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CITY COUNCIL

CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HOUSING And BUILDINGS

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December 12, 2003
Start: 11:30 a.m.
Recess: 2:30 p.m.

City Hall
Council Chambers
New York, New York

B E F O R E:

MADÉLINE PROVENZANO
Chairperson,

COUNCIL MEMBERS: Joel Rivera
Diana Reyna
Tony Avella
Gale Brewer
Leroy Comrie
Lewis Fidler
Robert Jackson

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2 A P P E A R A N C E S

3

COUNCIL MEMBERS:

4

Melinda Katz

5

Kendall Stewart

James Oddo

6

Philip Reed

Tracy Boyland

7

Domenic Recchia

Peter Vallone, Jr.

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

3

Andrew Hoffman
4 President
Community Housing Improvement Program

5

David Pechefsky
6 Finance Division
Council of the City of New York

7

Larian Angelo
8 Finance Division
Council of the City of New York

9

Jeffrey Haberman
10 Counsel and Deputy Director
Infrastructure Division
11 Council of the City of New York

Jay Damashek
12 Deputy General Counsel
13 Council of the City of New York

Chris Collins
14 Counsel and Deputy Director
15 Land Use Division
Council of the City of New York

16

Gail Benjamin
17 Director, Land Use Division
Council of the City of New York

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON PROVENZANO: Good morning.

3 My name is Madeline Provenzano, and I chair the
4 Committee on Housing and Buildings.

5 Thank you for attending this hearing
6 on proposed Intro. No. 101-A, in relation to
7 childhood lead poisoning prevention.

8 Proposed Intro. No. 101-A has been
9 the subject, or has been subject to numerous
10 revisions since the introduction of this bill.

11 Today's hearing will be conducted on
12 the latest version of the bill, which is available
13 for those of you who need it.

14 The version of this bill before the
15 Committee is dated 12/5/03, 10:40 p.m.

16 The Committee has held several
17 hearings on this matter, the last of which was
18 conducted on December 10th.

19 Also, before this Committee today is
20 a preconsidered resolution by Council Member
21 Perkins, finding that enactment of proposed Intro.
22 101-A does not have a significant adverse impact on
23 the environment and is consistent with the same
24 Environment Quality Review Act.

25 At this point, Terzah Nasser will

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2 explain a problem that we had at the last hearing
3 and we need to reenact a part of it that was not
4 recorded.

5 MS. NASSER: Terzah Nasser, Counsel to
6 the Committee on Housing and Buildings. At the
7 hearing on December 10th, we had a power
8 fluctuation, such that we lost some of the audio
9 portion to the hearing. We have invited Mr. Andrew
10 Hoffman to return to the hearing and to present his
11 testimony, to read into the record his testimony
12 again, because we lost a fair portion of his
13 presentation, and some of the exchange with the
14 members.

15 Mr. Hoffman, thank you.

16 MR. HOFFMAN: Good afternoon. I mean,
17 good morning. My name is Andrew Hoffman, I'm
18 President of the Community Housing Improvement
19 Program, a property owner, advocacy organization,
20 also an owner and manager of housing in New York
21 City.

22 I'm also the father of three children
23 who had grown up in an apartment in New York City
24 built before 1960, presumably containing lead-based
25 paint.

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2 I don't say that to be funny, but I
3 say that to let the Council members present know
4 that I'm here for the same reason that you guys are
5 here for, to protect the children of the dangers of
6 lead-based paint.

7 The City Council now finds themselves
8 in a typical job. The task here is how to prevent as
9 much as possible young children from being affected
10 from the dangers of lead paint. Unfortunately, what
11 the City Council has done, despite previous
12 testimony by myself and others, is to create a
13 series of measures which will make the operation of
14 affordable housing in New York City much more
15 costly.

16 Local Law 1 was an imperfect law. It
17 was followed by Local Law 38, which was heavily
18 negotiated and although not perfect, it did a much
19 better job in protecting children from the dangers
20 of lead-based paint.

21 Local Law 38 provided a roadmap for
22 myself and other owners to help eliminate the
23 hazards associated with the paint, and in fact lead
24 paint poisoning has dropped dramatically, while
25 Local Law 38 was in effect.

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2 Intro. 101 takes us in a much
3 different direction.

4 First, it gives plaintiff attorneys a
5 boom by eliminating the minor protections property
6 owners had under Local Law 38. I'm sure we've all
7 been on the City subways and we've seen the ads for
8 the plaintiff attorneys guaranteeing money for
9 parents of children poisoned by paint.

10 Under Local Law 38 we had some minor
11 protection, but if Intro. 101 is passed in its
12 present form, it would open the flood gates to
13 plaintiff's attorneys, it would dramatically
14 increase our property insurance, it will make lead
15 insurance unaffordable and probably unattainable.

16 It's imperative the Council reach out
17 to the State Insurance Department so they can hear
18 from another governmental agency the facts
19 concerning what Intro. 101 will do to the insurance
20 industry.

21 The day-to-day operations of my
22 building will become much, much more costly. Vacant
23 apartments will now have to be painted by
24 lead-certified workers, even if I know that a child
25 under seven will not be occupying that apartment, I

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2 still have to prepare that vacant apartment as if a
3 child under seven was going to occupy that
4 apartment. That's simply unfair.

5 This introduction provides funding,
6 education for City inspectors, including continued
7 education for inspectors and supervisory personnel,
8 but no where in this introduction is any funding
9 provided to help owners deal with this law, and I
10 think that's also very unfair.

11 It's clear from listening to prior
12 testimony that we all need a workable law to protect
13 the children. CHP was able to work, CHP, my
14 organization, was able to work with the Council on
15 some small aspects of Intro. 101. A continuous
16 dialogue concerning the Intro that helps clarify the
17 100 square foot issue, previous the 100-square foot
18 issue pertained to the whole apartment, and it was
19 clarified to pertain to just one room and we
20 appreciate the Council's help on that matter. But we
21 need to continue the same dialogue when it comes to
22 the insurance issue.

23 In the seventies we couldn't get
24 asbestos coverage, two years ago there was terrorism
25 coverage that was a problem, and now mold insurance

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2 is excluded from almost all of my insurance
3 policies.

4 After you pass Intro. 101, that
5 insurance will be nonexistent or unattainable. More
6 needs to be done and I'm ready to work with all
7 those concerns to make this bill a better one. We
8 all want the same thing. We do not want our children
9 to be affected by lead-based paint. The City
10 Council, over strong comments by property owners and
11 activists alike, have proposed a law which is
12 over-reaching. It's haste to make this introduction
13 into law. I think the City Council has done property
14 owners a grave injustice and I urge the Committee to
15 reexamine Intro. 101.

16 Thank you for giving me these second
17 opportunities to present my testimony.

18 CHAIRPERSON PROVENZANO: Well, it
19 really isn't a second, since we didn't record your
20 first.

21 But Council Member Recchia will,
22 since this is kind of a reenactment, Councilman
23 Recchia will ask one or two questions which are the
24 same ones that he asked last time. He will be the
25 only one that is able to question this witness.

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2 Councilman.

3 COUNCIL MEMBER RECCHIA: Thank you.

4 The last time you testified you spoke
5 about admitting insurance and non-admitting
6 insurance. Could you explain that for the Committee.

7 MR. HOFFMAN: New York State Insurance
8 Department is the body that governs insurance
9 companies in the City and they have certain rules in
10 the state and they have certain rules and
11 regulations pertaining to insurance companies,
12 insurance carriers, and if you are an admitted
13 carrier, you agree to comply with the rules and
14 regulations concerning the New York State Insurance
15 Department, but what happens and what's happened
16 recently in the past couple of years in my
17 experience is the insurance market is very tight
18 right now, every carrier is an admitted carrier, all
19 the names that you know, Chubb, Traveler, they all
20 have other insurance companies that are not
21 admitted, and those insurance companies are not
22 required to live by the same rules.

23 As an example with myself, after 9/11
24 terrorism insurance was impossible to get. But New
25 York State said that in order to be an admitted

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2 carrier you had to supply terrorism coverage. So,
3 what happens is, I have one building that's large,
4 it's in excess of, value is \$50 million. What the
5 insurance companies do is they essentially take a
6 value of \$200 a square foot, so if you have a
7 building that's in excess of 250,000 square feet,
8 that building replacement value is in excess of \$50
9 million. Coverage was essentially non-existent.

10 So what my brokers had to do is in
11 order to take a non-admitted carrier, you have to be
12 rejected by an admitted carrier, so they float my
13 insurance out to ten admitted carriers and they
14 don't bid on it, I just don't get prices. So, then I
15 have to go to the non-admitted carriers at that
16 point, and at that point they don't have to live by
17 the same rules and regulations, so as an example, I
18 don't have terrorism coverage on my policy, I don't
19 have mold coverage on my policy, I actually have
20 lead now, but two years ago, three years ago I
21 didn't have lead, so I'm sure that on my policy
22 renewal, when Intro. 101 passes, they're going to
23 exclude lead again.

24 COUNCIL MEMBER RECCHIA: So you feel
25 if this is passed that the insurance industry will

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2 have a hard time, the admitted carriers will not
3 want to ensure. What they do will be a high premium.

4 MR. HOFFMAN: Yes. And the admitted
5 carriers, what they have done in the past, you're
6 allowed to ask for an exclusion from the New York
7 State Insurance Department, and I know that they
8 have asked in the past for exclusions on lead paint.
9 It's part of the pollution exclusion, and at that
10 point you have the option of possibly buying a
11 rider. A few years ago it was non-existent.

12 COUNCIL MEMBER RECCHIA: Thank you.

13 CHAIRPERSON PROVENZANO: Okay, thank
14 you.

15 Thank you, Mr. Hoffman.

16 I'd like to introduce the Council
17 members that are here, members of the Committee, I
18 have Council Member James Oddo. Who is next? I can't
19 see. Well, Melinda was actually hiding you. Council
20 Member Lou Fidler, Councilwoman Melinda Katz,
21 Councilman Joel Rivera. To my left, Councilman Tony
22 Avella, Councilman Phil Reed, who is not a member of
23 the Committee, Councilwoman Diana Reyna. Council
24 Member Robert Jackson, Council Member/woman Tracy
25 Boyland, who is not a member of the Committee,

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2 Council Member Bill Perkins, who is not a member of
3 the Committee, and Council Member Domenic Recchia,
4 who is not a member of the Committee.

5 We have today a fiscal impact
6 statement, after I don't know how many months that
7 we've been asking for it, but we do have it today.
8 So, I'm going to call on the folks from our Finance
9 Division to answer some questions. You all have a
10 copy before you. Hopefully you've taken a look at
11 it. There have been many questions in the past about
12 this statement.

13 Another thing I would ask is that the
14 folks in the audience, there may be some heated
15 moments here, and I would ask for everybody's
16 indulgence and that they behave, for hopefully what
17 is the last time.

18 I'm going to ask the Committee folks,
19 or anyone, if they want to ask any questions.

20 James Oddo, I cannot imagine that you
21 don't have a question.

22 COUNCIL MEMBER ODDO: It's such an
23 ominous tone that there's going to be some heated
24 moments.

25 CHAIRPERSON PROVENZANO: It's an

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2 ominous day.

3 COUNCIL MEMBER ODDO: I just have one
4 question. Does the Administration agree with cost
5 estimates that the Council came up with?

6 MR. PECHEFSKY: Yes, I'm David
7 Pechefsky from the City Council Finance Division, to
8 my right is my boss, Larian Angelo, Director of the
9 Division, and at this time the Administration hasn't
10 shared with us their fiscal impact.

11 As you know, the bill was amended
12 heavily since, there were many iterations of the
13 bill since the last time the Administration actually
14 provided a cost estimate, so at this time we don't
15 know.

16 COUNCIL MEMBER ODDO: Thank you, Madam
17 Chair.

18 CHAIRPERSON PROVENZANO: In looking at
19 the statement, I see that the section that talks
20 about the age of the child, which would start out at
21 seven, and then after the first year could possibly
22 go to six, has that been factored in? When you did
23 this assessment, were you basing it on a seven or
24 six, and at any place did you figure out what the
25 difference would be if we started at six, rather

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2 than seven, what the difference in the year
3 financially would be?

4 MS. ANGELO: Generally speaking, when
5 we do a fiscal impact, we try and do the most
6 conservative estimate. So, indeed, we assume that
7 the age of seven remained throughout the period of
8 the fiscal impact, even though we were aware that
9 the age could be lowered from seven to six by the
10 Department of Health. But we wanted to do a
11 conservative fiscal impact, so in fact it may
12 overestimate the cost slightly.

13 David, do you want to finish the
14 discussion?

15 MR. PECHEFSKY: Sure. The fact that
16 the age would be seven and under Intro. 101-A for
17 the first year, was what we used in projecting the
18 costs, and it was factored in in many areas, in
19 terms of HPD's inspections, and also in the amount
20 of remediation work that the City might have to do.

21 CHAIRPERSON PROVENZANO: So, the total
22 cost for the first year would be 31,604,664?

23 MS. ANGELO: That's correct.

24 CHAIRPERSON PROVENZANO: If we started
25 at age six, how much would that decrease? What is

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2 the exact figure that the difference between age six
3 and seven is costing us?

4 MR. PECHEFSKY: Well, about 4 million.

5 CHAIRPERSON PROVENZANO: About \$4
6 million.

7 MS. ANGELO: Arrived at on the
8 assumption that about 15 percent, that if you look
9 at zero to 18, the entire cohort, about 16 percent
10 of the cohort is in each age year. So the assumption
11 is it would lower the ongoing or the recurring cost
12 by that 15 percent.

13 CHAIRPERSON PROVENZANO: And do we
14 have any idea where, since you are our finance
15 person, our very good finance person, do we have any
16 idea where we're getting this more than \$31 million?

17 MS. ANGELO: The \$31 million, or the
18 cost of any bill is factored into the budget, and it
19 will simply become part of the costs of the budget,
20 of which there are many that arise during the course
21 of the year. For example, generally speaking, we
22 assume that we will have to put more money in the
23 budget for uniformed overtime, but seldom precisely
24 estimated, there's overspending in a variety of
25 agencies and underspending in some agencies, so it

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2 will become one additional cost, added to various
3 other additional costs that will arise during the
4 year in the budget.

5 CHAIRPERSON PROVENZANO: Do we have
6 any other questions?

7 Oh, we've also been joined by Council
8 Member Stewart, a member of the Committee,
9 Councilwoman Gale Brewer, and Council Member Leroy
10 Comrie.

11 Anybody else here that I didn't
12 catch?

13 Council Member Rivera.

14 COUNCIL MEMBER RIVERA: Thank you very
15 much, Madam Chair.

16 It states in here in the fiscal
17 impact paper that the City will recoup part of the
18 cost of the implementation; can you explain that
19 more for the record?

20 MR. PECHEFSKY: Sure. Part of the cost
21 of the bill is in remediation costs through the
22 City's emergency repair program. In circumstances
23 where the owner fails to correct a violation, the
24 City may end up doing the work, this is the case not
25 only for lead violations, but for other types of

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2 class C violations.

3 Generally speaking the City recoups
4 some of those costs from landlords, that's factored
5 into the bill. That's reflected as revenue, coming
6 back to the City.

7 COUNCIL MEMBER RIVERA: Oh, so that's
8 .4 --

9 MR. PECHEFSKY: Yes, that's part of
10 it. That number reflects, in part that number
11 reflects anticipation of City recouping part of ERP
12 costs over time.

13 COUNCIL MEMBER RIVERA: Got you. Thank
14 you.

15 CHAIRPERSON PROVENZANO: Council
16 Member Oddo.

17 COUNCIL MEMBER ODDO: Thank you, Madam
18 Chair.

19 Does the \$31 million figure in FY '05
20 include potential or cost of liability judgments
21 against the City?

22 MR. PECHEFSKY: No, because the fiscal
23 impact is limited in scope to direct cost to the
24 City, a cost that the bill more or less directly
25 causes the City to assume.

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2 COUNCIL MEMBER ODDO: Does the Finance
3 Committee have an estimate that they would like to
4 share with the Committee of what they anticipate
5 liability cost to be to the City?

6 MS. ANGELO: No, I don't believe, we
7 haven't done that estimate.

8 COUNCIL MEMBER ODDO: Is there a way
9 of attempting to calculate that?

10 MS. ANGELO: We will always do an
11 estimate of anything. We'll always find a way to do
12 a calculation. But that is not in the fiscal impact.

13 MR. PECHEFSKY: Let me just say also,
14 nor does the fiscal impact statement contemplate
15 whatever benefits, in terms of savings, there may be
16 in the longrun to the City from reducing lead
17 poisoning, for example, special education costs,
18 health savings and health care. It doesn't
19 anticipate that either, that's outside the scope of
20 the fiscal impact.

21 MS. ANGELO: I mean, generally
22 speaking, a fiscal impact is not done with something
23 called dynamic scoring.

24 There may be costs in the outyears
25 that beyond the three or four or five years that we

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2 estimate, and there may be savings in those three or
3 four years beyond.

4 But generally we limit it to direct,
5 straight-forward costs.

6 CHAIRPERSON PROVENZANO: But there is
7 the possibility that more landlords may not accrue
8 the cost themselves. You know, how did you figure
9 out how many buildings -- David is shaking his head.
10 He's been with me so long he knows the question I'm
11 going to ask, and I'm sure he does.

12 You know, obviously you said to
13 yourself, well, X amount of landlords are not going
14 to do it, so the cost will be on HPD. But how can
15 you do that, because you don't really know how many
16 landlords, you know, there could be twice that
17 amount.

18 MR. PECHEFSKY: We know based on HPD's
19 reports to the City Council how many landlords were
20 correcting the violations under Local Law 38, based
21 in part on the back and forth between HPD and the
22 IBO on previous versions of the bill, and we
23 estimate how many landlords, what the rate of
24 correction will be among landlords, and we estimate
25 that it is going to be somewhat lower than HPD

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2 reported in its reports to the Council, because of
3 some of the concerns that HPD raised about time
4 frames and so forth. So that is factored into the
5 cost, that the City may be assuming, may have to do
6 more remediation jobs.

7 CHAIRPERSON PROVENZANO: So that has
8 been factored in?

9 MR. PECHEFSKY: That has been factored
10 in, yes.

11 CHAIRPERSON PROVENZANO: Even
12 considering the fact that this bill has issues like
13 presumption which could possibly lead to landlords,
14 to property owners not getting insurance, which
15 could lead to more abandoned buildings, bla, bla,
16 bla, bla.

17 MR. PECHEFSKY: It doesn't factor in
18 that. In factors in the -- it looks to the
19 provisions that pertain towards the time frames that
20 owners have to do correction in, it looks at the
21 provisions regarding HPD inspections, it doesn't
22 follow the trail all the way, it doesn't make
23 assumptions about the financial conditions of
24 buildings over time.

25 CHAIRPERSON PROVENZANO: Thank you.

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2 Council Member Rivera.

3 COUNCIL MEMBER RIVERA: Thank you very
4 much again, Madam Chair.

5 I know we don't have in the fiscal
6 impact statement how much the City would save in
7 terms of special education and other associated
8 costs, but can we find, do we have a number? And,
9 also, can we find out how much the City would save
10 in terms of extra resources being given to kids that
11 are affected by lead in the future? Is there a way
12 to get that number?

13 MS. ANGELO: Yes. I'm sure we can take
14 a look at that in the Finance Division and we would
15 be happy to do that. But, again, it will not be
16 included in the fiscal impact, because, again, as we
17 cannot really speculate three or four, five years
18 down the road, how landlords may or may not change
19 their pattern of a remediation, we also can't
20 speculate on this cost savings of having healthier
21 kids.

22 COUNCIL MEMBER RIVERA: Thank you.

23 CHAIRPERSON PROVENZANO: Council
24 Member Perkins.

25 COUNCIL MEMBER PERKINS: Thank you

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2 very much, Madam Chair.

3 Let me just say, it has been pointed
4 out, however, that the cost to the, the social cost
5 to the City, when children are lead poisoned, is
6 about \$1.4 billion a year. I know you don't normally
7 in your fiscal impact statements look at that, but
8 as a way of helping my colleagues understand the
9 enormous amount of savings that we're talking about
10 by virtue of not having children poisoned, it's been
11 estimated by those who are experts in the field,
12 doctors, et cetera, that it's about \$1.4 billion.

13 Let me ask just so I'm clear, because
14 I know the question has come up, we don't normally,
15 and in my experience, I don't know if we've ever
16 anticipated the liability cost to the City when
17 we've given fiscal impact statements.

18 MS. ANGELO: Not to my knowledge, but
19 I'm working from memory here. So, at some point we
20 can go back and take a look, but I can't really
21 recall one.

22 COUNCIL MEMBER PERKINS: Thank you.

23 CHAIRPERSON PROVENZANO: Any other
24 questions?

25 Thank you, again. As always, you've

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2 done a great job.

3 MR. PECHEFSKY: Thank you.

4 CHAIRPERSON PROVENZANO: You have
5 before you that huge package, the negative
6 declaration. I don't know how many of you have even
7 taken a look at it, but this is a resolution that we
8 will have to vote on.

9 I'd like to call on Jeff Rotus, is he
10 somewhere? I'm sorry, that's my other Jeff. Jeff
11 Haberman, who has been lucky enough not to be
12 involved in this. Jeff Haberman, who I would like to
13 have him give kind of a brief, if that's at all
14 possible, analysis of this. A brief analysis, and
15 then we'll take questions from the Committee, or
16 whoever. See, that's how brief it's going to be.

17 And he's joined by Chris Collins.

18 MR. HABERMAN: Good morning. My name
19 is Jeff Haberman. I am Counsel and Deputy Director
20 of the Council's Infrastructure Division.

21 CHAIRPERSON PROVENZANO: Ralphie, I'm
22 not sure that mic is great.

23 MR. HABERMAN: Okay, is this better.

24 My name is Jeffrey Haberman. I'm
25 Counsel and Deputy Director of the Council's

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2 Infrastructure Division.

3 MR. COLLINS: And I'm Chris Collins.

4 I'm the Counsel and Deputy Director of the Land Use

5 Division and we have provided some level of

6 assistance in the environmental review issues for

7 the Infrastructure Division on this matter.

8 MR. HABERMAN: Under the State's, the

9 Environmental Quality Review Act, Article 8 of the

10 Environmental Conservation Law, local legislation is

11 considered to be an action and requires undertaking

12 an environmental analysis. That was done in this

13 case, the outcome of that analysis indicates that a

14 negative declaration is the appropriate outcome.

15 There are three possible outcomes, one is the need,

16 a positive declaration requiring an environmental

17 impact statement, a determination that there will be

18 no significant --

19 CHAIRPERSON PROVENZANO: I'm having

20 trouble hearing you.

21 MR. HABERMAN: Okay.

22 CHAIRPERSON PROVENZANO: Bring the mic

23 up. Okay.

24 MR. HABERMAN: There are a number of

25 possible outcomes under this review. One is that a

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2 positive declaration, that the action will have an
3 adverse, a significant adverse environmental impact,
4 requiring an environmental impact statement.

5 A potential outcome is that there is
6 no significant, going to be no significant adverse
7 environmental impact in which case a negative
8 declaration would be an appropriate outcome.

9 And the third possibility is if there
10 are some potential adverse impacts, but they can be
11 mitigated, then a possible outcome is a conditional
12 negative declaration.

13 The analysis before you was performed
14 consistent with the City Environmental Quality
15 Review Technical Manual, which sets out those items
16 that have to be, that should be examined, indicates
17 criteria that should be looked at, and indicates
18 what some recommendations on what constitutes
19 significance, or significant environmental, adverse
20 environmental impact.

21 For example, in Section 222, there's
22 a roster of the criteria for significance, such as
23 removal or destruction of large quantities of
24 educational forma, creation of a conflict with
25 community development plans, the impairment of a

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2 historical archeological resources, major change in
3 use of either quantity or type of energy, et cetera.

4 I think it's important to keep in
5 mind that this analysis is, most of the analyses,
6 are geared to what I would call the "built
7 environment," where some construction or physical
8 change is taking place.

9 MR. COLLINS: I think it's also
10 important for me to just add that, at its very core
11 environmental review is a disclosure process, it
12 doesn't necessarily give you a result. The intent of
13 environmental review is to inform you, the decision
14 makers, as to whether or not you want to take a
15 particular action in light of potential impacts that
16 have been identified in the analysis.

17 As you know, the earlier lead paint
18 bill was invalidated by the State's highest court of
19 the basis of what was deemed to be a flawed
20 environmental review, and, so, I believe the staff
21 of the Infrastructure Division has been particularly
22 cautious in making sure that all of the necessary
23 aspects of the legislation have been covered in this
24 review.

25 As Jeff mentioned, it was done in

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2 accordance with the requirements of the CEQR
3 Technical Manual, and the Threshold Review is
4 basically what's called an environmental assessment,
5 environmental assessment statement in which a series
6 of questions are asked and answered, and on the
7 basis of the answers and the analysis performed
8 pursuant to those regulations, a reasonable
9 conclusion can be reached that significant adverse
10 impacts would not be identified as a result of
11 taking this action.

12 MR. HABERMAN: The document before
13 you, the attachment to the environmental assessment
14 statement, has separate sections, each one
15 addressing -- each the attachment to the
16 environmental assessment statement, which is part of
17 this package, has a section that addresses each of
18 the areas that is recommended to be examined.

19 The analysis was that none of the
20 particular areas would result in a significant
21 adverse environmental impact and therefore the
22 recommendations that a negative declaration be
23 issued.

24 CHAIRPERSON PROVENZANO: Okay, thank
25 you.

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2 I'm going to ask the questions, but
3 I'd just like to comment, it kind of blows my mind
4 that we get a document like that at 4:30 last night,
5 and we're expected to look at it and explore it and
6 come up with questions, and I totally don't
7 understand that.

8 Also, you know, we've spent six
9 months and I can't tell you how many hours testimony
10 on lead and lead dust, and truthfully, I've only
11 glanced at this, and even if I read every word of
12 it, I would still not understand it.

13 It would probably take another six
14 months for you to explain to me what's in it.

15 But I totally don't understand how
16 we're talking about lead and lead dust, and we come
17 up with a negative declaration that says there's no
18 significant environmental impact, I just don't
19 understand that. I think I'm one of the few members,
20 it doesn't seem to bother too many other people.

21 Do we have any questions? Council
22 Member Oddo.

23 COUNCIL MEMBER ODDO: Thank you, Madam
24 Chair. And I would like to reiterate your point
25 about notice. I got this document from my staff late

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2 yesterday afternoon, and if you truly go through it,
3 or go through it the way it needs to be analyzed,
4 there really isn't sufficient a time to do that and
5 to vote intelligently today, but apparently that's
6 what we're being asked to do.

7 Gentlemen, who actually wrote this?

8 MR. HABERMAN: Most portions of it I
9 wrote. I wrote it.

10 COUNCIL MEMBER ODDO: And Jeff, you
11 and I have been colleagues and worked together for
12 12 years now, so you're very good at what you do,
13 you've written negative decs before.

14 MR. HABERMAN: I have a number of
15 times, on a number of occasions.

16 COUNCIL MEMBER ODDO: Okay.

17 Was there a negative dec written for
18 Local Law 38?

19 MR. HABERMAN: There was. However, I
20 was not a participant in the Local Law 38 enactment
21 process, but I do have a copy of the negative
22 declaration with me.

23 COUNCIL MEMBER ODDO: Without casting
24 blame on anyone, do we know who wrote the negative
25 dec back then?

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2 MR. HABERMAN: A member of staff.

3 COUNCIL MEMBER ODDO: Okay.

4 Are they still employed on the
5 Council's staff?

6 MR. HABERMAN: They are.

7 COUNCIL MEMBER ODDO: And they weren't
8 involved in this one at all?

9 MR. HABERMAN: They were.

10 COUNCIL MEMBER ODDO: Okay. I'll tell
11 you why I'm troubled. The Council just passed six
12 down-zonings on Staten Island, three in Council
13 Member McMahon's district and three in my district,
14 and that process was delayed because we were told
15 that we had to do a full-blown EIS, and in that
16 study we had to look at the economic impact
17 down-zoning these communities, not only on Staten
18 Island, but Citywide. And it just strikes me that in
19 that situation we had to do a full-blown EIS, and
20 here we're saying that there's a negative dec to do
21 an EIS for this lead bill, and I have to be honest
22 with you, I can't get my arms around those two
23 facts.

24 It would seem to me that the scope of
25 this bill is as great as, or if not greater than

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2 down-zoning applications. Is it surprising to you
3 gentlemen, having completed this analysis, that it
4 is a negative declaration?

5 MR. HABERMAN: No, because the
6 hallmark of a negative declaration is that there is
7 no significant adverse environmental impact. Not
8 that there would be no impact at all, and I think
9 the analysis bears out that there will not be a
10 significant adverse environmental impact.

11 COUNCIL MEMBER ODDO: Again, Madam
12 Chair, I went through the document not as closely as
13 I would like to be able to, but there are a few
14 things that jump at me that I would like to be able
15 to ask, if that's okay?

16 On page two of the text there is a
17 paragraph that says "an issue that must be noted is
18 whether the dictates of the proposed law will result
19 in owners either withholding dwelling units from the
20 rental market, decline to rent those dwelling units
21 to families with children of applicable age so as to
22 avoid the obligation to comply, or abandoning
23 residential buildings subject to the provisions."

24 And then later on it says that "there
25 was no testimony by owners to that effect." And it

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2 says, "it's reasonable to assume for the purposes of
3 this analysis that owners will not intentionally
4 violate this law."

5 Does that mean that the expectation
6 of you folks is that Mr. Hoffman was going to come
7 in and testify and some of his colleagues, that they
8 were going to come in and testify before the Council
9 because of this bill they were going to violate the
10 law, and we expected them to come here and say that,
11 and in absence of them saying that, it's not an
12 issue?

13 MR. COLLINS: No, I don't think that
14 that's the case at all, Councilman. I think that
15 it's reasonable to assume that people will obey the
16 law, and the purpose of this section was simply to
17 indicate that this was a subject that was considered
18 and reviewed, but that the reasonable conclusion is
19 that people will obey the law.

20 But it in essence was, as I said
21 before, it was sort of to flag this as a potential
22 issue for you, the decision-makers, to take into
23 account.

24 COUNCIL MEMBER ODDO: The reasonable
25 conclusion based on the testimony or lack of

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2 testimony, or the reasonable conclusion based on
3 something outside of what happened in the hearings?

4 MR. COLLINS: The reasonable
5 conclusion based on the analysis that was conducted,
6 including the testimony.

7 COUNCIL MEMBER ODDO: Back on page
8 one, there is the sentence under the Land Use,
9 Zoning and Public Policy paragraph, where it says,
10 "consequently the proposed action is not expected
11 to have significant effect on Land Use, Zoning or
12 other Public Policy, such as urban renewal plans,"
13 et cetera.

14 Is that statement consistent with the
15 testimony of Mr. Lappin and some of the folks from
16 the affordable housing industry?

17 MR. HABERMAN: It is if you examine
18 the CEQR Technical Manual, which was the guidance
19 document for preparing environmental analyses. It
20 points to --

21 CHAIRPERSON PROVENZANO: Jeff, you
22 have to talk into the mic.

23 MR. HABERMAN: It points to certain
24 things that should be examined, such as the impact
25 it might have on urban renewal plans, on the

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2 comprehensive waterfront plans, on Solid Waste
3 Management Plan, Business Improvement Districts,
4 City maps, the activities that will be required were
5 proposed Intro. 101-A to be enacted, I don't believe
6 would have any bearing, would have any adverse
7 impact on those other policies.

8 COUNCIL MEMBER ODDO: But that's not
9 your opinion, and that's not consistent with what
10 the testimony was that we've heard from Mr. Lappin
11 and other folks in the affordable housing industry.
12 So, how do we come to that conclusion, when that
13 conclusion is not consistent with some of the
14 testimony that we heard?

15 MR. COLLINS: For purposes of
16 environmental review about the state law and City
17 law, operate under the assumption that people will
18 obey the law. I think that's the clearest way I can
19 answer that, Councilman.

20 MR. COLLINS: Fair enough. I
21 appreciate that, but when there is testimony, I
22 don't want to say to the contrary, but testimony
23 that raises that issue and raises questions about
24 that issue, I think it's sort of a leap, frankly I
25 think we reached the conclusion and we try to work

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2 backwards, despite the testimony be damned.

3 But let me ask you about another
4 point related to that. On page three, the first full
5 paragraph that begins, "concern expressed at the
6 hearings..." The last sentence says, "however, it is
7 believed that no testimony was received on this
8 issue..." and they're talking about insurance, "...
9 or issue from any representative of an insurance
10 company as to whether insurance would remain
11 available and at what rates. While the unintended
12 consequence spoken of may happen, it's speculative
13 and not yet possible to quantify."

14 I appreciate the fact that we didn't
15 have any testimony from the insurance industry and
16 the Counsel and the Chair mentioned the fact that
17 the insurance industry was invited and apparently no
18 one attended, but is it incumbent upon us to sort of
19 explore this issue in greater detail, considering
20 that this was the heart of the hearings? Should we
21 have engaged in some sort of study, some sort of a
22 more comprehensive look to determine if in fact this
23 is a genuine issue, instead of simply saying it may
24 happen, it's speculative and we can't quantify it?

25 Because if we analyze it in more

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2 detail, perhaps the ultimate decision of a negative
3 deck would not, you know, would not have been
4 reached.

5 MR. HABERMAN: Well, two comments. One
6 is, it was in fact some testimony to the contrary,
7 and there was, you'll also note, that there is at
8 least one organization that maintains on their
9 website of insurance companies that do provide
10 insurance coverage, but more importantly, and so
11 there was some contravailing testimony, it's also
12 important to keep in mind that the analysis is
13 designed to measure proposed Intro. 101-A against
14 the existing law, and the existing law is Local Law
15 1, which is a full abatement requirement, and so,
16 that's the nature of the analysis, and so it was in
17 that comparison that this analysis was done.

18 COUNCIL MEMBER ODDO: Let's take it
19 one at a time. First, with respect to testimony on
20 this issue, we had one individual testify and really
21 what she testified to, about hard and soft insurance
22 markets, and I think her testimony, when you balance
23 it out against individuals who spoke who were
24 practitioners, who were owners, who I think had more
25 hands-on dealings with insurance here in New York

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2 City, I think her testimony frankly didn't measure
3 up.

4 Your second point, that the standard
5 that we're using is Local Law 1, could you explain
6 that in just a little bit more detail?

7 MR. HABERMAN: On July 1st of this
8 year, the Court of Appeals issued a decision
9 invalidating Local Law 38 of 1999.

10 COUNCIL MEMBER ODDO: Correct.

11 MR. HABERMAN: The Court, in its
12 decision, the Court in its decision explicitly
13 stated that, and I'm reading from page 15 of the
14 slip opinion, "the parties recognized that by
15 operation of law, our validation of Local Law 38
16 revives Local Law 1. And so that became the baseline
17 for the analysis.

18 COUNCIL MEMBER ODDO: Is that your
19 interpretation of what the basis should be, Local
20 Law 1?

21 Clearly, I understand the judge's
22 decision, but is that staff's interpretation that
23 the baseline here is not what was on Local Law 38
24 but should be on Local Law 1?

25 MR. HABERMAN: Well, the Court made it

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2 very clear that Local Law 38 no longer exists as a
3 legal mechanism.

4 COUNCIL MEMBER ODDO: Understood.

5 MR. HABERMAN: Number two, the nature
6 of an environmental analysis is to compare what one
7 believes the actions might accomplish against what
8 the existing conditions are.

9 The existing condition quite clearly
10 is Local Law 1.

11 COUNCIL MEMBER ODDO: The existing
12 conditions in terms of getting insurance right now
13 --

14 MR. HABERMAN: No, I'm sorry.

15 COUNCIL MEMBER ODDO: Because that's
16 the issue we're talking about, getting insurance.
17 And I would say that it's not, because the insurance
18 these folks probably have is based for policies
19 based on Local Law 38.

20 MR. HABERMAN: I don't know that to be
21 a fact. And that wasn't the nature of the analysis.

22 COUNCIL MEMBER ODDO: Okay.

23 MR. HABERMAN: It was measured against
24 Local Law 1.

25 MR. COLLINS: If I could just add some

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2 to that?

3 COUNCIL MEMBER ODDO: Yes.

4 MR. COLLINS: The courts consistently
5 have said for purpose of environmental review what
6 you need to have is a reasonably elaborated
7 analysis. You need to look to various issues that
8 the law requires you to analyze.

9 That doesn't mean that you as one of
10 the decision-makers may not come to a different
11 conclusion based on other testimony or just your
12 belief of other factors, and, so, I understand the
13 basis of your question, based on certain testimony
14 that was received in the course of the Committee's
15 hearing, but for purposes of this environmental
16 review and its validity, I believe that the analysis
17 is adequate on the issue.

18 COUNCIL MEMBER ODDO: Fair enough. Let
19 me just ask you a procedural question.

20 This document is to reflect testimony
21 solely, or you factor in making your decision about
22 a negative dec outside information that didn't
23 happen within the four walls of City Hall?

24 MR. COLLINS: Your decision as the
25 decision-makers on this legislation --

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2 COUNCIL MEMBER ODDO: Well, your
3 recommendation let's say.

4 MR. COLLINS: No, may take into
5 account any number of factors, your life experience,
6 the testimony you heard, your knowledge and any
7 research that you've done.

8 COUNCIL MEMBER ODDO: But how do we
9 have a resolution in front of us that encourages a
10 negative dec?

11 MR. COLLINS: Because by following the
12 dictates of the technical manual, the analysis of
13 the various required categories was conducted by
14 staff. There was a resolution introduced.

15 COUNCIL MEMBER ODDO: Again, but the
16 analysis is analysis of testimony only, or analysis
17 of outside --

18 MR. COLLINS: It's an analysis of
19 subject matter.

20 COUNCIL MEMBER ODDO: Which is outside
21 the testimony?

22 MR. COLLINS: It could include the
23 testimony.

24 COUNCIL MEMBER ODDO: Okay.

25 MR. COLLINS: Only I think there are

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2 references and footnotes to the various witnesses at
3 the various hearings.

