

ALTERNATIVE ENFORCEMENT PROGRAM

§ 27-2153 **Alternative Enforcement Program.**

§ 27-2153 **Alternative Enforcement Program.** The department shall establish an alternative enforcement program and identify distressed buildings for participation in such program. Notwithstanding any other provision of law, the department shall enforce violations of this code and the multiple dwelling law pursuant to such program, as follows:

a. The department shall identify no fewer than two hundred different distressed buildings for participation in the alternative enforcement program in each of the first two years of such program. For purposes of this subdivision the criteria used to identify distressed buildings shall be:

(i) twenty-seven or more open hazardous or immediately hazardous violations of record which were issued by the department within the two-year period prior to identification of the building for such program; and

(ii) a ratio of open hazardous and immediately hazardous violations which were issued by the department within the two-year period prior to identification of the building for such program that equal in the aggregate five or more such violations for every dwelling unit in the multiple dwelling; and

(iii) unpaid emergency repair charges, including liens, in a ratio of one hundred or more dollars for each dwelling unit in the multiple dwelling which were incurred within the two-year period prior to identification of the building for such program.

b. In the third year of such program the department shall identify no fewer than two hundred different distressed buildings for participation in the alternative enforcement program. The criteria used to identify distressed buildings in such year shall be:

(i) twenty-five or more open hazardous or immediately hazardous violations which were issued by the department within the two-year period prior to identification of the building for such program; and

(ii) a ratio of open hazardous and immediately hazardous violations which were issued by the department within the two-year period prior to such identification that equal in the aggregate five or more such violations for every dwelling unit in the multiple dwelling; and

(iii) unpaid emergency repair charges, including liens, in a ratio of one hundred or more dollars for each dwelling unit in the multiple dwelling which were incurred within the two-year period prior to such identification.

c. (1) In the fourth year and each succeeding year of such program the department shall identify no fewer than two hundred different distressed buildings for participation in the alternative enforcement program. The criteria used to identify distressed buildings in such years shall be:

(i) in a multiple dwelling that contains not less than three and not more than nineteen units, a ratio of open hazardous and immediately hazardous violations which were issued by the department within the two-year period prior to such identification that equals in the aggregate five or more such violations for every dwelling unit in the multiple dwelling, and in a multiple dwelling that contains not less than twenty units, a ratio of open hazardous and immediately hazardous violations which were issued by the department within the two-year period prior to such identification that equals in the aggregate three or more such violations for every dwelling unit in the multiple dwelling; and

(ii) paid and unpaid emergency repair charges, including liens, which were incurred within the two-year period prior to such identification, of two thousand five hundred or more dollars in a multiple dwelling that contains not less than three and not more than nineteen units, and paid and unpaid emergency repair charges, including liens, which were incurred within the two-year period prior to such identification, of five thousand or more dollars in a multiple dwelling that contains twenty or more units.

(2) Notwithstanding the provisions of paragraph one of this subdivision, in the sixth year of such program, and for each succeeding year, the department shall identify no fewer than two hundred different distressed buildings for participation in the alternative enforcement program and may by rule revise criteria related to the ratio of open hazardous and immediately hazardous violations per dwelling unit and the amount or ratio per dwelling unit of paid and unpaid emergency repair charges which must exist for a building to qualify for participation in the program.

(3) Notwithstanding the provisions of paragraphs one and two of this subdivision, in the ninth year of such program, and for each succeeding year, the department shall identify no fewer than two hundred fifty different distressed buildings for participation in the alternative enforcement program and may by rule set criteria for such buildings to participate in the program, which may include, but need not be limited to: the ratio of open hazardous and immediately hazardous violations per dwelling unit, the amount or ratio per dwelling unit of paid or unpaid emergency repair charges and the number of dwelling units that must exist for a building to qualify for participation in the program. The department may by rule add to the criteria set forth in subdivision e of this section relating to which buildings are to be excluded from the program.

d. For the purposes of subdivisions a and b of this section, those buildings having the highest aggregate ratio of open hazardous and immediately hazardous violations for every dwelling unit shall be the buildings identified first for participation in the program. For the purposes of paragraph one of subdivision c of this section, those buildings having the highest amount of paid and unpaid emergency repair charges and liens incurred within the two-year period prior to identification shall be the buildings identified first for participation in the program. For the purposes of paragraphs two and three of subdivision c of this section, the department shall by rule determine the criteria for which buildings shall be identified first for participation in the program.

e. (1) Notwithstanding the criteria set forth in subdivisions a, b, and c of this section, a building that is currently the subject of an in rem foreclosure action by the city, or that was the subject of an in rem foreclosure judgment in favor of the city and that was transferred by the city to a third party pursuant to section 11-412.1 of the code within the prior five years, or that is currently the subject of a court order appointing or a proceeding brought by the department seeking the appointment of an administrator pursuant to article 7-A of the real property actions and proceedings law, shall not be included in the alternative enforcement program.

