

9984

I N A S S E M B L Y

May 2, 2016

Introduced by M. of A. RICHARDSON -- read once and referred to the
Committee on Cities

AN ACT to amend the administrative code of the city of New York, in
relation to imposing administrative sanctions on registered archi-
tects, licensed professional engineers and other persons for miscon-
duct with respect to applications and other accompanying documents
submitted to the department of buildings of the city of New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subchapter 1 of chapter 1 of title 27 of the administrative
2 code of the city of New York is amended by adding a new article 27 to
3 read as follows:

4 ARTICLE 27

5 ADMINISTRATIVE SANCTIONS FOR MISCONDUCT WITH RESPECT TO THE
6 SUBMISSION OF APPLICATIONS AND OTHER ACCOMPANYING
7 DOCUMENTS TO THE DEPARTMENT

8 S 27-228.17 ADMINISTRATIVE SANCTIONS FOR MISCONDUCT WITH RESPECT TO
9 APPLICATIONS AND OTHER ACCOMPANYING DOCUMENTS SUBMITTED TO THE DEPART-
10 MENT. IN ADDITION TO ANY OTHER PENALTIES PROVIDED UNDER ANY OTHER
11 PROVISION OF LAW, THE COMMISSIONER MAY, DURING THE PERIOD WHEN SANCTIONS
12 IMPOSED UNDER THIS ARTICLE ARE IN EFFECT, REFUSE TO ACCEPT OR APPROVE
13 ANY APPLICATION, OR OTHER ACCOMPANYING DOCUMENTS SUBMITTED PURSUANT TO
14 ANY PROVISION OF THIS CODE, OR IN SATISFACTION OF ANY OF THE REQUIRE-
15 MENTS OF ANY PROVISION OF THIS CODE FOR THE APPROVAL OF PLANS OR THE
16 ISSUANCE OF A PERMIT OR A CERTIFICATE OF OCCUPANCY BEARING THE SIGNATURE
17 OF A REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR OTHER
18 PERSON WHO HAS BEEN FOUND GUILTY UNDER THE PROCEDURES SET FORTH IN
19 SECTION 27-228.18 OF THIS ARTICLE OF ANY OF THE FOLLOWING ACTS:

20 A. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN A
21 REPORT OR WRITTEN STATEMENT WHICH WAS SUBMITTED PURSUANT TO FORMER
22 SECTION 27-132 OR FORMER SECTION 27-136 OF THIS SUBCHAPTER;

23 B. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN AN
24 APPLICATION FOR THE APPROVAL OF PLANS OR ANY ACCOMPANYING DOCUMENT WHICH
25 WAS SUBMITTED PURSUANT TO FORMER SECTION 27-139 OF THIS SUBCHAPTER,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 WHICH FACT HE OR SHE KNEW WOULD BE RELIED UPON BY THE DEPARTMENT IN
2 DETERMINING WHETHER TO APPROVE SUCH PLANS;

3 C. SUBMITTING AN APPLICATION FOR THE APPROVAL OF PLANS PURSUANT TO
4 FORMER SECTION 27-140 OF THIS SUBCHAPTER WHICH WERE NOT PREPARED BY HIM
5 OR HER OR UNDER HIS OR HER SUPERVISION;

6 D. MAKING A WRITTEN STATEMENT WHICH WAS SUBMITTED PURSUANT TO FORMER
7 SECTION 27-142 OF THIS SUBCHAPTER THAT, TO THE BEST OF HIS OR HER KNOW-
8 LEDGE AND BELIEF, THE PLANS AND THE WORK SHOWN THEREON COMPLY WITH THE
9 PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE LAWS, RULES AND REGU-
10 LATIONS WHEN HE OR SHE KNEW THAT THE PLANS WERE SUBSTANTIALLY NOT IN
11 COMPLIANCE WITH THE PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE
12 LAWS, RULES AND REGULATIONS;

13 E. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN AN
14 APPLICATION FOR A PERMIT OR ANY ACCOMPANYING DOCUMENT WHICH WAS SUBMIT-
15 TED PURSUANT TO FORMER SECTION 27-150 OF THIS SUBCHAPTER, WHICH FACT HE
16 OR SHE KNEW WOULD BE RELIED UPON BY THE DEPARTMENT IN DETERMINING WHETH-
17 ER TO ISSUE SUCH PERMIT;