4 COUNCIL MEMBER ODDO: Fair enough.

5 MR. COLLINS: So it's a fairly broad
6 review, and the sources of your information can be
7 varied.

8 COUNCIL MEMBER ODDO: Okay. Madam
9 Chair, two questions. Two last questions.

10 I think I see an inconsistency in J
11 hazardous materials and Q air quality, and correct
12 me, please.

13 In J it says the action essentially
14 involves activities principally in the interior of
15 the subject of the buildings, therefore there is no
16 further need to consider hazardous materials in
17 exterior areas. Later on we talk about an air
18 quality. The last sentence, this may result in the
19 generation of more particle matter, but the increase
20 cannot at this time be quantified.

21 Is there any inconsistency there?

22 MR. HABERMAN: I don't believe so. The
23 discussion about particulate matter was directed at
24 the work that would be performed in the interiors of
25 the building, and so I don't believe that there is

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2 any inconsistency there.

3 COUNCIL MEMBER ODDO: One last
4 question, Madam Chair. How long did it take to write
5 this document?

6 MR. HABERMAN: Over what period? Are
7 you asking over what period of time? How many hours?

8 COUNCIL MEMBER ODDO: From the first
9 time a pen went to paper, give me an hour of
10 actually writing, or give me a time period, I'll
11 take both. Actual writing, time period of analyzing
12 and putting it together.

13 MR. HABERMAN: Well, I didn't maintain
14 a log.

15 COUNCIL MEMBER ODDO: Understood. An
16 estimate.

17 MR. HABERMAN: An estimate? It was
18 done over the course of weeks, I would say as the
19 bill was evolved, and the bill went through many
20 iterations, there were meetings, there were
21 hearings, I couldn't tell you the first moment that
22 I put finger to keyboard, but it was over a
23 substantial period of time.

24 COUNCIL MEMBER ODDO: Gentlemen, thank
25 you. I appreciate your professionalism.

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2 CHAIRPERSON PROVENZANO: Did you get
3 an answer?

4 COUNCIL MEMBER ODDO: It took a long
5 period of time, and the point of my asking that
6 question is to reaffirm your initial point that we
7 have a document that is a threshold issue, it was
8 given to us at 4:00 in the afternoon, it's obviously
9 very technical, but less than 18 hours later we're
10 supposed to sit here and vote intelligently on the
11 document. And as you can see from my questions,
12 they're very technical and you can interpret it
13 different ways, and I think it's quite disturbing
14 and unnerving to have to vote on a document that
15 took weeks to prepare with such short notice.

16 CHAIRPERSON PROVENZANO: I would just
17 like to pursue that point a little bit. I know that
18 you spent a lot of time on the bill itself, but I'm
19 not so sure -- see, I have a different point of view
20 than James. I'm not so sure that as much time was
21 spent on the negative declaration. So, I think, you
22 know, I think if you search your mind you could
23 probably understand or decide or think about at what
24 point you actually started working on this dec? Was
25 it a week ago? Was it three days ago? I mean, on the

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2 actual document. Because anything that preceded that
3 had to do with the legislation more than it did with
4 this resolution. And the reason I'm asking this is,
5 Councilman Oddo is kind of comparing that it took
6 you such a long time, and you came up with this
7 document, and we're asked to in 15 or 20 minutes to
8 vote on it. My point is, I don't think enough time
9 was spent on this document. And I think if more time
10 had been spent we may be sitting here with a
11 different result. So that's why I'm asking the
12 question.

13 MR. HABERMAN: Again, I couldn't give
14 you a precise time, but you also have to keep in
15 mind that the nature of the analysis is such that
16 one reads material, reads the testimony, hears the
17 testimony, talks to people, and there's a period of
18 time where one gathers information, gathers
19 knowledge about the analysis, that's relevant to the
20 analysis, without necessarily reducing that to
21 writing.

22 CHAIRPERSON PROVENZANO: I'm not going
23 to get my answer.

24 Okay, I would just like to answer a
25 question for you, Council Member Oddo. You asked who

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2 the person was that did the negative impact on Local
3 Law 38? She is here, she's still employed, and it's
4 Terzah Nasser.

5 Council Member Comrie.

6 COUNCIL MEMBER COMRIE: That last
7 statement kind of answered part of my question. I
8 was not aware that this Council itself had the
9 authority to do environmental impact statements. Can
10 you give me some briefing on how that authority is
11 enacted and what that process is that the Council
12 has an authority to do an environmental impact
13 statement?

14 MR. HABERMAN: Well, let me backtrack.
15 The Council has legal obligation when it enacts
16 legislation to undertake an environmental analysis.

17 Article 8 of the State Environmental
18 and Conservation Law and the regulations that were
19 promulgated thereunder impose that legal obligation
20 by defining local legislation as an action that
21 requires the environmental examination.

22 COUNCIL MEMBER COMRIE: Is there a
23 process or a document that has to be submitted to
24 the State or any environmental agency before it's
25 submitted?

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2 MR. COLLINS: This determination, the
3 negative declaration, and similarly, if it had been
4 a positive declaration, the CEQR rules require that
5 these documents be made available to the public and
6 that they be circulated to the State DEC and a
7 variety of other City/State agencies.

8 COUNCIL MEMBER COMRIE: And will any
9 of those state agencies have a chance, did any of
10 those state or City agencies have a chance to see
11 this document, this present document, to voice an
12 opinion on it one way or another?

13 MR. COLLINS: No, it's simply a
14 distribution. It's not a public hearing requirement,
15 it's not a comment period requirement similar that
16 one would have if there was a full-blown
17 environmental review. It's a notice requirement.

18 COUNCIL MEMBER COMRIE: It's a notice
19 requirement.

20 MR. COLLINS: Yes.

21 COUNCIL MEMBER COMRIE: So, in fact, a
22 different agency could look at this document and
23 come back with a different decision, or --

24 MR. COLLINS: It's not a decision.
25 They could perhaps have a different opinion or

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2 express a view, but the obligation to conduct
3 environmental review under the law is imposed upon
4 what's called the lead agency, and for purposes of
5 adoption of local laws, the lead agency is either
6 City Council and/or the Mayor's Office, or the
7 Council may, by giving notice to the Mayor's Office,
8 assume lead agency status by itself, which is what
9 the Council did with regard to this particular
10 analysis.

11 COUNCIL MEMBER COMRIE: And in
12 drafting this analysis, you said that it's, the word
13 you used, this is an opinion, this is an opinion of
14 the Council based on information that was presented
15 to it?

16 MR. COLLINS: The law requires that
17 certain categories of subject matter be analyzed,
18 and the courts have required that that analysis be
19 what they call reasonably elaborated, and that's a
20 standard that probably, it's not all that clearly --
21 it's not defined in the staff sheet, but I think if
22 one reads the court cases, you will see whether or
23 not the analysis has been sufficiently elaborate.

24 COUNCIL MEMBER COMRIE: And this was
25 done by our standard template that is consistent

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2 among any agency or any authorizing body that would

3 have --

4 MR. COLLINS: Yes.

5 COUNCIL MEMBER COMRIE: And it's done
6 in whatever the scientific matter or specific matter
7 or whatever those rules and regulations are?

8 MR. COLLINS: There is a technical
9 manual that provides guidance toward the analysis of
10 the subject matter in each of the categories.

11 COUNCIL MEMBER COMRIE: And does any
12 part of that technical manual require actual
13 scientific investigation, in order to bring about
14 this analysis, or environmental, actual
15 environmental investigations?

16 MR. HABERMAN: Some portions of it
17 might. It depends on the analyses that you
18 undertake, and the examination of the criteria that
19 must be examined.

20 COUNCIL MEMBER COMRIE: Okay.

21 MS. BENJAMIN: Maybe I can provide a
22 fuller answer to that.

23 My name is Gale Benjamin. I'm the
24 Director of Land Use, but in my past life I was the
25 Director for the City, along with City Planning of

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2 the City Environmental Quality Review.

3 The CEQR manual lays out a series of
4 subject areas in which you must take a hard look,
5 and it defines the way in which you take a hard
6 look. If you take a hard look and you come to
7 certain conclusions, you stop there. The CEQR manual
8 determines there is no significant impact if you do
9 not reach the thresholds, based on the analysis they
10 suggest you do.

11 So, it is only if you exceed the
12 threshold that you go on to the more detailed
13 review.

14 COUNCIL MEMBER COMRIE: And what
15 determines the threshold?

16 MS. BENJAMIN: The CEQR threshold lays
17 out the threshold for each one of the review areas.
18 Let's say in traffic it may say that if the action
19 would not cause an increase of more than 20 cars in
20 the peak hour, there is not going to be an impact
21 and you just write it off.

22 COUNCIL MEMBER COMRIE: And that's
23 tested by someone being in the field at a certain
24 point?

25 MS. BENJAMIN: No, there are other

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2 technical manuals that the City uses and that the
3 manual suggests in coming up with how many vehicles
4 might be expected, if any.

5 COUNCIL MEMBER COMRIE: Okay.

6 MS. BENJAMIN: The highway capacity
7 manual is one, and there were several others.

8 COUNCIL MEMBER COMRIE: In other
9 words, this is compiled by looking at material and
10 reviewing material as opposed to actual physical --

11 MS. BENJAMIN: That's correct.
12 Generally it is only once, if you exceed the
13 threshold, that you get into more involved reviews
14 that might involve going out into the field and
15 counting cars or putting noise monitors at
16 locations. It's only once you exceed the thresholds
17 that you get to that level of study.

18 COUNCIL MEMBER COMRIE: Madam Chair,
19 I'll defer. I'll make a statement a little bit
20 later.

21 I would agree with your statement and
22 Councilman Oddo's statement, to determine, this kind
23 of determination with this type of time creates
24 unreadiness.

25 Thank you.

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2 CHAIRPERSON PROVENZANO: Thank you.

3 Council Member Brewer.

4 COUNCIL MEMBER BREWER: Thank you.

5 This is my ignorance. My first question, and maybe
6 you answered it, because we're going back and forth
7 with General Welfare, and we were downstairs on
8 General Welfare matters, is I'm so used to
9 environmental impact statements regarding
10 development, hard bricks and mortar.

11 I just want to understand, how are we
12 fortunate to have this wonderful document based on
13 this?

14 Is it because of the nature of the
15 combination of forces in terms of the lead
16 environment as an issue, and I just don't understand
17 it. So somebody explain it.

18 MR. COLLINS: The environmental review
19 that was undertaken with regard to the proposed
20 legislation is the same as would be undertaken for a
21 development project in your district, Council
22 Member. The thresholds were not met, therefore, the
23 full-blown environmental impact statement is not
24 triggered in this analysis.

25 COUNCIL MEMBER BREWER: All right, I

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2 sort of understand that.

3 The other question I had was, in the
4 beginning pages, there was a mention, when you're
5 talking about J-51 of some federal programs that may
6 or may not have been used by the City of New York, I
7 think it's on page three, and it talks about some
8 HUD programs that make grants available; is that
9 something that has been used, maybe not to its
10 fullest potential?

11 MR. HABERMAN: It has been used, and
12 HPD currently has an application pending for
13 additional grant funding.

14 COUNCIL MEMBER BREWER: Is that
15 something that has been available in the past, but
16 we don't know how much has been used but we know
17 that it could help mitigate some of this concern
18 about cost?

19 MR. HABERMAN: I don't recall precise
20 numbers, but HPD has a grant application that I can
21 make available to you.

22 COUNCIL MEMBER BREWER: Okay. All
23 right.

24 And the other thing is, in here I'm
25 sure that it's not that I have -- I read this

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2 quickly, but not completely, as I should have, is
3 that does this document describe kind of the process
4 that's involved? If one is in a building where
5 there are many windowsills, obviously one of the
6 concerns of the agency and I guess the industry is
7 the cost of maintaining a lead-free environment;
8 that's what seems to be one of the issues.

9 MR. HABERMAN: Well, the bill doesn't
10 require a lead-free environment, as did Local Law 1,
11 it requires a lead-safe environment.

12 COUNCIL MEMBER BREWER: So, a
13 lead-safe environment, and windowsills would be part
14 of that in terms of what they could produce,
15 correct?

16 MR. HABERMAN: Yes.

17 COUNCIL MEMBER BREWER: All right.

18 So one of the claims, of course, is
19 that this would be a bill in which there's not
20 enough trained staff, and, you know, I'm one of
21 these people who believes actually that sometimes
22 pushing on deadlines is a good thing because that
23 helps all of us. If we're pushing for deadlines that
24 are perhaps faster than normal for inspections, that
25 might help us with other ways in which there are

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2 challenges, and the agencies would have to perform.

3 So that might help all people living
4 in residential housing. But my question is, what in
5 this document talks about some ways in which the
6 challenges of time and maintaining a safe
7 environment can be met?

8 MR. HABERMAN: Well, the discussion in
9 the public health section is a discussion of
10 proposed Intro. No. 101-A as compared to Local Law
11 1, in terms of what work has to be done, the work
12 practices that have to be maintained, and I think
13 that addresses your question.

14 COUNCIL MEMBER BREWER: Okay. And does
15 that sort of indicate that there are ways in which
16 they could be done that are not particularly
17 onerous, despite what we heard from testimony from
18 the industry?

19 MR. HABERMAN: There are depending on
20 the circumstances of the work being done, there are
21 a variety of mechanisms that will be employed to
22 conduct the work. It depends on the size of the
23 work, there are different training requirements for
24 the workers who perform the work, in part depending
25 on the size of the work, that has been left

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2 principally to agency rule-making but with guidance
3 in the statute to the agencies, and I think that the
4 bill accommodates those concerns.

5 COUNCIL MEMBER BREWER: Okay, thank
6 you very much.

7 CHAIRPERSON PROVENZANO: Do we have
8 any other questions? No. Then we should be able to
9 take a vote on this resolution, which is, we have to
10 do the resolution first. I love when people ask
11 what's the resolution?

12 COUNCIL MEMBER ODDO: Madam Chair?

13 CHAIRPERSON PROVENZANO: Council
14 Member Oddo.

15 COUNCIL MEMBER ODDO: May I make a
16 motion to introduce an amendment, actually two
17 amendments to 101-A?

18 CHAIRPERSON PROVENZANO: Go right
19 ahead.

20 COUNCIL MEMBER ODDO: "The legal
21 standards of liability this bill creates makes it
22 easier to sue property owners, even highly
23 responsible ones. This will jeopardize the ability
24 to obtain the necessary proper liability insurance
25 that all rehabilitation investors rely upon,

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2 expanding the liability to presume that all pre-1960
3 buildings have lead paint for purposes of tort law
4 would, we believe, be interpreted by insurers as
5 providing too fertile a ground for endless
6 litigation. We believe that this is unnecessary and
7 counterproductive."

8 That is not my language. That is the
9 language of Michael Lappin, who is the President of
10 a not-for-profit community preservation corporation.

11 "To the extent that Intro. 101-A
12 will make the rehabilitation process harder, it is
13 likely to slow the process of making our City lead
14 safe." Again, not my language. That is the language
15 of the Commissioner of HPD Jerilyn Perine.

16 I would like to place on the floor an
17 amendment of subdivision A of Section 27-2056.5 so
18 that it would read, "in any multiple dwelling
19 erected prior to January 1, 1960, it shall be
20 presumed that the paint or other similar surface
21 coating material in any dwelling unit where a child
22 of applicable age resides or in the common areas is
23 lead-based paint solely for the purpose of this
24 article. The presumption established by this section
25 may be rebutted by the owner of a dwelling, or

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2 dwelling unit by submitting to the Department a
3 sworn written statement by the owner supported by
4 lead-based paint testing or sampling results. A
5 sworn written statement by the person who performed
6 the testing if performed by an employee or agent of
7 the owner, and such other proof as the Department
8 may require.

9 Testing performed to rebut the
10 presumption may only be performed by a person who
11 has been certified as an inspector or risk assessor
12 in accordance of sub parts L and Q of Part 745 and
13 Title 40 of the Code of Federal Regulations, or any
14 successor regulations. The determination as to
15 whether such proof is adequate to rebut the
16 presumption established by this section shall be
17 made by the Department."

18 That's the first one, and I believe
19 it's been distributed, or will be distributed to the
20 members of the Committee.

21 The second amendment that I'm putting
22 forth would amend subdivision A of Section 27-2056.4
23 regarding the owner's responsibility to notify
24 occupants and to investigate.

25 It would read: "In any dwelling unit

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2 in a multiple dwelling erected prior to January 1st,
3 1963, where the owner had actual knowledge that a
4 child of applicable age resides in any dwelling unit
5 in a multiple dwelling on or after January 1st,
6 1960, and before January 1st, 1978, where the owner
7 has actual knowledge that a child a child of
8 applicable age resides and the owner has actual
9 knowledge of the presence of lead-based paint, and
10 in the common areas of such multiple dwellings, the
11 owner shall cause an investigation to be made for
12 peeling paint, chewable surfaces, deteriorated
13 subsurfaces, friction surfaces and impact surfaces.

14 Such investigation shall be
15 undertaken at least one year and more often if
16 necessary, such as when in the exercise of
17 reasonable care an owner actually knows" -- deleting
18 "or should have known" -- "of a condition that is
19 reasonably foreseeable to cause a lead-based paint
20 hazard, or an occupant makes a complaint concerning
21 a condition that is likely to cause a lead-based
22 paint hazard or request an inspection where the
23 Department issues a notice of violation or orders a
24 correction of violation that is likely to cause a
25 lead-based paint hazard. The owner shall ascertain

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2 where the child resides therein pursuant to the
3 requirements of this section."

4 CHAIRPERSON PROVENZANO: Council

5 Member Oddo, I've been informed that the amendment
6 must -- you have to re-read it, because we have to
7 do it before we vote on the legislation.

8 We're going to vote on the negative
9 dec now, since they claim that I already called it,
10 we'll vote on that, then you could reintroduce the
11 amendment before we vote, okay?

12 We're going to vote on the negative
13 declaration. Apparently they seem to think those
14 powers that are floating around in this room, that I
15 already called the vote. So, we will be voting on
16 the resolution which is preconsidered, so it doesn't
17 have a number, but it's the resolution that,
18 resolution finding that enactment of proposed Intro.
19 No. 101-A does not have a significant adverse impact
20 on the environment, and it's consistent with the
21 State Environmental Quality Review Act.

22 That is what we will be voting on.
23 And after that, we can have Council Member Oddo once
24 again introduce his amendment.

25 COUNCIL CLERK: Provenzano.

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2 CHAIRPERSON PROVENZANO: After
3 listening to the testimony given to us by our
4 Council staff, which I pretty much have to go by,
5 since I do admit I haven't read this enormous
6 document, I've come up with several conclusions.

7 One is possibly that the template or
8 the format that's used that ends up in this negative
9 dec or positive dec should be revisited. Whoever the
10 folks are that have set this up, I don't know when
11 it was done, I don't know how many years ago, but
12 maybe we need a different kind of format to follow
13 when we do these things.

14 It appears to me that this whole
15 negative dec is quite iffy, it's based on a lot of
16 assumptions, and I think that something as important
17 as this issue should be considered in a whole other
18 way. I don't think they're anticipating problems
19 that could occur, I don't know maybe they're not
20 supposed to do that, but it appears to me that's not
21 happening, and if this is the opinion of our New
22 York City Council, I have a different opinion.

23 I vote no.

24 COUNCIL CLERK: Rivera.

25 COUNCIL MEMBER RIVERA: I vote aye on

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2 the resolution.

3 COUNCIL CLERK: Reyna.

4 COUNCIL MEMBER REYNA: Aye on the
5 resolution.

6 COUNCIL CLERK: Avella.

7 COUNCIL MEMBER AVELLA: Aye.

8 COUNCIL CLERK: Brewer.

9 COUNCIL MEMBER BREWER: I vote aye,
10 and I'm going to state parenthetically that I wish
11 we had this kind of discussion on every bill that we
12 vote on, I vote aye.

13 COUNCIL CLERK: Comrie.

14 (No response.)

15 COUNCIL CLERK: Fidler.

16 COUNCIL MEMBER FIDLER: Madam
17 Chairwoman, may I be briefly excused to explain my
18 vote?

19 CHAIRPERSON PROVENZANO: Yes.

20 COUNCIL MEMBER FIDLER: I am also
21 extremely troubled by getting a document that's
22 longer than any term paper I had to write in college
23 or law school. I got it this morning, and I think it
24 raises extraordinarily weighty issues that I just
25 don't fully feel that I'm conversant with.

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2 Nonetheless, I understand even in a
3 limited way that I do, the issue of needing either a
4 negative dec or an EIS and then the process of
5 amending bills that are on the floor, in some
6 limited way, and I see this vote really as being one
7 of process and not really of substance, because if
8 we were looking at the substance of it I would be
9 totally unequipped to vote.

10 I am one that does not elevate
11 process over substance, and as unhappy as I am and
12 as slighted as I feel in terms of having had an
13 opportunity to truly read, reflect and understand
14 this document. I am not going to elevate process
15 over substance and so therefore I am going to vote
16 yes. But I really think this is the kind of thing we
17 need to avoid, and I think we are probably in ways
18 that those who are strongly advocating for 101-A
19 have shot ourselves in the foot, because I am sure
20 that whatever we do here and whatever we do on
21 Monday will not be the end of this issue, and I'm
22 sure others will look at what we did here, how we've
23 done it, and whether or not we've done it in a
24 proper way, with a very jaundiced eye.

25 Since we've been discussing 101-A for

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2 the better part of the year, maybe longer, perhaps
3 it would have been nice to have this document with
4 an opportunity to discuss it and understand it much
5 more fully, so therefore I vote yes with some
6 reluctance.

7 COUNCIL CLERK: Jackson.

8 COUNCIL MEMBER JACKSON: Aye.

9 COUNCIL CLERK: Katz.

10 COUNCIL MEMBER KATZ: Madam Chair, to
11 explain my vote?

12 I just want to tag onto what
13 Councilman Fidler said, I mean this is a matter of
14 substance or procedure and the fact of the matter
15 is, 101-A has been around for an awfully long time,
16 we have had briefings upon briefings. We have had
17 diagnosis upon diagnosis and stat upon stat on this
18 piece of legislation. It would have been nice to get
19 this impact statement or this document earlier than
20 last night, yes. But I am pretty convinced that most
21 of the questions that I had on the topic had been
22 answered really before today, and on that note, I
23 will vote aye.

24 COUNCIL CLERK: Stewart.

25 COUNCIL MEMBER STEWART: Madam Chair,

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2 can I be excused to explain my vote.

3 I feel that we have been given a rush
4 job. I feel at this last moment to be given
5 information that is incomplete and having to make a
6 decision, I think something smells and it doesn't
7 smell good.

8 And with that in mind, I abstain from
9 voting, Madam Chair. Because until we can get
10 clearcut information that would lead us one way or
11 the other, that will make us do the things that lead
12 us to the best interest of the children of the City
13 of New York, I think we are doing the wrong thing. I
14 think what we need to do is take some more time,
15 include all the players and come up with a bill and
16 an understanding that will affect in a positive way
17 the children of New York.

18 Why should it be that one has to lose
19 and the other has to win? Why can't we have a
20 win/win situation? Why is it that some people are
21 being left out in the negotiation? Why is it that we
22 go down this road and have animosity among
23 ourselves.

24 I think it's important that whatever
25 bill they whatever bill we create, a bill that will

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2 affect in a positive way, a bill that assists in a
3 positive way everyone. With that in mind, I will
4 abstain from voting.

5 COUNCIL CLERK: Oddo.

6 CHAIRPERSON PROVENZANO: Just a
7 moment. You do realize that we're voting on the
8 resolution, we're not voting on the bill?

9 COUNCIL MEMBER STEWART: But at the
10 same time, Madam Chair, I feel I need more time to
11 assess on this resolution, based on what the
12 witnesses were saying awhile ago. We need to get
13 more information.

14 CHAIRPERSON PROVENZANO: Okay. Thank
15 you.

16 COUNCIL CLERK: Oddo.

17 COUNCIL MEMBER ODDO: May I be
18 temporarily excused to explain my vote?

19 Let me just start out by saying that
20 I appreciate the testimony of the two witnesses, and
21 I appreciate the fact that they said that hours and
22 weeks went into this document, but from where I sit,
23 from day one we reached a conclusion, and we've been
24 working backwards. The cart here was the negative
25 dec, and the horse were the facts that should

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2 determine whether we have a negative dec or not, and

3 it's clear to me that the cart was put before the

4 horse, and, therefore, I vote no.

5 COUNCIL CLERK: Comrie.

6 COUNCIL MEMBER COMRIE: Madam Chair,

7 may I be excused to explain my vote?

8 CHAIRPERSON PROVENZANO: Yes.

9 COUNCIL MEMBER COMRIE: Just because

10 we have the ability to make things happen, does not

11 mean that we should exclude every opportunity to

12 make things right.

13 Just because we have numbers doesn't

14 mean that we should ignore consensus. Just because

15 we have opportunity doesn't mean that we shouldn't

16 make difficult discussions open and honest and

17 difficult.

18 Now, clearly, this is an issue that

19 is going to affect us, not just today but throughout

20 our entire, throughout our entire days, as long as

21 we're residents of New York, and the things that we

22 do in the Council have to reflect on the integrity

23 of this body.

24 Clearly, children are being affected

25 by lead poisoning in the City. Clearly, from what

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2 I've read, it is not only happening from buildings
3 that had been built prior to 1960, just coming from
4 other sources. We have responsibilities as effective
5 and honest legislators to do everything we can to
6 make sure that this City has an opportunity to grow,
7 to develop, to be the best City in the world, to be
8 a City that we can all be proud of and to be a place
9 in this body that this body can all be proud of.

10 I think that we've done a lot of work
11 on Intro. 101. I know I've done as much as I could
12 to try to articulate within the body and within the
13 conditions and issues that I think are prevalent and
14 the things that need to be doned to fix and make
15 this bill something that the City could be -- and
16 nobody is going to ever be comfortable with any lead
17 bill, let's be clear on that, or one issue or the
18 other. But at the certain point when we don't have
19 the Sierra Club doing lead paint abatement, or these
20 other policy wonks doing the actual work, we still
21 have to understand that this City has to work. This
22 City has to be able to do things in a manner that we
23 all can be comfortable with, or we can all identify
24 what the actual problems are, but it makes it easier
25 for the City to do what's necessary.

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2 But in the fact that we have a
3 problem, and an endemic problem where we have two
4 pieces of legislation, none of which anybody knows
5 is the law, if we do Local Law 1 or Local Law 38,
6 there's a real problem with what the agencies use as
7 a template, there's a real problem with what people
8 use as a template, this is what we have today after
9 a lot of discussions and a lot of arguments back and
10 forth.

11 I feel that at this point, and
12 because of this, the issues in my community and the
13 high lead in my community, my community has to have
14 at least a template to work from, and they have to
15 have a bill that they can work from.

16 I hope that this does not end the
17 opportunities for people to do what's necessary to
18 protect children. That this is not an opportunity
19 for people to do what's necessary to make the City
20 the City that it should be. And therefore, I vote
21 yes on this bill.

22 CHAIRPERSON PROVENZANO: Council
23 Member Comrie, we're not voting on the bill, we're
24 voting on the reso; is that what you're voting on?

25 COUNCIL MEMBER COMRIE: On the

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2 environmental reso.

3 CHAIRPERSON PROVENZANO: Okay.

4 COUNCIL CLERK: By a vote of eight in
5 the affirmative, two in the negative and one
6 abstention, the item is adopted.

7 CHAIRPERSON PROVENZANO: Council
8 Member Oddo. You may reintroduce.

9 COUNCIL MEMBER ODDO: Madam Chair,
10 once again I would like to make a motion to amend
11 101-A.

12 CHAIRPERSON PROVENZANO: Yes. Do we
13 need a second for that? Do we have a second?

14 COUNCIL MEMBER STEWART: I second
15 that.

16 CHAIRPERSON PROVENZANO: Council
17 Member Kendall Stewart seconds the amendment.

18 COUNCIL MEMBER ODDO: For the sake of
19 all of our sanities, I won't reread the comments by
20 Michael Lappin or Jerilyn Perine, I'll get into the
21 text of the amendments.

22 The first one again is an amendment
23 to subdivision A of Section 27-2056.5 regarding the
24 presumption, and it reads: "In any multiple
25 dwelling erected prior to January 1, 1960, it shall

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2 be presumed that the paint or other similar surface
3 coating material in any dwelling unit where a child
4 of applicable age resides or in the common areas is
5 lead-based paint solely for the purpose of this
6 article. The presumption established by this section
7 may be rebutted by the owner of the dwelling or
8 dwelling unit by submitting to the Department a
9 sworn written statement by the owner supported by
10 lead-based testing of sampling results, a sworn
11 written statement by the person who performed the
12 testing, if performed by an employee or agent of the
13 owner, and such other proof as the Department may
14 require. Testing performed to rebut the presumption
15 may only be performed by a person who has been
16 certified as an inspector or risk assessor in
17 accordance with sub parts L and Q of part 745 of
18 Title 40 of the code, of federal regulations or any
19 successor regulations. The determination as to
20 whether such proof is adequate to rebut the
21 presumption established by this section shall be
22 made by the Department." That's the first one.

23 The second one is an amendment of
24 Subdivision A of Section 27-2056.4 regarding owner's
25 responsibility to notify occupants and to

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2 investigate and it reads: "In any dwelling unit, in
3 a multiple dwelling, a record prior to January 1st,
4 1960, where the owner has actual knowledge that a
5 child of applicable age resides in any dwelling
6 unit, in a multiple dwelling erected on or after
7 January 1st, 1960 and before January 1st, 1978,
8 where the owner has actual knowledge that a child of
9 applicable age resides, and the owner has actual
10 knowledge of the presence of lead-based paint, and
11 in common areas of such multiple dwellings, the
12 owner shall cause an investigation to be made for
13 peeling paint, chewable surfaces, deterioriated
14 subsurfaces, friction surfaces and impact surfaces.
15 Such investigation shall be undertaken at least once
16 a year and more often, if necessary, such as when in
17 the exercise of reasonable care an owner actually
18 knows -- delete "or should have known" -- of a
19 condition that is reasonably foreseeable to cause a
20 lead-based paint hazard or an occupant makes a
21 complaint concerning a condition that is likely to
22 cause a lead-based paint hazard or requests an
23 inspection, or the Department issues a notice of
24 violation or orders correction of a violation that
25 is likely to cause a lead-based paint hazard. The

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2 owner shall ascertain whether a child resides
3 therein pursuant to the requirements of this
4 section."

5 I could read it again if anyone would
6 like.

7 CHAIRPERSON PROVENZANO: No.

8 Excuse me, Council Member Oddo. Can
9 you unlegal-ease this for us?

10 COUNCIL MEMBER ODDO: Yes.

11 CHAIRPERSON PROVENZANO: Put it in
12 common language for those of us that -- for us
13 common folk?

14 COUNCIL MEMBER ODDO: The first
15 presumption says that there should be a presumption
16 to be used as a trigger for enforcement, not to
17 extend the presumption to liability. It essentially
18 says what we had in Local Law 38. I'm concerned
19 about the liability and opening up to all kinds of
20 cases, frivolous cases, the liability of property
21 owners, and the liability of the City.

22 The second amendment mandates that
23 there's actual notice for the landlord, so that the
24 landlord has actual notice that there's a child of
25 applicable age in the apartment.

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2 Common sense changes, I submit.

3 CHAIRPERSON PROVENZANO: Council

4 Member Brewer, now we can ask questions of Council

5 Member Oddo, that is Council members in the

6 Committee. We cannot take questions from the

7 audience.

8 Council Member Brewer, you had

9 questions?

10 COUNCIL MEMBER BREWER: First of all,

11 I respect the fact that Council Member Oddo always

12 does his homework, not just on this issue. Very

13 impressive.

14 The question, it seems to me, the

15 first one, presumption, like you said is Local Law

16 38, wasn't that thrown out by the courts?

17 COUNCIL MEMBER ODDO: No, Local Law 38

18 was thrown out because of an inefficient, or an

19 improper EIS, and I have the feeling that within a

20 year from now there will be deja vu all over again,

21 and there will be another court that will say that

22 there's insufficient environmental assessment,

23 that's why I voted no on the previous resolution.

24 COUNCIL MEMBER BREWER: Okay. And then

25 in terms of the second one, I think the notion of

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2 it's hard to -- it sort of guts the presumption
3 because it is very hard to prove things that a child
4 is living there some time; is that something that
5 we'd be able to figure out some way to make sure
6 that that fact was known?

7 We've had this discussion I think on
8 many other aspects of apartments. It's an ongoing
9 issue between landlords and tenants as to what
10 exactly is going on in an apartment because
11 residences change, situations change, people tell
12 the truth, people lie, owners do the same. So, I was
13 just wondering, how would this be actually carried
14 out?

15 COUNCIL MEMBER ODDO: Council Member,
16 I appreciate the work that you've done in other
17 areas in this, and I share your sentiment that we
18 want to hold property owners responsible, and my
19 concern is we want to make sure that they in fact
20 have the information and are put on proper notice.
21 And I believe that once they're on proper notice,
22 then we should hold them to the highest standards
23 possible. I'm just concerned that as the bill was
24 written, we leave this gaping hole open, and I just
25 think that we should craft a bill that says when

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2 you're properly notified, there's certain things we
3 expect from you, and that's why I submitted the
4 language.

5 COUNCIL MEMBER BREWER: Okay, thank
6 you.

7 CHAIRPERSON PROVENZANO: Council
8 Member Avella.

9 COUNCIL MEMBER AVELLA: I actually
10 have a procedural question, in terms of voting on
11 Council Member Oddo's amendment.

12 Should the Committee vote in favor of
13 the amendments, what happens then to the vote on the
14 actual bill?

15 CHAIRPERSON PROVENZANO: Council
16 Member Oddo, can you respond to that?

17 COUNCIL MEMBER ODDO: Well, I think
18 Counsel should respond to it, but clearly the cure
19 time changes so you won't be able to vote on an
20 amended bill on the 15th without a message of
21 necessity from the Administration, and, frankly, I
22 don't know what the Administration is doing on this,
23 so I don't know if a message of necessity would be
24 forthcoming. So, you'd have to wait a longer period
25 of time before the full Council could vote on the

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2 bill, but certainly enough time within this
3 legislative year.

4 COUNCIL MEMBER AVELLA: So, did I hear
5 correct that in effect if we vote in favor of these
6 amendments, we cannot vote on the whole bill today,
7 it is theoretically possible that this bill will
8 then die this session?

9 COUNCIL MEMBER ODDO: No, Tony, I'm
10 sorry. The Committee can vote today. I'm saying a
11 period of time that the bill has to cure once
12 amended when it goes from Committee to full Council,
13 that's the only delay.

14 The Council, this Housing and
15 Buildings Committee can certainly vote on this bill
16 today, we would wait eight days or whatever it is
17 and then the full Council could vote before December
18 is out.

19 COUNCIL MEMBER AVELLA: Can we get an
20 official interpretation from Counsel?

21 CHAIRPERSON PROVENZANO: Yes. Do you
22 want to say it on the record, please?

23 Introduce yourself.

24 MR. DAMASHEK: Deputy General Counsel
25 to the Council.

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2 The bill would have to lay over
3 another eight days, and I don't believe there are
4 any more Stated Council Meetings before the end of
5 the year, and it will die.

6 COUNCIL MEMBER ODDO: Unlike other
7 legislative bodies that go out of session and hide
8 wherever they live, this body can come into session
9 any time later on in December. Can't we call a
10 Stated Council Meeting?

11 MR. DAMASHEK: Right. But at the
12 moment there are no --

13 COUNCIL MEMBER ODDO: We can call it
14 at my house, we can call it --

15 MR. DAMASHEK: There are no Stated
16 Council Meetings after December 15th.

17 CHAIRPERSON PROVENZANO: Does that
18 answer your question?

19 COUNCIL MEMBER AVELLA: That
20 completely answers my question.

21 CHAIRPERSON PROVENZANO: Okay.
22 Council Member Jackson.

23 COUNCIL MEMBER JACKSON: Thank you,
24 Madam Chair.

25 CHAIRPERSON PROVENZANO: Thank you.

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2 COUNCIL MEMBER JACKSON: Would passing
3 this amendment with respect to either amendments, I
4 think, Jim, you indicated, would it take away the
5 presumption for enforcement of Intro. 101? I mean,
6 because my understanding, there are certain
7 triggers, once as a presumption that HPD and the
8 Department of Health triggers into safeguarding the
9 presumption that there's lead paint, and in essence
10 possibly saving children from being lead poisoned
11 and brain damaged; is that correct?

12 COUNCIL MEMBER ODDO: Robert, first
13 let me say I guess this is what Carol Robles-Roman
14 feels like. That was a joke from yesterday's
15 hearing.

16 COUNCIL MEMBER JACKSON: Jim, I didn't
17 hear what you said.

18 COUNCIL MEMBER ODDO: I said, I guess
19 this is what Carol Robles-Roman felt like yesterday
20 while questioning.

21 COUNCIL MEMBER JACKSON: I wasn't here
22 yesterday.

23 COUNCIL MEMBER ODDO: No, that's all
24 right. It's an inside joke anyway.

25 COUNCIL MEMBER JACKSON: That's why I

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2 missed it, I guess.

3 COUNCIL MEMBER ODDO: It's a very good
4 question, Bob. And, no, this does not take away the
5 presumption, in terms of being that trigger for
6 enforcement, we're simply adding the language so
7 that this article applies, this language, this
8 presumption applies solely to the enforcement. The
9 presumption will still exist as it should in terms
10 of being the trigger for enforcement for HPD, it
11 just limits it to the enforcement and doesn't extend
12 it to the liability issue.

