

This meeting is being held in accordance to Governor Cuomo's Executive Order and other Federal and State Orders that impact in-person attendance at public meetings, if applicable orders expire or are revoked before **the date of this meeting**, this will be an in-person meeting in City Hall, please check our website and Facebook for updates. Please submit your public comment via [email](#) or on our [website](#) by **12pm the day of the meeting**. These comments will be shared with members and/ or read for the record at the meeting. The meeting will be held using Zoom and streamed through the Albany Common Council's Facebook. To stream this video please visit: <https://www.facebook.com/albany.commoncouncil>. If we experience any technical difficulties on Facebook, the video will be streamed to [YouTube](#).



LAW, BUILDINGS, AND CODE ENFORCEMENT

Joseph Igoe, Chair

MEETING NOTICE

DATE: MONDAY, JUNE 14, 2021

TIME: 5:30PM

TOPICS OF DISCUSSION:

Local Law H of 2021 (As Amended 06/02/2021)

LOCAL LAW AMENDING CHAPTER 133A (BUILDING CONSTRUCTION AND HOUSING: SPECIAL PROVISIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO ISSUANCE OF NOTICES OF VIOLATIONS, PENALTIES, AND ENFORCEMENT OF STOP WORK AND UNSAFE AND UNFIT ORDERS UNDER THE NEW YORK STATE UNIFORM FIRE PREVENTION & BUILDING CODE AND ALBANY CITY CODE

Local Law I of 2021

LOCAL LAW REPEALING PARTS 4 (RESIDENTIAL OCCUPANCY PERMIT) AND 5 (RENTAL DWELLING REGISTRY) OF CHAPTER 231 (HOUSING) OF THE CODE OF THE CITY OF ALBANY AND ENACTING A NEW PART 4 OF SUCH CHAPTER ENTITLED "RENTAL OCCUPANCY PERMIT AND RENTAL DWELLING RESIDENCY" IN RELATION TO THE CITY'S RESIDENTIAL OCCUPANCY PERMIT AND RENTAL DWELLING REGISTRY PROGRAMS

PUBLIC COMMENT PERIOD: Yes

Council Member Anane introduced the following:

LOCAL LAW H OF 2021 (Amended 06/02/2021)

LOCAL LAW AMENDING CHAPTER 133A (BUILDING CONSTRUCTION AND HOUSING: SPECIAL PROVISIONS) OF PART II OF THE CODE OF THE CITY OF ALBANY IN RELATION TO ISSUANCE OF NOTICE OF VIOLATIONS, PENALTIES, AND ENFORCEMENT OF STOP WORK AND UNSAFE AND UNFIT ORDERS UNDER THE NEW YORK STATE UNIFORM FIRE PREVENTION & BUILDING CODE AND ALBANY CITY CODE

Be it enacted, by the Common Council of the City of Albany as follows:

Section 1. Chapter 133A (Building Construction and Housing: Special Provisions) of Part II (General Legislation) of the Code of the City of Albany is hereby amended as follows:

Article I General Provisions

§ 133A-1 Scope.

This chapter shall establish the procedures applicable to the manner of service of notices of violation, by whatever designation, ~~[provided in]~~ by the Chief Building Official as defined at Section 375-602 of the Albany City Code or their designee for the violation any provision of Chapter 133, Building Construction, [and Chapter 231, Housing, in the context of the enforcement of the requirements of those chapters of the] Chapter 171 (Electricity), Chapter 375, Unified Sustainable Development Ordinance, orders issued pursuant to Article 2B of the NYS Executive Law, Chapter 261 (Plumbing), State Uniform Fire Prevention and Building Code and of any other local or state law, order, regulation or directive, which the Chief Building Official is empowered to enforce. This chapter further shall establish the penalties applicable to a conviction of a violation of any of the provisions of ~~[Chapter 133 and Chapter 231]~~ the aforementioned laws, chapters, directives, and codes for which no other penalty is expressly provided therein.

Article II Service of Notices

§ 133A-2 Violations; Notices of violations of code; service of papers.

A. ~~[Service of notice. All notices issued pursuant to the provisions of Chapter 133 or Chapter 231 to restrain or remove any violation or to enforce compliance with any provision or requirement of such chapters may be served by:~~

(1) ~~— Delivering to an leaving a copy of the same with any person or persons violating, or who may be liable under any of the several provisions of such chapters;~~

(2) ~~— By registered or certified mail to the most current address on file in the Rental Dwelling Registry under § 231-143, if any;~~

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

- ~~(3) If none is on file, to the most current address on file in the City Department of Assessment and Taxation; or~~
- ~~(4) If such person or persons cannot be served by any of the aforesaid methods, after diligent search shall have been made for him or them, then such notice or order may be served by posting the same in a conspicuous place upon the premises where such violation is alleged to exist, or to which such notice may refer, or which may be deemed unsafe or dangerous, which shall be equivalent to personal service of said notice upon all parties for whom such search shall have been made; or~~
- ~~(5) By any other method of service authorized pursuant to Article 3 of the Civil Practice Law and Rules.]~~

Notices of Violation. Whenever it shall appear to the satisfaction of the Chief Building Official or their designee that the condition of any building, structure, or parcel, or part thereof is in violation of any of law described at Section 133-1A, above., the Chief Building Official is hereby authorized to serve upon the person or persons responsible for the violation, including but not limited to the owner of any such building or structure, or the architect, contractor or any other person in charge thereof, either as owner or agent, a notice of violation, in writing, which shall:

- (1) set forth the parcel upon which the violation was discovered;
- (2) specify the condition or conditions of such parcel, including all improvements thereon, which is in violation of the provisions of this code;
- (3) direct that the violation be discontinued within such time prescribed in the notice as determined by the Chief Building Official or their designee as reasonable for such discontinuance under the circumstances;
- (4) bear the official seal of the City of Albany and/or Buildings Department;
- (5) include contact information for the Buildings Department; and
- (6) provide notice to the subject of the notice of violation of the penalties of non-compliance with said notice as set forth in this chapter.

