

**Testimony of the New York City Department of Housing Preservation and Development to  
the New York City Council Committee on Housing and Buildings regarding  
Introductions 305, 336, 942, 1645, and 1427  
Monday, June 19, 2017**

Good morning, Chairman Williams and members of the New York City Council Committee on Housing and Buildings. My name is Louise Carroll, and I am the Associate Commissioner for Housing Incentives with the New York City Department of Housing Preservation and Development (HPD). At the table with me is Meryl Block Weissman, HPD's Assistant Commissioner of Performance Management, Analytics and Audit, and Mario Ferrigno, Assistant Commissioner of Code Enforcement with the Office of Enforcement and Neighborhood Services (OENS), who will be available for questions at the conclusion of this testimony. Thank you for the opportunity to testify on Introductions 305, 336, 942, and 1645, which would outline new requirements related to reporting on housing production, and Introduction 1427, which would add a definition for residency to the lead paint abatement law. I will first discuss the legislation focused on affordable housing reporting.

This Administration has taken historic steps in partnership with the City Council to increase transparency and accessibility for all New Yorkers. In accordance with New York City's Open Data Law (Local Law 11 of 2012), HPD works with the Department of Information Technology and Telecommunications (DoITT) and the Mayor's Office of Analytics to publish housing data in a format that is publically available for examination and analysis. As of June 15, 2017, there are nine areas in which HPD publishes data sets on the Open Data Portal, three for housing production and six related to enforcement. We are pleased to use this public forum to share what we have been working on to raise public awareness and City accountability.

HPD is voluntarily reporting a large amount of housing production data, including information on projects, buildings, and units that are counted towards the Housing New York plan. Data is presented on the Open Data website both by building and by project. If you search the Open Data website by using the "Housing New York Units by Project" tab, you will find data on a project level, such as the number of senior units per project. If you search using the "Housing New York Units by Building" tab, you can find building level-data, including house

number, street name, borough-block-lot (BBL), building information number (BIN), Community Board, Council District, and census tract in which the building is located. In addition, a search by building or project will give you the following information: project ID, project name, project start date, project completion date, extended affordability status, prevailing wage status, the number of units within each Average Median Income (AMI) band, number of rental units, number of homeownership units, and total units.

Another function of Open Data is that it allows the public to create specialized searches and save them for future use and for the general public to access. For instance, data can be accessed by Council District or Community District. For illustration, we created and saved a “Housing New York by Council District” query, providing information at a glance related to specific Council Districts. HPD is committed to ensuring that this data is not only available for public use, but for public analysis, which is why Open Data is the best way to publish information as opposed to static reports. We commit to providing Open Data trainings for Council Members and their staff, and to always be a resource for further support on the site’s data analysis capabilities.

Concerning Inclusionary Housing (IH), as promised to the Council during the Mandatory Inclusionary Housing (MIH) process, our interactive Inclusionary Housing Map was launched on HPD’s website in October 2016. It allows users to identify:

For the Voluntary Inclusionary Housing Program (VIH):

1. generating sites and the compensated developments that purchased floor area from those sites, including street address, block, and lot information;
2. the amount of floor area a generating site produced;
3. how much was transferred to each compensated site, and how much remains unused, if any;
4. the stage of construction of the generating site;
5. the Community Board and Council District in which both generated sites and compensated developments are located.

For the Mandatory Inclusionary Program (MIH), we just updated the map to include the two MIH projects that were closed this fiscal year. This requires us to provide similar information as we currently do for VIH. For these and all MIH sites, you will be able to see:

1. the corresponding MIH development, including address, block, and lot information;
2. the amount of floor area in the MIH site;
3. the stage of construction of the MIH site;
4. the Community Board and Council District in which both the MIH Site and MIH Development are located.

Users the Inclusionary Housing Map can search by City Council District to see all the Inclusionary Housing production in the district of interest, or, for information about a specific project, query by address or by BBL (Borough, Block and Lot). In addition, the layers tool lets users see other information such as the city's zoning districts. While the data comes from HPD, the source of most layers is the NYC Department of City Planning (DCP) and we thank them for their support in these efforts.

Finally, users can find information about developers and contractors by searching data that HPD published pursuant to Local Law 44 of 2012 (LL44). Pursuant to LL44, HPD requires housing production project information to be published biannually including project location, developers, contractors, City financial assistance, and affordability information. This legally required information can be accessed via Open Data, allowing for the public to analyze it through various meaningful lenses.

We now turn to the proposed legislation. It is clear that both the Council and HPD are committed to transparency, and HPD agrees with the spirit of Introductions 305, 336, and 942. We thank Public Advocate Leticia James and Council Members Lander, and Rodriguez for putting these bills forward for further discussion. Much of the data required in these bills is now being published through the recently created Housing New York open data, Inclusionary Housing Map, and Local Law 44 open data. We are open to codifying appropriate provisions, such as the indexing of data by Council District in a non-proprietary format as proposed by Introduction 942, and to further discussing what is not currently being captured but would be meaningful to the Council. HPD is also in the process of adding the administering agent to the Inclusionary Housing Map. As I noted previously, HPD wants to ensure the published information is available for public use and analysis so we will conduct Council trainings and provide continued support for how to best utilize the Open Data portal for analysis.

We do have concerns about some of the specific provisions of these bills. For example, HPD would need more time following the end of the Fiscal Year close in June to collect and conduct a data quality review for the information requested in Introduction 942. We would suggest October 31 for a more realistic timeline. We also have concerns with the requirement to identify anticipated or considered development sites in Introduction 305. Publishing – possibly prematurely – our recommendations for particular projects would significantly impede the City's ability to finance the preservation and creation of affordable housing at the lowest possible cost. Such a list might encourage developers to demand exorbitant prices for properties near our parcels, thereby inhibiting our ability to assemble land for a project.

Finally, as part of the process to enact Mandatory Inclusionary Housing (MIH), HPD and the City Council agreed that an annual report on in lieu fees and the Affordable Housing Fund

would be incorporated in the zoning text. Given that there is already an agreed upon reporting framework, HPD cannot support Introduction 1645.

Now I will quickly discuss Intro 1427 on behalf of HPD's Office of Enforcement and Neighborhood Services (OENS). HPD is committed to creating safe homes for all New Yorkers and takes very seriously any complaint related to lead based paint. According to the Department of Health and Mental Hygiene (DOHMH), since 2005, there has been an 86% decline in childhood lead poisoning.

HPD has concerns that Introduction 1427 would have unintended consequences that could greatly impact tenants, property owners, and HPD's enforcement operations. Although not defined in Local Law 1 of 2004, the term "reside" is commonly understood to mean that a person lives at location that is their primary dwelling. Local Law 1 includes several provisions that require the owner to affirmatively determine if a child resides in a unit.

When a child under six years old resides in an apartment, there are a significant number of requirements imposed on property owners, including annual notices, annual inspections, and work practice requirements. If the tenant responds "yes" to the annual notice, the owner must conduct an inspection for lead-based paint hazards. If the tenant does not respond, the owner is required to attempt to inspect the dwelling unit to determine if a child of applicable age resides there. Owners must also inspect for lead paint hazards when a tenant notifies them that a child has come to live in the unit, or makes a complaint about a condition that may cause a lead paint hazard or requests an inspection. The law also provides that tenants may not refuse or fail to provide information about child residency or refuse access to the owner for the purpose of investigation and repair of lead paint hazards. All of these provisions assist in establishing knowledge by the owner of the presence of a child under six in units in the building.

