

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HOUSING AND BUILDINGS

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November 12, 2010
Start: 10:13 am
Recess: 11:00 am

HELD AT: Committee Room
250 Broadway, 14th Floor

B E F O R E:
ERIK MARTIN DILAN
Chairperson

COUNCIL MEMBERS:
Erik Martin Dilan
Gale Brewer
Leroy G. Comrie, Jr.
Elizabeth Crowley
Letitia James
Brad S. Lander
Melissa Mark-Viverito
Jumaane D. Williams
Eric A. Ulrich

A P P E A R A N C E S

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Chief of Staff
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Salvatore Anelli
Vice President of New York Chapter
National Electrical Contractors Association

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2 CHAIRPERSON DILAN: Good morning
3 everybody. My name is Erik Martin Dilan and I'm
4 the chairperson of the City Council's Housing and
5 Buildings Committee.

6 Today, the committee will conduct a
7 hearing on two legislative items. The first being
8 Intro 343. We're not going to do it in this
9 specific order, but the first will be Intro 343,
10 in relation to amending the New York City Energy
11 Conversation Code, and the Preconsidered Intro
12 sponsored by Council Member Chin, which would
13 amend Local Law 29 of 2007 to give the Department
14 of Housing Preservation and Development until
15 January 31, 2011 to implement the requirements of
16 the alternative enforcement program, which was
17 Local Law 29 of the year that I mentioned.

18 Intro 343 would establish an Energy
19 Code that is more stringent than the New York
20 State's Energy Code. In 2009, the Council had
21 established its own Energy Code, with the
22 enactment of Local Law 85. However, in April of
23 this year, the New York State Fire Prevention and
24 Building Code amended the New York State Energy
25 Code in its entirety by adopting the 2009 edition

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2 of the International Energy Conservation Code,
3 which is a model code published by the
4 International Code Council.

5 The New York State amendments are
6 scheduled to take effect on December 28th of this
7 year. So in order for New York City to maintain
8 its own Energy Code, the city must establish an
9 Energy Code that would be more stringent than the
10 new state Energy Code, and Intro 343 would do
11 exactly that.

12 In a different vein, the
13 Preconsidered Intro that is before us today would,
14 as I said earlier, give HPD until January 31, 2011
15 to select multiple dwellings for the fourth round
16 of the Alternative Enforcement Program and notify
17 owners of the selected properties of multiple
18 dwellings of their participation or selection in
19 this program.

20 Normally, this would occur this
21 month, but the bill provides for an extension to
22 round four selection of multiple dwellings to
23 participate in the program because of proposed
24 changes to the legislation being worked on by this
25 committee and this Council as well as HPD. These

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2 proposed changes would incorporate provisions
3 related to addressing mold and vermin conditions
4 as a permanent part of the Alternative Enforcement
5 Program and incorporate provisions to expand the
6 AP program to other buildings.

7 These changes are included in the
8 legislation that's currently being worked on by
9 this committee and this committee's staff, which
10 includes many of the provisions of Intro 224 which
11 this committee conducted a hearing on this past
12 June.

13 Today the committee expects to hear
14 testimony from representatives from the Department
15 of Buildings as well as HPD, tenants, housing
16 advocates, representatives from the real estate
17 industry and contractors and other persons related
18 to these two bills.

19 We're going to hear the
20 Preconsidered Intro, which is the extend bill.
21 We'll hear that first. We'll take any testimony
22 on the extend bill first and then we will move on
23 to Intro 343 at the conclusion.

24 I just want to acknowledge that
25 I've been joined by two of my colleagues and two

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2 members of the committee: Council Member Melissa
3 Mark-Viverito of Manhattan and Council Member
4 Jumaane Williams of Brooklyn.

5 With that, we will turn these
6 proceedings over to HPD. We have Barbara Flynn
7 and she can introduce herself in her own voice, as
8 well as Grace DeFina. Again, introduce yourselves
9 in your own voice and then explain to us why the
10 Preconsidered Intro is necessary.

11 BARBARA FLYNN: Good morning,
12 Chairman Dilan and members of Housing and
13 Buildings Committee. I am Barbara Flynn, Chief of
14 Staff of the Intergovernmental Division and HPD.
15 Sitting next to me is Grace DeFina, Director of
16 Planning and Support Operations in HPD's Office of
17 Enforcement and Neighborhood Services. Grace runs
18 the AEP program.

19 We are here today to testify in
20 support of the Introduction before us which would
21 extend the effective date for Local Law 29 of
22 2007, also known as the Alternative Enforcement
23 Program, to January 31, 2011.

24 The AEP program was established as
25 a means for HPD to promote housing safety in some

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2 of the city's most distressed residential
3 buildings. Through a series of selection
4 criteria, including accumulation of Housing Code
5 violations, the AEP program aims to increase the
6 pressure on selected property owners by requiring
7 buildings be brought to code in a timely fashion.

8 Should the owners not comply, the
9 law requires HPD to intervene to make the
10 necessary repairs and ultimately lien the cost of
11 the repairs against the property. The AEP program
12 has made great strides in the city's efforts to
13 ensure safe and improved conditions for New York
14 City tenants.

