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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
BOOK I
-----x

June 21, 1999
Start: 10:50 a.m.
Recess: 7:20 p.m.

City Hall
Council Chambers
New York, New York

B E F O R E:

ARCHIE SPIGNER

Chairperson,

COUNCIL MEMBERS:

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Martin Malave-Dilan
Lawrence Warden
Madeline Provenzano
Michael Nelson
Thomas Ognibene
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2 A P P E A R A N C E S

3

Richard T. Roberts
Commissioner
NYC Department of Housing Preservation
and Development

6

Stephen Levy
Chief of Lead Unit, Tort Division
Assistant Corporation Counsel

8

Neal Cohen, M.D.
Commissioner
NYC Department of Health

10

Dr. Susan Clitzman
Assistant Commissioner
Environmental Risk Assessment and Communication
NYC Department of Health

12

Alan G. Hevesi
New York City Comptroller
Office of the Comptroller

14

Nick Farr
National Center for Lead Safe Housing

16

Don Ryan
Alliance to End Childhood Lead Poisoning

17

Celia Irvine
Office of the Manhattan Borough President

19

Carol Lamberg
Executive Director
New York Conf. and Settlement Housing Fund

21

Michael Lappin
Community Preservation Corporation

22

John McCarthy
Community Preservation Corporation

24

Dr. John F. Rosen
Montefiore Medical Center

25

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

3

4 Dr. Evelyn A. Mauss
5 Natural Resources Defense Council

6 Meryl Viener

7 Mary Ann Rothman
8 Council of New York Co-op and Condominiums

9

10 Frank Ricci
11 Rent Stabilization Association

12 Matthew Chachere
13 New York Coalition to End Lead Poison

14

15 Suzanne Mattei
16 New York State Trial Lawyers Association

17

18 Jeff Lichtman
19 New York State Trial Lawyers Association

20

21 Maureen Silverman
22 New York State Coalition to End Lead Poisoning

23

24 Dan Margulies
25 Executive Director
26 CHIP

27

28 Marolyn Davenport
29 Real Estate Board of New York

30

31 Nicholas LaPorte
32 Associated Builders and Owners Association

33

34 Andrew Goldberg
35 New York Public Interest Research Group

36

37 Marlen Bodden, Esq.
38 The Legal Aid Society

39

40 Judith Goldiner, Esq.
41 The Legal Aid Society

42

43 Lenora Colbert
44 1199 National Health
45 and Human Services Union

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

3

4 Joel Shufro
5 Executive Director
6 New York Committee for Occupational
7 Safety and Health

8 Joel Kupferman
9 New York Environmental Law and Justice Committee

7

8 Brian Honan
9 Tenants and Neighbors

9 Glenn Pasanen
10 Associate Director
11 City Project

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON SPIGNER: Good morning,
3 ladies and gentlemen. My name is Archie Spigner, and
4 I Chair the Council's Committee on Housing and
5 Buildings.

6 Today the Committee is conducting a
7 hearing on legislation aimed at preventing lead
8 poisoning of our City's children.

9 The legislation before us sets out
10 ways for owners of multiple dwellings to safely
11 correct lead-based paint hazards before a child
12 becomes lead poisoned.

13 It also establishes safe work
14 practices for landlords to use in correcting
15 lead-based paint hazards before a violation is
16 issued.

17 The bill is the result of a
18 collaborative effort by the Council and the Mayor
19 Administration.

20 The bill purports to have landlords
21 correct these hazardous conditions before a child
22 gets lead poisoned by placing an affirmative duty on
23 a landlord of a pre-1960 building, multiple
24 dwellings, to conduct an annual visual inspection of
25 a dwelling unit for lead-based paint hazards, when

1 COMMITTEE ON HOUSING AND BUILDINGS

2 such landlord has actual knowledge that a child
3 under the age of six resides therein.

4 We know that the best way to prevent
5 lead poisoning is to see that lead-based paint, or
6 paint that is presumed to be lead-based paint is
7 kept in good condition. Where peeling or
8 deteriorating subsurfaces exist, such lead-based
9 paint or paint that is presumed to be lead-based
10 paint should be adequately repaired using safe
11 working practices.

12 This bill sets forth what we believe
13 to be safe work practices. For the first time it
14 sets forth time frames in which lead-based paint
15 hazards must be addressed by a landlord when a
16 notice of violation is issued.

17 The bill also mandates for the first
18 time that the City under the jurisdiction of the
19 Department of Housing Preservation and Development
20 shall have the responsibility to correct lead-based
21 paint hazards when the owner fails to do so.

22 During today's hearing, we will give
23 members of the public, as well as government
24 officials an opportunity to speak.

25 Because of the large number of people

1 COMMITTEE ON HOUSING AND BUILDINGS

2 that wish to be heard, I will ask that you limit
3 your testimony as much as possible.

4 There will be copies of the bill made
5 available today, because of technical changes that
6 have been made. I am going to extend to Council
7 Member Michels the floor, so first let's hear from
8 Council Member Michels who has been involved in this
9 issue for a long period of time.

10 Council Member Michels.

11 COUNCIL MEMBER MICHELS: Thank you,
12 Mr. Spigner. Thank you very much for your courtesy
13 of making my opening statement.

14 As many of you know, I have been
15 involved in this issue throughout my term in office,
16 as the author of the existing statute, Local Law 1
17 of 1982, and most recently as the lead sponsor of
18 Intro. 205, the proposed Childhood Lead Poisoning
19 Act, which unfortunately is not on today's agenda,
20 although it should be.

21 Let me begin by saying that I truly
22 regret the preconsidered bill before us today, which
23 deals with a vitally important health issue
24 affecting hundreds of thousands of children
25 throughout the City, is being rushed through the

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Council with inadequate notice to the general public
3 and insufficient review to the bill itself.

4 The title of this bill says that it
5 deals with the childhood lead poisoning prevention.
6 I wish it were so. Many of us have hoped that the
7 needs of children, not those of landlords or City
8 agencies, would be the prime consideration in
9 shaping this legislation. I am sorry to report the
10 needs of children now appear to be secondary to
11 those of landlords.

