Resiliency & Waterfronts Committee

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**The New York City Council**

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**COMMITTEE REPORT OF THE INFRASTRUCTURE DIVISION**

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**Committee on Resiliency and waterfronts**

Hon. Justin Brannan, Chair

January 25, 2021

**INT. NO. 2092:** By Council Members Constantinides, Kallos, Rosenthal, Lander and Cornegy

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to climate resiliency design guidelines and resiliency scoring

**ADMINISTRATIVE CODE:** Adds sections 3-131 and 3-132

**INT. NO. 2198:** By Council Members Matteo and Rosenthal

**TITLE:** A Local Law to amend the New York city building code, in relation to additional freeboard for structures in the floodplain

**BUILDING CODE:** Amends section G501.1

**RES. NO. 1389:** By Council Members Brannan, Chin, Constantinides and Rosenthal

**TITLE:** Resolution calling upon the United States Congress to restore funding to the United States Army Corps of Engineers' New York-New Jersey Harbor and Tributaries Focus Area Feasibility Study, and the States of New York and New Jersey to advance their shares of the next phase of funding to revive the study until it is fully restored by the Congress

**PRECONSIDERED RES. NO. :** By Council Member Brannan

**TITLE:** Resolution calling on Congress to pass, and the President to sign, legislation amending the Stafford Act to proactively fund the planning and construction of FEMA and HUD coastal resiliency projects

**Introduction**

On January 25, 2021, the Committee on Resiliency and Waterfronts, chaired by Council Member Justin Brannan, will hold a hearing to consider: Int. No. 2092, sponsored by Council Member Constantinides, in relation to climate resiliency design guidelines and resiliency scoring; Int. No. 2198, sponsored by Council Member Matteo, in relation to additional freeboard for structures in the floodplain; and Res. No. 1389, sponsored by Council Member Brannan, calling upon the United States Congress to restore funding to the United States Army Corps of Engineers’ New York-New Jersey Harbor and Tributaries Focus Area Feasibility Study, and the States of New York and New Jersey to advance their shares of the next phase of funding to revive the study until it is fully restored by the Congress and Preconsidered Res. No.\_\_, sponsored by Council Member Brannan, calling upon Congress to pass, and the President to sign, legislation amending the Stafford Act to proactively fund the planning and construction of FEMA and HUD coastal resiliency projects. The Committee expects to hear testimony from the Mayor’s Office of Resiliency, climate experts, environmental and housing advocates, and interested members of the public.

 **Background**

In 2018, the United Nations Intergovernmental Panel on Climate Change (IPCC) identified an increase of 1.5 degrees Celsius above pre-industrial levels as the point over which irreversible environmental changes and potential loss of ecosystems become increasingly likely.[[1]](#footnote-1) According to the United States (U.S.) Global Change Research Program’s Fourth National Climate Assessment, failure to significantly mitigate global man made carbon emissions will lead to increasing rates of sea level rise, increased frequency of extreme weather events, and rising temperatures, which are expected to cause ongoing damage to critical infrastructure, property, and economic productivity.[[2]](#footnote-2)

The Global Climate Observing System (GCOS), an international organization established in 1992 for the purpose of compiling international climate related data into an accessible repository for all interested users,[[3]](#footnote-3) defines climate indicators as a set of parameters that describe the changing climate without reducing the understanding of climate change to strictly temperature.[[4]](#footnote-4) The seven main indicators tracked by the GCOS are surface temperature, ocean heat, atmospheric carbon dioxide (CO2), ocean acidification, sea level rise, glaciers, and polar sea ice, with further subsidiary indicators under each main category.[[5]](#footnote-5) Overall, the use of climate indicators enable a better understanding of the real world effects of climate change on both the global and regional scale.[[6]](#footnote-6)

