

CHAPTER 5

MISCELLANEOUS PROVISIONS

ARTICLE 501

MAINTENANCE PERMIT FOR OUTDOOR SIGNS

§28-501.1 Permit required. The commissioner may, in his or her discretion, when necessary in the public interest, establish a permit requirement for signs maintained in the areas described in this article in accordance with the provisions of this article and the rules of the department. On and after a date to be provided by the rules establishing such a permit requirement, and subject to the provisions of section 28-501.6 of this code, it shall be unlawful to place or maintain a sign, as defined in section 12-10 of the zoning resolution, on any building or premises unless a permit for the maintenance of such sign has been issued by the department pursuant to this article if such sign is within a distance of nine hundred linear feet from and within view of an arterial highway or within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of one half acre or more.

§28-501.1.1 Other permits notwithstanding. Where a sign maintenance permit has been established by the commissioner pursuant to section 28-501.1 such permit shall be required for all signs maintained in the areas described in such section 28-501.1 and not otherwise excluded under section 28-501.6, whether or not a work permit is required and/or has been issued for the installation, alteration or erection of such sign pursuant to chapter 1 of this title.

§28-501.1.2 Arterial highway. For the purposes of this article, the term arterial highway shall include all highways that are shown on the master plan of arterial highways and major streets as principal routes parkways or toll crossings and that have been designated by the city planning commission as arterial highways to which the provisions of sections 42-55 and 32-66 of the zoning resolution shall apply as shown in appendix C of the zoning resolution.

§28-501.2 Application. Application for a permit or for the renewal of a permit shall be made on forms to be furnished by the department and shall contain such information as the department shall prescribe. Except as otherwise provided in section 28-501.3, a permit shall remain in effect for a period to be determined by rule and may be renewed. The fee for a permit or for its renewal shall be established by rule. The identification number of the permit shall be displayed on the sign or on the building or premises on which the sign is located or both, in a manner to be provided by rule.

§28-501.3 Permit expiration. A permit issued pursuant to this article shall expire and be of no further force or effect where:

1. In the case of a sign which is accessory to a principal use within the meaning of section 12-10 of the zoning resolution, there has been a discontinuance of the operation of the principal use to which such sign is accessory, or in the event the sign is no longer in the same ownership as such principal use or is no longer operated and maintained

substantially for the benefit or convenience of the owners, occupants, employees, customers or visitors of the principal use;

2. In the case of any sign for which a permit has been issued pursuant to this article, whether or not accessory to a principal use within the meaning of section 12-10 of the zoning resolution, there has been a change in copy which the commissioner has determined renders such sign no longer in compliance with the zoning resolution. The commissioner shall prescribe by rule procedures for the notification to the department concerning changes in copy which have been made on signs for which permits have been issued under this article. Nothing herein shall be construed as limiting the ability of any person to apply for a new permit pursuant to this article.

§28-501.4 Civil penalties. Any person who places or maintains a sign on a building or premises without an appropriate permit in violation of this article shall be liable for a civil penalty of, for a first violation, not more than fifteen thousand dollars and, for a second or subsequent violation, not more than twenty-five thousand dollars. Each day's continuance shall be a separate and distinct violation. Such civil penalties may be recovered in an action in any court of appropriate jurisdiction or in a proceeding before the environmental control board. Such board shall have the power to impose the civil penalties provided for in this article. Notwithstanding the provisions of section six hundred sixty-six of the charter, a notice of violation issued by the department pursuant to this section 28-501.4 shall not be subject to review by the board of standards and appeals.

§28-501.5 Construction. This chapter shall not be construed to grant the right to place or maintain a sign on any building or premises where the placement or maintenance of such sign would otherwise be prohibited pursuant to the zoning resolution, the administrative code or any other provision of law. No permit for a sign issued hereunder shall be deemed to constitute permission or authorization to maintain a sign which is unlawful pursuant to any other provisions of law nor shall any permit issued hereunder constitute a defense in an action or proceeding with respect to such an unlawful sign.

§28-501.6 Exemption. The provisions of this article shall not apply to:

1. Signs with a surface area of 200 square feet (19 m²) or less that are located no higher than 3 feet (914 mm) above the floor of the second story of the building on which the sign is located; and
2. Signs under the control of an outdoor advertising company and included on a certified list of signs, sign structures, and sign locations under the control of such company required to be filed with the department pursuant to this chapter.

