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

JOHN A. CROTTY
DIRECTOR
CITY LEGISLATIVE AFFAIRS

December 19, 2003

Honorable Victor L. Robles
City Clerk and Clerk of the Council
Municipal Building, 2nd Floor
New York, NY 10007

Dear Mr. Robles:

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

Introductory Number 101-A

A Local Law to amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, including the avoidance and remediation of lead-based paint hazards in housing and day care facilities, the repeal of local law 38 for the year 1999 and the repeal of subdivision h of section 27-2013 and section 27-2126 of such code.

Sincerely,



John A. Crotty



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Honorable Victor Robles
City Clerk and Clerk of the Council
Municipal Building
New York, New York 10007

Re: Intro. 101-A

Dear Mr. Robles:

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 101-A, which would amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, and repeal local law 38 for the year 1999, local law 1 for the year 1982 and local law 50 for the year 1972.

The decline in childhood lead poisoning in New York City in the past three decades is a remarkable public health success story. For instance, in 1970, there were 2,649 children with blood lead levels that were 60 micrograms per deciliter (mcg/dL) or greater, a level that requires immediate medical attention; by last year cases at that threshold had plummeted to 8. More recent statistics are also impressive; from 1995 to 2002 alone, the number of children with blood lead levels of 10mcg/dL or greater declined almost eighty percent -- from 21,575 to 4,876 children. Nonetheless, all agree that despite these impressive gains, there continue to be unacceptable rates of elevated blood lead levels, particularly in some of the City's communities. Additionally, all agree that primary prevention through safe remediation of lead paint hazards in residential housing is a critical component to the elimination of childhood lead poisoning.

While there are fundamental problems with the bill, it does have useful elements that are important to protect children from lead paint hazards. These include additional worker training and dust testing requirements to ensure that hazards are not created or exacerbated when work is done, inclusion of conditions that cause exposure to elevated dust lead levels as a hazard, and targeting of certain higher risk situations. Unfortunately, this bill still has several elements that are very troubling for the City. The bill's approach is in many respects unreasonable, perhaps unachievable and in some instances, counter-productive.

First, this bill may result in negative unintended consequences that will affect the affordable housing stock of the City. Increased demands on landlords (such as difficult and probably unachievable timeframes and unreasonable tort liability exposure) as well as the possible unavailability of insurance may result in the deterioration of the City's housing stock. And those buildings most likely to have lead paint hazards and to need rehabilitation will be the least likely to have access to insurance and to capital to undergo rehabilitation. Beyond the deterioration of the housing stock, the bill may also lead to an increase in discrimination against families with children who are seeking to rent apartments, similar to the experience in Massachusetts. That state, which has a very strict tort liability law relating to lead paint hazards, has experienced a pervasive problem with owners discriminating against families with children. In addition, the bill may lead to an increase in attempts by owners to prohibit families from doubling up in apartments, a common occurrence in this time of tight housing availability. New York City can ill afford these consequences, which would make it even harder for low income families with children to remain in or find housing. Ultimately, if owners cannot comply with the strict requirements in the bill and face unreasonable tort exposure, they may either abandon their property, seek to evict doubled up families, decline to rent to families or increase rents. None of these scenarios helps anyone. The unfortunate irony is that after the Court of Appeals nullified the prior lead law because the Council failed to conduct an adequate environmental assessment, we are now presented with a new proposed lead law that was passed by the Council without the hard look required by the State's environmental law into these very real and very serious threats to our City's affordable housing stock, even though numerous witnesses and organizations expressed their concerns about secondary displacement.

