



Urban Justice Center
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RECORD

Alternate Enforcement Program

*New York, New York
December 15, 2010*

Urban Justice Center – Community Development Project

Testimony before the Housing and Buildings Committee

Good afternoon. My name is Harvey Epstein; I am the Director of the Community Development Project at the Urban Justice Center. The Urban Justice Center is a project-based umbrella legal services and advocacy organization serving New York City residents. The Urban Justice Center serves New York City's most vulnerable residents through a combination of direct legal service, systemic advocacy, community education and political organizing. The Community Development Project (CDP) of the Urban Justice Center formed to provide legal, technical, research and policy assistance to grassroots community groups engaged in a wide range of community development efforts through New York City. Our work is informed by the belief that real and lasting change in low-income, urban neighborhoods is often rooted in the empowerment of grassroots, community institutions.

The proposed amendment pending before the New York City Council is an important step in improving the health and quality of life of some of the most vulnerable residents of our City. There is an undeniable relationship between bad housing conditions and asthma prevalence. New York City has one of the highest asthma rates in the country and the disparate impact of asthma on the poor and minorities is not improving. Studies have shown that deteriorated housing conditions, often characterized by the presence of cracks and holes in the interior walls, contribute to the presence of Dust Mites, Cockroaches, Rodents and Mold. There is strong evidence suggesting that these conditions exacerbate asthma symptoms.

Asthmatic tenants have been unable to get their landlords to properly repair deplorable housing conditions that trigger asthma and there are currently no regulations that require landlords to make these repairs. Asthma triggers such as cockroaches and mold are seldom classified as serious housing violations that cause an immediate threat. Therefore, landlords had longer periods of time to repair and they suffered less severe penalties. Additionally, there was no regulation that required landlords to address the underlying causes of these deplorable conditions, such as leaking pipes or holes in walls and floors. Landlords merely sprayed toxins in people's homes, painted over mold or cleaned it with bleach. This exacerbated tenants' health issues and did not provide a long-term solution.

In 2007, the Urban Justice Center teamed with other community and advocacy organizations to form the Coalition for Asthma Free Homes (CAFH). Our goal was to find solutions for reducing indoor asthma triggers in New York City. In 2009, we proposed the Asthma-Free Housing Act of 2009 (Intro 750), which called for stricter and clearer guidelines for dealing with mold, insects and rodents. We wanted tougher penalties for violations, better training so that landlords could tell when mold was a problem, and more transparency in letting tenants know their rights. Under this Act, landlords would be required to

address and remedy the underlying causes of mold and vermin. Specifically, landlords would be responsible for ensuring that apartments of susceptible persons are maintained free of indoor allergen hazards such as mold and pest infestations. Landlords would be required to inspect dwellings of susceptible persons annually for mold and pest infestations and correct these conditions promptly and safely. We wanted the City, primarily in response to complaints, to inspect for indoor allergen hazards and underlying building defects in dwellings of susceptible persons. When HPD inspects, it would inquire whether a susceptible person resides in the home. If so, any allergen hazards or underlying building defects found there would be deemed Class C immediately hazardous violations and landlords would have 21 days to make repairs, unless given an extension. DHMH and HPD would determine the safe work practices to be used in making these repairs.

Additionally, we wanted DHMH and HPD to create a system that allowed health professionals, with the consent of their patients, to request the DHMH to investigate possible indoor allergen hazards. This would include referrals to HPD for investigation, and investigations by DHMH of other indoor allergens that may fall outside the scope of HPD investigations. DHMH would develop a pamphlet detailing appropriate procedures for correcting indoor allergen hazards, which would be made available to the general public and distributed to tenants when HPD or DHMH cites a violation.

The proposed amendment encompasses many of the things we wanted in the Bill. First, it sets guidelines for appropriate mold remediation. The guidelines here are very similar to those set forth by DHMH for mold removal and require owners to cure the underlying defects that cause mold rather than covering them up.

The amendment provides a less toxic, holistic, long-term approach to pest control. Owners are required to remedy the fundamental causes of pest infestations by caulking and sealing the holes in walls, cabinets and other locations where vermin may gain access. Owners are also encouraged to avoid pesticide sprays and foggers and to use pest control products approved by DHMH. This will limit the use of toxic pesticides that do not limit the number of vermin. Requiring owners to have a pest management plan approved by DHMH will ensure that proper methods of pest control are used in the future and requiring owners to distribute brochures on mold hazards, pest problems and proper correction will keep tenants informed and active.

But most importantly, this amendment will provide accountability. To get real results, there must be oversight and enforcement. In ensuring that repairs are made, properly and timely, the department is providing the necessary oversight for achieving positive results.

