TESTIMONY BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON HOUSING AND BUILDINGS
NEW YORK CITY DEPARTMENT OF BUILDINGS
MELANIE E. LA ROCCA, COMMISSIONER
SEPTEMBER 23, 2019

Good morning Chair Cornegy and members of the Committee on Housing and Buildings. I am Melanie E. La Rocca, Commissioner of the New York City Department of Buildings ("the Department"). I am joined today by Gus Sirakis, my First Deputy Commissioner. Together, we are pleased to be here to offer testimony on two of the bills before the Committee today regarding signage.

Signs, including accessory signs and advertising signs, must comply with requirements in both the New York City Building Code ("Building Code") and the New York City Zoning Resolution ("Zoning Resolution"). The regulations in the Building Code address permitting and structural issues and the regulations in the Zoning Resolution address issues including permissible surface area, projection and height. Collectively, these regulations exist to protect the public from dangerous or illegally installed signs and to reduce visual clutter. As such, the Department takes seriously its obligation to enforce these laws.

That being said, Local Law 28 of 2019 ("Local Law 28") instituted a moratorium, which will run until February 2021, on the issuance of violations for accessory signs, which are also referred to as business signs. The Department recognizes that educating the business community regarding applicable laws and regulations is critical and is conducting outreach to small business owners so that they know exactly what they need to do to bring their signs into compliance. This outreach includes direct mailings to businesses who have received violations from the Department for illegally installed signs and direct outreach to these businesses by our Community Engagement

staff. We also encourage small businesses to visit our Borough Offices on Tuesday nights during our open house, where they can receive one-on-one advice from Department experts on signage issues or on any construction projects they are planning. We thank this Committee for its partnership on behalf of the small business community and look forward to updating this Committee further on the implementation of this law.

The first bill before the Committee, **Intro. 790**, would prohibit the placement of more than one ground or wall sign advertising the availability of retail or commercial space for rent on each side of a vacant commercial or mixed-use building. We would like to discuss this bill further with this Committee and with its sponsor to better understand the issue it is seeking to solve and to craft a careful solution to such issue. Our concern is that this bill could have the unintended consequence of resulting in additional enforcement actions being taken by the Department against businesses and residential buildings seeking to rent their vacant space and reactivating that segment of the streetscape. Additionally, we are concerned about making it more difficult to operate a business in New York City by adding another layer of regulation. Finally, this Committee should be aware that depending on the content of these signs, the Department may be unable to take any enforcement action until the Local Law 28 moratorium on the issuance of violations that I previously mentioned has concluded.

The next bill before the Committee, **Intro. 1545**, would prohibit alcohol advertisements on an outdoor sign within 500 feet in any direction of a school. Research suggests that greater exposure to alcohol advertisements can increase the likelihood of underage alcohol consumption and encourage heavier alcohol consumption. For these reasons, this Administration banned alcohol advertising on City property earlier this year. We are supportive of this bill as it reaffirms this Administration's position on alcohol advertising.

Thank you for the opportunity to testify before you today.

Testimony of the New York City Department of Housing Preservation and Development to the New York City Council Committee on Housing and Buildings regarding Introduction 1710 on J-51 One-Year Extender
September 23, 2019

Good morning, Chair Cornegy and members of the Committee on Housing and Buildings. My name is Patricia Zafiriadis and I am the Associate Commissioner of Housing Incentives with the New York City Department of Housing Preservation and Development (HPD). Thank you for the opportunity to testify on Introduction 1710 sponsored by Council Member Richards. This bill would extend the J-51 benefit program that is available for the rehabilitation and upgrade of New York City's housing stock.

The J-51 program has played a significant role in the improvement of New York's housing stock since the program's inception during the 1950s. The New York State J-51 tax benefit program is a property tax abatement and/or exemption given to residential apartment buildings for certain alterations or improvements. Boiler or window replacements are common types of eligible work. After doing the rehabilitation work, owners are eligible for a J-51 tax abatement and, in certain cases, a J-51 tax exemption as well. The abatement is an actual reduction in the amount of tax an owner pays, and is related to cost of the work. The exemption ensures that the owner doesn't have to pay taxes on the increase in value resulting from the rehab work. All J-51 recipients receive abatements, but exemptions are only issued in cases where the Department of Finance determines that the J-51-eligible renovation will lead to an increased assessed value.

