

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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October 3, 2011
Start: 1:25pm
Recess: 2:30pm

HELD AT: Council Chambers
City Hall

B E F O R E:
ERIC MARTIN DILAN
Chairperson

- COUNCIL MEMBERS:
- Council Member Gale A. Brewer
 - Council Member Leroy G. Comrie, Jr.
 - Council Member Elizabeth S. Crowley
 - Council Member Lewis A. Fidler
 - Council Member James F. Gennaro
 - Council Member Robert Jackson
 - Council Member Letitia James
 - Council Member Brad S. Lander
 - Council Member Melissa Mark-Viverito
 - Council Member Rosie Mendez
 - Council Member James S. Oddo
 - Council Member Joel Rivera
 - Council Member Jumaane D. Williams

A P P E A R A N C E S (CONTINUED)

Vito Mustaciuolo
Deputy Commissioner, Office of Enforcement and
Neighborhood Services
Department of Housing Preservation and Development

Christopher Gonzalez
Director of Intergovernmental Relations
Department of Housing Preservation and Development

Sebastian Riccardi
Staff Attorney
Legal Aid Society

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2 CHAIRPERSON DILAN: Hey, good
3 morning, everybody. Good afternoon, everybody,
4 actually. My name is Erik Martin Dilan, and I'm
5 the Chairperson of the City Council's Housing and
6 Buildings Committee. Today, the Committee will
7 conduct an initial hearing on Intro 666 which is a
8 Local Law to amend the Code of the City of New
9 York in relation to penalties for violation of
10 heat and hot water requirements of the Housing
11 Maintenance Code. At the end of this hearing,
12 this item will be laid aside and will be worked on
13 and looked at for disposition potentially at a
14 future date. Intro 666 would make a property
15 subject to civil penalties for failing to provide
16 access to the property's heating system for the
17 purposes of an inspection by HPD. The civil
18 penalties would be not less than \$250, no more
19 than \$500, for each day the, the violation is
20 open, until it's corrected; and not less than
21 \$500, nor more than \$1,000 for each subsequent
22 violation at the same dwelling or multiple
23 dwelling during the same calendar year.
24 Additionally, the following heat and hot water--
25 the following heat and hot water related

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2 violations would only be considered satisfied upon
3 the payment of a \$250 payment to HPD, along with a
4 Notice of Correction by the building's owner or
5 his agent: failure to provide access to the
6 property's heating system for the purpose of an
7 inspection by HPD; failure to meet the minimum
8 indoor room temperature during the heat season;
9 failure to provide; to provide hot water for
10 tenants, and in buildings without a central
11 heating system; failure to meet standards
12 established for the use of fuel, gas, electric
13 space or water heaters--are all the things that
14 are subject to the initial \$250,000 penalty--\$250
15 penalty. If Notice of Correction and payment is
16 not received within ten days, then the penalties
17 will be applicable to the violations and HPD may
18 begin a proceeding in Housing Court for an order
19 to correct, and to recover these penalties.
20 However, the opportunity to submit Notice of
21 Correction and \$250 payment would not be available
22 in any of the violations just mentioned occurred
23 at the same time the property, at the same
24 property during the prior year, or for cases
25 failing to provide the minimum indoor temperature

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2 occurred during the last heat season. If a third
3 violation occurs during the same calendar year, or
4 during the heat season for violations of failing
5 to provide the indoor temperature, then the
6 property owner would be subject to a fee of \$200
7 for each inspection, resulting in the issuance of
8 the violations as well as any civil penalties
9 related to this violation. However, this fee
10 would not be applicable to inspections performed
11 in multiple dwellings, including the alternative
12 enforcement, alternative enforcement program. All
13 fees that remain unpaid will constitute a debt
14 recoverable from the owner and a lien upon the
15 premises upon the rents and other income of the
16 property. The Committee today expects to hear
17 testimony from representatives of HPD, as well as
18 tenants, housing advocates, representatives from
19 the real estate industry, as well as any other
20 interested persons. For housekeeping, we've been
21 joined by Council Member Letitia James of
22 Brooklyn, Council Member Joel Rivera of The Bronx,
23 Council Member Brad Lander of Brooklyn, Council
24 Member Elizabeth Crowley of Queens, and I'm sure
25 there'll be some other that will come and go

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2 during the proceedings and we'll introduce them at
3 the appropriate time. So with that, I see that
4 HPD is here, and why don't you introduce
5 yourselves in your own voice, and tell us why
6 you're so adamant about this bill?

7 VITO MUSTACIUOLO: Good afternoon,
8 Chairman Dilan, and Members of the Housing and
9 Buildings Committee. My name is Vito Mustaciuolo,
10 Deputy Commissioner for the Office of Enforcement
11 and Neighborhood Services. And sitting next to me
12 is--

13 CHRISTOPHER GONZALEZ: Christopher
14 Gonzalez, Director of Intergovernmental Relations.

15 VITO MUSTACIUOLO: Thank you for
16 the opportunity to testify in support of Intro
17 666, relating to the enforcement of heat and hot
18 water requirements of the Housing Maintenance
19 Code. First, let me take the opportunity to thank
20 the Council for their recognition of the
21 importance of heat and hot water as a basic
22 service to which all New Yorkers are entitled.
23 Local Law 16 of 2011, which the City Council
24 passed earlier this year, and which went into
25 effect on October 1st, increases the penalties for

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2 properties which fail to maintain these services
3 over multiple heat seasons and years. This
4 legislation before us today proposes to
5 additionally enhance HPD's ability to enforce
6 compliance with the heat and hot water provisions
7 of the Housing Maintenance Code. Intro 666 would
8 amend the provisions related to the collection of
9 penalties, for the issuance of the first heat and
10 hot water violation for a property, and impose an
11 inspection fee when multiple inspections result in
12 the issuance of heat or hot water violations.
13 Currently, the Housing Maintenance Code authorizes
14 HPD to seek a civil penalty in the amount of \$250
15 per day until the condition is corrected, for the
16 first heat--and for the first hot water violation
17 issued to a property. Since HPD has always placed
18 a particular importance on enforcing heat and hot
19 water provisions, our current procedure is to seek
20 those civil penalties in Housing Court in almost
21 every case where a heat or hot water violation is
22 issued. Reviewing HPD data, we found that of the
23 7,221 buildings issued a heat or hot water
24 violation during the 2010/2011 heat season, only
25 1,768 buildings, or 24 percent, had a second

1 violation. This data indicates that property
2 owners who fail to provide heat or hot water on
3 one occasion generally comply with the regulations
4 after the issuance of a first violation.
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6 Additionally, 82 percent of the buildings which
7 received a heat violation in Fiscal Year '11 did
8 not receive a heat violation during Fiscal Year
9 '10's season. Similarly, 77 percent of the
10 buildings which received a hot water violation in
11 calendar year 2010, did not receive a hot water
12 violation in the previous calendar year 2009.

13 Realistically, boilers break down or service is
14 interrupted in even the best of buildings, beyond
15 the control of the owners, who take appropriate
16 action to maintain their buildings. This change
17 would recognize those realities. Specifically,
18 Intro 666 proposed to add a provision to the
19 Housing Maintenance Code allowing an owner who has
20 corrected a first heat or hot water violation
21 within 24 hours to submit a payment of \$250 per
22 violation, if there has not been a heat violation
23 issued since the beginning of the previous heat
24 season. The payment would be submitted with a
25 timely notice of the correction of the violation