15 Currently, Local Law 29 of 2007
16 requires the department to identify 200 buildings
17 for inclusion in the Alternative Enforcement
18 Program by November 12th of each calendar year.
19 Furthermore, Local Law 29 requires the agency to
20 provide notice to these selected property owners
21 within 30 days of selection.

22 After three years of experience
23 with the AEP Program, HPD has embarked on a series
24 of discussions with the City Council to explore
25 modifications to the current program. As those

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2 discussions progress, HPD, in agreement with the
3 Council, feels it important to delay moving
4 forward with round four of AEP to take advantage
5 of these potential changes.

6 Accordingly, the legislation before
7 us amends the effective date for round four to
8 January 31st, 2011 to allow for completion of
9 final negotiations while also ensuring the agency
10 remains in full compliance with the law.

11 We thank you for your time and are
12 happy to respond to any questions.

13 CHAIRPERSON DILAN: I just have a
14 brief question and then I'll defer to my
15 colleagues. From my perspective, I understand why
16 the legislative change is needed. While it's not
17 a hearing on the future legislation that we'll
18 pass out this committee amending the program, this
19 extension will obviously allow the Council, as
20 well as the administration, to improve upon the
21 legislation that we originally created back in
22 2007 and will capture more units and now capture
23 the titles of mold and vermin as something that
24 can lead to a building selection.

25 I just wanted to ask a question on

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2 financial impact administratively. Because of the
3 delay in the selection of the fourth round, are
4 there any projected savings or expenditures to
5 HPD's budget?

6 BARBARA FLYNN: No.

7 CHAIRPERSON DILAN: So you see as
8 cost neutral?

9 BARBARA FLYNN: Correct.

10 CHAIRPERSON DILAN: So there's not
11 that much savings in delaying these 200 buildings
12 administratively for one year?

13 BARBARA FLYNN: No. We're doing
14 the same number of buildings, it's just delaying
15 it.

16 CHAIRPERSON DILAN: It will be
17 deferred until the next fiscal year. The cost
18 will be deferred one way or another. You say
19 there's none but I think that there will be
20 savings this year and the cost of the program
21 could be higher next year because we're
22 potentially doing two programs in 2011. You don't
23 see that as--

24 BARBARA FLYNN: [interposing] You
25 have four months to actually important the

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program.

CHAIRPERSON DILAN: Sure.

BARBARA FLYNN: So it's really not until March that it would start.

CHAIRPERSON DILAN: So it would be the same.

BARBARA FLYNN: So it's actually the next calendar year anyway.

CHAIRPERSON DILAN: The same fiscal year?

BARBARA FLYNN: Right.

CHAIRPERSON DILAN: Got it. So then your answer would be correct. I have no further questions on this. Do any of my colleagues have anything they want to ask? Council Member Williams?

COUNCIL MEMBER WILLIAMS: Thank you, Mr. Chair. Thank you for the testimony. Always good to see Vito also, who is very responsive to my office. Thank you.

I just want to make sure I'm clear. How can Council Members get buildings on the list?

BARBARA FLYNN: The criteria is actually in the statute. So HPD has to follow

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2 that criteria. If you have a building that you
3 have problems with that you feel has a lot of
4 violations or tenant complaints, call us. Tenants
5 should always call 311 with complaints. But we'll
6 respond to you and send inspectors out.

7 COUNCIL MEMBER WILLIAMS: You
8 already have a list of 200, correct?

9 BARBARA FLYNN: We haven't done it
10 for round four yet. But for the first three
11 rounds, we have buildings in the program. But we
12 have to follow the criteria that's in the statute.

13 COUNCIL MEMBER WILLIAMS: Can you
14 just run through what the criteria is?

15 BARBARA FLYNN: Currently, the
16 round four criteria would be 25 open BRC
17 violations within the last two years. It's an
18 additional five BRC violations per unit.

19 CHAIRPERSON DILAN: If you could
20 identify yourself in your own voice.

21 GRACE DEFINA: Grace DeFina. I
22 oversee the Alternative Enforcement Program for
23 HPD. For round four, it would be 25 open BRC
24 violations issued in the previous two years; a
25 ratio of at least five open BRC violations per

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2 dwelling unit; a ration of \$100 per dwelling unit
3 in emergency repair charges, whether it's paid or
4 unpaid. If more than 200 buildings meet that
5 criteria, the top 200 with the highest ratio of
6 violations per dwelling unit would make the list.

7 COUNCIL MEMBER WILLIAMS: Thank
8 you.

9 CHAIRPERSON DILAN: We've been
10 joined by Council Member Elizabeth Crowley of
11 Queens. Any questions from any of the members of
12 the committee? Council Member Crowley?

13 COUNCIL MEMBER CROWLEY: Thank you,
14 Chairman Dilan. I apologize for being late, so
15 I'm not sure if you covered this. This applies
16 when a building goes under renovation, and how big
17 of a renovation does it have to be?

18 BARBARA FLYNN: This program is
19 called the Alternative Enforcement Program. The
20 statute says that HPD will choose the most
21 distressed buildings with the criteria already in
22 the law. But it's not under renovation; it would
23 be the buildings as they stand with a number of
24 violations on them.

