

May 2, 2017

**Testimony of Daniel Carpenter-Gold
On behalf of New York Lawyers for the Public Interest
Before a joint hearing of the New York City Council's Committees on Public Housing
and Environmental Protection**

My name is Daniel Carpenter-Gold, and I am the Healthy Housing Legal Fellow for New York Lawyers for the Public Interest (NYLPI). On behalf of NYLPI, I would like to thank Councilmember Ritchie Torres, Chair of the Committee on Public Housing, and Councilmember Costa Constantinides, Chair of the Committee on Environmental Protection, for conducting this hearing. We also applaud the decision to hold this hearing in Red Hook, enabling the participation of some of those hardest hit by New York City's mold problem.

NYLPI is a non-profit organization that advocates for civil rights using a community-lawyering model, focused on systemic issues and emphasizing the active role of communities in addressing them. NYLPI's Healthy Housing initiative brings together its expertise in its three program areas—Health, Environmental, and Disability Justice—to help New Yorkers protect their rights to safe homes, free of conditions which could harm them. We place particular emphasis on asthma because of its prevalence, disparity of impact, and close relation to housing conditions.

It is especially important to understand the extent to which the asthma epidemic in New York City is a matter of race and economic class. Black and Hispanic children in this city are diagnosed with asthma at a rate more than three times that of White children.¹ Children in the poorest neighborhoods of the City are three times as likely as those who live in the wealthiest neighborhoods to visit the emergency room for asthma-related issues.² A similar divide can be seen in the rates at which residents of predominantly White and predominantly non-White ZIP codes are sent to the ER or hospitalized as a result of an asthma attack.³

One key factor in New Yorkers' health outcomes is the condition of the environment in which they spend the bulk of their time: their home. For a number of reasons, New York City

¹ NEW YORK CITY DEPT. OF HEALTH & MENTAL HYGIENE, *Preventing and Treating Childhood Asthma in NYC*, NYC VITAL SIGNS, Vol. 11, No. 4 at 1 (2012) (in 2009, 5% of White children ages 12 or younger in New York City had ever been diagnosed with asthma, compared to 17% of Black and 18% of Hispanic children), available at <http://www1.nyc.gov/assets/doh/downloads/pdf/survey/survey-2012childasthma.pdf>.

² *Id.* at 2.

³ For example, Brooklyn ZIP codes which are more than 50% non-White have an average asthma-related hospitalization rate of about 44 per 10,000 residents, compared to an rate of 15 per 10,000 for those that are majority-White. The asthma-related emergency-department visitation rates for the same neighborhoods are 231 per 10,000 for majority-non-White ZIP codes and only 59 per 10,000 for majority-White ZIP codes. Calculations performed by NYLPI using data from New York State Department of Health's SPARCS database (data from 2012–2014) and the 2014 American Community Survey.

residential buildings face extensive mold infestations, which can cause breathing difficulty and asthma attacks.⁴ As a result, many people with severe asthma live every day in an environment that is unhealthy and could even prove deadly. Mold and dampness may also be a cause of asthma development,⁵ meaning that children who grow up in poor housing conditions could be at risk of a lifetime of illness.

Mold conditions, like asthma incidence and impact, are much worse in high-poverty than low-poverty neighborhoods,⁶ and are particularly egregious in New York City's public housing. Mold in NYCHA developments is both prevalent and persistent, but NYCHA's typical approach to remediation is to give it no more attention than a quick wipe and, on occasion, a new coat of paint. The inadequacy of this response is well demonstrated in the Red Hook Initiative's recent report, *The Impact of Mold on Red Hook NYCHA Tenants: A Health Crisis in Public Housing*,⁷ which I commend to the Committees' attention. We at NYLPI have also seen, through the eyes of our clients, the extreme difficulty which NYCHA tenants face in receiving even basic maintenance services. Time and again, I have heard the same story from people living in NYCHA developments: You can file a ticket, you can get an inspection, you can even get a court order to remediate, but nothing will make NYCHA do more than wipe and paint.

The mold problem at the center of this hearing, therefore, is a health issue of primary importance to New York City tenants, and particularly residents of NYCHA developments. Mold is not just an aesthetic problem: It has a substantial impact on the ability of residents to manage their asthma, and possibly also on whether a person contracts asthma in the first place. The severity of the problem calls for a strong response that protects tenants from mold conditions and takes aim at the extreme disparity in asthma rates now seen in our city.