The extension of the J-51 program is an important piece in the City's interest in providing safe, habitable, and affordable housing to residents of New York City, and the Administration supports the Council's reauthorization of this tax benefit program. Thank you again for the invitation to testify on this bill. I look forward to answering any questions you may have at this time.

Community Service Society | Fighting Poverty Strengthening New York

THE LEGAL AID SOCIETY
Justice in Every Borough.

Hearing on Intro 1710, in relation to exemption from taxation of alterations and improvements to multiple dwellings

Testimony of Tom Waters
Housing Policy Analyst, Community Service Society

&

Testimony of Ellen Davidson
Staff Attorney, The Legal Aid Society

New York City Council Committee on Housing and Buildings

September 23, 2019

Thank you Chair Cornegy, Councilmember Donovan and the New York City Council Committee on Housing and Buildings for this opportunity to comment on the proposed renewal of the J-51 property tax exemption and abatement program.

The Community Service Society is an independent nonprofit organization that addresses some of the most urgent problems facing low-wage workers and their communities here in New York City, including the effects of the city's chronic housing shortage.

The Legal Aid Society is the oldest and largest program in the nation providing direct legal services to low-income families and individuals. The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, health care, food and subsistence-level income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of housing and public benefits, foreclosure prevention, immigration,

domestic violence and family law, employment, elder law, tax law, community economic development, health law and consumer law.

The Community Service Society and The Legal Aid Society present this joint testimony to urge this committee and the Council to either significantly amend the J-51 program or to let it lapse.

The J-51 tax expenditure program is an extraordinarily expensive program. In fiscal year 2019 it cost the city $297.9 million in lost taxes. But the benefits it produces are not proportional to this cost. Although it certainly does help to make needed improvements in some apartments that would not otherwise be improved, it is poorly targeted and also bestows unnecessary tax breaks on owners of apartments that are not affordable and that would have been improved even without the tax incentive.

The most clearly justifiable use of J-51 is to help pay for improvements in subsidized affordable housing in buildings subject to regulatory agreements. Here the program is simply one of several tools used to finance the creation or preservation of affordable housing as part of the city's or state's housing production plan. The Department of Finance's reporting on J-51 in its *Annual Report on Tax Expenditures* unfortunately does not make it clear how much of the expenditure is devoted to this purpose, but it is probably a significant part, helping to account for the fact that 31 percent of the total expenditure is for buildings in the Bronx.

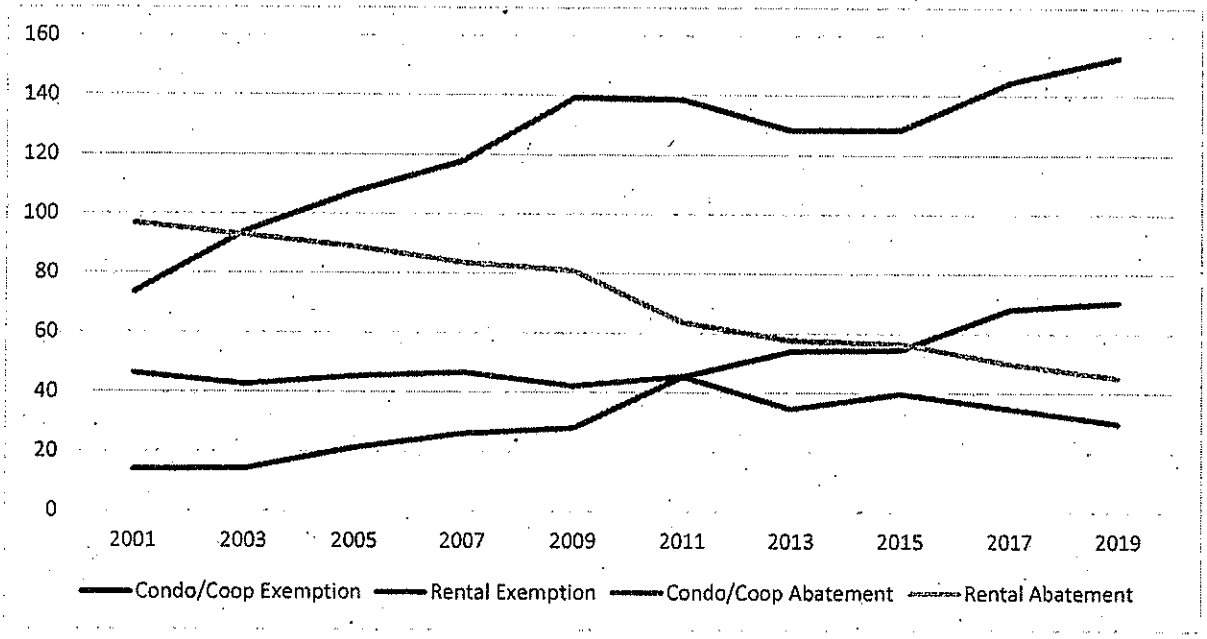
The least justifiable application of J-51 is for non-affordable coops and condos, where owners already have a strong incentive to improve their apartments simply in order to enjoy the improvement. The tax expenditures report does not distinguish affordable from non-affordable condos and coops, but the share of the expenditure going to all condos and coops rose from 26 percent in 2001 to 34 percent in 2019, and non-affordable apartments surely make up most of that.