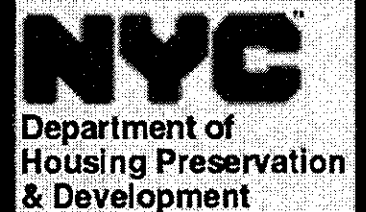
HPD also has substantial procedures for addressing lead based paint. Due to the increased risk for children, our inspectors ask tenants if there is a child under six years old residing the home at every single inspection we conduct and 311 operators are trained to ask if a child under the age of six resides in the home for any service request regarding paint. If a complaint is filed and the tenant does not indicate there is a child under six residing in the apartment but the inspector confirms that such a child lives in the dwelling at the time of inspection, HPD will conduct a preliminary lead-based paint survey and, if peeling paint is found, conduct a second inspection to confirm the presence of lead-based paint. A lead-based paint inspection requires the inspector to test the paint using an x-ray fluorescence machine, which measures the lead content in the paint. The inspector must test any painted surface that has peeling paint and all windows and doors. Violations will be issued if a lead-based paint hazard is identified and the property owner will be advised about how to correct the condition safely, which includes hiring a company certified by the Environmental Protection Agency (EPA) for abatement and a dust wipe contractor for follow up. If the property owner fails to address the lead-based paint condition, HPD will attempt to do so and bill the property owner for the work. Many of these operational standards also have notifications components and are required by law.

While we understand the intent of Intro 1427, we need to evaluate how a definition of "reside" would be incorporated operationally into our lead based paint complaint, inspection, and

# **Housing Transparency and Data Reporting**

**June 19, 2017**

**Hearing for the Committee on Housing and Buildings**



# Sample Housing Data Sets

## Housing Maintenance Code Complaints

Housing & Development

 Dataset

The Department of Housing Preservation and Development (HPD) records complaints that are made by the public through the 311 Citizen Services Center, Code Enforcement Borough Offices or the internet for conditions which...

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Updated  
June 2, 2017


Views  
2,591

Tags: department of housing preservation and development complaints hpd

AP Docs

## Open Market Order (OMO) Charges

Housing & Development

 Dataset

Contains information about work orders created to conduct emergency repair work when an owner fails to address a hazardous condition pursuant to the requirements of an HPD issued violation, HPD issues violations when an...

[More](#)

Updated  
June 14, 2017


Views  
2,394

Tags: open market order (omo) charges charges department of housing preservation and development hpd

AP Docs

## Multiple Dwelling Registrations

Housing & Development

 Dataset

Pursuant to New York City's Housing Maintenance Code, the Department of Housing Preservation and Development (HPD) collects registration information from owners of

[More](#)

Updated  
June 1, 2017


Views  
2,388

Tags: department of housing preservation and development hpd registrations

AP Docs

## Housing Litigations

Housing & Development

 Dataset

The Department of Housing Preservation and Development (HPD) Housing Litigation Division (HLD) initiates actions in the Housing Court against owners of privately-owned buildings to enforce compliance with the housing quality...

[More](#)

Updated  
June 2, 2017


Views  
1,915

Tags: department of housing preservation and development litigations hpd

AP Docs

## Complaint Problems

Housing & Development

 Dataset

Contains information about problems associated with complaints.

Tags: problems complaints hpd department of housing preservation and development

Updated  
June 2, 2017

Views  
1,894

AP Docs

# Housing New York Units by Project

NYC OpenData

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## Housing New York Units by Project

Project ID	Project Name	Project Start Date	Project Completion Date	Extended Affordability Status	Prevailing Wage Status
83121	2211 THIRD AVENUE	03/30/2017		Not Extended Affordability	Non Prevailing Wage
61902	810 FULTON STREET	03/28/2017		Not Extended Affordability	Non Prevailing Wage
64396	CONFIDENTIAL	03/27/2017	03/27/2017	Not Extended Affordability	Non Prevailing Wage
64394	CONFIDENTIAL	03/23/2017	03/23/2017	Not Extended Affordability	Non Prevailing Wage
64395	CONFIDENTIAL	03/23/2017	03/23/2017	Not Extended Affordability	Non Prevailing Wage
52735	HELP DJUMONT LLC YR15.FY17	03/22/2017		Not Extended Affordability	Non Prevailing Wage
64393	CONFIDENTIAL	03/22/2017	03/22/2017	Not Extended Affordability	Non Prevailing Wage
64384	CONFIDENTIAL	03/21/2017	03/21/2017	Not Extended Affordability	Non Prevailing Wage
64392	CONFIDENTIAL	03/21/2017	03/21/2017	Not Extended Affordability	Non Prevailing Wage
64391	CONFIDENTIAL	03/20/2017	03/20/2017	Not Extended Affordability	Non Prevailing Wage
52425	2700 JEROME AVENUE	03/16/2017		Not Extended Affordability	Non Prevailing Wage
64381	CONFIDENTIAL	03/10/2017	03/10/2017	Not Extended Affordability	Non Prevailing Wage
64379	CONFIDENTIAL	03/09/2017	03/09/2017	Not Extended Affordability	Non Prevailing Wage
64377	CONFIDENTIAL	03/03/2017	03/03/2017	Not Extended Affordability	Non Prevailing Wage
64332	CONFIDENTIAL	03/02/2017	03/02/2017	Not Extended Affordability	Non Prevailing Wage
80034	RENEWAL HDPC GHPP FY17	03/01/2017		Not Extended Affordability	Non Prevailing Wage
52985	788 FOX STREET HDPC HUOMF.FY17	02/22/2017		Not Extended Affordability	Prevailing Wage
64088	CONFIDENTIAL	02/15/2017	02/15/2017	Not Extended Affordability	Non Prevailing Wage
44352	HOPKINSON/PARK PLACE	02/10/2017		Not Extended Affordability	Non Prevailing Wage
64087	CONFIDENTIAL	02/10/2017	02/10/2017	Not Extended Affordability	Non Prevailing Wage
64085	CONFIDENTIAL	02/09/2017	02/09/2017	Not Extended Affordability	Non Prevailing Wage
64085	CONFIDENTIAL	02/08/2017	02/08/2017	Not Extended Affordability	Non Prevailing Wage
58276	NEW VISION COMMUNITY REDEVELOPMENT HDPC	02/02/2017		Not Extended Affordability	Non Prevailing Wage
81855	123 HOPE STREET	02/02/2017		Not Extended Affordability	Non Prevailing Wage

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# Housing New York Units by Building

 **Housing New York Units by Building**  
 The Department of Housing Preservation and Development (HPD) reports on buildings, units, and projects.

Project ID	Project Name	Project Start Date	Project Completion Date	Building ID
31	NEW VISION COMMUNITY REDEVELOPMENT HDFC	02/02/2017		
32	NEW VISION COMMUNITY REDEVELOPMENT HDFC	02/02/2017		
33	123 HOPE STREET	02/02/2017		
34	CONFIDENTIAL	01/27/2017	01/27/2017	
35	CONFIDENTIAL	01/26/2017	01/26/2017	
38	CONFIDENTIAL	01/26/2017	01/26/2017	
37	CONFIDENTIAL	01/25/2017	01/25/2017	
38	HP 109TH STREET HDFC.HUDMF.FY17	01/23/2017		
39	HP 109TH STREET HDFC.HUDMF.FY17	01/23/2017		
40	HP 109TH STREET HDFC.HUDMF.FY17	01/23/2017		
41	HP 109TH STREET HDFC.HUDMF.FY17	01/23/2017		

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# Housing New York by Council District and AMI



## Housing New York by Council District and AMI COMMUNITY

Division of Housing New York, Office of Building

The Department of Housing Preservation and Development (HPD) periodically updates unit and address data from its July 1, 2022, snapshot database toward the housing inventory plan. The inventory plan unit data may not represent the most current data.

