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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 5, 2003  
Start: 1:25 p.m.  
Recess: 3:05 p.m.

City Hall  
Council Chambers  
New York, New York

B E F O R E:

MADELINE PROVENZANO  
Chairperson,

COUNCIL MEMBERS: Jose Rivera  
Diana Reyna  
Tony Avella  
Gale Brewer  
Leroy Comrie  
Robert Jackson  
Kendall Stewart  
Erik Dilan  
Christine Quinn  
Charles Barron

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

3

4 Dr. Thomas Frieden  
5 Commissioner  
6 New York City Department of Health  
7 and Mental Hygiene

8

9 Jerilyn Perine  
10 Commissioner  
11 New York City Department of Housing Preservation  
12 and Development

13

14 Linda Gibbs  
15 Commissioner  
16 New York City Department of Homeless Services

17

18 Wilfredo Lopez  
19 General Counsel for HUD  
20 New York City Department of Health  
21 and Mental Hygiene

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23 Harold Schultz  
24 Special Counsel  
25 New York City Department of Housing Preservation  
and Development

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2 CHAIRPERSON PROVENZANO: If things  
3 look a little confusing, they are. This is what,  
4 Bill, fourth, fifth hearing?

5 COUNCIL MEMBER PERKINS: That's a  
6 good number.

7 CHAIRPERSON PROVENZANO: We'd like to  
8 move it along as quickly as possible. For those of  
9 you that don't know, there's a storm outside and  
10 we'd like people to get home quickly and safely, so  
11 I'm asking everybody to be as brief as possible.

12 We'll start with Council Member  
13 Perkins, who promised me he had a brief opening  
14 statement.

15 COUNCIL MEMBER PERKINS: Thank you  
16 very much, Madam Chair, for your cooperation and the  
17 opportunity to make a brief opening statement.

18 I am disappointed that the  
19 administration walked away from the negotiating  
20 table at the eleventh hour when the health and  
21 wellbeing of New York City's children is at stake.  
22 This bill is the most comprehensive, effective lead  
23 bill legislation in the country.

24 Further, it is a reasonable and  
25 approachable bill that addresses the legislative

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2 concerns of the administration while still  
3 protecting the health of children. I urge the Mayor  
4 to take another look at this bill and invite him to  
5 join us in passing sweeping legislation that will  
6 ultimately save hundreds of thousands of children in  
7 our city from the hazards of lead paint and lead  
8 paint poisoning. Thank you very much.

9 CHAIRPERSON PROVENZANO: That was  
10 very brief, Bill.

11 We have Tom Frieden from the  
12 Department of Health and Mental Health. We have  
13 Jerilyn Perine from HPD, and we have Linda Gibbs  
14 from the Department of Homeless Services. So  
15 whichever one of you wants to start first.

16 COMMISSIONER FRIEDEN: Good  
17 afternoon. I'm Dr. Thomas Frieden, Commissioner of  
18 Health and Mental Hygiene. I appreciate the  
19 opportunity to speak with the Council, this City  
20 Council Committee on Housing and Buildings and other  
21 members of the Council about lead poisoning  
22 prevention in New York City and the latest version  
23 of Intro. 101A.

24 We're all concerned with stopping  
25 lead poisoning in New York City. Several weeks ago

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2 I testified before you about Intro. 101A. I  
3 addressed components that, with some slight  
4 modification to ensure, a law would protect those at  
5 greatest need would allow us to achieve our goals.  
6 Most of those concerns appear to have been addressed  
7 in the latest version of the bill, however there are  
8 still issues of concern. It would be irresponsible  
9 to rush into a law that has such wide ramifications  
10 for the city's health and for the city's housing and  
11 that includes components that have potentially very  
12 large costs but which do little or nothing to  
13 address lead poisoning and to prevent it in our  
14 children.

15 I'll briefly review these issues with  
16 you. First is the issue of a chewable surface under  
17 the latest version of the bill. In the latest  
18 version, landlords would be required to remediate  
19 all window sills in all pre- 1960 buildings in every  
20 neighborhood in New York City where there's a child  
21 under the age of seven. There are an estimated  
22 350,000 dwelling units in New York City with such a  
23 child. Assuming for a moment that an average of  
24 eight window sills per dwelling unit, that's 2.8  
25 window sills which need to be remediated in the near

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2 future. No matter how stringently work practices  
3 are monitored, it is quite possible that some of  
4 that remediation will involve the generation of lead  
5 dust and that unintentionally that component could  
6 result in more rather than less lead poisoning.

7                   Remediation of window sills should be  
8 predicated on a real risk of poisoning. The best  
9 scientific knowledge suggests that most childhood  
10 lead poisoning results from hand- to- mouth  
11 activity. Remediation should be done where there's  
12 evidence that such a risk exists. Thus, we  
13 recommend that chewable surfaces be defined as an  
14 edge or protrusion that has been chewed or is  
15 deteriorated or where an occupant has notified the  
16 owner that a child lives there has mouthed or chewed  
17 it. In other words, either if it is actually  
18 deteriorated or if a parent or a family member or a  
19 child requests remedial action. We're not saying it  
20 shouldn't be done, we're saying it doesn't make  
21 sense to do this in nearly 3 million window sills in  
22 short order because you may actually cause more lead  
23 poisoning than you prevent. We know there's a risk  
24 of causing lead poisoning when you disrupt intact

25 lead paint. We're not certain that doing this will

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2 prevent many or even any cases of lead poisoning.

3                   Second, we want to emphasize once  
4 again the need for realistic time lines. It is the  
5 owner's obligation to correct the hazards and the  
6 owner needs adequate time to do this. HPD will  
7 discuss most of the time line issues, but I do want  
8 to discuss one that specifically pertains to the  
9 Health Department. The current version requires  
10 that we certify to HPD any dwelling unit where the  
11 landlord failed to comply with the order to correct  
12 the violation. We support this provision as we do  
13 so many other provisions in this version of the  
14 bill.

15                   New York City is one of the only, if  
16 not the only place in the U.S. Where a city will  
17 correct a hazard when the landlord fails to do so.  
18 But the current bill requires that this  
19 certification be completed within 16 days of the  
20 report of the elevated blood lead level. This is a  
21 problem. When a blood lead test is received, the  
22 Health Department inspector goes out within an  
23 average of about two days. However, there are  
24 situations where access into a dwelling unit is not

25 successful. Sometimes the family's out of town.

8

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2 Sometimes the family is not easily found. Physicians  
3 frequently don't accurately write an address on the  
4 blood test request requisition slip. Sometimes it's  
5 not the family's primary residence or address.  
6 Until we get into a home we don't know if there's a  
7 lead- based paint hazard at all. And in about 40%  
8 of the addresses we don't find a lead paint hazard.  
9 Once we identify a violation we issue a legal order  
10 to the landlord to abate. It takes several days to  
11 prepare that order so it will stand up in court if  
12 it's challenged, as it often is, or sometimes is,  
13 and it takes some time to serve it or have it arrive  
14 at the landlord. The landlord is then given five  
15 days to correct. Certifying to HPD within 16 days is  
16 neither efficient nor effective. In many cases the  
17 landlord would have begun doing the work and we will  
18 now have HPD trying to do the work as well.

19 We recommend a simple change in this  
20 provision, that the provision specify that the  
21 certification process be completed within 16 days of  
22 the date of identification of lead- based paint  
23 hazards. The implementation time for this

24 legislation is also unrealistic. As you know, the  
25 discussion of this legislation has been going on for

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2 many months. The legal, technical and  
3 administrative aspects of implementation are  
4 extraordinarily complex. We want to get it right.  
5 We should proceed with speed but not with  
6 irresponsible haste. It will take months to  
7 promulgate regulations, hold public hearings on  
8 those regulations, analyze and incorporate the many  
9 comments which we are inevitably going to receive,  
10 establish procedures for implementation and ensure  
11 effective implementation. It may be easy to set a  
12 deadline but ensuring that doing so doesn't  
13 unintentionally lead to longer delays and effective  
14 implementation of effective legislation is much  
15 harder.

16                   At the last hearing the Council  
17 requested cost estimates. Since we only received  
18 the bill very late last night, I can't give you an  
19 exact estimate, but we remain concerned in  
20 particular about the costly item of monitoring work  
21 practices for large jobs for a variety of reasons,  
22 including liability concerns which would arise in  
23 all work done that covers more than a hundred square

24 feet. This could cost the Department of Health \$7  
25 million or much more than that and I don't think it

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2 would have a commensurate benefit in preventing lead  
3 poisoning. This could be rectified with a  
4 relatively minor change in the wording of the  
5 legislation.

6 I'm also concerned about the  
7 provision for cleaning dust when no significant  
8 lead- based paint hazard has been identified. The  
9 bill currently only allows us to order the landlord  
10 to clean it if we determine that the source of dust  
11 is from the dwelling. The bill should more  
12 specifically allow the department to order the  
13 landlord to clean if there are no lead- based paint  
14 hazards in -- we should be able to order cleaning if  
15 there are lead- based paint hazards in the dwelling  
16 unit or in adjacent common areas. Moreover, this  
17 should be specified which I believe was intended for  
18 children with blood lead levels of 15 or greater.

19 As you know, my scientific judgment  
20 is that changing the current practice of covering  
21 children under six, established pursuant to the now  
22 voided Local Law 38 covering children under seven,

23 would be a serious error.  
24 The current draft legislation is an improvement as  
25 it allows the Board of Health to reduce the age to

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2 six or under six after one year.

3 I want to make clear that our concern  
4 on this issue has everything to do with preventing  
5 lead poisoning in our city's children. By  
6 increasing the size of the population covered by  
7 15%, and that's what increasing the age by a year  
8 would do, all of this increase, being among children  
9 who are at vastly lower risk for lead poisoning and  
10 who would receive vastly lowered benefit from  
11 intervention, you reduce at any funding level the  
12 effectiveness of lead poisoning prevention efforts  
13 by 15%. Let me reiterate, this is not an issue of  
14 resource allocation. If a hundred million dollars  
15 is being spent on the program, it will be 15% less  
16 than it would be otherwise. If a billion dollars is  
17 spent on the program, it'll be 15% less effective  
18 than it would be otherwise.

19 Younger children account for the vast  
20 majority of those who are lead poisoned. The number  
21 of children with lead poisoning peaks at two years  
22 of age.

23 Children under three play on the floor more. They  
24 have more exposure to lead dust. This is the age at  
25 which they have the most hand- to- mouth activity

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2 which exposes them to lead dust from their hands,  
3 toys and bottles. This is the age when their  
4 developing nervous system is most susceptible to the  
5 harmful effects of lead. This is the age at which a  
6 child's elevated levels are most likely to be  
7 related to exposures in their own home versus  
8 exposures elsewhere. This is the age at which  
9 intervention to lower blood lead levels are more  
10 likely to be successful. This is the age at which  
11 interventions to lower blood lead levels will have  
12 the most positive impact on child development. All  
13 of these factors are very different among six year  
14 old children. Older children have a much lower rate  
15 of poisoning, are much less likely to be exposed in  
16 their home and, if exposed, it's less likely for  
17 that exposure to have their levels reduced as a  
18 result of environmental intervention.

19 I understand that beyond the issue of  
20 the merits of the decision of whether to cover six  
21 year olds or not, there are issues of environmental

22 review. There's apparently concern that if the  
23 nonimplemented Local Law 1 age of under seven is  
24 changed to under six, this could be harmful. In  
25 fact, the opposite is the case. If the number of

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2 low risk children covered increases by 15%, then  
3 there will inevitably be more lead poisoning than  
4 there would be at any level of resource allocation  
5 than there would be if the current practice of under  
6 six is continued.

7                   Any law can have unintended  
8 consequences. In the case of housing, unintended  
9 consequences could potentially include decreased  
10 availability of apartments for children with  
11 families and increased homelessness. We're all too  
12 familiar with the negative health consequences of  
13 homelessness and unstable housing. Homeless  
14 children are less healthy. Neighborhoods with more  
15 abandoned property are less healthy. There are also  
16 potentially legal unintended consequences including  
17 a large increase in taxpayer costs as a result of  
18 compliance impossibility with proposed time frames,  
19 or landlord irresponsibility or because of a  
20 plethora of lawsuits.

