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Testimony by The Legal Aid Society

Before the New York City Council **Committee on Housing and Buildings** **on Intro 666- a Local Law to amend the Administrative Code of** **the City of New York, in relation to penalties for violations for** **the heat and hot water requirements of the Housing** **Maintenance Code**

The Legal Aid Society (the Society) in New York City is the nation's oldest and largest not-for-profit provider of legal help for vulnerable low-income children and adults.

Operating from 25 locations in New York City with a full-time staff of 1,600, including 925 lawyers and 675 social workers, paralegals, investigators, and support and administrative staff, the Society handles some 300,000 individual cases and legal matters each year. The Society operates three major practices: the Criminal Practice, which serves as the primary provider of indigent defense services in New York City; the Juvenile Rights Practice, which represents virtually all of the children who appear in Family Court as victims of abuse or neglect or as troubled young people facing charges of misconduct; and the Civil Practice, which improves the lives of low-income New Yorkers by helping families and individuals obtain and maintain the basic necessities of life- housing, health care, food, and subsistence income or self-sufficiency.

With a focus on enhancing family stability and security, through a network of neighborhood offices and city-wide special projects in all five boroughs of the City, the Civil Practice helps vulnerable families and individuals with these legal problems: housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law for low-income workers; consumer law; education law; community development opportunities to help clients move out of poverty; and reentry and reintegration matters for clients returning to the community from correctional facilities. Typically, clients seek assistance from the Civil Practice after exhausting all other avenues for assistance. The Society's Civil Practice is the safety net when all other safety nets fail. During the past year, our Civil Practice completed work on over 43,000 individual cases and legal matters, benefiting nearly 100,000 low-income children and adults, with an additional two million low-income New Yorkers benefiting from our law reform and class action litigation.

Through our housing practice, the Society represents thousands of low-income families every year, many of whom experience periods of lack of adequate heat and hot water. Safe, adequate housing must at a minimum include the provision of adequate heat and hot water during the winter heating season.

We appreciate the opportunity to testify before the Committee on Housing and Buildings about the Introduction of Bill 666, a Local Law to amend the Administrative Code of the City of New York, in relation to penalties for violations of the heat and hot water requirements of the housing maintenance code. The Legal Aid Society generally supports Intro 666 with some qualifications discussed below.

We believe that Intro 666-011 contains several good additions to the housing maintenance code, including subjecting landlords to civil penalties for a violation of the duty to provide HPD with access to a building's heating system and a \$200.00 inspection fee for subsequent heat and hot water violations. However, the Society is concerned that the new

self-certification provisions in the bill which permit a landlord to simply self-certify that a first time heat and/or hot water violation has been fixed and pay a \$250.00 fee to the Department of Housing Preservation and Development ("HPD"), will undermine the Housing Maintenance Code's enforcement scheme by inviting the City's worst landlords to falsely certify the correction of heat and hot water violations thereby leaving tenants without adequate heat and hot water, the most basic of services.

When a tenant calls HPD to complain about a lack of heat or hot water, HPD's first step is to contact the building's owner or managing agent to get heat or hot water service restored. An HPD inspector will be sent out to verify whether a violation continues to exist typically only a few days after the complaint is filed. Upon being contacted by HPD, most landlords will typically restore heat and hot water to the complaining tenant's apartment before any violation is placed, rather than face the prospect of a violation and civil penalties. There are, however, many landlords in the City who do not promptly restore services after receiving tenant complaints or at HPD's urging. In these cases, once a violation is placed on the dwelling by HPD, the landlord becomes subject to civil penalties until it can prove that the conditions have been fixed or HPD verifies that no condition exists.

Section 2 of the bill amends the civil penalties section of the Housing Maintenance Code, Section 27-2115(k), regarding heat and hot water violations. Section 2 of the bill provides that in the instance of a *first* heat or hot water violation, where a landlord certifies that the condition was corrected within 24 hours and sends in a \$250.00 payment to HPD within 10 days of the violation, the landlord will avoid accruing any additional civil penalties for such violation.

