

## CHAPTER 2

# ENFORCEMENT

### ARTICLE 201 GENERAL

**§28-201.1 Unlawful acts.** It shall be unlawful to erect, construct, alter, extend, repair, fail to maintain, move, remove, demolish, occupy, use or operate any building, structure, premises, or equipment, or to conduct any subject matter regulated by this code or by the zoning resolution, or to cause same to be done, in conflict with or in violation of any of the provisions of this code, the zoning resolution, or the rules of the department or, with regard to existing buildings, any applicable provision of the 1968 building code or any other law or rule enforced by the department. It shall be unlawful to fail to comply with an order of the commissioner or to violate any order of the commissioner issued pursuant to this code, the 1968 building code, the zoning resolution or any law or rule enforced by the department.

**§28-201.2 Classification of violations.** The commissioner shall promulgate rules classifying all violations of this code, the zoning resolution or, with regard to existing buildings, the 1968 building code or other laws or rules enforced by the department as immediately hazardous violations, major violations or lesser violations unless the classification of such violations is specifically directed by this code. Such classification shall be based on the effect of the violation on life, health, safety or the public interest or the necessity for economic disincentive.

**§28-201.2.1 Specified immediately hazardous violations.** The commissioner shall classify the following violations as immediately hazardous:

1. With respect to violations of article 210 of this chapter:
  - 1.1. A violation of section 28-210.1 in which a building legally approved for occupancy as a one-family or two-family dwelling (as set forth in the certificate of occupancy or if no certificate of occupancy is required, as evidenced by official records) is illegally converted to or maintained as a dwelling for occupancy by four or more families; or
  - 1.2. A violation of sections 28-210.1 and 28-210.2 in any building involving the illegal conversion, maintenance or occupancy of three or more dwelling units than are legally authorized by the certificate of occupancy or if no certificate of occupancy is required as evidenced by official records.
2. Any violation of section 28-211.1 false statement;
3. Any violation of a stop work order or of a cease use order;
4. Any violation of a vacate order or order to seal, secure and close, or closure order;
5. Unlawful demolition;
6. Falsely impersonating an employee or authorized representative of the department;
7. Occupancy without a required certificate of occupancy;
8. Intentional disobedience or violation of any provision of a closure order;
9. Submittal of a materially false or misleading professional certification.
10. A violation of section 28-212.11.
11. A violation of section 28-307.1.
12. A violation by a licensed rigger or person performing the functions and duties of a licensed rigger of the provisions of sections 28-404.1 or 28-401.9 of this code or such person's failure to ensure that workers have certificates of fitness required pursuant to this code or applicable rule or any person's violation of the provisions of section 3314.4.3.1 of the New York city building code.
13. A violation of any provision of chapter 4 of this title for engaging in any business or occupation without a required license or other authorization.
  - 13.1. The minimum civil penalty that shall be imposed for a violation of section 28-408.1 or section 28-410.1 of this code and the minimum fine that shall be imposed for a violation of such sections shall be two thousand five hundred dollars for the first violation and five thousand dollars for each subsequent violation.
14. Any person who knowingly permits or causes a violation of paragraph 3314.4.5 or paragraph 3314.4.6 of subdivision 3314.4 of section BC 3314 of the building code.
15. A violation of sections 3303.4.5 and 3303.4.6 of the building code.
16. A violation of section 28-210.3 that involves more than one dwelling unit or a second or subsequent violation of section 28-210.3 by the same person at the same dwelling unit or multiple dwelling.

**§28-201.2.2 Specified major violations.** The commissioner shall classify the following violations as major violations:

1. A violation of section 28-210.1 or 28-210.2 other than a violation that is directed to be classified as immediately hazardous.
2. Failure to perform required façade, retaining wall, elevator and boiler inspections, or tests, structural inspections of buildings and structures that are potentially compromised as defined in section 28-217.1, and to file required reports within the applicable time period.
3. Failure to provide the notice required by section 3314.1.1 of the New York city building code.
4. A violation of the zoning resolution by any person for causing damage to or removing a tree within a Special Natural Area District, as defined in the zoning resolution.
  - 4.1. The fine or civil penalty for a violation described in item 4 shall be not less than seven hundred fifty dollars for each tree damaged or removed.
5. Notwithstanding the provisions of section 28-204.2 of this code, a violation of item 3 or item 4 of section 1008.1.3.5 of the New York city building code except that no penalty for such violation shall be imposed if the respondent corrects the condition constituting the violation and files a certificate with the department that the condition has been corrected within ninety days from the date set forth in the notice of violation. It shall be an affirmative defense that the nonconforming security grille was installed prior to July 1, 2011.
  - 5.1. The fine or civil penalty for a violation described in item 5 shall be not less than two hundred fifty dollars for the first offense and not less than one thousand dollars for each subsequent offense.

**§28-201.2.3 Specified lesser violations.** The commissioner shall classify the following violations as lesser violations:

1. A violation of item 5 of section 1110.1 or of section 1110.2 of the New York city building code, or a violation of section 28-313.1 or 28-313.2 of the administrative code of the city of New York.

**§28-201.3 Methods of enforcement.** The commissioner may use any of the methods set forth in this code to enforce compliance with this code, the 1968 building code, the zoning resolution, other laws or rules enforced by the department and orders of the commissioner issued pursuant thereto including but not limited to:

1. Proceedings for the recovery of civil penalties for immediately hazardous, major and lesser violations before the environmental control board or other administrative tribunal.
2. Civil judicial proceedings for the recovery of civil penalties or injunctive relief or both for immediately hazardous, major and lesser violations.
3. Criminal judicial proceedings for the imposition of criminal fines or imprisonment or both for immediately hazardous, major and lesser violations.
4. The issuance and enforcement of peremptory orders for immediately hazardous, major and lesser violations.
5. The issuance of a commissioner's request for correction of an unlawful use or condition or order to correct an unlawful use or condition.
6. Other special remedies as set forth in this code, the zoning resolution or other law or rule.

**§28-201.3.1 Issuance.** Officers and employees of the department and of other city agencies designated by the commissioner shall have the power to issue summonses, appearance tickets, orders and notices of violation based upon violations of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department, orders, and requests for corrective action.

**§28-201.4 Aggravating and mitigating factors.** Civil penalties and criminal fines and imprisonment shall be imposed within the ranges set forth in this code or as otherwise specified in this code or other law, with due regard for mitigating and aggravating factors.

## ARTICLE 202 CIVIL PENALTIES

**§28-202.1 Civil penalties.** Except as otherwise specified in this code or other law, violations of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department shall be punishable by civil penalties within the ranges set forth below:

1. For immediately hazardous violations, a civil penalty of not less than one thousand dollars nor more than twenty-five thousand dollars may be imposed for each violation. In addition to such civil penalty, a separate additional penalty may be imposed of not more than one thousand dollars for each day that the violation is not corrected. The commissioner may by rule establish such specified daily penalties.
2. For major violations, a civil penalty of not more than ten thousand dollars may be imposed for each violation. In addition to such civil penalty, a separate additional penalty may be imposed of not more than two hundred fifty dollars for each month that the violation is not corrected. The commissioner may by rule establish such specified monthly penalties.
3. For lesser violations, a civil penalty of not more than five hundred dollars may be imposed for each violation.

**§28-202.2 Continuing violations.** Notwithstanding the assessment of daily penalties, each day that a violation continues shall be a separate and distinct offense.

**ARTICLE 203**  
**CRIMINAL PENALTIES**

**§28-203.1 Criminal fines and imprisonment.** Except as otherwise specified in this code or other law, violations of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department shall be punishable by criminal fines and imprisonment within the ranges set forth below:

1. Every person convicted of violating a provision of this code, the 1968 building code, the zoning resolution or other law or rule enforced by the department or an order of the commissioner issued pursuant thereto that is classified by the commissioner or the code as an immediately hazardous violation shall be guilty of a misdemeanor punishable by a fine of not more than twenty-five thousand dollars or by imprisonment of not more than one year or by both such fine and imprisonment.
2. Every person convicted of violating a provision of this code, the 1968 building code, the zoning resolution or other law or rule enforced by the department or an order of the commissioner issued pursuant thereto that is classified by the commissioner or the code as a major violation shall be guilty of a violation punishable by a fine of not more than ten thousand dollars or imprisonment for not more than 15 days or both such fine and imprisonment.
3. Every person convicted of violating a provision of this code, the zoning resolution or other law or rule enforced by the department or an order of the commissioner issued pursuant thereto that is classified by the commissioner or the code as a lesser violation shall be guilty of a violation punishable by a fine of not more than five hundred dollars.

**§28-203.2 Continuing violations.** In the case of continuing violations each day's continuance shall be a separate and distinct offense.

**ARTICLE 204**  
**ENVIRONMENTAL CONTROL BOARD**

**§28-204.1 General.** Any person who shall violate or fail to comply with any of the provisions of this code, the 1968 building code, the zoning resolution or other laws or rules enforced by the department or with any order issued pursuant thereto shall be liable for a civil penalty that may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable before the board. Such notice of violation may be issued by employees of the department or of other city agencies designated by the commissioner and may be served by such employees or by a licensed process server.