According to the U.S. Global Change Research Program’s Fourth National Climate Assessment, median sea level rise along the U.S. coastline has already increased by an average of 9 inches since the early 20th century and temperatures have increased by an average of 1.8°F in the same period.[[7]](#footnote-7) A report by the National Oceanic and Atmospheric Administration (NOAA) finds that by 2100, "high tide flooding will occur 'every other day' (182 days/year) or more often under the Intermediate Low Scenario within the Northeast and Southeast Atlantic. . ."[[8]](#footnote-8) The report also projects that the low and high end estimates of high tide flood frequency along the coast of the Northeast Atlantic “will reach on average about 235 and 365 days/year (with 95 and 100% from tides)” respectively.[[9]](#footnote-9) New York City’s waterfront communities face significant threats from extreme weather events and high tides, and projections show that these communities will experience greater and more frequent damage because of climate-related weather events and sea level rise. Neighborhoods such as Broad Channel, Howard Beach, Hamilton Beach,[[10]](#footnote-10) Rosedale, Far Rockaway, Coney Island, Stapleton, Arrochar, and Midland Beach,[[11]](#footnote-11) where eight New Yorkers drowned in Superstorm Sandy’s floodwaters, regularly experience tidal inundation, a trend that will only be exacerbated by continued sea level rise.

In 2012, Superstorm Sandy flooded approximately 17% of New York City’s total land mass, or 51 square miles.[[12]](#footnote-12) By the end of 2012, the City’s Department of Buildings (DOB) identified approximately 800 buildings as damaged or destroyed and thousands of housing units were found to have suffered some amount of damage.[[13]](#footnote-13) Superstorm Sandy caused an estimated $19 billion in losses in New York City.[[14]](#footnote-14) Along with damage to residential and commercial property, the storm damaged critical city infrastructure and services.

With 520 miles of coastline bordering the ocean, rivers, bays and inlets, New York City is particularly vulnerable to the impacts of sea-level rise, storm surge, and high-tide or sunny-day flooding.[[15]](#footnote-15) According to a Union of Concerned Scientists study published in 2018, New York State ranks third in the nation for most homes at risk of coastal inundation by the end of the century.[[16]](#footnote-16) The East and Gulf Coasts of the U.S. are undergoing some of the fastest rates of sea level rise.[[17]](#footnote-17) Scientists for the National Center for Atmospheric Research modeled sea level rise for 20 cities around the world and found that New York City will likely experience an increase in sea level rise twice the global average.[[18]](#footnote-18) Nationally, more than 300,000 homes with a collective value of $117.5 billion dollars, and 14,000 commercial properties valued at $18.5 billion dollars are at risk of chronic flooding within the next 30 years.[[19]](#footnote-19) In the state of New York, 15,500 homes representing a population of approximately 42,000 people and valued at approximately 8.5 billion dollars, mostly clustered in Long Island (Hempstead, Babylon), and Queens, risk chronic inundation by 2045.[[20]](#footnote-20) By 2100, 143,000 properties housing approximately 366,000 people, and valued at approximately 98 billion dollars, risk the same fate.[[21]](#footnote-21) The homes at risk by 2045 contributed about 170 million dollars in property tax revenue by 2018 figures, and those at risk by 2100 represent 2 billion dollars of annual property tax revenue.[[22]](#footnote-22) The 2,700 homes at risk in Queens by 2045 are largely concentrated in environmental justice communities.[[23]](#footnote-23)

Coastal flooding caused by sea level rise is just one of the climate change hazards affecting the City’s residents and property. Heat waves and severe rain storms are becoming more intense and occurring more frequently. Heat waves kill more people than any other weather disaster, and because of the urban heat island effect,[[24]](#footnote-24) cities are uniquely vulnerable to extreme heat.[[25]](#footnote-25) Researchers assert that “the urban heat island effect is largely driven by the basic physical fabric of a city, modifying that fabric is [a] vital way to reduce the human cost of extreme heat.”[[26]](#footnote-26) Additionally, a recent study by researchers at Stanford University revealed that nearly $75 billion in financial damage over the past three decades is caused by flooding from more frequent and intense precipitation as a result of climate change.[[27]](#footnote-27)

The Speaker’s March 2020 Report, Securing our Future: Strategies for New York City in the Fight against Climate Change, (the “Report”) discussed the importance of being forward-thinking and incorporating the New York City Panel on Climate Change (NPCC) projections of sea level rise and other climate change factors. For example, the report highlighted a strategy of increasing the resiliency of new construction by requiring a “context-dependent additional one-to-two feet of freeboard beyond what was required after Superstorm Sandy”[[28]](#footnote-28) that would take into account sea level rise projections. Freeboard is the technical term used for “the additional safety factor above the flood line above which finished floors and critical systems of buildings should be placed.”[[29]](#footnote-29) The Report also highlighted the need to codify and require compliance with the Climate Resiliency Design Guidelines (“CRDG”).[[30]](#footnote-30) In September 2020, the Mayor’s Office of Resiliency released Version 4.0 of the CRDG, which provides non-binding, discretionary guidelines for planners to consider heat, precipitation and sea level rise in the design of buildings and infrastructure.[[31]](#footnote-31) MOR stated that “[r]esilient design must become an integral part of the project planning process for City agencies and designers” and that “[a]ll new projects and substantial improvements [should] assess risks to climate hazards” in their design and siting.[[32]](#footnote-32)

