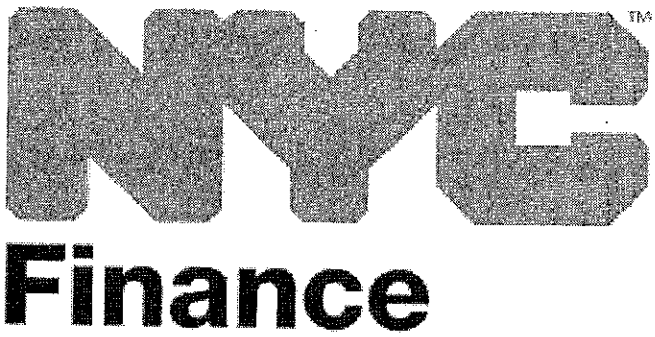

Testimony of
Andrew Salkin
Deputy Commissioner
New York City Department of Finance
Before the New York City Council
Committee on Housing and Buildings

On Intro No. 379, regarding the denial of building permits to property owners with outstanding charges owed to the City of New York

March 9, 2011

Good afternoon, Chairman Dilan, Council Member Vacca and members of the City Council Committee on Housing and Buildings. I am Andrew Salkin, Deputy Commissioner for Operations for the Department of Finance, here today representing Commissioner David M. Frankel. Thank you for the opportunity to testify today on Intro No. 379, Council Member Vacca's bill to deny building permits to property owners with outstanding charges owed to New York City.

At Finance, we want to protect the majority of New Yorkers who pay what they owe by collecting from those who don't. Under Commissioner Frankel, our agency is focused on leveling the playing field. One way to do this is looking for new methods to get individuals and entities to pay what they owe. Getting the bad actors that chose not to pay to do so is often challenging, and that is why we appreciate the Council's focus on this important issue.

I want to take the opportunity to explain some of what we hope to achieve at Finance, which will require the support of this Committee and Council. Not just limiting ourselves to fines originating at the Department of Buildings, Finance wants to make sure that we collect the outstanding fees, charges, fines and taxes owed to the City. If we assume those who are regulated by or do business with the City owe some portion of this debt, than developing tools to encourage these people to pay outstanding debts is an important objective. We want to do a better job of using the City's potential leverage to get paid what it is owed.

So for example, at Finance we are very interested in an approach that matches entities that receive licenses or permits with the outstanding debt owed. If the entity has unpaid parking tickets or owes ECB fines, we want to make sure the City collects the money before the permit or license is renewed or issued. Using sophisticated data matching techniques, linking debt held by the same entity across different agencies is possible. This will allow the City to develop additional programs, such as placing a hold on a licensee from renewing their license, which will incentivize paying outstanding debts. This concept is similar to a program Finance currently practices with New York State Department of Motor Vehicles where a vehicle registration renewal is placed on hold if the vehicle owner has three or more tickets in judgment over an eighteen-month period.

So while Finance agrees with the spirit of this bill, we would prefer if the Council would instead support a broader initiative focused on unpaid fines and other charges from any city agency. The City should be able to use its powers to collect debt when debtors are asking for an authorization or license. We look forward to working with the Council on this issue.

Thank you, once again, Chairman Dilan for inviting us here today. I am happy to answer any questions you have.

REBNY®
REAL ESTATE BOARD OF NEW YORK

Testimony before the Housing & Buildings Committee of the New York City Council on Int. 379
By Angela Sung Senior Vice President, Management Services and Government Affairs
Real Estate Board of New York
March 9, 2011

Good afternoon Chairman Dilan, Bill Sponsor Councilmember Vacca, and members of the Housing and Buildings Committee. The Real Estate Board of New York, representing over 12,000 owners, developers, managers and brokers of real property in New York City, thanks you for the opportunity to testify about Intro 379. As participants in our citywide community, we support increasing the City's enforcement to collect delinquent payments owed to the City and prevent those who attempt to subvert the system from being able to profit from the advantages of New York City. Although the goal is laudable, we have serious concerns with many of the provisions of this bill, the negative effects it would have on the condition of New York's building stock, and the administrative burdens it would place on property managers and tenants – preventing new developments and investment in existing properties. Our concerns include:

1. *Split incentives:* The proposed bill assumes that the primary responsibility for all violations falls to the building owner or manager. In reality, many violations may be the responsibility of tenants that have been assigned to the building owners. It can be very difficult and time consuming for owners and managers to force their tenants to resolve a violation. Also, violations can sometimes be assigned incorrectly. For example, a street vendor may receive a ticket, but since the cart has no address, the violation can get assigned to the building, which can be difficult for a building owner to correct.

2. *Threshold:* The bill sets a threshold of $25,000 of unpaid fines, civil penalties, judgments from the ECB, fees or liens for HPD repairs, tax arrears owed to the City, or unpaid water or sewage charges. As a fixed value, this or any threshold disproportionately burdens large developments, buildings with elevators, building larger than 4 units or buildings with other characteristics that increase the frequency of City inspections. Additionally, the $25,000 threshold is low. This level could be reached quickly, as many violations from DOB are as high as $10,000 each. For example, elevator violations range from $3,000 to $5,000 per car. Façade violations and construction shed violations range from $5,000 to $10,000. Violations are constantly issued and settled on a rolling basis and at any point in time, a building could very easily carry over $25,000 in violations - many of which are expected to be addressed and corrected by the landlord and the City at a later date. In the face of such steep fines, it is clear that this threshold would capture responsible building owners as well those who are in the process of resolving violations but attempting to continue complying with mandated work and want to avoid compromising public safety.

3. *Suspension:* This bill would allow the Commissioner to suspend the permit of any applicant if he or she finds that the arrears owed exceed the $25,000 threshold. By creating a scenario where construction or repair work may be stopped in the middle of a project, this provision has the potential to create a serious safety issues at work sites, particularly if the work is critical to building operations or for new construction.

4. *Deterioration of building stock:* Although we tend to focus on new construction or substantial renovations, the majority of permits that the Department of Buildings issues each year are for repairs, tenant fit outs, work to meet new city mandated regulations, and other building operations. Preventing or delaying access to these types of permits that maintain and keep a building functioning may lead to the deterioration of New York City's building stock. It would also take away the certainty that financing institutions and potential tenants need in order to lend money and sign leases.

5. *Disclosure requirements*: This bill requires the applicant to certify that neither he/she nor any owners with a 10% or greater stake in the property owe money to the City. This is a more extensive disclosure than required by any other level of government, and it counters a longstanding practice of creating individual limited liability corporations for each building in order to prevent the financial deterioration of one building from affecting another. Although the bill's goal is to isolate individual bad actors, this portion of the legislation may have the opposite effect by essentially tying significant numbers of buildings together. For instance, it is unclear whether ownership stake could include mortgage issuers or lenders. Many new developments can be financed with 30% equity, meaning that a bank is a 70% "owner" in a property. If that qualifies as ownership and a building defaults, any other building that the bank is financing would be restricted from accessing building permits. Additionally, real estate investment trusts (REITs) can operate similar to stock investments, which can pool investment moneys and distribute to a portfolio of properties - masking investor information and make it an administrative impossibility for each permit holder to identify and verify debt collection. Ownership is additionally complicated when there is a company with several partners, when the owner corporation is public (are shareholders owners?), if there are out-of-state or international investors/partners, or if any building or owner is in a bankruptcy or foreclosure filing – which adds administrative burdens, time, and costs that need to be accounted for each time a building needs to access a permit for a renovations, repair, or tenant improvements/fit outs.