The Society has advised HPD about our concerns that the self-certification provisions of the new law as currently drafted effectively remove the powerful deterrent of the prospect of large civil penalties and will possibly allow the City's worst landlords to file false certifications, thereby leaving tenants without vital and basic services in winter and with no means to enforce the civil penalties provisions of the Housing Maintenance Code.

To address our concern, we suggest an amendment to Intro 666 containing language requiring notice to be given by HPD to the tenant when the landlord self-certifies to HPD that the problem has been fixed. We hope that this notice provision will provide some protection to tenants against false certifications. We understand that HPD agrees tenants should get notice, but we think the bill should be amended to specifically reference the notice provisions of the law to ensure that tenants receive such notice.

The Society also suggests that HPD report regularly before this Committee on the implementation of this amendment to the Housing Maintenance Code, particularly its experience with regard to the self-certification provisions.

Thank you again for the opportunity to testify before the Committee on Housing and Buildings.

Respectfully Submitted:

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TESTIMONY OF THE DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT TO THE COUNCIL
COMMITTEE ON HOUSING AND BUILDINGS
INTRODUCTION 666: PENALTIES ON HEAT AND HOT WATER VIOLATIONS
MONDAY, OCTOBER 3RD, 2011 – 1 PM

Good Morning Chairman Dilan and members of the Housing and Buildings Committee. My name is Vito Mustaciuolo, Deputy Commissioner for the Office of Enforcement and Neighborhood Services and sitting next to me is Christopher Gonzalez, Director of Intergovernmental Relations at the Department of Housing Preservation and Development (HPD). Thank you for the opportunity to testify in support of Intro 666, relating to enforcement of the heat and hot water requirements of the Housing Maintenance Code.

First, let me take the opportunity to thank the Council for their recognition of the importance of heat and hot water as a basic service to which all New Yorkers are entitled. Local Law 16 of 2011, which the City Council passed earlier this year and which went into effect on October 1st, increases the penalties for properties which fail to maintain these services over multiple heat seasons and years. This legislation before us today proposes to additionally enhance HPD's ability to enforce compliance with the heat and hot water provisions of the Housing Maintenance Code. Intro 666 would amend the provisions related to the collection of penalties for the issuance of the first heat and hot water violation for a property and impose an inspection fee when multiple inspections result in the issuance of heat or hot water violations.

Currently, the Housing Maintenance Code authorizes HPD to seek a civil penalty in the amount of \$250 per day until the condition is corrected for the first heat and for the first hot water violation issued to a property. Since HPD has always prioritized enforcement of heat and hot water provisions, our current procedure is to seek those civil penalties in Housing Court in almost every case where a heat or hot water violation is issued. Reviewing HPD data, we found that of the 7,221 buildings issued a heat or hot water violation during the 2010-2011 heat season, only 1,768 buildings (24%) had a second violation. This data indicates that property owners who fail to provide heat or hot water on one occasion generally comply with the regulations after the issuance of a first violation. Additionally, 82% of the buildings which received a heat violation in FY11 did not receive a heat violation during the FY10 heat season. Similarly, 77% of the buildings which received a hot water violation in calendar year 2010 did not receive a hot water violation in calendar year 2009. Realistically, boilers break down or service is interrupted in even the best of buildings beyond the control of the owners who take appropriate action to maintain their buildings. This change would recognize those realities. Specifically, Intro 666 proposes to add a provision to the HMC allowing an owner who has corrected a first heat or hot water violation within 24 hours to submit a payment of \$250 per violation if there has not been a heat violation since the beginning of the previous heat season or calendar year for hot water violations. The payment would be submitted with a timely notice of correction of the violation within 10 days of the inspection. Submission of the certification with the payment would stop HPD from seeking civil penalties on that violation. Since \$250 is the minimum that would be sought