The Urban Justice Center supports this amendment. It is a marked improvement and vital step in improving the health of low-income tenants living in distressed buildings in New York City. However, we believe that the benefits of this bill should not be limited to the occupants of the 200 buildings chosen for AEP. Applying this law city wide would drastically improve not just the lives of asthmatic New Yorkers but of all those living in deteriorated conditions.



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For the Record

**TESTIMONY OF
DAVE HANZEL, DEPUTY DIRECTOR, BEFORE
THE NEW YORK CITY COUNCIL
COMMITTEE ON HOUSING & BUILDINGS**

December 15, 2010

Good Afternoon. Thank you, Chairman Dilan and Committee Members, for this opportunity to testify about Int. 436 "The Safe Housing Act," which will further enhance New York City's code enforcement efforts. My name is Dave Hanzel and I am the Deputy Director at the Association for Neighborhood and Housing Development (ANHD).

ANHD is a membership organization of NYC- neighborhood based housing groups- CDCs, affordable homeownership groups, supportive housing providers and community organizers. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers. We have 98 members throughout the five boroughs who directly operate over 30,000 units, providing housing for 100,000 people.

ANHD has been a regular advocate for giving the City the legislative authority and resources to forcefully address the substandard conditions some of our residents endure. We recognize that a variety of approaches – from education, to repair programs, to forcefully transferring management to more responsible parties – are essential to an effective strategy. ANHD believes the latest changes in the Alternative Enforcement Program legislation adds significantly to these efforts for several reasons.

First, ANHD would like to voice our support for the additional language and attention related to mold and vermin abatement. Specifically, the use of IPM in the remediation of asthma triggers will help benefit the long-term health of tenants. Second, ANHD supports the lowering of threshold violations from 5 or more B and C violations to 3 or more B and C violations for buildings with more than 20 units. These larger buildings often have a smaller violations-per-unit count than smaller buildings in comparably hazardous shape. By lowering the threshold, the program will be able to capture larger buildings and expand the reach to include a greater share of the city's rental units. Third, ANHD supports the proposed target number of buildings – in this case 200 – per year, and encourages Council to make sure that the HPD's code enforcement division is properly funded to ensure this level of enforcement.

Additionally, ANHD has always been of the opinion that 7-A administration is the appropriate response to truly irresponsible landlords, and we reiterate our belief that in cases of the worst buildings, 7-A actions should be undertaken. Indeed, our support of this legislation should not preclude more aggressive pursuance of 7-A administration, which is also needed. That being said, the new changes to the Alternative Enforcement Program legislation will give the city additional tools and options to improve the lives of the tenants.

ANHD supports passage of Intro 436, the Safe Housing Act, which will go a long way to ensuring New York's low- and moderate-income households enjoy safe, decent housing.
Thank you for this opportunity to testify.



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LATIN AMERICAN INTEGRATION CENTER
AND MAKE THE ROAD BY WALKING

Testimony in Support of Int. No. 436, Amending the Alternative Enforcement Program

My name is John Whitlow and I am a Supervising Attorney at Make the Road New York, a non-profit organization based in the communities of Bushwick, Brooklyn; Jackson Heights, Queens; and Port Richmond, Staten Island. We work to promote economic justice, equity and opportunity for all New Yorkers. Our organization consists of over 7,000 members, most of whom are immigrants and many of whom live in substandard housing. I submit this testimony on behalf of Make the Road New York and thank the Council for the opportunity to participate in this hearing.

Make the Road New York supports the proposed expansion of the Alternative Enforcement Program to require, among other things, the use of comprehensive remediation techniques to combat asthma triggers such as mold and roach and rodent infestations. The amended program, which will identify two hundred (200) buildings around the city that have high numbers of Housing Code violations and seeks their remediation through a combination of enforcement mechanisms, is a significant step toward insuring healthier, safer homes for low-income tenants.

The Alternative Enforcement Program has been an effective tool for improving housing conditions in the city since its inception in 2007. Under the amended program, buildings of various sizes will be selected for participation based upon the ratio of open hazardous and immediately hazardous violations to the number of units in the building. After identification of a building for participation in the program, an owner will have four (4) months to substantially comply with the Code – i.e. he/she will have to correct all violations related to heat and hot water and all immediately hazardous violations related to mold, eighty percent of all hazardous violations related mold, eighty percent of all vermin violations, and eighty percent of all other open hazardous and immediately hazardous violations. If an owner of a participating building fails to comply with the statute, the City will prepare a scope of work and will commence repairs, which will be charged to the owner. It is our hope that HPD and the Department of Finance will take appropriate and diligent measures to collect all outstanding charges and fines from non-complying owners.