25 COUNCIL MEMBER CROWLEY: Okay.

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Thank you.

CHAIRPERSON DILAN: Thank you, Council Member Crowley. Seeing no other questions, I'd like to thank Ms. Flynn and Ms. DeFina for coming by and providing testimony. Thank you very much.

BARBARA FLYNN: Thank you.

CHAIRPERSON DILAN: Is there any public testimony on the Preconsidered Intro? Does anyone from the public wish to speak about it? If not, we'll close that portion of the hearing and we'll move on to the oversight of the Energy Conservation Code. We have Mr. James Colgate, who is the Assistant Commissioner of the Department of Buildings. You can introduce yourself in your own voice before you begin your testimony. You can introduce the lady sitting beside you.

JAMES COLGATE: Sure. Thanks.

CHAIRPERSON DILAN: Welcome.

JAMES COLGATE: Chair Dilan and committee members. My name is James Colgate. I am the Assistant Commissioner for Technical Affairs and Code Development at the Department of Buildings. Sitting to my left is Deborah Taylor.

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2 She is the Chief Sustainability Officer for the
3 New York City Department of Buildings.

4 I am speaking to you today in
5 support of Intro 343. It's an update to the New
6 York City Energy Conservation Code. As you
7 recall, the City Council and the Mayor enacted
8 Local Law 85 of 2009 last December as part of the
9 City's Greener, Greater Buildings Plan. Local Law
10 85 instituted the New York City Energy
11 Conservation Code. The City energy code is based
12 on the New York State energy code but, unlike the
13 New York State code, applies to all alterations.
14 In addition, it is now an integral part of the New
15 York City Construction Codes.

16 In April of this year, the state
17 updated its code, based on the newer 2009 edition
18 of the International Energy Conservation Code.
19 This update by the state is now more stringent
20 than the current 2007 New York State Energy Code.
21 This change was adopted in response to a federal
22 funding mandate.

23 In accordance with the New York
24 State Energy Law, Section 11-109, an energy code
25 adopted by a local jurisdiction such as ours must

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2 be more stringent than the state energy code; .
3 therefore, the Department of Buildings in New York
4 City has developed Intro 343 for these reasons.
5 To continue our New York City Energy Conservation
6 Code, to adopt the updated New York State code as
7 the basis of our technical provisions, and to
8 maintain our New York City code to be more
9 stringent than the State Code.

10 Intro 343 is the minimum amendment
11 to the 2010 State energy code, which will become
12 effective on December 28, 2010. It does the
13 following: it makes no change to any of the
14 technical provisions of the New York State code.
15 It does amend Chapter 1 of the energy code and the
16 administrative provisions in there with Title 28
17 and the rest of our Construction Codes, while
18 retaining the provisions from the State chapter
19 that will be more stringent than our provisions.

20 It is in Chapter 1 of the Energy
21 Code that we continue the applicability of the
22 City Energy Code to all alterations. It modifies
23 a few definitions in Chapter 2 of Energy Cod,
24 mostly in accordance with our Construction Codes.
25 It adds as referenced standards in the Energy Code

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2 the 1968 New York City Building Code and the 2010
3 Residential Code of New York State.

4 The primary changes in Chapter 1 of
5 the Energy Code from our current New York City
6 Amendments to the 2007 New York State Energy
7 Conservation Construction Code are that the state
8 eliminates the exemption for local historic
9 buildings and districts, and therefore we have
10 conformed Intro 343 to say the same thing, to
11 avoid being less stringent than the State code.

12 The State code adds four additional
13 exceptions to the section on alterations, allowing
14 eight conditions under which an alteration is not
15 required, and we have included these exceptions to
16 conform to the state code. Minor changes have
17 been made in our filing requirements which we
18 believe will ease the filing process for
19 applicants.

20 Progress inspections have been
21 incorporated into our filing requirements in the
22 Energy Code. These are currently already on the
23 books as rules. The State expands the
24 construction document requirements and requires
25 that changes made to the approved construction

1 documents during construction be submitted for
2 approval. Inspection requirements follow the same
3 format in our other Construction Codes, and
4 include State requirements only where they are
5 more stringent. The bill also makes three minor
6 changes in Building Code requirements for
7 coordination with the Energy Code.
8

9 We urge you to pass Into 343 so
10 that it can become effective on December 28, 2010,
11 allowing our Department and the industry to
12 smoothly transition to the new State code, which
13 will preempt our code if this bill does not pass.
14 In other words, the changes in the State code are
15 coming to New York City regardless of any City
16 actions, and we request the enactment of this bill
17 so that the technical requirements can be more
18 easily enforced through our own administrative
19 structure.

20 One final note, the rule that helps
21 us implement the Energy Code will need to be
22 amended through the capital process, based on the
23 revised technical requirements and on a
24 renumbering of chapters in the State code. We are
25 not able to move this amended rule into the public

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2 comment until Intro 343 is enacted. As a result,
3 it cannot be adopt by December 28. The sooner
4 Council can pass this Intro prior to December 28,
5 the sooner that my department can move the rule
6 into CAPA and to adoption, and this will greatly
7 facilitate the construction industry's compliance
8 with the law. Thank you.

