

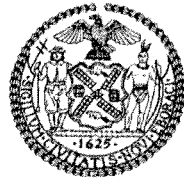
Staff: Laura Rogers
Counsel to the Committee

Edward Atkin
Assistant Counsel to the Committee

Benjamin J. Goodman
Senior Legislative Policy Analyst

Nathan Toth
Deputy Director, Finance Division

Amy Stokes
Legislative Financial Analyst



THE COUNCIL

**REPORT OF THE INFRASTRUCTURE DIVISION
ROBERT NEWMAN, LEGISLATIVE DIRECTOR**

COMMITTEE ON HOUSING AND BUILDINGS

Erik Martin Dilan, Chair

September 24, 2012

PROPOSED INT. NO. 730-A:

Council Members Recchia, Wills, Brewer, Chin, Dickens, Dromm, Fidler, Gentile, Koppell, Koslowitz, Lander, Levin, Mealy, Rose, Van Bramer, Vann, Weprin, Williams, Lappin, Nelson, Gonzalez, Koo, Jackson, Gennaro, Gardonick, Crowley, Comrie, Greenfield, Barron, Rodriguez, Oddo, Ulrich and Halloran.

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to the disclosure of information regarding certain construction projects.

ADMINISTRATIVE CODE:

Amends title 26 by adding a new chapter 10.

M 885-2012:

Communication from the Mayor – Mayor’s veto and disapproval message of Introductory Number 730-A, in relation to the disclosure of information regarding certain construction projects.

Introduction

On September 24, 2012, the Committee on Housing and Buildings, chaired by Council Member Erik Martin Dilan, will meet to vote on Proposed Int. No. 730-A, “A Local Law to amend the administrative code of the city of New York, in relation to the disclosure of information regarding certain construction projects,” and to file the veto message of Mayor Michael Bloomberg, M 885-2012.

On January 30, 2012, the Committee heard an earlier version of this legislation and received testimony from representatives of the Department of Housing Preservation and Development (HPD) and other persons interested in the legislation. Amendments to the bill were made following this initial hearing.

On July 25, 2012, the Committee passed a revised version of the bill, Proposed Int. No. 730-A, which was then passed by the Council later the same day.

On August 24, 2012, the Mayor issued a disapproval message vetoing the legislation (see attached). That veto message was formally received by the Council at its September 12, 2012 stated meeting.

The question before the Committee today is whether Proposed Int. No. 730-A should be re-passed notwithstanding the objections of the Mayor.

Background

One of HPD's duties is to encourage the construction, improvement, and rehabilitation of housing in the city.¹ HPD fulfills this duty in part by selecting developers to work on affordable housing projects including rental and home ownership projects, and by steering federal, state, and municipal financial assistance to such developers.

Since 2004, the City has invested over 8.5 billion dollars in affordable housing projects and over a billion in the last year alone. While piecemeal information about these projects can be uncovered through extensive research, there is currently no single, comprehensive, and easily located resource that the public can use to obtain all of the relevant information about such projects; information that includes where affordable housing projects are built, their size and affordability, the parties responsible for the construction work, how those parties were selected, and whether there are construction-related issues at these projects. Without such a resource, it is difficult to identify where city tax dollars are being spent, who is receiving those tax dollars, and whether the affordable housing units those dollars go toward are properly constructed. This is information that needs to be made readily accessible to the public.

Further, there have been a number of events indicating that HPD's developer selection process may not be functioning as intended. First, the Committee has received documentation of allegations calling into question the construction quality of the housing built by some HPD-selected developers. Second, investigations by the United States Department of Labor (DOL) as well as allegations in the press indicate possible underpayment and other mistreatment of construction laborers by some HPD-selected developers and their contractors. Third, several HPD-selected developers, as well as HPD staff involved with the selection of developers, were recently indicted on charges related to manipulation of HPD's developer selection process.

¹ Charter §1802.

Construction Quality Allegations

The Committee has received documentation of complaints from owners of housing built by HPD-selected developers alleging chronic flooding; sinking and uneven foundations; sewage backups; water leakage into lighting fixtures and electrical equipment; mold; premature pipe rusting; fire hazards such as combustible wooden pallets used to support boilers; substandard heating units and hot water heaters with too little capacity; doorframes not secured to buildings; improperly installed windows; buckling outdoor facades; crumbling staircases; improperly secured railings along stairwells; improperly installed roofing; and insufficient repair efforts.²

In December 2011, the press reported that owners of City-subsidized housing in the Bedford-Stuyvesant neighborhood were complaining of “contamination” due to plumbing backups and faulty heating, and that homeowners were being asked to pay the developer additional money to fix those problems.³

In January 2012, it was reported that an HPD-selected developer had constructed housing plagued by water leaks, mold, cracked walls, lack of insulation, and malfunctioning electrical systems and plumbing.⁴

The Committee also heard complaints from homeowners living in housing constructed by HPD-selected developers at the January hearing on this matter.

² Testimony for January 30, 2012 Hearing of Committee on Housing and Buildings regarding Int. 730, available online through legistar.council.nyc.gov.

³ Brian Kates and Erin Durkin, *Bed Stuy homeowners charge city and developer tried to jack up price, then moved them into shoddy homes*, New York Daily News, December 2011.

⁴ Erin Durkin, *Developer Transcorp, with long history of lapses, botched homes for city program in Ocean Hill, homeowners and city say*, New York Daily News, January 2012.

Worker Issues

DOL has taken legal action against a number of contractors engaged by HPD-selected developers over the course of the last few years. Some examples of the misconduct alleged by DOL include:

- Contractors that misclassified workers in order to underpay them, failed to pay workers for all hours worked, failed to maintain employment records, and falsified payroll documentation.⁵
- A contractor that was found to owe approximately \$1.4 million in back wages and that had failed to adequately monitor “under-bidding” by its subcontractors.⁶
- A contractor that had underpaid 32 workers by approximately \$829,000.⁷

Additionally, the press has reported allegations of worker underpayment, forced kickbacks, and even violence.⁸

Corruption Allegations

In October 2011, an HPD Assistant Commissioner and six HPD developers were indicted for “racketeering conspiracy, bribery, extortion, wire fraud and money laundering in connection

⁵ DOL, *US Labor Department recovers nearly \$339,000 in back wages and debar electrical subcontractor for work on New York City publicly-funded housing projects*, December 2010; DOL, *US Labor Department seeks to recover back wages, proposes debarment of construction contractor for labor violations at New York City publicly-funded housing project*, 2010.

⁶ DOL, *US Labor Department seeks debarment of construction contractor for labor violations at New York City publicly funding housing projects*, March 2011; see also Daniel Beekman, *Construction contractor slapped with \$960,000 back wage settlement still working for state in Bronx*, New York Daily News, September 2012.

⁷ DOL, *US Department of Labor seeks more than \$829,000 in back wages, proposes debarment of 2 contractors for work on New York publicly-funded housing projects*, December 2010.

⁸ Daniel Beekman, *Feds, HPD eye projects in Brooklyn, the Bronx after workers claim illegal labor*, New York Daily News, October 2011; Erin Durkin and Daniel Beekman, *City halts \$32 million Brooklyn housing project due to investigation first reported in Daily News*, New York Daily News, December 2011; Aaron Short, *Hospital stay! The city halts redevelopment of former medical center in Williamsburg*, The Brooklyn Paper, November 2011; Brian Kates, *Contractors hired goons to issue death threats, beat and throw acid at workers who fought kickbacks*, New York Daily News, October 2011; Brian Kates, *Feds probe workers underpaid at E. Harlem stimulus sites*, New York Daily News, November 2009.

with corruption schemes that netted defendants between one and two million dollars in kickbacks and bribes over a decade and cost HPD hundreds of thousands of dollars in overpayments to developers on HPD projects.”⁹ The Assistant Commissioner allegedly accepted approximately \$600,000 in bribes from developers and contractors in return for “awarding them HPD contracts.”¹⁰

In June 2012, two developers, one contractor, and two HPD officials were indicted on similar charges. The allegations against those individuals include:

- A developer that had a subcontractor do work on an HPD official’s residence for \$50,000 below cost in return for that official’s support in obtaining future housing subsidies. The subcontractor in turn recovered the \$50,000 by over-billing on another project.¹¹
- A “supervisory construction project manager” employed by HPD received a 30% stake in a private redevelopment company in exchange for steering HPD work toward the owners of that company.¹²
- A “director of construction services for loan and construction management programs” employed by HPD provided certified payrolls to a private contractor in exchange for \$10,000. The contractor then used these payrolls to create false wage information for a prevailing wage project.¹³

⁹ United States Department of Justice, *Assistant Commissioner of NYC Department of Housing Preservation and Development Indicted for Racketeering, Bribery and Extortion*, October 2011.

¹⁰ *Id.*

¹¹ Complaint and Affidavit in support of Application for Arrest Warrant in matter of *United States v. William B. Clarke*, #12M531 (E.D.N.Y. June 4, 2012).

¹² Complaint and Affidavit in support of Application for Arrest Warrant in matter of *United States v. Luis Adorno*, #12M529 (E.D.N.Y. June 4, 2012).

¹³ Complaint and Affidavit in support of Application for Arrest Warrant in matter of *United States v. Michael Provenzano*, #12M530 (E.D.N.Y. June 4, 2012).

- A developer arranged with other potential developers to require general contractors to give a \$300,000 kickback in exchange for selection.¹⁴
- A contractor paid for an HPD Assistant Commissioner's honeymoon in Greece in exchange for having contracts for HPD project work steered to him.¹⁵

This bill is intended to address these concerns.

Proposed Int. No. 730-A

Overview

This legislation will require HPD to post online certain information about affordable housing development projects that are created or preserved using city funding. The information for each project will include: (1) the name, address, and principal owners of developers, contractors, and subcontractors; (2) the manner in which the developers were selected, including if prequalified or disqualified lists were used in the process; (3) information about the project's size, location, number of dwelling units, and affordability levels (e.g. income limitations and initial rents); (4) the amount and type of city financial assistance given to the project; and (5) information on whether the construction work on a project will be subject to state or federal prevailing wage laws.

This legislation will also require quarterly wage reports from certain contractors and subcontractors working on city-funded affordable housing projects. These wage reports will include the same information currently required by the State Minimum Wage Theft Prevention Act thereby ensuring that the cost of providing the reports will be minimal. Wage reports will be

¹⁴ Complaint and Affidavit in support of Application for Arrest Warrant in matter of *United States v. Placido Rodriguez*, #12M533 (E.D.N.Y. June 4, 2012).

¹⁵ Complaint and Affidavit in support of Application for Arrest Warrant in matter of *United States v. Panayiotis Papanicolaou*, #12M532 (E.D.N.Y. June 4, 2012).

required for employees of contractors and subcontractors with annual gross revenues of at least \$2.5 million.

This legislation would take effect on January 1, 2013.

Section-by-Section

Bill section one adds a new chapter 10 entitled “Housing Development Project Reporting Requirements” to title 26 of the Administrative Code of the City of New York.

Section 26-901 of the new chapter defines relevant terms used in the bill.

Section 26-902, subdivision a, requires that HPD disclose the criteria it uses to prequalify developer, contractors, and subcontractors for its various affordable housing programs.

Section 26-902, subdivision b, requires that HPD disclose the name and address of any entity that has been disqualified from being selected as developer or which is ineligible to appear on a list of recommended contractors and subcontractors. HPD must also disclose the criteria it used to make disqualification decisions.

Section 26-903, subdivision a, requires that HPD disclose certain information concerning each affordable housing project carried out using discretionary financial assistance¹⁶ including: the HPD program under which the project is being carried out; the location of the project (address, block, lot number); the size of the project (stories, square footage); number of proposed dwelling units, disaggregated by bedroom size, income limits, and rents; how the project was publicly funded (type and amount of government assistance); the anticipated and actual completion dates; the name and address of the developer, contractors, and subcontractors and the name and title of the principal officers and owners thereof; how the developer was selected (method of selection, whether a prequalified list was used, what criteria were considered);

¹⁶ Projects funded exclusively by as-of-right, non-discretionary tax benefits – such as 421-a or J-51 benefits – are excluded.

whether project work will be covered by state or federal prevailing wage laws; descriptions of the final outcomes of complaints involving the developer related to prevailing wage violations to the extent known to HPD; and the total number of construction conditions related to the project along with a description of any remedial actions taken, ordered, or requested by HPD as it relates to such conditions.

Section 26-903, subdivision b, provides the reporting timeframe for projects where the developer was selected by HPD *after* January 1, 2013. For such projects, HPD must update the project information at least once every six months until completion of the project and must update the construction condition information at least once every six months until five years after completion of the project.

Section 26-903, subdivision c, provides the reporting timeframe for projects where the developer was selected by HPD *before* January 1, 2013. For such projects, HPD will have until January 1, 2014 to provide certain project information and must update the information at least once every six months thereafter until completion of the project. Information on construction conditions must be updated at least once every six months until five years after completion of the project.

Section 26-904 requires that developers file quarterly wage reports with HPD covering each laborer engaged in construction-related work (excluding professional employees like architects or lawyers, office support staff, and management). The wage reports must include the laborer's job title (or a description of their position) along with the information specified under Labor Law §195(3), specifically: the laborer's name; employer's name, address, and phone number; rates of pay; frequency of pay; gross wages; deductions; allowances; and net wages. Wage reports do not have to be filed for laborers working for contractors or subcontractors with

less than \$2.5 million annual gross revenue in the preceding tax year but such contractors/subcontractors must submit a certification stating that they are exempt from providing the wage reports.

Section 26-905 provides that any contractor/subcontractor who does not provide wage reporting in accordance with section 26-904 (if applicable) or who has a history of construction conditions (as determined by HPD) will be ineligible to be on any list of recommended contractors/subcontractors.

Bill section two contains the enactment clause and provides that the proposed legislation will take effect on January 1, 2013, except that the Commissioner of HPD shall take all actions necessary for its implementation, including the promulgation of rules, prior to such effective date.

Amendments to Int. 730

- Technical changes were made throughout the bill for the purposes of clarity and to revise the organization of the text.
- Bill section one has been amended as follows:
 - Originally, housing projects that were funded by more than \$100,000 of city financial assistance were covered by the bill. Now, housing projects receiving any discretionary city financial assistance are covered, except that projects receiving only non-discretionary tax benefits such as 421-a or J-51 benefits, work done through HPD's Emergency Repairs Program, certain demolition work, and work done by HPD under article seven-a of the New York State Real Property Actions and Proceedings Law have been excluded. Further, only projects where

the developer was selected within the last five years are covered (originally, all projects were covered).

- Information on the specific identities of entities on prequalified lists or information pertaining to entities that were denied prequalification status or who had such status revoked will no longer be required. However, HPD will now be required to provide the identities of entities that have been disqualified from selection as developers and the criteria used to make such disqualification decisions.
- The dwelling information HPD will provide for each project now includes the number of bedrooms, any income limitations, and all legal and actual rents. HPD must also disclose the number of commercial units, if any.
- The anticipated and actual completion date of each project will now be required.
- The disclosure of the name, address, and federal taxpayer identification for every *potential* developer is no longer required.
- HPD will not be required to provide information pertaining to specific housing development contracts.
- Information related to complaints, charges, allegations, judgments, injunctions or other relief filed or obtained in connection with a judicial action related to prevailing wage violations is no longer required. However, a description of the final outcome (including settlement) of proceedings related to such violations is now required. Further, this information is required only for developers and their current and former (within last five years) principal officers, not for all contractors and subcontractors.

- The disclosure requirements for construction quality issues have been modified to include: violations, complaints received by HPD related to construction quality, and all determinations by HPD that project work did not meet the customary standards for construction in New York City. Such information must be reported during the pendency of the project and up to five years after construction is completed. The original bill focused on post-construction Building Code violations issued up to five years after completion of the project.
- The time-frame for reporting by HPD has been changed. Information for projects where the developer is selected after January 1, 2013 must be updated twice annually (instead of monthly) until completion of construction. Construction conditions must be updated twice annually until five years after the date of completion. For projects where the developer was selected prior to January 1, 2013, information on such projects must be provided by January 1, 2014 and will have to be updated twice annually until completion of construction except that construction conditions must be updated twice annually until five years after completion of construction.
- The wage reporting requirement has been revised so that (1) it applies only to laborers and excludes certain employees (architects, lawyers, engineers, office staff, and management); (2) wage reports are required quarterly rather than monthly; (3) contractors and subcontractors that earn less than \$2.5 million annual gross revenue in the preceding tax year are excluded (but will have to submit a certification to that effect); and (4) the information required is the same information required for wage statements under Labor Law §195(3).

- Contractors and subcontractors that do not comply with wage reporting, or who have a history of construction conditions as determined by HPD, will now be ineligible to be included on a list of recommended contractors and subcontractors.
- Bill section two has been amended to provide that the effective date of the legislation will be January 1, 2013 instead of one year after enactment.

Proposed Int. No. 730-A

By Council Members Recchia, Wills, Brewer, Chin, Dickens, Dromm, Fidler, Gentile, Koppell, Koslowitz, Lander, Levin, Mealy, Rose, Van Bramer, Vann, Weprin, Williams, Lappin, Nelson, Gonzalez, Koo, Jackson, Gennaro, Garodnick, Crowley, Comrie, Greenfield, Barron, Rodriguez, Oddo, Ulrich and Halloran

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the disclosure of information regarding certain construction projects.

Be it enacted by the Council as follows:

Section 1. Title 26 of the administrative code of the city of New York is amended by adding a new chapter 10 to read as follows:

CHAPTER 10

HOUSING DEVELOPMENT PROJECT REPORTING REQUIREMENTS

§ 26-901 Definitions.

§ 26-902 Reporting on prequalified lists and disqualified lists.

§ 26-903 Reporting on housing development projects.

§ 26-904 Wage information reporting.

§ 26-905 Ineligibility for inclusion on prequalified lists.

§ 26-901 Definitions. For the purposes of this chapter only, the following terms shall be defined as follows:

a. “City financial assistance” includes any loans, grants, tax credits, tax exemptions, tax abatements, subsidies, mortgages, debt forgiveness, land conveyances for less than appraised value, land value or other thing of value allocated, conveyed or expended by the city.

b. “Construction condition” means:

(1) a violation of the New York city construction codes issued to a housing development project, a developer or a covered contractor of such housing development project, during the project work or within a five-year period following the completion of such project;

(2) a complaint related to the construction quality of a housing development project received by the department during the project work or within a five-year period following the completion of such project;

(3) a determination by the department, during the project work or within a five-year period following completion of such project, that the construction quality of a housing development project does not comply with applicable law or does not conform to customary standards for construction in the city of New York.

c. “Contractor” means an individual, sole proprietorship, partnership, joint venture, corporation or other entity that enters into a contract or other agreement with or is otherwise engaged by a developer or the department to perform project work.

d. “Covered contractor” means a contractor or subcontractor whose annual gross revenue for the immediately preceding tax year is not less than two million five hundred thousand dollars, calculated in accordance with section 779.266 of title 29 of the code of federal regulations; provided, however that where an entity is a principal owner of, serves as principal officer of, conducts or participates directly or indirectly in the conduct of the affairs of such contractor or subcontractor and any other contractor or subcontractor, the annual gross revenue for the immediately preceding tax year for each such contractor or subcontractor shall be aggregated and, if such aggregated value is not less than two million five hundred thousand dollars, each such contractor or subcontractor shall be a covered contractor.

e. “Department” means the department of housing preservation and development.

f. “Developer” means an individual, sole proprietorship, partnership, joint venture, corporation or other entity that receives city financial assistance for a housing development project.

g. “Disqualified list” means a list that identifies entities that are precluded by the department from being selected as developers where “disqualified” shall mean debarred, suspended or otherwise prohibited for any length of time. Such term shall also include a list of entities that are ineligible to be included on a list of prequalified contractors or subcontractors.

h. “Housing development project” means construction, rehabilitation or alteration of any residential building, residential facility or residential structure by a developer (1) which creates or preserves at least one dwelling unit; (2) which is funded in whole or in part by city financial assistance other than non-discretionary tax abatements or benefits approved or administered in accordance with sections 421-a or 489 of the New York state real property tax law or other similar programs and (3) where the developer of such project was not selected more than five years prior to the effective date of this chapter. The term “housing development project” shall not include emergency repairs performed by or on behalf of the department pursuant to section 27-2125 of this code, work performed by or on behalf of the department pursuant to section 27-2153 of this code, demolition work performed by or on behalf of the department pursuant to articles two hundred fifteen or two hundred sixteen of chapter two of title twenty-eight of this code, or work funded by the department pursuant to article seven-a of the New York state real property actions and proceedings law.

i. “List identifier” means a description of the purpose for which a disqualified list or prequalified list is used by the department that shall include the types of housing development projects for which the list is used.

j. “Prequalified list” means a list that identifies entities that are prequalified to be selected as developers and that was compiled, modified or used by the department to select developers within the immediately preceding five-year period; provided, however that the term “prequalified

(iii) when applicable, whether the wage information described by subdivision a of section 26-904 of this chapter has been provided to the department for such developer, contractor or subcontractor;

(7) whether the developer was prequalified at the time of selection;

(8) the method used to select the developer including, but not limited to, direct negotiation, request for proposals, competitive bidding, public bidding, auction, selection by entities other than the department, and application;

(9) the criteria used to evaluate potential developers and to select the developer;

(10) whether the developer or contractor executed any legal documents subjecting any of the project work to section 220 of the New York state labor law;

(11) whether the developer or contractor executed any legal documents subjecting any of the project work to subchapter IV of chapter thirty-one of part A of subtitle II of title 40 of the United States Code or any applicable regulations or rules;

(12) To the extent known to the department, based on information reported to the department by the developer that the department reasonably believes to be correct and complete, a description of the final outcome of any judicial actions or proceedings, including any final judgment rendered or settlement, with respect to section 220 of the New York state labor law or subchapter IV of chapter thirty-one of part A of subtitle II of title 40 of the United States code or any applicable regulations or rules, within the five-year period immediately preceding developer selection by the department, against the developer, the current principal owner or principal officer thereof, or the former principal owner or principal officer thereof if such person held such position or status within the five-year period immediately preceding developer selection by the department;

(13) the completion date of the project; and

(14) the total number of construction conditions and for each such condition, the nature of the condition and a description of any remedial actions taken, ordered or requested with respect to such condition.

b. For housing development projects where the developer was selected after the effective date of this chapter, the department shall update the information required by subdivision a of this section every six months until completion of such project except that the information required by paragraph fourteen shall be updated every six months until five years after completion of such project.

c. For housing development projects where the developer was selected prior to the effective date of this chapter, the department shall make available the information required by subdivision a of this section no later than January 1, 2014 and shall update such information every six months thereafter until completion of such project except that:

(1) the information required by paragraph six for subcontractors shall be limited to subcontractors that entered into a contract or other agreement with or were otherwise engaged by a contractor or the department; and

(2) the information required by paragraph fourteen shall be updated every six months until five years after completion of such project.

§ 26-904 Wage information reporting. For all housing development projects where the developer of such project was selected after the effective date of this chapter, each such developer shall report to the department the information listed below at least quarterly:

a. for each individual employed or otherwise engaged to perform project work by the developer or any covered contractor:

(1) the individual's job title, position, or a description of the type of work performed by such person;

(2) the information described by subdivision three of section 195 of the New York state labor law which includes the name of the individual; the name of the employer; the address and phone number of the employer; the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise; gross wages; deductions; allowances, if any, claimed as part of the minimum wage and net wages;

b. for each contractor or subcontractor that is not a covered contractor, a written certification under oath by a principal officer of such contractor or subcontractor that such contractor or subcontractor is not a covered contractor.

§ 26-905 Ineligibility for inclusion on prequalified lists.

a. In addition to any other penalty provided by law, any contractor or subcontractor who fails to provide wage reporting information in accordance with section 26-904 of this chapter shall be ineligible to be included on a prequalified list of contractors and subcontractors.

b. In addition to any other penalty provided by law, any contractor or subcontractor with a history of construction conditions, as determined by the department, shall be ineligible to be included on a prequalified list of contractors and subcontractors.

§2. This local law shall take effect on January 1, 2013, except that the commissioner of housing preservation and development shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

EAA
LS# 3113
7/17/2012 6:34 PM



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

August 24, 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 730-A, which would amend the Administrative Code of the City of New York "in relation to the disclosure of information regarding certain construction projects."

Introductory Number 730-A would require the Department of Housing Preservation and Development (HPD) to report on its website extensive information about affordable housing development projects that receive City financial assistance. By imposing an unnecessary layer of red tape on developers of affordable housing in New York City, it would threaten the creation of much-needed affordable housing for New Yorkers. More importantly, the bill would also mandate that developers report to HPD detailed wage information for the individual employees of all developers, contractors and subcontractors engaged on affordable housing projects. This requirement, while purporting to promote transparency, is, in actuality, an indirect effort to pressure contractors to hire union workers. The City's housing program, which serves critical public needs, should not be subverted in this way. It is inconsistent with this Administration's priorities to allow wages to be manipulated at the cost of constructing the maximum number of affordable units that we can finance. Finally, the bill is legally flawed as it seeks to legislate in areas in which such authority is reserved to the State.

Creation and preservation of affordable housing in New York City has been a top priority for this Administration since I took office. The New Housing Marketplace Plan set a goal of financing the creation or preservation of 165,000 units of affordable housing by the end of fiscal year 2014. One of the greatest accomplishments of this Administration has been our ability to meet that goal with limited City dollars and rapidly shrinking contributions from the State and federal governments by creatively leveraging public resources with those of the private market. This plan has not only financed the development of thousands of new homes for New York City's most vulnerable populations, but has also revitalized neighborhoods, created jobs and economic growth, and made New York City a safer place for a growing population. Continuing to create and preserve affordable housing remains a crucial objective for the City, and any unnecessary interference or divergence of funds has a direct impact on the amount of affordable units produced. Introductory Number 730-A is a prime example of such interference. It will serve as an impediment to local developers applying for loans to finance affordable housing

projects because of the administrative burden of compiling and verifying the wage data required by this bill. This in all likelihood will discourage developers and contractors from participating on future affordable housing development projects. Developers of affordable housing and the contractors that often work with these developers are a specialized group who know how to work within the confines of limited financing and high levels of regulation to produce this vital resource for New York City residents. Furthermore, the vast majority of HPD's affordable housing development is awarded through a competitive process. For these reasons, any reduction in the number of interested developers competing for a project could limit the number of projects worked on in a given year and lead to higher costs and rents, thereby limiting the number of affordable units produced.

The administrative costs imposed by the bill will have the most damaging impact on smaller, locally-based developers and contractors that do not have the resources to hire new staff to manage these reporting requirements. The bill will wreak particular havoc on minority and women-owned businesses (MWBE). Should these small MWBE developers and contractors be unable to apply for City affordable housing projects, the work will most likely be awarded to larger non-locally based developers who are more likely to hire workers who live outside the City. This could result in more New York City tax dollars being spent to create jobs for non-residents. We estimate that over 140,000 jobs have been created as a result of the New Housing Marketplace Plan. Introductory Number 730-A will increase the likelihood that more of these jobs will go to residents outside the City.

While Introductory Number 730-A purports to increase the transparency of affordable housing development in New York City, it imposes onerous and costly reporting requirements without any significant improvement in government transparency. For example, it requires HPD to collect wage data for every employee of each developer, contractor and subcontractor associated with each housing development project on a quarterly basis. But, other than for projects subject to prevailing wage laws, HPD plays no role in reviewing wages and has no legal authority to remedy wage violations. However, by forcing HPD to warehouse these documents, the bill will lead to the generation of numerous Freedom of Information Law requests seeking production of this data, which will result in the need to hire more staff to attend to these requests. Again, HPD costs will be incurred with no benefit to the public or to the City's housing stock.

The requirement that HPD provide extensive information online on housing development projects and update that information every six months for the duration of construction places a tremendous burden on agency resources by diverting attention from the agency's core mission of financing the development and preservation of affordable housing. Furthermore, HPD has recently begun to provide a substantial amount of pertinent closing information online, so requiring more, like what is required by Introductory Number 730-A, would task HPD with more work without providing any real benefit to the public. All three of HPD's major funding sources were dramatically reduced by Congress over the last two federal fiscal years, resulting in an annual loss of nearly \$94 million from HPD's capital and expense budgets. Since March 2009, the agency's headcount has been cut by twenty-three percent. Mandating expensive reporting requirements of dubious value on an agency coping with drastic cuts to its funding and personnel could not happen at a more inopportune time.

In addition to raising these very important policy concerns, Introductory Number 730-A is legally deficient. This bill requires wage reporting by every developer for each person

employed on the project by the developer or any covered contractor, and penalizes contractors who fail to report these wages by prohibiting HPD from including them on a prequalified list of contractors or subcontractors. The goal of the wage reporting requirement in this bill is evidently to pressure developers to hire union workers for these jobs and pay union-scale wages. For this reason, this bill is not merely about reporting information to a City agency in an effort to increase transparency. Rather, this bill, through new administrative requirements, seeks to affect the wages paid to workers employed on housing development projects, an area that has been exclusively reserved to State regulation.

Article 19 of the State Labor Law, the Minimum Wage Act, establishes a comprehensive regulatory scheme to set a minimum wage, investigate the adequacy of such wage, and recommend variations for employees in certain occupations. Indeed, this article also includes a provision that requires employers to maintain records detailing the hours worked by, and wages paid to, employees covered by the minimum wage. The Court of Appeals has held unequivocally that Article 19 acts to pre-empt any local legislation in the field of wage regulation.

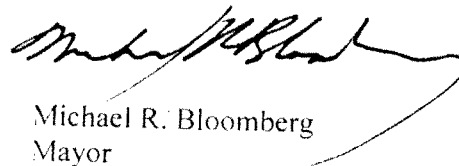
That Introductory Number 730-A seeks to pursue the improper goal of wage regulation through a reporting requirement does not ameliorate the legal problem. State law, dating back to the 1930s, operates to pre-empt local legislation in this area. To the extent the City Council has sought to evade this problem by imposing an onerous reporting requirement, and consequences for failing to comply with those requirements, the doctrine of field preemption does not permit such circumvention. Article 19 not only pre-empts the field of wage regulation, but also includes a reporting requirement that vitiates any local effort to impose a similar requirement.

The legal problems with Introductory Number 730-A are not confined to the effect of Article 19 of the Labor Law. The affordable housing projects that are the subject of this bill are governed by the Private Housing Finance Law, which gives plenary authority to HPD to supervise and administer these projects. The Private Housing Finance Law generally gives no role to the City Council in the administration of these projects. Because Introductory Number 730-A seeks to provide the City Council with such a role, the Private Housing Finance Law pre-empts such legislation.

My Administration has sought to work with the Council to strike the proper balance between increasing the transparency of City operations and creating the affordable housing units the residents of this City so desperately need. In seeking to promote the former goal, this bill will impede the latter goal, which is a result I cannot support.

Accordingly, I hereby disapprove Introductory Number 730-A.

Sincerely,



Michael R. Bloomberg
Mayor

Cc: The Honorable Christine C. Quinn

