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ASSISTANT COMMISSIONER
NEW YORK CITY DEPARTMENT OF BUILDINGS**

**HEARING BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON HOUSING & BUILDINGS**

February 27, 2015

Good morning Chair Williams and members of the City Council. My name is Patrick A. Wehle and I am Assistant Commissioner of External Affairs at the Department of Buildings. I am joined by my colleague Hiren (Harry) Vyas, Director of the Elevator Unit. Mr. Vyas and I are joined by Ann Marie Santiago, the Department of Housing Preservation & Development's Associate Commissioner of Enforcement and Neighborhood Services. We are pleased to be here this morning to offer testimony on Introductory Number 462, which requires referral by the Buildings Department ("Department") of certain immediately hazardous elevator violations to the Department of Housing Preservation & Development ("HPD") for inclusion in their Emergency Repair Program.

Specifically, Intro. 462 amends the City's Administrative Code to authorize the Buildings Commissioner to refer to HPD for inclusion in their Emergency Repair Program multiple dwellings that have received immediately hazardous elevator violations where no effort has been made to correct the violation in a period of time established by the Department. Exceptions are provided for elevators that only service an owner-occupied unit and elevators within convents and rectories that are not open to non-occupants on a regular basis.

Article 5 of subchapter five of the Housing Maintenance Code authorizes HPD to correct conditions in residential properties whenever HPD determines that because of any violation of this chapter or other applicable law, any dwelling or part of its premises is dangerous to human life and safety or detrimental to health. It is under this provision that HPD's Emergency Repair and Environmental Hazards Program operates. The same article provides the authority for HPD to recover all expenses and to place a lien upon the building and lot should payment not be made.

Inoperable elevators, particularly in multiple dwellings where only one elevator exists, are more than just an inconvenience to residents. For those residents who rely on an elevator due to their advanced age or physical impairment, not having access to one can effectively trap them in their home, or potentially cause injury resulting from being forced to navigate stairways. Furthermore inoperable elevators can delay emergency response.

In a dense urban environment such as ours elevators have become essential for New Yorkers to go about their daily lives. New York City is home to approximately sixty-five thousand passenger elevators in nearly thirty thousand buildings. The Department is responsible for ensuring that the City's elevators operate safely. Specifically we perform annual inspections of every single elevator in the City and additionally require owners to hire third parties to perform annual inspections as well. In 2014 approximately 180,000 inspections were performed on the City's elevators. The Department also licenses elevator inspectors and directors.

Examples of immediately hazardous elevator violations include elevators that run with doors that do not close properly and non-functioning elevator safety devices. In 2014 the Department

issued 503 immediately hazardous elevator violations, which represented an approximately 17% reduction from the 607 we issued in 2013 and a 42% reduction from the 871 we issued in 2012. Immediately hazardous elevator violations must be corrected immediately. The penalties for immediately hazardous elevator violations start at \$1,000 and can be as high as \$25,000 if the violation is not corrected.

Upon receipt of an elevator complaint the Department sends an inspector to the location to examine the elevator. For complaints related to hazardous conditions inspections are performed within thirty-six hours. Inspections are prioritized for buildings with a single elevator or if the Department is made aware that an elderly or disabled tenant occupies the building. If an immediately hazardous violation is issued a cease use order will be placed on the elevator. Upon the request of the owner or the elevator company the Department will reinspect the device to confirm that the hazardous condition(s) have been corrected. If the owner or elevator company fails to contact the Department, a reinspection will be performed in ten days for a single elevator building and thirty days for a multiple elevator building to determine if the repair has been made or to ascertain what steps have been taken to make the repair. Once the repair work is completed the Department will inspect the elevator to lift the cease use order. A Department inspector must reinspect all hazardous violations before elevator service can be restored for public use.

In 2006 the Department established the Major Offenders Project to identify properties and focus enforcement efforts where there was only one elevator in the building, or a portion of a building serviced by only one elevator and that was consistently out of service. A number of criteria must be satisfied to be considered a Major Offender including receiving ten or more complaints and

violations following confirmation of violating conditions by the Department. The Department lists Major Offenders on its web site and pursues enforcement action against them in criminal court. There are currently eight buildings on the Major Offenders list. Additionally the Department gives special attention by monitoring progress toward compliance for the properties at risk of becoming Major Offenders, of which there are currently thirty-three.

While any multiple dwelling without a working elevator requires prompt inspection by the Department and correction by the building owner as soon as practicable, the unfortunate reality of elevator repair is that depending on the scope of the problem it can often take quite some time to bring an elevator back on line. Many of the City's elevators are decades old, with the original manufacturer no longer in business. As a result, it can take many weeks for specialized replacement parts to be delivered or in some cases built.

Approximately 65% of immediately hazardous elevator violations are corrected within one week. For the remaining 35% correction can take anywhere from a week to three months depending on the scope of work.

