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CITY COUNCIL

CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

of the

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COMMITTEE ON HOUSING AND BUILDINGS

June 24, 1999  
Start: 10:55 a.m.  
Recess: 3:34 p.m.

City Hall  
Public Hearing Chambers  
New York, New York

B E F O R E:

ARCHIE SPIGNER

Chairperson,

COUNCIL MEMBERS:

Stanley Michels  
Martin Malave-Dilan  
Helen Marshall  
Lawrence Warden  
Tracy Boyland  
Madeline Provenzano  
Michael Nelson  
Thomas Ognibene  
Philip Reed  
Christine Quinn  
Ronnie Eldridge  
Guillermo Linares  
Martin Golden  
A. Gifford Miller  
Andrew Eristoff  
Kathryn Freed

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A P P E A R A N C E S

Richard T. Roberts  
Commissioner  
NYC Housing Preservation and Development

C. Virginia Fields  
Manhattan Borough President

Steven Newman  
Deputy Comptroller  
NYC Office of the Comptroller

Nancy Anderson  
NYC Office of the Comptroller

Megan Charlep  
Montefiore Medical Center

Ana Torres

Maria Dickson

Frank Ricci  
Rent Stabilization Association

Marolyn Davenport  
Real Estate Board of New York

Mary Ann Rothman  
Council of New York Cooperatives and Condos  
Federation of New York Housing Cooperatives

Jennie Laurie  
Met Council on Housing

Judith Goldiner, Esq.  
Legal Aid Society

Marlen Bodden, Esq.  
Legal Aid Society

Andrew Goldberg  
New York Public Interest Research Group

1

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

3

Matthew Chachere  
Northern Manhattan Improvement Corporation

5

Suzanne Mattei  
NYS Trial Lawyers Association

6

Jeff Lichtman  
NYS Trial Lawyers Association

8

Judy Keenan  
NYS Trial Lawyers Association

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON SPIGNER: Good morning. My  
3 name is Archie Spigner and I am the Chair of the  
4 Housing and Buildings Committee.

5 This is a continuation of the Housing  
6 and Buildings Committee that was held two days ago.  
7 Today, the Committee is conducting a second hearing  
8 on proposed legislation aimed at preventing lead  
9 poisoning in our children. The legislation before us  
10 is an amended version of the legislation discussed  
11 at a hearing conducted earlier this week.

12 In light of the extensive testimony  
13 received at that hearing, and afterward, this  
14 legislation before us contains the following  
15 significant changes.

16 Number one, a dust wipe clearance  
17 test has been added to the interim control  
18 procedures required to correct the violation for a  
19 lead-based paint hazard.

20 The Committee heard from numerous  
21 witnesses that such a test is necessary to ensure  
22 that work done to control lead-based paint hazards  
23 does not inadvertently increase a child's exposure  
24 to lead dust.

25 When a violation has been served, the

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2 test will be required when interim controls are  
3 applied to doors, windows and interior wood trim,  
4 where studies have shown lead to be most prevalent  
5 in New York City multiple dwellings.

6                   The tests will be performed  
7 immediately adjacent to the work area by a person  
8 who has passed a course approved by the Department  
9 of health, and test samples will be sent to an  
10 independent state-certified laboratory for analysis.

11                   The time frames for lead-based paint  
12 enforcement actions by the Department of Housing  
13 Preservation and Development have been reduced  
14 substantially in an attempt to reduce the compliance  
15 period during which a child might continue to be  
16 exposed to lead-based paint hazards.

17                   The time frame for HPD to conduct an  
18 inspection has been reduced to ten days from the  
19 date of complaint or 15 days during the heating  
20 season, down from 15 and 25 respectively. The time  
21 frame for HPD to serve a notice of violation has  
22 been reduced to 20 days from the date of an  
23 inspection finding a lead-based paint violation down  
24 from 60 days.

25                   The time frame for HPD to attempt to

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2 reinspect an owner's certification of correction of  
3 a violation has been reduced to 30 days from the  
4 date of receipt of certification down from 70 days.

5           The time frame for HPD to correct a  
6 violation that has not been corrected by the owner  
7 has been reduced to 60 days from the date for  
8 correction, or the date HPD found a certified  
9 correct to be false, down from 90 days.

10           When it finds a lead-based paint  
11 violation, HPD must notify the Department of health  
12 of the complainant's name and telephone number, if  
13 any, and the address of the unit where the violation  
14 was found.

15           The notification is intended to  
16 improve the ability of DOH to provide parents  
17 information on blood lead screening, testing,  
18 diagnosis or treatment, for appropriate follow-up.

19           Upon the request of a parent or  
20 guardian, DOH must arrange for a blood lead  
21 screening of any child whose parent or guardian is  
22 unable to obtain a lead test because the child is  
23 uninsured or otherwise not covered for screening.

24           An owner may apply to HPD for a  
25 single 45-day extension in which to correct a

1 COMMITTEE ON HOUSING AND BUILDINGS

2 lead-based paint violation. The legislation  
3 discussed earlier this week provided for an  
4 unlimited number of 30-day extensions. It should be  
5 noted that this change will reduce the overall time  
6 frame for a correction, whether by the owner or, if  
7 necessary, by HPD.

8                   The civil penalty for falsifying a  
9 certification of correction of a lead-based paint  
10 violation has been increased to a minimum of \$10,000  
11 and a maximum of \$25,000 in order to increase its  
12 deterrence value. The legislation discussed earlier  
13 this week provided for a civil penalty of \$1,000 to  
14 \$3,000.

15                   The borough registers of lead-based  
16 paint violations certified by DOH shall be  
17 maintained. The legislation discussed earlier this  
18 week would have eliminated the registers, which are  
19 a useful source of information on the geographic  
20 distribution of violations.

21                   Owners of gut-rehabilitated buildings  
22 may apply to HPD to have those buildings exempted  
23 from the presumption of lead-based paint and certain  
24 other requirements of the law at the discretion of  
25 HPD. The legislation discussed earlier this week did

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2 not provide for such an exemption, which recognizes  
3 that gut-rehabilitated buildings should have been  
4 made lead-free at the completion of such  
5 rehabilitation.

