

SUPPLEMENT TO

THE CITY RECORD

THE COUNCIL —STATED MEETING OF
TUESDAY, DECEMBER 18, 2012

THE COUNCIL

*Minutes of the Proceedings for the
STATED MEETING*

of
Tuesday, December 18, 2012, 3:23 p.m.

The President Pro Tempore (Council Member Rivera)
Acting Presiding Officer

Council Members

Christine C. Quinn, Speaker

Maria del Carmen Arroyo	Vincent J. Gentile	Michael C. Nelson
Charles Barron	Sara M. Gonzalez	James S. Oddo
Gale A. Brewer	David G. Greenfield	Annabel Palma
Fernando Cabrera	Daniel J. Halloran III	Domenic M. Recchia, Jr.
Margaret S. Chin	Vincent M. Ignizio	Diana Reyna
Leroy G. Comrie, Jr.	Robert Jackson	Joel Rivera
Elizabeth S. Crowley	Letitia James	Ydanis A. Rodriguez
Inez E. Dickens	Andy King	James Sanders, Jr.
Erik Martin Dilan	G. Oliver Koppell	Eric A. Ulrich
Daniel Dromm	Karen Koslowitz	James Vacca
Mathieu Eugene	Bradford S. Lander	Peter F. Vallone, Jr.
Julissa Ferreras	Jessica S. Lappin	Albert Vann
Lewis A. Fidler	Stephen T. Levin	James G. Van Bramer
Helen D. Foster	Melissa Mark-Viverito	Mark S. Weprin
Daniel R. Garodnick	Darlene Mealy	Jumaane D. Williams
James F. Gennaro	Rosie Mendez	Ruben Wills

Excused: Council Members Koo and Rose.

The Majority Leader (Council Member Rivera) assumed the Chair as the President Pro Tempore and Acting Presiding Officer.

After being informed by the City Clerk and Clerk of the Council (Mr. McSweeney), the presence of a quorum was announced by the President Pro Tempore (Council Member Rivera).

There were 49 Council Members marked present at this Stated Meeting held in the Council Chambers of City Hall, N.Y., N.Y. 10007.

INVOCATION

The Invocation was delivered by Dr. Robert A. Smith, Pastor, Church of the Savior, 120 Dekruif Avenue, Bronx, NY 10475.

Brothers and sisters,
if we can just have a moment of silence

to remember the babies that we lost
on Friday, December the 14th at 9:30 a.m.
Keep their families and the community of Newtown in your heart.
Let each of us be more diligent in loving the children.
The God of Abraham and the God of Isaac, and the God of Muhammad,
the God of our mothers and the God of our fathers,
we call upon the awesomeness of your presence, oh God.
That who you are reverberates within every beating heart,
that you occupy every space within these halls of deliberation.
We ask a special blessing on every member of the Council
as he or she deliberates the issues, the people's business.
Let the newest member to enter this chamber
Be imbued with wisdom, sense of justice,
views all things through the lens of human possibility.
We thank you for this extraordinary day.
We thank you for all the talent that is assembled within this space.
Let the power of your spirit, oh God,
send us on a trajectory of justice.
And we thank you for helping hands And caring hearts.
Amen.

Council Member Palma moved to spread the Invocation in full upon the Record.

At this point, the Speaker (Council Member Quinn) acknowledged that these Stated Meeting proceedings were to be the last for James Sanders, Jr. as Council Member from the 31st District in Queens before assuming his seat in the New York State Senate. The Speaker (Council Member Quinn) praised his devotion and commitment to his district especially in the wake of Hurricane Sandy and wished him well in the State Senate. The floor was briefly yielded to Council Member Sanders who thanked the Speaker (Council Member Quinn), his colleagues, and all those assembled.

At this point, the Speaker (Council Member Quinn) asked for a Moment of Silence in memory of the following individuals:

On December 14, 2012, Louis Alexander Carrington, 84, father of Council Member Debi Rose, passed away due to complications of a heart attack. Mr. Carrington served in the U.S. Army during the Korean War and was a N.Y.C. Department of Corrections officer for 23 years. Along with his fellow corrections officers, firefighters, and police fighters, he helped found a community organization, FIPOCO, which raised money to help people in need in Staten Island. Mr. Carrington is survived by his daughter Debi, his son Wayne, three brothers and a sister, two grandchildren and one great grandson, his companion of twenty eight years, Barbara, and his former wife, Debi's mother Muriel.

Dr. Frank J. Macchiarola, 71, chancellor of St. Francis College, died on December 18, 2012. Dr. Macchiarola served in many capacities in the public interest including: N.Y.C. Schools Chancellor, N.Y.C. Charter Commission chair, N.Y.C. Districting Commission chair, first chair of the N.Y.C. Campaign Finance Board, Deputy Director of the New York State Emergency Financial Control Board for New York City, a labor mediator, president of the New York City Partnership, Inc. and a professor at Columbia University and CUNY. At this point, the floor was yielded to Council Member Ulrich who spoke in respectful memory of Dr. Macchiarola.

At this point, the Speaker (Council Member Quinn) offered the Council's thoughts and prayers to the victims and the families of the December 14, 2012 school shooting tragedy at Sandy Hook Elementary School in Newton, Connecticut. The Speaker (Council Member Quinn) asked that we never forget the children and the heroes of that day, those that were killed and those that survived. In addition, the Speaker (Council Member Quinn), while acknowledging the debate on gun control,

called for a recommitment by the Council as a legislative body to the national effort to end the scourge of gun violence in the city and the country.

COMMUNICATION FROM CITY, COUNTY & BOROUGH OFFICES

M-1002

Communication from the Board of Elections - Submitting the Certification of Election of Andrew L. King, as the new Council Member of the 12th Councilmanic District, Bronx County.

(The following is the last page of the New York City Board of Elections' Statement and Return Report for Certification in regard to the 12th Council District election held on November 6, 2012:)

BOARD OF ELECTIONS IN THE CITY OF NEW YORK PRINTED AS OF: 12/18/2012 9:47:31AM		Statement and Return Report for Certification General Election - 11/06/2012 Bronx County All Parties and Independent Bodies Member of the City Council (12th Council District), vote for 1	
Total for Member of the City Council (12th Council District) - Bronx County			
PUBLIC COUNTER	52,297		
EMERGENCY	21		
ABSENTEE/MILITARY	1,382		
FEDERAL	179		
SPECIAL PRESIDENTIAL	0		
AFFIDAVIT	4,619		
Total Ballots	58,498		
Less - Inapplicable Federal/Special Presidential Ballots	(179)		
Total Applicable Ballots	58,319		
ANDY KING (PEOPLE FIRST)	34,270		
ANDY KING (COMMUNITY FIRST)	1,310		
NEVILLE MITCHELL (UNITED NEIGHBORS)	2,015		
GARTH MARCHANT (CHILDREN FIRST)	1,306		
JOSEPH NWACHUKWU (TOGETHER WE CAN)	1,311		
PAMELA A. JOHNSON (UNITY IN THE COMM)	1,956		
CHERYL S. OLIVER (SOLIDARITY)	2,468		
CHARLES BARON (WRITE-IN)	1		
CHRISTOPHER SUJ (WRITE-IN)	1		
CLYDE VANEL (WRITE-IN)	1		
DAVE GORDON (WRITE-IN)	1		
HOWARD STERN (WRITE-IN)	1		
JOHN W HOUSTON (WRITE-IN)	1		
MICHAEL WELCH (WRITE-IN)	1		
NADILUS ROJAS (WRITE-IN)	1		
PHIL DONAHUE (WRITE-IN)	1		
UNATTRIBUTABLE WRITE-IN (WRITE-IN)	2		
VALERIE RIGANO (WRITE-IN)	1		
Total Votes	44,648		
Unrecorded	13,671		

We certify this statement to be correct, and have caused the same to be attested by the signatures of the members of the board, or a majority thereof, on 12-18-2012 Date

John P. Gulino Chairman
Nancy Mitchell Schacher Deputy Chief Clerk
John P. Gulino Canvassing Board
Nancy Mitchell Schacher Canvassing Board
John P. Gulino Deputy Chief Clerk

Received, Ordered, Printed & Filed.

At this point, the City Clerk and Clerk of the Council (Mr. McSweeney) performed the formal swearing-in ceremony of Andrew L. King who took his oath of office as the new Council representative for the 12th Council District in the Bronx. The floor was yielded to Council Member King who spoke briefly to all assembled.

Preconsidered M-1003

Communication from the Richmond County Democratic County Committee recommending Maria Guastella to the Council for re-appointment to the New York City Board of Elections.

November 27, 2012

Honorable Christine Quinn
 Speaker of the City Council
 250 Broadway
 Suite 1856

New York, New York 10007
 November 27, 2012

Dear Speaker Quinn:

Enclosed please find a Certificate of Recommendation for the Re-appointment of Maria R. Guastella, Esq. as Richmond County Democratic Commissioner of Elections.

Ms. Guastella is an extremely qualified candidate for the position of Commissioner of Elections. She has been a trial lawyer for over 18 years and is currently in private practice in Richmond County, specializing in litigation in the State and Federal Courts. The Democratic Committee of Richmond County's Executive Committee voted unanimously for her to fill this vacancy.

As you are aware, Commissioner Guastella has served since July, 2012 and is currently the President of the Board.

This appointment is very important to me on both a personal and professional level. I want to thank you in advance for your time and consideration in this regard.

Sincerely Yours,

John P. Gulino
 County Chairman

**STATE OF NEW YORK
 BOARD OF ELECTIONS**

**ELECTION COMMISSIONER CERTIFICATE
 (New York City only)**

To the Clerk of the City Council of the City of New York

I certify that:

At a meeting of the Executive Committee County Committee of the County of Richmond, held on the 20th day of November, 2012, at Staten Island, New York, under the provisions of the Election Law and rules of the County Committee, a quorum being present, Maria R. Guastella, residing at 165 Wheeling Avenue, Staten Island, New York, 10309, was recommended by majority said committee as a suitable and qualified person for appointment to the office of Commissioner of Elections

For the term beginning January 1, 2013

To fill an existing vacancy in said office for the remainders of the current term.

And that said designee is a registered voter of the County of Richmond and a duly enrolled member of the Democratic Party.

Dated at Staten Island, New York
 November 20, 2012

John P. Gulino
 John P. Gulino, Chairman

Referred to the Committee on Rules, Privileges and Elections.

M-1004

Communication from the Kings County Democratic County Committee - Withdrawing the name of Julie R. Dent for consideration by the Council regarding her re-appointment to the Office of Commissioner of Elections (M 979).

December 14, 2012

Hon. Michael McSweeney
 Clerk of the Council of the City of New York
 141 Worth Street
 New York, NY 10013

Re: Kings County Democratic Party recommendation of a suitable and qualified candidate to be appointed as a Commissioner of the Board of Elections in the City of New York

Dear Mr. McSweeney,

Pursuant to the telephone conversation between my counsel, Frank V. Carone and Charles Davis, Director of the Appointment Investigation Unit of the New York City Council, it is the desire of Board of Elections Commissioner Julie R. Dent to withdraw her name from consideration by the Council for a second term.

Kindly confirm that such withdrawal will not impinge on the sovereign authority of the Democratic County Committee in Kings County to proffer the name of her successor, subject to the subsequent confirmation by the Council.

Please feel free to contact me if you have any questions or if you need to discuss this matter further.

Very truly yours,

Frank R. Seddio
Chairman of the Executive Committee

Received, Ordered, Printed and Filed.

M-1005

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a new base station license Northeast Queens Car Service, Council District 2, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(For text of the TLC letter, please see City Hall Library, 31 Chambers Street, Suite 112, New York, N.Y. 10007).

Referred to the Committee on Transportation.

M-1006

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license A & S Limousine Service Corp., Council District 41, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1007

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license BBA Management Inc., Council District 48, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1008

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license Broad Dyckman Car Service Inc., Council District 10, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1009

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license Fanny Radio Dispatcher Service Inc., Council District 28, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1010

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license Keykab Service Inc., Council District 9, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1011

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license Lindenbaum Supply Co. Inc. D/b/a Court Express Car & Limousine Service, Council District 39, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1012

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license Metropolitan Multiplex Car Service Corp., Council District 34, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1013

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license New Golden Horse Car & Limousine Service Inc., Council District 20, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1014

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license NY88 Express Corp., Council District 38, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1015

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license Omega Car Service Inc., Council District 31, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1016

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license Premium Radio Dispatcher & Multi Service, Council District 7, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1017

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license U.C. Columbus Radio Dispatch Inc., Council District 8, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1018

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal base station license New Webster Car Service Inc., Council District 15, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1019

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a renewal and ownership change base station license Monaco Limo. & Car Services Inc., Council District 35, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1020

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a relocation base station license Clean Air Car Service & Parking Corp., Council District 20, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1021

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a relocation base station license Double A Car Service Inc., Council District 49, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1022

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a relocation base station license Easy Fast Car Service Inc., Council District 45, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1023

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a relocation base station license Reyno Car Service Inc., Council District 10, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1024

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a relocation base station license Washington Radio Dispatch Inc., Council District 10, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

M-1025

Communication from the Taxi & Limousine Commission – Submitting its approval of an application for a relocation and ownership change base station license The Central Radio Dispatch Inc., Council District 34/42, pursuant to Section 19-511(i), of the administrative code of the city of New York.

(Please refer to M-1005 printed in these Communications from City, County and Borough Offices section of these Minutes)

Referred to the Committee on Transportation.

REPORTS OF THE STANDING COMMITTEES

Report of the Committee on Contracts

Report for Int. No. 911-A

Report of the Committee on Contracts in favor of approving and adopting, as amended, a Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to opportunities for minority and women owned business enterprises and emerging business enterprises in city procurement.

The Committee on Contracts, to which the annexed amended proposed local law was referred on August 22, 2012 (Minutes, page 3336), respectfully

REPORTS:

Introduction

On December 17, 2012, the Committee on Contracts (the Committee), chaired by Council Member Darlene Mealy, will meet to vote on Proposed Int. No. 911-A (the bill), which would revise Local Law 129 of 2005 (Local Law 129 or the law) to update and improve the City's Minority and Women-owned Business Enterprise (M/WBE) program.

The Committee held a hearing on a prior version of the bill on October 4, 2012.

Background

Local Law 129

The Council enacted Local Law 129 in 2005 in order to address the under-utilization of minority and women owned business enterprises in city contracting.¹ The law sets forth city-wide goals for the participation of M/WBEs in certain categories of contracts.

A city cannot institute remedial measures to overcome discrimination in city contracting absent a showing that disparities exist. In *Richmond v. J.A. Croson*, the Supreme Court held that race-based remedies in the area of public contracting must withstand a level of review known as "strict scrutiny," which requires a government enacting a race-conscious remedy to show that the remedy is narrowly tailored to meet a compelling governmental interest.²

To assemble the factual evidence required under *Croson*, in 2004, the Council commissioned a study to assess the participation of M/WBEs in City contracting.³ The study found that M/WBEs were not receiving a fair share of City contracts relative to their capacity and availability in the City procurement marketplace. In each of the industry classification groups covered under the study, there was a statistically significant disparity in contracting opportunities afforded M/WBEs.⁴ In response to the study's findings, the Council enacted Local Law 129 to enhance the capacity of M/WBEs to compete for City business and thereby increase competition in City contracts for goods and services, reduce fraud and favoritism in the procurement process, and ultimately lower contracting costs for the City.

Current Parameters of the M/WBE Program

The M/WBE program seeks to expand government contracting opportunities for M/WBEs by establishing citywide participation goals for each of the qualifying categories of M/WBE participants. The goals consist of target percentages of annual agency expenditures on contracts for construction, architectural and engineering, professional, and standard services, and goods. In addition to several categories of contracts that are exempt from the program—for example, contracts subject to federal and state requirements, emergency procurements, sole source procurements, small purchases, and contracts with non-profits—significantly, the M/WBE goals only apply to contracts valued at \$1 million and below. Thus, although the City spends billions of dollars each year in procurement, only 15% of the City's total contract portfolio for fiscal year 2012 was subject to the M/WBE goals.⁵

It merits emphasis that the goals prescribed in the law are aspirational; they are not quotas or set-asides to which agencies are legally required to adhere. In addition to the conditions mandated by *Croson*, the City is bound by New York State General Municipal Law,⁶ which requires that all qualifying contracts be awarded to the lowest responsible bidder.⁷ This means that the City must award a qualifying public contract to the firm submitting the lowest responsible bid and is forbidden from awarding contracts by any other means. Accordingly, the M/WBE program relies on aspirational goals because the City cannot require that its agencies award a certain number or value of contracts to any particular group; it can only work to ensure that groups that have been historically underrepresented in the procurement process have equal opportunity to submit competitive bids for government contracts.

Application of Local Law 129

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¹ See Briefing Paper, *A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the enhancement of opportunities for minority and women owned business enterprises in city contracting*, Dec. 20, 2005, Committees on Contracts and Economic Development.

² *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989).

³ *Supra* note 1.

⁴ For prime contracts, the following industry classifications were studied: construction, architectural and engineering, professional services, such as legal and consulting services, standard services, such as janitorial services, and goods. For subcontracts, the following three industry classifications were studied: construction, architecture and engineering, and professional services. The groups studied were: African Americans, Hispanic Americans, Asian Americans, Native Americans and Caucasian females.

It should be noted that the 2005 study did not find a disparity for certain groups in select industries – for example, the study showed participation by WBEs in construction subcontracts and by Asian-American firms in professional services subcontracts to be commensurate with their respective marketplace availability. In the cases where no disparity was found, no goals were set.

⁵ See Mayor's Office of Contract Services, *Agency Procurement Indicators, Fiscal Year 2012*, at 68.

⁶ General Municipal Law governs all contracts for public work with expenditures of greater than \$20,000 and all purchase contracts with expenditures of greater than \$10,000.

⁷ See Gen. Mun Law § 103. Please note that New York State recently passed an amendment to the State Finance Law that would allow localities to exercise some preference for M/WBEs in procurement. See State Fin. Law § 163(j). The City has not yet implemented this law.

Agencies have struggled to achieve the M/WBE participation goals established by the law.⁸ Since the law was enacted, through M/WBE forums, stakeholder meetings, and six Council oversight hearings,⁹ advocates have raised questions about the effectiveness of Local Law 129. Some have challenged agencies' implementation of the law, attributing repeated failure to reach goals to shortcomings in the management of the program.¹⁰ Others have been eager for the City to conduct a new disparity study, on the basis that current conditions might indicate sufficient underutilization to adjust the goals set forth in the law, particularly to establish a goal for women in construction.¹¹ Many also expressed concern that the \$1 million cap on program eligible contracts hindered utilization of M/WBEs on the City's largest projects, which in turn limited the impact of the law and prevented M/WBEs from building the necessary capacity to ultimately thrive outside of the program.¹² Finally, some believed that the program did not adequately protect against abuses from companies fraudulently certified as operated by minorities and women.¹³

Proposed Int. No. 911-A revises Local Law 129 to improve the M/WBE program in several ways. As discussed in greater detail below, the legislation, among other things:

(i) updates the participation goals in the law; (ii) enlarges the universe of available contracts by, among other measures, eliminating the \$1 million cap on M/WBE contracts;

(iii) establishes an accountability system to better enforce the law; (iv) enhances transparency of agencies' progress towards M/WBE goals; (v) and requires the implementation of measures to minimize fraud.

Revisions to Int. No. 911

Following the October 4, 2012 hearing on Int. No. 911, the legislation was revised to address concerns raised by stakeholders and to clarify provisions in the bill. The key revisions include the following:

- Int. No. 911 included a goal for "Caucasian Females" based on the City's data review to update the participation goals established by the 2005 disparity study.¹⁴ Advocates expressed concern that minority women, who may face discrimination on the basis of both race/ethnicity and gender, were excluded from the women's category.¹⁵ Upon evaluating its availability and utilization data, the City determined that the participation of minority women in program-eligible contracts could count towards the goals set for Caucasian women.¹⁶ Accordingly, Proposed Int. No. 911-A now includes a goal for "Women."¹⁷ The bill also makes clear that when crediting the participation of firms that are dually certified—as minority owned business enterprises and women owned business enterprises—such firms may not be counted towards more than one goal.¹⁸ Under Proposed Int. No. 911-A, the City must report the number and value of contracts awarded to dually certified firms.¹⁹

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⁸ For example, in Fiscal Year 2010, agencies achieved only 22% of the goal value pursuant to Local Law 129 (M/WBEs were awarded \$69,543,466 of a total goal value of \$312,971,510); in Fiscal Year 2011, agencies achieved 48% of the goal value (\$72,921,763 of \$152,959,487). See Department of Small Business Services, *New York City Minority and Women Owned Business Enterprise Program: 2011 Progress Report*, at 5.

⁹ *Oversight – MWBE: IMPLEMENTATION OF LOCAL LAW 129 OF 2005*, Sept. 28, 2006, Committee on Contracts; Transcript, *Oversight - Implementation of Local Law 129 of 2005 (MWBE)*, Oct. 31, 2006, Committee on Contracts; Transcript, *Oversight – A Closer Look at the Preliminary Report on MWBE Compliance*, June 13, 2007, Committee on Contracts; Transcript, *Oversight - MWBE Compliance*, June 24, 2008, Committees on Contracts, Small Business, Civil Rights, and Women's Issues; Transcript, *Oversight: The Department of Small Business Services' Compliance with Local Law 129 and Administration of the MWBE program*, Nov. 24, 2009, Committees on Contracts and Small Business; Transcript, *Oversight - Local Law 129 and the Administration of the MWBE Program*, Nov. 15, 2010, Committees on Contracts and Small Business.

¹⁰ See, e.g., Testimony of Walter McCaffrey, Transcript, *Oversight - Local Law 129 and the Administration of the MWBE Program*, Nov. 15, 2010, Committees on Contracts and Small Business, at 145 ("There has to be a sense of urgency on the part of the [A]dministration to do better. If the Mayor wants to get salt out of Campbell's soup, you hear him on TV. Have you ever heard a commissioner being berated by the Mayor or Deputy Mayor for not doing better in terms of the Local Law? Certainly not the case. So I recommend to you that a Deputy Mayor be appointed. Not [the director of MOCS, who] doesn't have any authority over any agency in reality, in sum and substance.... The wonderful folks at SBS lack the authority or the might of a Deputy Mayor to come in and to breathe fire at a commissioner.").

¹¹ See, e.g., Testimony of Maureen Fritch, Transcript, *Oversight – MWBE: IMPLEMENTATION OF LOCAL LAW 129 OF 2005*, Sept. 28, 2006, Committee on Contracts, at 110 ("[T]he disparity study shows that there is no disparity for women, but that is not necessarily true. . . . there are no goals presently set for WBE firms of general contracting and subcontracting categories. This must be corrected.").

¹² See, e.g., Testimony of Quenia Abreu, Transcript, *Oversight: The Department of Small Business Services' Compliance with Local Law 129 and Administration of the MWBE program*, Nov. 24, 2009, Committees on Contracts and Small Business, at 110 ("With Local Law 129, we do run into, you know, certain problems with the \$1 million threshold. . .").

¹³ See, e.g., Participant comments, *State of Women in Business Roundtable*, Mar. 27, 2012, New York Women's Chamber of Commerce (notes on file with Committee staff).

¹⁴ See Int. No. 911, §2, §6-129(d); Committee Report, *Int. No. 911*, Oct. 4, 2012, Committee on Contracts.

¹⁵ See, e.g., Testimony of Quenia Abreu, Cheryl McKissack, Sharon Sinaswee, Lenore Janis, Transcript and Testimony, *Int. No. 911*, Oct. 4, 2012, Committee on Contracts.

¹⁶ See Mayor's Office of Contract Services, *Disparity Data Analysis: Availability and Utilization of Minority- and Women-Owned Business Enterprises*. A version of the Analysis (that omits its own Appendix A, a draft of Int. No. 911) is attached at Appendix A.

¹⁷ Proposed Int. No. 911-A, §2, §6-129(d).

¹⁸ Proposed Int. No. 911-A, §2, §6-129(j).

¹⁹ Proposed Int. No. 911-A, §2, §6-129(l)(1)(b).

• Proposed Int. No. 911-A amends the criteria upon which firms graduate out of the M/WBE program. Int. No. 911 required graduation once a firm met industry-specific size standards established by the U.S. Small Business Administration for three years.²⁰ Proposed Int. No. 911-A incorporates that requirement and, to address historic discrimination in City contracting more fully, adds an additional requirement that a firm receive at least fifty million dollars in City contracts over three years.²¹

• Building upon the participation requirements of agency M/WBE officers at quarterly accountability meetings, Proposed Int. No. 911-A requires agency heads (i.e., commissioners) to join their agency M/WBE officers at such meetings twice per year.²²

• To provide the Administration sufficient time to prepare to implement the law, Proposed Int. No. 911-A sets the effective date of the law at July 1, 2013.²³

Proposed Int. No. 911-A

Updated Goals

Local Law 129 mandated that the Administration review the availability and utilization rates of M/WBEs by industry classification and minority group every two years.²⁴ The Administration conducted this review and analysis and determined that disparities still exist in the availability and utilization of minority groups across industries.²⁵ The bill would, accordingly, update the citywide goals established in the law to reflect the disparities found in the Administration's recent analysis. A chart showing M/WBE goals under both Local Law 129 and Proposed Int. No. 911-A is below.

M/WBE Goals²⁶				
	African American	Asian American	Hispanic American	Women
Construction Services				
<i>Local Law 129</i>	12.63%	No goal	9.06%	No goal
<i>Proposed Int. No. 911-A</i>	8%	8%	4%	18%
Goods				
<i>Local Law 129 (<\$1m)</i>	7.47%	5.19%	4.99%	17.87%
<i>Proposed Int. No. 911-A (<\$100k)</i>	7%	8%	5%	25%
Professional Services				
<i>Local Law 129</i>	9.00%	No goal	5.00%	16.50%
<i>Proposed Int. No. 911-A</i>	12%	No goal	8%	37%
Standardized Services				
<i>Local Law 129</i>	9.23%	No goal	5.14%	10.45%
<i>Proposed Int. No. 911-A</i>	12%	3%	6%	10%

Consistent with the current law, under Proposed Int. No. 911-A, each agency would establish its own set of goals in M/WBE utilization plans.²⁷ However, the bill clarifies that agency goals and goals set for individual procurements should be determined in part by the citywide goals, but also by the size and nature of the agency's projects and the availability of M/WBEs capable of performing the contracts.²⁸ In the aggregate, goals established in agency utilization plans may not exceed the citywide goals.²⁹

Universe of Contracts to which Goals Apply

When conducting its recent review of availability and utilization, the Administration determined that M/WBEs had capacity to compete for contracts worth more than \$1 million.³⁰ While the goals in Local Law 129 were tethered to the \$1 million cap established by the original disparity study, the bill would remove any limitation on the size of the contracts eligible for inclusion in the M/WBE program.³¹ With the exception of goods—an area where the Administration determined that the majority of contracts valued at more than \$100,000 were not procured locally, and, accordingly, goals were only assigned for contracts valued at less than \$100,000—contracts of all sizes would now fall within the scope of the M/WBE law. As a result

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²⁰ Int. No. 911, §2, §6-129(c)(20).

²¹ Proposed Int. No. 911-A, §2, §6-129(c)(20).

²² Proposed Int. No. 911-A, §2, §6-129(m)(1).

²³ Proposed Int. No. 911-A, §4.

²⁴ Local Law 129, §6-129(d)(A).

²⁵ See Mayor's Office of Contract Services, *Disparity Data Analysis: Availability and Utilization of Minority- and Women-Owned Business Enterprises*. A version of the Analysis (that omits its Appendix A, a draft of Int. No. 911) is attached at Appendix A. Also, attached at Appendix B is *Review of City of New York's Disparity Data Analysis*, a report prepared by Miller³ Consulting, Inc. in support of the methodology and findings of the City in its *Disparity Data Analysis*.

²⁶ Local Law 129, §6-129(d)(1); Proposed Int. No. 911-A, §2, §6-129(d)(1).

²⁷ Local Law 129, §6-129(d)(2); Proposed Int. No. 911-A, §2, §6-129(d)(2).

²⁸ Proposed Int. No. 911-A, §2, §6-129(d)(2)(b), (d)(3), (g)(1)(a).

²⁹ Proposed Int. No. 911-A, §2, §6-129(g)(4).

³⁰ See Appendix A.

³¹ Proposed Int. No. 911-A, §2, §6-129(d)(1).

of this shift, the value of program eligible contracts is estimated to more than quadruple, from \$443 million to \$2.2 billion.³²

In addition, the bill would adopt a total business model approach to establishing goals and assigning credit towards reaching goals.³³ This means that a goal set by an agency would be achievable through a combination of M/WBE participation in prime contracts, subcontracts, sub-subcontracts,³⁴ and joint ventures.³⁵ Further, for any procurement, an agency would be able to establish specific goals for individual groups and/or for types of services, or create a larger overall M/WBE goal that might be achieved through a combination of groups and services.³⁶

Accountability Program

To better ensure that agencies fulfill their obligations under the law, the bill would establish an accountability program, called M/WBEStat. The program would be modeled loosely on the New York Police Department's CompStat program, a method of fighting crime by analyzing crime statistics and convening precinct leaders before the highest levels of the department to answer for the statistics and to share successful tactics.³⁷ M/WBEStat would require agency M/WBE officers with significant portfolios of M/WBE-eligible contracts (those agencies required to submit agency utilization plans) to convene on a quarterly basis to discuss their progress towards reaching M/WBE goals with a high-ranking City official³⁸ who would hold these agency officers accountable for their progress or lack thereof and work with them as a group to impart best practices.³⁹ Twice per year, agency heads (commissioners) must also participate in these meetings.⁴⁰

Enhanced Reporting

To increase transparency of agency M/WBE performance, the bill improves upon the current reporting scheme in the Local Law 129. First, the law calls for semi-annual reporting on M/WBE progress—a report on the first six months of the fiscal year, and a report for the entire fiscal year at the year's conclusion.⁴¹ The bill would increase the frequency of reporting to require quarterly reports.⁴² Such quarterly reports would provide the M/WBE data that would serve as the foundation for the quarterly M/WBEStat meetings.⁴³

In addition, beyond the quantitative data provided within the quarterly reports, the bill would also require agencies to provide qualitative information regarding their efforts to reach M/WBE goals. Any agency that failed to reach its M/WBE goals set in the preceding fiscal year would be required to issue a performance improvement plan detailing the steps that the agency intends to take to increase M/WBE participation.⁴⁴

Finally, to provide advanced notice to M/WBEs and other contractors regarding contract opportunities, the bill would require the SBS Commissioner to provide an annually updated schedule and plan from each agency of the contracts that they anticipate entering into in the upcoming fiscal year, which must be posted online.⁴⁵

Certification and Directory Improvements

To deter fraud, the bill would require the SBS to establish guidelines for the performance of site visits on a proportion of firms seeking certification.⁴⁶ The law currently permits site visits as an audit function, but not as a pre-certification measure.⁴⁷

To minimize the administrative burden on firms that have been certified as M/WBEs by other governmental entities, the bill would also require SBS to establish guidelines to recognize certification from other entities.⁴⁸ SBS would set standards for crediting outside certifications such that a firm's application for City certification would be streamlined to require a limited amount of additional information.

Finally, to facilitate outreach to and utilization of M/WBEs, the bill would require SBS to enhance its public online directory that would include categories of information regarding each certified M/WBE, such as market sector, bonding capacity, recent job history, and union affiliation, if any.⁴⁹

Additional Revisions

In addition to the key revisions described above, the remaining substantive changes to Local Law 129 of 2005 are as follows:

- The bill would establish the position of director, an individual who would administer M/WBEStat. The director position is intended to be filled by a high ranking City official who would be designated by the Mayor, who either reports directly to the Mayor or is a commissioner.⁵⁰

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³² See Appendix A.

³³ Proposed Int. No. 911-A, §2, §6-129(d)(1), (i)(1), (j).

³⁴ Proposed Int. No. 911-A, §2, §6-129(i)(7), (j).

³⁵ Proposed Int. No. 911-A, §2, §6-129(i)(1), (i)(3).

³⁶ Proposed Int. No. 911-A, §2, §6-129(i)(1).

³⁷ See Silverman, Eli, 1999, *NYPD Battles Crime-Innovative Strategies in Policing*, Boston: Northeastern University Press.

³⁸ Proposed Int. No. 911-A, §2, §6-129(m)(1), (f)(11).

³⁹ Proposed Int. No. 911-A, §2, §6-129(m)(1).

⁴⁰ Proposed Int. No. 911-A, §2, §6-129(m)(1).

⁴¹ Local Law 129, §6-129(l).

⁴² Proposed Int. No. 911-A, §2, §6-129(l)(1).

⁴³ Proposed Int. No. 911-A, §2, §6-129(m)(1).

⁴⁴ Proposed Int. No. 911-A, §2, §6-129(l)(3).

⁴⁵ Proposed Int. No. 911-A, §2, §6-129(g)(5).

⁴⁶ Proposed Int. No. 911-A, §1, §1304(e)(7).

⁴⁷ Local Law 129, §1304(e)(7).

⁴⁸ Proposed Int. No. 911-A, §1, §1304(e)(6)(e).

⁴⁹ Proposed Int. No. 911-A, §1, §1304(e)(11).

⁵⁰ Proposed Int. No. 911-A, §2, §6-129(c)(14).

- As a contract management function, the bill would require each contracting agency to review its contractors' progress towards attaining the M/WBE goals for procurements at least once annually during the term of such contract.
- As previously indicated, the bill would redefine graduate M/WBEs according to both size standards established by the U.S. Small Business Administration and the value of City contracts awarded,⁵¹ and SBS would apply those standards to determine whether M/WBEs remain eligible to participate in the program.⁵²
- The bill would define indirect subcontractor and allow agencies to credit towards M/WBE participation goals the work of indirect subcontractors identified by the City Chief Procurement Officer as program-eligible.⁵³
- The Administration would be required to perform its next review and analysis of the availability and utilization of M/WBEs in 2015, with subsequent reviews conducted at least once every two years.⁵⁴
- Further to the law's requirement that SBS conduct educational programs for M/WBEs, the bill would require SBS to hold meetings with M/WBEs to outline the evaluation of bids and proposals.⁵⁵ The bill would also require SBS to inform contractors of opportunities to partner or subcontract with M/WBEs⁵⁶ and to encourage joint ventures.^{57,58}
- The bill would require agencies to set specific participation goals for purchases of less than \$20,000 and less than \$100,000.⁵⁹
- The bill would exempt contracts for capital projects valued at more than \$25 million from the law's requirement that agencies submit bids/proposals for contracts valued over \$10 million to the city chief procurement officer for determination of whether they should be broken into smaller pieces.⁶⁰
- An agency would have until the date that a subcontractor completes the work on a contract to have the subcontracting company certified as an M/WBE and therefore receive credit for that company's participation.⁶¹
- The bill would require reporting of contracts, disaggregated by size, in bands of \$20,000 or less, \$20,000 - \$100,000, \$100,000 - \$1 million, \$1 million - \$25 million, and more than \$25 million.⁶²
- Building upon the grounds for waiver currently set forth in the law, the bill would allow each agency to adjust participation goals, pre- or post- award, if it determines that the goals are unreasonable or if the scope of the project changes in a way that impacts the scale and/or types of work.⁶³
- The bill would require the Administration to report all requests for full or partial waivers and the determinations made regarding each such request,⁶⁴ not merely the waivers granted (as is the case in the current law).⁶⁵ The City would include information concerning such waiver requests in its quarterly compliance reports.⁶⁶
- The bill would define human services for the purpose of detailing the exclusion of such services from the program.⁶⁷
- The bill would incorporate architectural and engineering services into the professional services classification.⁶⁸

Please note that the bill would make a number of additional revisions to Local Law 129 in order to provide parallel updates to the program for Emerging Business Enterprises.

The legislation would become effective on July 1, 2013.

(The following is the text of the Fiscal Impact Statement for Int. No. 911-A:)

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⁵¹ Proposed Int. No. 911-A, §2, §6-129(c)(20).

⁵² Proposed Int. No. 911-A, §2, §6-129(e)(13).

⁵³ Proposed Int. No. 911-A, §2, §6-129(c)(22), (i)(j).

⁵⁴ Proposed Int. No. 911-A, §2, §6-129(d)(4)(a).

⁵⁵ Proposed Int. No. 911-A, §2, §6-129(e)(6).

⁵⁶ *Id.*

⁵⁷ Proposed Int. No. 911-A, §2, §6-129(e)(12).

⁵⁸ Note that under the law, responsibility for (1) conducting meetings with M/WBEs regarding the evaluation of bids and proposal and (2) encouraging joint ventures rested with agency M/WBE officers and agencies. Local Law 129, §6-129(h)(viii), (h)(ix).

⁵⁹ Proposed Int. No. 911-A, §2, §6-129(g)(2). Note that these levels conform with the small purchase guidelines (\$100,000) and guidelines pending before the Procurement Policy Board, first proposed on [date], for micro purchases.

