

Testimony of Stephen P. Kramer, Senior Counsel, New York City Department of Buildings, to the New York City Council, Housing and Buildings Committee, on Introductory Number 1008

November 24, 2009

Good Morning Chairman Dilan and other members of the Housing and Buildings Committee.

My name is Stephen Kramer, and I am senior counsel to Robert LiMandri, Commissioner of the Department of Buildings. I want to thank you for this opportunity to comment on Introductory Number 1008, a proposed amendment to the Building Code in relation to the issuance of building permits.

Intro. 1008 would prohibit the Department of Buildings from issuing building permits when building owners or their applicants owe the Department fines or judgments, or when the owner or their applicants owe the City any taxes. The term "owner" as defined in the bill includes any entity in which the applicant or property owner has a financial interest of 10 percent or more.

Specifically, it would apply where owners or their applicants:

- a) Owe the Department any fines, civil penalties or judgments issued by a court or the Environmental Control Board (ECB);
- b) Owe fees or charges imposed by the Department under the Building Code;
- c) Owe fees, fines or liens related to emergency repairs performed the Department of Housing Preservation and Development;
- d) Owe the City any taxes; or
- e) Have not complied with any outstanding request for corrective action or order of the commissioner.

The only exceptions would be for permits to correct outstanding violations or where the owner has entered into an agreement with the City to pay any outstanding amounts owed.

We support the underlying goal of this legislation: to keep permits and licenses out of the hands of owners and contractors who don't pay their fines and penalties, and to increase compliance associated with outstanding violations. Before I address the implementation challenges we anticipate with Intro. 1008 as it is currently written, I'll explain why this legislative effort is so important to the City.

The mission of the Department is clear: to ensure a safe home and work environment for New Yorkers through compliance with the Building Code and the Zoning Resolution. Violations will deter offenders only if the offenders know that they will have to pay the fines levied against them or face consequences for *not* paying their fines. Code compliance is our primary goal, and fines and penalties are the means in our arsenal to force a reasonable degree of compliance.

Collecting fines and penalties has historically been the primary responsibility of the Department of Finance, as ECB fines are technically owed to Finance. City licensees and permit recipients owe significant ECB debt, and many debtors owe ECB fines originated by multiple agencies. Nevertheless, over the last six years the Buildings Department has developed a number of its own programs to encourage the payment of outstanding fines and penalties.

One of the most effective programs we have created to address the impact on the City's safety of those who don't pay their fines stems from the use of Stop Work Orders. Under authority that the Council has given us under your leadership Chairman Dilan, and that of City Council Speaker Quinn, we do not lift stop work orders until penalties for work without a permit and penalties for violation of stop work orders have been paid. We have seen a dramatic increase of

penalties paid to the Department: in the last five years: they have increased from approximately \$12 million a year to \$24 million.

A second program we have implemented to decrease the number of outstanding fines owed to ECB is to require DOB licensees and registrants to pay outstanding ECB fines before they may have their licenses renewed. We have been able to implement this program pursuant to a provision in the Construction Code that the Council approved in 2007.

The results of our efforts have been dramatic. The City's collections from DOB violations returnable to ECB have grown 50% over the last five calendar years, from approximately \$18,000,000 to \$28,000,000 last year. While we don't have final year figures for this calendar year, we anticipate comparable numbers, as we have collected well over \$27,000,000 as of early November. While some of the increase is due to higher penalties and increased enforcement resulting from our increased inspector headcount, the trend in payments is clearly encouraging. If withholding license and registrations is extended to the remainder of contractors who register with the Buildings Department -- specifically, those who are now registering with us under the recently enacted safety registration program (general, concrete and demolition contractors) -- we should continue to see further reduction in scofflaw status. While the Department would prefer Code compliance rather than burdening contractors and property owners with the cost of violations, the simple fact is that violations and heavy penalties are necessary to deter bad actors.