As part of the expanded program, owners of participating buildings will be required to remediate certain asthma triggering violations – e.g. violations for mold and vermin – in a comprehensive manner designed to prevent recurrence. With respect to mold violation remediation, owners of participating buildings must cover all exposed surfaces in the repair area, ensure that all work is

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done in a manner that minimizes the dispersion of dust and debris into other parts of the apartment, clean any remaining visible dust properly, and then – upon completion of the work – document that the moisture source was repaired and that the work was performed in accordance with the statute. With respect to violations for vermin, owners must utilize an array of pest management techniques, document that all corrective work was done according to the requirements of the statute, and submit to a pest management plan indicating ongoing pest control measures.

It is our hope that these key additions in the Alternative Enforcement Program will help address the chronic and often debilitating problem of asthma faced by so many New Yorkers. Make the Road New York has been working on this issue for some time. Many of our members, principally in Bushwick, suffer from major environmental health problems, particularly asthma. According to the 2007 Department of Health and Mental Hygiene Community Health profile, Bushwick and Williamsburg have a higher combined rate of asthma in children and adults than the Bronx or Harlem. Both Bushwick and Williamsburg have an adult asthma rate of 9 percent, higher than the New York City and Brooklyn average of 5 percent. A joint study conducted by Make the Road New York and Wyckoff Medical Center, published in 2006, found a strong correlation between incidents of asthma and poor housing conditions. More specifically, the study found that 69% of asthmatics had cockroaches in their homes, 47% had rodent infestations, and 30% had mold conditions.

As a housing attorney representing tenants struggling to get much needed repairs in their apartments, I have found that even when we are able to force landlords to remediate the conditions that lead to asthma, usually through protracted housing court litigation, these conditions often recur. This is especially true with respect to violations relating to mold, which are often dealt with by “repairing” the surface condition without actually addressing the underlying cause of the problem. When dealing with a mold violation, landlords often paint over the surface mold, which is generally enough to have the violation cleared. But because the underlying condition has not been corrected, the mold inevitably returns, and the tenant is left in the same situation they were previously in. In short, our city’s enforcement system has often overlooked the correlation between housing violations and environmental health problems and has not effectively addressed underlying, structural housing conditions.

Through our work combating asthma, Make the Road New York has advocated for a more holistic approach to eliminating asthma-triggering conditions in our members’ – and all New Yorkers’ – homes. We are pleased that the expansion of the Alternative Enforcement Program incorporates elements of this approach into its enforcement regime. In conclusion, Make the Road New York urges the Council to approve the amendment to the Alternative Enforcement Program. We are hopeful that the Council and HPD will share our commitment to developing and implementing an enforcement system that will eliminate asthma-triggering and other serious housing conditions so that all New Yorkers are assured of a healthier future.

TESTIMONY OF THE DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT TO THE COUNCIL COMMITTEE ON
HOUSING AND BUILDINGS
WEDNESDAY, DECEMBER 15TH 2010 – 1PM

Good Morning Chairman Dilan and members of the Housing and Buildings Committee. My name is Rafael Cestero and I am Commissioner of the Department of Housing Preservation and Development. Sitting next to me is Vito Mustaciuolo, Deputy Commissioner of Enforcement and Neighborhood Services. Thank you for the opportunity to discuss the amendments to Local Law #29 of 2007, also known as, the Alternative Enforcement Program (AEP), proposed in Intro 436.

Signed into law in June of 2007 as part of the Safe Housing Act, AEP was established as a means for HPD to apply a whole-building approach to address conditions in some of the City's most distressed residential buildings. Each year, 200 buildings are selected using criteria that include Housing Maintenance Code (Code) violations and amount of emergency repair program (ERP) charges that are in arrears. Through the authority to impose inspection fees and order correction of system replacements the AEP has increased the pressure on the owners of the 600 buildings selected for the program over the past three years. When the owners of these buildings did not comply, HPD intervened to make the necessary building-wide repairs and ultimately lien the cost of the repairs against the property. Over the past three years AEP has been successful in improving housing conditions in the worst buildings in New York City with the removal of over 95,000 Code violations. These violation removals include such things as roof replacements, pointing, and replacement of domestic water supply and waste lines.