12 What we have before us is nothing
13 more than a landlords' protection bill. This bill
14 turns the whole issue upside down. It protects
15 landlords and City officials from liability, paying
16 little heed to the health and safety of children.

17 For example, it drops the use of
18 inexpensive scientific tests to see if invisible
19 lead dust remains after repairs are made and
20 clean-up is done. This glaring omission led the
21 nation's foremost lead poisoning prevention experts
22 to call the draft "A Tragic Mistake" that will
23 result in large numbers of children continuing to be
24 lead poisoned in this City.

25 Lead poisoning causes permanent brain

1 COMMITTEE ON HOUSING AND BUILDINGS

2 damage, resulting in learning in behavioral disorder
3 in young children. For the most part it is a
4 preventable disease.

5 Our primary goal should be simple:
6 Enact a law that will put in place the most
7 effective mechanism for maintaining our housing
8 stock so those children will not be poisoned.

9 The landlord representatives,
10 however, appear only interested in doing the work as
11 cheaply as possible and avoiding liability, no
12 matter what the condition of the apartment, and this
13 still reflects that position.

14 Our aim should be to keep lead dust
15 off the hands of children, by ensuring the repairs
16 are made right away.

17 It is a sham to say, as this bill
18 does, that peeling paint in pre-1960 apartments with
19 young children is an immediately hazardous housing
20 code violation, and then allow landlords an
21 excessive amount of time and unlimited postponements
22 before the repair is made.

23 It is also a sham to say that the
24 City will enforce the law as this bill suggests, but
25 then not allow an excessive amount of time for

1 COMMITTEE ON HOUSING AND BUILDINGS

2 inspectors to respond to tenants' complaints for
3 violation notices to be mailed out to landlords and
4 for emergency repairs to be done when landlords fail
5 to comply.

6 Once again, the needs of children are
7 lost in lead paint dust.

8 The bill before us reflects the
9 landlord's resistance for using the health code
10 safety rules for proper lead paint removal,
11 including the need for civil post cleaning
12 scientific tests. This bill also gives, to the
13 demand by the landlords of the City, for an
14 excessive amount of time to repair the immediately
15 hazardous conditions, therefore putting the child at
16 risk of further lead poisoning.

17 But the most outrageous part of this
18 bill is that it incorporates the secret agenda of
19 the real estate industry of this City and the City
20 to deny the right of lead poisoned children to
21 recover compensation for their serious injuries.

22 This would eliminate the landlord's
23 main motivation to correct lead paint hazards
24 promptly and properly.

25 Namely the fear of having to pay

1 COMMITTEE ON HOUSING AND BUILDINGS

2 enormous sums of money for the injuries, medical
3 care and special educational needs of severely lead
4 poisoned children. The best way for landlords to
5 protect themselves from lawsuit is and should be to
6 keep that property in good repair so there won't be
7 any lead poisoned children.

8 It would be tragic if this Council
9 retreated from a strong commitment embodied in Local
10 Law 1, to truly protect children from lead
11 poisoning.

12 The Council should adopt an effective
13 law that will stop the scourge of childhood lead
14 poisoning rather than disgraceful proposal which
15 would merely protect landlords and the City from
16 lawsuits.

17 My bill, 205, which has 36 other
18 co-sponsors, represents a reasonable and balanced
19 approach where only peeling paints or paints on
20 deteriorated subsurfaces will be cited as a
21 violation.

22 The concerns of both landlords and
23 tenants are addressed by limiting the extent and the
24 cost of any repairs while requiring that it be done
25 expeditiously and safely.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 I believe it is not too late to
3 reconsider this legislation and to enact a new law
4 based on Intro. 205.

5 I urge the Chair, Mr. Chairman,
6 respectfully, to look at today's New York Times
7 Editorial, which accurately analyzes the situation
8 and suggests that the Council ask the court for more
9 time to resolve this complicated issue.

10 For the sake of the children of our
11 City, we should take as much time as we need to come
12 up with the right bill.

13 Thank you very much.

14 CHAIRPERSON SPIGNER: Thank you very
15 much.

16 Thank you.

17 The first witness we have is Dr.
18 Cohen. Commissioner Roberts, HPD Commissioner.
19 Identify yourself and we would be happy to take your
20 testimony.

21 COMMISSIONER ROBERTS: I am Richard
22 Roberts. I am the Commissioner of the New York City
23 Department of Housing, Preservation and Development.

24 My colleague Dr. Cohen has a
25 prearranged scheduled meeting some place else in the

1 COMMITTEE ON HOUSING AND BUILDINGS

2 building with the Mayor, and he will be back to not
3 only deliver his testimony, but also to participate
4 in a dialogue with the Council.

5 I am going to proceed with my
6 statement and then we can take it from there.

7 Good morning, Chairman Spigner, and
8 members of the Committee. My name is Richard
9 Roberts, Commissioner of the Department of Housing
10 Preservation and Development. I appreciate the
11 opportunity to testify today regarding the proposed
12 legislation, concerning the prevention of lead paint
13 poisoning.

14 When I testified on this issue along
15 with Dr. Cohen in December of 1998, HPD was
16 preparing to implement Local Law 1, in response to
17 orders of the court in the NYCCELP litigation. At
18 that time I informed you that the court had
19 interpreted Local Law 1 to require that all multiple
20 dwelling units where a child six years of age or
21 under resides be made lead-free.

22 I explained that to implement the law
23 as interpreted by the court was an enormous and
24 costly task, and would have a devastating impact on
25 affordable housing and public health. I urged the

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Council to work with the administration to enact
3 reasonable new legislation that uses current
4 knowledge about lead poisoning prevention to provide
5 a real opportunity for us to protect the health and
6 safety of our children while ensuring the continued
7 preservation and development of affordable housing.

8 As you know, we have actively been
9 pursuing legislative change to appeal Local Law 1
10 and provide an alternative program for lead
11 poisoning prevention.

12 I am pleased to be here today to
13 testify regarding new proposed lead paint
14 legislation. We are all well aware that compromise
15 has been necessary in order to reach accord on this
16 controversial and often contentious issue.