Finally, DOB is working with the Mayor's Office of Operations on a multi-faceted effort to enhance revenue collection. A key aspect of this initiative is a review of the existing practices

through which DOB and other agencies that issue permits and licenses keep them out of the hands of owners, contractors and others who don't pay their fines, and how the City can extend these practices through legislation or other efforts. While these efforts are currently more narrowly focused than what Intro. 1008 would establish, they point to opportunities to match the worthy aims of Intro. 1008 to the current operational and technological capacity of the Department of Buildings and other relevant agencies. As we continue to work with you on this issue, coordination with this larger project will allow the Department and other agencies to leverage current successes and focus this legislation on the most problematic debtors.

As you can see, at the Buildings Department we are already implementing programs in line with the goal of this legislation -- to require scofflaws to pay their outstanding fines and penalties before they obtain permits and licenses, and increase compliance associated with outstanding violations. However, as I mentioned, we have some concerns with some of the administrative issues we anticipate with Intro. 1008 as it is currently written, which we believe must be addressed.

Intro. 1008 will require DOB to check each of the various agency databases for outstanding penalties before issuing a permit. In the last fiscal year, DOB issued in excess of 140,000 permits and permit renewals. The Department does not currently have an automated system capable of the rapid information sharing required to prevent delays in issuing permits if we had to check the various City databases before issuing each of these permits. Development of such a system would be a necessary prerequisite to implementing the bill's provisions. Establishing a mandate beyond the capacity of the City's current capacity will impose a crippling burden for

our staff. It will also create significant unnecessary delays for the tens of thousands of homeowners, construction workers, contractors and businesses that depend on timely permit issuance.

DOB has devoted significant resources over the past few years to streamline our processes to encourage safe business activity and to eliminate unnecessary delays that provide incentives for corruption. In order to maintain our successes in providing timely service, any system where a permit depends upon paying outstanding fines and taxes must address these various information-technology and data-integrity issues. This is particularly true with respect to collection of taxes and liens owed to the Department of Finance or to HPD, as our computer system does not keep track of the taxes liens and fines owed to other agencies.

Further, the bill as drafted would prohibit the issuance of permits where the property owner owes DOB or HPD any outstanding fines or owes the City taxes. As I noted earlier in my testimony, “owner” is defined in the bill as including persons who have a 10% or greater financial interest in any entity that owes the City money. Oftentimes, the ownership of a property is vested in a corporation or partnership, and the City doesn’t have any records indicating the stockholders or partners of those entities. Moreover, matching the full or partial principals of the entities owning the 975,000 properties in the City to the population seeking any and all DOB permits is, at this point, beyond the City’s capacity.

A workable requirement is also important because we do not want to create a system that would push work “underground” – that is, to implement such a cumbersome process that applicants

avoid the permitting system altogether and decide to not even apply for a permit. We can avoid this outcome—and keep the Department’s permit issuance process from grinding to a halt—by focusing this legislation on areas where the City has the capacity to efficiently tie payment of fines and penalties to the issuance of penalties.

Notwithstanding these issues, I want to reiterate the support of the Department and the City to pursue any practical way to deny permits and licenses to owners, contractors and others who don’t pay their ECB fines and City taxes. Knowledge that fines will have to be paid for illegal behavior is a strong incentive to comply with the law, and taxpayers can reasonably expect the City to continue improving its ability to collect money it is owed. In coordination with the Office of Operation’s ongoing, multi-agency project to improve penalty collection in the City, we can focus this legislation on keeping the most problematic outstanding debtors from obtaining permits and licenses. We look forward to working with you to achieve this bill’s worthy aims. We look forward to working with you to revising the legislation to achieve its worthy aims.

I will be glad to answer any questions you may have.



Testimony of Jessica Handy, LEED AP, Co-Vice Chair of the Codes & Regulations/Government Affairs Committee of the Building Owners and Managers Association of Greater New York Inc.