In the past year, with increasing distress in neighborhoods, new challenges in the multi-family housing stock, and the overall economic downturn, HPD had looked across the agency to rethink and re-position our programs to address these new challenges. Earlier this year, the Mayor announced a revision of the New Housing Marketplace Plan amending the program to focus more on preservation to mirror the slowing real estate market. In the same vein, we also took a closer look at the AEP program to ensure it was truly capturing the most distressed buildings in New York City. Through our evaluation, in conjunction with the New York City Council, we arrived at a variety of amendments that will improve the effectiveness of the program, while expanding its impact on the City's distressed housing stock. The bill before you proposes to make these amendments.

Currently, the criteria set out in AEP require HPD to annually select 200 buildings that have demonstrated a consistent history of serious Code violations as well as expenditures through HPD's ERP. The statutory criteria for the first two years of the program included: (1) a ratio of at least five hazardous (Class B) and immediately hazardous (Class C) violations per unit over the previous 2 years; (2) a ratio of \$100 of unpaid ERP charges per unit over the last 2 years; and (3) 27 open B and C violations that were issued within the last 2 years. The criteria for the third and most recent round of AEP included conditions 1 and 2, but amended the third to require only 25 open B and C violations.

After reviewing the 600 buildings included in the AEP program over the first three rounds of existence, we noticed that the current statutory criteria produced buildings that tended to be smaller. On average, AEP buildings in rounds one through three were approximately 6-7 units. In reevaluating the program for Round 4, we thought it essential to create a better cross section of building sizes to ensure the program produces maximum results city-wide. Accordingly, Intro 436 proposes an amendment to the existing criteria that will allow a better representation of higher unit buildings into the program. The proposal includes specific selection criteria for buildings of 3-19 units requiring a ratio of 5 or more B and C violations per unit, and at least \$2500 or more of paid or unpaid ERP charges, both in the previous 2 years. It also provides for separate selection criteria for buildings with 20 or more units, requiring a ratio of 3 or more B and C violations per unit and at least \$5000 or more of paid and unpaid ERP charges in the previous two years. Under the revised criteria, we estimate that the average building size for round 4 will increase from 6-7 units to approximately 17-18 units – an increase of almost 2000 units in total from round 3 to round 4.

Intro 436 also allows HPD to amend the AEP selection criteria through rulemaking for rounds 6 and beyond. This will allow HPD to monitor and assess the progress of rounds 4 and 5 and make adjustments as necessary to ensure buildings selected in subsequent rounds are representative of the most distressed buildings in New York City.

Another significant change to the AEP program included in Intro 436 is to specifically designate asthma triggers, including mold conditions and vermin infestation, as conditions mandating correction within the program. In consultation with the Department of Health and Mental Hygiene (DOHMH), the bill includes work practices for the removal of mold and vermin infestation for buildings selected for AEP. Almost 95% of the buildings selected for AEP contain Code violations for mold and vermin infestation in the overall violation count. Including these specific asthma triggers in the program will ensure that these violations are corrected in a timely fashion, and most importantly, according to a standard protocol.

Intro 436 also amends the means by which an AEP building might be discharged from the program. Currently, HPD may discharge a building from AEP after the owner has substantially corrected all of the open B and C violations on the property – including the underlying conditions, and has fully paid all the outstanding ERP and AEP charges and fees associated with HPD completing the necessary work, including liens, and the owner has registered the buildings with HPD. Intro 436 proposes to include the acceptance of a payment agreement as another means of discharge from the program. Experience over the past 3 rounds has shown that the requirement of full payment for program discharge has caused a significant amount of buildings to remain in the program even after the corrective work has already been completed. Allowing the payment agreement option will allow building owners to begin to pay off their debt without accumulating additional AEP fees for work that has already been completed. We think this new option will be a welcome change for the smaller buildings in the program that might have difficulty paying off the full amount at once. Furthermore, easier discharge will ensure the department's resources are focused on the buildings in the most need.

The success of the Alternative Enforcement Program has been a collaborative effort with the City Council from the onset, and the proposed amendments before us evidence the continuation of that effort. As you all know, AEP is vital to HPD's mission to ensure all New Yorkers are afforded the opportunity to live in residences that are safe and in a state of good repair. The amendments proposed in Intro 436 not only improve the functionality of the program, but also thoughtfully expand the scope of the program to mitigate dangerous public health hazards that disproportionately take place in physically distressed buildings like those in AEP. We thank you for your efforts in pursuing these amendments and for this opportunity to testify in favor of this legislation. We welcome any follow-up questions you might have.

Martha Davila's Testimony in favor of the expansion of the Safe Housing Act

December 15, 2010

Good afternoon. My name is Martha Dávila. I'm a member of Make the Road NY. For almost ten years I lived at 37-58 81st Street. When we moved in, we had to take the apartment out of necessity even though it was in very poor conditions. They hadn't painted it. The floor was coming up; the bathroom was a disaster and full of mold which we tried to cover up. The apartment had cockroaches and mice in it when we moved in. I had to do all the maintenance myself because the owner and super never did it.