As drafted Intro. 462 would require the Department to refer to HPD for inclusion in their Emergency Repair Program multiple dwellings where no effort has been made to correct immediately hazardous violations in a period of time established by the Department. Given that elevator malfunctions vary in their complexity it is difficult to arrive at a single period of time by which insufficient compliance would be demonstrated. That said, the Department recognizes

that there are a small number of buildings encompassing the most egregious violators that may benefit from an additional enforcement tool such as Emergency Repair Program.

Given the Department's largely successful enforcement efforts to compel correction of immediately hazardous elevator violations, albeit in a period of time that while sometimes lengthy is necessary, the Department would suggest special care be taken in determining which immediately hazardous elevator violations should be referred to HPD for inclusion in their Emergency Repair Program. Any referral process should be targeted to only the small number of buildings that are not seeing results from the Department's enforcement efforts and where subjection to HPD's Emergency Repair Program or other enforcement efforts would improve compliance.

Thank you for your attention and the opportunity to testify before you today. Mr. Vyas, Ms. Santiago and I welcome any questions you may have.



MEMORANDUM IN OPPOSITION

Intro.462

The Rent Stabilization Association (RSA) represents 25,000 owners and managers that collectively manage over 1,000,000 units of housing. Intro. 462 would authorize the Department of Housing Preservation and Development (HPD), to correct “any immediately hazardous elevator related violation” in a private building. It’s our understanding that the intent of the bill is to repair non-working elevators in buildings where the elevator has been out of service for an extended period of time. RSA agrees with the intent of the bill but opposes Intro. 462 in its current form.

According to many practitioners in the elevator repair/renovation business there is no list at the Department of Buildings (DOB) which regulates elevators, of “immediately hazardous violations”. The term “immediately hazardous violation” can basically be almost any condition an inspector deems hazardous. RSA’s concern is that this open ended definition could ensnare owners and managers trying to repair a condition but have experienced mechanical problems beyond their control. The overwhelming majority of owners move quickly to correct immediately hazardous violations. However, many older buildings have equipment that may not be fixable and locating parts can be a challenge. Often times when replacement parts are not available new parts must be fabricated. In extreme cases the lack of a critical part may trigger a major elevator upgrade. These issues sometimes delay prompt repair of elevators.

RSA suggests the bill be amended to provide an exception to owners or managers that can document the fact that they have contracted with a licensed elevator repair company to repair an elevator. This will prevent responsible owners from getting duplicate bills from city contractors that have the same repair issues an owners’ contractor is experiencing.

**Testimony before the Committee on Housing and Buildings
of the New York City Council
By Ryan J. S. Baxter, Senior Policy Analyst
Real Estate Board of New York
February 27, 2015**

Good morning Chairperson Williams and members of the Committee on Housing and Buildings. My name is Ryan Baxter and I am a Senior Policy Analyst for the Real Estate Board of New York. The Real Estate Board of New York, representing over 16,000 owners, developers, managers, and brokers of real property in New York City, thanks you for the opportunity to testify regarding the emergency repair of elevator violations. We also appreciate that the New York City Council has been proactive in seeking our comments and in collaborating with building owners.

We have been actively engaged in discussions with our membership to help ensure the proposed regulations efficiently and effectively meet the goals these bills try to accomplish. While we support the intent of the proposals, we have a few concerns with Int. No. 462.

We agree that the City needs a mechanism to address immediately hazardous elevator-related violations in multiple dwellings when owners and responsible parties are negligent and unresponsive. However, we believe the DOB should be the City's first line of defense, and that only in instances where an owner is acting willfully negligent through persistent unresponsiveness should they be referred to HPD.

Int. No. 0462-2015 – Establishment of an emergency repair program for elevators

- We recommend that the proposal more fully utilize DOB's existing infrastructure for remedying these violations while mirroring HPD's Alternate Enforcement Program (AEP) to address the worst conditions. Therefore, the trigger for violation referral needs to be set high enough that it does not include responsible owners and parties in the process of correcting violations.
- In certain circumstances, responsible repair of immediately hazardous elevator violations can take substantial time as the manufacture of requisite materials, parts, and equipment may take as long as 16-weeks. Currently, responsible parties taking all reasonable steps to correct the violations can pursue cure date extensions by demonstrating their progress. The bill should ensure that HPD does not pursue violations for which reasonable corrective measures have already begun.
- Additionally, as a matter of procedure, elevators with immediately hazardous violations are taken out of service, reducing the exposure to threats to life, health, and safety. HPD's focus should be on instances where owners and responsible parties have not done so, and or where there are other motivating factors for the Class 1 violation, similar to the AEP.
- Finally, we ask that the bill be revised to allow the DOB Commissioner discretion over which elevator violations are referred to HPD. Excluding responsible owners and parties taking reasonable actions to correct violations themselves will allow for an HPD effort more similar to the AEP.

We believe that effective legislation can be crafted to achieve the Council's goals while addressing the concerns listed above, and we look forward to working to that end with the Council. Thank you again for the opportunity to comment.