6. *Administration*: Many agencies are looking to convert from legacy data systems to modern systems. However, we are still working with processes that can make clearing old violations a difficult, time-consuming project. It is not uncommon for old violations can reappear on the DOB and FDNY's records even after being cleared. Additionally, building owners may dispute violations and need to appear at the Environmental Control Board to contest it. This process can take many months, and stopping all work in a given building due to the ECB could not only delay move-ins or prevent required work from taking place, but it may also hurt the economic development of the City, as jobs reliant on the construction industry will be slowed. Without additional resources assigned to the ECB or reforming the adjudication process, we do not think it is prudent to expand its authority. Also, many agencies increase enforcement and violations due to changes in agency priorities and to

meet revenue requirements for Programs to Eliminate the Gap (PEGs). As a result, receiving violations can be more a function of changed behavior from the City than of the building management or ownership.

7. *Department of Buildings:* The real estate industry has been working diligently with DOB on safety, inspection, development, and construction issues. In recent years, DOB's resources have been reduced to meet the financial austerity measures the City has taken. To additionally require a reduced workforce to take on the responsibilities of a financial enforcement and correction agency on the 125,000 construction permits issued each year would be an inappropriate use of resources when the real estate and construction industry need them to be focused on helping development projects recover.

We are sensitive to the budget pressures that the City is facing, and agree that City should have the proper tools to collect from those who legitimately owe money to the City. However, tying debt to Department of Building permits is a complicated proposal and we are concerned with the unintended consequences the proposed legislation may create. While the City will gain revenue and enforcement powers in the short run by forcing owners to pay, in the long run, this legislation may seriously harm the economic development of the City. It may cause a chilling effect on future development since owners will no longer have certainty on projects, and banks will likely not finance projects if there is an undeterminable amount of risk associated with revocable approvals due to previously unknown fines. Strengthening enforcement and collection by the City would achieve that goal more effectively, while preserving the ability of "good actor" building owners to continue to maintain their buildings safely without unduly burdening them or the City.

Thank you again, and we would welcome the opportunity to have further discussions with the City Council about this legislation.

Testimony of Jessica Handy, LEED AP on behalf of the Building Owners and Managers Association of Greater New York In.

Council of the City of New York Committee on Housing and Buildings Hearing in relation to Int. No. 379

March 9, 2011

Good Afternoon, Chairman Dilan and members of the Housing and Building Committee, my name is Jessica Handy. I am a commercial property manager for one of the largest commercial owner/manager companies in New York City. I'm testifying on behalf of the Building Owners and Managers Association of Greater New York Inc. (BOMA/NY) where I serve as member of the Codes and Regulations/Government Affairs Committee. We represent more than 750 owners, property managers and building professional who either own or manage 400 million square feet of commercial space. We're responsible for the safety of over 3 million tenants, generate more than $1.5 billion in tax revenue and contribute over $10 billion to the New York's Gross State Product.

BOMA/NY opposes the proposed Int. No. 379, a Local Law to amend the administrative code of the City of New York, in relation to the denial of building permits to property owners with outstanding charges owed to the City of New York.

While we agree with the spirit of the proposed legislation, the Bill in its current form does not effectively handle the problem that the sponsors seek to remedy. BOMA/NY members work hard every day to keep their buildings in compliance with all Building Codes and regulations. In the past, we have offered our expertise and insight toward efforts to strengthen building and construction laws. We believe that if this Bill was to be enacted into law, it would unfairly hurt those who strive to build in compliance with the law. It is not common in our industry given the current regulatory agency protocols that a renovation project in existing buildings can easily reach $25,000 in fines. This Bill does not incentivize the efficient payment of legitimate penalties; and it would punish those who have dared to invest their money in New York City real estate.

This Bill is called the "Bad Actors Law", but this Bill will only prohibit good owners from performing work; the "Bad Actors" will simply do the work without permits. The "Bad Actors" will not cease doing work; they will just require tenants to do all the work since tenant work is excluded from this legislation.

The proposed legislation does not take into account the intricate way that real estate partnerships are operated. Our market is full of large partnerships, and an ownership stake can

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be held by banks in the form of a mortgage or through investments. This provision effectively ties together every building in the City.

The Bill assumes that the primary responsible party for a violation is the property owner or manager. However, in reality, tenants may be responsible for certain violations or tenants may accrue violations assigned to them. This may result in the whole building's inability to pull permits and complete work. If a single tenant in a building fails to pay its fines, or is having a hard time clearing its violations, then that tenant could impact a building across the city.

Violations are too often issued in error to base such a sweeping piece of legislation on pending penalties. In my role as a property manager, I spent three weeks and $500 on an expeditor to research and get an FDNY violation dismissed that was issued to one of my buildings-it was the wrong building. In many instances, a violation will be reduced significantly once the hearing has concluded. Should this penalty have held up productive work at a building or many buildings for that matter?

And since this Bill does not apply to buildings seeking permits to resolve violations, why would a building owner attempt to be proactive about resolving issues? Why not just wait to get a violation? It's cheaper to get the violation and get a permit without paying outstanding penalties and without going through the expense of filing an Owner's statement.

BOMA/NY believes that this Bill is not needed, given already existing procedures. The 2008 Construction Code gives the City of New York and corporation counsel broad enforcement and foreclosure powers concerning unpaid fines, penalties and liens due to outstanding unpaid fines. This procedure is fair and equitable and leaves the matter with the courts.

If the City of New York feels additional legislation is required to reduce the number of "Bad Actors" in our industry, we recommend the following:

- Limit this legislation to residential buildings. If this legislation is a success, consider expanding it to commercial properties.
- Limit the bill to Alt 1 applications – new buildings, major gut-renovations and change of occupancy/use. Alt 2 applications are the majority of the NYC Department of Buildings permit applications and they can be anything from installing a new bathroom to building out an entire floor for a new tenant.
- Raise the limited partner requirement to 20% ownership not 10% as proposed. If this proves to be a success, and manageable by the enforcement agencies, then consider adjusting the ownership percentage.
- Raise the penalty amount and use a defendable definition for "owes" and "fees," It should clarify the terms so that only those fines imposed by a judicial body with all administrative appeals exhausted, are the ones which must be addressed.
- Require an Owner statement no more than once per year. As the Bill is presently written each Owner statement could cost thousands of dollars in expediter research fees for each desired permit. Again, this would punish only those desiring to comply with the law and would not affect the "Bad Actors" as intended. Has anyone figured out exactly how

many audits is 25%? This could be prohibitively challenging for the "appropriate city agency" to accomplish.

In conclusion, I thank the City Council and this Committee for the opportunity to present our views. This Bill has valid intentions but will lead to far more harm than good.

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READ INTO RECORD

Testimony of Con Edison
March 9, 2011
New York City Council Committee on Housing and Buildings

Good afternoon Chairman Dilan and members of the Housing and Buildings Committee and thank you for the opportunity to comment on Intro. 379, which seeks to deny building permits to property owners with outstanding charges owed to the City.

We understand the purpose of the bill, to ensure that residential and commercial properties are not developed by parties who already owe the City money and can abandon projects at various stages, leaving the blocks and neighborhoods to suffer, or to deny their obligation to the taxpayers of the City. While we do not deny the very reasonable request that what is owed gets paid, we have some issues that we would like to address.

First, the dollar amount for a company the size of Con Edison is extremely low. At any given time, between the dozen agencies we interact with, we could conceivably "owe" the City that amount of money, effectively prohibiting us from ever obtaining a building permit without appealing to the Commissioner. Second, it does not distinguish between amounts that may be in dispute versus those that have been adjudicated and a reasonable timeline for repayment has been established.

While we are not in the business of building residential or rentable commercial spaces, we do need to apply to the Department of Buildings for permits relating to infrastructure projects which are necessary to ensure the continual supply of energy throughout New York City. Therefore, we respectfully request that the following language be added "The commissioner shall not issue to any applicant a permit for a *residential or commercial property intended to be leased or rented*" or issue an additional exemption for critical infrastructure in section (4).

