

## DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

### Notice of Adoption

**NOTICE IS HEREBY GIVEN that pursuant to the authority vested in the City of New York** Department of Housing Preservation and Development (HPD) by Chapter 61 of the New York City Charter and by Local Law 65 of 2014, Local Law 47 of 2015, and Administrative Code §§27-2115(f), 27-2115(k), 27-2129, 27-2005, and 27-2008, and in accordance with section 1043 of the Charter, HPD hereby adopts rules pertaining to fees for complaint-based housing inspections and amending rules for protests of fees, and access by owners to dwelling units.

### Statement of Basis and Purpose of the Adopted Rule

Local Law 65 of 2014 (LL 65) authorizes the Department of Housing Preservation and Development (HPD) to impose a fee to conduct a third complaint-based inspection for a dwelling unit that HPD has inspected twice in the same twelve-month period. For this fee to apply, HPD must have issued a hazardous (class B) or immediately hazardous (class C) violation in the dwelling unit as a result of each such inspection in that period, and the owner must have failed to certify that all of those violations have been corrected. Under the law, if the fee has not been paid, it becomes a tax lien against the property.

The new law provides HPD with authority to, by rule:

- (1) Increase the fee for such inspections when they are performed during “heat season” (the period of October 1st through May 31st),
- (2) Exclude certain hazardous or immediately hazardous violations from the inspection fee, and
- (3) Determine what documents HPD would require for an owner to object to the inspection fee. An owner must prove that he/she attempted to access the dwelling unit to make repairs but was unable to do so. The owner’s objection would be made under the process provided by Administrative Code §27-2129 and related statutes, and HPD’s rules in 28 RCNY Chapter 17.

The rules provide for a new Chapter 47 to specify which hazardous and immediately hazardous violations would not generate the complaint-based inspection fee. They also amend 28 RCNY Chapter 17 to describe the documents required for an owner to protest the inspection fee on the basis of lack of access to a dwelling unit to make repairs. The rule also clarifies Chapter 17 to specify that the rules pertaining to objections to charges enforced as tax liens apply to charges incurred under Administrative Code § 27-2091 and 27-2115(k).

Housing Maintenance Code §27-2008 establishes an owner’s right of access to a tenant’s dwelling unit. The law authorizes HPD to make rules regarding an owner’s entry to a dwelling unit at a reasonable time and in a reasonable manner. Under LL 65, an owner would be able to protest a recurring violation inspection fee on the basis of lack of access to a dwelling unit to make repairs. The rule amends Chapter 25, Subchapter H, §25-101 to clarify and update requirements regarding notification to tenants and the right of access to a dwelling unit at a

reasonable time and in a reasonable manner to repair violations and conduct inspections for making improvements and other repairs.

In addition, Local Law 47 of 2015, which was signed into law by the Mayor on June 2, 2015, provides for owners to notify occupants when certain repairs are to be made to essential services like heat and hot water. The final rule incorporates those requirements by making conforming amendments to §25-101.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

New material in the following rule is underlined, deleted material is in [brackets].

Section one. Chapter 17 of title 28 of the rules of the city of New York is amended to read as follows:

**CHAPTER 17**  
**RULES PERTAINING TO OBJECTIONS TO CHARGES ENFORCED**  
**AS TAX LIENS PURSUANT TO §§27-2144, 27-2153(q), 27-2091, 27-2115(f)(8), 27-2115(k),**  
**28-215.1.1 AND 28-216.11 OF THE ADMINISTRATIVE CODE**

**§17-01 Scope.**

This chapter describes the process for making objections to municipal charges that are enforced as tax liens against properties pursuant to §§27-2144, 27-2153(q), 27-2091, 27-2115(f)(8), 27-2115(k), 28-215.1.1 and 28-216.11 of the Administrative Code and any other municipal charges that may be made tax liens subject to the process described in Article 8 of Subchapter 5 of the Housing Maintenance Code.

**§17-03 Objection Procedure.**

(a) The Department may file a lien for its expenses and fees incurred pursuant to Administrative Code §§27-2144, 27-2153(q), 27-2091, 27-2115(f)(8), 27-2115(k), 28-215.1.1 and 28-216.11.

(b) Unless otherwise stated in Administrative Code §27-2146 and these rules,

(1) an owner, or

(2) a mortgagee or lienor, whose mortgage or lien would have priority over the Department's lien if not for the provisions of §27-2144, who receives a statement of account pursuant to Administrative Code §27-2129 with a charge incurred pursuant to Administrative Code §§27-2125, 27-2153, 27-2091, 27-2115(f)(8), 27-2115(k), 28-215.1.1 or 28-216.11 may notify the Department in writing of his or her objection to such charge.