Council District	Extremely Low Income Units	Very Low Income	Low Income Units	Middle Income	Moderate Income	Other	All Counted Units
1	380	452	622	150	96	3	1,703
2	114	41	1,204	462	42	3	1,866
3	178	48	1,207	131	35	2	1,601
4	0	0	873	4,505	0	0	5,378
5	0	0	166	0	0	0	166
6	0	276	646	0	0	2	924
7	234	162	372	16	14	4	802
8	866	554	1,266	28	68	20	2,822
9	659	900	2,887	602	884	44	5,976
10	17	49	174	222	8	2	472
11	0	161	347	354	57	5	924
12	1	197	96	4	10	1	309
13	0	2	15	0	3	0	20
14	444	874	1,559	17	160	25	3,085
15	549	316	1,996	12	462	18	3,353
16	803	404	782	0	52	22	2,063
17	1,007	1,000	3,728	102	238	42	6,117
18	379	71	144	4	20	0	618
19	0	0	4	2	0	0	6
20	0	66	112	0	60	1	239
21	67	302	10	0	5	1	385
22	350	58	133	1	72	1	615
23	0	4	5	0	2	0	11
24	0	1	7	2	1	0	11

# HPD Inclusionary Housing Map

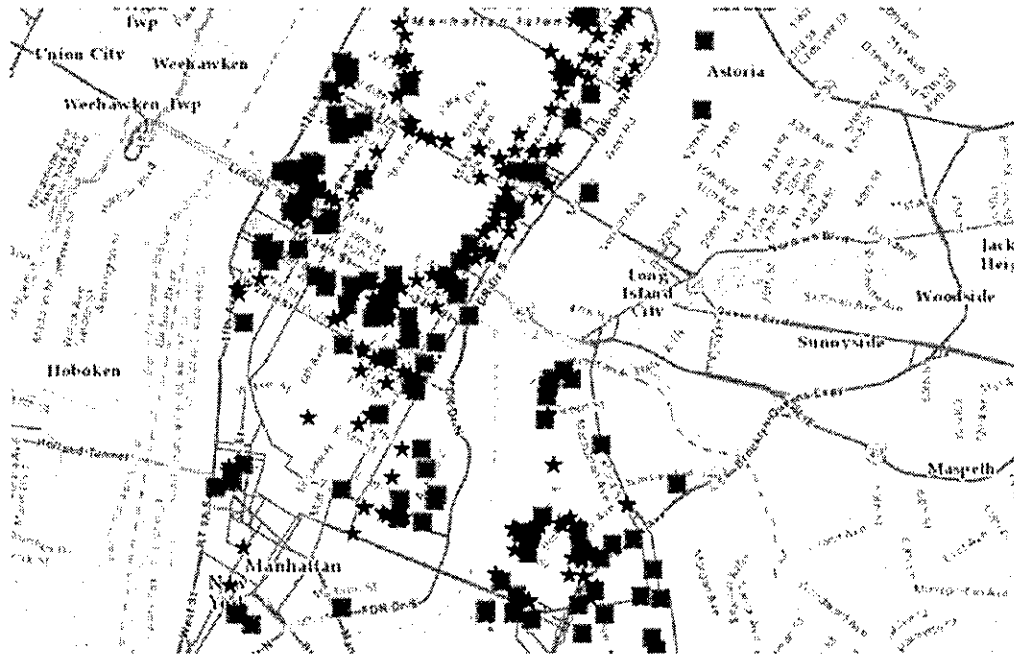
## Inclusionary Housing Program

The Inclusionary Housing Program (IHP) is designed to preserve and promote affordable housing within neighborhoods where zoning has been modified to encourage new development. The IHP consists of two programs:

**Voluntary Inclusionary Housing (VIH)**, enacted in 1987, where applicable, enables a development to receive a density bonus in return for the new construction, substantial rehabilitation, or preservation of permanently affordable housing.

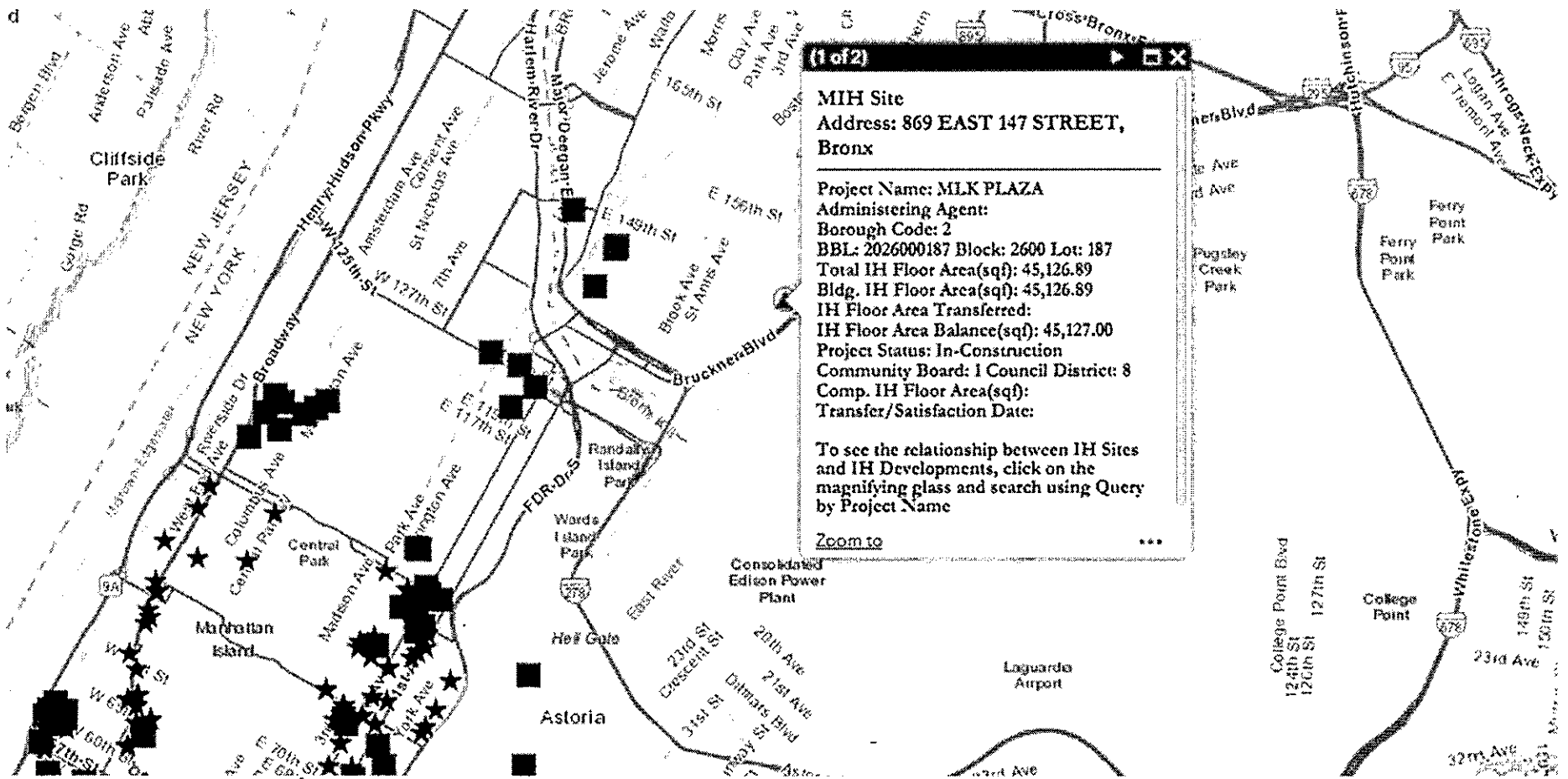
**Mandatory Inclusionary Housing (MIH)**, enacted in March 2016, requires a share of new housing in medium- and high-density areas that are rezoned to promote new housing production—whether rezoned as part of a city neighborhood plan or a private rezoning application—to be permanently affordable.