1 within ten days of the inspection. Submission of
2 the certification with a payment would stop HPD
3 from seeking civil penalties on that violation.
4 Since \$250 is the minimum that would be sought in
5 Housing Court, the payment with certification will
6 relieve the property owner and HPD of the expense
7 and time and money of going to Housing Court,
8 while still penalizing the owner for allowing the
9 heat or hot water to be below the minimum required
10 temperature. HPD will focus resources on seeking
11 penalties from property owners who continually
12 fail in their duty to restore services timely.
13 This legislation in no way will affect the owners'
14 right to appear in court, address or contest the
15 violation. Tenants will be notified as required
16 should a landlord certify correction of the
17 condition, and have an opportunity to contest the
18 certification. HPD also conducts audits of all
19 certifications as a standard practice. Should a
20 condition will exist on re-inspection, the owner
21 may be liable for a false certification of the
22 penalties existing in the existing statute.
23 Although a majority of owners do comply HPD
24 doesn't want to continue to enhance enforcement
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2 against the minority group of owners who fail to
3 comply for more than civil penalties. For those
4 properties that do not correct the condition
5 properly after the issuance of a second violation,
6 Intro 666 also proposes to subject any property in
7 violation of the heat and hot water requirements
8 to an inspection fee of \$200 for each additional
9 that results in the issuance of a violation. This
10 means that for a third and each subsequent offense
11 in the same calendar year, or heat season, \$200
12 will be charged to the building. All unpaid fees
13 will constitute a debt recoverable from the owner
14 and a tax lien will be placed on the premise if
15 the debt is not paid timely. The automatic and
16 timely addition of fees and potential liens will
17 encourage owners to be diligent in monitoring heat
18 and hot water functions of their properties, and
19 to be proactive about maintaining the systems.
20 Given fiscal realities, HPD's code enforcement
21 inspection resources cannot continue to be
22 consumed by a small number of properties. In
23 Fiscal Year '10, 607 properties had three or more
24 inspections in which heat or hot water violations
25 were issued. In Fiscal Year '11, there were 635

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2 properties in this category. HPD will also be
3 reviewing other actions that might be appropriate
4 to adjust conditions at these properties. Intro
5 666, as written, was intended to take effect on
6 October 1, 2011, to coincide with the commencement
7 of heat season. As I mentioned earlier, property
8 owners will be learning about the changes
9 associated with Local Law 16 for October 1, 2011.
10 Although we would like to implement the Intro
11 666's changes as soon as possible, the agency will
12 require some lead time to make the necessary
13 technological changes, coordinate with the
14 Department of Finance, and advise owners about the
15 additional legal changes. At this point, we
16 believe that phasing in the changes over this heat
17 season, Local Law 16, the next heat season,
18 starting October 2012, will provide for a smoother
19 transition and better compliance. Accordingly, we
20 propose amending the effective date to June 1,
21 2012. HPD's mission is to enforce the Housing
22 Maintenance Code and protect tenants' rights to a
23 habitable living space. During these times of
24 scarce fiscal resource, it is essential that HPD's
25 code inspection and housing litigation services be

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2 available to those constituents in most need.
3 This legislation allows HPD to achieve those
4 goals, while offering more efficiency for first
5 time violators, and toughening the penalties on
6 recalcitrant owners that repeatedly deprive their
7 tenants of heat and hot water. We thank you for
8 this opportunity to testify in support of the
9 legislation and welcome any questions that you may
10 have.

11 CHAIRPERSON DILAN: Okay, we'll do
12 a little housekeeping first. We've been joined by
13 Council Member Williams of Brooklyn, Council
14 Member Viverito of Manhattan, Council Member
15 Mendez of Manhattan, Council Member Jackson of
16 Manhattan, as well as the Republican leader Jimmy
17 Oddo. So, just, just highlight for me--oh, and
18 Council Member Fidler of Brooklyn, as well--just
19 highlight for me, because in my, in my opening,
20 and in your testimony, you know, it really sounds
21 like we're looking to increase fees and civil
22 penalties, or civil, civil penalties to be
23 specific. As somebody who hasn't been in, I guess
24 in this line of work, it sounds like these are all
25 new fees, so could you just highlight what fees

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are existing and what new fees that the agency is looking for?

VITO MUSTACIUOLO: Certainly. So actually it was Local--

CHAIRPERSON DILAN: Start with new.

VITO MUSTACIUOLO: Well, the, what the proposal 666, Intro 666, proposes is to add an additional fee, an inspection fee for repeat offenders. So, after the third occurrence of a heat or a hot water violation, in addition to the existing civil penalties, that could be imposed by Housing Court, we would be imposing an inspection fee of \$200.

CHAIRPERSON DILAN: Okay, so, is that the only new, is that the only new revenue you're looking for in the bill?

VITO MUSTACIUOLO: That's the only change. Again, Local Law 16, which was just passed recently and implemented, actually increases the civil penalties for repeat offenders.

CHAIRPERSON DILAN: Yeah, which is what we did last year.

VITO MUSTACIUOLO: Exactly.

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2 CHAIRPERSON DILAN: I got that
3 part. So, the only new revenue measure in this
4 bill specifically, is that \$200--

5 VITO MUSTACIUOLO: Inspection fee.

6 CHAIRPERSON DILAN: --inspection
7 fee. Everything else is in already existing in
8 the Housing Maintenance Code, is that correct?

9 VITO MUSTACIUOLO: Right, it does--
10 again, it supports Local Law 16, which was just
11 passed.

12 CHAIRPERSON DILAN: Okay. So,
13 could you clarify for me then, around the \$200 re-
14 inspection fee, what constitutes a re-inspection?
15 And how do you, how do you foresee using is a
16 tool?

17 VITO MUSTACIUOLO: Well, it's not
18 a, the \$200 is not a re-inspection fee. What the
19 \$200 represents is a fee in the event that, for,
20 again, for repeat offenders, that if we respond to
21 another complaint, which results in the issuance
22 of a violation, there will be a fee. And
23 basically, what, and if you recall, we actually
24 added fees in, to the legislation for the
25 alternative enforcement program. And actually

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2 that's why AEP buildings are excluded, because we
3 already charge an inspection fee for repeat
4 offenders in the alternative enforcement program.

5 CHAIRPERSON DILAN: All right, but
6 in the bill it's called the re-inspection fee. Is
7 that--?

8 VITO MUSTACIUOLO: I don't believe
9 it's called re-inspection, I believe it's called
10 an inspection fee.

11 CHAIRPERSON DILAN: Oh, each
12 inspection that results re-insp--

13 VITO MUSTACIUOLO: In the issuance
14 of a, a violation, correct. And hopefully, you
15 know, we're hoping that that will act as a
16 deterrent.

17 CHAIRPERSON DILAN: So, I think
18 what I'm trying to get at is, just by listening to
19 what you've said, if there's a repeat offender,
20 obviously a repeat offense, would that trigger a
21 new inspection? Or would that--how would you--
22 what happens currently with repeat offenders? How
23 many times do you guys send an inspector out on a
24 repeat offense?

25 VITO MUSTACIUOLO: Again, as often

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2 as we receive, when we receive a complaint for no
3 heat or hot water, as long as it's not a duplicate
4 complaint, which means that we don't have a
5 primary that's already open, we will send another
6 inspector out to the building, perform an
7 inspection. If the heat or hot water are not
8 adequate or to code, that will result in the
9 issuance of a violation. The civil penalties
10 under, that, with the increased civil penalties,
11 under Local Law 16, we have to go to Housing Court
12 to impose those. And we always ask for the
13 maximum civil penalties. And unfortunately,
14 oftentimes, it results in lesser amounts being
15 imposed.

16 CHAIRPERSON DILAN: Yeah, well, I
17 was going to get to that part--

18 VITO MUSTACIUOLO: All right.

19 CHAIRPERSON DILAN: --next, but I
20 just want to understand how, how your agency
21 intends to use the \$250, or the \$200 as a re--as
22 sort of a tool to, to curb repeat offenses, and I
23 want to know, I guess specifically if you send out
24 another inspector, does the charge happen then or
25 does it happen upon complaint? If you don't send

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an inspector, what happens? Kind of-

VITO MUSTACIUOLO: Certainly.

CHAIRPERSON DILAN: --how is that,
how is that additional \$200--?

VITO MUSTACIUOLO: Okay, so that
inspection fee will, would only be imposed after
the, the third offense, which means we would have
sent an inspector in response to a complaint,
resulting in the issuance of another violation for
inadequate heat or hot water.

CHAIRPERSON DILAN: And that's
assumed that the first offense has been legally
closed, HPD or the courts and the owner have come
to some agreement that the condition has been
fixed, supposedly, and then you move on to the
second, say we're dealing with a building,
hypothetically with three offenses, same building,
now there's a second offense, let's say for
argument's sake the same unit. What happens the
second, the second time?

VITO MUSTACIUOLO: The second
offense, we would--

CHAIRPERSON DILAN: Under the
proposal.

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2 VITO MUSTACIUOLO: Under the
3 proposal for the second offense, we would initiate
4 litigation, so we would bring a case in Housing
5 Court, and seek civil penalties. But we would not
6 impose an additional fee, an inspection fee. Not
7 for the second offense.

