

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON ECONOMIC DEVELOPMENT

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October 30, 2008

Start: 1:03 pm

Recess: 1:35 pm

HELD AT: Council Chambers
City Hall

B E F O R E: THOMAS WHITE, JR.
Chairperson

COUNCIL MEMBERS:
Diana Reyna
Albert Vann
David Yassky
Annabel Palma

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

Sam Miller
Assistant Commissioner for Communications and
Government Affairs
New York City Department of Finance

David Ehrenberg
Vice President
New York City Economic Development Corporation

Dara Jaffee
Assistant Commissioner for Legal Affairs
New York City Department of Finance

CHAIRPERSON WHITE: Good afternoon.

I'm Councilman Thomas White, Jr., Chair of the Economic Development Committee. Today's hearing will focus on Intro 8860, a Local Law to amend the administrative code of city of New York in relation to the industrial and commercial abatement program. Intro number 82-A, a Local Law to amend the administrative code of city of New York in relation to tax abatement and tax exemption for industrial and commercial work on properties in the city of New York, which authorized the city of New York's participation in the ICAP program, was approved by the Council on September the 24th, 2008. On October 10th, 2008, Mayor Michael R. Bloomberg signed Intro 82-A into law and Local Law 47 of 2008. Intro 820 proposed to amend part five of the subchapter two of the Chapter 2 of Title 11 of the administrative code of the city of New York by adding a new section 11 dash 277 to provide for suspension of benefits if a court or the environmental control board finds that there has been a violation of the New York City's construction codes, the 1968 building codes, or other law or rules enforced by the

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2 Department of Buildings at any property receiving
3 benefits pursuant to this part. In order to avoid
4 suspension of benefits, recipients must certify
5 that the underlying code violation has been
6 legally cured or corrected within 180 days after
7 notice of such code violation is sent to the
8 recipient. If the recipient fails to make the
9 required submission within the 180 day period, the
10 suspension of benefits should continue until the
11 recipient makes such a submission to the
12 Department of Finance. After the recipient makes
13 that submission, benefits shall resume, but
14 benefits lost during the period of suspension
15 shall not be restored. If the original finding of
16 the violation or denial of the certification is
17 appealed--is appealed and a court of appropriate
18 government agency finally determines that the
19 finding of the violation was invalid or erroneous,
20 any benefits lost pursuant to this section to
21 which the recipient was entitled shall be restored
22 retroactively. The Local Law would take effect
23 immediately and shall be retroactive to and deemed
24 to have been in full force and effect as of July
25 1st, 2008. I would like to thank the

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2 administration and the elected officials and
3 advocates for testifying today and I look forward
4 to a productive hearing on this important matter.
5 I am joined by my colleagues Council Member Reyna
6 and Council Member Palma. Testifying for the
7 Department of Finance is Mr. Sam Miller. Mr.
8 Miller?

9 SAM MILLER: Thank you. Good
10 afternoon, Chairman White and members of the City
11 Council Committee on Economic Development. My
12 name is Sam Miller, I'm the Assistant Commissioner
13 for Communications and Government Affairs at the
14 New York City Department of Finance. Thank you
15 for inviting me to speak in support of Intro 860,
16 sponsored by Chairman White, which requires that
17 the finance department suspended industrial and
18 commercial abatement benefits when owners who
19 receive these benefits are not in compliance with
20 specific laws addressing building, environmental,
21 and fire code standards. I'm going to be joined,
22 I believe, in a few minutes by David Ehrenberg,
23 the Vice President of the New York City Economic
24 Development Corporation. I also have Assistant
25 Commissioner for Legal Affairs Dara Jaffee, Chris

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2 Brown, over here, Fred Wiener, who actually runs
3 the ICIP program and Fran Joseph from our legal
4 department as well. If you recall, EDC played a
5 central role in the city's efforts to overhaul the
6 ICIP program over the last two years and we wanted
7 to once again thank the Committee for its
8 leadership in those efforts. As Speaker Quinn
9 noted when the full Council passed the new
10 replacement law last month, ICAP is a leaner,
11 meaner program that ensures that economic
12 development incentives go to industrial and
13 commercial projects and communities where targeted
14 economic development can really make a difference.
15 Intro 860 will require, as you noted, that finance
16 revoke ICAP benefits when a property owner fails
17 to cure a violation of the most egregious building
18 code violations that pose an immediate threat to
19 health and safety. The bill also named specific
20 fire code violations and environmental code
21 violations that will serve as triggers to suspend
22 benefits. And just briefly in terms of how it
23 would work, under the Bill, finance will work with
24 the Department of Buildings, the Department of
25 Environmental Protection and the Fire Department