6 Cooperatives and condominiums may  
7 allocate responsibilities under this legislation  
8 through agreements between the shareholder or owner  
9 and the corporation or association. The legislation  
10 discussed earlier this week did not contain this  
11 provision, which will prevent the bill from having  
12 an unintended effect on the agreements between  
13 shareholders and associations.

14 9) The effective date of the  
15 legislation has been changed to 120 days from the  
16 date of enactment, from 90 days, to allow DOH time  
17 to train people to conduct the dust wipe clearance  
18 test that has been added to the bill.

19 We have received assurances from the  
20 Commissioner of Health that DOH will have its own  
21 approved course on conducting the tests up and  
22 running in the immediate future so that a pool of  
23 trained individuals will be prepared to conduct any  
24 tests that may be required when the provisions of  
25 this bill become effective.

## 1 COMMITTEE ON HOUSING AND BUILDINGS

2                   The Committée expects to vote on this  
3 amended legislation today. Prior to that, we will  
4 hear testimony from the Commissioner of HPD. The  
5 Chair is in receipt of a letter from the  
6 Commissioner of Health, who was unable to be with us  
7 today, and that letter will be read into the record  
8 at this time by the Counsel to this Committee, for  
9 the moment, Cathy Cudahy.

10                   Identify yourself, please, Cathy.

11                   MS. CUDAHY: Cathleen Cudahy,  
12 Legislative Counsel to the Speaker.

13                   The letter is addressed to the Deputy  
14 Majority Leader and it is dated June 23rd, 1999.

15                   "I am writing in reference to the  
16 revised version of amendments to Local Law 1 of  
17 1982. The bill, as amended, represents an  
18 incentive-based and workable approach to housing  
19 maintenance and reduction in lead hazards. It  
20 contains important advances over the existing law.

21                   In particular, the annual inspections  
22 and the safe work practices are mandated even before  
23 a violation has been issued by HPD, creates a  
24 prevention approach to lead hazards that will  
25 benefit New York City's children.

## 1 COMMITTEE ON HOUSING AND BUILDINGS

2                   The revised measure mandates  
3 clearance dust wipe testing in certain instances. As  
4 stated in my June 21st testimony, this kind of  
5 testing provides significant quality control for  
6 repair projects and it will reduce the danger of  
7 lead poisoning to toddlers and other children under  
8 the age of six.

9                   The dust wipe test is the single best  
10 way to ensure that an area has been thoroughly  
11 cleaned and is safe.

12                   It is important to remember that for  
13 the overwhelming majority of residential properties,  
14 the risk of lead hazards appear to be quite low.  
15 More than 96 percent have never been issued a  
16 lead-based paint violation by the Department of  
17 Health.

18                   The bill, as amended, lays the ground  
19 work for an enforceable program to reduce lead  
20 hazards in housing. We believe that the new  
21 prevention approach provided in the bill will  
22 augment the Department of Health's increasingly  
23 successful efforts to address lead poisoning.

24                   In 1993, just 37 percent of all New  
25 York City's children were screened for blood lead

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2 levels. Of children born in 1994, 72 percent were  
3 screened before the age of two. But the Department  
4 is convinced that additional improvements in lead  
5 poisoning prevention can be achieved.

6                   It is currently implementing two  
7 measures to do a better job of reaching out to New  
8 York City children, especially those who live in  
9 medically underserved communities.

10                   First the Department will  
11 significantly reduce the blood lead levels at which  
12 it initiates environmental intervention and case  
13 management. At present, DOH acts when a child has a  
14 blood lead level of 20 milligrams per deciliter or  
15 greater.

16                   Beginning next month, environmental  
17 intervention and case management will begin for  
18 children who have a blood lead level of 15 in two  
19 consecutive tests.

20                   At the same time, the families of  
21 children who have blood lead levels between ten and  
22 14 will receive advisory information from DOH, as  
23 will their health care providers.

24                   Second, a link between DOH's child  
25 lead registry and its child immunization registry is

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2 being planned. By merging our databases, we will get  
3 a better, more detailed health profile of New York  
4 City children.

5 More complete information will allow  
6 us to identify youngsters who have not been tested  
7 for blood lead levels. Their families will be  
8 contacted and the DOH will link the children with  
9 comprehensive primary health care services. This  
10 aggressive outreach will augment already expanded  
11 screening efforts and it ensures that all children,  
12 regardless of ability to pay, can be tested for  
13 blood lead levels.

14 DOH's actions and the adoption of the  
15 bill the Committee is considering will mean that the  
16 sharp decrease in child lead poisoning cases that  
17 occur from 1994 to 1998 will continue."

18 The letter is signed, sincerely, Neal  
19 Cohen, Commissioner.

20 CHAIRPERSON SPIGNER: Thank you.

21 Now let me introduce the members,  
22 before Commissioner Roberts gives his testimony.

23 Starting at my far right is Council  
24 Member Reed -- excuse me, far left, Council Member  
25 Reed. Next to him is Council Member Eldridge, and

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2 Council Marshall, a member of the Committee. Council  
3 Member Boyland, a member of the Committee. Council  
4 Member Dilan, a member of the Committee. Council  
5 Member Michels, a senior member of the Committee.  
6 Council Member Quinn. Council Member Warden, a  
7 member of the Committee. Council Member Nelson, a  
8 member of the Committee. And Council Member Linares,  
9 a former member of the Committee. And I want to make  
10 a statement about that, because I took strong  
11 exception to an article written by Jack Newfeld,  
12 that said that Council Member Linares told him that  
13 he had been evicted from the Housing and Buildings  
14 Committee. Not true. Not true. Council Member  
15 Linares was not evicted from this Committee. He  
16 chose to leave this Committee for when he balanced  
17 his values of whatever his career choices were. He  
18 could still be a member of this Committee today. As  
19 a matter of fact, with the exception of a vote,  
20 which I never had, he still is permitted, as all  
21 members of the Council, to participate in the  
22 discussion and the deliberation. But I just take  
23 exception, and I know the need for colorful language  
24 in newspaper articles, but a distortion is more than  
25 necessary.

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2 COUNCIL MEMBER LINARES: Mr. Chair, if  
3 you will allow me to clarify, because, you know,  
4 this article was quoting me.