**§28-204.2 Order to certify correction.** Each such notice of violation shall contain an order of the commissioner directing the respondent to correct the condition constituting the violation and to file with the department electronically or in such other manner as the department may authorize by rule a certification that the condition has been corrected. Unless otherwise provided by rule, such order shall require that violations classified as major or lesser be corrected within 30 days from the date of the order, that violations classified as immediately hazardous be corrected forthwith. Such order shall also require that certification of the correction of the violation shall be filed with the department in a manner and form and within such period of time as shall be established by the department. In any proceeding before the environmental control board, no civil penalty shall be imposed for a lesser violation if the respondent complies with the commissioner's order to correct and to certify correction of the violation within the applicable time period. However, such violation may serve as a predicate for purposes of assessing aggravating factors attributable to multiple offenses.

**§28-204.3 Failure of proof.** In any proceeding before the environmental control board, if the board finds that the commissioner has failed to prove the violation charged, the order requiring the respondent to correct the condition constituting the violation and to file a certification of correction shall be deemed dismissed.

**§28-204.4 Failure to certify the correction of a violation.** Failure to comply with an order of the commissioner issued pursuant to section 28-204.2 or pursuant to any provision of law or rule enforced by the department in effect at the time the order was issued to correct and to certify correction of a violation within the applicable time period shall be a violation of this code for which penalties may be imposed in addition to the penalties that may be or have been imposed for the violation referred to in such order. Upon application, for good cause, the commissioner may extend the time for filing the certification of correction of a violation, but not for more than 30 days for each extension.

**§28-204.5 False statements in certification of correction.** For the purposes of this section 28-204.5, if the environmental control board finds that a certification of correction filed pursuant to section 28-204.2 contained material false statements relating to the correction of a violation, such certification of correction shall be null and void and the penalties set forth in this code for the violation may be imposed as if such false certification had not been filed with and accepted by the department. It shall be an affirmative defense that the respondent neither knew nor should have known that such statements were false.

**§28-204.6 Tax lien.** Enforcement of environmental control board judgments against owners for certain building code violations. Notwithstanding any provision of law to the contrary, an environmental control board judgment against an owner for a building code violation with respect to a private dwelling, a wooden-framed single room occupancy multiple dwelling, or a dwelling with a legal occupancy of three or fewer dwelling units shall constitute a tax lien on the property named in the violation with respect to which such judgment was rendered, as hereinafter provided. Such liens shall be entered and enforced as provided in this section 28-204.6.

**§28-204.6.1 Record of unpaid judgments.** There shall be filed in the office of the department a record of all such unpaid judgments. Such records shall be kept by tax lot and block number and shall be accessible to the public during business hours. An entry of a judgment on the records of the department shall constitute notice to all parties.

**§28-204.6.2 Lien.** All such unpaid judgments shall constitute a lien upon the property named in the violation with respect to

which such judgment was rendered when the amount shall have been definitely computed as a statement of account by the department, and the department shall file such statement with the department of finance for entry against the property. Such lien shall have a priority over all other liens and encumbrances except for the lien of taxes and assessments. However, no lien created pursuant to this section 28-204.6 shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless the requirements of section 28-204.6.1 are satisfied.

**§28-204.6.3 Notice.** A notice, stating the amount due and the nature of the charge, shall be mailed by the department of finance to the last known address of the person whose name appears on the records of the department of finance as being the owner or agent of the property or as the person designated by the owner to receive tax bills or, where no name appears, to the property, addressed to either the “owner” or the “agent.”

**§28-204.6.4 Mailing.** Such notice mailed by the department of finance pursuant to this section 28-204.6.4 shall have stamped or printed thereon a reference to section 204.6.

**§28-204.6.5 Failure to pay charge.** If such charge is not paid within 30 days from the date of entry, it shall be the duty of the department of finance to receive interest thereon at the same rate as unpaid real property taxes, to be calculated to the date of payment from the date of entry.

**§28-204.6.6 Enforcement of lien.** Such charge and the interest thereon shall continue to be, until paid, a lien on the property. Any remedy or procedure available for the enforcement of tax liens against such property, including, but not limited to, any sale of a tax lien or any foreclosure of a tax lien, shall be available with respect to such tax lien. In addition, such tax lien may be satisfied in accordance with the provisions of section 1354 of the real property actions and proceedings law.

**§28-204.6.7 Validity of lien.** In any proceeding to enforce or discharge a lien created pursuant to this section 28-204.6, the validity of the lien shall not be subject to challenge based on the lawfulness of the judgment, except as provided in this section 28-204.6.

**§28-204.6.8 Challenge.** No such challenge may be made except by the owner of the property or a mortgagee or lienor whose mortgage or lien would, but for the provisions of this section 28-204.6, have priority over the department’s lien.

**§28-204.6.9 Notice to mortgagees and lienors.** Notwithstanding the foregoing provisions, no such judgment shall be entered and enforced as a tax lien against any property unless at the time of the issuance of the notice of violation a copy of such notice was also served on all mortgagees and lienors of record of such property by mail addressed to the recorded addresses of such mortgagees and lienors.

**§28-204.6.10 Non-exclusive remedy.** The procedures provided in this section 28-204.6 for the enforcement of environmental control board judgments against owners shall be in addition to any other methods provided under any other provision of law for the enforcement of such judgments.

## **ARTICLE 205**

### **CIVIL JUDICIAL PROCEEDINGS**

**§28-205.1 Civil judicial enforcement.** The owner, lessee, person in charge, or occupant of any building, structure, premises, equipment or part thereof, where a violation of this code, the 1968 building code, the zoning resolution or of other laws or rules enforced by the department or any order issued by the commissioner shall exist or the agent, architect, builder, contractor, engineer, or any other person who commits or assists in any such violation or who maintains any building, structure, premises, equipment or part thereof where any such violation shall exist shall be subject to an action or proceeding to restrain, correct or abate such violation, or to compel compliance with such order. Upon request of the commissioner, the corporation counsel may institute judicial actions or proceedings seeking such relief. In addition to any other remedies, in any such action or proceeding the defendant or respondent shall be subject to the payment of civil penalties as provided in this code.

**§28-205.1.1 Corporation counsel.** Such actions and proceedings may be instituted by the corporation counsel in the name of the city in any court of competent jurisdiction in the city and shall be given preference over pending causes therein. In such actions or proceedings, the city may apply for restraining orders, preliminary injunctions or other provisional remedies, with or without notice; and no undertakings shall be required as a condition to the granting or issuing of any such order, injunction or remedy, or by reason thereof. No court shall lose jurisdiction of any action or proceeding hereunder by reason of a plea that the title to real estate is involved if the object of the action is to recover a penalty for the violation of any of the provisions of this code.

**§28-205.1.1.1 Naming the building as a defendant.** The corporation counsel shall name as defendants the building, structure, or premises where the violation shall exist 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 building, structure, or premises.

**§28-205.1.1.2 In rem jurisdiction over the building.** In rem jurisdiction over the building, structure, or premises where the violation shall exist shall be complete by affixing the summons to the door of the building, structure, or premises 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 building, structure, or premises. 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.

**§28-205.1.1.3 Service on other defendants.** Defendants, other than the building, structure, or premises where the violation shall exist, shall be served with the summons as provided in the civil practice law and rules.

**§28-205.1.2 Presumptive evidence.** In any action or proceeding founded upon a claim by the commissioner that any law or rule enforceable by the department has been violated, or that a lawful order issued by such commissioner has not been complied with,

the following presumptions shall apply:

**§28-205.1.2.1 Presumption of commissioner certificate.** A certificate in writing by the commissioner, or his or her authorized representative, shall be presumptive evidence of any matter stated therein.

**§28-205.1.2.2 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 applicable, shall be presumed to be the owner thereof.

**§28-205.1.2.3 Presumption of employment or agency.** Whenever there is evidence that a person was the manager, operator, or supervisor or, in any other way, in charge of the premises, at the time the violation occurred, such evidence shall be presumptive that he or she was an agent or employee of the owner and/or lessee of the building, structure, or premises.

**§28-205.1.3 Costs.** In no case shall the department, or any officer or employee thereof, be liable for costs in any such action or proceeding; and officers and employees of the department, acting in good faith and without malice, shall be free from liability for acts done in any such action or proceeding.

**§28-205.1.4 Lien.** Any judgment rendered in any such action or proceeding shall be and become a lien upon the premises named in the complaint in such action or proceeding, if any, the lien to date from the time of filing a notice of pendency in the office of the clerk of the county in which the premises is located, and to have priority before any mortgage or other lien existing prior to such filing, except tax and assessment liens.

