Committee on Housing & Buildings

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Testimony of Acting Buildings Robert LiMandri before the New York City Council Committee on Housing and Buildings, July 15, 2008

Good morning Chairman Dilan and other members of the Housing and Buildings Committee. My name is Robert LiMandri, and I am the Acting Commissioner of the Department of Buildings. I am here today with Stephen Kramer, Senior Counsel, and other members of my staff. I want to thank you for the opportunity to discuss the seven bills before you today.

In outline form, three of those bills that are being heard today relate to safety in the operations of cranes. The fourth requires a designated safety manager for buildings with substantial concrete operations. The fifth and sixth bills respectively require owners to submit periodic inspection reports on potentially compromised buildings and retaining walls. And the seventh mandates additional safety information in site safety plans.

These seven bills represent an integral part of the legislative agenda that the Mayor, Speaker Quinn and I announced June 4th with industry leaders. That agenda is designed to further the safety of New Yorkers

and construction workers. The construction industry in New York has a huge presence in so many New Yorkers' lives – on those who live, work or travel near construction sites; on the workers who are rebuilding our City to enable it to continue to be the most important metropolitan center of the nation; and on our City's residents, who will be living or working in the buildings under construction. The Mayor and the Council have been extraordinarily responsive in the last few years in adopting legislation to make the City's construction codes a paradigm of a model and responsive code that will enable the City to remain competitive in the twenty-first century. I want to thank you for so quickly considering the seven bills before you today, which further enhance the codes by giving the Department additional monitoring and enforcement tools that will upgrade the safety framework that ensures that buildings and construction techniques are as safe as they can possibly be. Let me now briefly explain how these seven bills will enhance the safety of New Yorkers.

The three bills addressed to cranes are Intro's 794-A, 795-A, and 796-A. Intro 794-A would require that all workers engaged in the erection, jumping, climbing, rigging, or dismantling of a tower or climber crane have satisfactorily completed a training course of a minimum of thirty

hours, as well as an eight-hour recertification course every three years after the initial course. The bill would require that the courses be provided or conducted by a registered New York State Department of Labor apprenticeship program, an educational institution or school chartered, licensed, or registered by the New York State Department of Education, or by an entity approved by the Department. A certificate or card proving successful completion of the applicable training course would be required to be made available to the Department upon request. The bill further amends section 28-404.3 of the Administrative Code to add these training requirements to master, special, and tower and climber rigger qualifications.

The practice of erecting or dismantling (including jumping) a crane is the most critical time of a crane's operation and consequently potentially the most dangerous for worker and public safety. As a result, all precautions should be taken to ensure that the safest measures are being employed, which includes training in proper means and methods for all involved parties. The addition of a training requirement for workers engaged in the erection and dismantling of cranes increases

safety and reduces the risk of an accident caused by human error. Both the Department and the construction industry fully support the training requirement, and, in view of the high-risk nature of crane operations, as evidenced particularly by the March 15th crane collapse, it is long overdue. We will work with the crane industry to expand these training requirements for those involved in the erection and dismantling of other types of cranes to ensure that New Yorkers can be confident that safety is the first and foremost priority for this segment of the construction industry.

The second bill, Intro 795-A, would allow nylon slings to be used in conjunction with the erection, jumping, climbing, and dismantling of cranes only if the manufacturer's manual specifically provides for or recommends their use. The rigging operations involved in the erection and dismantling of cranes present particular hazards that we must take all reasonable measures to minimize. Wire rope should be the basic material employed in these difficult operations unless the crane's manufacturer identifies a particular role for nylon material. In addition, the bill would prohibit the use of nylon slings unless softening mechanisms have been applied to all sharp edges as OSHA rules already require. Though no final conclusion has yet been reached by

OSHA or the Department's forensic engineers regarding the March 15th crane collapse, preliminary information indicates that a sheared or damaged nylon sling was involved. This bill would require that nylon slings not be used unless it is clear they are the best practice for that specific situation, and that extra safety measures be taken when they are used.