5 For the record, I want to say that  
6 there was a request made of me to allow for a new  
7 member to be part of this Committee, and I only  
8 accepted that request on the condition that I would  
9 expeditiously be allowed to return to this  
10 Committee. I did not intend to leave this Committee.  
11 This is a very important committee for me to be on.  
12 And so, I want to clarify for the record that the  
13 circumstances were not voluntary on my part, but  
14 there was a request of the leadership at a given  
15 moment, which I conditionally responded to.

16 CHAIRPERSON SPIGNER: We have some  
17 more requests coming up soon, all right?

18 COUNCIL MEMBER LINARES: I just wanted  
19 to put that on the record, because it was not that I  
20 really volunteered to move out of this Committee.  
21 This is too important a committee for me to be out  
22 of.

23 CHAIRPERSON SPIGNER: We will move  
24 ahead. Commissioner Roberts, if you will identify  
25 yourself, sir.

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2 COUNCIL MEMBER ELDRIDGE: Mr.

3 Chairman, I have a request, please.

4 The introductory remarks you made  
5 were filled with information that I think we should  
6 have before us, as we have a copy of the Health  
7 Commissioner's letter. But could the  
8 Sergeant-At-Arms copy it for us and distribute it?

9 Thank you.

10 CHAIRPERSON SPIGNER: I already gave  
11 it to someone who took it away from me.

12 COUNCIL MEMBER ELDRIDGE: We don't  
13 have it, and since it lists all of the changes, I  
14 think it is important that we do have it.

15 CHAIRPERSON SPIGNER: Okay.

16 Council Member Roberts.

17 COMMISSIONER ROBERTS: No, no. I am  
18 not a member of the Committee.

19 CHAIRPERSON SPIGNER: Excuse me,  
20 Commissioner Roberts.

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

25 Good morning, Chairman Spigner and

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2 members of the Housing and Buildings Committee and  
3 other members of the Council. I am here today to  
4 testify regarding the proposed legislation  
5 concerning the prevention of lead paint poisoning.

6           This proposed legislation has been  
7 amended since the hearing that was held this past  
8 Monday. In particular, the time frames for  
9 enforcement by HPD are shortened, despite my  
10 previous testimony regarding imposition of  
11 unrealistic time frames in our view, in my view that  
12 such time frames should be seen as outer limits on  
13 performance of HPD's duties, rather than goals.

14           This legislation has already taken  
15 the unusual action of placing mandates on the  
16 agency's enforcement, rather than leaving  
17 operational and programmatic issues within the  
18 agency's discretion.

19           The agency will now also have to find  
20 a way to work within the tightened time frames to  
21 avoid continually litigating in the circumstances  
22 where for some operational reason, we are unable to  
23 meet a particular deadline.

24           Nevertheless, we are ready to go  
25 forward with the proposed legislation and to work

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2 with the Council to identify the resources to  
3 fulfill our responsibilities under the law.

4 I would like to spend just a few  
5 minutes responding to some of the inaccuracies  
6 regarding HPD's duty under the proposed legislation  
7 that have been circulating in the past few days.

8 One such an accuracy concerns what  
9 are known as line of sight inspections by HPD  
10 housing inspectors. Some have stated that presently  
11 HPD inspectors ignore lead paint violations if they  
12 are inspecting a dwelling unit in response to a  
13 non-lead-related complaint. That is untrue.

14 HPD inspectors presently inspect for  
15 and write lead paint violations when they are in a  
16 dwelling unit with children for any reason, and they  
17 will continue to do so under the new proposal.

18 It would be a disservice to the  
19 children in the dwelling unit and a waste of agency  
20 resources to do otherwise.

21 With regard to targeting of at-risk  
22 buildings, HPD and the Department of Health  
23 currently work together under the federal lead paint  
24 based hazard control grant program to identify  
25 dwellings in the most at-risk neighborhoods to

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2 receive interim lead control treatments.

3           The City recently submitted a round  
4 VII lead grant application to continue its work in  
5 this area. By June of the Year 2000, the lead grant  
6 program will have funded lead control work in  
7 approximately 927 privately-owned units in the City.  
8 Thus, there is already a program in place to target  
9 at-risk buildings.

10           Many are concerned that tenants will  
11 not receive adequate notice of the issuance of  
12 violation. This ignores that the bill not only  
13 specifically provides for HPD to notify the tenant  
14 of the lead violation, but also requires HPD to  
15 inform the tenant if a postponement is granted, to  
16 provide the tenant with a special notice stating  
17 that he or she may contact DOH if there are concerns  
18 about issuance of the violation, to provide the  
19 tenant with a copy of the owner certification, to  
20 reinspect every certified violation, to provide  
21 notice to the tenant where the certification is  
22 false, and most importantly, to actually go in and  
23 correct the violation when the owner fails to do so.

24           These notices will keep the tenant  
25 informed of the status of the violations at every

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2 step of enforcement, and the tenant will be assured  
3 that the violation will be corrected by the City  
4 when the owner fails to do so.

5 Further, tenants will be given a form  
6 by owners containing information prescribed by HPD  
7 at the time of lease signing.

8 And annually inquiring if a child  
9 under six years of age, resides in the unit.

10 Tenants will thus know that the owner  
11 has a duty to inspect the unit, and can make a  
12 complaint to HPD if such inspection does not incur.

13 At every inspection for lead paint  
14 hazards, HPD inspectors will provide tenants with a  
15 pamphlet concerning lead hazards.

16 It should also be noted that federal  
17 rules require that a pamphlet about lead hazards and  
18 notifications about any known lead hazards be  
19 provided to each tenant at lease signing.

20 As I have stated previously, we  
21 believe that such broad notification and  
22 dissemination of information will go a long way in  
23 educating the at-risk population about preventing  
24 lead poisoning and informing them of their rights  
25 under the law.

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2           As I stated on Monday, we believe  
3 that the proposal has been amended to respond to  
4 many of the comments made in the extensive testimony  
5 that has been heard, creates an effective lead  
6 poisoning prevention program, which provides an  
7 incentive for owners to maintain units and  
8 expeditiously correct lead hazards safely.

9           Under the proposal, the City is  
10 taking on massive regulatory responsibilities in  
11 order to meet the goals of preventing lead  
12 poisoning, including most significantly the  
13 obligation to correct lead hazard violations when an  
14 owner fails to do so.

15           So, after years of uncertainty, this  
16 bill is a major step toward providing a method to do  
17 so.

18           We urge the Council to move to enact  
19 this new legislation. We are anxious to move forward  
20 with this new program. Thank you for the opportunity  
21 to testify and I look forward to answering whatever  
22 questions you might have.

