of the notice of claim. Accordingly, plaintiff would not be permitted to serve a notice of intention to commence the action upon the Corporation Counsel nunc pro tunc, and to amend the complaint.-Lerner v. City of N.Y., 119 (19) N.Y.L.J. (1-28-48) 354, Col. 3 F.

¶ 54. Sixty days was to be added to the three-month period prescribed by General Municipal Law § 71 for the commencement of an action to recover for damages to property sustained as a result of a Harlem riot, inasmuch as plaintiff was not free to commence an action during such 60-day period by reason of the provision of New York City Admin. Code § 394a-1.0.-Butchers' Mutual Casualty Co. v. City of N.Y., 182 Misc. 809, 52 N.Y.S. 2d 121 [1944].

¶ 55. A cause of action automatically assigned to an insurance carrier on December 19 by virtue of the provisions of § 29 of the Workmen's Compensation Law accrued on that date. Therefore an action by the carrier against the City was timely where it was commenced on the following February 24, that date being within one year from the time when the cause of action accrued.-Aetna Casualty and Surety Co. v. City of New York, 5 Misc. 2d 110, 160 N.Y.S. 2d 365 [1956].

¶ 56. An action for negligence based upon injuries sustained by the plaintiff while riding on a City subway train is subject to a one-year statute of limitations under Admin. Code § 394a-1.0, subd. c, or General Municipal Law, §§ 50-b, 50-c, and not to the three-year statute under C.P.A. § 49, subd. 6, which is applicable to negligence actions generally. Plaintiff's contention that the short statute applies only to actions involving governmental functions of the City and that actions relative to "proprietary" functions are governed by the longer statute is rejected. These short statutes are a concomitant of the State's waiver of immunity from civil suit in tort, with the sovereign's right to attach

conditions thereto. While the whole question of artificial classification of governmental functions may well stand reappraisal, the Court is not here called upon to characterize the operation of a subway system. The power of the Legislature to lay down a short statute of limitations as to all litigation against a municipality is beyond dispute.-McGuire v. City of New York, 3 Misc. 2d 569, 153 N.Y.S. 2d 368 [1956].

¶ 57. The Board of Estimate passed a resolution that a certain street was to be widened. Letters were sent to property owners directing them to remove all encroachments on the sidewalks which were to be narrowed. Plaintiff complied with this directive at a cost of $275. Thereafter, the City resolved that the roadway would not be widened. **Held:** plaintiff was not entitled to judgment against the City for the expense of removing the encroachments when the second resolution did not rescind or abrogate the first resolution.-Rubin v. City of New York, 42 Misc. 2d 598, 252 N.Y.S. 2d 1016 [1964].

¶ 58. The 30-day period following the service of notice of claim upon the Comptroller, during which period the plaintiff is stayed from bringing an action, is to be excluded in computing the time within which an action against the City must be begun, but the additional period during which by stipulation the time for giving of evidence of the claim before the Comptroller was adjourned and during which period it was agreed that no action shall be brought, might not be excluded from the computation of time. Although the Comptroller had power to adjourn the examination and to impose the condition that despite the adjournment he should have 30 days after completion of examination within which to determine whether he would settle the claim, the Comptroller did not have the further power to extend beyond six years and 30 days the time for commencing an action against the City.-Woodcrest Const. Co. v. City of New York, 185 Misc. 18, 57 N.Y.S. 2d 498 [1945], aff'd 273 App. Div. 752, 75 N.Y.S. 2d 299 [1947].

¶ 59. Complaint, in action against City of New York, was dismissed where it was not begun until 15 months and 10 days after the accident. The cause of action accrued on the date of the accident although plaintiff could not have commenced an action until 30 days after she presented her claim to the Comptroller. Such 30 day limitation for bringing the action under C.P.A. § 24, merely extended the one-year limitation for the additional thirty days. Contention that the cause of action accrued when written notice of claim was presented to the Comptroller, was rejected.-Javet v. City of N.Y., 187 Misc. 841, 65 N.Y.S. 2d 6 [1946], aff'd 272 App. Div. 795, 71 N.Y.S. 2d 925 [1947].

¶ 60. Where written notice of claim against City for personal injuries was duly served upon the City Comptroller and the claimant was subpoenaed to appear at his office for examination on a certain date but, due to the claimant's physical inability to attend, adjournments were granted and claimant died during the period of an adjournment, the administratrix of the claimant might institute an action against the City for injuries and death without awaiting the expiration of the period of time prescribed during which the Comptroller may decide whether to pay the claim.-Sharkey v. City of N.Y., 80 N.Y.S. 2d 284 [1948].

¶ 61. The necessity for service upon City of a notice of claim and demand for payment in connection with a claim for compensation allegedly due City employees, with a consequent stay of action for 30 days thereafter, had the effect of tolling the Statute of Limitations for a like period.-In re McGinnis (O'Dwyer), 121 (20) N.Y.L.J. (1-28-49) 351, Col. 2 F. For prior opinion, see 120 (72) N.Y.L.J. (1-13-48) 765, Col. 4 F.

¶ 62. Provision of Civil Practice Act § 24, that where commencement of action has been stayed by a statutory prohibition the period of the stay is not a part of the time limited for commencement of the action, resulted in the exclusion of the 30-day stay of action in Admin. Code § 394a-1.0 from the one-year limitation contained in a paving contract with the City of New York for the commencement of an action thereon. A distinction might not be made between cases where § 394a-1.0 becomes involved at the end of a period of limitation and where it is acted upon at an early portion of the period.-Amex Asphalt Corp. v. City of N.Y., 263 App. Div. 968, 33 N.Y.S. 2d 182 [1942], aff'd 288 N.Y. 721, 43 N.E. 2d 97 [1943].

¶ 63. The decision in Di Bartolo v. City of N.Y., 276 App. Div. 351, 41 N.Y.S. 2d 845 [1944], means that the burden is on the City to plead a violation of a stipulation adjourning the time for an examination by the Comptroller,

with resultant prejudice to the City, and to prove that fact on the trial. The mere violation of the stipulation would not be important, but what would be important is the prejudice to the City because of the violation.-Angelo v. City of N.Y., 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 64. Where examination of plaintiff by the Comptroller was adjourned by stipulation but the plaintiff failed to appear on the adjourned date, and, although he waited more that 30 days after the date he served notice upon the Comptroller, he nevertheless brought his action before any examination was had and therefore before the expiration of 30 days after conclusion of the examination, as required by the stipulation, his action was dismissed as premature. Violation of the terms of a stipulation with the Comptroller is as serious a matter as the violation of the statute itself.-Angelo v. City of New York, 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 65. Where on January 7, when the examination of plaintiff by the Comptroller was further adjourned, the City still had five days from the date to which the examination was adjourned within which to adjust the claim, but one day later, on January 8, when the City verified its amended answer, it admitted that notices of claim and of intention to sue had been presented to the Comptroller for adjustment "and that no adjustment thereof has been made," this amounted to a clear confession, for the purpose of pleading and trial, that the 30-day period for adjusting the claim had expired and that the Comptroller had neglected and refused to make an adjustment during that period, and hence the action was not to be deemed prematurely brought where it was commenced prior to five days after the adjourned date. Furthermore, an examination of the plaintiff was thereafter conducted by the Comptroller more than 11 months before the trial with no suggestion of adjustment or payment being subsequently made by the Comptroller, so that the plaintiffs were justified in assuming that the question of premature institution of the action was out of the case. Also, if the City desired to rely on the stipulation of the parties to establish that the action was prematurely commenced, the special agreement so relied upon should have been pleaded as an affirmative defense.-Di Bartolo v. City of N.Y., 293 N.Y 114, 56 N.E. 2d 71 [1944].

¶ 66. Where plaintiff, in his action against the City, alleged full performance of all conditions precedent to institution of the action, that he had been notified to appear for examination by the Comptroller, and that a stipulation had been entered into fixing a date for his examination, but he failed to allege any excuse for his non-appearance on the adjourned date, a defense alleging that plaintiff failed to appear in accordance with the stipulation and that the stipulation provided that no suit might be brought until after expiration of the time within which the Comptroller could settle or adjust the claim, **held** sufficient. Plaintiff had the burden of excusing his absence if the stipulation was in force.-Angelo v. City of N.Y., 186 Misc. 369, 63 N.Y.S. 2d 243 [1946].

¶ 67. Where plaintiff had filed its notice of claim with the City Comptroller on March 24, 1938, seven days later it had been subpoenaed to appear before the Comptroller and give evidence as to its claim, the examination was thereafter adjourned five times at plaintiff's request, on the final adjourned date plaintiff failed to appear and on November 28, 1938 the Comptroller notified plaintiff that its claim was disallowed, but on June 12, 1941 plaintiff notified the Comptroller that it was ready to be examined at the Comptroller's convenience, and upon the Comptroller's refusal to hold the examination plaintiff instituted the present action against the City, City **held** not entitled to summary judgment, inasmusch as there was present an issue as to whether the City had in fact waived the right to examine, as the subpoena was not ignored and an opportunity for examination was given the Comptroller prior to institution of the suit.-Daniel J. Rice, Inc. v. City of N.Y., 109 (69) N.Y.L.J. (3-25-43) 1166, Col. 2 F.

¶ 68. Absence of allegation in complaint that at least 30 days had elapsed since the demand upon which the action was founded was presented to the Comptroller for adjustment and that the Comptroller had failed to make adjustment, **held** to require dismissal of complaint.-Venditti v. City of N.Y., 187 Misc. 84, 60 N.Y.S. 2d 792 [1946], reversed without opinion, 188 Misc. 271, 67 N.Y.S. 2d 866 [1946] by permitting plaintiff to amend his complaint and include the required allegation.

¶ 69. After dismissal without prejudice of action against City for failure to comply with Charter provisions prescribing conditions precedent to the beginning of action, plaintiff could commence another action within one year

(C.P.A. § 23; 176 N.Y. 404; 250 A.D. 102; &c.).-Angelo v. City of N.Y., 115 (50) N.Y.L.J. (3-2-46) 848, Col. 4 F.

¶ 70. Personal injury action which was prematurely brought against the City of New York because the summons and complaint were served upon the City two days prior to the 30-day period required to elapse after service of notice upon the City, was nevertheless brought "within the time limited therefor", within meaning of Civil Practice Act § 23, where it was otherwise brought within the time limited by the general provisions of the Civil Practice Act. Hence the provisions of § 23 were applicable to make timely a new action commenced a few days after dismissal of the prior action as premature.-Di Donna v. City of New York, 48 N.Y.S. 2d 847 [1944].

¶ 71. Plaintiff's individual suit against City for injuries could not be related back to the date he commenced suit, in a representative capacity, on behalf of his wife who had been killed in the same accident, so as to bring his individual suit within the Statute of Limitations.-Iacono v. City of N.Y., 136 N.Y.S. 2d 767 [1954].

¶ 72. Motion of the City for leave to serve a second amended answer pleading Statute of Limitations was granted where City previously had made such motion and had then inadvertently failed to state reliance upon such statute in its first amended answer.-Manevetz v. City of New York, 283 App. Div. 1095, 131 N.Y.S. 2d 664 [1954].

¶ 73. Contention that the infant-plaintiff's action against the City was barred by virtue of Admin. Code § 394a-1.0, subd. c, where it was not brought until over two years after the accident, was rejected (C.P.A. § 60; 258 N.Y. 344; 7 N.Y.S. 2d 402).-In re Hector, 193 Misc. 727, 85 N.Y.S. 2d 440 [1948].

¶ 74. Admin. Code § 394a-1.0(c) operates as a Statute of Limitations, and Court may not excuse failure of the plaintiff to institute the action within the time limited.-Klein v. City of N.Y., 118 (117) N.Y.L.J. (12-1-47) 1537, Col. 4 F.

¶ 75. In action against City to recover for injuries sustained by fall on snow and ice, City **held** precluded from setting up the one-year statute of limitations prescribed by Admin. Code § 394a-1.0, by its failure to plead such bar in the answer or to move to amend at the trial.-Reilley v. City of N.Y., 273 App. Div. 1014, 78 N.Y.S. 2d 781 [1948], aff'd 298 N.Y. 710, 83 N.E. 2d 12 [1948].

¶ 76. That the complaint, in plaintiff's action against the City to recover for injuries sustained when she slipped on snow and ice upon a sidewalk, contained a count in nuisance as well as a count in negligence, did not render inapplicable Admin. Code § 394a-1.0, inasmuch as the case was submitted to the jury on the theory of negligence only, and moreover the rules applicable to negligence would be applied where the torts were co-existing and practically inseparable, and the same acts or omissions constituting negligence gave rise to a nuisance.-Jablon v. City of N.Y., 177 Misc. 838, 31 N.Y.S. 2d 764 [1941], aff'd 268 App. Div. 859, 58 N.Y.S. 2d 82 [1944].

¶ 77. In an action for injunctive relief against the maintenance of a culvert on plaintiff's land which blocked the flow of a stream so as to cause an overflow of sewage and surface waters upon plaintiff's premises and for damages, it was not necessary to allege the prior service of a notice of claim. Although the complaint demanded alternative relief that plaintiffs be compensated in damages for the permanent appropriation of their land, the defendant's contention that the recovery of damages was the main object of the action and that proof of service of a notice of claim must be proved was rejected.-Missall v. Palma, 292 N.Y. 563, 54 N.E. 2d 686 [1944].

¶ 78. This section is a condition precedent to the commencement of a statutory action to recover treble damages for the destruction of trees and shrubs when the City entered upon the plaintiff's lands after the commencement of condemnation proceeding but before the vesting of title in the City.-Rice v. City of New York, 32 Misc. 2d 942, 225 N.Y.S. 2d 65 [1962].

¶ 79. Provision of Greater New York Charter § 261 prohibiting maintenance of action against the City unless a notice of intention to sue was served upon the Corporation Counsel and the Comptroller within six months after accrual of the cause, and unless the action were commenced within one year after the accrual, were in conflict with the federal

Jones Act and the uniform operation of the Maritime Law, and were therefore inoperative in an action under the Jones Act.-Frame v. City of N.Y., 34 F. Supp. 194 [1940].

¶ 80. Plaintiff, suing as a "paying" patient at a City hospital to recover for injuries allegedly sustained by reason of negligence of a physician employed at the hospital by the City, **held** not entitled to have struck out a defense asserting that the action against the physician was not commenced within the time prescribed within General Municipal Law, § 50-d, on the theory that the physician's services were not gratuitously rendered and therefore he was not entitled to protection of the statute and that as to him the two-year Statute of Limitations was applicable. In pressing such motion plaintiff placed herself in anamalous position of asserting a common law action against the physician for whose malpractice the City would not be liable, and at the same time continuing her suit against the City on theory it was liable by virtue of the statute. So long as the action was maintained in the present form, with the City retained as a defendant, plaintiff was required to adhere to the requirements of the statute, including the one-year period of limitation applicable thereto.-Mackrell v. City of N.Y., 183 Misc. 1036, 52 N.Y.S. 2d 844 [1944].

¶ 81. In an action for negligence and malpractice, the 90-day period prescribed by subd. c does not begin to run at the last date of negligence of malpractice but begins to run at the end of a continuous period of treatment.-Borgia v. City of New York, 12 N.Y. 2d 151, 237 N.Y.S. 2d 319, 187 N.E. 2d 777 [1962].

¶ 82. In an action to recover for the malpractice of a physician who rendered services gratuitously to a person in a public institution maintained by the City of New York, a notice of intention to commence an action must be served within six months, pursuant to this section, whether the action is against the municipality or the physician.-De Licka v. Leo, 281 N.Y. 266, 22 N.E. 2d 367 [1939].

¶ 83. Under General Municipal Law § 50-d a physician or dentist rendering services gratuitously to a person in a public institution maintained by a municipal corporation may be sued, but such right to sue must be governed by statutes of limitation similar to those affecting the municipality itself. Hence plaintiff, whose intestate was allegedly treated in a negligent manner by defendant physician at a child health station maintained by the City, might properly be sued, along with the City, and the notice of intention to sue was timely and the action was instituted within the period fixed by Admin. Code § 394a-1.0, where the action was brought between six months and one year after the alleged cause of action accrued.-Grimaldi v. City of N.Y., 177 Misc. 492, 30 N.Y.S. 2d 366 [1941].

¶ 84. Requirements of New York City Charter § 261 and of Admin. Code § 392a-1.0, that an action be commenced within one year after accrual of the cause of action, and that notice of intention to commence such an action be given within six months after accrual, apply only to actions based upon negligence or nuisance, and not to an action against the City to recover for damages to plaintiff's building resulting from the demolition of the building adjoining the plaintiff's building (249 App. Div. 625).-Aeonitt Realty Corp. v. City of N.Y., 105 (10) N.Y.L.J. (1-13-41) 191, Col. 6 M.

¶ 85. Requirement of Admin. Code relative to giving of notice to the City of claims against it applied solely to acts founded on negligence or nuisance and not to a claim for damage to an adjoining building resulting from construction work where the liability was predicated on violation of a statute and not on negligence.-Victor A. Harder Realty & Const. Co. v. City of N.Y., 64 N.Y.S. 2d 310 [1946].

¶ 86. In an action against the New York City Housing Authority it is not necessary to serve a notice of claim or intention to sue upon the Comptroller and/or the Corporation Counsel of the City of New York.-Firman v. N.Y. City Housing Authority, 117 (44) N.Y.L.J. (2-24-47) 736, Col. 6 T.

¶ 87. Where no notice of claim had been filed on behalf of the husband, although such notice was filed on behalf of the wife, the judgment entered in favor of the husband for loss of services was set aside, since the claim filed by the wife did not inure to the husband's credit, and there could be no waiver of requirements of the Admin. Code. The claim for loss of services was one for "injuries to person".-Gordon v. City of N.Y., 107 (131) N.Y.L.J. (6-6-42) 2419, Col. 4

M.

¶ 88. City employee who failed to present a notice of claim to the Comptroller or to comply with Admin. Code § 394a-1.0, subd. a, **held** precluded from commencing a proceeding under C.P.A. Art. 78 for order directing respondents to pay him certain back pay alleged to be due him by reason of his retroactive seniority.-In re Strauss (Reid), 197 Misc. 346, 95 N.Y.S. 2d 269 [1950].

¶ 89. Respondent's claim for damages to its property allegedly resulting from the unauthorized dumping of waste material thereon by the City of New York, was founded upon a consummated invasion of its property, not upon intermittent and recurring injuries, and accordingly its damages were not limited by Admin. Code § 394a-1.0, subd. b, to the period of six months prior to the filing of notice of claim under that law.-Bomptin Realty Co. v. City of N.Y., 276 App. Div. 1094, 96 N.Y.S. 2d 414 [1950], rev'g 196 Misc. 218, 91 N.Y.S. 2d 780 [1949].

¶ 90. Although action by contractor against City to recover an alleged balance due for work performed was not brought within the six month period after issuance of certificate by the Commissioner of Public Works, as the contract required, it was nevertheless deemed timely as the City had not given plaintiff notice of the filing of the certificate, and the final certificate was known neither to the plaintiff nor its attorney.-Hauer Const. Co. v. City of N.Y., 125 (60) N.Y.L.J. (3-28-51) 1109, Col. 3 F.

¶ 91. The failure of the father of an injured child to serve a summons and complaint on the Board of Education within one year after his son's accident barred his cause of action.-Glatstein v. City of New York, 135 (126) N.Y.L.J. (6-29-56) 8, Col. 4 F.

¶ 92. An action against the Board of Education was untimely where a contractor finished his work and the work was accepted by the Board on January 19, 1956 and the action was not commenced until February 25, 1957. The contract had provided that no action shall lie against the Board or City upon a claim based upon the contract unless the action shall be commenced within one year after the date of acceptance of the work by the Board.-Lemitt Const. Corp. v. Bd. of Education, 8 Misc. 2d 817, 168 N.Y.S. 2d 541 [1957].

¶ 93. Father and son, who was injured when he was twelve years old due to alleged negligence of Board of Education, instituted an action in the Supreme Court on June 5, 1953. On March 16, 1962 it appeared for trial in the "Blockbuster Part" and on March 19, 1962 the action was dismissed on the ground that plaintiffs' counsel refused to proceed to trial when so directed by the judge. The motion to restore the action to trial was denied and no appeal was taken. Thereafter on September 18, 1962 plaintiff instituted an action in the Civil Court. At that time the son was twenty-one years old. **Held:** While C.P.A. § 60 extended the time of the "infant" son to institute the second action in the Civil Court so as to give him one year after the disability of infancy ceased in which to bring his action the dismissal in the Supreme Court constituted a dismissal for neglect to prosecute. Therefore, C.P.A. § 23 did not protect the plaintiff father from the bar of the Statute of Limitations set forth in this section and his complaint for loss of services was dismissed.-Martello v. Board of Education, 49 Misc. 2d 551, 267 N.Y.S. 2d 963 [1966].

¶ 94. The one year time limitation prescribed by this section is applicable to actions against the City whether the actions arise from the City's governmental functions or from its proprietary functions. The plaintiff, in his action to recover from injuries sustained while a passenger in a city subway train, unsuccessfully contended that the operation of the subways was a proprietary function in which the city was engaged in a business venture and therefore the statute establishing a one year time limitation was invalid as derogatory of plaintiff's common-law remedy.-McGuire v. City of New York, 135 (89) N.Y.L.J. (5-8-56) 12, Col. 1 F.

¶ 95. An action under § K41-44.0 of the Admin. Code to recover six months' salary for loss of employment was a new and special cause of action not governed by the terms of this section and it was not necessary that the plaintiffs present a demand to the Comptroller and wait thirty days for payment or adjustment. Section K41-44.0 is complete in itself and after the plaintiffs complied with all the prerequisites of that section their action could properly be

commenced.-Eckert v. City of New York, 268 App. Div. 46, 48 N.Y.S. 2d 590 [1944], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 96. The plaintiffs by signing City payrolls under protest, demanded the balance due them and the fact that they had not filed a formal notice of claim until several years later was immaterial. The requirement for the filing of a notice of claim as distinguished from the making of a demand is purely procedural and since this section is not substantive, it does not go to the essence of the claim and the plaintiffs were entitled to interest on the amounts due each payroll period from the date they signed their payrolls under protest.-Brunner v. City of New York, 200 Misc. 850, 103 N.Y.S. 2d 382 [1951], modified by 280 App. Div. 965, 116 N.Y.S. 2d 942 [1952] where it was held that signing payroll under protest was not such a demand as is prerequisite for the running of interest.

¶ 97. Since claim of defendant against the third party was contingent upon a recovery against defendant by the plaintiff, requirement of Admin. Code § 394a-1.0 that claims be presented to the Comptroller for adjustment, could not be complied with and would seem to be inapplicable.-Dick v. Sunbright Steam Laundry Corp., 282 App. Div. 928, 125 N.Y.S. 2d 402 [1953], rev'd on other grounds, 307 N.Y. 422, 121 N.E. 2d 399 [1954].

¶ 98. Where a proper notice of claim for damages for personal injuries was served upon the City of New York by the intestate during her lifetime, it was not necesary for her administrator to serve another notice when subsequently a claim was made for her wrongful death, as substantially the wrongful death action was the continuance of the original cause of action for the benefit of those dependent on the services or bounty of deceased and who had been injured by the personal wrong done to her, and Decedent Estate Law § 130 continues for the benefit of those persons a right of action which otherwise would have terminated on the death of the injured person, and enlarges its scope to embrace the injury resulting from his death.-Holmes v. City of N.Y., 269 App. Div. 95, 54 N.Y.S. 2d 289 [1945], aff'd without opinion, 295 N.Y. 615, 64 N.E. 2d 449 [1945].

¶ 99. Where deceased had filed a proper notice of claim against the City for injuries sustained in an accident, and shortly thereafter he died as result of his injuries, motion by his executrix for leave to serve an amended notice of claim to set forth the wrongful death and to increase the damages claimed would be granted in furtherance of orderly procedure to advise the City of the subsequent facts, although actually it would appear not necessary to amend the notice to include the wrongful death claim.-In re Zambrano (City of N.Y.), 117 (25) N.Y.L.J. (1-30-47) 416, Col. 1 F.

¶ 100. Amendment in 1947 of Admin. Code § 394a-1.0 should be read merely as requiring extra details to be stated in the notice of claim, and not as imposing a new obligation upon the legal representative, following death of a claimant, to file a claim.-Sharkey v. City of N.Y., 80 N.Y.S. 2d 284 [1948].

¶ 101. Where infant, suing City of New York and the Board of Education to recover damages for personal injuries, had served his notice to sue upon the Comptroller and the Corporation Counsel but not upon the Board of Education as required by Unconsolidated Laws §§ 1911 and 1912, such omission **held** fatal to the infant's cause of action against the Board of Education.-Tilinsky v. City of New York, 255 App. Div. 815, 7 N.Y.S. 2d 402 [1938].

¶ 102. Greater New York Charter § 262, providing that the Supreme Court shall have exclusive jurisdiction over all actions against the City of New York and that such actions shall be tried in the county within the City in which the cause of action arose, or in the county of New York, subject to power of the court to change the venue in proper cases, was not repealed or superseded by the new Charter, and since it was not inconsistent with the provisions thereof it was still in full force and effect.-Battleman v. Hoffman's Estate, 257 App. Div. 987, 13 N.Y.S. 2d 655 [1939].

¶ 103. Admin. Code § 394a-1.0, requiring service of notice of intention to sue Board of Education to be made within six months after cause of action accrues and limiting time for commencement of the action to one year after the cause of action arose, had no application to cause of action which arose in January 1935, before effective date of the statute, which was on January 1, 1938.-Sartori v. City of N.Y., 258 App. Div. 904, 16 N.Y.S. 2d 211 [1939].

¶ 104. Counterclaim which failed to allege compliance with Admin. Code § 394a-1.0 (a) was insufficient.-City of

N.Y. v. Crotta, 107 (101) N.Y.L.J. (5-1-42) 1845, Col. 4 F.

¶ 105. Provisions of Admin. Code § 394a-1.0, subds. a, b and c, relative to commencement of actions against the City and the giving of notice to the City, are applicable not only to claims but to counterclaims (138 Misc. 524), and hence counterclaims which failed to allege compliance with such provisions were defective, although the paragraphs involved would be sufficient as defenses.-City of N.Y. v. De Marco, 104 (49) N.Y.L.J. (8-2-40) 458, Col. 7 T.

¶ 106. The statute requiring notice to be given the City of New York in an action brought against it should not be construed to include the cross-complaint of a co-defendant whose claim against the City is contingent, particularly where the plaintiff in the action, whose claim was definite and certain, had complied with the statute by apprising the City of his grievance.-Tyson v. Primary Realty Corp., 112 (119) N.Y.L.J. (11-22-44) 1391, Col. 2 F.

¶ 107. Cross-complaint, pleaded under Civil Practice Act § 264 against the City of New York, must comply with the requirements imposed by Admin. Code § 394a-1.0, subd. a, with respect to "every action or special proceeding" against the City.-Patterson v. City of New York, 185 Misc. 610, 57 N.Y.S. 2d 427 [1945].

¶ 108. Service of process made upon the individual defendants, sued both individually and in their respective capacities as officials of the City of New York, by leaving a copy of the summons and complaint with a clerk in the office of the City's Corporation Counsel in charge of a room bearing a sign stating that papers were to be served there, **held** insufficient to constitute valid personal service, as there was no provision of law authorizing service upon them by delivery of the summons to the Corporation Counsel.-Avery v. O'Dwyer, 201 Misc. 989, 110 N.Y.S. 2d 569, modified 280 App. Div. 766, 113 N.Y.S. 2d 686, aff'd without opinion, 305 N.Y. 658, 112 N.E. 2d 428 [1953].

¶ 109. Service of summons made upon the City of New York by leaving a copy of the summons and complaint with a clerk in the office of the City's Corporation Counsel in charge of a room bearing a sign stating that papers were to be served there, **held** sufficient, by virtue of C.P.A. § 228 [Miller v. O'Connell, N.Y.L.J. (3-15-47), p. 1028].-Id.

¶ 110. Motion to correct title of the summons and complaint to include name of the City of New York inadvertently omitted from the title, was denied, notwithstanding the City had knowledge of the claim through its presentation to the Comptroller and the hearing on it, and that the omission was a mere oversight. Nevertheless, under the guise of amendment, basic jurisdictional requirements may not be wholly disregarded.-Id.

¶ 111. The filing of a notice of claim against the City pursuant to this section is not a "proceeding" within the meaning of Judiciary Law § 475 which gives an attorney who appears in a proceeding a lien on his client's cause of action from the time of the commencement of the proceeding. Thus, where an attorney had filed only a notice of claim and a notice of intention to sue he did not have a lien for his legal services on a settlement agreed to between his client and the City of New York.-Matter of Nathan, 178 Misc. 227, 33 N.Y.S. 2d 612 [1942].

¶ 112. Wrongful death and conscious pain and suffering action against City was governed by two-year period of limitations prescribed by Decedent Estate Law § 130, and the time ran from date of decedent's death. Provisions of § 394a-1.0 were not applicable.-Devine v. City of New York, 28 Misc. 2d 88, 214 N.Y.S. 2d 905 [1961].

¶ 113. In an equity action against the City for rescission of a contract claimed to have become incapable of performance, it was unnecessary for plaintiff to allege compliance with § 394a-1.0 of the Code.-Astrove Plumbing & Heating Corp. v. City of New York, 137 (24) N.Y.L.J. (2-4-57) 6, Col. 5 T.

¶ 114. Where a claimant has a right of action against the City, leave to sue is unnecessary, and this motion therefore is denied. If the action proves to be untimely, the City may plead the Statute of Limitation.-Barnathan v. City of New York, 137 (29) N.Y.L.J. (2-11-57) 9, Col. 5 T.

¶ 115. A taxpayer's failure to serve the notice and demand required by § 394a-1.0 will preclude its recovery of a refund of general business and financial tax payments, even where it did not discover its right to refund until too late to

comply with the section.-Rohy & Haas v. City of New York, 135 (120) N.Y.L.J. (6-21-56) 7, Col. 4 T.

¶ 116. Where an action was commenced prior to the 1958 amendment to § 50-h of the General Municipal Law, the failure of the plaintiff to appear for examination pursuant to demand of the defendant was insufficient as a defense to the action since once the action was started the Comptroller's right to demand an examination was lost.-Gross v. City of New York, 144 (121) N.Y.L.J. (12-27-60) 6, Col. 7 M.

¶ 117. In an action against the city for personal injuries, the 75 days elapsing between the time the City demanded a physical examination and the date set for such examination should have been added to the limitation of one year for commencement of the action.-Gurfein v. City of New York, 28 Misc. 2d 252, 214 N.Y.S. 2d 160 [1960].

¶ 118. In an action for personal injuries and loss of services, the period during which plaintiffs were precluded from commencing their action because of the City's demand for a physical examination should have been added to the statutory one-year period provided by this section of the Code.-Israel v. City of New York, 28 Misc. 2d 418, 214 N.Y.S. 2d 161 [1961].

¶ 119. The time during which plaintiff was stayed from commencing an action pending his examination under General Municipal Law § 50-h was added to the statutory one-year period for commencing an action against the City under this section.-Johnson v. City of New York, 148 (24) N.Y.L.J. (8-3-62) 6, Col. 4 T.

¶ 120. Action by plaintiff for breach of contract of purchase of real property in which plaintiff sued for recovery of his down payment under a contract drawn by the City and which provided that if the City was unable to convey marketable title its liability was limited to return of payments made on account of the purchase was not barred because plaintiff failed to present claim to the Comptroller pursuant to this section as this section does not apply to an action which seeks return of plaintiff's money pursuant to express language of a contract.-Redner v. City of N.Y., 53 Misc. 2d 148, 278 N.Y.S. 2d 51 [1967].

¶ 121. Plaintiff was not barred by this section which requires a notice of claim from instituting a third party proceeding against the Department of Social Services when sued by a hospital for medical services where he alleged that he was eligible for Medicaid assistance to pay the claim since this section applies to tort cases and does not apply to third party complaints.-Society of N.Y. Hospital v. Blake, 73 Misc. 2d 305, 341 N.Y.S. 2d 506 [1973].

¶ 122. Notice of claim was not prerequisite to Article 78 proceeding for order directing payment of salary to petitioner for period between date of his termination as an accountant for the City Transit Authority and date of his reinstatement to that position where compliance would be a "futile exercise" and there was no claim to settle, adjust or negotiate and petitioner's right to back pay was based on the Civil Service Law.-In re Gordon (City of N.Y.) 174 (74) N.Y.L.J. (10-15-75) 7, Col. 1 M.

¶ 123. Notice of claim is required in an action against the city for the wrongful inducement of a breach of contract, the gravaman of the complaint being in tort.-Hannibal Gen. Contractors v. St. Matthew and St. Timothy's Housing Corp., 83 Misc. 2d 53, 371 N.Y.S. 2d 535 [1975].

¶ 124. Compliance with the provisions of subdivision a of this section was required, even assuming that an exception exists, where instant action was not essentially for equitable relief, no injunction was sought, eight of the causes of action were for money only and five for declaratory relief.-Aral Development Corp. v. City of New York, 59 App. Div. 2d 883 [1977].

¶ 125. The provisions of this section requiring an allegation that at least thirty days have elapsed since the claim upon which the action is based was presented to the comptroller for adjustment must be included in a nonpayment summary proceeding against the city to recover possession of premises leased by the city for use by a community college, since this is a "hybrid proceeding-action, which may terminate in a money judgment for rent due in addition to a possessory judgment".-Devon Estates v. City of New York, 92 Misc. 2d 1077 [1977].

¶ 126. The requirement of subdivision a of this section that an allegation that 30 days have elapsed since service of a notice of claim upon the Comptroller be contained in every action against the city enlarges the Statute of Limitations to recover upon a liability created by statute (CPLR 214(2)) by a 30 day period.-Kowalski v. Dept. of Corrections of City of N.Y., 66 App. Div. 2d 814, 411 N.Y.S. 2d 367 [1978].

¶ 127. Plaintiff, who was suing city to recover overpayment it made under a contract to improve real property, was not limited to the amount set forth in its notice of claim since this section does not require the notice of claim to be in any particular form and city had actual knowledge of the total amount of plaintiff's claim.-Index Construction Corp. v. City of New York, 180 (82) N.Y.L.J. (10-27-78) 13, Col. 2 T.

¶ 128. Claim of respondent, who was injured in a hit-and-run accident while acting within the scope of his employment as a sanitation worker for the city was dismissed where the only notice given to the city was the filing of a hit-and-run accident report by claimant with the police and knowledge of city personnel, including claimant's superior that he was involved in an accident and demand to Comptroller pursuant to this section was not made.-Nassau Insur. Co. v. Guarascio, 82 App. Div. 2d 505 [1981].

¶ 129. Commissioner of Transportation was directed to accept and file a survey of defects on city streets in the form of maps prepared by professional surveyors to provide the notice required by the "Pothole Law" and Commissioner could not refuse to record such notices because of considerations of administrative convenience or expediency.-Big Apple v. Ameruso, 110 Misc. 2d 688 [1981].

¶ 130. Failure to comply with notice provisions of pothole law cannot be used by city in order to dismiss action for injuries sustained when defendant slipped on a patch of ice.-Miles v. Jennings & Hatwell Oil Co., 115 Misc. 2d 23 [1982].

¶ 131. Compliance with pothole law is not required where there is proof of relevant construction in area of accident.-Aetna Life & Cas. v. City of New York, 116 Misc. 2d 838 [1982].

¶ 132. The pothole law applies to a claim asserted against the city in a third-party action and compliance with that law is a prerequisite to maintaining the third party action.-Schwartz v. Turkin, 115 Misc. 2d 829 [1982].

¶ 133. Plaintiff's failure to allege that written notice of the dangerous condition was given to the city, as required by § 394a-1.0 d.2 requires dismissal of complaint. Fact that city pleaded failure to comply as an affirmative defense is immaterial.-Cipriano v. N.Y.C., 96 App. Div. 2d 817 [1983].

¶ 134. Collapse of portion of public pier does not come within ambit of statute requiring prior notice to city of defect in order to maintain action to recover for injuries. City cannot impose prior notice requirement when condition could not be ascertained by average person from normal observation of public places.-Ferrigno v. N.Y.C., 121 Misc. 2d 602 [1983].

¶ 135. Service of notice of claim must be made upon Comptroller. Failure to make service upon designated officer is fatal defect which mandates dismissal of complaint. Fact that city was not prejudiced is of no moment.-Davidson v. Bronx Municipal Hospital, 99 App. Div. 2d 730 [1984].

¶ 136. Cross claim for additional costs as result of suspension of construction of Second Avenue subway should be dismissed since no notice of claim asserting those damages had been served upon city nor did cross complaint allege service of notice of claim, that 30 days had elapsed and that Comptroller had failed or refused to pay claim. City is not equitably estopped from raising this issue even though it participated in action for 6 yrs. before raising it and an asst. corp. counsel orally agreed to allow belated service of claim.-Chinatown Apts. v. N.Y.C. Transit Authority; Horn Construction Co. vs. N.Y.C., 100 App. Div. 2d 824 [1984].

¶ 137. Determined adequacy of proof of "construction" needed in order for plaintiff to be excepted from prior

written notice requirement of pothole law. Testimony that area appeared to be under construction held to be inadequate proof. Action dismissed.-Aetna Life & Casualty v. N.Y.C., 189 (13) N.Y.L.J. (1-19-83) 14, Col. 3 M.

¶ 138. Where a combined complaint and CPLR Art. 78 petition served upon the Corporation Counsel of the City of New York is later converted into a civil rights action by stipulation of the parties, the original papers suffice as a notice of claim under this section.-Johnson v. Perales, 123 Misc. 2d 659 [1984].

¶ 139. An inspection report filed by a city inspector noting a violation of this code did constitute proper written notice of the defective condition as required by this section since the law does not require that such notices be submitted only by members of the public or by public interest groups.-Ostermeier v. Victorian House, 126 Misc. 2d 46 [1984].

CASE NOTES

¶ 1. Prior written notice pursuant to subsection [d][2] of this section is a condition precedent to a cause of action and one which the plaintiff must prove and plead. Although maps have been held to constitute such written notice, the plaintiff must demonstrate that the maps allegedly filed were filed at least 15 days in advance of the incident in question and that they listed the particular defect which allegedly caused the injury. Plaintiff has not so demonstrated and thus the City's motion for summary judgment is granted.-Acevedo v. City of New York, 128 App. Div. 2d 488 [1987].

¶ 2. Defective sidewalk condition within meaning of NYC Ad Cd § 394a-1.0(d) [7-201 (c)] is not "acknowledged in writing" by a tree inspection report.-Laing v. City of New York, 133 App. Div. 2d 339 [1987] affirmed 71 N.Y. 2d 912 [1988].

¶ 3. Claim against Comptroller for negligence when a person debarking from bus had accident in street and there were no warnings posted. Notice of claim failed to set forth "time when, place where and manner in which the claim arose" per General Municipal Law § 50-e(2) City unable to conduct proper investigation of actual accident sight.-Mitchell v. City of New York, 131 App. Div. 2d 313 [1987].

¶ 4. Prior written notice required by the Pothole Law (NYC Ad Cd § 7-201(c)(2) a condition precedent to action. That allegation was missing from plaintiffs complaint but plaintiff alleges timely written notice was given of a sidewalk defect in form of a map prepared by the Big Apple Pothole and Sidewalk Protection Corp. filed with DOT July 15, 1982 [Matter of Big Apple Pothole v. Ameruso, 110 Misc. 2d 688, 691]. Plaintiff must produce "evidentiary facts" that written notice was given. Similar map was submitted. Issue of fact whether plaintiff fell as result of defect.-Becker v. City of New York, 131 App. Div. 2d 413 [1987].

¶ 5. In two cases plaintiffs were relieved of proving that the city had written notice of an alleged defect. Under the Pothole Law, § 7-201, the city must keep accurate records of all prior notices of defect and make these records accessible. The failure to index a record of all notices of defect in any way but by location hampers discovery making it impermissible.-Shatzkamer v. Eskind, Termine v. City of New York, 139 Misc. 2d 672 [1988].

¶ 6. Broken glass and debris on sidewalk caused plaintiff to fall and receive personal injuries while using a public coin telephone. The accumulation of broken glass, stones, debris, etc. on a public sidewalk island is a condition which falls within scope of Prior Written Notice provision of § 7-201(c). These conditions are indeed dangerous and unsafe and require prior written notice to city. The explicit words "broken glass, stones, debris" need not be stated in the statute to constitute an unsafe condition.-Rebaudo v. N.Y. Tel Co., 139 Misc. 2d 711 [1988].

¶ 7. Illegally parked car on sidewalk does not constitute an "obstruction" within meaning of § 7-201(e)(2). Obstruction statute should be read strictly meaning physical defects in surface of sidewalk.-Lopez v. NYC Hous. Auth., 149 App. Div. 2d 342 [1989].

¶ 8. A concrete pathway located between a schoolyard and a public playground, which was used both as a link between two city streets and as an entrance to the playground, was deemed a "sidewalk" for purposes of the written

notice rule of this section. Fattorusso v. City of New York, 173 A.D.2d 768, 570 N.Y.S.2d 636 (2nd Dept. 1991).

¶ 9. In an action to recover damages caused by defective road conditions, court dismissed complaint on grounds that City had not received prior written notice of condition §7-201(c)(2), although prior notice is not required where it is claimed municipality was affirmatively negligent in causing condition, there was no proof independent contractor hired by City created condition complained of.-Messina v. City of New York, 190 AD2d 659 [1993].

¶ 10. Tenant is not precluded by his failure to comply with §7-201 from asserting landlord's breach of the warranty of habitability as a defense to the City's claim for rent. City of New York v. Jones, NYLJ, May 28, 1992, at 24, col. 5 App. Term, 2d & 11th Jud. Dists. Tenant is precluded by her failure to comply with §7-201 from asserting the City's breach of warranty of habitability as the basis for an affirmative judgment against the City.-City of NY v. Candelario, 156 Misc. 2d 330 [1993].

¶ 11. An abandoned car on a city street is clearly an obstruction requiring prior written notice before incurring liability for injury as a consequence of "dangerous or obstructed condition" on "any street, highway . . .", Ad Code §7-201(c)(2).-Lee v. City of New York, 193 AD2d 787 [1993].

¶ 12. Plaintiff stepped into pothole while alighting from bus and returned to site two days later to photograph pothole found it had been repaired. Plaintiff's claim that for defect to have been repaired within two days meant there must have been prior notice does not meet burden of proof.-Sandler v. NY City Tr. Auth., 188 AD2d 335 [1993].

¶ 13. The 15 day requirement is just a condition precedent to the commencement of an action against the city. The City is only liable for injuries caused by defective conditions it failed to repair in a reasonable period after receiving written notice of defect. A question of fact exists regarding the City's reasonableness in failing to make repairs within 15 days and also whether the plaintiff's injuries were caused by defective conditions.-Weinreb v. City of New York, 193 AD2d 596 [1993].

¶ 14. The street maps filed by the Big Apple Pothole and Sidewalk Protection Corporation with the City Department of Transportation serve as prior written notice of defective conditions indicated thereon, even when the map incorrectly identifies a building as No. 1448 instead of Nos. 1450 and 1452 since the City could have located the defect by comparing the location to the map.-Weinreb v. City of New York, 193 AD2d 596 [1993].

¶ 15. Ad Code §7-201 requirement that moving papers against the City contain an allegation that a 30-day demand upon which the action is based was presented to the Comptroller and that he neglected or refused to make an adjustment or payment for 30 days is inapplicable to a proceeding for repossession brought by a nontenant who was peaceably in possession when ousted by City.-Almonte v. City of N.Y. H.P.D., 158 Misc. 2d 290, 601 NYS2d 245 [1994].

¶ 16. City must have prior notice of defective condition in order to maintain a personal injury action pursuant to Ad Cd §7-201. In this case city had notice of two defective conditions "a short distance away" and a broken curb "a couple of feet away". Such other notices would not necessarily have brought the subject defective condition to the attention of the NYC Transportation Department.-Curci v. City of New York, 209 AD2d 574 [1994].

¶ 17. City proved that it had not been given any prior written notice of alleged defective condition and that no work construction or repair had been performed in two years preceding the accident. Plaintiff's proof consisted of an expert's affidavit who examined the subject area 20 months after the incident and was unable to say that alleged defective condition existed at time of plaintiff's injury or that city created the defect. The complaint was dismissed.-Elstein v. City of New York, 209 AD2d 186 [1994].

¶ 18. Plaintiff is required by Ad Cd §7-201(c) to establish prior notice to City of New York as a condition precedent to an action for personal injury alleging defective sidewalk. Although a prior map of the Big Apple Pothole and Sidewalk Protection Corporation showed the defect the city produced a more recent pre-accident Big Apple map that did not show a defective condition. Subsequent maps supersede prior maps. The complaint was dismissed for

failing to establish notice of condition.-Katz v. City of New York, 212 AD2d 483 [1995].

¶ 19. Prior written notice of defects or hazardous conditions of city streets and sidewalks, Ad Cd §7-201(c), may be traced to the most current map depicting defects by the Big Apple Pothole and Sidewalk Protection Committee Inc., on file with the Department of Transportation, the map closest in time to the accident. In this case, Supreme Court correctly dismissed the complaint when the city produced a successor map that did not show any defect in the area of plaintiff's accident.-Katz v. City of New York, 212 AD2d 483 affirmed 87 NY2d 241 [1996].

¶ 20. A repair order of the Department of Transportation was found to be insufficient to provide written notice of the condition which led to plaintiff's injuries, where the order merely indicated that there were holes in a stretch of roadway which exceeded 400 feet in length.-Fraser v. City of New York, 640 N.Y.S.2d 607 [App. Div. 2d Dept. 1996].

¶ 21. Plaintiff can maintain a cause of action against the City even in the absence of prior written notice of an alleged highway defect, where the municipality was affirmatively negligent in causing or creating the defective condition. The City negligently left in place an inadequately secured guard rail section adjacent to the sign post into which the plaintiff's decedent's car crashed.-Miller v. City of New York, 640 N.Y.S.2d 11 [App. Div. 1st Dept. 1996].

¶ 22. Where in response to a summary eviction proceeding, a tenant interposes a counterclaim against the City for damages, the counterclaim will be dismissed unless there was a proper and timely served notice of claim.-City of New York v. Candelario, 637 N.Y.S.2d 311 [App. Div. 2nd Dept. 1996].

¶ 23. Prior written notice of a defect is a condition precedent which plaintiff must plead and prove in order to maintain an action against the City. Where plaintiff produced a copy of a filed map which showed the defect, but the City produced a subsequently filed map which did not show the defect, the court held that plaintiff did not meet the notice requirement.-Katz v. City of New York, 87 N.Y.2d 241, 638 N.Y.S.2d 593 [1995].

¶ 24. Actual written notice of a defect is an exception to the prior written notice requirement. Where there is such notice, the 15 day "grace period" under the law to repair a defective condition does not apply to insulate the City for failing to take measures within a reasonable time to prevent injury from the condition.-Bernstein v. City of New York, 633 N.Y.S.2d 488 [App. Div. 1st Dept. 1995].

¶ 25. The City is not liable unless the written notice pinpoints the particular defect. Where the accident arose out of an alleged depression in a grassy area between the curbline and sidewalk, the facts that the City had notice of two raised portions of the sidewalk "a short distance away" and a broken curb "a couple of feet away" were not sufficient.-Curci v. City of New York, 209 A.D.2d 574, 619 N.Y.S.2d 98 [2nd Dept. 1994].

¶ 26. Plaintiff has the burden of proving that the City had prior notice, unless it is claimed that the City was affirmatively negligent in causing or creating the defect, in which case proof of notice is not required.-Elstein v. City of New York, 209 A.D.2d 186, 618 N.Y.S. 2d 528 [1st Dept. 1994].

¶ 27. An affidavit of a city official responsible for keeping of an index record of all notices of defective conditions received by the Department of Transportation is sufficient to establish that no prior written notice was received by the City. The affidavit need only indicate that a search was made and no notice was found. However, where it is shown that the City caused or created a hazardous condition, no notices is required. The City here had resurfaced a road without expansion joints, which would have guarded against roadway deterioration otherwise caused by temperature fluctuation and heavy stop-and-go traffic.-Cruz v. City of New York, 630 N.Y.S.2d 523 [App. Div. 1st Dept. 1995].

¶ 28. The City received actual written notice of a sidewalk defect. The adjacent property owner undertook to perform repairs but the work was defective. The court held that the City was not absolved from liability for its failure to properly cure the hazardous condition.-DeJesus v. City of New York, 199 A.D.2d 139, 605 N.Y.S. 2d 253 [1st Dept. 1993].

¶ 29. For purposes of the statutory requirement that the Department of Transportation be given written notice of any "dangerous or obstructed condition" before the City can be held liable as a result of personal injuries caused by such condition, an abandoned car is deemed an obstruction.-Lee v. City of New York, 193 A.D.2d 787, 598 N.Y.S. 2d 273 [2nd Dept. 1993].

¶ 30. Maps filed with the New York City Department of Transportation by the Big Apple Pothole and Sidewalk Protection Corporation (Big Apple) were held to be sufficient to give the City written notice of the allegedly defective condition which led to plaintiff's injuries. The Code does not contain any requirement as to the specificity of the notice. Here, although the maps incorrectly labeled the property in front of which plaintiff fell, the City, upon inspection, would have been able to locate the defective condition which caused plaintiff's injury by comparing the location with the Big Apple map. Thus, defendant's motion for summary judgment by reason of lack of notice had to be denied. However, plaintiff's motion for partial summary judgment on the issue of liability also had to be denied. § 7-201(c) provides that action cannot be maintained unless the City failed to repair the condition within 15 days after receipt of notice. The 15 day requirement is a condition precedent to the commencement of an action against the City, but the City is only liable for injuries resulting from defective conditions which it failed to repair within a reasonable time after receipt of notice.-Weinrib v. City of New York, 193 A.D.2d 596, 597 N.Y.S. 2d 432 [2nd Dept. 1993].

¶ 31. A tenant of a City-owned building was sued for use and occupancy. The court held that the tenant could not interpose an affirmative counterclaim for breach of the warranty of habitability (i.e. a claim in excess of the amount sought by the City) because she had not served a notice of claim against the City under § 7-201.-City of New York v. Candelario, 156 Misc.2d 330, 601 N.Y.S. 2d 371 (App. Term 2nd & 11th Judic. Dists. 1993). However, the same court, in City of New York v. Jones, N.Y.L.J. May 28, 1992, held that the tenant could assert the warranty of habitability as a defense (as opposed to an affirmative counterclaim) to the City's claim for rent.

¶ 32. Plaintiff contended that for the defect in question to have been repaired within two days, there must have been written notice to the City. However, the court held that this fact alone was not sufficient to prove the existence of written notice.-Sandler v. New York City Transit Authority, 188 A.D.2d 335, 591 N.Y.S. 2d 17 [1st Dept. 1992].

¶ 33. The fact that the City had attempted routine maintenance of the road where an accident occurred does not relieve the plaintiffs of their obligation to comply with the written notice requirement. The alleged defect here was the type of physical condition which would not ordinarily come to the attention of the municipality without notice.-Gaddy v. City of New York, 184 A.D.2d 548, 584 N.Y.S. 2d 329 [2nd Dept. 1992].

¶ 34. The issue of whether the City had prior written notice of a sidewalk defect was properly submitted to a jury upon proof that the same defect was the subject of an earlier hearing (under General Municipal Law § 50-h) that involved another claimant represented by the same counsel as plaintiff.-Rubain v. City of New York, 182 A.D.2d 583, 582 N.Y.S.2d 435 (1st Dept. 1992).

¶ 35. The Big Apple Pothole Corp. filed a map having the demarcation "CONS," which, to the map preparer, meant that there were too many defective conditions (due to construction) to separately mark them with X's. The court held, however, that where the map legend did not explain the meaning of "CONS," the City could reasonably not be expected to have written notice of the defect which caused the alleged injury. Moreover, although actual notice was not required where the City in fact created an unsafe condition, there was insufficient proof here that the City had caused the condition. Waldron v. City of New York, 175 A.D.2d 123, 571 N.Y.S.2d 816 (2nd Dept 1991).

¶ 36. Section 7-201 mandates prior written notice as a condition precedent to bringing an action against the City for personal injuries attributable to a sidewalk defect or obstruction. Failure to plead and prove such written notice requires dismissal of the complaint. Absent notice, the City is not liable for nonfeasance (not repairing or maintaining a sidewalk or roadway) and is responsible only for affirmative acts of negligence. Lack of compliance with the written notice requirement will be excused only under the narrowest of circumstances, such as where the accident occurred during a construction project at which a municipal inspector was present on a sufficient basis to ensure against precisely

the danger that caused the ensuing injury. The court here dismissed a personal injury action where there was no written notice and the City's inspector at a construction site was there solely to assess the quality of the contractor's performance and to ensure the safety of the workplace, and not to examine the condition of the sidewalk. Moreover, the inspector was not from the agency to which the written statutory notice must be furnished. Kelly v. City of New York, 172 A.D.2d 350, 568 N.Y.S.2d 744 (1st Dept. 1991).

¶ 37. Plaintiff slipped and fell on the roots of a tree which was growing in the grassy area between the sidewalk and the curb in front of a privately owned building. The tree was owned and maintained by the City, which was reponsible for pruning and removing roots. The court held that the grassy area adjacent to the curb line was part of the sidewalk and thus subject to the written notice rule of § 7-201. The court dismissed the action because there was neither written notice nor proof of affirmative negligence on the part of the City. The mere planting of a tree was not an affirmative act of negligence, and the alleged failure of the City to maintain the tree was, at best, simple nonfeasance for which there could be no liability absent prior written notice of the condition. Zizzo v. City of New York, 176 A.D.2d 722, 574 N.Y.S.2d 966 (2nd Dept. 1991).

¶ 38. Even though the owner was found to have purchased a home that had been structurally altered in such a manner that it was not in compliance with the zoning law, and the owner was aware of the prior owner's unsuccessful attempts to obtain the necessary variances which would have excused the violations in issue, the court in its discretion can decline to issue civil penalties against the owner. City of New York v. Falack, 175 A.D.2d 853, 5735 N.Y.S.2d 698 (2nd Dept. 1991).

¶ 39. This section, which provides for notifying the City of defects but which does not impose upon the City an affirmative duty to repair, cannot form the basis of a police officer's action under General Municipal Law § 205-e (§ 205-e now allows an injured police officer to maintain an action even though the injury arose out of the dangers inherent in police work, but only if the officer can point to a specific statute that was violated). Jackson v. City of New York, 659 N.Y.S.2d 321 (App.Div. 2d Dept. 1997).

¶ 40. A drainage hole, into which plaintiff fell, was located on the side of a highway, where he had pulled his car off the road. The court held that this was in an area included within the definition of a "highway" under Vehicle and Traffic Law §§ 118, 143-a and 144-a. Thus, the alleged defect was subject to the "actual notice" rule of Administrative Code § 7-201. Solone v. City of New York, 656 N.Y.S.2d 915 (App.Div. 2d Dept. 1997).

¶ 41. A pedestrian was walking along the sidewalk. At one point, he veered from the sidewalk into the roadway, allegedly due to the presence of an accumulation of debris which rendered the sidewalk passable only with great difficulty. He was then struck by an unidentified motorist. In the ensuing personal injury action, he alleged that the City was negligent in allowing the sidewalk to become impassable. The court held that actual notice requirement applied because this was an "obstructed condition" within the meaning of the law. Almodovar v. City of New York, 658 N.Y.S.2d 446 (App.Div. 2d Dept. 1997).

¶ 42. A firefighter was injured when he fell on a broken sidewalk in front of his firehouse. The court held that where prior to the accident, the commander of the firehouse had previously filed a written "Fire Department Buildings Unit Work or Repair Requisition" report describing the unsafe condition of the sidewalk and requesting that it be repaired, the requirements of § 7-201 had been satisfied. Borgia v. City of New York, N.Y.L.J., July 31, 1997, page 25, col. 4 (Sup.Ct. Queens Co.).

¶ 43. Failure to comply with the notice statute may be excused where a municipality knows or should know of the defective condition because it either has inspected or was performing work upon the subject area shortly before the accident, or where it created the defect in the roadway. Sewell v. City of New York, 656 N.Y.S.2d 916 (App.Div. 2nd Dept. 1997).

¶ 44. Oil on a roadway constitutes a defect for purposes of the statute. Baez v. City of New York, 653 N.Y.S.2d

926 (App.Div. 1st Dept. 1997).

¶ 45. A corporate tenant's counterclaims against the City in a commercial summary holdover eviction proceeding were dismissed by reason of the untimely filing of a notice of claim under the statute. City of New York v. Wall Street Racquet Club, 136 Misc.2d 405, 518 N.Y.S.2d 737 (Civ. New York Co. 1987).

¶ 46. The lack of compliance with the statute will be excused only in the narrowest of circumstances demonstrating affirmative negligence on the part of the municipality, such as where the City was engaged in a construction project at the subject area and where a city inspector was present on a sufficient basis to ensure against precisely the danger that caused the ensuing injury (Kirschner v. Town of Woodstock, 146 A.D.2d 465, 536 N.Y.S.2d 912 (3rd Dept. 1989).

¶ 47. Even though the Department of Environmental Protection may have inspected the site, the requirements of the notice law are not met unless the Department of Transportation has received notice. Feasel v. City of New York, N.Y.L.J., Mar. 17, 1997, at 30, col. 3 (Civ.Ct. New York Co.).

¶ 48. A stairway leading from a sidewalk up to a municipal park is considered part of the "street," so that the "actual notice" law will apply. Woodson v. City of New York, 93 N.Y.2d 936, 693 N.Y.S.2d 69 (1999).

¶ 49. A defendant in an action to abate a public nuisance is not entitled to a jury trial. City of New York v. 114-25 Farmers Blvd., 178 Misc.2d 404, 678 N.Y.S.2d 886 (Sup.Ct. Queens Co. 1998).

¶ 50. A case was dismissed by reason of failure to show prior written notice of a sidewalk defect, where the defect was not contained on a Big Apple Pothole Corporation map upon which plaintiff relied. Cuffey v. City of New York, 680 N.Y.S.2d 14 (App.Div. 2d Dept. 1998).

¶ 51. Failure to plead and prove compliance with the statute will result in dismissal of a claim against the City. Longo v. American Golf Corp., 256 A.D.2d 387, 681 N.Y.S.2d 589 (App.Div. 1st Dept. 1999).

¶ 52. The notice law is interpreted liberally in favor of plaintiffs. In one case, a court held that so long as the proof at trial related to the same defect as that contained in the notice, the statutory requirement has been met. Thus, where the notice referred to a "hole" in the sidewalk, plaintiff was able to prevail at trial even though the proof at trial related to an "uneven sidewalk." Brown v. City of New York, N.Y.L.J., Aug. 25, 1999, page 23, col. 3 (Civ.Ct. Bronx Co.).

¶ 53. In a summary holdover proceeding brought against the City after a lease has expired under its terms, no notice of claim is required. The primary object of the action is to seek possession, and there is nothing for the Comptroller to have settled or adjusted. Katzman v. City of New York, 703 N.Y.S.2d 347 (App.Term 1st Dept. 1999).

¶ 54. A claimant unsuccessfully argued that where the site of the alleged accident did not appear on any maps maintained by the City, the actual notice law did not apply and that liability could be established by showing constructive notice on the part of the City. The City does not have an affirmative obligation to have included the site in question on any map, the court said. Wekar v. City of New York, N.Y.L.J., Feb. 29, 2000, page 26, col. 3 (Sup.Ct. New York Co.).

¶ 55. It has generally been held that where the plaintiff seeks to rely upon maps of the Big Apple Pothole and Sidewalk Protection Committee, Inc. ("Big Apple"), the map that controls is the most recently filed map that pre-dates plaintiff's accident. Katz v. City of New York, 87 NY2d 241 (1995). However, the relevant appellate authority does not always preclude a court from considering earlier filed maps. In one case, defendant's attorney, in cross-examining Big Apple's witness, elicited information that on a single day, Big Apple had served the Department of Transportation with more than 100 pages of maps and on some days served hundreds of maps at a time, and that each map contained hundreds of depicted defects. The purpose was to convince the jury that defendant is overwhelmed with defects to correct and should not have been held responsible for the plaintiff's accident. The court held that once defendant used

this tactic, it opened the door for plaintiff to introduce an earlier map and of defendant to counter at least part of this argument. The earlier map was used by plaintiff to show that not only did defendant have three months to repair the defect from the date of filing of the later map to the date of plaintiff's accident, but also that from the filing of the earlier map, defendant knew of the defect as far back as one year prior to the filing of the later map, and thus had well over a year to correct the defect. Gallery v. City of New York, 182 Misc.2d 555, 699 N.Y.S.2d 266 (Sup.Ct. New York Co. 1999).

¶ 56. A municipality which has enacted a prior written notice statute is not liable for personal injuries unless it either received actual written notice of the dangerous condition, its affirmative act of negligence proximately caused the accident, or a special use confers a special benefit on the municipality. A transitory slippery condition, such as an oil spill, is a type of potentially dangerous condition for which prior written notice must be given before liability will attach. Estrada v. City of New York, 274 A.D.2d 194, 709 N.Y.S.2d 105, leave to appeal denied, 95 N.Y.2d 764, 716 N.Y.S.2d 38.

¶ 57. An intra-departmental report of an engineer for the New York City Board of Education will not qualify as notice to the City of a defect. Kempler v. City of New York, 272 A.D.2d 584, 709 N.Y.S.2d 818 (2d Dept. 2000).

¶ 58. A motorist sought recovery for injuries sustained when her automobile left the roadway and collided with a tree. The court held that the notice law did not apply where the City allegedly created a "drop off" of some four to eight inches at the right of the roadway, which drop off was created by the City's affirmative act of resurfacing the roadway next to the deteriorated curb. Gonzalez v. City of New York, 268 A.D.2d 214, 700 N.Y.S.2d 462 (1st Dept. 2000).

¶ 59. A cobblestone pathway in a City park, which leads to a sidewalk, is considered to be a "sidewalk" within the meaning of the law. It does not matter that the pathway is made of a different material from that of the adjoining sidewalk. Dennis v. City of New York, N.Y.L.J., Sept. 11, 2000, page 27, col. 4 (Civ.Ct. Bronx Co.).

¶ 60. A traffic signpost, which had been attached to a public sidewalk and subsequently became detached, is subject to the prior written notice requirement. Brady v. City of New York, 190 Misc.2d 284, 737 N.Y.S.2d 499 (App.Term 2nd Dept. 2001).

¶ 61. Once the City shows that it was not notified of an alleged street defect, the burden shifts to plaintiff to raise a triable issue as to whether the City affirmatively created or caused the defect. Even assuming that the City dug a trench from which certain pavement cracks seemed to originate, plaintiff could not recover in the absence of proof that the defect was a consequence of negligently performed work rather than normal pavement deterioration over time. Cardona v. City of New York, 305 A.D.2d 303, 759 N.Y.S.2d 323 (1st Dept. 2003).

¶ 62. The issue of whether a Big Apple map showing a broken or uneven curb and an obstruction protruding from the sidewalk gave defendant sufficient notice of the broken sidewalk was for the jury to decide. The notice requirement is construed strictly against the City, and a notice is sufficient if it brought the particular condition at issue to the attention of the City.

Vasquez v. City of New York, 298 A.D.2d 187, 748 N.Y.S.2d 140 (1st Dept. 2002).

¶ 63. In Torres v. City of New York, 39 A.D.3d 438, 834 NYS2d 164 (1st Dept. 2007), a motorist brought an action against the city for injuries sustained when the car he was driving hit a hole in the road, causing him to lose control of the car. Previously, the court had sustained a liability verdict against the City, holding that prior notice of a roadway defect is not necessary to hold city liable, where the defectis arises from the city's affirmative negligence, even where defect not immediately apparent but develops over an extended period. However, Bielecki v. City of New York, 14 A.D.3d 301, 788 N.Y.S.2d 67 (1st Dept. 2005), the court expressly held that prior written notice is necessary under § 7-201 when the alleged defect is not immediately apparent at the conclusion of the City's roadway work but develops subsequently. In light of Bielecki, the court dismissed the Torres case.

¶ 64. In Silva v. City or New York, 774 N.Y.S.2d 788 (2d Dept. 2004), plaintiffs sought to come within the "affirmative negligence" exception to the actual notice law. They contended that the negligence consisted of a failure to repair a water main in an expeditious manner. The court, however, held that this alleged failure to repair did not constitute affirmative behavior necessary to establish that the City created the defective condition.

¶ 65. Where there was no evidence that the City created the defective condition, and the City established, through an affidavit from an appropriate official, that a search of the Department of Transportation's records was conducted and that there was no prior written notice of the defective condition, the City was entitled to dismissal of cross-claims brought by co-defendants in a pothole-related personal injury case. Campisi v. Bronx Water & Sewer Service, Inc., 1 A.D.3d 166, 766 N.Y.S.2d 560 (1st Dept. 2003).

¶ 66. The court had to determine whether an internal document prepared by the Department of Environmental Protection (DEP) constituted actual notice to the City of a defective condition. Plaintiff had fallen after slipping into a hole in the street. Some time before the accident, some unknown person had called the complaint bureau of the Bureau of Sewers (a part of DEP) about a problem in the area. According to the complaint ticket generated as a result of the call, the problem was a "catch basin, sunken/damaged/raised, affecting street". A catch basin is an open box set into the street and covered by a metal grate. Its purpose is to collect water. The maintenance of catch basins is DEP's responsibility. The grate covering a catch basin is held in place by a metal frame, which sits on bricks that make up the upper portion of the catch basin walls. The bricks support part of the adjacent pavement. Thus, if bricks are removed or fall away, the pavement will be unsupported, and any weight placed on it will cause that portion of the street to cave in. The DEP document reflecting the complaint was forwarded to a Bureau of Sewers supervisor, who inspected the catch basin and adjacent area and filed a report stating: "repair defective catch basin unit . . . [which] is missing bricks on the wall due to caving . . ." Before any work was done, plaintiff was injured in a slip and fall accident. The City sought dismissal of plaintiff's personal injury action on the ground that the Department of Transportation (DOT) had never received actual notice of the defective street. The DEP supervisor testified that although he normally referred complaints about defects in the roadway to the DOT, he did not do so on this occasion because he believed that DEP was responsible for the repair. Plaintiff sought to establish actual notice by means of that portion of §7-201(c) that refers to "written acknowledgment from the City of the defective, unsafe, dangerous or obstructed condition." The court held that the written statement showing that DEP, the city agency responsible for repairing the condition, had actual knowledge both of the condition and its dangerous nature, was an "acknowledgment" sufficient to satisfy the Pothole Law. Bruni v. City of New York, 2 N.Y.3d 319, 778 N.Y.S.2d 757, 811 N.E.2d 19 (2004).

¶ 67. The issuance by the City of a work permit to Con Edison and Empire City Subway Company does not constitute actual notice of a defect. The work permits gave no indication that the City was aware of the defective condition so as to constitute a "written acknowledgment" within the meaning of the Pothole Law. DeSilva v. City of New York, 15 A.D.3d 252, 790 N.Y.S.2d 87 (1st Dept. 2005).

¶ 68. Although affirmative acts of negligence on the part of the City constitute an exception to the actual written notice law, that exception is limited to work by the City that immediately results in the existence of a dangerous condition. Where a defect developed over time as a result of water seeping into, and freezing within, the City's allegedly negligent patchwork repair of a pathway, the exception does not apply. The court explained that if it were to extend the affirmative negligence exception to cases where it is alleged that a dangerous condition developed over time from an allegedly negligent municipal repair, the exception to the notice requirement would swallow up the requirement itself, thereby defeating the purpose of the Pothole Law. Bielecki v. City of New York, 14 A.D.3d 301, 788 N.Y.S.2d 67 (1st Dept. 2005).

¶ 69. An affidavit of a representative of the Dept. of Transportation (DOT) responsible for supervising searches for records of notices of defective conditions, stating that no such records were found, is sufficient to establish that no such prior written notice of the alleged defect was filed with the City. Moreover, the mere issuance of a permit for a street excavation is not sufficient to provide the requisite written notice of a roadway defect. Marceca v. City of New York, 5 Misc.3d 936, 787 N.Y.S.2d 640 (Sup.Ct. Kings Co. 2004).

¶ 70. Where there are factual disputes regarding the precise location of the defect that caused the accident, and where the alleged defect is designated on a map filed with the City by the Big Apple Pothole Corp., the jury should determine the issue. Accordingly, the court denied the City's motion for summary judgment. Almadottir v. City of New York, 15 A.D.3d 426, 789 N.Y.S.2d 729 (2d Dept. 2005).

¶ 71. In one case, plaintiff allegedly was injured when he stepped into a pothole. Although the City did not have prior written notice of the defect, plaintiff contended that the City created the dangerous condition through an affirmative act of negligence. Plaintiff submitted an engineer's report that the City performed a defective street repair and described the manner in which the repair deviated from relevant industry standards. However, where plaintiff submitted no evidence as to when the street repair occurred in relation to the accident, and did not show that the repair immediately resulted in a dangerous condition, plaintiff was unable to get around the "actual notice" rule. The mere "eventual" emergence of a dangerous condition due to wear and tear and environmental factors does not fall under the allowable exceptions to NYC Admin. Code 7-201(c)(2). Yarborough v. City of New York, 28 A.D.3d 650, 813 N.Y.S.2d 511 (2nd Dept. 2006).

¶ 72. Where a pothole recurs approximately two years after a repair by the City, and the record shows that such recurrence was not the result of an affirmative act of negligence, the "actual written notice rule" precluded recovery on the part of a plaintiff who stepped into the hole. Ocasio v. City of New York, 28 A.D.2d 311, 813 N.Y.S.2d 408 (1st Dept. 2006)

¶ 73. Where the City acknowledged receipt of a defect, but where the accident occurred within the grace period provided by Administrative Code § 7-201, which gives the City 15 days to repair or remove a defect, the City is not liable for the accident allegedly caused by the defect. Plaintiff argued that he was excepted from any prior notice requirement based on the City's alleged affirmative creation of a defect by the placement of cones in the area of the accident. However, the court said that this argument was without merit, since the placement of cones did not create the depression in the roadway that was the proximate cause of the accident. Kruszka v. City of New York, 29 A.D.3d 742, 816 N.Y.S.2d 510 (2nd Dept. 2006).

¶ 74. Plaintiff brought suit when he was injured, allegedly due to tripping over several garbage bags which obstructed a pedestrian overpass. The City is not liable for a defect in or obstruction to a sidewalk or roadway unless it received at least 15 days written notice before the occurrence, and failed to remedy it. Plaintiff conceded that there was no prior written notice of this condition, but argued that the garbage bags were a "transitory condition" and not covered by Admin. Code § 7-201(c). In other words, plaintiff proceeded on a constructive notice theory, and contended that the garbage bags were present for a sufficient period of time so that the City had constructive notice of the defect. The court, however, rejected the "transitory condition" claim. Although the City might have been liable if it had affirmatively created the condition, there was insufficient evidence that the City had done so. Thus, the court dismissed the action. Min Whan Ock v. Grace Korean Presbyterian Church, 34 A.D.3d 542, 824 N.Y.S.2d 651 (2nd Dept. 2006).

¶ 75. In one case, the court sustained a verdict in favor of a Plaintiff who tripped on an obstruction protruding from the sidewalk. The City moved to set aside the verdict, contending that it had not received written notice pursuant to Sec. The court denied the motion, noting that the Admin. Code does not establish any specific requirements as to the content of the notice. Since the prior notice law conflicts with the common law and must be strictly construed against the city, a notice would be sufficient if it brought the alleged defective condition to the attention of the authorities. A map submitted to the N.Y.C. Dept. of transportation may serve to provide the City with prior written notice of the alleged defect. Where there are factual disputes regarding the precise location of the defect that caused plaintiff to fall, and whether the alleged defect is designated on the map, the jury must resolve the question, as in this case.

Thus, whether the Big Apple map indicating the presence of an obstruction protruding from the sidewalk at the address immediately adjacent to the address in front of which plaintiff fell, the only sidewalk defect, of that character indicated in the vicinity, provided the City with prior written notice, presented an issue of fact for the jury to resolve. Since the evidence presented at trial led to a reasonable inference that the notice was sufficient, there was no basis to set

aside the verdict. Vertsberger v. City of New York, 34 A.D.3d 453, 824 N.Y.S.2d 651 (2d Dept. 2006).

¶ 76. In Walker v. City of New York, 34 A.D.3d 226, 825 N.Y.S.2d 445 (1st Dept. 2006), plaintiff tripped and fell on a sidewalk and sustained injuries. In the resulting lawsuit, plaintiff sought to show that the accident was caused by an affirmative act of negligence, rendering inapplicable the written notice requirement. The court held that the evidence was insufficient to show that the City had performed work at the location where plaintiff fell. Plaintiff had offered into evidence four Dept. of Transportation records reflecting repair orders, but only one of the repair orders indicated that repair work had actually been undertaken. Even that one record showed only that there was a pothole somewhere in the intersection in question but did not indicate that the pothole was close to the curb where plaintiff fell. Furthermore, the repair work was performed in March 1995 and the fall occurred in November 1999, so that there was no evidence that the existence of the hole was the immediate result of the repair work. Accordingly, the court set aside a verdict and dismissed the action.

¶ 77. Even though Big Apple Maps are sometimes sufficient to provide the City with actual written notice of a particular defect, the notice relied on must bring to the particular condition at issue to the attention of the authorities. In one fact-specific case, the court found that the Big Apple map was insufficient notice. Plaintiff alleged that she tripped and fell over a metal bolt or screw protruding from the sidewalk, i.e. that she fell due to an obstruction. Although the map did depict a section of raised or uneven sidewalk, the court found that this was not enough to show the presence of an obstruction. Sullivan v. City of NY, 15 Misc. 3d 1114A, 839 N.Y.S.2d 437 (Table) (Sup.Ct. Richmond Co. 2007).

¶ 78. Actual or constructive notice of a defect does not satisfy the written notice requirement. Ranello v. Consolidated Edison, 15 Misc.3d 1128A, 841 N.Y.S.2d 221 (Table) (Sup. Ct. Richmond Co. 2007), citing Reich v. Meltzer, 21 A.D.23 543, 800 N.Y.S.2d 593 (2d Dept. 2005), leave to appeal denied, 7 N.Y.3d 301, 818 N.Y.S.2d 191 (2006). However, an exception is recognized where the locality created the defect or hazard through an affirmative act of negligence, or where a special use confers a special benefit upon the City (Ranello v. Consolidated Edison, supra).

¶ 79. In Oboler v. City of New York, 8 N.Y.3d 888, 832 N.Y.S.2d 871 (2007), a pedestrian brought an action to recover for injuries sustained when he tripped and fell over a depressed manhole cover. In order to bring himself within the "affirmative negligence" exception to the law, plaintiff sought to have an expert testify that there was a 1 to 1.5 inch height differential between the edge of the asphalt and the manhole cover, that the City created the condition when the street was resurfaced, and that the City's violation of these regulations caused the injuries. There was no evidence as to when the section of the street might have been resurfaced prior to the accident, or whether the City performed any such repaving work. There are only two recognized exceptions to prior written notice laws-where the locality created the defect or hazard through an affirmative act of negligence and where a special use confers a special benefit on the locality. Moreover, the affirmative negligence exception is limited to work by the City that immediately results in the existence of a dangerous condition. Here, plaintiff presented no evidence of who last repaved this section of the roadway before the accident, when any such work may have been carried out, or the condition of the asphalt abutting the manhole cover immediately after such resurfacing. Moreover, even assuming that the special use doctrine applies to a manhole cover situated in a city public street, plaintiff presented no proof of any special benefit conferred on the City. Accordingly, the court dismissed the action.

¶ 80. See Fernandez v. Highbridge Realty Assoc., 49 AD3d 318, 853 N.Y.S.2d 71 (1st Dept. 2008), reported as note under Sec. 7-210.

¶ 81. Repair orders or reports, reflecting only that pothole repairs had been made to the subject area more than a year before the accident, were insufficient to constitute prior written notice of the defect that allegedly caused plaintiff's accident. James Marshall v. City of NY 2008 NY Slip Op. 5490, 2008 NY App. Div. Lexis 5405 (App. Div. 2nd Dept., 52 AD3d 586).

¶ 82. The "actual notice law," Section 7-201, applies to an action by a police officer under Gen. Municipal Law Sec. 205-e. In other words, police officers do not have greater rights than other persons in terms of the actual notice law.

Montalvo v. City of New York, 46 AD3d 772, 848 N.Y.S.2d 330 (2nd Dept. 2007).

¶ 83. Plaintiff brought an action to recover damages for injuries which allegedly occurred after he fell upon stepping into a depression in the asphalt abutting a manhole cover. He caught his foot on the edge of the cover. The depression and the manhole cover were located in a parking lot operated by the City. Where a municipality has not received prior written notice of a defect, there can be no liability for injuries sustained. However, if the municipality received notice but failed to remedy it, or there is an exception, there is the potential for liability. Such an exception would be if the plaintiff establishes that the area where the defect was located resulted in a special benefit for the municipality, or the municipality affirmatively caused the defect where the accident occurred and resulted in the existence of a dangerous condition, there could be liability for the municipality under the affirmative negligence exception. Even if a municipality performs negligent pothole repairs, where the defect develops over time with environmental wear and tear, the affirmative negligence exception is not applicable. Here, the plaintiff did not allege that the City received prior written notice of the defect (See Admin. Code §7-201 [c]. Even if the special use exception were applicable, in order to avail himself of the benefit of this exception, the plaintiff was required to show that the City derived some special benefit from that alleged special use. Here, the plaintiff presented no proof as to the alleged special use of the manhole, as well as what special benefit the City derived from it. The plaintiff failed to meet its burden of showing that he was entitled to avail himself of the special use exception. The City's motion to dismiss was granted. Schleif v. City of NY, 60 AD2d 926, 875 NYS2d 259, 2009 App. Div. Lexis 2356.

¶ 84. In D'Onofrio et al. v. City of New York 2008 NY Slip Op. 9860, 901 NE2d 744, 873 NYS2d 251, 11 NY3d 581 (2008), the court indicated that in order to comply with the actual notice law, the Big Apple maps had to indicate clearly the location and nature of the defect. Where symbols are used, they must accurately depict the type of defect. Thus, if Big Apple chooses to use a straight line as a symbol for a raise or uneven sidewalk, the map will not be sufficient where it displays a vague line which was described either as a poorly drawn "X" or the Hebrew letter "shin," or a pitchfork without handles. Therefore, a plaintiff who allegedly tripped over an elevation on the sidewalk will not be able to use the map as a basis for notice.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-202

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-202 Power of comptroller to extend the time for commencement of suit upon claims.