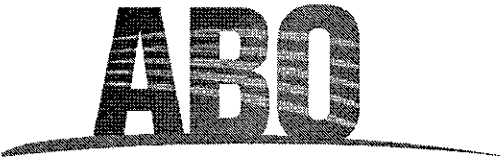
in Housing Court, the payment with certification will relieve the property owner and HPD of the expense in time and money of going to Housing Court while still penalizing the owner for allowing the heat or hot water to be below the minimum required temperature. HPD will focus resources on seeking penalties from property owners who continually fail in their duty to restore services timely. This legislation will in no way affect the owner's right to appear in court to address and/or contest the violation. Tenants will be notified, as required, should a landlord certify correction of the condition and have an opportunity to contest the certification. HPD also conducts audits of all certifications as a standard practice. Should a condition still exist on reinspection, the owner may be liable for false certification penalties under existing statute.

Although a majority of owners do comply, HPD does want to continue to enhance enforcement against those owners who repeatedly fail to comply through more than just civil penalties. For those properties that do not correct the condition properly after the issuance of a second violation, Intro 666 also proposes to subject any property in violation of the heat and hot water requirements to an inspection fee of \$200 for each additional inspection that results in the issuance of a violation. This means that for a third and for each subsequent offense in the same calendar year or heat season, \$200 will be charged to the building. All unpaid fees will constitute a debt recoverable from the owner and a tax lien will be placed on the premises if the debt is not paid timely. The automatic and timely addition of fees and potential liens will encourage owners to be diligent in monitoring heat and hot water functions of their properties and to be proactive about maintaining the systems. Given fiscal realities, HPD's Code Enforcement Inspection resources cannot continue to be consumed by a small number of properties. In FY10, 607 properties had three or more inspections on which heat or hot water violations were issued – in FY11, there were 635 properties in this category.

Intro 666 as written was intended to take effect on October 1, 2011 to coincide with the commencement of heat season. As I mentioned earlier, property owners will be learning about the changes associated with Local Law 16 for October 1st 2011. Although we would like to implement the Intro 666 changes as soon as possible, the agency will require some lead time to make the necessary technological changes, coordinate with the Department of Finance, and advise owners about the additional legal changes. At this point, we believe that phasing in the changes over this heat season (Local Law 16) and next heat season, starting October 2012 (Intro 666), will provide for a smoother transition and better compliance. Accordingly we propose amending the effective date to June 1, 2012.

HPD's mission is to enforce the Housing Maintenance Code and protect tenants' right to a habitable living space. During these times of scarce fiscal resources it is essential that HPD's code inspection and housing litigation services be available to those constituents in most need. This legislation allows HPD to achieve those goals while offering more efficiency for first time violators, and toughening the penalties on recalcitrant owners that repeatedly deprive their tenants of heat and hot water.

We thank you for this opportunity to testify in support of this legislation and welcome any questions that you might have.



Associated Builders and Owners
of Greater New York

For the record

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Testimony on Intro 666
By Dan Margulies
Executive Director, Associated Builders and Owners of Greater New York
September 28, 2011

Thank you for the opportunity to testify. ABO supports the approach of Intro 666 to offer building owners and managers an incentive to respond quickly to heat emergencies by capping fines if conditions are corrected within ten days.

We believe that most owners do attempt to restore heat promptly and that no one benefits from punitive daily fines if repairs are in progress.

We do propose one slight amendment to the bill. As written, Intro 666 limits penalties if violations are corrected within 24 hours of notice being affixed to the building and certification is received within ten days. Unfortunately, many owners and managers do not always see posted notices, they may not be mentioned by superintendents, or they are removed by someone. We believe that applying the same cap to violations corrected within 24 hours of service by mail on a managing agent pursuant to Housing Maintenance Code section 27-2115 c. 3 (which assumes service five days after mailing), or personal service on a building employee (whichever is earlier) would achieve essentially the same objective and make it more certain that notice of the violation was received by a responsible party.

Thank you again for the opportunity to comment.

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