⁶⁰ Proposed Int. No. 911-A, §2, §6-129(h)(2)(e).

⁶¹ Proposed Int. No. 911-A, §2, §6-129(j)(2)(c).

⁶² Proposed Int. No. 911-A, §2, §6-129(l)(1)(a).

⁶³ Proposed Int. No. 911-A, §2, §6-129(i)(11)(12).

⁶⁴ Proposed Int. No. 911-A, §2, §6-129(l)(1)(b)(iv).

⁶⁵ Local Law 129, §6-129(l)(1)(vii)(D).

⁶⁶ Proposed Int. No. 911-A, §2, §6-129(i)(11).

⁶⁷ Proposed Int. No. 911-A, §2, §6-129(c)(21), (q)(7).

⁶⁸ Proposed Int. No. 911-A, §2, §6-129(c)(11), (c)(29).



THE COUNCIL OF THE CITY OF
NEW YORK
FINANCE DIVISION
PRESTON NIBLACK, DIRECTOR
FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 911-A

COMMITTEE: Contracts

TITLE: A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to opportunities for minority and women owned business enterprises and emerging business enterprises in city procurement.

SPONSORS: By The Speaker (Council Member Quinn), and Council Members Sanders, Comrie, Dickens, Reyna, Jackson, Mark-Viverito, Mealy, Williams, Arroyo, Brewer, Chin, Crowley, Dromm, Eugene, Foster, Gentile, Gonzalez, James, Koo, Koppell, Koslowitz, Lander, Mendez, Palma, Recchia, Vann, Garodnick, Ferreras, Halloran, and Rivera

SUMMARY OF LEGISLATION: Proposed Int. 911-A would revise Local Law 129 to improve the Minority and Women-owned Business Enterprise (M/WBE) program in several ways. Proposed Int. 911-A would eliminate the \$1 million cap on the M/WBE program-eligible contracts, therefore, multiplying the total value of program-eligible contracts from the estimated \$433 million to approximately \$2.2 billion. The bill would establish an accountability program M/WBEStat, which would feature mandatory CompStat-like quarterly meetings, where a high-level Administration official would hold agency M/WBE officers accountable for their M/WBE statistics. On a semi-annual basis, commissioners would participate in these meetings to discuss their progress towards achieving MWBE goals and their efforts to increase participation in the M/WBE program. Proposed Int. 911-A would also enhance reporting by requiring: quarterly status reports of agencies' progress towards goals; annual performance improvement plans from agencies that fail to achieve goals; and annual contracting plans highlighting anticipated M/WBE-eligible procurements for each agency. The proposed legislation would also bolster the certification process by: requiring the establishment of guidelines to perform pre-certification site visits to minimize fraud; increasing information in the online directory of certified businesses (e.g., job history, project types, bonding capacity) to improve outreach to and utilization of M/WBEs; and allowing the establishment of guidelines to recognize M/WBE certification from other governmental entities.

EFFECTIVE DATE: This local law would take effect on July 1, 2013, provided that the department of small business services may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: N/A

FISCAL IMPACT STATEMENT:

	Effective FY14	FY Succeeding Effective FY15	Full Fiscal Impact FY14
Revenues	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0
Net	\$0	\$0	\$0

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 911-A:)

Int. No. 911-A

By The Speaker (Council Member Quinn), and Council Members Sanders, Comrie, Dickens, Reyna, Jackson, Mark-Viverito, Mealy, Williams, Arroyo, Brewer, Chin, Crowley, Dromm, Eugene, Foster, Gentile, Gonzalez, James, Koo, Koppell, Koslowitz, Lander, Mendez, Palma, Recchia, Vann, Garodnick, Ferreras, Rivera, Weprin, Rodriguez, Lappin, Gennaro, Greenfield, Levin and Halloran.

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to opportunities for minority and women owned business enterprises and emerging business enterprises in city procurement.

Be it enacted by the Council as follows:

Section 1. Subdivision e of section 1304 of the New York city charter, as amended by local law number 12 for the year 2006, is amended to read as follows:

e. The commissioner shall have the following powers and duties to implement the purposes of this section:

1. to direct and assist agencies in their efforts to increase participation by minority and women owned business enterprises and emerging business enterprises as contractors and subcontractors in city procurement;

2. to develop standardized forms and reporting documents;

3. to conduct, coordinate and facilitate technical assistance and educational programs;

4. to periodically review the compliance of city agencies with the provisions of local law for the identification, recruitment, certification and participation in city procurement of minority and women owned business enterprises and emerging business enterprises;

5. to annually report to the mayor and the council, as required by such local law, on the activities of the division and efforts by agencies to comply with the provisions of such local law;

6. a. to establish and operate, on behalf of the city, a centralized program for the certification of minority owned business enterprises, women owned business enterprises and emerging business enterprises for the purposes of establishing the eligibility of such businesses for participation in the programs and processes established pursuant to local law to ensure their meaningful participation in city procurement.

b. For the purposes of such certification, "minority owned business enterprise" and "women owned business enterprise" shall mean business enterprises authorized to do business in this state, including sole proprietorships, partnerships and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens who are either minority group members or women, (ii) the ownership interest of such [persons] *individuals* is real, substantial and continuing, and (iii) such [persons] *individuals* have and exercise the authority to control independently the day to day business decisions of the enterprise;

c. For the purposes of such certification, "emerging business enterprise" shall mean a business enterprise authorized to do business in this state, including sole proprietorships, partnerships and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens; (ii) the ownership interest of such [persons] *individuals* is real, substantial and continuing, (iii) such [persons] *individuals* have and exercise the authority to control independently the day to day business decisions of the enterprise; and (iv) such [persons] *individuals* have demonstrated, in accordance with regulations promulgated by the commissioner, that they are socially and economically disadvantaged. [A person] *An individual* who is "socially and economically disadvantaged" shall mean [a person] *an individual* who has experienced social disadvantage in American society as a result of causes not common to [persons] *individuals* who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. [A person's] *An individual's* race, national origin, or gender by itself, shall not qualify the [person] *individual* as "socially disadvantaged." In drafting such regulations, the commissioner shall consider criteria developed for federal programs established to promote opportunities for businesses owned by [persons] *individuals* who are socially and economically disadvantaged, including criteria for determining initial and continued eligibility in relation to the net worth of [persons] *individuals* claiming to be economically disadvantaged, provided that the net worth of [a person] *an individual* claiming disadvantage pursuant to this section must be less than one million dollars. In determining such net worth, the department shall exclude the ownership interest in the business enterprise and the equity in the primary personal residence.

d. To be eligible for certification, a business enterprise shall have a real and substantial business presence in the market for the city of New York, as defined by the commissioner pursuant to local law.

e. *The commissioner of small business services may provide by rule criteria and procedures for firms certified as minority owned businesses and women owned businesses by other governmental entities to be recognized as certified business enterprises by the city of New York.*

7. *to conduct site visits at business enterprises seeking certification, the basis for which shall be provided by rule, to verify that such business enterprises are eligible for certification;*

[7]8. to audit such certified business enterprises and periodically review and in appropriate cases recertify their eligibility for participation in programs established pursuant to local law;

[8]9. to direct and assist city agencies in their efforts to increase participation by minority owned business enterprises, women owned business enterprises and emerging business enterprises in any city-operated financial, technical, and management assistance program;

[9]10. to assist all business enterprises certified pursuant to this section in

becoming prequalified for all categories of procurement for which they may be eligible and for which contracting agencies utilize prequalification in the procurement process;

[10]11. to prepare, [and] periodically update, *and post on the website of the division* a directory of such city certified business enterprises for use by city agencies and contractors, *which shall include information for each such business enterprise, as applicable, including but not limited to: (i) identification of the market sector in which the business enterprise operates; (ii) the bonding capacity of the business enterprise; (iii) the contract price and specific tasks performed by the business enterprise for its last three contracts; (iv) the union affiliation, if any, of the certified business enterprise; and (v) the renewal date for certification;* [and]

12. to develop a clearinghouse of information on programs and services available to such business enterprises; and

[11]13. to provide such assistance to business enterprises interested in being certified as is needed to ensure that such businesses benefit from city technical, managerial, and financial assistance, and other business development programs.

§2. Section 6-129 of the administrative code of the city of New York, as amended by local law number 6 for the year 2006, is amended to read as follows:

§ 6-129. Participation by minority-owned and women-owned business enterprises and emerging business enterprises in city procurement.

a. Programs established. There are hereby established a program, to be administered by the department of small business services in accordance with the provisions of this section, designed to enhance participation by minority-owned and women-owned business enterprises in city procurement and a program, also to be administered by such department in accordance with the provisions of this section, designed to enhance participation by emerging business enterprises in city procurement.

b. Policy. It is the policy of the city to seek to ensure fair participation in city procurement; and in furtherance of such policy to fully and vigorously enforce all laws prohibiting discrimination, and to promote equal opportunity in city procurement by vigorously enforcing the city's contractual rights and pursuing its contractual remedies. The program established pursuant to this section is intended to address the impact of discrimination on the city's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for city business, and lowering contract costs.

c. Definitions. For purposes of this section, the following terms shall have the following meaning:

(1) "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Agency chief contracting officer" means the [person] *individual* to whom an agency head has delegated authority to organize and supervise the agency's procurement activity.

(3) "Availability rate" means the percentage of business enterprises within an industry classification that are owned by minorities, women or [persons] *individuals* who are socially and economically disadvantaged willing and able to perform agency contracts.

(4) "Bidder" means any person submitting a bid or proposal in response to a solicitation for such bid or proposal from an agency.

(5) "Bidders list" or "proposers list" means a list maintained by an agency that includes persons from whom bids or proposals can be solicited.

(6) "City" means the city of New York.

(7) "City chief procurement officer" means the [person] *individual* to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(8) "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the work called for in a contract. In determining whether an MBE, WBE or EBE is performing a commercially useful function, factors including but not limited to the following shall be considered:

[(i)](a) whether it has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses;

[(ii)](b) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and

[(iii)](c) whether it purchases goods and/or services from another business and whether its participation in the contract would have the principal effect of allowing it to act as a middle person or broker in which case it may not be considered

to be performing a commercially useful function for purposes of this section.

(9) "Commissioner" shall mean the commissioner of small business services.

(10) "Construction [contract]" means [any agreement with an agency for or in connection with the] construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind.

(11) "Contract" means any agreement, purchase order or other instrument whereby the city is committed to expend or does expend funds in return for goods, professional services, standard services, [architectural and engineering services,] or construction.

(12) "Contractor" means a person who has been awarded a contract *by a city agency*.

(13) "Direct subcontractor" means a person who has entered into an agreement with a contractor to provide services or perform work that is required pursuant to a contract with a city agency.

(14) "Director" means an individual designated by the mayor to perform the oversight functions of the director described in this section, who either reports directly to the mayor or is a commissioner.

[(13)](15) "Directory" means a list prepared by the division of firms certified pursuant to section 1304 of the charter.

[(14)](16) "Division" shall mean the division of economic and financial opportunity within the department of small business services.

(17) "EBE" means an emerging business enterprise certified in accordance with section 1304 of the charter.

[(17)](18) "Geographic market of the city" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

[(16)](19) "Goal" means a numerical target.

[(17)](20) "Graduate MBE," "graduate WBE" or "graduate EBE" means an MBE, WBE or EBE which shall have been awarded [prime] contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than [fifteen]fifty million dollars and whose size has exceeded the size standards established for its industry by the United States small business administration for three years.

(21) "Human services" means services provided to third parties, including social services such as day care, foster care, home care, homeless assistance, housing and shelter assistance, preventive services, youth services, and senior centers; health or medical services including those provided by health maintenance organizations; legal services; employment assistance services, vocational and educational programs; and recreation programs.

(22) "Indirect subcontractor" means a person who has entered into an agreement with a direct subcontractor to provide services or perform work that is required pursuant to the direct subcontractor's contract with a contractor.

[(18)](23) "Industry classification" means one of the following classifications:

[(i)](a) construction [services];

[(ii)](b) professional services;

[(iii)](c) standard services; and

[(iv)](d) goods.

[(19)](24) "Joint venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits and losses of the venture in reasonable proportion to the economic value of its contribution.

[(20)](25) "MBE" means a minority-owned business enterprise certified in accordance with section 1304 of the charter.

[(21)](26) "Minority group" means Black Americans; Asian Americans, and Hispanic Americans, provided that the commissioner shall be authorized to add

additional groups to this definition upon a finding that there is statistically significant disparity between the availability of firms owned by [persons] *individuals* in such a group and the utilization of such firms in city procurement.

(27) "Non-certified firm" means a business enterprise that has not been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter.

[(22)](28) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

[(23)](29) "Professional services" means services that require specialized skills and the exercise of judgment, including but not limited to accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, and construction management services.

[(24)](30) "Qualified joint venture agreement" means a joint venture between one or more MBEs, WBEs, and/or EBEs and another person, in which the percentage of profit or loss to which the certified firm or firms is entitled or exposed for participation in the contract, as set forth in the joint venture agreement, is at least 25% of the total profit or loss.

[(25)](31) "Scope of work" means specific tasks required in a contract and/or services or goods that must be provided to perform specific tasks required in a contract.

[(26)](32) "Standard services" means services other than professional services and human services.

[(27)] "Subcontractor" means a person who has entered into an agreement with a contractor to provide something that is required pursuant to a contract.]

[(28)](33) "Utilization rate" means the percentage of total contract expenditures expended on contracts or subcontracts with firms that are owned by women, minorities, or [persons] *individuals* who are socially and economically disadvantaged, respectively, in one or more industry classifications.

[(29)](34) "WBE" means a women-owned business enterprise certified in accordance with section 1304 of the charter.

[(30)] "EBE" means an emerging business enterprise certified in accordance with section 1304 of the charter.]

d. Citywide goals. (1) The citywide contracting participation goals for MBEs, WBEs and EBEs, which may be met through awards of prime contracts or subcontracts as described in subdivision j of this section, shall be as follows:

For construction contracts [under one million dollars]:

Category:	Participation goal:
Black Americans	[12.63%] 8% of total annual agency expenditures on such contracts
Asian Americans	8% of total annual agency expenditures on such contracts
Hispanic Americans	[9.06%] 4% of total annual agency expenditures on such contracts
Women	18% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For professional services contracts [under one million dollars]:

[Race/gender group]	Participation goal:
Black Americans	[9%] 12% of total annual agency expenditures on such contracts
Hispanic Americans	[5%] 8% of total annual agency expenditures on such contracts
[Caucasian females] Women	[16.5%] 37% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For standard services contracts [under one million dollars]:

[Race/gender group]	Participation goal:
Black Americans	[9.23%] 12% of total annual agency expenditures on such contracts

Asian Americans	3% of total annual agency expenditures on such contracts
Hispanic Americans	[5.14%] 6% of total annual agency expenditures on such contracts
[Caucasian females] Women	[10.45%] 10% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For goods contracts under one [million] hundred thousand dollars:

[Race/gender group] Category: Participation goal:	
Black Americans	[7.47%] 7% of total annual agency expenditures on such contracts
Asian Americans	[5.19%] 8% of total annual agency expenditures on such contracts
Hispanic Americans	[4.99%] 5% of total annual agency expenditures on such contracts
[Caucasian females] Women	[17.87%] 25% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

[For construction subcontracts under one million dollars:

Race/gender group: Participation goal:	
Black Americans	12.63% of total annual agency expenditures on such subcontracts
Asian Americans	9.47% of total annual agency expenditures on such subcontracts
Hispanic Americans	9.06% of total annual agency expenditures on such subcontracts
Emerging	6% of total annual agency expenditures on such subcontracts

For professional services subcontracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	9% of total annual agency expenditures on such subcontracts
Hispanic Americans	5% of total annual agency expenditures on such subcontracts
Caucasian females	16.5% of total annual agency expenditures on such subcontracts
Emerging	6% of total annual agency expenditures on such subcontracts

(2) (a) The division and the city chief procurement officer shall develop a citywide utilization plan for procurements of goods.

(b) Agencies shall develop agency utilization plans pursuant to subdivision g of this section. The citywide goals shall not be summarily adopted as goals for all annual agency utilization plans; rather, goals for such plans may be set at levels higher, lower, or the same as the citywide goals, subject to the approval of the commissioner as described in paragraph three of subdivision g of this section. When setting its goals, each agency shall consider the citywide goals, the size and nature of its own procurement portfolio, and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements during the year. Agencies shall seek to ensure substantial progress toward the attainment of each of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in subdivision i of this section, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals. In setting such goals, each agency shall take into account the citywide goals and the agency's annual utilization plan, the size and nature of the procurement, and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work involved in its procurements.

(4) [(A)](a) No later than 2015, [Beginning twelve months after the effective date of the local law that added this section and every two years thereafter,] the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities and women to the utilization rates of

such firms in agency contracts and direct subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. In making such revision, the commissioner shall consider the extent to which discrimination continues to have an impact on the ability of minorities and women to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals. Such review shall thereafter be conducted at least once every two years.

[(B)](b) No later than 2015, [Beginning twelve months after the effective date of the local law that added this section and every two years thereafter,] the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses. Such review shall be conducted in 2015 and at least once every two years thereafter.

e. Responsibilities of the division.

(1) The division shall create and maintain and periodically update directories by industry classification of MBEs, WBEs, and EBEs which it shall supply to all agencies, post on its website and on other relevant city websites and make available for dissemination and/or public inspection at its offices and other locations within each borough.

(2) The division shall make its resources available to assist agencies and contractors in (i) determining the availability of MBEs, WBEs, and EBEs to participate in their contracts as prime contractors and/or subcontractors; and (ii) identifying opportunities appropriate for participation by MBEs, WBEs, and EBEs in contracts.

(3) The division shall develop and maintain relationships with organizations representing contractors, including MBEs, WBEs, and EBEs, and solicit their support and assistance in efforts to increase participation of MBEs, WBEs, and EBEs in city procurement.

(4) The division shall coordinate with city and state entities that maintain databases of MBEs, WBEs, and EBEs and work to enhance city availability data and directories.

(5) The division shall keep agency M/WBE [and EBE] officers informed of conferences, contractor fairs, and other services that are available to assist them in pursuing the objectives of this section.

(6) The division shall conduct, coordinate and facilitate technical assistance and educational programs for MBEs, WBEs, and EBEs and other contractors designed to enhance participation of MBEs, WBEs, and EBEs in city procurement. The division shall further develop a clearinghouse of information on programs and services available to MBEs, WBEs, and EBEs. The division shall conduct meetings with MBEs, WBEs and EBEs to discuss what agencies look for in evaluating bids and proposals. The division shall also educate prime contractors on opportunities to partner or subcontract with certified MBEs, WBEs and EBEs.

(7) The division shall develop standardized forms and reporting documents for agencies and contractors to facilitate the reporting requirements of this section.

(8) The division shall direct and assist agencies in their efforts to increase participation by MBEs, WBEs, and EBEs in any city-operated financial, technical, and management assistance program.

(9) The division shall study and recommend to the commissioner methods to streamline the M/WBE and EBE certification process.

(10) Each fiscal year the division, in consultation with the city chief procurement officer, shall audit at least 5% of all open contracts for which contractor utilization plans [are] have been established in accordance with subdivision i of this section and 5% of all contracts awarded to MBEs, WBEs, and EBEs to assess compliance with this section. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential audit.

(11) The division shall assist agencies in identifying and seeking ways to reduce or eliminate practices such as bonding requirements or delays in payment by prime contractors that may present barriers to competition by MBEs, WBEs, and EBEs.

(12) The division shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs and EBEs.

(13) (a) The division shall, upon reviewing applications for certification and recertification, determine whether a firm qualifies as a graduate

MBE, WBE or EBE.

(b) The division shall promulgate regulations establishing a process by which a certified MBE, WBE or EBE may challenge a determination that it qualifies as a graduate MBE, WBE or EBE.

(c) At any time more than two years after the division has determined that a firm qualifies as a graduate MBE, WBE or EBE, the firm may apply to have such designation lifted. The division shall lift the designation if the firm demonstrates that it has been below the size standards established by the United States small business administration for its industry for a period of two years or more.

f. Responsibilities of agency M/WBE officers. Each agency head shall designate a deputy commissioner or other executive officer to act as the agency M/WBE officer who shall be directly accountable to the agency head concerning the activities of the agency in carrying out its responsibilities pursuant to this section, including the responsibilities relating to EBE participation. The duties of the M/WBE officer shall include, but not be limited to:

[(i)](1) creating the agency's utilization plan in accordance with subdivision g of this section;

[(ii)](2) acting as the agency's liaison with the division;

[(iii)](3) acting as a liaison with organizations and/or associations of MBEs, WBEs, and EBEs, informing such organizations and/or associations of the agency's procurement procedures, and advising them of future procurement opportunities;

[(iv)](4) ensuring that agency bid solicitations and requests for proposals are sent to MBEs, WBEs, and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

[(v)](5) referring MBEs, WBEs, and EBEs to technical assistance services available from agencies and other organizations;

[(vi)](6) reviewing requests for waivers [of target subcontracting percentages] and/or modifications of participation goals and contractor utilization plans in accordance with paragraphs 11 and/or 12 of subdivision i of this section;

[(vii)](7) working with the division and city chief procurement officer in creating directories as required pursuant to subdivision k of this section. In fulfilling this duty, the agency M/WBE officer shall track and record each contractor that is an MBE, WBE or EBE and each subcontractor hired pursuant to such officer's agency contracts that is an MBE, WBE or EBE, and shall share such information with the director, the commissioner, and the city chief procurement officer;

[(viii)](8) for contracts for which contractor utilization [goals] plans have been established pursuant to subdivision i of this section, monitoring each contractor's compliance with its utilization plan by appropriate means, which shall include, but need not be limited to, job site inspections, contacting MBEs, WBEs and EBEs identified in the plan to confirm their participation, and auditing the contractor's books and records;

[(ix)](9) monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in such plan; [and]

[(x)](10) providing to the city chief procurement officer information for the reports required in subdivision l of this section and providing any other plans and/or reports required pursuant to this section or requested by the director and/or the city chief procurement officer; and

(11) participating in meetings required pursuant to subdivision m of this section.

g. Agency utilization plans.

(1) Beginning May 15, 2006, and on April 1 of each year thereafter, each agency which, during the fiscal year which ended on June 30 of the preceding year, has made procurements in excess of five million dollars [during the fiscal year which ended on June 30 of the preceding calendar year], without counting procurements that are exempt pursuant to paragraph two of subdivision q of this section, shall submit an agency utilization plan for the fiscal year commencing in July of the year when such plan is to be submitted to the commissioner. Upon approval by the commissioner such plan shall be submitted to the speaker of the council. Each such plan shall, at a minimum, include the following:

[(i)](a) the agency's participation goals for MBEs, WBEs and EBEs for the year, provided however, that when setting its goals, each agency shall consider the citywide goals, the size and nature of its own procurement portfolio (excluding contracts described in paragraph two of subdivision q of this section), and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements

during the year;

[(ii)](b) an explanation for any agency goal that is different than the participation goal for the relevant group and industry classification as determined pursuant to subdivision d of this section;

[(iii)](c) a list of the names and titles of agency personnel responsible for implementation of the agency utilization plan;

[(iv)](d) methods and relevant activities proposed for achieving the agency's participation goals; and

[(v)](e) any other information which the agency or the commissioner deems relevant or necessary.

(2) An agency utilization plan shall set forth specific participation goals for MBEs, WBEs and/or EBEs for purchases of professional services, standard services, construction and goods valued at or below twenty thousand dollars, and for purchases of professional services, standard services, construction and goods valued at or below one hundred thousand dollars. When setting its goals for such purchases, in addition to the factors set forth in paragraph (1) of this subdivision, each agency shall specifically consider the potential for such purchases to provide opportunities for MBEs, WBEs and EBEs to develop greater capacity, thereby increasing competition for city procurements.

[(2)](3) An agency utilization plan may be amended from time to time to reflect changes in the agency's projected expenditures or other relevant circumstances and resulting changes in such agency's participation goals. Such amendments shall be submitted to the commissioner, the city chief procurement officer and the speaker of the council at least thirty days prior to implementation.

(4) Prior to approving individual agency utilization plans, the commissioner, in consultation with the city chief procurement officer, shall consider whether such plans viewed in the aggregate establish any goals exceeding the corresponding citywide goals set forth in subdivision d of this section. If any aggregated goals are found to exceed the corresponding citywide goal, the commissioner shall require agencies to adjust their goals so that plans, viewed in the aggregate, do not establish goals exceeding the citywide goals. Nothing in this paragraph shall be construed to limit the awards of contracts and subcontracts that may be made to MBEs, WBEs and EBEs without using goals.

(5) The commissioner, in consultation with the city chief procurement officer, shall, no later than July 31 of each year, publish on the division's website a plan and schedule for each agency detailing the anticipated contracting actions for the upcoming fiscal year that form the basis for the agency utilization plan of each such agency. The plan and schedule shall include information specific to each prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the specific type and scale of the services and/or goods to be procured, the term of the proposed contract, the method of solicitation the agency intends to utilize, and the anticipated fiscal year quarter of the planned solicitation.

h. Achieving agency participation goals.

(1) Each agency head shall be directly accountable for the goals set forth in his or her agency's utilization plan.

(2) Each agency shall make all reasonable efforts to meet the participation goals established in its agency utilization plan. Agencies shall, at a minimum, use the following methods to achieve participation goals:

[(i)](a) Agencies shall engage in outreach activities to encourage MBEs, WBEs and EBEs to compete for all facets of their procurement activities, including contracts awarded by negotiated acquisition, emergency and sole source contracts, and each agency shall seek to utilize MBEs, WBEs and/or EBEs for all types of goods, services and construction they procure.

[(ii)](b) Agencies shall encourage eligible businesses to apply for certification as MBEs, WBEs and EBEs and inclusion in the directories of MBEs, WBEs and EBEs. Agencies shall also encourage MBEs, WBEs and EBEs to have their names included on their bidders lists, seek pre-qualification where applicable, and compete for city business as contractors and subcontractors. Agencies are encouraged to advertise procurement opportunities in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations, and send written notice of specific procurement opportunities to minority and women's business organizations.

[(iii)](c) All agency solicitations for bids or proposals shall include information referring potential bidders or proposers to the directories of MBEs, WBEs and EBEs prepared by the division.

[(iv)](d) In planning procurements, agencies shall consider the effect of the scope, specifications and size of a contract on opportunities for participation by MBEs, WBEs and EBEs.

[(v)] For construction contracts, agencies shall consider whether to enter into separate prime contracts for construction support services including, but not limited to, trucking, landscaping, demolition, site clearing, surveying and site security.]

[(vi)](e) Prior to soliciting bids or proposals for contracts valued at over ten million dollars, *other than contracts for capital projects valued at over twenty-five million dollars and contracts that are exempt pursuant to paragraph two of subdivision q of this section*, an agency shall submit the bid or proposal to the city chief procurement officer for a determination whether it is practicable to divide the proposed contract into smaller contracts and whether doing so will enhance competition for such contracts among MBEs, WBEs and EBEs and other potential bidders or proposers. If the city chief procurement officer determines that it is both practicable and advantageous in light of cost and other relevant factors to divide such contracts into smaller contracts, then he or she shall direct the agency to do so.

[(vii)](f) Agencies shall examine their internal procurement policies, procedures and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs and EBEs in city procurement.

[(viii)] Agency M/WBE officers shall, in accordance with guidelines established by the city chief procurement officer, establish a process for quarterly meetings with MBEs, WBEs and EBEs to discuss what the agency looks for in evaluating bids and proposals.

(ix) Agencies shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs and EBEs.]

i. Participation goals for [construction and professional services] contracts *for construction and professional and standard services*.

(1) Prior to issuing the solicitation of bids or proposals for individual [construction and professional services] contracts, agencies shall establish [a target subcontracting percentage for the contract and] participation goals for MBEs, WBEs and/or EBEs. [The "target subcontracting percentage" for the contract shall represent the percentage of the total contract which the agency anticipates a typical prime contractor in the relevant industry would in the normal course of business award to one or more subcontractors for amounts under one million dollars. The participation goals established for a contract shall represent a percentage of the total dollar value of all subcontracts for amounts under one million dollars pursuant to the award]. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to subdivision d of this section. *Taking into account the factors listed in this subdivision, an agency may establish a goal for a procurement that may be achieved by a combination of prime contract and subcontract dollars, a combination of construction and services performed pursuant to the contract, and/or a combination of MBEs, WBEs and/or EBEs. Alternatively, an agency may establish specific goals for particular types of services, and/or goals for particular types of certified firms.* In determining the participation goals for a particular contract, an agency shall consider the following factors:

[(i)](a) the scope of work;

[(ii)](b) the availability of MBEs, WBEs and EBEs able to perform the particular tasks required in the contract;

[(iii)](c) the extent to which the type and scale of work involved in the contract [presents] *present prime contracting and subcontracting opportunities for amounts [under one million dollars] within the capacity of MBEs, WBEs and EBEs;*

[(iv)](d) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs and EBEs in the agency's future contracts; and

[(v)](e) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals for

(i) procurements described in subdivision q of this section; or

(ii) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals.

(3) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that[, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars,] the contractor shall [be subject to] *meet the participation goals unless such goals are waived or modified by the agency in accordance with this section. A contractor that is an MBE, WBE or EBE shall be permitted to count its own participation toward fulfillment of the relevant participation goal, provided that the value of such a contractor's participation shall be determined by subtracting from the total value of*

the contract any amounts that the contractor pays to direct subcontractors. A contractor that is a qualified joint venture shall be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goal. The value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE, WBE or EBE is entitled pursuant to the joint venture agreement. Notwithstanding any provision of this paragraph to the contrary, a contractor's achievement of participation goals shall be determined as described in paragraph two of subdivision j of this section.

(4) For each contract in which participation goals are established, the agency shall include in its solicitation and/or bidding materials a referral to the directories prepared by the division pursuant to this section.

(5) For each contract for which participation goals are established, the contractor shall be required to submit with its bid or proposal[,] a contractor utilization plan indicating:

(a) *whether the contractor is an MBE, WBE, EBE, or a qualified joint venture; [the percentage of the work it intends to subcontract, and]*

(b) the percentage of work it intends to award to *direct* subcontractors; [for amounts under one million dollars, and,] *and*

(c) in cases where the contractor intends to award *direct* subcontracts, [for amounts under one million dollars,] a description of the type and dollar value of work designated for participation by MBEs, WBEs and/or EBEs, and the time frames in which such work is scheduled to begin and end.

When the *contractor* utilization plan indicates that the bidder or proposer does not intend to [award the target subcontracting percentage] *meet the participation goals*, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award [waiver] *request for change* pursuant to paragraph 11 of this subdivision.

(6) (a) For each contract for which a *contractor* utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, *and at least once per year thereafter*, the contractor submit a list of persons to which it intends to award subcontracts within the next twelve months. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time to propose alternate subcontractors.

(b) *The contracting agency may also require the contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors.*

(7) For each contract for which a contractor utilization plan has been submitted, the contractor shall, with each voucher for payment, and/or periodically as the agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount *the contractor* paid to its *direct* subcontractors, *and, where applicable pursuant to subparagraph (l) of paragraph (1) of subdivision j of this section, the total amount direct subcontractors paid to indirect subcontractors*, [(including subcontractors that are not MBEs, WBEs or EBEs)]; the names, addresses and contact numbers of each MBE, WBE or EBE hired as a subcontractor [pursuant to such plan] *by the contractor or any of the contractor's direct subcontractors*, as well as the dates and amounts paid to each MBE, WBE or EBE. The contractor shall also submit, along with its voucher for final payment, the total amount *it* paid to subcontractors, *and, where applicable pursuant to subparagraph (l) of paragraph (1) of subdivision j of this section, the total amount its direct subcontractors paid directly to their indirect subcontractors* [(including subcontractors that are not MBEs, WBEs or EBEs)]; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE, WBE or EBE [hired pursuant to such plan], the work performed by, and the dates and amounts paid to each.

(8) If payments made to, or work performed by, MBEs, WBEs or EBEs are less than the amount specified in the contractor's utilization plan, the agency shall take appropriate action in accordance with subdivision o of this section, unless the contractor has obtained a modification of its utilization plan pursuant to paragraph 12 of this subdivision.

(9) When advertising a solicitation for bids or proposals for a contract for which a participation goal has been established, agencies shall include in the advertisement a general statement that the contract will be subject to participation goals for MBEs, WBEs and/or EBEs.

(10) In the event that a contractor with a contract that includes a *contractor* utilization plan submits a request for a change order the value of which exceeds *the greater of ten percent of such contract or \$500,000*, the agency shall [establish participation goals as if for a new contract for the work to be performed pursuant to such change order] *review the scope of work for the contract, and the scale and types of work involved in the change order, and determine whether the participation goals*

should be modified.

(11) [Pre-award waiver]Requests from bidders or proposers for changes in participation goals.

(a) A bidder or proposer may request that an agency change the participation goal or goals established for the procurement on the grounds that goals are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its utilization plan.

(b) If the contracting agency determines that the participation goals established for the procurement are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals.

[(i)](c) Subject to subparagraph [(ii)](d) of this paragraph, the contracting agency may grant a full or partial waiver of the [target subcontracting percentage] participation goals to a bidder or proposer who demonstrates that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. The contracting agency shall make its determination in light of factors [which] that shall include, but not be limited to, whether the bidder or proposer has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts [for under one million dollars] represented by the [target subcontracting percentage] participation goals. In making such determination, the agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, whether the bidder or proposer has made efforts to form a joint venture with a certified firm, and whether the bidder or proposer has made good faith efforts to identify portions of the contract that it intends to subcontract. [Within thirty days of the registration of a contract, the]The city chief contracting officer shall notify the council of any such waiver granted with respect to [the]a registered contract in the quarterly report required pursuant to subdivision 1 of this section.

[(ii)](d) The agency M/WBE officer shall provide written notice of requests for a full or partial waiver of the [target subcontracting percentage] participation goals to the division and the city chief procurement officer and shall not approve any such request without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer shall notify the speaker of the council in writing [within thirty days of]in the quarterly report required pursuant to subdivision 1 of this section following the registration of a contract for which a request for a full or partial waiver of a [target subcontracting percentage] participation goal was granted, provided that where an agency has been authorized to grant waivers without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original [target subcontracting percentage] participation goal, the waiver request, including all documentation, and an explanation for the approval of such request.

(12) Modification of utilization plans at contractor's request or agency's initiative. [(i)] (a) A contractor may request modification of its utilization plan after the award of a contract. Subject to subparagraph [(ii)](b) of this paragraph, an agency may grant such request if it determines that such contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by the agency for the contract. In making such determination, the agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

[(A)](i) The contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

[(B)](ii) The contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;

[(C)](iii) The contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs, WBEs or EBEs that their interest in the contract was solicited;

[(D)](iv) The contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs, WBEs and/or EBEs in the contractor utilization plan, and for which the contractor claims an inability to retain MBEs, WBEs or EBEs;

[(E)](v) The contractor held meetings with MBEs, WBEs and/or EBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

[(F)](vi) The contractor made efforts to negotiate with MBEs, WBEs and/or EBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

[(G)](vii) Timely written requests for assistance made by the contractor to the agency M/WBE liaison officer and to the division; and

[(H)](viii) Description of how recommendations made by the division and the contracting agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs, WBEs and/or EBEs.

[(ii)](b) The agency M/WBE officer shall provide written notice of requests for such modifications to the division and the city chief procurement officer and shall not approve any such request for modification without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer, shall notify the speaker of the council in writing within seven days of the approval of a request for modification of a utilization plan, provided that where an agency has been authorized to grant modifications without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original utilization plan, the modification request, including all documentation, and an explanation for the approval of such request.

[(iii)](c) An agency may modify the participation goals established for a procurement when the scope of the work has been changed by the agency in a manner that affects the scale and types of work that the contractor indicated in its contractor utilization plan would be awarded to subcontractors.

[(iv)](d) The agency M/WBE officer shall provide written notice to the contractor of its determination that shall include the reasons for such determination.

(13) For each contract in which a contracting agency has established participation goals, the agency shall evaluate and assess the contractor's performance in meeting each such goal. Such evaluation and assessment shall be a part of the contractor's overall contract performance evaluation required pursuant to section 333 of the charter.

j. Determining credit for MBE, WBE and EBE participation.

(1) An agency's achievement of its annual goals shall be calculated as follows:

[(i)](a) The [total] dollar amount that an agency has paid or is obligated to pay to a prime contractor that is an MBE, WBE or EBE, reduced by the dollar amount the contractor has paid or is obligated to pay its direct subcontractors upon their completion of work, [may] shall be credited toward the relevant goal. Where an agency has paid or is obligated to pay a prime contractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs.

[(ii)](b) [The]Except as provided in subparagraph (c) of this paragraph, the total dollar amount that a prime contractor of an agency has paid or is obligated to pay to a direct subcontractor that is an MBE, WBE or EBE [may]shall be credited toward the relevant goal. Where such a contractor has paid or is obligated to pay a direct subcontractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs.