21                   As Health Commissioner, I hope that

22 the cost resulting from this law go toward  
23 preventing lead poisoning. We're close. Many of the  
24 changes in the statute, in the draft statute, are  
25 changes which are more protective of children. Many

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2 of the changes would make the draft statute more  
3 possible to implement. There are a few remaining  
4 issues which unless resolved would result in a  
5 statute that could have very negative unintended  
6 consequences and would not devote the resources that  
7 we need to devote to lead poisoning prevention to  
8 the most effective measures of stopping lead  
9 poisoning in New York City.

10                   It is for that reason, regretfully,  
11 because I hope that we will have a good law that we  
12 can agree on and implement rapidly but, regretfully,  
13 despite all of the areas that there has been  
14 significant progress, I would be unable to recommend  
15 that this law become effective at this point.

16                   CHAIRPERSON PROVENZANO: Thank you,  
17 Dr. Frieden. You don't have copies of your  
18 testimony? Yeah, I know things were kind of rushed.

19

20                   Now that it looks like I have several

21 Council members here, let me introduce the folks  
22 that are here. I am Madeline Provenzano, Chair of  
23 the committee. To my left I have Council Member  
24 Tony Avella. Next to him is Council Member Eric  
25 Dilan, Council Member Kendall Stewart. Council

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2 Member Christine Quinn is in front of us. To my  
3 right Council Member Leroy Comrie, Councilwoman  
4 Diana Reyna, Councilman Bill Perkins, Council Member  
5 Joel Rivera. I'm actually -- I was afraid I was  
6 going to be sitting here by myself today so I'm glad  
7 to see that so many members joined me.

8 I think what we'll do is let all of  
9 the commissioners testify and then we'll have  
10 questions.

11 COMMISSIONER PERINE: Good morning --  
12 good afternoon, Chairperson Provenzano, members of  
13 the Housing and Buildings Committee. My name is  
14 Jerilyn Perine. I'm the Commissioner of the  
15 Department of Housing, Preservation and Development.

16 I'd like to start by just clarifying for the  
17 record that we did not walk away from any  
18 negotiations last night. I was here myself 'til  
19 quite late. We basically, when language and  
20 comments that we made were not accepted, we went

21 home. We wouldn't be here today if we didn't think  
22 that there was a case to be made for some additional  
23 changes, and the points we would like to outline we  
24 hope will be able to be a step towards doing that.  
25 We remain willing to continue to talk. That's why

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2 we're here.

3                   When I testified before this  
4 committee on November 17th, I stated that the  
5 proposed bill was a big step forward in the  
6 direction of improving the lives of children.  
7 However, we believe that some technical and  
8 procedural changes were required to have a better  
9 primary prevention program than we have had to date.

10 Unfortunately, a review of the proposed  
11 legislation leads me to feel that it falls short of  
12 our expectations of a bill that we had hoped would  
13 strengthen our enforcement capacity and provide a  
14 workable framework to reduce lead paint hazards in  
15 the city's most vulnerable housing stock.

16                   I've testified at least twice before  
17 this committee and both times I've emphasized that  
18 legislative time frames must be reasonable if we are  
19 to send a message that we are serious about carrying

20 out the required work according to the standards  
21 that we all agree should be put in place. Time  
22 frames that are unrealistic only ensure failure and  
23 noncompliance and will do little to protect the  
24 health of children at risk and improve the city's  
25 housing stock.

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2                   The City of New York is the only  
3 municipality in the country that carries out a large  
4 scale emergency repair program which completes  
5 emergency work in multiple dwellings when owners  
6 fail to correct the work themselves. Our employees,  
7 working within the constraints of the city's  
8 procurement rules, budget limitations, work rules  
9 and with all the difficulty associated with carrying  
10 out repairs in the housing stock that we do not own  
11 or control access to, have corrected over 10,000  
12 lead pain violations over the last three years alone  
13 at a cost of more than \$13 million.

14                   In short, HPD has had more experience  
15 doing work to correct lead violations than any other  
16 municipality or property owner in the country. So  
17 if we indicate that time frames cannot be met, our  
18 view is not based on conjecture but rather on the  
19 most extensive body of work in the United States.

20 We say again the time frames in the proposed  
21 legislation, although somewhat altered in this  
22 draft, remain difficult to comply with, particularly  
23 for HPD to follow up with emergency repair if needed  
24 and complete a final inspection when owners have  
25 undertaken the work themselves. They are simply not

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2 realistic. Changing them would ensure that the work  
3 can be carried out in accordance with the stated  
4 objective of the bill, that is to prevent lead paint  
5 poisoning in children. Leaving them as they are  
6 will undoubtedly create a situation where our  
7 workforce, which is diligent, hard working and  
8 committed to enforcing housing standards will be  
9 doomed to fail. Nowhere in the bill is there  
10 language that would ensure that the city is  
11 protected against liability as it undertakes its  
12 heavy responsibilities under the law, not as a  
13 landlord but as a regulator. The language that as  
14 in the previous bill protected the city and that  
15 language should be in this bill as well.

16 We have also had serious operational  
17 concerns with the provision in the law that require  
18 HPD to reinspect every lead violation it issues

19 within a very short period of time. And our  
20 inability to rely on the presumption of lead paint  
21 when we are unable to conduct or follow XRF  
22 inspection due to inability to gain access.

23                   We continue to have concerns about  
24 requirements for recording intact services. These  
25 will have the effect of reducing inspector

19

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2 productivity and reducing the number of apartments  
3 that will be inspected. And let me make this clear,  
4 it is not simply a function of resources. Time  
5 frames must reflect the actual tasks that must be  
6 carried out which include getting access to a  
7 tenant's apartment multiple times, developing an  
8 adequate scope of work and safe work containment  
9 practices obtaining all the necessary materials,  
10 adequately documenting the process, ensuring that  
11 qualified workers are carrying out the work and  
12 completing all of the cleanup and final dust testing  
13 that must be done before work can be determined to  
14 be complete.

15                   In addition, time frames must be  
16 suspended when for any reason we cannot gain access  
17 to a tenant's apartment or other unforeseen  
18 circumstances arise. We simply cannot be held to a

19 standard that requires us to carry out work or an  
20 inspection in someone's apartment with no  
21 opportunity for extension when access to the  
22 apartment is not provided. Based on our experience  
23 in carrying out work under Local Law 38 to correct  
24 lead violations, approximately one-half of the work  
25 that has been completed through the Emergency Repair

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2 Program is completed within 60 days. The other half  
3 takes more than 90 days, primarily because of access  
4 issues. Appointments with tenants must be made and  
5 kept and we must make reasonable attempts to  
6 accommodate the needs of the tenants.

7 I want to be clear here. I'm not  
8 talking about half of the jobs are not being done  
9 because people deny us access, it's that we're  
10 trying to accommodate people and their lives. They  
11 have jobs and they have children and we've got to be  
12 able to get access to carry out fairly extensive  
13 work. We try to work with people to accomplish  
14 that.

15 We should also be concerned with the  
16 unintended consequences of this law. The failure to  
17 provide owners with a clear path to protection from

18 tort suits may well have the same effect that it has  
19 had in Massachusetts. Massachusetts, which has a  
20 lead paint law which provides for strict liability,  
21 has experienced a pervasive problem with owners  
22 discriminating against families with children. In  
23 New York with its substantial homeless and double-  
24 up population, such families can ill afford the  
25 consequences of making it yet harder for low income

21

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2 families to find housing. By holding landlords to  
3 clear standards, but protecting them from  
4 unrealistic risks, we can mitigate this problem.

5                   And finally, the time provided for  
6 the proposed law's effective date is still  
7 insufficient and we do note that you have extended  
8 it, but we will think it's too short. This is a  
9 very complex bill requiring the writing of complex  
10 rules which must be publicly promulgated, the hiring  
11 and training of many workers, public education of  
12 owners, reprogramming of a complex computer system  
13 and purchase of sophisticated equipment.

14                   In addition, the rehabilitation work  
15 currently under way in the city would have to come  
16 into compliance with a new standard within 120 days,  
17 potentially stopping or delaying work that is

18 already underway. Simply by extending the time  
19 frame we could resolve many of these issues.  
20 Programs at the federal level that require far less  
21 stringent time frames and scope of work took many  
22 years to implement. While we recognize that the  
23 revised version lengthens the effective date to 120  
24 days, we will believe that this bill will require a  
25 phase- in process longer than that if we are to be

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2 serious about implementing its provisions  
3 responsibly.

4                   One example is the requirement that  
5 extensive rules including brand new ones that will  
6 govern safe work practices on all repair work be  
7 ready on the day the law goes into effect. These  
8 rules will have a profound effect on the way that  
9 lead paint is handled in the city and should be  
10 carefully considered. Doing these rules in 120 days  
11 is not reasonable or appropriate.

12                   New York City has had one of the most  
13 aggressive programs of primary prevention in the  
14 United States. We were the first city, almost the  
15 first city in the U.S. to ban lead paint in 1960.  
16 Now, lead hazard reduction law preceded the federal

17 government's Title 10 rules and we have spent more  
18 money than any other municipality on direct work to  
19 reduce lead hazards.

20                   In addition, as a result of an  
21 extended and significant public investment in the  
22 renovation of the city's low income housing stock,  
23 today we have the lowest dilapidation rate since it  
24 has been measured by the U.S. Census Bureau.

25                   Once again, we believe that this

23

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2 proposed legislation has made significant  
3 improvements. The proposed bill has come a very  
4 long way. We hope now that it can come a little  
5 further. If not, I am unable to recommend that the  
6 Mayor sign the bill in its current form. The  
7 changes we are suggesting do not change any of the  
8 standards for lead safety that the law provides for.  
9 They are instead simply intended to create even  
10 stronger safeguards for our city's children and  
11 ensure that the city's housing stock remains in good  
12 repair for generations to come. Thank you.

13                   CHAIRPERSON PROVENZANO: Thank you,  
14 Commissioner. We've been joined by Council Member  
15 Charles Baron. I guess he didn't have enough of his  
16 committee. Commissioner?

17                               COMMISSIONER GIBBS: Good afternoon.  
18 My name is Linda Gibbs. I'm the Commissioner of the  
19 New York City Department of Homeless Services.

20                               In the City of New York today we  
21 provide shelter to a record 9,250 families. This  
22 includes 17,000 children who are living in homeless  
23 shelters. I'm here today to express concern that  
24 this legislation as currently written could have the  
25 effect of increasing family homelessness in New York

24

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2 City. Let me explain.

3                               Nearly 80% of the families in  
4 homeless shelters today come from doubled- up  
5 housing situations. Meaning that they are living  
6 with friends or family members and then become  
7 homeless. These are primarily young families. 67%  
8 of the children in the family shelter system are  
9 under the age of seven. In New York City today it's  
10 estimated that there are 97,000 additional families  
11 with incomes under 20,000 who are currently in  
12 similar doubled- up situations. These 97,000  
13 families with an estimated 200,000 children are  
14 living on the edge. These are families who are at  
15 risk of homelessness. These are the very families

16 to which the city is focusing increased prevention  
17 efforts to help to avoid the trauma of homelessness.

18

19                   This legislation turns these families  
20 into a liability for landlords. This legislation  
21 turns these families who are now enjoying some  
22 measure of stability as they live in the community  
23 with families and friends into families at even  
24 greater risk of homelessness. It is clear that poor  
25 families with young children are exactly the

25

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2 families we must make greater efforts to stabilize  
3 in housing. Legislation that is meant to improve  
4 the health and wellbeing of low income families  
5 should not instead destabilize their housing  
6 situations in this tight housing market.  
7 Legislation meant to improve the health and  
8 wellbeing should not create new incentives for  
9 landlords to discriminate against families with  
10 children as has occurred in Massachusetts as  
11 Commissioner Perine has described.