**§28-205.1.5 Notice of pendency.** The notice of pendency referred to in this section 28-205.1.5 may be filed at the commencement of judicial proceedings; provided the commissioner may deem such action to be necessary. Any notice of pendency filed pursuant to the provisions of this code may be vacated and cancelled of record upon an order of a justice of the court in which such action or proceeding was instituted or is pending, or upon the consent in writing of the corporation counsel. The clerk of the county where the notice is filed is hereby directed and required to mark any such notice of pendency, and any record or docket thereof, as vacated and cancelled of record upon the presentation and filing of a certified copy of such order or consent.

## **ARTICLE 206 CRIMINAL JUDICIAL PROCEEDINGS**

**§28-206.1 Criminal judicial enforcement.** The owner, lessee, person in charge, or occupant of any building, structure, premises, equipment or part thereof, where a violation of this code, the 1968 building code, the zoning resolution or of other laws or rules enforced by the department or any order issued by the commissioner shall exist or the agent, architect, builder, contractor, engineer, or any other person who commits or knowingly assists in any such violation or who maintains any building, structure, premises, equipment or part thereof where any such violation shall exist shall be guilty of a criminal offense punishable by a fine or imprisonment or both a fine and imprisonment in accordance with this code.

**§28-206.1.1 Other penalties.** The criminal penalties provided by this code shall be in addition to or alternative to any civil sanctions authorized to be imposed for an unlawful use or condition cited in this code.

## **ARTICLE 207 PEREMPTORY ORDERS**

**§28-207.1 Contents and service.** Peremptory orders issued by the commissioner shall contain a description of the building, structure, premises, equipment or subject matter affected, and shall be designated by address where applicable. Such orders may be served personally or by posting at the premises followed by regular mail, by any officer or employee of the department, or by any person authorized by the commissioner.

**§28-207.2 Stop work orders.** Whenever the commissioner finds that any building work is being executed in violation of the provisions of this code, the 1968 building code, the zoning resolution or of any laws or rules enforced by the department, or in a dangerous or unsafe manner, the commissioner or his or her authorized representative may issue a stop work order.

**§28-207.2.1 Issuance.** Upon issuance of a stop work order by the commissioner, all work shall immediately stop unless otherwise specified. Such order may require all persons to forthwith vacate the premises pursuant to the provisions of section 28-207.4 and may also require such work to be done as, in the opinion of the commissioner, may be necessary to remove any danger therefrom. The police department or other law enforcement agency or officer shall, upon the request of the commissioner, assist the department in the enforcement of this section 28-207.2. The stop work order may be given verbally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons executing the work. A verbal order shall be followed promptly by a written order and shall include the reason for the issuance of the stop work order.

**§28-207.2.2 Unlawful continuance.** No person shall with knowledge or notice of a stop work order allow, authorize, promote, continue or cause to be continued any work covered by the stop work order, except such work that may be required by order of the commissioner.

**§28-207.2.3 Rescission.** Upon application, the commissioner shall rescind the stop work order when the condition that gave rise to its issuance has been corrected and either all civil penalties or criminal fines assessed for any violation of such order have been paid or, where a violation is pending, security for the payment of such penalties or fines has been posted in accordance with department rules, or where the stop work order was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such stop work order.

**§28-207.2.4 Mandatory stop work orders.** The commissioner shall issue stop work orders in the circumstances set forth below. Upon issuance of such stop work order, the work shall immediately stop and shall not resume until the stop work order is rescinded by the department. The stop work order shall not be rescinded less than two business days after the date of issuance of such order. Nothing in the following sections shall be construed to limit the commissioner's power to issue stop work orders in other circumstances.

**§28-207.2.4.1 Scaffold safety.** A stop work order shall be issued if a permit holder or person directly in charge of any suspended scaffold supported by c-hooks or outrigger beams fails to notify the department prior to the installation or use of such equipment as required by section 3314.1.1 of the New York city Building code and either:

1. The rigger does not hold a license required by this code, or
2. The workers lack certificates of fitness as required by this code or applicable rule, or
3. The rigger failed to file with the department satisfactory evidence of insurance required by this code.

**§28-207.2.5 Tampering.** It shall be unlawful to tamper with, remove or deface a written posted stop work order from the location where it was affixed unless and until such stop work order has been rescinded by the commissioner. The owner or other person in control of the location shall ensure that the stop work order remains posted until rescinded by the commissioner.

**§28-207.2.6 Penalties.** In addition to the penalties provided for in this chapter, any person who fails to comply with a stop work order shall be liable for a civil penalty in the amount of five thousand dollars for the initial violation and ten thousand dollars for every subsequent violation, to be paid to the department prior to the rescission of the stop work order; provided, however, this shall not apply to any work performed to remedy an unsafe or hazardous condition as authorized by order of the commissioner.

**§28-207.3 Public nuisance.** Whenever any building, structure, place or premises is or may be perilous to life or property by reason of the nature or condition of its contents, its use, the overcrowding of persons therein, defects in its construction, or deficiencies in fire alarm, fire extinguishing equipment or fire escape equipment, or by reason of any condition in violation of law or order of the commissioner, the commissioner may declare that the same, to the extent that the commissioner may specify, is a public nuisance and may order the same to be removed, sealed, abated, repaired, altered or otherwise improved.

**§28-207.3.1 Rescission.** Upon application, the commissioner shall rescind such order when the condition that gave rise to its issuance has been corrected or where the declaration was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such order.

**§28-207.4 Vacate order.** In case any order to remedy a condition that is or may be imminently perilous, dangerous or detrimental to life, public safety or property, issued by the commissioner is not complied with, or the commissioner determines that an emergency exists requiring such action, the commissioner may order and immediately cause any building, structure, place or premises to be vacated. The vacate order may be given verbally or in writing to the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons executing the work. A verbal order shall be followed promptly by a written order and shall include the reason for the issuance of the vacate order.

**§28-207.4.1 Basis for vacate.** Conditions for which the commissioner may issue a vacate order shall include but shall not be limited to the following conditions that create a hazard to life, public safety, or property:

1. Danger of structural failure;
2. Danger of façade failure;
3. Inadequate fire protection, detection, or suppression;
4. Inadequate egress; or
5. Improper storage of hazardous materials, combustible or toxic.

**§28-207.4.2 Enforcement of vacate order.** All orders issued pursuant to this section 28-207.4 shall be posted upon the premises and made available to the public. Upon the posting of an order upon the premises, officers and employees of the police department, the department, and other authorized officers and employees of the city shall immediately act upon and enforce such order. The police department shall provide all reasonable assistance to the department and other authorized officers and employees necessary to carry out the provisions of this section 28-207.4. A copy of the vacate order may be filed with the county clerk of the county in which the premises is located and shall be filed with the department and accessible to the public. Such filing shall be notice of the vacate order to any subsequent owner and such owner shall be subject to such order.

**§28-207.4.3 Rescission.** Upon application, the commissioner may rescind the vacate order when the condition that gave rise to its issuance has been corrected and either all civil penalties or criminal fines assessed for any violation of such order have been paid or, where a violation is pending, security for the payment of such penalties or fines has been posted in accordance with department rules, or where the vacate order was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such vacate order.

**§28-207.4.4 Tampering.** It shall be unlawful to remove or deface a written posted vacate order from the location where it was affixed unless and until such vacate order has been rescinded by the commissioner. The owner or other person in control of the location shall ensure that the vacate order remains posted until rescinded by the commissioner.

**§28-207.5 Cease use orders for service equipment.** Whenever the commissioner determines that the operation of any service equipment is or may be dangerous to life, health or safety, the commissioner may issue a cease use order requiring such equipment to be shut down or sealed or otherwise made inoperable. Upon the issuance of such order a tag or notice shall be affixed to the device warning that the equipment is unsafe for operation. It shall be unlawful to operate such equipment or to remove or deface such tag unless and until the cease use order is rescinded by the commissioner. The owner or other person in control of the service equipment shall ensure that such tag or notice remains affixed until rescinded by the commissioner.

**§28-207.5.1 Rescission of cease use order.** Upon application, the commissioner may rescind the cease use order when the condition that gave rise to its issuance has been corrected and either all civil penalties or criminal fines assessed for any violation of such order have been paid or, where a violation is pending, security for the payment of such penalties or fines has been posted in accordance with department rules or where the cease use order was issued in error or conditions are such that it should not have been issued. The commissioner may by rule require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such cease use order.

## **ARTICLE 208**

### **COMMISSIONER'S REQUEST FOR CORRECTIVE ACTION**

**§28-208.1 Commissioner's request for corrective action.** As an alternative to the issuance of an order or notice of violation, the commissioner may issue a request for corrective action to any person responsible for any claimed unlawful use or condition in any premises. Each request for corrective action shall have the commissioner's signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature, including an electronic signature.

