

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of NEW YORK PUBLIC  
INTEREST RESEARCH GROUP, INC., CITY PROJECT, Index No. \_\_\_\_\_/99  
INC., and COMMON CAUSE/NY,

Petitioners,

for a Judgment pursuant to Article 78 of the Civil Practice Law  
and Rules,

-against-

PETER VALLONE, as Speaker of the New York City Council;  
THE NEW YORK CITY COUNCIL; RUDOLPH GIULIANI,  
as Mayor of the City of New York; and the CITY OF NEW  
YORK,

Respondents.

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**PETITIONERS' MEMORANDUM OF LAW  
IN SUPPORT OF THE PETITION**

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Respectfully submitted,

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## **PRELIMINARY STATEMENT**

The object of this lawsuit is to obtain an order vacating and annulling Local Law 38 of 1999 which goes into effect on November 12, 1999, on the grounds that it was adopted by the New York City Council and was approved by the Mayor in violation of N.Y. Municipal Home Rule Law § 20, the Charter of the City of New York, and the Rules of the New York City Council.

N.Y. Municipal Home Rule Law ("MHRL") § 20(4) requires a proposed local law to be introduced in accordance with the rules of procedure adopted by the City Council and then to be in its "final form" and on the desks of Council members at least seven days (excluding Sunday) prior to its adoption. To adopt a local law more rapidly, the Mayor must issue a "message of necessity" and the Council must adopt the proposed law by a two-thirds majority vote.

On June 30, 1999, Local Law 38 was both introduced in the New York City Council and adopted at the same meeting, without the Mayor issuing a "message of necessity," in clear violation of applicable law.

## **STATEMENT OF FACTS**

Shortly before June 30, 1999, two "drafts" of a so-called "Preconsidered Int" were the subject of two public hearings before the New York City Council's Committee on Housing and Buildings. One was held on June 21 and the other was held on June 24. While the second proposal was purported to have addressed some of the shortcomings of the first, it was still criticized by lead poisoning prevention experts, who argued that it did not reflect current scientific research and understanding of childhood lead poisoning. Almost all the experts warned of the likely adverse impact from increased exposure to lead paint and lead contaminated dust hazards, with some

predicting an increase in childhood lead poisoning over the current rates under existing law. Even the Comptroller of the City of New York asked the Council to delay until his office had an opportunity to examine the financial impact of the proposals.

Yet despite this near unanimous opposition from medical and health experts, and even though neither of the two proposals were "introduced" prior to the hearings as a proposed local law, the Committee on June 24 voted to recommend a proposal to the full Council for consideration. The Committee's vote was five in favor and two in opposition. In fact, while the June 24 draft was identified as a "Preconsidered Int" in the Committee, it was not actually "introduced" as a proposed local law until Wednesday, June 30, when it was assigned the formal introduction number "Preconsidered Int No. 582."

Since Preconsidered Int 582 was both introduced and adopted on the same day, June 30, it was not on the desks of City Council members prior to its adoption for seven days subsequent to its introduction in the Council. The vote in the full Council was 36 in favor and 15 in opposition. Equally important, the Rules of the New York City Council neither authorize nor mention the use of a "Preconsidered" introduction as a proper procedural mechanism for introducing a proposed local law.

## ARGUMENT

### **UNDER N.Y. MUNICIPAL HOME RULE LAW § 20(4), A LOCAL LAW MUST BE "INTRODUCED," IN ITS "FINAL FORM" AND ON THE DESKS OF THE COUNCIL MEMBERS AT LEAST SEVEN CALENDAR DAYS, EXCLUSIVE OF SUNDAYS, PRIOR TO ITS FINAL PASSAGE**

A. The Legal Framework for Adopting a Local Law in the New York City Council.

Local legislative bodies are empowered by Article 9 of the New York State Constitution and Section 20 of the Municipal Home Rule Law ("MHRL") to enact "local laws." Subdivisions (1), (2), (3) and (5) of MHRL § 20 provide respectively for a majority vote to adopt a local law, the required "style," form and subject matter of a local law, and for the Mayor to hold a public hearing prior to approval of a local law adopted by the Council.

Subdivision (4) – which petitioners claim respondents have violated – first provides that a proposed local law must be "introduced" and then provides that it must be in its "final form" and "on the desks of the council members at least seven calendar days, exclusive of Sundays, prior to its final passage." MHRL § 20(4) states in relevant part:

A proposed local law may be introduced only by a member of the legislative body at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body. No such local law shall be passed until it shall have been in its final form and either (a) upon the desks or table of the members at least seven calendar days, exclusive of Sunday, prior to its final passage, or (b) mailed to each of them ... at least ten calendar days, exclusive of Sunday, prior to its final passage, unless ... the mayor in the case of a city ... shall have certified as to the necessity for its immediate passage and such local law be passed by the affirmative vote of two-thirds of the total voting power of the legislative body.

(emphasis added).

As permitted under MHRL § 20(4), both the New York City Charter and the Rules of the

City Council prescribe procedures relating to the introduction of a proposed local law in the City Council. Specifically, Charter § 46 directs the City Council to promulgate rules, which must include—

rules that the chairs of all standing committees be elected by the council as a whole; that the first-named sponsor of a proposed local law or resolution be able to require a committee vote on such proposed local law or resolution; that a majority of the members of the council be able to discharge a proposed local law or resolution from committee; that committees shall provide reasonable advance notice of committee meetings to the public; that all committee votes be recorded and made available to the public.

To a large extent, Chapter VI of the Rules of the City Council ("Council Rules") incorporate the requirements of Charter § 46, by designating the form to be used for all proposed local laws and the procedure to be used for their introduction. In particular, a proposed local law must be written in a specified style and "must be deposited with the Office of the Speaker before 1 p.m., at least three days, excluding Sundays, preceding the meeting day." Council Rule § 6.00. Pursuant to Council Rule § 2.10, the Speaker of the City Council is required to compile an agenda for each stated meeting of the Council, which shall include messages from the Mayor and a listing of "introductions" of local laws. Afterwards, the Speaker is required to "assign[ ] a chronological introduction ... number" to the proposed law and it "shall appear on the agenda in alphabetical order according to the name of the first-named prime sponsor, except that the Speaker's name shall appear first." Council Rule § 6.00.

To further implement the requirements of Charter § 46, the Council's rules specify a procedure for designating "prime sponsors" and "co-sponsors" of a proposed local law, a process that continues for "48 hours after the introduction of a proposed local law ...." Council Rules § 6.20 (emphasis added).

Furthermore, when a proposed local law is actually introduced, the Council Rules require its referral to an appropriate Committee. Council Rule § 6.30 states:

**Papers Referred to Committee; Change of Reference -**  
Every proposed local law or resolution introduced shall, upon its introduction, be referred by the Speaker to a committee to consider and report thereon. The Speaker may also refer proposed local laws or resolutions to two committees for their joint consideration. When a matter is jointly referred, each committee shall vote separately on the matter and an affirmative vote of both committees shall be required in order to report such matter to the full Council. At any time prior to the first meeting of such committee to consider such proposed local law or resolution, such reference may be changed by the Speaker. The prime sponsor may, at any time prior to the first meeting of such committee to consider such proposed local law or resolution, petition the Speaker to change the committee to which the matter has been referred.

(emphasis added.)

In the present case, the exact opposite of the procedure indicated by this rule was followed, because it was considered by the Committee and recommended to the full Council before it was introduced.

The Council Rules also make allowance for any proposed local law needing immediate consideration by allowing for a hearing by the appropriate Committee even on the day of a stated meeting. Subdivision (b) of Council Rule § 7.50 states:

No committee meeting shall be convened on the day of a stated or special meeting of the Council unless the item to be considered by such committee, will, out of necessity, be proposed as a General Order for that day or such committee meeting is called with the consent of two-thirds of the members of such committee.

Rule § 7.50, therefore, makes it possible for the Council to comply with Rule § 6.30 under all conceivable circumstances.