23           CHAIRPERSON SPIGNER: Okay,  
24 Commissioner, I thank you for your testimony, and I  
25 am certain that Council Member -- members, we have a

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2 room full of people and we have had years of  
3 testimony on this issue. Years, not months but  
4 years, and practically every angle of this issue has  
5 been discussed at least a dozen times, so try to  
6 limit yourselves to some unique aspect so that we  
7 don't start to lose our members before we take a  
8 vote.

9 Council Member Michels.

10 COUNCIL MEMBER MICHELS: Thank you  
11 very much, Mr. Chairman.

12 Mr. Commissioner, it is nice to see  
13 you again.

14 COMMISSIONER ROBERTS: Hi. How are  
15 you.

16 COUNCIL MEMBER MICHELS: I note, of  
17 course, that you gave testimony in furtherance of  
18 this legislation; do you have a copy of the  
19 legislation in front of you, sir? If not, I would  
20 ask the Sergeant-At-Arms to provide a copy of the  
21 legislation. And I assume that you have thoroughly  
22 read it and studied it?

23 COMMISSIONER ROBERTS: Yes.

24 COUNCIL MEMBER MICHELS: And you are a  
25 lawyer, as I am, and are conversant with it?

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2 COMMISSIONER ROBERTS: I am not a  
3 practicing lawyer.

4 COUNCIL MEMBER MICHELS: Well, neither  
5 do I, okay, so we are even on that.

6 I ask you to turn to page 11 and look  
7 at paragraph F on line 11. Page 11, line 11. It  
8 says, it starts out in that paragraph, and I will  
9 read it for the purposes of the people who are not  
10 here, I am not going to read the whole section, just  
11 certain sections of it.

12 "In the event of any action, the  
13 civil penalties arising from a violation of this  
14 section, or in the event of any claim by or on  
15 behalf of the occupant of the dwelling unit, or a  
16 child under six years of age who resides therein,  
17 such owner may in defense, or in mitigation of such  
18 owners' liability show that" -- and then it lists a  
19 whole various series of defenses that an owner may  
20 have.

21 Now I ask you to turn to page 12, and  
22 -- well, actually let's start at the bottom of page  
23 11, which let's says, the last word, "the" which  
24 says the bottom of page 11, "the", number 4, "the  
25 owner visually inspected the dwelling unit, but the

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2 lead-based paint arose subsequent to such inspection  
3 and the occupant did not provide notice to the owner  
4 of such hazard." And I am going to stop there, there  
5 is more language to it.

6                   So, in other words, as I understand  
7 it, and I am sure you understand it, that one of the  
8 defenses that a landlord has, is that he did not  
9 receive notice of the hazard that arose subsequent  
10 to the yearly inspection, right? Isn't that what you  
11 understand that it means?

12                   COMMISSIONER ROBERTS: I think that is  
13 an accurate reading.

14                   COUNCIL MEMBER MICHELS: Well, I have  
15 read this legislation from top to bottom, back and  
16 forth, upside down, and I see nothing in this  
17 legislation that puts the duty upon the landlord --  
18 withdrawn -- that puts the duty on the tenant to  
19 notify the landlord of the hazard. So, how can there  
20 be a defense, when there is no obligation on the  
21 part of the tenant himself to notify?

22                   And I submit that this legislation is  
23 defectively drawn because you are providing a  
24 defense to a landlord where there is no obligation  
25 or duty on the part of the tenant to do something.

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2                   So, therefore, this legislation, in  
3 my opinion, and I ask your opinion of whether or not  
4 it is defective, or maybe you know of some place in  
5 this legislation where there is that duty on the  
6 part of the tenant to notify the landlord of the  
7 defect -- of the hazard subsequent to the yearly  
8 inspection.

9                   COMMISSIONER ROBERTS: Your question  
10 is what? Is it specific to --

11                   COUNCIL MEMBER MICHELS: My question  
12 is, sir --

13                   COMMISSIONER ROBERTS: Is it specific  
14 to the relationship between --

15                   COUNCIL MEMBER MICHELS: -- Whether or  
16 not you know any place in this legislation where  
17 there is a duty on the part -- whether it provides  
18 in the legislation, it provides that the occupant of  
19 the premise must provide to the owner, notice to the  
20 owner of such hazard?

21                   COMMISSIONER ROBERTS: If the tenant,  
22 it is my understanding that if the tenant were to  
23 notify the landlord, then that would actually  
24 trigger the obligation to do the -- actually trigger  
25 the obligation to do the inspection.

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2 Part of the discussion in my remarks  
3 was geared toward the amount of information that we  
4 think is going to be provided in order to educate  
5 tenants about the obligations and the existence of  
6 the services and inspections and so forth that can  
7 trigger the remediation --

8 COUNCIL MEMBER MICHELS: What I am  
9 talking about, sir, within the four walls of this  
10 legislation, which we have considered, which is a  
11 newly amended legislation, that provides in there  
12 for a defense that can be asserted at the time of a  
13 lawsuit, in defense either by the City or defense by  
14 the owner of the premises. And that defense says  
15 that you cannot -- I have a defense in that you  
16 cannot be successful against me because you did not  
17 provide me with a notice of the hazard.

18 COMMISSIONER ROBERTS: Right.

19 COUNCIL MEMBER MICHELS: And I submit  
20 to you, sir, that there is nothing in this  
21 legislation that says to the occupant that he must  
22 do such a thing. So, therefore, we are dealing with  
23 a defective piece of legislation.

24 CHAIRPERSON SPIGNER: Stanley, you  
25 made your point, now move to another question. Don't

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2 spend the rest of the day --

3 COUNCIL MEMBER MICHELS: I want to  
4 hear an opinion as a lawyer and as the Commissioner  
5 of HPD.

6 COMMISSIONER ROBERTS: I am not going  
7 to offer legal opinions about tort --

8 COUNCIL MEMBER MICHELS: How about an  
9 opinion as the Commissioner of HPD?

10 COMMISSIONER ROBERTS: I did offer the  
11 opinion as the Commissioner of HPD.

12 COUNCIL MEMBER MICHELS: You read the  
13 legislation --

14 COMMISSIONER ROBERTS: In my view, and  
15 Council Member, either you are going to let me talk  
16 or you are not.

17 COUNCIL MEMBER MICHELS: Yes, but I  
18 hope you will answer the question.

19 COMMISSIONER ROBERTS: So, again, my  
20 response to this is whether the information and  
21 process is sufficient as to trigger the process to  
22 remediate the hazard, that is identified in the  
23 statute. And I think that the process, the processes  
24 that are outlined in the statute do provide an  
25 opportunity to actually effectively remediate the

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2 hazard.