Notwithstanding any other provision of law, the comptroller may, by stipulation in writing, agree with a claimant against the city, the board of education or any community college of the city university of New York, to extend the time of such claimant to commence suit upon a claim, the settlement of which is then pending before the comptroller, provided that such stipulation shall not extend the time within which such suit may be brought for a period or periods aggregating more than six months after the expiration of the time otherwise limited by law for the commencement of a suit upon such claim.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-3.1 added chap 142/1949 § 1

Renumbered chap 100/1963 § 139

(formerly § 93d-3.3)

CASE NOTES FROM FORMER SECTION

¶ 1. Plaintiff brought an action against the City of New York to recover property damages caused by the flooding

on January 1, 1963 of plaintiff's property as a result of the break in a water main. A notice of claim pursuant to General Municipal Law did not intend to complete the examination because the statutory period for commencement of the action had expired on March 30, 1964. This action was instituted on May 14, 1964 and defendant alleged in an affirmative defense that the action § 50-e was served on defendant on March 28, 1963. On December 11, 1963 one of the plaintiffs was examined by the city. The examination was not completed and was adjourned **sine die.** On May 11, 1964 the Comptroller of the City advised that it was time barred. Plaintiff's motion to strike the defense was granted because the city was equitably estopped from raising this defense as it had stipulated in connection with adjournment of the examination of claimant that no action would be brought against the city for a period of time which would not terminate before the expiration of the limitation period fixed by statute.-Robinson v. City of New York, 24 App. Div. 2d 260, 265 N.Y.S. 2d 566 [1965].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-203

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-203 Settlement of claims.

a. The comptroller may require any person presenting for settlement an account or claim, except a claim with regard to excise and non-property taxes, for any cause against the city or the board of education, to be sworn before the comptroller, any of the deputy comptrollers, or any officer or employee of the comptroller's office or of the law department designated in a written instrument by the comptroller and filed in the comptroller's office, touching such account or claim, and when so sworn, to answer orally as to any facts relative to the justness of such account or claim. Wilful false swearing before the comptroller, deputy comptroller or officer or employee designated to conduct such oral examination is perjury and punishable as such. In adjusting and settling such claims, the comptroller, as far as practicable, shall be governed by the rules of law and principles of equity which prevail in courts of justice. Claims against the city or against any of the counties contained within its territorial limits, or payable in the first instance from moneys in the city treasury for services rendered or work done or materials or supplies furnished, except:

1. claims reduced to judgment, or

2. awards, costs, charges and expenses duly taxed or ordered paid in judicial proceedings, or

3. claims arising under the provisions of contracts made at public letting in the manner provided by chapter thirteen of the charter and chapter one of title six of the code, or

4. claims settled and adjusted by the comptroller, pursuant to the authority of this section, shall not be paid unless an auditor of accounts shall certify that the charges therefor are just and rea- sonable.

b. Except as hereinbefore otherwise provided, all contracts with the city or any of such counties or with any public officer acting in its or their behalf, shall be subject to audit by the comptroller. The power hereby given to settle and adjust such claims shall not be construed to authorize the comptroller to dispute the amount of any salary established by or under the authority of any officer or department authorized to establish the same, nor to question the due performance of duties by such officer, except when necessary to prevent fraud. If in any action at law against the city to recover upon a claim not embraced within the exceptions specified in subdivision a the amount claimed by the plaintiff is in excess of the amount so audited and settled by the comptroller, the plaintiff must establish a claim by competent evidence of value, and no testimony shall be admitted to show a promise or agreement by any officer or employee of the city or of any of the counties contained within its territorial limits to pay any larger sum than the amount so audited or allowed by the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-1.0 added chap 929/1937 § 1

Open par amended LL 99/1950 § 1

Open par amended chap 100/1963 § 135

Sub 4 amended LL 54/1977 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Where extra compensation for additional work was certified by the Board of Education and was the subject of specific approval by the Corporation Counsel, who requested a voucher to be drawn for it after the Comptroller excluded it from the payment to be made, the sum claimed for the extra compensation should have been paid by the Comptroller in view of his lack of legal power to re-audit claims approved and audited by the Board of Education, 107 (39) N.Y. 65 N.Y. 43.-Wilaka Const. Co. v. Board of Education, 107 (39) N.Y.L.J. (2-17-42) 723, Col. 1 T.

¶ 2. Trustees of Armory Building, who had obtained the Attorney General's indorsement, pursuant to General Municipal Law § 70a, of their claims against the City of New York for reimbursement for legal fees and disbursements paid by them in a legal proceeding brought to require the City to make certain yearly payments to the trustees for maintenance of the Armory Building, were thereafter required to submit their claim to the City Comptroller for audit, and it was his duty to determine the reasonableness of the claim. Furthermore, the audit by the Comptroller involves a judicial function requiring the exercise of the Comptroller's official judgment, and in no event would mandamus lie to compel payment of the claim.-In re Tobin (La Guardia), 107 (98) N.Y.L.J. (4-28-42) 1786, Col. 6 M.

¶ 3. Notwithstanding the head of the department had agreed in writing to a price for the extra work performed by the contractor on a construction project, the Comptroller had the power and duty to pay no more than the reasonable value therefor.-Gerace & Castagna, Inc. v. City of New York, 283 App. Div. 716, 127 N.Y.S. 2d 351 [1954], aff'd without opinion, 307 N.Y. 707, 121 N.E. 2d 536 [1955].

¶ 4. It was not necessary for the plaintiff in an oral complaint to allege the filing of a notice of claim with the City of New York and the lapse of more than 30 days since the Comptroller's refusal and neglect to adjust it.-Fried v. Board of Education of N.Y.C., 106 (144) N.Y.L.J. (12-22-41) 2088, Col. 6 M.

¶ 5. In action to recover for personal injuries sustained as result of the alleged negligence of the City of New York, the City would not be permitted to amend its answer so as to plead that the action was commenced prior to the

expiration of the 30 days allowed the Comptroller to settle or adjust the action, pursuant to Admin. Code § 93d-1.0. It appeared that the City desired to rely on a stipulation of the parties extending the time for the Comptroller to settle or adjust the claim, that by a recent decision such an agreement must be pleaded as an affirmative defense, that defendant had not so pleaded and had failed to seek to amend its answer for over one year, during which period of time plaintiff's time to institute a new action had expired.-Shrubsall v. City of New York, 183 Misc. 424, 51 N.Y.S. 2d 252 [1944].

¶ 6. Where the plaintiff failed to appear on an adjourned date for examination and then, in violation of the stipulation fixed for the adjourned date which provided that no action could be commenced until thirty days after an examination, the plaintiff did commence an action without ever submitting to examination, the action should be dismissed.-Angelo v. City of New York, 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 7. The Comptroller has the **right** to examine every claimant under Admin. Code § 93d-1.0, but there is no **requirement** that he conduct such an examination, and he may adjourn it by stipulation from time to time, or he may abandon it.-Angelo v. City of New York, 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 8. Where plaintiffs' intestate had brought suit against the City of New York to recover for injuries sustained in a subway accident under circumstances such as to preclude the presence of any eye witnesses thereto, and pending trial of the action the intestate died and the action was continued by his administratricies, the examination of the intestate by the Corporation Counsel in behalf of the City Comptroller pursuant to Admin. Code § 93d-1.0 would be received in evidence in plaintiff's behalf, under an exception to the hearsay rule, in view of the necessity created by death of the intestate and the absence of other witnesses, and the considerations that the examination was given under oath and that the examination was as searching as that permitted upon cross-examination of an adverse witness or party. However, the examination was not admissible under C.P.A. § 303, which relates to depositions taken pursuant to the provisions of C.P.A., Art. 29; nor under C.P.A. § 374a as a written record made by defendant in the regular course of business; nor under C.P.A. § 348, relating to testimony given at a former trial or hearing by a party or witness who has since died.-Boschi v. City of New York, 187 Misc. 875, 65 N.Y.S. 2d 425 [1946].

¶ 9. In an action to recover damages for personal injuries suffered by plaintiff's decedent as a consequence of being struck by a trolley car owned and operated by defendant, the examination of the decedent before the Comptroller, pursuant to this section, was properly received in evidence where the decedent had died before the trial of the action.-Rothman v. City of New York, 273 App. Div. 780, 74 N.Y.S. 2d 872 [1947].

¶ 10. In action to recover for personal injuries suffered by claimant as consequence of being struck by trolley car owned and operated by defendant City of New York, the examination before the Comptroller pursuant to Admin. Code § 93d-1.0, **held** to have been properly received in evidence, where claimant died before trial of his action.-Rothman v. City of New York, 273 App. Div. 780, 75 N.Y.S. 2d 151 [1947].

¶ 11. The Comptroller's examination of plaintiffs, pursuant to N.Y.C. Admin. Code § 93d-1.0, **held** improperly received in evidence. Such an examination is admissible only where the claimant died before trial.-Grispo v. City of New York, 129 (16) N.Y.L.J. (1-23-53) 261, Col. 3 M.

¶ 12. Where plaintiff's testatrix had brought suit against the City of New York to recover for personal injuries sustained in a subway accident, and had been examined by the City Comptroller pursuant to Admin. Code § 93d-1.0, the testimony of testatrix before the Comptroller under oath **held** admissible in evidence in action to recover for personal injuries.-Carroll v. City of New York, 130 (113) N.Y.L.J. (12-11-53) 1419, Col. 2 F.

¶ 13. Indictment of defendant for perjury based on statements made before the "Chief Examiner of the Comptroller of the City of New York" in connection with a claim filed against the City of New York for personal injuries, was dismissed on ground that under Admin. Code § 93c-1.0 the authority to administer an oath is expressly limited to the Comptroller or "either of the deputy comptrollers", and therefore the oath had not been administered by a person authorized to administer it.-People v. Siegel, 198 Misc. 566, 102 N.Y.S. 2d 551 [1950].

¶ 14. The Comptroller was wrong where he refused to hold an examination after the plaintiff had filed his notice of claim and had failed to appear at an adjourned date for examination. Three years after failing to appear at the adjourned date, the plaintiff notified the Comptroller that it was ready to be examined at his convenience. At the time of filing the claim and for three years thereafter no person capable of giving any extensive information in regard to the claim was available to the plaintiff and as soon as an informed person appeared the plaintiff requested an examination.-Daniel J. Rice, Inc. v. City of New York, 180 Misc. 860, 42 N.Y.S. 2d 532 [1943].

¶ 15. Admin. Code § 93d-1.0 and Charter § 93d deal with prelawsuit procedure and once litigation has begun such provisions are no longer operative and any examination desired must be sought under the Civil Practice Act.-In re City of New York (Allen & Pike Sts.), 181 Misc. 860, 43 N.Y.S. 2d 316 [1943].

¶ 16. Although the provisions of this section may prohibit the Comptroller from inquiring into the justness of a claim accruing under the provisions of a contract for public letting, where a contract between a contractor and the Board of Water Supply stated that the City shall not be estopped from showing the true value of work, the City could withhold payment to the contractor. Where such clauses are found in a contract and where there is no clear showing that the public agency is independent of the City, mandamus will not lie.-Matter of Frazier-Davis Construction Co., 6 App. Div. 2d 112, 175 N.Y.S. 2d 765 [1958].

¶ 17. The provisions of this section which require a claimant to be sworn before the Comptroller with reference to a claim and when so sworn to give testimony with respect thereto are not applicable to an infant plaintiff. The Comptroller's representative, after a preliminary examination, found that the infant plaintiff did not understand the nature of an oath, but nevertheless sought to take the infant's unsworn testimony. Plaintiff's attorney agreed to the incompetency of the infant and refused to permit the infant to give a sworn testimony. The City then interposed a separate defense on the ground that the infant failed to comply with the provisions of this section in that he failed to testify at the Comptroller's hearing. **Held:** the defense should be stricken out.-Anesgart v. City of New York, 10 Misc. 2d 995, 170 N.Y.S. 2d 891 [1958].

¶ 18. In a negligence action involving an allegedly defective sidewalk plaintiff was not required during unilateral oral hearing preliminary to the commencement of the cause of action and conducted at the Comptroller's office to disclose the name and address of plaintiff's witness who was with him at the time of the occurrence. As the police blotter contained the name and address of a witness there was no basis for any possible claim that defendant was not in a position to evaluate the merits of the claim with a view toward settlement.-Alongis v. City of New York, 54 Misc. 2d 771, 283 N.Y.S. 2d 301 [1967].

¶ 19. In a hearing before the City Comptroller pursuant to this section it was not necessary that the answers to the Comptroller's questions be reduced to writing and subscribed by the claimant and hence, the plaintiff's failure to sign the testimony was not a failure to comply with the Admin. Code and therefore could not be the basis of a refusal to accept for filing a statement of readiness.-Mahar v. City of New York, 139 (72) N.Y.L.J. (4-14-58) 11, Col. 1 F.

¶ 20. The Comptroller's acceptance and retention of an affidavit filed by plaintiff, in lieu of an examination of plaintiff on the merits of his claim, did not affect the waiver of the City's right to a verified notice of claim.-Kannenbaum v. City of New York, 182 Misc. 109, 50 N.Y.S. 2d 122 [1944], aff'd 268 App. Div. 1062, 52 N.Y.S. 2d 600 [1945].

¶ 21. Claims made by private nonprofit hospital corporation for refund of overpayment of New York City real estate taxes against the Comptroller of the City of New York could not be allowed where the Tax Commission of the City of New York is given exclusive statutory authority to revise erroneous tax assessments on real property. Taxes are not "claims" which the Comptroller may compromise under New York City Charter § 93(d).-St. Luke's Hospital v. Beame, 47 Misc. 2d 71, 262 N.Y.S. 2d 129 [1965].

¶ 22. In an action by an infant to recover damages for personal injuries and by his father to recover for medical

expenses it was error to permit plaintiffs over objection of defendant to read into evidence portions of examination of plaintiff father who was not a witness to the accident taken before the Comptroller and even if examination was admissible the hearsay portions were inadmissible.-Schlechtman v. Board of Education, 25 App. Div. 2d 676, 268 N.Y.S. 2d 407 [1966].

¶ 23. In view of administrative backlog and shortage of personnel in Comptroller's office, Comptroller was granted a minimum of 30 days within which to process and investigate vouchers approved by the Board of Education without interest having run on the claims until after the expiration of the 30 day grace period. In re Mars Associates, Inc. (Beame), 166 (105) N.Y.L.J. (12-2-71) 2, Col. 4 F.

¶ 24. Provision of section that a claim "settled and adjusted by the Comptroller" shall not be paid unless an auditor of accounts certifies that the charges are just and reasonable does not give the Comptroller authority to settle and adjust claims without a prior audit of the claims by his office.-White Plains v. City of New York, 63 App. Div. 2d 396, 407 N.Y.S. 2d 517 [1978].

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Administrative Code of the City of New York

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NYC Administrative Code 7-204

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-204 Settlement of claims.

The commissioner of finance may require any person presenting for settlement a claim in relation to excise and non-property taxes against the city to be sworn before the commissioner of finance, any of the deputy commissioners of finance, or any officer or employee of the department of finance or of the law department designated in a written instrument by the commissioner of finance and filed in the office of the commissioner, touching such claim, and when so sworn, to answer orally as to any facts relative to the justness of such claim. Wilful false swearing before the commissioner of finance, any deputy commissioner or officer or employee designated to conduct such oral examination is perjury and punishable as such. In adjusting and settling such claims, the commissioner of finance, as far as practicable, shall be governed by the rules of law and principles of equity which prevail in courts of justice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 414-1.0 added LL 43/1965 § 1

(no additional refund LL 43/1965 § 2)

Amended LL 54/1977 § 25

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Administrative Code of the City of New York

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NYC Administrative Code 7-205

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-205 Comptroller to audit charges against city for costs, etc.

The comptroller, with the approval of the mayor, is authorized to audit and allow, as charges against the city, the reasonable costs, counsel fees and expenses paid or incurred, or which shall hereafter be paid or incurred by any commissioner or any judge of the civil or criminal courts of the city of New York who shall have been a successful party in any proceeding or trial to remove him or her from office, or who shall bring or defend any action or proceeding, in which the question of his or her title to office is in any way presented or involved, or in which it is sought to convict him or her, or to review or prohibit any such removal or to obtain possession of his or her office, or by any commissioner for the proper presentation and justification of his or her official conduct before any body or tribunal lawfully investigating the same, and not officially recommending his or her removal from office.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 136

CASE NOTES FROM FORMER SECTION

¶ 1. A City Magistrate successfully resisted a proceeding to remove him from office because his conduct was

unbecoming a judicial officer, but was censured by the App. Div. **Held:** he was not entitled to have his claim for legal costs and expenses audited and approved by the Comptroller as a successful party in the removal proceedings.-Matter of Maglio v. City of New York, 15 Appellate Division 2d 197, 223 N.Y.S. 2d 60 [1961], aff'd 12 N.Y. 2d 939, 238, N.Y.S. 2d 515, 188 N.E. 2d 789 [1962].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-206

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-206 Illegal claims; power of board of estimate to pay or compromise on equitable grounds.

The board of estimate may inquire into, hear and determine any claim against the city or any agency when the comptroller, or in the case of a claim against the board of education, the comptroller and the board of education, certifies in writing that such claim is illegal or invalid, but that it is equitable and proper that such claim be paid in whole or in part. If, upon such inquiry, the board of estimate, by a unanimous vote, determines that benefits have been received by the city or any agency and that public interests will best be served by payment or compromise thereof, it may authorize payment of such claim, and such claim shall thereupon be paid in such amount as the board shall determine to be just, in full satisfaction thereof, provided that the claimant shall execute a release, upon any such payment, in such form as shall be approved by the corporation counsel. The provisions of this section shall not authorize the audit or payment of any claim barred by the statute of limitations, nor any claim for services performed under an appointment in violation of any provision of the civil service law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-3.0 added chap 929/1937 § 1

Amended LL 30/1939 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Although the City may pay claims based on an implied contract it may not pay such claims if they are barred by the Statute of Limitations.-City of New York v. N.Y. City Transit Auth., 53 Misc. 2d 627, 279 N.Y.S. 2d 278 [1967].

¶ 2. Because Statute of Limitations starts to run when the right to make a demand accrues and not when the individual against whom the claim is asserted has the money to pay. The statute began to run when the right accrued to claimant and not when an expense budget containing an appropriation to pay the claim involved was adopted. Mere absence of a specific budget appropriation does not bar a right to file a claim.-Id.

¶ 3. Because of the strong public policy in this state against payment by public bodies of claims barred by the Statute of Limitations the acknowl- edgment of a debt by a city department after the statute had run was not permissible.-35 Park Avenue Inc. v. City of New York, 161 (102) N.Y.L.J. (5-26-69) 2, Col. 1 M.

¶ 4. Article 78 proceeding brought by foremen employed by the city at salaries fixed by a collective bargaining agreement to compel the Comptroller to certify that they had an equitable claim for unpaid wages was dismissed since this section is inapplicable to wage claims made by salaried employees of City.-In re DeLuca (Beame) 165 (115) N.Y.L.J. (6-16-71) 19, Col. 4 F.

¶ 5. Where plaintiff after submitting lowest bid to rebuild a school chimney received a letter from the Board of Education to proceed immediately with the work and allegedly spent $4,000 for about 8 days work before it received another letter from the Board rescinding the prior letter because the Comptroller had refused to accept the contract for failure to advertise the required number of times, plaintiff could not sue for breach of contract or for work, labor and services performed but was not barred from applying to the Board of Estimate for consideration of the claim on equitable grounds under this section.-Prosper Contracting Corp. v. Board of Education, 73 Misc. 2d 280, 341 N.Y.S. 2d 196 [1973], aff'd 43 App. Div. 2d 823, 351 N.Y.S. 2d 402 [1974].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-207

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-207 Payment of bonds upon which suit is barred by lapse of time.

Notwithstanding any other provision of law, the comptroller shall pay the principal and interest upon bonds or other evidences of indebtedness issued by the city within twenty years after a cause of action has accrued on said bonds or other evidences of indebtedness issued by the city or interest thereon, suit upon which may be barred by the statute of limitations.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B10-1.0 added chap 637/1951 § 1

Renumbered chap 100/1963 § 190

(formerly § 242-2.1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-208

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-208 Claims for injuries caused by police while executing legal process or sustained by persons injured while assisting in the apprehension of a criminal.

a. The board of estimate may inquire into, hear and determine any claim against the city wherein compensation is sought for the death of or injury to any person or persons:

1. which shall have been caused by a police officer of the city, while such officer is engaged in arresting or endeavoring to arrest any person or in retaking any person who has escaped from legal custody, or in executing any legal process, or

2. which shall have been caused by any person who is engaged in or who is in the act of leaving the scene of the commission of a felony or who is endeavoring to escape from a police officer or from legal custody, if such death was caused or injury received in assisting a police officer in the performance of the officer's duties.

b. The board, by a unanimous vote, as a matter of grace and not as a matter of right, may award an amount recommended by the comptroller to be paid to the person or persons injured, or in the case of death to the person or persons who would be entitled to distribution under the provisions of EPTL 5-4.4 or any amendments thereto. As a condition precedent, however, to consideration by the board, such claim must be certified in writing to the board by the comptroller as an illegal or invalid claim against the city, but which in the comptroller's judgment it is equitable and proper to pay in the amount certified by the comptroller; and provided, further, that a written petition stating all the essential facts in relation to such injury or death, signed by the injured person or persons, or in case of death by a person or persons entitled to receive the award or any part thereof, or by the personal representatives of a decedent, shall be filed with the comptroller within six months of the date of the occurrence which resulted in such injury or death. The

provisions of this section shall not authorize the audit or payment of any claim barred by the statute of limitations.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-4.0 added chap 929/1937 § 1

Amended LL 24/1941 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-209

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-209 Issuance of execution.

Before execution may be issued upon any judgment recovered against the city ten days' notice in writing of the recovery of such judgment shall be given to the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-2.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-210

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-210 Liability of real property owner for failure to maintain sidewalk in a reasonably safe condition.

a. It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition.

b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. This subdivision shall not apply to one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

c. Notwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.

d. Nothing in this section shall in any way affect the provisions of this chapter or of any other law or rule governing the manner in which an action or proceeding against the city is commenced, including any provisions requiring prior notice to the city of defective conditions.

HISTORICAL NOTE

Section added L.L. 49/2003 § 1, eff. Sept. 14, 2003 and applying to

accidents occurring on or after such date.

CASE NOTES

¶ 1. The City is generally liable for accidents caused by sidewalk defects that occurred prior to September 14, 2003. Rodriguez v. City of New York, 12 A.D.3d 282, 784 N.Y.S.2d 855 (1st Dept. 2004). Where a sidewalk accident occurred prior to that date, the abutting property owner is not liable unless the owner either caused the defect to occur because of some special use, or actually created the defect. The mere fact that the accident occurred in a sidewalk area adjacent to that portion used by the owner as a driveway does not, without more, establish liability against the owner. Zektser v. City of New York, 18 A.D.3d 869, 796 N.Y.S.2d 656 (App.Div. 2d Dept. 2005).

¶ 2. A pedestrian was injured when she slipped and fell on ice and snow on a public sidewalk, adjacent to a private business. Where, as here, the accident took place before Sept. 14, 2003 when revisions to the Administrative Code took place, the abutting property owner is liable for an injury sustained by an individual only if that person's ice and snow removal efforts made the sidewalk more hazardous. Martinez v. City of NY, 20 A.D.3d 513, 799 N.Y.S.2d 252 (2nd Dept. 2005).

¶ 3. In King v. Alltom Properties, 16 Misc.3d 1125(A), 2007 WL 2333086 (Sup.Ct. Kings Co.), a pedestrian fell over the remains of a broken signpost, which was protruding from the sidewalk. The question was whether the City or the adjoining property owner was responsible for the accident. City Charter Sex. 2903 requires the City to maintain signs for controlling traffic but the City is responsible for maintaining signposts. Thus, where a pedestrian allegedly was injured when she fell over the remains of a metal signpost protruding from the sidewalk, the City, rather than the adjoining property owner, is legally responsible for the accident. The court then considered Admin. Code § 19-152, which requires property owners to maintain sidewalks, lists nine categories of substantial defects which owners must repair. Eight of those nine categories involving tripping hazards pertaining to sidewalk flags being out of level, broken or loose. One category, however, in § 19-152(a)(6), refers to "hardware defects," which mean hardware or other appurtenances not flush within one-half inch of the sidewalk surface, or cellar doors that defect greater than one inch when walked on, are not skid resistant, or are otherwise in an unsafe condition. Thus, if the landowner was to be held responsible for the signpost, the signpost had to be considered "hardware" or an appurtenance. Section 19-152 does not itself give a clear indication of what falls within these categories. However, Admin. Code § 19-147, entitled "maintenance of street hardware," does shed light on the question; it provides that utility manhole covers, castings or other street hardware shall be maintained flush with the existing surrounding grade. When juxtaposed with the mention of cellar doors in § 19-152, it is evidence that "hardware" and "appurtenances" do not refer to things that, by their very nature, are intended to protrude from the sidewalk. Rather, they refer to that category of street hardware that is meant to be embedded in the sidewalk and, when properly constructed, is flush with the surrounding sidewalk. Therefore, since such things as signposts, fire hydrants and lightposts are intended to protrude from the sidewalk, they do not fall within the ambit of § 19-152. The court rejected the City's argument that the abutting property owner had a duty to notify the City of the existence of a broken signpost. The statutory framework set forth in Admin. Code § § 7-210 and 19-152 only impose a duty to maintain and nowhere impose a duty to notify the City of dangerous conditions.