**Council of the City of New York
Committee on Housing and Buildings
Hearing in relation to Int. No. 1008**

November 24, 2009

Good Morning, Chairman Dilan and members of the Housing and Buildings Committee, my name is Jessica Handy; I am a commercial property manager for a very large real estate company here in New York City. I'm testifying on behalf of the Building Owners and Managers Association of Greater New York, Inc. (BOMA/NY) where I serve as Co-Vice Chair of the Codes & Regulations/Government Affairs Committee. We represent more than 850 owners, property managers and building professionals who either own or manage 400 million square feet of commercial space. We're responsible for the safety of over 3 million tenants, generate more than \$1.5 billion in tax revenue and oversee annual budgets of more than \$4 billion.

BOMA/NY is proud of our members who day in and day out work hard to ensure that their buildings are compliant with the Building Codes and safety for their workers, tenants and visitors. In the past, we have offered our expertise and insight toward efforts to strengthen building and construction laws.

As the New York City real estate industry continues to navigate itself through the precipitous economic conditions toward a robust recovery, we must rise in opposition to the proposed Bill.

We are aware of the city's budgetary issues and that it must raise revenue to ensure quality government services. However, this attempt to raise revenue goes beyond its scope; it will adversely impact construction and leasing activity and will unfairly harm tenants and landlords due to the absence of controls and procedures in place to make the bill fair in its application. The Bill also needlessly replaces existing measures for collection of fines and liens.

**BUILDING OWNERS AND MANAGERS
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Intro 1008 is grossly expansive by its reference to “judgments” which are “imposed” by a “court of competent jurisdiction.” The impact of such is to mandate satisfaction of any civil court judgment against the building owner which may, and likely will, have no connection whatsoever to a notice of violation for unsafe work or work not per code. There is, of course, no corresponding reference to judgments or courts in the provisions requiring fines or civil penalties paid before a certificate of occupancy is issued. (See title 28, sec 28-118.14).

The Bill is also overbroad by its attack on those other than the applicant. The terms used in the legislation mandate an owner to satisfy existing fines or penalties having nothing to do with the alteration or new building work being applied for.

The Bill is not needed, given already existing procedures. The 2008 Construction Code gives the City of New York and corporation counsel broad enforcement and foreclosure powers concerning unpaid fines and penalties and liens due to fines. This procedure is fair and equitable and leaves the matter with the courts.

Also, the 2008 Construction Code already provides that letters of completion may be withheld if there are open fines or civil penalties. (Code Title 28, section 28-116.5) most construction work are alterations where letters of completion are issued by the Department of Buildings. Accordingly, there is already a mechanism in place to ensure those who cause or create fines or penalties will have them at least paid off before the work is fully approved by the city.

Intro 1008 is also unfair by its implementation before there is an expeditious process in place to challenge the denial of a work permit. Without a fair and prompt process in place, the building owner will have no choice but to pay sums that may be wrongfully assessed just so that construction can proceed.

Lastly, the Bill is wrong by its imposition of a hurdle before work may commence. The Bill as written threatens the start of construction and leasing activity. Simple enforcement of existing provisions in the code would ensure fair and directed compliance and payment of fines without harming economic activity – activity that is always needed in good times or in our current challenging times.

We again urge that the pending legislation proceed no further, and instead the city utilize the existing procedures to facilitate raising revenue.

Thank you.

**JOINT TESTIMONY OF THE QUEENS & BRONX BUILDING ASSOCIATION AND
THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY, INC. BEFORE
THE CITY COUNCIL COMMITTEE ON HOUSING & BUILDINGS
NOVEMBER 24, 2009**

GOOD DAY. MY NAME IS ROBERT ALTMAN AND I AM THE LEGISLATIVE CONSULTANT TO THE QUEENS & BRONX BUILDING ASSOCIATION AND THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY, INC., TWO LOCAL CHAPTERS OF THE NEW YORK STATE BUILDERS ASSOCIATION. I SUBMIT THIS TESTIMONY IN OPPOSITION TO INTRO. 1008.

THERE ARE NUMEROUS FLAWS WITH INTRO. 1008. IN FACT, WHILE WE UNDERSTAND THE GENERAL THRUST BEHIND THE BILL, IT IS SO AMORPHOUS AS TO MAKE THE BILL VIRTUALLY UNWORKABLE IN PARTS AND FOOLISH IN OTHERS.