13 COUNCIL MEMBER JACKSON: But this
14 doesn't talk about the liability issue. It doesn't
15 say anything about liability in here, Jim. In
16 summarizing this in plain simple language, you refer
17 to enforcement, and now you're saying that this
18 would, I guess, be the limit and/or take away the
19 liability issue, but I don't see liability issue
20 mentioned at all in the amendment.

21 COUNCIL MEMBER ODDO: So that the bill
22 would read that the presumption exists, there would
23 be no language to extending the presumption to
24 liability. The language within the bill would speak
25 of a presumption solely as a trigger for

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2 enforcement.

3 COUNCIL MEMBER JACKSON: Well, my
4 second question is that, if in fact, and I don't
5 know whether or not you can answer or somebody else
6 from staff, if in fact these amendments were passed
7 by this Committee, must then, based on the
8 amendments, a new negative declaration be submitted
9 to the Council as a result of the proposed changes
10 that you would like to see put forward?

11 COUNCIL MEMBER ODDO: That's a
12 question that Council staff should answer.

13 CHAIRPERSON PROVENZANO: Terzah.

14 MS. NASSER: Terzah Nasser, Counsel to
15 the Committee. Technically the answer would be yes,
16 because you are changing the bill. The bill is a
17 part of the environmental assessment. If you are
18 changing the provisions to the bill, then one would
19 have to review the environmental assessment to see
20 if it's still deemed adequate and if the answer is
21 still appropriate.

22 CHAIRPERSON PROVENZANO: Thank you.

23 COUNCIL MEMBER JACKSON: So, from a
24 process point of view, from a timing point of view,
25 based on the previous questions asked by my

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2 colleague Avella, this would then, also this time
3 frame that it is now scheduled, am I correct in that
4 assumption?

5 COUNCIL MEMBER ODDO: Bob, are you
6 still addressing me?

7 COUNCIL MEMBER JACKSON: I guess I was
8 addressing staff more so, Jim.

9 MR. NASSER: Terzah Nasser. Correct,
10 sir.

11 COUNCIL MEMBER JACKSON: Okay.

12 Now, Jim, with respect to, and I
13 guess you and my colleagues were here before I was
14 with respect to Local Law 38 being thrown out by the
15 courts, as my understanding and now, since that was
16 totally thrown out, is Local Law 1 in place as we
17 stand right now?

18 Can I get a definitive answer on
19 that? If someone can.

20 CHAIRPERSON PROVENZANO: Terzah.

21 MS. NASSER: Terzah Nasser, Counsel to
22 the Committee.

23 Local Law 38 was basically thrown out
24 by the courts, as you said. And at this point in
25 time, Local Law 1 was revived.

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2 COUNCIL MEMBER JACKSON: I'm sorry,

3 Local?

4 MS. NASSER: Local Law 1 of 1982.

5 COUNCIL MEMBER JACKSON: Was what?

6 MS. NASSER: Was revived.

7 COUNCIL MEMBER JACKSON: Okay.

8 So, in essence, since Local Law 38
9 was thrown out by the courts, we are operating under
10 Local Law 1; is that correct?

11 MS. NASSER: That is correct.

12 COUNCIL MEMBER JACKSON: Okay.

13 MS. NASSER: Though at the same token,
14 because the rules pursuant to Local Law 1 were never
15 promulgated by the agencies, there are no rules
16 right now in effect for Local Law 1. So, though the
17 letter of the law may have been or is revived, there
18 are no teeth to the law. People do not know what to
19 do right now because there are not rules.

20 COUNCIL MEMBER JACKSON: Going back to
21 I guess 27-2056.4, Jim, in looking at the text, you
22 bold, it says in the third line, it says, "the owner
23 has actual knowledge that..."

24 Well, what do you mean by the owner
25 has actual knowledge?

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2 Is it the agent of the owner, the
3 superintendent, the building manager, or his staff
4 or the actual owner, him or herself, or what if the
5 owner is a corporation? Because you bold and
6 underline that, and I'm not counsel, I'm not an
7 attorney at law, in my reading the owner has to have
8 actual knowledge. So, I'm just trying to get an
9 explanation of what does that mean.

10 Does it mean what it reads?

11 COUNCIL MEMBER ODDO: Yes, a couple of
12 things. First of all, a couple of things: One, the
13 fact that it's underlined in bold is to let you know
14 that's new language that's being put in.

15 COUNCIL MEMBER JACKSON: Okay.

16 COUNCIL MEMBER ODDO: All right?
17 That's the reason for the emphasis.

18 And it is with the extent of what the
19 words are, it's actual knowledge, not constructive
20 knowledge, and as you see later on it deletes the
21 phrase "should have known." It is what the language
22 says it is, actual knowledge.

23 Bob, if I may say one other thing?

24 COUNCIL MEMBER JACKSON: Yes.

25 COUNCIL MEMBER ODDO: If I could jump

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2 back to the question that Terzah answered about what
3 law is in place, I just want the record to reflect
4 that one of the very first -- well, not one of the
5 very first hearings, but the hearing that
6 Commissioner Frieden testified and the Speaker, is
7 that the Speaker and Commissioner Frieden had a very
8 interesting exchange where it was about really and
9 not really where the Speaker said, well, Local Law 1
10 is in effect, and Commissioner Frieden said, well,
11 not really, and the Speaker said really. So that I
12 think there is some outstanding questions as to
13 exactly what law is being applied and I have to
14 stress again as Terzah said, there are no
15 promulgated rules for Local Law 1, so it's hard to
16 say that Local Law 1 rules is the standard when
17 there are no promulgated rules.

18 COUNCIL MEMBER JACKSON: Okay, so they
19 had that discussion and opinion, but if Local Law 38
20 was thrown out by the courts, and it replaced Local
21 Law 1, as you say, it may be in place, but there are
22 no rules to implement Local Law 1, is that correct?

23 COUNCIL MEMBER ODDO: I think one of
24 the reasons why Local Law 38 came to rise is because
25 people realized that actually promulgating rules on

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2 Local Law 1 was a very difficult task.

3 COUNCIL MEMBER JACKSON: And if I can
4 get an opinion from anyone here, either staff or a
5 Council member, would then by implementing Local Law
6 101-A, will it have procedures and rules in there
7 for the agencies to follow?

8 Can I get an answer, please?

9 MR. HABERMAN: The answer is yes,
10 Intro. 101 -- oh, I'm sorry, my name is Jeffrey
11 Haberman, I'm Counsel and Deputy Director of the
12 Infrastructure Division of the Council.

13 Proposed Intro. No. 101-A requires
14 that HPD make rules for conducting work, but also
15 contains guidance to HPD, it requires that certain
16 requirements be met. It's such as depending on,
17 workers have to be properly trained for the line of
18 work that's being done, dust testing has to be done,
19 and clearances have to be met before the work is
20 considered completed. Local Law 38 did not have
21 that, Local Law 1 does not have that, and the courts
22 have directed HPD to take steps to enforce Local Law
23 1 because they didn't.

24 COUNCIL MEMBER JACKSON: You're Deputy
25 Director to the Council; is that correct?

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2 MR. HABERMAN: To the Infrastructure
3 Division.

4 COUNCIL MEMBER JACKSON: If we, in
5 fact, pass these amendments, will that have a
6 negative impact on Local Law 101 with respects to
7 enforcement and implementation of the rules that are
8 contained within Local Law 101-A, in your opinion,
9 as counsel to our Committee?

10 MR. HABERMAN: It would change the
11 equation, yes. And I think Intro. 101-A would not be
12 as effective a piece of legislation.

13 COUNCIL MEMBER JACKSON: I'm sorry.
14 Just, can you speak up a little louder? I'm a little
15 hard of hearing.

16 MR. HABERMAN: I'm sorry, I believe it
17 would change the equation and I don't believe that
18 Local Law -- Intro. 101-A would be as effective a
19 piece of legislation.

20 COUNCIL MEMBER JACKSON: Okay, thank
21 you, Madam Chair. That's all for now.

22 COUNCIL MEMBER ODDO: Robert, may I
23 just add one thing? Council Member Jackson?

24 COUNCIL MEMBER JACKSON: Sure. Sure.

25 COUNCIL MEMBER ODDO: As I said

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2 earlier, I've worked with Jeff for 12 years and I
3 respect him but that's his opinion; and, two, if I
4 may just amplify on your question about --

5 CHAIRPERSON PROVENZANO: You read my
6 mind.

7 COUNCIL MEMBER ODDO: Thank you.

8 To amplify on the response I gave you
9 on actual notice, actually telling the owner there
10 is a child or filling out the actual form,
11 submitting it to the owner, that there's a form that
12 states that there is a child of this age.

13 COUNCIL MEMBER JACKSON: You mean the
14 one that's attached to the lease of agreement, like
15 the bars across the window, correct?

16 CHAIRPERSON PROVENZANO: Window guard.

17 COUNCIL MEMBER JACKSON: Window guard.
18 Thank you.

19 CHAIRPERSON PROVENZANO: Council
20 Member Reyna.

21 COUNCIL MEMBER REYNA: Thank you,
22 Madam Chair.

23 Council Member Oddo, you had
24 mentioned that you've been in touch with I believe
25 someone representing the Community Neighborhood

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2 Preservation Corporation?

3 COUNCIL MEMBER ODDO: Yes. Michael
4 Lappin testified at the last, or two of the last
5 three hearings. He was one of the folks who came in
6 on Friday and because of the snow didn't get to
7 testify, and then he testified, was it yesterday or?
8 I'm losing track of the days. Was it yesterday or
9 the day before? Wednesday.

10 And he testified about his concerns
11 of specifically the insurance and the liability
12 issue, the chilling effect he believed 101-A would
13 have on construction of affordable housing, and for
14 the record, he is the president of a not-for-profit,
15 he's not a residential property owner.

16 COUNCIL MEMBER REYNA: But he wasn't
17 speaking on behalf of all entities?

18 COUNCIL MEMBER ODDO: No. He actually
19 in his testimony, he listed out Bill Frey and Debbie
20 Wright and Denise Scott, folks from various banks
21 and various other organizations.

22 COUNCIL MEMBER REYNA: And he never in
23 his testimony opposed the law in its entirety, he
24 raised concerns.

25 COUNCIL MEMBER ODDO: And neither do I

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2 oppose the law. I happen to think there are good
3 provisions of the bill. The amendment doesn't look
4 to do away with the entire law, it speaks to the
5 presumption issue and that's precisely the testimony
6 that Mr. Lappin spoke to.

7 COUNCIL MEMBER REYNA: And I'm torn
8 between the fact that right now, if I can remind
9 this Committee, that we are following Local Law 1,
10 since Local Law 38 have been thrown out, and not
11 recognized in the City of New York. Therefore, the
12 presumption has been there since then; is that
13 correct?

14 COUNCIL MEMBER ODDO: Well, I would
15 disagree and say that it's tough to say Local Law 1
16 is in effect when there are no rules promulgated for
17 it.

18 COUNCIL MEMBER REYNA: But it is in
19 effect?

20 COUNCIL MEMBER ODDO: But I would say
21 a lot of the, probably the insurance policies, were
22 obtained during Local Law 38 under a different
23 presumption. I think once you go back to Local Law
24 1, I think the argument that they've made is that it
25 will now be difficult to get insurance, and I think

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2 there are consequences that follow from that.

3 COUNCIL MEMBER REYNA: But if the
4 issue is insurance policy, then we would be
5 experiencing those troubles right now.

6 I just wanted to make it clear, that
7 if there was a real liability issue, we would have
8 heard by now from more than just a few testimonies
9 about policies being dropped.

10 CHAIRPERSON PROVENZANO: You were
11 there.

12 COUNCIL MEMBER REYNA: But they didn't
13 say they dropped, they were dropping clients.

14 CHAIRPERSON PROVENZANO: We did hear
15 such testimony and you were there. I mean, there
16 were folks that came up that said they actually at
17 this point in time do not have lead insurance, and
18 they foresaw that things would only get worse. There
19 were several folks that testified to Wednesday to
20 that effect.

21 COUNCIL MEMBER REYNA: There has never
22 been lead insurance.

23 CHAIRPERSON PROVENZANO: Of course
24 there has.

25 COUNCIL MEMBER REYNA: There has been?

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2 CHAIRPERSON PROVENZANO: Yes. Remember
3 they were trying to say that it was the twin towers
4 and terrorist attack that had the impact on it, and
5 then other folks were saying that they had lead
6 insurance and they were dropped, or the premium was
7 so high that they couldn't possibly afford it?

8 You even questioned some of these
9 people. Yes, okay.

10 COUNCIL MEMBER REYNA: No, I
11 understand that. But Local Law 1 existed, Local Law
12 38 existed, now we're going into Local Law 101-A.
13 All this time no one has ever been interested in
14 lead.

15 CHAIRPERSON PROVENZANO: James, would
16 you like to address that?

17 COUNCIL MEMBER REYNA: In lead, in
18 lead insurance.

19 CHAIRPERSON PROVENZANO: In the
20 insurance, no one has even been interested in it,
21 and it's because of the -- I mean, it relates to the
22 presumption issue.

23 COUNCIL MEMBER ODDO: I guess when you
24 have insurance you're not thinking about it. When
25 there's the threat of not having it, is when you

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2 think about it.

3 COUNCIL MEMBER REYNA: All right.

4 Thank you very much, Madam Chair.

5 CHAIRPERSON PROVENZANO: Council

6 Member Vallone.

7 COUNCIL MEMBER VALLONE: Thank you,

8 Madam Chair.

9 Council Member Oddo, let me commend
10 you for your amendments and for the hard work that
11 goes behind these amendments. People don't realize
12 how much work this actually is and you've done it
13 all.

14 People need to remember that Local
15 Law 38 was a hugely successful law which led to a
16 30 to 40 percent reduction in lead paint poisoning
17 cases.

18 People also need to remember that the
19 trial attorneys vehemently opposed that law, which
20 was a good law. They're in favor of this law and
21 need to ask why.

22 Council Member Oddo, I'm also a
23 former trial attorney so I understand the
24 presumption, so I'm not going to ask you a specific
25 question on that, but I would just like to say that

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2 I think that this presumption is just a big gift to
3 the trial attorneys, a big Christmas gift, and has
4 no business being in this law.

5 It will force landlords who have done
6 nothing wrong to spend \$100,000 to defend the case
7 or be extorted. It will end insurance for homeowners
8 and it will hurt affordable housing.

9 There are so many aspects of this new
10 law, which are improvements on Local Law 30, in
11 which I commend Bill Perkins and this entire
12 Committee, especially Councilwoman Provenzano, for
13 attempting to enact, such as recognizing lead dust
14 as a hazard.

15 There are so many good aspects of
16 this law. This presumption does not need to be here.
17 I'm a former trial attorney, I know exactly what
18 it's going to result in, and I urge the Committee
19 members to adopt Council Member Oddo's amendment.

20 COUNCIL MEMBER ODDO: Madam Chair, may
21 I just respond briefly?

22 Council Member Vallone, thank you for
23 that, and let me just say that I have it written in
24 my notes, it was one of the property owners, I'm not
25 sure who said it, but he said this bill should

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2 protect children and allow good landlords to
3 continue to renovate and maintain their buildings.

4 I want a bill that protects children
5 first and foremost, but doesn't gratuitously in my
6 mind prevent property owners from continuing to
7 renovate and maintain their buildings, and that's
8 why I submitted the amendments.

9 CHAIRPERSON PROVENZANO: Thank you.
10 Council Member Fidler.

11 COUNCIL MEMBER FIDLER: Actually,
12 Madam Chairwoman, Councilman Jackson asked my
13 question.

14 CHAIRPERSON PROVENZANO: Council
15 Member Stewart.

16 COUNCIL MEMBER STEWART: Thank you,
17 Madam Chair.

18 Council Member Oddo, is this
19 considered a friendly amendment?

20 I would like to know, because I feel
21 it's a very good amendment. I feel it is something
22 that has addressed some of the problems that we have
23 been asking and we have faced, and if these two
24 could be included, I would gladly join on board, but
25 I'm happy that you spend the time to at least look

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2 at some of these issues and I would like to know if
3 it's a friendly amendment, and to know what the
4 proponents are talking about in terms of these two
5 amendments.

6 COUNCIL MEMBER ODDO: I simply want a
7 bill that protects kids and allows property owners
8 to renovate and maintain a building.

9 I imagine it's friendly in some
10 circles, and unfriendly in others.

11 COUNCIL MEMBER STEWART: So,
12 therefore, if it's not considered friendly, I don't
13 think that those who consider it not friendly, if
14 they really do have the children's health in mind,
15 if they're considering that as one of their
16 interests, and the interest might be something else.

17 I think we all agree that we need to
18 protect children, and we'd like to do something
19 about that, but if they do not consider this, I
20 think it means that they do not really consider the
21 main focus here as being the children's health.

22 CHAIRPERSON PROVENZANO: Thank you.

23 Do we have any other questions on
24 these two amendments? Council Member Jackson.

25 COUNCIL MEMBER JACKSON: I'm sorry, I

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2 was I guess engaged in conversation with trying to
3 make a point to someone and also listening at the
4 same time.

5 My colleague, Council Member Stewart,
6 I guess raised the question of a friendly amendment,
7 and I didn't understand, or I didn't hear the
8 conclusion of that discussion or question, Madam
9 Chair.

10 CHAIRPERSON PROVENZANO: Council
11 Member Stewart, would you like to respond?

12 COUNCIL MEMBER STEWART: I asked the
13 question, I would like to know.

14 COUNCIL MEMBER JACKSON: Was there a
15 decision reached on that particular matter or not?

16 CHAIRPERSON PROVENZANO: If it was a
17 friendly amendment?

18 Well, I think what Council Member
19 Oddo said was it may be considered friendly to some
20 folks and unfriendly to others.

21 COUNCIL MEMBER JACKSON: Oh.

22 CHAIRPERSON PROVENZANO: Depending on
23 your interpretation of his amendments.

24 COUNCIL MEMBER JACKSON: Okay, so, has
25 it been adopted by the prime or primary sponsors as

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2 a friendly amendment?

3 CHAIRPERSON PROVENZANO: No, we
4 haven't taken any action on it.

5 COUNCIL MEMBER JACKSON: Oh, okay. So,
6 it's not then, is that correct, Madam Chair?

7 CHAIRPERSON PROVENZANO: We haven't
8 taken any action.

9 COUNCIL MEMBER JACKSON: So by not
10 taking any action on it, it is not considered a
11 friendly amendment; is that correct, Madam Chair?

12 CHAIRPERSON PROVENZANO: Okay, we're
13 going to have an actual interpretation for you on
14 friendly.

15 Terzah.

16 MS. NASSER: Terzah Nasser, Counsel to
17 the Committee.

18 Basically the question would be
19 whether the amendments are friendly to the main
20 sponsors of the bill, and in this case Council
21 Member Perkins is the prime, the first prime
22 sponsor, so the question is, one could interject is,
23 is it friendly to Council Member Perkins.

24 COUNCIL MEMBER ODDO: Can I stipulate
25 that it's not?

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2 CHAIRPERSON PROVENZANO: Go ahead.

3 COUNCIL MEMBER ODDO: So we save some
4 time? I know Bill doesn't support it, so let's move
5 on to a vote and we'll go on.