3 Now, the question of whether our  
4 duties and obligations are going to be perceived in  
5 tort cases, I can't offer you an opinion about that.

6 COUNCIL MEMBER MICHELS: Sir, I am not  
7 talking about tort cases. I am asking you a direct  
8 question. You know, after reading this legislation,  
9 whether there is anything in the four walls of this  
10 legislation, that puts an obligation on the tenants.  
11 Is there any language in here that says to the  
12 occupant of the premises that you must notify the  
13 landlord of a hazard?

14 I can't find it. Maybe you can find  
15 it. I can't find it, and therefore, I submit that  
16 the legislation is defective.

17 CHAIRPERSON SPIGNER: Duly noted,  
18 Council Member. Duly noted, let's move on.

19 COUNCIL MEMBER MICHELS: Can you find  
20 it?

21 CHAIRPERSON SPIGNER: Stanley.

22 COUNCIL MEMBER MICHELS: I have a  
23 question pending.

24 CHAIRPERSON SPIGNER: He has answered.

25 COUNCIL MEMBER MICHELS: If he doesn't

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2 know it, that is one thing.

3 CHAIRPERSON SPIGNER: He has answered  
4 it already.

5 COUNCIL MEMBER MICHELS: No, he hasn't  
6 answered whether or not he knows of any place in the  
7 legislation.

8 Can you answer the question, sir?

9 CHAIRPERSON SPIGNER: Stanley, this is  
10 not a court of law. This is not a court of law.  
11 Please --

12 COUNCIL MEMBER MICHELS: Please. I  
13 have a question pending, and it is not a debate, it  
14 is a simple question: Does the law provide for an  
15 obligation on the part of the tenant to notify the  
16 landlord of the defective hazard?

17 COMMISSIONER ROBERTS: It provides a  
18 process to do that.

19 COUNCIL MEMBER MICHELS: Where is that  
20 found. Can you tell me where that is here?

21 COMMISSIONER ROBERTS: It provides a  
22 process to do that, in order to inform the landlord  
23 that there are children.

24 COUNCIL MEMBER MICHELS: Maybe the  
25 gentleman here has got it for you. Maybe I am wrong.

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2 COMMISSIONER ROBERTS: Well, he is  
3 pointing to page ten, line one.

4 COUNCIL MEMBER MICHELS: Page ten,  
5 line one. Let's look at it together, page ten, line  
6 one.

7 That has to do with whether there is  
8 a child under six years of age. I am talking about a  
9 defective hazard. I think you ought to tell your  
10 Counsel that he ought to listen to the question  
11 also. That is if a child is under the age of six. I  
12 concede that he has an obligation to inform if there  
13 is a child under the age of six, but I am saying to  
14 you that there is no obligation in this law that  
15 provides that you must inform the landlord of the  
16 hazard.

17 COMMISSIONER ROBERTS: It provides a  
18 process to do it, Council member.

19 COUNCIL MEMBER MICHELS: Well, if that  
20 is your answer, fine. But there is nothing in this  
21 law whether there is a process or not, and I don't  
22 know of anything and therefore the law is defective.  
23 And it is in badly need of an amendment, if that is  
24 the desire.

25 CHAIRPERSON SPIGNER: Okay, Stanley,

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2 are you finished?

3 COUNCIL MEMBER MICHELS: Yes, second  
4 round.

5 CHAIRPERSON SPIGNER: Thank you.  
6 Council Member Ognibene.

7 COUNCIL MEMBER OGNIBENE: Thank you,  
8 Mr. Spigner.

9 I would like to go over that same  
10 paragraph, because I see it a little bit differently  
11 than my colleague does. What it is saying here is  
12 that, and what the statute says is that if the owner  
13 complies with his obligations under the statute,  
14 vis-a-vis the visual inspection, we understand that  
15 there is going to be no liability because he has  
16 complied with the tenor of the statute.

17 I think what that section says is  
18 that if he has done his inspection, and before the  
19 following yearly inspection, if a hazard is found  
20 and the tenant calls the landlord and tells him  
21 about that hazard, then he is then obligated to  
22 repair it. Actually what this does is it does not  
23 put an obligation on the tenant to give notice, it  
24 adds a different level of liability to the landlord  
25 and increases the landlord's liability and it

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2 doesn't diminish it.

3                   What it is saying simply is, what it  
4 says here is that the owner, if he makes his annual  
5 inspection has complied with the statute. He is no  
6 longer on the hook until the following year when he  
7 is mandated to do another inspection.

8                   However, if a tenant in that interim  
9 discovers a condition that presents a lead-hazard  
10 and tells the landlord about it, the landlord can no  
11 longer rely on the fact that he is doing his annual  
12 inspections. He is now mandated to proceed to abate  
13 the lead condition.

14                   So, this does not put an affirmative  
15 duty on the tenant to notify, it imposes an  
16 obligation on the landlord when the tenant does  
17 notify them and I think it is a significant  
18 difference and it actually adds another layer of  
19 liability to the landlord and protects the tenant  
20 even further.

21                   CHAIRPERSON SPIGNER: Thank you.

22                   Council Member Miller. The last  
23 person to speak. And then we are going to excuse the  
24 Commissioner, because he has got a big day ahead of  
25 him yet.

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2 COMMISSIONER ROBERTS: I am going to  
3 Council Member Michels' district actually.

4 COUNCIL MEMBER MILLER: Commissioner,  
5 as part of this legislation, I understand there is a  
6 provision which provides for HPD to have 20 days  
7 after they discovered a violation before they mail a  
8 notice of violation.

9 I am not an expert on this subject,  
10 and I appreciate your enlightening me as a lay  
11 person with regard to mailing things, that seems  
12 like an absolutely absurd amount of time at which  
13 the City has been put on notice of a serious  
14 environmental hazard and danger to children for  
15 which to complete what should be some pretty simple  
16 paperwork. What is the problem?

