

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2005**

No. 87

Introduced by Council Members Yassky, Barron, Clarke, Fidler, James, Koppell, Liu, Nelson, Stewart, Weprin, Foster, Gennaro, Quinn, Gerson, Addabbo, Jr., Jackson, Brewer, Comrie, Martinez, deBlasio, The Speaker (Council Member Miller), Gonzalez, Seabrook, Katz, Sanders, Arroyo and The Public Advocate (Ms. Gotbaum).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to prohibiting employers from locking employees or other individuals inside a workplace and increasing the fines for obstruction of exits and unlawful change of exits.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The Triangle Shirtwaist fire of 1911 significantly impacted labor unions and labor laws in the United States. At that time, 146 women and girls whose average age was 19 tragically perished in that fire because they were locked in their workplace. Despite numerous workplace safety laws and regulations that mandate emergency egress plans and fire safety equipment and plans, the problem of locking workers in the workplace still exists. A number of large retailers have been cited by the United States Department of Labor's Occupational Safety and Health Administration for continuing this potentially fatal practice. In addition, newspaper accounts have indicated that janitors and immigrant workers at supermarkets in Brooklyn, Queens and the Bronx are being locked in the workplace, with fire exits blocked or padlocked.

This legislation would increase the penalties for obstruction of exits and unlawful change of exits. In addition, this legislation would create a penalty where an employer locks the doors of or otherwise prohibits the exit from any workplace when by doing so the health or safety of an employee may become endangered. A workplace is intended to be any location, away from the home, permanent or temporary, where any employee, independent contractor or other individual performs any work-related duty in the course of employment, whether or not such duty is a direct responsibility of such person, including, but not limited to, any building that is classified by title twenty-seven of the Administrative Code of the City of New York.

§2. Paragraph 3 of subdivision g of section 26-248 of the administrative code of the city of New York, as last amended by local law number 33 for the year 1991, is amended to read as follows:

3. A violation which produces an imminent hazard to persons or property as a result of (a) a change of occupancy[;] or (b) use without a permit[;] (c) obstruction of exits; (d) unlawful change of exits[;].

§3. Section 26-248 of the administrative code of the city of New York, as last amended by local law number 33 for the year 1991, is amended by adding a new subdivision i to read as follows:

i. Notwithstanding any other law, rule or regulation, and in addition to any other penalties provided in this code or pursuant to any other law, rule or regulation, any person who is convicted of a violation which produces an imminent hazard to persons or property as a result of any (a) obstruction of an exit or (b) unlawful change of an exit shall be punished by a fine of not less than five thousand dollars for a first violation, not less than five thousand dollars nor more than ten thousand dollars for a second violation, not less than ten thousand dollars nor more than fifteen thousand dollars for a third violation, and not less than fifteen thousand dollars nor more than twenty thousand dollars for a fourth violation and any subsequent violation, or for any such violation by imprisonment for not more than six months, or by both the applicable fine and imprisonment.

§4. Article 10 of subchapter 3 of chapter 1 of title 26 of the administrative code of the city of New York is amended by adding a new section 26-252.1 to read as follows:

§26-252.1 Workplace exits (1) *Except for the exemptions specified in subdivision j of section 27-371 of title twenty seven of the administrative code of the city of New York, no employer or agent of such employer shall lock the doors of or otherwise prohibit exit from any workplace, when by so doing the health or safety of any employee, independent contractor or other individual working in such workplace may become endangered by fire or other hazardous condition.*

(2) *In addition to any other inspection requirements imposed by law, rule or regulation, a minimum of fifty unannounced inspections per year shall be conducted by the fire department to ensure the identification and abatement of any hazardous conditions in violation of this section. Such inspections shall include, but not be limited to, sites where there are known or suspected conditions affecting employee safety and health.*

(3) *Any employee who believes that he or she has been the subject of a retaliatory action by his or her employer or the agent of such employer, as defined by section seven hundred forty of the labor law, due to the lawful acts of such employee in furtherance of a civil or criminal enforcement proceeding brought concerning the failure of any employer or the agent of such employer to comply with this section, may bring an action in any court of competent jurisdiction for the relief provided for in this subdivision and shall be entitled to all relief necessary to make such employee whole. Such lawful acts of an employee shall include, but not be limited to, assisting in the investigation and initiation of an enforcement proceeding concerning the non-compliance of this section, providing testimony in any such proceeding or providing other assistance in connection therewith. The relief to which such employee shall be entitled shall include, but not be limited to, (i) an injunction to restrain any adverse or retaliatory action, (ii) reinstatement to the position such officer or employee would have had but for such action, or to an equivalent position, (iii) reinstatement of full benefits and seniority rights including payment of any missed back pay, plus interest and (iv) compensation for any special damages sustained as a result of such action, including litigation costs and reasonable attorneys' fees.*

(4) *Notwithstanding the provisions of any other law, rule or regulation, and in addition to any other penalties provided in this code or pursuant to any other law, rule or regulation, any person who is convicted of any violation of this section shall be guilty of a misdemeanor and shall be subject to a fine for each employee, independent contractor or other individual working in a workplace at the time such person violated this section, of not less than five thousand dollars for a first violation, not less than five thousand dollars nor more than ten thousand dollars for a second violation, not less than ten thousand dollars nor more than fifteen thousand dollars for a third violation, and not less than fifteen thousand dollars nor more than twenty thousand dollars for a fourth violation and any subsequent violation, or a term of imprisonment not exceeding nine months, or both the applicable fine and imprisonment. The court may impose a separate sentence for each offense, and if imprisonment is imposed, the court may order any of such sentences to be served concurrently or consecutively. Such violator shall also be subject to a civil penalty of not more than five thousand dollars for each employee, independent contractor or other individual working in a workplace at the time such person violated this section, to be recovered in a civil action brought in a court of competent jurisdiction or in a proceeding before the environmental control board.*

(5) *Any person who is convicted of a violation of this section, or any person directed by rule promulgated by the fire commissioner, shall post a sign in English, Spanish, Korean, Chinese and any other language deemed necessary by the fire commissioner, to be prominently displayed at all workplaces notifying all employees, independent contractors or any other individuals working in such workplace of the prohibitions against locking the doors of or otherwise prohibiting exit from any workplace and employer retaliation established pursuant to this section. Such sign shall be in a form prescribed by the fire commissioner and may contain any other information deemed necessary by the fire commissioner, or as recommended by the police commissioner or the commissioner.*

§5. Subchapter 29 of chapter 4 of title 27 of the administrative code of the city of New York is amended by adding new section 27-4267.5 to read as follows:

§27-4267.5 Safety plans for mercantile establishments. *The owner or other person having charge of a building or space classified in occupancy group C, designed to be occupied or arranged to be occupied for an occupant load of more than five hundred persons in such building or space, or in which more than twenty-five persons are employed, shall keep on file a safety plan for evacuation procedures in accordance with the requirements of the commissioner. Such plan shall be distributed by such owner or person to the tenants and employees of such establishment.*

§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 ninety days after its enactment into law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on September 15, 2005, and approved by the Mayor on October 3, 2005.

VICTOR L. ROBLES, City Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 87 of 2005, Council Int. No. 629-B) contains the correct text and:

Received the following vote at the meeting of the New York City Council on September 15, 2005: 46 for, 0 against, 0 not voting.

Was signed by the Mayor on October 3, 2005.

Was returned to the City Clerk on October 4, 2005.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel