30 Don’t Discourage Buildings From Operating During Emergencies

I. Summary

Issue:
Buildings need to remain open during many emergencies, but makeshift services that don’t meet code standards during normal operations can be a liability risk. Buildings also need clarity about enforcement of various regulations during an emergency, such as those governing heat and stairwell lighting.

Recommendations:
New York State should adopt legislation that limits the liability of building owners and their staff during emergency conditions. The city should inform owners and tenants how enforcement of regulations may be relaxed during emergencies.

II. Proposed Legislation, Rule or Study

Enact NYS Legislation Limiting Building Owner Liability During Emergencies:

The New York State legislature should enact legislation that shields building owners, their employees and agents from claims for personal injury, wrongful death, property damage or other loss when they:

1. shelter persons during an actual or impending emergency or following an emergency for some period of time
2. render assistance during a declared national, state, or local disaster or emergency
3. unless such services were provided in a wanton, willful or grossly negligent manner or with intentional misconduct.

Publish Relaxed Rules During Emergencies:

City agencies should provide information in one central location, such as nyc.gov and 311, identifying any rules and regulations that may be relaxed during and immediately following emergencies.

III. Supporting Information
Expanded Issue and Benefits:

During and following an emergency, private property owners, their employees and agents, must make myriad life-safety decisions and should be encouraged to use their best judgment to secure the safety of residents and minimize property damage without fear of legal repercussions. For instance, building owners may not be able to provide essential services required by the building code or other city regulations, like heating, electricity, or running water. At the same time, it may be the most prudent or safest option for building residents to remain in the building during these periods of limited functionality. The priority during these events should be occupant safety and not prescriptive compliance; city agencies and DHCR should communicate and make accessible in obvious places a list of those rules and regulations that will be suspended in the aftermath of an emergency and the timeframe(s) for such suspensions.

Illinois provides a model for such an effort, having enacted legislation that shields certain private property owners from liability for reasonable actions taken during an actual or impending disaster. We recommend New York State adopt similar legislation that would apply once the city has declared a disaster. Additionally, we recommend New York State enact legislation shielding private persons and volunteers acting during an emergency from tort liability, as the State of Michigan has done.

Existing buildings are regulated by numerous NYC agencies, including the Department of Buildings (DOB), the Fire Department of New York, the Department of Housing Preservation & Development (HPD) and the Department of Environmental Protection (DEP). For example, the Housing Maintenance Code regulates delivery of services to tenants including maintenance, service and utilities, (e.g., waste collection, water supply, sewers and drainage, heat and hot water, gas appliances, artificial lighting and protective devices and fire protection) and physical and occupancy standards for dwelling units (e.g., lighting and ventilation, sanitary facilities).

The following are examples of how the city might modify certain prescriptive existing building standards during disasters:

- The city issues violation notices and, when necessary, Orders to Vacate. Given that we cannot know in advance the specific consequences of any emergency, the agencies listed above should develop and publicize those rules and regulations for which enforcement may be reduced during and for a period after an emergency has been declared. In particular, we recommend that the city use a rule of reason and relax enforcement rules when specific violations are a direct result of a particular disaster or emergency.

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[ii] Michigan Emergency Management Act, Act 390 of 1976, Section 30.411. The following is sample language the State could utilize:
   An individual or entity engaged in disaster relief activity is not liable for the death of or injury to a person or persons, or for damage to property, as a result of that activity. An individual or an employee, agent, and volunteer of this entity that is engaged in disaster relief activity are immune from tort liability. As used in this section, “disaster relief activity” includes training for or responding to an actual, impending, mock, or practice disaster or emergency.
• The city evaluates decreased service complaints and can, among other things, order a rent reduction for affected tenants.\textsuperscript{iv} Similar to the temporary suspension of certain housing rules and regulations described above, the city could temporarily suspend the rent reduction process for a defined period of time in connection with service reductions that have been directly caused by an emergency event.

• After Sandy, the DOB developed processes to streamline permit applications. Their solutions, which were intended to solve specific problems following Sandy, should be adopted as city practice for use following future events.

• The city should inform owners if regulation limiting their ability to pump out basements has been relaxed in the aftermath of a flood.

• The city suspends parking rules before and during events. This can allow vehicles, normally parked below grade or in flood zones, to be moved to higher ground before storms. The city should continue to disseminate information about parking rule suspension, with particular emphasis on flood zones. Additionally, the city should continue to ensure parking permits for temporary generators and boilers are quickly available when needed following emergencies or storm events.

\textbf{Implementation:}

Limitations of liability would need to be enacted as New York State law. We also recommend that city agencies issue policy and procedural updates after a state of emergency has been declared and its implications are understood.

\textbf{Cost:}

The cost of implementing this rule is negligible. No cost estimation was performed for this proposal.

\textsuperscript{iv} See http://www.nyshcr.org/Rent/FactSheets/orafac14.htm.