



**THE CITY OF NEW YORK  
OFFICE OF THE CITY CLERK  
141 WORTH STREET  
NEW YORK, N.Y. 10013**

**MICHAEL McSWEENEY**  
CITY CLERK, CLERK OF THE COUNCIL

August 4, 2014

**BY HAND DELIVERY**

Honorable Melissa Mark-Viverito, Speaker  
The Council of the City of New York  
City Hall  
New York, NY 10007

Re: Petition

Dear Madam Speaker:

On July 3, 2014, a petition (the "Petition") was filed in the Office of the City Clerk (the "City Clerk") pursuant to Section 37 of the Municipal Home Rule Law ("MHRL"). The Petition seeks to amend the New York City Charter (the "Charter") by adding a local law that would mandate the Department of Buildings (the "Department") to investigate the collapse of any building that is at least twenty stories high. The new law would cover any collapse on or after September 11, 2001, excluding the former 1 World Trade Center and 2 World Trade Center. The text of the petition is transmitted as an attachment to this letter.

Section 24 of the MHRL requires that the City Clerk transmit to the City Council no later than August 4, 2014, a certificate that the Petition complies or does not comply, as the case may be, with all the requirements of the law.

Based upon a review of the Petition conducted at my direction, I have concluded that the Petition contains not more than 27,892 qualifying signatures, which is less than the 30,000 signatures legally required for submission to the electors of the City of New York (the "City") under Section 37 of the MHRL. Based on the foregoing review I have further concluded that not fewer than 37,688 signatures contained therein are invalid. The primary reason for such invalidity was the failure of the signers to be registered and qualified to vote in the last general election conducted in the City preceding the filing of the Petition, as is required by law. Other reasons include, but are not limited to, the failure of the signers to insert certain requisite information such as the date the Petition was signed or their address of record as a qualified voter, the presence of duplicate

signatures by the same signers, and the failure to have such signatures correctly witnessed. The failure to meet the requisite number of signatures renders the Petition invalid.

Furthermore, based on the advice of the Office of the Corporation Counsel, I have concluded that the Petition is otherwise invalid for several reasons:

1. The Petition's financing plan is deficient under the MHRL. Under Section 37(11) of the MHRL, if a proposed local law necessitates the expenditure of moneys, then the petition must contain "a plan to provide moneys and revenues sufficient to meet such proposed expenditures." The Petition here does not meet this requirement for two reasons. First, it imposes an unauthorized tax. Although the City can impose fees, it cannot impose taxes without New York State authorization. Here, the surcharge imposed by the Petition would be an unauthorized tax, rather than a fee, because the surcharge is insufficiently related to the permitting and regulatory scheme governing "Construction Permits" as defined in the Petition, and would impermissibly serve to offset the costs of broader Department functions. Second, the plan cannot be implemented in accordance with the principles of accounting that the City must follow under the New York State Financial Emergency Act for the City of New York ("FEA"). Section 8 of that law requires the City's budget to be balanced in accordance with generally accepted accounting principles ("GAAP"). Pursuant to the FEA and GAAP, the City is not generally permitted to create funds of City revenues held directly by a City agency and simply "rolled" from one fiscal year to the next to be used on an as-needed basis. Rather, in order to avoid improper deficit spending, current year expenditures must be made using only current year revenues. The Petition's financing plan would not be implemented in accordance with these principles.

2. The Petition is misleading and fails to give voters adequate notice of the purpose and effect of the proposed amendment. Courts have consistently held that referendum proposals must provide the voters adequate notice as to the meaning and implications of the proposed Charter amendments. The Petition fails to give voters adequate notice that its primary and immediate effect would be to re-investigate the collapse of one or more structures on September 11, 2001. In addition, the Petition does not adequately define "Construction Permits," a term that is key to understanding which permits would be subject to the surcharge that is the basis of the High-Rise Safety Initiative's financing plan.

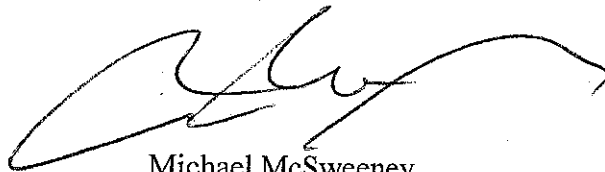
3. The Petition proposes what amounts to an impermissible advisory referendum. An earlier petition seeking to investigate (or reinvestigate) the events of September 11, 2001 was held to be invalid in part because it did not deal exclusively with municipal matters but rather encompassed matters of state, national, and even international concern. Burke v. Bd. of Elections, Index No. 110779/09, slip op. at 10-12 (Sup. Ct. N.Y. County Sept. 25, 2009) (Crespo, Special Ref.) (citation omitted), confirmed, Burke v. McSweeney, Index No. 110719/09 (Sup. Ct. N.Y. County Oct. 8, 2009). Because the earlier petition sought to reinvestigate the events of September 11, 2001, it was found to be "merely advisory" and therefore unauthorized. Burke v. Board

of Elections, Index No. 110779/09, slip op. at 12 (Crespo, Special Ref.). The present Petition suffers from the same defect in seeking to reinvestigate the events of September 11, 2001 and is therefore similarly unauthorized.

Finally, the Office of Corporation Counsel has concluded that the Petition's severability clause cannot be employed to save the non-flawed portions of the Petition due to the nature and extent of the Petition's legal flaws.

