

**Council Member Anane introduced the following:**

**LOCAL LAW H OF 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**

*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 or their designee for the violation any provision of Chapter 133[7] (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 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 the provisions of this code, the Uniform Fire Prevention and Building Code, other laws or rules enforced by the department and orders of the Chief Building Official issued pursuant thereto, 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~~

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~~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 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) Registered or certified mail to the most current address on file in the Rental Dwelling Registry under section 231-143 of this Code; or
- (3) Registered or certified mail to 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) Registered or certified mail to the most current address on file in the City Department of Assessment and Taxation; or
- (5) Registered or certified mail to the official address for the service of process provided by the owner to the New York State 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 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) 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 section 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 section 133A-3 (B) of this Code where such failure to comply is committed with a wanton 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~~] this Code that the Chief Building Official is empowered to enforce, the Uniform Fire Prevention and Building Code [~~(hereinafter "Uniform Code")~~], or other laws or rules enforced by the department 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.~~

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

- (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.~~
- (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 convicted of failing to comply with any provision of this Code with a wanton disregard for the health and safety of the occupants of the subject building or the public at large, the Uniform Fire Prevention and Building Code, other laws or rules enforced by the Department 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.

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

(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:

**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 of this Code, the Uniform Fire Prevention and Building Code, other laws or rules enforced by the department and orders of the Chief Building Official issued pursuant thereto, 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.

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

(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 law or order of the Chief Building Official or their designee, 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 affected 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  
6<sup>TH</sup> DAY OF MARCH, 2021**

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**Corporation Counsel**

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

**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:** March 6, 2021

**Sponsor:** Council Member Anane

## **LOCAL LAW H of 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 Violation, Violations; Notices of Violation; Service of Papers, Notices 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, Violations; Notices of Violation; 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 NOVs has been deleted as duplicative.

***§133A-2(C), Notices of Violation, Violations; Notices of Violation; Service of Papers, Failure to comply with notice:*** 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:*** 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 for typical code violations.

**§133A-3(1) 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.

**§133-A3(2) Penalties for Offenses, Elevated Penalties:** This takes the current penalty language, which includes \$1,000 per day fine and the possibility of imprisonment up to one year, and reserves it for wanton violations.

#### Changes to § 133A-4

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.

**§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