(c) In the case of contracts of the types identified pursuant to subparagraph (1) of this paragraph, the total dollar amount that a prime contractor of an agency has paid or is obligated to pay a direct subcontractor that is an MBE, WBE, or EBE, reduced by the dollar amount the direct subcontractor has paid or is obligated to pay its indirect subcontractors upon completion of work, shall be credited toward the relevant goal. Where such a contractor has paid or is obligated to pay a direct contractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs.

(d) In the case of contracts of the types identified pursuant to subparagraph (1) of this paragraph, the total dollar amount that a direct subcontractor of the prime contractor has paid or is obligated to pay to an indirect subcontractor that is an MBE, WBE or EBE shall be credited toward the relevant goal. Where such a contractor has paid or is obligated to pay an indirect contractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs.

[(iii)](e)For requirements contracts, credit [may] shall be given for the actual dollar amount paid under the contract.

[(iv)](f) Where one or more MBEs, WBEs or EBEs is

participating in a qualified joint venture, the amounts that the joint venture is required to pay its direct subcontractors shall be subtracted as provided in subparagraph (a) of this paragraph, and then a percentage of the remaining dollar amount of the contract equal to the percentage of total profit to which MBEs, WBEs or EBEs are entitled pursuant to the joint venture agreement shall be credited toward the relevant goal. Where such a participant in a joint venture is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs.

[(v)](g) No credit shall be given for participation in a contract by an MBE, WBE or EBE that does not perform a commercially useful function.

[(vi)](h) No credit shall be given for the participation in a contract by any company that has not been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter.

[(vii)](i) In the case of a contract for which the contractor is paid on a commission basis, the dollar amount of the contract may be determined on the basis of the commission earned or reasonably anticipated to be earned under the contract.

[(viii)](j) No credit shall be given to a contractor for participation in a contract by a graduate MBE, WBE or EBE.

[(ix)](k) The participation of a certified company shall not be credited toward more than one participation goal.

(1) The city chief procurement officer may identify types of contracts where payments to indirect subcontractors shall be credited toward the relevant participation goals.

(2) A contractor's achievement of [each goal] its participation goals established in its utilization plan shall be calculated [in the same manner as described for calculating the achievement of agency utilization goals as described in paragraph (1) of this subdivision; provided that no] as follows:

[(i)](a) A contractor's use of direct subcontractors and their indirect subcontractors toward achievement of each goal established in its utilization plan shall be calculated in the same manner as described for calculating the achievement of agency utilization goals as described in paragraph (1) of this subdivision, except that a contractor's use of a subcontractor that is both an MBE and a WBE shall not be credited toward the contractor's achievement of more than one goal;

[(ii)](b) A contractor that is an MBE, WBE or EBE shall be permitted to count its own participation toward fulfillment of the relevant participation goal, provided that the value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and provided further that a contractor that is both an MBE and a WBE shall not be credited for its participation toward more than one goal;

[(iii)](c) No credit shall be given to the contractor for the participation of a company that is not certified in accordance with section 1304 of the charter before the date that [the agency approves] the subcontractor completes the work under the subcontract.

[(iv)](d) A contractor that is a qualified joint venture shall be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goal. The value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE, WBE or EBE is entitled pursuant to the joint venture agreement; provided that where such a participant in a joint venture is both an MBE and a WBE, such amount shall not be credited toward more than one goal.

k. Small purchases.

(1) Each agency shall, consistent with the participation goals established in subdivision d of this section and such agency's utilization plan, establish goals for purchases valued at or below five thousand dollars which shall be made from MBEs, WBEs and/or EBEs.

(2) Whenever an agency solicits bids or proposals for small purchases pursuant to section three hundred fourteen of the charter, the agency shall maintain records identifying the MBEs, WBEs and EBEs it solicited, which shall become part of the contract file.

l. Compliance reporting.

(1) The city chief procurement officer, in consultation with the division, shall prepare and submit [semiannual]quarterly reports to the speaker of the council as described in this section. [A p]Preliminary reports containing information for the fiscal year in progress shall be submitted to the speaker of the council by January first, April first, and July first of each year[April 1, 2007, and annually thereafter], and a final report containing information for the preceding fiscal year

shall be submitted to the speaker of the council by October first of each year[October 1, 2007 and annually thereafter]. The reports, which shall also be posted on the division's website, shall contain the following information, disaggregated by agency:

[(i)](a) the number and total dollar value of contracts awarded, disaggregated by industry classification and size of contract, including but not limited to, contracts valued at or below twenty thousand dollars, contracts valued above twenty thousand dollars and at or below one hundred thousand dollars, contracts valued above one hundred thousand dollars and at or below one million dollars, contracts valued above one million dollars and at or below five million dollars, contracts valued above five million dollars and at or below twenty five million dollars, and contracts valued above twenty five million dollars; [, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(ii) The number and total dollar value of contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(iii) the total number and total dollar value of contracts awarded valued at less than five thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group;

(iv) the total number and total dollar value of contracts awarded valued at between five thousand and one hundred thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(v) the total number and total dollar value of contracts awarded valued at between one hundred thousand dollars and one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vi) the total number and total dollar value of contracts awarded valued at over one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vii)(b) for those contracts for which an agency set participation goals in accordance with subdivision i of this section:

[(A)](i) The number and total dollar amount of such contracts disaggregated by industry classification, size of contract and status as MBE, WBE, EBE, or non-certified firm, and further disaggregated by minority and gender group, and the number and dollar value of such contracts that were awarded to firms that are certified both as MBEs and WBEs;

[(B)](ii) the number and total dollar value of such contracts that were awarded to qualified joint ventures and the total dollar amount attributed to the MBE, WBE or EBE joint venture partners, disaggregated by minority and gender group, size of contract and industry classification, and the number and dollar value of such contracts that were awarded to firms that are certified both as MBEs and WBEs;

[(C)](iii) The number and total dollar value of subcontracts approved during the reporting period that were entered into pursuant to [such] contracts for which participation requirements under this section have been established (including both contracts awarded during the current reporting period and those awarded in earlier reporting periods that remain open during the current reporting period), and the number and total dollar amount of such subcontracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group, size of subcontract and industry classification, and the number and dollar value of such subcontracts that were awarded to firms that are certified both as MBEs and WBEs; [and]

[(D)](iv) a list of the requests for full or partial waivers of [target subcontracting percentages granted] participation requirements for such contracts made pursuant to paragraph 11 [12] of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such waivers were granted, disaggregated by industry classification; and

[(E)](v) a list of the requests for modification of participation requirements for such contracts made pursuant to paragraph 12 of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such modifications were granted, disaggregated by industry classification;

[(viii)](c) a detailed list of each complaint received pursuant to paragraph 1 of subdivision o of this section which shall, at a minimum, include the nature of each complaint and the action taken in investigating and addressing such complaint including whether and in what manner the enforcement provisions of subdivision o of this section were invoked and the remedies applied;

[(ix)](d) a detailed list of all non-compliance findings made pursuant to paragraph 4 of subdivision o of this section and actions taken in response to such findings;

[(x)](e) the number of firms certified or recertified in accordance with section 1304 of the charter during the six months immediately preceding such report;

[(xi)](f) the number and percentage of contracts audited pursuant to section paragraph 10 of subdivision e of this section and a summary of the results of each audit.

[(xii)](g) a summary of efforts to reduce or eliminate barriers to competition as required pursuant to paragraph 11 of subdivision e of this section;

[(xiii)](h) a list of all solicitations submitted to the city chief procurement officer pursuant to subparagraph [vi]e of paragraph 2 of subdivision h of this section and a summary of the determination made regarding each such submission; and

[(xiv)](i) any other information as may be required by *the director and/or the commissioner*.

(2) The annual reports submitted in October shall, in addition, contain a determination made by *the director and the commissioner*, as to whether each agency has made substantial progress toward achieving its utilization goals and whether the city has made substantial progress toward achieving the citywide goals established pursuant to subdivision d of this section. [The first three annual reports shall also include detailed information about steps that agencies have taken to initiate and ramp up their efforts to comply with the requirements of this section.]

(3) *If an agency that has submitted an agency utilization plan pursuant to subdivision g of this section fails to achieve its utilization goal, the agency head shall prepare and submit to the director, the commissioner, the city chief procurement officer, and the speaker of the council by October first a performance improvement plan which shall describe in detail the efforts such agency intends to undertake to increase M/WBE participation.*

[(3)](4) The data that provide the basis for the reports required by this subdivision shall be made available electronically to the council at the time the reports are submitted.

m. Agency compliance.

(1) [The]Each agency shall submit to the commissioner and the city chief procurement officer such information as is necessary for the city chief procurement officer to complete his or her reports as required in subdivision l of this section. The *director, the commissioner, and the city chief procurement officer* shall review each agency's submissions. *The director shall convene the agency M/WBE officers for those agencies that have submitted utilization plans pursuant to subdivision g of this section as often as the director deems necessary, but no less frequently than once per quarter, in order to have agency M/WBE officers (i) discuss the results of the reports required in subdivision l of this section; (ii) offer detailed information concerning their effectuation of their performance improvement plans and any additional efforts undertaken to meet goals established in agency utilization plans; (iii) share the practices that have yielded successes in increasing M/WBE participation; and (iv) devise strategic plans to improve the performance of those failing to meet goals established in agency utilization plans. No less frequently than twice per year, agency heads for those agencies that have submitted utilization plans pursuant to subdivision g of this section shall join such quarterly meetings.* [and whenever] *Whenever it has been determined that an agency is not making adequate progress toward the goals established in its agency utilization plan, the director, the commissioner, and the city chief procurement officer shall act to improve such agency's performance, and may take any of the following actions:*

[(i)](a) require the agency to submit more frequent reports about its procurement activity;

[(ii)](b) require the agency to notify *the director, the commissioner, and the city chief procurement officer*, prior to solicitation of bids or proposals for, and/or prior to award of, contracts in any category where the agency has not made adequate progress toward achieving its utilization goals;

[(iii)](c) reduce or rescind contract processing authority delegated by the mayor pursuant to sections 317 and 318 of the charter; and

[(iv)](d) any other action *the director, the commissioner, and the city chief procurement officer* deem appropriate.

(2) Noncompliance. Whenever *the director, the city chief procurement officer, or the commissioner* finds that an agency has failed to comply with its duties under this section, he or she shall attempt to resolve such noncompliance informally with the agency head. In the event that the agency fails to remedy its noncompliance after such informal efforts, *the director and the city chief procurement officer* shall

submit such findings in writing to the mayor and the speaker of the council, and the mayor shall take appropriate measures to ensure compliance.

(3) Failure by an agency to submit information required by *the director, the division, or the city chief procurement officer*, in accordance with this section, including but not limited to the utilization plan required pursuant to subdivision g of this section, shall be deemed noncompliance.

n. Pre-qualification. An agency establishing a list of pre-qualified bidders or proposers may deny pre-qualification to prospective contractors who fail to demonstrate in their application for pre-qualification that they have complied with applicable federal, state and local requirements for participation of MBEs, WBEs and EBEs in procurements. A denial of pre-qualification may be appealed pursuant to applicable procurement policy board rules.

o. Enforcement.

(1) Any person who believes that a violation of the requirements of this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section or such rules, including, but not limited to, any contractor utilization plan, has occurred may submit a complaint in writing to the division, the city chief procurement officer and the comptroller. [Such complaint shall be signed and dated.] The division shall promptly investigate such complaint and determine whether there has been a violation.

(2) Any complaint alleging fraud, corruption or other criminal behavior on, the part of a bidder, proposer, contractor, subcontractor or supplier shall be referred to the commissioner of the department of investigation.

(3) Contract award.

[(i)](a) When an agency receives a protest from a bidder or proposer regarding a contracting action that is related to this section, the agency shall send copies of the protest and any appeal thereof, and any decisions made on the protest or such appeal, to the division and the comptroller.

[(ii)](b) Whenever a contracting agency has determined that a bidder or proposer has violated this section, or rules promulgated pursuant to its provisions, the agency may disqualify such bidder or proposer from competing for such contract and the agency may revoke such bidder's or proposer's prequalification status.

(4) Contract administration.

(a) *For each contract for which participation requirements have been established under this section, at least once annually during the term of such contract, the contracting agency shall review the contractor's progress toward attainment of its utilization plan, including but not limited to, by reviewing the percentage of work the contractor has actually awarded to MBE, WBE and/or EBE subcontractors and the payments the contractor has made to such subcontractors.*

[(i)](b) Whenever an agency believes that a contractor or a subcontractor is not in compliance with this section, rules promulgated pursuant to its provisions or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the agency shall send a written notice to the city chief procurement officer, the division and the contractor describing the alleged noncompliance and offering *the contractor* an opportunity to be heard. The agency shall then conduct an investigation to determine whether such contractor or subcontractor is in compliance.

[(ii)](c) In the event that a contractor has been found to have violated this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the contracting agency shall, after consulting with the city chief procurement officer and the division, determine whether any of the following actions should be taken:

[(A)](i) enter an agreement with the contractor allowing the contractor to cure the violation;

[(B)](ii) revoke the contractor's pre-qualification to bid or make proposals for future contracts;

[(C)](iii) make a finding that the contractor is in default of the contract;

[(D)](iv) terminate the contract;

[(E)](v) declare the contractor to be in breach of contract;

[(F)](vi) withhold payment or reimbursement;

[(G)](vii) determine not to renew the contract;

[(H)](viii) assess actual and consequential damages;

[(I)](ix) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by this section, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;

[(J)](x) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or

[(K)](xi) take any other appropriate remedy.

(5) To the extent available pursuant to rules of the procurement policy board, a contractor may seek resolution of a dispute regarding a contract related to this section. The contracting agency shall submit a copy of such submission to the division.

(6) Whenever an agency has reason to believe that an MBE, WBE or EBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function, or has violated any provision of this section, the agency shall notify the commissioner who shall determine whether the certification of such business enterprise should be revoked.

(7) Statements made in any instrument submitted to an [contracting] agency pursuant to these rules shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE, WBE or EBE in any instrument submitted pursuant to these rules shall, in addition, be grounds for revocation of its certification.

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

p. Procurements by elected officials and the council.

(1) In the case of procurements by independently elected city officials other than the mayor, where these rules provide for any action to be taken by *the director or the city chief procurement officer*, such action shall instead be taken by such elected officials.

(2) In the case of procurements by the council, where these rules provide for any action to be taken by *the director or the city chief procurement officer*, such action shall instead be taken by the speaker of the council.

q. Applicability. Agencies shall not be required to apply participation requirements to the following types of contracts:

[(i)](1) those subject to federal or state funding requirements which preclude the city from imposing the requirements of this subdivision;

[(ii)](2) those subject to federal or state law participation requirements for MBEs, WBEs, *disadvantaged business enterprises*, and/or EBEs;

[(iii)](3) contracts between agencies;

[(iv)](4) procurements made through the [united states] *United States* general services administration or another federal agency, or through the New York state office of general services or another state agency, or any other governmental agency.

[(v)](5) emergency procurements pursuant to section three hundred fifteen of the charter;

[(vi)](6) sole source procurements pursuant to section three hundred twenty-one of the charter;

[(vii)](7) [small purchases as defined pursuant to section three hundred fourteen of the charter;] *contracts for human services*; and

[(viii)](8) contracts awarded to not-for-profit organizations.

r. Comptroller. The comptroller shall randomly examine contracts for which contractor utilization plans are established to assess compliance with such plans. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential comptroller examinations.

§3. Severability. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or

invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§4. Effective date. This local law shall take effect on July 1, 2013, provided that the department of small business services may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

JAMES SANDERS, Jr., Chairperson; MICHAEL C. NELSON, JAMES F. GENNARO, DOMENIC M. RECCHIA, Jr., MELISSA MARK-VIVERITO, ERIC A. ULRICH; Committee on Civil Service and Labor, December 14, 2012.

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Reports of the Committee on Consumer Affairs

Report for Int. No. 702-A

Report of the Committee on Consumer Affairs in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to requiring that all signs advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit card purchases.

The Committee on Consumer Affairs, to which the annexed amended proposed local law was referred on November 3, 2011 (Minutes, page 4838), respectfully

REPORTS:

I. INTRODUCTION

On Monday, December 17, 2012, the Consumer Affairs Committee, chaired by Council Member Dan Garodnick, will vote on Proposed Introductory Bill Number 702-A ("Proposed Int. No. 702-A"), a Local Law to amend the administrative code of the city of New York, in relation to requiring that all *gas* stations post road signs displaying the total selling price of gasoline and/or diesel motor fuel and that such road signs and any other sign, poster or placard advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit or debit card purchases. The Committee previously heard aversion of Int. No. 702 on December 14, 2012.

II. BACKGROUND

During economically uncertain times, fluctuations in the price of certain goods, such as gasoline, can have a debilitating impact on working families. Unfortunately, gasoline prices have experienced an upward trend in the past year in the New York City metropolitan area. According to the New York State Energy Research & Development Authority, regular grade gasoline averaged nearly \$3.65 per gallon on December 3, 2012.¹ For the majority of New York City residents, the price of gasoline is a major concern. According to the Siena Research Institute, in August of 2012, 53% of residents within the five boroughs considered gasoline prices to be "a somewhat or very serious

¹ N .Y.S. Research & Dev. Auth. "Weekly Average Motor Gasoline Prices," at <http://www.nyserdany.gov/Page-Sections/Energy-Prices-Supplies-and-Weather-Data/Motor-Gasoline-Weekly-Average-Motor-Gasoline-prices.aspx> (accessed September 12, 2012).

problem."² The necessity of gasoline in daily life became all too clear in the aftermath of Hurricane Sandy, when fuel shortages shuttered some gas stations and left others with lines of cars stretching several blocks long. In light of its expense, and the fact that gas is often not an optional purchase, it is critically important that consumer protection regulations are enforced and that gasoline pricing policies be as transparent as possible.

a. State and Local Regulation of Gas Stations

Several provisions in State and local law address gasoline pricing and regulate the form and manner by which prices are disclosed in order to promote clear and accurate communication of information to consumers. First, consumers are protected against price gouging of any consumer goods and services by the State General Business Law, which prohibits offering or selling goods and services considered "vital and necessary," such as gasoline, at "unconscionably excessive" prices during times of "abnormal disruption" of the market.³ When price gouging is alleged, the State Attorney General can apply to enjoin or restrain the offensive activity, and whether or not the activity violates the price gouging prohibition becomes a question for the court.⁴

Second, local consumer protection laws prohibit, among other deceptive practices, acts that result in "a gross disparity between the value received by a

consumer and the price paid, to the consumer's detriment."⁵ Specifically, local law defines fraudulent practices in which sellers of gasoline and petroleum products ("gas stations") are

²Siena Research Inst. "Seriousness of Gas and Food Prices: Percentage of NY'ers," at http://www.sienaedu/uploadedfiles/home/parents_and_community/community_page/sri/nyscc/Gas%20and%20Food%20Table0812.pdf (accessed on September 12, 2012).

³N.Y.S. Gen. Bus. Law § 396-r.

⁴*Id.*

⁵N.Y.C. Admin. Code § 20-710(b).

prohibited to engage, such as the sale of gasoline "in any manner so as to deceive, or tend to deceive the purchaser as to the price, nature, quality or identity thereof."⁶

Additionally, the State Agriculture and Markets Law requires that the selling price per gallon of gasoline be posted on all dispensing devices from which gasoline is extracted, and the law dictates the size and style of such posting.⁷ The law also requires the posting of multiple prices on a dispensing device that offers more than one type or grade of gasoline for sale. A civil penalty of \$100 is assessed for violating the law once and subsequent violations can be punished by fines of up to \$500. The law authorizes DCA to enforce the provisions that relate to price posting at the pump.⁸

Local law provides further regulations on price posting for gas stations in New York City. All signs displaying the price of gasoline at or near the premises of a gas station, such as road signs visible to drivers, must state the name or brand, grade or quality, and the total selling price per gallon of the gasoline.⁸ The total selling price is defined as "the sum of the basic price per gallon plus all applicable taxes."¹⁰ Further, local law dictates the size and style of such postings, requiring that all numbers and letters relating to the price of the gasoline be the same size and that the font shall be black on white background.¹¹

In 2006, the Council passed Local Law 38, which requires that sellers of gasoline adhere to the prices posted on such road signs, and prohibits such sellers from raising the posted prices for a period of 24 hours once they are posted.¹² The local law also

⁶N.Y.C. Admin. Code § 20-673.

⁷N.Y.S. Agri c. & Mkt. Law § 192(5). ⁸*Id.*

⁹N.Y.C. Admin. Code § 20-672.

¹⁰*Id.*

¹¹*Id.*

¹²LL 38/2006; *see* N.Y.C. Admin. Code § 20-672(b).

contained recordkeeping requirements related to pricing.¹³ Additionally, the Agriculture and Markets Law and the Administrative Code both regulate disclosures at the pump related to octane ratings and proper representation of gasoline as either leaded or unleaded.¹⁴

b. Enforcement

Fortunately for drivers in New York City, DCA is tasked with ensuring that those who purchase gasoline are getting their money's worth. DCA's "gas squad" inspects each gas station at least once a year, testing for "pump dispensing accuracy; gas octane at levels advertised as priced; proper maintenance of gasoline storage tanks; properly marked fill ports for gas delivery; functioning equipment, including indicator lights, nozzles, air compressors, and valves; and proper signage, including matching prices on pumps and curb signs."¹⁵ According to DCA, its inspectors check the accuracy of every pump in the City, visiting each gas station about twice a year.¹⁶

In 2010, DCA conducted a sweep of gas stations in the City and found a 97% compliance rate for accuracy at the pump.¹⁷ The department inspected over 1,800 gas stations and 10,850 gas pumps, 345 of which were faulty and taken out of commission pending repairs.¹⁸ Three hundred eighty-two violations were issued for reasons that included failing to disclose octane ratings, improper priming of pumps, short measure on pumps, deceptive practices, and scales that failed to conform to the standards for weights

¹³*Id.*

¹⁴N.Y.S. Agri c. & Mkt. Law §§ 192-A, 192-B and 192-C; N.Y.C. Admin. Code §§ 20-673.1 and 20-673.2.

¹⁵N.Y.C. Dep't of Consumer Affairs, "Department of Consumer Affairs Keeps Close Watch Over Gas Station Accuracy," Press Release, July 1, 2009, at <http://www.nyc.gov/html/dca/html/pr2009/pr070109.shtml>.

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

and measures as laid out by the National Institute of Standards and Technology.¹⁹ Of the 382 violations, 28 related to signage problems, including improper curb signage.²³ That year, DCA also received approximately 645 complaints about gas stations.²¹ The most common complaints were "overcharging, inaccurate meters and defective fuel pumps."²²

In 2011, the Office of New York State Attorney General Eric Schneiderman launched an investigation into possible price gouging and zone pricing in response to dramatic price fluctuations that were occurring throughout the state. Examining 89 gas stations throughout the state between February 1 and April 1 of 2011, the Attorney General's office ultimately concluded that despite the dramatic rise in gasoline prices during the period studied, and with the exception of two gas stations outside of New York City, price gouging did not occur and retail mark-ups on gasoline remained relatively consistent.²³ The fluctuations in gasoline prices, it was determined, were simply a reflection of the changes in the price of crude oil.²⁴ The Attorney General's office did, however, find that gasoline wholesalers were engaged in zone pricing, a practice where different gas stations are charged different prices depending on their location.²⁵ The report noted that, while such practice was banned by the State in 2008, weaknesses in the law's language render it unenforceable.²⁶

Attorney General Schneiderman revisited the issue of price gouging in 2012 in the wake of Hurricane Sandy. Prior to the storm making landfall, the Attorney General's

¹⁹N.Y.C. Dep't of Consumer Affairs, data submitted via email to Council staff on February 28, 2012.

²⁰*Id.*

²¹N.Y.C. Dep't of Consumer Affairs, *supra* note 14. ²²*Id.*

²³Office of the N.Y.S. Attorney General "Report on New York Gasoline Prices," December 2011, at 3. ²⁴*Id.*

²⁵*Id.*, at 4. ²⁶*Id.*

office warned vendors in certain areas of the state against engaging in price gouging.²⁷ After the hurricane, the office received hundreds of complaints relating to price gouging, the majority of which related to gasoline prices.²⁸ The Attorney General subsequently launched an investigation into these allegations.²⁹ To date, his office has initiated enforcement proceedings against 25 gas retailers in the state, twelve of which are located in New York City.^{30 31}

c. Cash Versus Credit Pricing

Despite the broad compliance with applicable laws and apparent lack of price gouging in New York, consumers still have reason to exercise caution when patronizing a gas station. A 2008 investigation of gas stations launched by then-Attorney General Andrew Cuomo found that roughly one quarter of the 130 stations examined in the New York City area were engaged in deceptive practices.³² Specifically, the Attorney General's office found that the offending gas stations were "charging customers more for using a credit card [and] posting only the lower cash prices on their large, street-facing signs in order to lure patrons to their station and then charging them more at the pump."³³

²⁷Office of the N.Y.S. Attorney General, "A.G. Schneiderman Details Post-Hurricane Price Gouging Investigation As Consumer Complaints Rise," Press Release, November 5, 2012, at <http://www.ag.ny.gov/pres-release/ag-schneiderman-details-post-hurricane-price-gouging-investigation-consumer-complaints>.

²⁸*Id.*

²⁹*Id.*

³⁰Office of the N.Y.S. Attorney General, "A.G. Schneiderman Announced 12 More Enforcement Actions Against Gas Retailers in Post-Sandy Price Gouging Investigation," Press Release, November 29, 2012, at <http://www.ag.ny.gov/pres-release/ag-schneiderman-announces-12-more-enforcement-actions-against-gas-retailers-post-sandy>.

³¹Office of the N.Y.S. Attorney General, "A.G. Schneiderman Brings First Series of Enforcement Actions in Post-Hurricane Price Gouging Investigation As Consumer Complaints Rise," Press Release, November 15, 2012, at <http://www.ag.ny.gov/pres-release/ag-schneiderman-brings-first-series-enforcement-actions-post-hurricane-price-gouging>.

³²Office of the N.Y.S. Attorney General, "Attorney General Cuomo Issues Consumer alert for NYC Drivers After Investigation Reveals Nearly 25% of NYC Area Gas Stations Inspected Engaged in Deceptive Practices," Press Release, August 28, 2008, at <http://www.ag.ny.gov/pres-release/attorney-general-cuomo-issues-consumer-alert-nyc-drivers-after-investigation-reveals>.

³³*Id.*

The Attorney General's office found that while some of the gas stations did include the word "cash" in their street-level signs, the font size was too small to be legible from the street.³⁴

The New York State General Business Law prohibits retailers from applying a surcharge to purchases made with a credit card.³⁵ Nevertheless, State law does not prohibit retailers from applying discounts to their sales. Therefore, gas stations are permitted to charge a discounted price for gasoline purchases made in cash. Many gas stations do so, charging the higher "non-discounted" price on non-cash purchases to offset the processing fees (also known as "interchange" fees) incurred when a consumer uses a debit or credit card.³⁶ It has been reported that gas stations in New York State are advertising only the (often lower) cash price on their street-level signs without adequate disclosure that such advertised price applies to cash transactions only.³⁷ As the 2008 investigation revealed, it is not always clear that the price being advertised on the street-level sign reflects only the cash price until the consumer has already pulled into the gas station next to a pump.

Price differentials received renewed attention earlier this year when drivers in Long Island complained about disparities of up to two dollars between cash and credit purchases.³⁸ This significant markup, combined with the high cost of fuel and the failure of gas stations to adequately label the cash price, prompted New York State Senator Lee Zeldin (R, C, I-Shirley) to introduce a bill that would require gas stations to post the

³⁴ *Id.*³⁵ N.Y.S. Gen. Bus. Law §518.³⁶ Morell, J., "Filling up the tank? It may pay to use cash," *CreditCards.com*, August 28, 2008, Available at <http://www.creditcards.com/credit-card-news/gas-discounts-for-cash-1275.php>.³⁷ Polsky, C., "Ire over credit card pricing," *Newsday*, July 11, 2008, at A 19.³⁸ "New York Senator Takes Aim At Gas Cash-Credit Price Gap," *CBS New York*, April 24, 2012, Available at <http://newyork.cbslocal.com/2012/04/24/new-york-senator-takes-aim-at-gas-cash-credit-price-gap>.

credit price on street-level signs when the disparity between the cash and credit price exceeds seven percent.³⁹ A similar bill was passed by the Westchester County Board of Legislators in December 2011, though that bill simply required that both cash and credit prices be displayed.⁴⁰ That same month, in response to price disparities in Long Island, Senator Charles Schumer (D-NY) sent a letter to the Federal Trade Commission asking them to consider rules that would require street-level signs at gas stations to more clearly disclose the cash and credit prices of gasoline.⁴¹

d. September Gas Station Hearing

The Committee first heard Int. No. 702 on September 20, 2012 along with an oversight hearing entitled "Gas Stations in New York City: Putting a Premium on Consumer Protection." At that hearing, Council Member Fidler, the sponsor of Int. No. 702, asked Jeffrey Frediani, a Legislative Analyst at AAA New York, for his opinion on whether all gas stations in New York City should be required to have street-level signs so that gas prices are legible to drivers on the road. Mr. Frediani stated that this requirement would give consumers more information prior to entering the gas station. In light of this information, Int. No. 702 was amended to require that all gas stations have such street-level signs advertising the gas prices.

³⁹ "Gas Price Gap Between Credit And Cash Up to \$2 A Gallon At Some L.I.," *CBS New York*, April 20, 2012, Available at <http://newyork.cbslocal.com/2012/04/20/rising-gas-price-gap-between-credit-and-cash-up-to-2-a-gallon-at-some-l-i-stations/>.⁴⁰ Swift, J., "Westchester Legislators Okay New Gas Pricing Law," *Peekskill Daily Voice*, December 1, 2011, Available at <http://peekskill.dailyvoice.com/news/kaplowitzs-law-gasoline-pricing-signs-passes>.⁴¹ Coen, A., "Sen. Schumer Appears in Wantagh Calling for Better Cash Price Disclosure," *Wantagh-Seaford Patch*, December 6, 2011, Available at <http://wantagh.patch.com/articles/sen-schumer-appears-in-wantagh-calling-for-better-gas-price-disclosure>.

III. PROPOSED INT. NO. 702-A

Proposed Int. No. 702-A would require all gas stations in New York City to maintain a sign, poster or placard advertising the selling price of gasoline that is visible to drivers of approaching vehicles. It would also require all gas stations to clarify any price differences that may exist between cash and credit or debit purchases on such road signs, posters or placards. It would require gas stations that charge cash-paying customers less than customers who pay with credit or debit cards to post the total selling price for each type of accepted payment. Proposed Int. No. 702-A would also require that the language distinguishing the price for cash purchases from credit or debit purchases be written in letters no less than half the size of the numbers displaying the price.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 702-A:)

Int. No. 702-A

By Council Members Fidler, Rivera, Brewer, Dickens, Eugene, Gentile, James, Koppell, Lander, Mendez, Nelson, Recchia, Rose, Williams, Rodriguez, Dromm, Greenfield and Barron.

A Local Law to amend the administrative code of the city of New York, in relation to requiring that all gas stations post road signs displaying the total selling price of gasoline and/or diesel motor fuel and that such road signs and any other sign, poster or placard advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit or debit card purchases.

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 20-672 of the administrative code of the city of New York, as amended by local law number 38 for the year 2006, is amended to read as follows:

[(b)]. [Where a sign, poster or placard advertises the selling price per gallon of gasoline or diesel motor fuel on, at or about the premises where such gasoline or diesel motor fuel is sold or offered for sale, or where such] *In addition to any sign or placard required pursuant to subdivision five of section one hundred ninety-two of the agriculture and markets law, there shall be a sign, poster or placard clearly visible to drivers of approaching motor vehicles on the premises of every location at which gasoline and/or diesel motor fuel are sold or offered for sale. Such sign shall*

be in a size and style to be determined by the commissioner. Such sign, in addition to any other sign, poster or placard that advertises the selling price of gasoline and directly or indirectly refers to a premises where the advertised gasoline [or] and/or diesel motor fuel [is] are sold or offered for sale, [such sign, poster or placard] shall state the name, trade name, brand, mark or symbol and grade or quality classification of such gasoline or diesel motor fuel, together with the total selling price per gallon. Total selling price shall be the sum of the basic price per gallon plus all applicable taxes. Such sign, poster or placard shall conform to the rules and regulations of all governmental agencies with jurisdiction as to structure and location.

1. A retail dealer shall only sell at [such posted] the total selling price. Any such price when posted may not be raised for a period of not less than twenty-four hours. [Such sign, poster or placard shall conform to the rules and regulations of all governmental agencies with jurisdiction as to structure and location.]

2. *Where the total selling price for purchases made with cash is less than the total selling price for purchases made with credit card, debit card or other form of non-cash payment, such sign, poster or placard shall state the total selling price for each type of accepted payment.*

§2. Subdivision c of section 20-672 of the administrative code of the city of New York, as relettered by local law number 31 for the year 1988, is amended to read as follows:

c. All numbers referring to price shall be the same height, width and thickness. Identification of the gasoline or diesel motor fuel offered for sale, *and any non-numerical language distinguishing the total cash selling price from the total credit card, debit card or other form of non-cash payment selling price* shall be in letters and numbers not less than one-half of the height, width and thickness of the numbers referring to price. Letters and numbers shall be black on a white background.

§ 3. This local law shall take effect one hundred twenty days after it shall have been enacted into law; provided that the commissioner and the commissioner of the department of transportation may take any actions necessary for the implementation of this local law prior to such effective date including, but not limited to, promulgating rules.

DANIEL R. GARODNICK, Chairperson; MICHAEL C. NELSON, CHARLES BARRON, LEROY G. COMRIE, Jr., JULISSA FERRERAS, KAREN KOSLOWITZ; Committee on Consumer Affairs, December 17, 2012.

Laid Over by the Council.

Report for Int. No. 939-A

Report of the Committee on Consumer Affairs in favor of approving and adopting, as amended, a local law to amend the administrative code of the city of New York, in relation to stoop line stands.

The Committee on Consumer Affairs, to which the annexed amended proposed local law was referred on September 24, 2012 (Minutes, page 3686), respectfully

REPORTS:

I. INTRODUCTION

On Monday, December 17, 2012, the Consumer Affairs Committee, chaired by Council Member Dan Garodnick, will vote on Proposed Int. No. 939-A, a Local Law to amend the administrative code of the city of New York, in relation to stoop line stands. The Committee previously heard Proposed Int. No. 939-A on December 14, 2012.

II. BACKGROUND

Stoop line stands, ubiquitous throughout much of New York City's retail landscape, are a rich part of the city's entrepreneurial tradition and have been a part of the cultural fabric for almost as long as the City itself has existed. For many businesses throughout our city's history, the stands also represent an additional revenue stream. First licensed by the New York City Department of Licenses in 1914, this responsibility was later transferred to DCA in 1968.¹ There are currently over 2,000 stoop line stands licensed in New York City. A business must acquire a

Stoop Line Stand license "if fruits, vegetables, soft drinks, flowers, confectionary, cigars, cigarettes, tobacco, or ice cream are sold from a stand outside of and directly adjacent to an existing retail establishment."² By law, a stoop line stand may only be used and operated by the store with which it is licensed, and the actual transactions must take place within the physical store.³

Because stoop line stands are situated on public sidewalks used by pedestrians, their dimensions are regulated by Chapter 20, subchapter 7 of the New York City Administrative Code. Generally, stoop line stands cannot exceed ten feet in length, four feet in width, or seven feet in height.⁴ If the space between the store with which the stand is licensed and the sidewalk is at least 16 feet wide, the width of the stoop line stand may be extended to five feet, provided that the additional width does not adversely affect the flow of pedestrian traffic.⁵ Before DCA can issue a stoop line stand license, the location must be approved by the Department of Transportation ("DOT"), whose approval is conditioned upon the determination that the presence of stoop line stand will not obstruct pedestrian traffic on that sidewalk.⁶ A license renewal would require a similar DOT determination.⁶ Stoop line stands may be temporarily removed where a police officer or other authorized City employee determines that exigent circumstances require their removal.⁹

III. PROPOSED INT. No. 939-A

Proposed Int. No. 939-A would define "stoop line stand" as a stand or booth operated on a sidewalk for the sale or display of fruits, vegetables, soft drinks, confectionary, ice cream, or flowers. This new definition would eliminate the sale of cigars, cigarettes and tobacco at such stands, which is currently permitted. Further, Proposed Int. No. 939-A would permit stands up to ten feet wide if such stands are: (i) located entirely in M1, M2 or M3⁹ zoning districts; (ii) were licensed on or before September 1, 2012; and (iii) the space between the store with which the stand is licensed and the sidewalk is at least 21 feet wide. Lastly, for any stand with a width larger than five feet, which would be permitted under the conditions set forth above, there would be an inspection fee of seventy-five dollars.

¹ Consumer Affairs Committee Report on Int. 612-A *A Local Law to amend the administrative code of the city of New York, in relation to the dimensions of stoop line stands* (1993).