Market rate and rent-stabilized rental apartments make up an intermediate case. The existing J-51 law attempts to direct benefit to apartments in these categories that are relatively affordable. To this end, the exemption component of J-51 is normally restricted to apartments outside of Manhattan below Harlem, and the abatement is restricted to buildings where the assessed value is below $40,000 per apartment, meaning that the Department of Finance's estimate of the market value is below about $89,000.

The significance of these restrictions have changed over time, as larger areas of the city are incorporated into the luxury market once concentrated in Manhattan below Harlem, and as market

values rise rapidly throughout the city. The result is that the restriction on exemptions has been getting much weaker, while the restriction on abatements has been getting stronger. The results of this can be clearly seen in Figure 1.

Figure 1: Inflation-adjusted value of J-51 exemptions and abatements, in millions of 2019 dollars, 2001 to 2019



It is clear from this graph that the restrictions are no longer working as intended. Neither the increase in the value of exemptions nor the decrease in the value of abatements reflects any desirable targeting of benefits. Instead, the reflect that the assumptions underlying the program's targeting strategy are getting more and more out of date.

As discussed in the Community Service Society's 2012 publication, "Upgrading Private Property at Public Expense: The Rising Cost of J-51," the program was developed and had its major revisions at times when real estate investment conditions in New York City were vastly different from those we see today. Times have changed, and the owners of rental housing in the city are in a far more advantaged position than they were in the 1950s, 1970s, or even the 1980s. Over the 63 years of the program's existence, efforts to retarget it appear to have had only modest success in

shifting the direction of benefits toward the greatest need. The result is the squandering of public funds at a time of great fiscal stress.

The J-51 program should be either drastically altered or eliminated entirely and replaced with a far more targeted incentive for improvements that benefit low-income tenants and that would not be undertaken without the incentive. If the program is continued, the following changes would significantly improve it:

- Eliminate all benefits for coops and condos except those being developed with government assistance.
- Replace the current system of restrictions on exemptions and abatements with one that more directly targets benefits to lower-rent apartments, ideally by setting a limit on the average rent on apartments in buildings eligible for the benefit. The outdated strategy of basing eligibility on geography should definitely be abandoned.
- Improve the coordination of the J-51 benefit with the rent increases allowed in rent-stabilized buildings for major capital improvements by requiring landlords to seek a J-51 exemption before applying for these rent increases and document the outcome to the state agency that administers rent stabilization; and by reducing the rent increases by 100 percent of the value of the tax benefit instead of only 50 percent.

Additionally, while the acceptance of J-51 benefits means that buildings are rent regulated and landlords cannot deregulate units, in practice, both the City and the State have abandoned their responsibilities to oversee this program. In response, landlords have taken advantage of lax enforcement and ignored their legal responsibilities. If the Council were to simply extend the law without amendment, the landlords would interpret such an action as the Council's support for business as usual. New York City landlords would continue to accept the benefits of the exemptions and abatements without having to comply with the affordability provisions in the law.