9 CHAIRPERSON DILAN: Thank you. I
10 will call upon Council Member Melissa Mark-
11 Viverito to open the questioning.

12 COUNCIL MEMBER MARK-VIVERITO:
13 Thank you, Mr. Chair. Thank you for your
14 testimony. Obviously, this is a very technical
15 bill and I don't understand all the nuances. One
16 question that comes to mind immediately is at one
17 point when it comes to residential buildings, at
18 what point does this Energy Code kick in? Now I
19 see that it says here that in one of the sections,
20 it says additions, alterations, renovations or
21 repairs to existing buildings must comply with the
22 ECC. But is there a minimal size of a building?
23 I mean, I'm wondering if it's going to be an
24 additional cost low income co-ops, if there's any
25 upgrades that are necessary, or any of the

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2 affordable housing. So just if you could talk a
3 little bit about that.

4 JAMES COLGATE: Sure. This bill
5 will not make anything, from a technical
6 perspective, what you actually have to do to the
7 building, any more stringent than the state is
8 already going to require of us. So the state's
9 code already says you have to do certain things.
10 Those things happen when you propose alterations
11 or changes to a building or you build a new
12 building. In terms of what that means is that
13 means that if you're putting in a new boiler, the
14 new boiler has to meet a certain efficiency rating
15 in order to be able to be put in.

16 COUNCIL MEMBER MARK-VIVERITO: So
17 basically, if it's a one-family home or two or
18 three, this covers everybody.

19 JAMES COLGATE: It covers
20 everybody.

21 COUNCIL MEMBER MARK-VIVERITO: I
22 mean, I'm not dismissing it. Obviously, I believe
23 in energy conservation. But I'm just wondering,
24 do you see that if you are a one-family home,
25 you're on limited income but you have to change

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the boiler.

JAMES COLGATE: Right.

COUNCIL MEMBER MARK-VIVERITO: In terms of the new expectations with these regulations, would it be more expensive to replace it with these requirements as opposed to not doing it that way?

JAMES COLGATE: I think with regard to boilers, because this Energy Code that we've adopted in New York City is the same as the state and is the same Energy Code that has been used throughout the country basically through the International Energy Conservation Construction Code, it's based on that. All the manufacturers of boilers now, they design their machinery and equipment to comply with these codes. I don't see it as a major issue. Deborah, do you want to add to that?

DEBORAH TAYLOR: I think, with regard to the residential chapter in the code, which remains whether or not we adopt this Intro, the changes are not substantial in the residential chapter of the code. There are more substantial changes in the commercial chapter.

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2 JAMES COLGATE: And let me add to
3 that.

4 CHAIRPERSON DILAN: I need to stop
5 her there. Just for the record, I just need you
6 to introduce yourself.

7 DEBORAH TAYLOR: I'm sorry. I'm
8 Deborah Taylor. I'm Chief Sustainability Officer
9 with the Department of Buildings.

10 JAMES COLGATE: So what I want to
11 add to that is that you're right, the code is
12 technical and it's complicated, but when you get
13 down to it and start digging into the pages, if
14 you look at the requirements for a single-family
15 house, they're different requirements than if you
16 were going to build a 30-story apartment building.
17 The code takes into account the complex nature of
18 a 30-story apartment building versus the simple
19 nature of a one-family house or a two-family house
20 or a three-family house.

21 So the code has built into a
22 certain ease of use for smaller projects than for
23 larger ones, if that's something you're concerned
24 about. But generally, mechanical installation
25 contractors, they understand and know this and

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2 they know what the requirement is. The only
3 requirement in the Energy Code for residential
4 small buildings, if I understand correctly, is
5 that they must meet a certain energy efficiency
6 rating. You can't put in a furnace which is not
7 going to be very efficient and burn the oil
8 poorly.

9 DEBORAH TAYLOR: Actually, the
10 equipment requirements, the furnace and the
11 boiler, are under federal mandates anyway for
12 efficiency. The real differences will come in
13 insulation values. Those have changed a bit, but
14 not significantly I would say.

15 JAMES COLGATE: But insulation
16 values are when you're reconstructing walls, it's
17 not to do with an existing building.

18 DEBORAH TAYLOR: That's correct.

19 COUNCIL MEMBER MARK-VIVERITO: All
20 right, I appreciate it. Thank you for the
21 clarity. Thank you, Mr. Chair.

22 CHAIRPERSON DILAN: Council Member
23 Williams? And we've also been joined by Council
24 Member Lander of Brooklyn.

25 COUNCIL MEMBER WILLIAMS: Thank

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2 you, Mr. Chair. I just have one question. I know
3 this bill is supposed to be more stringent than
4 the state, correct? In one of these bullets, it
5 says the state code adds four additional
6 exemptions to the section of alterations, along
7 with eight conditions under which an alteration is
8 not required. I just got confused by the
9 language. It says we have included these
10 exceptions.