¶ 4. In one case, plaintiff fell in a gap in a tree well located on a sidewalk. The area surrounding the tree was lined with concrete blocks, although one of the blocks was missing where the tree fell. The question was whether the City or the adjoining property owner, Con. Ed., was liable. The resolution of the issue depended in part on the definition of "sidewalk." Section 7-210 does not itself contain a definition of "sidewalk." However, Title 19 of the Administrative Code, which also addresses sidewalk maintenance, says that it is "that portion of the street between the curb lines . . . and the adjacent property lines, but not including the curb, intended for the use of pedestrians." The tree line here is located between the curb and the adjacent property line, so it fits within one part of the definition. However, what about

the part of the definition, "intended for the use of pedestrians." The court stated that the language does not preclude liability on the part of the adjoining property owner. Con. Ed. argued that liability could not be shifted to it because the City was responsible for the cultivation of trees (Adm. Code. § 18-105). However, the defect here was a missing concrete block, which was not related to trees under Admin. Code § 18-104 or 18-105. In other words, the responsibility to maintain a tree and the responsibility to maintain the area surrounding a tree are unrelated obligations. Under these circumstances, and in light of the fact that the plaintiff did not allege that the missing block was caused or created by any action on the part of the City, the City was not liable, and responsibility shifted to Con. Ed. Callan v. City of New York, 17 Misc.3d 248, 841 N.Y.S.2d 196 (Sup.Ct. Kings Co. 2007).

¶ 5. A mixed-use building, combining a one-family residence with a store or office, does not qualify for the residential use exception to the statute. Thus, the City is not liable for falls occurring on the sidewalk, and the liability, if any, is with the property owner. Aurelien v. City of NY, 15 Misc.3d 1116(A), 839 N.Y.S.2d 431 (Sup.Ct. Richmond Co. 2007).

¶ 6. In Seplow v. Solil Management Corp. 15 Misc. 3d 1138(A), 841 N.Y.S.2d 823 (Sup.Ct. N.Y. County 2007), the plaintiff allegedly was injured in a fall on a portion of sidewalk that was uneven by reason of tree roots. The court held that the City was not responsible for the accident. A similar result was reached in Goss v. Briar Owners, Inc. 14 Misc.3d 1239A, 836 NYS2d 499 (Sup.Ct. Queens 2007).

¶ 7. In one case, the plaintiff fell when she lost her footing after stepping into a metal circular hole that remained after a damaged fire hydrant had been removed by the City. The issue was whether the adjoining property owner was required to repair holes created by missing fire hydrant. The court held that the City had the responsibility to correct the defect. The court found that Admin. Code § 19-152 did not place upon the adjacent landowner the duty to repair or repave a sidewalk defect attributable to the City. Not only is a fire hydrant the property of the City, but its location and maintenance fall within the sole province of the municipal authorities (see 15 RCNY § 20-08). The court further said that § 7-210 is construed against the City. Manning v. city of NY, 16 Misc.3d 1132(A), 2007 WL 2446562 (Table)(Sup.Ct. Richmond Co. 2007).

¶ 8. A pedestrian was injured when she slipped and fell on ice on a public sidewalk. The injury took place in front of a warehouse rented by the tenant. Where an accident took place before the effective date of the Admin. Code § 7-210, an adjoining landowner may be held liable for the alleged defect in the sidewalk only if it "either created the defective condition or caused the defect to occur because of a special use." The use of a sidewalk as a driveway constitutes a special use. Where a defect that causes an accident occurs in a part of the sidewalk used as a driveway, the abutting landowner, on a summary judgment motion, bears the burden of establishing that he or she "did nothing to either create the defective condition or cause the condition through" the special use of the property as a driveway. In this case, the defendant could not establish that the allegedly defective condition that resulted in plaintiff's accident was not located on the portion of the sidewalk which was used as a driveway. The defendant also failed to show that it did nothing to cause that condition through its special use of the property as a driveway. Accordingly, the court denied the motion for summary judgment. Campos v. Midway Cabinets, Inc. 51 AD3d 843, 858 N.Y. 742 (2d Dept. 2008).

¶ 9. Plaintiff was injured when she tripped over a growth from a tree that spilled out onto sidewalk in front of multi-use residence owned by defendants. In moving for summary judgment dismissing the case, defendant cited Vucetovic and contended that they were not responsible for maintenance of trees. The court, however, denied the motion for summary judgment. While it is the city's primary obligation to maintain the trees, if a tree creates a dangerous condition on a property owner's sidewalk, the property owner cannot hide behind the City's possible negligence to avoid responsibility. The property owner has a right to seek a permit from the city to correct any sidewalk defect caused by a City tree. Admin. Code of the City of NY 18-129(a).

The court distinguished Vucetovic, which involved a fall in a tree well not from a defect. In DiGregorio, however, plaintiff fell over a tree growth on the sidewalk in front of a residential building whose owner was obligated to maintain the sidewalk pursuant to Adm. Code § 7-210. Liability does not shift back to the City when the accident

occurred due to the growth of tree roots. DiGregorio v. City of NY 2008 NY Slip Op. 51013U, 2008 NY Misc. Lexis 2951 (Sup. Ct. NY Kings Cty.). See also, Falco v. Jennings Hall Senior Citizen House Development Fund, Inc., 19 Misc.3d 1107 (A), 2008 NY Slip Op. 50595(U) (Sup.Ct. Kings Co.).

¶ 10. A pedestrian was injured when he fell on a stairway owned by the City. When suit was brought against the adjoining property owner based on the owner's alleged failure to maintain the sidewalk, the court had to decide how to define "sidewalk." Since § 7-210 does not define "sidewalk," the court had to look to other sections of the Admin. Code for an appropriate definition. The plaintiff urged the court to use the definition in Sec. 7-201, which includes steps and stairways. The court, however, held that 7-201 pertained to notice requirements against the City alone, and did not affect other entities such as adjoining property owners. Instead, the court used Admin. Code Sec. 19-101(d), whose definition of "sidewalk" did not include stairways. Accordingly, the court granted summary judgment dismissing the complaint against the adjoining property owner. Fernandez v. Highbridge Realty Assoc. 49 AD3d 318, 853 NYS2d 71 (1st Dept. 2008).

¶ 11. Plaintiff slipped and fell on snow and ice on a sidewalk adjacent to a building. Since the accident took place prior to Sept. 14, 2003, and the old law applied, plaintiff could not recover against the adjoining property owner in the absence of evidence that they undertook snow removal efforts which made the naturally occurring conditions more hazardous. Thus, the action was dismissed. Everly Bisontt v. Rockaway One Company LLC 2008 NY Slip Op. 638, 47 AD3d 862, 850 NYS2d 621, 2008 NY App. Div. Lexis 629 (AD2d Dept.).

¶ 12. In 2001, plaintiff tripped and fell on a city sidewalk in front of defendant's supermarket. Prior to the enactment of Sec. 7-210 in 2003, the duty to maintain the public sidewalks rested with the City. In such as case, an abutting landowner would be liable only if it created the defective condition or made a special use of the sidewalk. The court held that the mere ownership of property and the occasional use of the side of a store for deliveries does not constitute a special use. Aracelis Rodriguez v. City of NY 2008 NY Slip Op. 1433, 48 AD3d 298, 851 NYS2d 511, 2008 NY App. Div. Lexis 1404 (App. Div. 1st Dept.).

¶ 13. Section 7-210 was designed to shift liability away from the City for sidewalk accidents other than sidewalks abutting one-family homes used exclusively for residential purposes. An adjoining property owner is not liable for an accident caused by tree roots, which are still the responsibility of the City of New York. Mastromarino v. City of NY 2008 NY Lip Op 50377U, 18 Misc.3d 1140A (Sup. Ct. Kings Cty. 2008).

¶ 14. In Vucetovic v. Epsom Downs, Inc., 10 NY3d 517, 2008 NY Slip Op. 4901, 2008 NY Lexis 1464,, plaintiff's accident occurred when he stepped into a tree well and tripped on one of the cobblestones surrounding the dirt area containing a tree stump. The tree well was located in front of the building owned by Epsom, but the tree well apparently had been cut down prior to Epsom's acquisition of the building. Approximately four months before the accident, the City cut down the tree. Before addressing the language of § 7-210 itself, the court had to examine the background underlying its enactment.

Prior to the adoption of § 7-210, property owners in NYC had a statutory duty to install, construct, repave and repair the sidewalk flags in front of or abutting such property (Admin. Code § 19-152(a) and to remove the snow or ice, dirt, or other material from the sidewalk (Admin. Code of NYC § 16-123(a)). Failure to comply with both of these laws resulted in fines or an obligation to reimburse the city for its expenses under § 19-152(e) and 167-123(e)(h). Under the previous statutory scheme, the City, as the owner of the sidewalks, generally remained liable for injuries to pedestrians caused by defective sidewalk flags, assuming there was actual written notice of a defect (Adm. Code 7-201). Under that scheme, an abutting landowner could be held liable only if the owner affirmatively created the dangerous sidewalk condition or negligently made repairs or used the sidewalk in a special manner for its own benefit.

In 2003, the City Council modified this regime by adopting section 7-210 of the Admin. Code which states: a) It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition. b) The owner of real property,

abutting any sidewalk, and not limited to the intersection for the corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalk in a reasonably safe condition. Failure to install, construct, repave, repair or replace defective sidewalk and the negligent failure to remove snow, ice, etc. can result in an owner's liability. c) NYC shall no longer be liable for injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks in a reasonably safe condition.

In other words, under the new law, tort liability has been switched from the city to the owner of the property (with the exception of owner occupied residential buildings of three or fewer units) under § 7-210. The statute was a cost-saving measure, designed to shift liability for sidewalk maintenance from the City to the property owner, whose legal obligation it was to maintain and repair sidewalks. The language of § 7-210 mirrors the duties of property owners with regard to sidewalks as set forth in Admin. Code Secs. 19-152 and 16-123. Both plaintiff and the City argued that tree wells should be considered an integral part of the sidewalk for purposes of Sec. 7-210, so that Epsom could be held accountable for the accident. Although Sec. 7-210 does not define "sidewalk," plaintiff relied on Sec. 19-101(d), which describes a sidewalk as "that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians." Although the Court of Appeals acknowledged that the case presented a close question, it agreed with Epsom that Sec. 7-210 does not impose civil liability on property owners for injuries that occur in City-owned tree wells. The court narrowly construed Sec. 7-210, because the broad construction sought by plaintiff would have imposed civil liability on adjoining property owners where no such liability existed before.

Sections 19-152 and 16-123, the provisions whose language Sec. 7-210 tracks, contemplates the installation, maintenance, repair and clearing of sidewalks or sidewalk flags. Significantly, tree wells are not mentioned in Secs. 7-210, 16-123 and 19-152. Given the statutory silence and the absence of any discussion of tree wells in the legislative history, it appeared that the City Council did not consider the issue of tree wells liability when it drafted Sec. 7-210. If the City Council desired to shift liability for accidents involving tree wells exclusively to abutting landowners in derogation of the common law, it needed specific and clear language to accomplish this goal.

In addition to the above, the court considered Admin. Code Sec. 18-104, which gives the City Parks and Recreation the exclusive jurisdiction over the "planting, care and cultivation of trees; individuals cannot lawfully cut or remove a tree without first obtaining the Department's permission. In other words, if adjoining property owners are not in control of trees, they certainly cannot be expected to maintain tree wells. Accordingly, the court held that a tree well was not part of the "sidewalk" for purposes of Section 7-210, and dismissed the action against Epsom.

¶ 15. In one case, plaintiff sought damages for injuries sustained when crossing a NYC street. Her foot entered a "dip or a slope" in the sidewalk causing her to fall. The City claims that plaintiff violated NYC Admin. Code §7-210 which applies to sidewalk accidents occurring on or after Sept. 14, 2003, which shifts liability for accidents from the City to the abutting landowner. The issue presented here is whether plaintiff's accident falls under this provision. Section 7-210 provides that it shall be the duty of the owner of real property abutting any sidewalk, including but not limited to, the intersection for corner property, to maintain the sidewalk in a reasonably safe condition. The director of the pedestrian ramp unit for the NYC Dept. of Transportation, appearing on behalf of the City, stated that pedestrian ramps and sidewalk units are distinct constructions and the ramp at the location at issue here was constructed by the City prior to plaintiff's accident. The testimony shows that the pedestrian curb-cut ramp was not constructed by, on behalf of, or for the benefit of adjoining property owners. A "pedestrian ramp" is not part of the "sidewalk." Therefore, it does not fall under §7-210. Further, plaintiff alleges that her accident occurred, not because of a failure to maintain or repair a defect in the sidewalk, but rather, because of an alleged improperly designed ramp. In other words, the adjoining property owner is responsible for lapses in maintenance but not for the steepness of the slope, which was created by the City. Accordingly, the court dismissed the action as against the adjoining property owner. Rodriguez v. Sequoia Property Management Corp., 878 N.Y.S.2d 606 (Sup.Ct. Queens Co. 2009).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-211

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-211 Personal injury and property damage liability insurance.

An owner of real property, other than a public corporation as defined in section sixty-six of the general construction law or a state or federal agency or instrumentality, to which subdivision b of section 7-210 of this code applies, shall be required to have a policy of personal injury and property damage liability insurance for such property for liability for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain the sidewalk abutting such property in a reasonably safe condition. The city shall not be liable for any injury to property or personal injury, including death, as a result of the failure of an owner to comply with this section.

HISTORICAL NOTE

Section added L.L. 54/2003 § 1, eff. Sept. 14, 2003 and applying to

accidents occurring on or after such date.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-212

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-212 Authority to make payments for personal injury, including death, where abutting property owner liable pursuant to section 7-210 is uninsured.

a. Where a judgment for personal injury, including death, obtained against an abutting property owner pursuant to section 7-210 of this code is unsatisfied for a period of at least one year following entry of such judgment in the office of the county clerk of the county in which such property is situated and the judgment debtor has been determined by the comptroller after investigation to have no policy of liability insurance or other assets to satisfy such judgment, the comptroller, after consultation with the corporation counsel, is hereby authorized and empowered to make a payment for such personal injury, including death.

b. Any such payment shall be made in the discretion of the comptroller and shall not be made as a matter of right. The amount of such payment shall not exceed uncompensated medical expenses. Payment may be in a single payment, or may be made in periodic payments. No such payment or periodic payments shall exceed fifty thousand dollars in total with respect to any unsatisfied judgment and the total of all such payments for all judgments in any fiscal year shall not exceed four million dollars.

c. Petitions for a payment under this section shall be presented to the comptroller not less than one or more than three years following entry of such judgment in the office of the county clerk of the county in which such property is located. Each petition shall include evidence demonstrating (i) that efforts to collect the judgment have been pursued, and (ii) that the judgment debtor has no policy of liability insurance or other assets to satisfy the judgment.

d. Before the comptroller shall make such payment, he or she shall require the petitioner to execute an assignment of the judgment to the city. After assignment the city shall be entitled to enforce the judgment. To the extent

that the city collects money on the judgment in excess of the payment or payments made to a petitioner pursuant to this section, such excess amount shall be paid to the petitioner after deducting the city's expenses.

e. No payment shall be made under this section if it is determined that the unsatisfied judgment was obtained by fraud, or by collusion of the plaintiff and of any defendant in the action.

f. The comptroller shall, by rule, establish procedures for the presentation of petitions for payment pursuant to the provisions of subdivision c of this section, for the review of such petitions by that office and with respect to such other matters as are necessary to implement the provisions of this section.

HISTORICAL NOTE

Section added L.L. 54/2003 § 2, eff. Sept. 14, 2003 and applying to

accidents occurring on or after such date.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-301

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 3 BOARD OF STATUTORY CONSOLIDATION

§ 7-301 Board of statutory consolidation; powers and duties.

a. The board of statutory consolidation shall consist of the mayor, the comptroller, the public advocate and the corporation counsel. The board from among its members shall elect a chairperson, a vice-chairperson and a secretary. The members of such board shall serve as such members without compensation. The powers and duties of such board shall include the direction and control of the revision, simplification, consolidation, codification, restatement and annotation of the statutes, local laws, and departmental rules and regulations having the force of law affecting and relating to the government, affairs and property of the city and of the counties contained therein.

b. The revision, simplification, consolidation, codification, restatement and annotation herein provided for shall be carried on under the direction and control of such board by such counsel, assistant counsel and other persons as it shall designate and employ for that purpose. Compensation and necessary expenses shall be fixed by such board on the certification of the executive officer thereof as may be designated by such board and paid by the comptroller after audit by and on the warrant of such comptroller out of an appropriation that shall be made for such purpose. Such board is authorized and empowered, in its discretion, to keep and use the ledgers, documents, books, reports and all other papers and property of the codification division of the New York city charter revision commission, created by chapter eight hundred sixty-seven of the laws of nineteen hundred thirty-four.

c. The board shall cause its work to be printed from time to time, and may distribute copies of the same to such persons as it may deem fit for the purpose of obtaining their suggestions and advice in relation to such work. It shall report to the local legislative body of the city upon the progress of its work. It shall recommend for enactment to the legislature the statutes or to the local legislative body the local laws, and rules and regulations so revised, simplified, consolidated, codified, or restated and shall designate such statutes, or parts of statutes, as in its judgment should be

repealed and shall recommend the enactment of any acts, or parts of acts, which such repeal may in its judgment render necessary. Such board shall have the power to cause to be published and to sell any such publication and to copyright annotations thereto, the proceeds of such sale to be paid into the city treasury.

d. The city is authorized to appropriate and make available to the board of statutory consolidation such sums of money as may be necessary to defray the expenses of such board to enable it to perform its duties under this section, upon the receipt of a requisition therefor stating the purposes for which such moneys are required.

e. Such board may, under its direction and control, delegate to the corporation counsel the duty of continuing the annotating and editing of such statutes, local laws, rules and regulations and of statutes, local laws, and rules and regulations hereafter enacted or adopted relating to the government, affairs and property of the city and the counties therein contained.

f. Nothing contained in section eleven hundred fifteen or in any other section of the charter or in any other law shall be construed to prevent such mayor, comptroller, public advocate and corporation counsel from serving on such board, nor shall it prevent any city or county officer of the city from serving on the staff of such board.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, f amended L.L. 68/1993 § 27, eff. Jan. 1, 1994

DERIVATION

Formerly § B16-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 317

(formerly § 397-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-401

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 4 JURORS

§ 7-401 Jurors fees.

In pursuance of section five hundred twenty-one of the judiciary law, it is hereby directed that the sum of twelve dollars be allowed to each grand juror and each trial juror for each day's necessary attendance as such a juror at a term of any court of record of civil or criminal jurisdiction held within the city of New York; provided, however, that no such juror shall be so paid for attendance on any day on which the juror shall be excused from service at his or her own request.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a8-1.0 added chap 929/1937 § 1

Amended LL 65/1960 § 1

Renumbered and amended chap 100/1963 § 157

(formerly § 117(5)-1.0)

Amended LL 52/1969 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-402

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 4 JURORS

§ 7-402 Fees to grand jurors.

Pursuant to section five hundred twenty-one of the judiciary law, where the term of a grand jury is extended by an order of the court, the sum of twelve dollars shall be allowed to each grand juror for each day's necessary attendance by such grand juror during such extended term.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a8-2.0 added LL 57/1951 § 1

Renumbered and amended chap 100/1963 § 158

(formerly § 117(6)-1.0)

Amended LL 64/1969 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-403

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 4 JURORS

§ 7-403 Fees to grand jurors of extraordinary terms.

Pursuant to section five hundred twenty-one of the judiciary law, where a grand jury has been, or will hereafter be, empaneled to serve at an extraordinary and trial term of the supreme court of this state in any county within the city of New York, and where the term of such a grand jury continues for a period longer than thirty days from the date when such grand jury was empaneled and sworn, the sum of twelve dollars shall be allowed to each member of such grand jury for each day's necessary attendance as a grand juror from and after the expiration of such thirty-day period and until such grand jury shall have been discharged by the court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a8-3.0 added LL 40/1952 § 1

Renumbered and amended chap 100/1963 § 159

(formerly § 117(6)-1.1)

Amended LL 64/1969 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-501

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-501 Bond of sheriff.

a. Before entering upon the duties of office, the sheriff shall give a bond to the city and to whom it may concern in the sum of three hundred thousand dollars, with not less than three sufficient sureties, to be approved by the comptroller, conditioned that the sheriff shall well and faithfully in all things perform and execute the duties of the office of sheriff during his or her continuance in such office without fraud, deceit, or oppression, and that the sheriff shall in like manner well and faithfully account for all moneys received by him or her or his or her subordinates by virtue of the sheriff's office. Such bond shall be filed in the office of the comptroller.

b. In case of any official misconduct, default, mistake or omission of duty on the part of the sheriff, an action upon such bond may be begun and prosecuted to judgment by the person or corporation injured or damaged by such official misconduct, default, mistake or omission of duty.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-1.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-502

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-502 Seal.

The sheriff is authorized to adopt a seal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-3.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-503

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-503 Sheriff; accounting for fees.

The sheriff shall be paid a salary to be fixed by the mayor. All fees shall be the property of the city. All sums so received, except as otherwise provided by law, shall be deposited by the commissioner of finance, without deduction, in accordance with section fifteen hundred twenty-three of the charter.

HISTORICAL NOTE

Section amended L.L. 53/1995 § 4, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-4.0 added LL 4/1942 § 3

Amended chap 100/1963 § 1582

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-504

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-504 Statement of account to comptroller.

a. The sheriff, within ten days after the expiration of each calendar month, shall transmit to the comptroller a statement of the sheriff's accounts in such form as the comptroller shall prescribe.

b. Such statement shall be verified by the oath of the sheriff. The verification of every account transmitted to the comptroller shall be to the effect that the same is a true transcript or summary of the accounts and the books of the office of the sheriff.

c. The comptroller may examine under oath the sheriff or any of the sheriff's subordinates regarding the amount of moneys paid to and received by the sheriff and the sheriff's subordinates, in their official capacity, and regarding any statements contained in the certified transcript and return. An order for such examination must be granted by a justice of the supreme court whenever an application shall be made therefor by such comptroller and such examination shall take place before such justice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-5.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-505

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-505 Penalty for failure to account to comptroller.

If the sheriff or any of the sheriff's subordinates shall receive for their own use or neglect to account for any moneys belonging to the city, or if the sheriff shall neglect to render to the comptroller an account of the moneys which he or she has received or is entitled to receive in his or her official capacity or to pay over the same as herein required, or if the sheriff or any of the sheriff's subordinates shall make a false statement in such certified transcript and return or shall swear falsely upon an examination by the comptroller, the sheriff or any such subordinate shall be deemed guilty of a misdemeanor and punishable with a fine of not less than five hundred dollars nor exceeding five thousand dollars or imprisonment for a period of not less than three months nor exceeding five years, or both, at the discretion of the court before whom the sheriff or any such subordinate may be convicted. Such convicted officer or subordinate shall also forfeit any sum that may be due him or her on account of salary and shall be liable to the city in a civil action for all moneys so received and not accounted for and not paid over into the treasury of the city as required by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-6.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-506

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-506 Disposition of moneys collected.

All moneys collected by the sheriff or any of the sheriff's subordinates in any action or proceeding except fees authorized by law shall be paid to the party or parties to whom they are directed to be paid. When the sheriff is not so directed all such monies shall be deposited by the commissioner of finance in the court and trust fund accounts maintained by the commissioner of finance in accordance with applicable law. The money so deposited shall be withdrawn only on an order of the court on notice to the commissioner of finance and all parties who have appeared in the action or proceeding.

HISTORICAL NOTE

Section amended L.L. 53/1995 § 5, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-7.0 added LL 4/1942 § 3

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-507

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-507 Sheriff's books and records.

The sheriff shall keep in proper books or records, in such form as the comptroller shall prescribe, an exact account of all fees actually received by the sheriff or the sheriff's subordinates for any service done in their official capacity.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-8.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-508

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-508 Sheriff's sale.

a. Auctioneer; fees. 1. Whenever the sheriff is required by law to sell real or personal property, he or she may, and if requested in writing by any party or by the attorney of any party to the action or proceeding in which such sale be made, the sheriff must cause such sale to be made through an auctioneer. Such auctioneer shall be selected by the sheriff, except where the attorneys of such of the parties as have appeared in the action or proceeding in which such sale is to be made in writing name an auctioneer, subject to the approval of the sheriff, in which event the sale must be made by the sheriff through such autioneer. In the event of disapproval by the sheriff, the sale must be made by an auctioneer selected by the sheriff.

2. Such sheriff is authorized and directed to withhold from the proceeds of the sale a sum which would be sufficient to compensate the auctioneer for services rendered in conducting such sale, together with all necessary disbursements of such auctioneer as may be approved by the sheriff or by the attorneys for the parties to such action or proceeding, and to pay over such sum to such auctioneer. In no case shall such auctioneer's fee exceed the customary market rate of auctioneers' fees for similar services.

3. If the sheriff or any of the parties shall object to the fees and disbursements claimed by the auctioneer, such fees and disbursements shall be taxed by the court upon the application of the sheriff or of the auctioneer or of any of the parties who have appeared in the action or proceeding on two days' notice by the party desiring such taxation to be given to all of the other parties last mentioned.

b. Advertisement; cost. The sheriff shall himself or herself, or through the auctioneer designated to conduct the sale, cause to be advertised every sale of personal property to be made under any process or mandate of the court in not

exceeding two daily newspapers, except in the sale of perishable property, in which case the court, upon application of the sheriff, may direct the sale thereof at such a time and upon such a notice as it deems proper. Such advertisement shall be made for such a time as the sheriff shall deem sufficient and ample to give proper notice to the public of the sale for the purpose of realizing the highest price for the property to be sold. Such advertisements shall be printed in a daily newspaper or daily newspapers published in the city in addition to the public posting of notice of such sale now required by law. The sheriff shall retain the cost of such advertising from the proceeds of the sale and shall pay the newspaper or newspapers in which such advertisement shall be printed.

c. Deductions for expenses; record. 1. The sheriff shall also deduct from the proceeds of the sale the amounts paid by the sheriff or to be paid for cartage and for the transportation of the goods, as well as such sums paid to keepers or custodians or for storage of the property as hereinafter provided, together with the sums paid by the sheriff for insurance or expended necessarily in the protection and preservation of the property.

2. It shall be the duty of the sheriff after having paid over the proceeds of the sale to the parties in interest, less the amounts by this section authorized to be deducted from such proceeds, to enter in a proper book or record, to be kept for that purpose, under the title of the action in which such sale is made, the time and place of such sale, the name of the auctioneer who effected such sale and an itemized statement of the amount for which such goods are sold, the amount received therefor and the disbursements made by such sheriff under the authority of this section.

