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

PATRICK A. WEHLE  
DIRECTOR OF CITY LEGISLATIVE AFFAIRS

April 25, 2012

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

Dear Mr. McSweeney:

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

**Introductory Number 18-A**

A local law to amend the administrative code of the city New York, in relation to establishing a prevailing wage requirement for building service employees in city leased or financially assisted facilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick A. Wehle", written over a horizontal line.

Patrick A. Wehle

cc: Honorable Christine C. Quinn



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

April 25, 2012

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

Dear Mr. McSweeney:

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 18-A, which would amend the Administrative Code of the City of New York “in relation to establishing a prevailing wage requirement for building service employees in city leased or financially assisted facilities.”

Introductory Number 18-A would mandate the payment of a prevailing wage to building service employees in connection with non-exempted projects that receive from the City at least \$1 million in discretionary financial assistance for large commercial or residential housing projects. Employers would be required to maintain extensive records and to report on hours, wage and benefit information for all such employees. It would also mandate the payment of a prevailing wage in buildings in which the City leases space resulting in additional significant leasing costs to the City and make the City a less attractive tenant to landlords. It would threaten some of the City’s most innovative economic development projects, and at the same time hamper our ability to build and preserve affordable housing. With its onerous reporting requirements and penalties, the bill would discourage businesses from engaging in the kinds of economic development projects that are vital to the City. Furthermore, Introductory Number 18-A seeks to legislate in subject areas, and to assert jurisdiction over entities, that are governed by State law. Moreover, by prescribing business terms for the acquisition and disposition of real property in contravention of the land use processes set forth in the Charter, and by providing a prominent enforcement to the City Comptroller, this proposal would upset the balance of powers, carefully crafted in the Charter, among elected officials.

The creation of well-paying, sustainable jobs has never been more critical to New York City residents and to the future of the City’s economic health, which is why we have waged an aggressive ten-year campaign of job creation and workforce skill development that is designed to help expand economic opportunity for all New Yorkers. This has been central to the strategy to power the City’s recovery from the Great Recession, and it has yielded promising results. In 2011, New York City created new private-sector jobs at a rate that was approximately 55% faster than the nation as a whole. Furthermore, as of March 2012, New York City had gained back an encouraging 185% of

private sector jobs lost during the recession, compared to merely 42% of those recaptured nationwide.

Despite these results, there remain too many New Yorkers who are unemployed and looking for work. Part of our ongoing efforts involves incentive programs to encourage job-creating developments that otherwise would not occur, often in low- and moderate-income communities, or in challenging sectors of the economy such as industrial developments. Our focus with these programs is not companies who have clearly established a competitive advantage and do not need any additional incentive to be here, but rather those projects that are on the margins, where targeted support induces developers to make investments that would otherwise be financially unfeasible. Often, it means the difference between jobs gained and jobs lost.

This bill—which would increase the costs associated with development by mandating higher staff costs for projects receiving financial assistance from the City—would erase the competitive advantage induced by this assistance. It will make it harder for companies—which have the option to do business anywhere—to make decisions to invest in New York.

When the value of these incentives are cancelled out, the cost of the projects are passed along to others—either to taxpayers, in the form of making higher subsidies necessary to incentivize these types of projects, or to the end-user—consumers who will be faced with higher prices for goods and services. Additionally, other projects may not move forward at all because they are no longer financially viable. This is particularly troubling for industrial companies, which provide good-paying, high-quality jobs for hundreds of thousands of New Yorkers. This bill would make it more difficult for them to stay here and expand at a time when the City should be making it easier for them.

Moreover, the penalties included in this legislation—rescinding financial assistance for non-compliance—would complicate potential lenders' ability to quantify the risks inherent in a project, which in turn would make it more difficult for projects that are already financially challenging to access financing. This poses significant challenges for companies in planning for the future, and it could dissuade them from expanding and hiring.

The bill would further require private owners to pay building service employees a prevailing wage when the City leases space. Having the City as a tenant can be an important tool for spurring economic development—especially outside Manhattan—but this bill would impose additional costs on these buildings, making the City a less attractive tenant. The cost of the bill would also fall on taxpayers by driving up rents for City-leased space in private buildings, because property owners will pass along the added staff costs mandated by this legislation the form of higher rents.

While this bill would result in higher wages for some workers, these increases would come at the cost of job creation. It also would reduce opportunities for entry-level workers, because if employers are forced to pay higher wages, they will choose to hire more experienced employees to economically justify the increased costs. I will not endorse a law that risks having the opposite impact of its intentions, distorting the market in such a way that would reduce opportunities for those who most need them and force taxpayers to bear the burden.

Apart from raising these important policy concerns, Introductory Number 18-A is legally flawed for several significant reasons.

The bill seeks to cover parties and circumstances that are remote from direct City involvement, and also generally regulates payment of wages in transactions of the City that are not procurements of goods or services and thus are not within the City's specified home rule powers in light of a State-wide minimum wage. It defines categories of prevailing wage work under circumstances that the State Legislature has not subjected to prevailing wage requirements even where public agencies contract directly for the services. These measures effectively amount to an effort to impose a regulatory minimum wage upon sectors of the City economy, a subject matter reserved to the State under applicable Court of Appeals case law.

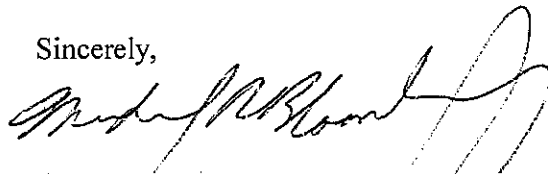
Moreover, the bill purports to set the terms under which the City may acquire an interest in real property or may dispose of real property for development projects, thus preventing the Mayor and executive agencies from dealing with other parties in real property transactions. This constitutes an improper infringement upon the discretionary powers of the Mayor and other officials involved in the land use review processes. By allowing the City Council to go beyond its prescribed role of reviewing land use decisions through processes specified in the Charter, the bill would unlawfully alter the balance among key City officials.

By using broad definitions of terms such as "city economic development entity" and "financial assistance", the bill appears to seek to cover projects aided by various entities created by State law to further goals such as affordable housing and economic development. To the extent that the bill frustrates the purposes of such State laws or otherwise interferes with such programs, it would be pre-empted. Finally, the bill improperly provides a major role in enforcement investigations to the City Comptroller. The Charter generally does not provide to the Comptroller this type of proactive role in investigations and enforcement given the role of the Mayor and his appointees in executing the laws. In other prevailing wage schemes, the Comptroller's role has been authorized by the State Legislature, but that is not the case here.

My administration has sought to work with the Council to strike the proper balance between improving the employment opportunities of the City's workers and creating opportunities for innovative economic development programs. Unfortunately, this bill goes further than we believe to be in the City's best interests and is impermissible on both policy and legal grounds.

Accordingly, I hereby disapprove Introductory Number 18-A.

Sincerely,



Michael R. Bloomberg  
Mayor

Cc: The Honorable Christine C. Quinn

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