17 Nevertheless, I believe that this
18 proposal provides us with a good opportunity to
19 protect the health and welfare of young children by
20 shifting the focus from intact lead paint and
21 eliminating the threat to affordable housing and
22 public health posed by implementation of local law
23 1.

24 The bill repeals an unworkable,
25 outmoded, lead-free mandate, and replaces it with a

1 COMMITTEE ON HOUSING AND BUILDINGS

2 rational system identifying and correcting lead
3 paint hazards, focusing on the immediate and
4 effective control of the most common cause of such
5 hazards, peeling lead paint.

6 It creates an incentive for owners to
7 take affirmative steps towards identifying and
8 controlling lead hazards in units where young
9 children reside.

10 The bill creates a lead paint
11 poisoning prevention program which requires owners
12 to: 1) comply with annual notification and
13 inspection requirements and ensure that paint is
14 kept intact by correcting lead hazards using safe
15 work practices.

16 2) Correct lead violations using safe
17 work practices that do not create additional
18 hazards.

19 3) take basic actions when apartments
20 become vacant to improve their lead safety.

21 The bill thus constructs a program
22 under which families which children can be assured
23 that lead hazards will be addressed promptly and
24 with which owners can readily comply.

25 A lead-based paint hazard is defined

1 COMMITTEE ON HOUSING AND BUILDINGS

2 as lead paint that is peeling or on a deteriorated
3 subsurface in a multiple dwelling unit where a child
4 under six resides. To enable enforcement, there is a
5 presumption that paint inside the dwelling unit is
6 lead-based paint if the building was constructed
7 prior to 1960 and a child under six years of age
8 resides in the unit. The presumption may be rebutted
9 by an owner.

10 One issue of concern is the time
11 frames prescribed for HPD to perform certain
12 enforcement mandates. Such time frames should be
13 viewed as outer limits for performance and not as
14 goals, since HPD has every intention of performing
15 all of its responsibilities under the law as
16 expeditiously as possible.

17 The Council must be sure that the
18 time frames that are set are realistic so that HPD
19 does not have to sacrifice other important
20 functions or continually litigate over failure to
21 comply with unrealistic time frames.

22 It is imperative that the Council
23 leave the agency ample discretion to allocate its
24 resources appropriately.

25 The time frame should be based upon

1 COMMITTEE ON HOUSING AND BUILDINGS

2 the operational and programmatic experience, rather
3 than dictated by other considerations.

4 Under the proposal, when HPD receives
5 a complaint about peeling paint at a pre-1960 unit
6 with a young child, an inspector must attempt to
7 gain access to the unit within a prescribed time
8 period to perform an inspection.

9 If peeling paint or a deteriorated
10 subsurface is found, the inspector will issue a lead
11 violation based upon the presumption. If during the
12 inspection the inspector observes a condition that
13 is clearly causing the paint to peel, he or she will
14 also issue a violation for correction of that
15 condition.

16 The owner will be responsible for
17 quickly correcting the lead violation, and for
18 correcting conditions that are causing the paint to
19 peel, where a notice for violation of such
20 conditions has been issued. Thus there will be a
21 prompt response to complaints by the agency and
22 rapid correction by the owner.

23 A lead hazard violation is a Class C
24 immediately hazardous violation. The violation must
25 be corrected by the owner within 21 days, using

1 COMMITTEE ON HOUSING AND BUILDINGS

2 interim controls and safety practices.

3 These include: 1) sealing the work
4 area to restrict access to it until work is
5 completed.

6 2) preparing the work area by
7 covering objects in and adjacent to the area, or by
8 removing such objects, and covering work areas with
9 plastic sheeting.

10 3) wet scraping and repairing all
11 peeling paint and deteriorated subsurfaces.

12 4) HEPA-vacuuming or washing all work
13 area surfaces to remove dust prior to repainting.

14 5) Cleaning the work area by
15 HEPA-vacuuming or washing at the end of each work
16 day.

17 6) minimizing dispersion of paint
18 chips, debris and dust from the work area, and
19 advising occupants not to enter the area.

20 7) Adjusting doors and cabinet doors
21 so that they are properly hung and do not bind.

22 8) Adjusting all windows to ensure
23 they are properly hung and do not bind.

24 9) Making sure that all debris is
25 stored and disposed of safely.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 10) HEPA-vacuuuming or washing all
3 surfaces exposed to dust at the completion of the
4 work. Owners must maintain records of the work
5 performed to correct the violation.

6 An owner who does not correct the
7 condition within 21 days will have an additional
8 15-day correction period. The work during that
9 period must be performed using the full range of
10 work practices of the Health Code.

11 Thus, there is an incentive for
12 owners to correct lead hazard violations promptly,
13 while ensuring that the work that is performed at
14 any time does not create additional hazards.

15 Owners must certify that they have
16 corrected the lead violation and HPD must provide a
17 copy of the certification to the complainant.

18 HPD will attempt to reinspect all
19 certified lead violations within a prescribed time.
20 Where a violation has been falsely certified, the
21 person responsible will be liable for a civil
22 penalty for each such certification, and guilty of a
23 misdemeanor punishable by \$1,000 fine and/or one
24 year imprisonment.

25 These penalty provisions, along with

1 COMMITTEE ON HOUSING AND BUILDINGS

2 the requirement that the certification be provided
3 to the complainant, and HPD's reinspection of the
4 certified lead violation should provide an effective
5 deterrent to false certifications.

6 If an owner fails to correct a lead
7 violation, or falsely certifies correction of such
8 violation, HPD will perform the work within a fixed
9 time period. A lien for the cost of the work will be
10 placed against the building. Lead violations will
11 therefore be corrected in each circumstance,
12 ensuring protection of the young children in the
13 unit.

14 An owner who does not correct a lead
15 violation before the end of the second time period
16 will be liable for civil penalties of \$250 a day up
17 to a maximum of \$10,000 per violation.

18 The potential liability for civil
19 penalties will deter owners from noncompliance.

20 In recognition that certain fact
21 situations may make imposition of penalties
22 inequitable, the bill also provides certain
23 specified defenses for owners, which are similar to
24 existing defenses for other violations of the
25 Housing Maintenance Code.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Owners of the pre-1960 multiple
3 dwellings must, at the time of signing of a lease or
4 beginning of occupancy, and annually, provide notice
5 to all tenants, inquiring whether a child under the
6 age of six resides in the unit.