ARTICLE 502 OUTDOOR ADVERTISING COMPANIES

§28-502.1 Definitions. As used in this chapter, the following terms shall have the following meanings:

AFFILIATE. An outdoor advertising company having a controlling interest in another outdoor advertising company or in which such other outdoor advertising company has a controlling interest. In addition, where a person or entity has controlling interests in two or more outdoor advertising companies, such outdoor advertising companies shall be considered affiliates of each other. A “controlling interest” means actual working control, in whatever manner exercised, including without limitation, control through ownership, management, debt instruments or negative control, as the case may be, as defined in rules of the department.

OUTDOOR ADVERTISING COMPANY. A person, corporation, partnership or other business entity that as a part of the regular conduct of its business engages in or, by way of advertising, promotions or other methods, holds itself out as engaging in the outdoor advertising business.

OUTDOOR ADVERTISING BUSINESS. The business of selling, leasing, marketing, managing, or otherwise either directly or indirectly making space on signs situated on buildings and premises within the city of New York available to others for advertising purposes, whether such advertising directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered on the same or a different zoning lot and whether such sign is classified as an advertising sign pursuant to section 12-10 of the zoning resolution.

SIGN. A sign as defined in section 12-10 of the zoning resolution except that such term shall not include any sign subject to regulation by the department of transportation.

SIGN LOCATION. A building or premises on which an outdoor advertising company is entitled to sell, lease, market, manage or otherwise either directly or indirectly make space on signs available to customers, irrespective of whether a sign exists on such building or premises.

UNDER THE CONTROL OF AN OUTDOOR ADVERTISING COMPANY in reference to a sign, sign structure, or sign location. That space on such sign, sign structure, or at such sign location that is sold, leased, marketed, managed or otherwise either directly or indirectly made available to others for any purposes by such outdoor advertising company.

§28-502.2 Registration of outdoor advertising companies. On and after a date to be provided by rule, it shall be unlawful for an outdoor advertising company to engage in the outdoor advertising business or, by way of advertising, promotions or other methods, hold itself out as engaging in the outdoor advertising business unless such company is registered in accordance with this code and the rules of the department. Such rules shall establish a procedure pursuant to which the department may require the single registration of an outdoor advertising company and its affiliates. An outdoor advertising company and its affiliates made subject to single registration shall be considered a single outdoor advertising company for purposes of this code.

§28-502.2.1 Application. Application for registration or the renewal of registration shall be made on forms to be furnished by the department, may be made through electronic means, and shall contain such information as the department shall prescribe. Registration shall remain in force for two years and may be renewed. The fee for such registration and for the renewal of such registration shall be established by rule and may be based on the number of signs in the registered inventory.

§28-502.2.2 Security. Each outdoor advertising company shall post a bond or provide another form of security to the city in an amount to be determined by the department by rule to cover:

1. All costs incurred by the city pursuant to this code for painting over, covering, rendering ineffective or for the removal and storage of an illegal sign or sign structure under the control of such outdoor advertising company; and
2. All fines or civil penalties imposed against such company pursuant to this chapter.

§28-502.3 Revocation or suspension or registration. The department may revoke, suspend or refuse to renew the registration of an outdoor advertising company or impose fines or other penalties where it is determined by the commissioner, after notice and the opportunity to be heard, that (i) such company has made statements that it knew or should have known are false in any application or certification filed with the department, (ii) such company has failed to comply with section 28-502.3 of this code or the rules adopted pursuant to its provisions by failing to file a listing of signs, sign structures and sign locations under its control as specified in such section within the time and in the manner required by department rules or by filing an incomplete listing of signs, sign structures and sign locations under its control as specified in such section, (iii) such company has been found liable for or has admitted to violations of the zoning resolution under section 28-502.5 of this code committed on three or more occasions within a 36 month period, where such violations relate to the erection, maintenance, attachment, affixing, painting or representation in any other manner on a building or premises of advertising signs, as defined in section 12-10 of the zoning resolution, at locations where the display of such advertising signs is not permitted under the zoning resolution or at locations where the display of such advertising signs violates the size, height, or illumination provisions of the zoning resolution, and such signs are located within a distance of nine hundred linear feet from and within view of an arterial highway or within 200 linear feet (60 960 mm) from and within view of a public park with an area of one half acre or more, (iv) such company has failed to pay any civil penalties imposed or amounts owed to the city pursuant to section 28-502.5 of this code or, (v) such company has violated the department’s rules pertaining to outdoor advertising companies. No application for registration by an outdoor advertising company or any affiliate thereof shall be accepted for filing by the department for a period of five years after revocation of or the refusal to renew the registration of such outdoor advertising company pursuant to this code. The department shall not accept or process any applications for permits to install, erect or alter signs pursuant to this code or for the maintenance of signs

