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Hearing on the Construction Safety Act

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Thank you Chair Williams and members of the Committee on Housing and Buildings for holding this important hearing to discuss different strategies for improving safety conditions on construction sites.

Identified by the New York State Department of Labor (NYSDOL) as one of the top 13 industries to grow faster than the overall economy through 2022, the construction industry is a significant economic engine for our city.¹ In 2015, the New York City Department of Buildings (DOB) authorized 56,528 new residential units across 1,998 new buildings—nearly 180% more than in 2014. Nearly a quarter of a million New Yorkers work in construction and real estate, including construction managers, skilled tradespeople, developers and brokers. Of these jobs, roughly 80% are engaged in physical construction and other manual operations.²

New York Building Congress data shows that Manhattan remains the center of construction activity. Over the next four years, Manhattan is expected to add 23 office buildings and nearly 20

¹ New York State Department of Labor, “Significant Industries: A Report to the Workforce Development System” September 2015. Retrieved January 26, 2017 <https://www.labor.ny.gov/stats/PDFs/Significant-Industries-New-York-City.pdf>

² New York Building Congress, “Three-Quarters of NYC Construction Workers Live in the Five Boroughs, According to New York Building Congress Analysis of Census Data” December 21, 2011. Retrieved on January 26, 2017 <https://www.buildingcongress.com/outlook/112916.html>

million square feet of office space. According to the last outlook analysis done by the New York Building Congress, in the first nine months of 2016 our borough was home to 58% of construction starts by value, citywide.³

New York City's building boom is not without its adverse effects: traffic congestion, construction noise, street closures, and drops in pedestrian traffic for small businesses and increases in rodent complaints near dig sites. But the most sobering effect of the boom has been a surge in the number of workers hurt and killed in construction accidents.

Looking only at data made available by the DOB, construction-related injuries totaled 599 citywide in 2016, 66 percent of which were in Manhattan, compared to 237 citywide in 2014, a 152.7 percent increase in just two years. Construction-related deaths totaled 8 in 2014, then 12 in 2015, and 12 more in 2016.⁴ However this is not the complete story about fatalities. The DOB and the U.S. Occupational Safety and Health Administration (OSHA), the federal agency tasked with investigating workplace accidents and fatalities, have different definitions of what is counted. The DOB only counts fatalities that violated the building code and public safety, not all accidents on the work site. That meant that in 2015, the DOB did not recognize 6 deaths where OSHA issued violations to respective employers for failing to adhere to safety standards.⁵

These deaths and injuries occur at a disproportionate rate among immigrant construction workers, which is particularly stark for Latino workers. According to the New York Committee for Occupational Safety and Health (NYCOSH), Latinos comprise 30 percent of the construction workforce but are 57 percent of the construction workers who die due to falls. NYCOSH researchers compared total OSHA penalties for safety violations to sites where Latino workers

³ New York Building Congress Construction Outlook Report November 29, 2016. Retrieved on January 26, 2017 <https://www.buildingcongress.com/outlook/112916.html>

⁴ NYC Department of Buildings, Construction Related Accident Reports for December 2015 and 2016, 12/13/16. Retrieved on January 26, 2017 <https://www1.nyc.gov/site/buildings/about/construction-related-accident-reports.page>

⁵ Rosa Goldensohn, Joe Anuta and Harini Chakrapani, "Despite safety push, many worksite deaths go uncounted", September 12, 2016. Retrieved on January 26, 2017

http://www.crainsnewyork.com/article/20160912/REAL_ESTATE/160919993/tension-between-union-and-nonunion-workers-over-uncounted-fatalities

lost their lives. The analysis showed that penalties at “worksites where Latinos died was \$40,989, compared to \$15,873 at worksites where non-Latino construction workers died.”⁶

The rise in serious construction site injuries is unacceptable. That’s why in Fall 2015 I convened the Manhattan Construction Safety Working Group, bringing together diverse representatives from the Building Trades Employers’ Association (BTEA), the Building and Construction Trades Council, Real Estate Board of New York (REBNY), New York State Association for Affordable Housing (NYSFAAH), worker’s rights organizations, elected officials, and the Manhattan DA’s office. For six months, working group members met in-person five times with many additional conferences by phone.