**§28-208.1.1 Contents and delivery.** The request for corrective action shall contain a description of the building, structure, premises, equipment or subject matter affected, shall be designated by address, where applicable, shall be sent by regular mail or upon consent by electronic means to the owner, lessee, person in charge, or occupant of the building, structure, premises, equipment or to any person responsible for the unlawful use or condition at the last known address for such person. Requests for corrective action may be sent to a managing agent or other person specifically designated by the owner to attend to such requests on behalf of the owner. Each such request shall describe the unlawful use or condition, call upon the person addressed to correct it and to inform the department of the action taken. A time for correction or response shall be specified. A request for corrective action may be given orally, followed within a reasonable time by a writing as described in this section 28-208.1.1. A request for corrective action shall provide notice that failure to respond to such a request may result in the imposition of a fee for any subsequent inspection that results in the issuance of a notice of violation for the condition.

**§28-208.1.2 Public record.** The department shall keep a record, available to the public, of requests for corrective action issued pursuant to this article. The record of a request for corrective action shall be reflected as withdrawn upon submission to the department of a statement in a form prescribed by rule indicating that the use or condition has been corrected or did not exist or following an inspection by the department that confirms correction. A request for corrective action may be issued in response to a complaint or inspection.

**§28-208.1.3 Other remedies not precluded.** Nothing in this article shall be construed to limit the power of the commissioner to take any other action authorized by this code with respect to any unlawful use or condition including, but not limited to, the commencement of an action or proceeding in a court or before the environmental control board or other administrative tribunal or the issuance of a peremptory order or to require that the commissioner issue a request for corrective action as a prerequisite to any other enforcement action.

## **ARTICLE 209**

### **COMMISSIONER'S ORDER TO CORRECT UNLAWFUL USE OR CONDITION**

**§28-209.1 General.** The commissioner may issue an order to the persons responsible for any unlawful use or condition in any premises directing such person to correct the unlawful use or condition. Each such order shall have the commissioner's signature affixed thereto; but the commissioner may authorize any subordinate to affix such signature, including an electronic signature.

**§28-209.2 Contents and service of order.** All orders issued by the commissioner shall contain a description of the building, structure, premises, equipment or subject matter affected, and shall be designated by address where applicable. All such orders shall be served by regular mail or, upon consent, electronically. Such orders may be served by any officer or employee of the department, or by any person authorized by the commissioner. An order may be given orally, followed within a reasonable time by a written order as described in this section 28-209.2. Failure to comply with a commissioner's order within the stated time period shall be a violation of this code punishable by civil penalties or criminal fines and imprisonment as set forth in this code. Proof of compliance with a commissioner's order shall consist of certification as prescribed by the rules of the department.

## **ARTICLE 210**

### **ILLEGAL CONVERSIONS**

**§28-210.1 Illegal residential conversions.** It shall be unlawful, except in accordance with all requirements of this code, to convert any dwelling for occupancy by more than the legally authorized number of families or to assist, take part in, maintain or permit the maintenance of such conversion. Upon the finding of such violation and the imposition of punishment for such violation as set forth in this code the department or if applicable the environmental control board shall forward to the internal revenue service, the New

York state department of taxation and finance and the New York city department of finance the name and address of the respondent or defendant, the address of the building or structure with respect to which the violation occurred and the time period during which the violation was found to have existed.

**§28-210.2 Illegal industrial or manufacturing conversions.** Except as otherwise provided by section 42-03 of the zoning resolution and the multiple dwelling law, it shall be unlawful, except in accordance with all requirements of this code, to convert to residential use any space legally authorized for occupancy for industrial or manufacturing use or to assist, take part in, maintain or permit the maintenance of such conversion. Upon the finding of such violation and the imposition of punishment for such violation as set forth in this code the department, or, if applicable, the environmental control board shall forward to the internal revenue service, the New York state department of taxation and finance and the New York city department of finance the name and address of the respondent or defendant, the address of the building or structure with respect to which the violation occurred and the time period during which the violation was found to have existed.

**§28-210.3 Illegal conversions of dwelling units from permanent residences.** Except as otherwise provided in subdivision 16 of section 67 of the multiple dwelling law and section 120 of the multiple dwelling law, dwelling units within (i) a class A multiple dwelling as defined in section 27-2004 of the administrative code, (ii) occupancy group J-2 as described in section 27-265 of the administrative code or (iii) occupancy group R-2 as described in section 310.1.2 of the New York city building code shall be used only for permanent residence purposes as required pursuant to subparagraph a of paragraph eight of subdivision a of section 27-2004 of the administrative code. It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or to convert for use or occupancy such multiple dwelling or dwelling unit for other than permanent residence purposes. For the purposes of this section a conversion in use of a dwelling unit may occur irrespective of whether any physical changes have been made to such dwelling unit. The provisions of this section shall not be construed to prohibit lawful accessory uses permitted pursuant to the zoning resolution or the lawful conversion of dwellings in accordance with applicable law.

## **ARTICLE 211 FALSE STATEMENTS**

**§28-211.1 False statements in certificates, forms, written statements, applications, reports, or certificates of correction.** It shall be unlawful for any person to knowingly or negligently make or allow to be made a material false statement in any certificate, professional certification, form, signed statement, application, report or certification of the correction of a violation that is either submitted directly to the department or that is generated with the intent that the department rely on its assertions.

**§28-211.1.1 Rebuttable presumption.** In any proceeding that relates to a false statement in a certification of correction of a violation filed in compliance with section 28-204.2 if an inspection made within six months after the filing of the certification finds a condition constituting a violation that is the same as the condition described in the notice of violation with respect to which such certification was filed, there shall be a rebuttable presumption that the condition described in such notice of violation continued and is the same condition found in the inspection.

**§28-211.1.2 Additional penalty for false statements.** In addition to any other penalty provided by law, the commissioner may refuse to accept an application or other document submitted pursuant to or in satisfaction of a requirement of this code or of a rule of any agency promulgated there under that bears the signature of a person who has been found, after a hearing at the office of administrative trials and hearings pursuant to the department's rules, to have knowingly or negligently made a false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this code or of a rule of any agency promulgated there under.

**§28-211.2 Falsely impersonating a department officer, inspector, or employee.** It shall be unlawful for any person to falsely represent himself or herself as an officer, inspector or employee of the department, or as acting under the authority of the department, or without authority to use, wear or display a shield or other insignia or emblem such as is worn by such officer, inspector or employee.

## **ARTICLE 212 ABATEMENT OF PUBLIC NUISANCE CAUSED BY CERTAIN ILLEGAL OCCUPANCIES**

**§28-212.1 Abatement of public nuisances caused by illegal commercial or manufacturing occupancy in residence districts and certain other zoning districts.** Any building or part thereof or vacant land that is located in a residence zoning district and that is occupied for a use not permitted in such district in violation of the zoning resolution, without a certificate of occupancy authorizing such use, is hereby declared to be a public nuisance. Any building or part thereof or vacant land that is located in a C-1 or C-2 commercial zoning district and that is occupied for a commercial or manufacturing use indicated under use group 16, 17, or 18 as described in sections 32-25, 42-14, and 42-15 of the zoning resolution, in violation of the zoning resolution, without a certificate of occupancy authorizing such use is hereby declared to be a public nuisance.

**§28-212.2 Order of closure.** If a building or part thereof or vacant land in which such a nuisance occurs is not occupied primarily as a residence, the commissioner may, in addition to or as an alternative to any other remedy under any other provision of law, after notice and the opportunity for a hearing in accordance with this article, order the closing of such building or part thereof or such vacant land to the extent necessary to abate the nuisance.



**§28-212.3 Notice of hearing.** A notice of hearing with respect to an order of closure shall be served on the owner and mortgagee of record of such building or part thereof or such vacant land and on any person alleged to be occupying such building or part thereof or such vacant land at which the nuisance is located.

**§28-212.4 Service of notice of hearing.** Service may be made on the owner by delivering such notice to the owner or to an agent of the owner or to a person of suitable age and discretion at the residence or place of business of the owner or, if upon reasonable application such delivery cannot be completed, by affixing such notice in a conspicuous place at the owner's place of business or residence or by placing it under the entrance door at either of such locations or by delivering such notice to a person employed by the owner to work at or to manage or maintain the premises at which the nuisance is located and, in all instances except personal delivery upon such owner by mailing the notice of hearing as follows:

**§28-212.4.1 Mailing to owner's registered address.** To the person registered with the department of housing preservation and development as the owner or agent of the premises, at the address filed with such department in compliance with article two of subchapter four of chapter two of title twenty-seven of the administrative code;

**§28-212.4.2 Mailing to billing address.** To the person designated as owner of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

**§28-212.4.3 Mailing to recorded address.** To the person in whose name the real estate affected by the order of the commissioner is recorded in the office of the city register or the county clerk as the case may be at the address set forth on the recorded instrument.

**§28-212.4.4 Service on corporate owner.** Service may be made on an owner that is a corporation pursuant to section 306 of the business corporation law; however, service upon a corporation shall be deemed to have been completed 45 days following service upon the secretary of state.

**§28-212.4.5 Service on mortgagees.** Service may be made upon mortgagees of record by mailing such notice to the mortgagees at the address set forth on the recorded instrument.