GENERALLY SPEAKING, WE ARE AT SOMETHING OF A LOSS TO UNDERSTAND WHY THE CITY COUNCIL IS CONSIDERING AN IMPEDIMENT TO ECONOMIC DEVELOPMENT IN THE MIST OF THE WORST ECONOMY SINCE THE GREAT DEPRESSION. THERE ARE WAYS TO AVOID THESE IMPEDIMENTS, BUT THIS LEGISLATION DOES NOT ADDRESS THEM. FOR EXAMPLE, RATHER THAN STOP ECONOMIC ACTIVITY BY NOT ISSUING THE PERMIT, WHY NOT ALLOW THE CONSTRUCTION TO MOVE FORWARD, BUT AVOID SIGN-OFFS ON THE PROJECT UNTIL APPROPRIATE ACTION IS TAKEN. A SIMPLE CHANGE ACHIEVES THE COUNCIL'S GOAL WITHOUT HARMING THE ECONOMY.

BUT EVEN IF THIS CHANGE WERE MADE, THE BILL IS STILL BEYOND REPAIR, BECAUSE THE BILL EITHER LOGISTICALLY IS FLAWED OR IT MAKES ASSUMPTIONS THAT ARE NOT TRUE OR IT FAILS TO PROVIDE FOR DUE PROCESS.

FOR EXAMPLE, THE LAW DOES NOT ACCOUNT FOR THE OPPORTUNITY TO APPEAL FROM A JUDGMENT OR VIOLATION. EVEN IN CASES WHERE A JUDGMENT SEEMS TO BE FINAL, IT MIGHT NOT BE. FOR EXAMPLE, AS MUCH AS THE COUNCIL WOULD LIKE TO ASSUME ALL VIOLATIONS ARE PROPERLY SERVED, THEY ARE NOT. AND BUILDING OWNERS FACE ISSUES YEARS LATER AS THEY TRY TO RECONSTRUCT JUST WHAT WAS THE NATURE OF A VIOLATION THAT THE CITY HAS ISSUED TO THEM.

MOREOVER, THE CITY DOES NOT NECESSARILY HAVE ITS OWN RECORDS IN ORDER. JUST RECENTLY, ONE OF OUR MEMBERS HAD A VIOLATION FOR FAILURE TO HAVE A PERMANENT CERTIFICATE OF OCCUPANCY FOR A SHOPPING CENTER THAT HAD BEEN IN EXISTENCE FOR TWENTY YEARS. THE PERMANENT CERTIFICATE OF OCCUPANCY HAD NOT BEEN IN THE BUILDING INFORMATION SYSTEM OF THE BUILDINGS DEPARTMENT, BUT HAD BEEN IN EXISTENCE FOR THOSE TWENTY YEARS. UNFORTUNATELY, THE OWNER WILL NEED TO APPEAR AT ECB COURT BECAUSE THIS IS NOT A VIOLATION THAT CAN BE CURED BEFORE APPEARANCE. IN SENDING A REPRESENTATIVE TO ECB COURT, IT WILL COST THE OWNER \$1,000 ON SOMETHING THAT IS THE FAULT OF THE CITY.

ON ANOTHER VIOLATION, A MEMBER HAD RECEIVED IT, CURED IT AND PAID ITS FINE IN THE SAME DAY. MONTHS LATER THE MEMBER NOTICED THAT THE VIOLATION WAS STILL ON RECORD. HE APPROACHED DOB WITH PROOF OF THE CORRECTION AND ASKED WHY IT APPEARED AS A CURRENT VIOLATION. THE ANSWER WAS THAT THE MEMBER HAD PAID AND CORRECTED THE VIOLATION TOO QUICKLY.