### IH Map




[Click to view map](#)

# Inclusionary Housing Map



# Local Law 44 Data Sets

## Local Law 44 Housing & Development

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Per Local Law 44 of 2012, HPD is required to release information about housing development projects receiving City financial assistance. Local Law 44 data is divided into two folders, which contain information on projects with start dates of 2013 and onward ("LocalLaw44After2013") and before 2013 ("LocalLaw44Before2013"). Each folder contains individual files with information on the buildings, units, affordability, funding, and development team for projects subject to Local Law 44. This information is saved in three common file formats: text (TXT), comma-separated values (CSV), and Microsoft Excel workbook (XLS). The content of the files does not differ among the three formats.

Updated  
June 15, 2017  
Data Provided by  
Department of Housing Preservation and  
Development (HPD)

For more information on how to utilize HPD's Local Law 44 Open Data, please see the attachment entitled "Guide to HPD LL44 Open Data".

[View](#)

### Download this Resource

LocalLaw44After2013-06012017.zip



### About this Dataset

Updated  
**June 15, 2017**

Metadata Last Updated  
June 15, 2017

Update  
Automation No  
Update Frequency As needed

emergency repair program processes. With the proposed threshold changing from primary residences to anywhere a child under six spends 15 hours a week, it can be assumed that the department's universe of buildings would greatly expand. However, to what extent and the impact this expansion would have is not yet known. More time would be needed to appropriately realize the additional costs to the Department related to staffing, office space, equipment, emergency repair work, and litigation. We look forward to continuing conversations with Council Member Dromm on this topic.

We thank you again for the opportunity to share the existing transparency work being done by the Administration, and to discuss ways ensuring that all New Yorkers can live in safe and comfortable homes. We would be happy to answer any questions you may have at this time.



**Testimony of the Public Advocate for the City of New York, Letitia James,  
Before the Committee on Housing and Buildings  
June 19, 2017**

Good morning. My name is Letitia James and I am the Public Advocate for the City of New York.

I would to thank the Chair, Councilmember Williams, and his staff as well as the committee staff for holding this hearing on these critical pieces of legislation.

One of HPD's core functions is the creation and preservation of affordable housing. We are in the midst of one of the worst affordable housing crises our City has ever experienced, and our government must do everything it can to ensure that New Yorkers most in need have access to safe and stable housing. Right now, we have a chance to shape the affordable housing landscape in this City for generations to come, and we have to get it right.

Under the "Housing New York: Ten Year, Five Borough Plan" there has been real progress, both substantive and in terms of transparency and accountability. The City has made strides toward its goal of creating or preserving 200,000 units of affordable housing over the next decade. Statistics as to the number of units created and preserved are available online and to the public. However, I believe we need to be even bolder and do even better.

There are significant questions over what it means for housing to truly be affordable for New Yorkers and whether we are doing enough to stem the tide of homelessness. Numerous programs from the tax lien sale to the Tenant Interim Lease Apartment Purchase Program to the Tenant Selection Criteria for the City's housing lottery are in need of major reform. But while we can, have, and will continue to debate whether the progress is sufficient or the methods used are the best available, progress has been made.

The bill I sponsor that is under consideration today was first introduced in 2010 by former Council Member, now Assembly Member, Erik Dilan. Much has changed in the seven years since the bill was first introduced and in the three plus years since I reintroduced it. For one thing, even its harshest critics must admit that HPD is more transparent and accountable than it was under prior administrations. Even more importantly, we now have an administration dedicated to using all available resources to create and preserve affordable housing. However, it is more critical than ever that policymakers and the public have the best possible information when we are debating this most important of subjects.

Affordable housing programs are currently under grave threat of federal cuts. This is

why language in the bill I sponsor which requires reporting on units created and preserved through federal funding is more crucial than ever. We need to have a clear idea of what potential and existing federal cuts mean to our goals, so we can better plan for our future. Additionally, this legislation requires the generation of local data by Community Board district, so we will know what neighborhoods need additional resources. With rezonings planned across the City, we need accountability and transparency from every facet of the process. We also need more information on what programs are working and which are not. Finally, I believe that, even if all of this information were voluntarily provided, it would be unquestionably better to codify this structure into law, rather than relying on the goodwill of future administrations.

Other bills we consider today reflect the need for transparency and accountability in the Mandatory Inclusionary Housing plan and city subsidies. Meeting a generational goal requires real public input, meaningful oversight, transparent accounting, and a robust debate based on facts and substance. That is why this legislative package remains so vital even in the face of a dedicated administration and vastly improved HPD.

Thank you for inviting me to this hearing today and giving me the opportunity to testify.



June 19, 2017

Good afternoon. My name is Paula Segal. I am speaking today as an Attorney in the Equitable Neighborhoods Unit of the Community Development Project (CDP) at the Urban Justice Center. CDP works with grassroots groups, neighborhood organizations and community coalitions to help make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of “progress.” We work together with our partners and clients to ensure that residents in historically under-resourced areas have stable housing they can afford, places where they can connect and organize, jobs to make a good living, and other opportunities that allow people to thrive.

Thank you to the Committee for holding this hearing today and to the Council Members for introducing key transparency legislation to shed light the impact of Housing New York, Mandatory Inclusionary Housing and other drivers of development. I will discuss each bill in sequence.

**Intro 305**, when passed, will require Housing Preservation and Development to produce annual reports of units created, sponsored or preserved through its programs every six months. This is key information that should be made available not in the aggregate, but by project, in a machine-readable format by Borough Block and Lot number, with information about which Council District, Community District and Borough each project is in. Providing detailed information will empower local advocates and allow them to produce summaries that reflect the geographies that matter to them. The legislation should be amended to include not only the median income of the district where the project is located but also the affordability levels to which units in the project are or will be made available side-by-side with the local median.

**Intro 336-A** will add key transparency to Housing New York’s Inclusionary Housing Programs and their successors. Again, the legislation should be amended to



mandate that reports be published in machine-readable format, that reports should include Community District and Council District for each site and that any and all expiration dates of affordability restrictions be included as an element of the report.

**Intro 942-A** will crucially shift responsibility for reporting on subsidies for affordable housing from HPD onto developers who are actually sponsoring the projects. The legislation should mandate reporting by Community District, as well as Council District.

Finally, **Intro 1645** will add key transparency to the mandatory inclusionary housing affordable housing fund created by the MIH Zoning Text Amendment but left in the shadows by that legislation. We and our clients commend Council Member Richards for identifying the need to shine a light on this fund. Transparency will enable advocates and their administration partners to better utilize money in the fund and maximize affordability in our neighborhoods. Without the oversight tool this bill provides, the fund itself is ineffective. Since the MIH Zoning Text requires HPD to maintain fund contributions by Community District and make the funds available in those district, we would encourage an amendment to add Community Boards to the list of recipients of reports.