8 CHAIRPERSON DILAN: Okay.

9 VITO MUSTACIUOLO: But this would
10 only be for the third offense and any subsequent
11 offense after that.

12 CHAIRPERSON DILAN: And this is all
13 within a calendar year, is that correct?

14 VITO MUSTACIUOLO: It's, it's
15 either within a, a heat season, if it's a heat
16 violation.

17 CHAIRPERSON DILAN: Okay.

18 VITO MUSTACIUOLO: Or a calendar
19 year, if it's a hot water violation. Again, it--

20 CHAIRPERSON DILAN: Okay. So it
21 could be--

22 VITO MUSTACIUOLO: --parallels--

23 CHAIRPERSON DILAN: --heat season
24 or penalty--

25 VITO MUSTACIUOLO: --the civil

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penalties.

CHAIRPERSON DILAN: --okay.

VITO MUSTACIUOLO: Yeah.

CHAIRPERSON DILAN: Makes sense.

VITO MUSTACIUOLO: And, I'm sorry, and we believe that the increased penalty will serve as a deterrent, also as I stated in my testimony, if the owner does not pay the fee, it will, it will that fee will change into a tax lien. And with the legislation that the Council passed, and which we can sell our tax liens--

CHAIRPERSON DILAN: All right, so on the past heat seasons in which you have data, how many buildings would have--how many buildings would the agency, would have been able to levy this new charge on?

VITO MUSTACIUOLO: In my testimony, I had indicated that the last heat season, we had 680--I believe 686. I'm sorry, 635 properties that were repeat offenders last heat season.

CHAIRPERSON DILAN: Repeat offenders that reached the second or third?

VITO MUSTACIUOLO: Third.

CHAIRPERSON DILAN: Third, okay.

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2 Okay, now, just moving on to, to, and we can do
3 the math to, to, to figure out how much revenue
4 you expect, but just based on those numbers, if
5 you have it done, how much revenue do you figure
6 this brings?

7 VITO MUSTACIUOLO: We are assuming
8 a 25 percent compliance, meaning owners taking
9 advantage of paying the \$250, for the first
10 offense.

11 CHAIRPERSON DILAN: For the first
12 offense, okay.

13 VITO MUSTACIUOLO: And the
14 increased fee for inspection, we're estimating
15 approximately a half million dollars.

16 CHAIRPERSON DILAN: Well, that,
17 that \$250 dollar fee is also a new revenue
18 measure. That doesn't exist in Housing
19 Maintenance Code as it, as it stands right now, is
20 that correct?

21 VITO MUSTACIUOLO: Well, currently
22 we, again, bring cases in Housing Court, and we
23 seek civil penalties.

24 CHAIRPERSON DILAN: Yes.

25 VITO MUSTACIUOLO: So there are, we

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do collect money for the civil penalty process.

CHAIRPERSON DILAN: Yeah, but there's no fee in lieu of the court process, that's also--

VITO MUSTACIUOLO: [interposing] No, there's not.

CHAIRPERSON DILAN: --this legislation, as well.

VITO MUSTACIUOLO: That's correct, only for the first time offense.

CHAIRPERSON DILAN: That, and that's a new revenue measure in this legislation, as well.

VITO MUSTACIUOLO: It's basically offsetting some of the current moneys that we collect for civil penalties.

CHAIRPERSON DILAN: Okay, so it, okay, got it. So, it's--

VITO MUSTACIUOLO: So it's not, it's not an increase, per se.

CHAIRPERSON DILAN: It's not an increase per se, but it's, it's new revenue to this bill, but it may be taking revenue that you would've normally received in the past--

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VITO MUSTACIUOLO: Right.

CHAIRPERSON DILAN: --anyway.

VITO MUSTACIUOLO: And again, that option is only available if, if the owner had not received a violation in the previous heat season.

CHAIRPERSON DILAN: Yeah, if they have, then you go to, it gets treated as a second offense. Is that--

VITO MUSTACIUOLO: They would not be able to certify a timely and pay the fee.

CHAIRPERSON DILAN: And you would go through the current process that--

VITO MUSTACIUOLO: Right, we would go to Housing Court, correct.

CHAIRPERSON DILAN: --that exists right now.

VITO MUSTACIUOLO: Correct.

CHAIRPERSON DILAN: Okay. You mentioned in your testimony about false, false certifications or false corrections. You didn't specifically say what the fine was, you said the fine was in current statute. Do you know what that fine is? Or the violation is, the civil penalty?

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2 VITO MUSTACIUOLO: Off the top of
3 my head, I'm sorry, I don't know what the penalty
4 is.

5 CHAIRPERSON DILAN: All right.

6 VITO MUSTACIUOLO: It's, it's not,
7 we're not changing the--

8 CHAIRPERSON DILAN: Yeah, no, I get
9 that.

10 VITO MUSTACIUOLO: --the penalty,
11 yeah.

12 CHAIRPERSON DILAN: I get that, I
13 just want to know what it is.

14 VITO MUSTACIUOLO: Yeah, I--

15 CHAIRPERSON DILAN: Is that
16 possible to get before we close the hearing? If,
17 if not, then you can get back to us, but if it's
18 possible before we close the hearing, that would
19 be helpful. Okay, I may have some questions
20 before we close. But we'll go with now Council
21 Member James, followed by Council Member Lander.

22 COUNCIL MEMBER JAMES: Good
23 afternoon. Of those 600 and some odd individuals
24 who were repeat offenders, how many of them filed,
25 I guess they all filed certs, certifications that

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in fact the condition had been corrected. Yes?

VITO MUSTACIUOLO: Actually, most did not.

COUNCIL MEMBER JAMES: They did not. So, how do we get at the issue of false certifications? How do we address that? Are you concerned at all that individuals are filing false certifications?

VITO MUSTACIUOLO: Again, we can, we will address the false certification process. When, if an owner does certify a violation--

COUNCIL MEMBER JAMES: Yes.

VITO MUSTACIUOLO: --a notice is sent to the complainant, indicating that the agency has received a certification that allows the, the tenant to notify the Department if they object to the certification. Even if we don't receive that objection from a tenant, we audit the certifications, and we generally attempt to re-inspect every Class C violation that's certified. If we find that the condition has not been corrected, it's listed as a false certification. And then we can pursue that. So that would only, again, be in the instance where the owner has

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actually submitted a timely certification.

COUNCIL MEMBER JAMES: And how many times does the, the agency purse individuals for filing false certifications?

VITO MUSTACIUOLO: We generally include those in our comprehensive litigation cases. And we have brought, we bring several hundred cases a year.

COUNCIL MEMBER JAMES: And it includes filing false certifications?

VITO MUSTACIUOLO: Yes, it does.

COUNCIL MEMBER JAMES: And of this 600 and some odd individuals who have been repeat offender, what would you say is the breakdown of individuals who have not filed any certifications and those who have filed certifications--?

VITO MUSTACIUOLO: The repeat offenders, honestly, are not certifying violations.

COUNCIL MEMBER JAMES: At all, okay.

VITO MUSTACIUOLO: At all.

COUNCIL MEMBER JAMES: Okay. Thank you.

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2 CHAIRPERSON DILAN: Thank you,
3 Council Member James. Council Member Lander.

4 COUNCIL MEMBER LANDER: Thank you,
5 Mr. Chairman. Thank you to the two of you for
6 being here. Very enthusiastic to see this, to see
7 this bill, this sort of smart approach, it's good
8 to see that, you know, 75 percent of landlords who
9 are getting heat and hot water complaints are
10 stepping up and making those repairs quickly, and
11 that we're trying, as a City, to figure out how to
12 make life easier on them. And then really focus
13 our energy on the bad apples. So, I would like to
14 have my name added as a sponsor to the bill. A
15 couple of questions, one, just simple one, you
16 know, part of what we did in Local Law 16 was
17 navigate this fact that the heat season goes
18 across the calendar year, so I assume when say in
19 a year here, for second or third repeat offense,
20 that that same, what's the time table applies,
21 where it's within two consecutive calendar years,
22 or--

23 VITO MUSTACIUOLO: Right, for heat
24 violations, it's two consecutive heat seasons.
25 For hot water violations, it's calendar year.

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COUNCIL MEMBER LANDER: Okay.

VITO MUSTACIUOLO: Because hot water is, is required to be provided all year round.

COUNCIL MEMBER LANDER: Right.

VITO MUSTACIUOLO: Right.