Unfortunately, although Introduction 978A is for the most part helpful, it is not the sort of aggressive action for which the current asthma epidemic calls. This bill ensures that, where mold remediation is performed, the work will conform to a minimum standard of quality. But it does not actually require mold remediation, nor does it guarantee that a remediation project will be successful in permanently eliminating a mold condition. Thus, while Intro 978A may effectively address untrained or unscrupulous contractors, the more fundamental problem—that landlords, and especially NYCHA, refuse to do the work in the first place—will remain. Furthermore, because the bill will improve the quality of work only in cases where landlords are already addressing mold, it will not narrow the racial or economic gap in health outcomes.

All the same, NYLPI believes that, with improvements, the bill could serve as a useful foundation for future action on the mold problem. In partnership with Turning the Tide—a collaboration between the Red Hook Initiative, Fifth Avenue Committee, FUREE, and the Southwest Bronx Industrial Development Corporation—NYLPI has prepared a set of recommended amendments to Intro 978A. These recommendations, prepared with extensive

⁴ THE NAT'L ACAD. OF SCIENCES, *Executive Summary*, in DAMP INDOOR SPACES AND HEALTH 1, 10–11 (2004), available at https://www.nap.edu/nap/cgi/report.cgi?record_id=11011&type=pdfxsum.

⁵ *Id.*

⁶ NEW YORK CITY DEPT. OF HEALTH & MENTAL HYGIENE, *Adults Reporting Mold in the Home* (2012), <http://a816-dohbsp.nyc.gov/IndicatorPublic/VisualizationData.aspx?id=2101.719b87.36.Disparities.Percent.years=2012.dataLink=Neighborhood%20Poverty>.

⁷ Available at http://rhicenter.org/wp-content/uploads/2016/10/ImpactofMold_RHI_FINALREPORT_10.27.16.pdf.

input from the residents of Red Hook Houses, would strengthen important elements of the bill while eliminating problem areas. A short summary follows; I refer you to the written testimony of the Red Hook Initiative for the full report.

- *Conflict with the Baez settlement:* The most alarming change which Intro 978A appears to make is to require a 14-day delay between submittal of the pre-remediation assessment and the start of remediation. This would create unavoidable conflict with the terms of the consent decree in *Baez v. NYCHA*, 13-cv-8916 (S.D.N.Y. Dec. 20, 2013), which requires NYCHA to maintain an average service time of 7 days for simple, and 15 days for complex, mold projects. We recommend eliminating this language.
- *Transparency:* It is currently difficult to obtain information on the mold problem in New York City, particularly with regard to three areas: mold prevalence, landlord responses, and the extent of NYCHA's compliance with relevant local-hire and -contract requirements in undertaking remediation work. Intro 978A's requirement that the Department of Environmental Protection publish pre-remediation assessments online would help remedy this problem; we recommend extending this requirement to post-remediation assessments, including local-hire reporting, and establishing a mandatory timeline for publication.
- *Landlord assessments:* The bill as written would allow landlords to conduct the assessment work on a project using their own employees, so long as a third party performs the remediation. We note that NYCHA has already proposed creating its own "Mold Busters" unit, which would apparently conduct both remediation and assessment. Because the work-standards aspect of the bill relies almost entirely on an impartial assessment of the needed scope of work and the sufficiency of the remediation, we recommend barring landlords from undertaking this part of the process.
- *Comprehensive assessment:* The language of Intro 978A would, in places, commit a substantial amount of discretion to the assessor. We recommend cabining this discretion by eliminating the exception for "routine cleaning" in the definitions section, along with standards such as "to the extent feasible" and "where practicable," and requiring additional steps in the pre-remediation assessment to ensure that underlying defects that cause mold recurrence are detected.
- *Communication with residents:* Poor communication between landlords and residents is a perennial problem that creates inefficiencies in remediation work. In the public-housing context, NYCHA management and residents each indicate that the other misses scheduled work times; NYCHA has even threatened to break into homes if residents are not present. Along the same lines, because of a cookie-cutter approach to education on mold issues, residents may be unaware of steps they could take themselves to prevent mold growth. We recommend establishing scheduled work periods as part of the work plan, and providing customized education on resident mold-prevention practices.
- *Mandatory assessments:* Finally, we recommend that Intro 978A include a provision for mandatory assessment if a mold problem is brought to the attention of the landlord. This proactive measure would help ensure that the protections provided by the bill do not vanish simply because a landlord chooses to ignore a mold problem in its building.

I thank you very much for your attention to this important issue.