Thank you so much for accepting my testimony today. I look forward to working together in the decades to come for towards equitable city.



**Testimony of Matthew Chachère**  
**Staff Attorney**  
**Northern Manhattan Improvement Corp. Legal Services**  
**before the Committee on Housing and Buildings**  
**June 19, 2017, regarding Intro 1427**

I am a staff attorney with Northern Manhattan Improvement Corporation (NMIC), a non-profit multi-services provider in Washington Heights, Inwood, and portions of the Bronx. I appreciate the invitation to testify today.

At NMIC, I have been counsel to the New York City Coalition to End Lead Poisoning (“NYCCELP”) for over 20 years, and in this capacity have been involved with much litigation over the failures of City agencies to implement New York City’s lead poisoning prevention laws, and as well have submitted friend of the court briefs in many of the major lead poisoning cases that have gone to the New York Court of Appeals, including the Yaniveth R. v. LTD Realty Co. 27 N.Y.3d 186 (2016) case which underlies Intro 1427’s proposed amendment to Local Law 1 of 2004. I was also closely involved in the drafting of Local Law 1 of 2004, as well as litigation to defend that law when the real estate lobby sought to invalidate it (and the prior administration refused to defend it). I am also an appointee to New York State Lead Poisoning Prevention Advisory Council, a state body created by Public Health Law § 1370-b.

I submit these comments on behalf of NMIC and NYCCELP.

I also submit these comments on behalf of the New York Public Interest Group (“NYPIRG”). NYPIRG was formed in 1973 as a non-profit, non-partisan organization to bring about policy reforms while training students and other New Yorkers to effectively monitor and participate in civic decision making, and has a long history of involvement in the area of lead poisoning prevention, beginning in 1992 when it began a Lead Poisoning Prevention Awareness Campaign.

I also submit these comments on behalf of the Urban Justice Center (UJC), which works with the most vulnerable communities in this City. UJC works with grassroots groups, neighborhood organizations and community coalitions to help make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of “progress” and

works together with its partners and clients to ensure that residents in historically under-resourced areas have stable housing they can afford, places where they can connect and organize, jobs to make a good living, and other opportunities that allow people to thrive.

In 2003 in N.Y. City Coalition to End Lead Poisoning v. Vallone, 100 N.Y.2d 337, 342-43 the Court of Appeals declared that

The dangers of exposure to lead-based paint, especially to young children, are well documented and pose a serious public health problem. "Lead is a poison that affects virtually every system in the body" and is particularly harmful to brain and nervous system development. Even low levels of blood lead have been linked to diminished intelligence, decreased stature or growth and loss of hearing acuity.

Indeed, that paint containing lead can poison children has been widely known for a very long time. For example, a New York court 54 years ago said, "[I]t is well known that paint contains lead which may cause lead poisoning to anyone ingesting it." Acosta v. Irdank Realty Corp., 38 Misc 2d 859, 860 (S. Ct. NY Co. 1963) (emphasis added). In 1970, another New York court said, "It is a matter of common knowledge in New York City, that ... as successive layers of paint peel away, the paint underneath becomes a menace to any young child who can pick off the flakes and put them in his mouth." Garcia v. Freeland Realty, Inc., 63 Misc. 2d 937, 940 (Civ. Ct. N.Y. Co. 1970) (emphasis added).

Even at very low exposure levels, the consensus among the public health community is to focus efforts on "primary prevention" — removing lead paint hazards before a child is poisoned — rather than awaiting the poisoning of a child before performing environmental remediation. Five years ago, the U.S. Centers for Disease Control and Prevention (CDC) concluded that "no safe blood lead level in children has been identified" and the CDC reduced by 50% the level at which a child is effectively considered lead poisoned, recommending action when a child's blood lead level registers at 5 µg/dL. Halving of the level at which a child is considered lead poisoned underscores that there is no safe level of exposure and the need for New York City to aggressively pursue prevention strategies and programs.<sup>1</sup> While New York City was on the cutting edge of prevention

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<sup>1</sup> U.S. Dep't of Health and Human Services, CDC, "Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention" (2012) ("CDC Report"). The adverse health effects associated with lead poisoning have been widely studied and documented. See, e.g., Lanphear, et al., "Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International Pooled Analysis, Environ Health Perspect." 2005 Jul; 113(7): 894–899. This article may be accessed at the National Institute of Environmental Health Science website at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1257652/>.

(continued...)

policy in 2004 when it adopted Local Law 1, the medical science makes clear that we need to do even more to prevent children from the intellectual, emotional and physical damage that exposure to lead dust at even vanishingly small levels causes.

Thus, in 2008, the federal Environmental Protection Agency (“EPA”) issued rules (40 CFR Part 745 Subpart E, “Residential Property Renovation”) that require the use of specified lead safe work practices for repair, renovation, and painting work not only in pre-1978 homes where young children reside but as well in “child-occupied facilities.” “Child-occupied facilities” are defined in 40 CFR § 745.83 as locations “visited” by the same child at least 2 days a week for a minimum of 3 hours each visit and a combined weekly total of at least 6 hours, and combined annual visits of at least 60 hours. This federal standard – which presumably was carefully analyzed during the federal EPA rulemaking process – is thus significantly more protective than the standard proposed in Intro. 1427, because the duration a vulnerable child may occupy an apartment under the EPA rule is shorter than that proposed in Intro 1427. Since this federal standard already successfully applies to federally-assisted housing since 2008, there is no apparent reason for the Council to adopt a standard that is less protective of children’s health.

Indeed, in 2010, EPA revised those rules (75 Fed. Reg. 24802) to make them applicable to all pre-1978 housing, regardless of whether a child resides there, explaining that:

Visiting children who do not spend enough time in the housing to render it a child-occupied facility may nevertheless be exposed to lead from playing in dust-lead hazards created by renovations. For example, children may spend time in the homes of grandparents...

75 Fed. Reg. 24805 (emphasis added). And as the CDC’s 2012 Report states:

CDC should develop and help implement a nationwide primary prevention policy to ensure that no children in the U.S. live or spend significant time in homes, buildings or other environments with lead-exposure hazards.

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<sup>1</sup>(...continued)

Over the period from 1960 to 1991, the CDC has lowered incrementally from 60 to 10µg/dL the level at which a child’s blood-lead content was a “level of concern” (or colloquially the child “is lead poisoned”). In 2010, the CDC recommended dispensing with the concept of “level of concern” because medical research had documented adverse effects below 10µg/dL and also had failed to establish any scientifically-based safe level of lead in children’s blood. Still, in order to prioritize the limited resources of local governments to respond to poisoned children, the CDC recommended an action level of 5 µg/dL. (CDC Report at 16.) In comparison, Yaniveth R. was reported to the Department of Health with a blood lead level of 30µg/dL.

CDC Report at 18 (emphasis added).

While I believe that Yaniveth was wrongly decided, and that it should have been left to a jury to assess the duration of Yaniveth's open presence in her grandmother's apartment in determining whether the landlord should have been aware that the dangerous lead paint conditions could lead to her poisoning at the age of one, this proposal certainly well intentioned and could help close a gap created by the Yaniveth decision with respect to owner's liability for the avoidable lead poisoning of young children, due to that decision's narrow application of the meaning of "residence" under former Local Law 1 of 1982.