(2) Notwithstanding the criteria set forth in subdivisions a, b, and c of this section, a multiple dwelling that is the subject of a loan provided by or through the department or the New York city housing development corporation for the purpose of rehabilitation, as provided in rules of the department, and that has closed within the past two years, shall not be included in the alternative enforcement program, provided further, that a multiple dwelling that has been included in the alternative enforcement program and becomes the subject of such a loan that closes within the first four months after the building has been included in the alternative enforcement program, shall be discharged from such program.

f. Where there are fewer than two hundred fifty buildings that meet the applicable criteria, the department shall by rule determine the criteria for additional buildings to participate in the alternative enforcement program.

g. (1) The department shall within thirty days of identifying a distressed building for participation in the alternative enforcement program provide written notification to the owner of such building, the occupants of such building and the council member in whose district the building is located, that such building is subject to the requirements of such program and the requirements of this article. Such written notification shall inform such owner of his or her duty to post the notice required by paragraph two of this subdivision and that such owner shall be liable for a civil penalty for failure to comply. The department shall simultaneously provide to such owner information about correcting violations related to mold and vermin, when such violations

are applicable to such multiple dwelling, as set forth in paragraphs ii and iii of subdivision i of this section.

(2) Within fifteen days after receiving notice from the department in accordance with paragraph one of this subdivision, or such later date as the department may specify in such notice, the owner of a building identified for participation in the alternative enforcement program shall post a sign on the building's main entrance door, or in another conspicuous location in the common area of the building, stating (i) that the building has been placed in the alternative enforcement program, (ii) that occupants may call 311 or the program's direct line to make complaints about the conditions in their units or in the common areas, (iii) the name, telephone number and address of the owner and (iv) the identity of the financial institution that holds the mortgage on the property, if any. Such sign shall be in English, Spanish and in any other language the department may require by rule. Upon request of a tenant occupying a dwelling unit in the building, the owner shall make best efforts to provide the sign in a language other than English or Spanish. The owner shall maintain such sign until he or she receives written notice from the department that the building has been discharged from the alternative enforcement program. An owner who fails to comply with the requirement to post and maintain a sign pursuant to this subdivision shall be liable for a penalty of two hundred fifty dollars.

h. The department shall establish a process to provide the occupants of buildings participating in the alternative enforcement program and council members within whose districts such buildings are located with information regarding the status of the building during participation in such program.

i. (i) The owner of a building that is identified for participation in the alternative enforcement program shall be required to respond in writing to the notification provided pursuant to subdivision g of this section whether he or she intends to correct the existing violations of this code and the multiple dwelling law in such building. Such owner shall correct the existing violations of this code and the multiple dwelling law in such building no later than four months after written notification by the department pursuant to subdivision g of this section, provided, however, that the original correction date for any violation issued in such building shall not be deemed to be changed or postponed by such notification. Nothing in this subdivision shall preclude the department from determining after such identification that the provisions of subdivision k may be immediately implemented. Where such owner believes that such violations have been corrected, such owner shall request a reinspection of such violations for dismissal by the department. The process to request a reinspection and dismissal of such violations shall be prescribed in rules promulgated by the department. The department shall perform a reinspection within sixty days of receipt of a request for such reinspection by the owner and upon completion of such reinspection the department shall assess whether such owner has substantially complied with the requirements of this subdivision. The department shall issue a notice of violation for any new violation observed in the course of such reinspection. After completion of such reinspection, the department shall within twenty days provide a written determination to such owner. For the purposes of this subdivision, "substantial compliance" shall mean that at the time of reinspection by the department, all violations relating directly to providing heat and hot water and all immediately hazardous violations related to mold, eighty percent of all hazardous violations related to mold, eighty percent of all vermin violations and eighty percent of all other open hazardous and immediately hazardous violations have been determined by the department to have been corrected. A violation relating to mold shall only be deemed corrected if the violation has been corrected in accordance with paragraph ii of this subdivision and a violation relating to vermin shall only be deemed corrected if such violation has been corrected in accordance with paragraph iii of this subdivision.