- B. ~~[Notice by mail to owners residing out of state. If the person or persons or any of them to whom said notice is directed do not reside in the State of New York and have no known place of business therein, the same may be served by delivering to, and leaving with, such person or persons, or either of them, a copy of said notice, or if said person or persons cannot be found within said state after diligent search, then by posting a copy of the same in the manner as aforesaid and depositing a copy thereof in a post office in the City of~~

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

~~Albany, enclosed in a sealed wrapper addressed to said person or person at his or their last known place of residence, with the postage paid thereon; and said posting and mailing a copy of said notice shall be equivalent to personal service of said notice.]~~ Service of notice. All notices issued pursuant to the provisions of Chapter 133 or Chapter 231 to restrain or remove any violation or to enforce compliance with any provision or requirement of such chapters may be served by:

- (1) Delivering to and leaving a copy of the same with any person or persons violating, or who may be liable under any of the several provisions of such chapters; or
- (2) By registered or certified mail to the most current address on file in the Rental Dwelling Registry under § 231-143; or
- (3) An address provided to the Department of Buildings in the preceding three years as a contact address for the property and/or owner allegedly in violation; or
- (4) To the most current address on file in the City Department of Assessment and Taxation; or
- (5) The official address for the service of process provided by the owner to the NYS Department of State; or
- (6) If such person or persons cannot be served by any of the aforesaid methods, after diligent search shall have been made for him or them, then such notice or order may be served by posting the same in a conspicuous place upon the premises where such violation is alleged to exist, or to which such notice may refer, or which may be deemed unsafe or dangerous, which shall be equivalent to personal service of said notice upon all parties for whom such search shall have been made; or
- (7) By any other method of service authorized pursuant to Article 3 of the Civil Practice Law and Rules.

C Failure to comply with notice. Any person who shall fail to comply with a written notice of violation of the Chief Building Official or their designee within the time fixed for compliance therewith, and any owner of any such building or structure, or the architect, contractor or any other person in charge thereof, either as owner or agent who have not complied with any lawful order, notice, directive, permit or certificate of the Chief Building Official or their designee made thereunder shall be guilty of a violation punishable as set forth in 133A-3(A) of this Code.

D. Aggravated failure to comply with notice. Any person who shall fail to comply with a written notice of a violation of the Chief Building Official or their designee within the time fixed for compliance therewith, and any owner of any such building or structure, or the

architect, contractor or any other person in charge thereof, either as owner or agent who have not complied with any lawful order, notice, directive, permit or certificate of the Chief Building Official or their designee made thereunder shall be guilty of a violation punishable as set forth in 133A-3(B) of this Code where such failure to comply is committed with a wonton disregard for the health and safety of the occupants of the subject building or the public at large.

Article III Penalties

§ 133A-3 Penalties for offenses.

A. ~~[Building Code]~~ General Penalties

- (1) When a person is ~~[convicted of]~~ found liable for failing to comply with any provision of [Chapter 133 or of] any law described at Section 133-1A, above, and orders of the Chief Building Official issued pursuant thereto, such person shall be subject to a fine of not more than \$1,000 per day of violation ~~[or imprisonment not exceeding one year, or both such fine and imprisonment].~~
- (2) The term “person,” as used in this section, shall include the owner, occupant, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation directly or indirectly in control of the building or part thereof.
- (3) Each day of violation shall be deemed to constitute a separate offense.
- (4) Fines levied shall constitute civil forfeitures to the City of Albany.

B. ~~[Housing Code]~~ Elevated Penalties.

~~{(1) Any person convicted of a violation of the Housing Code (inclusive of noncompliance of administrative requirements), as defined under Part 3 or Part 4 of Chapter 231, shall be punished according to the following schedule:~~

- ~~(a) First offense: a fine of not less than \$250 nor more than \$400 per day the violation remains unabated or five days' imprisonment, or 50 hours of community service, or any combination thereof.~~
- ~~(b) Second offense for the same violation regarding the same person and property committed within three years after the first offense: a fine of not less than \$500 nor more than \$800 per day the violation remains unabated, or 10 days' imprisonment or 100 hours of community service, or any combination thereof.~~

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

- (c) ~~Third offense for the same violation regarding the same person and property committed within three years after the first offense: a fine of not less than \$1,000 nor more than \$1,600 per day the violation remains unabated, or 15 days' imprisonment, or 150 hours of community service, or any combination thereof.~~
- (d) ~~The dispositions of matters prosecuted under this section shall be reported to the Common Council in the quarterly report.~~
- (2) ~~All persons convicted of a violation of the Housing Code, as defined under Part 5 of Chapter 231, shall be fined not less than \$250 nor more than \$1,600.~~
- (3) ~~The term "person," as used in this section, shall include the owner, occupant, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation directly or indirectly in control of building of part thereof.~~
- (4) ~~Each day of violation shall be deemed to constitute a separate offense.~~
- (5) ~~Fines levied shall constitute civil forfeitures to the City of Albany.~~
- (6) ~~Any unpaid fines of an owner of premises shall be subject to the placement and recordation of a lien by the City of Albany against such premises.]~~
- (1) When a person is found liable of failing to comply with any provision of any law described at Section 133-1A, above, and orders of the Chief Building Official issued pursuant thereto, with a wonton disregard for the health and safety of the occupants of the subject building or the public at large, such person shall be subject to a fine of not more than \$1,000 per day of violation or imprisonment not exceeding one year, or both such fine and imprisonment.
- (2) The term "person," as used in this section, shall include the owner, occupant, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation directly or indirectly in control of the building or part thereof.
- (3) Each day of violation shall be deemed to constitute a separate offense.
- (4) Fines levied shall constitute civil forfeitures to the City of Albany.