Second, the bill may expose the City to numerous tort actions stemming from its regulatory conduct in inspecting for lead paint hazards, and in performing emergency repairs when owners fail to do so. It is estimated that the City's tort exposure in this regard could easily exceed \$200 million per year. Unlike most local laws, the bill places strict mandates on HPD that will be difficult -- and in some cases impossible -- to achieve in every one of the thousands of inspections and repairs that HPD performs on an annual basis. For instance, the bill requires that HPD inspect a private apartment within 14 days after a violation correction date to determine whether the violation was, in fact, corrected. If HPD cannot perform this inspection because it cannot gain access to the apartment, HPD could conceivably be sued (for its failure to timely conduct this inspection), since the bill fails to address this specific lack of access situation. This type of problem applies to numerous other provisions in the bill as well. More fundamentally, even if HPD performs all of its mandated duties, it will likely be subject to tort actions since the adequacy of inspections is inherently subjective, and can easily be challenged by a so-called "expert" retained by a lawyer for the sole purpose of testifying in a lawsuit. The City's exposure will also be exacerbated because insurance will likely not be available to owners as a result of the imposition of difficult, if not impossible, mandates on owners. Thus, the City will be the only viable defendant in many cases, and will bear the entire tort judgment, even if it is found to be only minimally responsible for the purported exposure. While the Corporation Counsel will vigorously defend the City against unwarranted liability and this unwarranted increase in the City's tort exposure may not occur on my watch, this threat in future years is very real and very serious. Ultimately, the City's obligations in conducting inspections and performing emergency repairs should be similar to the City's obligations in addressing its other

regulatory obligations, such as responding to 911 calls. Our goal must be to protect our children from lead hazards, not to provide possible bonanza for trial lawyers.

Third, this bill applies to common areas and chewable surfaces; such a mandate places expansive obligations on owners for only minimal public health benefits. Especially troubling is the bill's requirement that on its effective date owners will have to immediately abate (i.e. permanently remove or cover) the paint on every window sill accessible to a young child. Up to 2.8 million window sills will be included within this mandate. If such abatements are not performed properly -- and it can, unfortunately, be assumed that will be the case in some situations, especially since there will likely not be a sufficient number of trained workers needed to do the work immediately -- vast quantities of lead dust will be released, thereby increasing the risk of lead poisoning to children.

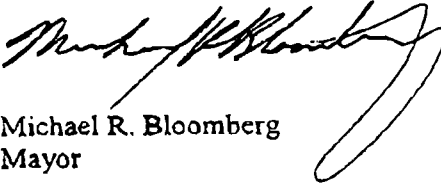
Fourth, the timeframes in this bill are unreasonable and will only increase the risk of failure and non-compliance. Compounding this problem is the bill's general failure to account for situations where the City is unable to gain access to perform the inspections and emergency repairs that are mandated by the bill. Short time frames and the failure to address access problems, coupled with unwarranted tort liability exposure, will lead to a mis-direction of resources that would be better spent on childhood lead poisoning prevention. For instance, the bill allows 45 days for HPD to correct a lead violation, without considering what obstacles the agency may face in getting access to dwelling units. Similarly, the bill requires DOHMH to notify HPD to perform emergency repairs in cases involving a child with an elevated blood lead level 16 days after DOHMH is first notified of such a case. Since DOHMH may be unable to get timely access to a dwelling unit where a lead poisoned child resides to determine whether lead paint hazards even exist, or the owner may be in the process of performing the repairs, this short time frame is neither feasible nor sensible. The bill also fails to extend timeframes for postponements for owners willing to do the work but who need extra time. There is no policy reason to stop otherwise willing owners from performing lead hazard remediations if they seek reasonable extensions for good cause. And given the liability risk that owners will face, owners seeking to comply may be forced to pursue aggressive legal options when tenants are not able or unwilling to provide prompt access.

Fifth, the bill contains poorly drafted provisions that are subject to broad interpretations by a court that may require HPD inspectors to record the existence of intact surfaces and require them to move furniture and other objects in front of painted walls. Also because of poor drafting, HPD may be required to inspect dwelling units to determine if a lead paint violation has been corrected even if it has already commenced the Emergency Repair process.

Finally, the bill fails to protect conscientious owners from potential tort liability even when they comply with all components of the bill. Specifically, lead paint may be presumed in tort liability cases even when owners have complied with all aspects of the annual notice, investigation and remediation requirements and thereafter are not notified of a new lead paint hazard in a dwelling unit.

For all the foregoing reasons, and those stated at prior hearings by the Commissioners of the Departments of Health and Mental Hygiene, of Housing Preservation and Development and of Homeless Services, I hereby disapprove Introductory Number 101-A.

Sincerely,



Michael R. Bloomberg
Mayor

cc: Honorable A. Gifford Miller

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