When I moved in, my daughter Jaritza was one year old. Two years after we moved into that apartment, my daughter got asthma. I stopped working in order to take care of her. At night she had trouble breathing and had to use a machine. This weakened her lungs and she had pneumonia twice. During the winter she always got worse. In 2007, she had to stay home from school for a month and a half. Her asthma attacks and pneumonia were chronic and she developed other complications from the medications she was taking. She began to gain weight and have heart problems.

My daughter is still suffering from the consequences of the academic set-back from having had asthma and so many asthma attacks. Right now her asthma is treatable. She still takes medication but she doesn't have regular asthma attacks anymore. But this whole experience was very traumatic for my daughter and we would not have had to go through all of this if the owner of the building had complied with his responsibility and fixed the apartment. I don't want any other family to go through the same suffering that we have gone through. That's why I'm here to ask the authorities to pass strong and broad legislation in the City of New York to protect tenants from the things that provoke asthma like mice, cockroaches and mold. I ask you to please pass the expansion of the Safe Housing Act.

Thank you.



Testimonio de Martha Dávila a favor de la expansión del Acta de Vivienda Segura

15 de diciembre del 2010

Buenas tardes. Mi nombre es Martha Dávila. Soy miembro de Se Hace Camino Nueva York. Por casi 10 años viví en el 37-58 de la 81 St. Cuando nos movimos al apartamento, por necesidad lo tomamos en muy malas condiciones. No lo habían pintado. El piso estaba levantado, el baño desastroso y lleno de mojo que lo tratamos de cubrir. Lo recibimos con cucarachas y ratones. El mantenimiento tenía que hacerlo personalmente, porque ni el casero ni el súper lo hacían.

Cuando llegué allí, mi hija Jaritza tenía un año. A los dos años que vivimos en este apartamento, mi hija contrajo asma. Yo dejé de trabajar para atenderla. En las noches se ahogaba y usábamos la maquina. Aquello le debilitó sus pulmones y dos veces contrajo neumonía. En el invierno mi hija se ponía peor. En el 2007 tuvo que quedarse un mes y medio en casa, teniendo que faltar a la escuela. Sus ataques de asma y neumonía eran crónicos y su salud se complicó más por los medicamentos. Empezó a subir de peso y a tener problemas de corazón.

Hasta ahora mi hija sufre las consecuencias del atraso académico como resultado de haber contraído asma y sufrido los ataques. Al momento su asma es tratable. Sigue tomando medicina, pero ya no tiene ataques seguidos. Pero toda esta experiencia traumática mi hija y yo no la hubiéramos sufrido si el dueño del edificio hubiera cumplido con su responsabilidad de arreglar el apartamento. Yo no quisiera que otras familias sufran esas mismas experiencias y es por eso que exijo a las autoridades una legislación amplia y fuerte en la Ciudad de Nueva York que proteja a los inquilinos de los provocadores del asma como ratones, cucarachas y moho. Pido que se apruebe la expansión del Acta de Vivienda Segura.

Gracias.

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María Cortes' Testimony in favor of the expansion of the Safe Housing Act

December 15, 2010

Good afternoon. My name is María Cortes. I'm a member of Make the Road NY and a tenant of 870 Bedford Ave. Apt 3R. I have lived in this apartment for about 12 years. The conditions in the apartment are unhealthy. There is mold and rust in the bathroom and kitchen. I currently have a case in housing court and the owner has done very little, even though he was ordered by the court to make the repairs. Last year I had to move my father to a nursing home because of doctor's orders because my father had respiratory problems which were aggravated by the poor conditions in my apartment.

I suffer from asthma and I've had to visit the doctor and go to the emergency room many times because of respiratory problems. Currently I'm taking Predisone and Albuterol. My husband, who's 75 years old, also suffers from a heart condition and respiratory problems which are both aggravated by the unhealthy conditions of mold, mice and cockroaches. The owner has only fumigated twice in the 12 years that we've lived there. On two occasions I had to turn to New York City's Health Department to force the owner to clean the building's common areas. My building only has 8 apartments but it has 186 open violations, 40 of which correspond to my apartment.

It's not fair for the tenants in this city to have to beg for healthy housing conditions or for us to suffer from asthma attacks because of the irresponsibility and lack of respect on the part of the owners. I would like to ask the appropriate authorities to pass this law to protect tenants from the things that cause asthma.

Thank you.