11 JAMES COLGATE: I can see why that
12 would be a little confusing there. Our code will
13 be more stringent than the state. The main reason
14 is that because of the Greater Green Buildings Law
15 that we enacted earlier this year, we apply this
16 code to all alterations. Whereas, if you were
17 outside of New York City, if you were in
18 Westchester or Long Island or Albany and you were
19 renovating a building, you wouldn't trigger the
20 requirements unless you did a rather major
21 renovation. So we say that just replacing parts
22 of the building, you have to comply. That was
23 already--

24 COUNCIL MEMBER WILLIAMS:

25 [interposing] So you include the alterations. I

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thought you were including the exceptions.

JAMES COLGATE: Yeah.

COUNCIL MEMBER WILLIAMS: Okay.

JAMES COLGATE: Then the more complicated thing. When you get to the New York State version of the code, the code that is going to, starting December 20th, apply outside New York City, New York State lists some very, very certain exceptions. They've enumerated them and spelled them out in great detail in the state code. So in order to conform to that, we had to take those exceptions and write them in directly the same way. I think that's what we did.

So we took the state exceptions and we wrote them in exactly the same way that the state already has on their books. Because 28th, that's coming anyway, whether we want to have it or not.

COUNCIL MEMBER WILLIAMS: So the exceptions that the state has, the city also has?

JAMES COLGATE: Right.

COUNCIL MEMBER WILLIAMS: You couldn't exclude them?

DEBORAH TAYLOR: They actually give

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2 some relief. They're exceptions to the
3 requirement to comply for alterations. So they
4 actually give some relief.

5 COUNCIL MEMBER WILLIAMS: So it's a
6 good thing?

7 JAMES COLGATE: It's a good thing.

8 DEBORAH TAYLOR: So it's a good
9 thing.

10 JAMES COLGATE: They were sensible
11 exceptions. The state said these are exceptions
12 we think are good.

13 COUNCIL MEMBER WILLIAMS: Okay.
14 Thank you.

15 CHAIRPERSON DILAN: Thank you. I
16 just want to take the time to just add a few brief
17 questions. I guess the need for this is so that
18 the city's Energy Conservation Code remains in
19 existence. For that to happen, it has to be more
20 stringent. So in what respects does our code
21 differ from the new state code?

22 DEBORAH TAYLOR: It is primarily in
23 this requirement that it apply to all alterations.
24 There are some other minor things, but it's
25 primarily in this requirement that it apply to all

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2 alterations. This requirement which differs from
3 the state was actually enacted in Local Law 85.
4 So it's not new in this legislation. But we did
5 that because the state's Energy Code applies to
6 alterations that affect 50 percent or more of any
7 building system. So when we have a 60-story high
8 rise and a tenant has 20 floors in that high rise
9 and they are doing major renovation or fit-out in
10 the initial building, they don't have to comply
11 with the Energy Code.

12 JAMES COLGATE: Of New York State.

13 DEBORAH TAYLOR: In New York State.
14 In New York City now, they do. So we were losing
15 a lot of opportunity to capture those.

16 CHAIRPERSON DILAN: I just want to
17 shift the focus for a second. I believe it was
18 mentioned in your testimony. The code would
19 exempt certain historical buildings from its
20 application but not all historic buildings. I
21 guess buildings with only a Landmark Preservation
22 Commission designation are not exempt. Why was
23 this made and how could the ECC impact the
24 renovation of a building with a Landmarks
25 Preservation designation?

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2 JAMES COLGATE: Let me explain that
3 because it's a little complicated. There are
4 several different layers of possible designation.
5 A building can be designated as a federal or a
6 state landmark or in a federal or state historic
7 district. That's not the same thing as the
8 Landmarks Commission. So if you're certified on
9 the list of National Historic Places or the State
10 Register of Historic Places or you're certified as
11 being eligible to be on those, that's one category
12 of buildings and then there are city landmarks.

13 Now, they overlap a lot. Large
14 numbers of city landmarks are also on the State
15 Register. What the state did this time around,
16 this is the Albany rule, this new state law that's
17 coming in on December 28th says that the only
18 buildings that get exemptions are if you're on the
19 state or federal register. They didn't include an
20 exemption for buildings that are locally
21 designated by municipalities or counties.

22 So that means that when the
23 Landmarks Commission says you are a landmark, by
24 the city law it doesn't give an automatic
25 exemption to the state Energy Code anymore. Only

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2 if that building is also on the state or federal
3 register or certified as being eligible to be on
4 the state or federal register. Did I get that
5 right?

6 DEBORAH TAYLOR: That's correct,
7 yes.

8 JAMES COLGATE: I hope that's
9 clear. It's hard to say that any clearer.

10 CHAIRPERSON DILAN: I guess
11 basically what we're saying is we can't do
12 anything about the exemption to federal and state
13 buildings, but we can on the city landmark
14 designated buildings?

15 JAMES COLGATE: No, it's not that.
16 It's that the buildings that now get the exemption
17 under the state Energy Code are only if they're on
18 the state or federal lists. If you're on a city
19 list, it doesn't mean that you get the exemption
20 unless you're also on the federal or state list.

21 So that's what the state did to us.
22 That's how they did their exemptions. You don't
23 get exempt from the Energy Code if you're a city
24 landmark but not also on the federal or state
25 lists.

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2 DEBORAH TAYLOR: So for us to
3 change that would make us less stringent than the
4 state code. We can't do that by State Energy Law.
5 But I've just been notified that Landmarks is
6 actually in the process right now of trying to
7 make all city-only landmarks certified as eligible
8 for designation on the state register. So given
9 that, if they're eligible, if they're certified as
10 eligible for state designation, they are exempt.

11 JAMES COLGATE: So Landmarks is
12 working on that.

13 CHAIRPERSON DILAN: Okay. We've
14 also been joined by Council Member Gale Brewer of
15 Manhattan. I want to point to a certain section
16 in the bill, Section 101.4.4. It relates to the
17 change of occupancy or use and provides that
18 spaces undergoing a change in occupancy that
19 result in an increase in demand of fossil fuels or
20 electrical energy shall comply with this code. I
21 guess this appears kind of subjective. How will
22 the city determine that a particular change in
23 occupancy will result in an increased demand of
24 fossil fuel or electrical energy?

25 DEBORAH TAYLOR: This is in the

1
2 state code and we've brought it directly from the
3 state code. In fact, it's in the International
4 Energy Conservation Code. The impact of this is
5 if a building changes occupancy that would
6 increase the requirement for a fossil fuel, then
7 the lighting, which is Section 505, the lighting
8 would have to comply with the table for 505. So
9 if it is increasing the requirement of energy, the
10 lighting which would otherwise not have to be
11 affected if it was not being touched in the first
12 place.

13 So there's a requirement in
14 alterations that if you touch it, then you have to
15 bring it up to code. If you're changing use and
16 you're not changing the lighting, this would say
17 that you have to change the lighting because of
18 the new use, not because you're affecting it
19 necessarily in your alteration. Is that
20 understood?

21 CHAIRPERSON DILAN: I think it's
22 understood but I guess it doesn't make it clear
23 how the new use or occupancy would actually use
24 more energy or draw more energy. I guess your
25 answer would lead me to believe that whether it

1
2 does or it doesn't is basically irrelevant.

3 Because you're changing the use of the occupancy,
4 you want--

5 JAMES COLGATE: [interposing] No,
6 there's two issues here. One is the fossil fuel
7 and one is lighting. There's two halves to this
8 section.

9 CHAIRPERSON DILAN: Sure, I got
10 that part.

11 JAMES COLGATE: I mean, it's easy
12 for my department to know when the change of use
13 happens. They come for the Certificate of
14 Occupancy.

15 CHAIRPERSON DILAN: Sure.

16 JAMES COLGATE: So now the question
17 is if I'm changing from one thing to another, how
18 do I know that that new use has an increase in the
19 demand for fossil fuel or electrical energy.

20 CHAIRPERSON DILAN: That's the
21 question here.

22 JAMES COLGATE: Well, electrical
23 energy is easy for the engineers because when you
24 look at the codes, it establishes for each of the
25 uses, for the lighting, which one has more

1
2 electrical requirements or what the limits are, I
3 should say, for the different ones. For the
4 fossil fuel, that's going to be done by the
5 engineer who has to review that application and
6 submit it to us and certify to us that the new use
7 either does or doesn't increase the demand for
8 fossil fuel.

9 Now, the codes establish what the
10 minimum requirement is for temperature inside
11 buildings and they're different. So if I was,
12 let's say, in a hospital or in an apartment
13 building, there may be different requirements for
14 how much I have to heat the building. If I'm
15 changing from a hospital to an apartment or from a
16 apartment to a hospital, I can look at the table
17 and say I need more heat here or less heat here.
18 I can understand it from that perspective. I
19 mean, I don't think it's that--

20 CHAIRPERSON DILAN: [interposing]
21 Dramatic.

22 JAMES COLGATE: Dramatic.

23 DEBORAH TAYLOR: Or if you're
24 converting from a warehouse to offices.

25 JAMES COLGATE: That's really what

1
2 this is meant to capture. I have an unheated
3 warehouse space and I'm going to change it to an
4 office building.

5 CHAIRPERSON DILAN: Well, what you
6 see in my area is you see mainly old manufacturing
7 warehouses being converted to residential.

8 DEBORAH TAYLOR: Exactly.

9 CHAIRPERSON DILAN: That's what you
10 see commonly, at least in my part of the city.

11 JAMES COLGATE: Right. So what
12 this says is that if you do that, you have an old
13 warehouse and you change it to an apartment being
14 you're in your part of the city or wherever it is
15 in the city that it happens, if the old use wasn't
16 required to provide much heat at all and the new
17 use has more heat, well then you have to comply
18 with the Energy Code.

19 DEBORAH TAYLOR: Which actually
20 gives you a benefit in that case.

21 CHAIRPERSON DILAN: Thank you. Any
22 other questions from my colleagues? We've finally
23 been joined by Council Member Lander. I
24 acknowledged Council Member Brewer. I think that
25 will conclude our questioning for this panel.

1
2 We'd like to thank you both for your time and your
3 testimony. Next, I'd like to call on Ms. Dottie
4 Harris from the International Code Council. I
5 need to step out for a brief second and I'll be
6 right back. But you can proceed, Ms. Harris.

7 DOTTIE HARRIS: Good morning
8 Chairman Dilan, Members and Staff of the City
9 Council Committee on Housing and Buildings. My
10 name is Dottie Harris. I am the Vice President of
11 State and Local Government Relations and your
12 liaison to the International Code Council.

13 The International Code Council is a
14 membership association dedicated to building
15 safety and fire prevention which develops the
16 codes used to construct residential and commercial
17 buildings, including homes and schools. It is the
18 mission of the ICC to provide the highest quality
19 codes, standards, products, and services for all
20 concerned with the safety and performance of the
21 built environment.

22 I would like to commend the City of
23 New York for its outstanding work to ensure the
24 safety, health and well being of its citizens.
25 Intro 343, a Local Law to amend the Administrative

1
2 Code of the City of New York, in relation to
3 amending the New York City Energy Conservation
4 Code will have a positive effect on sustainability
5 in the built environment and therefore I offer the
6 following testimony in support of the legislation
7 before you today.

8 As the previous panel mentioned, in
9 April of 2010, the State Fire Prevention and
10 Building Code Council voted to move forward with
11 the implementation of the 2009 International
12 Energy Conservation Code with some New York State
13 modifications so that the State could be in
14 compliance with the requirements of the American
15 Recovery and Reinvestment Act of 2009.

16 The Energy Conservation and
17 Construction Code of New York State will become
18 effective on December 28, 2010 and therefore the
19 City must update its Energy Code so that it
20 continues to stay in compliance with Article 11 of
21 the New York State Energy Law.

22 The International Energy
23 Conservation Code is currently adopted at the
24 state and local level in 44 states and Washington,
25 DC. In the September 3, 2010 Federal Register,

1
2 the Department of Energy has preliminarily
3 determined that the 2009 version of the
4 International Energy Conservation Code would
5 achieve greater energy efficiency in low rise
6 residential buildings than the previous document,
7 which was the 2006 IECC.

8 The IECC, along with the other
9 International Codes, are revised and updated every
10 three years by a national consensus process that
11 strikes a balance between the latest technology
12 and new building products, economics and cost
13 while providing for an acceptable level of public
14 and first responder safety.

15 It is an open, inclusive process
16 and encourages input from all individuals and
17 groups and allows for those governmental members
18 to determine the final code provisions. The
19 International Codes are correlated to work
20 together without conflicts so as to eliminate
21 confusion in building design or inconsistent code
22 enforcement among differing jurisdictions.

23 Included in the historic
24 legislation passed by your committee, under your
25 leadership to adopt the new New York City

1
2 Construction Codes is a requirement to review the
3 next version of the codes every three years
4 modeled after the national code development
5 process. Accordingly, these codes should be
6 reviewed and updated next year so that New York
7 City Construction Codes do not become dated again
8 as referenced in Mayor Bloomberg's Press Release.

9 Intro 343 begins that process and I
10 look forward to continuing to work with you as you
11 embark on a review of the rest of the 2009
12 international Codes.

13 The International Code Council is
14 honored to partner with the City of New York and
15 we look forward to continuing to serve your needs.
16 Thank you.

17 CHAIRPERSON DILAN: I have no
18 questions. It's good to see you again.

19 DOTTIE HARRIS: Nice to see you
20 too.

21 CHAIRPERSON DILAN: Apparently
22 you're going to be around a little bit more.

23 DOTTIE HARRIS: That's right.
24 Boring you all on codes.

25 CHAIRPERSON DILAN: Do any of my

1
2 colleagues have anything they want to add? I
3 guess I hate to make you come all this way for
4 just a short piece of testimony.

5 DOTTIE HARRIS: It's not far at
6 all, and I'm happy to do it.

7 CHAIRPERSON DILAN: Thank you.

8 DOTTIE HARRIS: Thank you.

9 CHAIRPERSON DILAN: Okay, next we
10 have Mr. Sylvester Giustino and Mr. Salvatore
11 Anelli.

12 [Pause]

13 CHAIRPERSON DILAN: I guess we'll
14 begin with Mr. Giustino.

15 SYLVESTER A. GIUSTINO: Good
16 morning, Chairman Dilan and members of the City
17 Council. My name is Sylvester Giustino, Director
18 of the Building Owners and Managers Association of
19 Greater New York.

20 We represent more than 700 property
21 owners, managers and building professionals who
22 either own or manage 400 million square feet of
23 commercial space. We're responsible for the
24 safety of over 3 million tenants, generate more
25 than \$1.5 billion in tax revenue and oversee

1
2 annual budgets of more than \$4 million.

3 We commend the Bloomberg
4 Administration for taking the lead in proposing a
5 bold program to make existing buildings more
6 energy efficient. BOMA New York firmly stands
7 behind the concept of greening our City, and we do
8 that every day in the buildings we own and manage.

9 In June of 2009, BOMA New York
10 supported Intro 564-A, enacted as Local Law 85
11 which established a New York City Energy
12 Conservation Code.