**Legislation**

Below is a brief summary of the legislation being heard today by this Committee. This summary is intended for informational purposes only and does not substitute for legal counsel. For more detailed information, you should review the full text of the bill, which is attached below.

**Int. No. 2092, A Local Law to amend the administrative code of the city of New York, in relation to climate resiliency design guidelines and resiliency scoring**

Int. No. 2092 would require the Office of Long-Term Planning and Sustainability (OLTPS) to develop climate resiliency design guidelines, pursuant to a pilot program, for City capital projects. OLTPS, in consultation with other City agencies and members of the public with expertise in climate resiliency, climate design and the built environment, would also use the climate resiliency design guidelines to develop a climate resiliency score metric for capital projects, and future City capital projects would be required to meet certain scores. Such score would account for flooding risk, energy efficiency, energy resilience and on-site water capture and management.

This local law would take effect 120 days after it becomes law.

**Int. No. 2198, A Local Law to amend the New York city building code, in relation to additional freeboard for structures in the floodplain**

Int. No. 2198 would require that structures located in the floodplain be elevated an additional one-to-two feet, depending on the type of structure, to provide additional flood proofing of those structures.

This local law would take effect 120 days after it becomes law.

**Res. No. 1389**

Res. No. 1389 calls upon the United States Congress to restore funding to the United States Army Corps of Engineers’ New York-New Jersey Harbor and Tributaries Focus Area Feasibility Study, and the States of New York and New Jersey to advance their shares of the next phase of funding to revive the study until it is fully restored by the Congress.

**Preconsidered Res. No. ­­\_\_\_**

Preconsidered Res. No. \_\_ calls upon Congress to pass, and the President to sign, legislation amending the Stafford Act to proactively fund the planning and construction of FEMA and HUD coastal resiliency projects.

Int. No. 2092

By Council Members Constantinides, Kallos, Rosenthal, Lander and Cornegy

A Local Law to amend the administrative code of the city of New York, in relation to climate resiliency design guidelines and resiliency scoring

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 1 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-131, to read as follows:

§ 3-131 Climate resiliency design guidelines. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Critical facility. The term “critical facility” means a:

1. Hospital or healthcare facility;

2. Fire, rescue, ambulance, police station or emergency vehicle facility;

3. Jail, correctional facility or detention facility;

4. Facility used in emergency response;

5. Critical aviation facility;

6. Food distribution center with an annual expected volume of greater than 170,000,000 pounds;

7. Building or structure that manufactures, processes, handles, stores, disposes or uses toxic or explosive substances;

8. Component of infrastructure in transportation, telecommunications or power networks;

9. Ventilation building or fan plant;

10. Operations center;

11. Sanitary pumping station;

12. Stormwater pumping station;

13. Train and transit maintenance yard or shop;

14. Wastewater treatment plant;

15. Component of the water supply infrastructure;

16. Combined sewer overflow retention tank;

17. Fueling station;

18. Waste transfer station; and

19. Facility where residents have limited mobility or ability.

Resiliency.  The term “resiliency” means the capacity of a covered project, as defined in section 3-132, to absorb disruption and manage stresses while maintaining the same basic structure and function.

Useful life. The term “useful life” means the period over which a building, structure or system is expected to be available for use by an entity and may exceed the design life of such building, structure or system.

b. The office of long-term planning and sustainability shall establish a pilot program for developing the climate resiliency design guidelines.  Each agency and office of the mayor shall identify projects that comprise no less than five percent of their respective capital construction budgets for fiscal years 2021 through 2024.  The office of long-term planning and sustainability shall select no less than 35 such capital projects, as such term is defined in section 210 of the charter, to include in the pilot program.  The pilot program shall be in effect for not more than five years.  Projects selected for the pilot program shall include, but not be limited to, the following:

1. A combination of the most common facilities;

2. New construction and substantial improvements, as both terms are defined in section G201.2 of chapter G2 of appendix G of the New York city building code;

3. No less than 30 percent of all projects shall be located in an environmental justice area, as such term is defined in section 3-1001;

4. No less than four projects shall be located in each borough;

5. Projects with a useful life: (a) less than 10 years; (b) 10 to 50 years; and (c) over 50 years;

6. Projects with capital costs: (a) under $10 million; (b) $10-49 million; (c) $50-100 million; and (d) over $100 million; and

7. Critical and non-critical facilities.

c. No later than December 31, 2025, the office of long-term planning and sustainability shall submit to the speaker of the council and publish on its website the climate resiliency design guidelines, developed pursuant to the pilot program described in subdivision b. Such guidelines shall provide instruction on incorporating forward-looking climate change data into the design of city facilities, as such term is defined in section 203 of the charter, as well as into the design of covered projects, pursuant to section 3-132, and on determining the appropriate resilient design strategies, including consideration of the useful life and criticality of facilities. Such guidelines shall be updated no less than once every eight years.

§ 2. Subchapter 2 of chapter 1 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-132, to read as follows:

§ 3-132 Resiliency score. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Covered project. The term “covered project” means construction, installation, retrofit, improvement or alteration, with an estimated construction cost of no less than $10,000,000 of a city facility, as such term is defined in section 203 of the charter, or a capital project, as such term is defined in section 210 of the charter, that is funded in whole or in part from the city treasury or through debt issued or secured by the city, provided that it shall not include a public betterment consisting solely of a street project that does not involve subsurface utility work, drainage or roadway grading, fencing, or combination thereof. Any city facility with an estimated construction cost of less than $10,000,000 shall be considered a covered project upon registration of a change order, or change orders, with a value that exceeds 30 percent of the original registered construction contract value of such project, and after which the estimated construction cost exceeds $10,000,000.

Office. The term “office” means the office of long-term planning and sustainability.

b. The director of long-term planning and sustainability, in consultation with the New York city panel on climate change, the commissioner of design and construction, the commissioner of environmental protection, the commissioner of citywide administrative services, the commissioner of transportation, the commissioner of emergency management, the commissioner  of buildings, the commissioner of parks and recreation, the commissioner of housing preservation and development, the director of management and budget, the director of city planning, the president of the New York city economic development corporation, and members of the public with expertise in climate resiliency, climate design, and the built environment, shall develop a resiliency score metric. For the purposes of calculating such resiliency score, the office shall by rule assign a number of points to each potential resilient feature of a project, to be informed by and include features detailed in the climate resiliency design guidelines pursuant to section 3-131, and which may also include but need not be limited to features such as:

1. Elevation to reduce the risk of flooding over the anticipated useful life;

2. Flood-proofing of structures or equipment;

3. Heat mitigation;

4. Energy resilience, including energy storage with or without use of on-site renewable energy generation;

5. On-site storm water capture and management;

6. Integration with naturally resilient shoreline features;

7. Salt or flood tolerant landscaping;

8. Green infrastructure;

9. Pervious pavement;

10. Resilient building materials;

11. Living walls or structures; and

12. Integration with and preservation of naturally occurring vegetation and habitat.

c. No later than December 31, 2025, the office shall establish by rule a minimum resiliency score that could be met or exceeded by most covered projects, provided that separate minimum resiliency scores may be established for i) new construction; and ii) a retrofit, improvement or alteration.

d. The office shall publish on its website the minimum resiliency score and the number of points that resilient features are assigned for the purpose of calculating the resiliency score.

e. Each covered project that is a new construction shall be required to meet or exceed the minimum resiliency score. The project design shall be submitted to the office for calculation of a resiliency score and scored by such office prior to being made available for review by the respective council committee, borough president and the community board pursuant to section 223 of the charter.

f. Each covered project that is a retrofit, improvement or alteration of an existing facility or infrastructure shall be required to either:

1. Meet or exceed the minimum resiliency score; or

2. Receive approval from the office, after submission of the project design with a written statement explaining how resilient features have been incorporated into the design to the extent practicable.

§ 3. Section 2 of this local law shall not apply to any projects for which the design has been made available for review by the respective council committee, borough president and the community board pursuant to section 223 of the charter prior to the effective date of this local law, except section 2 of this local law shall apply to such projects if registration of a capital project change order occurs after the effective date of this local law and such change order has a value that exceeds 60 percent of the original registered construction contract value of such project.