The reality today is that young children may spend significant time in multiple homes in a given week, such as where the parents live in separate residences, or where working parents have gaps in child care coverage and another family member – such as a grandparent (as in Yaniveth) – informally provides day care. From the perspective of a child's health, however, the damage that can be done from ingesting lead from dust or deteriorated paint can be just as devastating, regardless of whether the child formally "resides" in the dwelling or merely visits frequently.<sup>2</sup>

Thus, while I can support the amendment in Into 1427 only if the Council adopts a duration standard that is at least as stringent as that in the EPA definition of "child-occupied facilities."

It should be noted as well that the Yaniveth case was decided by the Court of Appeals under the City's former lead law, Local Law 1 of 1982 (former Administrative Code § 27-2013(h)). While former Local Law 1 of 1982 was just a few short paragraphs, the current Local Law 1 of 2004 is many pages in length and contains many additional mandates for landlords, for tenants and for City agencies. As an example, unlike the former law, the current law requires landlords to inspect for certain hazards on an annual basis and in response to tenant complaints, document those inspections, and to safely correct any hazards that are present. In § 27-2056.1 (Statement of Findings and Purposes), this Council stated that:

the council by enacting this article makes it the responsibility of every owner of a multiple dwelling to investigate dwelling units for lead-based paint hazards and to address such hazards on a case-by-case basis as the conditions may warrant, taking such actions

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<sup>2</sup> Indeed, a child's "presence" in an apartment for a significant duration and a child's "residence" in the apartment should be seen as functionally similar for the purpose of establishing the landlord's knowledge, with duration being a more important criteria than residence, because a child may "reside" in an apartment yet still be present for a duration that is significantly less than the visiting child was in her grandmother's apartment in the Yaniveth case.

as are necessary to prevent a child from becoming lead poisoned. Having established this responsibility, the council finds that sufficient information exists to guide owners in making determinations about the existence of lead-based paint hazards.

(emphasis added.) In addition, in § 27-2056.2(6) the Council defined a “lead-based paint hazard” without an age designation — recognizing that children older than six years of age can be lead poisoned — as:

any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

Additionally, in § 27-2056.8 the Council mandated that landlords remediate certain actual and potential lead-based paint hazards whenever an apartment becomes vacant because of a change in tenants. This obligation reflected the 2004 Council’s intention that residential housing overall become more lead safe as time goes on. Therefore, if a case like Yaniveth had arisen under the current law, then the question of the landlord’s liability would not just focus on the child’s residence during the tenancy that existed at the time the child was lead poisoned, but also on whether any lead paint hazards were treated before that tenancy began.<sup>3</sup>

Indeed, I would respectfully suggest that perhaps a more significant issue for this Committee with respect to lead poisoning prevention is the extent to which the City is enforcing these new provisions – if at all. It is my understanding, from current and recent litigation I’ve been involved in, that the City undertakes essentially no enforcement of the requirement that owners, upon vacancy, permanently abate lead paint hazards on certain high-risk surfaces, such as window and door frames, nor perform the required annual inspections for lead hazards, all of which is supposed to be documented in written form and maintained for ten years under law.

This is no small matter; these measures were central to this Council’s 2004 enactment, placed

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<sup>3</sup> It is my experience that many landlords do not comply with the vacancy remediation requirement of current law. As a consequence, a child who is a mere “visitor” has the potential to be poisoned in an apartment that should have undergone remediation but did not. Therefore, it is important that an amendment of Local Law 1 of 2004 not be construed as shielding landlords from this liability because it will encourage additional noncompliance with the law, which will thwart the original intent of the Council in 2004. Intro.1427 should be amended to make clear that the law is being changed to improve compliance and enforcement, but not to provide shelter from liability by landlords who shirk their responsibility under the law as it now exists.

in the law with the understanding that these measures would help achieve the Council's stated goal of ending lead poisoning by the year 2010 by both permanently eliminating certain high risk areas of lead poisoning and creating a regime wherein landlords — not the City — took on primary responsibility to regularly inspect their own buildings for lead hazards in the hundreds of thousands of older dwelling units with young children and lead-based paint.

By and large, however, the City has refused to undertake meaningful enforcement of these key provisions, leaving countless children at risk, even though violation of these provisions are considered immediately hazardous violations and can subject the owner to misdemeanor penalties. To my knowledge, outside of situations where a child was already lead poisoned, the only time HPD has ever investigated a landlord's failure to do vacancy lead abatements and perform annual inspections was in a Housing Court HP case I handled last summer, where the City stipulated to conduct an audit — but only on condition that my clients agree they would not seek from the Court an order directing the City to issue violations! (The audit, by the way, resulted in findings of widespread non-compliance at the building, located at 560-568 Audubon Avenue in Washington Heights with over 90 units; however, the City did not issue violations as a result.)

Indeed, this past week I was in Housing Court representing a family in private housing with a Section 8 subsidy (administered by the New York City Housing Authority), where the landlord falsely certified 3 years ago when the family moved in (after living in a City shelter) that the owner had done the required lead abatements on the window and door frames. NYCHA approved the dwelling for this family of young children, even though the landlord provided no documentation of having done any lead abatement work. Only recently has the family discovered, as a result of an HPD inspection, that peeling paint on at least 8 window and door frames is loaded with lead. In other words, for 3 years this family lived in hazardous conditions without knowing it, due to the landlord's deception and the City's lack of enforcement. Notwithstanding that, however, HPD issued no violation for the landlord's failure to abate the lead at vacancy or the false certification to the tenant, and NYCHA merely cut off further Section 8 payments, but as far as I'm aware takes no affirmative steps to assure compliance with the City's lead poisoning prevention laws.<sup>4</sup>

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<sup>4</sup> This Committee should note that NYCHA actually put in a friend of the court brief in the Yaniveth case in support of the landlord's position, offering NYCHA's considerable prestige to protect those landlords who avoid their responsibility to protect children from lead poisoning. Since lead poisoning from residential lead paint is an entirely preventable disease, the Council should press NYCHA to find out why protecting landlords is more important to the Authority's housing mission than protecting children.

Thus, I would urge that this Committee consider promptly holding oversight hearings with HPD and NYCDoH as to the City's efforts to enforce these and other provisions of current law, in particular the requirement that specific safe work practices be employed anytime work is performed on surfaces contained lead-based paint or paint of unknown lead content.





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NEIGHBORHOOD &  
HOUSING  
DEVELOPMENT, INC.

50 Broad Street, Suite 1402  
New York, NY 10004  
Tel: 212-747-1117  
Fax: 212-747-1114  
www.anhd.org

**TESTIMONY OF BARIKA X WILLIAMS, BEFORE THE  
NEW YORK CITY COUNCIL COMMITTEE ON HOUSING AND BUILDINGS  
REGARDING THE PROPOSED  
HPD REPORTING ON INCLUSIONARY HOUSING PROGRAMS**

June 19, 2017

Good Morning. Thank you to Chair Williams and to the members of the Committee on Housing and Buildings for the opportunity to submit testimony.

My name is Barika Williams and I am the Deputy Director for the Association for Neighborhood and Housing Development (ANHD). ANHD is a membership organization of NYC- neighborhood based housing and economic development groups- CDCs, affordable housing developers, supportive housing providers, community organizers, and economic development service providers. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers. We have over 100 members throughout the five boroughs who have developed over 100,000 units of affordable housing in the past 25 years alone and directly operate over 30,000 units.