COUNCIL MEMBER LANDER: Okay, so this follow, the second and third violations in this bill, follow the calendar adjustments that we made in Local Law 16.

VITO MUSTACIUOLO: Absolutely.

COUNCIL MEMBER LANDER: Okay. So that is good. I guess I just want to, first of all, just a little bit on Council Member James's-- I mean, one, is I would love to get a little more information, she sort of asked about data on false certifications and if you can provide that to us, just what you guys fine and what you bring to us, I recognize that's not the issue with the 600-ish properties that are the worst offenders here, since they're not bothering to certify at all, but it's a separate issue we'd like to keep an eye on. So, if you can let us know, that would be great. Now, with the 600 odd buildings that did have

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2 multiple violations, can you give us some sense of
3 how that overlaps with AEP or Housing litigation--
4 you know, I mean, these seem like 600 buildings
5 that we really want to be focusing in on, and not
6 only getting a \$200 inspection fee, but making
7 sure those landlords, you know, take care of their
8 buildings and stop abusing their tenants and get
9 the, you know, so give me a little sense of sort
10 of what we're doing with those buildings, to get
11 'em in a better place.

12 VITO MUSTACIUOLO: Sure. Actually,
13 I have some statistics, but not with respect to
14 the, the 686. What I do have--Now, we took a look
15 at buildings that were repeat offenders, so they
16 had multiple occurrences in two consecutive heat
17 seasons. Okay, 'cause we fig--those are really
18 the worst of the worst.

19 COUNCIL MEMBER LANDER: Sure.

20 VITO MUSTACIUOLO: That comes down
21 to 121 buildings. Of that, 29 are active in AEP,
22 in the Alternative Enforcement Program; 15 we
23 brought and still have comprehensive litigation
24 cases; 9 are in the Proactive Preservation
25 Initiative; 32, our Division of Neighborhood

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2 Preservation is working with the owners; 22 are
3 one- and two-family home buildings, so litigation
4 is a little bit more difficult in a private
5 dwelling. So that constitutes the 121. So I
6 don't have it--

7 COUNCIL MEMBER LANDER: Yeah.

8 VITO MUSTACIUOLO: --for the 686,
9 but I could certainly get a breakdown of that, as
10 well.

11 CHAIRPERSON DILAN: If you could,
12 if you could submit the data that you just
13 presented in writing, as well as the 600, it'd be
14 beneficial, and then I guess specifically to the
15 Council Member that asked, also.

16 VITO MUSTACIUOLO: Absolutely.

17 COUNCIL MEMBER LANDER: Well, I'm
18 happy to get it as one of the Committee, as part
19 of the Committee follow up. I mean, I guess
20 there's a more general issue that I don't want to
21 ask specifically on, it's wonderful that we have,
22 these many different preservation tools. Some of
23 like need a scorecard, remember AEP from Proactive
24 Preserva--you know, and it's great that we have
25 them. It sounds like you guys are looking at them

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2 in relationship to each other, and kind of using
3 the increased data that you have to really focus
4 on the worst buildings, and target all those
5 tools. So, so that's great, and I won't ask a
6 specific question about it, but it's sort of on
7 our mind when you bring us something new, how does
8 it overlap with these other things, and how are we
9 really using the data to get to the, to the, to
10 solve the problems in the worst buildings here?
11 So, thank you for that. I guess just one other
12 question I want to ask about is about violations
13 versus complaints. So, again, that 75/25 number
14 roughly of that, you know, most folks who get a
15 first violation don't get a second violation, is
16 encouraging. And I, it makes sense to me that the
17 significant majority of owners, you know,
18 whatever, a boiler breaks, they get a violation,
19 they fix it. You know, they're not, they're good
20 owners, and providing good services. But I
21 wonder, did you look at, are there some meaningful
22 number of cases where there are repeat complaints
23 that don't necessarily result in, in violations,
24 and what do we think is going on there, if there
25 are?

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2 VITO MUSTACIUOLO: We did not look
3 at that with respect to this introduction. I
4 believe that there, we've had some conversations
5 with Council in the past, with respect to how to
6 address the repeat complaints that are received,
7 that do not result in the issuance of violations.
8 And we would be more than glad to sit down and
9 discuss that again. I believe that there was an
10 Intro discussion at one time about having
11 thermometers installed in apartments, which really
12 addressed--

13 COUNCIL MEMBER LANDER: Oh, that's
14 right.

15 VITO MUSTACIUOLO: --that issue.

16 COUNCIL MEMBER LANDER: Right, I
17 remember we talked about that.

18 VITO MUSTACIUOLO: Yeah. I just
19 also want to go back for a second to, with respect
20 to the penalties. Last year, the agency also
21 spent slightly over \$6 million in emergency repair
22 work. And specifically with respect to addressing
23 heat and hot water complaints. So, in addition to
24 the civil penalties and legal action that we take,
25 we step in when the owners do not, and perform

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2 emergency repair work. So, we did spend, I
3 believe it was close to \$6.5 million.

4 COUNCIL MEMBER LANDER: And now all
5 of that is a result of legislation that the Chair
6 sponsored attaches to those, those become liens
7 that can be enforced in court, foreclosed on if
8 necessary.

9 VITO MUSTACIUOLO: Yes.

10 COUNCIL MEMBER LANDER: Right? So,
11 that's one, an additional good step that we took
12 that doesn't add a fee or a fine, but makes them
13 have more of the, a stronger force of law. So--

14 VITO MUSTACIUOLO: Right.

15 COUNCIL MEMBER LANDER: All right,
16 well, I would like to continue the conversation
17 on, on complaints. It seems to me we clearly have
18 a lot of situations. The common case being one
19 problem, landlord fixes it, don't have that
20 problem again. And that, that's great. We have
21 this set we're looking at today, where there's
22 repeat violations, and we really need to drill
23 down. And you know, and then we have this other,
24 the other set that we should, we should come back
25 to, some of which are a, you know, disagreement

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2 about how warm it should be, but some of which
3 clearly are more, more significant and pervasive
4 problems, and we should just try to figure out how
5 to, you know, what we can do to identify the ones
6 that are, are persistently actually problematic.
7 So. Okay, thank you very much for your time and
8 for all the data. And Mr. Chairman, for your
9 indulgence.

10 VITO MUSTACIUOLO: Thank you.

11 CHAIRPERSON DILAN: Thank you,
12 Council Member Lander. Council Member Brewer.

13 COUNCIL MEMBER BREWER: Thank you
14 very much. Just wondering, maybe it's on the site
15 and I don't know that. How does the tenant know
16 that the problem has been fixed? And the pro--in
17 other words, one of the issues is 311, and poor
18 311, I guess you could say this, gets lots of
19 calls. And I know at some point, 311 states we've
20 gotten lots of calls on this building, you don't
21 need to do it anymore. And of course then the
22 tenants get all upset, 'cause they want to have
23 lots and lots of case numbers. So my question is,
24 in this new scenario, is there any way, is there
25 any need to improve the way in which 311 takes

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2 calls? And then the second question is, and maybe
3 it's here, how the tenant know in this process, if
4 they're on first second or third violation, even,
5 'cause obviously if they're in that situation,
6 they're not going to have any heat or hot water.
7 Sort of how do you legally keep the tenants up to
8 date, and is there some way you can do it that's
9 easier for you, and at the same time gives them
10 information?

11 VITO MUSTACIUOLO: Okay, so if I
12 can address first the issue with respect to the
13 complaints. We do take duplicate complaints for
14 heat and hot water conditions.

15 COUNCIL MEMBER BREWER: Okay.

16 VITO MUSTACIUOLO: And a few years
17 ago, we changed actually the script for the 311
18 operators. So, if you are the primary complainant
19 who calls in the heat and hot water complaint, we
20 will take your information and you basically
21 become the primary complainant for that building.
22 If anyone else from that building calls in another
23 heat or hot water complaint, before we were able
24 to dispatch an inspector that actually performed
25 the inspection, the system will identify that as a

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duplicate complaint.

COUNCIL MEMBER BREWER: Okay.

VITO MUSTACIUOLO: The operator will indicate to the tenant that we have already received a complaint. They will still give them a complaint ID number for that, their specific complaint.

COUNCIL MEMBER BREWER: Okay.

VITO MUSTACIUOLO: The reason why we changed the script is we didn't want tenants to feel that an inspector had to come there, to their home, to their apartment.

COUNCIL MEMBER BREWER: When it's a building wide problem.

VITO MUSTACIUOLO: When it's a building wide problem.

COUNCIL MEMBER BREWER: Okay.

VITO MUSTACIUOLO: Also, the information is available on the website, so if you put your complaint in, it will indicate that your complaint is a duplicate complaint. With respect to notifying tenants, if we receive a timely certified violation, which is, will be true of the heat violation as well, we send a notice, a

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2 written notice to the tenant, in which apartment
3 we wrote the violation, indicating that we
4 received a timely complaint, I'm sorry, a timely
5 certification, and they have an opportunity to--

6 COUNCIL MEMBER BREWER: Appeal,
7 right.

8 VITO MUSTACIUOLO: Object to that.

9 COUNCIL MEMBER BREWER: Right,
10 yeah.

11 VITO MUSTACIUOLO: In which case
12 then we would send an inspector to perform a re-
13 inspection.

14 COUNCIL MEMBER BREWER: Okay. And
15 do you find that, and particularly in these
16 buildings that are problematic, that that system
17 works? In other words, you have enough feedback
18 from the residents? 'Cause obviously it's
19 problematic. Hopefully, they're complaining and
20 stating this hasn't been fixed. Is that something
21 that works?

22 VITO MUSTACIUOLO: It does work.
23 Also, our litigation activity is also on the
24 website. So, you can check any litigation
25 activity that we have on your particular building.

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2 In addition to which, if the owner failed to
3 certify, the violation is corrected timely, they
4 would see staff from my Division of Maintenance,
5 which would be out there, looking to scope out the
6 work that's required to actually restore the heat
7 and hot water. And that's why, again, when I said
8 earlier, we've spent about approximately--

9 COUNCIL MEMBER BREWER: \$6 million.

10 VITO MUSTACIUOLO: \$6.5 million in
11 making those repairs.

12 COUNCIL MEMBER BREWER: Okay.

13 VITO MUSTACIUOLO: Those violations
14 are still considered open of record, because the
15 owner didn't correct. We close them at the end of
16 heat season.

17 COUNCIL MEMBER BREWER: You do.

18 Okay.

19 VITO MUSTACIUOLO: Right. After,
20 'cause we corrected the condition.

21 COUNCIL MEMBER BREWER: Okay, after
22 you spent all that money. And then on this,
23 finally on this large number of properties, do you
24 have any sense of how, what your goal is to try to
25 make it a better number? In other words, at 635,

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do you have some goal that you have in mind to try to, obviously zero would be the best.

VITO MUSTACIUOLO: Right. Well, we believe that the inspection fee, in addition to the Local Law 16, with the increased civil penalties for repeat offenders, would lower that number.

COUNCIL MEMBER BREWER: Okay. Is it mostly one borough, or one area? Or is it just across the City?

VITO MUSTACIUOLO: We don't have, I don't have it with me by borough. Traditionally, we've seen the higher numbers in Brooklyn and The Bronx.

COUNCIL MEMBER BREWER: Mm-hmm.

VITO MUSTACIUOLO: Followed by Manhattan, Queens, and then Staten Island.

COUNCIL MEMBER BREWER: Okay, all right. I'd like to add my name to the bill. Thank you very much.

CHAIRPERSON DILAN: I understand, Council Member Lander, you have a follow up?

COUNCIL MEMBER LANDER: Yeah, yes, thank you. So, I just, I just want to follow up

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2 on the, maybe you said it and I just didn't quite
3 catch it. This situation, you know, that one
4 might be concerned about, under the new version of
5 the bill, of a false certification, because it
6 might be attractive if I'm doing the wrong thing,
7 and I'm not that worried about you guys getting me
8 for false certification, that I get myself out of
9 civil penalties just by self-certifying, writing
10 you a \$250 check. So, does the tenant who
11 complained get notice from HPD when the landlord
12 files that self-certification, so that if in fact
13 the problem hasn't been fixed there's opportunity
14 for them to--

15 VITO MUSTACIUOLO: That's correct.

16 COUNCIL MEMBER LANDER: So that
17 always happens?

18 VITO MUSTACIUOLO: Yes, it does.

19 COUNCIL MEMBER LANDER: And is that
20 part, I mean, is that part of the legislation? If
21 we made it part of the legislation, would you guys
22 be amenable to that, if it always happens?

23 VITO MUSTACIUOLO: It actually is
24 already in the Housing Maintenance Code. It is
25 Section ...

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2 COUNCIL MEMBER LANDER: You don't
3 have to cite the section, if that's in there.

4 VITO MUSTACIUOLO: No, no, no.

5 COUNCIL MEMBER LANDER: We know you
6 know it better than anybody else - -

7 VITO MUSTACIUOLO: [interposing]
8 Yeah, it's Section 27-2115(f)(2). And it reads,
9 "A copy of such certification shall then be mailed
10 not more than twelve calendar days from the date
11 of receipt of notification to any complainant by
12 the Department." So that current section applies
13 to this violation, as well.

14 COUNCIL MEMBER LANDER: Okay, so,
15 if you've complained, your landlord pays the \$250
16 and files self-certification, you're going to get
17 a mailed notice that they have filed it--

18 VITO MUSTACIUOLO: That's correct.

19 COUNCIL MEMBER LANDER: --and that
20 gives you an opportunity to say, "Wait, it wasn't
21 actually fixed."

22 VITO MUSTACIUOLO: Correct.

23 COUNCIL MEMBER LANDER: Okay,
24 great.

25 VITO MUSTACIUOLO: And I would also

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assume that we would also have additional calls into 311.

COUNCIL MEMBER LANDER: Right, right, no, but obviously we don't want to open a new, you know, I mean, if a new--

VITO MUSTACIUOLO: Right

COUNCIL MEMBER LANDER: I mean, actually, under this bill, maybe you would want to open a new complaint, to get closer to the third one. But obviously if it hasn't been fixed, we-- All right, that's great, thank you for clarifying that for me.

CHAIRPERSON DILAN: Okay, do any of my other colleagues have any questions. If not, I just want to follow up. On the re-inspection fee, does that apply to a specific unit, or does it apply to the building as a whole?

VITO MUSTACIUOLO: So the additional, the inspection fee, after the third offense? It would be if we issue any violation for heat or hot water, in response to a new complaint. So, it doesn't have to be against a specific apartment, or to the building, it's in response to another complaint for no heat or hot

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water. So it's a third occurrence where we've actually sent inspectors out to the building in response to a complaint.

CHAIRPERSON DILAN: But it applies to the building as a whole.

VITO MUSTACIUOLO: Yes, it--well, again, it could be a specific apartment, as well.

CHAIRPERSON DILAN: Okay, yeah, I mean, I get it, but I guess if it's for, for a specific apartment, it just maybe says to me that there's a maintenance problem a not a overall systems problem, at the building level.

VITO MUSTACIUOLO: If we find no heat or hot water in an apartment, we will write a violation and we'll reference the apartment.

CHAIRPERSON DILAN: And you have to address that, yeah.

VITO MUSTACIUOLO: Yes.

CHAIRPERSON DILAN: Okay, so it applies to both situations.

VITO MUSTACIUOLO: Yes, it does.

CHAIRPERSON DILAN: Okay. And--

VITO MUSTACIUOLO: Mr. Chair, I'm sorry, also, with respect to your earlier

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question, willful false certification?

CHAIRPERSON DILAN: Yes.

VITO MUSTACIUOLO: So, the penalties under the Housing Maintenance Code, it's a range of \$50 to \$250, for any violation that's willful falsely certified, with the exception of lead, which has its own specific structure.

CHAIRPERSON DILAN: Okay, now, another part of the, another part of the bill that I addressed earlier, around the current penalties for failure to provide access to the building's heating system, as required in the Maintenance Code, what's the current penalty for that?

VITO MUSTACIUOLO: It's the same amount. So the civil penalty would be \$250 to \$500 for the first offense, \$500 to \$1,000 for subsequent violations. And the inspection fee would be the same for us, it would be \$200.

CHAIRPERSON DILAN: All right, isn't that what the bill does, though, isn't that what this current proposal seeks to achieve, or so--

VITO MUSTACIUOLO: Seeks to achieve access?

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2 CHAIRPERSON DILAN: No, yeah, in
3 terms of access, is that, is that a new revenue
4 measure in terms of access to the--we're requiring
5 now that building owners, and I believe it was a
6 requirement before, but maybe not, maybe or maybe
7 not subject to a civil penalty.

8 VITO MUSTACIUOLO: It was always a
9 requirement.

10 CHAIRPERSON DILAN: Always a
11 requirement.

12 VITO MUSTACIUOLO: Yes.

13 [background comment]

14 CHAIRPERSON DILAN: And was the
15 penalty the same, or are we increasing it?

16 VITO MUSTACIUOLO: The, the, the
17 repeat offenses, we increased with Local Law 16,
18 but the initial civil penalty was always the same.

19 CHAIRPERSON DILAN: Okay. No, but
20 I'm, I'm not talking about repeat offenses now,
21 now I'm talking specifically for failure to
22 provide access to the heating system.

23 VITO MUSTACIUOLO: Civil penalty
24 was always the same. [pause] Thought this - - to
25 Local Law 16. [pause] But yeah, we're going to

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double check that and get back to you.

CHAIRPERSON DILAN: Okay, please, yeah, 'cause my, from my understanding, that may be, that may be a new revenue action. If it's not, we can certainly clarify that.

VITO MUSTACIUOLO: Yeah.

CHAIRPERSON DILAN: But I would like to know that before we, before we move forward with the bill. Council Member Jackson.

COUNCIL MEMBER JACKSON: Thank you, Mr. Chair. Even though my physical presence was absent, I was listening to the testimony while having lunch, I was like doing two things at one time. But first let me thank you for coming in, and I heard you and your response to I believe Council Member Brewer, that you don't keep statistics as to borough wide, as to like which boroughs are the 600 and some odd worst offenders?

VITO MUSTACIUOLO: No, sir, I just said I don't have it with me right now.

COUNCIL MEMBER JACKSON: Okay, okay.

VITO MUSTACIUOLO: Yeah.

COUNCIL MEMBER JACKSON: All right,

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2 but you're, you'll provide that to us, if you
3 don't mind?

4 VITO MUSTACIUOLO: Absolutely.

5 COUNCIL MEMBER JACKSON: Okay. And
6 what, can you just tell me, what is the, if you
7 have already determined that, what is the normal
8 turnaround time from a, the agency receiving a
9 complaint that there's no heat or hot water, from
10 the time of complaint, until actually an inspector
11 goes and visited the premises. What is the
12 average turnaround time?

13 VITO MUSTACIUOLO: Last heat
14 season, our average time was I believe four, four
15 to five days.

16 COUNCIL MEMBER JACKSON: Four to
17 five days. Okay. So, if, I just want to walk
18 through this scenario. So, if I woke up in the
19 morning at 6:00 in the morning, I didn't have heat
20 or hot water, and I tried to reach the agent or a
21 super, and then I dialed 311, and I filed a
22 complaint. And assuming that other tenants in the
23 building did the same thing. So, you would send
24 an inspector out to check on that? What is the
25 protocol? Or would you call, for example, the

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2 building agent of record and say, "Hey, what's
3 going on? This building doesn't have any heat and
4 hot water." What is the normal--

5 VITO MUSTACIUOLO: Our first
6 response when we do receive a complaint into 311
7 is to make that phone call. We do attempt to call
8 the managing agent or the registered owner.

9 COUNCIL MEMBER JACKSON: Okay. And
10 have you, have you determined, and especially I
11 guess it's with these chronic buildings, have you
12 determined what your percentage is of reaching
13 someone, versus not reaching someone, do you know
14 what I mean?

15 VITO MUSTACIUOLO: Yeah.

16 COUNCIL MEMBER JACKSON: Have you
17 determined that?

18 VITO MUSTACIUOLO: We have not
19 looked at that, but we can certainly look at it.

20 COUNCIL MEMBER JACKSON: Okay.
21 Because I know, so for example, like any other
22 heating system, it breaks down, every once in a
23 while, and if an owner is doing normal maintenance
24 and what have you, it happens. I realize that.
25 I, you know, I live in a building and sometimes it

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2 happen and you, you know, we all say, "Oh, joke,"
3 you know what I mean? You don't say, "Oh, joke,"
4 but you say something else. And then you just
5 move along and do what you have to do. But with
6 these inspections, do you find that, for example,
7 was it that type of situation where, by the time
8 you get there, since the average time is four or
9 five days, that there's heat in the premises?

10 Let's assume there's heat in the premises, so you,
11 do you determine a no violation at, based on the
12 complaint? What is the determination on that
13 particular complaint? Or those complaints that
14 came in that day, about that building?

15 VITO MUSTACIUOLO: Right. So,
16 after we attempt to contact the owner or agent, we
17 do attempt to call the tenant before we send an
18 inspector. Obviously, if the tenant who filed the
19 complaint informs us that the condition's been
20 corrected, we close the complaint, right.

21 COUNCIL MEMBER JACKSON: How do you
22 close it as?

23 VITO MUSTACIUOLO: As tenant
24 indicted that the condition's been corrected.
25 Now, we never close the complaint if the landlord

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tells us that the condition's been corrected--

COUNCIL MEMBER JACKSON: Okay.

VITO MUSTACIUOLO: --only if the tenant tells us.

COUNCIL MEMBER JACKSON: So, if the landlord says to you, or the agent, "Yes, I'm sorry, there was a temporary breakdown with the boiler, a contractor will be there this morning to fix it," you still send an inspector out?

VITO MUSTACIUOLO: It still goes through the process, we will still--

COUNCIL MEMBER JACKSON: The process.

VITO MUSTACIUOLO: --attempt to call a tenant to verify.

COUNCIL MEMBER JACKSON: So, if for example HPD, let's assume, since you know that the timeframe for an inspector is about four or five days, so if you call that evening, and the tenant says, "Yes, there's hot water again," you, I mean, you, in my opinion, you can close out that case. Is that correct?

VITO MUSTACIUOLO: We will close out that specific complaint.

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COUNCIL MEMBER JACKSON: That

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complaint.

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VITO MUSTACIUOLO: Right, as

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corrected.

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COUNCIL MEMBER JACKSON: And I, if,

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if there were ten complaints in that building of

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the same complaint, about the same morning, you

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could close out all of them, is that correct?

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VITO MUSTACIUOLO: We would call,

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we, we can, but we would call to see if the

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condition was widespread.

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COUNCIL MEMBER JACKSON: Okay. But

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I mean, if it was about complaint, 6:30 in the

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morning, between 6:30 and 7:00, you got 15

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complaints about no heat or hot water, and then

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you call 1:00 or 2:00, and they say, "Yes, we have

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heat or hot water," you can, in my opinion, you

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close them all out."

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VITO MUSTACIUOLO: Right, the

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duplicate complaints are closed with the primary,

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right.

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COUNCIL MEMBER JACKSON: Yeah,

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okay. Okay. How do--if I may, Mr. Chair, how do

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you determine, then, I know that you're talking

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2 about repeat offenders, with respect to this
3 particular bill we're talking about. And do you,
4 for example, like that list, have you submitted to
5 us that list? Can we request that list? I'm
6 sorry, I'm, I may have missed something, and--

7 VITO MUSTACIUOLO: We have not, but
8 we will certainly, we can provide you with a
9 detailed list of the repeat offenders.

10 COUNCIL MEMBER JACKSON: Of repeat
11 offenders.

12 VITO MUSTACIUOLO: Right. So, it's
13 approximately 600 buildings in the past two heat
14 seasons.

15 COUNCIL MEMBER JACKSON: Okay. And
16 so, the buildings, obviously, the buildings would
17 have the building's owner name to it, like say for
18 example, X Realty that has, let's say, 400
19 buildings in Northern Manhattan, and let's assume
20 that ten of them are on the list. So you would
21 have the building owner's name besides the
22 building? Or just--

23 VITO MUSTACIUOLO: If you like, on
24 the list, we can add the registered owner's name.

25 COUNCIL MEMBER JACKSON: Yeah. I

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2 think that would be good, because just walking
3 through this scenario as far as the complaints,
4 and if it was resolved, as an elected public
5 official, as a City Council Member, I would then
6 peruse that list to see what's in my district, so
7 I'm aware, even though my staff may be aware
8 already, to be in sync, in order to try to address
9 and be proactive in dealing with the owner and,
10 you know, HPD, da-da-da-da.