§ 4. This local law takes effect 120 days after it becomes law, provided that the director of long-term planning and sustainability may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

NAB/JSA

LS #11602, 14347

9/4/20

Int. No. 2198

By Council Members Matteo and Rosenthal

A Local Law to amend the New York city building code, in relation to additional freeboard for structures in the floodplain

Be it enacted by the Council as follows:

Section 1. The New York city amendments to section 2.3 of ASCE 24-05 as set forth in section G501.1 of chapter G5 of appendix G of the New York city building code, as amended by local law number 141 for the year 2013, is amended to read as follows:

**Section 2.3.** Table 2-1 of Section 2.3 (Elevation Requirements) is amended to read as follows:

**TABLE 2-1
MINIMUM elevation of the top of lowest floor**

**Relative to design flood elevation (DFE)-A-Zonesa**

|  |  |
| --- | --- |
| **Structural Occupancy Categoryb** | **Minimum Elevation of Lowest Floor** |
| I | DFE = BFE |
| II (1-and 2- family dwellings) | DFE = BFE + [2] 3 ft |
| IIc, d (all others) | DFE = BFE + [1]- 2 ft |
| IIIc, d | DFE = BFE + [1] 3 ft |
| IVc | DFE = BFE + [2] 4  ft |

a. Minimum elevations shown in Table 2-1 do not apply to V Zones (see Table 4-1). Minimum elevations shown in Table 2-1 apply to A-Zones unless specific elevation requirements are given in Section 3 of this Standard.

b. See Table 1-1, or Table 1604.5 of the *New York City Building Code,* for structural occupancy category descriptions.

c.For nonresidential buildings and nonresidential portions of mixed-use buildings, the lowest floor shall be allowed below the minimum elevation if the structure meets the floodproofing requirements of Section 6.

d. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

§ 2. The New York city amendments to section 4.4 of ASCE 24-05 as set forth in section G501.1 of chapter G5 of appendix G of the New York city building code, as amended by local law number 141 for the year 2013, is amended to read as follows:

**Section 4.4.** Table 4-1 of Section 4.4 (Elevation Requirements) is amended to read as follows:

**Table 4-1**

**Minimum Elevation of Bottom of Lowest Supporting**

**Horizontal Structural Member of Lowest Floor**

**Relative to Design Flood Elevation (DFE)-V-Zones and Coastal A-Zones**

|  |  |
| --- | --- |
| **Structural Occupancy categorya** | **Member orientation relative to the Direction of wave approach** |
|   | **Parallelb** | **Perpendicularb** |
| I | DFE=BFE | DFE=BFE |
| II (1-and 2- family dwellings) | DFE=BFE + [2] 3 ft | DFE=BFE + [2] 3 ft |
| IIc (all others) | DFE=BFE +1 ft | DFE-BFE + [1] 2 ft |
| IIIc | DFE=BFE + [1] 3 ft | DFE=BFE + [2] 4 ft |
| IVc | DFE=BFE + [1] 3 ft | DFE=BFE + [2] 4 ft |

a. See Table 1-1, or Table 1604.5 of the *New York City Building Code,* for structural occupancy category descriptions.

b. Orientation of lowest horizontal structural member relative to the general direction of wave approach; parallel shall mean less than or equal to 20 degrees from the direction of approach; perpendicular shall mean greater than 20 degrees from the direction of approach.

c. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

§ 3. The New York city amendments to section 5.1 of ASCE 24-05 as set forth in section G501.1 of chapter G5 of appendix G of the New York city building code, as amended by local law number 141 for the year 2013, is amended to read as follows:

**Section 5.1.** Table 5-1 of Section 5.1 (Materials, General) is amended to read as follows:

**Table 5-1**

**Minimum Elevation, Relative to Design Flood**

**Elevation (DFE), Below which Damage-Resistant**

**Materials Shall be Used**

|  |  |  |
| --- | --- | --- |
| **Structural Occupancy categorya** | **A-ZONE** | **Coastal High Hazard Areas and Coastal A-Zones** |
|   |   | **Orientation Parallelb** | **Orientation  Perpendicularb** |
| I | DFE=BFE | DFE=BFE | DFE=BFE |
| II (1-and 2- family dwellings) | DFE=BFE + [2] 3 ft | DFE=BFE + [2]- 3 ft | DFE=BFE + [2] 3 ft |
| IIc (all others) | DFE=BFE + [1] 2 ft | DFE=BFE + [1] 2 ft | DFE=BFE + [2] 3 ft |
| IIIc | DFE=BFE + [1] 3 ft | DFE=BFE + [2] 4 ft | DFE=BFE + [3] 5 ft |
| IVc | DFE=BFE + [2] 4 ft | DFE=BFE + [2] 4 ft | DFE=BFE + [3] 5 ft |