12                   Let me be clear. We obviously want a  
13 law that provides clear standards for owners along  
14 with strong enforcement. But we must also ensure  
15 that we do not create the unintended consequence of

16 producing more family homelessness in this process.

17 Thank you.

18 CHAIRPERSON PROVENZANO: Thank you,

19 Commissioner.

20 Commissioner Frieden, you mentioned  
21 an increase of some \$7 million to your agency to  
22 implement it. I don't think either one of the other  
23 commissioners mentioned -- gave us a figure for what  
24 -- I may have missed it but -- okay. I'd be  
25 interested in knowing if you have any idea, and I'd

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2 also be interested in knowing if there's been a  
3 commitment from OMB to address this additional  
4 expense and if not where do you plan on getting this  
5 money?

6 COMMISSIONER FRIEDEN: Again, the  
7 estimate of 7 million was specifically for work  
8 practices. We estimate again making cost estimates,  
9 with about 12 hours after seeing the bill is  
10 difficult to do, but we estimate that it may be  
11 about \$11 million for the Health Department alone.  
12 We have no additional money pledged or like next  
13 year from OMB. In fact, as you all know, we have a  
14 multi- billion dollar deficit going into the future

15 years. \$11 million comes on a series of painful  
16 budget cuts at the Health Department. We don't see  
17 places where we could cut that amount of money  
18 without significant pain. Anything that could be  
19 done painlessly has been done. Cuts of \$11 million  
20 would, for example, include all of the following  
21 programs. All of our intermediate school presence  
22 throughout public schools, a significant portion of  
23 our support for the several dozen child health  
24 clinics of HHC, our support for gratis medication  
25 programs and fuel waivers of HHC. I would be open

27

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2 to other suggestions also. It's not that I'm saying  
3 these are the programs that we'd like to cut. There  
4 are no programs left that we would think, let alone  
5 like, would be possible to cut without significant  
6 health ramifications.  
7 Most of what we do is legally mandated or related to  
8 outbreak control or related to contractual  
9 obligations that we continue or related to direct  
10 service for prevention of epidemics. So we would  
11 not want to stop controlling West Nile virus. We  
12 would not want to stop vaccinating for the flu. We  
13 would not want to stop registering births and deaths  
14 and so there are a very limited number of places

15 where we could cut. \$11 million is a very  
16 significant reduction and I don't see any way to do  
17 it without a great deal of pain.

18                   COMMISSIONER PERINE: We really  
19 didn't have a chance to analyze the cost in this  
20 bill. We certainly analyzed the last version which  
21 was close to about \$60 million in cost for HPD. I  
22 think a lot of the changes in this bill actually  
23 would reduce that number. I think we'd still be  
24 talking about tens of millions of dollars. It would  
25 be difficult to say where we would take that from

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2 within our budget because our agency's budget is a  
3 little different than a lot of other agencies. We  
4 are overwhelmingly federally funded. Our expense  
5 budget only has -- only accounts for -- about 20% of  
6 it accounts for tax levy funds. So because we  
7 couldn't just switch over the federal money, because  
8 we get those grants for particular purposes often  
9 associated with capital work, we would really be  
10 hard- pressed to be able to come up with the right  
11 kind of money for this. Certainly, we'd have to  
12 look to our preservation enforcement activities.

13                   COMMISSIONER GIBBS: The Department

14 of Homeless Services has not had a chance to cost  
15 out the implications of this bill either. The forms  
16 of that cost would come in two ways; one would be  
17 the cost of increased shelter that comes with  
18 increased family homelessness and, secondarily,  
19 would be the cost of compliance within the shelter  
20 system. Both of those would have to be taken into  
21 account.

22 CHAIRPERSON PROVENZANO: Thank you.  
23 Commissioner Perine, you mentioned Boston,  
24 Massachusetts, and we hear a lot of talk about their  
25 legislation. Could you sort of expand on that

29

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2 because I'm kind of in the dark about what's going  
3 on up there as compared to --  
4 COMMISSIONER PERINE: Well, what's  
5 happened there, you know, their housing stock is  
6 certainly a little different than ours is. It's a  
7 smaller housing stock. They don't have the large  
8 multiple dwellings that we have so most people who  
9 are renting are renting in a smaller stock. They  
10 are also an old city as we are, so they do have an  
11 aging housing stock which is why they've got the  
12 similar kind of problem with lead paint. They've  
13 got four times the rate of lead poison in children

14 that we have. One of the implications that has --

15 CHAIRPERSON PROVENZANO: That's

16 specifically Boston we're talking about?

17 COMMISSIONER PERINE: That's Boston,

18 yes, I'm sorry. At least in Boston, and I don't

19 know how pervasive the problem is statewide, but in

20 Boston with it's very tight housing market, they

21 have experienced pretty extensive discrimination

22 against families with children. Those complaints,

23 as they do here, you know, go to the State's Human

24 Rights Commission which has lead. Complaints about

25 discrimination with families has been a big issue

30

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2 for them there. Again, in a tight housing market

3 it's a concern. We don't want to create a situation

4 here where people are at an unfair disadvantage when

5 they are in the housing market looking for housing.

6 CHAIRPERSON PROVENZANO: Thank you.

7 I'm going to turn this over to some of my

8 colleagues. We've also been joined by Council

9 Member Robert Jackson, a member of the committee.

10 Council Member Stewart?

11 COUNCIL MEMBER STEWART: Thank you,

12 Madam Chair. Commissioners, you all three seem to

13 think that there's a rush and if so I want to ask  
14 you, how many sit down meetings have you had with  
15 the proponents of this bill?

16 COMMISSIONER PERINE: I haven't  
17 counted them all. I mean we were here pretty late  
18 last night. Certainly in addition to myself,  
19 members of my staff have been in multiple meetings.  
20 I don't know the number, and there have been  
21 obviously other discussions as well. So there's  
22 been lots of discussions, particularly over the last  
23 couple weeks. As I said, we are happy to continue  
24 talking.

25 COUNCIL MEMBER STEWART: In other

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2 words, you feel that there's a lot more we can do by  
3 coming together and spending time and trying to work  
4 out something that is, that can be worked for both  
5 sides.

6 COMMISSIONER FRIEDEN: I think as we  
7 said, most of the concerns we previously raised have  
8 been effectively addressed and those concerns are  
9 concerns that will allow the current version of the  
10 bill to be more protective of children and more  
11 effective. There are, however, some remaining  
12 concerns which remain unresolved and which we feel

13 would result in a bill that doesn't do the good that  
14 it should do and it could have very serious  
15 unintended consequences.

16 COUNCIL MEMBER STEWART: All right.  
17 I agree with that. As far as liability is  
18 concerned, is the city going to be liable when one  
19 does not have insurance because as I see it the  
20 small home owners cannot get insurance right now and  
21 if they can't get insurance with this form of  
22 liability that we are creating for them, it means  
23 then that they wouldn't have any defense. Would the  
24 city be responsible, would they be liable as a co-  
25 defendant?

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2 COMMISSIONER PERINE: The city's  
3 liability is actually a little different in this  
4 bill than the owner's. It's not in our role as an  
5 owner that we're actually talking about the city's  
6 liability. The issue with the city's liability in  
7 this bill is really the city's role as a regulator,  
8 as the entity that has some responsibility for  
9 enforcing the law. In Local Law 38 there was  
10 specific language which limited the city's liability  
11 in that regard and we're simply suggesting that this

12 law should repeat the same language that that law  
13 had. The liability on the owner's side is really  
14 different and yes, I think you've probably heard  
15 from the real estate industry about issues related  
16 to insurance but I don't want to mix up those two  
17 different liability ideas. I mean what we really  
18 talked about here were the issues related to the  
19 city's liability as a regulator and what the  
20 implications we think in the housing market might be  
21 if you start to increase the risk of owners in the  
22 housing market.

23 COUNCIL MEMBER STEWART: Well, my  
24 question really points to the fact that if you don't  
25 have enough time to enforce what has to be done and

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2 there is no insurance by the owner's part, I want to  
3 know if the city will be responsible in any form, in  
4 that fashion.

5 COMMISSIONER PERINE: And as I said,  
6 there would be a liability in terms of that would  
7 extend to the city in terms of its regulatory role.  
8 I don't know that I can really put those two things  
9 together. It's not explicitly associated with the  
10 liability of an owner who's not gotten insurance.  
11 It's really separate and apart from that. In

12 addition to, another way to put it.

13 COUNCIL MEMBER STEWART: And,  
14 Commissioner Gibbs, how many families do you think  
15 that will be discriminated against in this fashion?  
16 If one knows that they cannot get insurance and the  
17 family's trying to get an apartment in that building  
18 and they have children, how many you think could be  
19 discriminated against?

20 COMMISSIONER GIBBS: I think it's  
21 obviously very difficult to precisely predict that.  
22 I think we should look at the Massachusetts  
23 experience in order to try to understand it. Here  
24 the question is around whether or not the way the  
25 law is structured creates an incentive for landlords

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2 to comply and to continue to make housing available  
3 or if it creates an incentive for landlords to try  
4 to minimize their risk by not allowing children of  
5 young age to be in their apartments. I think that's  
6 really where we're focusing, thinking about how we  
7 can bet to a resolution that encourages compliance  
8 and encourages open access to housing.

9 Just in terms of those, looking at  
10 what are the potential risk numbers, the 97,000

11 families that are living doubled up with incomes  
12 less than \$20,000 are really the most at risk  
13 population for homelessness in the city today.  
14 Those are the types of families that we most  
15 frequently find coming into shelter and the ones  
16 that we believe would be -- have increased risk of  
17 homelessness because of the liability that they now  
18 pose as a tenant to those landlords.

19 COUNCIL MEMBER STEWART: My next  
20 question has to do with training of workers. The  
21 workers that to do the cleanup, to make the changes,  
22 there is what we call "presumption" that there's  
23 lead. How long they have to be trained and isn't it  
24 a fact that we're going to have people going to be  
25 creating an even much more dangerous situation if

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2 there is a possibility of lead because they might be  
3 just doing it because of the cost?

4 COMMISSIONER PERINE: I'm not sure if  
5 I'm going to answer your question properly. I mean  
6 right now under the existing law HPD, when we carry  
7 out emergency repair work, we already use certified  
8 trained workers. Owners under the former Local Law  
9 38 in certain circumstances weren't required to do  
10 so. This law actually extends that requirement to

11 all work. Last time when I testified in November we  
12 supported that change. I mean I know we think  
13 requiring trained and certified workers is a good  
14 thing and is going to help the work that is of a  
15 greater scope and standard in this proposed law for  
16 that work to be done in an appropriate and safe way.

17 The concern that we have is about really the time  
18 that people are given to do that work, which also  
19 goes to the effective date of the law.

20 If you want, if you're serious about  
21 wanting people to actually go out and find the  
22 appropriate workforce that is EPA certified to do  
23 the work properly, there's got to be adequate time  
24 frames in place to do that. I actually don't know  
25 how the EPA training is. I can -- it's several days

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2 to a week depending on the level of training. So  
3 that's what it would take to get people certified.

4 COUNCIL MEMBER STEWART: But that  
5 work, trained workers should be with actual and not  
6 just presumption. If I have work to be done and  
7 there's no test that to say that it's actually lead,  
8 you're saying that I must have certified workers to  
9 do any kind of work even if there's just a

10 presumption?

11                               COMMISSIONER PERINE: Well, you know,  
12 an owner can always test to see if there's lead or  
13 not, and if they don't believe -- if they have a  
14 sense that maybe they don't have lead paint, they  
15 can just carry out the test and then that would  
16 relieve them from the obligations of the law. That  
17 was true under the prior law as well. So, yes,  
18 there is an obligation to carry out lead reduction  
19 work with certified trained workers, but owners do  
20 have an ability to affirmatively test to see if  
21 there is lead and if there isn't, they need go no  
22 further.