**§28-212.4.6 Service on occupants.** Service may be made upon an occupant by delivering such notice to the occupant or to a person employed by the occupant to work at or to manage or maintain the premises at which the nuisance is located; or by affixing such notice to the premises at which the nuisance is located in a conspicuous place or by placing a copy under the entrance door of such premises and mailing a copy of such notice to the occupant at such premises; and in all instances except personal delivery upon such occupant, by mailing the notice of hearing to the occupant at the premises at which the nuisance is located.

**§28-212.4.7 Proof of service.** Proof of service pursuant to section 28-212.4.1 through 28-212.4.6 shall be filed with the commissioner.

**§28-212.5 Conduct of hearing by office of administrative trials and hearings.** The hearing shall be conducted by the office of administrative trials and hearings. The administrative law judge assigned to hear the matter shall submit his or her proposed findings of fact and recommended decision to the commissioner. If based on such recommended decision, proposed findings of fact, and the record of the hearing the commissioner determines that the building or part thereof or vacant land is a public nuisance, pursuant to this article, the commissioner may issue an order of closure. Such order shall not bar legally required ingress or egress for residential occupancy of parts of the building that are not subject to the order of closure.

**§28-212.6 Lack of knowledge not a defense.** At such hearing it shall not be a defense that the owner, occupant, lessor, lessee, mortgagee, or other person having an interest in the property lacked knowledge of or did not acquiesce or participate in the creation or continuation of the public nuisance.

**§28-212.7 Closure not an act of possession.** A closure ordered by the commissioner pursuant to this article shall not constitute an act of possession, ownership, or control by the city over the closed premises.

**§28-212.8 Posting of order of closure.** An order of closure shall be posted at the building or part thereof or vacant land that is the subject of such order, and shall be mailed to the record owner of such premises, and any record mortgagee at the address for such person set forth in the recorded instrument, and to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property. A copy shall also be filed with county clerk or register of the county in which such premises are located. Such filing shall be notice of the order to any subsequent owner and such owner shall be subject to such order.

**§28-212.9 Enforcement of order of closure.** On the tenth business day after the posting of such order and upon the written directive of the commissioner, police officers and authorized employees of the department shall act upon and enforce such order by sealing, padlocking, or otherwise preventing access to the premises in a manner that will not bar legally required ingress or egress for residential occupancy of parts of the building that are not subject to the closure order.

**§28-212.10 Rescission of order of closure.** If at any time after the issuance of such order, the owner, mortgagee, or other person having an interest in the property provides assurance, in a form satisfactory to the commissioner, that the illegal commercial or manufacturing use of the premises has been discontinued and will not reoccur, or such owner, mortgagee, or other person establishes

that the premises may be lawfully occupied for such use, the commissioner shall rescind the closure order. If such order is rescinded, the commissioner shall, upon request of such owner, mortgagee, or other person, provide a copy of such rescission, which may be filed with the county clerk or register of the county in which such premises are located. No such re-occupancy shall be permitted without a certificate of occupancy or other department records authorizing such use.

**§28-212.11 Violation of closure order.** It shall be unlawful for any person to use or occupy or to permit any other person to use or occupy any building or part thereof or vacant land that has been sealed, padlocked, or otherwise closed pursuant to an order of the commissioner. It shall be unlawful to mutilate or remove a posted order of the commissioner. Intentional disobedience or violation of any provision of a closure order shall be punishable as an immediately hazardous violation.

## **ARTICLE 213**

### **PENALTY FOR WORK WITHOUT A PERMIT**

**§28-213.1 Department penalty for work without a permit.** In addition to any penalties otherwise authorized by law pursuant to article 202 and the rules of the department, whenever any work for which a permit is required pursuant to this code has been performed without a permit, a penalty shall be imposed by the department as provided in this article.

**§28-213.1.1 Penalty for work without permit on one or two-family dwelling.** Where work has been performed without a permit on a one-family or two-family dwelling the penalty shall equal four times the amount of the fee payable for the permit. Where only part of the work has been performed without a permit, the penalty shall be reduced proportionately according to the amount of work still to be performed at the time a permit is issued. Notwithstanding the foregoing, no such penalty shall be less than five hundred dollars.

**§28-213.1.2 Penalty for work without permit on other than one or two-family dwelling.** The penalty for work without a permit on buildings other than one or two-family dwellings shall be fourteen times the amount of the fee payable for such permit. Where only part of the work has been performed without a permit, the penalty shall be reduced proportionately according to the amount of work still to be performed at the time a permit is issued. Notwithstanding the foregoing, no such penalty shall be less than five thousand dollars.

**§28-213.2 Waiver.** Such penalty and the permit fee shall be payable by the owner of the building on which the unpermitted work was performed. A waiver or reduction of such penalty shall be available to a subsequent bona fide purchaser of the premises pursuant to department rules.

**§28-213.3 Payment of penalty required before issuance of permit.** No permit shall be issued for work described in this article until the penalty assessed by the department pursuant to this article has been paid.

**§28-213.4 Procedure.** The department shall adopt a rule setting forth a procedure for assessment of penalties pursuant to this article.

## **ARTICLE 214**

### **ORDER TO SEAL, SECURE AND CLOSE**

**§28-214.1 Order to seal, secure and close.** If the commissioner determines such action is necessary to the preservation of life and safety the commissioner may order a building subject to a vacate order to be sealed, secured and closed.

**§28-214.1.1 Definition.** For the purpose of this article, “sealed” and “sealed, secured and closed” shall mean the use of any means available to render the building, structure or part thereof inaccessible, including but not limited to the use of a padlock or cinder blocks.

**§28-214.1.2 Hearing.** Such order to seal, secure and close shall contain notice of the opportunity for a hearing with respect to such order to determine if the order was properly issued in accordance with the provisions of this article. Such hearing shall be conducted by the commissioner, or in the commissioner’s discretion, by the office of administrative trials and hearings or the environmental control board. If the matter is referred to such office or board, the hearing officer shall submit his or her findings of fact and a recommended decision to the commissioner. The hearing shall be held within three business days after the receipt of the written request of an owner, lessor, lessee, or mortgagee for such hearing. The commissioner shall render a decision within three business days after such hearing is concluded or findings of fact and a recommendation are submitted.

**§28-214.1.3 Service of seal, secure and close order.** Such order issued pursuant to this article shall be served as follows: It shall be mailed to the record owner of such premises; any record mortgagee of such premises at the address for such person as set forth in the recorded instrument; and if reasonably ascertainable, the person designated as owner’s agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property. A copy shall also be filed with the county clerk of the county in which such premises is located. Such filing shall be notice of the order to any subsequent owner and such owner shall be subject to such order.

**§28-214.1.4 Rescission of seal, secure and close order.** An order issued pursuant to this article shall not be rescinded unless the owner, lessor, lessee or mortgagee seeking such rescission provides assurance, in a form satisfactory to the commissioner, that the conditions that caused the issuance of such order have been corrected and will not reoccur. If such order is rescinded, upon the request of the owner, lessor, lessee or mortgagee, the commissioner shall provide a certified copy of such rescission, which may

be filed with the county clerk of the county in which such premises is located.

**§28-214.1.5 Expenses of enforcing seal, secure and close orders.** The expenses attending the execution of any and all orders duly made by the department shall respectively be a several and joint personal charge against each of the owners or part owners, and each of the lessees and occupants of the building, structure, enclosure, place or premises to which such order relates, and in respect to which such expenses were incurred; and also against every person or body who was by law or contract bound to do that in regard to such building, structure, enclosure, place or premises which such order requires. Such expenses shall also be a lien on all rent and compensation due, or to become due, for the use of any building, structure, place or premises, or any part thereof, to which such order relates, and in respect to which such expenses were incurred.

**§28-214.1.6 Notice of seal, secure and close order to community.** The commissioner shall give written notice of the closing of any building, structure, enclosure, place or premises pursuant to this article, and any subsequent actions taken with respect thereto, as soon as practicable, to the borough president of the borough within which the closing has occurred; the council member representing the district within which the closing has occurred; and the local community board. On January first of each year, the commissioner shall submit a report to the council, setting forth the number of closings made in the previous year, the locations of such closings, and the nature and use of the premises closed. The commissioner shall, in addition, as soon as practicable after a building, structure, enclosure, place or premises has been closed, make and publish a report of said closing in a manner calculated to quickly notify the local community in which such closing occurred. The commissioner shall also make and publish a report of any premises reopened pursuant to his or her permission under this article. Failure to comply with this section 28-214.1.6 shall not invalidate any action taken by the commissioner pursuant to this article.

**§28-214.2 Access to sealed premises.** The commissioner shall allow access to the premises sealed, secured and closed pursuant to this article to an owner, or a lessor, lessee or mortgagee upon the following conditions:

1. The submission of a written affirmation, satisfactory to the commissioner, that such person or persons will commence or cause to be commenced without delay all work necessary to correct the conditions stated in the vacate order or otherwise to make the premises meet all applicable laws and rules and will complete such work within a period of time and in a manner to be approved by the commissioner;
2. The submission of a written affirmation or other proof satisfactory to the commissioner describing the steps that have been taken and will be taken in the future to ensure that the premises will be used or operated in a lawful manner and specifying such lawful use;
3. If a license, permit, certificate of operation or certificate of occupancy is necessary for such lawful use, the submission of a written affirmation or other proof, satisfactory to the commissioner, describing the steps that have been taken and will be taken in the future to ensure that such premises will be used or operated in compliance with any law requiring such license, permit, certificate of operation or certificate of occupancy; and
4. If the premises are leased and the person making the affirmations described above in items 1, 2 and 3 is not such lessee, the commissioner may also require any authorized person seeking access to submit a written affirmation or other proof that proceedings to enable such person to take actions necessary to ensure compliance with the affirmations submitted by such authorized person pursuant to items 1, 2 and 3 have been commenced.

**§28-214.3 Additional penalties for harm or injury from violation of order to seal, secure and close.** Notwithstanding any other law, rule, or regulation, any person, corporation, partnership, association or any other legal entity who permits a building, structure, enclosure, place or premises, or any part thereof, to be unlawfully occupied or used in contravention of an order of the commissioner pursuant to this article, or who negligently fails to prevent or prohibit such unlawful occupancy or use, shall be liable for a civil penalty of not more than one million dollars, if any other person suffers serious physical injury, as defined in section ten of the penal law, or death in the building, structure, place or premises or any part thereof subject to such order as a result of such unlawful occupancy or use. If more than one person suffers serious physical injury or death, such penalty shall be recoverable for each person suffering serious physical injury or death. Such penalty shall be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction. 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 caused by the violation;
2. The history of violations by the defendant at such premises, or any other premises, of laws or rules enforced by the department;
3. The degree of willfulness, recklessness, or negligence displayed by the defendant in committing the subject violation;
4. The defendant's financial resources; and
5. The defendant's good faith efforts to cure the subject violation, including efforts to obtain entry to or possession of the premises in order to do so.

**§28-214.3.1 Payment by city.** In the event that the family of any person seriously injured or who has died as the result of any unlawful occupancy or use described in this section 28-214.3 is unable to collect a judgment recovered in a civil action for personal injury or wrongful death against a defendant who has violated this section 28-214.3 because of the insolvency of such defendant, the city may, in its discretion, pay to such injured person or the family of such deceased person an amount, as hereinafter provided, collected from such defendant in an action relating to the same injury or death commenced by the

corporation counsel against such defendant pursuant to this section 28-214.3.1.

**§28-214.3.2 Limitations.** Payments pursuant to section 28-214.3.1 shall be made as a matter of grace and shall be in such amounts and in accordance with such standards and procedures as shall be established by the mayor, provided, however, that any payment made pursuant to section 28-214.3.1 shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which such action is based; loss of earnings or support resulting from such injury; burial expenses not exceeding two thousand five hundred dollars of a person who died as a result of such unlawful occupancy or use described in this section 28-214.3; and the unreimbursed cost of repair or replacement of articles of essential personal property lost, damaged or destroyed as a direct result of such unlawful occupancy or use. In no event shall the payment made to any person exceed the amount of such person's uncollected judgment for personal injury or wrongful death and in no event shall the total amount paid to any number of persons with such uncollected judgments against a single defendant exceed the actual amount collected by the city from such defendant in an action under this subdivision.

## **ARTICLE 215**

### **EMERGENCY POWERS OF THE COMMISSIONER**

**§28-215.1 Emergency work.** Notwithstanding any other provisions of law, if the commissioner determines that a structure or premises or any part thereof poses an imminent danger of serious physical injury or death to the public or is in imminent danger of collapse and the exigency of the situation is such that any delay may cause further danger to the public safety, then the commissioner may direct the commissioner of housing preservation and development or the department of citywide administrative services, or other authorized agency to perform or arrange the performance of the emergency work on, or demolition of such structure or premises or part thereof or such other work as deemed by the commissioner to make it safe.

**§28-215.1.1 Lien for emergency work.** The expenses of the city in performing emergency work on any structure or part of such structure pursuant to this article shall constitute a debt recoverable from the owner and a lien upon the land and any part of such structure that was not demolished. Every such lien shall have priority over all other liens and encumbrances on the premises except for the lien of taxes and assessments. Except as otherwise provided by rule of the affected agency, the agency incurring such expense shall be governed by the procedures set forth in article eight of subchapter five of the housing maintenance code with respect to the enforcement of such debt and lien against all types of structures, including those authorized to be occupied or otherwise occupied for residential, commercial, and manufacturing purposes.

**§28-215.2 Stopping work and securing structures.** See section 28-207.2.

**§28-215.3 Vacating structures.** See section 28-207.4.

**§28-215.4 Violations of protective measures during construction or demolition.** During the construction or demolition of a structure, the commissioner shall notify the owner of the structure affected of any failure to comply with any of the provisions of this code that concern the protection of life, safety and property during construction or demolition. Unless the owner so notified proceeds immediately to comply with the orders of the commissioner, the commissioner shall have full power to correct the violation. All expenses incurred therefore shall become a lien on the property pursuant to section 28-112.9.

**§28-215.5 Investigation of accidents or other emergency conditions.** When necessary to conduct an investigation of any occurrence affecting building or construction safety, the commissioner may seize or impound equipment, building material, and portions of the affected building or premises for examination and testing. The police department or other authorized law enforcement agency shall cooperate with the commissioner upon request and shall provide a suitable place for the deposit of such items.

**§28-215.6 Closing streets temporarily.** The commissioner may, when necessary for the public safety, temporarily close the sidewalks, streets, structures or places adjacent to a structure or part thereof, and the police commissioner or commissioner of the department of transportation, any of his or her subordinates shall enforce all orders or requirements made by the commissioner, when so requested by the commissioner.

**§28-215.7 Recovery of bodies from wrecked structures.** Where any persons are known or believed to be buried under the ruins of any fallen structure or part thereof in the city, the commissioner shall cause an examination of the premises to be made for the recovery of the injured and bodies of the dead. Whenever, in making such examination, it shall be necessary to remove any debris from the premises, other city agencies shall cooperate with the commissioner in carrying out the purposes of this section 28-215.7, and shall provide suitable and convenient places for the deposit of such debris.

**§28-215.8 Non-compliance with orders; execution of work by department.** Upon the failure to comply with any order of the commissioner within the time limited thereby, and subject to the provisions of article 216, any work required to be executed by such order may be executed by the commissioner through the officers, agents or contractors of the department or other authorized agency; and the city shall be reimbursed promptly for all costs and expenses of such work. Such costs and expenses shall become a lien upon the premises involved and named in the commissioner's order, which may be enforced in accordance with the provisions of section 28-112.9 of this code.

## **ARTICLE 216**

### **UNSAFE BUILDINGS**

**§28-216.1 Conditions constituting an unsafe building or structure.** Any building, structure or part thereof described in this article shall be deemed an unsafe building and shall be demolished or removed or made safe and secure as provided herein.

**§28-216.1.1 Compromised structures.** Any structure or premises or part of a structure or premises that from any cause may at any time become dangerous or unsafe, structurally or as a fire hazard, or dangerous or detrimental to human life, health or safety, shall be demolished and removed or made safe and secure.

**§28-216.1.2 Vacant buildings.** Any vacant building not continuously guarded or not sealed and kept secure against unauthorized entry shall have all openings sealed in a manner approved by the commissioner, and it shall be the duty of the owner thereof promptly to make any repairs that may be necessary for the purpose of keeping such building sealed and secure.

**§28-216.2 Record and notice of unsafe building, structure or premises.** The department shall cause a report to be filed on an unsafe building, structure or premises. The report shall describe the nature of the occupancy of the structure and the nature of the unsafe condition and be made a record of the department.

**§28-216.3 Notice of survey and summons and order.** The owner, executor, administrator, mortgagee, lessee or any other person who may have a recorded vested or recorded contingent interest in the unsafe building, structure or premises, shall be served with a notice of survey and summons containing a description of the unsafe building, structure or premises and an order requiring such building be sealed, secured, repaired, shored, or demolished and removed as may be deemed necessary by the commissioner.

**§28-216.3.1 Content.** Such notice of survey and summons shall require the person thus served immediately to certify to the commissioner his or her acceptance or rejection of the order. The notice of survey and summons shall further notify said person(s) that upon his or her refusal or neglect to comply with any of the requirements of this provision, a survey of the building or premises named in such notice will be made at a time and place therein named. The notice of survey and summons shall also state that if, pursuant to the survey, it is found that the building, structure, or premises referred to therein is unsafe or dangerous by the surveyors, their report of survey will be placed before the supreme court for trial at a time and place named in such notice.

**§28-216.4 Method of service.** The notice of survey and summons and order shall be served in accordance with the civil practice law and rules of the state of New York.