a. See Table 1-1, or Table 1604.5 of the *New York City Building Code,* for structural occupancy category descriptions.

b. Wet or dry floodproofing shall extend to the same level.

c. Dry floodproofing of residential buildings and residential portions of mixed use buildings shall not be permitted.

d. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

§ 4. The New York city amendments to section 7.1 of ASCE 24-05 as set forth in section G501.1 of chapter G5 of appendix G of the New York city building code, as amended by local law number 141 for the year 2013, is amended to read as follows:

**Section 7.1.** Table 7-1 of Section 7.1 (General) is amended to read as follows (see Table 7-1 below):

**Table 7-1**

**Minimum Elevation of utilities and attendant equipment relative to design flood elevation (dfe)**

|  |  |
| --- | --- |
| **Structural Occupancy categorya** | **LOCATE UTILITIES AND ATTENDANT EQUIPMENT ABOVEb** |
|   | **A-Zones** | **Coastal High Hazard Area and Coastal A-Zones** |
|   |   | **Orientation Parallelc** | **Orientation  Perpendicularc** |
| I | DFE=BFE | DFE=BFE | DFE=BFE |
| II (1-and 2- family dwellings) | DFE=BFE + [2]3 ft | DFE=BFE + [2] 3 ft | DFE=BFE + [2] 3 ft |
| IIc (all others) | DFE=BFE + [1]2 ft | DFE=BFE + [1] 2 ft | DFE=BFE + [2] 3 ft |
| IIIc | DFE=BFE + [1]3 ft | DFE=BFE + [2] 4 ft | DFE=BFE + [3] 5 ft |
| IVc | DFE=BFE + [2]-4 ft | DFE=BFE + [2] 4 ft | DFE=BFE + [3] 5 ft |

a. See Table 1-1, or Table 1604.5 of the *New York City Building Code,* for structural occupancy category descriptions.

b. Locate utilities and attendant equipment above elevations shown unless otherwise provided in the text.

c. Orientation of lowest horizontal structural member relative to the general direction of wave approach; parallel shall mean less than or equal to +20 degrees from the direction of approach; perpendicular shall mean greater than +20 degrees from the direction of approach.

d. Buildings that include I-2 occupancies that are hospitals shall use the greater of (i) the DFE for the applicable structural occupancy category as indicated in this table or (ii) the 500-year flood elevation.

§ 5. This local law takes effect 120 days after it becomes law, except that this local law shall not apply to construction work related to applications for construction document approval filed prior to such effective date, and the commissioner of buildings may take all actions necessary for its implementation, including the promulgation of rules, prior to such effective date.

JSA

LS #13023

7/20/2020

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Res. No. 1389

Resolution calling upon the United States Congress to restore funding to the United States Army Corps of Engineers’ New York-New Jersey Harbor and Tributaries Focus Area Feasibility Study, and the States of New York and New Jersey to advance their shares of the next phase of funding to revive the study until it is fully restored by the Congress.

By Council Members Brannan, Chin, Constantinides and Rosenthal

Whereas, The New York-New Jersey Harbor and Tributaries Focus Area Feasibility Study (HATS) is a coastal storm risk management study covering the New York (N.Y.) and New Jersey (N.J.) Harbor and tidally affected tributaries encompassing all of New York City, the Hudson River to Troy, N.Y.; the lower Passaic, Hackensack, Rahway, and Raritan Rivers; the Upper and Lower Bays of New York Harbor; the bays of Newark, N.J., Jamaica, Raritan and Sandy Hook; the Kill Van Kull, Arthur Kill and East River tidal straits; and the western Long Island Sound; and

Whereas, HATS, initiated in 2016 and expected to finish in 2022, was one of nine studies that were recommended by the Unites States Army Corps of Engineers (USACE) 2015 North Atlantic Coast Comprehensive Study to manage future potential coastal storm risks facing the region, including those from predicted sea level rise and extreme weather events, by developing possible means of preventing the loss of human lives and damages to property; and