6 CHAIRPERSON PROVENZANO: That clears
7 it up. Thank you.

8 Council Member Perkins.

9 COUNCIL MEMBER PERKINS: Thank you
10 very much.

11 First let me, for the record,
12 establish that it is not a friendly amendment. And
13 essentially it's an amendment that I would like to
14 go on record opposing. It effectively guts 101-A,
15 and returns us back to Local Law 38 in terms of
16 removing the presumption that is perhaps the most
17 significant part of Local Law 38.

18 But let me say to the Chairwoman, I
19 want to commend you, even though we seriously
20 disagree, because the last time we were down this
21 path, this hearing took 45 seconds, and so this is
22 an extraordinary representation of the best that
23 this Council can be, even as we disagree.

24 And, so, from that point of view, I
25 guess there have been reasons to feel good about

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2 what we're going through today.

3 I also want to take a moment to
4 acknowledge that the last time we came this way we
5 had a Judge Richard Rivera who was the lawyer for
6 the New York City Coalition to End Lead Poisoning,
7 and it just so happens that this is the anniversary
8 of his death, and so I'm pleased to acknowledge the
9 extraordinary work that he has done to help craft
10 this type of legislation and move this particular
11 issue before the City Council and to say to help the
12 children of the City of New York. Thank you.

13 CHAIRPERSON PROVENZANO: Thank you for
14 those kind words, Councilman Perkins. We probably
15 haven't had too many of those between us. Hopefully
16 the future will change that.

17 Council Member --

18 COUNCIL MEMBER ODDO: Madam Chair, may
19 I respond to that?

20 CHAIRPERSON PROVENZANO: Okay, sure.

21 COUNCIL MEMBER ODDO: Let me just say
22 that submitting these amendments, it's not my
23 intention to gut 101-A. I don't believe these
24 amendments do gut 101-A. I'm interested to hear that
25 the presumption is the heart of 101-A, I thought

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2 lead dust was the heart of everyone's focus. And if
3 the presumption was the heart and soul of this bill,
4 I don't know what took this bill so long in reaching
5 fruition. We could have copied language and
6 submitted it.

7 I think there are lots of other
8 things about this bill that people fought hard for,
9 and I'm interested to learn now at this late hour
10 that this has all been about the presumption.

11 CHAIRPERSON PROVENZANO: Thank you.
12 Council Member Stewart.

13 COUNCIL MEMBER STEWART: Madam Chair,
14 I was just wondering if the friendly amendments was
15 --

16 CHAIRPERSON PROVENZANO: We decided it
17 wasn't friendly.

18 COUNCIL MEMBER STEWART: Well, if you
19 consider it not friendly, it's because of time or
20 timing or is it because the amendments are bad?

21 I'm just looking at that perspective
22 because to me I think most of us agree that the
23 amendments are great, but what we're looking at is
24 the time, the time whether we can get this done
25 before the end of the year. And I think for the

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2 interest of children, for the interest of providing
3 a proper protection for our children, we should
4 really consider that and not just to have a bill,
5 just to say that you have a bill.

6 CHAIRPERSON PROVENZANO: Terzah Nasser
7 will respond to that.

8 MS. NASSER: Terzah Nasser, Counsel to
9 the Committee.

10 Whether the amendments are friendly
11 or not friendly, they are treated the same. The
12 question is whether the amendments are something
13 that the proponents of the bill, the sponsors to the
14 bill, are favorably disposed to.

15 And doesn't matter whether they are
16 or not, they're still going to be voted upon by the
17 Committee in the same manner.

18 CHAIRPERSON PROVENZANO: Does that
19 answer your question?

20 COUNCIL MEMBER STEWART: I was
21 distracted by my colleague here, I didn't get the
22 response.

23 CHAIRPERSON PROVENZANO: Would you
24 like to repeat that?

25 MS. NASSER: Basically whether the

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2 amendments are friendly or not friendly is not of
3 significant concern right now, on the way that the
4 amendments are going to be voted upon. They're going
5 to be voted upon in the same manner.

6 CHAIRPERSON PROVENZANO: Whether
7 they're friendly, or unfriendly.

8 MS. NASSER: Right.

9 COUNCIL MEMBER STEWART: So, you're
10 saying that it will not affect the timing of passing
11 this bill; is that correct?

12 MS. NASSER: That's not what I said.

13 COUNCIL MEMBER STEWART: Well, Madam
14 Chair, I would like some clarification on that.

15 If we were to vote on these
16 amendments now, and granted that they're passed
17 favorably, I'm asking would that change the timing
18 of the voting on this bill and having it passed?

19 In other words, I get the impression
20 that we are trying to have this bill passed before
21 the end of the year, and I'm asking now with this
22 friendly amendment, or this amendment, as we call
23 it, if it is voted on and it's passed, I'm wondering
24 if it will be late after the end of the year.

25 MR. DAMASHEK: Jay Damashek, Deputy

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2 General Counsel to the Council.

3 Whether or not the amendments are
4 friendly or unfriendly, if they are voted on today,
5 they will affect the timing.

6 The friendliness only applies to the
7 people who are proponents of the legislation. If
8 they feel that it's unfriendly to the legislation,
9 then it's not a friendly amendment.

10 If they feel it's friendly to the
11 legislation, then it's a friendly amendment.

12 Both of those will be voted upon in
13 the same manner. And if the amendments are voted
14 today, they will affect the timing. And they will
15 have to lay on the desks of the Council members for
16 eight business days, for seven business days.

17 COUNCIL MEMBER STEWART: So you're
18 telling me that I have a choice, a choice here
19 whether to vote on this, these amendments, and if I
20 vote yes, it means that the bill will be -- if we so
21 happen to have a positive vote, this will lay over
22 and it may not be voted out until the end of the
23 year. That's what the understanding --

24 CHAIRPERSON PROVENZANO: Well, it
25 takes more than your vote, it takes a majority of

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2 the --

3 COUNCIL MEMBER STEWART: I understand
4 that.

5 CHAIRPERSON PROVENZANO: Okay.

6 COUNCIL MEMBER STEWART: I understand
7 that, Madam Chair. But what I'm looking at is that
8 some of us might be thinking, yes, this might be
9 good, but because the proponents want to get this
10 over right away, they have to go on the other side.
11 That's what I'm saying.

12 So, I'm looking at that perspective,
13 and I just wanted that to be clear.

14 MR. DAMASHEK: And also, the last
15 Stated Council Meeting is scheduled for December
16 15th. So, the bill will not properly age for the
17 December 15th meeting, and there is not another
18 scheduled Meeting for this, Stated Council meeting,
19 for this year. In deference to Council Member Oddo,
20 there can be another one scheduled, but I don't know
21 if there will be or not be.

22 COUNCIL MEMBER STEWART: And in
23 essence, what we're doing, we're appropriating the
24 idea that, listen, after December 15th, there is no
25 chance that we can do this again? That's what you're

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2 saying, next year or whatever?

3 CHAIRPERSON PROVENZANO: No. What he's
4 saying is the last scheduled meeting is the 15th,
5 that doesn't mean that we can't have a meeting any
6 day up until the end of December. We can't, but it's
7 just not on the schedule today. But it certainly
8 could happen. It has in the past and I'm sure it
9 could happen.

10 And I'm sure it would, for Bill
11 Perkins would go right down and schedule a meeting
12 for the eighth day.

13 Council Member Vallone would just
14 like to introduce some of the folks we have in the
15 back.

16 COUNCIL MEMBER VALLONE: Yes, we're
17 pleased to have with us today, the members of the
18 Warsaw City Council, Warsaw, Poland, obviously,
19 including Ewol Bender, the Chairman of the Public
20 Safety Committee. We welcome you gentlemen. We hope
21 that we are a shiny example of democracy, especially
22 today, and dissent, and we look forward to working
23 with you. Thank you for coming.

24 CHAIRPERSON PROVENZANO: Thank you.
25 Welcome.

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2 Council Member Katz, you look

3 confused.

4 COUNCIL MEMBER KATZ: I'm really not

5 confused. I have a substantive question.

6 We've been talking about presumption

7 and I know that Council Member Oddo and I are just

8 having a side bar discussion on how that presumption

9 takes hold and how actual knowledge takes hold.

10 Can someone just clarify for me on

11 the record, and I've been speaking to Counsel, maybe

12 you can do this for me.

13 The tenant fills out the form, there

14 is no child in the apartment. The tenant

15 subsequently has a child, what happens to the

16 presumption until the next form is filled?

17 CHAIRPERSON PROVENZANO: The Council

18 will answer that, but these are the kinds of

19 questions that we have been answering throughout the

20 hearings.

21 COUNCIL MEMBER KATZ: I understand

22 that, which is actually going to be my second

23 statement, but now since the fact of actual

24 knowledge, as opposed to the presumption of

25 knowledge has come up, I think that it's important

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2 to distinguish that the presumption is --

3 CHAIRPERSON PROVENZANO: Okay, Jeff
4 will respond to you.

5 COUNCIL MEMBER KATZ: Go ahead.

6 MR. HABERMAN: Jeff Haberman. Jeff
7 Haberman, Infrastructure Division.

8 The bill provides that where a tenant
9 -- a landlord has properly sent out the notices,
10 and the tenant has responded by saying that there is
11 no child of applicable age residing in the dwelling
12 units, and subsequently a child does move in, where
13 the tenant does not notify the landlord that there
14 is now a child of applicable age residing in a
15 dwelling unit, in a personal injury case, the
16 presumption is not available during the period from
17 the time the child moved in until the next noticed
18 cycle arises.

19 COUNCIL MEMBER KATZ: I thank you,
20 Madam Chair, that was really the only time I was
21 unsure whether the presumption would take hold. And
22 I guess Council Member Oddo and I were having a
23 discussion on what actual knowledge would truly
24 mean.

25 If there is a child who is running in

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2 and out of the building all day and you don't know
3 where that child is, I guess that would not be
4 actual knowledge of the child.

5 Thank you, Madam Chair.

6 CHAIRPERSON PROVENZANO: Do we have
7 any other questions or comments on these two
8 amendments?

9 COUNCIL MEMBER KATZ: One quick thing.
10 I just want to say that I think you run into this
11 kind of question with other bills and other
12 situations in the past and presumption and it has
13 been worked out. So, it's not something that I think
14 can't be worked out.

15 Thank you very much.

16 CHAIRPERSON PROVENZANO: Any other
17 questions?

18 Okay, so, we will now be voting on
19 the proposed amendments. We will vote separately. I
20 wanted to couple them. I have been told it would be
21 better if we did not. So we will vote separately on
22 the amendments.

23 I would hope that every Committee
24 member has it in front of them, since there is no
25 number to it.

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2 The first one we'll vote on is the
3 one that relates to Section 1 subdivision of Section
4 27-2056.4. I will not read the entire amendment, but
5 if you look at your sheet, you will know which one
6 you're voting on.

7 Are you ready?

8 COUNCIL CLERK: Provenzano.

9 CHAIRPERSON PROVENZANO: We're voting
10 separately but I'm going to give my comments for
11 both.

12 I certainly think that the addition
13 of these amendments would cover a lot of the
14 concerns, or most of the concerns that some of us
15 have that still are really upset by this
16 legislation.

17 I think the issue of presumption,
18 which is a big factor for me, you know, because I
19 can see it bringing us back to the seventies and all
20 of the problems that we had at that time, so I feel
21 that these two amendments could or would satisfy
22 many of the concerns that I have.

23 So, I vote yes on just the one right
24 now.

25 COUNCIL CLERK: Rivera.

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2 COUNCIL MEMBER RIVERA: I vote no on
3 proposed amendment, Subdivision of Section 27-256.4.

4 COUNCIL CLERK: Reyna.

5 COUNCIL MEMBER REYNA: No.

6 COUNCIL CLERK: Avella.

7 COUNCIL MEMBER AVELLA: No.

8 COUNCIL CLERK: Brewer.

9 COUNCIL MEMBER BREWER: No.

10 COUNCIL CLERK: Comrie.

11 COUNCIL MEMBER COMRIE: No.

12 COUNCIL CLERK: Fidler.

13 COUNCIL MEMBER FIDLER: No.

14 COUNCIL CLERK: Jackson.

15 COUNCIL MEMBER JACKSON: No.

16 COUNCIL CLERK: Katz.

17 COUNCIL MEMBER KATZ: No.

18 COUNCIL CLERK: Stewart.

19 COUNCIL MEMBER STEWART: Yes.

20 COUNCIL CLERK: Oddo.

21 COUNCIL MEMBER ODDO: Yes.

22 COUNCIL CLERK: By a vote of three in

23 the affirmative, eight in the negative, no

24 abstentions, the item is defeated.

25 CHAIRPERSON PROVENZANO: No applause,

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2 please.

3 We'll now vote on the second
4 amendment, which is subdivision of Section
5 27-2056.5.

6 COUNCIL CLERK: Provenzano.

7 CHAIRPERSON PROVENZANO: Yes.

8 COUNCIL CLERK: Rivera.

9 COUNCIL MEMBER RIVERA: Actually, if I
10 may be excused to explain my vote?

11 First I want to thank Council Member
12 Oddo, for all your hard work on these amendments,
13 even though we may disagree on their benefits. I
14 think that it's good that this Council can debate
15 dialogue and really have a good conversation on what
16 we feel are good parts of the bill and what are bad
17 parts of the bill. So, I just want to say thank you
18 for your honest and hard work, and for your
19 leadership.

20 I, unfortunately, do have to vote no
21 because I'm on the opposite side. I feel that this
22 would damage the intent of 101-A, but I just feel
23 that it's good that we can have dialogue. Thank you.

24 I vote no on proposed amendment
25 27-2566.5.

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2 COUNCIL CLERK: Reyna.

3 COUNCIL MEMBER REYNA: No, and I

4 appreciate it as well.

5 COUNCIL CLERK: Avella.

6 COUNCIL MEMBER AVELLA: No.

7 COUNCIL CLERK: Brewer.

8 COUNCIL MEMBER BREWER: No.

9 COUNCIL CLERK: Comrie.

10 COUNCIL MEMBER COMRIE: No.

11 COUNCIL CLERK: Fidler.

12 COUNCIL MEMBER FIDLER: Pass.

13 COUNCIL CLERK: Jackson.

14 COUNCIL MEMBER JACKSON: No.

15 COUNCIL CLERK: Katz.

16 COUNCIL MEMBER KATZ: Chair

17 Provenzano, if I could explain my vote?

18 This bill has been negotiated for a
19 very long time, it has been in front of us, it seems
20 like forever, and we've gone back and forth on every
21 single issue in this bill, I believe to the point
22 where the place that it's at today is what has been
23 agreed upon by the majority of the members of the
24 City Council.

25 I don't think it's perfect, but I do

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2 think it's good. I do have a little bit of a problem
3 with actual knowledge.

4 The presumption has been used in
5 other places of law, it has worked in the past.
6 Perhaps some time between might have been the way to
7 go, but the fact of the matter is, we had a long
8 discussion beforehand on process, and the fact that
9 we didn't get the environmental impact statement til
10 last night, and the process may not have been great.
11 This has gone through a very, very lengthy process,
12 as the Chair has pointed out, it is before us, I
13 must vote no on the amendment.

14 COUNCIL CLERK: Stewart.

15 COUNCIL MEMBER STEWART: Yes.

16 COUNCIL CLERK: Oddo.

17 COUNCIL MEMBER ODDO: Perhaps if I
18 read the amendment a third time. I vote yes.

19 COUNCIL CLERK: Fidler.

20 COUNCIL MEMBER FIDLER: Madam
21 Chairman, I actually would associate myself with the
22 comments that Councilwoman Katz just made.

23 I have, I did not have any problem
24 with the notice provision. I disagree on the
25 substance with Council Member Oddo on the

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2 presumption issue. I felt somewhat differently.

3 I recognize the fact that the
4 proponents of this bill, the sponsors of the bill
5 feel this is an integral provision. And in
6 discussions that have been had over the past several
7 months, I felt that a meaningful compromise would
8 have impacted both the affirmative defenses and the
9 presumption, in terms of tort liability I think it's
10 somewhat unfair.

11 But I do recognize that what is
12 before us today is the result of lengthy dialogue
13 and compromise and it's not really right for you to
14 pick and choose when a settlement has been reached,
15 that you like this part and not the other and so
16 therefore you're going to savage the whole deal.

17 So, I am voting yes -- I'm sorry, I
18 am voting no on the amendment, even though I
19 honestly think it is probably something that we may
20 have to come back and revisit. But I'm willing to
21 let the law take its course, and if we are incorrect
22 we won't have to fix it, and if we unfortunately are
23 correctly predicting that this is going to impact
24 very severely on the ability to provide affordable
25 housing in this City, which is the only factor that

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2 one should consider here, other than the most
3 important factor, which is the health and safety of
4 our children, then we may have to take another look
5 at it. So, I vote no.

6 COUNCIL CLERK: By a vote of three in
7 the affirmative, eight in the negative, no
8 abstentions, the item is defeated.

9 CHAIRPERSON PROVENZANO: Okay, thank
10 you very much.

11 Okay, now we're voting on proposed
12 Intro. No. 101-A.

13 COUNCIL CLERK: Provenzano.

14 CHAIRPERSON PROVENZANO: It's taken us
15 a long, long time to get to this day. I, we, have
16 sat through several hearings and many, many hours of
17 testimony over the past several months.

18 One of the things I would like to do
19 is commend the Council staff, my staff that work
20 closely with me, Terzah Nasser, Sarah, David, and
21 the whole Council staff, Jeff, and all of those
22 folks, and I'd like to particularly mention Marcel.
23 I know he spent many, many hours, weeks, months,
24 dreaming, wreaking probably of lead, and I think he
25 has to be commended for, although he and I have had

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2 some tough moments, I think he's to be commended for
3 the job that he did.

4 That time I'll let you clap. I
5 appreciate, though, that you were all hesitant. That
6 was nice.

7 You know, another thing that I don't
8 mind saying, that we're spending these several
9 months, I really feel that a lot of time has been
10 diverted from this Committee, from holding hearings
11 on very important issues that we should have
12 addressed. I don't even know how many hearings we
13 had, what, six? Seven? Who knows.

14 And I have to tell you, some of those
15 hours I sat here by myself, which really distressed
16 me because out of 51 Council members, I could
17 probably count 20 that spent any time at this
18 hearing, and I think a bill that's as important as
19 this, and we all agree that it's very important,
20 should have been the concern of all 51 members of
21 this Council.

22 And I really think that there is some
23 of this Council that don't really know what this
24 bill is about and yet will vote on it on Monday, and
25 that's very distressing.

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2 I have listened to all of the
3 testimony, and I've waited to be convinced that we
4 were doing the right thing on this legislation. This
5 is the third time we've done this, Intro. No. 1,
6 Intro. 38, and now this, Intro. 101-A. They say
7 practice makes perfect, obviously not always.

8 My whole career in politics, and
9 that's over 25 years, has focused on the children.
10 Go to my district, ask any one of my constituents.
11 So, no one can talk to me about not caring for the
12 children, and I suggest no one go there.