The third crane bill is Intro 796-A. This bill would codify the protocols to be followed in erection and dismantling (including jumping) operations of tower and climber cranes. The affected parties would be required to have the engineer of record for the crane submit written plans and specifications to the Department detailing the erection and dismantling (including jumping) procedures that will be implemented for the crane. The bill will also require that a safety coordination meeting attended by all interested parties be held before each instance of a jump or climb, and further requires that the Department be notified of their occurrence. The parties would be required to discuss the scope, protocols, personnel responsibilities and safety measures of the jump or climb, all of which would be documented in a meeting log by the general contractor. Finally, the bill would require that the engineer of record for the crane inspect the crane to ensure that it

complies with relevant safety requirements and that there are no hazardous conditions that might affect the safety of the erection and dismantling (including jumping) operations.

Crane and rigging operations are a high-risk area of construction with little room for error. Even one incident can be – as we tragically saw on both March 15th and May 30th – catastrophic. Crane operations in New York City are virtually unique in scope, often involving highly engineered structures that require detailed planning and subsequent implementation of safety measures. The bill codifies the best current practices to minimize the risks associated with erection and dismantling (including jumping) operations and to protect workers and the public alike by averting preventable accidents.

The fourth bill before you today is Intro 783-A. Similar to what the new NYC Construction Codes require for demolition and high-rise construction operations, this legislation would require a licensed individual to continually monitor concrete operations for compliance with safe practices and building regulations. Our recent experience with concrete operations has led us to conclude that concrete operations are a high risk endeavor. Last year our data indicate that 59% of material

falling from construction sites had its origin in concrete operations. Concrete on large jobs requires a dedicated and specially trained person to be on site to help ensure that these highly complex operations, involving the coordination of many different trades in a complex series of operations, are conducted safely. Major concrete jobs involve not only the hoisting and pouring of concrete, the correct storage and placement of reinforcing bars, and large amounts of wood and other materials to create forms, but also careful management of the form building and form removal operations, the re-bar installation, and debris handling. To obtain a license as a Concrete Safety Manager, candidates would be required to pass a background check to demonstrate adequate experience and undergo extensive training. The Concrete Safety Manager would have to be available to the Buildings Department at all times, and along with the contractor, would be issued violations with escalating penalties for safety infractions related to concrete work.

The fifth bill before you is Intro 687-A, which would amend the Building Code to require the owners of buildings that may be structurally compromised to file a report with the Department prepared

by a design professional detailing the condition of the building. Intro 687-A is modeled on Local Law 11, the highly successful law that requires owners of buildings over six stories to have their buildings regularly inspected to make sure that the public is not at risk from falling masonry. Intro 687-A would require owners of buildings that have been classified as potentially impaired to file similar reports, but on all of the structural components of the building, not just on the facade.

The bill identifies several categories of buildings that are potentially compromised and which therefore would be subject to this mandatory inspection and reporting requirement: buildings with an open roof for 60 days or more, buildings that have been shored or braced or otherwise repaired by the Department of Housing Preservation and Development pursuant to an order of the Buildings Department, buildings that have been subject to a precept issued by the Supreme Court in an unsafe building proceeding, and other classes of buildings identified by the Department of Buildings that have been determined to be potentially at risk. For example, when a building has had a serious fire and may have incurred structural damage, the Department would notify the owner that the building has been so classified and that an

engineering assessment must be filed within 60 days. Additional reports monitoring the building would be required to be filed every two years or more frequently depending on the condition of the building. Moreover, the report would have to be filed with the Department before a work permit could be accepted for filing. If an owner fails to file a required report with the Department, the Department would cause an inspection and report to be prepared and the costs would become a lien on the building. The owner would also be subject to civil penalties and to fines at the Environmental Control Board.

We think this bill could help minimize the risk that dilapidated buildings pose to New Yorkers. The bill would help identify those buildings that are at risk and "tag" them in a way would put them on our radar screen. For example, most buildings that have had significant fires have had their roofs opened by the Fire Department to ventilate the smoke. If the owner does not repair the roof for 60 days, that is a sign that the building has been abandoned and is at risk. The open roof itself can, through exposure of beams and other structural members to the elements, can lead to serious structural damage. Similarly, buildings that have been subject to emergency repairs by HPD pursuant

to Department of Buildings' emergency repair orders also will also be subject to this inspection and reporting requirement. These are buildings whose owners have refused to take care of their buildings notwithstanding formal notice from the Department.