Whereas, The New York and New Jersey Harbor Region was severely impacted from Superstorm Sandy, which destroyed approximately 300 homes and damaged over 69,000 residential units; harmed critical public and private infrastructure; killed 44 City residents and displaced thousands more; and inflicted an estimated $19 billion in damages and lost economic activity across New York City in 2012, according to New York City data; and

Whereas, HATS, if completed, would have proposed a comprehensive plan for managing future potential coastal storm risks facing the New York and New Jersey Harbor Region, including those from predicted sea level rise and extreme weather events, and the study is a necessary precursor to beginning any federally funded harbor-wide resiliency projects; and

Whereas, In February 2020, the Trump Administration abruptly halted HATS by failing to fund USACE’s work plan for the project, leaving it suspended until further notice -a decision that came six weeks after President Donald Trump, via Twitter, ridiculed a seawall proposed by the study; and

Whereas, Funding to HATS must be restored in order to develop plans to allay major future potential damages to New York, caused by coastal storms such as Superstorm Sandy and to protect against rising sea levels and other extreme weather events; and

Whereas, The States of New York and New Jersey are non-federal sponsors of HATS, via the New York State Department of Environmental Conservation and the New Jersey Department of Environmental Protection, and should move forward with financing their portions of the project until federal funding is revived; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to restore funding to the United States Army Corps of Engineers’ New York-New Jersey Harbor and Tributaries Focus Area Feasibility Study, and the States of New York and New Jersey to advance their shares of the next phase of funding to revive the study until it is fully restored by the Congress.

LS #14247

1/6/2021 2:12 PM

M.T.

Preconsidered Res. No.

Resolution calling on Congress to pass, and the President to sign, legislation amending the Stafford Act to proactively fund the planning and construction of FEMA and HUD coastal resiliency projects

By Council Member Brannan

Whereas, The Robert T. Stafford Disaster Relief and Emergency Assistance Act (“the Stafford Act”) gives the president the power to declare a national emergency as a response to a national disaster, thereby allowing the president to access funds set aside by Congress to provide states with federal assistance during and after an emergency or disaster; and

Whereas, The United States (“U.S.”) has a number of agencies that work towards disaster relief, such as the Federal Emergency Management Agency (“FEMA”), the U.S. Department of Housing and Urban Development (“HUD”), and the U.S. Army Corps of Engineers (“USACE”); and

Whereas, Although FEMA and HUD administer federal funding programs for disaster relief and prevention, the USACE is also able to fund, design, and construct large-scale infrastructure projects, provided, however, that all allocations for such programs and projects must be planned for and earmarked in advance by Congress; and

Whereas, The Stafford Act required all funding requests must be in relation to a “major disaster” declaration by the president for a declared disaster that occurred in the past seven years; and

Whereas, The Safeguarding Tomorrow through Ongoing Risk Mitigation Act, or The STORM Act, was passed on January 1, 2021, amending the Stafford Act by adding § 205, which authorizes the FEMA Administrator to enter into agreements with a state or Indian tribal government (“eligible entity”) to make capitalization grants that are not contingent upon prior disaster declarations but are instead based on an application’s ability to detail both recurring major disaster vulnerabilities that show sizable risk and how the application’s plan would achieve resilience in a vulnerable area to establish hazard mitigation so as to help local governments carry out eligible projects to reduce disaster risks and decrease disaster costs, with single hazard mitigation projects having to be less than $5 million; and,

Whereas, The STORM Act authorizes appropriations of $100 million for each of Fiscal Year 2022 and Fiscal Year 2023, but has not authorized any appropriations after Fiscal Year 2023; and

Whereas, FEMA and HUD have dedicated disaster relief and mitigation funding programs, particularly FEMA’s Building Resilient Infrastructure and Communities (“BRIC”) and Disaster Relief Fund (“DRF”) and HUD’s Community Development Block Grant Mitigation (“CDBG-MIT”) and Disaster Relief (“CDBG-DR”) programs, all of which provide key frameworks and details for directing federal disaster funding in accordance with the Stafford Act; and

Whereas, While BRIC and CDBG-MIT were formulated with a focus on future disaster prevention and mitigation, they are still mandated by the Stafford Act to require funding allocations to be in relation to recent and past disasters; and