13 Unfortunately this legislation, which
14 should be all about the children is not. It has been
15 so far removed from that original concept, and I
16 don't even want to go into where it's gone. And I
17 think if it were about the children, it would have
18 been an easier lift.

19 I have some very serious concerns
20 about this proposed bill. First of all, I think we
21 should have focused on the areas of this City with
22 the greatest need and concentrated our efforts and
23 resources in those areas.

24 I think that would have limited the
25 scope of the bill, and would have still accomplished

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2 what we wanted.

3 I think by diluting these resources,
4 we are doing an injustice to the areas of this City
5 that really need help.

6 Secondly, I still have a problem with
7 the age. I think seven is much too high, and if one
8 year costs us \$4 million, two years we're looking at
9 eight, we could have even brought it to four and I
10 think it would have done the job.

11 Thirdly, and probably most
12 importantly, I'm not an attorney, that's probably
13 been obvious to most of you, but as I see it from a
14 layman's point, I think the whole issue of
15 presumption is based on the premise that a landlord
16 is guilty until he's proven innocent, until he can
17 prove himself innocent. And the last time I looked,
18 this was still America.

19 I think the presumption creates a
20 whole myriad of problems that are a direct hit on
21 affordable housing in this City. As Chairwoman of
22 this Committee, I have committed myself to
23 addressing the growing problem of the enormous lack
24 of affordable housing in all parts of this town.

25 Presumption pushes the liability

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2 issue so far that it will be almost impossible for
3 landlords to get insurance.

4 I can see us reverting back to the
5 early seventies, and there's a lot of you here that
6 don't remember the early seventies. I do. It was an
7 era of abandoned buildings, burned out buildings,
8 landlords walking away from their apartments. I can
9 see that happening again.

10 The City will once again be
11 collecting in rem properties, and this Committee has
12 reached a point with HPD, where we have almost
13 cleared that out, and I think that once again the
14 City will be collecting properties. And in these
15 times, which are still tough, I don't believe in
16 that rainbow that seems to be appearing. I don't
17 think that we should be looking to spend this extra
18 money.

19 I'm talking about the in rem
20 properties.

21 You know, most of the legislation we
22 vote on in this Council I think is easy enough to
23 do, it's kind of feel good stuff. But every once in
24 awhile there's a vote that really takes the courage
25 of your conviction, and that's because you really

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2 believe in what you're doing.

3 I really believe that what I'm doing
4 is the right thing, and I've had to let my
5 conscience be my guide. And I cannot in good
6 conscience vote for this bill. I vote no.

7 COUNCIL CLERK: Rivera.

8 COUNCIL MEMBER RIVERA: If I may be
9 excused to explain my vote, Madam Chair?

10 CHAIRPERSON PROVENZANO: Sure.

11 COUNCIL MEMBER RIVERA: Thank you very
12 much. I appreciate it.

13 We have gone down this road for the
14 past couple of years, and it has been a difficult
15 one. We have heard -- but I think it's one that was
16 worthwhile.

17 I think we've been able to hear both
18 sides of the tape and see the pros and the cons of
19 Intro. 101-A and what would part of the
20 ramifications be and the benefit of it be.

21 I feel like we should have a drum
22 roll now because we waited so long for this to be
23 voted on, but it was something that was good because
24 we've been able to have dialogue, debate,
25 discussion, proposed amendments, amendments,

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2 compromises, and at the end of the day we have a
3 great responsibility. And even though it may not be
4 a perfect bill, I think we can all agree, no law
5 that has ever been written by man has ever been
6 perfect.

7 I think that is why we cannot stop in
8 our allegations to protect our children. I think
9 that even though there are some aspects of this bill
10 that probably could be better, we will only know by
11 time. I think it is our job and our duty today to
12 vote on the bill that at the end will decrease the
13 amount of kids that get lead poisoned every year.

14 We have decreased from 1995 to 2002.
15 There's decrease even further. Take it a step
16 further, and ensure that we provide a good, safe
17 environment for our children within the City of New
18 York.

19 With that being said, I want to
20 commend the proponents and opponents to this bill,
21 because we have been able to debate and have
22 dialogue as adults, and I feel that this is what
23 government and this is what advocacy on both sides
24 is all about. I think it's about a City coming
25 together, debating and conversing on what our

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2 policies should be shaped and how they should be
3 shaped, and I think that I would like to also
4 commend the leadership of our Chairwoman because she
5 has had six or seven hearings on this issue, and has
6 worked very hard, and even though has come under
7 fire I think has a lot of courage because even
8 though she's in opposition, she has sat here
9 tirelessly and been able to really take in all sides
10 of it and I think you've done a phenomenal job,
11 Madam. So, I just want to say that.

12 But with that being said, we do have
13 a great big obligation and our obligation is to the
14 children and to the future of our City, and I vote
15 aye on Intro. 101-A.

16 COUNCIL CLERK: Reyna.

17 COUNCIL MEMBER REYNA: Permission to
18 explain my vote, Madam Chair.

19 I just wanted to take an opportunity
20 to thank yourself and the Council staff, as well as
21 the Speaker's staff, in particular Marcel, who has
22 been very patient and knowledgeable in sharing all
23 of what he has done to prepare himself and prepare
24 this Committee with accurate answers. And although
25 this may not seem as a perfect bill, nothing is

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2 perfect and I hope that this is just a beginning of
3 what I consider putting children first.

4 Today as we vote we're not going to
5 be voting and shutting the doors behind us. I have
6 to believe that because we have to also monitor, we
7 have a responsibility, this Committee does, as well
8 as this body in the City Council. And as we vote on
9 this bill today, there have been liability concerns
10 and issues under the provision of this bill. I count
11 on the real estate industry. Developers, small and
12 large property owners, as well as our neighborhood
13 preservation corporations to lead us in continuing
14 the dialogue that has begun, it is necessary because
15 it has been pointed out in their testimony, and all
16 of this talk regarding insurance carriers dropping
17 policies and not offering policies are going to have
18 to be one that needs to be taken to higher
19 authorities, such as the state level.

20 I must emphasize a need to have an
21 oversight hearing, and I count that this Committee
22 will join with the oversight committee to in a
23 year's time perhaps evaluate the impact, positive or
24 negative, on everyone in the City of New York.

25 I vote aye on this bill.

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2 COUNCIL CLERK: Avella.

3 COUNCIL MEMBER AVELLA: Madam Chair,
4 may I explain my vote? Thank you.

5 First of all, I'd like to commend the
6 Chair for all of her work on this. I can well
7 imagine that at various points she was alone. I can
8 only imagine how many hours it took away from your
9 own duties and your own Council district, and I
10 think you're really to be commended for all the work
11 that you've done, and I'd like to commend the
12 Council and the Committee staff because this has
13 been a Herculean task.

14 I would also like to commend Council
15 Member Perkins and all the groups that really worked
16 on this bill and fought for the passage of this
17 bill, because I don't think we would be here without
18 that happening.

19 I vote aye.

20 COUNCIL CLERK: Brewer.

21 COUNCIL MEMBER BREWER: Thank you very
22 much. Thank you, Madam Chair, and your staff, Marcel
23 Van Ooyen, and the many people who were also at HPD
24 and DOH, the representatives of owners, and, of
25 course, the individuals whom are parents, many of

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2 whom I know, and advocates for children.

3 I am remembering, and Cathy Cudahy
4 who is standing where Marcel and Jeff Haberman are
5 standing now in 1985, when I was a staff member in
6 the City Council working for Ruth Messinger, and
7 Local Law 58 passed. Catherine reminded me of the
8 number and the date, and that was the law that
9 mandated that buildings in New York City needed to
10 be accessible to the disabled.

11 I remember obviously young children
12 who are lead poisoned perhaps cannot be compared to
13 people who are in wheelchairs and who need to get
14 into buildings.

15 But there was a feeling that why
16 should we make apartments accessible for people who
17 are never, who may never use them, and there was a
18 great deal of discussion on this topic, and we're
19 still alive and building housing after Local Law 58
20 passed. Sometimes it's adhered to, and sometimes
21 it's not. I can give you both examples in my
22 district.

23 The point of the matter is that
24 people who are disabled now have the opportunity to
25 get into housing, where before a wheelchair could

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2 not fit, bathrooms are larger and we live.

3 And I want to indicate that as time
4 goes on, that's what makes this country and the City
5 great, is we realize that there's a challenge, we
6 try to fix it and it's not perfect.

7 I think Mike Lapping made a terrific
8 case for some of the concerns on affordable housing.
9 I think it will make the City Council stronger in
10 participating in oversight. Obviously Bill Perkins
11 and his staff, in particular, have made a
12 contribution as we move forward.

13 So, I hope that we will take into
14 consideration the affordable housing issues, but I'm
15 sure that the staff of HPD and DOH will help as I
16 assume the bill moves forward, whether there's a
17 veto or not. I assume the City Council will move
18 forward as it passes the first time, and we'll
19 figure out a way to make sure that we have zero
20 tolerance for lead poisoning in the City of New
21 York.

22 I vote aye.

23 COUNCIL CLERK: Comrie.

24 COUNCIL MEMBER COMRIE: Madam Chair,
25 may I explain my vote?

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2 First, I want to also echo the other
3 Council members in thanking you for your diligence
4 and due diligence regarding this issue. It has been
5 an issue that has embraced us since, some of us even
6 before we got on the Council, and it's been an issue
7 that has been discussed almost every week in this
8 body in one form or the other on what we do to try
9 to protect children and improve and reduce the
10 children that are being lead poisoned every year,
11 and how we together as a City can do that in a fair
12 and equitable way.

13 This bill has been changed and
14 amended, altered and adjusted, prodded and poked, I
15 hope that I've had something to do with helping to
16 make the bill change from the original introduction,
17 and I can hope that together we can continue as
18 Council Member Reyna said to do the due diligence
19 and to do the necessary oversight to see what the
20 impact and what the real practices are once this
21 bill is implemented over time.

22 This is a living document, as has
23 been said. It is an issue that will not go away
24 until we eradicate lead, the lead hazards for young
25 people in this City, which is really what this bill

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2 should be all about.

3 I hope that everyone that has been
4 involved in this will continue to be as aggressively
5 advocating whatever their positions are regarding
6 this issue, because really at the end of the day we
7 need to eliminate this as an issue and hopefully we
8 can do that by reducing the opportunity for children
9 to be poisoned.

10 Again, I want to thank the Council's
11 staff for everything that they've done to bring this
12 bill to where it is today. There is some parts of
13 the bill that clearly will be addressed over time,
14 and I would hope that once we do address those
15 things, that it can be done, and while, as
16 Councilman Perkins said earlier, the last vote went
17 15 seconds, I know that we will never have a
18 15-second vote in this particular body, because this
19 body -- all right, well, 45 seconds -- this bill and
20 this issue is an issue that's close to I think
21 everyone at this Committee at this point, and
22 hopefully we will, as Council Member Provenzano
23 said, instruct and enlighten all 51 members so
24 together we can work to end this as a concern for
25 Council members in the future.

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2 I do vote aye on this bill. I look
3 forward to continuing to be an integral part of the
4 discussions to help build the City and continue to
5 make the City the place where we can all live and
6 develop and grow so that it can continue to be the
7 best City in the world.

8 Thank you.

9 COUNCIL CLERK: Fidler.

10 COUNCIL MEMBER FIDLER: Madam
11 Chairwoman, may I be temporarily excused to explain
12 my vote? Thank you.

13 I guess the problem with going
14 seventh is everyone else has already thanked the
15 Chairwoman. I want to do that as well. I think this
16 is probably the most contentious and complicated
17 issue that we faced in the almost two years that
18 I've been now on the Council, and I think you have
19 handled the very, very difficult situation over a
20 long period of time with grace and integrity, and I
21 want to thank you for that.

22 I also want to thank the Committee
23 staff, Terzah and the others, who have had to sit
24 through hundreds of hours of this stuff, and to
25 Jeff, who had to probably stay up several nights to

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2 draft the term paper that we call the negative
3 declaration, and to Marcel, who had a full head of
4 hair when this started.

5 I also want to say a word of thanks
6 to the advocates on both sides of this issue.

7 While we don't agree on everything
8 that's been done and certainly you don't agree with
9 each other, I certainly hope that none of you
10 questions the integrity of the sincerity that each
11 side has brought to the table here as to what they
12 believe is in the best interest of this entire City.

13 Having said that, I want to agree
14 with you, Madam Chairwoman, as to your concern that
15 this bill doesn't concentrate resources where
16 they're most needed, but disagree with you in terms
17 of the application of that thought.

18 As far as I'm concerned, the relevant
19 application, the geography to a child who is exposed
20 to lead paint is the apartment that they live in, or
21 the place that they were exposed, wherever it is in
22 the City, whether it's in the lead paint belt or
23 otherwise, my concern about the misallocation of the
24 resources is are the provisions and application of
25 the bill which requires that we file numerous

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2 reports that are, I think, over -- not terribly
3 necessary, that we catalog healthy walls when an
4 inspector comes into an apartment on a heat
5 complaint, they have to make a room-to-room search,
6 as hard as it is to explain to someone who is not
7 familiar with the issue, I think raising the age
8 level has diluted resources at a time when those
9 resources are scarce.

10 I also think that the presumption
11 issue, which we spoke to earlier, is unfair, but the
12 bottom line for me is, is that local law
13 notwithstanding, there is no lead law in this City
14 right now which protects children.

15 Local law, I did ask the three
16 commissioners who testified here at one of the
17 hearings and their comment about Local Law 1 was
18 that it's on the books but it's not being enforced,
19 and we've certainly heard from Committee staff here
20 today as to why not.

21 Not having a lead law to protect
22 children in this City is unconscionable. And we
23 cannot obviously craft a bill that is going to
24 satisfy everybody, or satisfy me, that every
25 provision is fair or is appropriately targeted to

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2 take care of our children. But I recognize that
3 there's been a process by which we have come to to
4 this day and to this compromise.

5 And, so, I am going to vote yes on
6 the bill, and I would also add one other thing.

7 I have put in an LS request asking
8 for an intro that will make the sale of litigerio
9 (phonetic) and other ingestible substances that
10 contain lead in this City unlawful.

11 I was a little disturbed to be told
12 that the advocates were not terribly pleased with
13 that, because it was, in their view, a comment that
14 lead paint in apartments isn't a serious problem.
15 Though one-third of children, I believe that's the
16 statistic, one-third of the children in this City
17 who are infected by lead paint are not getting it
18 from lead paint in their apartments, and I don't
19 think we ought to forget about the other third.

20 And, so, I hope that once we move
21 past this, and as I expect, pass this bill on
22 Monday, override a veto, if necessary, that we can
23 also look at these other possible causes of lead
24 poisoning in this City. If it's three kids or 300,
25 there is absolutely no societal purpose by allowing

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2 litigerio or candies that contain lead to be sold in
3 this City. It sends a terrible message that we don't
4 tell people that as culturally bound as these
5 practices may be, they are hurting our children. And
6 I hope we can get together on that obviously in the
7 next legislative session.

8 Thank you, all, for listening to me
9 ramble on as well, and I vote aye.

10 COUNCIL CLERK: Jackson.

11 COUNCIL MEMBER JACKSON: Madam Chair,
12 I'm going to follow suit, I'd like to comment, if
13 you don't mind, before I vote.

14 First of all, I'd like to take the
15 opportunity to thank you for your patience, and I
16 know that sometimes the meetings are long and
17 without food and without going to the restroom, and
18 believe me, I tried to attend all of them, but I did
19 not attend all of them, I must say, but I tried to
20 be diligent as far as attending my meetings, I take
21 my job very seriously.

22 So, I want to thank you for this long
23 process on the very, an issue that is very, very
24 controversial. And obviously everyone agrees, both
25 advocates for Intro. 101 and those that feel it

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2 should be changed that everyone agrees that three-
3 to four-thousand children that are lead poisoned,
4 and many of them, if not all of them, from lead
5 paint in homes, clearly has to stop. That's for
6 sure, because we know that the result is that our
7 children are being poisoned, and damage to their
8 brains that will never come back, so we definitely
9 know that. So, I want to thank you for your
10 patience, and this is a very emotional subject, and
11 let me tell you, you had a lot of patience, and
12 sometimes you were a little -- but that's okay,
13 we're all human, you know what I mean? And so we all
14 have to have patience with one another as a body,
15 and I think that in retrospect in looking at the
16 whole process, I say that this is an esteemed body
17 and I'm glad to call all of you my colleagues on
18 this body and I truly mean that.

19 Secondly, the staff, you know,
20 obviously need to be applauded and commended, and
21 some advocates on the other side try to have a last
22 minute push to make some changes and we all were
23 listening to that, and I've communicated the
24 concerns that the advocates in my community, as far
25 as affordable housing, because I have a concern, as

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2 I said there is a balance there, the balance is
3 trying to stop children from being lead poisoned and
4 then also Madam Chair, the issue of building
5 affordable housing in our community.

6 And I'll tell you, I have thousands
7 of units in my district that are affordable housing,
8 and I want that to continue, because it's
9 affordable, and people in my district need
10 affordable housing, so we're trying to strike that
11 balance.

12 And I do know from a process point of
13 view that the staff and everyone has been involved
14 for a long, long time and we're at the end of this
15 road as far as passing Intro. 101, and quite
16 frankly, the bottom line is that one child lead
17 poisoned is too many, and I hear the concerns of
18 advocates that are advocating as far as insurance
19 and things like that, and I hope that things work
20 out for them and for us, because when I say them and
21 us, they may be the owners, but as my constituents
22 are the residents that live in those affordable
23 units that they build, so we are impacted by that
24 also.

25 I just want to compliment my former

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2 colleague Stanley Michels, and I remember he was an
3 advocate, the lead person on the bill, and then when
4 he left the City Council, I remember very clearly he
5 passed on a baton to Bill Perkins, and I know there
6 was some discussion, initially he wanted me to take
7 it on because I was replacing him in the 7th
8 Councilmanic District, but I say to you in
9 retrospect, I can understand why Council Member
10 Perkins was chosen to take the lead on this
11 particular bill.

12 Obviously someone with his vast
13 experience and knowledge and the fact that he has
14 gone through this situation in the City Council
15 before, in my opinion you needed someone with his
16 experience and fortitude as a marathon man in order
17 to go through this. And so I applaud you, Bill, for
18 taking the lead on this particular matter.

19 And I'm hoping in the long run that
20 this is a win/win situation for everyone. I try to
21 think positive, and that's the way I want to
22 proceed, knowing that the impact that this will
23 have, I must vote, I must vote yes on Intro. 101-A.

24 COUNCIL CLERK: Katz.

25 COUNCIL MEMBER KATZ: Chair

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2 Provenzano, to explain my vote?

3 Obviously, you've got my thank you to
4 the Chair and to the staff and everyone who is
5 involved in reaching today. I do agree it was sort
6 of a marathon over the last year and I do believe a
7 lot of the issues were fleshed out. There has been
8 some discussion of things being quick, it's just not
9 the way it was, and it was a very thought out,
10 thoughtful detailed discussion on the issue.