The next bill before you is Intro 793-A, which imposes a similar periodic reporting requirement as 687-A that I have just discussed, but with respect to retaining walls. New York City has hundreds of retaining walls fronting public space. Owners of retaining walls fronting public areas are often not aware of their legal responsibilities to maintain these walls – which are designed to brace and hold back land. As seen in the massive retaining wall collapse on the Henry Hudson Parkway in 2005, retaining walls in disrepair can be extremely dangerous. This legislation would reinforce private-property owners' responsibility to maintain their retaining walls fronting public areas by imposing cyclical inspection requirements.

The final bill before you is Intro 790-A, which increases the required safety information provided in site safety plans. Contractors pulling permits for construction projects that require the presence of a site safety manager currently must submit a site-specific safety plan that addresses safety issues. This bill enhances these requirements to include

provisions for additional training for construction workers. These include a safety orientation program for new workers and a requirement for job-specific safety meetings before undertaking unusually hazardous work. Because the Department's inspectors simply cannot be at every job site every day, much less at every floor at every job site, it is important to emphasize that basic responsibility for ensuring safety at construction sites begins with contractors employing trained workers who understand the importance of always observing safety rules. The industry itself is aware of this, and its leaders have repeatedly emphasized to me that well organized and properly managed sites employing trained workers who are motivated to emphasize safety provide the basic path for protecting the public. Working high above crowded City streets, often with complex and heavy machinery, high rise construction must be conducted carefully with safety the first and foremost consideration. Many job sites already hold these safety meetings; this additional mandate is intended to make the practice universal and to make sure the message is delivered to new workers as well as to those who are experienced.

Before concluding, I would like to thank the Council and its staff, as well as industry representatives for the helpful and productive input they have provided on these bills. I look forward to continued dialogue and the prompt approval of all the bills comprising our legislative agenda toward the end of a safer construction industry in New York. I will be glad to now address any questions you may have.

BUILDING & CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK

EDWARD J. MALLOY
PRESIDENT

AFFILIATED WITH THE
BUILDING CONSTRUCTION TRADES DEPARTMENT
OF WASHINGTON D.C.
—
BUILDING AND CONSTRUCTION TRADES COUNCIL
OF NEW YORK STATE
—
AMERICAN FEDERATION OF LABOR OF CONGRESS
OF INDUSTRIAL ORGANIZATION

**TESTIMONY OF
EDWARD J. MALLOY
PRESIDENT
BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK**

**COUNCIL OF THE CITY OF NEW YORK
COMMITTEE ON HOUSING AND BUILDINGS
HEARING ON INTS. 687A, 783A, 790A, 793A, 794A, 795A AND 796A**

JULY 15, 2008

Good morning Mr. Chairman and Members of the Committee. My name is Edward J. Malloy. I am the president of the Building and Construction Trades Council of Greater New York, an organization consisting of fifteen local affiliates of national and international unions which represent 100,000 active and retired members in the five boroughs. We are here this morning to testify on seven bills intended to improve safety in the building and construction industry.

Ints. 687A, 783A and 795A have the support of our industry. These bills would, respectively, (1) implement requirements for certain buildings or structures to undergo a structural inspection, (2) implement requirements pertaining to the inspection, maintenance and repair of retaining walls and (3) implement requirements for the correct use of nylon slings in crane operations.

Both the Council and Administration have worked with the building and construction industry to assure that these three bills will promote better safety in buildings, structures and the work performed on them. We commend these efforts.

Ints. 783A and 790A would, respectively, (1) require a concrete safety manager on certain projects and (2) require enhanced site-safety plans on certain projects. We are constrained to oppose these bills in their current form. We have, however, submitted comments on these bills to both the Council and Administration to address concerns with these bills. If these bills are amended to reflect the comments submitted by our industry, we will be pleased to support them.

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Ints. 794A and 796A would, respectively, (1) require certain training for workers involved in tower and climber crane operations, including the erection, dismantling and jumping of this equipment and (2) requires certain safety and regulatory notices for crane operations.