We believe that this language will allow Con Edison to obtain necessary permits without shirking any financial responsibility it is ultimately deemed to owe.

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JOINT TESTIMONY ON INTRO. 379
March 9, 2011

My name is Robert Altman, and I am the legislative consultant to the Building Industry Association of New York City, Inc. (BIANYC) and the Queens & Bronx Building Association (QBBA). Our associations are chapters of the New York State Builders Association ("NYSBA") and represent builders and contractors in the Bronx, Brooklyn, Queens and Staten Island within NYSBA. I am here to testify in opposition to Intro. 379.

Intro. 379 is a flawed concept as it is simply too broad. While we understand its intent, it risks putting legitimate applicants at risk. A few examples may help this discussion.

For example, let's just take something as basic as the $25,000 tax delinquency. Many times a developer/owner has applied for and received approval for a tax benefit from the City of New York. It then takes the City many months (and if it falls through the cracks, years) to implement the tax benefit. In the interim, the City inevitably sends out a bill that is too high, and sometimes this is for substantial amounts. The owner or developer, knowing that the tax exemption program will limit the taxes to a much lower amount, pays what the tax bill should be, but not the amount reflected on the bill. This only makes sense because when overpaying the City provides no interest on a refund that may be quite some time in the making, while any interest on the tax bill will be eliminated once the tax break is provided. However, during this time period, a large delinquency may show. And as a result, the developer now faces both the loss of any permit on the current property or the refusal of a permit on a new property. As for water and sewer charges, I often hear Council Members rail on behalf of constituents on improper bills for water and sewer charges. Does the Council think that this same problem does not exist for other larger properties?

Second, tenants can have ECB violations, and some can become quite large if the tenant does not address the matter. But in this instance the owner is the one who suffers. It does not matter that there is an appeal process as an appeal process can take time and why should the applicant need to go through the cost and expense of an appeal for something that is not their fault.

Third, it is easy when one owns multiple properties to rack up DOB or ECB violations and not even know that they are there. I have a manufacturing client who keeps spotless records and except for 33 DOB violations for the exact same thing (failure to timely file a boiler inspection report) it had no violations on its building. However, upon refinancing, the client found these violations (the fault of its contractor) and is trying to figure out how to handle this matter while doing necessary renovations to save its 80 jobs in Brooklyn. Obviously, it can do the renovation because this legislation is not the law, but implement it and you risk 80 jobs.

And that points to issues with the City record keeping. Many times building owners do not even know what ECB violations are outstanding. One landlord of a large industrial building constantly laments that ECB is in his building everyday looking for a violation because it views him as a cash cow.... And his building is in remarkably good shape. He has multiple buildings throughout the City and he would be harmed by this bill.

And ECB fines are easy to rack up. Over the years, as any crisis pops up, there is a rush to reclassify a violation as immediately hazardous, when it is really not, and this reclassification

ultimately leads to higher fines. It is a small wonder that not every ECB fine is classified as "immediately hazardous." But even more problematic is when the City records are not up to date or do not properly reflect the true record, which is quite commonplace. So the City is now going to rely on records that are not, in fact, accurate.

Next, it is interesting that the Council would promote a law that in effect allows for self-certification. For years, I have attended meetings where members, many of whom are sponsors of this bill, have railed against self-certification. And such efforts had an impact as for the most part, self-certification is now quite proscribed. But this bill asks the applicant to certify to the fact that other owners are essentially clean of any violations of this bill. But unlike self-certification, where a licensed architect or engineer is self-certifying and should have the training to do so, this bill puts the onus on an unwitting contractor, property manager or other unsuspecting person, who is frankly, not equipped to conduct such an investigation or simply would have no reason to know. In deed, even if the applicants themselves are signing, it is often beyond their purview to know the business of every other 10% or more owner. Why would the signer of such a document want to take on the potential liability?