7 If the tenant informs the owner that
8 a child of such age lives in the unit, or if the
9 owner otherwise knows that a child lives there, the
10 owner must provide for an annual visual inspection
11 for lead paint hazards.

12 If such hazards are found, the owner
13 must correct them, using the safe work practices and
14 interim controls specified for correction of lead
15 violations.

16 During the ensuing year, if a child
17 subsequently comes to reside in the unit, tenants
18 must inform the owner so that such an inspection
19 will be conducted and necessary repairs occur.

20 Regular inspections of units occupied
21 by young children will ensure that peeling paint
22 conditions are addressed, and will provide a
23 reasonable cycle for maintenance of painted surfaces
24 to prevent lead paint hazards.

25 Further, since the bill requires that

1 COMMITTEE ON HOUSING AND BUILDINGS

2 safety practices be followed even where a violation
3 has not been issued, work done to address lead
4 hazards in units will not create new lead hazards.

5 Further, since the bill prohibits the
6 dry scraping and dry sanding of lead paint or paint
7 of unknown lead content in any dwelling unit, all
8 paint repair will be performed using a basic safe
9 work practice that will help to reduce generation of
10 dust.

11 When pre-1960 units become vacant,
12 owners must:

- 13 1) repair defective paint.
- 14 2) restrict access to the work area.
- 15 3) make bare floors smooth so that
16 they will be easily cleanable.
- 17 4) HEPA-vacuum or wash all surfaces
18 in the work area to remove dust prior to repainting.
- 19 5) Adjust doors so that the painted
20 surfaces do not bind.
- 21 6) adjust all windows to ensure that
22 they are properly hung and do not bind.
- 23 7) ensure that all debris is stored
24 and disposed of safely to minimize exposure to
25 building occupants.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 This provision will enable owners to
3 take advantage of the window of opportunity
4 presented at vacancy to make certain that potential
5 lead hazards have been addressed.

6 As a result, families with small
7 children who may move into the unit will be assured
8 that it is reasonably free of immediate lead
9 hazards.

10 The bill clarifies sole remedy
11 against the City for failure to perform a regulatory
12 duty under the new lead law is an Article 78
13 proceeding to compel compliance. The bill similarly
14 clarifies Section 27-2126 of the code to provide the
15 same Article 78 remedy.

16 Informational pamphlets will be
17 developed but HPD and DOH explaining the hazards
18 associated with lead paint and recommending certain
19 work practices to be used when repairing lead paint.
20 Tenants will receive the lead hazard pamphlet when
21 they sign a lease or commence occupancy. When HPD
22 inspects the unit upon a complaint of peeling paint,
23 owners will receive the Safe
24 Work Practices Pamphlet in conjunction with service
25 of a notice of violation for a lead hazard.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 HPD will also send a notice to units
3 where lead violations have been issued informing
4 parents to contact the Department of Health if they
5 have medical concerns about exposure to lead.

6 Broad dissemination of information
7 about the hazards of lead paint and safe work
8 practices will help to educate tenants and owners
9 about preventing lead paint poisoning.

10 HPD will provide an annual written
11 report to the City Council concerning the agency's
12 implementation of the new law. The bill prescribes
13 gathering of detailed data regarding the agency's
14 enforcement efforts that will be reported in the
15 annual report.

16 We believe that the proposed
17 legislation creates an effective lead poisoning
18 prevention program which provides an incentive for
19 owners to maintain units and expeditiously correct
20 lead hazards safely.

21 The program is workable and
22 efficient, protects public health and affordable,
23 and preserves the agencies resources so that we may
24 continue to perform our many other important
25 functions which directly impact upon the quality and

1 COMMITTEE ON HOUSING AND BUILDINGS

2 quantity of affordable housing in the City of New
3 York.

4 We strongly urge the Council to put
5 the threat of Local Law 1 behind us by enacting this
6 new lead legislation promptly, so that we can move
7 forward with this new program.

8 Thank you for the opportunity to
9 testify. I will be happy to answer any questions you
10 may have.

11 Thank you.

12 CHAIRPERSON SPIGNER: Thank you,
13 Commissioner, for your testimony.

14 As I stated initially, this is a
15 hearing on a proposed bill where it is our practice
16 to submit testimony on the bill, both in favor and
17 against, and we try to take into consideration all
18 of the various suggestions made and where
19 appropriate they will be reflected in a final draft
20 of our legislation.

21 Let me ask you, Commissioner, this
22 one question: What is HPD currently doing to reduce
23 lead paint hazards in the buildings you manage?

24 COMMISSIONER ROBERTS: We survey all
25 of the tenants in what we refer to as in-rem

1 COMMITTEE ON HOUSING AND BUILDINGS

2 buildings, in the City of New York. We do annual
3 surveys and in connection or response to those
4 surveys we perform a variety of different levels of
5 work in occupied in rem buildings.

6 In addition, as you know, and we have
7 had several discussions here at the Council, we are
8 engaged in a series of comprehensive efforts around
9 the rehabilitation of in rem housing and one of the
10 results of the rehabilitation work that we do in
11 those buildings is, you know, comprehensive
12 rehabilitation, which results in abating many of the
13 conditions that would be of some concern.

14 CHAIRPERSON SPIGNER: But you don't
15 issue violations to yourself?

16 COMMISSIONER ROBERTS: No.

17 CHAIRPERSON SPIGNER: All right.

18 As you pointed out, there are
19 substantial penalties addressed to false
20 self-certifications in this proposed legislation.
21 How many self-certified corrections of lead paint
22 violations were audited by HPD last year? Do you
23 have that information?

24 COMMISSIONER ROBERTS: Yes. We don't
25 break out, and this is what the discussion was

1 COMMITTEE ON HOUSING AND BUILDINGS

2 about, we don't break out the audit of
3 self-certifications on C violations by type or
4 class. So, in terms of the actual numbers of lead
5 violations that fall within that C violation, the
6 larger C violation universe, we don't break those
7 out.