11 VITO MUSTACIUOLO: Right. That's,
12 there's also, again, a smaller list which shows
13 the repeat offenders of the past two heat seasons.

14 COUNCIL MEMBER JACKSON: Mm-hmm.

15 VITO MUSTACIUOLO: And that's only
16 121 buildings.

17 COUNCIL MEMBER JACKSON: Okay.

18 VITO MUSTACIUOLO: Of which we're
19 actively involved in almost all.

20 COUNCIL MEMBER JACKSON: Excellent,
21 thank you. Thank you, Mr. Chair.

22 CHAIRPERSON DILAN: Right, thanks,
23 yeah, I believe we did request the information
24 that Council Member Jackson asked for, but if you
25 could provide it in the format that you mentioned,

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2 that would be great. Just the final question
3 before, before you go is, in terms of this new
4 process, for first time offenders, to basically
5 avoid the Housing Court situation in lieu of
6 paying a civil penalty, what steps will HPD take
7 to inform and educate property owners about this
8 process, to address the first violation?

9 VITO MUSTACIUOLO: I mean, we
10 perform owners' nights throughout the City, in
11 conjunction with the Council staff, and Council
12 Members. So we will certainly address it through
13 the owners' nights that we conduct. And we can
14 also do some public notifications.

15 CHAIRPERSON DILAN: And then, by
16 creating this, this process, do you, is there an
17 anticipated savings to your agency budget? And I
18 would imagine there should be anticipated savings
19 to the Housing Court system. You have any
20 estimates on, on any potential savings, if any?

21 VITO MUSTACIUOLO: Not at this
22 time.

23 CHAIRPERSON DILAN: All right. As
24 we get closer to adoption, if you could try to
25 quantify that. I don't know if you could or not,

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2 but that will be helpful as well. If there are no
3 other questions, I would like to thank you, you
4 know, thank you all for coming in and providing
5 testimony this morning. [pause] We have one
6 person signed up to speak publicly on the bills,
7 Sebastian Riccardi of the Legal Aid Society. And
8 there's some other testimony that has been
9 submitted for the record. We'll get to that after
10 this.

11 [pause, background noise]

12 SEBASTIAN RICCARDI: Thank you, Mr.
13 Chair, and Members. My name is Sebastian
14 Riccardi, I'm a staff attorney at the Legal Aid
15 Society, Brooklyn Neighborhood office. The Legal
16 Aid Society is the nation's oldest and largest
17 nonprofit provider of legal services for low
18 income families. Through our housing practice,
19 the Society represents thousands of low income
20 families every year, many of whom experience
21 periods of lack of adequate heat and hot water.
22 And in order to ensure safe housing, at a minimum,
23 tenants need heat and hot water. We appreciate
24 the opportunity to testify before this Committee
25 about Intro 666. And we generally support Intro

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2 666, but we have some qualifications which I will
3 discuss below. We believe that Intro 666 contains
4 several good additions to the Housing Maintenance
5 Code, including subjecting landlords to civil
6 penalties for violation, provide, of their duty to
7 provide HPD access to their heating system, which
8 is, I believe, a new addition, the enhanced civil
9 penalties for that. Previously, I believe, the
10 penalties were \$125 a day, with this, because it
11 was a normal C violation. But this bill would add
12 that to the list of heat and hot water violations
13 for enhanced penalties.

14 CHAIRPERSON DILAN: That is my
15 understanding, as well.

16 SEBASTIAN RICCARDI: And, and we
17 support that because in our experience, we find
18 that very often, when tenants are subjected to
19 lack of heat and hot water, there is also a
20 problem with HPD gaining access to the boiler
21 system. So, these violations tend to travel
22 together and it's an important step toward
23 ensuring that there are no heat and hot water
24 violations to make sure that all of the other
25 violations get punished as severely. We also

1 support the \$200 inspection fee for, for repeat,
2 repeat offenders. However, the Society is
3 concerned about, that the self-certification
4 provisions of the bill will permit a landlord
5 simply to self-certify that a first time heat and
6 hot water violation has been fixed and pay a \$250
7 fee to the Department, this will undermine the
8 Housing Maintenance Code enforcement scheme by
9 inviting the City's worst landlords to falsely
10 certify the correction of heat and hot water
11 violations, and thereby leave tenants without
12 adequate heat and hot water, the most basic of
13 services. So, as, as Commissioner, or as Deputy
14 Commissioner Mustaciuolo was, was explaining, when
15 a tenant calls HPD concerning a lack of heat and
16 hot water, the first step HPD does is notify the
17 landlord. And then usually it takes four or five
18 days for inspectors to actually go and verify
19 whether a condition exists. Most landlords will
20 turn the heat and hot water on when that happens.
21 Or they will fix the heat and hot water problem
22 before any inspectors. And so no violation will
23 ever be issued, in the vast majority of cases.
24 Even when we're dealing with bad landlords. It's
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2 only the worst landlords that don't restore these
3 heat and hot water vi--heat and hot water within
4 the four or five days that, that they have from
5 being notified by HPD. And it's only these
6 landlords that this bill would really affect. In
7 these cases, once a violation is placed on the
8 dwelling by HPD, the landlord would become subject
9 to civil penalties for each day until it can prove
10 that it has, or they can prove the condition's
11 been fixed, or HPD verifies that, that it doesn't.
12 So, Section 2 of this bill would, would change
13 that and allow the landlord to self-certify, and
14 that would reverse this presumption that currently
15 exists. The Society has advised HPD about our
16 concerns, that the self-certification provisions
17 of the new law would effectively remove a powerful
18 deterrent of the prospect of large civil
19 penalties, and could allow landlords to falsely
20 certify the correction of violations, and thereby
21 leave tenants without heat and hot water, a very
22 basic need. To address our concern, we suggest
23 the amendment of Intro 666 to contain language
24 requiring that notice be given by HPD to the
25 landlord, when the tenant self-certifies that the

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2 problem has been fixed. I know the Commissioner
3 had mentioned that Section 2115(f), Subsection 2,
4 actually already requires that, but Section 2515,
5 Subsection F, Subsection (f)(2), actually is only
6 dealing with the certifications that are in
7 Subsection (f)(1), which follow a different
8 timeframe, and are as a general rule supposed to
9 be verified by HPD. Now, I believe that HPD would
10 have no problem with making it more explicit in
11 this bill, about the, the various, the
12 requirements that it has to provide this notice.
13 I know that we frequently hear from our clients
14 that violations are removed from the database,
15 from their apartment, and yet conditions haven't
16 been fixed and they have not seen an HPD
17 inspector. So we are also concerned about false
18 certifications in general. And I don't know, this
19 I guess will be a topic that will be investigated
20 later, about whether, about how accurate these
21 certifica--the general certifications are. But we
22 would have some specific language that we could
23 suggest to add to this bill, such that it would
24 specifically reference the requirement to give
25 tenants notice, because we are concerned that

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2 this, the certification provisions of this bill do
3 not explicitly reference the other portions of the
4 Housing Maintenance Code. So we hope that any
5 future notice provision will provide some
6 protection to tenants against false
7 certifications, and we understand that HPD agrees
8 on, on this in principle, and we look forward to
9 working with them. And we also suggest that HPD
10 report regularly before this Committee, on the
11 implementation of the certification provisions in
12 this bill, as well as in general, for the Housing
13 Maintenance Code, particularly its experience with
14 the, with landlord self-certification provisions
15 and, and its audits. Thank you again for this
16 opportunity to, to testify.

17 CHAIRPERSON DILAN: And we'll take
18 a brief look at the suggested changes. Our
19 belief, also, as the HPD Commissioner suggested,
20 is that it does exist in the current Housing
21 Maintenance Code, but my counsel will take a look
22 and if it's not repetitive, having a reference is
23 not, not an issue.

24 SEBASTIAN RICCARDI: Okay, I would
25 actually suggest in addition to just a reference,

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2 maybe a shortened time period, because under this
3 bill, a landlord has up to ten days to mail in a
4 certification. HPD then has up to twelve days to
5 mail that certification to tenants under
6 2115(f)(2). That would leave 22 days, at least,
7 before a tenant might get any notice that this is
8 going on. So, in light of the immediately
9 hazardous nature of these conditions, maybe a
10 shortened timeframe for such notice provisions
11 might be warranted.

12 CHAIRPERSON DILAN: We'll take a
13 look at it.

14 SEBASTIAN RICCARDI: Okay, thank
15 you.

16 CHAIRPERSON DILAN: Council Member
17 Jackson.

18 COUNCIL MEMBER JACKSON: Mr. Chair,
19 I guess it's a question, either for the advocate
20 or for, for our Committee staff, with respect to
21 the letter, you said they have ten calendar days,
22 I make the assumption they're not working days, to
23 mail it in; and HPD has twelve calendar days. So,
24 when you look at, that's a total of 22 days,
25 that's like three weeks. I mean, talk about heat,

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2 and hot water, someone can freeze to death in one
3 day, and less than that. But, could it possibly
4 be where a landlord from their, from the email
5 address certify that something has been done? I'm
6 just talking legally, I don't know whether or not,
7 and this is a question I guess for the Legal Aid
8 Society, and also for our counsel, Mr. Chair,
9 whether or not a certification by email to HPD,
10 that the matter has been corrected, whether or not
11 that can be, rather than a hard letter, by slow
12 mail? And I'm just raising the question. 'Cause
13 that would be, in my opinion, much quicker and
14 easier, if I, if I'm the owner, and I've already
15 fixed it, I could just--especially if my ABC
16 Company, and I'm sending it as Robert Jackson,
17 owner of ABC Company, that it's been fixed, then
18 that's, boom, that's easy. Do you know? So, I
19 guess that's what my question is, overall, whether
20 or not, can we, if it's legal, put it in there, a
21 certification from like a, the contractor or
22 owner's company's email address, for example. I
23 don't know if that's the case, but that would make
24 it a lot easier.

25 CHAIRPERSON DILAN: As far as, as

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far as electronically, that option is available to, to owners, and the Counsel, Counsel will speak to you after the hearing in terms of more details. To whether Mr. Riccardi wants to answer the question or not--

SEBASTIAN RICCARDI: No, my understanding--

COUNCIL MEMBER JACKSON: Okay, thank you.

SEBASTIAN RICCARDI: --was that there is a e-certification program that HPD already has through its website.

COUNCIL MEMBER JACKSON: Okay.

CHAIRPERSON DILAN: Yeah, she'll speak to you.

COUNCIL MEMBER JACKSON: Thank you, okay.

CHAIRPERSON DILAN: She'll speak to you off the record.

COUNCIL MEMBER JACKSON: Thank you.

CHAIRPERSON DILAN: Council Member Fidler.

COUNCIL MEMBER FIDLER: Thank you. I'm just kind of curious, what you, what your

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2 opinion of the efficacy of having the landlord
3 notify all the tenants in his or her building,
4 either by slipping a notice under their door or in
5 their mailbox, and making part of their self-
6 certification that they've done so. So that if
7 they have ten days to notify HPD, the tenant
8 notification will have already occurred.

9 SEBASTIAN RICCARDI: I think that's
10 a, a very good idea. It can't, on the, it can't,
11 however, substitute for HPD also sending a copy of
12 the certification, just because our concern is
13 false certification, a landlord calls and falsely
14 certified that it slipped copies in tenants'
15 mailboxes. But I think the idea that that be part
16 of the certification, will make it more likely
17 that tenants get timely notice that a landlord is
18 claiming that a condition was fixed immediately,
19 so that they have time to dispute it.

20 COUNCIL MEMBER FIDLER: I, I hear
21 that, and I'm not looking to duplicate, and I am
22 always dubious of self-certification. We've seen
23 architects abuse that privilege repeatedly, in
24 this Committee. So, and I understand that. But
25 you know, in effect, HPD only knows about a heat

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2 or hot water complaint because a resident of the
3 building made that complaint. And you know, if
4 nothing is done, I'm willing to hazard a guess
5 that that tenant will complain again. And I think
6 the answer to what you're suggesting may be severe
7 penalties for falsely self-certifying. Which I
8 would be very supportive of. I mean, if you could
9 prove that someone just sent in a piece of paper
10 saying everything was done and hadn't done it, and
11 even that that penalty be the most draconian
12 penalty that, you know, we could think of, I mean,
13 so that didn't happen. It just, you know, I think
14 the goal would be to avoid duplication and to get
15 notification to the tenants as quickly as
16 possible, so that we weren't going into this
17 duplicate ten and twelve day period, which is, as
18 Council Member Jackson points out, is an
19 extraordinarily long time to be without heat or
20 hot water.

21 SEBASTIAN RICCARDI: I, I agree, I
22 think the problem of self-certification and false
23 certifications is a difficult one to which we, we
24 the Legal Aid Society, don't have a firm answer
25 on. I think increasing, higher and more draconian

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2 penalties than \$250, which is only one day's civil
3 penalties for a heat and water vi--for a first
4 heat and hot water violation, is, escalating that
5 would certainly be better. One issue about the
6 nature of heat and hot water violations that make
7 them, what, that make us concerned about self-
8 certifying them, is that, is that they are, by
9 their nature, transient, and it is difficult to
10 detect the falsity of certification, rather than
11 when the inspector comes later, it be a new, new
12 issue. But I think I would, I would support your,
13 the general framework that you're outlining.

14 COUNCIL MEMBER FIDLER: Now, I
15 think if, if we, you know, made the fine for false
16 self-certification \$25,000, I think that would be
17 chilling, and might actually prevent that, and you
18 know, you know, kind of create, consider it a
19 rebuttable presumption, if the, if the complaint
20 is renewed, right?

21 SEBASTIAN RICCARDI: Right.

22 COUNCIL MEMBER FIDLER: The
23 landlord would then have to be able to rebut the
24 presumption they did not certify, that they
25 certified falsely, saying, "Hey, I can show you I

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2 had the plumber in," you know, and you know, "I'm
3 really sorry, the boiler broke again," you know,
4 "But I can prove to you I had the boiler in,"
5 well, you know, that, you know, stuff happens,
6 okay, and--

7 SEBASTIAN RICCARDI: Right.

8 COUNCIL MEMBER FIDLER: --I
9 wouldn't want to, you know, burden or penalize a
10 landlord who made an honest effort to repair. On
11 the other hand, I would, there is, you know, I
12 mean, I'd flog a landlord in the street who did
13 nothing and self-certified that they had fixed
14 someone's heat and hot water complaint, and didn't
15 really do a blessed thing. So, you know, I, I
16 would ask the Chair to perhaps have Counsel look
17 at that mechanism in its entirety, and whether or
18 not HPD would be saved an administrative burden in
19 doing it this way. If we could kind of backfill
20 the hole, so that I didn't have to worry that
21 self-certifications were going to be abused.

22 CHAIRPERSON DILAN: I think the
23 bigger concern around the certifications is that
24 only 25 percent are actually being done. So that
25 means 75 percent of the complaints are going

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uncertified. To my mind that's the larger--

COUNCIL MEMBER FIDLER: Well, yes, and certainly HPD, if HPD didn't have to worry about sending out sets of notices to tenants in the building, that might free up resources to get after the 75 percent that never did it.

CHAIRPERSON DILAN: Yeah, yeah, but like you said, if that, if that, just because it only certifies it, if the heat's not on, HPD's certainly going to know about it. So, I'm--

COUNCIL MEMBER FIDLER: I would think.

CHAIRPERSON DILAN: I'm a little less concerned about that. But more concerned about, you know, the 75 percent that don't--but we'll, again, we'll take a look at those, as well.

COUNCIL MEMBER FIDLER: Right, thank you.

SEBASTIAN RICCARDI: Thanks.

CHAIRPERSON DILAN: If there are no more questions, Mr. Riccardi, thank you.

SEBASTIAN RICCARDI: Thank you.

CHAIRPERSON DILAN: And we received testimony from the Associated Builders and Owners

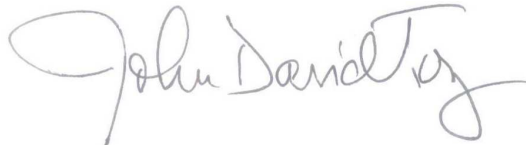
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2 of New York, ABO, for the record. The Executive
3 Director, Dan Margulies, in general support but
4 suggests one amendment. And with that, Intro 666
5 is laid aside, and that will conclude this
6 hearing.

7 [gavel]

C E R T I F I C A T E

I, JOHN DAVID TONG 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

A handwritten signature in cursive script that reads "John David Tong". The signature is written in dark ink and is positioned to the right of the printed word "Signature".

Date October 19, 2011