Moreover, what if someone is a 10% minority owner in another property that meets the criteria? That owner has no control in getting the other owner(s) to correct any errors, so all this law would do would be to prevent jobs and growth in a City desperately in need of both. This self-certification is essentially an admission by the City that it cannot really enforce its own laws.

I could go on and pick this bill apart. Even the law itself fails to work on its own terms. For example, the owner statement is required on all permits, but this provision is inconsistent with prior provisions of the law regarding tenant rights. And is the Department really set up to conduct a single audit properly? Can it handle two percent of the applications in good and bad times, let alone 25% percent? After all, this is not a situation with typical self-certification where limited applications were self-certified and the rest went through standard procedures, this is EVERY application. These and more issues must be discussed in more depth than what I write here.

This Committee recently passed an alternative enforcement program. The bill was narrowly tailored to avoid harming properties and property owners who were not the intent of the bill. In that way, business could still be done by legitimate property owners and bad owners were narrowly targeted. This bill could take a lesson from that bill and seek to go after those owners that are problems. Upon meeting with Council Member Vacca, he complained about a problematic developer or two in his district that was a problem. Considering the amount of building that gets done in this City, I would think that even if there were 50 or so problem people, the Council should think of alternative methodologies rather than penalizing the entire real estate community.

Ultimately, this law is so flawed that our Associations are extremely concerned about any measure the Council redrafts. We believe that any proposal is more likely to get legitimate owners stuck in a bureaucratic morass than it is to actually collect a single dime. For these reasons, we oppose this legislation.

Testimony of New York City Department of Buildings
New York City Council, Housing and Buildings Committee,
Introductory Number 379
March 9, 2011

Good Morning Chairman Dilan and members of the Housing and Buildings Committee. My name is Vincent Grippo, and I am Chief of Staff at the Department of Buildings. I am here today with Donald Ranshte, Director of Intergovernmental Affairs, and other members of the Department.

I want to thank you for this opportunity to comment on Introductory Number 379, otherwise known as the 'Bad Actors Bill', a proposed amendment to the Building Code regarding conditions for withholding permits. Intro 379 would prohibit the Department of Buildings from issuing building permits when building owners or their applicants owe the Department fees, fines, judgments or penalties, with exceptions for emergency work, permits to correct outstanding violations or where the owner has entered into an agreement with the City to pay any outstanding monies owed.

The mission of the Department is clear: to ensure safe and compliant development for New Yorkers. Violations will deter offenders only if the offenders know that they will have to pay the fines levied against them, or, face consequences for not paying their fines. Code compliance is our primary goal, and fines and penalties are the means by which we force a degree of compliance.

The bill as written presents many operational and logistical challenges that would create a significant burden on DOB staff as well as the filing community. Most significantly, is the lack of an automated networked data system capable of aggregating outstanding debt and associating that debt with properties across the City. Without such a system we would create significant delays in permit issuance for all applicants including the tens of thousands of homeowners, construction workers, contractors and businesses that rely on timely permit issuance.

The Department of Buildings strives to be an effective part of the City's greater goal of collecting outstanding debts from "bad actors", and keeping permits and licenses out of the hands of owners and contractors who don't pay their fines and penalties. In studying the application of Intro 379 to our operations, the Department is prepared to work with the Council on an alternative bill that would allow DOB to withhold certain permit types when property or BIN based DOB debt exceeds a defined threshold. In doing this we would need to be mindful of the potential unintended consequence that we may push work "underground" – that is applicants avoiding the permitting system altogether and deciding not to apply for a permit due to an overly cumbersome process.

In addition, DOB is working with the Department of Finance and the Mayor's Office of Operations on a multi-faceted effort to help enhance revenue collection. To that end, the Department continues to pursue any practical way to deny permits and licenses to owners, contractors and others who do not pay their fines.

Thank you for this opportunity to present our testimony on Intro 379.