Section 2. Chapter 133A (Building Construction and Housing: Special Provisions) of Part II (General Legislation) of the Code of the City of Albany is hereby further amended by adding a new Article IV, to be entitled "Peremptory Orders and Fees," which will read as follows:

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

Article IV Peremptory Orders and Fees

§ 133A-4 Peremptory Orders and fees.

A. Stop Work Orders. Whenever the Chief Building Official or their designee finds that work or activity is being or has been performed in violation law described at Section 133-1A, above the Chief Building Official or their designee may issue a stop work order.

(1) Issuance. Upon issuance of a stop work order by the Chief Building Official or their designee, all work shall immediately stop unless otherwise specified. Such order may require all persons to forthwith vacate the premises pursuant to subsection B of this section and may also require such work to be done as, in the opinion of the Chief Building Official or their designee, may be necessary to remove any danger therefrom. The police department or other law enforcement agency or officer shall, upon the request of the Chief Building Official or their designee, assist the Buildings Department in the enforcement of a stop work order. 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.

(2) Unlawful continuance. No person with knowledge or notice of a stop work order shall 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 Chief Building Official or their designee.

(3) Rescission. Upon application, the Chief Building Official or their designee 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 Chief Building Official may require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to such stop work order except where doing so would impose such a fee on party making a good faith and legal request for service.

(4) Tampering. It shall be unlawful to tamper with, remove or deface a written posted stop work order from the location where it was affixed by the Chief Building Official or their designee unless and until the Chief Building Official or their designee has so permitted its removal. The owner or other person in control of the location shall ensure that the stop work order remains posted until rescinded by the Chief Building Official. The Chief Building Official may require the payment of a fee in the amount of the expense of additional inspection and administrative expense related to the re-posting of such stop work order.

B. Unsafe and Unfit Orders. Whenever any building, structure, place or premises or portion thereof 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 any law described at Section 133-1A, above, the Chief Building Official or their designee may declare that the same, to the extent that the Chief Building Official or their designee may specify, is unsafe and unfit and may order the same to be removed, sealed, abated, repaired, altered or otherwise improved.

(1) Issuance. Upon issuance of an unsafe and unfit order by the Chief Building Official or their designee, the owner, lessee or occupant of the property involved, or to the agent of any of them, or to the person or persons responsible for the condition giving rise to the unsafe and unfit order shall undertake to immediately remedy the condition giving rise to the unsafe and unfit order in the manner determined by the Chief Building Official or their designee to be reasonably necessary to remove the danger at the subject property including vacating the property and ensuring it remains vacant. Such order may require all persons to forthwith vacate the premises pursuant to the provisions of this section. The police department or other law enforcement agency or officer shall, upon the request of the Chief Building Official or their designee, assist the Buildings Department in the enforcement of an unsafe and unfit order. The unsafe and unfit 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 responsible for the condition giving rise to the unsafe and unfit order however, the Chief Building Official or their designee shall undertake to post a warning at the subject property reasonably calculated to advise those who would enter the building of the existence of the unsafe and unfit order.

(a) Order to Vacate. 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 Chief Building Official or their designee is not complied with, or the Chief Building Official or their designee determines that an emergency exists requiring such action, the Chief Building Official or their designee may order and immediately cause any building, structure, place or premises or portion thereof 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.

(b) Enforcement of vacate order. All vacate orders issued pursuant to this section shall be posted upon the premises and made available to the public. The police department shall provide all reasonable assistance to the Buildings Department and other authorized officers and employees necessary to carry out the provisions of this section. A copy of the vacate order may be filed with the Albany County Clerk. Such filing shall be notice

of the vacate order to any subsequent owner and such owner shall be subject to such order.

- (c) Unlawful continuance. No person with knowledge or notice of an unsafe and unfit order shall allow, authorize, promote, continue or cause to be continued any activity prohibited by the unsafe and unfit order, except such work that may be required by order of the Chief Building Official or their designee.
- (2) Rescission. Upon application, the Chief Building Official or their designee shall rescind the unsafe and unfit 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 unsafe and unfit order was issued in error or conditions are such that it should not have been issued. The Chief Building Official may require the payment of a fee in the amount of the expense of additional inspection and response by City of Albany personnel and administrative expense, including expenses related to the relocation and/or rehousing of individuals effected by the unsafe and unfit order related to such unsafe and unfit order except where doing so would impose such a fee on party making a good faith and legal request for service.
- (3) Tampering. It shall be unlawful to tamper with, remove or deface a written posted unsafe and unfit order from the location where it was affixed unless and until the Chief Building Official or their designee has so permitted its removal. The owner or other person in control of the location shall ensure that the unsafe and unfit order remains posted until rescinded by the Chief Building Official. The Chief Building Official may require the payment of a fee in the amount of the expense of additional inspection and response by City of Albany personnel and administrative expense related to the re-posting of such stop work order.