(c) The "statement date" listed on the Department of Finance's billing application detail for a statement of account shall be presumptive evidence that such statement of account was mailed within five business days of the statement date to the person or entity registered with the Department of Finance.

(d) All objections to a charge on a statement of account shall be submitted in writing or electronically. Each objection shall be addressed to the Department to the attention of the Research and Reconciliation Unit, 100 Gold Street, [Room 4A,] New York, N.Y. 10038 or to [www.hpderp@hpd.nyc.gov](mailto:www.hpderp@hpd.nyc.gov).

(e) Each objection to a charge on a statement of account shall:

- (1) specify the charge objected to and the nature of such objection, and
- (2) include any documentation supporting the objection.

Any charge without specific objections from an owner shall be considered undisputed.

(f) If an owner submits an objection under Administrative Code §27-2129 and 28 RCNY §47-02 to a charge imposed under §27-2115(f)(8) on the basis that he or she has attempted and failed to gain access to the dwelling unit that is the subject of the complaint-based inspection fee for the purpose of making repairs, then the owner shall include the following documentation:

(i) Copies of at least four written notices delivered to the occupant of the subject dwelling unit (two attempts at access after each complaint-based inspection) requesting access at reasonable dates and times in accordance with 28 RCNY §25-101, to make repairs. However, if the owner is requesting access to repair a class C violation, copies of such written notices will not be required unless such class C violation is for the existence of a lead-based paint hazard; and

(ii) A sworn affidavit signed by the owner, that such owner or his or her representative was not able, after four attempts (two attempts at access after each complaint-based inspection), to gain access to the dwelling unit for the purpose of making repairs. Such affidavit shall include the date of each such attempt at access and shall describe the efforts made by the owner or his or her representative to obtain access to the dwelling unit, and such other information as the Department may require. When an owner requests access to repair a class C violation that is not for lead-based paint, the affidavit shall include details of the actions taken

by the owner or his or her representative to notify the occupant of the subject dwelling unit, including, but not limited to, making telephone calls, sending emails, and knocking on the occupant's door at a reasonable time when he or she would be expected to be present. Such affidavit shall include the date and time of such actions.

[(f)] (g) Each objection to a charge on a statement of account shall be received by the Department prior to the due and payable date of such charge. Pursuant to Administrative Code §27-2129, if an owner does not notify the Department in writing of his or her objection to such a charge before the due and payable date as indicated on the statement of account, the owner may not contest the charge in any subsequent judicial or administrative proceeding.

[(g)] (h) Unless otherwise stated in subdivision (c) of Administrative Code §27-2146, a written objection to a charge on a statement of account may not be based upon:

- (1) the lawfulness of the repair or other work done or,
- (2) the propriety and accuracy of the expense for which a lien is claimed.

[(h)] (i) Within a reasonable time after receipt of a written objection to a charge on a statement of account, the Department will make a determination based on all the documentation received from the objecting owner as well as the records of the Department. The Department will then inform the objecting owner of such determination in writing, including the reasons for that decision.

§2. Section 25-101 of subchapter H of chapter 25 of title 28 of the rules of the city of New York is amended to read as follows:

**SUBCHAPTER H**  
**OWNER'S RIGHT TO ACCESS TO DWELLING UNITS [APARTMENTS] OR**  
**ROOMS IN MULTIPLE DWELLINGS AND REQUIREMENTS FOR**  
**NOTIFICATION**

**§25-101 Owner's Right of Access and Requirements for Notification.**

**§25-101 Owner's Right of Access.**

(a)(1) *Owner to give notice.* Where an owner or his or her representative seeks access to [an apartment] a dwelling unit, suite of rooms or to a room, under the provisions of §27-2008 in order to make an inspection [therein] for the purpose of determining whether such places are in compliance with the provisions of the multiple dwelling law [of] or the administrative code, [he]

such owner or representative shall notify the tenants [that he will seek access to the apartment, suite of rooms, or rooms,] not less than twenty-four hours in advance of such time of inspection.

(2) Where an owner [, contractor or agent of the owner] or his or her representative seeks access to make improvements required by law or to make repairs to a dwelling unit, suite of rooms or to a room, such owner or representative shall give written notice [shall be given] to the tenant not less than one week in advance of the time when the improvements or repairs are to be started, except where otherwise provided in paragraph (3) of this subdivision.

(3) [However, where] Where an owner or his or her representative seeks access to make repairs (i) that are urgently needed to a dwelling unit, suite of rooms or a room, as in the case where a class C violation of the Housing Maintenance Code has been issued, except where such class C violation is for the existence of a lead-based paint hazard, or (ii) in the case of an emergency where repairs are immediately necessary [in emergencies] to prevent damage to property or to prevent injury to persons, such as repairs of leaking gas piping or appliances, leaking water piping, stopped-up or defective drains, [or] leaking roofs, or broken and dangerous ceiling conditions, such owner or representative shall not be required to provide written [no] advance notice, but shall be required [from the owner, agent, contractor or workman] to notify the tenant or tenants by such actions as telephone, email, or by knocking on the occupant's door at a reasonable time when he or she would be expected to be present.

