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DEPUTY COMMISSIONER OF ENFORCEMENT
NEW YORK CITY DEPARTMENT OF BUILDINGS

HEARING BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON RECOVERY & RESILIENCY

January 21, 2016

Good afternoon Chair Treyger and members of the Committee on Recovery and Resiliency. I am Timothy Hogan, Deputy Commissioner of Enforcement at the New York City Department of Buildings (“Department”). I am joined by Assistant Commissioner of External Affairs Patrick Wehle along with colleagues from the Mayor’s Office of Housing Recovery. We are pleased to be here to offer testimony on Introductory Numbers 448 and 1037, which prohibits the issuance of civil and criminal penalties for Building Code violations resulting from certain work performed, or scheduled to be performed, in response to a natural or man-made disaster.

The Department works closely with the Mayor’s Office of Housing Recovery (“HRO”) to streamline the construction process for homeowners and ensure all work is performed in compliance with the City’s Construction Codes. To date, HRO has completed over 1,400 construction projects and is positioned to complete the Build it Back single family program by the end of the year.

The Department has an established protocol that it follows in response to a natural or man-made disaster. Under these circumstances, should an inspection reveal conditions that violate the Building Code, rather than issuing a violation with an associated civil penalty as is the standard

practice, the Department issues a Notice of Deficiency. This Notice of Deficiency has no monetary penalty attached and provides the property owner with ninety days to secure the necessary permits to make the necessary repairs. If the property owner fails to do so they would be subject to a violation with an associated civil penalty. The Department does not issue criminal penalties for violations resulting from natural or man-made disasters.

Depending on the severity of the disaster, the Department may provide a longer grace period to correct the violating conditions. Following Hurricane Sandy, if an initial inspection by the Department revealed violating conditions, property owners were given six months to obtain permits. For those circumstances where permits were not obtained within six months, a Notice of Deficiency was issued to the property owner. If permits were not obtained within ninety days after the issuance of the Notice of Deficiency, a violation was issued. For property owners participating in a City-operated disaster recovery program such as Build it Back, with few exceptions violations are not issued. Exceptions would include a property owner demolishing a building without securing a permit to ensure asbestos is being properly abated or adding a second story onto a building without permits.

In our response to Hurricane Sandy, the Department performed assessments on 19,690 buildings. Of those, 2,874 received Notices of Deficiency and ultimately 54 of those buildings received civil penalties. Violations are necessary in these very limited circumstances to spur correction of a condition that has the potential to affect the safety of occupants and the public.

Given the Department's policy of issuing violations in response to a disaster only as a last resort to protect the safety of the public we question the need for this legislation. Furthermore, the legislation is crafted in such a way as to offer immunity in far more circumstances than we imagine

is the intent. For example, Intro. 1037 appears to excuse any violation, regardless of whether or not the disaster caused the violation. Concerning Intro. 448, it would be very difficult for the Department to determine if the violation resulted from work done by the City, its contractors, or someone else. We also fear this legislation could result in contractors being incentivized to shun compliance with our requirements without fear of penalty.

Thank you for your attention and the opportunity to testify before you today. We welcome any questions you may have.

Testimony of the Legal Services NYC

**Before the New York City Council
Committee on Recovery and Resiliency**

Hearing on Int. No. 448 and 1037 in relation to civil and criminal penalties for building code violations resulting from certain work done in response to a natural or man-made disaster or received while awaiting city assistance after a disaster



January 21, 2016

Thank you for this opportunity to testify. My name is Margaret Becker. I am Director of Disaster Recovery at Legal Services NYC (LSNYC). I am testifying on behalf of Legal Services NYC, which has offices in all five boroughs and dedicated disaster recovery staff in our Queens, Staten Island, and Brooklyn offices.

LSNYC fights poverty and seeks justice for low-income New Yorkers. For more than 40 years, we have challenged systemic injustice and helped clients meet basic needs for housing, high-quality education, health care, family stability, and economic security. LSNYC is the largest civil legal services provider in the country, with deep roots in all of the communities we serve. Our neighborhood-based offices and outreach sites across all five boroughs help more than 60,000 New Yorkers annually.

In November 2012, our services expanded to include Hurricane Sandy recovery work, specifically legal assistance on FEMA benefits, insurance claims, Sandy-related mortgage problems, contractor fraud, tenant rights and benefits, access to Build it Back help, family law issues that have arisen, and other legal needs associated with New Yorkers' long, slow recovery. To date LSNYC has assisted over 6,000 Sandy-affected households.

The proposed amendments to the administrative code of the City of New York will significantly help our Sandy-affected clients, many of whom are still struggling to recovery, as well as low-income New Yorkers that may be affected by a future disaster. As discussed below, these violations impose financial and mental strain on people who are already heavily burdened.

Our experience working with Sandy-affected homeowners has shown us that the burden is not limited to Department of Buildings violations or just violations incurred after a homeowner registered for Build it Back. Homeowners awaiting Build it Back assistance may have received fines before the July 2013 registration period or may be awaiting acquisition rather than repair or reconstruction.

Expanding the proposed amendments in the following ways would more fully address the problem:

- Include violations incurred *before* the Build it Back program existed;
- Include violations incurred by homeowners waiting for City or State *acquisition* (not just repair or rebuild); and
- Include violations from the Department of Environmental Protection and Department of Sanitation.

In addition, we are concerned that Int. No. 1037 could inadvertently harm tenants living in Sandy-damaged property.

- Restricting the applicability of Int. No. 1037 to circumstances in which no tenant would be adversely affected would help ensure that low-income renters are not adversely affected.

Ideally, for the remainder of our Sandy recovery and for any future disasters, the City would have a system in place to assure that the Department of Buildings, Department of Environmental Protection and Department of Sanitation work together to coordinate the identification of unsafe or unhealthy conditions in disaster-damaged buildings and provide help, rather than penalties, to building owners to promptly remedy these conditions.

I. Department of Buildings violations and fines have burdened low-income Sandy-affected homeowners.

Low-income homeowners are especially unable to afford repairs without nonprofit or government assistance. They are disproportionately likely to be unable to correct the conditions which are the subject of Department of Buildings violations and to wait for Build it Back help to complete necessary repairs. The fines imposed by the Department of Buildings and other City agencies have a greater impact on the financial stability of low-income homeowners, in particular those who are struggling to afford rent as well as mortgage payments.

Elderly and disabled homeowners are particularly affected by this predicament. These homeowners frequently struggle even to access recovery help or to travel to Build it Back centers to engage in the program. Homeowners who have physical difficulty in pursuing a Build it Back application often cannot manage the added burden—financial, emotional, and physical—of hiring and supervising contractors to correct Department of Buildings violations.

In addition, elderly and disabled homeowners can face a significant burden in responding to Department of Buildings violations: traveling to and attending the hearings can be difficult. Low-income clients, particularly those who work hourly jobs, may lose pay for hours missed attending a hearing or may have difficulty getting time off to attend the hearing. This legislation would benefit some of the most vulnerable residents in New York City.

Ms. Rhodes, who is disabled, has been displaced from her Broad Channel home since Sandy. With her family, she has been living in a cramped apartment in Kew Gardens for over three years now. Her home was damaged beyond repair and has been unoccupied since Sandy. Build It Back will be fully rebuilding it. In the meantime, Ms. Rhodes has incurred citations and fines from both the Department of Buildings and the Department of Sanitation. She was fined \$530 by the Department of Buildings for failing to maintain the roof, porch and side stairs of the unoccupied building. She was unable to pay that fine, and we can assume it is therefore increasing. She was also fined \$300 by the Department of Sanitation for trash left by others on the vacant property. It is very difficult for Ms. Rhodes to keep the property free of random trash while she is displaced in Kew Gardens, particularly given her disability. She was unable to pay the \$300 fine as well, and it is therefore presumably increasing.

Ms. T of Brooklyn reported to us that she received Department of Buildings citations for electrical work done by Rapid Repairs.

Staten Island homeowner Mr. G received Department of Sanitation and Department of Environmental Protection violations for debris containers that were brought to his home by a Build it Back contractor.

Mr. and Ms. H are elderly home owners in Red Hook. Their home suffered serious damage from Sandy. They had limited income and no insurance, so recovery from Hurricane Sandy was very difficult. They hoped to get assistance through the Build It Back program as that seemed like their only source of aid. However, a week before Thanksgiving 2013 they were issued 3 violations and a full vacate order by the Department of Buildings for Sandy-caused damage. Mr. and Ms. H tried to address this by communicating with city officials but to no avail. After spending time displaced from their home they were forced to hire a contractor to do work so they could return. The work cost about \$45,000. Mr. and Ms. H used credit cards to pay for some of the work, had to borrow money from friends—a loan they will be hard pressed to even repay—for some of the cost, and they still owe money to the contractor. However, because they were forced to do this work after their Build It Back registration, it made them ineligible for BIB assistance. In essence, the Department of Buildings violations forced Mr. And Ms. H to take steps that disqualified them from the only disaster assistance that was available.

Mr. and Ms. H's situation underscores the need for any future Build It Back program to include a Rapid Repairs-like component to address urgent needs on an expedited schedule.

II. Low-income homeowners are burdened by violations incurred before Build It Back was created.

Int. No. 1037 would affect only those homeowners who are under evaluation for repair by a disaster recovery program. This excludes violations issued before the Build it Back registration period opened in July 2013. Expanding Int. No. 1037 to include violations against homeowners who were awaiting assistance before Build it Back registration opened would benefit low-income clients who did not have resources to complete repairs immediately after Sandy.

Ms. B., an elderly woman with limited mobility, was displaced from her New Dorp home to a third-floor walk-up apartment where she has been since Sandy. She received a Department of Buildings citation in early 2013 that required her to secure or demolish the damaged home. She struggled for over a year to resolve the Department of Buildings violation and had to pay over \$4,000 to have the home boarded up while awaiting federal disaster assistance.

III. Low-income Sandy-affected homeowners are burdened by violations from the Department of Sanitation and the Department of Environmental Protection as well, not just Department of Buildings.

Displaced homeowners frequently receive violations from the Department of Sanitation and the Department of Environmental Protection for Sandy-related conditions. It is hard for a displaced homeowner to closely monitor property conditions such as trash, snow, weeds, and other factors. Low-income homeowners are especially unable to find affordable temporary housing in New York, especially if they are still paying a mortgage on the Sandy-affected property. Low-income homeowners may need to relocate to other boroughs, other cities, or even out of state to stay with friends or family or to find affordable rents. Thus, low-income homeowners are especially likely to receive Department of Sanitation violations for poor property conditions.

Our clients have received violations and fines for un-shoveled snow, for overgrown weeds, and for trash

left by passersby on their properties. These are conditions that they simply cannot closely monitor while they are displaced far from home. Expanding the proposed amendments to include violations by the Department of Sanitation would protect low-income homeowners from fines for property conditions that are a direct result of Sandy displacement.

Ms. Preissler is a homeowner whose Sandy-damaged home in South Beach, Staten Island, is unsafe for residence because of mold. She has been living out of state since Sandy while awaiting recovery assistance. Since Sandy, she has received nine Department of Sanitation violations totaling almost \$3,000 for failure to cut weeds and remove construction materials from her lawn. Build it Back will be rebuilding her home.

IV. The problem of City citations also burdens those awaiting City or State acquisition of their damaged property.

Several of our clients have opted to pursue State or City acquisition of their homes. These clients have lost over 50% of the value of their homes and are frequently displaced. The acquisition process is an extended one, taking years to be complete. Many of these clients are displaced and are paying both rent and mortgage on an uninhabitable home. For these clients, it often is not feasible to make the necessary repairs on the home while awaiting the completion of the acquisition.

Expanding this legislation to include homeowners who are awaiting acquisition would free clients from the wasteful burden of repairing a home which will soon be demolished and rebuilt or returned to nature.

Ms. S., who has stage four cancer, is living on Staten Island's north shore while she awaits City acquisition of her uninhabitable Midland Beach home. She has attempted to travel back to her home regularly to remove snow after winter storms. Nevertheless, she has received six Department of Sanitation violations since Sandy for failure to shovel the snow within fourteen hours after the storm and one violation for overgrown weeds.

V. Renters may be adversely affected if this legislation does not expressly protect their rights.

Low-income renters may be adversely affected if landlords do not promptly correct safety issues in rental buildings. Excluding renter-occupied buildings from these exemptions or otherwise addressing the need to protect renters from unsafe or unhealthy conditions would ensure that renters are not inadvertently hurt by the proposed amendments.

For further information, please contact

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Appearance Card

I intend to appear and speak on Int. No. 498/1037 Res. No. _____

in favor in opposition

Date: 1/21/16

(PLEASE PRINT)

Name: Mary Van Noy

Address: Asst. Gen. Council

I represent: Housing Recovery (HRO)

Address: _____

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Name: Joe Kipferman

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Appearance Card



I intend to appear and speak on Int. No. 448/1037 Res. No. _____

in favor in opposition

Date: 1/21/16

(PLEASE PRINT)

Name: <u>Timothy Hogan</u>	<u>Patrick Wehle</u>
Address: <u>Dep. Comm. of Enforcement</u>	<u>Asst. Comm. of</u>
I represent: <u>DOB</u>	<u>External Affairs</u>
Address: _____	<u>DOB</u>

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Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

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Name: Margaret Becker

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I represent: Legal Services NYC

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