3. The sheriff shall keep vouchers or receipts for such payments regularly filed under the title of the action under which such sale has been effected at all times on file in the sheriff's office. The same shall at all times during office hours be open to inspection as public records.

d. Whenever the sheriff deems it necessary, may require that the party directing the sale advance any or all of the costs and disbursements provided for in this section, in which event the sheriff shall repay the same out of the proceeds, if any, of the sale.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-9.0 added LL 4/1942 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 1032-9.0, subd. a(2), limits the fee of an auctioneer in sales on behalf of the sheriff in the City of New York to $2^1/_2$ percent in Bronx County in the absence of a contrary written agreement, inasmuch as such is the rate provided by General Business Law § 21 in Bronx County by virtue of County Law § 246a, and the Admin. Code provides that the commission shall not exceed the customary market rate of auctioneer's fees for similar services.-Di Palma v. Carraro, 180 Misc. 998, 45 N.Y.S. 2d 206 [1943], aff'd 267 App. Div. 947, 48 N.Y.S. 2d 460 [1944]; and see also, 269 App. Div. 659, 53 N.Y.S. 2d 353 [1945].

¶ 2. Where five separate and distinct mortgages on five separate and distinct parcels, with a separate bond for each, four mortgages being owned by one plaintiff and one by the other plaintiff, were foreclosed in one action, the auctioneer was entitled to separate fees on each sale, making a total of $115 where the judgments on all mortgages exceeded $25,000, and an additional $25 for five salesroom fees (contra 163 Misc. 880).-Bretzfelder v. Ghelardi, 115 (99) N.Y.L.J. (4-29-46) 1666, Col. 7 M.

¶ 3. Plaintiff's objection that the sheriff failed to realize any money from the defendant's property after execution was filed with him, as grounds for denial of poundage, could not be sustained where it was shown that the plaintiff

requested delay of physical possession and failed to advance the cost of advertising a sale under the execution, though requested to do so by the sheriff, under the authority of subdivision d of this section.-Manni v. Shirtcraft Co., Inc., 6 Misc. 2d 925, 161 N.Y.S. 2d 257 [1957].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-509

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-509 Storage of property; payment.

The sheriff is authorized to store any goods or property for the safe keeping of which the sheriff may at any time be responsible, or to designate proper and competent persons to act as keepers or custodians of such goods or property, and to fix the salary of such keepers subject to review by a justice of the supreme court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-10.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-510

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-510 Inquiry for enforcement of judgments owed to the city.

The sheriff shall be empowered to make an inquiry to determine whether a judgment debtor of the city has sufficient assets and property, including any debts owed to a judgment debtor, to pay the judgment. In connection with such an inquiry, the sheriff is authorized to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as he or she may deem necessary.

HISTORICAL NOTE

Section added L.L. 47/1991 § 1, eff. July 17, 1991

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-513

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-513 Counsel. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 53/1995 § 6, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-12.1 added LL 4/1942 § 3

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-514

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-514 Fees defined.

The term "fees", as used in this chapter, shall include all percentages, commissions, compensations, poundages, perquisites, and emoluments of any nature which the sheriff or any of the sheriff's subordinates may receive by virtue of their office.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-13.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-515

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-515 Additional hours.

a. The sheriff's subordinates or employees may be ordered to serve during any additional hours as the proper performance of the duties of the office requires.

b. Whenever the last day on which any paper is required to be filed or delivered or any act is required to be done or performed in such office expires on Saturday, Sunday or a public holiday, the time therefor is hereby extended to and including the next business day.

HISTORICAL NOTE

Section amended L.L. 53/1995 § 7, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-14.0 added LL 4/1942 § 3

Amended chap 801/1958 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-516

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-516 Construction clause.

Any law, rule, regulation, contract or other document which refers or is applicable to the sheriff of any of the counties in the city shall refer to the office of the city sheriff in such county, except that any provision, in any law, rule, regulation, contract or other document relating to the custody and transportation of prisoners held for any cause in criminal proceedings in any county within the city, heretofore applicable to any sheriff of any of the counties within the city, shall apply to the department of correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-15.0 added LL 4/1942 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. In view of provisions of Admin. Code § 1032-15.0, that any law, rule or regulation which refers to or is applicable to the sheriff of any of the counties of the City shall refer to the office of the City Sheriff in such county, each county division of the office of the City Sheriff was to be regarded as an independent entity for the purpose of applying the provisions of C.P.A. § 17. Hence plaintiff's timely delivery of the summons and complaint to the New York County Division of the Sheriff's Office, which made a return specifying that the defendant could not be found in

New York County, would not validate a service thereafter made by the Bronx County Division of the Sheriff's Office, to which office the summons and complaint were delivered after expiration of the applicable period of limitations, although within 60 days after delivery of the summons to the New York County Division.-Balter v. Janis, 200 Misc. 635, 107 N.Y.S. 2d 837 [1951].

¶ 2. Delivery of a summons to the Sheriff of the City of New York, Kings County Division, prior to the expiration of the two year statutory period was ineffectual to toll the statute where the defendants in the wrongful death action were residents of Queens County.-Barko v. Mollica, 5 A.D. 2d 699, 169 N.Y.S. 2d 771 [1957].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-601

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-601 Register; bond.

a. The register, before entering upon the duties of office, shall give a bond to the city and to the people of the state of New York in the sum of eighty thousand dollars, with not less than two sufficient sureties to be approved by the comptroller, conditioned that the register will faithfully discharge the duties of such office and all trusts imposed upon him or her by law by virtue of the register's office, including all duties in connection with the tax on mortgages as prescribed by article eleven of the tax law. Such bond shall be filed in the office of the comptroller.

b. In case of any official misconduct, default, neglect or omission of duty on the part of the register, an action upon such bond may be brought and prosecuted to judgment by the person or corporation injured or damaged by such official misconduct, default, neglect or omission of duty.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-1.0 added LL 4/1942 § 5

Amended chap 252/1949 § 5

CASE NOTES FROM FORMER SECTION

¶ 1. Where plaintiffs sought a declaratory judgment that certain words in an assignment of a mortgage were inserted by inadvertence and that these words constituted a cloud on title which they were entitled to have removed by a judgment in order to enable them to satisfy the mortgage, contention of Register of the City of New York that plaintiffs had an adequate remedy in a C.P.A. Art. 78 proceeding, was rejected. Such a proceeding could not be brought to compel the Register to cancel the mortgage, as the Register is merely a ministerial officer and may not decide questions of law or fact.-Gilkey v. City Bank Farmers Trust Co., 129 (31) N.Y.L.J. (2-16-53) 514, Col. 4 F.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-602

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-602 Bond of deputies, assistants, clerks and other subordinate employees.

The register shall require from any deputy, assistant, clerk, employee or other subordinate a bond in such sum and with such sureties as may be approved by him or her and the comptroller, which bond shall run to the register, the city and to whom it may concern, and shall be conditioned for the faithful performance of his or her duty. Each such bond shall be filed with the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-2.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-603

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-603 Seal.

The register is authorized to adopt a seal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-3.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-604

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-604 Register; accounting for fees.

a. The register shall be paid a salary to be fixed by the mayor. All fees shall be the property of the city. All sums so received shall be paid to the commissioner of finance monthly without deduction. The additional fee of twenty dollars for recording any instrument required by New York state statute to be recorded pursuant to subdivision one of section 7-614 of this code shall be used as follows: five dollars paid monthly by the commissioner of finance to the New York state commissioner of education, after deducting twenty-five cents, for deposit into the New York state local government records management improvement fund and fifteen dollars, after deducting seventy-five cents, for deposit to the cultural education account.

b. It shall be the duty of the register to keep an exact account of all fees which the register or any of the register's subordinates or assistants shall be entitled to demand and receive from any person for any service rendered by the register or them in the register's or their official capacity, pursuant to law. Such account shall show the nature of every such service performed and the fees chargeable therefor, and shall at all times during business hours be open to the inspection, without any fee or charge therefor, of all persons desiring to examine the same, and such account shall be deemed a part of the records of the office in which they shall be kept, and shall be preserved therein as are other records, except that the register may destroy such account upon obtaining the written consent of the comptroller authorizing such destruction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 83/2002 § B4, eff. July 1, 2002.

Subd a amended chap 78/1989 § 10

DERIVATION

Formerly § 1052-4.0 added LL 4/1942 § 5

Sub b amended LL 78/1948 § 1

Sub a amended chap 100/1963 § 1584

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-605

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-605 Statement of account to comptroller.

A statement of such account, to be made in such form as shall be prescribed by the comptroller, shall be transmitted by the register for each calendar month, within ten days from the expiration thereof, to the comptroller, which shall be verified by the oath of the register, and which shall show all fees which the register or the register's subordinates or assistants shall be entitled to demand and receive from any person for any service rendered in their official capacity, by virtue of any law since making the last preceding return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-5.0 added LL 4/1942 § 5

Amended LL 78/1948 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-606

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-606 Penalty for neglect to account.

The register or any subordinate who shall receive to their own use or neglect to account for any fees, declared to belong to and be for the benefit of the city, or who shall neglect to render to such comptroller an account of the fees accruing to the register's office, or to pay over the same as required herein, shall be deemed guilty of a misdemeanor, and punishable with a fine of not less than five hundred dollars nor exceeding five thousand dollars, or imprisonment for a period of not less than three months nor exceeding one year, or both, at the discretion of the court before whom such officer may be convicted, and in addition shall forfeit any sum that may be due to him or her on account of his or her salary and shall be liable to the city in a civil action for all moneys so received and not accounted for and paid over into the treasury of the city pursuant to the requirements of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-6.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-607

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-607 Real estate instruments to be recorded.

Every instrument affecting real estate or chattels real, situated in the counties within the city, shall be indexed pursuant to the provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-7.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-608

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-608 Microfilmed instruments; how indexed.

If recording is done by microphotography or other photographic processes, the words liber and page when used in this chapter shall be construed to mean the serial number of microfilmed instruments.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-7.1 added chap 638/1953 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-614

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-614 Fees.

The register, and the county clerk of the county of Richmond when acting as recording officer, are entitled, for services specified in this section, to the following fees, to be paid in advance:

1. For recording, indexing and endorsing a certificate on any instrument, ten dollars in the case of the Richmond county clerk and twelve dollars in the case of the register; and, in addition thereto, two dollars in the case of the Richmond county clerk and five dollars in the case of the register for each page or portion of a page, two dollars for each additional block indexed against exceeding one, and three dollars for each additional lot indexed against exceeding one; and, in addition thereto, twenty dollars for recording any instrument required by state statute to be recorded.

2. For filing and indexing a certificate of the appointment of a commissioner of deeds, ten dollars.

3. For issuing, signing and sealing a certificate, six dollars.

4. For searching and certifying the title to or an incumbrance or lien upon real property, fifty cents per year for each name against which the search is made, and fifty cents per year for each separate piece or parcel of property not consisting of contiguous lots. There shall be an additional charge of ten cents for each return made of any conveyance or lien found. The minimum charge for a search and certificate, and return, if any, shall be ten dollars.

5. For preparing and certifying a copy of a paper filed or recorded in the office, four dollars for each page or portion thereof.

6. For certifying a prepared copy of a paper filed or recorded in the office, four dollars for each page or portion thereof.

7. For filing and indexing each map, twenty dollars, and two dollars for each square foot or major part thereof of a map surface.

8. For copying any map which he or she may copy or certify, such reasonable fees for the service as may be fixed by the register, or county clerk when acting as register, subject to review by the supreme court, by which the same may be taxed.

9. For issuing a last owner of record report, fifteen dollars.

10. For filing a statement under oath reciting facts evidencing entitlement to a credit against, or exemption in whole or in part from, the tax on mortgages imposed by or pursuant to the authority of article eleven of the tax law, eight dollars.

11. For purposes of this section, the size of each page accepted for recording and indexing shall not exceed nine inches by fourteen inches, and every printed portion thereof shall be plainly printed in type of which the face is not smaller than eight point. The register and the county clerk acting as recording officer may in special circumstances accept a page exceeding the size or with smaller print than that prescribed herein, on such terms and at such fee, subject to review by the supreme court, as he or she may deem appropriate, but the fee for such recording and indexing shall be not less than double the fees otherwise chargeable by law therefor.

12. The register, or county clerk when acting as register, may fix the fee for any service rendered by him or her, and for which no fee is herein specified, subject to review by the supreme court.

HISTORICAL NOTE

Section amended L.L. 35/1987 § 1

Section added chap 907/1985 § 1

Subd. 1 amended chap 83/2002 § B5, eff. July 1, 2002. Note language

set to expire Dec. 31, 2005 was made permanent by chap

520/2004 § 1.

Subd. 1 amended L.L. 56/1995 § 1, eff. July 1, 1995

Subd. 1 amended L.L. 53/1991 § 1, eff. Sept. 1, 1991

Subd. 1 amended ch. 78/1989 § 11. Note: This amendment expires and

is repealed on Dec. 31, 2000 per chap 385/1995 § 1

DERIVATION

Formerly § 1052-13.0 added LL 4/1942 § 5

Sub 13 amended LL 66/1950 § 1

Amended LL 131/1953 § 1

Subs 6-9, 11 amended LL 70/1963 § 1

Sub 16 renumbered LL 70/1963 § 2

(formerly sub 15)

Sub 15 added LL 70/1963 § 2

Amended LL 14/1970 § 1

Amended LL 10/1975 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The "amount involved in a chattel mortgage," within meaning of Admin. Code § 1052-13.0, prescribing a graduated fee of $1.25 "for each $100,000 or fraction thereof" when "the amount involved in a chattel mortgage or other instrument affecting chattels" is $100,000 or more, means the amount of the indebtedness which the mortgage is given to secure, and not the particular amount of money advanced at the time the mortgage is executed, if that is less than the entire debt. Accordingly, where the mortgage in question expressly recited that the truck concerned was to constitute security not only for the $4,094.74 loan but for the prior indebtedness of $3,500,000 as well, the filing fee was to be measured by the total debt secured. The certificate of stockholders' consent required by § 16 of the Stock Corporation Law in connection with the execution of a chattel mortgage by the corporation was not an "other instrument" affecting chattels within meaning of subd. 5 of § 1052-13.0 of the Admin. Code, and hence it might be filed upon payment of a fee of 25 cents, instead of the graduated fee prescribed by § 1052-13.0. The phrase, "other instrument", refers to a document that affects rights in chattels, whereas it is the mortgage plus the stockholders' consent, not the certificate attesting to such consent, that creates rights.-Manufacturers Trust Co. v. Ralph, 300 N.Y. 411, 91 N.E. 2d 865 [1950].

¶ 2. Under Admin. Code § 1052-13.0, the fee for filing a satisfaction of a chattel mortgage is $1.25, regardless of the amount of the loan. Subdivision 14, relative to the charge for filing and entering a chattel mortgage or any renewals thereof, did not authorize a charge of $1.25 for each $100,000 of the amount involved in the chattel mortgage when it was merely sought to file a satisfaction.-W. L. Maxson Corporation v. Ralph, 182 Misc. 144, 47 N.Y.S. 2d 643 [1944], aff'd without opinion, 268 App. Div. 753, 48 N.Y.S. 2d 802 [1944], aff'd 294 N.Y. 880, 62 N.E. 2d 782 [1945].

¶ 3. Instrument executed under chattel mortgage securing an indebtedness of $5,100,000 whereby it released from the lien of the mortgage three vessels but retained its mortgage lien on the other properties and vessels still subject thereto, was deemed a partial satisfaction of the mortgage for which the fee for filing of the release in each county should have been $1.25 instead of the graduated scale of fees prescribed in Admin. Code § 1052-13.0, subd. 14, which applies to an "instrument affecting chattels".-N.Y. Trap Rock Corp. v. City of N.Y., 204 Misc. 753, 124 N.Y.S. 2d 636 [1953].

¶ 4. Under circumstances of the instant case, the City Register was deemed required to accept and record the satisfaction of the mortgage in question and to cancel and discharge the mortgage [Admin. Code § 1052-9.0(k)]. The Register had contended that the discharge of a mortgage by him under the statute must be based upon a certificate of satisfaction executed by one with a complete and unbroken record title to the mortgage, and that in the instant case the certificate of satisfaction showed a break in the chain of title to the mortgage.-Application of Lauro, 298 N.Y. 845, 84 N.E. 2d 149 [1949].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-615

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-615 Corrections to be without erasures.

No entry in any book or index in the register's office or the office of the clerk of the county of Richmond shall be erased so as to be illegible, but in case of any correction the same shall be made without destroying the original entry by drawing a line through such original entry, and in all such cases the date of such correction attested by the signature of such register or county clerk or his or her assistant shall be entered upon the same page on which such correction is made, on the margin opposite such correction. Such correction shall only be made upon the production to the register or county clerk of the original instrument, or, when it is impossible to produce the original instrument, the register or the county clerk, however, may make any correction of the records in his or her office where it is obvious or apparent that an error has been made in recording or indexing any instrument.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-14.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-616

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-616 Miscellaneous instruments.

The provisions of this chapter shall not apply to the indexing of general assignments, wills and powers of attorney. Such instruments shall be filed or recorded as now required by law, and when recorded such general assignments, wills and powers of attorney shall be indexed in separate alphabetical indices.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-15.0 added LL 4/1942 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-617

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-617 Searches.

a. The register, upon request, and upon payment of, or offer to pay, the fees allowed by law, shall diligently search the files, papers, records and dockets in the register's office, and either make one or more transcripts therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to the register cannot be found. It shall be the duty of the register to cause any and every written order or requisition directing a search to be made to be executed and complied with without delay. The city shall be liable for all damages and injuries resulting from errors, inaccuracies or mistakes in the register's return so certified by the register.

b. The register shall in all cases charge and collect for such search, in addition to the fees prescribed in this chapter, an additional guaranty charge of two dollars which charge shall be accounted for by the register as other fees collected by the register.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-16.0 added LL 4/1942 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-618

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-618 Chattel mortgages, etc., and renewals thereof to be indorsed.

When a chattel mortgage or a conditional bill of sale or other instrument affecting chattels is presented for filing in the office of the register, it must be indorsed on the outside thereof with the names of the parties thereto, the amount of indebtedness and the location of the property affected by such instrument. Every renewal of any such instrument must, in addition to the aforesaid indorsements, be stamped or marked "renewal," and contain in the body thereof a reference to the serial number and the date of filing of the chattel mortgage or other instrument which it is desired to be continued for a further period, and the serial number and the date of filing of the latest previous renewal thereof, if any.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-17.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-619

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-619 Destroying obsolete documents and records.

The register is authorized to destroy any or all chattel mortgages, chattel mortgage indices, certificates of stockholders' consent to the execution of mortgages of chattels, bills of sale, conditional bills of sale affecting real property or other filed instruments affecting chattels, on file in the register's office after the expiration of five years from the date of filing, and any daily index or tickler more than two years old and which has been replaced by permanent block and alphabetical indices as provided for in this chapter, and all surplus copies of land maps of any of the counties of the city more than ten years old, which have not been disposed of by sale or otherwise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-18.0 added LL 4/1942 § 5

Amended LL 66/1950 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-620

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-620 Preserving and copying records.

Whenever by reason of age, exposure or any casualty, any public records, maps or papers in the custody of the register shall become mutilated, obliterated or rendered unfit for public service, it shall be the duty of the register to cause copies thereof to be made and certified for public use, and such copies when so made shall for all purposes take the place of the original records.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-19.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-621

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-621 Construction and application of this chapter.

This chapter shall not be construed to repeal or modify the provisions of the real property law in relation to the recording of instruments, and of registering titles to real property; nor of the lien law respecting chattel mortgages; nor of the personal property law in relation to contracts for the conditional sale of goods and chattels; nor of the tax law regarding the taxation of mortgages.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-20.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-622

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-622 Indices to be public records.

Upon the completion of the indexing and reindexing directed by this chapter as to any instruments or liens herein mentioned, the same shall be deposited in the same office in which the respective instruments or liens are required to be kept, or such other place as shall be provided for them, for public use, and the same shall thereupon be public records.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-21.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-623

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-623 Business hours.

a. The office of the register shall remain open for the transaction of business every day in the year, except Saturdays, Sundays and holidays, from nine o'clock in the forenoon to four o'clock in the afternoon and except during the months of July and August when it shall remain open for the transaction of business from nine o'clock in the forenoon until two o'clock in the afternoon except Saturdays, Sundays and holidays. The register may order any of the register's subordinates or employees to serve during such additional hours as the proper performance of the duties of the office requires.

b. Whenever the last day on which any paper is required to be filed or delivered or any act is required to be done or performed in such office expires on Saturday, the time therefor is hereby extended to and including the next business day.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-22.0 added LL 4/1942 § 5

Amended chap 801/1958 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. This section is not a limitation on the power of the City register to require additional working hours. Nothing in the history of the statute nor in the nature of services performed by the City Register suggests basis for discrimination in working hours between his employees and other city employees.-Montreuil v. Board of Estimate, 10 App. Div. 2d 266, 198 N.Y.S. 2d 891 [1960].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-624

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-624 Construction clause.

Any law, rule, regulation, contract, or other document which refers or is applicable to the register, register of deeds or registrar of any of the counties within the city shall refer to the city register.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-23.0 added LL 4/1942 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-625

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-625 Block indexing after July first, nineteen hundred sixty-four.

a. Tax maps; block boundaries, block number designations. On and after July first, nineteen hundred sixty-four, the tax maps for the boroughs of Manhattan, Bronx, Brooklyn and Queens shall be substituted for the land maps theretofore in use for the counties of New York, Bronx, Kings and Queens and such tax maps shall be conclusive as to location of block boundaries and block number designations.

b. Block index forms. On and after July first, nineteen hundred sixty-four, new forms for the (1) conveyance block index, and (2) mortgage block index for the counties of New York, Bronx, Kings and Queens may be adopted by the register, which forms shall make provision for the following information:

(1) Conveyance Block Index

1. Name of grantor

2. Name of grantee

3. Date of recording

4. Liber and page

5. Lot number and remarks; and

(2) Mortgage Block Index

1. Name of mortgagor

2. Name of mortgagee

3. Date of recording

4. Liber and page

5. Lot number and remarks

6. Date of recording and liber and page of certificate of dis- charge

c. Indexing under new block numbers. On and after the adoption of the new forms for the block index, the existing block index in use in the register's office, shall be closed and a new block index shall be opened for each block in the form as adopted by the city register. At the end of each block index so closed, a reference shall be made to the new block index. On and after the date on which any such new block index shall be opened, the register shall index in such new block index, under the proper block numbers and in the proper index, all instruments which are presented to the register on and after such date for recording and which are authorized or required by law to be recorded.

On and after the first day of January next succeeding the certifying and filing, by the real property assessment bureau, with the city register of a list of the numbers of new, altered or additional blocks with maps or diagrams showing such alterations or additions, the indices of all blocks theretofore existing shall be closed except for the purpose of completing the indexing belonging to the preceding year. A new block index shall thereupon be opened for every such altered or new block in the prescribed form, which new index shall thenceforth be used for all entries relating to land in such altered or new blocks. At the end of each block index so closed, a reference shall be made to the new block index.

d. Daily block indices. On and after July first, nineteen hundred sixty-four, new forms for the daily index of conveyances and the daily index of mortgages may be adopted by the register. Such forms shall make provision for the following information:

1. Names of parties

2. Block number

3. Serial number

4. Liber and page

e. Endorsement on instruments of tax block number and of tax lot numbers. On and after the adoption of the new forms for the block index, every instrument presented to the register and required to be indexed in the block index of conveyances or mortgages shall have endorsed thereon every block number and every lot number on the current tax map in which the land affected by the instrument is situate.

f. Block index to be notice. The entries made in such indices, except the lot number designation and the information contained in the column or columns headed Lot Number and Remarks, shall be deemed and taken to be a part of the record of the instrument to which such entries respectively refer, and shall be notice to subsequent purchasers or incumbrancers to the same extent and with like effect as the recording of such instruments in the office of the register, now is or may be notice.

g. Miscellaneous instruments. On and after July first, nineteen hundred sixty-three, any instrument entitled to be indexed and recorded as a miscellaneous instrument shall be indexed in a miscellaneous index and recorded in a miscellaneous liber.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-24.0 added chap 925/1963 § 1

Sub c amended chap 851/1964 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-626

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-626 Block indexing after July first, nineteen hundred eighty-one in Richmond county.

a. Tax maps; block boundaries, block number designations. On and after July first, nineteen hundred eighty-one, the tax map for the borough of Staten Island shall be substituted for the land map theretofore in use for the county of Richmond and such tax map shall be conclusive as to location of block boundaries and block number designations.

b. Block index forms. On and after July first, nineteen hundred eighty-one, new forms for the (1) conveyance block index, and (2) mortgage block index for the county of Richmond may be adopted by the register, which forms shall make provision for the following information:

(1) Conveyance Block Index

1. Name of grantor

2. Name of grantee

3. Date of recording

4. Liber and page

5. Lot number and remarks; and

(2) Mortgage Block Index

1. Name of mortgagor

2. Name of mortgagee

3. Date of recording

4. Liber and page

5. Lot number and remarks

6. Date of recording and liber and page of certificate of dis- charge

c. Indexing under new block numbers. On and after the adoption of the new forms for the block index, the existing block index in use in the register's office with respect to Richmond county, shall be closed and a new block index shall be opened for each block in the form as adopted by the city register. At the end of each block index so closed, a reference shall be made to the new block index. On and after the date on which any such new block index shall be opened with respect to Richmond county, the register shall index in such new block index, under the proper block numbers and in the proper index, all instruments which are presented to the register on and after such date for recording and which are authorized or required by law to be recorded. On and after the first day of January next succeeding the certifying and filing, by the real property assessment bureau, with the city register of a list of the numbers of new, altered or additional blocks with maps or diagrams showing such alterations or additions, the indices of all blocks theretofore existing shall be closed except for the purpose of completing the indexing belonging to the preceding year. A new block index shall thereupon be opened for every such altered or new block in the prescribed form, which new index shall thenceforth be used for all entries relating to land in such altered or new blocks. At the end of each block index so closed, a reference shall be made to the new block index.

d. Daily block indices. On and after July first, nineteen hundred eighty-one, new forms for the daily index of conveyances and the daily index of mortgages may be adopted by the register. Such forms shall make provision for the following information:

1. Names of parties

2. Block number

3. Serial number

4. Liber and page

e. Endorsement on instruments of tax block number and of tax lot numbers. On and after the adoption of the new forms for the block index, every instrument presented to the register with respect to Richmond county and required to be indexed in the block index of conveyances or mortgages shall have endorsed thereon every block number and every lot number on the current tax map in which the land affected by the instrument is situate.

f. Block index to be notice. The entries made in such indices, except the lot number designation and the information contained in the column or columns headed Lot Number and Remarks, shall be deemed and taken to be a part of the record of the instrument to which such entries respectively refer, and shall be notice to subsequent purchasers or incumbrancers to the same extent and with like effect as the recording of such instruments in the office of the register, now is or may be notice.

g. Miscellaneous instruments. On and after July first, nineteen hundred eighty-one, any instrument entitled to be indexed and recorded as a miscellaneous instrument shall be indexed in a miscellaneous index and recorded in a miscellaneous liber.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-24.1 added chap 365/1981 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-627

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-627 Alphabetical indices.

Notwithstanding the provisions of any general, special or local law, the register may adopt a form of consolidated alphabetical index book for any one or all of the counties of New York, Bronx, Kings and Queens, in which shall be entered the names of the parties to conveyances and mortgages.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-25.0 added chap 554/1967 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-701

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-701 Legislative declaration.

The council of the city of New York finds that public nuisances exist in the city of New York in the operation of certain commercial establishments and the use or alteration of property in flagrant violation of the building code, zoning resolution, health laws, multiple dwelling law, penal laws regulating obscenity, prostitution and related conduct, licensing laws, environmental laws, laws relating to the sale and consumption of alcoholic beverages, laws relating to gambling, controlled substances and dangerous drugs and penal laws relating to the possession of stolen property, all of which interfere with the interest of the public in the quality of life and total community environment, the tone of commerce in the city, property values and the public health, safety, and welfare; the council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the city of New York and of the businesses thereof and visitors thereto. It is the purpose of the council to create one standardized procedure for securing legal and equitable remedies relating to the subject matter encompassed by this law, without prejudice to the use of procedures available under existing and subsequently enacted laws, and to strengthen existing laws on the subject.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.0 added LL 55/1977 § 1

Amended LL 18/1983 § 1

CASE NOTES

¶ 1. The court can impose both civil penalties and punitive damages under the nuisance abatement law, without violating the constitutional prohibition against double jeopardy. City of New York v. Taliaferrow, 158 A.D.2d 445, 551 N.Y.S.2d 253 (2nd Dept. 1990).

¶ 2. The court granted injunctive relief closing a theatre exhibiting adult films. The testimony established by clear and convincing evidence that the establishment was made available for prohibited sexual activities and thus constituted a threat to public health. Constitutional standards were in that the City first attempting to pursue a less restrictive alternative designed to eliminate the activity. Management was given an explicit pre-closure warning that sexual activities dangerous to public health were occurring at the premises and that the City would seek closure if such activities were not immediately curtailed. The premises were closed only after the owner, despite repeated assurances that they would monitor the facility, failed to eliminate the prohibited activity.-City of New York v. 777-779 Eighth Avenue Corp., 640 N.Y.S.2d 546 [App. Div. 1st Dept. 1996].

¶ 3. An order closing the premises was properly granted where there was clear and convincing evidence that drugs were sold to undercover police officers on five separate occasions during a one year period.-City of New York v. 924 Columbus Associates, L.P., 640 N.Y.S.2d 497 [App. Div. 1st Dept. 1996].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-702

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-702 Short Title.

This chapter shall be known as the "nuisance abatement law".

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.1 added LL 55/1977 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-703

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-703 Public nuisance defined.

The following are declared to be public nuisances:

(a) Any building, erection or place, including one- or two-family dwellings, used for the purpose of prostitution as defined in section 230.00 of the penal law. Two or more criminal convictions of persons for acts of prostitution in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance. In any action under this subdivision, evidence of the common fame and general reputation of the building, erection or place, including one- or two-family dwellings, of the inmates or occupants thereof, or of those resorting thereto, shall be competent evidence to prove the existence of the public nuisance. If evidence of the general reputation of the building, erection or place, including one- or two-family dwellings, or of the inmates or occupants thereof, is sufficient to establish the existence of the public nuisance, it shall be prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance, on the part of the owners, lessors, lessees and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form in the property, real or personal, used in conducting or maintaining the public nuisance;

(b) Any building, erection or place, including one- or two-family dwellings, used for the purpose of obscene performances. The term "obscene" shall have the same meaning as that term is defined in subdivision one of section

235.00 of the penal law. The term "performance" shall have the same meaning as that term is defined in subdivision three of section 235.00 of the penal law. Two or more convictions, as defined in subdivision thirteen of section 1.20 of the criminal procedure law, of persons for production, presentation or direction of an obscene performance or for participation in such performance, in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance;

(c) Any building, erection or place, including one- or two-family dwellings, used for the purpose of promotion of obscene material. The term "obscene" shall have the same meaning as that term is defined in subdivision one of section 235.00 of the penal law. The term "material" shall have the same meaning as that term is defined in subdivision two of section 235.00 of the penal law. Two or more convictions, as defined in subdivision thirteen of section 1.20 of the criminal procedure law, of persons for promotion of or possession with intent to promote obscene material in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance;

(d) Any building, erection or place, other than a one- or two-family dwelling classified in occupancy group J-3 pursuant to section 27-237 of this code, which is in violation of article five of subchapter two*12 of chapter one of title twenty-six or of article three, four, six, ten, twenty-two or twenty-four of subchapter one of chapter one of title twenty-seven of this code. A conviction, as defined in subdivision thirteen of section 1.20 of the criminal procedure law, of persons for offenses, as defined in subdivision one of section 10.00 of the penal law, in violation of the aforesaid provisions of this code in the building, erection or place, including one- or two-family dwellings, within the period of one-year preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance;

(e) Any building, erection or place, other than a one- or two-family dwelling classified in occupancy group J-3 pursuant to section 27-237 of this code, which is a nuisance as defined in section 17-142 of this code or which is an infected and uninhabitable house as defined in section 17-159 of this code or which is in violation of subdivision two of section 16-118 of this code;

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law;

(g) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of one or any combination of the provisions of article two hundred twenty, two hundred twenty-one or two hundred twenty-five of the penal law;

(h) Any building, erection or place, including one- or two-family dwellings, used for any of the unlawful activities described in section one hundred twenty-three of the alcoholic beverage control law;

(i) Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a violation of subchapter six, eight or ten of chapter one of title twenty-four of this code;

(j) Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a violation of subchapter three or four of chapter two of title twenty-four of this code;

(k) Any building, erection or place, including one- or two-family dwellings, wherein there exists or is occurring a violation of the zoning resolution;

(l) Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a criminal nuisance as defined in section 240.45 of the penal law;

(m) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more violations on the part of the lessees, owners, operators, or occupants, of one or any combination of the following provisions: sections 165.40, 165.45, 165.50, 170.65, 170.70 or 175.10 of the penal law or section four hundred fifteen-a of the vehicle and traffic law;

(n) Any building, erection or place, including one- or two-family dwellings, in which a security guard, as defined in subdivision six of section eighty nine-f of the general business law, is employed in violation of one or more of the following provisions: the alcoholic beverage control law or sections 20-360.1 or 27-525.1 of this code;

(o) Reserved.

(p) Reserved.

(q) Reserved.

(r) Any building, erection or place, including one- or two-family dwellings, used for the creation, production, storage or sale of a false identification document, as defined in subsection (d) of section one thousand twenty-eight of title eighteen of the United States code, a forged instrument, as defined in subdivision seven of section 170.00 of the penal law, or a forgery device, as that term is used in section 170.40 of the penal law. It shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance if there have occurred, within the one-year period preceding the commencement of an action under this chapter, two or more violations constituting separate occurrences on the part of the lessees, owners, operators or occupants of one or any combination of the following provisions: paragraph one, five or eight of subsection (a) of section one thousand twenty-eight of title eighteen of the United States code, section 170.05, 170.10, 170.15 or 170.40 of the penal law or, under circumstances evincing an intent to sell or distribute a forged instrument, section 170.20, 170.25 or 170.30 of the penal law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (d) laid out for footnote purposes.

Subd. (g) amended L.L. 8/2007 § 1, eff. Apr. 13, 2007.

Subd. (g) amended L.L. 113/1993 § 1, eff. Dec. 29, 1993

Subd. (l) amended L.L. 35/2006 § 1, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Subd. (m) amended L.L. 8/2007 § 2, eff. Apr.13, 2007.

Subd. (m) amended L.L. 35/2006 § 1, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Subd. (n) amended L.L. 8/2007 § 2, eff. Apr.13, 2007.

Subd. (n) added L.L. 35/2006 § 1, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Subd. (r) added L.L. 8/2007 § 3, eff. Apr. 13, 2007.

DERIVATION

Formerly § C16-2.2 added LL 55/1977 § 1

Amended LL 59/1982 § 1

Sub g amended LL 18/1983 § 2

Subs k, l amended LL 18/1983 § 3

Sub m added LL 18/1983 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Plaintiff was not entitled to a permanent injunction and monetary damages on theory that defendants operated hotel as a nuisance in that it was operated as a house of prostitution where although there were three arrests for prostitution in the hotel within one year before commencement of action overt solicitation did not occur within the hotel and there were no arrests or convictions for promoting prostitution.-People v. Macbeth Realty Co., 100 Misc. 2d 926, 420 N.Y.S. 2d 252 [1979].

¶ 2. Subdivision (a) of this section held not facially unconstitutional as there is some minimal, rational connection between three arrests and three convictions for prostitution in a hotel and the maintaining of a house of prostitution.-People v. Macbeth Realty Co., 100 Misc. 2d 926, 420 N.Y.S. 2d 252 [1979].

¶ 3. Plaintiff was entitled to a preliminary injunction closing a bar and enjoining further use of the premises by defendants on ground that it was regularly used for purposes of prostitution, where there had been six convictions for prostitution within the premises and the bar was the scene of several violent criminal acts, even though defendant claimed that the tenant had surrendered possession of the premises to the landlord, since the tenant could "return in the guise of another corporate entity" or the premises could be leased to someone else for similar use.-City of N.Y. v. Dazar Restaurants, 182 (33) N.Y.L.J. (8-16-79) 6, Col. 2 M.

¶ 4. City is authorized to commence action for preliminary and permanent injunction enjoining public nuisance. Operation of bodega by def. was in violation of zoning resolution and therefore constituted a public nuisance. (Subd. k).-N.Y.C. v. Narod Realty, 122 Misc. 2d 885 [1983].

¶ 5. Defendant intentionally permitted a public nuisance to exist in violation of subds. (a), (e) and (g) by failing to control trafficking in drugs. The Nuisance Abatement Law is constitutional. Temporary receiver to manage the hotel was appointed.-N.Y.C. v. Senate Associates, 191 (109) N.Y.L.J. (6-6-84) 5, Col. 5 T.

CASE NOTES

¶ 1. City established that a public nuisance, as defined in § 7-703, existed on premises habitually used by prostitutes. People (NYC) v. Taliaferrow, 144 Misc. 2d 649 [1989].

¶ 2. The City sought a permanent injunction against defendants based on three separate sales of alcohol to underage auxiliary police officers within a 15 month period. The City also sought a preliminary injunction as well as a temporary restraining order (TRO) and closure of the premises. The trial court denied the preliminary injunction on the ground that three instances of underage sales were insufficient to constitute a pattern of illegal activities giving rise to a public nuisance. The Appellate Division, however, held that the trial court should not have denied a preliminary injunction without a hearing. Unlike other types of public nuisances listed in the Admin. Code, § 7-703 that specifically require a minimum number of violations before a nuisance is established (e.g. § 7-703(g), which relates to controlled substances, marijuana and gambling), § 7-703(h), relating to underage sales of alcohol, does not expressly require multiple violations of the Alcoholic Beverages Control Law. It is not clear why the legislature wrote the statute this

way. What is clear, however, is that the trial court should have given the City an opportunity to establish its case of nuisance and should have given the defendant an opportunity to contest the allegations. City of NY v. Untitled LLC 2008 NY Slip Op. 4434, 2008 NY App. Div. Lexis 4155 (App. Div. 1st Dept.).

FOOTNOTES

12

[Footnote 12]: * So in original, "two" should be "three" per New York City Law Department.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-704

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-704 Remedies.

(a) The corporation counsel shall bring and maintain a civil proceeding in the name of the city in the supreme court of the county in which the building, erection or place is located to permanently enjoin the public nuisances, defined in subdivisions (a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (r) of section 7-703 of this chapter, in the manner provided in subchapter two of this chapter.

(b) The corporation counsel shall bring and maintain a civil proceeding in the name of the city, in the supreme court of the county in which the building, erection or place is located to recover a civil penalty in relation to the public nuisances defined in subdivisions (b) and (c) of section 7-703 of this chapter, in the manner provided in subchapter three of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended L.L. 8/2007 § 4, eff. Apr. 13, 2007.

Subd. (a) amended L.L. 35/2006 § 2, eff. Nov. 21, 2006. [See

§ 20-360.1 Note 1]

DERIVATION

Formerly § C16-2.3 added LL 55/1977 § 1

Amended LL 18/1983 § 4

130 of 158 DOCUMENTS

Administrative Code of the City of New York

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NYC Administrative Code 7-705

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-705 Applicability.

This subchapter shall be applicable to the public nuisances defined in subdivisions (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (r) of section 7-703 of this chapter.

HISTORICAL NOTE

Section amended L.L. 8/2007 § 5, eff. Apr. 13, 2007.

Section amended L.L. 35/2006 § 3, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.4 added LL 55/1977 § 1

Amended LL 18/1983 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-706

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-706 Action for permanent injunction.

(a) Generally. Upon the direction of the mayor, or at the request of the head of a department or agency of the city, or at the request of a district attorney of any county within the city, or at the request of a member of the city council with respect to the public nuisances defined in subdivisions (a), (b), (c), (g), and (h) and section 7-703 of this chapter, or upon his or her own initiative, the corporation counsel may bring and maintain a civil proceeding in the name of the city in the supreme court to permanently enjoin a public nuisance within the scope of this subchapter, and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. The owner, lessor and lessee of a building, erection or place wherein the public nuisance as being conducted, maintained or permitted shall be made defendants in the action. The venue of such action shall be in the county where the public nuisance is being conducted, maintained or permitted. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this subchapter.

(b) The summons; the caption; naming the building, erection or place as defendant. The corporation counsel shall name as defendants the building, erection or place wherein the public nuisance is being conducted, maintained or permitted, by describing it by block, lot number and street address and at least one of the owners of some part of or interest in the property.

(c) In rem jurisdiction over building, erection or place. In rem jurisdiction shall be complete over the building, erection or place wherein the public nuisance is being conducted, maintained or permitted by affixing the summons to

the door of the building, erection or place and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners of some part of or interest in the property. Proof of service shall be filed within two days thereafter with the clerk of the court designated in the summons. Service shall be complete upon such filing.

(d) Service of summons on other defendants. Defendants, other than the building, erection or place wherein the public nuisance is being conducted, maintained or permitted, shall be served with the summons as provided in the civil practice law and rules.

(e) Notice of pendency. With respect to any action commenced or to be commenced by him or her pursuant to this subchapter, the corporation counsel may file a notice of pendency pursuant to the provisions of article sixty-five of the civil practice law and rules.

(f) Presumption of ownership. The person in whose name the real estate affected by the action is recorded in the office of the city register or the county clerk, as the case may be, shall be presumed to be the owner thereof.

(g) Presumption of employment or agency. Whenever there is evidence that a person was the manager, operator, supervisor or, in any other way, in charge of the premises, at the time a public nuisance was being conducted, maintained or permitted, such evidence shall be presumptive that he or she was an agent or employee of the owner or lessee of the building, erection or place.

(h) Penalty. If, upon the trial of an action under this chapter or, upon a motion for summary judgment in an action under this chapter, a finding is made that the defendant has intentionally conducted, maintained or permitted a public nuisance defined in this chapter, a penalty, to be included in the judgment, may be awarded in an amount not to exceed one thousand dollars for each day it is found that the defendant intentionally conducted, maintained or permitted the public nuisance. Upon recovery, such penalty shall be paid into the general fund of the city.

HISTORICAL NOTE

Section amended LL 6/1989 § 2 [See Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.5 added LL 55/1977 § 1

NOTE

1. Provision of LL 6/1989 § 1

Section one. Legislative Intent. The Council hereby finds that the Nuisance Abatement Law, Local Law 55 of 1977, as amended by Local Law 18 of 1983, was enacted to create a standardized procedure for securing legal and equitable remedies relating to public nuisances: commercial establishments or property operated or used in violation of local and state laws, the existence of which are detrimental to the public health, safety and welfare. The Council hereby reaffirms its desire to sanction and penalize such public nuisances in the city of New York and to further strengthen the law by adding members of the City Council as parties who may initiate an injunction proceeding to obtain penalties against a public nuisance and a civil proceeding to obtain penalties against a person who conducts or maintains such a nuisance.

CASE NOTES

¶ 1. City established the habitual use of premises by prostitutes and that defendants should thus be permanently enjoined from continuing this public nuisance. Evidence of the general reputation of the premises and occupants thereof

is sufficient to establish the existence of the public nuisance and imposition of civil penalties pursuant to § 7-706(h) are appropriate.-People (NYC) v. Taliaferrow, 144 Misc. 2d 649 [1989].

¶ 2. An order preliminarily enjoining defendants from the use and occupancy of the first floor area of the premises was proper under section 7-701 et seq. of the Ad Code of the City of New York where six NY City police officers observed illegal gambling activity. The police officers affidavits regarding the illegal activity established a prima facie showing sufficient to sustain the temporary closing order (Ad Code § 7-703(g)). There is a presumption that the person in charge of the premises at which the nuisance is discovered is the agent or employee of the owner or lessees (Ad Code § 7-706(g)) does not arise on an application for preliminary relief.-City of New York v. Castro, 160 AD2d 651.

¶ 3. City seeks injunction to prohibit storage of certain material on property, prevent the operation of an illegal construction waste transfer station and require removal of waste as a violation of Ad Cd § 7-703(f)(1). Notice of pendency authorized by Ad Cd § 7-706(e) cannot be cancelled through surety bonds issued by an unlicensed Texan bonding company.-City of New York v. Britestarr Homes, Inc., 150 Misc 2d 820 [1991].

¶ 4. Once the City has chosen to use the eviction route (see RPAPL §§ 711 and 715) to remove the perpretrators of the alleged nuisance (receiving stolen property), and the operators of the premises had entered into a consent decree agreeing to vacate the premises, the City could not properly continue an action for an injunction against them. The City was also unsuccessful in its claim for civil penalties. There was nothing in the law which supported a claim for penalties independent of permanent injunctive relief where the nuisance pertained to stolen property, the court said. Although the court took note of the City's contention that a business should not be able to escape monetary liability under the nuisance law by closing prior to judgment, the court was not in a position to rewrite the law. City of New York v. Mora, 261 A.D.2d 185, 690 N.Y.S.2d 33 (1st Dept. 1999), appeal dismissed, 93 N.Y.2d 1041, 697 N.Y.S.2d 569 (1999).

¶ 5. The Metropolitan Transportation Authority brought an eviction proceeding against Mor, on the basis of nuisance-the tenant allegedly had been operating a shop that dealt in stolen goods. The court held that even though the tenant had signed a consent order with respect to the eviction, the City could still use the nuisance law to maintain an action seeking a permanent injunction and recovery of civil penalties. City of New York v. Mora, 261 A.D.2d 185, 690 N.Y.S.2d 33 (1st Dept. 1999), appeal dismissed 93 N.Y.2d 1041 690 N.Y.S.2d 3 (1999).

¶ 6. While the eviction of a tenant whose conduct created a public nuisance may abate the nuisance, the case is not considered moot, and the City can still maintain a claim for permanent injunction against the offensive conduct. City of New York v. Mike Phillips check, 2000 WL 710119 (App.Div. 2d Dept.)

¶ 7. See Cromwell v. Hoffman, 724 N.Y.S.2d 420 (App. Div. 1st Dept. 2001), reported under Sec. 20-361.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-707

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-707 Preliminary injunction.

(a) Generally. Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this subchapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. An order granting a preliminary injunction shall direct a trial of the issues within three business days after joinder of issue or, if issue has already been joined, within three business days after the entry of the order. Where a preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction within three business days after the conclusion of the trial. A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted.

(b) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the city agency at whose request the underlying action is being brought. In the event the underlying action is being brought at the direction of the mayor, or at the request of several city agencies or by the corporation counsel, on his or her own initiative, or upon the request of a district attorney, or a member of the city council, the order shall be enforced by the agency designated by the mayor. The police department shall, upon the request of the agency involved or upon the direction of

the mayor, assist in the enforcement of the preliminary injunction.

(c) Preliminary injunctions, inventory, closing of premises, posting of orders and notices, offenses. If the court grants a preliminary injunction, the provisions of section 7-711 of this subchapter shall be applicable.

HISTORICAL NOTE

Section amended LL 6/1989 § 3 [See § 7-706 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.6 added LL 55/1977 § 1

Sub a amended LL 18/1983 § 6

CASE NOTES FROM FORMER SECTION

¶ 1. Although a preliminary injunction was warranted under this section in action by city to restrain defendants from maintenance and use of a single-room-occupancy hotel as a public nuisance in that it was being used for prostitution, only those rooms used for prostitution and any vacant rooms or those that might become vacant during the pendency of the action would be ordered closed, since the tenants of most of the rooms had nothing to do with the prostitution and it "would work an unjust hardship on such tenants to require them to leave their homes".-People v. MacBeth Realty Co. Inc., 63 App. Div. 2d 908 [1978].

CASE NOTES

¶ 1. City is entitled to a preliminary injunction pursuant to § 7-707 enjoining defendents from the use and occupancy of an area where several arrests were made for gambling. The law is not void for failing to clearly define the term "violation" since the repeated illegal conduct clearly constituted a public nuisance. Fifth Amendment right against self incrimination was not violated since the statute provides for rescission of closing order upon proper showing, other than testimony, that public nuisance has been abated.-City of New York v. Castro, 143 Misc. 2d 766 [1989].

¶ 2. The court granted an injunction which closed a theatre in which sex- ually explicit films had been shown and in which high risk sexual activities had occurred. The aim is to control the spread of the HIV virus. Under § 7-707(a), the court may grant a preliminary injunction enjoining a public nuisance and the persons conducting or permitting the nuisance. The court's jurisdiction is in rem and its orders are enforced against the premises. Although the owner denied any personal fault and sought to shift reponsibility onto a lessee, the court held that the owner could not hide behind the lease and was presumed to know how the property was being used.-City of New York v. Capri Cinema, 641 N.Y.S.2d 969 (Sup.Ct. New York Co. 1995).

¶ 3. The court granted an injunction prohibiting a public nuisance, where the City made a clear and convincing showing that illegal gambling had occurred at the premises on several occasions within a one-year period. In light of proof of illegal operations at the premises over an extended period, and the City's ongoing right to insure that the guilty parties do not subsequently recommence their illegal activities in the same location, continued injunctive relief was appropriate, the court said. The court noted that the injunction was based on the existence of the nuisance, and that the landlord's alleged lack of knowledge concerning the tenant's illegal activities was irrelevant. City of New York v. Partnership 91, 277 A.D.2d 164, 716 N.Y.S.2d 659 (1st Dept. 2000).

¶ 4. In City of New York v. Ring, 34 A.D.3d 318, 823 N.Y.S.2d 145 (1st Dept. 2006), the City obtained a preliminary injunction, prohibiting defendants from maintaining, creating, conducting or permitting a public nuisance, pursuant to the Nuisance Abatement Law (Admin. Code of NYC Title 7, Chapter 7). The nuisance that the City wanted

to abate related to the sale of counterfeit trademarked merchandise. The defendants argued that once the goods were removed, this rendered moot the City's application for a permanent injunction. The court, however, held that the action was not moot, since the City had an ongoing right to insure that the respondents do not recommence their illegal activities in the same location.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-708

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-708 Motion papers for preliminary injunction.

The corporation counsel shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a permanent injunction abating a public nuisance within the scope of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.7 added LL 55/1977 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-709

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-709 Temporary closing order.

(a) Generally. If, on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing order, a temporary order closing such part of the building, erection or place wherein the public nuisance is being conducted, maintained or permitted may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

(b) Service of temporary closing order. Unless the court orders otherwise, a temporary closing order together with the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served, in the same manner as a summons as provided in the civil practice law and rules.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.8 added LL 55/1977 § 1

Sub a amended LL 18/1983 § 7

CASE NOTES FROM FORMER SECTION

¶ 1. Although a temporary closing order was warranted under this section in action by city to restrain defendants from maintenance and use of a single-room-occupancy hotel as a public nuisance in that it was being used for prostitution, only those rooms used for prostitution and any vacant rooms or those that might become vacant during the pendency of the action would be ordered closed since the tenants of most of the rooms had nothing to do with the prostitution and it "would work an unjust hardship on such tenants to require them to leave their homes".-People v. MacBeth Realty Co., Inc., 63 App. Div. 2d 908 [1978].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-710

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-710 Temporary restraining order.

(a) Generally. If, on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary restraining order, such temporary restraining order may be granted without notice restraining the defendants and all persons from removing or in any manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary restraining order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

(b) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served, in the same manner as a summons as provided in the civil practice law and rules.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.9 added LL 55/1977 § 1

Sub a amended LL 18/1983 § 8

Administrative Code of the City of New York

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NYC Administrative Code 7-711

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-711 Temporary closing order; temporary restraining order.

(a) Generally. If on a motion for a preliminary injunction, the corporation counsel submits evidence warranting both a temporary closing order and a temporary restraining order, the court shall grant both orders.

(b) Enforcement of temporary closing orders and temporary restraining orders. Temporary closing orders shall be enforced by the agency at whose request the underlying action is being brought. In the event the underlying action is being brought at the direction of the mayor, or at the request of several city agencies or by the corporation counsel on his or her own initiative, or upon the request of a district attorney, or a member of the city council, the order shall be enforced by the city agency designated by the mayor. The police department shall, upon the request of the agency involved or upon the direction of the mayor, assist in the enforcement of a temporary closing order or a temporary restraining order.

(c) Inventory upon service of temporary closing orders and temporary restraining orders. The officers serving a temporary closing order or a temporary restraining order shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a public nuisance within the scope of this subchapter and shall enter upon the building, erection or place for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory including, but not limited to photographing such personal property.