Testimony by New York Legal Assistance Group (“NYLAG”)

before the NYC Council Committee on Housing and Buildings regarding:

Int. No. 462, A Local Law to amend the administrative code of the City of New York, in relation to the establishment of an emergency repair program for elevators.

February 27, 2015

Chair Williams, Council Members, and staff, good morning and thank you for the opportunity to speak about the emergency repair of elevators and to testify in support of Int. No. 462. My name is Lauren Price and I am a fellow in the Special Litigation Unit of the New York Legal Assistance Group, or NYLAG. NYLAG is a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

As a free legal services provider, NYLAG sees the impact of repairs issues on New York City tenants on a daily basis. Specifically, NYLAG has been concerned for many years about the impact of broken elevators on low-income New Yorkers with disabilities. In 2009, NYLAG brought a class action lawsuit against the New York City

Housing Authority (NYCHA) on behalf of mobility impaired public housing residents. These residents complained to NYLAG that perpetually broken elevators had confined them to their apartments for days at a time, forced them to hobble down multiple flights of stairs in a leg brace, and left them stuck for hours in wheelchairs in public housing lobbies. The lawsuit challenged NYCHA's widespread and systemic failure to maintain its more than 3,300 elevators in operable working condition, asserting that NYCHA's practices violated the Americans with Disabilities Act, as well as state disability law, by denying people with disabilities the full use of their homes.

One of these clients, who uses a motorized wheelchair due to a variety of medical issues, including severe osteoporosis of the spine and osteoarthritis of the knee (both of which have required multiple surgeries) and chronic asthma lives in a building where she estimates that the elevator is broken as often as fifteen times per month. One night after returning home from Bible study class, she was stuck in the lobby of her building for eight hours waiting for the landlord to make repairs. As she waited, she was accosted and robbed. Her purse was taken, along with all of her money. She called the police, who stayed with her until the elevator finally was repaired at 4:00 a.m. At least three times after that, she has had to call the police to sit with her when she has had to wait late into the night for elevator repairs. She now fears leaving her apartment, worrying that her safety will be endangered if she returns to find the elevator broken.

As a result, NYLAG worked with NYCHA over the course of three years to reach agreement on milestones for repairing and maintaining elevators, and NYLAG has been monitoring NYCHA's compliance with this agreement. While NYCHA has made some progress in repairing its elevators as a result of the lawsuit, NYLAG has many mobility

impaired clients who reside in private housing and suffer the severe consequences of landlords who refuse to maintain elevators in working order.

To mention just two examples, we have one client in the Bronx who is a single parent of a son with mobility impairment. When their elevator is broken, which is often and for lengthy periods of time, she has to carry both her son and his wheel chair up and down the stairs. This requires her to make two trips up and down the stairs each time her son needs to leave the apartment just to go to school. Another one of our other clients, who is an 80 year old single senior and uses a walker, has resorted to calling 911 to have someone carry her down the stairs when she needs to leave her home. In the first case, NYLAG helped the client file an HP action, but the court dismissed the case on the grounds that it had to be brought by a group of tenants and not just one of them.

We would also like to note that maintaining elevators in working order does not only help individuals in their personal, daily lives, but is also important in terms of emergency or disaster preparedness. NYLAG assisted many clients who were affected by the lack of elevator service right after Superstorm Sandy where neighbors and volunteers had to go door to door to make sure that no seniors or mobility impaired individuals were left in their apartments without food, electricity, or water for days.

As such, we commend the Council and this Committee for working on this matter and urge the passing of Int. No. 462, which would allow for HPD to take over elevator repairs when landlords refuse to do so.

We would welcome the opportunity to discuss any of these matters with the Committee further.

Thank you for the opportunity to testify today.

Respectfully submitted,

Lauren Price, Fellow

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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I intend to appear and speak on Int. No. 462 Res. No. _____

in favor in opposition

Date: 2-27-15

(PLEASE PRINT)

Name: LAUREN PRICE

Address: 7 HANOVER SQUARE

I represent: NEW YORK LEGAL ASSISTANCE GROUP

Address: _____

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Appearance Card

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Ann Marie Santiago, Associate

Address: Commissioner, NYS

I represent: HPD

Address: 100 2nd street

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Appearance Card

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Date: 2/27/15

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Name: FRANK RICCI

Address: _____

I represent: Rent Stabilization Assoc.

Address: _____

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in favor in opposition

Date: 2/27/15

(PLEASE PRINT)

Name: Harry Vyes

Address: _____

I represent: Buildings Dept.

Address: _____

Please complete this card and return to the Sergeant-at-Arms

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I intend to appear and speak on Int. No. 462 Res. No. _____

in favor in opposition

Date: 2/27/15

(PLEASE PRINT)

Name: Patrick Wehle

Address: _____

I represent: Buildings Dept.

Address: _____

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