(ii) With respect to mold violations, the owner of a building participating in the alternative enforcement program shall correct such violations by investigating and correcting identified moisture problems prior to or as part of the mold removal work; informing building occupants

about commencement of mold removal work; providing building occupants with a copy of the department of health and mental hygiene's brochure about mold and requiring, to the extent practicable, occupants to leave the work area before work begins; removing, or securely covering with plastic sheeting, any difficult-to-clean surfaces or items in the immediate work area before mold removal work begins; ensuring that all mold removal work is done in a manner that minimizes the dispersion of dust and debris from the work area into other parts of the dwelling; removing and throwing away porous materials that contain mold growth and that cannot be cleaned, or materials that are saturated with water and that cannot be dried; discarding any plastic sheeting, materials with mold growth, and used sponges, mop heads and cleaning wipe cloths in sealed heavy-duty plastic bags; cleaning any remaining visible dust from the mold removal work using wet cleaning methods or by HEPA-vacuuming and cleaning mold growth with soap or detergent and water, not bleach or other biocide solutions. When such mold removal work has been completed, such owner shall document all corrective actions taken for identifying and repairing moisture sources and mold removal work methods that were used, inform occupants of the building that if mold growth or moisture recurs they should inform the building owner, and shall provide a certification to the department that such actions have been taken.

(iii) With respect to vermin violations, the owner of a building participating in the alternative enforcement program shall correct such violations by eliminating conditions conducive to vermin infestation, including but not limited to, areas allowing access to vermin, leaking plumbing, and uncontained garbage and debris, and eliminating sources of water and food for pests. Owners shall inform building occupants about the commencement of pest management treatment and provide occupants with a copy of the department of health and mental hygiene's brochure on controlling pests safely. Owners shall request that occupants support the pest management treatment by preparing the kitchen, bathroom and other areas as needed and that occupants be available to listen to advice on how to maintain pest-free conditions, including clean up, food storage, management of garbage, and selection of safer pest control products. Such owner shall also address such violations by utilizing pesticide applications or devices as permitted by state and federal law. No person may perform pesticide applications unless that person is a certified applicator pursuant to article 33 of the environmental conservation law or is supervised by a certified applicator. An owner shall caulk and seal small holes less than four inches in diameter, cracks and crevices in or in between walls, cabinets, floors, and in other locations where vermin may gain access. A HEPA-vacuum shall be utilized in kitchens and bathrooms, including in cracks, crevices and appliances in such rooms. When such pest management work has been completed, such owner shall document all corrective actions taken to address vermin violations including work methods and products used, provide information to occupants of the building about ways to control pests safely, inform building occupants that they should report recurrent or persistent pest problems to the owner, and provide a certification to the department that such actions have been taken. In addition, for a multiple dwelling in which vermin infestation is indicated the owner of such multiple dwelling shall submit a pest management plan indicating continuing pest control measures to the department of health and mental hygiene for approval which must be approved by such department prior to the discharge of such building from the program.

j. (i) Where an owner has received a written determination by the department that he or she has substantially complied with the requirements of subdivision i of this section, such owner shall pay to the department all outstanding charges, including liens, for emergency repair work performed by the department in such building that are due, if any, or shall enter into an agreement with the department of finance to pay such charges and liens, and shall register the building in accordance with article two of subchapter four of chapter two of this title if the building is not validly registered. Upon such payment, or execution of such an agreement, and valid registration, where applicable, the department shall notify the owner, the occupants in such

building and the council member in whose district such building is located that the building has been discharged from participation in the alternative enforcement program, provided, however, that the department shall continue to monitor the building to ensure continued compliance with this code. Such monitoring shall be performed not less often than every three months for a period of at least one year with special consideration given to any uncorrected immediately hazardous violations.

(ii) Except as provided in subdivision l of this section, the failure by an owner to substantially comply with the provisions of subdivision i of this section, or pay all outstanding charges, including liens, for emergency repair work, if any, or enter into an agreement with the department of finance to pay such charges and liens, or validly register the building in accordance with article two of subchapter four of chapter two of this title, where applicable, shall result in the building remaining in the alternative enforcement program, and such building shall continue to be subject to the fees and other requirements applicable to such program. Upon such failure, the department shall notify such owner that the building has not been discharged from the alternative enforcement program.