Currently the J-51 law requires that if a rental building receives J-51 benefits, the landlord must register the apartments as rent regulated. Additionally, if the building receiving the J-51 was rent regulated under the Emergency Tenant Protection Act, landlords could not deregulate units. Further, the law states that if a landlord who receives a J-51 benefit also applies to New York State Homes and Community Renewal for a Major Capital Improvement increase, the MCI increase should be decreased by 50% because of the receipt

of the J-51. However, there is no mechanism in place to ensure that landlords do not receive the full MCI increase and the J-51 benefit. It is our experience that lax enforcement has led to high rents and deregulation.

The Legal Aid Society represents tenants in a building in Queens. Our clients' building has 110 units. Although the building was built before 1974, it was never regulated as rent stabilized. In 2008, the landlord of the building began receiving the J-51 tax abatement. The landlord assured the New York City Department of Housing Preservation and Development that he would comply with the law by registering eleven units as rent regulated. Not one person at HPD thought to check its own housing portal to see that the building had over 100 units. Indeed, those fortunate tenants who lived in the eleven registered units were able to apply for and receive Senior Citizen Rent Increase Exemptions and Disability Rent Increase Exemptions. Our clients who were eligible for such benefits could not access them because their apartments were not registered as rent regulated. When we sued the landlord and the City, the City responded by arguing that the J-51 law had nothing to do with providing affordable housing to tenants and instead as long as the landlords completed the improvement to the building, the benefits could not be revoked. This is but one example of New York City's decades long refusal to enforce the rent regulation aspect of the J-51 law.

Thus until the law is amended to ensure that landlords who receive these benefits actually comply with the affordability restrictions in the law, we urge the Council to eliminate this program.

Conclusion

Thank you for the opportunity to testify before the New York City Council Committee on Housing and Buildings today.

Respectfully Submitted:

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September 23, 2019

Re: **New York City Hospitality Alliance Testimony** on
Int. No. 1545, in relation to restricting the advertisement of alcoholic beverages near schools

We represent the New York City Hospitality Alliance, a not-for-profit trade association that represents thousands of eating and drinking establishments throughout the five boroughs.

Underage drinking is a problem that we all stand against. There are many tools available to the City to advance its goals in this field. For example, when the Alliance collaborated with NYPD to create *Best Practices for Nightlife Establishments*, a first-of-its-kind publication utilized by hospitality businesses across New York City, we made sure to devote an entire section to educating operators on best age verification practices. Alcohol is appropriately an age-restricted product, and the Alliance supports efforts to keep it out of the hands of minors.

However, state law and relevant caselaw restrict the City's ability to regulate alcoholic beverages in the manner that is envisioned by Int. No. 1545. The Court of Appeals has held that the state Alcoholic Beverage Control Law occupies the field when it comes to efforts "to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance … and obedience to law." *See* People v. De Jesus, 54 NY 2d 465 (1981). As the Court observed, "the Alcoholic Beverage Control Law is surely pre-emptive. For one thing, the regulatory system it installed is both comprehensive and detailed." *Id*.

When New York City previously passed legislation that interfered with the ABCL's comprehensive regulatory regime, the Court of Appeals struck it down, holding "the direct consequences of a local ordinance should be examined to ensure that it does not 'render illegal what is specifically allowed by State law.'" *See* Lansdown Entertainment Corp. v. New York City Department of Consumer Affairs, 74 NY2d 761 (1989).

The rule is clear: "local governments' prerogatives to enact local laws of general application which are aimed at other legitimate concerns of local government" are permissible, "so long as they do not intrude essentially on the State's exclusive control … over the sale or distribution of alcohol." *Id*.

The ABCL and the regulations promulgated by the State Liquor Authority already address the issues of underage drinking, proximity to schools, and alcohol advertisements. For example: (1) it is a violation of the ABCL to sell alcohol to a minor; (2) full on-premises drinking establishments may not be situated within 200 feet of a building exclusively occupied as a school, and (3) manufacturers and retailers of alcohol are subject to complex rules regulating the content of alcohol advertisements. As the Court of Appeals has held in similar contexts, the City may not render illegal what the state ABCL and SLA permit.