Whereas, The Stafford Act caps BRIC funding at up to 6 percent of the total estimated disaster expenditures associated with each presidential disaster declaration, with annual contributions depending on the number and cost of disasters in the previous year and all funds entering the National Public Infrastructure Pre-Disaster Mitigation Fund, leading to FEMA estimating annual contributions to this fund to be between $300 and $500 million nationwide; and

Whereas, For Fiscal Year 2020 (“FY2020”), BRIC was allocated $500 million, and, in 2018, Congress appropriated $15.9 billion to HUD for CDBG-MIT for mitigation activities for qualifying disasters in 2015, 2016, and 2017, but has not indicated plans for future CDBG-MIT appropriations or allocations; and

Whereas, In comparison, the New York City Council issued a report entitled “Securing Our Future: Strategies for New York City in the Fight Against Climate Change,” which included a snapshot of New York City’s (“NYC”) current coastal resiliency projects, which cost approximately $52.87 billion in combined funding from NYC, New York State, USACE, FEMA, and HUD, demonstrating that current federal funding for coastal resiliency will not be sufficient for the future needs of both NYC and the nation at large; and

Whereas, Due to the advance of climate change, more and more national disasters are happening each year, with FEMA reporting more than twice the number of annual billion-dollar events in the U.S. were experienced in the 2010s compared to the 2000s, that 2020 bore witness to the most active Atlantic hurricane season on record, and that severe storms are becoming an increasing contributor to the number of billion-dollar events, with the average frequency of high-tide flooding already up 50 percent when compared to the frequency in 2000; and

Whereas, The National Oceanic and Atmospheric Administration (“NOAA”) found that NYC is under threat from disasters like flooding, sea level rise, and coastal storms due to its 520 miles of coastline, which is more shoreline mileage than the cities of Miami, Los Angeles, San Francisco, and Boston combined, meaning coastal resiliency efforts, which seek to protect against coastal hazardous events, are a necessary aspect of disaster prevention in NYC; and

Whereas, Regular tidal flooding is already occurring in NYC neighborhoods such as Broad Channel, Hamilton Beach, and Howard Beach, with a Lower Manhattan Climate Resilience Study conducted by NYC’s Economic Development Corporation and the Mayor’s Office of Recovery & Resiliency finding that by 2050, 37 percent of buildings in Lower Manhattan will be at risk from a rise in seawater level caused by a storm, otherwise known as storm surge; and

Whereas, FEMA recorded billions of dollars in National Flood Insurance Program (“NFIP”) payouts in the past decade, with six of the top 10 most significant NFIP payouts occurring in the past decade, and all 10 occurring since 2000, and has paid out $830 million to NFIP policy holders in 2020 alone; and

Whereas, According to NOAA, coastal resiliency efforts are crucial to protecting against and minimizing the impacts of coastal hazards like flooding and storm surge, as well as coastal disasters like Hurricane Sandy, which cost $19 billion in citywide damages and lost economic activity while also damaging over 69,000 residential units according to the NYC Mayor’s Office of Management and Budget; and

Whereas, Coastal resiliency efforts are predicated on preparing for, rather than reacting to, coastal hazards and consist of a myriad of different strategies, all of which take time and money to develop, yet, in 2020, FEMA published their “FEMA Mitigation Action Portfolio” which found that natural hazard mitigation saves, on average, $6 in future disaster costs for every $1 spent on federal grants; and

Whereas, As currently written, and other than what is authorized by the STORM Act, the Stafford Act only allows for mitigation funding as a reaction to past disasters as declared by the president, rather than a proactive protection against potential future disasters and damages, meaning that potential disasters which, due to climate change, could impact an area previously not affected by disasters, or wreak damage on an unprecedented level, would not allow an applicant to qualify for federal mitigation funding needed to build resiliency; and

Whereas, Proactive funding of coastal resiliency projects would entail both increased funding and easier access to disaster prevention funding, both of which would enhance and expedite current and future coastal resiliency plans, and which might cost-effectively reduce future needs for post-disaster funding and flood insurance payouts; now, therefore, be it

Resolved, That the Council of the City of New York calls on Congress to pass, and the President to sign, legislation amending the Stafford Act to proactively fund the planning and construction of FEMA and HUD coastal resiliency projects.

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