17 COMMISSIONER ROBERTS: Absurd is an  
18 absurd word in this context, so I will just get to  
19 that. Let me walk you through the process.

20 COUNCIL MEMBER MILLER: Please.

21 COMMISSIONER ROBERTS: It is actually  
22 the service of a legal document. Once the inspector  
23 writes the violation, there is then a period of  
24 return to the agency, generation of what is  
25 essentially a legal document for service on the

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2 owner.

3           The process both involves the  
4 technical generation of the violation and its  
5 analysis versus the Housing Maintenance Code, and  
6 quite frankly when the inspector goes out, they  
7 don't go out to write specific violations, so an  
8 inspector shows up in the unit and doesn't just  
9 write a violation, doesn't just go there with the  
10 purposes of doing this function, but goes out and  
11 does a series, often will write a series of  
12 violations, which then have to be checked against  
13 the Housing Maintenance Code for the validity,  
14 appropriateness of the violation, because in fact  
15 when you receive the violation as an owner, it will  
16 be a legal document for which you will have to  
17 respond and will be binding, to trigger all of the  
18 obligations under not only this statute but the  
19 Housing Maintenance Code.

20           When I was here on Monday, the  
21 discussion that we had with the Committee was not  
22 about -- it was about a couple of things but as it  
23 related to time frames, but in particular it related  
24 to having outside limits of mandates, particularly  
25 because once then the violation is generated and it

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2 is actually a document that is often about this  
3 thick, once the violation is generated, it is then  
4 served through the mail as a notice of violation.

5                   We then will also have to generate a  
6 set of documents around notifying other parties that  
7 the violation has actually been generated, we want  
8 to make sure that all of that paperwork is correct.  
9 It is in order, it reflect the conditions--that are  
10 actually identified in the unit, and then it is  
11 delivered.

12                   The other point that I made was that  
13 we often are more expeditious in the actual delivery  
14 of the notice of violation, but in terms of the  
15 statute articulating time frames that then become  
16 mandates on the agency's operational resources,  
17 particularly in light of the fact that there are a  
18 whole range of heat, hot water, other emergency  
19 conditions that we often have to deal with, 20 days  
20 is a reasonable period of time, in our view.  
21 Actually, we were a little concerned about it being  
22 short, but we will meet our obligations under the  
23 statute when the law is enacted.

24                   COUNCIL MEMBER MILLER: Well, let me  
25 first say, I am sorry I wasn't here for your

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2 testimony Monday morning, I wasn't notified of this  
3 hearing and would certainly have been here, I  
4 arrived a little bit late. But you know --

5 COMMISSIONER ROBERTS: That's fine,  
6 you don't need to apologize to me.

7 COUNCIL MEMBER MILLER: Thank you.

8 You know, I would like to be  
9 satisfied by that response but I don't think I can  
10 be. Let me just try to understand this a little bit  
11 better.

12 When you say generate a legal  
13 document, are you saying that every legal document  
14 is entirely different, depending on whether it is on  
15 the wall or on the window or whether it is a  
16 two-inch or five-inch?

17 COMMISSIONER ROBERTS: No, every  
18 notice of violation which will involve often  
19 multiple violations will be unique to that unit.

20 COUNCIL MEMBER MILLER: Unique how? I  
21 mean, if you say it is this thick, this is unique to  
22 the unit, like this much (indicating)? You put  
23 information about the site and the particular type  
24 of violation, other than that, what else is unique?

25 COMMISSIONER ROBERTS: No, the actual

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2 conditions have to be -- the conditions have to be  
3 identified, have to be specific so that you can have  
4 a correction, so that you can actually inform --

5 COUNCIL MEMBER MILLER: Okay, if  
6 somebody were to work on this steady through, does  
7 it take one person six working days to generate that  
8 legal document? Let's say somebody sat down, there  
9 is a violation and the inspector goes back, is it  
10 the inspector who generates the legal document  
11 himself?

12 COMMISSIONER ROBERTS: No.

13 COUNCIL MEMBER MILLER: It is somebody  
14 else.

15 COMMISSIONER ROBERTS: It comes back  
16 to the Code Enforcement Unit.

17 COUNCIL MEMBER MILLER: Okay, so it  
18 goes back to the Code Enforcement Unit. The Code  
19 Enforcement Unit, we just have one particular  
20 violation and the Code Enforcement Unit, let's say  
21 that you, Commissioner, you decide you wanted this  
22 thing out, how long would it take for each one? In  
23 terms of generating the document?

24 CHAIRPERSON SPIGNER: That's the last  
25 question, Council Member, because we have to move

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2 on.

3 COMMISSIONER/ROBERTS: My point is  
4 that it is unique to every unit, in terms of the --

5 COUNCIL MEMBER MILLER: How long does  
6 it take you to get out the notice of violation for  
7 heat and hot water?

8 COMMISSIONER ROBERTS: We try to get  
9 it out in -- well, in a heat and hot water  
10 situation, we have, there is a lot of back and  
11 forth.

12 COUNCIL MEMBER MILLER: How long would  
13 it take?

14 COMMISSIONER ROBERTS: The other thing  
15 that I went over to some degree --

16 COUNCIL MEMBER MILLER: How long --

17 COMMISSIONER ROBERTS: Let me finish,  
18 please.

19 COUNCIL MEMBER MILLER: Sorry.

20 COMMISSIONER ROBERTS: Because  
21 otherwise you can talk -- you obviously don't know  
22 about --

23 COUNCIL MEMBER MILLER: I am getting  
24 pressure by the chairman to quit.

25 COMMISSIONER ROBERTS: One of the

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2 things that happens is there is a lot of back and  
3 forth between tenant, landlord and the agency in the  
4 initial stages of development of the heat and hot  
5 water complaint.

6                   So often we can get the complaint  
7 out, issue the notice of violation, as I went over  
8 it on Monday, within a week- to two-week period,  
9 although we are not mandated to do so. And so, in a  
10 particular situation where -- but that is not to  
11 say, like in this case, in a particular case of a  
12 lead violation, for example, or any violation, that  
13 is not to say that there is lack of attention to the  
14 detail of the existence of the complaint. That is  
15 one thing I want to clarify on.