Section 3. This ordinance shall take effect upon final passage, public hearing, and filing with the Secretary of State.

**APPROVED AS TO FORM THIS
3RD DAY OF JUNE, 2021**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: Robert Magee, Deputy Corporation Counsel
Laura Gulfo, Assistant Corporation Counsel
Brett Williams, Senior Assistant Corporation Counsel

Re: Request for Common Council Legislation
Supporting Memorandum

Date: June 2, 2021

Sponsor: Council Member Anane

LOCAL LAW H of 2021 (As Amended 06/02/2021)

TITLE

LOCAL LAW AMENDING CHAPTER 133A (BUILDING CONSTRUCTION AND HOUSING: SPECIAL PROVISIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO ISSUANCE OF NOTICE OF VIOLATIONS, PENALTIES, AND ENFORCEMENT OF STOP WORK AND UNSAFE AND UNFIT ORDERS UNDER THE NEW YORK STATE UNIFORM FIRE PREVENTION & BUILDING CODE AND ALBANY CITY CODE

GENERAL PURPOSE OF THE LEGISLATION

Changes to §133A-1 & 2

This language clarifies the form of notices of violation issued by the Department of Buildings & Regulatory Compliance, the manner in which they are issued, updates this section to explicitly provide for the enforcement of the Unified Sustainability Ordinance by the Buildings Department, and creates an aggravated violation which reserves the possibility of jail for extreme malfeasance.

§133A-1, Notices of Violation, Scope: The existing language constrained the use of this section to the NYS Building Code and certain provisions of the city code. This broadens its application and allows the use of this notice of violation for the enforcement of all laws which the Chief Building Official is empowered to enforce.

§133A-2(A), Notices of violations of code; service of papers. Notice of Violation: This specifies the parties which may receive or be subject to a notice of violation. The previous wording referred only to “persons responsible” for a violation, which courts have deemed to include only the owner of the building. The proposed change specifies that the notice of violation may be directed to the owner, their agent, contractors, and property managers. It also sets out what a notice of violation ought to include.

§133A-2(B), Notices of violation of code; service of papers. Service of Notice: This provision sets out how notices of violation are to be issued. The changes here provide flexibility to the Department in determining where to send notices of violation, allowing them to be sent to the address provided in the ROP, the address provided by the property owner to the assessor's office for contact purpose, the most current address provided by the property owner to the Department, or, where the owner is a corporate entity, to the address on file with the NYS Department of State. The previous language required a search of the rental dwelling registry for the most recent address on the properties rental dwelling registration, which was often out of date or belonged to a previous owner and didn't allow for service upon corporate owner by its registered address for service with the Secretary of State. With this clarification, the provision regarding on how individuals outside of the state must be issued NOV's has been deleted as duplicative.

§133A-2(C), Notices of Violation, Violations; Notices of Violation; Service of Papers, Failure to comply with notice: The proposed legislation will add this Paragraph to the Section of the Code. This provision makes it a violation to fail to comply with a duly issued notice of violation. This refers to the new penalties provision, which includes a possible fine, but no imprisonment.

§133A-2(D), Notices of Violation, Violations; Notices of Violation; Service of Papers, Aggravated failure to comply with notice: The proposed legislation will add this Paragraph to the Section of the Code. This provision makes it a violation to fail to comply with a duly issued notice of violation where failure to comply is done with a wanton disregard for the safety of a building's occupants or the general public. This refers to the new penalties provision, which includes a possible fine and imprisonment.

Changes to § 133A-3

This proposal clarifies the laws to which the penalties at ACC 133A-3 apply and creates two tiers of violation for most violations of laws enforced by the Buildings Department one of which includes the possibility of imprisonment for wanton code violations and a second which does not include the possibility of imprisonment for typical code violations.

§133A-3(A) Penalties for Offenses, General Penalties: Removes the possibility of imprisonment from the existing penalty language for standard code violations, which is \$1,000 for each day of non-compliance.

§133A-3(B) Penalties for Offenses, Elevated Penalties: This removes the current language and takes the current penalty language, which includes \$1,000 per day fine and the possibility of imprisonment up to one year, and reserves the penalty language for wanton violations.

Changes to § 133A-4

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

The purpose of this proposal is to confirm and codify the NYS Department of Buildings & Regulatory Compliance's ability to issue stop work and unsafe and unfit orders.

This proposal formalizes the process related to the issuance of stop work and unsafe and unfit orders. The previous law at ACC 133-49 and ACC 133-55 could be read to restrict the issuance of stop work orders and unsafe and unfit orders to limited instances and did not specify the Department's administrative remedies in resolving stop work orders. This proposal sets out, codifies, and supports the Building Department's current practice with respect to stop work orders and unsafe and unfit orders.

§133A-4(A) Stop Work Orders: This specifically empowers the Chief Building Official to issue stop work orders where work is being done or has been done illegally.

§133A-4(A)(1) Stop Work Orders, Issuance: Provides that stop work orders may be issued orally, obligates the subject of the order to cease work, cease occupancy, and comply with the directives of the Chief Building Official to remediate the violation.

§133A-4(A)(2) Stop Work Orders, Unlawful Continuance: This makes the violation of a stop work order a violation unto itself.

§133A-4(A)(3) Stop Work Orders, Rescission: Provides the process by which a stop work order may be rescinded. Specifically, it requires that the responsible party pay necessary fees and fines and receive proper approvals as a condition of lifting a stop work order. This also empowers the Chief Building Official to require the responsible party to pay an administrative fee as a condition of lifting the stop worker equal to the administrative cost of issuing the stop work order.

§133A-4(A)(4) Stop Work Orders, Tampering: Provides that tampering with a stop work order placard prior to the order's rescission or without the Chief Building Official's permission.

§133A-4(B) Unsafe & Unfit Orders: Explicitly empowers the Chief Building Official to issue an unsafe and unfit order in cases involving immediate peril to a property's occupants or the general public.

§133A-4(B)(1) Unsafe & Unfit Orders, Issuance: Provides what the Chief Building Official may direct to ameliorate the condition underlying the order and the parties subject to the Chief Building Official's direction. It also provides the Chief Building Official with the authority to require the responsible party to pay an administrative fee equal to the cost to the city in responding to the condition underlying the order and in issuing the unsafe and unfit order.

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

§133A-4(B)(1)(a) Unsafe & Unfit Orders, Issuance, Order to Vacate: Provides the manner in which an order to vacate may be issued by the Chief Building Official.

§133A-4(B)(1)(b) Unsafe & Unfit Orders, Issuance, Enforcement: Provides the manner of enforcing a vacate order and empowers the Chief Building Official to file the order with the Albany County Court.

§133A-4(B)(1)(c) Unsafe & Unfit Orders, Issuance, Unlawful Continuance: Provides that failing to comply with an unsafe and unfit order is a separate violation.

§133A-4(B)(2) Unsafe & Unfit Orders, Issuance, Rescission: Sets out the process for lifting an unsafe and unfit order and empowers the Chief Building Official to require the payment of a fee equal to the cost to the City of responding to the condition underlying the order and in enforcing the order.

§133A-4(B)(3) Unsafe & Unfit Orders, Issuance, Tampering: This provision prohibits tampering with an unsafe and unfit notice.

NECESSITY FOR LEGISLATION

(§133A-1 & 2)

The measures here are largely intended as housekeeping designed to better reflect and support the current procedures of the Department and the City Court.

(§ 133A-3)

These changes more appropriately tailor penalties to code violations.

(§ 133A-4)

This proposal codifies and supports the Building Department's ability to respond to emergent dangers presented by illegal building work and buildings which present an immediate health and safety threat. It also empowers the Building Department to cover some of the costs imposed by illegal work or egregious failures to maintain buildings, which often require a response from multiple City departments, by providing for an administrative fee to recover those costs.

FISCAL IMPACT

(§ 133A-4)

Insofar as this provides for administrative fees as a condition of lifting a stop work or unsafe and unfit order, it will result in a modest increase

Council Member Fahey introduced the following

LOCAL LAW I OF 2021

LOCAL LAW REPEALING PARTS 4 (RESIDENTIAL OCCUPANCY PERMIT) AND 5 (RENTAL DWELLING REGISTRY) OF CHAPTER 231 (HOUSING) OF THE CODE OF THE CITY OF ALBANY AND ENACTING A NEW PART 4 OF SUCH CHAPTER ENTITLED “RENTAL OCCUPANCY PERMIT AND RENTAL DWELLING REGISTRY” IN RELATION TO THE CITY’S RESIDENTIAL OCCUPANCY PERMIT AND RENTAL DWELLING REGISTRY PROGRAMS

Be it enacted, by the Common Council of the City of Albany as follows:

Section 1. Part 4 (Residential Occupancy Permit) and Part 5 (Rental Dwelling Registry) of Chapter 231 (Housing) of Part II (General Legislation) of the Code of the City of Albany are hereby REPEALED in their entirety, and a new Part 4, entitled “Rental Occupancy Permit and Residential Dwelling Registry,” is hereby added to read as follows:

Part 4 Rental Occupancy Permit and Rental Dwelling Registry

§ 231-128 Title.

This Part 4 shall be known as the “Residential Dwelling Registry and is supplementary and applicable to provisions of Part 2 of Chapter 231 (“the Housing Code”) of the City of Albany.

§ 231-129 Purpose and scope.

The purpose and scope of this part is to provide uniform administration and compliance with the requirements of this Part applicable to the rental dwelling registry. The purpose of this Part is to protect the health, safety and welfare of residents, to protect a diverse housing stock from deterioration and to accomplish the foregoing at the lowest cost to owners and occupants in order to keep housing costs as low as reasonably possible in a manner consistent with compliance with this Code.

The Common Council finds and declares that the registration of rental property is intended to and will ensure the protection of persons and property in all existing residential rental structures and on all premises required to be registered under this Part and ensure that rental property owners and prospective rental property owners are informed of, and adhere to, code provisions governing the use and maintenance of rental properties, including provisions limiting the maximum occupancy for which a rental dwelling unit can be certified.

§ 231-130 Definitions.

For the purposes of this Part, the following terms shall have the meanings set forth in this section, unless different meanings are clearly indicated by the context in which they appear:

EMERGENCY CONTACT

An individual who resides in Albany County or any adjacent county who shall respond either individually or through an agent to the property at all times on thirty minutes’ notice in the event of emergencies and who, if not the owner, has the authority to act on the owner’s behalf and access all areas of a rental dwelling in the event of such emergencies.

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

RENTAL DWELLING

Any building which contains a rental dwelling unit.

RENTAL DWELLING UNIT

Any room or group of rooms within a rental dwelling which are used or intended to be used by one or more persons for living and sleeping with or without facilities for cooking and eating which is occupied by an individual or household for living and sleeping pursuant to an agreement with a third-party which does not so occupy the room or group of rooms.

§ 231-131 Registration of rental dwellings required.

All rental dwelling units shall be registered according to the provisions in this Part except where the agreement governing the rental unit is between individuals related by lineal consanguinity or directly by marriage.

§ 231-132 Registration of rental dwellings.

- A. Registration. The City shall maintain a registry of all rental dwelling units and rental dwellings containing the following information, which shall be provided to the Department of Buildings and Regulatory Compliance by the owner thereof on forms available from the Department of Buildings and Regulatory Compliance:
- (1) Owner Information. The name, legal residence address and telephone number of the owner or owners, or in the event that the owner is a corporate entity, the names, addresses, and telephone numbers of at least one officer(s), partner(s), and/or member(s) responsible for the property, an address for service of process, and the entity's Employer Identification Number (EIN), if applicable.
 - (2) Further Owner Information. A copy of government-issued identification for, or the driver's license number or social security number of, each owner of the property, or if the owner is a corporate entity, a copy of government-issued identification for, or the driver's license number or social security number of, the officer, partner, or member responsible for the property.
 - (3) Agent Information. The name, contact address, and telephone number of any agent of the owner in control of the rental dwelling.
 - (4) Emergency Contacts. The names, telephone numbers, email addresses, and contact addresses of two emergency contacts for the rental dwelling who shall be designated primary and secondary contacts.
 - (5) Property Information.
 - (a) The address of the rental dwelling.
 - (b) The tax map parcel number of the rental dwelling.
 - (c) The number of rental dwelling units in the rental dwelling.
 - (d) A list of units in the rental dwelling as they are referred to at the premises.

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

- (6) Certification. Certification by the property owner that the registered rental dwelling units are, to the best of the owner's knowledge, safe, habitable, and in compliance with all relevant New York State building codes and the City of Albany Code.

B. Inspection.

- (1) All residential rental dwelling units shall be inspected and certified by the Department of Buildings and Regulatory Compliance (hereinafter "the Department"), which shall determine compliance with, administer and enforce all applicable provisions of this Code and the NYS Fire Prevention & Building Code. The Chief Building Official or their designee may accept such inspections and certifications from uninterested and qualified third-party inspectors where sufficient proof of such inspection is provided. Residential occupancy permits shall be valid for 24 months from the date of issuance.
- (2) Nothing contained herein shall be construed or operate to invalidate an otherwise legally effective permit or certificate issued prior to the effective date of this Part, except that such permit or certificate shall be valid only until the permit or certificate's expiration date, or two years from the effective date of this Part, or a change in the tenancy of the residential rental dwelling unit to which the permit or certificate relates, whichever occurs first.
- (3) Except as otherwise provided herein, it shall be unlawful and a violation of this Part to rent, lease, or otherwise allow the occupancy of any residential rental dwelling unit without the inspection and certification as required herein.
- (4) If, upon inspection, said premises are found not to comply with applicable provisions of this Code or the Uniform Code, the specific reasons for noncompliance shall be specified in writing in a notice and order, in the manner set forth in Chapter 133A of this Code. Occupants or proposed occupants of dwellings shall have the right to inspect the certificate of occupancy of the residential rental dwelling unit, apartment or multiple residence in which they have an interest at no cost.
- (5) When inspecting a dwelling unit within a multiresidential complex, as defined in section 313-12 of this Code, the Department shall inspect and certify compliance with the provisions of section 313-14 of this Code requiring the establishment of solid waste private collection and source separation facilities in such complexes. No residential occupancy permit for a dwelling unit under this Part 4 shall be issued unless the multiresidential complex is in compliance with section 313-14 of this Code.

C. Renewal and Update. It shall be the obligation of the rental dwelling owner to register the rental dwelling with the Department of Buildings and Regulatory Compliance and it shall be the obligation of the current or succeeding owner or owner's agent to update registration information with the Department of Buildings and Regulatory Compliance within thirty days of any change. There shall be no cost associated with such an update.

D. Continuing Compliance. Upon registration, it shall be the obligation of the rental dwelling owner to ensure that the rental dwelling and all rental dwelling units contained therein comply with all relevant New York State building codes and the City of Albany codes. In the event of such non-compliance a rental dwelling unit may be deregistered and have its residential occupancy permit suspended according to Albany City Code.

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

- E. Except as otherwise provided herein, it shall be unlawful and a violation of this chapter to rent, lease or otherwise allow the occupancy of any rental dwelling unit without said rental dwelling unit having been registered in accordance with this Part. No owner, agent or person in charge shall collect rents during any period of noncompliance with the provisions of this part which would otherwise be due and owing for the rental of premises unless and until he or she shall have complied with the provisions herein. Nothing herein shall be construed to prevent a landlord, upon receipt of the residential occupancy permit, from receiving the equitable value of the occupancy of the premises from the earliest date of occupancy, but in no event shall a landlord recover in excess of the agreed rent in the form of late fees or other penalties.
- F. All rental dwelling units within a given rental dwelling must have the same registration expiration date. When it becomes necessary to do so, the Department of Buildings and Regulatory compliance may extend the registration period for the purpose of ensuring all rental dwelling units in a rental dwelling have the same registration period so long as the registration fee is pro-rated over the extended registration period or, in the event that there is a delay in registration caused by noncompliance, the registration termination date for a rental dwelling unit shall be the same as that of the already registered rental dwelling units in the rental dwelling.
- G. The passage of an inspection pursuant to this part or the issuance of a residential occupancy permit shall not constitute a waiver of any rights or immunities accorded the City of Albany as a municipal corporation pursuant to the laws of the State of New York or other provision of the Code of the City of Albany, in particular, Chapter 24 of this Code, nor shall the passage of an inspection pursuant to this part constitute a representation that any rental dwelling or rental dwelling unit is free of danger or entirely free of NYS Uniform Fire Prevention and Building Code or Albany City Code violations.

§ 231-133 Fees.

- A. To offset the administrative costs of preparing and maintaining the Rental Dwelling Registry there shall be, except for owner-occupied rental dwellings containing not more than one rental unit owned by one or more natural persons, all of whom are aged 65 years or older, a fee of \$50 for each unit or \$100 for a residential unit which has not had an active Residential Occupancy Permit for more than forty-five days at the time the new Residential Occupancy Permit is applied for.
- B. The following schedule of fees shall apply with respect to the inspection and certification of residential dwelling units:
 - (1) There shall be no fee for an initial inspection to determine compliance with the applicable provisions of this Code, or for a first re-inspection.
 - (2) Any and all subsequent re-inspection(s) necessary to determine compliance with required corrective action or repairs shall be subject to a fee of \$50 per unit inspected.
 - (3) Failure to appear within 15 minutes of a scheduled inspection (“no show”) shall result in a fee of the lesser of \$50 per unit or \$300.
 - (4) Cancellation of a scheduled inspection less than 24 hours before that scheduled inspection (“late cancellation”) shall result in a fee of the lesser of \$50 per unit or \$100.

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

- (5) Cancellation of a scheduled inspection less than 24 hours before the scheduled inspection for the unit more than once or after a “no show” (“second cancellation”) shall result in a fee of the lesser of \$75 per unit or \$300.
- C. Fees prescribed under this section for failure to appear at, and cancellation of, a scheduled inspection may be waived at the discretion of the Commissioner or their designee for good cause shown.
- D. Unpaid fees shall be subject to the placement and recording of a lien by the City of Albany against the inspected property.
- E. The fees set forth in this Part may be increased at the discretion of the Department of Buildings and Regulatory Compliance as may be deemed necessary by the Chief Building Official to recover the administrative cost of issuing residential occupancy permits and maintaining the rental dwelling registry provided that so such increase shall exceed five percent in a given calendar year.

§ 231-134 Residential Occupancy Permit.

- A. Upon successful registration of a rental dwelling, the Department of Buildings and Regulatory Compliance shall issue to the owner of the rental dwelling or the owner’s agent or designee a Residential Occupancy Permit.
- B. The Residential Occupancy Permit shall contain the following information:
 - (1) A statement indicating that all units in the rental dwelling are subject to the Residential Occupancy Permit or, if certain units have not been registered, a statement indicating which units are not the subject of the Residential Occupancy Permit;
 - (2) The name and contact phone numbers of the building owner’s agents and emergency contact(s);
 - (3) The contact information for the City of Albany Police Department, Fire Department, and Department of Buildings and Regulatory Compliance;
 - (4) Contact information for available tenant advocacy resources as determined by the Chief Building Official;
 - (5) The statement: “Retaliation against a tenant by a landlord for a tenant’s ‘good faith complaint, by or in behalf of the tenant, to a governmental authority of the landlord’s alleged violation of any health or safety law, regulation, code, or ordinance’ is illegal under New York State Real Property Law § 223-b. Any tenant concerned about such retaliation should consult an attorney.”;
 - (6) The statement: “Pursuant to section 231-132 (a) of the Albany City Code it shall be unlawful and a violation of Albany City Code to rent, lease or otherwise allow the occupancy of any rental dwelling unit without said rental dwelling unit having been registered on the City of Albany Rental Dwelling Registry. No owner, agent or person in charge may collect rents while a rental dwelling unit is unregistered.”; and
 - (7) The rental dwelling’s Rental Dwelling Registration expiration date.

Matter in brackets and [strikethrough] to be deleted. Matter underlined is new material.

- C. The Residential Occupancy Permit shall be posted conspicuously adjacent to the primary egress point in the rental dwelling to which said Residential Occupancy Permit applies or, if there is no such common egress point, at all common egress points.

§ 231-135 Registration renewal and de-registration.

- A. Rental dwelling units shall be re-registered in accordance with this Chapter every twenty-four months or after New York State building codes or Albany City Code compliance has been achieved following de-registration.
- B. Where the Department of Buildings and Regulatory Compliance determines that a rental dwelling and/or rental dwelling unit is in violation of the New York State building codes, the rental dwelling units may be de-registered according the following procedure:
- (1) The Department of Buildings and Regulatory Compliance, after discovering a violation, shall notify the responsible party of the alleged violation(s) in writing.
 - (2) If the violation has not been corrected within thirty-days, or fourteen days in the event of violations imposing a threat to the health and safety of building occupants or public at large as determined by the Department of Buildings and Regulatory Compliance, of mailing of said notice, the rental dwelling unit containing the violation or all rental dwelling units affected by the violation may be de-registered by the Chief Building Official or their designee subject to the following conditions:
 - (i) Where the Chief Building Official or their designee determines that a lack of compliance is attributable to a tenant's refusal to allow a rental dwelling owner or their designee sufficient access to an area under the exclusive control of the tenant which must be accessed in order to obtain compliance, the compliance period shall be extended to the fourteenth day of consecutive access after the date the rental dwelling owner secures such access provided that reasonable action is taken to ameliorate the effect of such a violation on tenants other than the tenant denying access. Where the code violation is attributable to the actions of a tenant and affects only the offending tenant, deregistration shall not occur until fourteen days after these conditions no longer obtain.
 - (ii.) If the Department of Buildings and Regulatory Compliance is not able to confirm compliance due to a tenant's explicit or implicit refusal to allow re-inspection of the affected area, the period of compliance shall be extended to the date the Department is granted the ability to perform a re-inspection.
 - (iii.) Where the rental dwelling owner has made a good faith effort to comply within the time allowed, has taken concrete steps towards compliance, and where the underlying violation is not a threat to health and safety, the Department may extend the compliance period for up to sixty additional days.
 - (3) Upon the correction of the violation, the rental dwelling unit(s) shall be re-registered on the Rental Dwelling Registry by the owner. If a court of law determines that the rental dwelling unit was de-registered in error, the rental dwelling unit(s) shall be re-registered

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on the Rental Dwelling Registry by the Chief Building Official or their designee. The expiration of rental dwelling registration following de-registration pursuant to this section shall be same as the period as that of the rental dwelling unit's most recent registration or, if that date has expired, determined according to section 231-132 (F) of this Code. There shall be no fee for re-registration following a determination in a court of law that no violation occurred.

§ 231-136 Penalties for offenses.

Any person who shall knowingly and willfully violate or assist in the violation of this Part, or who fails to comply with a notice and order issued by the Department under this Part shall, upon conviction, be punished as set forth in Chapter 133A of this Code.

Nothing contained in this Part shall preclude the City from enforcing violations of New York State building codes and the Code of the City of Albany independently pursuant to Chapter 133A of this Code.

Section 2. This local law shall take effect upon final passage, public hearing, and filing with the Secretary of State.

APPROVED AS TO FORM THIS

19TH DAY OF MARCH, 2021

Corporation Counsel

To: Danielle Gillespie, City Clerk
From: Robert Magee, Esq., Deputy Corporation Counsel
Laura Gulfo, Esq., Assistant Corporation Counsel
Brett Williams, Esq., Senior Assistant Corporation Counsel
Re: Request for Common Council Legislation
Supporting Memorandum
Date: March 19, 2021
Sponsor: Council Member Fahey

LOCAL LAW I of 2021

TITLE

A LOCAL LAW REPEALING PARTS 4 (RESIDENTIAL OCCUPANCY PERMIT) AND 5 (RENTAL DWELLING REGISTRY) OF CHAPTER 231 (HOUSING) OF THE CODE OF THE CITY OF ALBANY AND ENACTING A NEW PART 4 OF SUCH CHAPTER ENTITLED “RENTAL DWELLING REGISTRY” IN RELATION TO THE CITY’S RESIDENTIAL OCCUPANCY PERMIT AND RENTAL DWELLING REGISTRY PROGRAMS

GENERAL PURPOSE OF LEGISLATION

This local law updates the City of Albany’s rental dwelling registry and residential occupancy permit programs.

This legislation updates the existing residential dwelling permit and rental dwelling registry program based on what we have learned, institutionally, from the program over nearly two decades. They will make it easier for tenants, landlords, and the City to track program compliance and make the program more useful for all parties. Finally, it will empower the Buildings Department to impose better-tailored negative consequences on bad actors.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

§ 231-130 Definitions: This section is drawn from §231-138 of the current law. It includes a more specific definition of dwelling unit which clarifies that an apartment with three unrelated occupants is not required to obtain three ROPs. Additionally, it eliminates several definitions which are no longer useful or were never meaningfully used and adds a definition for “emergency contact” as it is later used in the section on what is to be included on an ROP application.

§ 231-131 Registry of Rental Dwellings Required: This requires all units that are rented to obtain an ROP, except where the landlord and tenant are immediate family.

§ 231-132 Registration of Rental Dwellings, Registration: This section specifies what a rental dwelling unit owner must provide in their ROP application. In addition to what was required previously §231-143, this proposal requires that the owner provide a copy of government issued id or a NYS driver's license number, or social security number. For corporate owners, this information must be provided by at least one principal along with the corporation's EIN. It also requires that the applicant provide two emergency contacts, though one contact may be the owner if they meet the definition of an emergency contact per §1. Finally, it requires that the applicant certify that the units are safe and habitable.

§ 231-133(2) Registration of Rental Dwellings, Inspection: It modifies the original language to allow the Chief Building Official to accept third party inspections for rental occupancy permits from qualified third-party inspectors to address changes in the law since the original passage of the residential occupancy permit/rental dwelling registry ordinance. It includes a provision to encourage the uniform registration of units in large buildings.

§ 231-134 Fees: This section increases the fee for ROPs which are issued for the first time to the unit or are applied for more than 45 days after the last ROP expired to from \$50 to \$100. This creates a late fee intended to encourage timely renewal. It maintains fees associated with excess ROP inspections, though it reduces the potential cost of cancelled or no-show inspections by capping fees for those at \$100 for late cancellations and \$300 for failure to show-up at a scheduled inspection or repeated untimely cancellations. It permits the Chief Building Official to increase these fees by 5% per year.

§ 231-135 Residential Occupancy Permit: This proposal requires that an ROP be posted at the property and include the property's emergency contact information, the building department's contact information, a statement regarding tenants' rights against retaliation, and contact information for available tenant services organizations as determined by the Chief Building Official.

§ 231-136 Registration renewal and de-registration: This proposal reduces the registration period from 30 to 24 months. It also provides the Chief Building Official with the authority to revoke an ROP where a notice of violation has not been complied with, involves violations that present a threat to health and safety, and the owner has failed to make a good faith effort to address the violations.

FISCAL IMPACT

This will increase ROP revenues insofar as it decreases the active ROP period and provides for late fees.