k. (i) The department shall perform a building-wide inspection of a building that is subject to the requirements of the alternative enforcement program if: (1) the owner has been notified that such building has not been discharged from the program pursuant to subdivision i of this section, or (2) the owner has failed to respond to written notification by the department in accordance with subdivision g of this section. Such building-wide inspection shall be commenced no later than thirty days after notice is given to the owner pursuant to paragraph ii of subdivision j of this section. After such building-wide inspection is completed, the department shall issue an order to such owner to correct existing violations of this code and the multiple dwelling law and any new violations written since the notification of the owner in accordance with subdivision g of this section and repair the related underlying conditions as shall be specified in such order, provided, however, that if such inspection does not indicate that any building systems must be repaired or replaced, the order may be limited to requiring the owner to correct violations of this code and the multiple dwelling law and any physical defects. Such building-wide inspection shall be completed and such order issued within ninety days of commencement of the building-wide inspection. Such order shall be filed in the office of the county clerk in the county in which the building is located. For purposes of this article, a "related underlying condition" shall mean a physical defect or failure of a building system that is causing or has caused a violation, such as, but not limited to, a structural defect, or failure of a heating or plumbing system.

(ii) The department shall: (1) within thirty days of the filing of such order prepare a scope of work necessary to correct the violations and repair the related underlying conditions as are specified in such order; (2) cause repair work to be commenced and expeditiously completed unless there are circumstances beyond the control of the department such as: the inability to obtain access to the building or any part thereof necessary for the making of such repairs in which case the repairs related to the portion of the building to which access could not be obtained may be delayed until access is obtained; or the inability to obtain necessary legal approvals, materials or labor; or there is ongoing litigation with respect to the building that prevents such work from being performed by the department; or the owner undertakes the repair work in a manner that is satisfactory to the department; or commencement or completion of the work is not practicable because a vacate or similar order has been issued by the department or any city agency and/or the cost of performing work necessary for restoring the building pursuant to the order is economically infeasible; and (3) monitor repair work as it is performed in accordance with subdivision m of this section. For the purposes of this subdivision, "economically infeasible" shall mean a determination by the department that the cost of repairing a particular building exceeds the anticipated market value of such building after all repairs have been completed. However, any determination by the department that, for the

purposes of this subdivision, repairs to a particular building would be economically infeasible for the department to undertake, shall not take into consideration the owner's conduct with respect to the building.

(iii) When the department causes repair work to be commenced in accordance with paragraph ii of this subdivision, in a multiple dwelling in which vermin infestation is indicated, vermin violations shall be corrected in accordance with paragraph iii of subdivision i of this section. The department shall also require the owner of such multiple dwelling to submit to the department of health and mental hygiene for their approval a pest management plan indicating continuing pest control measures. Such plan must be approved by the department of health and mental hygiene prior to the discharge of such building from the program.

l. The owner or managing agent or other designated representative of a building which is the subject of an order by the department pursuant to subdivision k of this section may be required to participate in a course of training relating to building operation and maintenance, approved by the department.

m. The department shall reassess, at quarterly intervals, or more often as necessary, each building that has been identified for participation in the alternative enforcement program for which the department has issued an order pursuant to subdivision k of this section and in which the department or an owner has commenced repairs, to ensure progress towards completion of such repairs. At each such reassessment the department shall determine whether repairs are progressing in a timely fashion. When conducting such reassessment the department shall give special consideration to the correction of immediately hazardous violations. No later than six months from the commencement of such repair work, if the department determines that such repair work is not progressing in a timely fashion, then the department shall expeditiously complete the repairs.

n. The department may discharge from the alternative enforcement program a building for which an order has been issued pursuant to subdivision k of this section upon: (1) substantial compliance, (2) payment of fees, (3) payment to the department of all outstanding emergency repair charges, including liens, or entry into an agreement with the department of finance to pay such charges and liens, and (4) registration of such building in accordance with article two of subchapter four of chapter two of this title or such other criteria as may be established by rule which are not inconsistent with any of the provisions of this article as are applicable. The department may also discharge from the alternative enforcement program any building for which an administrator is appointed pursuant to article 7-A of the real property actions and proceedings law during the time period that such building is participating in the program; any building that is vacant for one year or more except for any building that contains six or more units and is the subject of a vacate order; any building that becomes the subject of an in rem foreclosure judgment in favor of the city and that is transferred by the city to a third party pursuant to section 11-412.1 of the code; and any building in which the department has completed the work it is required to perform pursuant to subdivision k of this section. Where the department determines to discharge a building from such program, it shall provide a written determination to the owner, the occupants of such building and the council member in whose district such building is located and shall file in the office of the county clerk in the county in which such building is located, a rescission of the order issued pursuant to subdivision k of this section, where such order has been issued. For the purposes of this subdivision, "substantial compliance" shall mean that at the time of reinspection by the department, all violations relating directly to providing heat and hot water and all immediately hazardous violations related to mold, eighty percent of all hazardous violations related to mold, eighty percent of all vermin violations and eighty percent of all other open hazardous and immediately hazardous violations and the related underlying conditions, have been determined by the department to have been corrected. A violation relating to mold shall only be deemed corrected if the violation has been corrected in accordance with paragraph ii of subdivision i of this section and a violation relating

to vermin shall only be deemed corrected if such violation has been corrected in accordance with paragraph iii of subdivision i of this section and, when applicable, paragraph iii of subdivision k of this section.