In summary, when the Council takes up the enactment of a local law, the legal framework to do so is fully enumerated in the statutes, the Charter and the Council Rules. MHRL § 20(4) requires a proposed law to be "introduced" first and then in its "final form" and on the desks of the Members for seven calendar days exclusive of Sundays. If a proposed law after introduction must be enacted more quickly, then the Mayor must issue a "message of necessity" and the full Council must adopt the bill by a two-thirds vote.<sup>1</sup>

MHRL § 20(4) also states that a proposed local law may be introduced "at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body." In this regard, the Council Rules expressly state the procedures for the "introduction" of all proposed local laws in the Council. These procedures, which also incorporate the requirements of New York City Charter § 46, include—

- depositing copies of a proposed local law in the Speaker's Office in advance of a stated meeting, Council Rule § 2.10;
- the assignment of a chronological introduction number and listing in the Agenda for the stated council meeting, Council Rule § 6.00 and § 6.10;
- the process of "sponsorship" by Council members of all proposed local laws, Council Rule § 6.20; and
- the mandatory requirement that "[e]very proposed local law or resolution introduced shall, upon its introduction, be referred by the Speaker to a committee to consider and report thereon."

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In People ex rel. Hatch v. Reardon, 184 NY 431 (1906), the Court of Appeals addressed an analogous provision found in the state constitution governing the state legislature. The Court explained that the "object of this provision ... is to prevent hasty and careless legislation, to prohibit amendments at the last moment and to secure more publicity than had been required before." Furthermore, the Court showed that "[c]are was taken to provide for emergencies by a certificate of necessity from the governor, which authorizes immediate action." Finally, the Court specified that the requirement "is not directory, but mandatory, as is obvious from the form of the command, which prohibits a bill from becoming a law without compliance therewith."

Equally important, nowhere do the Council Rules sanction an alternative procedure for the "introduction" of a proposed local law. Nor do the Council Rules authorize the "pre-consideration" of a proposed local law by a Committee of the Council ahead of its introduction in the full Council. In the event proposed legislation must be expedited, the Council Rules have an express provision, allowing for immediate consideration by the appropriate Committee. Council Rule § 7.50. The Council's adopted procedures, however, were not followed when Local Law 38 was adopted.

B. Applicable Case Law Supports the Invalidation of Local Law 38.

Under applicable case law, the adoption of Local Law 38 by the Council without the Mayor issuing a "message of necessity" constitutes an actual and substantial violation of the Municipal Home Rule Law, the New York City Charter and the Council Rules.

Legislative bodies are required to comply with the procedural prerequisites of the Municipal Home Rule Law and other applicable laws. For example, in Matter of Tylec v. Niagara County Legislature and County of Niagara, 175 A.D.2d 676, 572 N.Y.S.2d 600 (4th Dep't 1991), a redistricting plan enacted by the Niagara County Legislature was invalidated under MHRL § 20(4) because it was in its final form and before the members of the legislature for too few days before its enactment. Similarly, in 41 Kew Gardens Associates v. Tyburski, 124 A.D.2d 553, 507 N.Y.S.2d 698 (2d Dep't 1986) and in Village of Mill Neck v. Nolan, 233 A.D. 248, 251 N.Y.S. 533 (2d Dep't 1931), the courts invalidated legislation under, respectively, MHRL § 20(5) and N.Y. Village Law because the legislative bodies failed to comply with the requirements of these laws.

Nor does the present case raise any of the exceptional circumstances where a court has sanctioned a legislative body's "substantial" compliance with a governing statute, in the absence of its actual compliance. For example, under the unusual circumstances in Alscot Investing Corp. v.

Laibach, 65 N.Y.2d 1042, 494 N.Y.S.2d 295 (1985), the Court of Appeals said that “[o]nly a departure in substance from the formula described by statute will invalidate a municipal enactment.” Alscot, however, and similar cases are vastly different and easily distinguishable from the present situation.

In Alscot, a village attorney forwarded a proposed local law to the mayor and the village board. While the bill was never formally "introduced" by a member of the village board at the next meeting, the village board members during the meeting actually "directed" the attorney to proceed with a notice of public hearing, which he did along with mailing a copy of the proposed local law to the board members in timely compliance with MHRL § 20(4). At the next meeting, the board unanimously adopted the proposed local law.

In challenging the validity of this local law, the petitioner in Alscot argued that the proposed local law was not "introduced" by a member of the board, in violation of MHRL § 20(4). The Court of Appeals disagreed stating that—

[the] direction of the Board to the Village Attorney to prepare notice of hearing of the local law, the text of which was in the possession of all of its members, was a "substantial and sufficient compliance" with the requirement that such a law be introduced by a member of the Board at a meeting of the Board, and sufficient vote to hold a public hearing .... The more particularly [in light of] the unanimous vote for adoption at the November 1, 1976 meeting ...

65 N.Y.2d at 1044.

Obviously the Court of Appeals viewed the situation as an unintentional oversight by the village board, since all the members had a copy of the bill before them at the first meeting, when they "directed" the village attorney to notice the proposed law for a hearing at the next meeting.

In Preble Aggregate Inc. v. Town of Preble, 247 A.D.2d 697, 688 N.Y.S.2d 751 (3rd Dep't 1998), the town clerk, after passage of a local law, failed to include certain documents when he filed a copy with the Secretary of State pursuant to MHRL § 27(3). The petitioner argued that under § 27(3) a local law cannot take effect until filed and, therefore, the court should invalidate the local law. Rejecting this argument, the court held that a clerical error in filing a properly adopted local law will not invalidate it. See also Brechner v. Incorporated Village of Lake Success, 5 Misc.2d 920, 208 N.Y.S.2d 365 (Nassau Co. 1960), aff'd, 14 A.D.2d 567, 218 N.Y.S.2d 1017 (2nd Dep't 1961) (Clerk's oral notice to members of a board meeting did not constitute a "substantial" defect even though Village Law requires written notice, where all members were present and voted).

Alscot, Preble and Brechner, however, are each distinguishable from the present case. In each, the legislative body was acting on legislation that was uncontroversial and was adopted by a unanimous vote. In contrast, when the New York City Council began its consideration of Preconsidered Int 582, it was confronted with highly controversial proposed legislation. Also, the

Council was deeply divided over the bill's merits,<sup>2</sup> which is reflected by a final vote that was not unanimous. Moreover, unlike Alscot and the other cases, the "departure in substance from the formula described by statute" was unintentional. In contrast to these unintentional errors, the City Council's immediate passage of Preconsidered Int 582 was entirely deliberate. As the record amply demonstrates, quick passage of Preconsidered Int 582 was necessary because of the severe criticism that was increasing over the merits of the proposed law.

In light of the above, the Council's improper enactment of Local Law 38 is vastly different and distinguishable from all prior cases that validate legislation with minor, technical violations of the Municipal Home Rule and other laws.

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This concern simply mirrored the unanimous concern by experts in the field of childhood lead poisoning prevention, who were vocal in their disapproval of the proposed law. For example, Don Ryan, the Executive Director of the nationally recognized Alliance to End Childhood Lead Poisoning, in Washington, DC, wrote to Speaker Vallone on June 30. He implored the Speaker not to pass Preconsidered Int 582, saying that the Speaker needed to know that –

by any objective measure the Vallone bill is severely skewed in favor of landlords. You need to know that its "standard of care" does not protect children from lead poisoning. You need to know that this bill ignores the science and is at odds with enlightened approaches other states are pursuing.

See Exhibit T.

While few rank and file Council members made public statements about the bill, one who did was Council member Tracy Boyland, who explained that voting on the bill was a vote of conscience. Council member Boyland said:

I voted my conscience on this issue. When I go home, I'll be able to sleep at night.

See Exhibit L.

## CONCLUSION

In conclusion, the respondents have both actually and substantially violated MHRL § 20, the Charter of the City of New York § 46, and the Rules of the City Council. Petitioner therefore requests a judgment pursuant to Article 78 of the Civil Practice Law and Rules to vacate and annul Local Law 38 of 1999.

Dated: New York, New York  
October 26, 1999

Respectfully submitted,

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