**§28-216.5 Owner abatement of unsafe or dangerous conditions.** If the person served with a notice and order pursuant to section 28-216.4 shall immediately certify his or her assent to the securing or removal of such unsafe building, structure or premises condition, such person shall be allowed a period of time as determined by the commissioner, or his or her designee, within which to commence and complete the abatement of the unsafe or dangerous condition. Such person shall employ sufficient labor and assistance to secure or remove such conditions as expeditiously as possible.

**§28-216.6 Survey.** A survey of the building or premises shall be conducted as follows:

**§28-216.6.1 Identity of surveyors.** The survey shall be made by three competent persons, of whom one shall be the commissioner or his or her designee; another shall be a registered design professional appointed by a recognized professional organization or by the commissioner; and the third shall be a registered design professional appointed by the person served with a notice pursuant to section 28-216.4. If the person served with such notice shall neglect or refuse to appoint such surveyor, the other two surveyors shall make the survey. In case they disagree, they shall appoint a third person to take part in such survey, who shall be a registered design professional of at least 10 years' practice, whose decision shall be final.

**§28-216.6.2 Posting report of survey.** A copy of the report of the survey shall be posted on the structure that is the subject thereof by the persons holding the survey, immediately on their issuing such report.

**§28-216.6.3 Compensation of surveyors.** The registered design professional appointed by the respective professional organization or by the commissioner, as hereinbefore provided, who may act on any survey called in accordance with the provisions of this section 28-216.6, and the third surveyor who may have been called in the case of disagreement provided for in this section 28-216.6, shall each be paid a sum to be determined by rule to be promulgated by the department.

**§28-216.6.4 Cost of survey.** Any costs incurred by the city in connection with the survey shall become money due and owing to the city as part of the return of precept and judgment provided for in section 28-216.9, 28-216.10 and 28-216.11 of this code or pursuant to lien provided for in section 28-112.9 of this code.

**§28-216.7 Court proceeding.** Whenever the report of survey shall recite that the building, structure or premises surveyed is unsafe or dangerous, the corporation counsel or his or her designee shall, at the time specified in the notice, place such notice and report before a justice of the court named in the notice. The report of survey shall be in writing and constitute the issues to be placed before the court for trial. The purpose of the trial shall be to determine whether the unsafe building, structure, or premises shall be vacated and sealed, secured, shored, or demolished and removed.

**§28-216.7.1 Precedence of proceeding.** The unsafe building proceeding shall have precedence over every other business of such supreme court. The trial on the issues in the unsafe building proceeding shall be held without delay, at the time specified in the notice, and shall be held by a justice of the court or by a referee, whose decision or report in the matter shall be final.

**§28-216.7.2 Precept to abate.** If the justice or referee determines the building, structure or premises that is the subject of the report of survey is unsafe or dangerous, such justice or referee trying the case shall immediately issue a precept directed to the commissioner authorizing the commissioner forthwith to vacate pursuant to section 28-207.4, if necessary, and to seal, secure, shore, or demolish and remove the unsafe building, structure or premises named in such report. The precept shall be effective for a period of three years from the date of issuance.

**§28-216.7.3 Notice of pendency.** A notice of pendency shall be filed in accordance with the following procedure:

1. The notice of pendency shall be filed in accordance with the Civil Practice Law and Rules of the State of New York and shall be filed in the office of the clerk of the county where the property affected by such action, suit or proceeding is

located. Such notice of pendency may be filed at any time after the service of the notice described in section 28-216.3.

2. Any notice of pendency filed pursuant to the provisions of this section 28-216.7.3 that has not expired may be vacated and cancelled of record upon an order of a justice of the court in which such suit or proceeding was instituted or is pending, or upon the consent in writing of the corporation counsel. The clerk of the county where the notice is filed is hereby directed and required to mark any such notice of pendency, and any record or docket thereof, as vacated and cancelled of record upon the presentation and filing of a certified copy of such order or consent.

**§28-216.8 Execution of precept.** A precept issued pursuant to section 28-216.7.2 shall be executed in accordance with the procedure set forth in sections 28-216.8.1 through 28-216.8.3.

**§28-216.8.1 Work by the department.** Upon receiving a precept under the provisions of section 28-216.7.2, the commissioner shall execute such precept, as therein directed, and may employ such labor and assistance and furnish such materials as may be necessary for that purpose. The commissioner or his or her designee shall direct the commissioner of citywide administrative services or the department of housing preservation and development or other authorized agency to perform work in accordance with the precept. Such work shall be performed by or under the direction of citywide administrative services in accordance with the provisions of section 4-204 of the administrative code, or the department of housing preservation and development, or such other authorized agency.

**§28-216.8.2 Owner application to perform work.** The owner of such unsafe building, structure, or premises, or any party interested therein, if such person applies to the commissioner immediately upon the issuing of such precept, shall be allowed to perform the requirements of such precept at his or her own cost and expense, if the performance shall be done immediately and in accordance with the requirements of such precept and other applicable laws and rules and such other requirements as the commissioner shall impose.

**§28-216.8.3 Modification of precept.** The commissioner or his or her designee shall have authority to modify the requirements of any precept when such commissioner or designee shall be satisfied that such change will secure the safety of such structure or premises equally well.

**§28-216.8.3.1 Upon application.** The commissioner shall also have authority to modify the requirements of any precept upon application to such commissioner in writing by the owner of the unsafe building, structure, or premises, or such owner's authorized representative. In addition, upon application to modify the requirements of any precept to seal, shore or demolish the structure by the commissioner of housing preservation and development, citywide administrative services or such other authorized agency, the commissioner or designee shall have authority to modify such precept accordingly when the commissioner shall be satisfied that such change will secure the safety of such structure or premises equally well.

**§28-216.8.3.2 Notice.** After a determination to modify the precept is made by the commissioner, written notice of such determination shall be sent by regular mail to the owner and applicant for the modification if other than the owner, at his or her last known address.

**§28-216.8.3.3 Failure of owner to perform work.** If no action in accordance with the modified precept is undertaken by the owner or applicant for modification within the time period provided in the modification following the granting of such application, the commissioner may direct the department of housing preservation and development or the department of citywide administrative services or other authorized agency to execute the original precept, provided however that prior to such execution, notice shall be provided by regular mail to the owner of the unsafe building, structure or premises and applicant for the modification if other than the owner, at his or her last known address. The owner shall continue to have the right to request the commissioner to modify the requirements of the precept prior to the execution thereof.

**§28-216.8.4 Interference prohibited.** It shall be unlawful for any person to interfere, obstruct or hinder the commissioner or the commissioner of citywide administrative services, housing preservation and development, or other authorized agency, or any person who, acting under the authority conferred on such person by such commissioner, in performing the work authorized by a precept issued out of any court or modified in accordance with section 28-216.8.3, or the work ordered by the commissioner in accordance with such precept under the provisions of section 28-216.8.3.3.

**§28-216.8.5 Enforcement.** The police commissioner shall enforce such orders or requirements when requested by the commissioner and shall likewise enforce same at the request of the commissioner of citywide administrative services, housing preservation and development, or other authorized agency, with respect to work performed by or under the direction of such commissioner pursuant to the provisions of section 28-216.8.3.3.

**§28-216.9 Return of precept and reimbursement of city.** Upon compliance with any precept issued to the commissioner in a proceeding under this article, the commissioner may make return thereof, with an endorsement of the action there under and the costs and expenses thereby incurred, to the justice of the court from which such precept issued. Such justice shall then tax and adjust the amount endorsed upon such precept, and shall adjust and allow the disbursements of the proceeding, including but not limited to the preliminary expenses of searches, service of the notice of survey and summons on interested parties, surveys thereof, and costs of executing the precept, which shall be inserted in the judgment in such proceeding. Such justice shall then render judgment for such amount and for the sale of the premises named in such notice, together with all the right, title and interest that the person named in such notice had in the lot, ground or land upon which such structure was placed, at the time of the filing of a notice of pendency in such proceedings, or at the time of the entry of judgment therein, to satisfy such judgment in foreclosure of mortgages. Nothing in this article shall preclude the city from recovering such costs and expenses in any other lawful manner, including pursuant to sections 28-112.9, 28-216.10 and 28-216.11 of this code.

**§28-216.10 Judgment lien.** Any judgment rendered in an action or proceeding instituted under this article shall be and become a lien upon the premises named in such action or proceeding, such lien to date from the time of filing a notice of pendency in the office of the clerk of the county wherein the property affected by such action or proceeding, is located. Every such lien shall have priority before any mortgage or other lien as may exist prior to such filing except tax and assessment liens.