8 CHAIRPERSON SPIGNER: Commissioner,
9 you stated, if I remember directly, that you believe
10 that substantial penalties proposed in this local
11 law would be a deterrent; is that your belief again?

12 COMMISSIONER ROBERTS: Yes,
13 absolutely. We believe it would be a deterrent.
14 Although, one of the things that I think is
15 important about this legislation is that there are a
16 series of controls and compliance mechanisms within
17 the performance of work where we hopefully will deal
18 with many of the issues that would be of some
19 concern as we move through the process.

20 So, you have both the compliance work
21 within performing the work as articulated by the
22 interim controls and then also in connection with
23 the Health Code, but also then at the end of the day
24 the penalties connected to self-certification --
25 false certification.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON SPIGNER: So you do
3 believe they are adequate as stated in the bill?

4 COMMISSIONER ROBERTS: Yes.

5 CHAIRPERSON SPIGNER: Okay.

6 Let me ask the question as it relates
7 to the timetables. You mentioned that you felt the
8 timetables should be, your words I can't recall --

9 COMMISSIONER ROBERTS: Cause for some
10 concern. I think that we have, in the context of the
11 discussions around the legislation, certainly heard
12 quite a bit about there being an interest in
13 changing some of the time frames that are outlined
14 in the legislation.

15 We have supported the current time
16 frames as they are currently articulated because
17 they conform to, by and large they conform to the
18 time frames that are consistent with other C
19 violations, which would be hazardous conditions
20 within buildings.

21 What we don't want to get ourselves
22 into is a situation where we are allocating or
23 competing for the allocation of scarce resources
24 between hazardous conditions, other hazardous
25 conditions of the Housing Maintenance Code.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON SPIGNER: Let me ask you a
3 question. Why does HPD require 25 days to respond to
4 a complaint of peeling paint?

5 COMMISSIONER ROBERTS: It generally
6 doesn't take 25 days.

7 CHAIRPERSON SPIGNER: Well, you don't
8 require 25 days?

9 COMMISSIONER ROBERTS: Right.

10 CHAIRPERSON SPIGNER: Does it require
11 HPD 60 days of serving a violation once an inspector
12 has found a problem?

13 COMMISSIONER ROBERTS: Well, that
14 particular time frame is one that is of some concern
15 to us, because once we actually write the violation
16 and we have to go back and perform a number of
17 functions at the agency, data entry, getting it out.

18 CHAIRPERSON SPIGNER: That takes 60
19 days?

20 COMMISSIONER ROBERTS: Getting it out.
21 I mean we are comfortable with the 60-day time frame
22 on that one.

23 CHAIRPERSON SPIGNER: But it does take
24 that long?

25 COMMISSIONER ROBERTS: Well, we try to

1 COMMITTEE ON HOUSING AND BUILDINGS

2 do it faster than that, but that is of some concern
3 to us.

4 CHAIRPERSON SPIGNER: Do you usually
5 take 60 days to do it, or you do it in a shorter
6 period of time?

7 COMMISSIONER ROBERTS: We can
8 generally do it in a shorter period of time. Again,
9 this will set out some outer limits for performance
10 that for which we would be comfortable. We don't
11 want to get ourselves in a situation where there is
12 a tremendous amount of litigation around these time
13 frames and so forth.

14 CHAIRPERSON SPIGNER: Okay, after a
15 violation has been certified to be corrected, why do
16 you require 70 days to audit and determine if it is
17 an accurate determination?

18 COMMISSIONER ROBERTS: Again, that is
19 one again where we don't have, where we generally
20 are within those timeframes in terms of actually
21 performing the work, but, again, it is the same
22 answer, in terms of being comfortable as to what is
23 mandated. We are more comfortable with the outside
24 limits of some of those performance measurements.

25 CHAIRPERSON SPIGNER: As it relates to

1 COMMITTEE ON HOUSING AND BUILDINGS

2 a violation that has not been corrected by a
3 landlord, as I understand it now you have 90 days --

4 COMMISSIONER ROBERTS: Ninety days to
5 perform the work.

6 CHAIRPERSON SPIGNER: Can you tell us
7 why you need 90 days?

8 COMMISSIONER ROBERTS: Well, just as
9 an operational matter, to go in, identify the
10 contractor.

11 CHAIRPERSON SPIGNER: You may be able
12 to do it in less than that --

13 COMMISSIONER ROBERTS: That's right.
14 In terms of what the mandated time frame is going to
15 be, we are more comfortable with the outside limits
16 on the performance.

17 CHAIRPERSON SPIGNER: Council Member
18 Linares has questions for you, sir.

19 COUNCIL MEMBER LINARES: Thank you,
20 Mr. Chair.

21 Good morning, Commissioner.

22 COMMISSIONER ROBERTS: Hi.

23 COUNCIL MEMBER LINARES: In following
24 your testimony, I noticed that you referred to a
25 number of entering controls and safety practices.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 You highlighted about ten of them, but I was looking
3 for one of them to be clearance testing, after any
4 work has been done to correct any type of
5 violations, and actually to see to it that the dust
6 that may remain gets removed and it is not included.
7 Experts clearly recommend that without this there is
8 no way of determining whether children will be
9 exposed in ways in which you will be detrimental
10 perhaps to their life and to their well being and I
11 was just wondering how, understanding that this was
12 a very expensive test and that this is actually one
13 of the current existing practices, how do you
14 explain excluding this?

15 CHAIRPERSON SPIGNER: Council Member,
16 we are going to have the Department of Health
17 Commissioner here shortly. You are speaking about
18 the white tests?

19 COMMISSIONER ROBERTS: Right.

20 COUNCIL MEMBER LINARES: Yes.

21 CHAIRPERSON SPIGNER: The Commissioner
22 will be here shortly.

23 COUNCIL MEMBER LINARES: I would like
24 the Commissioner to briefly comment and then I will
25 proceed with my second question.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 COMMISSIONER ROBERTS: My testimony
3 merely outlined what was currently in the
4 legislative proposal. I do believe that my
5 colleague, Commissioner Cohen, is going to speak to
6 both his statement and also of the responses that he
7 is prepared to get into in the question and answer
8 session, speaks specifically to this test, and the
9 public health implications of performing it.