o. The department shall expeditiously undertake good faith efforts to obtain access to any portion of the building where access is necessary in order to perform an inspection, perform work to correct a violation of this code or the multiple dwelling law or perform work to repair a related underlying condition. If access is not obtained even after such good faith efforts, the department shall seek an order of access in accordance with the provisions of section 27–2123 of this code. Any time period set forth in this section within which the department is required to act shall be tolled during the period in which the department is making such good faith efforts to obtain access or is seeking an order of access.

p. An owner of a building who has been notified of participation in the alternative enforcement program pursuant to subdivision g of this section shall be subject to fees for any inspection, reinspection or any other action taken by the department in relation to such building during the time period that the building is in such program. A schedule of fees for this purpose shall be prescribed in rules promulgated by the department.

q. All amounts for expenses incurred and fees imposed by the department pursuant to this article that remain unpaid by an owner, shall constitute a debt recoverable from the owner and a lien upon the building and lot, and upon the rents and other income thereof. The provisions of article eight of this subchapter shall govern the effect and enforcement of such debt and lien. The department may serve a statement of account upon an owner for such amounts pursuant to section 27–2129 of this subchapter.

r. Any failure by the department to provide notification to occupants of a building that is participating in the alternative enforcement program or council members as required by this article shall not prevent the department from taking any actions under or enforcing the provisions of this article, except that the department shall attempt to remedy any such failure immediately upon its discovery.

s. On or before February 15th of each year, the department shall prepare and submit to the council a report on the results of the alternative enforcement program. Such report shall be cumulative and shall include the following: (i) the address and owner of each building in the program; (ii) the council member in whose district the building is located; (iii) for each building, the aggregate number of open hazardous and immediately hazardous violations at the time the alternative enforcement program was used as an enforcement mechanism for such building, the ratio of such violations and unpaid and paid emergency repair charges or liens, as is applicable, to the number of dwelling units at such time, whether or not the building has been discharged from the program and the reason for such status; and (iv) the number of buildings for which substantial compliance has not been achieved within twelve months from the start of their participation in the program. Such report shall be posted on the department's website within ten days of its submission to the council.

t. Nothing in this section shall prevent the department from enforcing the provisions of this code or the multiple dwelling law pursuant to any other provision of this code, the multiple dwelling law or any other law where the department determines that additional enforcement mechanisms are necessary to do so. Nothing in this article shall be deemed to affect the duties of an owner, a tenant or the department under any other article of this code or the multiple dwelling law.

u. Any notifications or information required by this section to be provided to an owner or occupant of a building shall be in English, the languages set forth in subdivision j of section 8–1002 of the administrative code of the city of New York and in such other languages as the department deems appropriate.

v. No later than July 31, 2012 and every two years thereafter the department shall conduct a study to evaluate the effectiveness of the alternative enforcement program. Such study shall examine, but shall not be limited to examining, the following:

- (1) the program's cost effectiveness, including the amount of fees collected;
- (2) whether the criteria established pursuant to subdivisions a, b or c of this section were appropriate and if not, how they should be adjusted;
- (3) whether the monitoring undertaken by the department is appropriate and if not, what modifications should be made;
- (4) an evaluation of the use of the work practices identified in paragraph ii of subdivision i of this section to address mold conditions including the reoccurrence of mold;
- (5) for those multiple dwellings in which a building-wide inspection was conducted, an assessment of whether mold was identified in such multiple dwellings and whether the criteria for the issuance of a violation for mold should be revised or enhanced as a result;
- (6) an evaluation of the use of the work practices identified in paragraph iii of subdivision i of this section to address vermin conditions;
- (7) information on the compliance levels achieved by multiple dwellings which remain in the program for failure to achieve substantial compliance and recommendations on how to achieve higher compliance levels for those multiple dwellings; and
- (8) for those multiple dwellings that were discharged from the program, information on the number of such buildings that were able to correct all identified violations prior to discharge or that were able to achieve a higher compliance level than required by this program in order to be discharged and an assessment of why such buildings were able to achieve such results.

Such study shall also include recommendations as to whether the program should be continued or modified in any way and the reasons therefore.