16                   COUNCIL MEMBER MILLER: Let me just  
17 say --

18                   COMMISSIONER ROBERTS: Okay? So there  
19 is a lot of -- let me finish.

20                   COUNCIL MEMBER MILLER: Yes.

21                   COMMISSIONER ROBERTS: There is a lot  
22 of back and forth on that before we actually get to  
23 the actual issuance of the legal document.

24                   COUNCIL MEMBER MILLER: Let me just  
25 say this, Mr. Chairman --

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2 CHAIRPERSON SPIGNER: Conclude,  
3 Council Member, please.

4 COUNCIL MEMBER MILLER: I would simply  
5 say that your testimony notwithstanding, it seems to  
6 me that when the City determines that there is a  
7 serious environmental hazard in somebody's  
8 apartment, which is affecting the health and safety  
9 of children, that we ought to be able to come up  
10 with a scheme whereby that person returns and I  
11 can't understand why it would take more than a day  
12 or two. I mean, we need to obviously talk more,  
13 because the inspector would notify the code  
14 enforcement person, there ought to be some kind of a  
15 form. Police officers do fill out these things  
16 immediately when there are those kind of violations  
17 and they don't go out with a particular violation in  
18 mind, we ought to be able to work out a way in which  
19 it should not take 20 days in which the City sits on  
20 its hands.

21 CHAIRPERSON SPIGNER: Your point is  
22 made.

23 Council Member Marshall.

24 COUNCIL MEMBER MARSHALL: Thank you,  
25 Mr. Chairman.

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2 CHAIRPERSON SPIGNER: And please limit  
3 it to five minutes.

4 COUNCIL MEMBER MARSHALL: Well, I  
5 don't think I need five minutes.

6 Commissioner Roberts, on that  
7 notification, and I am glad to see that I did effect  
8 this bill, that the form that the parent fills out,  
9 right after the lease has been consumated;  
10 everything is in order, that is when the notice will  
11 be given, they will not have to wait for the  
12 landlord to send it to them, right then and there  
13 they will be given the form and it should be in  
14 Spanish and English, and any other language that we  
15 think is necessary because it is very, very  
16 important.

17 Can that be a carbon copy, numbered,  
18 and one would go to the landlord and one would go to  
19 HPD or DOH? I think that that would help to tighten  
20 it up. So then the idea of notification is not as  
21 vague as it is now?

22 COMMISSIONER ROBERTS: This is either  
23 upon occupancy of the Department or the existence of  
24 --

25 COUNCIL MEMBER MARSHALL: It is at the

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2 time when you actually finalize the lease, that the  
3 landlord is obligated, according to this law, to  
4 give the person a form to fill out to say whether or  
5 not there will be a child under six occupying the  
6 apartment; I am asking that that form be a carbon so  
7 that one can go to the landlord and one would go to  
8 some official agency so a track record can be kept  
9 of it.

10 Now, we have had the experience with  
11 looking into housing violations, and we refine the  
12 legislation. One part of it we did have to go to the  
13 state for and that is nail and mail. If we had nail  
14 and mail we wouldn't have this problem.

15 CHAIRPERSON SPIGNER: Council Member,  
16 we are going to try to get nail and mail implemented  
17 as far as the legislation to the state.

18 COUNCIL MEMBER MARSHALL: All right,  
19 let me just finish. All right?

20 For everybody else who doesn't  
21 understand what that means, now when I go out with  
22 an inspector, he can write out the violation and  
23 hand it to the owner of the building immediately.  
24 And he will also receive one in the mail, which  
25 would do away with this time frame, this lapse in

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2 time frame.

3 Now, also on the line of sight, I  
4 know that you --

5 CHAIRPERSON SPIGNER: This is your  
6 last question, Council Member.

7 COUNCIL MEMBER MARSHALL: All right.  
8 You might inform all of your  
9 inspectors when they go out to look for all kinds of  
10 violations, in many instances lead, which is more  
11 technical and a little more difficult to establish,  
12 and it is true I am mostly taking them to one and  
13 two-family houses, but basically I don't know that  
14 they necessarily look for lead. I think it would be  
15 a stretch for them to look for lead. Even though you  
16 are saying that they do, but now when it comes to  
17 older apartment houses, maybe they would be a little  
18 more vigilant about it, but I haven't seen that kind  
19 of scrutiny when we take an inspector to an  
20 apartment.

21 COMMISSIONER ROBERTS: We do it now,  
22 Council member.

23 COUNCIL MEMBER MARSHALL: Oh, okay.

24 COMMISSIONER ROBERTS: And we do look  
25 for these types of conditions, the feeling and

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2 chipping and so forth.

3 COUNCIL MEMBER MARSHALL: Well, if you  
4 see a young child, it should trigger something,  
5 right? It should trigger that, then they should look  
6 for lead.

7 CHAIRPERSON SPIGNER: Thank you,  
8 Council Member.

9 COMMISSIONER ROBERTS: It is part of  
10 our discharge duties right now to look for these  
11 conditions.

12 COUNCIL MEMBER MARSHALL: We  
13 appreciate your support on nail and mail, though.

14 CHAIRPERSON SPIGNER: Council Member  
15 Boyland.

16 COUNCIL MEMBER MARSHALL: Okay, thank  
17 you.

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

20 Commissioner, I just need some  
21 insight, and I have some questions on some things  
22 that we may be able at some point in time to work  
23 out, which is, I have a huge problem with the 20-day  
24 piece. And I am thinking that there may be possibly  
25 something that we can do in terms of maybe budget

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2 items in terms of allowing you the ability to have  
3 more people work with you in terms of inspecting  
4 buildings.

5 I represent Brooklyn and we have a  
6 huge problem with lead in Brooklyn, it is one of the  
7 areas that is most highly affected.

8 How many inspectors are you working  
9 with at the present time?

10 COMMISSIONER ROBERTS: The current  
11 budgeted headcount is 240 inspectors, and I think we  
12 are, you know, either at that target or working  
13 towards that target after the agreement on the  
14 budget that was reached.

15 So, we are at the highest level of  
16 funding and complement of inspectors since the state  
17 cut its support for Housing inspectors in 1991.

18 COUNCIL MEMBER BOYLAND: Yes.

19 COMMISSIONER ROBERTS: And both the  
20 Mayor and the Council have been working diligently  
21 to try to increase the number of inspectors, and we  
22 have done so over the course of the last couple of  
23 years.