10 So, I am going to defer that to him
11 but he will address it.

12 COUNCIL MEMBER LINARES: I am still
13 left puzzled by a sense of recommendation of a
14 process that does not take that into consideration
15 when that is a fundamental area of concern, and when
16 inspectors under your jurisdiction will be closely
17 involved with overseeing that process, so that is
18 why I posed the question and --

19 COMMISSIONER ROBERTS: Well, that will
20 be a question for the Department of Health, I mean
21 we are going to inspect as to the condition, the
22 paint condition which existed which contributed to
23 the violation being written, and so we will inspect
24 or perform a reinspection as to the correction of
25 the paint condition.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 As to the existence of the dust or
3 what have you, that will be a question for the
4 Department of Health.

5 COUNCIL MEMBER LINARES: If the
6 inspectors are the one that will be charged to
7 oversee and monitor and also enforce any violation
8 that takes place --

9 COMMISSIONER ROBERTS: Under the
10 Housing and Maintenance Code, but not under the
11 health code.

12 COUNCIL MEMBER LINARES: Now, how many
13 properties are owned by the City under your
14 jurisdiction that are pre-1960?

15 COMMISSIONER ROBERTS: In terms of
16 pre-1960, I don't know if there is a specific number
17 that I have, I know we own 22,000, approximately
18 22,000 units, although that is decreasing
19 significantly every year, and so all of those units
20 will be subject to, would be subject to our
21 complying with this --

22 COUNCIL MEMBER LINARES: How many --

23 COMMISSIONER ROBERTS: Twenty-two
24 thousand units.

25 COUNCIL MEMBER LINARES: Would it be

1 COMMITTEE ON HOUSING AND BUILDINGS

2 safe to say that under your jurisdiction, we
3 probably have the highest number of units that any
4 landlord would have in the City of New York, and
5 that possibly the children and the families are
6 prone to be impacted by this legislation would
7 probably live significantly in this type of
8 property?

9 CHAIRPERSON SPIGNER: Before you
10 answer, Commissioner. In light of the large amount
11 of interest in this topic, and a number of Council
12 Members who want to participate in the dialogued, I
13 am going to have to adhere to a rigid five-minute
14 time allocations for questions and answers, and I
15 started three or four minutes after you started, so
16 you are now under those restrictions, Councilman.

17 COUNCIL MEMBER LINARES: I have about
18 two minutes.

19 COMMISSIONER ROBERTS: We are
20 obviously a significant property owner, residential
21 property owner and manager in the City of New York.
22 I don't know if there are others.

23 COUNCIL MEMBER LINARES: If you are
24 the largest, I have to presume that you are and you
25 probably have the largest number. So, my question

1 COMMITTEE ON HOUSING AND BUILDINGS

2 is, how do we then ensure the safety of the children
3 within those units when your own inspectors are the
4 one that are supposed to hold yourself accountable
5 and that is a question that I have and that is why I
6 am asking.

7 COMMISSIONER ROBERTS: Well, you know,
8 the level of accountability with respect to the
9 maintenance of our properties on all levels is
10 extremely high.

11 That is not to say that we discharge
12 those obligations in a manner that is, you know,
13 that we are always particularly proud of, but,
14 again, remember that is one of the reasons that we
15 are involved in more -- we are also probably
16 involved in more rehabilitation in upgrading
17 properties than any other residential property owner
18 and manager in the City of New York, and so to the
19 extent there are problems, we are doing more, not
20 only within the context of this framework, but we
21 are doing more outside of the context of this
22 framework than any other property owner or manager
23 to actually upgrade properties, significant
24 rehabilitation, relocation of tenants and families
25 when that rehabilitation occurs, but we are engaged

1 COMMITTEE ON HOUSING AND BUILDINGS

2 in a significant amount of work in that regard.

3 COUNCIL MEMBER LINARES: This is an
4 area of great concern to me.

5 Let me ask you, does HPD have enough
6 inspectors to do proactive lead paint inspections?
7 That is, inspections that are not triggered by a
8 complaint?

9 COMMISSIONER ROBERTSON: Well, our
10 system is a complaint-driven system, so throughout
11 all aspects of the Housing Maintenance Code, the
12 system, which is a function of state law, is set up
13 to actually be activated on the complaints of a
14 tenant.

15 You know, as I have indicated to this
16 Committee on several occasions, particularly in the
17 time that I have been with the agency, we are at the
18 highest level of funding for inspectors at any time
19 since the state significantly reduced the funding
20 for inspectors in 1991. The Council obviously
21 deserves a tremendous amount of credit for
22 additional resources in this area, particularly in
23 the last couple of years. So, we believe that the
24 level of resources is appropriate, particularly if
25 we are able to construct a piece of legislation,

1 COMMITTEE ON HOUSING AND BUILDINGS

2 like this one that continues to be consistent with
3 other aspects of the Housing Maintenance Code. I
4 think we will, and our concern is that we may indeed
5 have issues if we have to divert resources in order
6 to treat this as some kind of specialized --
7 although, we understand it is extremely important,
8 some kind of specialized area of the Housing
9 Maintenance Code.

10 COUNCIL MEMBER LINARES: Right now,
11 even with the complaint-driven --

12 CHAIRPERSON SPIGNER: Council Member,
13 please. You can have a second round. You can have a
14 second round.

15 COUNCIL MEMBER LINARES: Just to
16 conclude with my last question, even with
17 complaint-driven, a mechanism of complaint-driven,
18 do you feel which is not enough because those
19 children that may be exposed to lead and we don't
20 know about because there has not been a complaint,
21 those do not configure anywhere, but even for those
22 who are driven by complaint, do you have enough
23 inspectors? I am still unclear.

24 COMMISSIONER ROBERTS: Yes. I mean, I
25 believe we do, and particularly in light of

1 COMMITTEE ON HOUSING AND BUILDINGS

2 additional resources that we have committed to that,
3 to that area over the last couple of years.