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2 to identify ICAP beneficiaries who are in
3 violation of the relevant safety codes. Finance
4 will notify these owners through their quarterly
5 or semiannual Statement of Account, which is our
6 property tax bill. Owners will be told that they
7 must resolve their violation within 180 days or
8 lose their ICAP benefits. If, after the 180 days,
9 the owner has not cured the violation, finance
10 will revoke the benefits. Once an owner cures the
11 violation, finance will restore benefits at the
12 start of the next quarter and this will be
13 reflected on the following Statement of Account.
14 Finance will not restore benefits retroactively
15 once a violation is cured, however, I think as you
16 noted, Chairman, if the owner successfully appeals
17 the violation, finance will restore benefits
18 retroactively. I thank you for the opportunity to
19 testify and I'm happy to answer any questions.

20 [Off mic]

21 COUNCIL MEMBER REYNA: I have a
22 question, but I'm not too sure if it pertains to
23 this Bill, more so to the enforcement piece.
24 Because we have many illegal converted
25 manufacturing and industrial spaces that prohibit

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or hinder businesses from acquiring much-needed space, and I'm not too sure if there's ever a flag system to identify buildings that perhaps are in violation to, at one point or another ,apply for these benefits and has the Department of Finance ever tried to identify through the BSA, let's say, buildings that have been converted through a variance process receiving ICAP in the past--well, ICAP now and ICIP in the past. Is this some type of general practice? Is that the type of violation that you're going to be looking at?

SAM MILLER: I don't believe that that's the type of violation that's covered in this Bill, but certainly we can try to work with our sister agencies to try to identify those properties, you know, that have converted illegally [off mic].

[Off mic]

SAM MILLER: Right. I'm just--he's--Chris is telling me that generally it wouldn't go to anything other than commercial, that this benefits, so I don't know that it would necessarily irrelevant [phonetic], but I think--

COUNCIL MEMBER REYNA: It is

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relevant--

[Off mic]

SAM MILLER: It's a good--right--

DARA JAFFEE: [Off mic] we could,
we could look at [off mic]

COUNCIL MEMBER REYNA: I'm sorry,
you need to sit at the--

SAM MILLER: Come up here, dear.
Come up.

COUNCIL MEMBER REYNA: --in front of
the mic because they're recording everything--

DARA JAFFEE: Oh, I'm sorry.

COUNCIL MEMBER REYNA: No, it's
okay, and identify yourself for the record.

DARA JAFFEE: Hello, I'm Dara Jaffee
from Finance.

MALE VOICE: Pull it to you [off
mic] the mike a little closer.

DARA JAFFEE: Sorry, what I was
saying was that even if it didn't pertain to this--
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COUNCIL MEMBER REYNA: Mm-hmm.

DARA JAFFEE: --and we would need to
confirm, but--

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COUNCIL MEMBER REYNA: Mm-hmm.

DARA JAFFEE: --because of what Sam was saying with the residential properties, if probably the populations or other groups of buildings wouldn't match up, but it's still a good idea and we could certainly look at what we could do with data and having the different systems--

COUNCIL MEMBER REYNA: Right.

DARA JAFFEE: --try and talk to each other to try to identify [crosstalk]--

COUNCIL MEMBER REYNA: [Interposing] And I don't want you to--

DARA JAFFEE: Good idea.

COUNCIL MEMBER REYNA: --focus on the residential, because it's not, it's not as if these are obvious residential units. They're not what we consider, you know, a normal setting for kitchen, bathroom, you know, there are literally property owners that are converting these buildings calling them commercial and they're not.

SAM MILLER: Okay. We can--we'll absolutely look into that.

COUNCIL MEMBER REYNA: I appreciate it.

2 SAM MILLER: Sure.

3 COUNCIL MEMBER REYNA: Thank you.

4 SAM MILLER: Sure.

5 [Off mic]

6 CHAIRPERSON WHITE: Council [off
7 mic] Councilperson Palma.

8 COUNCIL MEMBER PALMA: Thank you,
9 Mr. Chair. In your testimony, it says that no
10 business would--if they don't correct their
11 violations, their benefits will not be restored
12 unless the violations are corrected, but then it
13 also goes on to say that if the owner appeals the
14 violation, then it will be retroactively restored.
15 Like, how is that--how does that work and how
16 would--if--how would that work?

17 SAM MILLER: Well I believe what
18 would happen--you want to talk about that
19 [crosstalk]--

20 MALE VOICE: Go ahead.

21 SAM MILLER: --I think what would
22 happen is that if an, you know, if an owner was
23 successfully appealed that violation and it turns
24 out that they were not in violation--

25 COUNCIL MEMBER PALMA: Okay.

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2 SAM MILLER: --then we would know--
3 we would be notified of that or we would see that
4 in the system and then we would then say, okay,
5 we'll retroactively go back and grant the benefit.

6 COUNCIL MEMBER PALMA: But only if
7 they're not--

8 DAVID EHRENBERG: If there--if not
9 just--I'm sorry, I'm David Ehrenberg from EDC, I
10 apologize for being late, I was in the wrong room,
11 but it's not if they appeal, it's if they win
12 their appeal--

13 SAM MILLER: Yeah, right, they have
14 to win [crosstalk]--

15 COUNCIL MEMBER PALMA: Okay.

16 DAVID EHRENBERG: That--

17 COUNCIL MEMBER PALMA: So it's not
18 just they'll pay a violation and then go appeal it
19 and then they'll retroactively get their monies
20 back.

21 DAVID EHRENBERG: They would have to
22 have found never--not to have been in violation--

23 COUNCIL MEMBER PALMA: [Interposing]
24 In violation in the first place.

25 DARA JAFFEE: Right.

2 COUNCIL MEMBER PALMA: Okay.

3 DARA JAFFEE: The entire repeal is
4 predicated on having a valid judgment either from
5 ECB or from a court saying that basically you're
6 guilty of these violations that are listed in the
7 statute, so if you've appealed and you win your
8 appeal, there's no--there's really no basis and a
9 person shouldn't be harmed for that.

10 COUNCIL MEMBER PALMA: Okay. Thank
11 you. Thank you, Mr. Chair.

12 CHAIRPERSON WHITE: Okay. How many
13 properties currently receive ICAP?

14 SAM MILLER: We just actually,
15 because the law was just passed, we just put the
16 application up on our website, I believe, last
17 week so I don't know what the number is. There
18 about 6,000 ICIP properties, properties that
19 receive ICIP, but we don't--I don't know the
20 number on ICAP just yet.

21 CHAIRPERSON WHITE: What did--what's
22 the number [crosstalk]--

23 SAM MILLER: It's zero on ICAP
24 'cause we just put the application up--

25 CHAIRPERSON WHITE: Right.

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SAM MILLER: We can go with zero.

DARA JAFFEE: This week, we're good.

CHAIRPERSON WHITE: Okay. And what about ICIP?

SAM MILLER: About 6,000 properties.

CHAIRPERSON WHITE: Okay. Can you name some of the violations that will be considered, ones that will lose an owner's benefits?

SAM MILLER: I can, I have them here on the Building's Department side, one of the violations is working without a permit, failure to maintain a building law, failure to safeguard all persons from property affected by construction, there are fire codes also that are a part of this, failure to provide fire protection or emergency power system, failure to have a fire safety and evacuation plan, there is also one on the DEP side, Department of Environmental Protection, that pertains to abating asbestos. We can provide--I think the codes are probably--I don't even know if all the codes are in the law, but maybe what we could is just provide written out in English what each of the codes are, that would be probably

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2 helpful.

3 CHAIRPERSON WHITE: Okay. One more
4 please explain the process whereby information on
5 violations will be passed from agency to finance
6 and will a building loss--when a building loses
7 its benefits, the day after it gets a building
8 code violation?

9 SAM MILLER: They won't lose it the
10 day after they get the violation because what's
11 going to happen is we're going to, we're going to
12 warn the owners that they have 180 day--that
13 there's a violation and that they have 180 days to
14 cure that violation, and then, if they don't,
15 within that 180 days, then we will revoke the
16 benefit. In terms of how we're going to get that
17 information, I don't think we've quite worked out
18 exactly how, we're going to try to figure out the
19 most efficient and most automated way to do that,
20 it may be that just we get our computers to be
21 able to talk to, you know, the Buildings
22 Department and the Fire Department's computers and
23 figure out and do a match of who has ICAP and who
24 has the violations and then we'll simply put that
25 information on our Statement of Account and mail

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2 that to the owners. We already mail them the
3 statements, so we'll just make it very clear on
4 the statement that they have 180 days to cure it.

5 CHAIRPERSON WHITE: Okay. Thank
6 you. Council Member Reyna?

7 COUNCIL MEMBER REYNA: I think John
8 just clarified something for, me but I'm going to
9 try anyway. I wanted to understand, I just
10 recently had a business, who shut down a waste
11 transfer facility in my district and is now
12 reopening it because he couldn't sell so,
13 therefore, applied for ICAP or--I apologize, it's
14 not ICAP, it's Empire Zone credits. But similar
15 to the Empire Zone, I just want to understand how
16 would the ICAP, moving forward, deal with any type
17 of violation that perhaps a waste transfer
18 facility would receive in connection to receiving
19 these types of benefits if they applied?

20 SAM MILLER: Are you asking whether
21 prospectively--

22 COUNCIL MEMBER REYNA: Mm-hmm.

23 SAM MILLER: --an owner will get the
24 benefit in the first place if they have a
25 violation? Is that [crosstalk]--

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COUNCIL MEMBER REYNA: The
[crosstalk]--

SAM MILLER: --the Empire Zone, but
are you saying if somebody's applying for ICAP and
they have a violation already, will they get one
of these--will they get the--will they--will the
benefits even start if it's approved?

COUNCIL MEMBER REYNA: Well, I raise
it because you have specific agencies that are
being mentioned here: Department of Buildings,
Department of Environmental Protection, Fire
Department, so that this is only safety violations
during a construction phase or is it safety
violations, not just construction, but day-to-day
operations?

DARA JAFFEE: Is it any--

MALE VOICE: Dara.

DARA JAFFEE: --point during the
benefit period and the benefit--is it any point
during the benefit period--I have to get a little
better with the microphone.

SAM MILLER: So, it's not just--

DARA JAFFEE: Right.

SAM MILLER: --during construction.

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2 DARA JAFFEE: And the benefit
3 periods can be quite some time, depending on the
4 projects.

5 COUNCIL MEMBER REYNA: And does that
6 exclude a waste transfer facility because the
7 waste transfer facility would be issued a
8 violation by, let's say, the Department of
9 Sanitation.

10 DAVID EHRENBERG: The violations are
11 not--I don't represent the Department of
12 Buildings--

13 COUNCIL MEMBER REYNA: Mm-hmm.

14 DAVID EHRENBERG: --my understanding
15 is the violations are only those buildings, fire
16 and violations that threaten the life and safety.
17 So--

18 COUNCIL MEMBER REYNA: If--

19 DAVID EHRENBERG: --health and
20 safety so--

21 COUNCIL MEMBER REYNA: For instance,
22 I just want to make sure you understand why I'm
23 approaching this line of questioning, last Friday
24 we had an unfortunate death, a 70-year-old man
25 going to get a cup of coffee was hit by a

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2 sanitation truck and to no fault perhaps the two
3 sanitation workers, there was still a death and
4 that will open an investigation. But in an
5 instance like that, would that receive a violation
6 and what is the violation? Is it coming from the
7 Department of Sanitation?

8 DARA JAFFEE: I think it would
9 depend, I mean, I don't know enough about the
10 facts or the situation, to like give an opinion,
11 but I guess the analysis would be what kinds of
12 violation was issued and if it was one of the
13 violations that's enumerated in the statute, if
14 this was a property that could receive ICAP
15 benefits then you would, you'd be involved in the
16 process that we're describing and wouldn't be
17 entitled to benefits unless the underlying
18 violation was cured. I mean I can't--I don't know
19 whether or not that project would qualify for ICAP
20 or whether or not the situation you described
21 would give rise to one of these violations. I
22 also want to make one point, it's not just that
23 you get a violation, you have to have a violation
24 that becomes like a court judgment either in court
25 or ECB. So it's not just that if you get the

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2 violation 180 days later, you have to actually
3 have a judgment rendered against you.

4 DAVID EHRENBERG: It may also be--
5 the ICIP and ICAP go to the building, not to the
6 business and often times that's the same, you
7 know, the property owner runs the business, but
8 the--in general, this is a benefit for buildings
9 and particularly for buildings where there's been
10 a substantial capital investment in the city, it's
11 the entire logic of the program. So the
12 violations are, and again not speaking for
13 Department of Buildings, but are basically
14 building level violations, not violations on the
15 operation of a business within that building.

16 UNKNOWN VOICE: Right, right.

17 COUNCIL MEMBER REYNA: Thank you. I
18 appreciate the clarification.

19 CHAIRPERSON WHITE: I would like to
20 acknowledge that we've been joined by my
21 colleague, Council Member Vann. Anyone else?

22 [Off mic]

23 CHAIRPERSON WHITE: And Council
24 Member Yassky.

25 [Off mic]

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Chairperson WHITE: Any questions?

[Off mic]

CHAIRPERSON WHITE: Okay. All right. There are no further questions, so I want to thank you for taking your time and I'll leave the record open for a half hour. All right? We'll take a recess.

[Off mic]

CHAIRPERSON WHITE: How we looking, man? How we looking?

[Off mic]

MALE VOICE: Sorry? Dara Jaffee.

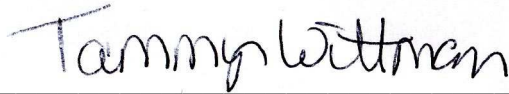
J-A--

[Off mic]

C E R T I F I C A T E

I, Tammy Wittman, 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 _____

Handwritten signature of Tammy Wittman in cursive script.Date November 24, 2008