24 COUNCIL MEMBER BOYLAND: In  
25 conclusion, on the decision that is made today, that

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2 is something that they might want to put forth on  
3 the table in terms of helping HPD in providing the  
4 necessary inspectors to do so, because I figure the  
5 earlier that someone moves on it, the earlier that  
6 child is detected with lead poisoning, the quicker  
7 that we are able to correct the problem within our  
8 communities, so we don't have high incidence, or we  
9 can use preventive methods there for avoiding this  
10 whole situation that we are testifying and  
11 discussing today.

12 Thank you, Commissioner.

13 CHAIRPERSON SPIGNER: Okay, Council  
14 Member Quinn.

15 COUNCIL MEMBER QUINN: Thanks.

16 In the amended bill, the inspection  
17 and notification requirements, which window guard  
18 law are they based on?

19 COMMISSIONER ROBERTS: Well, there is  
20 some discussion about that. You know, there is some  
21 discussion about the old law versus the new law, I  
22 am not so sure that I am familiar with the  
23 differences between the old and the new. But I think  
24 that the question, if the question comes down to  
25 whether the notification provisions and information

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2 dissemination and obligation for triggering the  
3 inspection is sufficient, I think that is certainly  
4 a discussion that we can have, but I don't know --

5 COUNCIL MEMBER QUINN: Well, my  
6 concern about the lack -- my concern that the  
7 requirements would not be sufficient is based on a  
8 number of things, but partially it is based on, I  
9 believe what is in this bill is based on the 1996,  
10 1976 excuse me, window guard law, which was repealed  
11 because it didn't work and didn't protect children's  
12 health and children's safety.

13 So it seems to me certainly a red  
14 flag to then base, to go back and base a new law on  
15 a law that we had to repeal because it has failed so  
16 badly.

17 I mean, I am new to this process, but  
18 that doesn't make logical sense to me.

19 COMMISSIONER ROBERTS: Yes, I am not  
20 representing to you that the provisions in the  
21 statute or in the proposal are based on one version  
22 of the window guard law or not. So, I guess I can't  
23 help you with that.

24 COUNCIL MEMBER QUINN: Let me just --

25 COMMISSIONER ROBERTS: I don't

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2 administer the window guard law, Department of  
3 Health Does that, and so I don't --

4 COUNCIL MEMBER QUINN: Okay. Well,  
5 just since the other Commissioner couldn't be here  
6 today, let me ask the question in another way.

7 Let's assume that the notification  
8 provision of this bill is based on the old '76 law  
9 that got repealed, would you as the Commissioner  
10 have concerns about the notification provisions if  
11 they were in fact based on a bill that had to be  
12 repealed because it was not satisfactory and did not  
13 protect children's safety? If that is in fact the  
14 case.

15 COMMISSIONER ROBERTS: Well, I won't  
16 answer it in that way. Let me say the following: I  
17 think that we can evaluate the notification  
18 provisions and process in the statute on their own  
19 or on its own merit and determine whether we believe  
20 that there will be enough information, notice  
21 provided in order to trigger again, in going back to  
22 the discussion I had with Council Member Michels,  
23 trigger the process of remediation of the hazard.

24 And I think that there are, at least  
25 in our view, the provisions are sufficient to

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2 actually trigger those obligations.

3           Let me also point out that my  
4 prepared remarks were designed not only to talk  
5 about what is in the statute, but also the other  
6 compliment of programs and proposals which we think  
7 are really essential to generating information  
8 around this issue and the obligations that owners  
9 and also ultimately the City will have in terms of  
10 actually performing the correction work.

11           So if the provisions, if we want to  
12 talk about whether the provisions in the statute are  
13 sufficient in order to generate, where the law, the  
14 proposed law, are sufficient to generate the  
15 information that will trigger the process, that I  
16 think the answer to that is yes.

17           In addition, there are several other  
18 things that are not only referenced in Commissioner  
19 Cohen's letter, but also in my prepared remarks,  
20 whether they are federal standards whether there are  
21 programs that we are engaged in in terms of  
22 rehabilitation or properties, whether there are  
23 other kinds of inspection and code enforcement  
24 activities we are involved in, which we think will  
25 provide information that will actually help us to

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2 ameliorate these problems.

3 CHAIRPERSON SPIGNER: Thank you.

4 COUNCIL MEMBER QUINN: If there is a  
5 second round, if you can put me down for it, please.

6 CHAIRPERSON SPIGNER: Council Member  
7 Warden.

8 COUNCIL MEMBER WARDEN: Thank you very  
9 much. I just have one question on an area that has  
10 been raising some concern, and that is in the area  
11 of the self-certification. Could you walk us through  
12 the self-certification process, and tell us how we  
13 will determine whether an individual landlord is not  
14 being truthful, what type of fines are going to be  
15 imposed and how you do the follow up?

16 COMMISSIONER ROBERTS: Right. We made  
17 some modifications since Monday in the bill that  
18 actually increases the penalties for false  
19 certification.

20 Upon time that there is either a  
21 reinspection of a verification on the part of the  
22 owner that the work has been performed, and that  
23 work is determined to actually not have been  
24 performed, and the standards for, the legal  
25 standards for determining that there was in fact a

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2 self-certification or a false certification, then  
3 the penalties will be imposed and I think they have  
4 been increased, let me just get the figures here,  
5 between \$10,000 and \$20,000. A minimum of ten and a  
6 maximum of \$25,000. You know, the issue of false  
7 certifications is one that we deal with  
8 aggressively, not only in the context of this  
9 legislation, but also in Housing Code enforcement  
10 issues generally, and so this is, you know, this is  
11 an issue and something that we should pay attention  
12 to.

13 COUNCIL MEMBER WARDEN: But  
14 practically, once your Department receives  
15 certification, what will trigger someone going out  
16 on reinspection, or is reinspection going to be done  
17 on a routine basis?

18 COMMISSIONER ROBERTS: Well, a couple  
19 of things. One is that in the process, and I guess  
20 this is a continuation of a conversation that we had  
21 with Council Member Miller, is that in this process,  
22 all of these code enforcement processes, there is a  
23 tremendous amount of back and forth and interaction  
24 between the enforcement agencies and the tenant.

25 The entire system is a