² Dept of Consumer Affairs, "Stoop Line Stand License," Available at <http://www.nyc.gov/html/dca/html/licenses/033.shtml>, Accessed on December 5, 2012.

³ Santos, F., "Two Florists Fight Back as Sweet Smell of Success Turns Sour," *NY Times*, February 13, 2010, at A21.

⁴ N.Y.C. Admin. Code § 20-237.

⁵ *Id.*

⁶ N.Y.C. Admin. Code § 20-239.

⁷ *id.*

⁸ N.Y.C. Admin. Code § 20-240.1.

⁹ "M" indicates a manufacturing zoning district.

(The following is the text of the Fiscal Impact Statement for Int. No. 939-A:)



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
PRESTON NIBLACK, DIRECTOR
FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 939-A

COMMITTEE:
Consumer Affairs

TITLE: To amend the administrative code of the city of New York, in relation to stoop line stands.
SPONSORS: Council Members Greenfield, Recchia, Gonzalez, Fidler, James, Nelson, Williams, Palma, Koslowitz, Gentile, Dromm, Oddo and Halloran

SUMMARY OF LEGISLATION: This legislation amends the City's administrative code in relation to stoop line stands by expanding the stands to include the sale of confectionery and requiring stands to have a license to operate. An applicant seeking to obtain or renew a license for any stoop line stand that extends beyond five feet in width must pay the Department of Consumer Affairs (DCA) an inspection fee of \$75 for each stoop line stand that it seeks to license. The fee will be paid with the application for the license and will be retained by DCA regardless of whether the license is granted.

Prior to DCA approving the license, the Department of Transportation (DOT) must approve the stoop line stand location. The legislation also restricts the height, length and width size of the stands to not restrict pedestrian access on the sidewalks. If the sidewalk is at least 21 feet wide, and if the entire premises is located within an M1, M2 or M3 zoning district, and if a stoop line stand on such premises was licensed on or before the September 1, 2012, the stoop line stand may extend up to 10 feet in length and 10 feet in width as long as a straight, unobstructed pathway of at least 9.5 feet is maintained at all times on the sidewalk in front of the entire length of the premises where such stoop line stand is located.

EFFECTIVE DATE: This local law would take effect 90 days following enactment, except that the DCA Commissioner may take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it would take effect.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: 2013

FISCAL IMPACT STATEMENT:

	Effective FY13	FY Succeeding Effective FY14	Full Fiscal Impact FY13
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: There will be no impact on revenues by the enactment of this legislation.

IMPACT ON EXPENDITURES: There will be no impact on expenditures by the enactment of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: Department of Consumer Affairs

ESTIMATE PREPARED BY: Ralph P. Hernandez, Principal Legislative Financial Analyst

Nathan Toth, Deputy Director
New York City Council Finance Division

HISTORY: Int. 939 was introduced to the Council and referred to the Consumer Affairs Committee on September 24, 2012. The Committee held a hearing on an amended version, Proposed Int. 939-A, on December 14, 2012, and the bill was laid over. The Committee will vote on Proposed Int. 939-A on December 17, 2012.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 939-A:)

Int. No. 939-A

By Council Members Greenfield, Recchia, Gonzalez, Fidler, James, Nelson, Williams, Palma, Koslowitz, Gentile, Dromm, Rodriguez, Oddo, Halloran, Barron and Gennaro.

A Local Law to amend the administrative code of the city of New York, in relation to stoop line stands.

Be it enacted by the Council as follows:

Section 1. Section 20-228 of the administrative code of the city of New York is amended by adding new subdivision f to read as follows:

f. *Stoop line stand.* A stand or booth operated on a sidewalk for the sale or display of the articles enumerated in subdivision b of section 20-233 of this subchapter, which shall be subject to the restrictions and requirements of sections 20-233 through 20-241 of this subchapter.

§ 2. Section 20-233 of the administrative code of the city of New York, subdivision a as amended by local law number 118 for the year 1954 and subdivision b as amended by local law number 65 for the year 1992, is amended to read as follows:

§ 20-233 [Stoopline] *Stoop line* stands; license required; permitted use. a. It shall be unlawful to maintain a [stand or booth within stooplins] *stoop line stand* without a license therefor.

b. [Such stands or booths] *Stoop line stands* shall be used for the sale or display of fruits, vegetables, soft drinks, [cigars, cigarettes, tobacco, confectionary] *confectionery*, ice cream, flowers or any of the foregoing.

§ 3. Section 20-236 of the administrative code of the city of New York, as amended by local law number 65 for the year 1992, is amended to read as follows:

§ 20-236 *Stoop line* stands; fees. The fee for such license shall be based on the article or articles permitted to be sold or displayed as follows:

1. For fruits, vegetables, soft drinks or combinations thereof eighty dollars
- [2. For cigars, cigarettes, tobacco or combinations thereof forty dollars]
- [3] 2. For confectionery forty dollars
- [4] 3. For ice cream forty dollars

[5] 4. For any combination of the foregoing, the *license* fee shall be the total of the prescribed fees, except that such fee shall not exceed one hundred dollars.

§ 4. Subdivisions a and b of section 20-237 of the administrative code of the city of New York, as amended by local law number 46 for the year 1993, are amended to read as follows:

§ 20-237 Stoop line stands; restrictions. a. [Displays] *Stoop line stands* shall not extend farther than three feet from the front of any premises and [in no case] shall not [such stand or display] exceed seven feet in height. Every [licensed] *stoop line* stand shall be maintained wholly within the stoop line and shall not obstruct the free use of the sidewalk by pedestrians. [It] *Stoop line stands* shall not exceed ten feet in length nor four feet in width, *except as provided*, however that where the sidewalk in front of the premises is at least sixteen feet wide, such stand shall not exceed ten feet in length nor five feet in width as long as a straight, unobstructed pathway of at least nine and one-half feet is maintained at all times on the sidewalk in front of the entire length of the premises where such stand or stands are located] *in subdivision b of this section.*

b. [Any stand licensed for the sale of any combination of the articles enumerated in subdivision b of section 20-233 of this subchapter, shall not exceed ten feet by four feet, provided, however that where] *Where* the sidewalk in front of the premises is at least sixteen feet wide, such *stoop line* stand [shall not] may [exceed] *extend up to* ten feet in length [nor] *and* five feet in width as long as a straight, unobstructed pathway of at least nine and one-half feet is maintained at all times on the sidewalk in front of the entire length of the premises where such *stoop line* stand [or stands are] *is* located. *Where the sidewalk in front of the premises is at least twenty-one feet wide, and if the entire premises is located within an M1, M2 or M3 zoning district, and if a stoop line stand on such premises was licensed on or before the first day of September, two thousand twelve, such stoop line stand may extend up to ten feet in length and ten feet in width as long as a straight, unobstructed pathway of at least nine and one-half feet is maintained at all times on the sidewalk in front of the entire length of the premises where such stoop line stand is located. In addition to any license fee required to be paid pursuant to section 20-236 of this subchapter, an applicant seeking to obtain or renew a license for any stoop line stand that extends beyond five feet in width shall pay to the department an inspection fee of seventy-five dollars for each stoop line stand that it seeks to license. Such fee shall be paid with the application for such license and shall be retained by the department regardless of whether the license is granted.*

§ 5. Section 20-239 of the administrative code of the city of New York, as amended by local law number 46 for the year 1993, is amended to read as follows:

§ 20-239 Approval. [Any] *A* *stoop line* stand [required to be licensed under section 20-233] shall not be licensed unless the location thereof has been approved by the department of transportation. No license [issued under section 20-233] shall be *approved or* renewed if the department of transportation determines that the stoop line stand [so licensed] poses an obstruction to the free use of sidewalks by pedestrians. Notwithstanding anything in this subchapter to the contrary, if the department of transportation determines that a stoop line stand which is permitted to [be five feet] *extend more than four feet* in width pursuant to section 20-237 of this subchapter poses an obstruction to the free use of sidewalks by pedestrians solely because the width of such *stoop line* stand [is five feet rather than] *exceeds* four feet, the [department of transportation] *commissioner* shall approve [the renewal of] *or renew* such license at a width of four feet.

§ 6. This local law shall take effect ninety days following enactment, except that the commissioner of the department of consumer affairs may take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect.

DANIEL R. GARODNICK, Chairperson; MICHAEL C. NELSON, CHARLES BARRON, LEROY G. COMRIE, Jr., JULISSA FERRERAS, KAREN KOSLOWITZ; Committee on Consumer Affairs, December 17, 2012.

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Reports of the Committee on Finance

Report for Int. No. 972

Report of the Committee on Finance in favor of approving and adopting a Local Law to amend the administrative code of the city of New York, in relation to authorizing an increase in the amount to be expended annually in seven business improvement districts.

The Committee on Finance, to which the annexed proposed local law was referred on November 27, 2012 (Minutes, page 4371), respectfully

REPORTS:

On December 10, 2012, the Finance Committee adopted a Resolution, Proposed Res. 1587-A, that sets today as the date to consider a local law that would increase the annual expenditures for seven Business Improvement Districts (BIDs), effective as of July 1, 2012. Today, the Committee will hear from all persons interested in the legislation, which would increase the amount to be expended annually in the seven BIDs.

Pursuant to Section 25-410(b) of the Administrative Code, a BID may obtain an increase in its budget (i.e. the total amount allowed to be expended annually by the BID or improvements, services, maintenance and operation) by means of the adoption of a local law amending the BID's district plan. Such local law may be adopted by the City Council after determining that it's in the public interest to authorize such an increase in the maximum annual amount, and that the tax and debt limits prescribed in section 25-412 of the Administrative Code will not be exceeded. Notice of the hearing on this local law must be published in at least one newspaper having general circulation in the district specifying the date, time and place where the hearing will be held and stating the increase proposed in the maximum amount to be expended annually.

Although this is the only relevant legal requirement for the provision of notice, in the case of other recent requests for budget increases by BIDs, the Finance Committee Chair informed the Department of Small Business Services that it desires written notices of the proposed increases and the hearing date to be mailed to property owners within the BIDs, and has only considered budget increases for those BIDs providing such additional notice. The Chair has requested that the same procedure be followed with regard to the increase that is the subject of this resolution.

The following BIDs have requested increases to their budgets as indicated below:

BID ASSESSMENT INCREASE REQUESTS
FISCAL YEAR 2013

BID Name	Year Est.	Last Assessment Increase	Present Assessment	Requested Assessment	CM District	Purpose of Assessment Increase
Alliance for Downtown NY	1995	FY06 \$1,750,000	\$13,000,000	\$15,900,000 (\$2.9M increase or 22.3%)	Chin	Expanded outreach through a new website, mobile app, social media and printed materials, additional computer equipment, and hire a landscape architect to develop a district-wide planting plan.
Bryant Park	1986	FY94 \$100,000	\$900,000	\$1,100,000 (\$200K increase or 22.2%)	Quinn	Hire new staff in design, horticulture, and park programs; enhance park lighting project and repairs to bluestone pathway; added maintenance costs for the Carousel including the replacement of the canopy; new electric charges for Citi Pond; increases in payroll and payroll-related costs.
5 th Avenue	1993	FY11 \$153,720	\$2,715,720	\$2,905,000 (\$190K increase or 6.9%)	Quinn & Garodnick	Added supplies and office expenses, and increase in uniform cost; and increases in real estate taxes, rent, and payroll-related costs.
47 th Street	1997	FY09 \$168,633	\$500,000	\$700,000 (\$200K increase or 40%)	Quinn	Hire two additional public safety officers, and maintain security cameras; strengthen the supervision and management of sanitation services; hire a public relations consultant; and administrative costs.
Flatiron	2006	None	\$1,600,000	\$2,200,000 (\$600K increase or	Quinn	Enhance sanitation services; and

				37.5%)		increases in payroll, insurance costs and taxes.
Kings Highway	1990	FY06 \$50,000	\$250,000	\$290,000 (\$40K increase or 16%)	Nelson	Purchase new trash receptacles; install new lighting; and replace park benches.
North Flatbush	1986	FY07 \$22,000	\$115,000	\$200,000 (\$85K increase or 73.9%)	Levin & James	Increase in sanitation services; street scape, and increases in payroll, insurance, rent and printing costs.

FF = Per frontage foot, the length of the property facing the street
AV = Assessed Value, the assessed value is then multiplied by the given rate
SF = Square Foot, the square feet is then multiplied by the given rate

These increases, which have already been approved by the District Management Associations of the 7 BIDs, would result in a higher assessment on all properties currently subject to BID assessments as a result of the increase in the assessment rate.

(The following is the text of the Fiscal Impact Statement for Int. No. 972:)



THE COUNCIL OF THE CITY OF NEW YORK
 FINANCE DIVISION
 PRESTON NIBLACK, DIRECTOR
 FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 972

COMMITTEE:
 Finance

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to authorizing an increase in the amount to be expended annually in seven Business Improvement Districts (BID).

SPONSORS: By Council Members Recchia, Dickens, Koo, and Wills (by request of the Mayor)

SUMMARY OF LEGISLATION: The proposed local law amends the Administrative Code of the city of New York (the "Code") which would increase the budget amounts of seven Business Improvement Districts ("BID") throughout the City. The budgets are funded by special assessments on properties within the district and pay for additional services beyond those which the City provides. The special assessments are collected with the City's property tax collection system and passed through to the BIDs.

EFFECTIVE DATE: This local law would take effect immediately and shall be retroactive to July 1, 2012.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: 2013

FISCAL IMPACT STATEMENT:

	Effective FY13	FY Succeeding Effective FY14	Full Fiscal Impact FY13
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES AND EXPENDITURES: There will be no net impact on revenues or expenditures resulting from the enactment of this legislation on the City's budget adopted for Fiscal 2013. The BID assessments are charges separate

BID Name	Year Est.	Last Assessment Increase	Present Assessment	Proposed Assessment
5 th Avenue	1993	FY 11 \$153,720	\$2,715,720	\$2,905,000
Bryant Park	1986	FY 94 \$100,000	\$900,000	\$1,100,000
Alliance for Downtown NY	1995	FY 06 \$1,750,000	\$13,000,000	\$15,900,000
Kings Highway	1990	FY 06 \$50,000	\$250,000	\$290,000
47 th Street	1997	FY 09 \$168,633	\$500,000	\$700,000
North Flatbush	1986	FY 07 \$22,000	\$115,000	\$200,000
Madison/23 rd /Flatiron/Chelsea	2006	None	\$1,600,000	\$2,200,000

from the City's property tax levy and thus do not impact the General Fund. The assessments are levied on the businesses located in the impacted BIDs. The BIDs' budgets for Fiscal 2013 will increase from the Fiscal 2012 amounts (see below) as a result of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: BID special assessments.

SOURCE OF INFORMATION: City Council Finance Division
 New York City Department of Small Business Services

ESTIMATE PREPARED BY: Tanisha Edwards, Counsel
 Ralph Hernandez, Principal Legislative Financial Analyst

HISTORY: Introduced as Intro. 972 by the Council and referred to the Finance Committee on November 27, 2012. To be considered by the Committee on December 18, 2012.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 972:)

Int. No. 972
 By Council Members Recchia, Dickens, Koo, Wills and Eugene (by request of the Mayor).

A Local Law to amend the administrative code of the city of New York, in relation to authorizing an increase in the amount to be expended annually in seven business improvement districts.

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 25-431.1 of the administrative code of the city of New York, as amended by local law number 5 for the year 2011, is amended to read as follows:

a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize an increase in the amount to be expended annually in the Fifth Avenue Association business improvement district beginning on July 1, [2010] 2012, and the council having determined further that the tax and debt limits prescribed in section 25-412 of chapter four of this title will not be exceeded by such increased expenditure, there is hereby authorized in such district an annual expenditure of [two million seven hundred

fifteen thousand seven hundred twenty dollars (\$2,715,720)] *two million nine hundred five thousand dollars (\$2,905,000)*.

§2. Subdivision a of section 25-441 of the administrative code of the city of New York, as added by local law number 33 for the year 1994, is amended to read as follows:

a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize an increase in the amount to be expended annually in the Bryant Park business improvement district beginning on July 1, [1994] 2012, and the council having determined further that the tax and debt limits prescribed in section 25-412 of chapter four of this title will not be exceeded by such increased expenditure, there is hereby authorized in such district an annual expenditure of [nine hundred fifty thousand dollars (\$950,000)] *one million one hundred thousand dollars (\$1,100,000)*.

§3. Subdivision a of section 25-442.2 of the administrative code of the city of New York, as added by local law number 133 for the year 2005, is amended to read as follows:

a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize an increase in the amount to be expended annually in the Downtown-Lower Manhattan business improvement district beginning on July 1, [2005] 2012, and the council having determined further that the tax and debt limits prescribed in section 25-412 of chapter four of this title will not be exceeded by such increased expenditure, there is hereby authorized in such district an annual expenditure of [thirteen million dollars (\$13,000,000)] *fifteen million nine hundred thousand dollars (\$15,900,000)*.

§4. Subdivision a of section 25-445 of the administrative code of the city of New York, as amended by local law number 133 for the year 2005, is amended to read as follows:

a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize an increase in the amount to be expended annually in the Kings Highway business improvement district beginning on July 1, [2005] 2012, and the council having determined further that the tax and debt limits prescribed in section 25-412 of chapter four of this title will not be exceeded by such increased expenditure, there is hereby authorized in such district an annual expenditure of [two hundred fifty thousand dollars (\$250,000)] *two hundred ninety thousand dollars (\$290,000)*.

§5. Subdivision a of section 25-452.1 of the administrative code of the city of New York, as amended by local law number 60 for the year 2008, is amended to read as follows:

a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize an increase in the amount to be expended annually in the 47th Street business improvement district beginning on July 1, [2008] 2012, and the council having determined further that the tax and debt limits prescribed in section 25-412 of chapter four of this title will not be exceeded by such increased expenditure, there is hereby authorized in such district an annual expenditure of [five hundred thousand dollars (\$500,000)] *seven hundred thousand dollars (\$700,000)*.

§6. Subdivision a of section 25-453 of the administrative code of the city of New York, as amended by local law number 56 for the year 2006, is amended to read as follows:

a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize an increase in the amount to be expended annually in the North Flatbush Avenue business improvement district beginning on July 1, [2006] 2012, and the council having determined further that the tax and debt limits prescribed in section 25-412 of chapter four of this title will not be exceeded by such increased expenditure, there is hereby authorized in such district an annual expenditure of [one hundred fifteen thousand dollars (\$115,000)] *two hundred thousand dollars (\$200,000)*.

§7. Chapter 5 of title 25 of the administrative code of the city of New York is amended by adding a new section 25-463.1 to read as follows:

§ 25-463.1 *Madison/23rd/Flatiron/Chelsea business improvement district.*

a. *The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize an increase in the amount to be expended annually in the Madison/23rd/Flatiron/Chelsea business improvement district beginning on July 1, 2012, and the council having determined further that the tax and debt limits prescribed in section 25-412 of chapter four of this title will not be exceeded by such increased expenditure, there is hereby authorized in such district an annual expenditure of two million two hundred thousand dollars (\$2,200,000).*

b. *The amount of such expenditure to be levied upon each property in the district shall be determined in accordance with the method of assessment set forth in the Madison/23rd/Flatiron/Chelsea business improvement district plan.*

§8. This local law shall take effect immediately and shall be retroactive to and deemed to have been in full force and effect as of July 1, 2012.

DOMENIC M. RECCHIA, Jr., Chairperson; JOEL RIVERA, DIANA REYNA, GALE A. BREWER, LEROY G.COMRIE, Jr., LEWIS A. FIDLER, HELEN D. FOSTER, ROBERT JACKSON, G. OLIVER KOPPELL, ALBERT VANN, DARLENE MEALY, JULISSA FERRERAS, FERNANDO CABRERA, KAREN KOSLOWITZ, JAMES G. VAN BRAMER, VINCENT M. IGNIZIO, JAMES S. ODDO; Committee on Finance, December 18, 2012.

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

At this point the Speaker (Council Member Quinn) announced that the following items had been **preconsidered** by the Committee on Finance and had been favorably reported for adoption.

Report for Res. No. 1623

Report of the Committee on Finance in favor of approving a Resolution approving the new designation and changes in the designation of certain organizations to receive funding in the Expense Budget.

The Committee on Finance, to which the annexed resolution was referred on December 18, 2012, respectfully

REPORTS:

Introduction. The Council of the City of New York (the "Council") annually adopts the City's budget covering expenditures other than for capital projects (the "expense budget") pursuant to Section 254 of the Charter. On June 28, 2012, the Council adopted the expense budget for fiscal year 2013 with various programs and initiatives (the "Fiscal 2013 Expense Budget").

Analysis. This Resolution, dated December 18, 2012, amends the description for the Description/Scope of Northern Manhattan Coalition for Immigrant Rights, an organization receiving funding through the Immigrant Opportunities Initiative in accordance with the Fiscal 2013 Expense Budget in the amount of \$22,008 within the budget of the Department of Youth and Community Development. This Resolution changes the Description/Scope of Services to read: "Immigrant Related Legal Services."

Additionally, this Resolution amends the description for the Description/Scope of Services for IlluminArt Productions, an organization receiving local discretionary funding in accordance with the Fiscal 2013 Expense Budget in the amount of \$3,500 within the budget of the Department of Youth and Community Development. This Resolution changes the Description/Scope of Services to read: "ACTive Adults will use Improvisational Theater at the JCC located at 1475 Manor Road and will pass on their wisdom to senior audiences throughout the borough through performances of their original script. The actors will be transported by van to senior centers throughout the Island to perform. Participants and audience members will evaluate the ACTive Adult program through formal questionnaires and informal discussions."

Moreover, this Resolution amends the description for the Description/Scope of Services for CUNY Creative Arts Team, an organization receiving local discretionary funding in accordance with the Fiscal 2013 Expense Budget in the amount of \$3,500 within the budget of the City University of New York. This Resolution changes the Description/Scope of Services to read: "To provide in-class emergent literacy workshops plus 1:1 mentoring/coaching of 3 teachers for the early childhood center in your district: PS/IS 187 Hudson Cliffs."

This resolution approves new designations and changes in the designation of certain organizations receiving local, aging, and youth discretionary funding in accordance with the Fiscal 2013 Expense Budget, and approves the new designations and changes in the designation of certain organizations to receive funding pursuant to certain initiatives in such budgets.

In an effort to continue to make the budget process more transparent, the Council is providing a list setting forth new designations and/or changes in the designation of certain organizations receiving local, aging, and youth discretionary funding, as well as new designations and/or changes in the designation of certain organizations to receive funding pursuant to certain initiatives in the Fiscal 2013 Expense Budget.

This resolution sets forth new designations and specific changes in the designation of certain organizations receiving local initiative funding pursuant to the Fiscal 2013 Expense Budget, as described in Chart 1; sets forth new designations and changes in the designation of aging discretionary funding pursuant to the Fiscal 2013 Expense Budget, as described in Chart 2; sets forth new designations and changes in the designation of youth discretionary funding pursuant to the Fiscal 2013 Expense Budget, as described in Chart 3; and sets forth the new designations and changes in the designation of certain organizations that will receive funding pursuant to certain initiatives in the Fiscal 2013 Expense Budget, as described in Charts 4 - 7.

The charts, attached to the Resolution, contain the following information: name of the council member(s) designating the organization to receive funding or name of the initiative, as set forth in Adjustments Summary/Schedule C/ Fiscal 2013 Expense Budget, dated June 28, 2012.

Specifically, Chart 1 sets forth the new designation and changes in the designation of certain organizations receiving local discretionary funding in accordance with the Fiscal 2013 Expense Budget.

Chart 2 sets forth the new designation and changes in the designation of a certain organization receiving aging discretionary funding in accordance with the Fiscal 2013 Expense Budget.

Chart 3 sets forth the new designation and changes in the designation of certain organizations receiving youth discretionary funding in accordance with the Fiscal 2013 Expense Budget.

Chart 4 sets forth the new designation and changes in the designation of a certain organization receiving funding pursuant to the Domestic Violence and Empowerment Initiative in accordance with the Fiscal 2013 Expense Budget.

Chart 5 sets forth the new designation and changes in the designation of a certain organization receiving funding pursuant to the Senior Centers Program Restoration Initiative in accordance with the Fiscal 2013 Expense Budget.

Chart 6 sets forth the new designation and changes in the designation of a certain organization receiving funding pursuant to the OST Initiative in accordance with the Fiscal 2013 Expense Budget.

Chart 7 sets forth the new designation and changes in the designation of a certain organization receiving funding pursuant to the Early Learn/Childcare Initiative in accordance with the Fiscal 2013 Expense Budget.

It is to be noted that organizations identified in the attached Charts with an asterisk (*) have not yet completed or began the prequalification process conducted by the Mayor's Office of Contract Services (for organizations to receive more than \$10,000) by the Council (for organizations to receive \$10,000 or less total), or other government agency. Organizations identified without an asterisk have completed the appropriate prequalification review.

It should be further noted that funding for organizations in the attached Charts with a double asterisk (**) will not take effect until the passage of a budget modification.

Description of Above-captioned Resolution. In the above-captioned Resolution, the Council would approve the new designation and changes in the designation of certain organizations to receive funding in the Fiscal 2013 Expense Budget. Such Resolution would take effect as of the date of adoption.

In connection herewith, Council Members Comrie and Weprin offered the following resolution:

Res. No. 1623

Resolution approving the new designation and changes in the designation of certain organizations to receive funding in the Expense Budget.

By Council Members Recchia and Comrie.

Whereas, On June 28, 2012 the Council of the City of New York (the "City Council") adopted the expense budget for fiscal year 2013 with various programs and initiatives (the "Fiscal 2013 Expense Budget"); and

Whereas, The City Council is hereby implementing and furthering the appropriations set forth in the Fiscal 2013 Expense Budget by approving the new designation and changes in the designation of certain organizations receiving local, aging and youth discretionary funding, and by approving the new designation and changes in the designation of certain organizations to receive funding pursuant to certain initiatives in accordance therewith; and

Resolved, That the City Council approves the new designation and changes in the designation of certain organizations receiving local discretionary funding in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 1; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving aging discretionary funding in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 2; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of certain organizations receiving youth discretionary funding in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 3; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving funding pursuant to the Domestic

Violence and Empowerment Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 4; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving funding pursuant to the Senior Centers Program Restoration Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 5; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving funding pursuant to the OST Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 6.

Resolved, That the City Council approves the new designation and changes in the designation of certain organizations receiving funding pursuant to the EarlyLearn / Childcare Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 7; and be it further.

ATTACHMENT:

CHART 4: Domestic Violence and Empowerment (DoVE Initiative) - Fiscal 2013

Organization	EIN Number	Agency	Amount	Agr #	UIA *
DWA Farm, Inc.	43-1952083	OCJC	(\$15,625.00)	098	002
Council of Peoples Organization, Inc.	75-3046891	OCJC	\$15,625.00	098	002

* Indicates pending completion of pre-qualification review.

CHART 5: Senior Centers and Programs Restoration - Fiscal 2013

Organization	EIN Number	Agency	Amount	Agy #	U/A *
Mapleton Midwood Community Mental Health Board	11-2524611	DFTA	(\$39,225.00)	125	003
Heights and Hill Community Council, Inc.	23-7237927	DFTA	\$39,225.00	125	003

* Indicates pending completion of pre-qualification review.

CHART 6: OST - Fiscal 2013

Organization	EIN Number	Agency	Amount	Agy #	U/A *
Fort Green Senior Citizen Council, Inc. - Young Minds Day Care Center	11-2300840	DYCD	(\$160,000.00)	260	312
Fort Greene Council - Young Minds Day Care Center	11-2300840	DYCD	\$160,000.00	260	312

* Indicates pending completion of pre-qualification review.

DOMENIC M. RECCHIA, Jr., Chairperson; JOEL RIVERA, DIANA REYNA, GALE A. BREWER, LEROY G.COMRIE, Jr., LEWIS A. FIDLER, HELEN D. FOSTER, ROBERT JACKSON, G. OLIVER KOPPELL, ALBERT VANN, DARLENE MEALY, JULISSA FERRERAS, FERNANDO CABRERA, KAREN KOSLOWITZ, JAMES G. VAN BRAMER, VINCENT M. IGNIZIO, JAMES S. ODDO; Committee on Finance, December 18, 2012.

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

At this point the Speaker (Council Member Quinn) announced that the following items had been **preconsidered** by the Committee on Finance and had been favorably reported for adoption.

Report for L.U. No. 747

Report of the Committee on Finance in favor of approving Council Towers VII, 2219 Givan Avenue, Bronx, Block 5141, tentative lot 1002, Community District No. 10, Council District No. 12

The Committee on Finance, to which the annexed resolution was referred on December 18, 2012, respectfully

REPORTS:

(The following is the text of a Memo to the Finance Committee from the Finance Division of the New York City Council:)

December 18, 2012

TO: Hon. Domenic M. Recchia, Jr.
Chair, Finance Committee

Members of the Finance Committee

FROM: Amy Stokes, Finance Division

RE: Finance Committee Agenda of December 18, 2012 - Resolution approving a tax exemption for one preconsidered Land Use Items (Council Districts 12).

HPD has submitted a request to the Council to approve property a partial tax exemption for the following property: Council Towers VII, located in Councilmember King's district.

Council Towers VII (Block 5141, tentative Lot 1002 (p/o existing lot 326)) in the Bronx will consist of one building with 78 units and one superintendent unit. Under the Section 202 Supportive Housing Program For The Elderly, not-for-profit sponsors selected by the United States Department of Housing and Urban Development ("HUD") purchase land from the City or from private owners and then construct residential buildings (or rehabilitate existing vacant buildings) on such land. HUD provides acquisition, construction, and permanent financing through a capital advance and the City provides a tax exemption pursuant to Section 422 of the Real Property Tax Law.

The completed building will provide rental housing for elderly persons of low income and receive operating subsidies from HUD through a project rental assistance contract. Under the proposed project, Council Towers VII Housing Development Fund Corporation ("Sponsor") will purchase Unit 2 in the Givan Avenue Condominium, a condominium to be formed, tentatively designated as Block 5141, tentative Lot 1002 (p/o existing Lot 326) ("Exemption Area") from the current private owner and thereafter undertake the new construction of the 11-story elevator building. The Exemption Area currently does not receive any exemption from real property taxation. HPD respectfully requests that the Council approve, pursuant to Section 422 of the Real Property Tax Law, a partial real property tax exemption.

This item has the approval of Councilmember King.

In connection herewith, Council Members Comrie and Weprin offered the following resolution:

Res. No. 1624

Resolution approving a partial exemption from real property taxes for property located at (Block 5141, tentative Lot 1002 (p/o existing lot 326)) The Bronx, pursuant to Section 422 of the Real Property Tax Law (Preconsidered L.U. No. 747).

By Council Members Recchia and Comrie.

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council its request dated December 11, 2012 that the Council take the following action regarding a housing project to be located at 2219 Givan Avenue, Bronx, New York, Block 5141, tentative lot 1002 (formerly known as p/o lot 326) and to be known as Unit 2 in The Givan Avenue Condominium, a condominium to be formed (the "Exemption Area")

Approve an exemption of the Project from real property taxes pursuant to Section 422 of the Real Property Tax Law (the "Tax Exemption");

WHEREAS, the project description that HPD provided to the Council states that the purchaser of the Project (the "Sponsor") is a duly organized housing development fund company under Article XI of the Private Housing Finance Law;

WHEREAS, the Council has considered the financial implications relating to the Tax Exemption;

RESOLVED:

The Council hereby grants an exemption from real property taxes as follows:

1. All of the value of the property in the Exemption Area, including both the land and improvements, shall be exempt from real property taxes, other than assessments for local improvements, from the date of conveyance of the land to the Sponsor until the date of issuance of the temporary or permanent Certificate of Occupancy for the housing project;
2. All of the value of the property in the Exemption Area, including both the land and improvements, (excluding those portions, if any, devoted to business or commercial use), shall be exempt from real property taxes, other than assessments for local improvements, commencing upon the date of issuance of the temporary or permanent Certificate of Occupancy for the housing project (or, if the housing project is constructed in stages, upon the date of issuance of the temporary or permanent Certificate of Occupancy for each such stage) (the "Effective Date") and terminating upon the earlier to occur of (i) the date the mortgage held by the Department of Housing and Urban Development of the United States of America ("HUD") is satisfied, or (ii) a date which is forty (40) years from the Effective Date (the "Expiration Date"); provided, however, that the Sponsor shall make an annual real estate tax payment commencing upon the Effective Date and terminating upon the Expiration Date;
3. Commencing upon the Effective Date and during each year thereafter until the Expiration Date, the Sponsor shall make real estate tax payments in the sum of (i) \$57,728, which is ten percent (10%) of the annual shelter rent for the housing project, as determined by HPD in accordance with the formula agreed upon with HUD, plus (ii) an additional amount equal to twenty-five percent (25%) of the amount by which the total contract rents applicable to the housing project for that year (as adjusted and established pursuant to Section 8 of the United States Housing Act of 1937, as amended) exceed the total contract rents which are authorized as of the Effective Date. Notwithstanding the foregoing, the total annual real estate tax payment by the Sponsor shall not at any time exceed the lesser of either (i) seventeen percent (17%) of the contract rents, or (ii) the amount of real estate taxes that would otherwise be due in the absence of any form of tax exemption or abatement provided by any existing or future local, state, or federal law, rule or regulation;
4. In consideration of such tax exemption, the Sponsor, for so long as the partial tax exemption provided hereunder shall remain in effect, shall waive the benefits, if any, of additional or concurrent real property tax abatement and/or tax exemption which may be authorized under any existing or future local, state, or federal law, rule or regulation.

DOMENIC M. RECCHIA, Jr., Chairperson; JOEL RIVERA, DIANA REYNA, GALE A. BREWER, LEROY G. COMRIE, Jr., LEWIS A. FIDLER, HELEN D. FOSTER, ROBERT JACKSON, G. OLIVER KOPPELL, ALBERT VANN, DARLENE MEALY, JULISSA FERRERAS, FERNANDO CABRERA, KAREN KOSLOWITZ, JAMES G. VAN BRAMER, VINCENT M. IGNIZIO, JAMES S. ODDO; Committee on Finance, December 18, 2012.

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Fire and Criminal Justice Services

Report for Int. No. 943-A

Report of the Committee on Fire and Criminal Justice Services in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to the place of assembly certificate of operation and the place of assembly permit.

The Committee on Fire and Criminal Justice Services, to which the annexed amended proposed local law was referred on October 11, 2012 (Minutes, page 4010), respectfully

REPORTS:

I. INTRODUCTION

On December 18, 2012, the Committee on Fire and Criminal Justice Services, chaired by Council Member Elizabeth S. Crowley, will consider on Proposed Int. No. 943-A, a Local Law to amend the Administrative Code of the city of New York, in relation to the Place of Assembly Certificate of Operation ("PACO") and the Place of Assembly Permit ("FDNY Permit"). The Committee first considered this bill at a hearing on December 17, 2012 and received testimony from the New York City Department of Buildings ("DOB"), the Fire Department ("FDNY") and stakeholders.

II. BACKGROUND

In 2009, the New York City Regulatory Review Panel ("Review Panel") was created by local law to review the structure and function of city regulations and their impact on small businesses) After garnering input from small business owners, industry representatives and members of the public, the Review Panel, comprised of members of the Bloomberg Administration ("the Administration") and representatives from the City Council, issued a report ("Panel Report") which detailed the panel's findings and recommendations on fostering small business growth by eliminating or streamlining regulatory obstacles.² Simplifying the place of assembly permitting process was one of the panel's suggestions.³ Proposed Int. No. 943-A, would amend several provisions of the Administrative, Building and Fire Codes relating to places of assembly in order to coordinate and streamline the regulation of those places by the DOB and FDNY.⁴

¹ http://council.nyc.gov/html/rel_eases/100212business.shtml . See also, New York City Local Law 45 of 2009.

² See, Regulatory Review Panel Report, April 2010.

http://www.nyc.gov/html/nycrules/downloadstpdf/regulatory_review_panel_report.pdf .

³ See, Regulatory Review Panel Report at p. 19, April 2010.

⁴ See, Administrative Memorandum in Support of Introductory No. 943-2012, on file with the Fire and Criminal Justice Services Committee.