pursuant to section 28-501.1 of this code where such applications are filed by or where such signs are under the control of an outdoor advertising company or any affiliate thereof after the registration of such outdoor advertising company has been revoked or not renewed or during the term of any period of suspension of such registration. The commissioner may settle any proceeding in which the revocation, suspension or renewal of an outdoor advertising company's registration is at issue upon such terms and conditions as he or she may deem appropriate including but not limited to the agreement of an outdoor advertising company to remove signs along with supporting sign structures as a condition for the dismissal of such proceeding.

§28-502.4 Reporting requirement. An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

1. The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of $\frac{1}{2}$ acre (5000 m) or more.
2. The commissioner may, by rule, expand the scope of such list to include the reporting of other signs, sign structures and sign locations, as specified in such rule.

§28-502.4.1 Form of list. The list shall be in such form, containing such information and filed at such periodic intervals or upon such other conditions, as the department shall prescribe by rule.

§28-502.4.2 Other required information. Such list shall also indicate the work permit identification numbers for the erection, alteration or installation of such signs pursuant to chapter 1 of this title and for the maintenance of such signs pursuant to article 501, unless a permit is not required pursuant to such provisions, as well as the name and license number of the master or special sign hanger who hung or erected each such sign.

§28-502.4.3 Certification of list. Such list shall be accompanied by (i) a certification by an architect or engineer, co-signed by a responsible officer of the outdoor advertising company, that all signs reported on such list are in compliance with the zoning resolution; (ii) copies of proof that the sign complies with the zoning resolution and a certification by the sign's owner that to the best of the certifier's knowledge and belief the information provided is accurate, or (iii) a written opinion by the department, stating that the sign to which the opinion refers complies with the zoning resolution. Notwithstanding any inconsistent provision of this code, where, in accordance with the department's rules, the department renders an opinion, determination or decision relating to whether a sign is non-conforming or whether it is located in proximity to an arterial highway as defined by the zoning resolution, such decision, determination or opinion will be appealable to the board of standards and appeals in accordance with applicable law. If a timely appeal to such board is taken, the department shall not issue a notice of vio-

lation with respect to such sign pending a determination of such appeal by such board.

§28-502.4.4 Public access to list. The commissioner shall make all listings filed pursuant to this article accessible to the public.

§28-502.5 Display of name and registration number of outdoor advertising company. On and after a date to be prescribed by rule, the commissioner shall require that each outdoor advertising company display, in a manner to be provided by rule, on each sign under its control or on the building or premises where each sign under its control is located or both, (i) the name and registration number of such company and, (ii) unless a permit is not required, the work permit identification number for the installation, alteration or erection of the sign pursuant to chapter 1 of this code and, if applicable, for the maintenance of the sign pursuant to article 501.

§28-502.6 Criminal and civil penalties. Outdoor advertising companies that violate the zoning resolution, this code, the 1968 building code or rules of the department shall be subject to criminal and civil penalties in accordance with this article.

§28-502.6.1 General. Notwithstanding any other provision of law, an outdoor advertising company shall be liable for a civil penalty in accordance with this article if a sign under its control has been erected, maintained, attached, affixed, painted on, or in any other manner represented on a building or premises in violation of any provision of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto relating to signs.

§28-502.6.2 Unlawful for outdoor advertising company to sell space on illegal sign. It shall be unlawful for an outdoor advertising company to sell, lease, market, manage or otherwise make available to others for advertising purposes space on a sign that has been erected, maintained, attached, affixed, painted on or in any other manner represented on a building or premises in violation of any provision of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto or to enter into any agreement for such purpose.

§28-502.6.3 Unlawful to transfer sign to unregistered outdoor advertising company. On and after a date to be provided by rule, it shall be unlawful for an outdoor advertising company to sell or otherwise transfer control of a sign or sign location or of any right of such company to sell, lease, market, manage or otherwise make space on a sign or at a sign location available to others for advertising purposes to an outdoor advertising company that is not registered in accordance with this article and the rules of the department.