Testimonio de María Cortes a favor de la expansión del Acta de Vivienda Segura

15 de diciembre del 2010

Buenas tardes. Mi nombre es María Cortes. Soy miembro de Se Hace Camino Nueva York e inquilina del 870 de Bedford Ave. Apt 3R. He vivido en este apartamento por alrededor de 12 años. Las condiciones del apartamento no son saludables ya que hay moho y óxido en el baño y en la cocina. Actualmente tengo un caso en la corte de vivienda y el casero ha hecho muy poco, aunque la corte le ordenó hacer las reparaciones. El año pasado tuve que trasladar mi padre a un "nursing home" por orden del médico, ya que tenía problemas respiratorios y las malas condiciones en el apartamento las agravaba.

Yo sufro de asma y he tenido que visitar varias veces a mi médico y salas de emergencia de hospitales por problemas respiratorios. Actualmente estoy en medicación de Predisone y Albuterol. De la misma manera mi esposo, cuya edad es de 75 años, sufre de condición cardíaca y problemas respiratorios, que se agravan por las condiciones insalubres de moho, ratones y cucarachas. El casero ha fumigado solamente una vez en los 12 años. En dos ocasiones tuve que recurrir al Departamento de Salud de la Ciudad de Nueva York para pedir al dueño que haga la limpieza de las áreas comunes del edificio. Mi edificio tiene solo 8 apartamentos pero tiene 186 violaciones abiertas, de las cuales 40 corresponden a mi apartamento.

No es justo que los inquilinos en esta ciudad mendiguemos por condiciones saludables y suframos ataques de asma como consecuencia de la irresponsabilidad e irrespeto de los caseros. Solicito a las autoridades competentes aprobar esta ley que protegerá a los inquilinos de las causas que provocan el asma.

Gracias.

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Fifth Avenue Committee Testimony
Before the New York City Council
On the Expansion of the Safe Housing Act
December 14, 2010

Good morning. My name is Aura Mejia and I am a Tenant Advocate & Community Organizer with Fifth Avenue Committee based in South Brooklyn. FAC's mission is to advance economic and social justice principally by developing and managing affordable housing and community facilities, creating economic opportunities and ensuring economic stability, organizing residents and workers, providing student-centered adult education opportunities, and combating displacement caused by gentrification.

Fifth Avenue Committee would like to especially thank Speaker Quinn and Council members Mendez, James and Brewer for their leadership in expanding the Safe Housing Act to protect thousands of New York City families suffering from asthma and for working with the Asthma Free Homes Coalition on these new code enforcement provisions. FAC would also like to thank the City's Departments of Health and Mental Hygiene and Housing Preservation and Development for their efforts to ensure that this legislation is effectively implemented.

Let me share some facts about asthma that impact thousands of New Yorkers every year, especially low income Latino and African American New Yorkers living in sub-standard housing.

In New York City, low-income Latinos are more likely to be living with asthma. (New York City Department of Health and Mental Hygiene, Community Health Survey 2007)

The majority of those suffering asthma in our city are children. (*Id.*)

Low-income Latinos are also more likely to suffer pest infested homes. (*New York City Department of Health and Mental Hygiene, NYC Vital Signs, Pests Can Be Controlled ... Safely, December 2005 vol. 4, No. 3.*)

Studies have also found that New Yorkers living in roach and mice infested homes can be up to two times more likely to be living with asthma. (*Id.*)

There is a strong link between poor housing conditions and poor health conditions and given this link, the legislation before the Council today to expand the Safe Housing Act will protect the health of thousands of New Yorkers. As background, FAC assists over 200 families a year who face poor housing conditions such as lack of heat and hot water, roach and mice infestations, and mold. FAC has long been aware of what scientific studies undeniably confirm: poor housing conditions, specifically mice and roach infestations, can make asthmatic people very sick. As FAC's lead housing advocate I, personally, have handled hundreds of cases of asthmatic families trying to get these conditions addressed by mediating with landlords, calling 311, organizing tenant associations, and ultimately going to court. In many cases, and often when asthmatic children were involved, FAC observed how Family Doctors would write in their prescription pads:

"Dear Landlord: Child suffers from allergic asthma, severely allergic to roaches and rodents. Please remove."



Fifth Avenue Committee
Our Community. Our Future.

Fifth Avenue Committee Testimony
Before the New York City Council
On the Expansion of the Safe Housing Act
December 14, 2010

But our existing housing code system cannot currently address these conditions because of lack of enforcement and lack of standards to adequately remediate mold and pest infestations. With the expansion of the Safe Housing Act, we can learn how to more effectively address pest and mold violations that negatively impact the health of thousands of asthmatic New Yorkers and ultimately improve the quality of life for those children and families. We can do this in a targeted manner through the expanded enforcement authority granted to NYC HPD by focusing on the properties that have the worst housing code violations.