18 F. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN AN
19 APPLICATION FOR A CERTIFICATE OF OCCUPANCY OR ANY ACCOMPANYING DOCUMENT
20 WHICH WAS SUBMITTED PURSUANT TO FORMER SECTION 27-219 OF THIS SUBCHAP-
21 TER, WHICH FACT HE OR SHE KNEW WOULD BE RELIED UPON BY THE DEPARTMENT IN
22 DETERMINING WHETHER TO ISSUE SUCH CERTIFICATE OF OCCUPANCY;

23 G. MAKING A WRITTEN STATEMENT WHICH WAS SUBMITTED PURSUANT TO FORMER
24 SECTION 27-221 OF THIS SUBCHAPTER THAT, TO THE BEST OF HIS OR HER KNOW-
25 LEDGE AND BELIEF, A BUILDING WAS ERECTED OR ALTERED IN ACCORDANCE WITH
26 THE APPROVED PLANS AND SPECIFICATIONS AND, AS ERECTED OR ALTERED,
27 COMPLIED WITH THE PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE LAWS,
28 RULES AND REGULATIONS WHEN HE OR SHE KNEW THAT THE BUILDING HAD SUBSTAN-
29 Tially NOT BEEN ERECTED OR ALTERED IN ACCORDANCE WITH THE APPROVED PLANS
30 AND SPECIFICATIONS, OR THE BUILDING AS ERECTED WAS SUBSTANTIALLY NOT IN
31 COMPLIANCE WITH THE PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE
32 LAWS, RULES AND REGULATIONS.

33 S 27-228.18 PROCEDURE. A. IF THE COMMISSIONER HAS REASONABLE CAUSE TO
34 BELIEVE THAT A REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR
35 OTHER PERSON HAS COMMITTED ANY OF THE ACTS DESCRIBED IN SECTION
36 27-228.17 OF THIS ARTICLE, HE OR SHE SHALL PREPARE CHARGES STATING THE
37 ALLEGED MISCONDUCT AND THE MATERIAL FACTS BY WHICH THE CHARGES ARE TO BE
38 PROVED.

39 B. AT LEAST THIRTY DAYS PRIOR TO THE HEARING, THE DEPARTMENT SHALL
40 SERVE A COPY OF THE CHARGES AND A NOTICE OF THE TIME AND PLACE OF THE
41 HEARING UPON THE RESPONDENT PERSONALLY OR BY CERTIFIED MAIL, RETURN
42 RECEIPT REQUESTED, TO THE RESPONDENT'S LAST KNOWN ADDRESS.

43 C. THE HEARING SHALL BE HELD BEFORE A HEARING PANEL APPOINTED PURSUANT
44 TO SECTION 27-228.19 OF THIS ARTICLE. THE RESPONDENT SHALL HAVE THE
45 RIGHT TO BE REPRESENTED BY COUNSEL, PRODUCE WITNESSES AND PRESENT
46 EVIDENCE ON HIS OR HER BEHALF. THE RESPONDENT SHALL ALSO HAVE THE RIGHT
47 TO EXAMINE EVIDENCE PRODUCED AGAINST HIM OR HER, CROSS-EXAMINE WITNESSES
48 AND REQUEST THE HEARING OFFICER TO ISSUE SUBPOENAS. A RECORD SHALL BE
49 KEPT OF THE PROCEEDING.

50 D. THE DETERMINATION OF THE PANEL SHALL BE BASED UPON SUBSTANTIAL
51 EVIDENCE.

52 E. THE PANEL SHALL FIND THE RESPONDENT GUILTY OR NOT GUILTY OF THE
53 CHARGE OR CHARGES AND SHALL ISSUE A WRITTEN REPORT INCLUDING FINDINGS OF
54 FACT AND A DETERMINATION OF THE TIME PERIOD OVER WHICH THE SANCTIONS, IF
55 ANY, IMPOSED PURSUANT TO SECTION 27-228.17 OF THIS ARTICLE SHALL BE
56 EFFECTIVE, PROVIDED, HOWEVER, THAT NO SANCTION IMPOSED BY A PANEL FOR

1 ANY SINGLE CHARGE AGAINST ANY ONE RESPONDENT SHALL BE EFFECTIVE FOR A
2 PERIOD OF TIME IN EXCESS OF TWO YEARS. THE REPORT OF THE PANEL SHALL BE
3 FILED WITH THE COMMISSIONER AND SERVED UPON THE RESPONDENT. THE SANC-
4 TIONS SHALL COMMENCE UPON THE FILING OF THE REPORT.