§28-502.6.4 Civil penalty. An outdoor advertising company that violates any of the provisions of this article shall be subject to a civil penalty of, for a first violation, not more than fifteen thousand dollars and, for a second or subsequent violation, not more than twenty-five thousand dollars. Each day's continuance shall be a separate and distinct violation.

§28-502.6.5 Criminal penalty. Notwithstanding any inconsistent provision of law, an outdoor advertising company shall, upon being found guilty, be subject to fines or

imprisonment or both pursuant to this code if a sign under its control has been erected, maintained, attached, affixed, painted on, or in any other manner represented on a building or premises in violation of any provision of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto relating to signs.

§28-502.6.6 Activity by unregistered company. On and after a date to be provided by rule, an outdoor advertising company that engages in the outdoor advertising business or, by way of advertisement, promotion or other methods holds itself out as engaging in the outdoor advertising business without registering with the department pursuant to this chapter, or, after such registration has been revoked or not renewed pursuant to this code continues to engage in such business beyond a date specified by the commissioner in his or her determination to revoke or not renew, shall be guilty of a misdemeanor subject to a fine not to exceed five thousand dollars or a sentence of imprisonment of not more than one year or both such fine and imprisonment for each offense. In the case of a continuing violation each day's continuance shall be a separate and distinct violation. Such company shall also be liable for a civil penalty of, for a first violation, not more than fifteen thousand dollars and, for a second or subsequent violation, not more than twenty-five thousand dollars. Each day's continuance shall be a separate and distinct violation.

§28-502.6.7 Venue. Civil penalties may be recovered in an action in any court of appropriate jurisdiction or in a proceeding before the environmental control board. Such board shall have the power to impose the civil penalties provided for in this article. Notwithstanding the provisions of section six hundred sixty-six of the charter, a notice of violation issued by the department pursuant to this article shall not be subject to review by the board of standards and appeals.

§28-502.7 Signs under control of unregistered outdoor advertising company are public nuisance. On and after a date to be provided by rule, it shall be unlawful to erect, maintain, attach, affix, paint on, or in any other manner represent on a building or premises any sign that is under the control of an unregistered outdoor advertising company. In addition to or as an alternative to any other remedies or penalties provided under any other provision of law, the commissioner may commence a proceeding for the removal of such sign or its sign structure or both in accordance with the procedures set forth in this code for the abatement of a nuisance and any such sign and its sign structure is hereby declared to be a public nuisance pursuant thereto. All of the provisions of article 503 of this chapter shall apply to the removal of a sign pursuant to this article except that a sign under the control of an unregistered outdoor advertising company may be removed whether or not it is in compliance with the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto, and irrespective of whether it has a surface area greater than 200 square feet (19 m²).

§28-502.8 Franchise or concession disqualification. Notwithstanding any other provision of law to the contrary, an outdoor advertising company, or any affiliate thereof, that has been found guilty of a misdemeanor or liable for a civil penalty pursuant to this article or whose registration has been revoked shall be considered ineligible for the award of any city fran-

chise or concession, and shall be prohibited from administering any advertising program on behalf of a city franchisee or concessionaire, for a period of five years following judgment or decision.

§28-502.9 Investigations. The department may investigate any matter within the jurisdiction conferred by this chapter and shall have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation. The department of investigation may, at the request of the commissioner, assist the department in any investigation conducted pursuant to this article.

ARTICLE 503

NUISANCE ABATEMENT FOR ILLEGAL SIGNS

§28-503.1 General. A sign with a surface area greater than 200 square feet (19 m²) that is erected, maintained, attached, affixed, painted on, or in any other manner represented on a building or premises in violation of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto is hereby declared to be a public nuisance. The commissioner may, after notice and hearing, order the removal of such illegal sign or its sign structure or both, as hereinafter provided.

§28-503.2 Notice. The commissioner shall serve a notice of hearing with regard to the proposed nuisance abatement on the owner and mortgagee of record of the building or premises and other persons having a recorded interest in the property in the manner provided in article 212 of chapter 2 of this title for the service of an order of closure. If the sign is under the control of an outdoor advertising company and an address for such company is reasonably ascertainable, the notice shall also be served on such outdoor advertising company by mail to the last known address for such company or, if such company is registered in accordance with section 28-502.2, at the address provided to the department by the registrant.