23                               COUNCIL MEMBER STEWART: So you're  
24 saying that before they can start that work with  
25 trained workers, which will cost more, they should

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2 do a test?

3                               COMMISSIONER PERINE: Well, certainly  
4 if they believe -- if they have reason to believe  
5 that there's no lead paint, sure, they should  
6 certainly do that because that would then just  
7 relieve them of that burden right away.

8                               COUNCIL MEMBER STEWART: I'm trying  
9 to clear this up because I'm looking at the five or

10 six- family owner who has some repairs that need to  
11 be done in an apartment, maybe sheetrock, and you  
12 may have some dust and based on the law it's  
13 presumed that it has lead. But --

14 COMMISSIONER PERINE: If it's built  
15 before 1960.

16 COUNCIL MEMBER STEWART: Yes, if it's  
17 built before 1960. But you're saying before he can  
18 do that sheetrock, that new work to resurface that  
19 wall, he has to do one of two things: Get it tested  
20 and if it says no, it's negative, he can get anybody  
21 to do it. But if it's not tested, it's only  
22 presumed he must get someone who is trained to do  
23 that?

24 COMMISSIONER PERINE: That's right.

25 COUNCIL MEMBER STEWART: That's what

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2 the law says?

3 COMMISSIONER PERINE: Yes, that's  
4 correct.

5 COUNCIL MEMBER STEWART: Contrary to  
6 what is happening right now?

7 COMMISSIONER PERINE: Yes, it is. It  
8 is a change from Local Law 38, yes.

9 COUNCIL MEMBER STEWART: And do you  
10 think that throughout the City of New York all the  
11 workers, all the carpenters and mason workers and  
12 sheetrock workers, you're saying that they all have  
13 to be trained now to do that type of repair?

14 COMMISSIONER PERINE: I'm saying that  
15 when an owner is going to carry out work that is  
16 going to affect painted surfaces and if there's a  
17 presumption of lead because the building was built  
18 before 1960, the owner must use certified trained  
19 workers in order to do that work, yes.

20 COUNCIL MEMBER STEWART: All right.  
21 So you don't think there's going to be a lot of  
22 cheating on this? I'm trying to figure out, the  
23 amount of building that we have that were built  
24 before 1960 --

25 COMMISSIONER PERINE: Yes.

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2 COUNCIL MEMBER STEWART: -- There's  
3 quite a lot.

4 COMMISSIONER PERINE: Yes.

5 COUNCIL MEMBER STEWART: And if you  
6 have to just do maybe one surface with sheetrock  
7 because there might be a hole in that wall, you're  
8 saying that if you really just want to do it without

9 getting the test, without going out and getting that  
10 test done, you have to go and get a worker who has  
11 been trained to do that?

12 COMMISSIONER PERINE: Yes, that's  
13 correct, and if it's more than a hundred square  
14 feet, then they also have to be EPA certified.

15 COMMISSIONER FRIEDEN: And if I could  
16 just add, if it's more than a hundred square feet  
17 they have to notify us in writing in advance at the  
18 Department of Health, and because of some of the  
19 aspects of how it's written in the statute, we would  
20 have an affirmative obligation, we feel potentially,  
21 to review the work that's being done, which would be  
22 very costly for us.

23 COUNCIL MEMBER STEWART: Just the  
24 presumption?

25 COMMISSIONER PERINE: Yes. And if I

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2 could just add, you know, last time when I  
3 testified, again, these were things that we actually  
4 agreed with in the proposed law. We think that if  
5 you're going to increase the standard of work that  
6 people have to carry out it should be done with  
7 trained workers and where certified workers are

8 appropriate, then that's what's appropriate. All  
9 we're saying is that people should have a fair  
10 amount of time to accomplish that work if we're  
11 actually going to be serious about making that a  
12 requirement.

13 COUNCIL MEMBER STEWART: And once  
14 again, you are willing to sit down and make sure  
15 that we have an adequate bill, not a bill that  
16 creates a vague liability for anybody? You're  
17 willing to sit down to have a true bill that all of  
18 us can agree on and all of us can sign onto?

19 COMMISSIONER PERINE: Yes, I think,  
20 again, that's why we came here today, to try to once  
21 again express our comments and indicate the places  
22 where we think the proposed legislation could be  
23 changed to be made better.

24 COUNCIL MEMBER STEWART: Thank you.

25 CHAIRPERSON PROVENZANO: Council

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2 Member Barron.

3 COUNCIL MEMBER BARRON: Thank you  
4 very much, Madam Chair. You know, in these chambers  
5 I've heard so much incredible testimony in the last  
6 couple of days but, Commissioner Gibbs, are you  
7 telling us that if we require you to do what you're

8 supposed to do anyway, which is have lead free  
9 shelter for homeless families -- by law in 1986 the  
10 Barnes v. Koch (phonetic), by law that's something  
11 you have to do anyway, are you saying that if you're  
12 required to do this, it's going to create  
13 homelessness? You're blaming us for requiring you  
14 to do what you're supposed to do anyway?

15 COMMISSIONER GIBBS: I actually --

16 COUNCIL MEMBER BARRON: Let me  
17 finish, Commissioner, let me finish, Commissioner.  
18 For what you're supposed to do anyway. So you're  
19 telling us that if this happens it's going to create  
20 homelessness, as though you're supposed to be  
21 putting children in lead contaminated homes in the  
22 first place. You're not supposed to do that anyway.  
23 You're already required not to do that. I just want  
24 to get clear because the way you communicated, I  
25 just want to be very clear that you're saying

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2 because you have to do this and discrimination, with  
3 insurance which is not supposed to happen either,  
4 that all of this, you know, the problem you have  
5 with this bill is that it might create more  
6 homelessness?

7                   COMMISSIONER GIBBS: I was actually  
8 not speaking about the responsibilities of the  
9 Department of Homeless Services to provide shelter,  
10 I was speaking about the implications this would  
11 have within the real estate market more broadly that  
12 might cause landlords to be disinclined to rent  
13 apartments to young children. And I raise this  
14 because it's being raised with me and I think it's  
15 something that we have to be really concerned about  
16 in a city that already has a crisis of homelessness,  
17 whether this is going to exacerbate --

18                   COUNCIL MEMBER BARRON: I hear what  
19 you're saying, but that's a very -- I'm not as  
20 sophisticated as the others, that's a very slick  
21 connection because -- and I say that because, first  
22 of all, no one's supposed to discriminate against  
23 any child when it comes to homeless, the agency  
24 should take them to court, the city should protect  
25 against discrimination. So they can't threaten you

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2 with discriminating -- discrimination and then you  
3 say we're not going to be for this bill because now  
4 the landlord's going to discriminate against the  
5 poor, poor children, so if we pass this bill, it's  
6 going to make them homeless. Come on now, that's a

7 stretch. It is the city's responsibility, your  
8 responsibility that no discrimination should happen.  
9 So you can't come to the City Council and say  
10 because of some discrimination we shouldn't have  
11 lead free, lead safe, you know, apartments because  
12 landlords are going to discriminate against children  
13 so it's going to create more homelessness.

14 COMMISSIONER GIBBS: I don't think we  
15 disagree with you. I think we agree with you  
16 because we're not trying to change any of the  
17 standards of the requirements in this law. All that  
18 we're saying, and we're not suggesting that -- what  
19 we're saying is if you look at the Massachusetts  
20 experience we can say this is what happened there.  
21 Could that happen here? It is possible. It's not  
22 just a question of discrimination because, you're  
23 right, of course, you know, we have to --

24 COUNCIL MEMBER BARRON: That's right.

25 COMMISSIONER GIBBS: We have to

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2 presume that people are going to act in good faith.

3 COUNCIL MEMBER BARRON: Right.

4 COMMISSIONER GIBBS: However, we do  
5 know, again looking at the Boston experience, that

6 people don't always and the concern that we've got  
7 here, we've got an extra problem in New York that  
8 they actually didn't have in Boston which is that we  
9 have a very significant overcrowding problem in New  
10 York City, again, given our very tight housing  
11 market. So in fact owners who have doubled up  
12 families in their apartments, it's actually not  
13 discrimination if they seek to have that doubled- up  
14 family removed. It's actually them enforcing the  
15 occupancy standards that --

16 COUNCIL MEMBER BARRON: Yes, but --

17 COMMISSIONER GIBBS: -- Most owners  
18 in New York City kind of turn a blind eye to that.  
19 What we're saying is there is a potential. Again, I  
20 believe it's a completely unintended consequence --

21 COUNCIL MEMBER BARRON: It's --

22 COMMISSIONER GIBBS: -- But there is  
23 -- we are articulating to you --

24 COUNCIL MEMBER BARRON: I know.

25 COMMISSIONER GIBBS: -- That there is

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2 a potential of an unintended consequence here of  
3 making families with young children potentially  
4 undesirable for owners. That's all we're saying.

5 COUNCIL MEMBER BARRON: Yes, but I'm

6 saying --

7 COMMISSIONER GIBBS: And given our  
8 extreme overcrowding problem --

9 COUNCIL MEMBER BARRON: Right.

10 COMMISSIONER GIBBS: -- And given our  
11 extreme tight housing market, this kind of a problem  
12 can really be exacerbated.

13 COUNCIL MEMBER BARRON: But I really  
14 think that that's bogus. I really do. I think it's  
15 bogus. I think in the context of saving children  
16 from lead poisoning because that's what this whole  
17 context is, saving children from lead poisoning  
18 which is the priority. That's bogus, that any kind  
19 of trying to manipulate the law and removing  
20 children, the city should unequivocally say this  
21 will not happen, that we will fight it along with  
22 the City Council, along with the Mayor, along with  
23 every agency, along with every -- all the power that  
24 we have to protect our children from being lead  
25 contaminated poison that any kind of slick way

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2 landlords or real estate folk put pressure on us, we  
3 will not tolerate it. It's just difficult to come  
4 to this hearing and try to attach, you know, this

5 question of homelessness with this lead free bill  
6 here. This lead bill I think is just a little -- I  
7 wouldn't say -- I don't know whether it's overtly or  
8 not so overtly disingenuous to come with that  
9 because it gives -- it would give the public the  
10 impression that with this bill being like it is or  
11 if we go forth, then we're going to have a problem  
12 with homelessness because now landlords or real  
13 estate people will not be desirable. I have  
14 problems with that. I have very serious problems  
15 with that.

16                   The perception, because you know,  
17 reality is one thing, perception is everything.  
18 It's just a perception that you're giving with that  
19 testimony, makes it seem that the public will run  
20 out here saying oh, man, if we do this it's going to  
21 create more homelessness, and that is disingenuous.

22                   COMMISSIONER GIBBS: Well, it's not  
23 disingenuous. You can disagree and I certainly  
24 respect that, but we feel it's our obligation to  
25 bring to your attention what we consider can be

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2 unintended consequences of the bill and something,  
3 frankly, that I think can be fairly easily fixed

4                   COUNCIL MEMBER BARRON: Right.

5                   COMMISSIONER GIBBS:  -- Without  
6 dealing with any of the standards or obligations in  
7 this law.  We're not suggesting that any of those  
8 things be changed.  We're simply -- you know, we've  
9 simply suggested that some of the tort liability  
10 exposure for owners be limited.

11                   COUNCIL MEMBER BARRON:  I bet.

12                   CHAIRPERSON PROVENZANO:  Thank you.  
13 Council Member Quinn?

14                   COUNCIL MEMBER QUINN:  Thank you.  
15 The Massachusetts law that some comparisons have  
16 been made to, that's a full abatement law, isn't it?

17                   COMMISSIONER PERINE:  Yes.

18                   COUNCIL MEMBER QUINN:  So this isn't  
19 a full abatement law, correct?

20                   COMMISSIONER PERINE:  And I'm not --  
21 yes, but that's not what drives actually the problem  
22 that I was talking about, it's actually the  
23 liability issue that is similar in Massachusetts as  
24 it is in this proposed bill.