ANHD was the leading organization calling for a Mandatory Inclusionary Housing policy, though we were disappointed that the legislation put in place missed an opportunity to guarantee truly affordable housing at the deeper affordability levels needed in order to serve the needs of communities across the City and help address our housing crisis.

With the new program in place now, ANHD applauds the council for taking the legislative action of Int 0336 to require the Department of Housing Preservation and Development (HPD) to periodically report on the voluntary and mandatory inclusionary housing program and any similar successor programs.

It is essential that the City transparently monitor and report on the affordable housing outcomes of the City's Inclusionary Housing program. This will allow both the Council and the public to know:

- Where are the City's inclusionary housing programs being applied?
- Are affordable housing units fostering inclusion and being created on-site or being placed off-site?
- What affordability levels are being produced from the City's inclusionary housing programs?
- What additional forms of subsidy or tax relief are inclusionary housing developments receiving?
- Who is applying for waivers to the inclusionary housing regulations and under what circumstances are waivers being granted?

In order to achieve the critical oversight and monitoring goals ANHD recommends the following changes to Int 0336:

- Require reporting on the financial benefits for the FULL BUILDING and not limited to the income-restricted UNITS or QUARTERS for people with special needs. Most housing subsidy is done across the building, and spread across all units in building, both market rate and affordable. As it's written now a developer could report on 20% of their total 421a tax break because only 20% of the MIH sites units are income restricted.



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50 Broad Street, Suite 1402  
New York, NY 10004  
Tel: 212-247-1117  
Fax: 212-247-1114  
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- Require reporting on all rent regulated units in covered sites. HPD should be able to demonstrate that the rights of all tenants are being protected and enforced, not just those in income restricted units.
- Require reporting on total dollars put into the #affordable housing fund (via payment in lieu option) broken down by community district and borough.
- Require reporting on the number of sites applying for and/or being granted Board of Standards and Appeals (BSA) waivers.
- Require a copy of all administering agents' affidavit submitted to HPD as referenced in section 23-961 (b)(3) -- "Within 60 days following the #rent-up date#, the #administering agent# shall submit an affidavit to #HPD# attesting that the #monthly rent# registered and charged for each #affordable housing unit# complied with the applicable #monthly rent# requirements at the time of #initial occupancy#." As the bill is written now, Council would not be able to tell when and whether IH units were in compliance with income restrictions, release requirements, rent-regulation requirements, rent-up protocol, sales, resales, fair housing, etc.
- Require a list of any other entities the administering agent is affiliated with. Generally administering agents have to be non-profits with no ownership, management, or affiliation to the project. However, this is not necessarily always the case and HPD has the authority to make exceptions. In these cases the Council should be monitoring to ensure that there is not conflict of interest between building developers/managers and the administering agent.
- Require an annual copy of the administering agent agreement.
- Require reporting of administering agents' fee (per-income restricted unit).
- Require a list of any administering agents whose approvals HPD has revoked.
- Include homeownership affordable housing units which are also overseen by an administering agent.

Additionally, ANHD would encourage the Council to request that HPD and the administering agents document tenants' reason for not renewing their lease. This is unique opportunity for the City to begin to gather information on a key research question: What are the reasons behind tenant mobility and/or displacement?

Inclusionary Housing can and should be a powerful affordable housing tool. However in order to access the programs overtime we must have consistent, transparent, reporting. ANHD maintains that the success of City Inclusionary Housing programs is not simply whether we create affordable units, but whether we create units at the affordability levels necessary to help address the City's ongoing housing and homelessness crisis.

# Landlord's Duty to Remedy Lead Paint and the Meaning of 'Reside'

George M. Heymann, New York Law Journal October 7, 2016



George M. Heymann

In "Romeo and Juliet" (Act II, Scene II), Shakespeare poses one of the most famous questions in literary history: "What's in a name?" In the legal profession, attorneys, and judges alike, as trained wordsmiths, are frequently called upon to answer the question: What's in a word? Often, the meaning of a single word, or omission thereof, when interpreting a statute, code, contract or stipulation can ultimately determine which party to a suit is successful.

A recent example of this is the case of *Yaniveth R. v. LTD Realty Co.*, 27 NY3d 186 [Ct of App (Pigott, J)] wherein the Court of Appeals had to decide whether a child who spends at least 50 hours per week with a caregiver, in an apartment containing lead-based paint, but does not live there full-time, "resides" in the apartment to "trigger" a duty on the owner/landlord to protect the child from lead poisoning and be held liable for damages if such poisoning occurs.

## Statutory Background

The New York City Administrative Code §27-2056.1, et seq., sets forth the duties and obligations of both the landlord and tenant with respect to the prevention of lead-paint poisoning.

Known as Local Law 1 under the former Administrative Code (§27-2013h.1), the Code imposes a duty on every owner of a multiple dwelling to investigate apartments for lead paint hazards and to take such action necessary to eliminate them, as the conditions warrant, to prevent lead poisoning of a child in the subject premises.

The Code contains a rebuttable presumption that any pre-1960 buildings have lead paint, and as such the landlord must ascertain whether any of its tenants have children 6 years of age or younger residing therein. Administrative Code §27-2056.4a; §27-2056.5.

In addition, any unit in a multiple dwelling built between 1960 and 1978, where the landlord has actual knowledge of lead paint and that a child of 6 years of age or younger resides therein, must investigate for peeling paint, deteriorated surfaces, etc. on an annual basis. Administrative Code §27-2056.4a.

Using a standardized form (in English and Spanish), the landlord of a multiple dwelling must give a copy of the form to every tenant upon the initial signing of their lease and every subsequent lease renewal or commencement of their occupancy. Administrative Code §27-2056.4d(1).

The landlord must also provide such form to the tenants on an annual basis. The tenant must check a box stating one of the following: "A child under six years of age resides in the unit"; or "A child under six years of age does not reside in the unit," sign it and return it to the landlord.

The landlord must also provide such form to the tenants on an annual basis between Jan. 1 and Jan. 16 for all multiple dwellings erected prior to Jan. 1, 1960. Administrative Code §27-2056.4e(1). If the landlord receives no response by Feb. 15, and has no actual knowledge that such child resides therein, then the owner, at reasonable times and upon reasonable notice, shall inspect the apartment and make an investigation to ascertain such information. Administrative Code §27-2056.4e(3)(1).

If, in fact, a child 6 years of age or under does reside in the apartment and the form so states, the duties and obligations of the landlord to prevent lead poisoning are established. If the tenant states that no child under 6 years of age resides in the premises, no duties or obligations, in this regard, are imposed upon the landlord. If, subsequent thereto, a child 6 years or younger moves into the apartment, then the tenant has the legal obligation to notify the landlord. Administrative Code §27-2056.4d(2).

If the landlord has no actual notice of a qualified child residing in the premises, but has constructive notice that such a child is in the apartment and hazardous lead paint violations exist, the same duties, obligations and potential liabilities apply. Administrative Code §27-2056.6. Such violations constitute a class C immediately hazardous violation.

A tenant who refuses to sign such notice(s), or fails to notify the landlord of the existence of said child, or denies the landlord access necessary to cure the hazard, may ultimately jeopardize any potential lawsuit against the landlord and the "presumption" of the existence of hazardous lead paint shall no longer apply. Administrative Code §27-2056.4d(2).