In addition, we are concerned that vague language in the bill could be interpreted in an overbroad manner. While we appreciate the exemption for buildings owned or leased by businesses that sell alcohol, the bill as written would still appear to prohibit advertisements by eating and drinking establishments on billboards on other buildings. Envision, for example, an advertisement for an Italian restaurant on a billboard, depicting a family eating around a dinner table with a parent drinking wine. Under the current language, such an advertisement would be conceivably illegal. That is obviously not acceptable.

For these reasons, we ask that the Council reconsider the legality and utility of this bill.

Respectfully submitted,

PESETSKY & BOOKMAN, P.C.

By: Max Bookman, Esq.

TESTIMONY OF THE REAL ESTATE BOARD OF NEW YORK TO THE COMMITTEE ON HOUSING AND BUILDINGS OF THE NEW YORK CITY COUNCIL CONCERNING INT. 790 AND INT. 1710.

September 23, 2019

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the Council for the opportunity to testify on Int. 0790 and Int. 1710.

BILL: Intro No. 0790-2018
SUBJECT: A Local Law to amend the administrative code of the city of New York, in relation to outdoor signs
SPONSORS: Van Bramer

While we are not aware of this being a widespread issue, REBNY understands that members of the public have expressed concerns about signage in certain vacant commercial properties being out of character with the local neighborhood. As drafted, however, the bill imposes a one-size fits all solution that would make it harder for potential tenants to find available space for their businesses.

Int. 790 would amend the New York City administrative code to limit the number of ground and wall signs advertising vacancy in retail and commercial space to one per side of the building. While many Councilmembers have expressed concerns about vacant storefronts, this bill would make it more difficult for potential tenants to identify vacant space by limiting owner's ability to advertise their space.

Specifically, we are concerned that the proposed legislation treats all buildings equally, ignoring any difference in size and scope of retail space. This would mean larger buildings with multiple entrances occupying a full city block would be permitted the same number of signs as a smaller, mid-block space with a single entrance. Further, if adopted, a building with multiple retail or commercial vacancies on the same side of the street would be unable to separately advertise each of those spaces. Similarly, in buildings where retail space is also located on the second floor, the owner could be prevented from identifying that space as vacant at all.

The proposed action is a superfluous constraint on a building owner's ability to lease or sell its space for commercial and retail use, further exacerbating the existing commercial vacancy problem. REBNY stands ready to work with the Council to help address community member concerns about signage advertising vacant space at buildings across the city. Where particular concerns are raised in buildings owned by our members, we would welcome the chance to work with the Council, the community, and our members to address those concerns.

BILL: Intro No. 1710-2019
SUBJECT: A Local Law to amend the administrative code of the city of New York, in relation to exemption from taxation and improvements to multiple dwellings
SPONSORS: Richards

REBNY expresses its support for Int. 1710, which extends the J-51 tax exemption and abatement program. Like the Council, we recognize this program's importance in continuing to provide New Yorkers with a quality housing stock.

Thank you for considering our views.

# # #

CONTACT(S):
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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1710 Res. No. _____

☐ in favor ☒ in opposition

Date: Sept 23, 2019

(PLEASE PRINT)

Name: Tom Waters

Address: _____

I represent: Legal Aid + CSS

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1710 Res. No. _____

☐ in favor ☒ in opposition

Date: Sept 23, 2019

(PLEASE PRINT)

Name: Ellen Davidson

Address: _____

I represent: Legal Aid + CSS

Address: _____

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: 9/23/2019

(PLEASE PRINT)

Name: Patricia Zafiriadis

Address: Francoise Hardt

I represent: HPD Guild

Address: 100 Gold

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: MELANIE LA ROCCA, COMMISSIONER

Address: _____

I represent: DEPARTMENT OF BUILDINGS

Address: _____

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: GUS SIRAKIS

Address: _____

I represent: NYC DOB

Address: 280 BROADWAY NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1545 Res. No. _____

☐ in favor ☒ in opposition

Date: 9/23/19

(PLEASE PRINT)

Name: MAX BOOKMAN

Address: 325 Broadway 10007

I represent: NYC Hospitals/ Alliance

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

ON BOB NOW

Date: 9/23/19

(PLEASE PRINT)

Name: RICHIE NAGAN

Address: 1029 NEILL AVENUE

I represent: MYSELF ~~& THE COUNTY~~

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

DOB NOW

Date:

(PLEASE PRINT)

Name: Arie Isaacs

Address:

I represent:

Address:

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