

REBNY Testimony | December 1, 2021

The Real Estate Board of New York to The Committee on Environmental Protection of the New York City Council Regarding Intro. No. 265, Intro. No. 271, Intro. No. 274, and Intro. No. 2460

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the New York City Council Committee on Environmental Protection for the opportunity to provide testimony on Intros 265, 271, 274, and 2460.

Confronting climate change requires collective effort from both the public and private sectors to deal with the crisis at hand. REBNY supports City and State emissions reductions goals and we are proud to represent members who are innovating in the fields of building construction and technology to reduce carbon footprints, increase energy efficiencies, and take concrete steps to strengthen climate resilience.

We would encourage the City Council to work with the industry to find practical, data-driven solutions to inform their approach to these problems. Below please find bill specific comments for consideration.

BILL: Intro 265

SUBJECT: A Local Law to amend the administrative code of the city of New York, in relation to limiting nighttime illumination for certain buildings, by request of the Queens Borough President

SPONSORS: Council Members Brannan, Rosenthal, Kallos, Reynoso, and Dromm

This proposed bill would prohibit nighttime illumination of the exterior or interior of any building whose main use or dominant occupancy is classified in group B or M pursuant to the New York City building code. The bill includes several exemptions and allows for waivers in certain instances, including for certain landmarked buildings. Where a building owner has made a showing of special circumstances indicating a need for night security lighting, the Department of Buildings (DOB) may vary or waive the requirements of this section. Buildings may remain illuminated where individuals remain inside and where nighttime illumination is required by law, rule, or zoning resolution. Seasonal displays may be illuminated until midnight and storefront displays are permitted limited illumination until midnight.

REBNY and its members share the goals of reducing our carbon footprint. However, for several operational reasons, Intro 265 is unlikely to reduce carbon emissions and instead poses substantial

problems for the city that never sleeps. Indeed, realizing the goals of this law would dramatically disrupt the operations of commercial buildings where significant activity occurs at night. As proposed, it will increase the staff time needed to sort through the various permutations of the exemption language and heighten the need for a compliance regime with the necessary oversight to monitor illumination levels within every stairwell. For instance, the current legislation includes exemptions for buildings where there is a staff presence at night. Typically, however, tenant leases include the provision of building services after hours. Practically, this means that services such as cleaning and garbage removal routinely occur during overnight shifts. Additionally, because leases include 24-hour access for tenants, buildings often maintain at minimum a security presence as well as the presence of a Fire Safety Director, who is required by the City when the building has an occupancy of 100 persons above and below grade or 500 persons in the entire building.

Furthermore, commercial buildings, by code, are required to have a certain amount of lighting at all times. This includes all stairwells, in elevators and elevator lobbies, major paths of egress, and common areas to aid in safe circulation through building spaces.

Architectural lighting has proved to be a valuable asset to key buildings, including many recognizable cultural icons and designated landmarks across our city such as the Empire State Building, and the Chrysler Building. Manhattan is home to hundreds of thousands of landmarked properties that will require an additional level of coordination between DOB and the Landmarks Preservation Commission. Additionally, the bill is silent to newer structures with marquee exterior lighting such as the World Trade Center and One Vanderbilt – both of which were subject to significant design review – and how they would be treated under the statute.

Finally, lighting at night also plays an important role in increasing public safety by increasing visibility on streets that can help deter crime.

REBNY is opposed to this legislation absent significant modifications to address the many operational concerns raised by this bill.

BILL: Int 271

SUBJECT: This bill would amend the administrative code of the city of New York, in relation to reducing unnecessary illumination in city-owned and city-controlled spaces, by request of the Queens Borough President

SPONSORS: Council Members Brannan, Rivera, Rosenthal, Reynoso, Dromm and the Public Advocate

The bill would require occupancy sensors be installed in City-owned and controlled spaces to reduce electricity usage over time. The effective dates for existing buildings are phased in over time, with newly constructed buildings required to be compliant immediately. The legislation also requires robust reporting by the Department of Citywide Administrative Services (DCAS) to the Mayor and the Speaker on key performance efforts on an annual basis, and every three years on the amount of energy saved.

While the intent of this bill is laudable, we would welcome the opportunity to further discuss the measure with the Council to discuss technical issues with the proposal.

BILL: Int 274

SUBJECT: This bill would amend the administrative code of the city of New York, in relation to nighttime illumination during peak avian migration periods, by request of the Queens Borough President.

SPONSORS: Council Members Rosenthal, Rivera, Reynoso, Brannan, Dromm and the Public Advocate

This bill would for city-owned buildings, non-essential outdoor lighting shall be turned off between the hours of 11:00 p.m. and 6:00 a.m. during peak avian migratory periods to reduce or eliminate avian mortality during such periods.

REBNY supports reasonable efforts to protect the city's avian population and is proud to partner with the New York Audubon Society's *Lights Out Initiative*. Each year, REBNY encourages its members to participate in this initiative and to turn out lights in their buildings during migration season from midnight to dawn. Promotion of this initiative continues on an annual basis, and we welcome the Council and the City's collaboration in this matter.

While well intentioned, Intro 274 leaves key terms undefined and subject to rulemaking by DCAS, when the Department of Buildings may be a better arbiter given code and zoning considerations already highlighted in the companion bill Intro 265. Wholesale "lights out" mandates may have unintended consequences, and it is not clear from the data presented that every building poses the same risk. REBNY would encourage the sponsors to consider further study on the topic before committing significant City resources.

BILL: Int 2460

SUBJECT: The bill would amend the administrative code of the city of New York, in relation to enforcement of environmental remediation plans and rules of the office of environmental remediation.

SPONSORS: Council Member Gennaro

This bill would grant the City the authority to classify violations of any provisions of the site management plan for a local brownfield remediation site as a civil penalty of up to 25,000 dollars. The bill would grant access to a yet to be determined City agency or staff to enter private property to inspect the terms of a site management plan.

The New York State Brownfield Cleanup Program is targeted towards remediating and repurposing contaminated and blighted areas known as Brownfield sites. Over the years, the Cleanup Program has proved critical in our efforts to correct environmental injustices, combat neighborhood blight, and provide thousands of homes citywide for New Yorkers who need it the most. Since 2015, the program has supported 20,000 homes in New York City, of which 6,400 are considered income restricted¹, with more homes anticipated in the coming years.

A robust enforcement mechanism is vital to maintaining the integrity of the program. However, the bill language appears overly broad and could ultimately unintentionally penalize well-intentioned actors or entities. The bill is inconsistent with existing OER programs, and should be refined to target the problem of

¹ [New York State Brownfield Cleanup Program and Tax Credits: Analysis of a Three Generation Program, NYU Schack Institute of Real Estate, October, 2021](#)

a select subset of second party non-compliance. This should include any such person, its transferee, successors, or assigns rather than referring to an entity. The bill also lacks a recourse mechanism to ensure participants have due process and are not unfairly penalized by anything that is found or determined in these "site visits." REBNY and its members would be happy to work with the Council and the City to craft legislation that meets the goals of better compliance with the Brownfield Clean Up Program while adequately balancing private property rights.

Thank you as always for your consideration on these points.

CONTACT(s):

Ryan Monell

Vice President of City Legislative Affairs
Real Estate Board of New York

212.616.5247
rmonell@rebny.com