On behalf of the thousands of families who will be literally able to breathe easier in their own homes, Fifth Avenue Committee (FAC) asks that you support the expansion of the Safe Housing Act to include housing code violations that trigger asthma.

Thank you.

Testimony of
The Legal Aid Society

on

Int. No. 436

A Local Law to amend the administrative code of the city of New York, in
relation to the alternative enforcement program.

Presented before

The New York City Council,
Committee on Housing and Buildings

Judith Goldiner, Supervising Attorney
Sebastian Riccardi, Staff Attorney
Civil Practice
The Legal Aid Society

December 15, 2010

The Legal Aid Society welcomes this opportunity to testify in support of legislation to amend the administrative code of the city of New York, in relation to the alternative enforcement program.

About the Legal Aid Society

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 900 of the brightest legal minds. These 900 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

Intro. 436:

The Legal Aid Society generally supports Intro 436 which would expand the criteria for the Alternative Enforcement Program (AEP) with some qualifications itemized below. One of the problems with the AEP program is that some of the worst buildings do not qualify because they are larger buildings. The change in criteria will include larger rent regulated buildings. We have seen deterioration in these properties because so many of these buildings were overleveraged. In addition, landlords are using the lack of repairs in order to empty buildings. In the Bronx in particular, we have seen huge problems with entire portfolios: Milbank, Ocelot and Hunter. We hope that this redefinition will allow HPD to expend more resources in going after the true worst landlords.

We also support the requirements for better practices with respect to mold and vermin. We see increasing problems with the failure to abate mold and vermin adequately. These requirements will help set a standard for better practices with respect to mold and vermin abatement. However, we have concerns about three provisions.

First, the bill allows HPD to remove any building from the program that "has been vacant for a year or more." See Section (n). It is very important to ensure that HPD not be granted the discretion to remove buildings from AEP due to the existence of a vacate order. The Brooklyn Legal Aid Society office has handled three cases in AEP buildings that have been the subject of vacate orders due to the owners' negligent (or intentional) damage to the building. In all of the cases HPD has been, at best, sluggish in their response and at worst hostile to the tenants' position. And in none of the cases did HPD do what it was supposed under the AEP program which would have prevented the vacate orders in the first place. It is likely that due to the fact that their owners are the worst of the worst, AEP buildings become subject to vacate orders at a higher rate than other buildings. The amendment to Section n giving HPD the discretion to discharge buildings from AEP due to the fact that they have been vacant for a year or more gives landlords an incentive to force out tenants and keep them out. It also would leave vacated tenants with fewer tools to compel owners to make expeditious repairs.

Second, subdivision n provides for other reasons that a building may be discharged from AEP that are also objectionable. We do not object to buildings being discharged from AEP due to the appointment of a 7(a) administrator or based on an in rem foreclosure. Both situations provide tenants with comparable remedies against the City to ensure repairs. However, the provision allowing a building to be removed from the program because "the department has completed any work or monitoring required under subdivision k of this section" is problematic. It would allow HPD to discharge buildings from AEP even if a building owner has not corrected 80% of the immediately hazardous and hazardous violations or all heat and hot water violations, so long as those violations were placed after the comprehensive order issued pursuant to subdivision k. Our experience with AEP buildings is that, even though under subdivision k, HPD is supposed to issue a comprehensive order after a roof to cellar inspection, there are numerous violations in a building that are not included in the order or that are reported only after issuance of the order. This section of the amendment to subdivision n would make correcting all of those subsequently recorded violations irrelevant to whether a building remains in the AEP program. This again gives owners a perverse incentive: they will focus on correcting older violations that may have already been repaired and have no incentive to address the newer violations that are impacting the lives of tenants.

Third, we are also concerned about section (1)(c)(iii) which seems to prioritize the existence of unpaid liens and fines over hazardous conditions when selecting buildings to be put in AEP. HPD's other part of the bargain – removing the condition that all unpaid liens and fines be paid as a condition of leaving the program – is also not advisable. Currently, before a building can exit the AEP program, the owner must pay all outstanding HPD liens and fines. Under this bill a building need only "enter into an agreement with the department of finance to pay such charges and liens." See e.g. Section (j)(i). It is unclear how strict these payment agreements will be

or how much DOF currently collects based on similar payment plans. We do not agree with allowing owners should be able to escape paying HPD's liens and fines before exiting the program or why the City should want a weaker method to collect these monies.

