



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

NYC COUNCIL

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SPEAKER'S OFFICE

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PATRICK A. WEHLE
DIRECTOR OF CITY LEGISLATIVE AFFAIRS

August 24, 2012

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

Dear Mr. McSweeney:

Transmitted herewith is the bill disapproved by the Mayor. The bill is as follows:

Introductory Number 730-A

A local law to amend the administrative code of the city New York, in relation to the disclosure of information regarding certain construction projects.

Sincerely,

Patrick A. Wehle

cc: Honorable Christine C. Quinn



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

August 24, 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 730-A, which would amend the Administrative Code of the City of New York "in relation to the disclosure of information regarding certain construction projects."

Introductory Number 730-A would require the Department of Housing Preservation and Development (HPD) to report on its website extensive information about affordable housing development projects that receive City financial assistance. By imposing an unnecessary layer of red tape on developers of affordable housing in New York City, it would threaten the creation of much-needed affordable housing for New Yorkers. More importantly, the bill would also mandate that developers report to HPD detailed wage information for the individual employees of all developers, contractors and subcontractors engaged on affordable housing projects. This requirement, while purporting to promote transparency, is, in actuality, an indirect effort to pressure contractors to hire union workers. The City's housing program, which serves critical public needs, should not be subverted in this way. It is inconsistent with this Administration's priorities to allow wages to be manipulated at the cost of constructing the maximum number of affordable units that we can finance. Finally, the bill is legally flawed as it seeks to legislate in areas in which such authority is reserved to the State.

Creation and preservation of affordable housing in New York City has been a top priority for this Administration since I took office. The New Housing Marketplace Plan set a goal of financing the creation or preservation of 165,000 units of affordable housing by the end of fiscal year 2014. One of the greatest accomplishments of this Administration has been our ability to meet that goal with limited City dollars and rapidly shrinking contributions from the State and federal governments by creatively leveraging public resources with those of the private market. This plan has not only financed the development of thousands of new homes for New York City's most vulnerable populations, but has also revitalized neighborhoods, created jobs and economic growth, and made New York City a safer place for a growing population. Continuing to create and preserve affordable housing remains a crucial objective for the City, and any unnecessary interference or divergence of funds has a direct impact on the amount of affordable units produced. Introductory Number 730-A is a prime example of such interference. It will serve as an impediment to local developers applying for loans to finance affordable housing

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projects because of the administrative burden of compiling and verifying the wage data required by this bill. This in all likelihood will discourage developers and contractors from participating on future affordable housing development projects. Developers of affordable housing and the contractors that often work with these developers are a specialized group who know how to work within the confines of limited financing and high levels of regulation to produce this vital resource for New York City residents. Furthermore, the vast majority of HPD's affordable housing development is awarded through a competitive process. For these reasons, any reduction in the number of interested developers competing for a project could limit the number of projects worked on in a given year and lead to higher costs and rents, thereby limiting the number of affordable units produced.

The administrative costs imposed by the bill will have the most damaging impact on smaller, locally-based developers and contractors that do not have the resources to hire new staff to manage these reporting requirements. The bill will wreak particular havoc on minority and women-owned businesses (MWBE). Should these small MWBE developers and contractors be unable to apply for City affordable housing projects, the work will most likely be awarded to larger non-locally based developers who are more likely to hire workers who live outside the City. This could result in more New York City tax dollars being spent to create jobs for non-residents. We estimate that over 140,000 jobs have been created as a result of the New Housing Marketplace Plan. Introductory Number 730-A will increase the likelihood that more of these jobs will go to residents outside the City.

While Introductory Number 730-A purports to increase the transparency of affordable housing development in New York City, it imposes onerous and costly reporting requirements without any significant improvement in government transparency. For example, it requires HPD to collect wage data for every employee of each developer, contractor and subcontractor associated with each housing development project on a quarterly basis. But, other than for projects subject to prevailing wage laws, HPD plays no role in reviewing wages and has no legal authority to remedy wage violations. However, by forcing HPD to warehouse these documents, the bill will lead to the generation of numerous Freedom of Information Law requests seeking production of this data, which will result in the need to hire more staff to attend to these requests. Again, HPD costs will be incurred with no benefit to the public or to the City's housing stock.

The requirement that HPD provide extensive information online on housing development projects and update that information every six months for the duration of construction places a tremendous burden on agency resources by diverting attention from the agency's core mission of financing the development and preservation of affordable housing. Furthermore, HPD has recently begun to provide a substantial amount of pertinent closing information online, so requiring more, like what is required by Introductory Number 730-A, would task HPD with more work without providing any real benefit to the public. All three of HPD's major funding sources were dramatically reduced by Congress over the last two federal fiscal years, resulting in an annual loss of nearly \$94 million from HPD's capital and expense budgets. Since March 2009, the agency's headcount has been cut by twenty-three percent. Mandating expensive reporting requirements of dubious value on an agency coping with drastic cuts to its funding and personnel could not happen at a more inopportune time.

In addition to raising these very important policy concerns, Introductory Number 730-A is legally deficient. This bill requires wage reporting by every developer for each person

employed on the project by the developer or any covered contractor, and penalizes contractors who fail to report these wages by prohibiting HPD from including them on a prequalified list of contractors or subcontractors. The goal of the wage reporting requirement in this bill is evidently to pressure developers to hire union workers for these jobs and pay union-scale wages. For this reason, this bill is not merely about reporting information to a City agency in an effort to increase transparency. Rather, this bill, through new administrative requirements, seeks to affect the wages paid to workers employed on housing development projects, an area that has been exclusively reserved to State regulation.

Article 19 of the State Labor Law, the Minimum Wage Act, establishes a comprehensive regulatory scheme to set a minimum wage, investigate the adequacy of such wage, and recommend variations for employees in certain occupations. Indeed, this article also includes a provision that requires employers to maintain records detailing the hours worked by, and wages paid to, employees covered by the minimum wage. The Court of Appeals has held unequivocally that Article 19 acts to pre-empt any local legislation in the field of wage regulation.

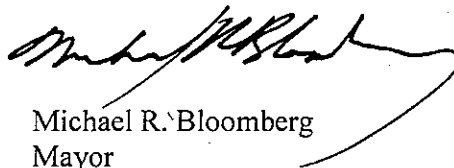
That Introductory Number 730-A seeks to pursue the improper goal of wage regulation through a reporting requirement does not ameliorate the legal problem. State law, dating back to the 1930s, operates to pre-empt local legislation in this area. To the extent the City Council has sought to evade this problem by imposing an onerous reporting requirement, and consequences for failing to comply with those requirements, the doctrine of field preemption does not permit such circumvention. Article 19 not only pre-empts the field of wage regulation, but also includes a reporting requirement that vitiates any local effort to impose a similar requirement.

The legal problems with Introductory Number 730-A are not confined to the effect of Article 19 of the Labor Law. The affordable housing projects that are the subject of this bill are governed by the Private Housing Finance Law, which gives plenary authority to HPD to supervise and administer these projects. The Private Housing Finance Law generally gives no role to the City Council in the administration of these projects. Because Introductory Number 730-A seeks to provide the City Council with such a role, the Private Housing Finance Law pre-empts such legislation.

My Administration has sought to work with the Council to strike the proper balance between increasing the transparency of City operations and creating the affordable housing units the residents of this City so desperately need. In seeking to promote the former goal, this bill will impede the latter goal, which is a result I cannot support.

Accordingly, I hereby disapprove Introductory Number 730-A.

Sincerely,



Michael R. Bloomberg
Mayor

Cc: The Honorable Christine C. Quinn