

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2018**

No. 70

Introduced by The Speaker (Council Member Mark-Viverito) and Council Members Crowley, Salamanca, Dromm, Gentile, Rosenthal, Rose, Reynoso, Levin, Espinal, Menchaca, Cornegy, Richards, Chin, Kallos, Lander and Barron.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to penalties for construction site safety violations that result in or are accompanied by death or serious physical injury

Be it enacted by the Council as follows:

Section 1. Exception 5 of section 28-202.1 of the administrative code of the city of New York, as added by local law number 94 for the year 2017, is amended to read as follows:

[5.] 9. For a violation of section 28-210.1:

[5.1.] 9.1. Unless exception 5.2 applies, the minimum civil penalty for a violation of section 28-210.1 in any building involving the illegal conversion, maintenance or occupancy of three or more dwelling units above the number of dwelling units that is legally authorized by the certificate of occupancy or if no certificate of occupancy is required as evidenced by official records shall be \$15,000. Each dwelling unit above the number that is legally authorized by the certificate of occupancy or if no certificate of occupancy is required as evidenced by official records shall constitute a separate offense that shall be charged separately and shall be punishable by a separate civil penalty. Provided, however, that the penalties for multiple violations of this exception may be based on the same evidence; and

[5.2.] 9.2. The owner of a building shall not be subject to a civil penalty for a violation of section 28-210.1 in such building if such owner can show the following:

[5.2.1.] 9.2.1. Such violation was the first such violation issued for such building or was issued within 30 days after such first violation;

[5.2.2.] 9.2.2 At the time such violation was issued or, if such violation was issued within 30 days after such first violation was issued, the time such first violation was issued, a registration for such building has been properly filed with the department of housing preservation and development in accordance with article two of subchapter 4 of the housing maintenance code; and

[5.2.3.] 9.2.3 At the time such violation was issued or, if such violation was issued within 30 days after such first violation was issued, the time such first violation was issued, such owner reasonably did not know of, or could not reasonably have known of such illegal conversion, the maintenance thereof or occupancy thereof and takes lawful immediate and diligent steps to cure said violation.

§ 2. Exception 6 of section 28-202.1 of the administrative code of the city of New York, as added by local law number 203 for the year 2017, is amended to read as follows:

[6.] 10. For violations of article 110 of this chapter or chapter 33 of the New York city building code:

[6.1.] 10.1. The minimum civil penalty for an immediately hazardous violation of such article or chapter shall be \$2,000, in addition to any separate daily penalty imposed pursuant to item 1 of this section; and

[6.2.] 10.2. The minimum civil penalty for a major violation of such article or chapter shall be \$1,000, in addition to any separate monthly penalty imposed pursuant to item 2 of this section.

§ 3. Article 202 of chapter 2 of title 28 of the administrative code of the city of New York is amended by adding a new section 202.4 to read as follows:

§ 28-202.4 Maximum civil penalty for immediately hazardous violation of chapter 33 of the New York city building code that results in death or serious physical injury. *Notwithstanding any inconsistent provision of this article an immediately hazardous violation of a provision of chapter 33 of the New York city building code that results in death or serious physical injury, as such term is defined in article 10 of the New York state penal law, shall be punishable by a civil penalty of not more than \$500,000, or not more than \$150,000 if such violation is issued to an individual, which may be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction where:*

1. There was a substantial probability that the violating condition would cause death or serious physical injury, as such term is defined in article 10 of the New York state penal law;

2. *The defendant knew, or with reasonable diligence should have known, (i) of the existence of such violation and (ii) was in a position to remedy such violation or lessen the danger posed thereby; and*
3. *Such violation resulted in the death or serious physical injury, as such term is defined in article 10 of the New York state penal law, of a person.*

§ 28-202.4.1 Determining the amount of the civil penalty to be imposed. *In determining the amount of the civil penalty to be imposed the court shall consider:*

1. *The extent and severity of injury to persons and property;*
2. *The history of violations by the defendant of laws or rules enforced by the department;*
3. *The degree of willfulness, recklessness or negligence displayed by the defendant in committing the violation; and*
4. *The defendant's financial resources.*

§ 4. This local law takes effect 180 days after it becomes law, except that the commissioner of buildings may take such measures as are necessary for its implementation, including the promulgation of rules, before 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 December 19, 2017 and returned unsigned by the Mayor on January 22, 2018.

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

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 70 of 2018, Council Int. No. 1419-A of 2017) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.