25                   COUNCIL MEMBER QUINN:  But some of --

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2                   COMMISSIONER PERINE:  It's not about  
3 the standard of work, it's about the liability

4 exposure.

5                   COUNCIL MEMBER QUINN: But wouldn't  
6 on some level the liability exposure be impacted,  
7 maybe not determined, but impacted by whether it was  
8 a full abatement proposal or not? And I thought  
9 somebody when they were testifying kind of made  
10 financial references to Massachusetts which I think  
11 would have some relationship to the level of work  
12 required, which the abatement issue --

13                   COMMISSIONER PERINE: I actually  
14 don't think so because I think the liability can be  
15 extreme and it's not necessarily a function of the  
16 work that is required.

17                   COUNCIL MEMBER QUINN: Is there  
18 another city or state or county that has actually a  
19 program that's more of a -- similar to what ours  
20 would be, where keeping it intact as opposed to  
21 complete abatement? Because then at least the  
22 comparison would be apples to apples. And you're  
23 making the point that Massachusetts did this and it  
24 caused X, Y and Z problems. If we had some way that  
25 was doing something more similar to what we're

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2 doing, that would be -- I would find that more  
3 useful information.

4                   COMMISSIONER PERINE: I mean I don't  
5 know. We'd have to look at it. I'm sure somebody  
6 knows that. I don't know that. But again, I think  
7 the applicability is not around the standard of work  
8 required but actually over the liability exposure.  
9 So the liability exposure is very similar.

10                   COUNCIL MEMBER QUINN: I guess, I'm  
11 not a trial lawyer --

12                   COMMISSIONER PERINE: I'm not any  
13 kind of lawyer.

14                   COUNCIL MEMBER QUINN: So it's great  
15 that the two of us are discussing this. But it  
16 seems to me that the standard of work, something  
17 like full abatement which is about as broad as you  
18 can get, would have an impact on liability exposure.  
19 I mean it just seems logical to me that it would.

20                   COMMISSIONER PERINE: No, I don't  
21 think so. I mean it actually would -- I don't think  
22 it would. I'm actually not quite following what  
23 your concern is. I mean, you know, what the work is  
24 that is required is one set of issues. What the  
25 liability exposure for an owner and what he has to

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2 do in order to I guess defend against cause is

3 really -- I don't think it's a function of  
4 abatement. I mean I think the difference would be  
5 that if you fully abate, then you've limited your  
6 liability in that way. But even with that --

7 COUNCIL MEMBER QUINN: But you've --

8 COMMISSIONER PERINE: But even with  
9 that provision there's been problems in Boston.

10 COUNCIL MEMBER QUINN: I guess if  
11 there is another place, that would be more useful to  
12 look at, that's more similar to what we're doing.  
13 It just seems to me like if you're saying you have  
14 to do this whole much broader universe of work, then  
15 if you don't accomplish, which is a higher standard,  
16 a broader array of full abatement, that on some  
17 level that would translate into a more likelihood of  
18 liability in this greater amount of work that would  
19 have to be done. Maybe that's not how it works.

20 COMMISSIONER PERINE: I don't think  
21 it does. I think it's a little more expensive but I  
22 don't think it's necessarily a function of  
23 liability. And again, I'm not suggesting in any way  
24 that the standard of requirement of scope of work  
25 that is outlined in this proposed law be changed.

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2 I'm not suggesting that. We have been supportive of

3 the standard of work and having it carried out with  
4 trained workers and all of that. We're really just  
5 trying to ensure, again, that there are not some  
6 unintended consequences that if we were in a housing  
7 market with a very high vacancy rate, you know,  
8 these things maybe could be absorbed within the  
9 housing marketplace given the extremely vacancy rate  
10 that we have and we know we've got many more people  
11 chasing that vacant apartment than there are vacant  
12 apartments. So we know when it is essentially a  
13 seller's market. These constraints I think are  
14 potentially going to be exacerbated.

15 COUNCIL MEMBER QUINN: That kind of  
16 leads me to my next question, actually, which is in  
17 Massachusetts, did homelessness increase after their  
18 law went into effect?

19 COMMISSIONER PERINE: I can't answer  
20 that. I actually don't know. I mean they've also  
21 of course got a very different structure than we do.

22 I mean there's no requirement for shelter as we  
23 have in New York, so what you find in most other  
24 cities, and Commissioner Gibbs is more expert on  
25 this than me, but you don't necessarily see an

2 analogous situation to what we have because we take  
3 on a fairly open obligation and most other places do  
4 not.

5 COUNCIL MEMBER QUINN: I mean that --

6 COMMISSIONER PERINE: So they simply  
7 limit -- they simply don't take people into a system  
8 in other places so their system is as big as it is  
9 and it just stops at where it is and they don't  
10 continue to have access they way we do.

11 COUNCIL MEMBER QUINN: I think that  
12 speaks to what the impact would be on government,  
13 but it doesn't, which is a valid point in comparison  
14 to Massachusetts, but it doesn't speak to whether  
15 the problem was created if you know part of what you  
16 guys are saying is that if we do this we're going to  
17 create more homelessness and you're drawing  
18 comparisons to Massachusetts. Although Boston or  
19 the state may not have been required to house them,  
20 it's relevant whether or not their law created  
21 homelessness. Although we may not know it to the  
22 exact same number we would in New York City, where  
23 Commissioner Gibbs has an obligation to deal with  
24 it, I'm sure there are some organizations,  
25 governmental or nonprofit, that would have some

2 sense of whether homelessness rose after  
3 Massachusetts --

4 COMMISSIONER PERINE: Yes --

5 COUNCIL MEMBER QUINN: Even in --  
6 pick a place --

7 COMMISSIONER PERINE: I think it's --

8 COUNCIL MEMBER QUINN: -- Boston or  
9 somewhere.

10 COMMISSIONER PERINE: I think it's a  
11 fair point. I think we should remember, however,  
12 there is -- I think the effects in Boston were going  
13 to manifest themselves a little differently than  
14 they potentially will here. Again, given the nature  
15 of their housing stock versus ours and given the  
16 nature of their marketplace, they don't have a  
17 significant number of overcrowded doubled- up  
18 families at this very, very low income level. I  
19 mean in Boston essentially the low income population  
20 is almost exclusively concentrated in their public  
21 housing stock. It's very different than in New York  
22 which is a much more varied housing stock with --  
23 and a much larger housing stock, obviously, as well.

24 So I guess we're trying to say that is our  
25 concern. Unlike most places in the United States,

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2 most big cities, we really have a significant number  
3 of families who are living really on the edge for  
4 whom one last event can then, you know, push them  
5 over into homelessness. I don't believe that was  
6 the case -- I don't believe that's the case in  
7 Boston. So, you know, I think it's different.

8 COUNCIL MEMBER QUINN: I mean if  
9 those folks are living doubled up or otherwise in a  
10 home that's unsafe, they should be out of that home  
11 and we need to --

12 COMMISSIONER PERINE: Again, that's  
13 not so much the issue. I mean the issue is will we  
14 be encouraging landlords to aggressively enforce the  
15 occupancy standards.

16 COUNCIL MEMBER QUINN: Did we see in  
17 Massachusetts -- one of the other statements was  
18 that we would see landlords basically discriminating  
19 against families with children. Is there data that  
20 that happened in Massachusetts?

21 COMMISSIONER PERINE: Yes, I think  
22 from the State Commission on Human Rights.

23 COUNCIL MEMBER QUINN: How much did  
24 they see housing discrimination increase?

25 COMMISSIONER PERINE: I don't know

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2 the statistics actually but it has been --

3 COUNCIL MEMBER QUINN: Was it charted

4 --

5 COMMISSIONER PERINE: -- Reported

6 significantly, yes.

7 COUNCIL MEMBER QUINN: And did it

8 track with other trends in the state or was this the

9 only factor that it caused?

10 COMMISSIONER PERINE: No, it was --

11 you know, people saying they were discriminated

12 against because of, in this particular issue.

13 COUNCIL MEMBER QUINN: But you don't

14 know how much that went up or --

15 COMMISSIONER PERINE: I don't have

16 the data.

17 COUNCIL MEMBER QUINN: Okay. If you

18 could get that to us, that would be great.

19 Commissioner Frieden, I was a little

20 confused in part of what you were saying about the

21 time frame issues because I don't think that 101A

22 talks about shortening the Department of Health time

23 frames in response when children are lead poisoned.

24 It seemed to me that they are exactly the same as in

25 the current law of Local Law 50 of 1972. So I don't

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2 really -- Local Law 50 in 1972, how did that change?

3 Which I think were the same in Local Law 38.

4                   COMMISSIONER FRIEDEN: No, no, Local  
5 Law 38, if I understand correctly, the deadline  
6 begins when we document the lead paint hazard, and  
7 we 're fine with that. We're fine with having it 16  
8 days from then. The problem is when there's -- we  
9 get electronic reports, 400,000 a year, of lead  
10 poisoning levels, of lead paint -- of blood lead  
11 levels. From that date of that report we have to  
12 get access to the apartment. If we document the  
13 lead- based paint hazard we have to issue an order  
14 to the owner. We have to serve the order to the  
15 owner. We have to give the owner five days to  
16 remediate. Keep in mind that HUD, under the federal  
17 statute for lead poisoned children, gives 15 days  
18 and 30 days for controls on the owner's part. So  
19 those are the federal standards. We have no problem  
20 with the 16 days from the documentation of lead-  
21 based paint hazard. I think really it's a small  
22 issue and it would be consistent with what 38 has  
23 provided.

24                   COUNCIL MEMBER QUINN: I mean maybe  
25 we could have more discussion after this, but I'm

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2 not exactly sure, it seems to me, where the change  
3 is because I don't really see --

4 COMMISSIONER FRIEDEN: I'm sorry?

5 COUNCIL MEMBER QUINN: That's okay.

6 So you're saying the change is in when in confirming  
7 the poisoning or -- because I don't see how the time  
8 frames change.

9 COMMISSIONER FRIEDEN: Confirming  
10 that there's a hazard in the apartment. About 40%  
11 of the kids, we don't have a hazard in the apartment  
12 so there's no time frame that arrives there. We  
13 could be in the situation in this circumstance of  
14 actually mandating a correction where there's no  
15 lead- based paint hazard if we can't get access to  
16 the apartment for 16 days.

17 COUNCIL MEMBER QUINN: Maybe I can  
18 look at that with some of the DOH folks afterwards  
19 because as I read it there isn't a significant  
20 change there in the time frame and that there's a  
21 misinterpretation.

22 COMMISSIONER FRIEDEN: I've been  
23 corrected, that I guess the practice in the past  
24 under 38 had been to count the 16 days.

25 COUNCIL MEMBER QUINN: What I

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2 understand Local -- someone just handed me Local Law  
3 38 which says that, "The procedure of certification  
4 shall be completed within 16 days from receipt of  
5 complaint or inspection or examination, whichever  
6 occurs first."

7                   COMMISSIONER FRIEDEN: Right. And  
8 what I'm being informed is that that in fact has not  
9 been the practice because it's simply not possible  
10 and would remain not possible under this. So rather  
11 than saying either/or and whichever is first, we  
12 would say do it from the date of inspection. If the  
13 Council wanted to discuss standards for how quickly  
14 to get in and how we would leave notice if we  
15 couldn't get in, those are things we're certainly  
16 willing to discuss. We want to get in quickly. We  
17 want to get it fixed quickly but realistically there  
18 are circumstances where we can't get access to the  
19 apartment in 16 days so we can't break down the door  
20 and look for lead.

21                   COUNCIL MEMBER QUINN: So your  
22 assertion is that this, because I'm now only a  
23 little more confused, I apologize, that this does or  
24 doesn't change, 101A does or doesn't change the time  
25 frames for DOH. Because it still sounds to me like

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2 it doesn't.