5 F. THE DETERMINATION OF THE PANEL MAY BE APPEALED TO THE COMMISSIONER
6 PROVIDED THAT NOTICE OF SUCH APPEAL IS FILED WITH THE COMMISSIONER WITH-
7 IN THIRTY DAYS AFTER THE FILING OF THE REPORT ISSUED BY THE PANEL PURSU-
8 ANT TO SUBDIVISION E OF THIS SECTION. UPON APPLICATION, THE COMMISSIONER
9 IN HIS OR HER DISCRETION MAY SUSPEND THE IMPOSITION OF SANCTIONS DURING
10 THE PENDENCY OF SUCH APPEAL. THE PERIOD OF TIME DURING WHICH THE SANC-
11 TIONS ARE EFFECTIVE SHALL BE CALCULATED WITHOUT REGARD TO ANY PERIOD OF
12 SUSPENSION OF SUCH SANCTIONS. THE COMMISSIONER SHALL REVIEW THE REPORT
13 OF THE PANEL AND MAY ACCEPT OR MODIFY THE FINDINGS OF FACT OF THE PANEL
14 AND ACCEPT, REDUCE OR DISMISS ITS RECOMMENDED PENALTY. IF THE COMMIS-
15 SIONER DETERMINES THAT THE IMPOSITION OF SANCTIONS SHALL NOT BE
16 SUSPENDED DURING THE PENDENCY OF THE APPEAL, THE COMMISSIONER SHALL HAVE
17 FIFTEEN DAYS FROM THE TIME OF THE FILING OF SUCH APPEAL TO MAKE HIS OR
18 HER DETERMINATION. IF THE COMMISSIONER FAILS TO MAKE HIS OR HER DETERMI-
19 NATION WITHIN THIS ALLOTTED TIME PERIOD, HE OR SHE SHALL SUSPEND THE
20 IMPOSITION OF SUCH SANCTIONS. THE COMMISSIONER SHALL SERVE UPON THE
21 RESPONDENT NOTICE OF HIS OR HER DECISION. THE DECISION OF THE COMMIS-
22 SIONER REGARDING SUCH APPEAL SHALL CONSTITUTE THE FINAL AGENCY DETERMI-
23 NATION.

24 S 27-228.19 HEARING PANELS. A. THERE SHALL BE WITHIN THE DEPARTMENT A
25 HEARING PANEL OR PANELS. EACH PANEL SHALL CONSIST OF NINE MEMBERS WHO
26 SHALL BE APPOINTED BY THE COMMISSIONER TO SERVE ON SUCH PANEL AT HIS OR
27 HER PLEASURE. THE COMMISSIONER SHALL DESIGNATE A MEMBER OF EACH PANEL TO
28 SERVE AS CHAIRPERSON AND SUCH PERSON SHALL PRESIDE OVER THE PANEL. THE
29 MEMBERS OF THE PANEL SHALL SERVE WITHOUT COMPENSATION. THE PANEL SHALL
30 CONSIST OF:

31 (1) TWO EMPLOYEES OF THE DEPARTMENT, ONE OF WHOM SHALL BE EITHER A
32 REGISTERED ARCHITECT OR LICENSED PROFESSIONAL ENGINEER;

33 (2) TWO LICENSED PROFESSIONAL ENGINEERS SELECTED FROM CANDIDATES WHO
34 ARE RECOMMENDED BY ASSOCIATIONS AND ORGANIZATIONS REPRESENTING LICENSED
35 PROFESSIONAL ENGINEERS IN THE STATE OF NEW YORK;

36 (3) TWO REGISTERED ARCHITECTS SELECTED FROM CANDIDATES WHO ARE RECOM-
37 MENDED BY ASSOCIATIONS AND ORGANIZATIONS REPRESENTING REGISTERED ARCHI-
38 TECTS IN THE STATE OF NEW YORK;

39 (4) TWO PERSONS REPRESENTING ASSOCIATIONS WHOSE MEMBERS PERFORM OR
40 SUPERVISE CONSTRUCTION ACTIVITIES;

41 (5) ONE PERSON REPRESENTING AN ASSOCIATION WHOSE MEMBERS OWN AND
42 MANAGE PROPERTY IN THE CITY OF NEW YORK.