We tackled a wide range of topics, including:

- How risk contributes differently to accidents in low-rise vs. high-rise construction
- Public health concerns for workers and the adjacent community
- Language access for immigrant workers and community residents
- Code enforcement from both agency and industry perspectives

Though we didn’t always agree on every idea, attached to my testimony is a list of recommendations on which we were able to find consensus,⁷ and I thank the members of the group for giving generously of their expertise and time to work through these difficult issues in pursuit of improved safety for the industry. Issues discussed at our meetings and included in the attached list have appeared as reports and recommendations issued by members of the working group. Examples include elements of the agenda laid out by the Construction Safety Advisory Committee of New York (CSACNY) released in December 2016⁸; the Standards of Excellence Agreement used by the Building Construction Trades Council and the Building Trades

⁶ NYCOSH (January 2017). *Deadly Skyline An Annual Report on Construction Fatalities in New York State*. Retrieved from http://nycosh.org/wp-content/uploads/2017/01/DeadlySkyline2017_NYS-ConstructionFatalitiesReport_final_NYCOSH.pdf

⁷ APPENDIX: Manhattan Construction Safety Working Group Recommendations

⁸ Construction Safety Advisory Committee Of New York recommendations <http://www.csacny.net/agenda/>

Employers' Association⁹; the annual report on construction fatalities issued by NYCOSH in January 2017; and statistics related to high fatality rates on low-rise buildings as reported in REBNY's March 2016 Construction Safety Report.

The bottom line is that we must increase health, safety, and craft training above what is currently required, and that monetary penalties for safety violations must become too costly to ignore.

My efforts in the working group led me to co-sponsor Int. No. 1404 and 1447, which are included in the impressive package of bills before you today.

Int. No. 1404 will increase the minimum and maximum civil penalties and fines for immediately hazardous and major violations of the site safety provisions of the building code. Int. No. 1447 specifies worker training and qualifications relative to the size of the project or the buildings under construction.

Int. No. 1404 mandates an escalating schedule of fines to help create strong disincentives to unsafe conditions and practices. This approach was applied at the federal level as part of the 2016 federal budget bill, which included the Protecting America's Workers Act (PAWA) that allowed for the first adjustment of OSHA's maximum penalties since 1990, increasing them by as much as 78%¹⁰.

On October 7, 2015, Dr. David Michael, PhD, MPH, who was then the Assistant Secretary of Labor for Occupational Safety and Health at OSHA, testified before the U.S. House of Representatives Education and the Workforce Committee, Subcommittee on Workforce Protections, that "OSHA penalties must be increased to provide a real disincentive for employers

⁹ Unions and Management Agree to Major Construction Cost Reductions at Twelve Large Development Sites in New York City, Business wire, May 29, 2009. Retrieved January 26, 2017
<http://www.businesswire.com/news/home/20090529005513/en/Unions-Management-Agree-Major-Construction-Cost-Reductions> <http://www.businesswire.com/news/home/20090529005513/en/Unions-Management-Agree-Major-Construction-Cost-Reductions>

¹⁰ OSHA Factsheet November 2015 <https://www.osha.gov/Publications/OSHA3879.pdf>

accepting injuries and worker deaths as a cost of doing business.”¹¹ Dr. Michael’s rationale applies to Int. No. 1404 because the proven cost benefits of safer sites are apparently not enough of an incentive, despite a 2013 McGraw Hill Construction Smart Market Report which found that contractors investing in strong safety management programs saw a range of positive benefits that improved their bottom line. Safer practices reduce fines, decrease reportable injuries, shorten project schedules, shrink total budgets, and improve insurance rates.

Additionally, enforcement and oversight of safety violations should be used as an opportunity to increase outreach to Latino and immigrant workers, improve education, expand language services, and make clear to workers that they are protected regardless of immigration status. NYCOSH’s correlations between high OSHA fines and danger to immigrant workers should be an incentive for DOB and OSHA to conduct coordinated, proactive enforcement instead of simply reacting to complaints or accidents.