4 But let me also say that the
5 existence of a complaint would not only be --
6 wouldn't be the only measurement of the existence of
7 lead paint problems in children. I mean, we would
8 also have, and I think the Health Department could
9 speak to this, screening and testing and what we
10 actually see in the public health system outside of
11 the rubric of just complaints being generated than
12 within housing. So, there are a variety of
13 mechanisms in which we can gauge, whether we are
14 making progress in that regard.

15 CHAIRPERSON SPIGNER: Thank you,
16 Commissioner.

17 Council Member Michels.

18 COUNCIL MEMBER MICHELS: Thank you,
19 Mr. Chairman.

20 I might say to you that I hope that
21 your agency has learned better since the last time
22 this controversy came up, when you learned that it
23 was absolutely necessary to have a clearance test to
24 see after the work is done the dust has been
25 removed.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Commissioner Margaret Hamburg, the
3 predecessor to the present Commissioner, made it
4 very clear in her statement that you cannot possibly
5 think that you have done the job and supported the
6 bill unless those clearance tests are done, and that
7 is why we stopped negotiations at that time on that
8 particular bill.

9 Let me ask you this. In removing the
10 presumption of lead paint for liability purposes,
11 which you, I know you are aware of, a good lawyer,
12 you believe that shielding property, including the
13 City, from liability, from lead poisoning forces
14 owners taking seriously their obligation of this new
15 law? And how does this protect children by removing
16 the compulsion of having to clean up or do the right
17 job and stopped kids from being lead poisoned or be
18 sued; what is your opinion on that?

19 COMMISSIONER ROBERTS: I am not sure I
20 understand the question.

21 If the question relates to, I think
22 that the legislation sets up a compliance system
23 that is immediate --

24 COUNCIL MEMBER MICHELS: Let me
25 explain it to you.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 COMMISSIONER ROBERTS: -- As opposed
3 to a liability system, which I think the immediate,
4 having the ability to immediately compel the City
5 and the City to effect its compliance system, I
6 think the focus of this bill is not --

7 COUNCIL MEMBER MICHELS: I have read
8 the bill very thoroughly and I fail to see a
9 compliance system here. I have studied the bill, I
10 have slept with this bill. There is no compliance
11 system in here. But I was talking to you about the
12 fact that the presumption of lead paint has been
13 taken out for the purposes of lawsuits against the
14 City and against private owners. And without the
15 compulsion, the cases which the landlord thought was
16 so wonderful, the Juarez case, which removed strict
17 liability, cannot be successful. And this is what I
18 am talking about is the secret agenda here.

19 Do you think without being able to
20 sue a landlord or sue a City, when you have a
21 lead-poisoned child, that that is going to help to
22 remove lead paint from these apartments?

23 COMMISSIONER ROBERTS: Yes, we may
24 have the Law Department come in and address whatever
25 specific legal questions you have, Council Member.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 But I guess my point is that
3 compelling compliance is the way the bill deals with
4 that issue, as opposed to creating an alternative
5 forum for tort liability, which presumably you still
6 have, you can still go into court --

7 COUNCIL MEMBER MICHELS: You can't win
8 in the changes made here, but let's not get into
9 that, you want to go to the Corporation, I will
10 argue that with Corporation.

11 You say in your statement there is
12 going to be quick compliance, after we are dealing
13 with an ultra-hazardous, an immediately hazardous
14 violation, which defines 24 hours remediation, and,
15 yet, under your statement and under the law that is
16 written here, you have 15 to 25 days for the HPD to
17 comply with the complaint, coming to look at it, 16
18 days to issue the violation, 21 days to correct by
19 the landlord which can be unlimited, you have 30-day
20 periods, five days to mail the certification, 70
21 days for an HPD reinspection, and 30 days for
22 mailing of notice if invalid certification and 90
23 days for HPD to come into the correction.

24 That amounts to some 291, 301 days,
25 minimum enforceable deadline for HPD removal of

1 COMMITTEE ON HOUSING AND BUILDINGS

2 violation. Do you really think that is adequate to
3 address an immediate hazardous violation, where we
4 have a possibility of a lead-poisoned child?

5 COMMISSIONER ROBERTS: Well, I think
6 that we can establish, you know, all kinds of
7 situations if we just want to add up the numbers
8 that are outlined.

9 COUNCIL MEMBER MICHELS: That's the
10 bill. I am not making that up, that is the
11 legislation that we have in front of us.

12 COMMISSIONER ROBERTS: The key
13 element, or I guess the key cause for concern would
14 be the 30-day period.

15 COUNCIL MEMBER MICHELS: It's all a
16 key element. That is all of it. Because the
17 landlord, he knows he has all that time, he's not
18 going to clean --

19 COMMISSIONER ROBERTS: As I mentioned
20 to you earlier when we were addressing the
21 Chairman's questions, the time frames that are
22 established in the legislation are the same
23 timeframes that are articulated for emergency or
24 Class C violations in the Housing Maintenance Code.
25 And, so, that is where this comes from.

1 COMMITTEE ON HOUSING AND BUILDINGS

2 The 30-day period is again a period
3 where there is a -- while you can apply for the
4 30-day, the 30-day extension, there will be
5 standards or there are standards for which the
6 Department -- the Department is not obligated to
7 grant the 30-day extensions indefinitely and the
8 legislation contemplates --

9 COUNCIL MEMBER MICHELS: But the bill
10 doesn't provide for that.

11 CHAIRPERSON SPIGNER: Stanley, will
12 you let the Commissioner conclude and you will have
13 a second round.

14 COUNCIL MEMBER MICHELS: Thank you.

15 COMMISSIONER ROBERTS: -- Standards
16 for which of those 30-day periods would be granted.

17 COUNCIL MEMBER MICHELS: I want to
18 follow up on this.

19 COMMISSIONER ROBERTS: Sure.

20 COUNCIL MEMBER MICHELS: Because this
21 is extremely important.

22 CHAIRPERSON SPIGNER: You will have a
23 second round.

24 Council Member Eisland.

25 COUNCIL MEMBER EISLAND: Good morning,

1 COMMITTEE ON HOUSING AND BUILDINGS

2 Commissioner.

3 COMMISSIONER ROBERTS: Hi.

4 COUNCIL MEMBER EISLAND: As somebody
5 who represents a great many co-ops and condos,
6 probably more than anybody else outside of
7 Manhattan. I am somewhat unclear, obviously
8 buildings being multiple dwellings, but with
9 multiple ownership.