3 COMMISSIONER FRIEDEN: I misstated  
4 earlier. You are correct, Local Law 38, as you  
5 read, is similar to the draft of 101A, but in  
6 neither case do we feel it's implementable and in  
7 both cases it's very different from the HUD federal  
8 guideline which are considered the most restrictive  
9 in the country, where you have 15 days followed by  
10 30 -- 15 days to do -- inspect and then 30 days to  
11 remediate.

12 COUNCIL MEMBER QUINN: But you've  
13 existed under Local Law 38 and in fact testified  
14 before the committee at other moments that Local Law  
15 38 was working.

16 COMMISSIONER FRIEDEN: That we were  
17 operating under Local Law 38 effectively, but  
18 without full adherence to this aspect of the  
19 legislation, I gather. At least that's what I'm  
20 being informed at this point.

21 COUNCIL MEMBER QUINN: So it doesn't  
22 change it from the existing law but now the more  
23 that you think about it, you never liked the  
24 existing law to begin with, right? I mean that's  
25 basically what you're saying.

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2 COMMISSIONER FRIEDEN: We think there  
3 needs to be improvements to make it workable.

4 COUNCIL MEMBER QUINN: So it isn't --  
5 you're not opposed to it because it changes the  
6 existing law, you're opposed to it because you  
7 didn't like the existing law now more that you think  
8 about it?

9 COMMISSIONER FRIEDEN: I'll ask  
10 Wilfredo Lopez, our general counsel, to --

11 COUNCIL MEMBER QUINN: Oh, no,  
12 they're bringing up a lawyer, gentlemen. Now we're  
13 in trouble.

14 MR. LOPEZ: I don't have Local Law --

15 COUNCIL MEMBER QUINN: You just have  
16 to identify yourself.

17 MR. LOPEZ: Wilfredo Lopez, general  
18 counsel for HUD, New York City Department of Health  
19 and Mental Hygiene.

20 I don't have Local Law 38 in front of  
21 me, but as you read it, I think you read it as from  
22 16 days from the date of inspection or examination,  
23 whichever occurs first. The proposed law says 16  
24 days from the receipt of the elevated blood lead  
25 level. Now that language you just read from Local

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2 Law 38 could be interpreted in different ways. We  
3 agree that it should say 16 days from the date of  
4 the inspection. If you're talking about what does  
5 date of the examination mean, that gets a little  
6 vaguer, but this proposed law is very clear that  
7 it's 16 days from our receipt of the elevated blood  
8 level report. And that is a change and that is  
9 certainly not doable.

10 COUNCIL MEMBER QUINN: So your  
11 problem is that you feel it narrows it to not date  
12 of the receipt of the levels or the inspection but  
13 just to the date that you get the levels?

14 MR. LOPEZ: It starts --

15 COUNCIL MEMBER QUINN: Because this  
16 says from receipt of complaint or inspection or  
17 examination, whichever occurs first. So you'd  
18 always get the complaint before you would do the  
19 inspection or the examination, so it seems like  
20 basically it is the same thing. This just had more  
21 language that might have seemed like it gives you  
22 more time but it really didn't.

23 MR. LOPEZ: Local Law 38 allowed a  
24 valid interpretation of this. The sentence  
25 specifically says, "The procedure of certification

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2 shall be completed within 16 days from receipt of  
3 complaint" --

4 COUNCIL MEMBER QUINN: Right.

5 MR. LOPEZ: -- "or inspection or  
6 examination, whichever occurs first." None of those  
7 are necessarily report of the blood lead level.  
8 That's a different date. Examination of the child,  
9 examination of the apartment, examination of both?  
10 So we have no problem with it, tight time frame and  
11 being held to that time frame. We do have a problem  
12 with a time frames that's unimplementable. We've  
13 been implementing with great effort but very  
14 effectively the 16- day time frame from the time  
15 where we can get access and document the lead  
16 hazard, which is our interpretation of Local Law 38.

17 COUNCIL MEMBER QUINN: I mean I think  
18 obviously that there's some confusion about what has  
19 or has not happened here. That deserves more  
20 discussion because, as I said, I was under the  
21 impression that that hadn't been changed and  
22 certainly we could all agree there's a lack of  
23 clarity here and that may not end up being such  
24 after further examination that it's a point which  
25 the administration may in fact object to and feel a

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2 need to stand in opposition based on. I know that's  
3 not your only issue.

4 COMMISSIONER FRIEDEN: But let me also  
5 comment that on many other issues, similarly, the  
6 issues are not huge. This has an issue of a  
7 definition of when the clock starts. We have no  
8 problem with the standard. We have no problem  
9 looking at time frames. We have no problem  
10 reporting and being held accountable on those time  
11 frames, as long as they're realistic.

12 Similarly, on the issue of work  
13 practices, we don't think it's a major issue. It  
14 just has to do with ensuring that we're not creating  
15 a bureaucracy in an administrative requirement that  
16 isn't really protecting children. I do think that  
17 we're close on these issues.

18 COUNCIL MEMBER QUINN: Just lastly  
19 very quickly, on the issue of the age levels, six or  
20 seven, I know Commissioner Frieden, you as the  
21 Commissioner and a medical doctor, think it's not  
22 the right thing to do, but I've heard -- I must say,  
23 you're the only in this process and certainly we've  
24 not heard from every doctor in the City of New York,

25 thank God, or we would be here a really, really,

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2 really long time --

3 CHAIRPERSON PROVENZANO: No, I would  
4 have been here a really long time myself.

5 COUNCIL MEMBER QUINN: That is very  
6 true, yes. Well, thank God for Madeline, that she  
7 wouldn't have to be here that long.

8 But I've heard and I think probably  
9 the Committee has heard from more doctors of  
10 prominence and most doctors in general who think  
11 that that is the medically correct and better thing  
12 to do for children. I mean, Doctor, you know, I  
13 just had the testimony of two, for example, in front  
14 of me, but there have been many from places, that  
15 are some of the leading hospitals that deal with  
16 lead poisoning, so --

17 COMMISSIONER FRIEDEN: They're wrong.  
18 They're simply and plainly --

19 COUNCIL MEMBER QUINN: You're the  
20 only doctor that's right.

21 COMMISSIONER FRIEDEN: I'm not the  
22 only doctor - The Centers for Disease Control, HUD,  
23 the U.S. Guide for --

24 COUNCIL MEMBER QUINN: Well, HUD --

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2 Preventive Task Forces, the Advisory Committee for  
3 the Centers for Disease Control and Prevention. The  
4 leading national experts on lead poisoning all agree  
5 on this issue. This is in no way a minority view.  
6 This is the standard view of the environmental world  
7 and of the public health world. It's the wrong  
8 thing to do to change it.

9 COUNCIL MEMBER QUINN: Many of the  
10 organizations you just referenced were actually  
11 government organizations as opposed to independent  
12 doctors. I mean I have two letters here from six  
13 different doctors, some from, -- affiliated with Mt.  
14 Sinai Hospital, has a long record of issues of lead  
15 poisoning. I mean it seems hard for me to imagine  
16 that all of these doctors who have no governmental  
17 interest in this, you know, HUD, the Centers for  
18 Disease Control and others that you mentioned, are  
19 all government affiliated, but all of these other  
20 independent doctors are wrong. What interest would  
21 they have in misguiding government?

22 COMMISSIONER FRIEDEN: I find it  
23 puzzling and I'll leave it at that adjective, the

24 insinuation that government, public health  
25 physicians would be guided by anything other than

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2 how to make the most effective public health policy.  
3 That's what CDC does and that's what the Health  
4 Department does in New York City. Most kids with  
5 lead poisoning are under three. If you add a group  
6 of kids that has a rate that's ten times lower,  
7 you're going to be essentially stealing resources  
8 away from the kids who need it and giving it to kids  
9 who don't need it.

10 We have 40,000 licensed physicians in  
11 New York City. I'm sure you can get a few,  
12 including some very smart ones, to agree with many  
13 different types of assertions, but the national  
14 guidelines, the state guidelines, the city  
15 guidelines, the recommendations are very clear on  
16 this issue, there's not ambiguity.

17 COUNCIL MEMBER QUINN: I think it's a  
18 bold statement to say there's not ambiguity and that  
19 all these other doctors are wrong. And my reference  
20 to questioning the governmental public health people  
21 is more about the federal ones, because they do work  
22 for an administration who I don't necessarily would  
23 agree with has the best public health interest of

24 New York City's children in mind, not the doctors  
25 affiliated with your department. Now, you may

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2 disagree with my perspective on the Bush  
3 administration, but I think we could at least agree  
4 to disagree.

5 COMMISSIONER FRIEDEN: These are  
6 panels going back to Jimmy Carter.

7 COUNCIL MEMBER QUINN: We could at  
8 least agree to disagree on that, and I think it's a  
9 bold statement that all of these other medical  
10 doctors, and like I said, I've heard from far more  
11 that think it's the right thing to do, are wrong.  
12 But I guess we'll agree to disagree on that, and I'd  
13 love to talk to folks at another point about the  
14 other thing that there appears to be confusion or a  
15 lack of clarity on. Thank you, Madam Chair.

16 CHAIRPERSON PROVENZANO: Thank you.  
17 We have two more Council members to ask questions.  
18 Joined by Council Member Gale Brewer. I am  
19 adjourning this meeting at 3:00, even if it's in mid  
20 sentence because of the weather. Council Member  
21 Comrie.

22 COUNCIL MEMBER COMRIE: Thank you,

23 Madam Chair. I'll try to be quick.

24 It's a lot of confusion in my mind

25 anyway as to what is now -- to your best

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2 articulation, now there's going to be the process to

3 report a violation, to resolve a violation and to

4 correct a violation in two cases. Number one, if a

5 tenant reports it or, number two, if it's reported

6 by an outside agency, some nongovernmental

7 organization.

8 COMMISSIONER PERINE: Are you asking

9 me how it would work under this proposed --

10 COUNCIL MEMBER COMRIE: Yes.

11 COMMISSIONER PERINE: -- This

12 proposed bill?

13 COUNCIL MEMBER COMRIE: Yes.

14 COMMISSIONER PERINE: Under the

15 proposed bill, I mean the first step -- I mean let's

16 set aside the issue of when it's triggered, the

17 violation is triggered by their being a lead

18 poisoned child that the Health Department

19 identifies. Right, that's one way --

20 COUNCIL MEMBER COMRIE: Before you

21 get to the knowing a child is lead poisoned, you

22 have to have a call in to say that an apartment

23 needs to be inspected or are we doing this --

24 COMMISSIONER PERINE: No, no, I'm  
25 just saying there's two different broad drivers,

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2 right, and this is true -- this was true under Local  
3 Law 38. It's true here as well. If a child turns  
4 up lead poisoned, you know, they go to the doctor  
5 and they get a test. I mean that's going to  
6 immediately refer to the Department of Health. That  
7 triggers one way of the apartment getting looked at  
8 and a violation being placed. And we can explain --

9 COUNCIL MEMBER COMRIE: But this law  
10 is not increasing the responsibility for doctors to  
11 do more testing, is it, or mandating more --

12 COMMISSIONER FRIEDEN: The State has  
13 authority over the licensing --

14 COUNCIL MEMBER COMRIE: Licensing,  
15 right.

16 COMMISSIONER FRIEDEN: -- Of  
17 physicians, so we actually don't have --

18 COUNCIL MEMBER COMRIE: I'm not  
19 talking about the people that get reported to you,  
20 I'm talking about the other ones.

21 COMMISSIONER PERINE: So then the

22 other is when somebody calls and says either I just  
23 have peeling paint and then they are questioned; do  
24 you have a child under, you know, whatever the  
25 requirement of the law is going to be, and if they

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2 answer in the affirmative, then that potentially is  
3 going to trigger both an inspection and potentially  
4 a violation if that's found to all be the case.

5                   The other is when somebody calls  
6 directly and says I have a child under the  
7 appropriate age and I have paint that is not intact  
8 or I have dust on my window -- whatever their  
9 problem is and then that's going to also trigger an  
10 inspection. I'm presuming that for the most part  
11 that initial entry point into the system would be  
12 the same under this proposed law as it is now which  
13 is that we continue to encourage people to call 311  
14 if they have housing problems of any kind.  
15 Certainly if they're concerned about lead paint and  
16 they know they have a child, a young child, they  
17 should call.