My support for Int. No. 1447 –mandatory apprenticeship--is the result of decades of experience working with and witnessing the local impact of apprenticeship programs that have developed the country’s best-trained construction workforce. A key aspect of these programs is the emphasis on worksite health and safety, and additional layers of safety training improve the culture of safety on job sites.

A March 2014 study in the *Work & Industry*, a publication by The American Occupational Therapy Association, found that safety communication and fall prevention training modeled after an apprentice program curriculum for 48 participating foremen increased the daily emphasis on fall protection, and on toolbox talks from 13% to 68%. Other positive effectives included an increase in the availability of fall protection gear from 56% to 100% of sites, and led to a general drop in unsafe site behaviors.¹²

¹¹ United States. Cong. House. Subcommittee on Workforce Protections. Hearing on Protecting America’s Workers: An Enforcement Update from the Occupational Safety and Health Administration October 07, 2015. 114th Cong. 1st sess. Washington: GPO, 2015 (statement of Dr. David Michael, PhD, MPH, Assistant Secretary, OSHA) https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=TESTIMONIES&p_id=1722.

¹² Vicki Kaskutas, OTD, MHS, OT/L. “Fall Prevention and Safety Communication Training for Construction Foremen”, *Work & Industry*. March 2014. Retrieved January 27, 2017 <https://oshr.wustl.edu/wp->

I believe that when workers are given the opportunity to hone skills like applied mathematics for construction, blue print evaluation, or acquire specialty skills like welding or bridge painting, they pay more attention to potential health and safety problems. Training classes, including OSHA 10 and 30 courses, fall prevention and 4-hour, 8-hour and/or 32-hr scaffolding trainings promise to reduce the frequency of injury or death.

I want to stress that each of these bills, as is often the case with legislation, is the beginning of a dialogue about how to balance private interests and wise oversight. Industry advocacy groups, safety professionals, and workers each have their role to play. My primary aim is workable standards that maximize protections for workers and whenever possible add value for contractors and developers who also seek a safer workplace.

The construction trades must continue to be an avenue of opportunity for people of all backgrounds, and its workforce should be representative and supportive of our city's diversity. To that end, we must ensure that minority and women-owned construction firms have the resources they need to comply with the final version of Int. No. 1447.

In the area of workforce diversity, I'm most familiar with efforts by organizations like the Building and Construction Trades Council (BCTC) and the Building Trades Employers' Association. Programs like the Edward J. Malloy Initiative for Construction Skills and Nontraditional Employment for Women have pushed to add several thousands more people of color and women to the construction field; in the public sector there is the work of BCTC and NYCHA's 2015 Project Labor Agreement (PLA) which required that 10 percent of new apprenticeship classes be reserved for public and subsidized housing residents. This could lead to 1,000 to 1,200 slots annually.¹³ NYCHA's other great collaboration, launched with the help of the City Council, is the four-year Civil Service Apprenticeship program run by District Nine of

content/uploads/2016/11/Kaskutas_2014_WISIS_Fall-Prevention-and-Safety-Communication-Training-for-Construction-Foremen.pdf

¹³ New York Public Housing Authority. (2015). NYCHA Residents to Get Swifter Capital Repairs and Access to Union Jobs and Training Through Newly Signed Labor Agreement with Building Trades Union [Press release]. Retrieved from <https://www1.nyc.gov/site/nycha/about/press/pr-2015/project-labor-agreement-release.page>

the International Union of Painters and Allied Trades. This Council-funded program is expected to bring hundreds of residents into gainful employment; 86% of current apprentices are women and 96% are minorities.¹⁴

In addition to these programs, there are hundreds of open/merit construction firms that do not currently have a registered apprenticeship program but employ tens of thousands of workers and contribute to important efforts like the construction of affordable housing throughout the city.