**§28-216.11 Tax lien.** Any costs and expenses incurred by any agency of the city pursuant to this article, including but not limited to the preliminary expenses of searches, service of the notice of survey and summons on interested parties, surveys thereof, and costs of executing the precept, shall be a debt recoverable from the owner of the premises and a lien upon the land and buildings upon or in respect to which such costs and expenses were incurred. Every such lien shall have priority over all other liens and encumbrances on the premises except for the lien of taxes and assessments. Except as otherwise provided by rule of the affected agency, the agency incurring such expense shall be governed by the procedures set forth in article eight of subchapter five of the housing maintenance code with respect to the enforcement of such debt and lien.

## **ARTICLE 217**

### **BUILDINGS AND STRUCTURES THAT ARE POTENTIALLY COMPROMISED**

**§28-217.1 Buildings and structures that are potentially structurally compromised.** For purposes of this article “potentially compromised” shall include a building or structure that has had an open roof for sixty days or longer, that has been shored and braced or otherwise temporarily safeguarded pursuant to an emergency declaration issued by the commissioner, that has been subject to a precept as a compromised structure under section 216.1.1 of this code or that may have suffered structural damage by fire or any other cause as determined by the commissioner.

**§28-217.1.1 Structural inspections of potentially compromised buildings or structures.** When a building or structure has become potentially compromised, the owner shall cause a structural inspection of such building or structure to be performed. Such inspection shall be performed within 60 days of the opening of the roof, within 60 days of the shoring and bracing or other temporary safeguards pursuant to an emergency declaration, or within 60 days of damage by fire or a determination by the commissioner that the building has suffered structural damage by other cause. A report of such inspection shall be filed with the department within 30 days thereafter in such form and detail and with provision for periodic monitoring of the building or structure as the commissioner may require.

**§28-217.1.2** Structural inspections shall only be performed by a registered design professional in good standing with the New York state department of education.

**§28-217.1.3** If a violation of any applicable statute, law, rule or regulation or any unsafe condition that poses a threat to the structural integrity of the building or to the public is found during the course of such inspection, the registered design professional performing the inspection shall immediately notify the department and the owner of such violation or unsafe condition by calling 311 and in writing.

**§28-217.1.4** An inspection of the buildings and structures subject to the inspection and filing requirements of section 28-216.12 shall be performed every year or, for a specified building or structure, within such other period as determined by the commissioner but not longer than two years, and shall continue until such time as the registered design professional documents and certifies that the building or structure is no longer potentially compromised and such certification is accepted by the commissioner.

**§28-217.1.5** The owner shall hire a registered design professional to perform a structural inspection of buildings and structures subject to section 28-217.1 prior to the issuance of a permit to alter, repair, demolish or enlarge such building or structure, except that the commissioner may waive such inspection if a structural inspection of the entire building or structure has been performed within the prior year.

**§28-217.1.6** Any owner of a building or structure shall notify the department in writing that such building or structure has become potentially compromised immediately after such owner knows or should have known of the condition. Such notice shall contain the name and business address of the owner of record of such building or structure and shall identify the building or structure by street address and tax block and lot. The notices required by this subdivision shall be in such form and manner as established by the commissioner by rule.

**§28-217.1.7** If an owner subject to the inspection and filing requirements of this section fails to file such report, the owner shall be liable for a civil penalty in an amount not less than two thousand dollars. In such a case, the department may cause a structural inspection to be conducted and a report filed.

## **ARTICLE 218**

### **SAFETY COMPLIANCE OFFICER**

**§28-218.1 Definition.** For purposes of this article, the terms "Safety Compliance Officer" and "SCO" shall mean a person whose presence is required by the commissioner pursuant to section 28-218.2 and who satisfies the qualifications of section 28-218.4.

**§28-218.2 Safety Compliance Officer.** In addition to any other remedies or penalties authorized by law, the commissioner in his or her discretion may require the presence of a SCO at any permitted site that has received immediately hazardous violations that the commissioner determines adversely affect public safety and require the presence of a SCO to protect public safety. In any circumstance where a SCO is required, the commissioner shall state in writing the circumstances necessitating the SCO, and the duration of the compliance monitoring and/or conditions that must be satisfied prior to the termination of the compliance monitoring.

**§28-218.3 Compliance monitoring.** The SCO shall monitor the operations related to the circumstances and conditions that the commissioner has identified pursuant to section 28-218.2 until the areas of concern set forth by the commissioner have been addressed as determined by the commissioner, but in no case shall any monitoring period exceed ninety days. For such purpose, the SCO and his or her employees shall be designated as authorized representatives of the commissioner with authority pursuant to section 28-103.13 of this code to enter upon and examine and inspect at all reasonable times any site, building or structure. In the event that the conditions set-out in the commissioner's determination, pursuant to section 28-218.2, to require a SCO have not been satisfied within the prescribed monitoring period, the commissioner may appoint another SCO, who shall be a different SCO than the initial SCO, to monitor operations for an additional period not to exceed ninety days.

**§28-218.4 Qualifications.** Safety Compliance Officers shall have experience in supervising the construction operations being monitored. They shall be an architect or engineer who has experience supervising construction projects in New York City, a licensed site safety manager or coordinator or other licensee of the department, or a special inspector as provided for in article 115 of this title. Safety Compliance Officers shall carry insurance as required by the department.

**§28-218.5 Cost of a Safety Compliance Officer.** The owner of the site where the services of the SCO have been required shall reimburse the department for all direct costs and any related administrative expenses incurred by the department in the operation of the SCO program provided for in this article. Reimbursement shall be made at such times as the department shall require, but in any event, before a temporary or permanent certificate of occupancy is issued for the building or structure that is being monitored. No permit shall be issued for the job site at which a SCO has been assigned if reimbursements for the cost of the monitor are outstanding for more than thirty days. The department shall adopt rules establishing a process for the resolution of disputes concerning the costs of the SCO.

**§28-218.6 The SCO shall document with photographs or other means any violation of the code.** The SCO shall submit an interim report, to be submitted at the midpoint of the appointment period, and a final report to the department in the manner and form prescribed by the commissioner. The department will share the results of these reports with the general contractor and provide the general contractor an opportunity to comment.

**§28-218.7 Records.** The SCO shall keep and maintain records relating to the services performed on behalf of the department in such manner and for such period of time as shall be established by the commissioner by rule or by direction of the commissioner.

## **ARTICLE 219**

### **FAILURE TO CERTIFY CORRECTION OF CERTAIN IMMEDIATELY HAZARDOUS VIOLATIONS**

**§28-219.1 Department penalty for failure to certify correction.** In addition to any penalties otherwise authorized by law pursuant to article 202 and the rules of the department, whenever any person fails to submit certification of correction of an immediately hazardous violation that poses a threat of imminent danger to public safety or property, as required by an order issued pursuant to section 28-204.2, a penalty shall be paid to the department in the amount of not less than one thousand five hundred dollars or more than five thousand dollars. No permit or certificate of occupancy shall be issued and no stop work order may be rescinded at the property named in the order until such penalty is paid to the department. Failure to pay such penalty shall not prevent the issuance of a permit for work to be performed pursuant to articles 215 or 216 of this chapter.

**§28-219.2 Reinspection.** Where an immediately hazardous condition has been identified as posing a threat of imminent danger to public safety or property and a violation has been issued, the commissioner shall re-inspect the condition that gave rise to the violation within 60 days of the date of the notice of a violation, unless:

1. A certification of the correction of the condition has been filed in the manner and form prescribed by the department;
2. The person to whom the violation has been directed has obtained an extension of time for filing the certificate of correction of the violation from the commissioner in accordance with section 28-204.4 and with any applicable rules of the department, and said extension of time to file has not yet expired; or
3. The condition has been corrected in the presence of the commissioner.

**§28-219.2.1 Continued noncompliance.** If, upon re-inspection, the commissioner determines the condition continues to pose a threat of imminent danger to public safety or property, and the person against whom the initial violation was directed is not in compliance with section 28-204.4, the commissioner shall issue an appropriate violation and shall issue a stop-work order, pursuant to section 28-207.2, or the commissioner shall, if the commissioner is unable to obtain access to the premises, request the corporation counsel to institute legal proceedings to compel correction of the violation and abate the condition or take such other action as is appropriate.

**§28-219.2.2 Inspections by the commissioner.** The commissioner shall continue to re-inspect any condition that has given rise to an immediately hazardous violation that poses a threat of imminent danger to public safety or property every 60 days, and shall follow the procedures described in items 1, 2 and 3 of section 28-219.2 until the condition has been found by inspection or certification to be corrected or abated.

**§28-219.3 False certifications of correction.** It shall be unlawful to prepare, file or offer for filing a certification of correction of an immediately hazardous condition, knowing that such certification contains a false statement or false information. Any person who prepares such a certificate shall be subject to prosecution under section 175.05 or 175.10 of the penal law. Any person who files such a certificate or offers such a certificate for filing shall be subject to prosecution under section 175.30 or 175.35 of the penal law. Nothing in this section shall be construed to limit, alter or affect the authority conferred by any other provision of this chapter or other law to bring criminal, civil or administrative actions or proceedings or other remedies for the preparation, filing or offering for filing of a certification of correction of an immediately hazardous condition containing a false statement or false information.