

Testimony of  
The Legal Aid Society

on

Int. No. 436

A Local Law to amend the administrative code of the city of New York, in relation to the alternative enforcement program.

Presented before

The New York City Council,  
Committee on Housing and Buildings

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December 15, 2010

The Legal Aid Society welcomes this opportunity to testify in support of legislation to amend the administrative code of the city of New York, in relation to the alternative enforcement program.

### About the Legal Aid Society

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 900 of the brightest legal minds. These 900 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

### Intro. 436:

The Legal Aid Society generally supports Intro 436 which would expand the criteria for the Alternative Enforcement Program (AEP) with some qualifications itemized below. One of the problems with the AEP program is that some of the worst buildings do not qualify because they are larger buildings. The change in criteria will include larger rent regulated buildings. We have seen deterioration in these properties because so many of these buildings were overleveraged. In addition, landlords are using the lack of repairs in order to empty buildings. In the Bronx in particular, we have seen huge problems with entire portfolios: Milbank, Ocelot and Hunter. We hope that this

redefinition will allow HPD to expend more resources in going after the true worst landlords.

We also support the requirements for better practices with respect to mold and vermin. We see increasing problems with the failure to abate mold and vermin adequately. These requirements will help set a standard for better practices with respect to mold and vermin abatement.

The most problematic provision in this bill is the bill's provision allowing HPD to remove any building from the program that "has been vacant for a year or more." See Section (n). It is very important to ensure that HPD not be granted the discretion to remove buildings from AEP due to the existence of a vacate order. The Brooklyn Legal Aid Society office has handled three cases in AEP buildings that have been the subject of vacate orders due to the owners' negligent (or intentional) damage to the building. In all of the cases HPD has been, at best, sluggish in their response and at worst hostile to the tenants' position. And in none of the cases did HPD do what it was supposed under the AEP program which would have prevented the vacate orders in the first place. It is likely that due to the fact that their owners are the worst of the worst, AEP buildings become subject to vacate orders at a higher rate than other buildings. The amendment to Section n giving HPD the discretion to discharge buildings from AEP due to the fact that they have been vacant for a year or more gives landlords an incentive to force out tenants and keep them out. It also would leave vacated tenants with fewer tools to compel owners to make expeditious repairs.

Subdivision n provides for other reasons that a building may be discharged from AEP that are also objectionable. We do not object to buildings being discharged from AEP due to the appointment of a 7(a) administrator or based on an in rem foreclosure. Both situations provide tenants with comparable remedies against the city to ensure repairs. However, the provision allowing a building to be removed from the program because "the department has completed any work or monitoring required under subdivision k of this section" is problematic. It would allow HPD to discharge buildings from AEP even if a building owner has not corrected 80% of the immediately hazardous and hazardous violations or all heat and hot water violations, so long as those violations were placed after the comprehensive order issued pursuant to subdivision k. Our experience with AEP buildings is that, even though under subdivision k, HPD is supposed to issue a comprehensive order after a roof to cellar inspection, there are numerous violations in a building that are not included in the order or that are reported only after issuance of the order. This section of the amendment to subdivision n would make correcting all of those subsequently recorded violations irrelevant to whether a building remains in the AEP program. This again gives owners a perverse incentive, they will focus on correcting older violations that may have already been repaired and have no incentive to address the newer violations that are impacting the lives of tenants.

We are also concerned about section (1)(c)(iii) which seems to prioritize the existence of unpaid liens and fines over hazardous conditions when selecting buildings to be put

in AEP. HPD's other part of the bargain -- removing the condition that all unpaid liens and fines be paid as a condition of leaving the program -- is also not advisable. Currently, before a building can exit the AEP program, the owner must pay all outstanding HPD liens and fines. Under this bill a building need only "enter into an agreement with the department of finance to pay such charges and liens." See e.g. Section (j)(i). It is unclear how strict these payment agreements will be or how much DOF currently collects based on similar payment plans. We do not agree with allowing owners should be able to escape paying HPD's liens and fines before exiting the program or why the City should want a weaker method to collect these monies.

Thank you for the opportunity to share this testimony. And, as always, we look forward to working with the Committee and the City Council in the coming months and years on efforts to address housing conditions in distressed housing.

Respectfully Submitted by,

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