§28-503.3 Hearing. The office of administrative trials and hearings shall conduct the hearing. The administrative law judge assigned to hear the matter shall submit his or her proposed findings of fact and recommended disposition to the commissioner. If based on such recommended disposition, proposed findings of fact and the record of the hearing the commissioner determines (i) that the sign has a surface area greater than 200 square feet (19 m²) and, (ii) that the sign has been erected, maintained, attached, affixed, painted on, or in any other manner represented on the building or premises in violation of the zoning resolution, this code, the 1968 building code or rules adopted pursuant thereto, he or she may order the removal of the illegal sign or its sign structure or both.

§28-503.3.1 Lack of knowledge no defense. At such hearing it shall not be a defense that an owner or other person having an interest in the property lacked knowledge of or did not participate in the erection or maintenance of the illegal sign.

§28-503.4 Posting of order. The commissioner's order of removal shall be posted, mailed and filed in the manner provided in this code for an order of closure.

§28-503.5 Enforcement of order. On or after the tenth business day after the posting of such order and upon the written directive of the commissioner, police officers and authorized representatives of the department shall act upon and enforce such order by removing, covering, painting over or otherwise rendering ineffective the illegal sign or its sign structure or both. Such work shall at all times be performed by a licensed sign hanger where required by law. Nothing in this article shall be construed to prohibit an owner or other person having an interest in the property from removing or causing the removal of an illegal sign or its sign structure prior to the arrival of such enforcement officers. On and after the posting of such removal order, no further permits for signs shall be issued for such building or premises pursuant to this code and, if the sign structure is not removed, no further display shall be exhibited on such sign structure unless and until the commissioner rescinds such order.

§28-503.6 Rescission of order. The commissioner may rescind the order if the owner or other person having an interest in the building or premises provides assurance in a form satisfactory to the commissioner that all signs erected or maintained at such building or premises will be in compliance with the zoning resolution, this code, the 1968 building code or rules adopted pursuant to such provisions. If such order is rescinded, the commissioner shall, upon request of such owner, mortgagee or other person, provide a certified copy of such rescission which may be filed with the county clerk or register of the county in which such building or premises is located.

§28-503.7 Costs. The costs and expenses for painting over, covering, rendering ineffective or for the removal and storage of such sign and its sign structure may be recovered from the owner of the premises or, if the illegal sign is under the control of an outdoor advertising company and notice was served on such company in accordance with this article, from such outdoor advertising company. Such amounts may be recovered by the city in an action or proceeding in any court of appropriate jurisdiction and, with respect to amounts owed by an outdoor advertising company, by drawing upon any bond posted or other security provided by such company pursuant to section 28-502.2. Nothing in this article shall be construed to limit the ability of an owner to seek recovery of such costs and expenses from any other party.

§28-503.8 Lien. In addition, such costs and expenses shall constitute a lien on the land and building on which the sign was located which may be entered and enforced pursuant to the provisions of this code in the same manner as an unpaid fee.

§28-503.9 Storage and disposal. The commissioner shall adopt rules to provide for the storage and disposal of any sign or sign structure removed pursuant to this article. If the identity and address of the owner of such property is reasonably ascertainable, notice of the removal shall be sent to the owner within a reasonable period of time after the removal. If such property is not claimed within thirty days after its removal, it shall be deemed to be abandoned and may be sold at a public auction after having been advertised in the City Record and the proceeds paid into the general fund or if the commissioner determines that the property is not saleable, he or she may turn over such property to the department of sanitation for disposal. Property removed pursuant to this article shall be released to

the owner or other person lawfully entitled to possession upon payment of the costs of removal and storage as set forth in the rules of the department and any fines or civil penalties imposed for the violation or, if an action or proceeding for the violation is pending in court or before the environmental control board, upon the posting of a bond or other form of security acceptable to the department in an amount which will secure the payment of such costs and any fines or civil penalties which may be imposed for the violation.

§28-503.10 Definitions. For the purposes of this article the terms “sign” and “surface area,” in reference to a sign, shall be as defined under section 12-10 of the zoning resolution.

§28-503.11 Review of order. An order of the commissioner issued pursuant to this article shall be a final determination of the commissioner for purposes of review pursuant to article seventy-eight of the civil practice law and rules. Notwithstanding any inconsistent provision of paragraph (a) of subdivision six of section six hundred sixty-six of the New York city charter, such order shall not be subject to review by the board of standards and appeals.