According to Richard Lambeck, professor at New York University's Schack Institute of Real Estate, slightly more than half of private sector development is constructed by open/merit shops¹⁵. I am aware of concerns that an apprenticeship program mandate would have a negative financial impact and create new layers of bureaucracy for open/merit shop construction firms. My office has reached out to Jane Thompson, Director of Apprenticeship Training at NYSDOL, to clarify the timeline for state approval of new apprenticeship programs, and how best to bring open/merit construction firms into compliance. One option may include working with NYSDOL to offset costs and establish additional Group Non-Joint Programs¹⁶ through the Apprenticeship USA State Expansion Grants¹⁷ available from the Employment and Training Administration of the U.S. Department of Labor. We can also encourage NYSDOL and the Office of Labor Policy and Standards at the NYC Department of Consumer Affairs to provide matching funds for local programs.

Another issue that will need to be considered is the unique hurdles of creating language-appropriate training for workers from our immigrant communities. Legislation of this scale

¹⁴ Kathleen Culliton, "NYCHA Tenants Get Chance to Apprentice for Union Jobs Under \$26M Program", DNAINFO, October 25, 2016. Retrieved from <https://www.dnainfo.com/new-york/20161025/civic-center/nycha-tenants-get-chance-apprentice-for-union-jobs-under-26m-program>

¹⁵ Laura Kusisto, "Growth of Nonunion Construction Tests New York City Labor Leader", The Wall Street Journal, June 12, 2015. Retrieved from <http://www.wsj.com/articles/growth-of-nonunion-construction-tests-new-york-city-labor-leader-the-weekend-profile-gary-labarbera-1434154002>

¹⁶ Group Non-Joint Programs consisting of a group or association of employers without the participation of a union representing employees, in which the group or association of employers acts as Sponsor, and where the Sponsor and its Signatories are bound by a Department approved agreement signed, collectively or individually, by the Sponsor and all the Signatories. Article 23, Part 601 NYS Labor Law

¹⁷ U.S. Department of Labor (2016). Notice of Availability of Funds and Funding Opportunity Announcement for: ApprenticeshipUSA State Expansion Grants [Notice]. Retrieved from <https://www.doleta.gov/grants/pdf/FOA-ETA-16-13.pdf>

should consider whether a fund can be created that funds efforts to extend low-cost or free training programs to immigrant workers, regardless of educational and cultural circumstances, and available in their native languages. This level of strategic planning should be coordinated with organizations like the National Day Laborer Organizing Network (NDLON) and New Immigrant Community Empowerment (NICE) to identify worker centers that need assistance with navigating the NYSDOL system or partnering with existing qualified programs to meet their need. This should also be included as items to discuss with NYSDOL and the Office of Labor Policy and Standards.

Separate from Int. No. 1404 and 1447, this package of bills includes several initiatives that I can support, such as those calling for greater cooperation and information sharing between OSHA and DOB – specifically, detailed toolbox talks -, increased netting and guardrail requirements, greater scrutiny for smaller job sites, and several bills related to crane safety. Int. 1436 would gather information about the approval process for site safety managers and help address a problematic shortage in the industry. I hope that conversations related to Int. 1436 will help determine if DOB has used any portion of the four-year \$120 million investment announced in 2015 to address this problem.¹⁸

Another reason these bills are so important is because experts are already predicting a less aggressive, underfunded OSHA under the new Trump Administration. Given President Trump's experience as a developer and distaste for regulation it's expected that a scaling back of initiatives will be on the President's agenda. The outcomes can range from reinterpreting or ignoring existing regulations to using OSHA site visits as an extension of his administration's immigration policy, using inspections to search for undocumented workers on construction sites, a strategy that would be disastrous and undermine the safety of all workers. Any additional actions to relax enforcement by this federal agency would compound reductions that have been going on for the past several years. According to the analysis by NYCOSH, since 2012, the number of OSHA safety inspectors in New York State went from 82 to 66 in 2015 and

¹⁸ Matt A.V. Chaban, "Fatal Construction Accidents Are Rising in New York", New York Times, June 2, 2015. Retrieved on January 26, 2017 <https://www.nytimes.com/2015/06/03/nyregion/fatal-construction-accidents-are-rising-in-new-york.html>

inspections fell from 2,722 in 2011 to 1,966 in 2015, a drop of 27%. Since we are unable to know if we can count on federal assistance, we must make construction safer using the powers available to local government.