## Case Law

Twenty years ago, the Court of Appeals had its first opportunity, in *Juarez v. Wavecrest Mgt Team*, 68 NY2d 628 [Ct of App, 1996], to determine whether a landlord failed to comply with the lead abatement provisions of former Local Law 1. The plaintiff mother of the infant children in question illegally sublet a room from the tenant of record, who was prohibited from subletting by his landlord. Approximately a year later, her 2-year-old daughter was diagnosed with lead poisoning. Although she had previously observed her daughters with paint dust on their hands and eating paint chips, she complained of the problem only to the primary tenant but never notified the landlord.

The court stated that the burden was on the plaintiff to prove that a dangerous condition existed and that the landlord had knowledge of same and an opportunity to repair. To be held liable the landlord must have actual or constructive notice or both of the hazardous condition and that a child 6 years or younger resides therein.

Notwithstanding that the landlord had no contractual obligations to the illegal subtenant, Local Law 1 imposed that duty once there was actual or constructive notice to the landlord and/or managing agents, as a result of the City Department of Health issuing an Order to Abate [the lead paint] Nuisance.

## Time With Caregivers

Over the past decade there has been an increase in the number of rent-stabilized tenants who use their apartments as child-care or daycare centers. The use of such apartments has been held not to be a substantial violation of the tenant's lease.<sup>1</sup> As a result, the issue of when a child "resides" in such premises has become a subject that needed to be addressed where parents sued landlords for lead paint violations claiming the amount of time spent in apartments with relatives or paid caregivers can often exceed the amount of time that is spent in their actual homes.

In 2011, the Appellate Division, Second Department, in *Michaud v. Lefferts 750 LLC and 91 East 21st Street LLC*, 87 AD3d 990 [2d Dept. (2011)], addressed that very issue. The plaintiff, individually, and as guardian for her infant daughter, sued for alleged exposure to lead paint. Defendant Lefferts 750, LLC was the building in which the infant lived with her parents. Defendant 91 East 21st Street, LLC was the building where her caretaker-grandmother resided and where the infant stayed "every day after school and would sleep over at least two to three times per week."

The Appellate Division reversed the Supreme Court's ruling denying summary judgment as against the landlord of the parents' building<sup>2</sup> and affirmed the summary judgment dismissal

regarding the grandmother's landlord. As to both Local Law 1 and common law negligence, 91 East 21st Street, LLC, established prima facie, as a matter of law, that the landlord had no duty to the infant child as she did not "reside" in her grandmother's apartment.

The Court of Appeals, in *Yaniveth R.* clarified when a child 6 years of age or younger "reside[s]" in the premises of a caregiver, that would obligate the landlord to inspect, repair and eliminate violations of lead paint, as set forth in the Administrative Code, to avoid liability in a personal injury or negligence case.

Yaniveth, born in 1997, lived with her parents in their apartment in the Bronx until 2002. At 3 months of age she began staying with her grandmother while her parents were at work. The grandmother lived in the defendant's building a few blocks away, and she watched her grandchild five days a week from approximately 9:30 a.m. until 6:30 or 7 p.m. Both Yaniveth's mother and grandmother acknowledged that the infant child did not live with the grandmother, but only with her parents and older sister.

In 1998, it was discovered that the child had an elevated blood lead level and the Department of Health issued an Order to Abate for the grandmother's apartment. The plaintiff mother, on behalf of herself and her infant daughter, commenced an action in 2006 alleging that the landlord of the grandmother's apartment owed them a duty, under the former sections of the Administrative Code, to abate the condition based on the "significant amount of time" spent by Yaniveth in the apartment.

The sole issue to be determined in *Yaniveth R.* was whether Yaniveth "reside[d]" in her grandmother's apartment "triggering" the landlord's duty under former Local Law 1, which imposed a duty on the landlord to "remove or cover" lead-based paint "in any dwelling unit which a child or children six (6) years of age and under reside." Noting that the Administrative Code did not define the word "reside," the Court of Appeals, relying on its holding in *Rosner v. Metro Prop. & Liab. Ins. Co.*, 96 NY2d 475 [Ct of App (2001)],<sup>3</sup> cited the definition of "reside" from several dictionaries during the relevant time period. Among them was Black's Law Dictionary which states, "'residence' 'is made up of fact and intention, the fact of abode and the intention of remaining, and is a combination of acts and intention. Residence implies something more than mere physical presence and something less than domicile.'" Black's Law Dictionary 1176 [5th ed. 1979]

To this end the court concluded that "[h]ad the City intended to expand the meaning of the word 'reside' to include children who do not actually live in an apartment but spend significant amounts of time there, it could have used words to that effect ( ). \*\*\* The question of whether a person 'reside[s]' in a given location is a fact-driven inquiry that depends on the totality of circumstances, and although there is no question that Yaniveth did not reside in her grandmother's apartment, there are a number of situations in which a child may reside in more than one apartment, such as in a joint custody situation of other shared living arrangement."<sup>4</sup>

## **Conclusion**

The issue of whether an infant child "resides" in a particular premises, to warrant protection under the lead paint laws currently in effect, is case-specific and "fact-driven." In light of the Yaniveth decision, it would behoove the City Council to take immediate action to rectify the situation to protect such vulnerable children by specifically defining its intent of the word "reside[s]" in the Administrative Code, regarding lead paint poisoning to children 6 years of age or under.

#### **Endnotes:**

1. See, *Carroll St. Props. v. Puente*, 4 Misc3d 896 [Heymann, J. (2004)], cited in *Marick Real Estate v. Ramirez*, 11 Misc3d 42 [App. Term, 2d Dept. (2005)] [the Legislature has preempted the area of regulation as it pertains to lease restrictions to allow for home-based child care].
2. The expert's report showing lead paint in plaintiff's apartment was based on testing taken two years after the plaintiff child was diagnosed with lead-paint poisoning and, therefore, was insufficient to raise a triable issue of fact in opposition to Lefferts' motion for summary judgment dismissal.
3. "The starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof ( ). \*\*\* In the absence of any controlling statutory definition, we construe words of ordinary import with their usual and commonly understood meaning, and in that connection have regarded dictionary definitions as 'useful guideposts' in determining the meaning of a word or phrase ( )."
4. Judge Eugene Fahey dissented. ["I disagree with the majority, however, to the extent that it concludes that the word 'reside,' as used in Local Law 1, is to be narrowly interpreted so as to require that a person 'liv[e] in a particular place with the intent to retain it as a residence' and, by extension, to remove Yaniveth from the coverage of that law.

George M. Heymann, a retired New York City Housing Court judge, is of counsel to Finz & Finz and director of the Housing Legal Clinic at Woodside on the Move, a community organization in Queens.

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 in favor  in opposition

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I represent: Project at the Urban  
Address: Justice Center

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 in favor  in opposition

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I represent: Northern Manhattan Improvement Corp  
Address: 45 Wadsworth Ave NY NY 10033

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in favor  in opposition

Date: 4/19/17

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Name: Louise Carroll

Address: HPD

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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Name: MARIO FERRIGNO

Address: 100 GOLD ST RM 527 NY NY

I represent: HPD

Address: SAME AS ABOVE

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in favor  in opposition

Date: 4/19/17

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Name: Louise Carroll

Address: HPD

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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942 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/19/2017

(PLEASE PRINT)

Name: MORYL Block WEISSMAN

Address: 40 Seely St. BROOKLYN NY 11218

I represent: NYC HPD

Address: 100 Gold St NY NY 11218

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in favor  in opposition

Date: \_\_\_\_\_

Name: Deborah Nagin Questions if needed - re: 1427

Address: DHMH

I represent: Director, Healthy Homes

Address: Program

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