10 Can you take me through the process
11 of inspection right through the end of that whole
12 process as to liability.

13 COMMISSIONER ROBERTS: Yes.

14 COUNCIL MEMBER EISLAND: And where the
15 liability is as far as the co-op or condo boards,
16 and the liability as far as the cooperators.

17 COMMISSIONER ROBERTS: Yes. I don't
18 know, it's not a whole process. This legislation
19 again exists within the context of the Housing and
20 Maintenance Code, so when any violation is issued
21 against a co-op, for example, the violation is
22 issued against the Corporation, in which the
23 shareholders hold shares. So, in effect the
24 day-to-day entity that is responsible for both the
25 receipt of the violation and the correction of the

1 COMMITTEE ON HOUSING AND BUILDINGS

2 violation will be the board, the co-op board.

3 COUNCIL MEMBER EISLAND: You mean
4 after the Board has dispatched people to make the
5 inspections, and the individual co-op or condo
6 owners are informed that they have a problem, that
7 is where the end of the responsibility of the owner
8 of the apartment lies? Just that they have received
9 that information, they don't have the responsibility
10 to clear up the violation?

11 COMMISSIONER ROBERTS: Well, no.

12 Ultimately the legal responsibility
13 lies with the corporation, and like all aspects of
14 cooperative ownership, the responsibility would be a
15 shared one among the shareholders. But the Board
16 would have responsibility for, ultimate
17 responsibility for correcting that violation.

18 Now, as between the shareholders or
19 between the corporation as to who actually performs
20 the work or if I am an individual shareholder with
21 an individual unit, as to whether I am going to take
22 the responsibility for doing that, that is a
23 question that the shareholders have to determine in
24 and among themselves. But from the perspective of
25 the City, or legal entities that are dealing with

1 COMMITTEE ON HOUSING AND BUILDINGS

2 this corporation, it is the corporation that has
3 responsibility. And the day-to-day management of the
4 Corporation falls to the Board of Directors.

5 COUNCIL MEMBER EISLAND: I find that I
6 guess somewhat peculiar in the instances where you
7 might have a recalcitrant cooperator, that liability
8 would then fall upon the shoulders of a multitude of
9 board members that obviously if they have done the
10 proper inspections in a timely manner, obviously
11 have a different attitude.

12 So, I find that peculiar.

13 COMMISSIONER ROBERTS: Well, it is
14 actually the case with all violations, and hazardous
15 violations against a cooperative.

16 I am involved or know one situation
17 in the City that actually has that particular issue,
18 not as it relates to lead paint but as it relates to
19 a hazardous situation that the Board believes is the
20 responsibility of a recalcitrant shareholder, but
21 the Board is actually, the corporation is actually
22 on the hook for it. And that is one of the things
23 that you buy into when you cooperate.

24 COUNCIL MEMBER EISLAND: Well, now
25 having heard this from you directly, I guess my

1 COMMITTEE ON HOUSING AND BUILDINGS

2 discomfort level is even higher on a subject such as
3 this that we are now considering, as far as
4 updating.

5 One more question, and I am sure this
6 needs to be pursued. At the other end of the
7 spectrum, it has been my experience that violators
8 and landlords that are not in compliance, are not
9 doing the work, those numbers seem to be shrinking,
10 yet on the other hand they seem to be the same
11 flagrant violators as far as non-responsible
12 landlords, at least in my experience in the Bronx.

13 If there is now the responsibility of
14 the intent to inform when they believe there is a
15 violation, what do we do particularly in poorer
16 socioeconomic buildings and neighborhoods where
17 people really don't have the sophistication, or they
18 have been beaten down so-to-speak by the system,
19 they have had these complaints in for years, nothing
20 has happened, and now the responsibility is on those
21 most vulnerable tenants; what do we do in those
22 situations?

23 COMMISSIONER ROBERTS: Well, there are
24 a couple of things. One is, I will speak about the
25 legislation in particular, and then outside the

1 COMMITTEE ON HOUSING AND BUILDINGS

2 context of the legislation.

3 The first is that I think that this
4 legislation establishes a very good frame work for
5 information dissemination, and educating tenants as
6 to the responsibilities that landlords will have and
7 the availability of the assistance to support them
8 in these efforts.

9 As it relates to the larger issues,
10 we have a variety of different informational
11 programs that we conduct not only through HPD and
12 also the Department of Health that will be geared
13 toward trying to provide this information and to
14 trigger this process.

15 In addition --

16 COUNCIL MEMBER EISLAND: Well, let me
17 just stop you there. Will you be doing something
18 different, if this law were to pass, than you are
19 today? This is probably the same people with the
20 same problems.

21 COMMISSIONER ROBERTS: The existence
22 of a lead paint hazard is a C violation under the
23 current Housing Maintenance Code, so we have--
24 whether this legislation is passed or otherwise, we
25 have an obligation to pursue these issues and we do

1 COMMITTEE ON HOUSING AND BUILDINGS

2 do that.

3 In addition to the information
4 issues, we have a variety of different capital and
5 in other types of lead paint abatement programs for
6 which provide --

7 COUNCIL MEMBER EISLAND: I am aware of
8 that.

9 COMMISSIONER ROBERTS: -- But which
10 are specifically targeted in these --

11 COUNCIL MEMBER EISLAND: I would ask
12 --

13 CHAIRPERSON SPIGNER: Council member
14 --

15 COUNCIL MEMBER EISLAND: I would ask
16 you, not at this time, but some time within the next
17 day or two, to pursue this and think of some kind of
18 mechanism that you might employ that will go after
19 the violators that are on the books now and have
20 been for a protracted period of time, other than
21 what you are doing right now, because in some
22 instances, in some buildings, your process and the
23 landlords' process have been a failure.

24 CHAIRPERSON SPIGNER: Council Member
25 Quinn.