(d) Closing of premises pursuant to temporary closing order. The officers serving a temporary closing order shall, upon service of the order, command all persons present in the building, erection or place to vacate the premises forthwith. Upon the building, erection or place being vacated, the premises shall be securely locked and all keys delivered to the officers serving the order who thereafter shall deliver the keys to the fee owner, lessor or lessee of the building, erection or place involved. If the fee owner, lessor or lessee is not at the building, erection or place when the order is being executed, the officers shall securely padlock the premises and retain the keys until the fee owner, lessor or lessee of the building is ascertained, in which event, the officers shall deliver the keys to such owner, lessor or lessee.

(e) Posting of temporary closing order and temporary restraining order; posting of notices; offenses. Upon service of a temporary closing order or a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the public nuisance is being conducted, maintained or permitted. In addition, where a temporary closing order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that the premises have been closed by court order, which notice shall contain the legend "closed by court order" in block lettering of sufficient size to be observed by anyone intending or likely to enter the premises, the date of the order, the court from which issued and the name of the office or agency posting the notice. In addition, where a temporary restraining order has been granted, the officers shall affix, in the same manner, a notice similar to the notice provided for in relation to a temporary closing order except that the notice shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five hundred dollars or by imprisonment not exceeding ninety days, or by both, provided such order or notice contains therein a notice of such penalty. The police department shall, upon the request of the agency involved or upon the direction of the mayor, assist in the enforcement of this subdivision.

(f) Intentional disobedience of or resistance to temporary closing order or temporary restraining order. Intentional disobedience of or resistance to a temporary closing order or a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than one thousand dollars or by imprisonment not exceeding six months or by both.

HISTORICAL NOTE

Section amended LL 6/1989 § 4. [See § 7-706 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.10 added LL 55/1977 § 1

Subs c, d, e, f amended LL 48/1983 § 1

CASE NOTES

¶ 1. A closing order issued under the statute does more than abate the alleged nuisance, and bars even the owner from entering the property without court permission. However, the court can afford the owner a limited right of access for the purpose of inspecting the property and making needed repairs. City of New York v. Jai Balaji, 176 Misc.2d 719, 673 N.Y.S.2d 861 (Sup.Ct. Queens Co. 1998).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-712

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-712 Temporary closing order; temporary restraining order; defendant's remedies.

(a) A temporary closing order or a temporary restraining order shall be vacated, upon notice to the corporation counsel, if the defendant shows by affidavit and such other proof as may be submitted that the public nuisance within the scope of this subchapter has been abated. An order vacating a temporary closing order or a temporary restraining order shall include a provision authorizing agencies of the city to inspect the building, erection or place which is the subject of an action pursuant to this chapter, periodically without notice, during the pendency of the action for the purpose of ascertaining whether or not the public nuisance has been resumed. Intentional disobedience of or resistance to an inspection provision of an order vacating a temporary closing order or a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five hundred dollars or by imprisonment not exceeding six months, or by both. The police department shall, upon the request of the agency involved or upon the direction of the mayor, assist in the enforcement of an inspection provision of an order vacating a temporary closing order or temporary restraining order.

(b) A temporary closing order or a temporary restraining order may be vacated by the court, upon notice to the corporation counsel, when the defendant gives an undertaking and the court is satisfied that the public health, safety or welfare will be protected adequately during the pendency of the action. The undertaking shall be in an amount equal to the assessed valuation of the building, erection or place where the public nuisance is being conducted, maintained or permitted or in such other amount as may be fixed by the court. The defendant shall pay to the city, in the event a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements in investigating, bringing

and maintaining the action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.11 added LL 55/1977 § 1

CASE NOTES

¶ 1. Where a temporary closing order is in effect by reason of drug sales on premises leased by a tenant, it was improper for the landlord to engage in self-help by renting to another tenant without notice to the New York City Corporation Counsel and without leave of court.-City of New York v. 924 Columbus Associates, L.P., 640 N.Y.S.2d 497 (App.Div. 1st Dept. 1996).

¶ 2. A temporary closing order can be vacated only upon a sufficient evidentiary showing that the public nuisance has been abated. The conclusory association of counsel that the tenant of record had vacated the premises and that the complained-of activities were no longer taking place, was not sufficient to obtain vacatur of the closing order. In other words, the mere fact that the landlord is back in possession does not alone establish that the premises illegality has abated. City of New York v. Partnership 91, 277 A.D.2d 164, 716 N.Y.S.2d 659 (1st Dept. 2000).

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Administrative Code of the City of New York

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NYC Administrative Code 7-713

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-713 Temporary receiver.

(a) Appointment, duration and removal. In any action wherein the complaint alleges that the nuisance is being conducted or maintained in the residential portions of any building or structure or portion thereof which are occupied in whole or in part as the home, residence or sleeping place of one or more human beings, the court may, upon motion on notice by the plaintiff, appoint a temporary receiver to manage and operate the property during the pendency of the action in lieu of a temporary closing order. A temporary receivership shall not continue after final judgment unless otherwise directed by the court. Upon the motion of any party, including the temporary receiver, or on its own initiative, the appointing court may remove a temporary receiver at any time.

(b) Powers and duties. The temporary receiver shall have such powers and duties as the court shall direct, including, but not limited to collecting and holding all rents due from all tenants, leasing or renting portions of the building or structure, making or authorizing other persons to make necessary repairs or to maintain the property, hiring security or other personnel necessary for the safe and proper operation of a dwelling, prosecuting or defending suits flowing from his or her management of the property and retaining counsel therefor, and expending funds from the collected rents in furtherance of the foregoing powers.

(c) Oath. A temporary receiver, before entering upon his or her duties shall be sworn or shall affirm faithfully and fairly to discharge the trust committed to such receiver. The oath or affirmation may be administered by any person authorized to take acknowledgements of deeds by the real property law. The oath or affirmation may be waived upon

consent of all parties.

(d) Undertaking. A temporary receiver shall give an undertaking, in an amount to be fixed by the court making the appointment, that such receiver will faithfully discharge his or her duties.

(e) Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property. Upon motion of the temporary receiver or of any person having an apparent interest in the property, the court may require the keeping of particular records or direct or limit inspection or require presentation of a temporary receiver's accounts. Notice of motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on the temporary receiver's undertaking as well as upon each party.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.12 added LL 18/1983 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-714

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-714 Permanent injunction.

(a) A judgment awarding a permanent injunction pursuant to this subchapter may direct the sheriff to seize and remove from the building, erection or place all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and shall direct the sale by the sheriff of such property in the manner provided for the sale of personal property under execution pursuant to the provisions of the civil practice law and rules. The net proceeds of any such sale, after deduction of the lawful expenses involved, shall be paid into the general fund of the city.

(b) A judgment awarding a permanent injunction pursuant to this subchapter may authorize agents of the city to forthwith remove and correct construction and structural alterations as provided in section 26-246 of this code.

(c) A judgment awarding a permanent injunction pursuant to this subchapter may direct the closing of the building, erection or place by the sheriff, to the extent necessary to abate the nuisance, and shall direct the sheriff to post a copy of the judgment and a printed notice of such closing conforming to the requirements of subdivision (e) of section 7-711 of this subchapter. Mutilation or removal of such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than two hundred fifty dollars or by imprisonment not exceeding fifteen days, or by both, provided such judgment contains therein a notice of such penalty. The closing directed by the judgment shall be for such period as the court may direct but in no event shall the closing be for a period of more than one year from the posting of the judgment provided for in

this subdivision. If the owner shall file a bond in the value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, erection or place has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the building, erection or place. A closing by the sheriff pursuant to the provisions of this subdivision shall not constitute an act of possession, ownership or control by the sheriff of the closed premises.

(d) Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment not exceeding six months, or by both.

(e) Upon the request of the agency involved or upon the direction of the mayor, the police department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this chapter.

(f) A judgment rendered awarding a permanent injunction pursuant to this subchapter shall be and become a lien upon the building, erection or place named in the complaint in such action, such lien to date from the time of filing a notice of lis pendens in the office of the clerk of the county wherein the building, erection or place is located. Every such lien shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens.

(g) A judgment awarding a permanent injunction pursuant to this chapter shall provide, in addition to the costs and disbursements allowed by the civil practice law and rules, upon satisfactory proof by affidavit or such other evidence as may be submitted, the actual costs, expenses and disbursements of the city in investigating, bringing and maintaining the action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.13 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.12)

CASE NOTES

¶ 1. The City can recover costs in an action to abate a public nuisance. The CPLR provisions dealing with costs do not pre-empt Section 7-714 of the Administrative Code. City of New York v. Basil Co., 182 A.D.2d 307, 589 N.Y.S.2d 319 (1st Dept. 1992).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-715

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-715 Applicability.

This subchapter shall be applicable to public nuisances defined in subdivisions (b) and (c) of section 7-703 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.14 added LL 55/1977 § 1

Renumbered and amended LL 18/1983 § 10

(formerly § C16-2.13)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-716

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-716 Action for civil penalty.

(a) Generally. Upon the direction of the mayor, or at the request of the head of a department or agency of the city, or at the request of a district attorney of any county within the city, or at the request of a member of the city council with respect to the public nuisances defined in subdivisions (a), (b), (c), (g) and (h) of section 7-703 of this chapter, or upon his or her own initiative, the corporation counsel may bring and maintain a civil proceeding in the name of the city in the supreme court to recover a civil penalty against any person conducting, maintaining or permitting a public nuisance within the scope of this subchapter. The amount of any civil penalty awarded in a judgment entered pursuant to this subchapter shall be in an amount of one thousand dollars for each day the public nuisance has been conducted, maintained or permitted. Upon recovery, such penalty shall be paid into the general fund of the city. The venue of such action shall be in the county wherein the public nuisance is being conducted, maintained or permitted.

(b) The summons and its service; naming of parties as defendants. The corporation counsel shall name as defendants all persons conducting, maintaining or permitting a public nuisance within the scope of this subchapter. Other persons may be named as defendants pursuant to the rules governing joinder of parties set forth in the civil practice law and rules. The summons shall be served in the manner provided by the civil practice law and rules.

(c) Scienter. A temporary restraining order shall not be granted nor shall a judgment be entered against a defendant unless the court is satisfied that the defendant had knowledge of the public nuisance which the defendant conducted, maintained or permitted. The presumption of knowledge provided by subdivision one of section 235.10 of

the penal law shall be applicable to this subchapter.

HISTORICAL NOTE

Section amended L.L. 6/1989 § 5. [See § 7-706 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.15 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.14)

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Administrative Code of the City of New York

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NYC Administrative Code 7-717

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-717 Preliminary injunction.

(a) Generally. Pending an action pursuant to section 7-716 of this subchapter, the court may grant a preliminary injunction enjoining a defendant from making a bulk transfer, as defined in subdivision (b) of this section. An order granting a preliminary injunction shall direct a trial of the issues within three business days after joinder of issue or, if issue has already been joined, within three business days after entry of the order. Where a preliminary injunction has been granted the court shall render a decision with respect to the final determination of the action within three business days after the conclusion of the trial. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted. The existence of an adequate remedy at law shall not prevent the granting of a temporary injunction or a temporary restraining order pursuant to this subchapter.

(b) "Bulk transfer" defined. A "bulk transfer" is any transfer of a major part of the materials, supplies, merchandise or other inventory or equipment of the transferor in the building, erection or place where the public nuisance is being conducted, maintained or permitted that is not in the ordinary course of the transferor's business.

(c) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the agency or agencies specified in subdivision (b) of section 7-707 of this chapter.

(d) Preliminary injunction; inventory. If the court grants a preliminary injunction, the provisions of subdivision

(d) of section 7-719 of this subchapter shall be applicable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.16 added LL 55/1977 § 1

Renumbered and amended LL 18/1983 § 11

(formerly § C16-2.15)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-718

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-718 Motion papers for preliminary injunction.

The corporation counsel shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a civil penalty within the scope of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.17 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.16)

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NYC Administrative Code 7-719

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-719 Temporary restraining order.

(a) Generally. If, on a motion for a preliminary injunction pursuant to section 7-717 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted, a temporary restraining order may be granted without notice restraining the defendants and all persons from making or permitting a "bulk transfer" as defined in subdivision (b) of section 7-717, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary restraining order, the court shall direct the holding of a hearing for a preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

(b) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for a preliminary injunction shall be personally served, in the same manner as a summons as provided in the civil practice law and rules.

(c) Enforcement of temporary restraining order. A temporary restraining order shall be enforced by the city agency or agencies specified in subdivision (b) of section 7-707 of this chapter.

(d) Inventory upon service of temporary restraining order. The officers serving a temporary restraining order

shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a public nuisance within the scope of this subchapter and shall enter upon the building, erection or place for such purpose.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.18 added LL 55/1977 § 1

Renumbered and amended LL 18/1983 § 12

(formerly § C16-2.17)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-720

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-720 Vacating a temporary injunction or a temporary restraining order.

When the defendant gives an undertaking in the amount of the civil penalty demanded in the complaint together with costs, disbursements and the projected actual costs of the prosecution of the action to be determined by the court, upon a motion on notice to the corporation counsel, a temporary injunction or a temporary restraining order shall be vacated by the court. The provisions of the civil practice law and rules governing undertakings shall be applicable to this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.19 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.18)

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NYC Administrative Code 7-721

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-721 Judgment.

(a) Seizure and destruction of obscene material. A judgment awarding a civil penalty pursuant to this subchapter shall direct the sheriff to seize and remove from the building, erection or place and to forthwith destroy all material found by the court or jury to be obscene as defined in section 235.00 of the penal law.

(b) Enforcement of the judgment for a civil penalty. A judgment awarding a civil penalty shall be enforced by the sheriff pursuant to the provisions of the civil practice law and rules.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.20 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.19)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-722

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-722 Chapter not exclusive remedy.

This chapter shall not be construed to exclude any other remedy provided by law for the protection of the health, safety and welfare of the people of the city of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.21 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.20)

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Administrative Code of the City of New York

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NYC Administrative Code 7-801

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-801 Short title.

This chapter shall be known as the "New York city false claims act."

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1, 2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

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Administrative Code of the City of New York

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NYC Administrative Code 7-802

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-802 Definitions.

For purposes of this chapter, the following terms shall mean:

1. "City" means the city of New York, and any city agency, department, division or bureau, and any board, committee, institution, agency of government, local development corporation or public benefit corporation, the majority of whose members are appointed by city officials.

2. "Civil enforcement action" means a legal action brought pursuant to section 7-804 of this chapter for the commission of any act or acts described in subdivision a of section 7-803 of this chapter.

3. "Claim" means any request or demand, whether under a contract or otherwise, for money or property which is made to any employee, officer, or agent of the city, or to any contractor, grantee or other recipient, if the city provides the money or property which is requested or demanded or will reimburse such contractor, grantee or other recipient for the money or property which is requested or demanded. "Claim" also encompasses any record or statement used in presenting an obligation to pay or transmit money or property either directly or indirectly to the city.

4. "False claim" means any claim, or information relating to a claim, which is false or fraudulent.

5. "Knowing" and "knowingly" mean that with respect to information, a person: (i) has actual knowledge of the falsity of the information, or (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.

6. "Person" means any natural person, corporation, partnership, firm, organization, association or other legal entity or individual, other than the city.

7. "State" means the state of New York and any state department, agency, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office or other entity performing governmental or proprietary function for the state.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

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NYC Administrative Code 7-803

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-803 False claims.

a. Any person who:

1. knowingly presents, or causes to be presented, to any city officer or employee, a false claim for payment or approval by the city;

2. knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the city;

3. conspires to defraud the city by getting a false claim allowed or paid by the city;

4. has possession, custody, or control of property or money used, or to be used, directly or indirectly, by the city and, intending to defraud the city or willfully conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

5. is authorized to make or deliver a document certifying receipt of property used, or to be used, directly or indirectly, by the city and, intending to defraud the city, makes or delivers the receipt without completely knowing that the information on the receipt is true;

6. knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the city knowing that such officer or employee lawfully may not sell or pledge the property; or

7. knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or

decrease, directly or indirectly, an obligation to pay or transmit money or property to the city;

shall be liable to the city for three times the amount of damages which the city sustains because of the act or acts of such person, and a civil penalty of between five thousand and fifteen thousand dollars for each violation of this section, except that any party to a civil enforcement action commenced may request the court to assess, and the court may agree to so assess, not more than two times the amount of damages sustained because of the act or acts of such person if all of the following circumstances are found:

(i) The person committing the violation of section 7-803 of this chapter had furnished all information known to such person about such act or acts to (a) the commissioner of investigation or (b) the corporation counsel or a city agency head, who shall refer such information to the commissioner of investigation, and has furnished such information within thirty days of the date on which such person first obtained the information;

(ii) such person fully cooperated with any government investigation of such violation; and

(iii) at the time such person furnished information about the violation, no criminal or civil action or proceeding, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

b. A person who violates this section shall also be liable for the costs, expenses and attorneys' fees of a civil enforcement action and for the cost of the city's investigation.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-804

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-804 Civil actions for false claims.

a. If the corporation counsel finds that a person has violated or is violating the provisions of section 7-803 of this chapter, he or she may institute a civil enforcement action against that person in any court of competent jurisdiction.

b. 1. Any person may submit a proposed civil complaint to the city alleging violations of section 7-803. Proposed civil complaints shall be signed and verified and shall include all material evidence and information possessed by such person in support of the allegations in such proposed civil complaints. The city shall diligently investigate all such proposed civil complaints. The city may request such additional information as it deems necessary from the person submitting a proposed civil complaint.

2. The corporation counsel and the commissioner of investigation shall promulgate rules establishing a protocol detailing the procedures by which the city will address proposed civil complaints after they have been submitted, which protocol shall include the requirement that within one hundred eighty days of receipt of a proposed civil complaint, the city shall, in writing, notify the person who submitted the proposed civil complaint that the corporation counsel:

(i) intends to commence a civil enforcement action based on the facts alleged in the proposed civil complaint against one or more of the defendants named in the proposed civil complaint, in which case he or she shall commence such action within ninety days of such notification, provided that if the corporation counsel determines that a delay in commencing such action is warranted, he or she may delay such commencement, upon notice to the person who submitted the proposed civil complaint, for an additional ninety days at which time he or she shall commence such action;

(ii) designates the person or, if the person is not an attorney, the attorney of such person, as a special assistant corporation counsel for purposes of filing a civil enforcement action against one or more of the defendants named in the proposed civil complaint; or

(iii) declines to commence a civil enforcement action or designate such person to commence a civil enforcement action in which case the corporation counsel shall state in the notification its reason for doing so.

3. The corporation counsel shall commence a civil enforcement action or designate the person who submitted the proposed civil complaint or, if the person is not an attorney, his or her attorney, to commence a civil enforcement action unless:

(i) the proposed civil complaint is barred for the reasons set forth in subdivision d of this section;

(ii) the corporation counsel has determined that the proposed civil complaint is based upon an interpretation of law or regulation which if adopted, would result in significant cost to the city;

(iii) the corporation counsel has determined that commencing a civil enforcement action would interfere with a contractual relationship between the city and an entity providing goods or services which would significantly interfere with the provision of important goods or services, or would jeopardize the health and safety of the public; or

(iv) the corporation counsel has determined that the complaint, if filed in a court of competent jurisdiction, would be dismissed for failure to state a claim upon which relief may be based.

c. If the commissioner of investigation determines that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency, then the corporation counsel may decline to commence a civil enforcement action based on a proposed civil complaint or to designate the person who submitted such proposed civil complaint to commence such action, provided that the corporation counsel notifies the person who submitted the proposed civil complaint of such determination within ninety days of receipt by the city of such proposed civil complaint and every one hundred eighty days thereafter until such time as the commissioner of investigation determines that such civil enforcement action would no longer interfere with or jeopardize a governmental investigation, at which time the corporation counsel shall provide to the person who submitted the proposed complaint the notification required in paragraph two of subdivision b of this section. The determination by the commissioner of investigation shall be final.

d. Certain actions barred. This section shall not apply to claims, records, or statements made pursuant to federal, state or local tax law nor to any proposed civil complaints:

1. based upon one or more false claims with a cumulative value of less than twenty five thousand dollars;

2. based upon allegations or transactions which are the subject of any pending criminal or civil action or proceeding, including a civil enforcement action, or an administrative action in which the city is already a party;

3. derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or upon allegations or transactions disclosed by the news media and likely to be seen by the city officials responsible for addressing false claims, unless the person who submitted the proposed complaint is the primary source of the information;

4. based upon information discovered by an employee of the city, state or federal government in the course of his or her employment unless: (i) such employee first reported such information to the department of investigation; and (ii) the city failed to act on the information within six months of its receipt by the department of investigation; or

5. against the federal government, the state of New York, the city or any officer or employee acting within the

scope of his or her employment.

e. Nothing herein shall be construed as authorizing anyone other than the corporation counsel and a person or attorney authorized pursuant to this chapter to commence a civil enforcement action to represent the city of New York in legal proceedings.

f. Pending and related actions. 1. No person, other than the corporation counsel, may intervene or bring a related action based upon the facts underlying a civil enforcement action, unless such other person has first obtained the permission of the corporation counsel to intervene or to bring such related action.

2. Regardless of whether the corporation counsel has commenced a civil enforcement action or another party has been designated to do so, the city may elect to pursue any alternate action with respect to the presentation of false claims, provided that the person who submitted the proposed civil complaint upon which such alternate action is based, if any, shall be entitled to the same percentage share of any cash proceeds recovered by the city as such person would have been entitled to if such alternate action was a civil enforcement action.

g. Rights of the parties. 1. If the corporation counsel elects to commence a civil enforcement action, then the city shall have the sole authority for prosecuting, and, subject to the approval of the comptroller, settling the action and may move to dismiss the action, or may settle the action notwithstanding the objections of the person who submitted the proposed civil complaint upon which such civil enforcement action is based.

2. If a person who submitted a proposed complaint or his or her attorney has been designated to commence a civil enforcement action, then the corporation counsel and such authorized person or attorney shall share authority for prosecuting the case. However, the corporation counsel may move to dismiss the action notwithstanding the objection of the person who submitted the proposed civil complaint provided such person has been served with an appropriate motion and the court has provided such person with an opportunity to be heard. The corporation counsel may also, subject to the approval of the comptroller, settle the action notwithstanding the objection of the person who submitted the proposed civil complaint if the court determines after providing such person with an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable.

3. The corporation counsel may apply to the court for and the court may issue an order restricting the participation of a person designated to commence a civil enforcement action in such litigation notwithstanding the objections of such person if the court determines, after providing such person an opportunity to be heard, that such person's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that such person's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden. Such restrictions may include, but need not be limited to: (i) limiting the number of witnesses such person may call, (ii) limiting the length of the testimony of such witnesses, (iii) limiting such person's cross-examination of witnesses, or (iv) otherwise limiting such person's participation in the litigation.

4. The corporation counsel may apply to the court for a stay of any civil enforcement action if it will interfere with any investigation or prosecution of a criminal matter arising out of the same facts.

h. Under no circumstances shall the city be bound by an act of a person designated to commence a civil enforcement action.

i. Awards from proceeds. 1. If the corporation counsel has elected to commence a civil enforcement action based on a proposed civil complaint, then the person or persons who submitted such proposed civil complaint collectively shall be entitled to receive between ten and twenty-five percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

2. If a person, or such person's attorney has been designated to commence a civil enforcement action based on

such person's proposed civil complaint, then such person shall be entitled to receive between fifteen and thirty percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

3. The court shall determine the share of the proceeds to which a person submitting a proposed complaint is entitled, and may take into account the following factors:

(i) the extent to which the person who submitted the proposed civil complaint contributed to the prosecution of the action, either in time, effort or finances;

(ii) whether the civil enforcement action was based primarily on information provided by the person who submitted the proposed civil complaint, rather than information derived from public sources such as allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media;

(iii) any unreasonable delay by such person in submitting the proposed civil complaint;

(iv) the extent to which the allegations involve a significant safety issue;

(v) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action initiated the violation of section 7-803 of this chapter alleged in such action, in which case the percentage share of the proceeds of the action that such person would otherwise receive under this section may be reduced below the minimum percentages set forth in paragraphs one and two of this subdivision, taking into account the role of such person in advancing the case to litigation and any relevant circumstances including those pertaining to the violation; (vi) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action has been charged with criminal conduct arising from his or her role in the alleged violation of section 7-803 of this chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on such charges; and

(vii) fundamental fairness and any other factors the corporation counsel and the court deem appropriate.

j. Costs, expenses and attorneys' fees. 1. In any civil enforcement action commenced pursuant to this chapter, the corporation counsel, or a person designated to commence such civil enforcement action, if applicable, may apply for an amount of reasonable expenses, plus reasonable attorneys' fees, plus costs. Costs and expenses shall include costs incurred by the department of investigation in investigating the false claim and prosecuting conduct relating thereto. All such expenses, attorneys' fees and costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the city prevails in the action.

2. In a civil enforcement action commenced by a designated person or such person's attorney the defendant may apply for an amount of reasonable expenses, plus reasonable attorneys' fees, plus costs and the court may award such expenses, attorneys' fees and costs if it determines that such civil enforcement action was frivolous. All such expenses, attorneys' fees and costs shall be awarded directly against the person or person's attorney that commenced the action.

k. The city shall not be liable for any expenses, attorneys' fees or costs that a person or a person's attorney incurs in submitting a proposed civil complaint or commencing or litigating a civil enforcement action pursuant to this section.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-805

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-805 Remedies of employees.

a. (1) Any officer or employee of the city of New York who believes that he or she has been the subject of an adverse personnel action, as such term is defined in paragraph one of subdivision a of section 12-113 of the administrative code of the city of New York; or

(2) any officer or employee of the city or state of New York, who believes that he or she has been the subject of a retaliatory action, as defined by section seventy-five-b of the civil service law; or

(3) any non-public employee who believes that he or she has been the subject of a retaliatory action by his or her employer, as defined by section seven hundred forty of the labor law because of lawful acts of such employee in furtherance of a civil enforcement action brought under this section, including the investigation, initiation, testimony, or assistance in connection with, a civil enforcement action commenced or to be commenced under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to: (i) an injunction to restrain continued discrimination, (ii) reinstatement to the position such employee would have had but for the discrimination or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

b. An employee described in subdivision a of this section may bring an action in any court of competent jurisdiction for the relief provided in this section.

HISTORICAL NOTE

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2012. [See Chapter 8 footnote]

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