18                   COUNCIL MEMBER COMRIE: Under that --

19                   COMMISSIONER PERINE: We expect that  
20 system's going to remain in place obviously and be  
21 the main intake for getting inspectors out to see

22 what the problems are.

23 COUNCIL MEMBER COMRIE: Maybe I'm not  
24 articulating it. I have a cold so -- you're saying  
25 that once the initial complaint comes in, the time

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2 for HPD to extend the complaint has been extended  
3 from five to ten days. Is that the initial time  
4 frame --

5 COMMISSIONER PERINE: Yes.

6 COUNCIL MEMBER COMRIE: -- That we're  
7 talking about?

8 COMMISSIONER PERINE: Yes.

9 COUNCIL MEMBER COMRIE: And you're  
10 saying that that ten day period is not adequate?

11 COMMISSIONER PERINE: No. Actually,  
12 we had asked for it to be extended from five and,  
13 yes, it was. The two time frames I guess that we  
14 have primary concern about, and this is separate and  
15 apart from the effective date, is essentially the  
16 time that we get to correct the work, when owners  
17 don't act and we have to act under the repair  
18 program.

19 COUNCIL MEMBER COMRIE: Um- hum.

20 COMMISSIONER PERINE: You know, in

21 the interest of not taking up the last 15 minutes on  
22 this issue completely, because it's a little arcane,  
23 is the issue of the proposed laws basically  
24 requiring that we go back and reinspect every single  
25 apartment that had any kind of a lead violation,

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2 even when the owner corrected or didn't correct.  
3 Even though if he didn't correct we would have gone  
4 out and done it through the Emergency Repair  
5 Program. So we just think that's a redundancy. We  
6 think that's something --

7 COUNCIL MEMBER COMRIE: You think  
8 it's onerous --

9 COMMISSIONER PERINE: But we think  
10 it's something very resolvable because, again, we're  
11 not --

12 COUNCIL MEMBER COMRIE: And your  
13 resolution for that is just to keep pushing the  
14 clock because we're up against the --

15 COMMISSIONER PERINE: Yes, it would  
16 simply be to say, you know, it doesn't have to be  
17 redundant. If the owner didn't act, we're going to  
18 go in to do the emergency repairs, so you don't  
19 really need to have an inspector go first to say,  
20 yes, we're really, really sure he didn't act. I mean

21 because we're going to be sending in the emergency  
22 repair scoping unit to go and see what the work is  
23 and so we would know then anyway, so... I think it  
24 meets the same intent of what was being asked. I  
25 think we could just change it a little to make it

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2 work better.

3 COUNCIL MEMBER COMRIE: And that  
4 change would be?

5 COMMISSIONER PERINE: That if the  
6 owner didn't act, there's no need to send a code  
7 inspector to verify that fact because we would first  
8 just be sending people in to do the emergency repair  
9 work. So we're accomplishing the next step. You  
10 don't need to have a redundant step in the middle of  
11 that, but we do need more time to complete the work.

12 Right now it's 30 days in the proposed law and we  
13 need 60 days. Again, half the work that we do now  
14 is completed in 60 days. The other half takes  
15 longer than 60 days because we have difficulty  
16 accommodating the access needs of the tenants.

17 COUNCIL MEMBER COMRIE: And most of  
18 those 60 day period with the difficult access needs,  
19 how many of those turn out to be valid complaints,

20 do you have a rough idea?

21 COMMISSIONER PERINE: These are only

22 -- I'm only talking about the ones that were valid

23 to begin with.

24 COUNCIL MEMBER COMRIE: You're only

25 talking about valid.

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 COMMISSIONER PERINE: I took out of

3 the equation the ones that didn't --

4 COUNCIL MEMBER COMRIE: In the last

5 calendar year do you know how many complaints were

6 invalid approximately?

7 COMMISSIONER PERINE: I think it was

8 about 9,000. And by invalid, I would simply call

9 them downgraded. I mean it just means that people

10 legitimately had peeling paint and a child under

11 seven, but we went out. The landlord didn't do what

12 they were supposed to do. We went out to do the

13 repair. We tested. We found it wasn't lead or --

14 COUNCIL MEMBER COMRIE: But they had

15 to

16 actually --

17 COMMISSIONER PERINE: -- Or we found

18 the work was done.

19 COUNCIL MEMBER COMRIE: But you did

20 the 5,000 preliminary inspections?

21 COMMISSIONER PERINE: Yes.

22 COUNCIL MEMBER COMRIE: And you just  
23 found out it was not as serious as they --

24 COMMISSIONER PERINE: It was either  
25 not lead or the work had already been done.

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 COUNCIL MEMBER COMRIE: Okay. Do you  
3 think that if we had more sort of, as the window  
4 guard legislation where with the owner every year  
5 was required to do a thorough building inspection  
6 and a preliminary inspection of each apartment at  
7 the beginning of the year of the window guard, it  
8 would lessen your inspection at the end of the day?

9 COMMISSIONER PERINE: Yes, and I  
10 think the proposed law -- again, in my last  
11 testimony in November, the proposed legislation  
12 already had a provision in it that kind of mirrored  
13 the window guard notice provision. And we were in  
14 agreement with that. We --

15 COUNCIL MEMBER COMRIE: But that's  
16 not in this one today.

17 COMMISSIONER PERINE: -- Supported  
18 that.

19 COUNCIL MEMBER COMRIE: I'm only --

20 COMMISSIONER PERINE: I think it is.

21 Yes, it is. It's -- that remains, that's still in  
22 there. And we were on board with that when it was  
23 in there last time. Again, we're just really talking  
24 about the time that people are given to carry out  
25 the work that we all agree needs to be done.

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 COUNCIL MEMBER COMRIE: Well, since  
3 I'm against the clock, I'll behave and won't ask any  
4 more questions.

5 How many -- Council Member Reyna is  
6 asking me, how many valid complaints were registered  
7 in the last year if you can recall? If your staff  
8 has it handy.

9 COMMISSIONER PERINE: I don't know.  
10 We'll get that to you. I'm sure somebody behind me  
11 has it.

12 COUNCIL MEMBER COMRIE: Has it, I'm  
13 sure.

14 COMMISSIONER PERINE: We corrected  
15 about 3,000 violations -- about 10,000 violations we  
16 corrected, which means over the last three years  
17 about 10,000 lead violations that owners didn't  
18 correct, we corrected through the Emergency Repair

19 Program. But we can give you a complete breakdown.  
20 It really comes right out of the report that we did  
21 for the Council on Local Law 38, so I'm sure we have  
22 it.

23 COUNCIL MEMBER COMRIE: I'm sure I  
24 have it, too, it's just that everything has been  
25 compressed so we hadn't -- and with this snow today

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 I didn't want to walk with all these papers to this  
3 hearing, so please forgive me for asking, but I just  
4 wanted to clarify it for the hearing purposes.

5 I just have one other question. How  
6 far away do you think we are with getting this  
7 resolved?

8 COMMISSIONER PERINE: Again, I think  
9 we are really --

10 COUNCIL MEMBER COMRIE: To where the  
11 city feels most effective in protecting children?

12 COMMISSIONER PERINE: I think we are  
13 not far away. I believe that with incorporating the  
14 changes that Commissioner Friedan and I have  
15 outlined here today, I think that it is resolved and  
16 I really hope that some time can be set aside to do  
17 that.

18                               COUNCIL MEMBER COMRIE: I hope that  
19 you do get the opportunity between now and the next  
20 hearing to sit and meet again and resolve these  
21 questions because I really feel that HPD and Health  
22 has been working adamantly and with much honor and  
23 praise in trying aggressively do lead abatement in  
24 the city. I think that if we have empowered  
25 agencies that are given opportunity to do what they

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2 need to do aggressively, without being forced into  
3 situations -- I know that unhappy employees lead to  
4 shoddy work. Unhappy agencies lead to underreported  
5 and bad service. If we're going to look to the city  
6 to be our champions in this we have to try to give  
7 them every opportunity to do what they need to do in  
8 the way that they feel most comfortable. Thank you,  
9 Madam Chair.

10                               CHAIRPERSON PROVENZANO: Thank you,  
11 Council Member Comrie. Well spoken. Council Member  
12 Perkins, you will be the last questioner.

13                               COUNCIL MEMBER PERKINS: Thank you  
14 very much, Madam Chair. I'm not going to be very  
15 long. I want to first express my appreciation to  
16 the Commissioners for recognizing how far we've come  
17 from where we've been and how important it is that

18 we do this bill on behalf of the children of the  
19 City of New York.

20 I want to make sure I'm clear,  
21 landlords in the city are presently subject to  
22 liability for neglect?

23 COMMISSIONER PERINE: There are two  
24 different liability concerns and let me try to  
25 explain the city's first and I'll ask Harold to help

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 me if I need help with this. If I'm not saying this  
3 right, tell me.

4 Essentially in Local Law 38 there was  
5 specific language which protected the city from  
6 extreme liability in its role as a regulatory -- in  
7 its regulatory function. Again, forget the landlord  
8 function that we have in some limited capacity.  
9 It's just we have an obligation to go out, to send a  
10 code inspector, to write a violation, whatever all  
11 the steps were. In Local Law 38 the liability that  
12 we had in the performance of those activities was  
13 limited. In this law there is no such language,  
14 which means we make a human mistake, somebody loses  
15 a piece of paper, somebody missed something,  
16 somebody didn't get to the end of their routing and

17 then they got someplace a day later than they  
18 expected to be, the city becomes potentially  
19 unprotected from a fairly large liability risk.  
20 Again, just talking about in its regulatory  
21 function. I'm not talking about in its function as  
22 a landlord or owner of property. We believe that  
23 risk is unintended and we also don't believe it aids  
24 the law in any possible way. We think that there  
25 should be clear standards and time frames in the

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 things that we're supposed to do. We think we  
3 should be accountable as we try to be to the Council  
4 and to the Mayor in terms of our ability to carry  
5 out those functions, but we don't think we should  
6 saddle the city with a huge potential liability pool  
7 that creates a very significant risk. So that's one  
8 concern. Did I -- okay.

9 MR. SCHULTZ: I'm sorry, my name is  
10 Harold Schultz. I'm special counsel for the  
11 Department of Housing, Preservation and Development.

12

13 What I would add to that concern is  
14 of course of particular concern when we're looking  
15 at a statute that has time frames requiring us to do  
16 things in times that we basically believe are not

17 really feasible and that does not recognize the  
18 nature of the problem that we have when we try to  
19 gain access to apartments that we don't control in  
20 order to get work done.

21                   COMMISSIONER PERINE: So these two  
22 ideas kind of go together. If we've got an  
23 unrealistic burden, this is really exacerbated by  
24 having kind of this unlimited liability concern. So  
25 these two things kind of work against each other in

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2 this case. We think both these things need to be  
3 adjusted.

4                   COUNCIL MEMBER PERKINS: I just want  
5 to just be clear that under Local Law 1 the city and  
6 landlords are subject to liability on the basis of  
7 neglect. Under the present law, not Local Law 38  
8 because it doesn't exist --

9                   MR. SCHULTZ: Well, actually, that's  
10 actually debateable, Councilman, and I'll tell you  
11 why.

12                   COUNCIL MEMBER PERKINS: In terms of  
13 city owned properties.

14                   MR. SCHULTZ: Well, in terms of city  
15 regulatory activity, the courts in general have held

16 the city not liable. Our concern right now,  
17 frankly, is the issue of Local Law 38. Local Law 38  
18 had language that specifically held the city not  
19 liable in its regulatory context, we are now  
20 concerned that replacement statute, which once again  
21 doesn't have that, might be interpreted by a court,  
22 possibly interpreted by a court as a decision by the  
23 Council to remove what we would have thought was the  
24 natural liability -- the natural immunity of the  
25 city from regulatory liability. So that's why it's

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2 particularly important in this case.