Accordingly, I hereby certify that the Petition does not comply with the requirements of law and therefore, it is ineligible for submission to the electorate. A copy of this letter is being forwarded to the person by whom the Petition was filed pursuant to Section 37(5) of the MHRL.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael McSweeney', written in a cursive style.

Michael McSweeney  
City Clerk  
Clerk of the Council

c: Leo Glickman  
Encl.

**Initiative Petition to Amend New York City Charter Under New York Municipal Home Rule Law Section 37**

I, the undersigned, do hereby state that I am a registered voter of the City of New York, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby sign this Petition, as set forth below, to enable the within Proposed Charter Amendment to be submitted to the electors of the City of New York at a general election to be held on November 4, 2014.

**PETITION TO AMEND THE CHARTER OF THE CITY OF NEW YORK TO ESTABLISH  
THE HIGH-RISE SAFETY INITIATIVE**

WHEREAS, it is the obligation of the New York City Department of Buildings to ensure the safe and lawful use of buildings in the City;

WHEREAS, in cities across the country, as a result of construction and design defects, natural and man-made disasters, and other causes, buildings of various types, including high-rise structures, have suffered collapse; and

WHEREAS, it is in the best interest of the City to establish, within the Department of Buildings, a responsibility to investigate and report on the causes of collapses of high-rise structures in the City;

**THE CHARTER OF THE CITY OF NEW YORK IS HEREBY AMENDED TO ADD A NEW SUBSECTION 645(e) TO  
CHAPTER 26 TO READ AS FOLLOWS AND TO BE PRESENTED TO THE VOTERS OF THE CITY OF NEW YORK AT  
THE GENERAL ELECTION OF VOTERS TO BE HELD ON NOVEMBER 4, 2014:**

1. The title of this local law is "Act to Establish the High-Rise Safety Initiative."
2. Definitions. As used in this local law, the following terms shall have the following meanings:
  - a) "Act" shall mean Act to Establish the High-Rise Safety Initiative;
  - b) "Agent" shall mean any investigator, consultant, expert, or other person or entity hired or retained to assist in carrying out the Department's responsibilities under the Act;
  - c) "City" shall mean City of New York;
  - d) "Commissioner" shall mean Commissioner of the New York City Department of Buildings;
  - e) "Collapse" shall mean any incident, occurring on or after September 11, 2001, in which, in the Commissioner's judgment, a portion comprising most or all of a High-Rise Structure has collapsed to the ground, other than in the normal course of intentionally raising such High-Rise Structure for purposes of real property development, and in response to which the City has conducted rescue operations or debris removal at the site of such High-Rise Structure;
  - f) "Construction Permits" shall mean all permits encompassed in the term "Construction Permits" as used in The City of New York Comprehensive Annual Financial Report of the Comptroller for the Fiscal Year Ended June 30, 2013;
  - g) "Department" shall mean New York City Department of Buildings;
  - h) "Effective Date" shall mean the date on which the Act takes effect, as defined herein;
  - i) "Employee" shall mean any full-time or part-time City employee who works in or for the Department;
  - j) "Fund" shall mean the "New York City High-Rise Safety Fund" established under the Act to provide the moneys and revenues sufficient to meet expenditures necessary for implementation of the Act;
  - k) "High-Rise Structure" shall mean any building, whether used for commercial, residential, or other purposes, and without regard to its classification or categorization under any Law that (i) has or had a height of at least 20 stories, and (ii) it or was located in the City. This term shall not, however, include the buildings that, on and prior to September 11, 2001, were located at and known as 1 World Trade Center and 2 World Trade Center;
  - l) "Investigation" shall mean the activities of the Department conducted pursuant to the Act; and
  - m) "Law" shall mean any City, New York State, or Federal law, regulation, or rule, or any applicable judicial decision.
3. Investigatory Responsibilities. The Department shall, to the extent permitted by and consistent with the Law, conduct an investigation into the cause or causes of each Collapse. The Commissioner shall, to the extent the Commissioner deems necessary and to the extent permitted by and consistent with the Law:
  - a) Designate Employees to assist in conducting each investigation and in carrying out the Department's other responsibilities under the Act;
  - b) Hire or retain Agents to assist in conducting each investigation and in carrying out the Department's other responsibilities under the Act; and
  - c) Expend and direct the expenditure of Fund assets for purposes in furtherance of conducting each investigation and of carrying out the Department's other responsibilities under the Act.Each investigation shall proceed, to the extent permitted by and consistent with the Law, even if a City, New York State, Federal, or other public or private entity conducted or participated in previous investigations relating to the High-Rise Structure at issue.
4. Investigatory Authority. Provided that the Department's powers under this Act shall be limited solely to the City and that the Department shall not be authorized, under this Act, to exercise subpoena power over any non-City public official or to enter or inspect any building, structure, enclosure, or premises located outside the City in the Commissioner's discretion, the Department and its Employees and Agents, to the extent permitted by and in compliance with the Law, shall have the following authority:
  - a) To compel, through subpoena, the attendance of witnesses, the taking of oaths, the examination of witnesses, and the production of books, papers, and other documents;
  - b) To enter and inspect any building, structure, enclosure, premises or any part thereof, anything therein, or anything attached thereto;
  - c) To consult and coordinate with other City departments and agencies; and
  - d) To exercise all other investigatory powers authorized by Law.
5. Reporting on Investigations. The Department shall prepare a report, to be submitted to the Mayor of the City and published on the Department's website, detailing and analyzing the results of each investigation.
6. Finance Plan Under New York State Municipal Home Rule Law Section 37 Paragraph 11. There shall be established a special fund, to be