Currently, a PACO is required for premises where 75 or more members of the public gather indoors, or 200 or more gather outdoors for religious, recreational, educational, political or social purposes or to consume food or drink.⁵ These premises must meet certain Fire and Building Code requirements to operate.⁶ The initial application for a PACO is filed with the DOB which reviews the application and performs an inspection of the premises prior to issuance of the certificate.⁷ PACOs are issued for one year terms and must be renewed on an annual basis. The renewal is based on an inspection of the location by the FDNY prior to the expiration of the certificate.⁸ Although FDNY inspects places of assembly to assess compliance requirements, FDNY does not renew these certificates, but rather forwards the inspection results to DOB and, if determined to be appropriate, DOB issues the PACO renewal.⁹

The involvement of two agencies in the renewal process for these certificates has been criticized as being duplicative and cumbersome and noted as causing delays in places of assembly receiving timely renewal of the needed PACO. Proposed Int. No. 943-A would address these concerns by streamlining this process. The bill would allow DOB to issue an initial PACO, but only FDNY would be involved in the renewal of these certificates. The bill would authorize the FDNY to issue, after an annual compliance inspection, an FDNY Permit that, together with the DOB issued PACO would authorize the continued operation of a place of assembly. The FDNY permit would last for a year subject to renewal. The DOB PACO would not expire but would be inoperative without an accompanying FDNY permit. Additionally, the bill specifies that if places of assembly make certain changes a new or amended PACO from DOB will be required. A new certificate will be required when a place of assembly without a nine digit number (DOB's Building Information System ("BIS") was created in 1992 allowing the agency to begin issuing nine-digit-job numbers which are recognized in such system) makes a: (i) physical change to the space; (ii) change to seating plan; and/or (iii) an establishment name change. For those places of assembly with a nine-digit job number, these types of changes will trigger the need to file an amended plan with DOB. All places of assembly will be required to file for a new PACO if a change of zoning use group or assembly occupancy group is made at a location.

⁵ <http://www.nyc.gov/html/dob/html/development/pa.shtml>. PACOs were previously called Place of Assembly Permits.

⁶ <http://www.nyc.gov/html/dob/html/development/pa.shtml>.

⁷ <http://www.nyc.gov/html/dob/html/development/pa.shtml>.

⁸ <http://www.nyc.gov/html/dob/html/development/pa.shtml>.

⁹ <http://www.nyc.gov/html/dob/html/development/pa.shtml>.

III. PROPOSED INT. NO. 943 A

Bill section one amends table 28112.8 of Chapter 1 of Title 28 of the Administrative Code ("Ad. Code") by changing the reference to "renewal" in the comments section to "amendment."

Bill section two amends section 28-117.1.1 of the Ad. Code to provide that PACOs issued prior to the effective date of this legislation will be valid for one year after its date of issuance. After such effective date, all new PACOs shall be subject to the provisions of this legislation and DOB filing requirements.

Bill section three amends section 28-117.1 by adding two new sections. New section 28117.1.2 would require the issuance of a new PACO for places of assembly without a nine digit job number, when there is a change of zoning use group or assembly occupancy groups A1 through A5, or when there are any changes identified in section 28-117.1.3 and (ii) for places of assembly with a nine digit job number, a new PACO will be necessary when there is a change of zoning use group or assembly occupancy groups A1 through A5. Section 28-117.1.3 would prohibit any change to a place of assembly inconsistent with filed plans unless an amendment to such plans was approved or accepted by DOB. An amended PACO would be needed for any physical changes requiring a DOB alteration permit, any change to the approved seating plan, or any change in the name of the establishment.

Bill section four amends section 28-117.3 to provide that PACOs shall be valid for one year. After the one year period, a PACO would remain in effect so long as an annual FDNY Permit is in place.

Bill section five amends section BC 3110.7 of the Building Code to correct and conform a reference to the PACO which is presently referred to as a place of assembly permit.

Bill section six amends section FC 105.3.1 of the Fire Code by providing that every permit or renewal granted by the Fire Commissioner shall be for a specified period, not to exceed two years, except for permits listed in section 105.6 of the Fire Code.

Bill section seven amends section 105.6 of the Fire Code to provide that the term of the place of assembly permit would be for a period not to exceed one year.

Bill section eight provides the enactment clause and provides that this local law shall take effect 120 days after its enactment and that, in advance of such effective date, the DOB and FDNY Commissioners may promulgate rules and take any other actions necessary to implement the local law.

(The following is the text of the Fiscal Impact Statement for Int. No. 943-A:)



THE COUNCIL OF THE CITY OF
NEW YORK
FINANCE DIVISION
PRESTON NIBLACK, DIRECTOR
FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 943-A

COMMITTEE: Fire and Criminal
Justice Services

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to the place of assembly certificate of operation and the place of assembly permit.

SPONSORS: By Council Members Dickens, Comrie, Fidler, Koo, Mealy, Rose, Williams, Rodriguez and Crowley (in conjunction with the Mayor)

SUMMARY OF LEGISLATION: Proposed Int. 943-A would streamline the process by which places of assembly are permitted by eliminating the Department of Buildings (DOB) annual renewal process for certificates of operation. Rather than issuing place of assembly certificates of operation (PACO) that expire after one year, DOB would issue PACOs that do not expire. The bill would instead authorize the FDNY to issue a PA permit each year following an annual inspection, rather than sending inspection results to DOB to renew PACOs. A DOB place of assembly certificate of operation would be valid for one year by itself and, after one year, would be required to be accompanied by a Fire Department PA permit. A DOB place of assembly certificate of operation would be valid as long as the business has a valid FDNY PA permit. A new or amended place of assembly certificate of operation would be required in cases of: (i) a change of zoning use group or assembly occupancy group; (ii) a physical change to the space; (iii) a change to seating plan; or (iv) an establishment name change. For businesses that that received their original place of assembly certificate of operation prior to approximately 1993, all of these changes would require a new place of assembly certificate of operation. (This is intended to get all places of assembly into the Buildings Information System, BIS).

EFFECTIVE DATE: This local law would take effect 120 days after its enactment; provided, however, that the commissioner of buildings and the fire commissioner may, in advance of such effective date, promulgate rules and take any other actions necessary to implement this local law.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2014.

FISCAL IMPACT STATEMENT:

	Effective FY13	FY Succeeding Effective FY14	Full Fiscal Impact FY14
Revenues	\$0	(\$350,000)	(\$350,000)
Expenditures	\$0	\$0	\$0
Net	\$0	(\$350,000)	(\$350,000)

IMPACT ON REVENUES: Because the Department of Buildings would issue a place of assembly certificates of operation that do not expire and the Fire Department would be now authorized to issue Public Assembly permits, the DOB will no longer renew certificates of operation. DOB charges a renewal fee of \$100, and collects approximately \$350,000 each year. Therefore, enactment of this legislation would reduce revenue by \$350,000 annually for the Department of Buildings.

IMPACT ON EXPENDITURES: Proposed Int. 943-A would not impact expenditures.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: Not applicable

SOURCE OF INFORMATION: City Council and Department of Buildings

ESTIMATE PREPARED BY: Regina Poreda Ryan, Deputy Director
John Lisianskiy, Legislative Financial Analyst

HISTORY: Introduced as Intro. 943 by the Council on October 11, 2012 and referred to the Committee on Fire and Criminal Justice Services. The bill was amended and a hearing was held on December 17, 2012. Proposed Int. 943-A is scheduled to be voted on by the Committee and the full Council on December 18, 2012.

DATE SUBMITTED TO COUNCIL: December 18, 2012

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 943-A:)

Int. No. 943-A

By Council Members Dickens, Comrie, Fidler, Koo, Mealy, Rose, Williams, Rodriguez and Crowley (in conjunction with the Mayor).

A Local Law to amend the administrative code of the city of New York, in relation to the place of assembly certificate of operation and the place of assembly permit.

Be it enacted by the Council as follows:

Section 1. Table 28-112.8 of chapter 1 of title 28 of the administrative code of the city of New York, as amended by local law number 45 for the year 2011, is amended to read as follows:

Table 28-112.8

Item Description	Fee	Comments
Place of assembly certificate of operation.	\$200.	\$100 [renewal] amendment.

§2. Section 28-117.1.1 of chapter 1 of title 28 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

§28-117.1.1 Contents of the place of assembly certificate of operation. The place of assembly certificate of operation shall contain the place of assembly certificate number, the number of persons who may legally occupy the space and any other information that the commissioner may determine. Such place of assembly certificate of operation shall be framed and mounted in a location that is conspicuously visible to a person entering the space. For the purposes of this article a department issued place of assembly permit [issued prior to the effective date of this code] or place of assembly certificate of operation shall be valid until its expiration, at which time a new place of assembly certificate of operation shall be required in accordance with the provisions of this article and with the filing requirements of the department. [Prior to the expiration of the term of such place of assembly permit, the party responsible for renewal shall apply to the department for a certificate of operation in accordance with this article, except that the issuance of such certificate shall be subject to the same inspection requirement as a renewal of a certificate of operation pursuant to this code.]

§3. Section 28-117.1 of chapter 1 of title 28 of the administrative code of the city of New York is amended by adding new sections 28-117.1.2 and 28-117.1.3 to read as follows:

§28-117.1.2 New certificate required. The following changes to a place of assembly shall require a new place of assembly certificate of operation instead of an amendment filed in accordance with section 28-117.1.3:

1. For a department issued place of assembly permit or place of assembly certificate of operation that does not have a nine-digit job number, any change of zoning use group, assembly occupancy group A-1 through A-5, or any of the changes set forth in section 28-117.1.3.

2. For all other department issued place of assembly permits or place of assembly certificates of operation, any change of zoning use group or assembly occupancy group A-1 through A-5.

§28-117.1.3 Amendments. No change shall be made to a place of assembly that is inconsistent with the most recently issued place of assembly certificate of operation or renewal unless an amendment to such certificate is filed with and approved or accepted by the department. Changes that require an amendment include any of the following:

1. Any physical change requiring an alteration permit to be issued by the department.

2. Any amendment to the plan for seating and other moveable furnishings, in accordance with section 28-117.1.

3. Any change to the name of the establishment.

§4. Section 28-117.3 of chapter 1 of title 28 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

§28-117.3 Duration [and renewal] of certificate. A place of assembly certificate of operation shall be issued [for a term of 1 year and may be renewed annually upon payment of proper fees and proof of satisfactory inspection by the fire department] by the department and shall be effective for one year after its issuance. Thereafter, such certificate shall be effective only for periods of time during which there is in effect an annual place of assembly permit issued by the fire department pursuant to section 105.6 of the New York city fire code.

§5. Section 3110.7 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

3110.7 Assembly seating. Unless separated from seating inside the building by fire partitions complying with Section 708, the seating for enclosed sidewalk cafés shall be added to that inside the building in order to determine whether a place of assembly [permit] certificate of operation is required.

§6. Section FC 105.3.1 of the New York city fire code, chapter 2 of title 29 of the administrative code of the city of New York, as added by local law number 26 for the year 2008, is amended to read as follows:

105.3.1 Permit issuance and renewal. Every permit or renewal thereof granted by the commissioner shall be for a period specified therein, not to exceed two years, or as set forth in Section 105.6, and shall expire at the end of such period unless the commissioner approves its renewal. Permits are not transferable and any change in occupancy, operation, tenancy or ownership shall require that a new permit be issued.

§7. The “places of assembly” subdivision of section FC 105.6 of the New York city fire code, chapter 2 of title 29 of the administrative code of the city of New York, as added by local law number 26 for the year 2008, is amended to read as follows:

Places of assembly. A permit is required to maintain or operate a place of assembly. The term of such permit shall be for a period not to exceed 1 year.

§8. This local law shall take effect 120 days after its enactment; provided, however, that the commissioner of buildings and the fire commissioner may, in

advance of such effective date, promulgate rules and take any other actions necessary to implement this local law.

ELIZABETH S. CROWLEY, Chairperson; VINCENT J. GENTILE, ROSIE MENDEZ, MATHIEU EUGENE, YDANIS A. RODRIGUEZ, DANIEL J. HALLORAN III; Committee on Fire and Criminal Justice Services, December 17, 2012.

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Housing and Buildings

Report for Int. No. 977-A

Report of the Committee on Housing and Buildings in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to waiving certain permit and inspection fees for the demolition, alteration, rebuilding or repair of certain buildings and systems damaged by the severe storm that occurred on October 29 and 30, 2012, commonly referred to as “Hurricane Sandy.”

The Committee on Housing and Buildings, to which the annexed amended proposed local law was referred on December 10, 2012 (Minutes, page 4544), respectfully

REPORTS:

BACKGROUND AND ANALYSIS:

On December 17, 2012, the Committee on Housing and Buildings, chaired by Council Member Erik Martin Dilan, will conduct a hearing on Proposed Int. No. 977-A, A Local Law to amend the administrative code of the city of New York, in relation to waiving certain application, permit and inspection fees for the demolition, alteration, rebuilding or repair of certain buildings and systems damaged by the severe storm that occurred on October 29 and 30, 2012, commonly referred to as “Hurricane Sandy.” The Committee heard an earlier version of this bill on December 13, 2012 where the Department of Buildings, representatives of the real estate industry, and other interested parties testified on such item.

Hurricane Sandy caused heavy flooding, power outages, and widespread damage to buildings throughout the city. Some of the more severe damage to property in the city took place in communities such as the Rockaway Peninsula in Queens, the South Shore of Staten Island, and the Red Hook and Coney Island communities in Brooklyn. Following this storm, the Department of Buildings (DOB or Department) inspected 80,000 buildings and properties in areas affected by the storm and affixed to each building or lot a placard, indicating the condition of the property.¹ Green placards specified that the property was hazard-free and with no restriction on entry, yellow placards indicated that there was some damage to the property and included instructions on entry limitations, and red placards meant that a building was seriously damaged and therefore unsafe to enter.² A total of 1,040 properties were issued red placards by the Department or were otherwise noted by the Department in its files to be severely damaged or destroyed by the storm.³ Out of the 1,040 properties noted by the Department 222 were completely destroyed by Sandy.⁴

To aid communities in their recovery efforts and encourage the repair and reconstruction of buildings damaged by the storm, on November 12, 2012, Mayor Bloomberg issued Executive Order 172, suspending certain DOB fees for properties affected by Sandy.⁵ The Executive Order waived all fees for red placard buildings related to demolition applications and permits; alteration 1, 2 and 3 applications and permits to renovate and repair damaged structures; and new building applications and permits to rebuild structures that were completely destroyed. For all other buildings that were damaged by the storm, fees related to electrical and plumbing work were waived so long as a master plumber or electrician certified to the department that such damage was Sandy-related.⁶ Since November 12, the Mayor has re-issued this Executive Order a number of times to continue the same fee waivers set forth in the original order.⁷

Proposed Int. No. 977-A would establish the work that may be eligible for a DOB fee waiver and the timeframe for such waivers. In order to qualify for the waiver of all DOB fees, owners of buildings that were severely damaged or destroyed as indicated by a red placard or a notation in the Department’s records must submit their application for construction document approval or a permit on or before October 31, 2014. All other owners whose buildings require electrical or plumbing work as a result of Sandy would have to submit their application for construction document approval or a permit on or before April 30, 2013 in order to qualify for the fee waiver.

Proposed Int. No. 977-A

Bill section one amends Article 112 of Chapter 1 of Title 28 of the Administrative Code (Ad. Code) by adding new section 28-112.10. New section 28-

112.10 is titled “Waiver of application, permit and inspection fees for certain work arising out of the storm that occurred on October 29 and 30, 2012.” This section provides that the commissioner shall waive fees that would otherwise be required to be paid by the Ad. Code, Electrical Code, or the rules of the Department for applications, permits and inspections for certain work arising out of the storm that occurred on October 29 and 30, 2012 as provided in subsections 28-112.10.1 and 28-112.10.2.

New subsection 28-112.10.1 is titled “Eligible buildings.” An eligible building is defined as a building that, following the storm and pursuant to an inspection program established by the Department under an emergency order of the Mayor, is designated by the Department after an inspection through a notation on the Department’s records and/or by the posting of a red placard warning on the building or premises as seriously damaged and unsafe to enter or occupy or completely demolished and/or washed away. All DOB fees associated with applications, permits, and inspections for eligible buildings shall be waived for alteration work, demolition work, construction of new buildings and associated work, including but not limited to electrical and plumbing work. The Commissioner may request additional information from the applicant relating to the damage. Fee waivers will be available for all jobs where the initial application for construction document approval or, if no construction documents are required, application for a permit, is submitted on or after October 30, 2012 and on or before October 31, 2014.

New subsection 28-112.10.2 is titled “Storm related damage to electrical and plumbing systems.” This new subsection provides that in buildings other than eligible buildings, fees shall be waived only for applications, permits and inspections for work related to plumbing and electrical systems damaged by the storm. Applicants must submit certification by a licensed master electrician or a licensed master plumber or fire suppression piping contractor that the proposed work is related to such storm damage. The Commissioner may request that the applicant submit additional information relating to the damage. Finally, this subsection also provides that a fee waiver will be applicable for electrical and plumbing jobs where the initial application for construction document approval or, if no construction documents are required, application for a permit is submitted on or after October 30, 2012 and on or before April 30, 2013.

Bill section two contains the enactment clause and provides that this local law shall take effect immediately.

Amendments to Int. No. 977

Since the initial hearing on the item, this bill has been amended in the following ways:

- Technical amendments were made throughout the bill for purposes of clarity.
- The deadline for electrical and plumbing fee waivers was extended from January 31, 2013 to on or before April 30, 2013 in order to provide owners in affected communities more time to apply.

¹ Office of the Mayor Press Release Nov. 12, 2012 http://www.nyc.gov/html/dob/downloads/pdf/pr_storm_related_building_fees_waived.pdf

² Department of Buildings Storm Cleanup Frequently Asked Questions http://www.nyc.gov/html/dob/downloads/pdf/Storm_Cleanup_FAQs.pdf

³ Testimony provided by the New York City Department of Buildings on December 13, 2012. Available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1254493&GUID=A7EDAB2B-E0D8-4BFD-B82D-62FBE2DB9F20&Options=ID|Text|Search=977>

⁴ *Id.*

⁵ Section 24 of the New York State Executive Law provides the Mayor with the authority to suspend any local laws, ordinances, or regulations, or parts thereof, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery. Such suspension cannot, however, be declared for more than five days at a time.

⁶ Executive Order No. 172 Emergency Order Regarding Waiver of Building Department Permit Fees November 12, 2012. http://www.nyc.gov/html/om/pdf/eo/eo_172.pdf

⁷ The Executive Order waiving Department of Buildings Fees was re-issued on: November 17 (EO 178), November 22 (EO 182), November 27 (EO 187), December 2 (EO 190), December 7 (EO 193) and December 12 (EO ____).

(The following is the text of the Fiscal Impact Statement for Int. No. 977-A:)



THE COUNCIL OF THE CITY OF NEW YORK
 FINANCE DIVISION
 PRESTON NIBLACK, DIRECTOR
 FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 977-A

COMMITTEE: Housing and Buildings

TITLE: To amend the administrative code of the city of New York, in relation to waiving certain permit and inspection fees

SPONSORS: Council Members Ignizio, Chin, Dilan, Dromm, Eugene, Ferreras, Gentile, James, Koo, Lander, Mendez, Nelson, Williams, Wills, Comrie,

for the demolition, alteration, rebuilding or repair of certain buildings and systems damaged by the severe storm that occurred on October 29 and 30, 2012, commonly referred to as “Hurricane Sandy.”

Recchia, Jackson, Rodriguez, Halloran and Ulrich in conjunction with the Mayor)

SUMMARY OF LEGISLATION: This legislation would allow the Department of Buildings (DOB) to waive certain fees for buildings that were damaged or destroyed by Hurricane Sandy.

Buildings that were deemed seriously damaged and unsafe to occupy or destroyed as indicated by a red tag or other notation by the Department will be eligible for the waiver of all fees associated with the alteration, demolition or construction of a new building, including but not limited to electrical and plumbing work so long as the application is submitted on or after October 30, 2012 and on or before October 31, 2014.

For all other buildings damaged by Hurricane Sandy that require electrical or plumbing work, fees related to such work will be waived if a licensed master electrician or plumber or fire suppression piping contractor certifies to the Department that such damage is the result of the storm. The electrical and plumbing waiver is available for applications submitted on or after October 30, 2012 and on or before April 30, 2013.

EFFECTIVE DATE: This law would take effect immediately.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2013

FISCAL IMPACT STATEMENT:

	Effective FY13	FY Succeeding Effective FY14	Full Fiscal Impact FY13
Revenues (+)	See below	See below	See below
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: DOB is estimating that the City will lose roughly \$2 million in revenues. However, the City is not counting this revenue lost as it is only realized as a result of Hurricane Sandy. The City’s revenue budget projections were formulated prior to Hurricane Sandy. Therefore, this legislation creates no impact to the City.

IMPACT ON EXPENDITURES: There will be no impact on expenditures by the enactment of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: Office of Management and Budget (OMB)
 Department of Buildings (DOB)

ESTIMATE PREPARED BY: Ralph P. Hernandez, Principal Legislative Financial Analyst

Nathan Toth, Deputy Director
 New York City Council Finance Division

HISTORY: Int. 977 was introduced to the City Council and referred to the Housing and Buildings Committee on December 10, 2012. The Committee held a hearing on Int. 977 on December 13, 2012, and the bill was laid over. The Committee will vote on an amended version, Proposed Int. 977-A, on December 18, 2012.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 977-A:)

Int. No. 977-A

By Council Member Ignizio, Chin, Dilan, Dromm, Eugene, Ferreras, Gentile, James, Koo, Lander, Mendez, Nelson, Williams, Wills, Comrie, Recchia, Jackson, Rodriguez, Van Bramer, Vallone, Garodnick, Crowley, Gennaro, Greenfield, Halloran and Ulrich (in conjunction with the Mayor).

A Local Law to amend the administrative code of the city of New York, in relation to waiving certain permit and inspection fees for the demolition, alteration, rebuilding or repair of certain buildings and systems damaged by the severe storm that occurred on October 29 and 30, 2012, commonly referred to as “Hurricane Sandy.”

Be it enacted by the Council as follows:

Section 1. The administrative code of the city of New York is amended by adding a new section 28-112.10 to read as follows:

§28-112.10 Waiver of application, permit and inspection fees for certain work arising out of the storm that occurred on October 29 and 30, 2012. *The commissioner shall waive the fees that would otherwise be required to be paid by this code, the electrical code or the rules of the department for applications, permits and inspections for certain work arising out of the storm that occurred on October 29 and 30, 2012 as provided in subsections 28-112.10.1 and 28-112.10.2.*

§28-112.10.1 Eligible buildings. *For the purposes of this article, eligible buildings are those buildings that, following the storm and pursuant to an inspection program established by the department under an emergency order of the Mayor, are designated by the department after inspection through a notation on the department’s records and/or by the posting of a red placard warning on the building or premises as seriously damaged and unsafe to enter or occupy or completely demolished and/or washed away. With respect to eligible buildings, fees associated with applications, permits and inspections shall be waived for alteration work, demolition work, construction of new buildings and associated work, including but not limited to associated electrical and plumbing work. The commissioner may request the applicant to submit additional information relating to the damage. Waiver of such fees pursuant to this section shall be applicable for jobs where the initial application for construction document approval or, if no construction documents are required, application for permit is submitted on or after October 30, 2012 and on or before October 31, 2014.*

§28-112.10.2 Storm related damage to electrical and plumbing systems. *In buildings other than eligible buildings, fees shall be waived only for applications, permits and inspections for work related to plumbing and electrical systems damaged by such storm. Applicants must submit certification by a licensed master electrician or a licensed master plumber or fire suppression piping contractor that the proposed work is related to such storm damage. The commissioner may request the applicant to submit additional information relating to the damage. Waiver of such fees pursuant to this section shall be applicable for jobs where the initial application for construction document approval or, if no construction documents are required, application for permit is submitted on or after October 30, 2012 and on or before April 30, 2013.*

§2. This local law shall take effect immediately.

ERIK MARTIN DILAN Chairperson; JOEL RIVERA, GALE A. BREWER, LEROY G. COMRIE, Jr., LEWIS A. FIDLER, ROBERT JACKSON, LETITIA JAMES, ROSIE MENDEZ, ELIZABETH S. CROWLEY, BRADFORD S. LANDER, JUMAANE D. WILLIAMS, JAMES S. ODDO; Committee on Housing and Buildings, December 18, 2012.

(The following is the text of a Message of Necessity from the Mayor for the Immediate Passage of Int No. 977-A:)

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

Pursuant to authority invested in me by section twenty of the Municipal Home Rule and by section thirty-six of the New York City Charter, I hereby certify to the necessity for the immediate passage of a local law; entitled:

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to waiving certain permit and inspection fees for the demolition, alteration, rebuilding or repair of certain buildings and systems damaged by the severe storm that occurred on October 29 and 30, 2012, commonly referred to as “Hurricane Sandy.”

Given under my hand and seal this 17th day of December, 2012 at City Hall in the City of New York

Michael R. Bloomberg
Mayor

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Reports of the Committee on Land Use

At this point the Speaker (Council Member Quinn) announced that the following items had been **preconsidered** by the Committee on Land Use and had been favorably reported for adoption.

Report for L.U. No. 748

Report of the Committee on Land Use in favor of approving Application No. 20135202 HAM submitted by New York City Department of Housing Preservation and Development (“HPD”) for a modification of an exemption of real property taxes for the property located at 502 West 151st Street, Tax Block 2082, Lot 36, and 526/8 West 151st Street (Tax Block 2082, Lot 52), Borough of Manhattan, Community Board 9, Council District 7. This matter is subject to Council review and action at the request of HPD and pursuant to Sections 123(4), 125 and 577 of the Private Housing Finance Law.

The Committee on Land Use, to which the annexed Land Use item (with coupled resolution) was referred on December 18, 2012, respectfully

REPORTS:

SUBJECT

MANHATTAN CB - 9

20135202 HAM

Application submitted by New York City Department of Housing Preservation and Development (“HPD”) for a modification of an exemption of real property taxes for the property located at 502 West 151st Street (Tax Block 2082, Lot 36), and 526/8 West 151st Street (Tax Block 2082, Lot 52), Borough of Manhattan, Community Board 9, Council District 7. This matter is subject to Council review and action at the request of HPD and pursuant to Sections 123(4), 125 and 577 of the Private Housing Finance Law.

INTENT

To modify and extend the Private Housing Finance Law exemption of real property taxation for Sinclair Houses Apartments which provides rental housing for low income families.

PUBLIC HEARING

DATE: December 17, 2012

Witnesses in Favor: Two

Witnesses Against: None

SUBCOMMITTEE RECOMMENDATION

DATE: December 17, 2012

The Subcommittee recommends that the Committee approve the proposal and grant the requests made by the Department of Housing Preservation and Development.

In Favor:

Levin
None
Barron
Gonzalez
Dickens

Against:

None

Abstain:

COMMITTEE ACTION

DATE: December 17, 2012

The Committee recommends that the Council approve the attached resolution.

In Favor:	Against:	Abstain:
Comrie	None	None
Reyna		
Barron		
Jackson		
Vann		
Gonzalez		
Palma		
Arroyo		
Dickens		
Garodnick		
Lappin		
Mendez		
Vacca		
Lander		
Levin		
Weprin		
Williams		
Ignizio		
Halloran		

In connection herewith, Council Members Comrie and Levin offered the following resolution:

Res. No. 1625

Resolution approving a new tax exemption, a voluntary dissolution and termination of a prior tax exemption for an Exemption Area located at 502 West 151st Street (Block 2082, Lot 36) and 526/8 West 151st Street (Block 2082, Lot 52); Borough of Manhattan, pursuant to the Private Housing Finance Law (Preconsidered L.U. No. 748; 20135202 HAM).

By Council Members Comrie and Levin.

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council on December 7, 2012 its request dated December 3, 2012 that the Council take the following actions regarding developments (the "Project") located at 502 West 151st Street (Block 2082, Lot 36) and 526/8 West 151st Street (Block 2082, Lot 52), Community District 9, Borough of Manhattan (the "Exemption Area"):

1. Approve the tax exemption of the Exemption Area from real property taxes pursuant to Section 577 of the Private Housing Finance Law;
2. Approve, pursuant to Section 125 of the Private Housing Finance Law, the termination of the partial tax exemption of the Exemption Area granted by the Board of Estimate on June 11, 1981 (Cal. No. 65) ("Prior Exemption"), which termination shall become effective one day preceding the conveyance of the Exemption Area from the Current Owner to the New Owner.
3. Consent, pursuant to Section 123(4) of the PHFL, to the voluntary dissolution of the Current Owner.
4. If (i) the conveyance of the Exemption Area from the Current Owner to the New Owner does not occur within one day following the termination of the Prior Exemption, or (ii) the conveyance of the Exemption Area from the Current Owner to the New Owner does not occur on the same day as the voluntary dissolution of the Current Owner, then all of the approvals and consents set forth above shall be null and void, the dissolution shall be rescinded, and both the obligations of the Current Owner to remain an Article V redevelopment company and the Prior Exemption shall be reinstated as though they had never been terminated or interrupted.

WHEREAS, upon due notice, the Council held a public hearing on the Project on December 17, 2012;

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the Project;

RESOLVED:

The Council approves the tax exemption of the Exemption Area from real property taxes pursuant to Section 577 of the Private Housing Finance Law as follows:

a. For the purposes hereof, the following terms shall have the following meanings:

- (1) "Current Owner" shall mean Sinclair Houses Associates L.P.
 - (2) "Effective Date" shall mean the later of (i) the date of conveyance of the Exemption Area to the HDFC, (ii) the date that HDC and the New Owner enter into the HDC Regulatory Agreement, or (iii) the date that HPD and the New Owner enter into the HPD Regulatory Agreement.
 - (3) "Exemption Area" shall mean the real property located in the Borough of Manhattan, City and State of New York, identified as Block 2082, Lots 36 and 52 on the Tax Map of the City of New York.
 - (4) "Expiration Date" shall mean the earlier to occur of (i) a date which is thirty (30) years from the Effective Date, (ii) the date of the expiration or termination of the HDC Regulatory Agreement, (iii) the date of the expiration or termination of the HPD Regulatory Agreement, or (iv) the date upon which the Exemption Area ceases to be owned by either a housing development fund company or an entity wholly controlled by a housing development fund company.
 - (5) "HDC" shall mean New York City Housing Development Corporation.
 - (6) "HDC Regulatory Agreement" shall mean the regulatory agreement between HDC and the New Owner providing that for the term of thirty (30) years, all dwelling units in the Exemption Area must, upon vacancy, be rented to families whose incomes do not exceed sixty percent (60%) of area median income.
 - (7) "HDFC" shall mean Sinclair Housing Development Fund Corp.
 - (8) "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.
 - (9) "HPD Regulatory Agreement" shall mean the regulatory agreement between HPD and the New Owner establishing certain controls upon the operation of the Exemption Area during the term of the New Exemption.
 - (10) "J-51 Program" shall mean the program of exemption from and abatement of real property taxation authorized pursuant to Real Property Tax Law §489 and Administrative Code §11-243.
 - (11) "New Exemption" shall mean the exemption from real property taxation provided hereunder with respect to the Exemption Area.
 - (12) "New Owner" shall mean, collectively, the HDFC and the Partnership.
 - (13) "Partnership" shall mean Sinclair Preservation L.P.
 - (14) "Prior Exemption" shall mean the exemption of the Exemption Area from real property taxation pursuant to Section 125 of the PHFL approved by the Board of Estimate on June 11, 1981 (Cal. No. 65).
 - (15) "PHFL" shall mean the Private Housing Finance Law.
 - (16) "Shelter Rent" shall mean the total rents received from the commercial and residential occupants of the Exemption Area, including any federal subsidy (including, but not limited to, Section 8, rent supplements, and rental assistance), less the cost of providing to such occupants electricity, gas, heat, and other utilities.
 - (17) "Shelter Rent Tax" shall mean an amount equal to ten percent (10%) of the Shelter Rent.
- b. All of the value of the property, including both the land and the improvements (excluding those portions, if any, devoted to business or commercial use), shall be exempt from real property taxation, other than assessments for local improvements, for a period commencing upon the Effective Date and terminating upon the Expiration Date.

c. Commencing upon the Effective Date and during each year thereafter until the Expiration Date, the New Owner shall make annual real property tax payments in the sum of the Shelter Rent Tax. Notwithstanding the foregoing, the total annual real property tax payment by the New Owner shall not at any time exceed the amount of real estate taxes that would otherwise be due in the absence of any form of tax exemption or abatement provided by an existing or future local, state, or federal law, rule or regulation.

d. Notwithstanding any provision hereof to the contrary:

(1) The New Exemption shall terminate if HPD determines that (i) the Exemption Area is not being operated in accordance with the requirements of Article XI of the Private Housing Finance Law, (ii) the Exemption Area is not being operated in accordance with the requirements of the HDC Regulatory Agreement, (iii) the Exemption Area is not being operated in accordance with the requirements of the HPD Regulatory Agreement, (iv) the Exemption Area is not being operated in accordance with the requirements of any other agreement with, or for the benefit of, the City of New York, or (v) the demolition of any private or multiple dwelling on the Exemption Area has commenced without the prior written consent of HPD. HPD shall deliver written notice of any such determination to the New Owner and all mortgagees of record, which notice shall provide for an opportunity to cure of not less than sixty (60) days. If the noncompliance specified in such notice is not cured within the time period specified therein, the New Exemption shall prospectively terminate.

(2) The New Exemption shall not apply to any building constructed on the Exemption Area which did not have a permanent certificate of occupancy on the Effective Date.

(3) Nothing herein shall entitle the HDFC to a refund of any real property taxes which accrued and were paid with respect to the Exemption Area prior to the Effective Date.

e. In consideration of the New Exemption, the owner of the Exemption Area, for so long as the New Exemption shall remain in effect, shall waive the benefits of any additional or concurrent exemption from or abatement of real property taxation which may be authorized under any existing or future local, state or federal law, rule or regulation. Notwithstanding the foregoing, the Exemption Area may receive any exemption from and/or abatement of real property taxation pursuant to the J-51 Program provided, however, that the aggregate exemption from and abatement of real property taxation pursuant to the J-51 Program in any twelve (12) month period shall not exceed fifty percent (50%) of the Shelter Rent Tax for such twelve (12) month period pursuant to the New Exemption.

The Council approves, pursuant to Section 125 of the PHFL, the termination of the Prior Exemption, which termination shall become effective one (1) day preceding the conveyance of the Exemption Area from the Current Owner to the New Owner.

The Council consents, pursuant to Section 123(4) of the PHFL, to the voluntary dissolution of the Current Owner.

If the conveyance of the Exemption Area from the Current Owner to the New Owner does not occur either (i) within one (1) day following the termination of the Prior Exemption, or (ii) on the same day as the voluntary dissolution of the Current Owner, then all of the approvals and consents set forth above shall be null and void, the dissolution of the Current Owner shall be rescinded, and both the obligations of the Current Owner to remain an Article V redevelopment company and the Prior Exemption shall be reinstated as though they had never been terminated or interrupted.

LEROY G. COMRIE, Jr., Chairperson; DIANA REYNA, CHARLES BARRON, ROBERT JACKSON, ALBERT VANN, SARA M. GONZALEZ, ANNABEL PALMA, MARIA del CARMEN ARROYO, INEZ E. DICKENS, DANIEL R. GARODNICK, JESSICA S. LAPPIN, ROSIE MENDEZ, JAMES VACCA, BRADFORD S. LANDER, STEPHEN T. LEVIN, MARK S. WEPRIN, JUMAANE D. WILLIAMS, VINCENT M. IGNIZIO, DANIEL J. HALLORAN III; Committee on Land Use, December 17, 2012

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 742

Report of the Committee on Land Use in favor of filing, pursuant to a letter of withdrawal, Application no. 20135112 TCM, pursuant to §20-226 of the Administrative Code of the City of New York, concerning the petition of 14 Bar LLC, d/b/a The Double Seven, for a revocable consent to establish, maintain and operate an unenclosed sidewalk café located at 63 Gansevoort Street, Borough of Manhattan, Community Board 2, Council District 3. This application is subject to review and action by the Land Use Committee

only if called-up by vote of the Council pursuant to Rule 11.20b of the Council and §20-226(e) of the New York City Administrative Code.

The Committee on Land Use, to which the annexed Land Use item (with coupled resolution) was referred on November 27, 2012 (Minutes, page 4382), respectfully

REPORTS:

SUBJECT

MANHATTAN CB - 2

20135112 TCM

Application pursuant to Section 20-226 of the Administrative Code of the City of New York, concerning the petition of 14 Bar, LLC, d/b/a The Double Seven, for a revocable consent to establish, maintain and operate an unenclosed sidewalk café located at 63 Gansevoort Street.

By letter dated December 7, 2012, and submitted to the City Council on December 11, 2012, the applicant withdrew its application for the revocable consent.

SUBCOMMITTEE RECOMMENDATION

DATE: December 13, 2012

The Subcommittee recommends that the Land Use Committee approve the motion to file pursuant to withdrawal of the application by the Applicant.

In Favor:	Against:	Abstain:
Weprin	None	None
Rivera		
Reyna		
Comrie		
Jackson		
Vann		
Garodnick		
Lappin		
Ignizio		

COMMITTEE ACTION

DATE: December 17, 2012

The Committee recommends that the Council approve the attached resolution.

