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NYC COUNCIL

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THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

SPEAKER'S OFFICE

May 30, 2012

Hon. Michael McSweeney  
City Clerk and Clerk of the Council  
141 Worth Street  
New York, NY 10013

Dear Mr. McSweeney:

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 251-A, which would amend the Administrative Code of the City of New York "in relation to requiring a living wage to employees employed on property developed by recipients of financial assistance for economic development."

Introductory Number 251-A would impose a wage mandate for those employed in connection with property or projects developed by recipients of at least \$1 million in discretionary financial assistance from the City or a "city economic development entity" for the improvement or development of real property, economic development, job retention and growth or "other similar purposes". Employers would be required to maintain extensive records and to report on hours, wage and benefit information for all such employees, involving onerous requirements and potential penalties that will additionally discourage companies from participating in any City programs that involve financial assistance. Passage of this bill will threaten some of the City's most innovative and important economic development projects -- the types that have stabilized and revitalized neighborhoods in all five boroughs. Furthermore, Introductory Number 251-A seeks to legislate in subject areas, and to assert jurisdiction over entities, that are governed by State law. Moreover, by prescribing business terms for the acquisition and disposition of real property in contravention of the Charter, and by providing a prominent enforcement role to the City Comptroller, this proposal would upset the balance of powers, carefully crafted in the Charter, among elected officials.

The creation of well-paying, sustainable jobs has never been more critical to New York City residents and to the future of the City's economic health, which is why we have waged an aggressive ten-year campaign of job creation and workforce skill development that is designed to help expand economic opportunity for all New Yorkers. This has been central to the strategy to power the City's recovery from the Great Recession, and it has yielded promising results. In 2011, businesses in New York City created new private-sector jobs at a rate that was approximately 55% faster than the nation as a whole. Furthermore, as of March 2012, New York City had gained back an encouraging 185% of private sector jobs lost during the recession, compared to merely 42% of those recaptured nationwide.

Despite these results, too many New Yorkers remain unemployed and looking for work. One component of our ongoing comprehensive efforts involves incentive programs that attempt to reduce tax and other costs to encourage job-creating developments that otherwise would not occur, often in low- and moderate-income communities, or in challenging sectors of the economy such as the industrial sector. Our focus with these programs is not on companies that have clearly established a competitive advantage and do not need any additional incentive to be here, but rather on those investments that are on the margins, where targeted support induces developers and businesses to make investments that would otherwise be financially unfeasible in New York City. Often, it means the difference between jobs gained and jobs that are created outside the City, or not created at all.

This bill—which would increase the costs associated with development and investment by mandating higher costs for projects receiving financial assistance from the City—would offset the benefit provided by this assistance. It would make it harder for companies—which have the option to do business anywhere—to make decisions to invest in New York. This bill is a risk to New York City's long-term economic competitiveness.

Some projects that would create jobs may not move forward at all because they are no longer financially viable without the benefit of these incentives. This is particularly troubling for industrial companies, which provide good-paying, high-quality jobs for hundreds of thousands of New Yorkers. This bill would make it more difficult for these businesses to stay here and expand at a time when the City should be focused on supporting them.

For projects that still do move forward, if the value of these incentives is offset, the increased cost of the projects will be passed along to others—either to taxpayers, in the form of making higher subsidies necessary to incentivize these types of projects, or to the end-user—consumers who will be faced with higher prices for goods and services.

Moreover, the penalties included in this legislation—such as recovering financial assistance for non-compliance—would complicate potential lenders' ability to quantify the risks associated with a project, which in turn would make it more difficult for projects that are already financially challenging to access financing, or make financing more costly. This poses significant challenges for companies in planning for the future, and it could dissuade them from expanding and hiring in New York City.

The bill would also generate significant business and operational costs for not-for-profit and cultural groups who, while themselves exempted from the legislation, would bear the burdens of the additional costs imposed on the contractors, vendors and consultants performing work on their premises.

While this bill could potentially result in higher wages for some workers, these increases would come at the cost of job creation. It also would reduce opportunities for entry-level workers, because if employers are forced to pay higher wages, they will choose to hire fewer more experienced employees to economically justify the increased costs. I will not support a law that risks having the opposite impact of its intentions, distorting the market in such a way that would reduce opportunities for those who most need them and force taxpayers to bear the burden.

Apart from raising these important policy concerns, Introductory Number 251-A is legally flawed for several significant reasons.

The bill is pre-empted by State and federal law in that it seeks to regulate wages. It defines categories of "living wage" work under circumstances that the State Legislature elected not to subject to wage requirements. These measures effectively amount to an effort to impose a regulatory minimum wage upon sectors of the City economy, a subject matter reserved to the State under applicable Court of Appeals case law.

Moreover, the bill purports to set the terms under which the City may acquire an interest in real property or may dispose of real property for development projects, thus improperly inhibiting the Mayor and executive agencies from dealing with other parties in real property transactions. This constitutes an improper infringement upon the discretionary powers of the Mayor and other officials involved in the land use review processes. By allowing the City Council to go beyond its prescribed role of reviewing land use decisions through processes specified in the Charter, the bill would unlawfully alter the balance among key City officials.

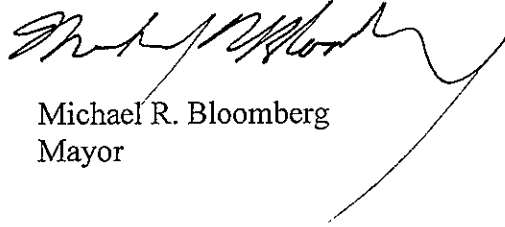
By using broad definitions of terms such as "city economic development entity" and "financial assistance", the bill appears to seek to cover projects aided by various entities created by State law to further goals such as affordable housing and economic development. To the extent that the bill frustrates the purposes of such State laws or otherwise interferes with such programs, it would be pre-empted. Finally, the bill improperly provides a major role in enforcement investigations to the City Comptroller. The Charter generally does not provide to the Comptroller this type of proactive role in investigations and enforcement given the role of the Mayor and his or her appointees in executing the laws. In prevailing wage mandates, the Comptroller's role has been authorized by the State Legislature, but that is not the case here.

When I disapproved Introductory Number 18-A, which sought to establish new prevailing wage requirements for certain employees in City-assisted economic development projects, I emphasized the need to strike the appropriate balance between improving the employment opportunities of the City's workers and creating opportunities for innovative economic development programs. Like that bill, this proposal also fails to strike such a balance and is both inconsistent with law as well as unsound from a policy perspective. The passage of

two similar bills in a short period of time raises serious concerns about the long-term ability of the City to continue attracting and generating the business activity that is necessary to support both the local economy and the services of local government. I respectfully urge the Council to reconsider the course that it has undertaken with these bills.

Accordingly, I hereby disapprove Introductory Number 251-A.

Sincerely,



Michael R. Bloomberg  
Mayor

cc: The Honorable Christine C. Quinn

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