WE HAVE ALSO IN THE PAST HAD SITUATIONS WHERE NO PERMIT COULD BE ISSUED UNTIL A VIOLATION WAS CURED AND TO CURE THE VIOLATION, A PERMIT NEEDED TO BE TAKEN OUT, BUT THE CITY WOULD NOT ISSUE A PERMIT UNLESS THE VIOLATION WAS CORRECTED. EVENTUALLY, THIS SITUATION OF THE DOG CHASING ITS TAIL WAS EVENTUALLY CORRECTED, BUT SOMETIMES NOT UNTIL AFTER AGONIZING MONTHS HAD GONE BY.

ADDITIONALLY, EVERY CITY AGENCY IS UNDERGOING CUTS AND THIS LEGISLATION WILL FURTHER BURDEN THEM SO THAT WE ARE WORRIED ABOUT HOW WELL THIS WILL BE IMPLEMENTED. FOR EXAMPLE, WHILE THE SECOND PARAGRAPH OF THE LEGISLATION SOUNDS INNOCENT ENOUGH, YOU CAN BE SURE THAT IT WILL TAKE MONTHS FOR THE "CERTIFICATION BY THE APPROPRIATE CITY AGENCY OR A DETERMINATION BY THE COMMISSIONER THAT THE APPLICANT OR CONTRACTOR IS IN COMPLIANCE WITH SUCH AGREEMENT."

FINALLY, JUST HOW IS THE BUILDINGS DEPARTMENT SUPPOSED TO DETERMINE WITHIN AN APPLICATION FOR A PERMIT, WHETHER THE APPLICANT OR OWNER HAS A TEN (10%) PERCENT STAKE IN ANY ENTITY THAT OWES MONIES TO THE CITY? IN FACT, AN APPLICANT COULD IN FACT OWN SUCH A STAKE AND NOT EVEN BE AWARE HIMSELF THAT FUNDS ARE OWED BECAUSE HE OR SHE HAS SUCH A MINORITY INTEREST IN THE ENTITY. AND WHAT IF THE APPLICANT HAS MANY OWNERS? DOES THE MAIN OWNER NEED TO CHECK WITH EACH OF ITS OWNERS TO DETERMINE IF EACH ONE MIGHT OWN TEN PERCENT IN ANOTHER ORGANIZATION THAT HAS OUTSTANDING FEES DUE?

ULTIMATELY, THIS LAW HAS NO BASIS IN REALITY ALTHOUGH IT DOES SOUND GOOD. IT IS A CRUDE ATTEMPT TO TRY TO COLLECT REVENUE WITHOUT FIGURING HOW THIS IS GOING TO BE DONE IN A REALISTIC MANNER. IT FAILS TO TAKE INTO ACCOUNT THAT IT IS AN IMPEDIMENT TO ECONOMIC GROWTH AND IT FAILS TO ACCOUNT FOR HOW SOMETHING LIKE THIS WOULD BE IMPLEMENTED IN FLUSH TIMES, LET ALONE THE LEAN TIMES THIS CITY IS ABOUT TO FACE. FINALLY, IT FAILS TO TAKE INTO ACCOUNT THAT FOR YEARS THE CITY'S RECORD KEEPING HAS BEEN POOR WITH RESPECT TO VIOLATIONS. WHILE WE HAVE SEEN IMPROVEMENT, THE ABOVE EXAMPLES ARE ALL RECENT EXAMPLES OF POOR RECORD KEEPING. AND FRANKLY, GETTING BETTER AFTER A DISASTER DOES NOT MEAN THAT RECORD KEEPING IS GOOD.

THIS LEGISLATION ONLY PROMISES TO HAVE MORE PEOPLE GET CAUGHT UP IN THE CITY'S BUREAUCRATIC MAZE. IT SHOULD BE REJECTED. THANK YOU FOR THIS OPPORTUNITY TO TESTIFY.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1008 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Robert S Altman

Address: 27 Whitehall St

I represent: BIANYC + QBBA

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Stephen Kramer

Address: SENIOR COUNSEL

I represent: Dept of Buildings

Address: 200 Broadway

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1008 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jessica Handy

Address: _____

I represent: BOMAINY

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1008 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JOHN DOYLE

Address: 570 Lexington Avenue

I represent: REBNY

Address: _____

Please complete this card and return to the Sergeant-at-Arms