In Favor:	Against:	Abstain:
Comrie	None	None
Reyna		
Barron		
Jackson		
Vann		
Gonzalez		
Palma		
Arroyo		
Dickens		
Garodnick		
Lappin		
Mendez		
Vacca		
Lander		
Levin		
Weprin		
Williams		
Ignizio		
Halloran		

In connection herewith, Council Members Comrie and Weprin offered the following resolution:

Res. No. 1626

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 745

Report of the Committee on Land Use in favor of approving Application No. 20135180 HKM (N 130098 HKM), pursuant to §3020 of the Charter of the City of New York, concerning the designation by the Landmarks Preservation Commission of the Rainbow Room located in the eastern section of the 65th floor interior at 30 Rockefeller Plaza (Tax Map Block 1265, Lot 1069, in part) (Designation List 461, LP-2505), Borough of Manhattan, Community Board 5, Council District 1, as an interior landmark.

The Committee on Land Use, to which the annexed Land Use item (with coupled resolution) was referred on December 10, 2012 (Minutes, page 4565), respectfully

REPORTS:

SUBJECT

MANHATTAN CB - 5 20135180 HKM (N 130098 HKM)

Designation (List No. 461/LP-2505) by the Landmarks Preservation Commission pursuant to Section 3020 of the New York City Charter regarding the designation of the Rainbow Room interior, consisting of the fixtures and interior components of this space, including but not limited to, the walls and ceiling surfaces, floor surfaces, rotating wood dance floor, stairs, stage, seating platforms, glass panel screens, chandeliers, wall sconces, and window frames; located in the eastern section of the 65th Floor, 30 Rockefeller Plaza, a.k.a. 1240-1256 Avenue of the Americas; 31-81 West 49th Street and 30-64 West 50th Street, as an historic landmark.

PUBLIC HEARING

DATE: December 13, 2012

Witnesses in Favor: One **Witnesses Against:** None

SUBCOMMITTEE RECOMMENDATION

DATE: December 13, 2012

The Subcommittee recommends that the Land Use Committee affirm the designation.

In Favor:	Against:	Abstain:
Lander	None	None
Palma		
Arroyo		
Mendez		
Williams		

COMMITTEE ACTION

DATE: December 17, 2012

The Committee recommends that the Council approve the attached resolution.

In Favor:	Against:	Abstain:
Comrie	None	None
Reyna		
Barron		
Jackson		
Vann		
Gonzalez		
Palma		
Arroyo		
Dickens		
Garodnick		
Lappin		

Mendez
Vacca
Lander
Levin
Weprin
Williams
Ignizio
Halloran

In connection herewith, Council Members Comrie and Lander offered the following resolution:

Res. No. 1629

Resolution affirming the designation by the Landmarks Preservation Commission of the Rainbow Room interior, consisting of the fixtures and interior components of this space, including but not limited to, the walls and ceiling surfaces, floor surfaces, rotating wood dance floor, stairs, stage, seating platforms, glass panel screens, chandeliers, wall sconces, and window frames; located in the eastern section of the 65th Floor, 30 Rockefeller Plaza, a.k.a. 1240-1256 Avenue of the Americas, 31-81 West 49th Street and 30-64 West 50th Street; Tax Map Block 1265/Lot 1069, in part, Borough of Manhattan, Designation List No. 461, LP-2505 (L.U. No. 745; 20135180 HKM; N 130098 HKM).

By Council Members Comrie and Lander.

WHEREAS, the Landmarks Preservation Commission filed with the Council on October 26, 2012 a copy of its designation dated October 16, 2012 (the "Designation"), of the Rainbow Room interior, consisting of the fixtures and interior components of this space, including but not limited to, the walls and ceiling surfaces, floor surfaces, rotating wood dance floor, stairs, stage, seating platforms, glass panel screens, chandeliers, wall sconces, and window frames; located in the eastern section of the 65th Floor, 30 Rockefeller Plaza, a.k.a. 1240-1256 Avenue of the Americas; 31-81 West 49th Street and 30-64 West 50th Street), Community District 5, Borough of Manhattan, as an historic landmark and Tax Map Block 1265, Lot 1069, in part, as its landmark site pursuant to Section 3020 of the New York City Charter;

WHEREAS, the Designation is subject to review by the Council pursuant to Section 3020 of the City Charter;

WHEREAS, the City Planning Commission submitted to the Council on November 30, 2012 its report on the Designation dated November 28, 2012 (the "Report");

WHEREAS, upon due notice, the Council held a public hearing on the Designation on December 13, 2012; and

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Designation;

RESOLVED:

Pursuant to Section 3020 of the City Charter, and on the basis of the information and materials contained in the Designation and the Report, the Council affirms the Designation.

LEROY G. COMRIE, Jr., Chairperson; DIANA REYNA, CHARLES BARRON, ROBERT JACKSON, ALBERT VANN, SARA M. GONZALEZ, ANNABEL PALMA, MARIA del CARMEN ARROYO, INEZ E. DICKENS, DANIEL R. GARODNICK, JESSICA S. LAPPIN, ROSIE MENDEZ, JAMES VACCA, BRADFORD S. LANDER, STEPHEN T. LEVIN, MARK S. WEPRIN, JUMAANE D. WILLIAMS, VINCENT M. IGNIZIO, DANIEL J. HALLORAN III; Committee on Land Use, December 17, 2012

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 746

Report of the Committee on Land Use in favor of approving Application No. 20135199 HAM submitted by the New York City Department of Housing Preservation and Development for a modification of an exemption of real property taxes for the property located at 235 Central Park North (Tax Block 1826, Lot 8), Borough of Manhattan, Community Board 9, Council District 9. This matter is subject to review and action at the request of HPD

- a housing development fund company or an entity wholly controlled by a housing development fund company.
- (6) “HDFC” shall mean HP Hargate Housing Development Fund Company, Inc.
- (7) “HPD” shall mean the Department of Housing Preservation and Development of the City of New York.
- (8) “New Exemption” shall mean the exemption from real property taxation provided hereunder with respect to the Exemption Area.
- (9) “New Owner” shall mean, collectively, the HDFC and the Company.
- (10) “Prior Exemption” shall mean the exemption of the Exemption Area from real property taxation pursuant to Section 125 of the PHFL approved by the Board of Estimate on October 9, 1980 (Cal. No. 10).
- (11) “Regulatory Agreement” shall mean the regulatory agreement between HPD and the New Owner establishing certain controls upon the operation of the Exemption Area during the term of the New Exemption.
- (12) “Shelter Rent” shall mean the total rents received from the commercial and residential occupants of the Exemption Area, including any federal subsidy (including, but not limited to, Section 8, rent supplements and rental assistance), less the cost of providing to such occupants electricity, gas, heat and other utilities.
- (13) “Shelter Rent Tax” shall mean an amount equal to five percent (5%) of Shelter Rent
- b. All of the value of the property in the Exemption Area, including both the land and any improvements (excluding those portions, if any, devoted to business or commercial use), shall be exempt from real property taxes, other than assessments for local improvements, for a period commencing upon the Effective Date and terminating upon the Expiration Date.
- c. Commencing upon the Effective Date, and during each year thereafter until the Expiration Date, the New Owner shall make real property tax payments in the sum of the Shelter Rent Tax. Notwithstanding the foregoing, the total annual real property tax payment by the New Owner shall not at any time exceed the amount of real estate taxes that would otherwise be due in the absence of any form of tax exemption or abatement provided by an existing or future local, state, or federal law, rule or regulation.
- d. Notwithstanding any provision hereof to the contrary:
- (1) The New Exemption shall terminate if HPD determines at any time that (i) the Exemption Area is not being operated in accordance with the requirements of Article XI of the Private Housing Finance Law, (ii) the Exemption Area is not being operated in accordance with the requirements of the Regulatory Agreement, (iii) the Exemption Area is not being operated in accordance with the requirements of any other agreement with, or for the benefit of, the City of New York, or (iv) the demolition of any private or multiple dwelling on the Exemption Area has commenced without the prior written consent of HPD. HPD shall deliver written notice of any

such determination to New Owner and all mortgagees of record, which notice shall provide for an opportunity to cure of not less than sixty (60) days. If the noncompliance specified in such notice is not cured within the time period specified therein, the New Exemption shall prospectively terminate.

(2) The New Exemption shall not apply to any building constructed on the Exemption Area which did not have a permanent certificate of occupancy on the Effective Date.

(3) Nothing herein shall entitle the HDFC to a refund of any real property taxes which accrued and were paid with respect to the Exemption Area prior to the Effective Date.

e. In consideration of the New Exemption, the owner of the Exemption Area, for so long as the New Exemption shall remain in effect, shall waive the benefits of any additional or concurrent real property tax exemption from or abatement of real property taxation which may be authorized under any existing or future local, state or federal law, rule or regulation.

The Council approves, pursuant to Section 125 of the PHFL, the termination of the Prior Exemption, which termination shall be effective one (1) day preceding the date of conveyance of the Exemption Area from the Current Owner to the New Owner.

The Council consents, pursuant to Section 123(4) of the PHFL, to the voluntary dissolution of the Current Owner.

If the conveyance of the Exemption Area from the Current Owner to the New Owner does not occur either (i) within one day following the termination of the Prior Exemption, or (ii) on the same day as the voluntary dissolution of the Current Owner, then all of the approvals and consents set forth above shall be null and void, the dissolution shall be rescinded, and both the obligations of the Current Owner to remain an Article V redevelopment company and the Prior Exemption shall be reinstated as though they had never been terminated or interrupted.

LEROY G. COMRIE, Jr., Chairperson; DIANA REYNA, CHARLES BARRON, ROBERT JACKSON, ALBERT VANN, SARA M. GONZALEZ, ANNABEL PALMA, MARIA del CARMEN ARROYO, INEZ E. DICKENS, DANIEL R. GARODNICK, JESSICA S. LAPPIN, ROSIE MENDEZ, JAMES VACCA, BRADFORD S. LANDER, STEPHEN T. LEVIN, MARK S. WEPRIN, JUMAANE D. WILLIAMS, VINCENT M. IGNIZIO, DANIEL J. HALLORAN III; Committee on Land Use, December 17, 2012

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Rules, Privileges and Elections

At this point the Speaker (Council Member Quinn) announced that the following items had been **preconsidered** by the Committee on Rules, Privileges and Elections and had been favorably reported for adoption.

Report for M-1003

Report of the Committee on Rules, Privileges and Elections approving the re-appointment of Maria R. Guastella as the Richmond County Democratic Commissioner of Elections.

The Committee on Rules, Privileges and Elections, to which the annexed resolution was referred on December 18, 2012, respectfully

REPORTS:

Topic: *New York City Board of Elections — (Richmond County Democratic Committee Candidate for re-appointment by the Council)*

• **Maria R. Guastella [Preconsidered-M-1003]**

The New York City Board of Elections ("BOE") consists of ten commissioners, two from each of the City's five counties, who are directly appointed by the New York City Council. Not more than two commissioners shall be registered voters of the same county. Each commissioner serves a term of four years or until a successor is appointed. Commissioners shall be registered voters from each of the major parties in the county for which they are appointed [*New York State Election Law § 3-200(3)*].

Party recommendations for election commissioner shall be made by the County Committee, or in such fashion as the rules of a party may provide. Each of the major political parties shall be eligible to recommend appointment of an equal number of commissioners [*New York State Election Law § 3-200(2)*]. The BOE and its commissioners are responsible for the maintenance and administration of voting records and elections. The BOE also exercises quasi-judicial powers by conducting hearings to validate nominating petitions of candidates for nomination to elective office. The BOE is required to make an annual report' of its affairs and proceedings to the New York City Council once every twelve months and no later than the last day of January in any year. A copy of said annual report shall be filed with the New York State Board of Elections [*New York State Election Law § 3-212(4)(a)*].

At least thirty days before the first day of January of any year on which an elections commissioner is to be appointed, the Chair or Secretary of the appropriate party County Committee shall file a *Certificate of Party Recommendation* with the Clerk of the appropriate local legislative body [*New York State Election Law § 3-204(1)*]. In New York City, the City Clerk serves as the Clerk of the Council. If the Council fails to appoint an individual recommended by a party for appointment as a Commissioner within thirty days after the filing of a *Certificate of Party Recommendation* with the Council, then members of the Council who are members of the political party that filed the certificate may appoint such person. If none of the persons named in any of the certificates filed by a party are appointed within sixty days of the filing of the designating certificate, then such party may file another certificate within thirty days after the expiration of any such sixty day period recommending a different person for such appointment. If the party fails to file a *Certificate of Party Recommendation* within the time prescribed, the members of the Council who are members of such party may appoint any eligible person to such office [*New York State Election Law § 3-204(4)*].

If at any time a vacancy occurs in the office of any election commissioner other than by expiration of term of office, party recommendations to fill such vacancy shall be made by the county committee in such fashion as the rules of the party may provide.² *Certificates of Party Recommendation* to fill such vacancy shall be filed no later than forty-five days after the creation of a vacancy. Anyone 3

who fills a vacancy shall hold such office during the remainder of the term of the commissioner in whose place he/she shall serve [*New York State Election Law § 3-204(5)*].

BOE elects a President and a Secretary who cannot belong to the same political party [*New York State Election Law § 3-312(1)*]. The commissioners receive a \$300 per diem for each day's attendance at meetings of the BOE or any of its committees, with a maximum of \$30,000 per year [*New York State Election Law § 3-208*].

If re-appointed, Ms. Guastella, a resident of Staten Island, will be eligible to serve a four-year term that begins January 1, 2013 and expires December 31, 2016. Copies of Ms. Guastella's resume, report/resolution and Election Commissioner Certificate are annexed to this briefing paper.

¹ The annual report shall include a detailed description of existing programs designed to enhance voter registration. The report shall also include a voter registration action plan to increase registration opportunities [*New York State Election Law § 3-212(4)(b)*].

² According to *New York State Public Officers Law § 5*, every officer except a judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the Constitution, having duly entered on the duties of his office, shall unless the office shall terminate or be abolished, hold over and continue to discharge the duties of his office after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor.

After interviewing the candidate and reviewing the relevant material, the Committee decided to approve the appointment of the nominee, Maria R. Guastella (M-1003). Please see immediately below:

The Committee on Rules, Privileges and Elections respectfully reports:

Pursuant to § 3-204 of the *New York State Election Law*, the Committee on Rules, Privileges and Elections, hereby approves the re-appointment by the Council of Maria R. Guastella as Richmond County Democratic Commissioner of Elections to serve a four-year term that begins January 1, 2013 and expires December 31, 2016.

This matter was referred to the Committee on December 18, 2012.

In connection herewith, Council Member Rivera offered the following resolution:

Res. No. 1631

RESOLUTION APPROVING THE RE-APPOINTMENT BY THE COUNCIL OF MARIA R. GUASTELLA AS THE RICHMOND COUNTY DEMOCRATIC COMMISSIONER OF ELECTIONS

By Council Member Rivera.

RESOLVED, that pursuant to § 3-204 of the *New York State Election Law*, the Council does hereby approve the re-appointment of Maria R. Guastella as Richmond County Democratic Commissioner of Elections to serve a four-year term that begins January 1, 2013 and expires December 31, 2016.

JOEL RIVERA, Chairperson; LEROY G. COMRIE, Jr., ERIK MARTIN-DILAN, LEWIS A. FIDLER, ROBERT JACKSON, ALBERT VANN, VINCENT J. GENTILE, INEZ E. DICKENS, JAMES VACCA, ELIZABETH S. CROWLEY, KAREN KOSLOWITZ, JAMES S. ODDO, CHRISTINE C. QUINN; Committee on Rules, Privileges and Elections, December 18, 2012.

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

GENERAL ORDER CALENDAR

Resolution approving various persons Commissioners of Deeds

By the Presiding Officer –

Resolved, that the following named persons be and hereby are appointed Commissioners of Deeds for a term of two years:

Approved New Applicant's Report

<u>Name</u>	<u>Address</u>	<u>District #</u>
Melanie Thomas	1765 Pitman Avenue Bronx, N.Y. 10466	3
Sonia Marie Manzo	228-29 Mentone Avenue Laurelton, N.Y. 11412	31

Approved New Applicants and Reapplicants

<u>Name</u>	<u>Address</u>	<u>District #</u>
David Ferber	40 Fifth Avenue #2A New York, N.Y. 10011	3
Gwendolyn V. Junious	3550 Bivona Street #7H Bronx, N.Y. 10475	12
Maria G. Pagan C/0	980 VanNest Avenue Bronx, N.Y. 10462	13
Joel Purser	2275 Cruger Avenue #5F Bronx, N.Y. 10467	13
Beverly D. Smith	1735 Popham Avenue #5 Bronx, N.Y. 10453	16
Michael C. Ortiz	524 Southern Blvd Bronx, N.Y. 10455	17
Bernalyn A. Jones-Clarke	880 Boynton Avenue #19B Bronx, N.Y. 10473	18

Dolores Kushel	18-15 215 th Street #4S Bayside, N.Y. 11360	19
Alisha M. Lyman	126-07 7 th Avenue College Point, N.Y. 11356	19
Joan Marie Snyder	241-20 Northern Blvd #3M Douglaston, N.Y. 11362	19
Vincent Abolencia, Jr.	187-36 Wexford Terrace Jamaica, N.Y. 11423	24
Jacqueline Dan	83-20 141 st Street #2G Queens, N.Y. 11435	24
Alan Robert Block	66-25 103 rd Street #2N Queens, N.Y. 11375	29
Josephine Panicola	71-27 71 st Street Queens, N.Y. 11385	30
Pamela D. Jeter	456 Beach 40 th Street #10B Far Rockaway, N.Y. 11691	31
Duke Saunders	208 St. Marks Avenue Brooklyn, N.Y. 11238	35
Ana F. Gonzalez	450 3 rd Avenue#3L Brooklyn, N.Y. 11215	38
Gary Washington	280 Ocean Parkway #4S Brooklyn, N.Y. 11215	39
Cyriaca Decaill	1626 Prospect Place #1 Brooklyn, N.Y. 11233	41
Karen Moye	31 Kane Place Brooklyn, N.Y. 11233	41
Patricia Roberson	147 Rockaway Parkway #6 Brooklyn, N.Y. 11212	41
Evelyn Matos	760 Eldert Lane #5F Brooklyn, N.Y. 11208	42
Alice Canizio	1251 75 th Street Brooklyn, N.Y. 11228	43
Angela Barbera	5611 13 th Avenue Brooklyn, N.Y. 11219	44
Anna Elman	2228 East 28 th Street Brooklyn, N.Y. 11229	46
Aaron D. Maslow	1761 Stuart Street Brooklyn, N.Y. 11229	46
Marie Giardina Walsh	1736 East 52 nd Street Brooklyn, N.Y. 11234	46
Ethlyn Marie Chan	29 Avenue W #3D Brooklyn, N.Y. 11223	47
Jaqueline Ham	2007 Surf Avenue #7A Brooklyn, N.Y. 11224	47
Diana Palma	105 Bay 5 th Street Brooklyn, N.Y. 11214	47
Dmitry Zaprudskiy	3311 Shore Parkway #3C Brooklyn, N.Y. 11235	48
Mary Faust	475 Vanderbilt Avenue 1 st Floor Staten Island, N.Y. 10304	49
Robin K. Aryakia	282 Wilder Avenue Staten Island, N.Y. 10306	50
Francois Bachaalany	246 Seaview Avenue Staten Island, N.Y. 10305	50
Roy Fischman	81 Oakdale Street Staten Island, N.Y. 10308	51
Candi N. Lee-Yau	21 Winston Street Staten Island, N.Y. 10312	51
Vincent Simineri	25 Serrell Avenue Staten Island, N.Y. 10312	51

On motion of the Speaker (Council Member Quinn), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

**ROLL CALL ON GENERAL ORDERS FOR THE DAY
(Items Coupled on General Order Calendar)**

- (1) **M 1003 & Res 1631 -** Maria Guastella, Staten Island Board of Elections.
- (2) **Int 911-A -** In relation to opportunities for minority

- (3) **Int 939-A -** and women owned business enterprises and emerging business enterprises in city procurement.
- (4) **Int 943-A -** In relation to stoop line stands.
In relation to the place of assembly certificate of operation and the place of assembly permit.
- (5) **Int 972 -** In relation to authorizing an increase in the amount to be expended annually in seven business improvement districts.
- (6) **Int 977-A -** In relation to waiving certain permit and inspection fees for the demolition, alteration, rebuilding or repair of certain buildings and systems damaged by the severe storm that occurred on October 29 and 30, 2012, commonly referred to as “Hurricane Sandy” **(with Message of Necessity from the Mayor requiring affirmative vote of at least two-thirds of the Council for passage).**
- (7) **Res 1623 -** Designation of funding in the Expense Budget **(Transparency Resolution).**
- (8) **L.U. 742 & Res 1626 -** App. **20135112 TCM**, 63 Gansevoort Street, Borough of Manhattan, Community Board 2, Council District 3 **(Coupled to be Filed pursuant to a Letter of Withdrawal).**
- (9) **L.U. 743 & Res 1627 -** App. **20135084 TCM**, 89 MacDougal Street, Borough of Manhattan, Community Board 2, Council District 3.
- (10) **L.U. 744 & Res 1628 -** App. **20135137 TCM**, 3 Greenwich Avenue, Borough of Manhattan, Community Board 2, Council District 3.
- (11) **L.U. 745 & Res 1629 -** App. **20135180 HKM (N 130098 HKM)**, 65th floor interior at 30 Rockefeller Plaza (Tax Map Block 1265, Lot 1069, in part) (Designation List 461, LP-2505), Borough of Manhattan, Community Board 5, Council District 1, as an interior landmark.
- (12) **L.U. 746 & Res 1630 -** App. **20135199 HAM**, 235 Central Park North (Tax Block 1826, Lot 8), Borough of Manhattan, Community Board 9, Council District 9. This matter is subject to review and action at the request of HPD and pursuant to Sections 123(4), 125 and 577 of the Private Housing Finance Law.
- (13) **L.U. 747 & Res 1624 -** Council Towers VII, 2219 Givan Avenue, Bronx, Block 5141, tentative lot 1002, Community District No. 10, Council District No. 12
- (14) **L.U. 748 & Res 1625 -** App. **20135202 HAM** 502 West 151st Street, Tax Block 2082, Lot 36, and 526/8 West 151st Street (Tax Block 2082, Lot 52), Borough of Manhattan, Community Board 9, Council District 7. This matter is subject to Council review and action at the request of HPD and pursuant to Sections 123(4), 125 and 577 of the Private Housing Finance Law.
- (15) **Resolution approving various persons Commissioners of Deeds.**

The President Pro Tempore (Council Member Rivera) put the question whether the Council would agree with and adopt such reports which were decided in the **affirmative** by the following vote:

Affirmative – Arroyo, Barron, Brewer, Cabrera, Chin, Comrie, Crowley, Dickens, Dilan, Dromm, Eugene, Ferreras, Fidler, Foster, Garodnick, Gennaro, Gentile, Gonzalez, Greenfield, Halloran, Ignizio, Jackson, James, Koppell, Koslowitz, Lander, Lappin, Levin, Mark-Viverito, Mealy, Mendez, Nelson, Palma, Recchia, Reyna, Rodriguez, Sanders, Ulrich, Vacca, Vallone, Jr., Van Bramer, Vann, Weprin, Williams, Wills, Oddo, Rivera, and the Speaker (Council Member Quinn) – **48.**

Abstention – King – **1.**

The General Order vote recorded for this Stated Meeting was 48-0-1 as shown above with the exception of the votes for the following legislative items:

The following was the vote recorded for **Int No. 911-A**:

Affirmative – Arroyo, Brewer, Cabrera, Chin, Comrie, Crowley, Dickens, Dilan, Dromm, Eugene, Ferreras, Fidler, Foster, Garodnick, Gennaro, Gentile, Gonzalez, Greenfield, Halloran, Ignizio, Jackson, James, Koppell, Koslowitz, Lander, Lappin, Levin, Mark-Viverito, Mealy, Mendez, Nelson, Palma, Recchia, Reyna, Rodriguez, Sanders, Ulrich, Vacca, Van Bramer, Vann, Weprin, Williams, Wills, Rivera, and the Speaker (Council Member Quinn). – **45**.

Negative – Barron and Oddo – **2**.

Abstention – King and Vallone, Jr. – **2**.

he following Introductions were sent to the Mayor for his consideration and approval: Int Nos. 911-A, 939-A, 943-A, 972, and 977-A (with Message of Necessity from the Mayor).

For **Introduction and Reading of Bills**, see the material following the **Resolutions** section below:

RESOLUTIONS

Presented for voice-vote

The following are the respective Committee Reports for each of the Resolutions referred to the Council for a voice-vote pursuant to Rule 8.50 of the Council:

Report for voice-vote Res. No. Res 1352

Report of the Committee on Civil Service and Labor in favor of approving a Resolution calling upon employers in New York City to hire more workers over 55 years of age.

The Committee on Civil Service and Labor, to which the annexed resolution was referred on May 31, 2012 (Minutes, page 1787), respectfully

REPORTS:

INTRODUCTION:

On Friday, December 14, 2012, the Committee on Civil Service and Labor, chaired by Council Member James Sanders Jr., will hold a vote on Resolution Number 1352, which calls upon employers in New York City to hire more workers over 55 years of age. The Committee previously held a hearing on this resolution on November 28, 2012, during which representatives from the AARP; Services & Advocacy for Gay, Lesbian, Bisexual, Transgender Elders (SAGE); and the New York Academy of Medicine testified.

BACKGROUND:

The number of people aged 65 and older in the United States has increased significantly over the past century.¹ The federal government projects that the population of people aged 65 and over will increase from 40 million in 2010 to 55 million in 2020, a 36 percent increase.² Further, in 2006, seniors aged 60 and older accounted for nearly 17 percent of the population; however, by 2030, it is projected that this figure will rise to nearly 25 percent.³ In New York State, the number of older adults in this age range is projected to grow by 50 percent over the next twenty years from 2.7 million in 2011 to 3.9 million in 2030.⁴ Approximately 1 million, or 12 percent, of New York City residents are over age 60, a figure that is also projected to increase by 50 percent in the next twenty years.⁵

Currently, the United States is experiencing a demographic change due to the increased longevity of Americans, and the “baby boomer” generation reaching traditional retirement age. Every seven seconds, a baby boomer turns 60.⁶ The aging of the nation’s population will have a significant impact on society, in particular the labor market, including possible labor and skill shortages.⁷ According to the U.S. Department of Labor, Bureau of Labor Statistics, between 1977 and 2007, the employment of workers 65 years old and over increased 101 percent. The employment of Americans 16 years old and over increased 59 percent over the same period.⁸ Further, the number of employed men 65 and over rose 75 percent, and the employment of women 65 and older increased by 147 percent, nearly twice as much.⁹ Although the total labor force is projected to increase by 8.5 percent by 2016, the number of workers age 16-24 has been projected to decline, while the number of workers age 25-54 is projected to rise only slightly.¹⁰ In comparison, the number of workers age 55-64 is expected to climb by 36.5 percent.¹¹ Further, it has been projected that workers between the ages of 65 and over will grow by more than 80 percent, accounting for 6.1 percent of the total labor force by 2016.¹²

The unemployment situation for adults 55 years and older has looked bleak since 2007. People aged 55-64 make up 15.1 percent of the total labor force nationwide and make up 11.2 percent of the total unemployed population nationwide.¹³ Currently, the unemployment rate of people 55-64 hovers at 5.9 percent.¹⁴ The numbers are more troublesome for older people due to the staggering duration of unemployment; as of July 2011, the average length of time it takes an American 55 years old or older to find employment is 52.7 weeks compared to 36.5 weeks for people under 55.¹⁵

Res. No. 1352:

The resolution would note that according to the United States Department of Labor, of the 14.9 million individuals who are unemployed, more than 2.2 million are over 55 years of age and nearly half of the 2.2 million workers over 55 years of age that are unemployed have been so for 6 months or longer.

The resolution would also indicate that although the unemployment rate for this population is lower than the rest of the nation, it takes workers 55 years of age or older an average of 54 weeks to find a new job compared to an average of 36 weeks for younger workers. In addition, the poverty rate for workers between 55 and 64 years of age increased from 8.6 percent in 2007 to 9.4 percent in 2009.

The resolution would further state that the New York State Department of Aging projects that by 2030 nearly one in four New Yorkers will be 60 years of age or older. Additionally, the resolution would point out that according to a survey conducted by AARP, only 18 percent of businesses offered a part-time work arrangement with benefits, only 25 percent of the businesses surveyed offered training to managers about ways to utilize older employees, and, according to the same survey, hiring managers consider identifying and keeping skilled workers as a critical issue facing employers today.

The resolution additionally would point out that among the 29 qualities included in the survey, older employees are believed to possess six of the top seven qualities that all employers desire in an employee and that older workers have a wealth of workplace experience and are capable of learning new skills.

Finally, the resolution would point out that in order to address the changing economy and workforce, employers must utilize creative efforts to fill the labor gap.

Thus, the Council would call upon employers in New York City to hire more workers over 55 years of age.

¹ U.S. Administration on Aging. “A Profile of Older Americans: 2009.” Department of Health and Human Services. Washington, D.C.

² *Id.*

³ MetLife Mature Market Institute. (March 2009). “Broken Trust: Elders, Family, and Finances.” National Committee for the Prevention of Elder Abuse, and the center for Gerontology at Virginia Polytechnic Institute and State University, at 18.

⁴ Geriatric Mental Health Alliance of New York. (Spring 2011) “Geriatric Mental Health in New York State: A Reflection on Progress and Future Directions.” at 1.

⁵ Age Friendly New York, “Creating an Age Friendly NYC One Neighborhood at a Time,” 2012, available at <http://www.nyam.org/agefriendlynyc/tools-and-resources/>.

⁶ U.S. Department of Labor: “Report of the Taskforce on the Aging of the American Workforce,” February 2008, at 8, available at http://www.doleta.gov/reports/FINAL_Taskforce_Report_2_27_08.pdf.

⁷ *Id.* at 1.

⁸ U.S. Department of Labor, Bureau of Labor Statistics: “Spotlight on Statistics: Older Workers,” July 2008 available at <http://www.bls.gov/spotlight/2008/older%5Fworkers/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Report by the Joint Economic Committee Chairman’s Staff: “Addressing Long-Term Unemployment After The Great Recession: The Crucial Role of Workforce Training.” August 2011, at 6, available at http://jec.senate.gov/public/?a=Files.Serve&File_id=97c2e98e-a791-47fc-a324-6b407948e083

¹⁴ See U.S. Dept. of Labor, Bureau of Labor Statistics website at <http://www.bls.gov/news.release/empsit.t10.htm>.

¹⁵ Fleck, C., AARP Bulletin, August 5, 2011 “Jobs Rise by 117,000; But news is mixed for older workers, who remain unemployed longer.” available at <http://www.aarp.org/work/job-hunting/info-08-2011/unemployment-down-older-workers-unemployed-longer.html>

Accordingly, this Committee recommends its adoption.

Res. No. 1352

Resolution calling upon employers in New York City to hire more workers over 55 years of age.

By Council Members Lappin, Dromm, Jackson, James, Koo, Koslowitz, Mendez, Palma, Rose, Vann, Williams, Wills, Rodriguez, Chin, Nelson, Eugene, Barron, Greenfield, Mealy and Ulrich.

Whereas, According to the United States Department of Labor, of the 14.9 million individuals who are unemployed, more than 2.2 million are over 55 years of age; and

Whereas, Nearly half of the 2.2 million workers over 55 years of age that are unemployed have been so for 6 months or longer; and

Whereas, Although the unemployment rate for this population is lower than the rest of the nation, it takes workers 55 years of age or older an average of 54 weeks to find a new job compared to an average of 36 weeks for younger workers; and

Whereas, The poverty rate for workers between 55 and 64 years of age increased from 8.6 percent in 2007 to 9.4 percent in 2009; and

Whereas, The New York State Department of Aging projects that by 2030 nearly one in four New Yorkers will be 60 years of age or older; and

Whereas, According to a survey conducted by AARP, only 18 percent of businesses offered a part-time work arrangement with benefits; and

Whereas, Only 25 percent of the businesses surveyed offered training to managers about ways to utilize older employees; and

Whereas, The same survey revealed that hiring managers consider identifying and keeping skilled workers as a critical issue facing employers today; and

Whereas, Among the 29 qualities included in the survey, older employees are believed to possess six of the top seven qualities that all employers desire in an employee; and

Whereas, Older workers have a wealth of workplace experience and are capable of learning new skills; and

Whereas, In order to address the changing economy and workforce, employers must utilize creative efforts to fill the labor gap; now, therefore, be it

Resolved, That the Council of the City of New York calls upon employers in New York City to hire more workers over 55 years of age.

JAMES SANDERS, Jr., Chairperson; MICHAEL C. NELSON, JAMES F. GENNARO, DOMENIC M. RECCHIA, Jr., MELISSA MARK-VIVERITO, ERIC A. ULRICH; Committee on Civil Service and Labor, December 14, 2012.

Laid Over by the Council.

At this point the Speaker (Council Member Quinn) announced that the following items had been **preconsidered** by the Committee on Finance and had been favorably reported for adoption.

Report for voice-vote Res. No. 1619

Report of the Committee on Finance in favor of approving a Resolution expressing grief and sorrow for the victims and their families and for all those affected by the tragedy at Sandy Hook Elementary School in Newtown, Connecticut and calling upon the President of the United States, the United States Congress, State and Local legislators, and all Americans to work together to reduce needless gun violence by making meaningful changes to gun control laws that will ensure that we are all kept safe from gun violence.

The Committee on Finance, to which the annexed resolution was referred on December 18, 2012, respectfully

REPORTS:

On Friday, December 14, 2012 a tragedy unfolded at the Sandy Hook Elementary School in Newtown, Connecticut. A gunman entered the school heavily armed with a semi-automatic assault rifle, two handguns, and high-capacity ammunition magazines. With a complete disregard for life he viciously murdered 20 innocent elementary school students and 6 adults, in a matter of mere minutes. The New York City Council honors those who lost their lives and those who exhibited exceptional courage and heroism on that day. Furthermore, the Council expresses its sorrow, unites in solidarity with the families of Newtown, and endeavors to ensure that the lives lost will forever be remembered.

The tragic events that unfolded at Sandy Hook are an unfortunate reminder that we as a Nation must do more to protect the lives of innocent individuals from senseless gun violence. As President Obama said, "If there is even one step we can take to save another child, or another parent, or another town, from the grief [that gun violence causes]...then surely we have an obligation to try."¹ The Council recognizes that there is no one simple solution to the gun violence epidemic, but believes that in working together we can create a safe environment for all to live and learn.

The horrific incident that happened in Newtown, like many of the mass shootings that have happened in the past few years, comes at the hand of a gunman that was able to destroy an entire community in such a short amount of time due, in no small part, to the access he had to wartime weaponry. Semi-automatic military-style assault weapons and high-capacity ammunition magazines allow for the discharge of multiple rounds of ammunition in a quick and efficient manner, without the need to stop to reload between shots or for long periods of time. It is for these reasons that such artillery is intended for military purposes rather than civilian use.

The Violent Crime Control and Law Enforcement Act of 1994 provided restrictions on these weapons until it expired in 2004. At that point it expired without being renewed by the United States Congress, and thus, unfortunately, the purchase

and possession of such high-powered weaponry is currently legal throughout most of the United States. Therefore, to prevent more shocking tragedies of the kind that have occurred around the country and most recently in Newtown, Connecticut, it is imperative that our federal government immediately pass legislation banning weapons that are created for the simple purpose of killing en masse.

Reasonable restrictions on gun ownership have been held to be constitutional,² and such regulations would help to mitigate the damage that is done when violence does take place. However, gun control alone will not ensure safety, and for this reason more must be done as a Nation to prevent unnecessary violence. The shooting at Sandy Hook Elementary School, like the shootings that took place on campus at Virginia Tech, at a movie theater in Aurora, Colorado, and at a constituent event in Tucson, Arizona, was perpetrated by an individual with severe mental health issues. Therefore, to adequately protect the well-being of innocent individuals it is important that proper preventative measures and safety net solutions are in place to help those with mental infirmities. This can only be done if our federal, state, and local governments work together to ensure that mental health services are, and remain, readily available and affordable to all those who need assistance. In addition, all Americans must be adequately educated and informed about the seriousness of these illnesses and the help available to those suffering so that we can guarantee that our loved-ones, friends, and neighbors no longer harm themselves and others.

For these reasons, this preconsidered resolution expresses the Council's grief and sorrow for the victims and their families and for all those affected by the tragedy at Sandy Hook Elementary School. In addition, the preconsidered resolution calls upon the President of the United States, the United States Congress, State and Local legislators, and all Americans to work together to reduce needless gun violence by making meaningful changes to gun control laws that will ensure that we are all kept safe from gun violence.

¹ See Remarks by the President at Sandy Hook Interfaith Prayer Vigil, December 16, 2012, available at: <http://www.whitehouse.gov/the-press-office/2012/12/16/remarks-president-sandy-hook-interfaith-prayer-vigil>

² See generally *District of Columbia v. Heller*, 554 U.S. 570 (2008).

Accordingly, this Committee recommends its adoption.

(For text of the resolution, please see the Introduction and Reading of Bills section printed in these Minutes).

Pursuant to Rule 8.50 of the Council, The President Pro Tempore (Council Member Rivera) called for a voice vote. Hearing those in favor, the President Pro Tempore (Council Member Rivera) declared the Resolution to be adopted.

