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COMMITTEE ON LEGAL PROBLEMS OF THE AGING
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

Intro. No. 380 **Council Member Katz**

A LOCAL LAW to amend the Administrative Code of the City of New York, to clarify the rights of guardians and their companion animals in multiple dwellings by specifying that once a no-pet provision in a lease is waived, it is waived for the duration of the tenant's occupancy in the multiple dwelling; and to grant senior citizens residing in multiple dwellings the automatic right, regardless of three months elapsing, to have companion animals in their apartments.

THIS BILL IS APPROVED

Intro. No. 380 modifies Section 27-2009.1 of the Administrative Code of the City of New York, a 1983 law (sometimes called the three-month rule or the pet law). The 1983 pet law provides that any no-pet provision in a lease is waived if the building owner does not commence suit within three months of the companion animal's open presence in an apartment. The proposed amendment has two objectives. First, it clarifies that waiver of the no-pet provision after three months applies, unless a nuisance is created, for the duration of the tenancy, not just for the lifetime of the particular animal(s) then present. Second, it provides that senior citizens may have companion animals in their apartments regardless of the applicability of the three-month rule, unless a nuisance is created.

DURATION OF THE TENANCY AMENDMENT

The proposed amendment will serve both to clarify the original intent of the 1983 pet law and to settle recent conflicting court decisions regarding the law.

The legislative history of the 1983 pet law reveals that the companionship and security provided by a household animal are compelling. Thus, a person's right in general to have a companion animal is as important as the right to have a particular animal. Once the required three months elapses, that right must vest in general, not just for a particular companion animal.

Judicial decisions have varied in their interpretation of this point, indicating a need for clarification. Before 1996, courts considering the 1983 pet law generally held or implied that a waiver of a no-pet clause after three months was intended to apply for the duration of the tenancy. *See, e.g.*, *Park Holding Co. v. Emicke*, 167 Misc. 2d 162 (Civil Ct. N.Y. Co. 1995), *rev'd*, 168 Misc. 2d 133, 646 N.Y.S.2d 434 (App. Term 1st Dept. 1996); *McCullum v. Brotman*, N.Y.L.J. May 11, 1988, at p.14, col. 4. One Appellate Division decision provided that once enforcement action is not timely taken the "lease provision shall be deemed waived." *See Megalopolis Prop. Ass'n v. Buvron*, 110 A.D.2d 232, 494 N.Y.S.2d 14 (2d Dept.1985). Another court held that the only reasonable reading of the statute would be a waiver of the clause in the

future because the section refers to a tenant who "harbors or has harbored a household pet or pets." According to that court, the past tense can only be meant to refer to situations where there was a previous waiver of the clause. *See Brown v. Johnson*, 139 Misc. 2d 195 (Civil Ct. N.Y. Co. 1988).

A 1996 Appellate Term decision, however, held that when a building owner fails to commence suit within the required three-month period, it is not the lease provision itself that is waived, but the enforcement of the lease provision against that particular pet. *See Park Holding Co. v. Emicke*, 168 Misc. 2d 133, 646 N.Y.S.2d 434 (App. Term 1st Dept. 1996).

More recently still, one Appellate Division case implied that once three months have passed, the clause may be waived for all future pets during the tenancy. The court held that "all extant leases were thereby amended by operation of law [referring to section 27.2009.1] to render no-pet clauses waivable under the terms of the ordinance." *Seward Park Housing Corp. v. Cohen*, 287 A.D.2d 157, 734 N.Y.S.2d 42 (1st Dept. 2001) (citing *Megalopolis Prop.*, 110 A.D.2d 232, 494 N.Y.S.2d 14).

In short, there is at least some controversy over this issue that requires clarification of the original intent of the law. The committee believes that the proposed modification complies with the intended meaning of the 1983 pet law.

SENIOR CITIZEN AMENDMENT

This aspect of the amendment provides that a person 62 years or older shall not be denied occupancy in, or be subject to eviction from, a multiple dwelling on the sole ground that such a person harbors or will harbor a household pet or pets, the harboring of which is not prohibited by the multiple dwelling law, the housing, maintenance or health codes of the city of New York or any other applicable law. Under the proposed amendment, the senior citizen will not be required to prove that the animal has been kept for three months. The proposed amendment is designed in part to protect senior citizens from having to make a heart-wrenching, and unfair, choice between giving up their pets—often their primary companions—and moving out of their apartments and severely disrupting their lives. Additionally, approximately 40,000 homeless dogs ands cats are killed each year in New York City's animal shelters, too often because not enough homes are available for them.[1]

Numerous studies show that pets can be extremely beneficial to the health of the aging and various hospitals throughout the city have recognized this link. Animal-assisted therapy has gained mainstream recognition in the past several years, as more studies emphasize the medical benefits offered by companion animals (e.g. lower blood pressure, increased motor skills, mental stimulation). [2] The proposed amendment protects the city's elderly and their companion animals by recognizing the valuable benefits each bestows upon the other.

[1] New York City Animal Care and Control; Humane Society of New York.

[2] "Helping Paws," Ruth J. Katz, *New York Magazine*, May 18, 1998, p. 29.