13 Today, BOMA is proud to support
14 Intro 343, which would bring New York City in
15 compliance with the recently amended New York
16 State Energy Code which uses the 2009
17 International Energy Conservation Code standards
18 and requirements.

19 BOMA New York members know that by
20 making buildings more resourceful is the single
21 biggest step to make New York achieve its
22 sustainability goals and remain competitive as the
23 business capital of the world.

24 We look forward to continuing
25 working with the Bloomberg Administration, the

1
2 City Council and our industry partners in making a
3 greener New York a reality. That's it for my
4 statement, Mr. Chairman.

5 CHAIRPERSON DILAN: Good to see you
6 again as well.

7 SYLVESTER A. GIUSTINO: Same here,
8 sir.

9 CHAIRPERSON DILAN: Mr. Anelli?

10 SALVATORE ANELLI: Good morning,
11 Councilman Dilan. I don't have a formal written
12 statement and I'll explain why. My name is Sal
13 Anelli. I am Vice President of the New York
14 Chapter of the National Electrical Contractors
15 Association. I am also a New York City licensed
16 master electrician and I sit on the New York City
17 licensing board and I sit on many of the panels
18 that do the Electrical Code.

19 I just want to, at the outset, say
20 that NECA and New York Electrical Contractors are
21 very much in favor of this Intro 343. I think we
22 believe that we are very supportive of making New
23 York City green and help save the environment.

24 Back on August 16th, I was sent an
25 email by Ms. Deborah Taylor asking me,

1
2 representing Commissioner LiMandri, asking me to
3 sit on an advisory committee for this code, the
4 New York City Electrical Construction Energy Code.
5 I responded and I told them I would. At that
6 point, soon afterwards, I was sent electronically
7 the comments and the changes on the code. I
8 responded.

9 The reason why I don't have a
10 formal written statement is because I wasn't aware
11 of this hearing until yesterday. I only have one,
12 because I was explained the landmark restoration
13 just a few minutes ago. But my only objection to
14 this code, and maybe it's misput, but once I gave
15 my remarks, I never heard back from Commissioner
16 LiMandri or Ms. Deborah Taylor, so I didn't know
17 what the outcome was.

18 My only remark is that it seems to
19 me that code puts the onus of the design and the
20 functionality of this code on the electrical
21 contractor. Meaning that they put the New York
22 City Electrical Code as part of the requirements
23 that these changes make. New York State does not
24 have a uniform electrical code. So when the
25 changes are made, the New York City Electrical

1
2 Code was referenced in it. Maybe I'm mistaken,
3 but since I never had any other discussions
4 electronically or otherwise with the
5 commissioner's office or Ms. Taylor, I felt I
6 should come here and make that clear.

7 New York City electrical contactors
8 are installers. We install what engineers and
9 architects design. Once we sign an application,
10 we affirm that we are going to install all the
11 equipment as per New York City Electrical Code. I
12 don't want to be responsible, nor do any of my
13 constituents want to be responsible for the design
14 of the building to comply with the Conservation
15 Code. We are not designers, we are not engineers,
16 we are merely installers.

17 Basically, that was my only remark.
18 I had a second remark, which I didn't know why
19 landmark restoration buildings would be exempt.
20 Sometimes you've got a whole landmark restoration
21 building leaving the fascia up just to comply.
22 But I think it was explained somewhat by the
23 previous panel.

24 So I just want to make that
25 statement that if this code puts the onus of the

1
2 design on the electrical contractor, I am very
3 much against it.

4 CHAIRPERSON DILAN: I'm glad that
5 Ms. Taylor is here to actually hear your concern
6 in person. I know you've made similar objections
7 to the Electrical Code.

8 SALVATORE ANELLI: Intro 160.

9 CHAIRPERSON DILAN: Yeah, in
10 private conversation. So that would apply to the
11 Energy Code as well.

12 SALVATORE ANELLI: Exactly, yes.

13 CHAIRPERSON DILAN: So it's good
14 that she's here. As a committee, we can look into
15 whether that's fact or not as well.

16 SALVATORE ANELLI: We otherwise
17 support it 100 percent. NECA, National Electrical
18 Contractors Association are very supportive of
19 greening. We have taken the initiative on a lot
20 of electrical usage and greening for New York
21 City.

22 CHAIRPERSON DILAN: Thank you, Mr.
23 Anelli. We've been joined by Council Member Tish
24 James of Brooklyn. Do any of my colleagues have
25 any questions? Seeing none, I'd like to thank you

1
2 both for your time and for your testimony. Do we
3 have anybody here on behalf of the New York
4 Chapter of Architects and Engineers? We've also
5 been joined by Council Member Eric Ulrich of
6 Queens.

7 [Pause]

8 CHAIRPERSON DILAN: We have
9 testimony from the New York Chapter of the AIA and
10 it will be submitted for the record. It is
11 largely in favor. They just have concerns about
12 Section 101.5.3.1 which deals with LEED
13 professionals. We'll have that entered into the
14 record. If need be, we can provide the Department
15 of Buildings with a copy of the testimony. With
16 that, both items before the committee will be laid
17 aside and that will conclude this hearing.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature_____

Date November 29, 2010