43 B. EACH PANEL SHALL HEAR AND DETERMINE CHARGES OF MISCONDUCT FOR THOSE
44 ACTS SET FORTH IN SECTION 27-228.17 OF THIS ARTICLE, IN ACCORDANCE WITH
45 PROCEDURES SET FORTH IN SECTION 27-228.18 OF THIS ARTICLE AND, UPON A
46 DETERMINATION OF GUILT, MAY IMPOSE THE ADMINISTRATIVE SANCTIONS SET
47 FORTH IN SECTION 27-228.17 OF THIS ARTICLE. A MAJORITY OF THE APPOINTED
48 MEMBERS OF THE PANEL SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF
49 THE PANEL'S BUSINESS. THE PANEL SHALL HAVE THE POWER TO ACT BY A MAJORI-
50 TY VOTE OF ITS MEMBERS.

51 S 27-228.20 ADMINISTRATIVE SANCTIONS FOR BRIBERY OF EMPLOYEES OF THE
52 DEPARTMENT. A REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR
53 OTHER PERSON WHO IS CONVICTED OF ANY OFFENSE DEFINED IN ARTICLE TWO
54 HUNDRED OF THE PENAL LAW, WITH RESPECT TO CONDUCT TOWARD AN EMPLOYEE OF
55 THE DEPARTMENT OF BUILDINGS, MAY BE SUBJECT TO THE SANCTIONS SET FORTH
56 IN SECTION 27-228.17 OF THIS ARTICLE. NOTWITHSTANDING ANY INCONSISTENT

1 PROVISION OF SECTION 27-228.18 OF THIS ARTICLE, UPON CONVICTION OF ANY
2 OFFENSE DEFINED IN ARTICLE TWO HUNDRED OF THE PENAL LAW, WITH RESPECT TO
3 CONDUCT TOWARD AN EMPLOYEE OF THE DEPARTMENT, THE COMMISSIONER SHALL
4 SELECT A HEARING PANEL PURSUANT TO SECTION 27-228.19 OF THIS ARTICLE TO
5 DETERMINE WHETHER TO IMPOSE ADMINISTRATIVE SANCTIONS PURSUANT TO SECTION
6 27-228.17 OF THIS ARTICLE ON REGISTERED ARCHITECTS, LICENSED PROFES-
7 SIONAL ENGINEERS OR OTHER PERSONS CONVICTED OF ANY SUCH OFFENSE. THE
8 RESPONDENT MAY APPEAL THE DETERMINATION OF SUCH PANEL TO THE COMMISSION-
9 ER, IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBDIVISION F OF
10 SECTION 27-228.18 OF THIS ARTICLE. IF THE CONVICTION IS VACATED OR
11 REVERSED, SUCH REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR
12 OTHER PERSON WHO HAD BEEN CONVICTED OF SUCH OFFENSE AND SUBJECT TO
13 ADMINISTRATIVE SANCTIONS SET FORTH IN SECTION 27-228.17 OF THIS ARTICLE
14 MAY GIVE THE COMMISSIONER NOTICE OF THE VACATUR OR REVERSAL TOGETHER
15 WITH SUCH DOCUMENTATION THEREOF AS THE COMMISSIONER MAY REASONABLY
16 REQUIRE AND, UPON RECEIPT OF SUCH NOTICE AND DOCUMENTATION, THE COMMIS-
17 SIONER SHALL REVOKE THE SANCTIONS IMPOSED PURSUANT TO SECTION 27-228.17
18 OF THIS ARTICLE AND THIS SECTION. IF THE COMMISSIONER HAS REASONABLE
19 CAUSE TO BELIEVE THAT THE IMPOSITION OF SUCH SANCTIONS SHOULD BE CONTIN-
20 UED, HE OR SHE SHALL PREPARE CHARGES AND APPOINT A HEARING PANEL IN
21 ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBDIVISIONS B THROUGH F OF
22 SECTION 27-228.18 OF THIS ARTICLE.

23 S 27-228.21 REGISTERED ARCHITECTS AND LICENSED PROFESSIONAL ENGINEERS;
24 APPLICATION. REGISTERED ARCHITECTS AND LICENSED PROFESSIONAL ENGINEERS
25 SHALL BE SUBJECT TO THE PROCEDURES AND THE ADMINISTRATIVE SANCTIONS SET
26 FORTH IN THIS ARTICLE, IN ADDITION TO THE PROCEDURES AND PENALTIES FOR
27 PROFESSIONAL MISCONDUCT PRESCRIBED IN TITLE EIGHT OF THE EDUCATION LAW.

28 S 2. This act shall take effect immediately.