Once again, I want to congratulate the Council on moving to address this issue with such force and purpose. I'm proud to be part of this comprehensive package of construction regulation reform and stand ready to provide any assistance I can.

APPENDIX: Manhattan Construction Safety Working Group Recommendations

The following reforms were among those that the Working Group discussed at our meetings:

Access to Safe and Proper Training:

These recommendations address a number of safety and training issues that contribute to making current work sites unsafe. These include a proliferation of fraudulent OSHA classes and certifications resulting in workers who are seemingly certified but not actually properly trained; a lack of effective training resources - both personnel, health, and actual classes; a lack of language accessibility; and rules that apply only to large buildings (10 stories or more) when in fact many accidents occur on smaller building sites.

- Require Occupational Safety and Health Administration (OSHA) trainers register with the city's Department of Buildings (DOB) and submit lists of all students who complete their courses
- Expand the requirement that workers complete an OSHA 10-hour training course for all construction sites, not just those with a height of 10 or more stories, with funding and a phase-in period to ease the transition for companies working on buildings below 10 stories
- Allow community organizations to be authorized to offer 4-hour Scaffold User Safety Training (Scaffold User Safety Training covers proper scaffold assembly, fall and electrical hazard prevention, ladder safety, and other topics.)
- Require DOB to ensure that all materials are translated into the languages read and spoken by the nationalities in the construction workforce. The city's current practices do not comply with federal language access laws.
- Support new and existing public/non-profit partnerships to create additional day labor centers with onsite professional assistance and consultation about workers' rights
- Increase the number of multilingual master safety trainers in the NYC-Metro area

Stronger Enforcement Measures:

These recommendations primarily address the lack of enforcement in smaller construction sites (buildings less than 10 stories) where so many construction accidents occur. They also address the issue of fraudulent training and certification.

- Create a Buildings Enforcement Safety Team (BEST) focused on high-risk low-rise buildings (less than 10 stories) or increase staffing, resources and the scope of inspections by the existing BEST low rise unit
- Extend the safety plan provisions of the NYC Administrative Code section 28-110.1 to cover more medium-size projects, rather than only the largest worksites. Specifically, these provisions should apply to all 'New Buildings', 'ALT 1' or 'Full Demolitions' of buildings from 4 stories (or 40 feet in height) to 10 stories (or 100 feet in height) or a "building foot print" 40,000 square feet or larger
- Create a joint DOB/OSHA enforcement unit to identify and penalize businesses and operators who provide fraudulent safety certification credentials

Transparency and Accountability Through Data

These recommendations address a lack of public information about those who are responsible for each construction site, and are intended to encourage builders to employ higher safety standards.

- Using the city's Building Information System (BIS), create a database on DOB's website that would enable users to cross reference about owners, developers, LLCs, general contractors and subcontractors - including those with high-risk trades – to learn which permits have been issued to them, and all adjudicated violations they have incurred
- Government should work with insurance companies to incentivize premium reductions on construction sites where management, general contractors, and subcontractors adhere to higher industry standards.
- Modify the construction fence signage requirements to require the new project information panels to include a contact name and phone number for the project construction superintendent and local Community Board office

Worker and Job Site Safety

These recommendations provide some best practices for increasing worker safety at all construction sites.

- Mandate that all employers provide fall prevention training
- Encourage construction companies to form joint jobsite health and safety committees between workers and management
- Support the creation of/sponsor public workshops with community entities on how to identify and report issues on construction sites
- Require the owner of sites categorized as 'New Buildings', 'ALT 1' or 'Full Demolitions' of 4 stories (or 40 feet in height) to 10 stories (or 100 feet in height) or a "building foot print" 40,000 square feet or larger to retain a third-party qualified safety professional to provide daily safety checks. Records should be kept onsite and available for review. A set of criteria should be established to trigger more regular DOB inspections if a series of negative conditions are found on site. To ensure DOB is able to process and enforce this new site safety plan requirement, additional resources need to be allocated to the department as part of implementation
- Require DOB to study and implement procedures that streamline the approval process for qualified safety professionals to become Certified Site Safety Managers and Site Safety Coordinators