The following Council Member formally voted against this item: Council Member Halloran.

Adopted by the Council by voice-vote.

INTRODUCTION AND READING OF BILLS

Int. No. 982

By The Speaker (Council Member Quinn) and Council Members Mark-Viverito, Dromm, Brewer, Chin, Comrie, Eugene, Ferreras, Jackson, James, Lander, Mendez, Palma, Reyna, Williams and Wills.

A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained.

Be it enacted by the Council as follows:

Section 1. Chapter 1 of Title 14 of the administrative code of the city of New York is amended by adding a new section 14-154 to read as follows:

§14-154. *Persons not to be detained. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:*

1. "Civil immigration detainer" shall mean a detainer issued pursuant to 8 C.F.R. 287.7.

2. "Convicted of a crime" shall mean a final judgment of guilt entered on a misdemeanor or felony charge in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States. *Persons: (i) adjudicated as youthful offenders, pursuant to article 720 of the criminal procedure law or a comparable provision of federal law or the law of another state, or juvenile delinquents, as defined by section 301.2(1) of the family court act or a comparable provision of federal law or the law of another state; or (ii) who have never been convicted of a*

felony and whose last misdemeanor conviction was ten years or more from the date of the instant arrest; or (iii) convicted of violating Section 230.00 or 240.37 of the penal law or Section 511(1), 511 (2)(a)(i), or 511(2)(a)(iv) of the vehicle and traffic law, shall not be considered convicted of a crime.

3. "Federal immigration authorities" shall mean any officer, employee or person otherwise paid by or acting as an agent of United States immigration and customs enforcement or any division thereof or any other officer, employee or person otherwise paid by or acting as an agent of the United States department of homeland security who is charged with enforcement of the civil provisions of the immigration and nationality act.

4. "Pending criminal case" shall mean a case in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States, excluding the family court of the state of New York or a comparable court in another jurisdiction in the United States, where judgment has not been entered and where, through the filing of a criminal complaint or similar procedural instrument, a felony charge, or a misdemeanor charge under any of the following, is lodged: (i) section 265.01 of the penal law, provided, however, that such charge must relate to possession of a firearm; (ii) section 215.50 of the penal law, unless the defendant is released upon failure to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law; (iii) section 120.00 of the penal law, unless the defendant is released upon failure to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law; (iv) article 130 of the penal law; or (v) article 31 of the vehicle and traffic law. Notwithstanding the foregoing, any individual who is a defendant in more than one case in which criminal charges are lodged with a criminal court through the filing of a criminal complaint or similar procedural instrument and where judgment has not been entered shall be considered a defendant in a pending criminal case provided such individual is charged in any such case with a crime other than a violation of section 230.00 or 240.37 of the penal law or of section 511(1), 511 (2)(a)(i), or 511(2)(a)(iv) of the vehicle and traffic law. Any individual whose case is disposed of with an adjournment in contemplation of dismissal pursuant to section 170.55 or 170.56 of the criminal procedure law or a comparable provision of federal law or the law of another state shall not be deemed to be a defendant in a pending criminal case or a defendant in a case in which criminal charges have been lodged with a criminal court through the filing of a criminal complaint or similar procedural instrument and judgment has not been entered. A case in which the highest charge is a violation or a non-criminal infraction, including a case in which an individual has been sentenced to conditional discharge for committing a violation or a non-criminal infraction pursuant to section 410.10 of the criminal procedure law or a comparable provision of federal law or the law of another state, shall not be deemed to be a pending criminal case or a case in which criminal charges have been lodged with a criminal court through the filing of a criminal complaint or similar procedural instrument and judgment has not been entered. Any individual who, if convicted of the top count of the accusatory instrument with which such individual is charged, would be mandatorily adjudicated as a youthful offender, pursuant to article 720 of the criminal procedure law or a comparable provision of federal law or the law of another state, or a juvenile delinquent, as defined by section 301.2(1) of the family court act or a comparable provision of federal law or the law of another state, shall not be considered a defendant in a pending criminal case.

4. "Terrorist screening database" shall mean the United States terrorist watch list or any similar or successor list maintained by the United States.

b. Prohibition on honoring a civil immigration detainee. 1. The department shall not honor a civil immigration detainee by:

(i) holding an individual beyond the time when such individual would otherwise be released from the department's custody, except for such reasonable time as is necessary to conduct the search specified in paragraph two of this subdivision, or

(ii) notifying federal immigration authorities of such individual's release.

2. Paragraph one of this subdivision shall not apply under any of the following circumstances:

(i) A search, conducted at or about the time when such individual would otherwise be released from the department's custody, of state and federal databases, or any similar or successor databases, accessed through the New York state division of criminal justice services e-JusticeNY computer application, or any similar or successor computer application maintained by the city of New York or state of New York, indicates, or the department has been informed by a court, that such individual:

A. has been convicted of a crime;

B. is a defendant in a pending criminal case;

C. has an outstanding criminal warrant in the state of New York or another jurisdiction in the United States;

D. is identified as a known gang member in the database of the national crime information center or any similar or successor database maintained by the United States; or

E. is identified as a possible match in the terrorist screening database.

(ii) The search conducted pursuant to subparagraph i of this paragraph indicates, or the department has been informed by federal immigration authorities, that such individual:

A. has an outstanding warrant of removal issued pursuant to 8 C.F.R. 241.2; or

B. is or has previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1;

3. Nothing in this section shall affect the obligation of the department to maintain the confidentiality of any information obtained pursuant to paragraph two of this subdivision.

c. No conferral of authority. Nothing in this section shall be construed to confer any authority on any entity to hold individuals on civil immigration detainers beyond the authority, if any, that existed prior to the enactment of this section.

d. No conflict with existing law. This local law supersedes all conflicting policies, rules, procedures and practices of the city of New York. Nothing in this local law shall be construed to prohibit any city agency from cooperating with federal immigration authorities when required under federal law. Nothing in this local law shall be interpreted or applied so as to create any power, duty or obligation in conflict with any federal or state law.

e. No private right of action. Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department.

f. Reporting. No later than September 30, 2013 and no later than September 30 of each year thereafter, the department shall post a report on the department website that includes the following information for the preceding 12 month period:

1. the number of individuals held pursuant to civil immigration detainers beyond the time when such individual would otherwise be released from the department's custody;

2. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers;

3. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had at least one felony conviction;

4. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had at least one misdemeanor conviction but no felony convictions;

5. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions;

6. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as known gang members in the database of the national crime information center or a successor database maintained by the United States;

7. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as possible matches in the terrorist screening database;

8. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as both possible matches in the terrorist screening database and known gang members in the database of the national crime information center or a successor database maintained by the United States;

9. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were charged with a felony or felonies in a pending criminal case;

10. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were charged solely with a misdemeanor or misdemeanors in a pending criminal case;

11. the number of individuals for whom civil immigration detainers were not honored pursuant to subdivision b of this section; and

12. the number of individuals for whom civil immigration detainers were not honored pursuant to subdivision b of this section.

g. For the purpose of this section, any reference to a statute, rule, or regulation shall be deemed to include any successor provision.

§2. This local law shall take effect 120 days after it shall have become a law, except that the commissioner shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

Referred to the Committee on Immigration.

Res. No. 1619

Resolution expressing grief and sorrow for the victims and their families and for all those affected by the tragedy at Sandy Hook Elementary School in Newtown, Connecticut and calling upon the President of the United States, the United States Congress, State and Local Legislators, and all Americans to work together to reduce needless gun violence by making meaningful changes to gun control laws that will ensure that we are all kept safe from gun violence.

By The Speaker (Council Member Quinn) and Council Members Williams, Cabrera, Vallone, Garodnick, Fidler, Arroyo, Chin, Comrie, Dickens, Eugene, Ferreras, Gennaro, Gentile, Gonzalez, Greenfield, James, King, Koppell, Koslowitz,

Lander, Mark-Viverito, Mealy, Mendez, Palma, Reyna, Sanders and Van Bramer.

Whereas, On Friday, December 14, 2012, a gunman tragically took the lives of twenty elementary school children and six adults at Sandy Hook Elementary School in Newtown, Connecticut; and

Whereas, The New York City Council honors those who lost their lives and those who exhibited exceptional courage and heroism at Sandy Hook Elementary School; and

Whereas, The New York City Council expresses its sorrow, unites in solidarity with the families of Newtown during these difficult days, and endeavors to ensure that the lives lost will forever be remembered; and

Whereas, This horrific event is another tragic reminder that more must be done to protect the lives of innocent Americans from senseless gun violence; and

Whereas, There is no one simple solution to this problem, however, it is important for all Americans to join together to ensure that no more innocent lives are lost to gun violence.

Whereas, As President Obama said, "If there is even one step we can take to save another child, or another parent, or another town, from the grief that has visited Tucson, and Aurora, and Oak Creek, and Newtown, and communities from Columbine to Blacksburg before that -- then surely we have an obligation to try"; and

Whereas, Just as President Obama pledged to use the power of his office to engage all citizens "from law enforcement to mental health professionals to parents and educators -- in an effort aimed at preventing more tragedies like this," so too must the United States Congress and all levels of government work together at regulating the types of weaponry available to the average United States citizen in order to reduce gun violence; and

Whereas, The gunman who entered Sandy Hook Elementary School was heavily armed with a semi-automatic assault rifle, two handguns, and high-capacity ammunition magazines, all of which enabled him to wreak havoc on multiple innocent lives in a short period of time; and

Whereas, Semi-automatic assault weapons and high-capacity ammunition magazines allow for the discharge of many rounds of ammunition without the need to stop to reload between shots or for long periods of time, and for that reason they are intended for military purposes rather than civilian use; and

Whereas, Yet, it remains lawful in some states for an individual to purchase both semi-automatic assault weapons and magazines that hold more than 10 rounds of ammunition; and

Whereas, Therefore, at a minimum, the availability of such high-capacity ammunition magazines and semi-automatic military-style weapons, which enable a person to endanger multiples lives in mere minutes without hesitation or interruption, should be restricted; and

Whereas, There is no need for a civilian to be able to fire a weapon more than 10-times without the need to reload a new ammunition magazine; and

Whereas, Semi-automatic military-style assault weapons fire multiple rounds almost as quickly as automatic weapons, however, automatic weapons have been tightly controlled since passage of the National Firearms Act of 1934; and

Whereas, Although there is no compelling need for high-capacity ammunition and although semi-automatic military-style assault weapons are capable of firing multiple rounds almost as quickly as automatic weapons there are currently no nationwide restrictions on the sale or possession of this warzone weaponry; and

Whereas, In fact, such weaponry has wrought death and devastation in other mass shootings in America, such as those that took place both at schools like Virginia Tech and Columbine High School, and in public spaces such as a movie theater in Aurora, Colorado and a political constituent event in Tucson, Arizona; and

Whereas, Therefore it is vital for our federal government to immediately pass legislation that would ban the sale, possession, transfer, or manufacture of high capacity ammunition feeding devices and dangerous semi-automatic military-style assault weapons, as was done by portions of the Violent Crime Control and Law Enforcement Act of 1994, which unfortunately expired in 2004 without being renewed; and

Whereas, These weapons are not the only source of gun violence in the country as evidenced by the mass shooting earlier in the year at a Sikh temple in Wisconsin and the shootings that take place every day in many areas throughout the country; and

Whereas, Therefore, solutions must be sought at all levels of government to ensure that proper regulations are in place to reduce gun violence in general; and

Whereas, While reasonable restrictions on certain weapon ownership will help mitigate the damage done when violence takes place, these restrictions alone will not eradicate violence in general; and

Whereas, In fact, the New York City Council's Task Force to Combat Gun Violence has examined the gun violence epidemic on a holistic level and will release a report indicating its findings and recommendations regarding the best solutions to ensure that all of our children have a safe and nurturing community in which to grow; and

Whereas, Consequently, it is important that we work together as a Nation to undertake proper preventative measures, which include determining the root causes that lead individuals to act in such an abhorrent manner; and

Whereas, There is a common thread running through the tragedies that took place at Sandy Hook Elementary School, Virginia Tech, Aurora, Colorado, and Tucson, Arizona, in that each act was undertaken by a young male with verifiable mental health infirmities; and

Whereas, It is imperative that our federal, state, and local leaders work together to ensure that proper mental health services are, and remain, readily available and affordable to all those who need assistance, regardless of their criminal history or lack thereof; and

Whereas, It is equally important that all Americans are properly educated and informed about the seriousness of mental health issues and the help available to those suffering from the same; and

Whereas, As a Nation, we all have a duty and a role to play in protecting the welfare of all Americans, while at the same time ensuring that all law abiding citizens retain their constitutional rights; now, therefore, be it

Resolved, That the Council of the City of New York expresses grief and sorrow for the victims and their families and for all those affected by the tragedy at Sandy Hook Elementary School in Newtown, Connecticut and calls upon the President of the United States, the United States Congress, State and Local legislators, and all Americans to work together to reduce needless gun violence by making meaningful changes to gun control laws that will ensure that we are all kept safe from gun violence.

Adopted by the Council by voice-vote (preconsidered and approved by the Committee on Finance).

Int. No. 983

By Council Members Arroyo, Brewer, Cabrera, Chin, Comrie, Dickens, Eugene, Ferreras, Fidler, Gentile, Gonzalez, Jackson, James, King, Koppell, Mark-Viverito, Mendez, Nelson, Palma, Reyna, Sanders, Williams and Wills.

A Local Law to amend the New York city building code, in relation to flood-resistant construction requirements for health facilities.

Be it enacted by the Council as follows:

Section 1. The definition of "NONRESIDENTIAL (FOR FLOOD ZONE PURPOSES)" as set forth in Section BC G201.2 of the New York city building code, as added by local law 33 for the year 2007, is amended to read as follows:

NONRESIDENTIAL (FOR FLOOD ZONE PURPOSES). A building or structure that either:

1. Contains no space classified in Groups I-1, I-2, R-1, R-2, or R-3 and contains no space that is accessory, as such term is defined in the New York City Zoning Resolution, to any I-1, I-2, R-1, R-2, or R-3 occupancy; or

2. Contains such space(s), but also contains space on the lowest floor that is not accessory, as such term is defined in the New York City Zoning Resolution, to an I-1, I-2, R-1, R-2, or R-3 occupancy.

§2. The definition of "RESIDENTIAL (FOR FLOOD ZONE PURPOSES)" as set forth in Section BC G201.2 of the New York city building code, as added by local law 33 for the year 2007, is amended to read as follows:

RESIDENTIAL (FOR FLOOD ZONE PURPOSES). A building or structure containing any space that is either:

1. Classified in Groups I-1, I-2, R-1, R-2, or R-3; or

2. Accessory, as such term is defined in the New York City Zoning Resolution, to an I-1, I-2, R-1, R-2, or R-3 occupancy.

Exception: Such a building or structure shall be considered nonresidential (for flood zone purposes) when also containing space on the lowest floor that is not accessory, as such term is defined in the New York City Zoning Resolution, to an I-1, I-2, R-1, R-2, or R-3 occupancy.

§3. This local law shall take effect immediately.

Referred to the Committee on Housing and Buildings.

Res. No. 1620

Resolution calling upon the New York State Legislature to pass and the Governor to sign legislation that would amend the Real Property Tax Law to allow tenants to be placed on probationary status if their income exceeds the maximum level for the Senior Citizen Rent Increase Exemption or the Disability Rent Increase Exemption on one year's income tax return.

By Council Members Brewer, Chin, Comrie, Dromm, Fidler, Gentile, Gonzalez, Jackson, James, Lander, Mendez, Palma, Williams and Wills.

Whereas, The Senior Citizens Rent Increase Exemption (SCRIE) Program and the Disability Rent Increase Exemption (DRIE) Program provide eligible tenants an exemption from rent increases and provide the owner of the buildings with a corresponding credit against their real estate taxes from New York City; and

Whereas, New York City tenants are eligible for the SCRIE program if the tenant or his spouse is 62 years of age or over, lives in a rent regulated apartment, has a combined household income at or below \$29,000 per year, and pays at least one third of his or her income toward rent; and

Whereas, The DRIE program is modeled on the SCRIE program and extends rent increase exemptions to people with disabilities provided that such persons' annual household income is no greater than \$19,860 if they live in a single-person household or \$28,668 if they live in a household consisting of two or more people; and

Whereas, Once a tenant has been approved for SCRIE or DRIE he or she must file a recertification application every one to two years; and

Whereas, If during the previous year, a tenant had a one-time income boost, such as an insurance payout, which resulted in the tenant having an income that exceeded the maximum income level for SCRIE or DRIE, he or she would no longer be eligible for the SCRIE or DRIE programs; and

Whereas, Once a tenant has been removed from the program the landlord is free to increase his or her rent; and

Whereas, If the tenant is later re-enrolled in the SCRIE or DRIE program, he or she will have to pay the increased rent amount and will only be protected from future rent increases; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass and the Governor to sign legislation that would amend the Real Property Tax Law to allow tenants to be placed on probationary status if their income exceeds the maximum level for the Senior Citizen Rent Increase Exemption or the Disability Rent Increase Exemption on one year's income tax return.

Referred to the Committee on Aging.

Int. No. 984

By Council Members Cabrera, Arroyo, Brewer, Comrie, Ferreras, Gentile, Jackson, James, Palma, Reyna, Sanders, Williams, Wills and Ulrich.

A Local Law to amend the New York City Charter, in relation to requiring the Department of Information Technology and Telecommunications to create and maintain an interactive crime mapping website.

Be it enacted by the Council as follows:

Section 1. Section 1072 of the New York City Charter is amended by amending subdivisions p and q and by adding a new subdivision r to read as follows:

p. to perform such other responsibilities with respect to information technology and telecommunications matters, including responsibilities delegated elsewhere by the charter, as the mayor shall direct; [and]

q. to provide to the public at no charge on the city's website an interactive map, updated as often as practicable and necessary but not less than once per week, displaying the following:

1. Permitted and approved street closures that do not allow for the passage of vehicular traffic on that street, including but not limited to closures for special events, crane operations and other construction work, film shoots and paving operations; and

2. Parking regulations.

The information related to paragraph (1) of this subdivision shall be searchable and sortable by time, date and borough, except that street closures for crane operations, construction work and paving operations shall have the notation "subject to closure" during times where closure has been permitted and approved but where such closure may or may not occur on a particular day. All information required by this subdivision shall be available on the city's website as soon as practicable but in no case less than one week prior to any such closure or change, except closures which were applied for or planned less than one week prior to any such closure or change, which shall be available on such interactive map within seventy-two hours of the permit and approval of such closure. Where a permitted and approved street closure is due to a special event, the sponsor of the event with appropriate contact information shall be provided as part of such interactive map. For the purposes of this subdivision, special event shall mean any street fair, block party or festival on a public street(s) where such activity may interfere with or obstruct the normal use by vehicular traffic of such street(s).]; and

r. to provide to the public at no charge on the city's website an interactive crime map, displaying the total number of crime complaints that have been filed with the New York City Police Department ("NYPD") on a monthly basis, searchable by address, zip code or NYPD patrol precinct. Such crime map shall display the aggregate totals of the classes of crimes reported, on a street-by-street basis, and shall include crimes that have been reported to have occurred in parks and subway stations. All information required by this subdivision shall be available on the city's website as soon as practicable but in no case more than one month after a crime complaint has been filed. The mayor shall ensure that all agencies provide the

department with such assistance and information as the department requires to compile and update the crime map.

§2. This local law shall take effect one hundred eighty days after its enactment into law.

Referred to the Committee on Public Safety.

Int. No. 985

By Council Members Comrie, Arroyo, Cabrera, Dickens, Fidler, Gentile, Greenfield, James, Koslowitz, Palma, Vallone, Williams, Chin, Halloran and Ulrich.

A Local Law in relation to underground power lines.

Be it enacted by the Council as follows:

Section 1. Study of underground power lines. The office of long-term planning and sustainability shall conduct a study of the utilization of underground power lines in the City and submit the findings of such study to the mayor and council within six months of the effective date of this local law. To the extent that the data required below has been made available by local electric corporations, such study shall include, but not be limited to, for both underground power lines and above ground power lines, disaggregated by borough and by community district or other service areas as defined by the office of long-term planning and sustainability:

(i) the name of local electric corporations that provide electric service, the total length of power lines, the numbers of residential and commercial customers serviced by such lines, the number of persons that receive such service, and the average maintenance cost per mile for the most recent calendar year such data is available;

(ii) the total number of power outages caused by weather and climate events, including downed trees, in the past ten years and for each such outage the number of customers affected, the number of persons affected, the type of power lines, the areas serviced, the cause and length of time of each such outage, the estimated economic loss caused by each such outage, and the costs of restoring each such outage;

(iii) the total number of power outages, disaggregated by the cause of such outages, other than those caused by weather and climate events for the most recent calendar year such data is available, and for each such cause, the mean and standard deviation for the number of customers affected, the number of persons affected, and the length of time of such outages, respectively;

(iv) a list of neighborhoods or service areas where relocating above ground power lines to underground locations would not be practical or result in more severe power outages and the considerations that went into such determination; and

(v) a list of neighborhoods or service areas where relocating above ground power lines to underground locations would be most advantageous and the considerations that went into such determination.

§2. This local law shall take effect immediately upon its enactment.

Referred to the Committee on Consumer Affairs.

Int. No. 986

By Council Members Dromm, Koslowitz, Mendez and Wills.

A Local Law to amend the administrative code of the city of New York, in relation to removing references to the Old New York County Courthouse as the Tweed Courthouse.

Be it enacted by the Council as follows:

Section 1. No print, online, or other publication produced or printed after the effective date of this law by any New York city agency shall refer to the old New York county courthouse, the building located at 52 chambers street, as the Tweed courthouse.

§2. This local law shall take effect three months after its enactment.

Referred to the Committee on Governmental Operations.

Res. No. 1621

Resolution calling upon the New York State Legislature to pass and the Governor to enact S.7319/A.4930, the "Public Interest Legal Services Loan Assistance Act" which would allow public interest attorneys to qualify for a certain amount of educational loan forgiveness.

By Council Members Dromm, Brewer, Comrie, Eugene, Ferreras, Fidler, Jackson, Lander, Mark-Viverito, Mendez, Palma, Sanders and Wills.

Whereas, Public interest attorneys work in government agencies, non-profits, and prosecutor and public defender offices; and

Whereas, Our legal system needs devoted prosecutors, public defenders, and public civil attorneys to make a long-term commitment to public interest work; and

Whereas, Public interest attorneys often carry significant and increasingly burdensome amounts of student loan debt that is extremely difficult to repay on their relatively low salaries; and

Whereas, According to the American Bar Association (ABA), many of today's law school graduates are faced with debt of more than \$100,000 upon graduation; and

Whereas, According to the ABA, the median starting public interest salary in civil legal aid is in the low \$40,000s; and

Whereas, According to the New York County District Attorney's Office, the starting salary for assistant district attorneys is \$60,500; and

Whereas, According to the Association for Legal Career Professionals, the median starting private sector salary is \$160,000 at large firms in New York City; and

Whereas, Many law school graduates who take on public interest jobs are forced to leave shortly thereafter when confronted with major life decisions such as starting a family; and

Whereas, According to the ABA, many attorneys in public interest legal jobs leave after two to three years of employment; and

Whereas, Low income New Yorkers would benefit from additional attorneys working in the public interest who can assist them with issues such as immigration, housing and obtaining public benefits; and

Whereas, Loan repayment assistance programs have emerged as a solution for relieving the debt burden of some graduates; and

Whereas, Although the number of these programs has increased, they still do not meet the need of many attorneys who would like to work in public interest; and

Whereas, A report by the ABA entitled Making a Critical Difference: Ohio Legal Assistance Foundation's Loan Repayment Assistance Program shows that the \$6,000 in assistance given annually to public interest attorneys in Ohio has made a positive difference in their financial lives; and

Whereas, In 2012, Senator Kevin Parker (D-NY) and Assembly Member James Brennan (D-NY) introduced S.7319 and companion bill A.4930; and

Whereas, This legislation would establish the "Public Interest Legal Services Loan Assistance Fund," which would assist public service attorneys practicing public interest law in repaying their student loans; and

Whereas, Specifically, the fund would be established by increasing the fees to take the state bar exam and to be admitted to practice in New York as an out-of-state attorney; and

Whereas, Eligible attorneys working for public sector institutions could apply after three years of practice for grants of up to \$6,000 to cover the costs of their student loans; and

Whereas, Such a fund would help to recruit and retain public interest attorneys in New York State, including in the City; and

Whereas, The Task Force to Expand Access to Civil Legal Services in New York convened by the Chief Judge of the State of New York conducted a study in 2010 and found that recruitment of public interest attorneys is especially critical in areas of high need including health, finances, employment, housing, public benefits and family issues, and such findings were affirmed in the Task Force's 2012 report; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass and the Governor to enact S.7319/A.4930, the "Public Interest Legal Services Loan Assistance Act" which would allow public interest attorneys to qualify for a certain amount of educational loan forgiveness.

Referred to the Committee on Civil Service and Labor.

Res. No. 1622

Resolution calling on the United States Congress to pass and the President to sign H.R. 6412/S.3553, also known as the Attracting the Best and Brightest Act of 2012, which would allocate up to 50,000 immigrant visas for advanced graduates in science, technology, engineering, and mathematics.

By Council Members Dromm, Jackson, Barron, Comrie, Eugene, Ferreras, James, Mark-Viverito, Mendez, Palma and Williams.

Whereas, In an effort to promote economic growth by providing valuable immigrants with the visas they need to stay in this county, on September 18, 2012, H.R. 6429, also known as the STEM Jobs Act of 2012, was introduced in the United States Congress; and

Whereas, H.R. 6429 seeks to create 55,000 total immigrant visas for individuals who have advance degrees in the science, technology, engineering, and mathematics ("STEM") field; and

Whereas, Many elected officials were opposed to such a bill because it would provide visas for only highly educated immigrants and eliminate the diversity visa

program, which is awarded to immigrants from countries with low rates of immigration; and

Whereas, Because of such opposition, on September 20, 2012, H.R. 6429 failed to pass; and

Whereas, In response to H.R. 6429, Congresswoman Zoe Lofgren introduced H.R. 6412, also known as the Attracting the Best and Brightest Act of 2012, which mirrors the language dictated in H.R. 6429, but neither contains a deadline for using the visa nor eliminates the diversity lottery program; and

Whereas, In addition, according to the bill, H.R. 6429 "makes unused STEM visas available for other employment-based visa categories"; and

Whereas, Furthermore, the bill contains protections for the children of these immigrants to prevent them from aging out while their immigrant visa petitions and permanent residency applications are pending; and

Whereas, In an effort to provide more opportunities for immigrants to apply for visas, Senator Charles Schumer introduced S. 3553, also known as the Benefits to Research and American Innovation through Nationality Statutes Act of 2012, which is similar to H.R.6412; and

Whereas, Currently, according to the 2010 Census immigrants, who have made positive contributions to the city's economy, culture and society, represent 36 percent of the city's population; and

Whereas, According to the Partnership for a New American Economy, a bipartisan group of 340 mayors and CEOs from across the country co-chaired by Mayor Michael Bloomberg, a 1% increase in immigrants working in advanced positions leads to a 3% increase in U.S. exports to their home countries; and

Whereas, An infusion of foreign-born graduates would be a boom for the city's efforts to become a hub for the science and technology sector; and

Whereas, Without programs specifically designed to facilitate permanent residency for immigrants and their families, they are returning home to the detriment of our country or forced to live in society's shadows; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to pass and the President to sign H.R. 6412/S.3553, also known as the Attracting the Best and Brightest Act of 2012, which would allocate up to 50,000 immigrant visas for advanced graduates in science, technology, engineering, and mathematics.

Referred to the Committee on Immigration.

Int. No. 987

By Council Members Ferreras, Wills, Barron, Chin, Comrie, Crowley, Dickens, Gentile, Jackson, James, Koppell, Lander, Mark-Viverito, Mendez, Palma, Reyna, Sanders, Van Bramer and Williams.

A Local Law to amend the administrative code of the city of New York, in relation to requiring public hospitals to post signs regarding the penalty for assaulting nurses.

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 17 of the administrative code of the city of New York is amended by adding a new section 17-198 to read as follows:

§17-198 Signage regarding assaulting nurses. *Every public hospital shall conspicuously post signage at the entrance of the hospital and next to each elevator stating that it is a crime to assault a nurse. Such sign shall be in a form and manner as proscribed by the commissioner and shall include the following text: "Assaulting a nurse is a D felony punishable by up to seven years in prison." Such sign shall appear in English, Spanish and any other language used by the predominant patient populations in the facility catchment areas, as determined by the commissioner. For purposes of this section, the term "public hospital" shall mean a hospital operated by the New York city health and hospitals corporation.*

§2. This local law shall take effect ninety days after its enactment.

Referred to the Committee on Health.

Int. No. 988

By Council Members González, Arroyo, Cabrera, Chin, Comrie, Crowley, Dickens, Eugene, Gentile, Jackson, James, Mark-Viverito, Nelson, Palma, Sanders, Williams and Halloran.

A Local Law to amend the New York city building code, in relation to flood-resistant construction.

Be it enacted by the Council as follows:

Section 1. Section BC G103.7 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

G103.7 Sand dune alterations in V-Zones and Coastal A-Zones.

Prior to issuing a permit for alteration of sand dunes in a V-Zone or Coastal A-Zone, the commissioner shall require submission of an engineering analysis demonstrating that the proposed alteration will not increase the potential for flood damage.

§2. Sections BC G104.5.1 and G104.5.2 of the New York city building code, as added by local law number 33 for the year 2007, are amended to read as follows:

G104.5.1 A-Zones. For construction in A-Zones, *except Coastal A-Zones*, the permit application shall include the following certifications, as applicable:

1. **Wet floodproofing certification.** For wet floodproofed enclosures below the design flood elevation, construction documents shall include a certification by the applicant that the design provides for the automatic entry and exit of floodwaters for equalization of hydrostatic flood forces in accordance with Section 2.6.1.2, ASCE 24.

2. **Dry floodproofing certification for nonresidential buildings.** For dry floodproofed buildings and structures that are nonresidential (for flood zone purposes), construction documents shall include a certification by the applicant that the dry floodproofing is designed in accordance with ASCE 24.

3. **Utility certifications.** For all applications involving utility or mechanical work, including applications where such work is to be filed in a separate, related application, construction documents shall include a certification by the applicant that “all heating, ventilation, air conditioning, plumbing, electrical and other services, facilities and equipment within the structure or site will be located or constructed so as to prevent water from entering or accumulating within the components during conditions of flooding, in accordance with ASCE 24.”

G104.5.2 V-Zones and Coastal A-Zones. For construction in V-Zones and Coastal A-Zones, the permit application shall include the following certifications, as applicable:

1. **Structural design certification.** Construction documents shall include a certification by the applicant that the “entire structure is designed in accordance with ASCE 24, including that the pile or column foundation and building or structure to be attached thereto is designed to be anchored to resist flotation, collapse and lateral movement due to the effects of wind and flood loads acting simultaneously on all building components, and other load requirements of Chapter 16 of the New York City Building Code.”

2. **Breakaway wall certification.** Where breakaway walls are provided, construction documents shall include a certification by the applicant that “the breakaway walls meet the load requirements of Section 5.3.2.3 of ASCE 7, are designed in accordance with ASCE 24, and are of an open lattice type construction only.”

3. **Utility certifications.** For all applications involving utility or mechanical work, including applications where such work [it] is to be filed in a separate, related application, construction documents shall include a certification by the applicant that “all heating, ventilation, air conditioning, plumbing, electrical and other services, facilities and equipment within the structure or site will be located or constructed so as to prevent water from entering or accumulating within the components during conditions of flooding, in accordance with ASCE 24.”

§3. Sections BC G106.2 and G106.3 of the New York city building code, as added by local law number 33 for the year 2007, are amended to read as follows:

G106.2 Space subject to flooding in A-Zones. [The] *For spaces subject to flooding in A-Zones, except Coastal A-Zones*, the certificate of occupancy shall describe all non-dry-floodproofed spaces below the design flood elevation as “subject to flooding,” including but not limited to wet floodproofed spaces usable solely for parking, storage, building access or crawl spaces.

G106.3 Spaces subject to flooding in V-Zones and Coastal A-Zones. [The] *For spaces subject to flooding in V-Zones and Coastal A-Zones*, the certificate of occupancy shall describe all spaces below the design flood elevation as “subject to flooding,” including but not limited to spaces usable solely for parking, storage, building access or crawl spaces.

§4. The definition of “AREA OF SPECIAL FLOOD HAZARD” as set forth in Section BC G201.2 of the New York city building code, as added by local

law number 33 for the year 2007, is amended to read as follows:

AREA OF SPECIAL FLOOD HAZARD. [The land in the flood plain] *Land delineated on the ABFEMs* as subject to a one percent or greater change of flooding in any given year. Such areas are designated on the [Flood Insurance Rate Map (FIRM)] *ABFEMs* as A-Zones, *Coastal A-Zones*, [or] *V-Zones or other High Risk Flood Hazard Areas*. [Such areas] *Areas of special flood hazard* are also known as the base flood plain or one hundred year flood plain. Areas designated as X-Zones shall not be deemed areas of special flood hazard for the purpose of this Appendix.

§5. Section BC G201.2 of the New York city building code is amended by adding new definitions of “A-ZONE, COASTAL” and “ADVISORY BASE FLOOD ELEVATION MAPS (ABFEMs)” to follow in alphabetical order the definition of “A-ZONE,” to read as follows:

A-ZONE, COASTAL. *An area of special flood hazard, landward of a V-Zone or landward of an open coast without mapped V-Zones, where the potential for breaking wave heights (the vertical distance between the crest and trough of a wave) is greater than or equal to 1.5 feet (457 mm), as delineated on the ABFEMs.*

ADVISORY BASE FLOOD ELEVATION MAPS (ABFEMs). *The advisory flood maps, released by the Federal Emergency Management Agency (FEMA) in December 2012, which delineate the areas of special hazard, base flood elevations, flood boundaries and floodways for the following counties in the State of New York: Bronx County, Kings County, New York County, Queens County and Richmond County. The ABFEMs are adopted until the revised FIRM and FIS are issued and adopted.*

§6. Section G201.2 of the New York city building code is amended by adding new definitions of “HIGH RISK FLOOD HAZARD AREA” and “HIGH VELOCITY WAVE ACTION” to follow in alphabetical order the definition of “FUNCTIONALLY DEPENDENT FACILITY,” to read as follows:

HIGH RISK FLOOD HAZARD AREA. *An area of special flood hazard where one or more of the following hazards are known to occur, as delineated on the ABFEMs: alluvial fan flooding, flash floods, mudslides, ice jams, high velocity flows, high velocity wave action, breaking wave heights greater than or equal to 1.5 feet (457 mm), or erosion, as such terms are defined by ASCE 24.*

HIGH VELOCITY WAVE ACTION. *A condition where wave heights are greater than or equal to 3 feet (914 mm) in height or where wave runups reach elevations of at least 3 feet (914 mm) above grade.*

§7. Section BC G201.2 of the New York city building code is amended by adding a new definition of “SMALL RESIDENTIAL STRUCTURE” to follow in alphabetical order the definition of “SAND DUNES,” to read as follows:

SMALL RESIDENTIAL STRUCTURE. *A structure that is a one- or two-family dwelling, as defined in Section 310.2, not more than three stories above-grade in height or a dwelling that is used for providing overnight accommodations and a morning meal to not more than ten lodgers and containing not more than five bedrooms for such lodgers.*

§8. Sections BC G303.2 and G303.3 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

G303.2 Sewer facilities. All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with [Chapter] *Section 8*, ASCE 24, to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into floodwaters, or impairment of the facilities and systems.

G303.3 Water facilities. All new and replacement water facilities shall be designed in accordance with the provisions of [Chapter] *Section 8*, ASCE 24, to minimize or eliminate infiltration of floodwaters into the systems.

§9. Section BC G303.7 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

G303.7 Grading and fill. In areas of special flood hazard, grading and/or fill shall not be approved:

1. Unless such fill is placed, compacted and sloped to minimize shifting, slumping and erosion during the rise and fall of flood water and, as applicable, wave action, in accordance with ASCE 24.

2. In floodways, unless it has been demonstrated through hydrologic and hydraulic analyses performed by an engineer in accordance with standard engineering practice that the proposed grading or fill, or both will not result in any increase in the flood levels during the occurrence of the design flood, in accordance with Section G103.5.