Thank you for the opportunity to share this testimony. And, as always, we look forward to working with the Committee and the City Council in the coming months and years on efforts to address housing conditions in distressed housing.

Respectfully Submitted by,

Judith Goldiner
Supervising Attorney
Sebastian Riccardi
Staff Attorney
The Legal Aid Society
Civil Practice
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New York, NY 10038
Tel: 212-577-3314



Testimony of LISC NYC
On Intro 436
NYC Council Housing and Buildings Committee
Dec 15, 2010

My name is Sarah Hovde and I am the Director of Research and Policy for the NYC Program of the Local Initiatives Support Corporation (LISC). LISC is a national community development intermediary organization that helps community-based groups to transform distressed communities and neighborhoods into healthy ones by providing capital, technical expertise, training and information. In NYC, LISC has provided over \$160 million in loans and grants and over \$1.7 billion in equity to more than 75 community development corporations (CDCs), resulting in the development close to 30,000 units of affordable housing in Harlem, the South Bronx, and Brooklyn.

Intro 436 amends the Alternative Enforcement Program in a number of ways that are aimed at including more large buildings in the program. It adjusts the criteria for eligibility into the program by lowering, for buildings with more than 19 units, the violation-per-unit threshold for eligibility to three or more B or C violations per unit (while the threshold for smaller buildings remains five B or C violations per unit). It also changes the formula for considering ERP liens as an eligibility criteria; rather than basing eligibility on ERP charges per unit, a flat threshold of ERP charges over the prior two years is set; at a higher level of \$5,000 for buildings 20 units and over, and at the lower level of \$2,500 for smaller buildings. Finally, for the fourth year of the program (that is, the up-coming year), the bill prioritizes, among eligible buildings, those with the highest amount of ERP charges incurred during the prior two-year period. This will also result in larger buildings being admitted to the program, since larger buildings tend to have higher amounts of ERP charges.

For buildings that enter AEP, the bill also requires owners to pay special attention to mold and vermin-related violations, and to repair such violations in a manner specified in the legislation.

Finally, the bill proposes a number of changes that are intended to move buildings more quickly out of AEP – including giving the city the ability to discharge buildings whose owners have entered into installment payment agreements; allowing the discharge of buildings that have been vacant for more than one year; and allowing the discharge of buildings that have either become subject to an *in rem* action or have had a 7A administrator appointed.

LISC NYC supports these proposed changes in the legislation, and agrees with the goals they are meant to advance. As the recent IBO report on AEP shows, buildings participating in the program to date have generally been small, with a median of five units. There are many larger buildings in the city that are suffering seriously deteriorated conditions, and their number has grown with the over-financing phenomenon. The ones in the worst conditions deserve the

focused enforcement and access to repairs that AEP offers. I would note, however, that the inclusion of larger buildings in the program will further drive up program costs, which have been rising as HPD has taken on an increasing share of repairs for buildings in the program. Because of this, the devotion of increased budget resources to the program may be necessary.

We also support the changes that address the special threats posed by mold and vermin, which are triggers for asthma, and threaten the health and well-being of building residents, especially children.

Finally, we recognize that there is a need to move buildings more quickly out of the program, and for the most part agree with the amendments that are intended to do this. With regard to the change that would allow discharge when owners enter into an installment payment agreement, we'd like clarification regarding what consequences are applied when an owner defaults on such an agreement. Is the building reinstated in AEP? We suggest that default on an AEP payment agreement should result in an automatic judgment against the owner, and the placement of a lien for the full amount of the outstanding charges on the property.

As sensible as these changes are, they will not by themselves address the lack of incentives for owners to make required repairs, or to pay the costs of the City performing the repairs directly. As the IBO report shows, the majority of buildings that have entered the program to date are still in the program, and the majority of AEP charges billed to owners remain unpaid. Owners need to face stronger consequences for not repairing and not paying. It is our understanding that the legislation under consideration today is simply the first step of a more comprehensive re-examination and updating, by HPD and the Council, of the enforcement and incentive tools needed to ensure that buildings are maintained, and that critical repairs get done. One example, which we expect to hear more about in the near future, would be giving the city the ability to sell – or foreclose upon – stand-alone ERP liens. We support such a move, and recommend that AEP charges be included as well.

Thank you for the opportunity to testify today.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 12/15/2010

(PLEASE PRINT)

Name: MARTHA DAVIDA

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I represent: Make The Road New York

Address: 92-10 ROOSEVELT AVE JACKSON HEIGHTS

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Name: Aura Mejia Fifth Avenue

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I represent: FAC

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Name: Rafael Cestero, Commissioner

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I represent: HPD

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Name: Sarah Hovde

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