3 COUNCIL MEMBER PERKINS: And with  
4 respect to the landlords, private owners?

5 MR. SCHULTZ: Landlords had liability  
6 under the prior statute, although I would say that  
7 not during the entire time of that prior statute.  
8 It required a subsequent decision of the court, the  
9 Wave Crest decision, which then imposed liability.  
10 That happened relatively late in the history of  
11 Local Law 1 and was not that big an issue and was  
12 pretty much when Local Law 38 came into effect did  
13 change that, but in the early history of Local Law  
14 1, Wave Crest was not the standard.

15 COUNCIL MEMBER PERKINS: I guess the

16 big issue that has been coming up today, especially  
17 as evidenced by the first time appearance of the  
18 Commissioner for Homeless Services, is the  
19 discrimination issue. I was wondering, we're  
20 already under liability framework. Are you seeing  
21 evidence of discrimination over these last X number  
22 of years because of the fact that landlords, whether  
23 it be the city or, more importantly, private  
24 landlords are discriminating?

25 COMMISSIONER PERINE: I don't think

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2 we would say that we've seen something in the short  
3 term and I don't think we could see something in the  
4 short term for a couple of reasons.

5 COUNCIL MEMBER PERKINS: Because  
6 Local Law 1 is much longer -- has been around for a  
7 while.

8 COMMISSIONER PERINE: Right. But  
9 again, we spent the last three years with Local Law  
10 38, so I think one of the points of confusion right  
11 now is that I think there's a lot of confusion out  
12 there, frankly, in the industry in terms of what  
13 kind of standards they're supposed to be meeting  
14 right now. And this is actually not a good thing

15 from anybody's point of view. I think that we have  
16 a situation where people may not be sure, are they  
17 following Local Law 38 rules, are they following  
18 Local Law 1, and while it may be clear from a  
19 lawyer's perspective which law is applicable right  
20 now, I think to the average person out there who's  
21 trying to make repairs or carry out work in their  
22 buildings, I don't think it's so clear to them. So  
23 I don't think the full -- I don't think the impact  
24 of Local Law 1 provisions is really being felt in  
25 the industry right now. Again, just because of the

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1 COMMITTEE ON HOUSING AND BUILDINGS  
2 oddity of the way that Local Law 38 was rescinded, I  
3 think there's a lot of owners out there who probably  
4 still don't fully understand that.  
5 I certainly think that makes me certainly agree with  
6 you that it's important to pass another bill  
7 because, regardless of what we might believe is the  
8 law that people should be following today, I think  
9 there's a certain amount of confusion out there and  
10 the quicker we can resolve that confusion with a law  
11 that we can all begin explaining to people and  
12 reaching out to people and making sure that they  
13 understand what the obligations are, the better off  
14 we all will be.

15                   COUNCIL MEMBER PERKINS:  But, again,  
16 to your knowledge we are not experiencing  
17 discrimination by virtue of the liabilities that are  
18 presently imposed on landlords?

19                   COMMISSIONER PERINE:  No, and we  
20 didn't suggest that in my testimony.

21                   COUNCIL MEMBER PERKINS:  I don't  
22 think you expressed it that implicitly, but by  
23 making reference to Massachusetts, it suggested that  
24 if you maintain liability, that there will be the  
25 Massachusetts experience in New York City in terms

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1  COMMITTEE ON HOUSING AND BUILDINGS  
2  of discrimination against families that have  
3  children.  So I just wanted to make sure that it was  
4  clear that we already have that -- we're already  
5  operating in that context and we're not seeing that  
6  kind of evidence yet.

7                   COMMISSIONER FRIEDEN:  I would just  
8  reiterate once again that the Wave Crest standard  
9  came along late in the history of Local Law 1, and  
10 on top of that the confusion with regard to --

11                   COUNCIL MEMBER PERKINS:  How late was  
12 that, do you know?

13                   COMMISSIONER FRIEDEN:  I think it was

14 not until like the early to mid '90s that you had  
15 the Wave Crest standard. I have to check the date.  
16 But Local Law 1 was passed in 1982. It was not the  
17 standard throughout most of the '80s and I believe  
18 the early '90s.

19 COUNCIL MEMBER PERKINS: How long do  
20 you think it takes before discrimination becomes  
21 apparent in the housing?

22 COMMISSIONER PERINE: No, it's just  
23 that we're saying that that wasn't the standard.  
24 You know, things changed after that decision. That  
25 was the issue.

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2 Our only point, you know, is this  
3 what we are saying with some sort of crystal ball  
4 certainty is going to happen? No. What we're  
5 saying is this is what happened in Massachusetts.  
6 We're saying we have some intrinsic issues in our  
7 housing marketplace in New York City that can make  
8 us vulnerable to these kinds of things. It is a  
9 seller's market in New York. It's a very low  
10 vacancy rate. We have more people chasing  
11 apartments than apartments available for them. So  
12 we know we've got some of the circumstances that  
13 make people seeking housing in New York,

14 particularly lower income people, more vulnerable to  
15 problems in finding those apartments. We know that  
16 that's the case now. So all we're saying is that  
17 this is a concern, we should be aware of it. We  
18 believe that there are some fairly de minimis things  
19 that we could do to change this law in order to keep  
20 all the same standards in place, accomplish the same  
21 objectives that I think we all are trying to  
22 accomplish and minimize the unintended consequences.

23 COUNCIL MEMBER PERKINS: Just so I'm  
24 clear, should we be protecting landlords who  
25 discriminate against families with children to avoid

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2 liability?

3 COMMISSIONER PERINE: No, of course  
4 not.

5 COUNCIL MEMBER PERKINS: Okay. So we  
6 shouldn't be crafting legislation that says  
7 eliminate liability to eliminate discrimination.

8 COMMISSIONER PERINE: What we should  
9 be doing is crafting legislation that gives  
10 landlords an incentive to meet the standards that  
11 are carried out, that are provided for in the law.

12 COUNCIL MEMBER PERKINS: Okay. We

13 can probably do that and maintain liability as well  
14 because I would expect that the same landlord that  
15 discriminates is probably the kind of landlord that  
16 we would want to be liable for negligence. It seems  
17 that those types of values of being a discriminator  
18 and being one who is purposefully negligent are  
19 about the same character. We don't want -- do you  
20 understand?

21 COMMISSIONER PERINE: Yes, I do. I'm  
22 not sure I agree with that.

23 COUNCIL MEMBER PERKINS: Okay. Let  
24 me ask you, Dr. Friedan. I want to be clear. You  
25 in your presentation make note of the problem of the

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2 seven and the six. Am I correct? It's my  
3 understanding that we've come to some accommodation,  
4 mutually acceptable accommodation to some extent  
5 crafted by you or the administration side and am I  
6 correct in that regard? Because I was wondering why  
7 it was still being represented?

8 COMMISSIONER FRIEDEN: The current  
9 draft is something that I stated in my testimony is  
10 a significant improvement. It's not from our view  
11 ideal --

12 COUNCIL MEMBER PERKINS: I want to be

13 specific about the seven and the six.

14 COMMISSIONER FRIEDEN: We can live  
15 with the current draft of seven and six, yes.

16 COUNCIL MEMBER PERKINS: Okay. Thank  
17 you very much. Because you raised that again and  
18 cited the 15% and the other, you know --

19 COMMISSIONER FRIEDEN: I just wanted  
20 to make clear why we're concerned about it, that's  
21 all.

22 COUNCIL MEMBER PERKINS: That's a  
23 fight that's been -- that's off the table. So if  
24 you put it on the table, it might make people who  
25 are concerned about that think that that has not

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2 been addressed. I know that you were generous in  
3 saying we've addressed some things together but you  
4 brought that one back up as if it wasn't addressed  
5 and that has budgetary implications and other types  
6 of implications. In fact, the decision about it  
7 basically put it in your court to determine whether  
8 or not it was appropriate after one year of being in  
9 implementation. Am I correct?

10 COMMISSIONER FRIEDEN: At the Board  
11 of Health, actually.

12 COUNCIL MEMBER PERKINS: Yes. Okay.

13 So we just want to make sure the record's clear.

14 Now, assuming that such  
15 technicalities as that and others that you've cited  
16 this morning in your testimony were mutually  
17 resolved with perhaps the exception of the  
18 liabilities or with regard to the city and with  
19 regard to the private landlords, do you think that  
20 you would be -- we would be able to be agreeable on  
21 a piece of legislation?

22 CHAIRPERSON PROVENZANO: Let me just  
23 interject. I'm very serious about this. Another  
24 five minutes and we're finished here because I have  
25 people that have to get home to the Bronx, Brooklyn,

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2 and I'm very concerned about people's safety. So  
3 Queens, you're only over the bridge. So five  
4 minutes and we're out of here.

5 COMMISSIONER PERINE: I don't think  
6 we can make that statement because I think that for  
7 us the liability issues are very much intrinsically  
8 integrated into the issues, particularly around time  
9 frames and the obligations around time frames. I  
10 would reiterate that I believe that the gaps are not  
11 significant and that we could probably talk through

12 some of these things and hopefully reach a  
13 resolution.

14 COUNCIL MEMBER PERKINS: Putting  
15 liability to the side, and we did to some credit,  
16 talk through those things, would you still -- would  
17 you be able to support the bill with liability,  
18 without giving the city freedom from liability?

19 COMMISSIONER PERINE: We cannot put  
20 that aside. We cannot put that aside. That would  
21 be -- we believe that would be irresponsible. We  
22 couldn't do that.

23 COUNCIL MEMBER PERKINS: Okay. Dr.  
24 Friedan?

25 COMMISSIONER PERINE: But we

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2 certainly can talk about it.

3 CHAIRPERSON PROVENZANO: Bill, I'm  
4 going to end this. I'm sure we'll have another  
5 hearing. You know, I'm --

6 COUNCIL MEMBER PERKINS: This is my  
7 last question. I'm not going to --

8 CHAIRPERSON PROVENZANO: Is it --

9 COUNCIL MEMBER PERKINS: I'm just  
10 asking for an answer to this one last question.

11 (Commotion)

12 CHAIRPERSON PROVENZANO: Excuse me.

13 You can be removed from this chamber. Go ahead.

14 COUNCIL MEMBER PERKINS: Dr. Frieden,

15 I just wanted to get your response to the question.

16 COMMISSIONER FRIEDEN: The response

17 will be from the administration when I see a new

18 version of the bill in addition to the liability

19 concerns, the chewable surface issue I outlined in

20 some detail on the other issues I think are issues

21 that need to be addressed. I do feel we're very

22 close and that we do have a mutual goal coming up

23 with an implementable and effective piece of

24 legislation.

25 COUNCIL MEMBER PERKINS: Thank you.

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2 CHAIRPERSON PROVENZANO: Save it for

3 next week.

4 I have four whatever here, people

5 that have signed up. You will be put on the top of

6 the list. I can assure you there will be another

7 hearing. I apologize, but I have folks getting very

8 nervous here. Proposed Intro. No. 101A is laid

9 over. There was a lot of confusion. Folks worked

10 very late into the night and that's why some of the

11 issues are not clear. But in another few days we'll  
12 be able to take a better look at the new bill.  
13 Thank you all for coming. Safe home. This hearing  
14 is adjourned.

15 (Hearing concluded at 3:05 p.m.)

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CERTIFICATION

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5 STATE OF NEW YORK )

6 COUNTY OF NEW YORK )

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I, PAT IARKOWSKI, do hereby certify

10 that the foregoing is a true and accurate transcript  
11 of the within proceeding.

12 I further certify that I am not  
13 related to any of the parties to this action by  
14 blood or marriage, and that I am in no way  
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto  
17 set my hand this 5th day of December 2003.

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PAT IARKOWSKI

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

I, PAT IARKOWSKI, do hereby certify the

10 aforesaid to be a true and accurate copy of the  
11 transcription of the audio tapes of this hearing.

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