3. In V-Zones and Coastal A-Zones, unless such fill is

[conducted and or placed to avoid dispersion of water and waves towards any building or structure.] *nonstructural fill used in accordance with ASCE 24 for dune construction or reconstruction, minimal site grading, landscaping, or to meet local drainage requirements.*

§10. Section BC G304 of the New York city building code, as added by local law number 33 for the year 2007, are amended to read as follows:

SECTION BC G304

POST-FIRM CONSTRUCTION AND ALTERATIONS; SUBSTANTIAL IMPROVEMENTS TO PRE-FIRM CONSTRUCTION

G304.1 A-Zone construction standards. [The] *In addition to the requirements of ASCE 24, the following standards shall apply [to post-FIRM construction and substantial improvements located] within A-Zones, except Coastal A-Zones.*

G304.1.1 Residential. [For buildings] *Buildings* or structures that are residential (for flood zone purposes)[, all post-FIRM new buildings and substantial improvements] shall comply with the applicable requirements in *this* Chapter [G3] and ASCE 24, and shall be elevated as follows:

1. **Lowest floor.** The lowest floor, including the basement (for flood zone purposes), shall be elevated to at or above the design flood elevation specified in ASCE 24, Table 2-1;

2. **Enclosures below the design flood elevation.** Enclosed spaces below the design flood elevation specified in ASCE 24, Table 2-1 shall be useable solely for parking of vehicles, building access, storage, or crawlspace, and shall be wet floodproofed in accordance with ASCE 24. Breakaway walls are not required in A-Zones[.], *except Coastal A-Zones;*

3. **Materials.** Only flood-damage-resistant materials and finishes shall be utilized below the design flood elevation specified in ASCE 24, Table 5-1;

4. **Utilities and equipment.** Utilities and attendant equipment shall be located at or above the design flood elevation specified in ASCE 24, Table 7-1, or shall be constructed so as to prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24;

5. **Certifications.** Applications shall contain applicable certifications in accordance with Section G104.5; and

6. **Special inspections.** Special inspections shall be as required by Section G105.

G304.1.2 Nonresidential. [For buildings] *Buildings* or structures that are nonresidential (for flood zone purposes)[, all post-FIRM new buildings and substantial improvements] shall comply with the applicable requirements in *this* Chapter [G3] and ASCE 24, and shall comply with either of the following:

1. **Elevation option.** The structure shall comply with Items 1 through 6 of Section G304.1.1;

2. **Dry floodproofing option.** The structure shall comply with the following:

2.1. **Elevation of dry floodproofing.** The structure shall be dry floodproofed to at or above the design flood elevation specified in ASCE 24, Table 6-1;

2.2. **Dwelling units.** Where dwelling units are located in a building utilizing the dry floodproofing option, the following additional requirements shall be met:

2.2.1. All rooms and spaces within dwelling units shall be located at or above the design flood elevation;

2.2.2. No more than one toilet and one sink shall be located below the design flood elevation. Any such toilet

room shall not be located within a dwelling unit and shall be no larger than required by Chapter 11; and no roughing therein shall be permitted to accommodate additional fixtures;

2.2.3. No more than one two-compartment laundry tray shall be permitted below the design flood elevation;

2.2.4. No kitchens or kitchenettes shall be permitted below the design flood elevation;

2.2.5. A restrictive declaration noting the above restrictions shall be filed with the City Register or County Clerk, and the page number and liber number shall be identified in the permit application and on the certificate of occupancy.

2.3. **Utilities and equipment.** Utilities and attendant equipment shall be located within the dry floodproofed enclosure, or may be located outside the dry floodproofed enclosure provided that they are located at or above the design flood elevation specified in ASCE 24, Table 7-1 or are constructed so as to prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24[.];

2.4. **Certifications.** Applications shall contain applicable certifications in accordance with Section G104.5; and

2.5. **Special inspections.** Special inspections shall be as required by Section G105.

Exception: *Buildings and structures that are nonresidential (for flood zone purposes) and located within a High Risk Flood Hazard Area, except V-Zones and Coastal A-Zones, shall comply with the applicable requirements in this Chapter and ASCE 24, and shall comply with the elevation option set forth in Items 1 through 6 of Section G304.1.1.*

G304.2 V-Zone and Coastal A-Zone construction standards. In addition to the requirements of ASCE 24, the following standards shall apply [to post-FIRM construction and substantial improvements located] within V-Zones and Coastal A-Zones.

1. **Foundation.** The lowest floor shall be elevated on adequately anchored pilings or columns and securely anchored to such piles or columns to prevent [floatation] *floatation*, collapse and lateral movement resulting from wind and flood loads acting simultaneously on all building components, and other load requirements of Chapter 16 and this appendix.

2. **Lowest horizontal member.** The lowest portion of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) shall be *elevated to* at or above the design flood elevation specified in ASCE 24, Table 4-1.

3. **Below the lowest horizontal members.** Spaces below the lowest horizontal member shall be either:

3.1. Free of obstructions; or

3.2. Enclosed with breakaway walls providing unconditioned space useable solely for parking of vehicles, building access, storage or crawl space. Such breakaway walls shall:

3.2.1. Be of an open lattice type construction only;

3.2.2. Meet the load requirements of Section 5.3.2.3 of ASCE 7; and

3.2.3. Meet the additional requirements of

ASCE 24.

4. **Materials.** Only flood-damage-resistant materials and finishes shall be utilized below the design flood elevation specified in ASCE 24, Table 5-1;

5. **Utilities and equipment.** Utilities and attendant equipment shall be located at or above the design flood elevation specified in ASCE, Table 7-1, or shall be construed so as to both resist wave action and prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24;

6. **Prohibitions.** The following shall be prohibited in V-Zones and Coastal A-Zones:

6.1. Development, including land-disturbing activities, seaward of the reach of mean high tide;

6.2. Use of fill for structural support of buildings; and

6.3. Man-made alterations of sand dunes that would increase potential damage to buildings.

7. **Certifications.** Applications shall contain applicable certifications in accordance with Section G104.5; and

8. **Special inspections.** Special inspections shall be as required by Section G105.

§11. Sections BC G305 and BC G306 of the New York city building code, as added by local law number 33 for the year 2007, are amended to read as follows:

**SECTION BC G305
MANUFACTURED HOMES**

G305.1 General. Manufactured homes shall be prohibited in V-Zones and Coastal A-Zones. Within A-Zones, except Coastal A-Zones, all new, replaced or substantially improved manufactured homes shall be:

1. Installed using methods and practices that minimize flood damage;

2. Elevated to or above the design flood elevation specified in ASCE 24, Table 2-1;

3. Placed on a permanent, reinforced foundation that is designed in accordance with ASCE 24; and

4. Securely anchored to a foundation system designed to resist [floatation] floatation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

**SECTION BC G306
RECREATIONAL VEHICLES**

G306.1 General. The following shall apply to placement of all recreational vehicles within areas of special flood hazard:

1. **Placement in V-Zones, Coastal A-Zones and floodways prohibited.** The placement of recreational vehicles is prohibited in V-Zones, Coastal A-Zones and floodways.

2. **Temporary placement in A-Zones.** Within A-Zones, except Coastal A-Zones, recreational vehicles shall be fully licensed and ready for highway use, and shall be placed on a site for less than 180 consecutive days.

3. **Permanent placement in A-Zones.** Within A-Zones, except Coastal A-Zones, recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for 180 or more consecutive days, shall meet the requirements of Section G305 for manufactured homes.

§12. Section BC G402 of the New York city building code, as amended by local law 8 for the year 2008, is amended to read as follows:

SECTION BC G402 STANDARDS

ASCE 7-02 Minimum Design Loads for G104.5.2, G201.2,

	Buildings and Other Structures	G304.2	
ASCE 24-05*	Flood Resistant Design and Construction	G103.1, G104.5.1, G105.2, G201.2, G303.2, G303.4, G304.1.1, G304.2, G307.1, G307.3, G308.1, G308.3	G104.3, G104.5.2, G105.3.1, G301.1, G303.3, G303.7, G304.1.2, G305.1, G307.2, G308.3
FEMA 360497	FIS Flood Insurance Study, Community Number 360497, Revised September 5, 2007; Federal Emergency Management Agency	G102.2	
FEMA FIRMs 360497	Flood Insurance Rate Map, Community Number 360496, Panels Numbers 1 through 0457, Revised September 5, 2007; Federal Emergency Management Agency	G102.2, G102.3.1, G103.3, G201.2	G102.3, G102.3.2
FEMA ABFEMs	Advisory Base Flood Elevation Maps for Bronx County, New York; Kings County, New York; New York County, New York; Queens County, New York and Richmond County, New York, Issued December 2012; Federal Emergency Management Agency	G102.2, G103.3, G201.2	G102.3.4
FEMA FORM 81-31	Elevation Certificate; Federal Emergency Management Agency	G105.3	
FEMA FORM 81-65	Floodproofing Certification; Federal Emergency Management Agency	G105.3	
HUD 24 CFR Part 3280-94	Manufactured Home Construction Safety Standards, 1994	G201.2	

* As modified in Chapter G5.

§13. The modifications to sections 1.1.1 and 1.1.2 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as added by local law 33 for the year 2007, are REPEALED.

§14. The modifications to sections 1.2, 1.4.3, and 2.3 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as amended by local law 8 for the year 2008, are amended to read as follows:

Section 1.2. Section 1.2 (Definitions) is amended by modifying only the following definitions:

[Coastal A Zone-Reserved.]

[Design Flood Elevation-The applicable elevation specified in Table 2-1, 4-1, 5-1, 6-1, or 7-1, depending on the structure category designated in Table 1-1.]

Design Flood Elevation-As defined in Section G201 of the New York City Building Code, Appendix G.

[High Risk Flood Hazard Area-An area designated as a coastal high hazard area, being those areas identified on the FIRM as a V-Zone.]

Nonresidential-As defined in Section G201 of the New York City Building Code, Appendix G.

Residential-As defined in Section G201 of the New York City Building Code, Appendix G.

Section 1.4.3. Table 1-1 of Section 1.4.3 (Classification of Structures) is amended to read as follows:

Table 1-1. Classification of Structures for Flood-Resistant Design and Construction (Classification same as New York City Building Code Table 1604.5)

Nature of Occupancy	Structural Occupancy Category
Buildings and other structures that represent a low hazard to human life in the event of failure including, but not limited to: <input type="checkbox"/> Agricultural facilities <input type="checkbox"/> Certain temporary facilities <input type="checkbox"/> Minor storage facilities, not including commercial storage facilities	I
Buildings and other structures except those listed in Categories I, III and IV	II

Buildings and other structures that represent a substantial hazard to human life in the event of failure including, but not limited to: Buildings and other structures where more than 300 people congregate in one area Buildings and other structures with day-care facilities with an occupant load greater than 150 Buildings and other structures with elementary school or secondary school facilities with an occupant load greater than 250 Buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities Health care facilities with an occupant load of 50 or more resident patients but not having surgery or emergency treatment facilities Jails and detention facilities Power-generating stations, water treatment for potable water, waste water treatment facilities and other public utility facilities not included in Structural Occupancy Category IV Buildings and other structures not included in Structural Occupancy Category IV containing sufficient quantities of toxic or explosive substances to be dangerous to the public if released

III

Buildings and other structures designed as essential facilities including, but not limited to: Hospitals and other health care facilities having surgery or emergency treatment facilities Fire, rescue and police stations and emergency vehicle garages Designated earthquake, hurricane or other emergency shelters Designated emergency preparedness, communication, and operation centers, and other facilities required for emergency response Power-generating stations and other public utility facilities required in an emergency or required as emergency backup facilities for Structural Occupancy Category IV structures Structures (including, but not limited to, communication towers, fuel storage tanks, cooling towers, electrical substation structures, fire water storage tanks or other structures housing or supporting water or other fire-suppression material or equipment) required for operation of Structural Occupancy Category IV structures during an emergency Structures containing highly toxic materials as defined by Section BC 307 of the New York City Building Code where the quantity of the material exceeds the maximum allowable quantities [of] set forth in Table 307.7(2) of the New York City Building Code Aviation control towers, air traffic control centers and emergency aircraft hangars Buildings and other structures having critical national defense functions Water treatment facilities, water storage facilities and pump structures required to maintain water pressure for fire suppression

IV

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-Zones^a

Structural Occupancy Category ^b	Minimum Elevation of Lowest Floor
I	DFE = BFE
II ^c	DFE = BFE + 1 ft ^d
III ^c	DFE = BFE + 1 ft
IV ^c	DFE = BFE + 2 ft

^aMinimum elevations shown in Table 2-1 do not apply to V Zones and Coastal A-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.

^bSee Table 1-1, or Table 1604.5 of the New York City Building Code, for structural occupancy category descriptions.

^cFor 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.

^dFor small residential structures, as defined in Section G201 of the New York City Building Code, the design flood elevation shall be the base flood elevation plus 2 feet.

§15. The modifications to section 4.1.1 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as added by local law 33 for the year 2007, are REPEALED.

§16. The modifications to sections 4.4 and 5.5 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as amended by local law 8 for the year 2008, are 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 Category ^a	Occupancy Member Orientation Relative to the Direction of Wave Approach	
	Parallel ^b	Perpendicular ^b
I	DFE = BFE	DFE = BFE
II	DFE = BFE ^c	DFE = BFE + 1 ft ^c
III	DFE = BFE + 1 ft	DFE = BFE + 2 ft
IV	DFE = BFE + 1 ft	DFE = BFE + 2 ft

^aSee Table 1-1, or Table 1604.5 of the New York City Building Code, for structural occupancy category descriptions.

^bOrientation 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.

^cFor small residential structures, as defined in Section G201 of the New York City Building Code, the design flood elevation shall be the base flood elevation plus 2 feet.

§17. The modifications to section 5.1 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as amended by local law 8 for the year 2008, are 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 Flood-Damage-Resistant Materials Shall Be Used

Structural Occupancy Category ^a	A-Zones	V-Zones and Coastal A-Zones	
		Orientation Parallel ^b	Orientation Perpendicular ^b
I	DFE = BFE	DFE = BFE	DFE = BFE
II	DFE = BFE + 1 ft	DFE = BFE + 1 ft	DFE = BFE + 2 ft
III	DFE = BFE + 1 ft	DFE = BFE + 2 ft	DFE = BFE + 3 ft
IV	DFE = BFE + 2 ft	DFE = BFE + 2 ft	DFE = BFE + 3 ft

^aSee Table 1-1, or Table 1604.5 of the New York City Building Code, for structural occupancy category descriptions.

^bOrientation 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.

§18. The modifications to section 5.2.6 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as added by local law 33 for the year 2007, are amended to read as follows:

Section 5.2.6. Section 5.2.6 (Finishes) shall be amended to read as follows:

5.2.6 Finishes and other materials. Interior finishes, trim and exterior finishes, as well as any materials not otherwise provided for in Sections 5.2.1 through 5.2.5, shall be flood-damage-resistant materials in [Accordance] accordance with FEMA Technical Bulletin 2-93, Flood [resistant] Damage-Resistant Materials [Requirement] Requirements for Buildings Located in Special Flood Hazard Areas, or shall be required to be approved by the authority having jurisdiction.

§19. The modifications to section 6.2 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as amended by local law 8 for the year 2008, are amended to read as follows:

Section 6.2. Table 6-1 of Section 6.2 (Dry Floodproofing) is amended to read as follows:

Table 6-1. Minimum Elevation of Floodproofing, Relative to Design Flood Elevation (DFE)-A-Zones Except High Risk Flood Hazard Areas^d

Structural Occupancy Category ^a	Minimum Elevation of Floodproofing ^b
I	DFE = BFE + 1 ft
II ^c	DFE = BFE + 1 ft
III	DFE = BFE + 1 ft
IV	DFE = BFE + 2 ft

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

^bWet or dry floodproofing shall extend to the same level.

^cDry floodproofing of residential buildings and residential portions of mixed use buildings shall not be permitted.

^dDry floodproofing shall not be permitted in High Risk Flood Hazard Areas.

§20. The modifications to section 7.1 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as amended by local law 8 for the year 2008, are amended to read as follows:

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

Table 7-1. Minimum Elevation of Utilities and Attendant Equipment Relative to Design Flood Elevation (DFE)

Structural Occupancy Category ^a	Locate Utilities and Attendant Equipment Above ^b		
	A-Zones	V-Zones and Coastal A-Zones	
		Orientation Parallel ^c	Orientation Perpendicular ^c
I	DFE = BFE	DFE = BFE	DFE = BFE
II	DFE = BFE + 1 ft	DFE = BFE + 1 ft	DFE = BFE + 2 ft
III	DFE = BFE + 1 ft	DFE = BFE + 2 ft	DFE = BFE + 3 ft
IV	DFE = BFE + 2 ft	DFE = BFE + 2 ft	DFE = BFE + 3 ft

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

^bLocate utilities and attendant equipment above elevations shown unless otherwise provided in the text.

^cOrientation 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.

§21. The modifications to section 9.3.1 of ASCE 24-05 as set forth in Section BC G501.1 of the New York city building code, as added by local law 33 for the year 2007, is amended to read as follows:

Section 9.3.1. The second sentence of the first paragraph of Section 9.3.1 (Attached Garages and Carports) is amended to read as follows:

Wet floodproofed garages and carports are permitted below elevations specified in Table 2-1 provided the lowest level of the garage or carport is at or above grade on at least [one side] *two sides*, the garage or carport walls meet the opening requirements of Section 2.6, and the lowest level of the garage or carport is not classified as a "lowest floor" pursuant to Appendix G of the New York City Building Code.

§22. This local law shall take effect immediately.

Referred to the Committee on Housing and Buildings.

Int. No. 989

By Council Members Mark-Viverito, the Speaker (Council Member Quinn), Dromm, Chin, Comrie, Eugene, Ferreras, Jackson, James, Koppell, Lander, Mendez, Palma, Reyna, Vann, Williams and Wills.

A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the Department of Correction.

Be it enacted by the Council as follows:

Section 1. Paragraphs 2 and 5 of subdivision a of section 9-131 of Chapter 1 of Title 9 of the administrative code of the city of New York, as added by local law 62 for the year 2011, are amended to read as follows:

2. "Convicted of a crime" shall mean a final judgment of guilt entered on a misdemeanor or felony charge in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States. Persons: (i) adjudicated as youthful offenders, pursuant to article 720 of the criminal procedure law or a comparable provision of federal law or the law of another state, or juvenile delinquents, as defined by section 301.2(1) of the family court act or a comparable provision of federal law or the law of another state; or (ii) who have never been convicted of a felony and whose last misdemeanor conviction was ten years or more from the date of the instant arrest; or (iii) convicted of violating section 230.00 or 240.37 of the penal law or section 511(1), 511 (2)(a)(i), or 511(2)(a)(iv) of the vehicle and traffic law, shall not be considered convicted of a crime.

5. "Pending criminal case" shall mean a case in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States, excluding the family court of the state of New York or a comparable court in another jurisdiction in the United States, where judgment has not been entered and where, through the filing of a criminal complaint or similar procedural instrument, a [misdemeanor or] felony charge, or a misdemeanor charge under any of the following, is lodged [is pending.]: (i) section 265.01 of the penal law, provided, however, that such charge must relate to possession of a firearm; (ii) section 215.50 of the penal law, unless the defendant is released upon failure to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law; (iii) section 120.00 of the penal law, unless the defendant is released upon failure to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law; (iv) article 130 of the penal law; or (v) article 31 of the vehicle and traffic law. Notwithstanding the foregoing, any individual who is a defendant in more than one case in which criminal charges are lodged with a criminal court through the filing of a criminal complaint or similar procedural instrument and where judgment has not been entered shall be considered a defendant in a pending criminal case provided such individual is charged in any such case with a crime other than a violation of section 230.00 or 240.37 of the penal law or of section 511(1), 511 (2)(a)(i), or 511(2)(a)(iv) of the vehicle and traffic law. Any individual whose case is disposed of with an adjournment in contemplation of dismissal pursuant to section 170.55 or 170.56 of the criminal procedure law or a comparable provision of federal law or the law of another state shall not be deemed to be a defendant in a pending criminal case or a defendant in a case in which criminal charges have been lodged with a criminal court through the filing of a criminal complaint or similar procedural instrument and judgment has not been entered. A case in which the highest charge is a violation or a non-criminal infraction, including a case in which an individual has been sentenced to conditional discharge for committing a violation or a non-criminal infraction pursuant to section 410.10 of the criminal procedure law or a comparable provision of federal law or the law of another state, shall not be deemed to be a pending criminal case or a case in which criminal charges have been lodged with a criminal court through the filing of a criminal complaint or similar procedural instrument and judgment has not been entered. Any individual who, if convicted of the top count of the accusatory instrument with which such individual is charged, would be mandatorily adjudicated as a youthful offender, pursuant to article 720 of the criminal procedure law or a comparable provision of federal law or the law of another state, or a juvenile delinquent, as defined by section 301.2(1) of the family court act or a comparable provision of federal law or the law of another state, shall not be considered a defendant in a pending criminal case.

§ 2. Subparagraph i of paragraph 2 of subdivision b of section 9-131 of the administrative code of the city of New York, as added by local law number 62 for the year 2011, is amended to read as follows:

i. a search, conducted at or about the time when such individual would otherwise be released from the department's custody, of state and federal databases, or any similar or successor databases, accessed through the New York state division of criminal justice services e-JusticeNY computer application, or any similar or successor computer application maintained by the city of New York or state of New York, indicates, or the department has been informed by a court, that such individual:

- A. has been convicted of a crime;
- B. is a defendant in a pending criminal case;
- C. has an outstanding criminal warrant in the state of New York or another jurisdiction in the United States;
- D. is identified as a known gang member in the database of the national crime information center or any similar or successor database maintained by the United States; or
- E. is identified as a possible match in the terrorist screening database.

§3. Paragraphs 10 and 11 of subdivision f of section 9-131 of the administrative code of the city of New York, as added by local law 62 for the year 2011, are renumbered paragraphs 12 and 13, respectively, and new paragraphs 10, 11 and 14 are added to read as follows:

10. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were charged with a felony or felonies in a pending criminal case;

11. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or

felony convictions and were charged solely with a misdemeanor or misdemeanors in a pending criminal case;

[10]12. the amount of state criminal alien assistance funding requested and received from the federal government; [and]

[11]13. the number of individuals for whom civil immigration detainees were not honored pursuant to subdivision b of this section[.]; and

14. the number of individuals for whom civil immigration detainees were not honored pursuant to subdivision b of this section.

§4. This local law shall take effect 120 days after it shall have become a law, except that the commissioner of correction shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

Referred to the Committee on Immigration.

Res. No. 1623

Resolution approving the new designation and changes in the designation of certain organizations to receive funding in the Expense Budget.

By Council Members Recchia and Comrie.

Whereas, On June 28, 2012 the Council of the City of New York (the “City Council”) adopted the expense budget for fiscal year 2013 with various programs and initiatives (the “Fiscal 2013 Expense Budget”); and

Whereas, The City Council is hereby implementing and furthering the appropriations set forth in the Fiscal 2013 Expense Budget by approving the new designation and changes in the designation of certain organizations receiving local, aging and youth discretionary funding, and by approving the new designation and changes in the designation of certain organizations to receive funding pursuant to certain initiatives in accordance therewith; and

Resolved, That the City Council approves the new designation and changes in the designation of certain organizations receiving local discretionary funding in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 1; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving aging discretionary funding in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 2; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of certain organizations receiving youth discretionary funding in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 3; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving funding pursuant to the Domestic Violence and Empowerment Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 4; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving funding pursuant to the Senior Centers Program Restoration Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 5; and be it further

Resolved, That the City Council approves the new designation and changes in the designation of a certain organization receiving funding pursuant to the OST Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 6.

Resolved, That the City Council approves the new designation and changes in the designation of certain organizations receiving funding pursuant to the EarlyLearn / Childcare Initiative in accordance with the Fiscal 2013 Expense Budget, as set forth in Chart 7; and be it further.

Adopted by the Council (preconsidered and approved by the Committee on Finance; for text of the Exhibits, please see the attachment following the Report of the Committee on Finance for Res 1623 printed in these Minutes).

Int. No. 990

By Council Members Ulrich, Oddo, Arroyo, Cabrera, Comrie, Gentile, Gonzalez, James, Nelson, Sanders, Vallone Jr., Wills and Halloran.

A Local Law to amend the New York city building code, in relation to the adoption of advisory base flood elevation maps.

Be it enacted by the Council as follows:

Section 1. Section BC G102.2 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

G102.2 Establishment of areas of special flood hazard. The following flood hazard map and supporting data are adopted as referenced standards and declared to be a part of this appendix:

[1. FEMA FIS 360497.

2. FEMA FIRMs 360497.]

Federal Emergency Management Agency (FEMA) Advisory Base Flood Elevation Maps (ABFEMs).

Areas of special flood hazard for the City of New York shall be as delineated on the FEMA ABFEMs until a revised FEMA FIRMs 360497 and FEMA FIS 360497 are issued and adopted.

§2. Section BC G102.3 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

G102.3 Letters of map change. Map changes to the Federal Emergency Management Agency (FEMA) ABFEMs shall be administered in compliance with Section G102.3.4 until a revised FEMA FIRMs 360497 and FEMA FIS 360497 are issued and adopted, whereupon map changes to [FEMA FIRMs 360497] such maps shall be administered in compliance with Section G102.3.1 and G102.3.2.

G102.3.1 Letters of map amendment (LOMA). Where FEMA FIRMs 360497 indicates that a structure or tax lot is within a delineated area of special flood hazard, but the pre-FIRM ground elevations adjacent to the structure or throughout the tax lot are at or above the base flood elevation, the commissioner shall deem such structure or tax lot as being within the area of special flood hazard and shall not approve plans except in compliance with this appendix, unless a letter of map amendment (LOMA) is issued by FEMA removing such structure or tax lot from the area of special flood hazard.

G102.3.2 Letter of map revision based on fill (LOMR-F). Where FEMA FIRMs 360497 indicates that a structure of tax lot is within a delineated area of special flood hazard, but post-FIRM compacted fill is proposed to be added adjacent to the structure or throughout the tax lot to an elevation at or above the base flood elevation, the commissioner shall deem such structure or tax lot as being within the area of special flood hazard and shall not approve plans except in compliance with this appendix, unless a conditional or final letter of map revision based on fill (LOMR-F) is issued by FEMA removing such structure or tax lot from the area of special flood hazard. The commissioner shall promulgate rules establishing procedures for processing letters of map revision based on fill (LOMR-F).

G102.3.3 Certificates of occupancy. Certificates of occupancy shall indicate that the structure or tax lot is subject to a letter of map amendment (LOMA) or letter of map revision based on fill (LOMR-F) as per Section [G106.3] G106.5.

G102.3.4 Map changes to the FEMA ABFEMs. Where the FEMA ABFEMs indicate that a structure or tax lot is within a delineated area of special flood hazard, the commissioner shall deem such structure or tax lot as being within the area of special flood hazard and shall not approve plans except in compliance with this appendix, unless a letter or other document is issued by FEMA removing such structure or tax lot from the area of special flood hazard. Certificates of occupancy shall indicate that the structure or tax lot is subject to such a letter as per Section G106.5.

§3. Sections BC G103.3 and 103.5 of the New York city building code, as added by local law number 33 for the year 2007, are amended to read as follows:

G103.3 Determination of base flood elevations. Where the proposed development is within an area of special flood hazard but the base flood elevations are not specified in the [FEMA FIRMs 360497] ABFEMs, the commissioner shall require the applicant to request base flood elevation data from the New York State Department of Environmental Conservation (DEC); and

1. Submit to the commissioner either:

1.1. A letter from DEC making such a determination of base flood elevation; or

1.2. A letter from [the] DEC indicating that the data are not available. When such a letter from DEC indicates that the data are not available, the base flood elevation shall be equal to 3 feet (914 mm) above the highest adjacent pre-FIRM grade.

Exception: Large lots. Where the base flood elevation is not specified, the applicant shall submit a detailed engineering study establishing the base flood elevation, performed by an engineer in accordance with accepted hydrologic and hydraulic engineering techniques, in sufficient detail to allow review by the commissioner

for any of the following conditions:

- 1. For a development which is located on a tax lot greater than 5 acres (2.02 hectares), or is located on property that was part of a tax lot that was greater than 5 acres (2.02 hectares) at the time of the adoption of the FIRM (October 1, 1984), or at any subsequent applicable map change thereto *including the ABFEMs*; or
- 2. For subdivisions resulting in 50 or more tax lots, including all tax lots previously subdivided from the same tax lot since the adoption of the FIRM (October 1, 1984), or since any subsequent applicable map changes thereto *including the ABFEMs*.

G103.5 Floodway encroachment. Prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing activity, the commissioner shall require submission of a certification, along with supporting technical data, demonstrating that such development will not cause any increase of the level of the base flood. However, a floodway encroachment that increases the level of the base flood may be authorized if the applicant has:

- 1. Applied for a conditional Letter of Map Revision *or the equivalent Federal Emergency Management Agency (FEMA) letter or other document applicable to the ABFEMs*; and
- 2. Received the approval of the [Federal Emergency Management Agency (FEMA)] *FEMA*.

§4. Section BC G106.5 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

G106.5 Letters of map change. Where applicable, the certificate of occupancy shall indicate that “the structure is exempted from the area of special flood hazard pursuant to FEMA Letter of Map Amendment (LOMA) # (_____)” [or] that “the structure is exempted from the area of special flood hazard pursuant to FEMA Letter of Map Revision Based on Fill (LOMR-F) # (_____)” *or that the structure is exempted from the area of special flood hazard as delineated on the ABFEMs pursuant to a letter or other document issued by FEMA.*

§5. The definition of “A-ZONE” as set forth in Section BC G201.2 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

A-ZONE. An area of special flood hazard without high velocity wave action *as delineated on the ABFEMs*. When not shown on the [FIRMS] *ABFEMs*, the water surface elevation may be determined from available data by the registered design professional of record in accordance with Section G103.3. See also “Area of special flood hazard.”

§6. Section BC G201.2 of the New York city building code is amended by adding a new definition of “ADVISORY BASE FLOOD ELEVATION MAPS (ABFEMs)” to follow in alphabetical order the definition of “A-ZONE,” to read as follows:

ADVISORY BASE FLOOD ELEVATION MAPS (ABFEMs). *The advisory flood maps, released by the Federal Emergency Management Agency (FEMA) in December 2012, which delineate the areas of special hazard, base flood elevations, flood boundaries and floodways for the following counties in the State of New York: Bronx County, Kings County, New York County, Queens County and Richmond County. The ABFEMs are adopted until the revised FIRM and FIS are issued and adopted.*

§7. The definition of “BASE FLOOD ELEVATION” as set forth in Section BC G201.2 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

BASE FLOOD ELEVATION. The elevation of the base flood, including wave height, as specified on [FEMA FIRMS 360497] *the ABFEMs* or as determined in accordance with Section G103.3, relative to the National Geodetic Vertical Datum (NGVD).

§8. The definition of “FLOOD INSURANCE RATE MAP (FIRM)” as set forth in Section BC G201.2 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

FLOOD INSURANCE RATE MAP (FIRM). The official *flood* map on which the Federal Emergency Management Agency (FEMA) has delineated areas of special flood hazard, base flood elevations, and the flood boundary and floodways.

§9. The definition of “PRE-FIRM DEVELOPMENT” as set forth in Section BC G201.2 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

PRE-FIRM DEVELOPMENT. Any development:

- 1. Completed prior to November 13, 1983;
- 2. Under construction on November 13, 1983, provided that the start of construction was prior to said date; or
- 3. Completed on or after November 13, 1983, but that:
 - 3.1. Was not located within an area of special flood hazard at the start of construction; and
 - 3.2. Is now located within an area of special flood hazard as a result of a subsequent change to the FIRM *or ABFEMs*.

§10. The definition of “V-ZONE” as set forth in Section BC G201.2 of the New York city building code, as added by local law number 33 for the year 2007, is amended to read as follows:

V-ZONE. An area of special flood hazard subject to high velocity wave action, *as delineated on the ABFEMs*.

§11. This local law shall take effect immediately.

Referred to the Committee on Housing and Buildings.

L.U. No. 747

By Council Member Recchia:

Council Towers VII, 2219 Givan Avenue, Bronx, Block 5141, tentative lot 1002, Community District No. 10, Council District No. 12

Adopted by the Council (preconsidered and approved by the Committee on Finance).

L.U. No. 748

By Council Member Comrie:

Application No. 20135202 HAM submitted by New York City Department of Housing Preservation and Development (“HPD”) for a modification of an exemption of real property taxes for the property located at 502 West 151st Street, Tax Block 2082, Lot 36, and 526/8 West 151st Street (Tax Block 2082, Lot 52), Borough of Manhattan, Community Board 9, Council District 7. This matter is subject to Council review and action at the request of HPD and pursuant to Sections 123(4), 125 and 577 of the Private Housing Finance Law.

Adopted by the Council (preconsidered and approved by the Committee on Land Use and the Subcommittee on Planning, Dispositions).

At this point the Speaker (Council Member Quinn) made the following announcements:

ANNOUNCEMENTS:

Thursday, December 20, 2012

★ Addition

Committee on **GOVERNMENTAL OPERATIONS**..... **2:00 P.M.**
Proposed Int. 978-A - By Council Member Mendez - A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the campaign finance board and the New York City campaign finance act.
Committee Room– 250 Broadway, 14th Floor Gale Brewer, Chairperson

Tuesday, January 8, 2013

Committee on **FINANCE**..... **10:00 A.M.**
Agenda to be announced
Committee Room – 250 Broadway, 16th Floor
..... Domenic M. Recchia, Chairperson

Wednesday, January 9, 2013

Charter Meeting..... *12:00 Noon*
Location *~ Council Chambers ~ City Hall*

Special Supplement

Editor's Note: *The following Res No. 999-A was inadvertently not printed in the softcover version of the Minutes of the November 3, 2011 Stated Council Meeting. This resolution was introduced by the Council and referred to the Committee on Technology on September 8, 2011 (Minutes, p. 4083), was subsequently amended and approved by the Committee on Technology, and was later adopted by the Council at the November 3, 2011 Stated Council Meeting (Minutes, p. 4796):*

Res. No. 999-A

Resolution pursuant to section 104-c of the New York State General Municipal Law, authorizing the New York City Department of Citywide Administrative Services to donate surplus city-owned computers, computer software and computer equipment to public and private institutions for secular educational use and to not-for-profit institutions for use by individuals with disabilities, senior citizens, or low income individuals.

By Council Members Cabrera, Jackson, Arroyo, Chin, Comrie, Dickens, Dromm, Eugene, Fidler, Foster, Gentile, James, Koppell, Koslowitz, Lander, Mendez, Nelson, Rose, Seabrook, Vann, Williams, Sanders, Brewer, Garodnick, Weprin, Mark-Viverito, Rodriguez, Van Bramer, Lappin, Gennaro, Mealy, Koo and Ulrich.

Whereas, Many educational programs and not-for-profit institutions have an insufficient supply of computers and often rely on donations; and

Whereas, The City of New York currently transfers equipment and supplies from one City agency to another through the Department of Citywide Administrative Services Office of Surplus Activities but does not currently have a policy for the donation of surplus computer equipment to non-city entities; and

Whereas, Donations of computer equipment to institutions operating educational programs and those providing services for persons with disabilities will assist in the disposal of unneeded equipment, is mutually beneficial for the City and the recipients of the donations and is an efficient use of government resources; and

Whereas, Section 104-c of the New York State General Municipal Law allows the governing board of a political subdivision to adopt policies by resolution authorizing the donation of spare computer equipment to schools, public libraries, and other public and private educational programs for secular educational use, and to not-for-profit institutions serving persons with disabilities, senior citizens, or low income individuals; and

Whereas, The New York City Council is the governing board of the City of New York; and

Whereas, The New York City Department of Education and the New York Public Library are eligible to receive surplus equipment through the Department of Citywide Administrative Services Office of Surplus Activities; and

Whereas, Donations are required to be based on a public notification process and competitive proposals from eligible organizations; and

Whereas, Institutions requesting donations must demonstrate need and specific plans for the use of such equipment; and

Whereas, No computer software shall be transferred if such transfer would cause a breach of a computer software license agreement or an infringement of a copyright; now, therefore, be it

Resolved, That the Council of the City of New York, pursuant to section 104-c of the New York State General Municipal Law, authorizes the New York City Department of Citywide Administrative Services to donate surplus city-owned computers, computer software and computer equipment to public and private institutions for secular educational use and to not-for-profit institutions for use by individuals with disabilities, senior citizens, or low income individuals.

Whereupon on motion of the Speaker (Council Member Quinn), the President Pro Tempore (Council Member Rivera) adjourned these proceedings to meet again for the Charter Meeting on January 9, 2013.

MICHAEL M. McSWEENEY, City Clerk
Clerk of the Council

Editor's Local Law Note: *Int Nos. 599-A and 968, both adopted by the Council at the November 27, 2012 Stated Council Meeting, were signed into law by the Mayor on December 12, 2012 as, respectively, Local Law Nos. 57 and 58 of 2012. Int No. 597-A, adopted by the Council at the November 27, 2012 Stated Council Meeting was signed into law by the Mayor on December 13, 2012 as Local Law 59 of 2012.*

Int Nos. 575-A, 926-A, 958-A, and 979, all adopted by the Council at the December 10, 2012 Stated Council Meeting, were signed into law by the Mayor on December 20, 2012 as, respectively, Local Law Nos. 60, 61, 62, and 63 of 2012.