11 I have some concerns that I share
12 with you, Madam Chairing. I remember in the hearing
13 first off, the fact that the resources are going to
14 be now Citywide instead of what has been dubbed the
15 belts of lead paint poisoning.

16 As you know, when the Department of
17 Health was on the stand, I asked the Department of
18 Health for the numbers of those folks and children
19 who are poisoned outside of those belts, and I
20 didn't receive an answer on that, and I'm not sure
21 that's because of the stats or because of how it's
22 done. I have no idea. But there is an issue with the
23 resources and the liability and also the affordable
24 housing issue.

25 I will tell you that as the Chair of

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2 the Land Use Committee, bar none, affordable housing
3 is the largest single issue that comes up in every
4 disposition and every rezoning and everything that
5 the Committee does. It is a priority of the Council
6 members, not only on this Committee but in the
7 entire City Council, and I know that we will still
8 continue to have it as a priority, and we will make
9 sure that affordable housing is still created in
10 abundance in this City and we're not going to let
11 anything stand in the way of that.

12 I want to comment on what Council
13 Member Reyna said and she's absolutely correct, we
14 have oversight over the agencies on this issue and
15 this issue is not going away. But we do need
16 legislation, as Councilman Fidler said. We need
17 legislation to protect the kids and we need
18 legislation so that the industry has guidance under
19 the direction so that they know which way this
20 Council expects them to go.

21 I'm voting yes on this, Chair
22 Provenzano, for several reasons. Number one, most of
23 my questions, as far as the legislation and as far
24 as the problems that we may have, have been
25 answered.

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2 Number two, I do believe we need
3 legislation on the lead paint issue. I do believe
4 our children need protecting and I think it's our
5 responsibility to make sure that we not only pass
6 this bill, also rules and regulations are
7 promulgated pursuant to this legislation that never
8 was done under Local Law 1.

9 And obviously, I have oversight. I am
10 comfortable that the Council members in this City
11 Council will use that oversight responsibility to
12 the fullest extent to make sure that the bill is
13 working, to make sure that our kids are protected,
14 to make sure that affordable housing is still being
15 built, to make sure that rules and regulations of
16 proper authority have been promulgated, and on that
17 note, on balance I think it's a good bill. I vote
18 aye.

19 COUNCIL CLERK: Stewart.

20 COUNCIL MEMBER STEWART: Madam Chair,
21 may I be excused to explain my vote?

22 First, I want to thank the folks who
23 put this bill together because it brings out some of
24 the inequities and the problems of the City.
25 However, I think that we should not just really feed

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2 on our emotions, and lose our common sense. We have
3 heard from HPD and they said that this bill fell
4 short of the expectation to strengthen the
5 enforcement capacity. We have heard that its
6 unintended consequences which will negatively impact
7 affordable homes. We have heard about the inadequate
8 timing frames they spoke about that will only
9 increase risk of failure and non-compliance, and
10 will not help protect health of children at risk.

11 We have also heard some serious
12 concerns that were articulated by people like the
13 developers, mortgage people, small property owners,
14 Health Department, Dr. Frieden. We have also heard
15 from HRA on the question of affecting homelessness
16 negatively. We are all concerned about the health of
17 children, and if we truly believe, if we truly
18 believe that, then why can't we have a win/win
19 situation.

20 If we believe that the health of
21 children is the focus, then why the rush? Why not
22 sit down with the fore-mentioned agencies and the
23 interested parties to come up with a bill that will
24 work for all of us.

25 I believe that the rush bill,

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2 catering to special interests is worse than no bill
3 at all.

4 This bill will have to stand the test
5 during the next five years. Rest assured that I feel
6 that I was elected to be the voice of the voiceless,
7 and even though I was intimidated from the time of
8 the introduction of this bill, I was castrated in so
9 many different ways, just because I think the
10 interest of the small landlords and the interests of
11 the children who cannot find homes, and the ones who
12 have difficulty in becoming and join in part of a
13 piece of the American dream of owning real estate,
14 and even, yes, those children who will feel this
15 mostly, I must beg you, do not use your emotions. We
16 all do want to protect children, but at the same
17 time we are not going to do that, and I was not sent
18 here to do that by destroying other people.

19 I feel we can have what we call a
20 win/win situation. I feel this is a rush and all
21 those who will be talking even to an amendment of
22 the bill, fought against it, even to talk to deal
23 with it on a level where everyone can understand we
24 fought against it, I must let you know within the
25 next five years we will know and we will see the

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2 test of this bill, we will understand. And I'm glad
3 that we're still in the Council that we will have to
4 have oversight to look at this clearly. I feel,
5 ladies and gentlemen, we are making such a mistake
6 by voting such a bill that has so many shortcomings,
7 and it has been articulated by so many different
8 people.

9 Once again, I want to let you know
10 that I thank you for bringing these issues to the
11 forefront. And on that note, I vote no.

12 COUNCIL CLERK: Oddo.

13 COUNCIL MEMBER ODDO: May I be
14 temporarily excused to explain my vote? Thank you.

15 Maddie, I've known you for more than
16 a decade, and I know what's in the heart and I think
17 those of us who know you well know of your
18 integrity, and I trust as Council Member Fidler
19 said, those in the audience, those that advocated on
20 both sides will respectfully see that we can look at
21 issues differently. So, let me commend you for your
22 patients, let me commend you for your integrity.
23 You're a good friend. You're a good chair. And I
24 hope you have a relaxing holiday because you deserve
25 it.

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2 To my friend Marcel, we, and I use
3 the personal pronoun "we" are not adversaries and
4 when I am Mayor of Sarasota, Florida, I will buy you
5 lots of suntan lotion and you will be a great Deputy
6 Mayor.

7 This ends for now the legislative
8 branch of government's involvement with lead. As we
9 say at the football draft, the judicial branch of
10 government is on the clock, and rest assured this
11 bill will find it's way into the courts.

12 My fear is that it will languish in
13 the courts. If it does, there are a few things that
14 are certain. All the time that it is in the courts,
15 thankfully lead cases in New York City will continue
16 to decrease. They will continue to decrease at a
17 rate faster than a national rate, and, yes, kids
18 will continue to be poisoned, and, yes, as our
19 colleagues pointed out, kids in particular
20 communities will be poisoned, and, yes, those are
21 communities of color. My concern is that we've
22 missed an opportunity with this bill, to craft a
23 bill that focuses the resources where they should be
24 spent, and that will sustain, withstand the
25 inevitable legal challenge.

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2 Some will move on to bigger and
3 better things. Borough President, Congress, Mayor,
4 and some of us will be back here and we will be
5 dealing with lead, and I hope whether it's a year
6 from now or two years from now or five years from
7 now, we get it right then, because we didn't on this
8 occasion. I vote no.

9 COUNCIL CLERK: By a vote of eight in
10 the affirmative, three in the negative, no
11 abstentions, the matter is adopted. Council members,
12 please sign the Committee report.

13 CHAIRPERSON PROVENZANO: I take the
14 privilege of the chair to make a few more comments.

15 There are some folks that were not
16 thanked, HPD, Commissioner Perine; Dr. Frieden,
17 Department of Health and Mental Health, they also
18 spent many, many hours at this Committee, not only
19 giving testimony but answering questions and
20 hopefully it will get back to them that I expressed
21 my sincere thanks to them, as does the whole
22 Committee I'm sure.

23 I would like to emphasize from some
24 of the comments that I heard, first of all, I thank
25 my colleagues for the kind things that they had to

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2 say, I'd like to emphasize that I don't believe
3 there are sides in this issue. There is no side.
4 There is no good guys and there's no bad guys, and I
5 think sometimes we forgot that and things sort of
6 blurred over.

7 I also would like to thank, and most
8 of them aren't here, the folks that did sit out
9 there day after day, hour after hour. As RJ said,
10 there were times where, you know, in the hustle and
11 bustle folks got edgie, got emotional, but I don't
12 apologize for myself. I happen to be a very anal
13 person, I need organization and decorum to function.
14 So that's why my hearings go the way they go.

15 Be that as it may, if you like it,
16 fine. If you don't, that's fine too.

17 I would also like to comment on
18 Council Member Fidler talking about the one-third of
19 the kids who are poisoned by other sources, and
20 that's really a sticky point for me, because I am
21 really concerned about those kids, and I think that
22 when this piece of legislation is going whatever way
23 it goes, we really must address that issue, because
24 I think that is becoming more and more serious,
25 because there are so many ways these kids can be

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2 lead poisoned. And I would hate to think that now
3 that we're doing this, we don't care about those
4 kids.

5 So, I, for one, would probably be one
6 of the first people to sign up for legislation that
7 you want to introduce, and I'd like to see us move
8 forward on that.

9 Council Member Perkins would like to
10 make a few statements. Please do.

11 COUNCIL MEMBER PERKINS: Thank you
12 very much, Madam Chair.

13 I know that I've taken up a lot of
14 your time beyond today, so I'm not going to take up
15 much more time. I want to begin by joining those who
16 were expressing an appreciation to all that have
17 been involved, including the loyal opposition.

18 In fact, I want to especially thank
19 the loyal opposition because they have helped us
20 make a better bill. We've included some of the
21 concerns and I think we've come up with a
22 state-of-the-art bill that can make us all proud,
23 that this is an institution that has embraced those
24 children who are the victims of potential victims of
25 lead poisoning for the record, and I think that's

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2 very important, and I feel proud to be associated
3 with an institution that has done such.

4 I want to also take a moment to thank
5 the Speaker, Gifford Miller, who came on board and
6 brought his right hand Marcel to the table to help
7 us craft this state-of-the-art legislation. Needless
8 to say, all your staff in the Housing Committee,
9 Terzah, all the staff of the Council in general, and
10 let me just say in conclusion, I have a lot I want
11 to say, but I don't want to, again, take up your
12 time.

13 NYCCELP is the organization, the New
14 York City Coalition to End Lead Poisoning, that has
15 been the movement that has been sort of the wind
16 under my wings, as they say, to make this bill
17 happen for this City and this Council, and I want to
18 commend them for their perseverance for their
19 steadfastness, for their militancy and advocating on
20 behalf of the children.

21 Then I want to acknowledge these
22 mothers who have turned their pain into power, and
23 there are two in particular that I need to
24 acknowledge who have been so instrumental in this
25 and they're with us today, and one is Susan Mattei,

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2 and the other, of course, is my own Cordel Clear.

3 Yes, you can give them a round of applause on my

4 time. I know the Chair is going to rule me out of

5 order, but they are the ones who put a face to the

6 pain, and have, instead of being cynical, came to us

7 as an institution and asked us for help, and we

8 responded and I think we responded in a rather

9 extraordinary way with this legislation.

10 So, Madam Chair, thank you again, for

11 your indulgence over the last two years, because

12 there's really been more than a few months or a few

13 hearings, and I guess we move on to the next stop on

14 Monday. Thank you.

15 And in case I didn't say so, I want

16 to make sure that every member of this Committee,

17 whether or not they supported this bill, I want to

18 make sure that they understand how much I appreciate

19 their participation as well.

20 CHAIRPERSON PROVENZANO: Thank you.

21 This hearing is adjourned.

22 (The following written testimony was

23 read into the record.)

24

25

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Written Testimony Of:

3 Suzanne Zafonte Sennett

4 Director of Child Care

5 New York State Office of Children & Family Services

6

7 Regarding Proposed Initiative No. 101-A (2003)

8 of the Council of the City of New York

9

10 Submitted by Suzanne Zafonte Sennett

11 Director of Child Care

12

13 December 16, 2003

14 Via Facsimile and U.S. Mail

15

16 Proposed Initiative No. 101-A

17

18 Thank you for the opportunity to
19 comment on Proposed Initiative No. 101-A regarding
20 childhood lead poisoning prevention that has been
21 introduced for consideration by the New York City
22 Council.

23 As the Director of Child Care for the
24 New York State Office of Children and Family
25 Services, I supervise the licensure and monitoring

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2 of all regulated child care programs across New York
3 State with the exception of day care centers in New
4 York City.

5 However, while day care centers are
6 exempted from State regulation, group family day
7 care programs, registered family day care programs
8 and school age child care programs within the five
9 boroughs of New York are under the purview of State
10 law and regulations.

11 Protecting the health and safety of
12 children is the preeminent concern of the Office of
13 Children and Families across all its programs, and
14 very specifically in the area of child day care. We
15 are strong State partners with the City of New York
16 in promoting safe, quality child care.

17 Although OCFS shares the sponsors'
18 concerns regarding preventing lead poisoning in
19 young children, the City Council does not have the
20 authority to implement the portions of the
21 initiative that address family and group family day
22 care homes and school-age child care centers in the
23 City of New York (17-820 to 17-825).

24 Social Services Law 390 provides OCFS
25 with the authority to regulate the provision of

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2 child care services throughout the State with the
3 exclusion of child care centers located in the City
4 of New York. Therefore, OCFS is responsible for
5 regulating family and group family day care homes
6 and school age child care programs in the City of
7 New York. The New York State Legislature, in passing
8 Social Services Law 390, chose to preempt any town,
9 village, and city laws, ordinances, rules or
10 regulations that establish building, health or
11 safety standards for child care programs regulated
12 by OCFS. The courts in the State of New York have
13 agreed with the State Legislatures' position in this
14 matter.

15 The courts have held that local
16 legislatures may not act in areas covered by Social
17 Services Law 390 and the associated implementing
18 regulations. Based on the relevant statute and case
19 law, the New York State Office of Children and
20 Family Services has no other option but to conclude
21 that the provisions in New York City Council
22 Proposed Initiative No. 101-A that would establish
23 special standards for family and group family day
24 care homes and school-age child care programs are
25 preempted by Social Services Law 390.

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2 To the extent that the City of New
3 York imposes standards on ALL residential settings
4 in order for them to be deemed habitable, then
5 compliance with these building codes will be a
6 prerequisite for licensing or registration.

7 However, one (sic) a residence has
8 been deemed to meet all necessary standards for
9 typical residential use, no additional building or
10 zoning requirements can be imposed by any entity
11 other than OCFS.

12 The fact that those provisions
13 related to child day care cannot be implemented,
14 does not weaken the strength of our past, present
15 and future efforts to prevent lead exposure of
16 children in child day care settings. Outlined below
17 is a summary of how lead poisoning prevention is
18 addressed through current OCFS regulations and
19 programming.

20 Many houses and apartments built
21 before 1978 have paint that contains lead (called
22 lead-based paint). Lead from paint, chips, and dust
23 can pose serious health hazards if not taken care of
24 properly. Child day care regulations address the
25 issue of lead in the following ways (examples drawn

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2 from family day care regulations but parallel

3 citations found in other modalities):

4 - 417.3 (e) Non-toxic paint and
5 non-hazardous materials must be used on room
6 surfaces, toys, equipment, materials and furnishings
7 that are accessible to children.

8 - 417.3 (f) All concrete floors must
9 be covered with appropriate material. The facility
10 must be free of peeling/damaged paint/plaster.

11 - 417.5 (a) Suitable precautions must
12 have been taken to eliminate any safety hazards in
13 areas accessible to the children.

14 - 417.11 (i) The provider must have
15 tried to obtain a copy of a lead-screening
16 certificate for each child under the age of six. If
17 this information is unavailable, the caregiver must
18 have given the parents information on lead poisoning
19 and prevention and also referred them to the child's
20 health care provider or local health unit for a lead
21 blood screening test.

22 In the case of a building built
23 before 1978, regardless of the condition of the
24 paint, OCFS will inquire as to when the building,
25 particularly windowsills and other internal

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2 surfaces, were last painted. It is rarely the case
3 that internal surfaces would not have been painted
4 since 1978.

5 Thus, in most cases, 417.3 (e)'s
6 requirements are not an issue.

7 However, particularly in rural areas
8 with older outbuildings and barns, OCFS will learn
9 that older buildings, even if there is no
10 expectation that the children will actually have
11 direct access, may have contributed to paint chips
12 and dust in the soil.

13 OCFS have, when appropriate, asked
14 the provider to test such surfaces, and surrounding
15 soil. At that point the local Health Department will
16 take the lead in determining an appropriate course
17 of action. At times, this may mean restricting the
18 play area to a portion of the provider's property
19 where the soil tests safely.

20 In the case of a building where there
21 is chipped or flaking paint where the condition is
22 discovered exclusively through inspection (i.e. Not
23 in response to illness in a child), our directive is
24 to repair the chipping or flaking paint, thus
25 re-encapsulating any potential lead paint below the

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2 current paint surfaces.

3 While OCFS may not force a parent to
4 have their child tested for lead as a condition of
5 enrolling in child care, OCFS does require child
6 care providers to make the importance of lead
7 testing known to parents and ask them to seek the
8 results of lead testing known to parents and ask
9 them to seek the results of lead testing from
10 parents.

11 To the extent that a child tests
12 positively for lead, the local health department
13 will investigate all of the environments in which
14 the child spends time. If, through this
15 investigation, the child care facility emerges as a
16 potential source of the child's elevated lead
17 levels, OCFS defers to the local health department
18 in designing an appropriate course of action (as
19 OCFS does in any environmental remediation plan) and
20 will require the provider as a condition of
21 continued licensure, to fully implement the health
22 department directives.

23 Finally, to the extent that a
24 building is being renovated to become a day care
25 center, or renovations on an existing program are

1 COMMITTEE ON HOUSING AND BUILDINGS

2 underway, then more expansive controls come into
3 play through state and local building codes.

4 The Office of Children and Family
5 Services also promotes appropriate action by making
6 funds available to potential and existing providers.
7 The Office offers start-up grants for potential
8 providers of all modalities, family day care, group
9 family day care, day care centers and school age
10 child care programs.

11 These funds are available to assist
12 in defraying the cost of readying a site for the
13 provision of child care. To the extent that lead
14 abatement is a necessary step in site approval, the
15 funds could be used for that purpose.

16 Similarly, the Office has funds for
17 health and safety improvements for existing
18 regulated providers. Lead abatement would be
19 prioritized for the use of these funds across all
20 modalities.

21 A copy of the Request for Proposals
22 for day care centers and school age child care
23 programs is available on our website at
24 ww.ocfs.state.ny.us.

25 In addition, this website contains a

1 COMMITTEE ON HOUSING AND BUILDINGS

2 link to information as to how family day care
3 providers can access start up and health and safety
4 funding from local child care councils and other
5 local agencies in NYC funded by OCFS.

6 I am confident that this summary
7 reinforces our shared commitment to the protection
8 of children. I am also hopeful that it will cause
9 you to refrain from passing an ordinance that will
10 not be legally enforceable and would only contribute
11 to confusion among child care providers and the
12 various local partners that work with us to promote
13 safe, affordable child care in New York City.

14 OCFS remains available to you to
15 provide additional information as may be necessary.

16 (Hearing concluded at 2:30 p.m.)

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CERTIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, CINDY MILLELOT, a Certified Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the within proceeding.

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.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of December 2003.

CINDY MILLELOT, CSR.

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C E R T I F I C A T I O N

I, CINDY MILLELOT, a Certified Shorthand Reporter and a Notary Public in and for the State of New York, do hereby certify the aforesaid to be a true and accurate copy of the transcription of the audio tapes of this hearing.

CINDY MILLELOT, CSR.