(4) Where an owner or his or her representative must make a repair in a public area or other area of a dwelling that may result in an interruption of essential services such as utilities (heat, hot water, cold water, gas, electricity, or elevator) that is expected to continue for more than two hours, the owner or his or her representative shall provide written notice to the tenants by posting a notice in a prominent place within the public part of the building and on each floor of such building at least twenty-four hours prior to such interruption. However, if such interruption is not expected to continue for more than two hours or is due to emergency repairs that were not anticipated and must begin immediately, advance notice is not required, provided that notice shall be posted as soon as possible if such work continues for two or more hours. Such notice shall identify the service to be interrupted, the type of work to be performed, the expected start and end dates of the service interruption, and shall be updated as necessary. Such notice shall be provided in English, Spanish, and such other language as the owner deems necessary to adequately provide notice to the tenants. Such notice shall remain posted until the interruption of essential services interruption ends. A sample notification form is provided in these rules.

(b) *Notices to be in writing.* Where an owner is required to give notice in advance of seeking access to [an apartment] a dwelling unit, suite of rooms or to a room, as required by subdivision

(a) of this section, such notice shall be in writing, dated, and shall contain a statement of the nature of the improvement or repairs to be made, unless specifically stated otherwise in these rules.

(c) *Authorization to be in writing.* Where [an authorized agent or employee] a representative of an owner seeks access to [an apartment] a dwelling unit, suite of rooms, or rooms, the authorization of the owner shall be in writing and the [agent or employee] representative shall exhibit such authorization to the tenant when access is requested.

(d) *Hours when access to be permitted.* Except as provided in paragraph (3) of subdivision (a) of this section [in emergencies], access to [an apartment] a dwelling unit, suite of rooms, or rooms, shall be limited[, ] to the hours between nine antemeridian and five post-meridian, unless otherwise agreed to by the tenant. Access shall not be required on Saturdays, Sundays or legal holidays, unless otherwise agreed to by the tenant, except [in emergencies] as provided in paragraph (3) of subdivision (a) of this section.

Sample Notification Form for Interruption of Essential Services

NOTICE OF INTERRUPTION OF SERVICES

Please be advised that due to repair work in the building located at

\_\_\_\_\_, there will be an interruption in the following building services:

heat  hot water  cold water  gas  electricity  elevator

The interruption in service is expected to begin on \_\_\_\_\_ and to end on

\_\_\_\_\_.

The repair work is for the purpose of

\_\_\_\_\_  
\_\_\_\_\_

## AVISO DE INTERUPCION DE SERVICIOS

Por favor tenga en cuenta que debido a reparaciones en el edificio localizado en \_\_\_\_\_, habrá una interrupción en los siguientes servicios del edificio:

Calefacción  Agua Caliente  Agua Fría  Gas  Electricidad  Elevador

La interrupción en servicio se espera comenzar en \_\_\_\_\_ y terminar en \_\_\_\_\_.

El trabajo de reparación es para el propósito de \_\_\_\_\_

§3. Title 28 of the rules of the city of New York is amended by adding a new chapter 47 to read as follows:

### CHAPTER 47

#### Rules Pertaining to Recurring Violations and Complaint-Based Inspections

§47-01. A complaint-based inspection shall not be subject to the complaint-based inspection fee and shall not be included in the total number of such inspections within a twelve-month period that qualifies a dwelling unit for the complaint-based inspection fee authorized by Administrative Code §27-2115(f)(8) where such inspection results exclusively in the issuance of an immediately hazardous or hazardous violation for only one or more of the following conditions:

- (a) inoperable or missing smoke detector;
- (b) inoperable or missing carbon monoxide detector;
- (c) double cylinder lock on entry door of the dwelling unit;
- (d) illegal window gate;
- (e) improper installation or absence of a window guard; or
- (f) failure to maintain a dwelling unit in a clean and sanitary condition, including, but not limited to, an accumulation of refuse/rubbish.

§47-02. An owner may object, pursuant to Administrative Code §27-2129, to the imposition of the complaint-based inspection fee authorized by Administrative Code §27-2115(f)(8). An owner

may object on the basis that he or she has attempted and failed to gain access to make repairs to the dwelling unit that is the subject of this fee. Such objection shall be made pursuant to article eight of subchapter five of chapter two of title 27 of the Administrative Code, and the rules promulgated thereunder in 28 RCNY Chapter 17.