Crane operations involve a high level of coordination and training among multiple trades. It is imperative in implementing training requirements for crane operations that we adopt standards for legitimate training in clearly defined disciplines to reflect the skills and roles of each trade involved in the work.

Crane operations also play a singular and irreplaceable role in supplying material to building sites. It is imperative in implementing safety and regulatory notices for crane operations that we understand these requirements do not merely bear on those involved in crane operations. They affect the entire industry and trades having nothing to do with crane operations whose employment depends on the ability of crane operations to efficiently deliver material to building sites as they rise.

At this point in time, we are constrained to oppose Int. 794A because it fails to adequately assure that training will only be delivered by legitimate providers and because it does not sufficiently define the training curricula appropriate for the different trades involved in crane operations.

At this point in time, we are constrained to oppose Int. 796A because the implications of the bill on overall construction activity have not been sufficiently evaluated. We do not believe this evaluation will unnecessarily delay action on this bill. To the contrary, we believe and expect that with a diligent approach to assuring that Int. 796A will promote safety and not unduly hinder economic activity, the Council and Administration can produce legislation our industry can support before the summer concludes.

We remain committed to working with the Council and Administration on Ints. 794A and 796A. We must, however, be clear in stating that we do not believe the complexities of these two bills can be responsibly addressed in a matter of hours or days. We therefore expect that these bills will not be acted on until August at the earliest so that we can continue the review and discussion on these issues in a manner which will produce effective pieces of legislation.

In conclusion, we believe we are making progress in working with the Council and Administration on the package of fifteen items we jointly agreed to pursue earlier this spring. Ints. 687A, 783A and 795A represent significant accomplishments in crafting legislation to implement parts of this package.

Ints. 783A and 790A and particularly Ints. 794A and 796A are bills where work remains to be done and where prudence dictates that the Council and Administration not act on these bills until we can collectively craft them in such a way that they will achieve real results for the working men and women of our industry and the people of New York City.

We look forward to continuing to work with this Committee and the Council and Administration on these critically important issues. Thank you.

For the record

TESTIMONY OF THE QUEENS & BRONX BUILDING ASSOCIATION BEFORE THE CITY COUNCIL COMMITTEE ON HOUSING & BUILDINGS
JULY 15, 2008

GOOD DAY. MY NAME IS ROBERT ALTMAN AND I AM THE LEGISLATIVE CONSULTANT TO THE QUEENS & BRONX BUILDING ASSOCIATION, A LOCAL CHAPTER OF THE NEW YORK STATE BUILDERS ASSOCIATION. I SUBMIT THIS TESTIMONY IN OPPOSITION TO INTRO 783-A.

IT IS NOT THAT WE OPPOSE THE INTENT OF THIS INSTRO., BUT RATHER ITS PRECISION.

FIRST, SINCE THE LAW WILL TAKE EFFECT IN JUST A FEW MONTHS, WE NEED TO ENSURE THAT THERE ARE SUFFICIENT SITE SAFETY CONCRETE MANAGERS AVAILABLE UPON IMPLEMENTATION OF THE LAW. AT THIS TIME, WE ARE UNSURE OF THE AVAILABILITY.

SECOND, THE THRESHOLD OF $250,000 IS UNWIELDY. FOR EXAMPLE, IT IS SUBJECT TO THE VAGARIES OF INFLATION WHICH IS A MAJOR PROBLEM CURRENTLY FACING THE CONSTRUCTION INDUSTRY. NEXT, WE ARE UNSURE WHETHER THIS FIGURE INCLUDE PRE-CAST CONCRETE, WHICH SHOULD BE EXCLUDED. MOREOVER, WE ARE ALSO UNSURE IF THE INTENT IS TO INCLUDE LESS DANGEROUS FOUNDATION WORK IN THE FIGURE. IF SO, A SMALL APARTMENT BUILDING WOULD BE WITHIN THIS FIGURE AND WE DO NOT BELIEVE IT SHOULD BE.

IF THESE MATTERS ARE REASONABLY ADDRESSED, OUR ASSOCIATION SEES NO REASON WHY OUR OPPOSITION SHOULD NOT BECOME SUPPORT FOR THE BILL.

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY.